BILLS
SUPPLEMENT No. 2 **21st February, 2025**

BILLS SUPPLEMENT

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THE MORTGAGE REFINANCE INSTITUTIONS BILL, 2025

MEMORANDUM

1. Object

The object of this Bill is to regulate the establishment of mortgage refinancing institutions; to provide for the functions of the central bank in relation to mortgage refinance business; to provide for the conduct of mortgage refinance business; to provide for corrective actions and liquidation; and for related matters.

2. Defects in the existing law

Currently, there is no law regulating the establishment of mortgage refinance institutions in Uganda. Mortgage refinance institutions play a key role in providing liquidity to financial institutions and micro finance deposit-taking institutions to enable them issue long-term mortgages. In the absence of mortgage refinance institutions, primary mortgage lenders have continuously relied on customer deposits and other short term borrowing to finance their mortgages and other long-term credit facilities, causing maturity mismatch.

Due to maturity mismatch, financial institutions and micro finance deposit-taking institutions limit their exposure to longer term loans in favour of short-term loans which has resulted into unfavorable mortgage terms such as —

(a) high interest rates;

(b) high payment installments;

(c) short payment durations; and

(d) requiring borrowers to start repaying loans immediately.

As a result of the above unfavorable terms, there is a high default rate on repayment of mortgages by the mortgagors which has led to numerous foreclosures of mortgages, court disputes, low access to housing, low investment levels which has negatively affected the livelihood of Ugandans.

3. Remedies

The Bill seeks to provide for the licensing of mortgage refinance institutions to carry out mortgage refinance business for purposes of refinancing or pre-financing portfolios of mortgages from primary mortgage lenders for financing of mortgages.

The Bill requires mortgage refinance institutions to provide long-term funding to primary mortgage lenders by re-financing or pre-financing mortgage portfolios for a long period of time of at least five years. This will enable primary mortgage lenders to offer mortgages to the public at—

(a) more affordable interest rates;

(b) manageable payment installments;

(c) long-term payment durations; and

(d) extending to borrowers, a grace period prior to repayment of the loan.

Thus, the enactment of the Mortgage Refinance Institutions Bill, 2025 will lead to increased access to financing for primary mortgage lenders that in long term will have an effect of facilitating affordable housing in Uganda.

4. Provisions of the Bill

The Bill consists of five parts and two schedules.

PART I — PRELIMINARY

This Part deals with the commencement of the Act, interpretation of key words and phrases used within the context of the Act, objects of the Act and functions of the central bank.

PART II — LICENSING OF MORTGAGE REFINANCE INSTITUTIONS

Part II of the Bill provides for the licensing of mortgage refinance institutions by prohibiting the operation of mortgage refinance business without a licence (Clause 5 of the Bill), provides for approval for a mortgage refinance institution to conduct Islamic mortgage refinance business through a window, provides for the licensing procedures (Clauses 6 to 10 of the Bill) and provides for the revocation of licences and annual fees (Clauses 11, 12 and 13 of the Bill).

PART III — CONDUCT OF MORTGAGE REFINANCE BUSINESS

This Part deals with matters relating to minimum capital for mortgage refinance institutions, limits on investments, liquidity management, prohibited activities, lending to primary mortgage lenders, as well as qualifying collateral (Clauses 14 to 19 of the Bill).

This Part further provides for the review and classification of credit facilities, governance and management, conditions for mortgage refinancing or pre-financing and limits on shareholding. (Clauses 20 to 24 of the Bill).

PART IV — CORRECTIVE ACTIONS AND LIQUIDATION

This Part deals with the powers of the central bank to issue directives, power of central bank to intervene in management, cessation of mortgage refinance business and liquidation of mortgage refinance institutions. (Clauses 25 to 28 of the Bill).

PART V — GENERAL

This Part deals with general matters relating to the maintenance of records, reporting requirements, inspection, mergers and acquisitions, risk management, financial year, power to make Regulations and amendment of Schedules. (Clauses 29 to 36 of the Bill).

MATIA KASAIJA (MP),

Minister of Finance, Planning & Economic Development.

THE MORTGAGE REFINANCE INSTITUTIONS BILL, 2025

ARRANGEMENT OF CLAUSES

Clause

A BILL for an ACT

ENTITLED

THE MORTGAGE REFINANCE INSTITUTIONS ACT, 2025

An Act to regulate mortgage refinancing business; to provide for the functions of the central bank in relation to mortgage refinance business; to provide for the conduct of mortgage refinance business; to provide for corrective actions and liquidation of mortgage refinance institutions; and for related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Commencement

This Act shall come into force on the date appointed by the Minister by Statutory Instrument.

2. Interpretation

In this Act, unless the context otherwise requires—

"central bank" means the Bank of Uganda established under article 161 of the Constitution;

"credit facility" means a contractual commitment to lend, offer a credit accommodation or extend credit to a borrower;

"currency point" has the value assigned to it in Schedule 1;

"financial institution" means an institution licensed under the Financial Institutions Act to conduct financial institutions business;

"islamic mortgage refinance business" means mortgage refinance business conducted in accordance with shari'ah principles through an islamic window;

"islamic window" means the part of a mortgage refinance institution which conducts islamic mortgage refinance business;

"licence" means a licence issued to a company to engage in the mortgage refinance business in accordance with this Act;

"licensee" means the holder of a licence issued under this Act;

"micro finance deposit-taking institution" means an institution licensed under the Microfinance Deposit Taking Institutions Act to conduct micro finance business;

"Minister" means the Minister responsible for finance;

"mortgage" includes any mortgage, charge, debenture, loan agreement or other encumbrance, whether legal or equitable which constitutes a charge over an estate or interest in land in Uganda or partly in Uganda and partly elsewhere and which is registered under the Mortgage Act;

"mortgage refinance institution" means a company incorporated in Uganda and licensed by the central bank to conduct mortgage refinance business;

"mortgage refinance business" means —

(a) the refinancing of portfolios of mortgages from primary mortgage lenders;

(b) the pre-financing of primary mortgage lenders for financing of mortgages;

(c) issuing bonds, notes and other financial instruments; or

(d) other activities as may be approved by the central bank from time to time;

"primary mortgage lender" means an entity that originates mortgages by lending or extending credit accommodation to borrowers and includes a financial institution, an Islamic financial institution, a micro finance deposit-taking institution, an Islamic micro finance institution, a registered society and any other entity that the central bank may, by notice in the Gazette, declare to be a primary mortgage lender;

"registered society" means a savings and cooperative society licensed by the central bank to offer financial services.

3. Objects of Act

The objects of this Act are—

(a) to provide for the licensing of mortgage refinance institutions to carry on mortgage refinance business;

(b) to provide for the approval of mortgage refinance institutions to carry on islamic mortgage refinance business through an islamic window;

(c) to prescribe the legal framework to govern mortgage refinance institutions; and

(d) to regulate mortgage refinance institutions.

4. Functions of central bank

(1) The central bank shall regulate, supervise and oversee the operations of a mortgage refinance institution.

(2) Without prejudice to the generality of subsection (1), the functions of the central bank are —

(a) to regulate and supervise the operations of mortgage refinance institutions;

(b) to consider applications for licences to carry out mortgage refinance business in accordance with this Act;

(c) to consider applications for approval to carry out islamic mortgage refinance business in accordance with this Act;

(d) to approve underwriting standards developed by mortgage refinance institutions for the purpose of granting credit facilities to primary mortgage lenders;

(e) to issue directives, standards, guidelines, orders and circulars regulating the manner in which the objectives of this Act may be achieved; and

(f) to do such other things as it may deem necessary for the administration of this Act.

PART II—LICENSING OF MORTGAGE REFINANCE INSTITUTIONS

5. Prohibition against operating mortgage refinance business without licence

(1) A person shall not conduct a mortgage refinance business in Uganda without a licence or an approval in the case of islamic mortgage refinance business issued by the central bank in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and if that person is—

(a) an individual, is liable on conviction to a fine not exceeding five hundred currency points or to imprisonment not exceeding seven years or both; or

(b) a body corporate, is liable on conviction to a fine not exceeding seven thousand currency points.

(3) A person convicted of an offence under subsection (2), shall immediately cease to carry out mortgage refinance business or islamic mortgage refinance business and shall be disqualified from acquiring a licence or approval under this Act.

6. Islamic mortgage refinance business

(1) A mortgage refinance institution licensed under this Act may apply to the central bank for approval to carry out islamic mortgage refinance business through an Islamic window.

(2) The central bank may, in consultation with the Minister, by regulations, provide for the conduct of islamic mortgage refinance business.

(3) The Regulations made under subsection (2) may provide for the treatment of islamic mortgage refinance business products that is equivalent to the treatment of mortgage refinance business products under conventional mortgage refinance business.

7. Application for licence

(1) A person who wishes to carry out mortgage refinance business shall apply to the central bank for a licence under this Act.

(2) An application referred to in subsection (1), shall be made in accordance with regulations made by the central bank and shall be accompanied by the prescribed fees.

(3) A person shall not make an application for a licence under subsection (1) unless, that person is a company limited by shares incorporated in Uganda.

(4) A person who, knowingly or recklessly furnishes a document or information which is false or misleading in connection with an application for a licence, commits an offence and is liable on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding five years or both.

8. Processing of licence

(1) The central bank shall consider an application made under this Act and may, grant or refuse to grant a licence in accordance with sections 9 and 10 of this Act.

(2) The central bank shall, before issuing a licence to an applicant to carry on mortgage refinance business, satisfy itself that the applicant—

(a) meets the minimum capital requirements for operating mortgage refinance business;

(b) is owned, governed and managed by persons whose integrity is consistent with mortgage refinance business and meets the fit and proper person criteria in Schedule 2 to this Act;

(c) has competent personnel to conduct the business of mortgage refinance; and

(d) meets any other requirements which the central bank regards as relevant to the application or to the applicant.

9. Refusal to grant licence

(1) The central bank may refuse to grant a licence to an applicant, where the applicant does not fulfil the requirements for a licence prescribed under this Act and the regulations made under this Act.

(2) Where the central bank declines to grant a licence to an applicant, the central bank shall, within the time prescribed by regulations under this Act, notify the applicant of its decision and specify the reason for the refusal in writing.

10. Grant of licence

(1) The central bank shall, upon receiving an application under section 7 consider the application and may, if satisfied, that the applicant meets the requirements prescribed under this Act and the regulations made under this Act, grant a licence to the applicant to carry on mortgage refinance business.

(2) The central bank may grant a licence subject to such conditions as the central bank may consider necessary and may, from time to time, add, vary or substitute the conditions as it deems appropriate.

(3) A licence granted under this Act shall be valid until revoked or suspended under this Act.

11. Revocation of licence

(1) Where a licensee fails to commence a mortgage refinance business within twelve months from the date of issue of the licence, the central bank shall revoke the licence.

(2) The central bank may, at any time, revoke the licence of a mortgage refinance institution if the central bank is satisfied that the licensee —

(a) has ceased to carry out mortgage refinance business;

(b) is undercapitalised or does not meet the prescribed minimum capital requirements;

(c) has entered into insolvency proceedings;

(d) has failed to comply with any of the provisions of this Act;

(e) has submitted false or misleading statements in respect of its financial condition, ownership, management or other information related to its business;

(f) obtained the licence through unlawful means;

(g) has failed to comply with a condition specified in the licence;

(h) has failed to comply with any directive, order or guidelines issued by the central bank; or

(i) has conducted its business in a manner that poses a systemic risk to the stability of the financial system.

(3) The central bank may, by regulations, prescribe additional grounds and the procedure for revoking a licence under this Act.

(4) The central bank shall give the licensee at least thirty days' notice in writing, specifying the reason for the intended revocation of the licence.

(5) The central bank shall, before revoking a licence, consider any representations made in writing by the licensee opposing the revocation.

(6) The central bank shall revoke the licence if, within thirty days after issuing the notice, the mortgage refinance institution does not oppose the revocation or the central bank is not satisfied by the representations made.

(7) Where the central bank revokes a licence, the central bank shall direct the licensee to furnish the central bank with information relating to its operations.

(8) The central bank shall publish a notice of revocation of a licence in a newspaper of wide national circulation or any other media as the central bank may determine.

12. Effect of revocation of licence

(1) A licensee whose licence is revoked under section 11 shall be taken not to be licensed from the date on which the central bank revokes the licence.

(2) The revocation of a licence shall not operate so as to —

(a) avoid or affect any agreement, transaction or agreement with a primary mortgage lender relating to mortgage refinance business where the agreement, transaction or arrangement was entered into before the revocation; or

(b) affect any right, obligation or liability arising under an agreement, transaction or arrangement with the primary mortgage lender relating to the mortgage refinance business.

(3) Where the central bank revokes a licence, the mortgage refinance institution shall be liquidated in accordance with section 28 of this Act.

13. Annual fees

(1) A licensee shall on or before the 31st day of January each year pay annual fees prescribed by the central bank by regulations.

(2) Where a licensee fails to pay the prescribed annual fee before or on the date specified in subsection (1)—

(a) the licensee shall pay to the central bank a civil penalty of fifty percent of the annual licence fees; and

(b) the unpaid annual fees and any civil penalty payable under paragraph (a), shall be a debt due to the central bank by the licensee.

(3) The central bank shall on annual basis publish the list of licensed mortgage refinance institutions.

PART III — CONDUCT OF MORTGAGE REFINANCE BUSINESS

14. Minimum capital for mortgage refinance institution

(1) The minimum paid-up capital required for the establishment of a mortgage refinance institution shall be one million, seven hundred and fifty thousand currency points invested initially in such liquid assets as the central bank may approve.

(2) The minimum capital funds requirements for a mortgage refinance institution unimpaired by losses shall, at all times, not be less than the minimum paid- up capital prescribed in subsection (1).

(3) The Minister may, in consultation with the central bank, by statutory instrument, revise the minimum paid-up capital referred to in subsection (1).

15. Limit on investments

(1) A mortgage refinance institution may invest in —

(a) treasury securities or equivalent instruments issued by the Government of Uganda;

(b) fixed cash deposits in financial institutions, Islamic financial institutions, microfinance deposit-taking institutions and Islamic microfinance institutions licensed by the central bank; and

(c) such other instruments as the central bank may permit.

(2) Notwithstanding subsection (1), the central bank may, by regulations prescribe a limit on the total assets of a mortgage refinance institution that may be invested under subsection (1).

16. Liquidity management

(1) A mortgage refinance institution shall maintain liquid assets for purposes of meeting its obligations and liabilities as and when they fall due, in a manner prescribed by regulations made by the central bank.

(2) For purposes of subsection (1), liquid assets include —

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

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

(c) moneys at call and balances at banks in Uganda other than the central bank, after deducting therefrom balances owed to those banks;

(d) Uganda treasury bills maturing within a period not exceeding ninety-one days;

(e) uncommitted balances at banks abroad, withdrawable on demand or short notice, and money at call outside Uganda after deducting balances owed to banks outside Uganda if the balances and money at call are denominated in currencies which are freely negotiable and transferable in international exchange markets consistent with the articles of agreement of the International Monetary Fund;

(f) commercial bills and promissory notes which are eligible for discount by commercial banks or by the central bank under the Bank of Uganda Act; or

(g) any other asset that the central bank may by statutory instrument approve.

(3) A mortgage refinance institution that fails to maintain the liquid assets as required under subsection (1), shall be liable to pay to the central bank a civil penalty of one hundred currency points for each day on which the contravention continues.

17. Prohibited activities

(1) A mortgage refinance institution shall not —

(a) receive or take deposits within the meaning of the Financial Institutions Act and the Microfinance Deposit-Taking Institutions Act;

(b) offer credit facilities to any other person other than a primary mortgage lender;

(c) raise any capital or equity from the capital markets without the prior written approval of the central bank;

(d) purchase or refinance non-performing mortgages;

(e) invest in a security instrument other than an instrument provided for in section 15 of this Act;

(f) create a subsidiary entity without the written approval of the central bank;

(g) engage in activities that may lead it to incur foreign exchange risks, commodity risks or equity risks; or use financial derivatives, except for purposes of hedging in the ordinary course of the licensed business; or

(h) engage in any activity, other than the activity which it is licensed to undertake under this Act.

(2) A mortgage refinance institution that engages in prohibited activities under subsection (1), is liable to pay to the central bank a civil penalty of two percent of the gross annual revenue of the mortgage refinance institution and, in addition to the penalty, the mortgage refinance institution shall forfeit all the gross proceeds from the prohibited activity to the central bank.

18. Lending to primary mortgage lenders

(1) A mortgage refinance institution shall not lend, offer credit accommodation or offer a credit facility to any person unless the person is a primary mortgage lender that is in good standing.

(2) A primary mortgage lender shall not access a credit facility from a mortgage refinance institution unless the credit facility is for purposes of —

(a) refinancing of mortgage portfolios;

(b) purchasing mortgage portfolios from another primary mortgage lender; or

(c) pre-financing mortgages.

(3) For purposes of subsection (1), a primary mortgage lender is considered to be in good standing if it —

(a) has not previously defaulted on any payment obligation relating to a credit facility;

(b) has not received a qualified opinion on its most recent audited statements;

(c) meets its capital adequacy requirements;

(d) complies with regulatory requirements; and

(e) meets any other conditions set by the central bank or the mortgage refinance institution.

(4) A mortgage refinance institution may request in writing the primary mortgage lender to submit information to prove that the primary mortgage lender is in good standing.

(5) A mortgage refinance institution shall with the approval of the central bank, set underwriting standards for the purpose of granting a credit facility to a primary mortgage lender.

(6) The central bank may, by regulations, set single borrower limits which a mortgage refinance institution shall comply with.

(7) A mortgage refinance institution or primary mortgage lender that contravenes this section, is liable to pay to the central bank a civil penalty of one hundred currency points for each day on which the contravention continues.

19. Qualifying collateral

(1) A mortgage refinance institution shall not issue a credit facility unless the primary mortgage lender has provided qualifying collateral to secure the credit facility.

(2) The qualifying collateral referred to in subsection (1) may include—

(a) a lien or assignment of a portfolio of first ranking charges or mortgages over mortgaged properties which are not in arrears;

(b) debt instruments issued or guaranteed by the Government of Uganda;

(c) fixed cash deposits; or

(d) any other qualified collateral approved by the central bank.

(3) The central bank may, by Regulations, prescribe the criteria for ascertaining the adequacy of the qualifying collateral.

20. Protection of collateral pledged to mortgage refinance institution

(1) The collateral pledged by a primary mortgage lender to a mortgage refinance institution shall not be attached, assigned or transferred for purposes of satisfying any debt or claim.

(2) The primary mortgage lender shall not deal or transact with any collateral pledged to a mortgage refinance institution without the approval of the mortgage refinance institution.

(3) The approval referred to in subsection (2), shall not be unreasonably denied by a mortgage refinance institution.

21. Review and classification of credit facility

(1) A mortgage refinance institution shall review its credit facility portfolio at least once every ninety days and classify the credit facilities as either performing or non-performing.

(2) The central bank may, by regulations, prescribe a criteria for classifying credit facilities as performing or non-performing in accordance with subsection (1).

22. Conditions for mortgage refinancing or pre-financing

(1) A mortgage refinance institution shall not offer a credit facility to a primary mortgage lender unless —

(a) the duration of the mortgage to be refinanced or pre-financed is at least five years;

(b) the interest rates or the equivalent under islamic mortgage refinance business is fixed for the duration of the credit facility; or

(c) any other condition as the central bank may prescribe by regulations.

(2) The conditions referred to in subsection (1), shall apply to a primary mortgage lender offering a credit facility to a customer under a mortgage refinancing or pre-financing arrangement.

(3) A mortgage refinance institution or primary mortgage lender that contravenes subsection (1) or (2), is liable to pay a civil penalty of two hundred and fifty currency points for each day of default.

23. Governance

(1) A mortgage refinance institution shall establish and maintain an appropriate governance and management structure.

(2) The central bank may by regulations prescribe the governance and management structures and qualifications of the shareholders, board of directors and senior management of a mortgage refinance business.

24. Limit on shareholding

(1) A person, body corporate controlled by one person, group of related persons or body corporate owned or controlled directly

or indirectly by a group of related persons, shall not hold, whether directly or indirectly, more than twenty five percent of the shares of a mortgage refinance institution.

(2) Subsection (1) shall not apply where the shareholder, is the Government of Uganda, an agency or parastatal of the government of Uganda.

PART IV — CORRECTIVE ACTIONS AND LIQUIDATION

25. Power of central bank to issue directives

(1) If, at any time, the central bank has reason to believe that —

(a) the business of a mortgage refinance institution is being conducted in a manner contrary to this Act, other applicable laws or guidelines, directives or instruments issued by the central bank, or in any manner detrimental to or not in the best interests of the primary mortgage lenders, or its creditors; or poses a systemic risk to the stability of the financial system; or

(b) a mortgage refinance institution, any of its officers or other person participating in the general management of the mortgage refinance institution is engaged in any practice that is likely to cause a contravention of this Act, other applicable laws, or, guidelines, directives or instrument issued by the central bank, the central bank may, without prejudice to any other course of actions—

(i) order, in writing, that the mortgage refinance institution takes remedial action to comply with the Act or other relevant laws, guidelines or instrument issued by the central bank;

(ii) issue directives regarding measures to be taken to improve the management, financial soundness or business methods of the mortgage refinance institution;

(iii) require the directors or management of the mortgage refinance institution to execute an agreement concerning their implementation of orders or directives issued under paragraphs (i) and (ii) of this subsection; or

(iv) perform or appoint an agent to perform a special examination of the mortgage refinance institution to determine the financial condition of the institution, the efficacy of its governance framework or its risk management practices and evaluate resolution options if necessary, at the cost of the mortgage refinance institution.

(2) Where a mortgage refinance institution fails, refuses or neglects to comply with an order, directive or agreement issued or made under this Act or any other law, the central bank may do any or all of the following —

(a) issue a cease and desist order requiring the mortgage refinance institution and its management —

(i) to stop the improper or unacceptable practice;

(ii) to put a limit to the licenced mortgage refinance business; or

(iii) to stop any declaration of discretionary distributions including dividends, bonuses, increments in the salary, emoluments and other benefits of all shareholders, directors and officers of the mortgage refinance institution.

(b) remove or suspend any person from the governance or management of the affairs of the mortgage refinance institution;

(c) impose penalty of one hundred currency points on the mortgage refinance institution for each day on which the contravention continues;

(d) appoint a person, qualified and competent, in the opinion of the central bank, to advise and assist the mortgage refinance institution for the purposes of implementing any directives or agreements under subparagraphs (a), (b) or (c) of this subsection;

(e) require the mortgage refinance institution to reconstitute its board of directors within such a period as shall be specified by the central bank;

(f) require the mortgage refinance institution to add such capital as may be specified by the central bank; or

(g) impose any other sanctions as the central bank may deem appropriate in the circumstances.

(3) The central bank may, before making a decision under subsection (1), require the mortgage refinance institution, officer or other person to show cause why the central bank should not intervene.

26. Power of central bank to intervene in management

(1) The central bank may take over management of a mortgage refinance institution where the mortgage refinance institution —

(a) is significantly undercapitalised;

(b) has failed to comply with directives or orders issued by the central bank; or

(c) is conducting business in a manner that poses a systemic risk to the stability of the financial system.

(2) For purposes of subsection (1)(a), a "significantly undercapitalised" mortgage refinance institution is one which does not–

(a) hold the minimum capital funds, unimpaired by losses of at least fifty percent of the requirement prescribed in section 14 (2);

(b) hold core capital of at least fifty percent of the requirement prescribed by regulations issued by the central bank or

(c) hold total capital of at least fifty percent of the requirement prescribed by regulations issued by the central bank.

(3) Where the central bank decides to intervene under subsection (1), the central bank may take over management of a mortgage refinance institution or appoint a person suitably qualified and competent in the opinion of the central bank, to manage the affairs of the mortgage refinance institution for a period not exceeding twelve months.

(4) The central bank shall, on taking over management of a mortgage refinance institution under this section, suspend the management and the board of the mortgage refinance institution and have exclusive powers of management and control of the affairs of the mortgage refinance institution including the power to—

(a) review the mortgage portfolios with the primary mortgage lenders and where necessary, arrange for substitution of any non-performing mortgages;

(b) continue or discontinue any of the operations of the mortgage refinance institution;

(c) stop or limit the payment of its obligations;

(d) employ any necessary staff;

(e) execute any instrument in the name of the mortgage refinance institution;

(f) initiate, defend and conduct in its name any action or proceeding to which the mortgage refinance institution may be a party;

(g) assume or reject any executory contracts;

(h) cancel any leases or tenancy agreements entered into by the mortgage refinance institution as lessee or tenant;

(i) appoint an advisory board of directors;

(j) arrange the transfer of the mortgage portfolio to another entity licensed or established for that purpose;

(k) do any other act which is necessary to enable the central bank to carry out its obligations under this section.

(5) Where the condition of the mortgage refinance institution continues to deteriorate, the central bank may revoke the licence of the mortgage refinance institution.

27. Cessation of mortgage refinance business

(1) A mortgage refinance institution shall not cease conduct mortgage refinance business or islamic mortgage refinance business without the approval of the central bank.

(2) A request for the approval of the central bank under subsection (1) shall be accompanied by a cessation plan indicating —

(a) the procedure for how the credit facilities to primary mortgage lenders shall be managed;

(b) the mitigation plan for any adverse effects of the cessation of business; and

(c) any other matter as the central bank may require.

(3) The central bank may, upon review of the request in subsection (2)—

(a) approve; or

(b) request the mortgage refinance institution to amend its cessation plan in whichever aspects it deems necessary.

(4) A mortgage refinance institution shall, upon obtaining the approval of the central bank under subsection (3), publish a notice of cessation of business in the Gazette and in a newspaper of wide circulation at least ninety days before the date of cessation.

28. Insolvency of mortgage refinance institution

(1) The Insolvency Act and the Companies Act shall apply to a mortgage refinance institution undergoing liquidation, receivership administration or other form of dissolution.

(2) Notwithstanding subsection (1), section 16 of the Insolvency Act, Cap. 108 shall not apply to a decision made by the central bank or its agent made under section 26 of this Act.

PART V — GENERAL

29. Maintenance of records

(1) A mortgage refinance institution shall maintain its records in a manner and format and for a period prescribed by the central bank by regulations.

(2) A mortgage refinance institution shall keep its financial records in a manner that is compliant with the International Financial Reporting Standards and such other reporting requirements as the central bank may prescribe.

(3) The central bank shall have the power to access, inspect and verify the records of a mortgage refinance institution required to be maintained under subsection (1) and (2).

30. Reporting requirements

A mortgage refinance institution shall submit to the central bank reports at a frequency, in a format and with content prescribed by the central bank by regulations.

31. Inspection

(1) The central bank may cause an inspection of a mortgage refinance institution for purposes of ascertaining that the mortgage refinance business is being conducted in accordance with this Act.

(2) A mortgage refinance institution shall furnish the person conducting an inspection with information relating to the affairs of the mortgage refinance business as the person may require within such reasonable time as the person may specify.

(3) A director or any other officer of a mortgage refinance institution who fails or refuses to furnish any document or information in his or her custody or power as required under subsection (2), shall cease to be a fit and proper person and shall cease to be a director or an officer of the mortgage refinance institution.

32. Mergers and acquisitions

(1) A mortgage refinance institution shall not execute any merger or acquisition agreement without the written approval of the central bank.

(2) A mortgage refinance institution that contravenes subsection (1), is liable to pay a civil penalty of two hundred and fifty currency points for each day of default.

33. Risk management

(1) A mortgage refinance institution shall put in place a risk management framework with measures to mitigate risks that arise or may arise in the operation of the mortgage refinance business.

(2) A mortgage refinance institution shall comply with the risk management requirements issued by the central bank or other competent authority by regulations, guidelines or directives.

(3) A mortgage refinance institution shall not keep funds in one financial institution or micro finance deposit-taking institution in excess of twenty five percent of its total liquid assets.

(4) The central bank in consultation with the Minister, may by statutory instrument, revise the percentage referred to in subsection (3).

34. Financial year

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

35. Power to make regulations

(1) The central bank, may, in consultation with the Minister, make regulations generally for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to subsection (1) the central bank may make regulations relating to—

(a) asset quality including credit facility provisions, classification and write off;

(b) submission of accounts;

(c) intervention in the management of mortgage refinance institutions;

(d) reporting procedures and requirements;

(e) consolidated supervision; in the case of mortgage refinance institution under group structures;

(f) prescribing fees payable under this Act;

(g) the forms and notices to be used under this Act;

(h) the retention of records relating to transactions under this Act;

(i) corporate governance requirements;

(j) risk and liquidity management;

(k) administrative sanctions;

(l) income recognition, accounting standards and, capital adequacy ratios based on risk weights for assets; and

(m) any other matter for the purposes of giving effect to the provisions of this Act.

(3) Regulations made under this section may prescribe, for any contravention of the regulations—

(a) a fine not exceeding one thousand currency points or imprisonment not exceeding two years or both; and

(b) an additional fine not exceeding one hundred currency points in respect of each day on which the contravention continues.

36. Amendment of Schedule

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

(2) The Minister in consultation with the central bank may amend Schedule 2 to this Act.

SCHEDULES

SCHEDULE 1

Section 2

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

SCHEDULE 2

Section 8 (2)(b)

CRITERIA FOR DETERMINING WHETHER A PERSON IS A FIT AND PROPER PERSON TO MANAGE, CONTROL, BECOME A DIRECTOR OR SUBSTANTIAL SHAREHOLDER IN A MORTGAGE REFINANCE INSTITUTION

1. In order to determine, for the purposes of this Act, the professional and moral suitability of any person proposed to manage or control a mortgage refinance institution, or to become a substantial shareholder, or director, the central bank shall have regard to the following qualities, in so far as they are reasonably determinable, in respect of the person concerned—

(a) his or her general probity;

(b) his or her competence and soundness of judgment for the fulfilment of the responsibilities of the office in question;

(c) the diligence with which the person concerned is fulfilling or likely to fulfil those responsibilities; and

(d) whether the interests of depositors or potential depositors of the institution are, or are likely to be in any way, threatened by his or her holding that position.

2. For the purposes of and without prejudice to the general effect of subparagraph (1), the central bank may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that the person—

(a) has been convicted of the offence of fraud, corruption, drug, wildlife and human trafficking, tax crime, a predicate offence generating proceeds of crime to money laundering and terrorism financing or any other offence depicting dishonesty or indicative of involvement or participation in handling of proceeds of illegal activities or any other offence of which dishonesty or violence is an element;

(b) has contravened any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractice by, persons engaged in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;

(c) was a director of an institution that has been liquidated or is under liquidation or management of the central bank or under receivership;

(d) has taken part in any business practice that in the opinion of the central bank, was deceitful or oppressive, fraudulent, prejudicial or otherwise improper whether unlawful or not, or which otherwise reflect discredit on his or her method of conducting business;

(e) has engaged in or taken part in or been associated with any other business practices or otherwise conducted himself or herself in such a manner as to cause doubt on his or her competence and soundness of judgment;

(f) has defaulted on a loan or credit accommodation or a company in which he or she is a director has defaulted on a loan or credit accommodation;

(g) has been listed as an individual or entity subject to targeted financial sanctions under any United Nations Security Council Resolution or any other national, regional or international sanctions list;

(h) has contravened any law protecting members of the public against financial loss;

(i) was a director or substantial shareholder or vetted executive manager of any corporate entity that has been or is under involuntary liquidation, receivership or management by a central bank or financial sector regulator or by the direction of court or a creditor mandated administrative process;

(j) has been refused admission to, or has been expelled from or has an outstanding probe or pending disciplinary process with, any professional body;

(k) has taken part in any improper business practices that discredit or bring into disrepute the said business;

(l) has engaged in business practices or conduct that causes or casts doubt as to his or her competence or integrity or soundness of judgment;

(m) has been sanctioned by any regulator or professional body or association;

(n) has defaulted on a loan as an individual or he or she is a director or has a substantial shareholding or is an ultimate beneficial shareholder in a company that has defaulted on a loan or credit facility;

(o) has been the subject of an adverse judgment or has been found guilty on any matter or subject that speaks to his or her integrity in a civil or criminal proceeding by any lawfully established court;

(p) has deliberately misled or attempts to mislead by act or omission, a client, the institution or the regulator that is seeking or sought to authenticate their probity;

(q) has deliberately falsified documents to mislead a client, the institution or regulator, or failed to disclose the existence of falsified documents;

(r) has deliberately failed to inform a client, institution or regulator, without reasonable cause, of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding;

(s) has deliberately prepared or to a material extent, participated in the preparation of inaccurate records or returns;

(t) has a record of non-compliance with statutory codes, including but not limited to disciplinary or supervisory or regulatory administrative sanctions; or

(u) his or her appointment would result in a conflict of interest, real or perceived.

3. Notwithstanding paragraph (2), the central bank reserves the right to take into consideration other facets or features not expressly provided for under paragraph (2) that may be applicable to the nominee, to ascertain that the nominee is a fit and proper.

4. The central bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of a nominee.

Cross References

The Companies Act, Cap. 106

The Financial Institutions Act, Cap. 57

The Insolvency Act, Cap. 108

The Microfinance Deposit-Taking Institutions Act, Cap. 58

The Mortgage Act, Cap. 239