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**Bill No. 1    *Micro Deposit-Taking Institutions Bill*                      2002****THE MICRO DEPOSIT-TAKING INSTITUTIONS BILL, 2002****MEMORANDUM**

The object of this Act is to provide for the regulation and supervision of microfinance business in Uganda; to ensure that microfinance business is conducted in a safe and sound manner conducive to the orderly growth of the financial sector whilst contributing to poverty reduction in both rural and urban areas.

**GERALD M. SSENDAULA,***Minister of Finance, Planning and Economic Development.*

**THE MICRO DEPOSIT-TAKING INSTITUTIONS BILL, 2002.**

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*Clause.*

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**FIRST SCHEDULE**

Currency Point

**SECOND SCHEDULE**

Criteria for determining whether a person is a fit and proper person to manage, control, become a director or substantial shareholder in 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 25 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;

(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.

**13.** 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—

Revocation  
of licence.

- (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.

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

(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.

15. 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.

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

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

(3) The Central Bank may from time to time by statutory instrument, vary the minimum paid-up capital prescribed by subsection (1).

- (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.

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

- (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.

**30.** For the purpose of this section and sections 31 to 45—

- (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.

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

(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.

External  
auditors.

Appointment  
of external  
auditor.

(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).

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

Qualification  
of external  
auditors.

(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;

Statute No.  
12 of 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).

(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.

No change  
of external  
auditor  
without  
approval of  
Central  
Bank.

**33.** (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

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

34. 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.

Insurance cover by external auditors.

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

Time limit for external auditor.

36. The duties of an external auditor appointed under subsections (1) or (3) of section 31 shall be—

Duties of the external auditor.

(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.

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

- (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).

**38.** (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.

(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.

**39. (1) Every auditor of an institution shall—**

Powers of  
external  
auditor.

(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 is liable to a fine not exceeding twenty-five currency points or imprisonment for a period not exceeding six months or both.

**40. A person who in good faith makes an oral or written communication under subsection (1) of section 38 shall not be liable in any civil action arising from having made the communication.**

No civil  
liability.

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

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.

Qualified  
audit report.

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

Rejection of  
audit report.

**43.** 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.

Require-  
ments on  
provisions.

**44.** The Central Bank shall, before the annual accounts of an institution are finalised, dividends paid and the capital requirements stipulated in sections 16 and 17 are met, require to be satisfied by the institution in respect of—

(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.

Meetings  
with  
auditors.

**45.** (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.

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

46. 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.

Indemnity.

47. (1) Every institution shall promptly report to the Credit Reference Bureau established by the Central Bank—

Credit  
reference  
bureau.

(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.

Corporate  
records.

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

(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.

Form of  
corporate  
records, etc.

**49.** The financial and non-financial records referred to in section 48 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.

Cap 85.

Submission  
of audited  
accounts.

**50.** (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.

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

Financial  
year.

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

Disclosure  
of violations  
in audited  
financial  
statements.

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

(a) the name of any person or group of related persons who hold 20 per cent or more of the total voting rights in the institution;

- (b) advances or credit facilities exceeding 1% 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.

**53.** (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.

Publication  
of audited  
accounts.

(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.

**54.** 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—

Rectification  
of audited  
accounts.

- (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.

Protection  
and  
retention of  
records.

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

- (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 DEPOSIT-TAKING INSTITUTIONS.**

Responsi-  
bilities of  
the Central  
Bank.

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

- (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.

(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.

**62.** (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—

Powers of  
Central  
Bank on  
taking over  
manage-  
ment.

(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.

**63.** 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

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

- (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.

**64.** (1) A statutory manager appointed under paragraph (n) of section 62 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.

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

Powers and  
duties of a  
statutory  
manager.

- (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.

Management  
by Central  
Bank not  
relief from  
contractual  
obligations.

**65.** 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.

**66.** 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.

Costs of management.

**67.** 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—

Offences.

- (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.

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

Placing of institution under receivership.

- (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.

Options  
available to  
receiver.

**69.** (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—

- (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.

**70.** 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.

Effect of  
placement  
of  
institution  
under  
receivership.

#### PART VII—LIQUIDATION.

**71.** 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.

Bar on  
liquidation  
or winding  
up  
proceedings.

**72.** (1) An institution may, with the prior approval of the Central Bank apply to the High Court to voluntarily liquidate its operations.

Voluntary  
liquidation.

(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 74 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 73 of this Act.

**73.** (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—

(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.

Liquidation  
by the  
Central  
Bank.

Cap 85.

**74.** (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 her 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.

Powers of  
liquidator.

**75.** (1) A liquidator may—

- (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.

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

(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.

Stay of  
proceedings.

**76.** (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.

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

Reliance on  
statements.

**77.** A liquidator is not liable if the liquidator relies in good faith on—

(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.

Examination  
of others,  
etc.

**78.** (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.

(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.

Costs of  
liquidation.

**79.** 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.

**80.** (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.

Release of  
liquidator.

(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.**

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

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.

**82.** (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.

Branches.

(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.

Freezing of  
accounts.

**83.** (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.

(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.

**84.** (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.

Officers  
deemed  
public  
officers.

**85.** 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.

Obligations  
under the  
Companies  
Act, etc.  
Cap 85.

**86.** Nothing in this Act shall be deemed to relieve an institution from any of its obligations under the Companies Act or Building Societies Act.

Protection  
of Central  
Bank.

**87.** 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.

Deposit  
advertisements.

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

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

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

(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.

Regulations,  
notices and  
directions.

**90.** (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.

(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.

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

Amendment  
of  
Schedules.

(2) The Central Bank may, by statutory instrument, amend the Second Schedule to this Act.

Transitional  
provisions.

**92.** 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 twelve months from the commencement of this Act comply with the requirements of this Act or wind up its business.

**FIRST SCHEDULE.**

**SECTIONS 2 AND 91**

**Currency Point**

A currency point shall be equivalent to twenty thousand shillings.

**SECOND SCHEDULE.****SECTIONS 2,7 (4), 22(4) AND 23(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  
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.