

ACTS SUPPLEMENT

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Act 2 ***Financial Institutions (Amendment) Act*** **2016**

THE FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2016.

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**THE FINANCIAL INSTITUTIONS (AMENDMENT)
ACT, 2016.**

An Act to amend the Financial Institutions Act, 2004, to provide for Islamic banking; to provide for bancassurance; to provide for agent banking; to provide for special access to the Credit Reference Bureau by other accredited credit providers and service providers; to reform the Deposit Protection Fund; and for related purposes.

DATE OF ASSENT: 19th January, 2016.

Date of Commencement: 4th February, 2016.

BE IT ENACTED by Parliament as follows:

1. Amendment of section 3 of the Financial Institutions Act, 2004

The Financial Institutions Act, 2004, in this Act referred to as the “principal Act”, is amended in section 3—

- (a) in the definition of “acceptance house” by inserting immediately after “acceptance facilities” the following—

“and economically equivalent Islamic financial business subject to any restrictions specified by the Central Bank by regulations;

“agent” means a person contracted by a financial institution to provide financial institution business on behalf of the financial institution in accordance with this Act;

“agent banking” means the conduct by a person of financial institution business on behalf of a financial institution as may be approved by the Central Bank”

- (b) in the definition of “associate” in paragraph (a)(iii) by inserting immediately after “director” the following—

“or a substantial shareholder;”

- (c) in the definition of “commercial bank” by inserting immediately after “others.” the following—

“and economically equivalent Islamic financial business subject to any restrictions specified by the Central Bank by regulations;”

- (d) in the definition of “credit accommodation” by inserting immediately after “lend” the following—

“or otherwise extend credit,”

- (e) by substituting for the definition of “demand liabilities” the following—

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

- (f) in the definition of “deposit substitutes” by inserting immediately after “instruments” the following—

“including Islamic contracts specified for that purpose by the Central Bank by regulations.”

- (g) in the definition of “discount house” by inserting the following immediately after “financial instruments”—

“and economically equivalent Islamic financial business subject to any restrictions specified by the Central Bank by regulations;”

- (h) by substituting for the definition of “exposure” the following—

“exposure” includes loans, advances, overdrafts, other extensions of credit and holding of papers as well as off balance sheet commitments such as acceptances, guarantees, underwriting, endorsements, placements, documentary credits, performance bonds and other contingent liabilities including Islamic contracts specified for that purpose by the Central Bank by regulations;”

- (i) by substituting for the definition of “finance house” the following—

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

- (j) in the definition of “financial institution” by inserting immediately after “finance house” the following—

“an Islamic financial institution”

- (k) in the definition of “financial institution business”—

- (i) by substituting for “lending or extending credit” the following—

“lending or extending money held on deposit or any part of that money including by way of”—

- (ii) in paragraph (d) by inserting immediately after “sale of foreign currencies” the following—

“as a financial institution;”

- (iii) in paragraph (n) by inserting immediately “networks” the following—

“as a financial institution;”

- (iv) by repealing paragraph (o);

- (v) by inserting immediately after paragraph (o) the following—

“(oa) Islamic financial business”

- (l) by substituting for the definition of “foreign exchange business” the following—

“foreign exchange business” means any facility offered, business undertaken or transaction executed with any person involving a foreign currency inclusive of any account facility, credit extension, lending, issue of guarantee, counter-guarantee, purchase or sale of any money, instrument or asset by means of cash, cheque, draft, transfer or any other instrument denominated in a foreign currency including Islamic contracts specified for that purpose by the Central Bank by regulations;”

- (m) by inserting immediately after the definition of “insider” the following—

“Islamic bank” means an Islamic financial institution which is a bank;

“Islamic contract” means a contract which complies with the Shari’ah and satisfies any conditions specified by the Central Bank for that purpose;”

“Islamic financial business” means financial institution business which conforms to the Shari’ah and includes—

- (a) the business of receiving property into profit sharing investment accounts or of managing such accounts;
- (b) any other business of a financial institution which involves or is intended to involve the entry into one or more contracts under Shari’ah or otherwise carried out or purported to be carried out in accordance with the Shari’ah including—
 - (i) equity or partnership financing, including *Musharakah*, *Musharakah mutanaqisah* and *mudarabah*;
 - (ii) lease based financing, including *al-ijarah*, *al-ijarah muntahia bi al-tamlik* and *al-ijarah thumma al-bai*;
 - (iii) sale based financing, including *istisna`*, *bai` bithaman ajil*, *bai` salam*, *murabahah* and *musawamah*;
 - (iv) currency exchange contracts;
 - (v) fee based activity, including *wakalah*;
- (c) the purchase of bills of exchange, certificates of Islamic deposit or other negotiable instruments; and

- (d) the acceptance or guarantee of any liability, obligation or duty of any person;
 - (e) the business of providing finance by all means including through the acquisition, disposal or leasing of assets or through the provision of services which have similar economic effect and are economically equivalent to any other financial institution business;
- “Islamic financial institution” means a company licensed to carry on financial institution business in Uganda whose entire business comprises Islamic financial business and which has declared to the Central Bank that its entire operations are and will be conducted in accordance with the Shari’ah;”
- (n) in the definition of ““long position” or “long open position” or “overbought position”” by inserting immediately after “foreign currency” occurring last the following—
 - “or economically equivalent positions or holdings in respect of Islamic contracts;”
 - (o) by substituting for the definition of “merchant bank” the following—
 - “ “merchant bank” means a company licensed to carry on financial institution business in Uganda and whose business consists mainly in the acceptance of call and time deposits from corporate, institutional and international clients, withdrawable by cheque or otherwise and engaging in the financing of international trade, provision of corporate finance services advisory services, provision of foreign exchange facilities; arranging finance, lending or otherwise extending credit or participation in syndicated loans or other financings, acting as guarantors and financing or lending in the institutional

money markets and economically equivalent Islamic financial business subject to any restrictions specified by the Central Bank by regulations;”

- (p) by substituting for the definition of “microfinance business” the following—

““microfinance business” means the business of accepting deposits from and providing short-term loans or other credit to small micro enterprises and low income households, usually characterised by the use of collateral substitutes, such as group guarantees and economically equivalent Islamic financial business subject to any restrictions specified by the Central Bank by regulations;”

- (q) in the definition of “mortgage bank” by inserting immediately after “currency” the following—

“and economically equivalent Islamic financial business subject to any restrictions specified by the Central Bank by regulations;”

- (r) by inserting immediately after “personal representative” the following—

““place of business” means any premises including a branch, an agent or mobile unit, or such other premises as may be prescribed by the Central Bank by regulations, at which a financial institution transacts financial institutions business in Uganda and which is open to the public;

“profit sharing investment accounts” means an account managed by a financial institution—

- (a) in relation to property of any kind including currency specified by the Central Bank by regulations, held for or within the account;

- (b) as part of its Islamic financial business; and
- (c) under the terms of an agreement where—
 - (i) the account holder agrees to share any profit with the financial institution as manager of the account in accordance with a determined specified percentage or ratio; and
 - (ii) the account holder agrees that he or she will bear any losses in the absence of negligence or breach of contract on the part of the financial institution;”
- (s) in the definition of “repurchase agreement” by inserting immediately after “stated price” the following—

“including Islamic contracts specified for that purpose by the Central Bank by regulations;”
- (t) in the definition of “securities” by inserting immediately after paragraph (d) the following—

“(e) any instrument which satisfies conditions prescribed for this purpose by the Central Bank by regulations;”
- (u) in the definition of ““short position” or “short open position” or “oversold position”” by inserting immediately after “foreign currency” occurring last the following—

“or economically equivalent positions or holdings in respect of Islamic contracts;”
- (v) by substituting for the definition of “substantial shareholder” the following—

““substantial shareholder” means any person who holds more than five percent of shares in the company;”
- (w) in the definition of “time liabilities” by inserting immediately after “deposit liabilities” the following—

“and other liabilities specified by the Central Bank by regulations;”

(z) by renumbering the current section as subsection (1);

(aa) by inserting immediately after subsection (1), the following—

“(2) In this Act, unless the context otherwise requires, a reference to loans or credit, lending, extension or provision of credit, credit accommodation or such similar terms, or to any instrument in that respect, collectively referred to as “credit provision”, shall be interpreted to apply to—

(a) any finance arrangement which satisfies the following conditions—

(i) the arrangement provides for a person, in this section referred to as “the financier” to pay a sum of money, in this section referred to as “the capital” to another person, in this section referred to as “the customer”;

(ii) the arrangement identifies assets, or a class of assets, which the customer acquires;

(iii) the arrangement specifies a period at the end of which it ceases to have effect, in this section referred to as the “the finance term”;

(iv) the customer undertakes under the arrangement to make a payment in respect of the capital referred to as “the capital payment” to the financier during or at the end of the finance term, whether in instalments or not and to pay to the financier other payments on one or more occasions

during or at the end of the finance term, in this section referred to as “additional payments”; and

- (v) the arrangement satisfies such other conditions as may be specified by the Central Bank in regulations; and
- (b) any finance arrangement not included in subsection 2(a) and satisfies the following conditions—
 - (i) the arrangement provides for a customer to pay capital to the financier to purchase, lease, hire or otherwise acquire or use assets which are identified or of one or more classes which are identified;
 - (ii) the financier agrees to sell, lease, hire or otherwise dispose of or allow the use of such assets or classes of assets to the customer or to pay a sum of money to another person to do so; and
 - (iii) meets conditions (a)(iii) to (v) apply;
- (c) any other provision of finance including through the acquisition, disposal or leasing of assets that is economically equivalent to credit provision.

(3) In this Act, unless the context otherwise requires, a reference to guarantees or similar terms or a reference to any instrument in respect of guarantees or similar terms, in the Act referred to collectively as a “guarantee provision”, shall be interpreted to apply to any arrangement which satisfies the following conditions—

- (a) the arrangement is economically equivalent to a guarantee provision; and

- (b) the arrangement satisfies such other conditions as may be specified by the Central Bank in regulations.”

2. Amendment of section 4 of the principal Act

Section 4 of the principal Act is amended—

- (a) by inserting immediately after subsection (2) the following—

“(2a) A person licensed to carry out financial institutions business may carry out the licensed business through an agent.

(2b) The Central Bank shall, in consultation with the Minister make regulations in respect of agents and agent banking.”

- (b) in subsection (3)(a) by inserting immediately after “transact” the following—

“or holds itself out as conducting”

- (c) by inserting immediately after subsection 3(b), the following—

“(c) hold itself out as a financial institution listed in the second Schedule or an Islamic bank or other Islamic financial institution unless it holds the appropriate licence; and

(d) enter into Islamic contracts or otherwise conduct Islamic financial business which is not in accordance with this Act.”

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

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

- (e) by substituting for subsection (8), the following—

“(8) Notwithstanding subsection (7) (a) and (b), a business is not a deposit-taking business for the purposes of this section if any deposits accepted by the business, are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.”

3. Amendment of section 7 of the principal Act

Section 7 of the principal Act is amended by inserting immediately after subsection (3) the following—

“(3a) A financial institution that is entitled under this Act to call itself a bank may describe its Islamic financing business as “Islamic banking business” and, if it is an Islamic financial institution, may describe itself as an “Islamic bank.”

4. Amendment of section 10 of the principal Act

Section 10 of the principal Act is amended—

- (a) in subsection (2) by inserting immediately after paragraph (k), the following—

“(l) such other information the Central Bank may specify by regulations.”

- (b) in subsection (3) by inserting immediately after paragraph (h) the following—

“(i) the business of an Islamic bank (Class 9);

(j) the business of an Islamic financial institution which is a non-bank financial institution (Class 10)”

- (c) by substituting for paragraph (a) of subsection (6) the following—

- “(a) the applicant’s memorandum and articles of association or other instrument under which the company is incorporated, the certificate of incorporation and in the case of a person intending to conduct Islamic financial business, a statement stating that the business of the financial institution operations shall be conducted in accordance with the Shari’ah;”
- (d) by inserting immediately after paragraph (c) the following—
- “(d) in the case of an applicant proposing to be an Islamic financial institution, a declaration signed by all the directors and persons proposing to become directors, in a form specified by the Central Bank in regulations made under this Act, to the effect that the entire business operations of the applicant will be conducted in accordance with the Shari’ah.”

5. Amendment of section 12 of the principal Act

Section 12 of the principal Act is amended in subsection (4) by substituting for paragraph (d) the following—

- “(d) the place or places at which the licensee is authorised to conduct the business and in the case of a financial institution permitted to conduct agent banking, the licence shall indicate the word “Agents”.”

6. Amendment of section 18 of the principal Act

Section 18 of the principal Act is amended—

- (a) by substituting for subsection (1), the following—
- “(1) unless this Act expressly provides otherwise,
- (a) a person;
- (b) a body corporate controlled by one person;

(c) a group of related persons; or

(d) a body corporate owned or controlled directly or indirectly by a group of related persons,

shall not own or acquire more than forty nine per cent of the shares of a financial institution.

(b) in subsection (2) by inserting immediately after “one person” the following—

“or group of related persons.”

7. Substitution of section 20 of the principal Act

For section 20 of the principal Act, there is substituted the following—

“20. Registrar not to register transfer of shares without permission of Central Bank

The registrar of companies shall not register any transfer or allotment of shares of a financial institution referred to in section 18(2) without the written consent of the Central Bank.”

8. Amendment of section 27 of the principal Act

Section 27 of the principal Act is amended by inserting immediately after subsection (2), the following—

“(3) The Central Bank may, in consultation with the Minister, by statutory instrument, revise the minimum on-going capital requirements of a financial institution.

(4) The Central Bank may, in addition to the minimum ongoing capital requirements specified in subsection (1), and in consultation with the Minister, by statutory instrument, require financial institutions to maintain capital buffers.”

9. Amendment of section 33 of the principal Act

Section 33 of the principal Act is amended in subsection (1) by inserting immediately after “loan” the following—

“or credit accommodation”.

10. Amendment of section 35 of the principal Act

Section 35 of the principal Act is amended by substituting for subsection (2) the following—

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

11. Amendment of section 37 of the principal Act

Section 37 of the principal Act is amended—

- (a) by substituting for the words “A financial institution shall not” the following—

“Subject to this Act, a financial institution shall not”

- (b) in paragraph (a) by repealing the word “insurance”.

12. Amendment of section 38 of the principal Act

Section 38 of the principal Act is amended by substituting for subsection (3) the following—

“(3) This section shall not be construed so as to prevent a financial institution from—

- (a) securing a debt on any immovable property and in case of default of payment of the debt, from holding the immovable property for realization at the earliest reasonable opportunity to the financial institution;
- (b) purchasing or acquiring moveable or immoveable property as part of a business involving the purchase or acquisition of such property for immediate lease or resale after obtaining consent from the Central Bank or in accordance with rules specified by the Central Bank by regulations.”

13. Amendment of section 44 of the principal Act

Section 44 of the principal Act is amended—

- (a) in subsection (1) by inserting immediately after paragraph (b) the following—

“(c) a person authorised by the Central Bank.”

- (b) by substituting for subsection (5), the following—

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

14. Replacement of section 45 of the principal Act

For section 45 of the principal Act, there is substituted the following—

“45. Restrictions on a mortgage bank

A mortgage bank shall not advance or make more than twenty five percent of all its loans or other credit accommodations for a purpose other than the acquisition, construction, enlargement, repair, improvement and maintenance of urban or real estate or the substitution of mortgages taken out for that same purpose.”

15. Amendment of section 49 of the principal Act

Section 49 of the principal Act is amended—

- (a) in subsection (1)(b) by inserting immediately after “capital lent” the following—

“or extended”;

(b) by substituting for subsection (1)(c), the following—

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

(c) in subsection (1)(d), by inserting immediately after “period;” the following—

“and”;

(d) by inserting immediately after subsection (1)(d), the following—

“(e) such other information as may be prescribed by regulations made under this Act”

16. Amendment of section 52 of the principal Act

Section 52 of the principal Act is amended by inserting after subsection (7) the following—

“(8) A member of a Shari’ah Advisory Board in any financial institution shall not be appointed a director of a financial institution while he or she holds that position.”

17. Replacement of section 54 of the principal Act

Section 54 of the principal Act is amended by substituting for subsection (1) the following—

“(1) A director, officer or a member of a Shari’ah Advisory Board of a financial institution shall not take part in the discussion of or taking a decision on any matter in which that person or any of his or her related interest has an interest.”

18. Amendment of section 55 of the principal Act

Section 55 of the principal Act is amended—

(a) by substituting for subsection (1)(c), the following—

“(c) ensuring that the business of the financial institution is carried on in compliance with all applicable laws and regulations, and in the case of a financial institution that conducts Islamic financial business, the business of the financial institution complies with the Shari’ah, and is conducive to safe and sound banking practices;”

(b) by substituting for subsection (1)(e), the following—

“(e) for the purposes of this Act, ‘corporate governance’ shall cover the overall environment in which the financial institution operates, comprising a system of checks and balances which promotes a healthy balancing of risk and return, and in the case of a financial institution which conducts Islamic financial business, promotes compliance with the Shari’ah”

19. Amendment of section 56 of the principal Act

Section 56 of the principal Act is amended in subsection (2)(c), by inserting immediately after “kind” the following—

“or any transfer or delivery of any asset;”

20. Amendment section 59 of the principal Act

Section 59 of the principal Act is amended—

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

“(2) Notwithstanding subsection (1), an executive director shall be disqualified from serving on the committee on audit.”;

- (b) by substituting for paragraph (b) of subsection (7) the following—

“(b) to review the internal controls, operating procedures and systems and management information systems of the financial institution and in the case of a financial institution which conducts Islamic financial business, those controls, procedures and systems designed to ensure compliance with the Shari’ah;”

21. Amendment of section 60 of the principal Act

Section 60 of the principal Act is amended—

- (a) in subsection (2)(j) by inserting immediately after “assets” the following—

“respectively;”;

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

“(m) other limits and guidelines as the Central Bank may specify.”

22. Amendment of section 62 of the principal Act

Section 62 of the principal Act is amended in subsection (1)(a) by inserting immediately after “loss account” the following—

“cash flow statement”

23. Amendment of section 64 of the principal Act

Section 64 of the principal Act is amended in paragraph (e) by inserting immediately after “director” the following—

“or an officer.”

24. Amendment of section 69 of the principal Act

Section 69 of the principal Act is amended in subsection (3) by repealing the following—

“which may not be sufficiently fundamental to lead to qualification of the accounts.”

25. Amendment of section 78 of the principal Act

Section 78 of the principal Act is amended—

- (a) in subsection (2)(a), by inserting immediately after “non-performing loans” the following—

“and other accredited credit facilities”;

- (b) by inserting immediately after subsection (5), the following—

“(6) The Central Bank may, in consultation with the Minister, make regulations providing for the access and use of the Credit Reference Bureau by other credit providers or service providers.

(7) For the purposes of subsection (6), a “credit provider” or “service provider” means an institution not licensed by the Central Bank that is involved in the provision of goods and services on credit to the public.

(8) Where the Central Bank considers it necessary, and after consultation with the Minister, the Central Bank may, under the provisions of subsection (1), establish more than one Credit Reference Bureau.

(9) The Central Bank may license a Biometric Identification Service Provider for purposes of the Credit Reference Bureaus established under subsection (1).

(10) For the purposes of this section, a Biometric Identification Service Provider means a legal entity established as a limited liability company and licensed by the Central Bank to collect, compile, consolidate, process and store biometric and personal identification data to identify persons, companies and enterprises for purposes of

availing that data to financial institutions, microfinance deposit taking institutions, Credit Reference Bureaus, and such other credit providers that may have been permitted by the Central Bank under regulations made under subsection (6).”

26. Insertion of section 78A

The principal Act is amended by inserting immediately after section 78, the following—

“78A. Financial institution to carry out credit check on customer applying for credit

(1) Unless the Central Bank directs otherwise, every financial institution shall perform a credit check on a customer who applies for credit from the financial institution.

(2) Notwithstanding subsection (2), the Central Bank may, by statutory instrument, after consultation with the Minister, prescribe other circumstances requiring a financial institution to perform a credit check on a customer.”

27. Amendment of section 80 of the principal Act

Section 80 of the principal Act is amended—

- (a) in subsection (1) by inserting immediately after “holding company to that financial institution” the following—

“or any other information”;

- (b) by substituting for subsection (2), the following—

“(2) A financial institution shall report to the Central Bank all loans and other credit granted or extended to insiders at least once every quarter of the financial year.”

28. Amendment of section 82 of the principal Act

Section 82 of the principal Act is amended in subsection (2) (a)(ii) by inserting immediately after “lending” the following—

“and other credit accommodation;”

29. Amendment of section 85 of the principal Act

Section 85 of the principal Act is amended—

- (a) in subsection (1) by inserting immediately after paragraph (b) the following—

“(c) prohibit the financial institution from making any other distributions, bonuses or increments in the salary, emoluments and other benefits of all directors and staff of the financial institution.”;

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

“(3) For the purposes of this section “large losses” means any loss that constitutes twenty five percent of a financial institution’s core capital.”

30. Amendment of section 86 of the principal Act

Section 86 of the principal Act is amended by repealing subsection (2) (c).

31. Amendment of section 88 of the principal Act

Section 88 of the principal Act is amended by substituting for subsection (2)(e) the following—

“(e) any lending or other credit accommodation to any officer, director or any related person of an officer or director on preferential terms or without adequate security made within six months prior to the take over by the Central Bank of the management of the financial institution shall be rescinded; and that officer, director or related person to the officer or director shall immediately refund the moneys advanced and the interest or other economic return accrued at the going rate in the bank.”

32. Amendment of section 90 of the principal Act

Section 90 of the principal Act is amended by substituting for subsection (6) (b) the following—

- “(b) limit the maximum rate of interest or other economic return which shall accrue on deposits and other debts payable by the institution during the period of the moratorium to the minimum rate as may be prescribed by the Central Bank by notice for the purposes of this section except that this paragraph shall not be construed so as to impose an obligation on the institution to pay interest or other economic return at a higher rate to any depositor or creditor than would otherwise have been the case;”

33. Amendment of section 94 of the principal Act

Section 94 of the principal Act is amended—

- (a) by substituting for subsection (1), the following—

“(1) Subject to this section, the Central Bank may place a financial institution under receivership.”;

- (b) by substituting for subsection (3), the following—

“(3) Where a financial institution is placed under receivership, the Central Bank or a person appointed by the Central Bank shall become the receiver of the financial institution in receivership.”

34. Amendment of section 95 of the principal Act

Section 95 of the principal Act is amended—

- (a) in subsection (1) by inserting immediately after “Central Bank” the following—

“or a person appointed by the Central Bank”;

- (b) in subsection (2) by inserting immediately after “Central Bank” occurring first, the following—

“or a person appointed by the Central Bank”.

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

“(b) document the evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to rates of interest or other economic return, asset recovery rates, inflation, asset holding and other costs.”

35. Amendment of section 99 of the principal Act

Section 99 of the principal Act is amended by inserting immediately after subsection (3), the following—

“(3a) Where a person is appointed a liquidator under subsection (3), the details of the appointment shall be published in a newspaper of national circulation.”

36. Replacement of section 102 of the principal Act

For section 102 of the principal Act, there is substituted the following—

“102. Invitation of claims from creditors.

The Central Bank or its appointed liquidator shall, immediately after appointment for the purpose of making an estimate of the debts and liabilities of the financial institution, publish once a week for four consecutive weeks in a local newspaper of national circulation a notice calling upon all creditors, secured and unsecured, including depositors, to submit to the Central Bank or the liquidator within one month from the date of publication, a statement of the amount claimed and the particulars of the claim.”

37. Amendment of section 106 of the principal Act

Section 106 of the principal Act is amended by inserting immediately after subsection (2), the following —

“(3) A liquidator is not liable where he or she 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.

(4) 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.

(5) Where an examination conducted pursuant to subsection (4) 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.”

38. Replacement of Part XII of the principal Act

For Part XII of the principal Act, there is substituted the following—

“PART XII—THE DEPOSIT PROTECTION FUND.

“108. Continuation of Deposit Protection Fund

(1) The Deposit Protection Fund established in the Central Bank shall continue to exist in accordance with this Part.

(2) The Fund shall be a body corporate with perpetual succession and may sue or be sued in its corporate name.

(3) For the avoidance of doubt, the Fund shall be a separate legal entity from the Central Bank.

109. Purpose of the Fund

The Fund—

- (a) shall be a deposit insurance scheme for customers of contributing institutions;
- (b) may act as a receiver or liquidator of a financial institution, if appointed for that purpose by the Central Bank; or
- (c) may perform such other functions as may be conferred upon it by law.

110. Board of the Fund

(1) The Fund shall be governed by a board comprising—

- (a) a chairperson who shall be appointed by the Minister;
- (b) the Governor or his or her representative;
- (c) the Secretary to the Treasury or his or her representative;
- (d) two representatives of contributing institutions;

- (e) two persons appointed by the Minister, with experience in the business of banking or other financial services to represent the public.

(2) A person shall not be appointed a member of the board who is a Member of Parliament or a local government council, a salaried employee of any government entity, a director, officer, employee or significant shareholder of any institution whose deposits are protected under this Part or the Microfinance Deposit-Taking Institutions Act, 2003.

(3) A member of the board appointed under subsection (1) (a), (d) or (e) shall serve for five years.

(4) A person appointed member of the board shall be eligible for reappointment for one further term.

(5) A member of the board may resign in writing addressed to the Minister.

(6) The Minister may remove a person appointed to the board only where the person—

- (a) becomes disqualified under subsection (2);
- (b) is adjudged bankrupt or enters into a scheme of arrangement with his or her creditors;
- (c) is absent, without leave of the chairperson, from three consecutive meetings of the Board; or
- (d) is of unsound mind or otherwise incapable of performing the duties of a member of the board.

111. Contributions to the Fund by financial institutions

(1) Every financial institution shall contribute to the Fund in accordance with this section.

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

(3) A financial institution which, for any reason, does not pay its contribution to the Fund within the period specified in a notice issued under subsection (2) shall be liable to pay to the Fund a civil penalty interest charge of 0.5 per cent of the unpaid amount for every day outside the notice period on which the amount remains unpaid.

(4) The minimum annual amount of contribution to the Fund under this section shall not be less than 0.2 per cent of the average weighted deposit liabilities of the financial institution in its previous financial year; except that the board may from time to time by regulations vary the percentage.

(5) Where the Central Bank finds that the affairs of a financial institution are being conducted in a manner detrimental to the interests of depositors and the financial institution and it is of the opinion that the continued conduct may cause loss to the Fund, the Central Bank may, advise the Board to increase the contribution of that financial institution to the Fund.

(6) The Board may by notice, increase the contributions of the financial institution referred to in subsection (5) beyond the rate set out in subsection (4).

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

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

- (a) marginal additional charge of 0.1 per cent of the average weighted deposit liabilities in addition to the contribution in subsection (3);
- (b) unsatisfactory: additional charge of 0.2 percent of the average weighted deposit liabilities in addition to the contribution in subsection (3).

111A. The Deposit Protection Fund under Microfinance Deposit Taking Institutions Act to be merged with Fund.

(1) The Deposit Protection Fund established under the Microfinance Deposit Taking Institutions Act, 2008, shall on the commencement of this Act, be merged with the Fund established under this Act.

(2) For the avoidance doubt, all monies held in the Deposit Protection Fund established under the Microfinance Deposit Taking Institutions Act, 2008, shall, on the commencement of this Act, be transferred to the Fund established under this Act.

(3) On the commencement of this Act, every microfinance deposit taking institution shall contribute to the Fund in accordance with section 111.

111B. Finances of the Fund

(1) The finances of the Fund shall consist of—

- (a) monies contributed to the Fund by financial institutions under section 111;
- (b) monies contributed to the Fund by microfinance deposit taking institutions under section 111;
- (c) grants;

- (d) income from investments of the Fund;
- (e) money borrowed by the Board for purposes of the Fund under subsection (2).

(2) The Minister may, from time to time, by notice in the Gazette, fix the size of the Fund sufficient to protect the interests of depositors to be made up by the contributions under sections 111 and the Board.

(3) The Board may borrow any such amount as it may require for temporary purposes of making up deficiency in the Fund pending collection of contributions.

(4) The Board shall maintain an account with the Central Bank on which the finances of the Fund shall be deposited.

111C. Payments out of the Fund

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

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

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

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

(5) The Board shall make payment of the protected deposit to customers within ninety days after closure of the financial institution.

(6) The Board may, before paying any claim lodged under this subsection (6), require the claimant to furnish it with documentary proof as may be proper to show that the person is entitled to payment out of the Fund, and the Board may decline to make any payment under this section to a person who, in the opinion of the Boards is responsible for or has profited directly or indirectly from the circumstances leading up to the closure of the financial institution.

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

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

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

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

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

111D. Annual report of the Deposit Protection Fund

(1) The Board shall, within four months after the close of each financial year, submit audited financial statements and an annual report of its operation of the Fund to the Minister and contributing financial institutions and microfinance deposit taking institutions.

(2) The annual report shall include the following—

- (a) a self – assessment on the Fund’s performance in relation to its statutory duties;
- (b) statistical data on insured institutions and an analysis of potential of future losses;
- (c) details of the operations of the Fund including the contributions collected, the management of the Fund, the deposits paid, the remuneration and allowances paid to the Board, the receivership and liquidation activities, the internal governance and its management.

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

111E. Financial year of the Fund

The financial year of the Fund shall be the same as the financial year of Government.

111F. Public awareness

(1) The Fund shall provide institutions with display material containing the Fund logo.

(2) Every institution shall permanently exhibit the display material at its public entrance and exit doors and adjacent to each teller station in its banking hall.

(3) Every institution shall display the statement “Deposit Protected by the Deposit Protection Fund” on all websites, official stationery and print advertising.

(4) All radio and television adverts made by the institution shall contain a statement that its deposits are protected by the Deposit Protection Fund.

111G. Regulations to operationalise the Fund

The Board Fund may, after consultation with the Minister, make regulations for the proper management of the Fund.””

39. Amendment of section 116 of the principal Act

Section 116 of the principal Act is amended by inserting immediately after subsection (3), the following—

“(3a) Subsections (1), (2) and (3) do not apply to agent banking.

(3b) For the avoidance of doubt, the approval of change of location of place of business of an agent, closure of place of business of an agent or change of business hours of an agent shall be determined by the financial institution retaining the services of the agent.

(3c) Where a financial institution effects any change under subsection (3b) , the financial institution shall, within the prescribed period after effecting the change, notify the Central Bank.”

40. Insertion of new Parts XIII A and Part XIII B

There is inserted immediately after Part XIII of the principal Act, the following—

“PART XIII A – SPECIAL PROVISIONS ON ISLAMIC BANKING

115A. Licensing of financial institutions to conduct Islamic financial business

(1) On the commencement of this Act, an already licensed financial institution carrying on business, may apply to the Central Bank in accordance with this Act to carry on Islamic financial business in addition to its existing licensed business.

(2) Notwithstanding subsection (1), an already licensed financial institution which is permitted to carry out Islamic banking shall carry out that business through an Islamic window.

(3) For the purposes of subsection (2), an “Islamic window” means the part of a financial institution, other than an Islamic financial institution, which conducts Islamic financial business.

(4) For the avoidance of doubt, a financial institution shall, in respect of Islamic financial business carried on by it, be subject to the provisions of this Act.

(5) The Central Bank shall, in consultation with the Minister, by statutory instrument, make special provisions for the licensing and operation of Islamic banking.

115B. Shari’ah Advisory Board

(1) Every financial institution which conducts Islamic financial business shall appoint and maintain a Shari’ah Advisory Board.

(2) There shall be a Central Shari’ah Advisory Council in the Bank of Uganda to —

- (a) advise the Bank of Uganda on matters of regulations and supervision of Islamic banking systems in Uganda; and
- (b) approve any product to be offered by financial institutions conducting Islamic banking.

(2) For the purposes of subsection (1), a “Shari’ah Advisory Board” means a Board appointed by a financial institution in accordance with this Act to advise, approve and review activities of a Islamic financial business in order to ensure that the financial institution complies with the Sharia’h.”

(3) The Central Bank, in consultation with the Minister, shall make regulations in respect of Shari'ah Advisory Boards including—

- (a) the size, functions, duties and responsibilities, governance and conduct of Shari'ah Advisory Boards;
- (b) the competency, interests and terms of engagement of a members of a Shari'ah Advisory Board; and
- (c) the policies, procedures, record-keeping, reviews, reporting and disclosure.

(4) Notwithstanding subsection (2), the appointment, maintenance, operation and conduct of a Shari'ah Advisory Board shall at all times be carried out in accordance with any applicable rules and policies of the respective financial institution and be the responsibility of the board of directors of the financial institution.

115C. Sections 37 and 38 not to apply to Islamic banks

The provisions of sections 37 and 38 shall not apply to a financial institution engaging in Islamic financial business in accordance with this Act.

PART XIIB—CONDUCT OF BANCASSURANCE BY FINANCIAL INSTITUTIONS

115D. Banks engaging in bancassurance business

(1) A financial institution shall not engage in bancassurance or Islamic insurance business in Uganda as a principal or agent without prior written authorisation by the Central Bank.

(2) A financial institution wishing to engage in the business of bancassurance or Islamic insurance shall do so in a format and manner prescribed by the Insurance Regulatory Authority of Uganda after consultation with the Central Bank.

(3) Subject to subsections (1) and (2), the bancassurance or Islamic insurance business activities of any financial institution shall comply with the Insurance Act.

(4) For the purposes of this section “bancassurance” means using a financial institution and its branches, sales network and customer relationships to sell insurance products.”

41. Amendment of section 119 of the principal Act

Section 119 of the principal Act is amended in subsection (1) by inserting immediately after “account” in the first line the following—

“or a profit sharing investment”

42. Amendment of section 121 of the principal Act

Section 121 of the principal Act is amended by inserting immediately after “institution” the following—

“or a member of a Shari’ah Advisory Board”

43. Replacement of section 122 of the principal Act

For section 122 of the principal Act, there is substituted the following—

“122. Fines and penalties

All fines and penalties expressed in monetary terms and recovered by the Central Bank under this Act shall be retained by the Central Bank and used to offset the costs of supervising financial institutions.”

44. Amendment of section 126 of the principal Act

Section 126 of the principal Act is amended—

(a) in section (1) by inserting immediately after “institution” the following—

“or a member of a Shari’ah Advisory Board”

(b) in subsection (4) by inserting immediately after “institution” the following—

“or a member of a Shari’ah Advisory Board”

- (c) in subsection (5) by inserting immediately after “institution” the following—

“or a member of a Shari’ah Advisory Board”

- (d) in subsection (6) by inserting immediately after “institution” the following—

“or a member of a Shari’ah Advisory Board”

45. Amendment of section 127 of the principal Act

Section 127 of the principal Act is amended by substituting for subsection (1) the following—

“(1) Where the Central Bank is of the opinion that any officer, director, shareholder or a member of a Shari’ah Advisory Board, past or present, of a financial institution has any information relating to the operations of the financial institution which the Central Bank considers necessary for the performance of its supervisory functions, the Central Bank may on notice summon that officer, director or shareholder or member of a Shari’ah Advisory Board, for an examination.”

46. Amendment of section 129 of the principal Act

Section 129 (1)(b) of the principal Act is amended by substituting for “national law enforcement agencies” the following—

“Financial Intelligence Authority”.

47. Amendment of section 130 of the principal Act

Section 130 of the principal Act is amended by substituting for subsection (1) the following—

“(1) A financial institution shall promptly report to the Financial Intelligence Authority any suspected money laundering activity related to any account held with the financial institution.”

48. Amendment of section 131 of the principal Act

Section 131 of the principal Act is amended—

(a) by substituting for subsection (1)(e) the following—

“(e) providing for lending and other limits on credit extended to insiders;”

(b) by inserting immediately after subsection (1) (l) the following—

“(la) providing for profit sharing investment accounts, including the terms on which such accounts may be offered, profit sharing and incentives, disclosures to customers, the form and content of advertisements and prudential requirements;

(lb) providing for agent banking;

(1c) providing for sanctions for non-compliance with Shari’ah principles.”

49. Amendment of the Second Schedule of the principal Act

The Second Schedule of the principal is amended—

(a) by inserting immediately after subparagraph (i) on “Commercial Banks” under paragraph (A) dealing with “BANKS” the following—

“(ia) Islamic Banks	• To mobilise funds in the form of deposits such as demand deposits, savings or other compatible forms based on contracts compatible with Shari’ah; • To invest in products based on contracts acceptable in Shari’ah; • To distribute financing of leasing moveable or immovable goods to customers based on the contract <i>ijarah</i> or lease purchase in the form of <i>ijarah</i> or other contract compatible with Shari’ah;
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	• To grant loans or debt based on contracts compatible with Shari’ah; • To conduct custody for the interest of other parties, such as providing safety deposit boxes, based on contracts compatible with Shari’ah; • To transfer money, both for own interest and interest of the customers based on contracts compatible with Shari’ah; • To function as trustees based on contracts of <i>wakalah</i>; • To provide letters of credit facilities and bank guarantees based on contracts compatible with Shari’ah; • To engage in any other Shari’ah compliant banking business”
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(b) by inserting immediately after subparagraph (iv) on “Finance Houses” under paragraph (B) dealing with “NON-BANKS INSTITUTIONS” the following—

“(iva) Islamic Financial Institutions	• To mobilise funds in the form of deposits such as savings deposits, or other compatible forms based on contracts compatible with Shari’ah; • To invest in products based on contracts compatible Shari’ah; • To distribute financing of leasing moveable or immovable goods to customers based on the contract <i>ijarah</i> or lease purchase in the form of <i>ijarah</i> or other contract compatible with Shari’ah;
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“(iva) Islamic Financial Institutions	• To grant loans or debt based on contracts compatible with Shari’ah; • To conduct custody for the interest of other parties, such as providing safety deposit boxes, based on contracts compatible with Shari’ah; • Function as trustees based on contracts of <i>wakalah</i>. • To carry out any other function which is compatible with Shari’ah.
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50. Amendment of Third Schedule of the principal Act

The Third Schedule of the principal Act is amended by substituting for paragraph (2)(f) the following—

- “(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.”

Cross References

Insurance Act, Cap. 213

Micro Finance Deposit-Taking Institutions Act 2003, Act No. 5 of 2003