

BILLS SUPPLEMENT

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Micro Finance Deposit-Taking Institutions

Bill No. 27 (Amendment) Bill 2022

**THE MICRO FINANCE DEPOSIT-TAKING INSTITUTIONS
(AMENDMENT) BILL 2022**

MEMORANDUM

1. OBJECTIVE

The object of the Microfinance Deposit-Taking Institutions (Amendment) Bill, 2022 is to amend the Micro Finance Deposit-Taking Institutions Act, 2003 to provide for the use of the word “microfinance bank” for Microfinance Deposit Taking Institutions; 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; and for other related purposes.

2. DEFECTS IN THE EXISTING LAW

The Micro Finance Deposit-Taking Institutions Act, 2003, was enacted in 2003 to provide for the licensing, regulation and supervision of microfinance business in Uganda and to provide for related matters. At the time of the enactment of the Micro Finance Deposit-Taking Institutions Act, 2003, it was considered adequate in ensuring that the microfinance business is better regulated than was the case prior to its enactment.

However, following the review of the Micro Finance Deposit-Taking Institutions Act, 2003, some provisions in the current legislation were found to be barriers to the new financial products development and innovations which are less costly and more consumer driven.

For instance the Act does not permit for the conduct of Islamic banking which has become a popular form of microfinance business particularly because of its less reliance on profits. This is particularly significant for government which would benefit in terms of programme funding without having to incur huge fees.

Further, the Micro Finance Deposit-Taking Institutions Act, 2003 is lacking on financial inclusion. Thus the amendments contained in the Bill are intended to bring financial services closer to the people. For instance the proposal to use microfinance institutions to sell insurance is a way of achieving financial inclusion for a large proportion of the population with less costs. Also, the Bill seeks to enable Microfinance institutions bring services closer to the people by the use of agents who are not necessarily within the banking system.

3. REMEDIES

3.1 Interpretation

Clause 1 of the Bill seeks to effect several amendments to section 2 of the Act dealing with interpretation. Section 2 of the Act is amended by providing for insertions and substitution for the definitions of the following words: agent; branch; compulsory savings; Islamic contract; Islamic microfinance business; Islamic microfinance bank; Islamic window; place of business; registered society among others.

3.2 Use of the phrase Microfinance Bank

The Bill seeks to amend section 5 of the Act to authorise a microfinance deposit taking institution to use the word "Microfinance Bank" as part of their business name. Currently section 5(1) of the MDI Act, 2003 restricts the use of the word to commercial banks licensed by the Central Bank. The justification for the amendment is based on the public perception that Banks provide for safer and reliable financial services which disadvantages MDI's if not permitted to use the word Bank.

3.3 Agency banking

The Bill seeks to amend section 4 of the Act to provide for agency banking. Agency banking is akin to correspondent banking where an independent person partners with an institution to offer its services and in so doing facilitates the enhancement of outreach services at a substantially lower cost to the institution and customer.

3.4 Bancassurance

The Bill seeks to introduce new section 20D to provide for bancassurance. According to the Bill, “bancassurance” means using an institution and its branches, sales network and customer relationships to sell insurance products. The purpose of the amendment is to enable microfinance deposit taking institutions to engage in bancassurance which is currently prohibited under the Act.

3.5 Islamic microfinance

The Bill seeks to introduce new sections 20A and 20B to provide for Islamic microfinance business. The Financial Institutions Act, 2004 was amended by the Financial Institutions (Amendment) Act, 2016 to provide for Islamic banking by the commercial banks and credit institutions. However the current MDI Act, 2003 does not provide for Islamic form of banking thus there is need to align the MDI Act, 2003 with the Financial Institutions Act, 2004 on Islamic banking to provide for provision of financial services premised on shari'ah principles within the microfinance sector.

3.6 Harmonise the Microfinance Deposit Taking Institutions Act, 2003 with the Tier IV Microfinance and Money Lenders Act, 2016

The Bill seeks to harmonise the Microfinance Deposit Taking Institutions Act, 2003 with the Tier 4 Microfinance and Money

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Lenders Act, 2016 by applying the provisions of the Act to a registered society. Section 110 of the Tier 4 Microfinance and Money Lenders Act, 2016 amended the Microfinance Deposit Taking Institutions Act, 2003 to empower the Central Bank to licence and regulate registered societies whose voluntary savings are in excess of one billion five hundred million shillings and with institutional capital of above five hundred million shillings.

MATIA KASAIJA (MP)

Minister of Finance, Planning & Economic Development.

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(AMENDMENT) BILL 2022**

ARRANGEMENT OF CLAUSES

Clauses

- 1. Amendment of Act 5 of 2003**
- 2. Amendment of section 3 of principal Act**
- 3. Amendment of section 4 of principal Act**
- 4. Amendment of section 5 of principal Act**
- 5. Amendment to section 7 of principal Act**
- 6. Insertion of section 9A in principal Act**
- 7. Amendment to section 18 of principal Act**
- 8. Amendment to section 19 of principal Act**
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- 13. Amendment of section 25 of principal Act**
- 14. Amendment of section 26 of principal Act**
- 15. Amendment of section 27 of principal Act**
- 16. Amendment of section 28 of principal Act**
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Clauses

20. **Amendment of section 35 of principal Act**
21. **Amendment of section 40 of principal Act**
22. **Amendment of section 43 of principal Act**
23. **Amendment of section 46 of principal Act**
24. **Amendment of section 52 of principal Act**
25. **Amendment of section 57 of principal Act**
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A Bill for an Act

ENTITLED

**THE MICRO FINANCE DEPOSIT-TAKING INSTITUTIONS
(AMENDMENT) ACT 2022**

An Act to amend the Micro Finance Deposit-Taking Institutions Act, 2003 to provide for the use of the word “microfinance bank” for Microfinance Deposit Taking Institutions; 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; and for other related purposes.

BE IT ENACTED by Parliament as follows:

1. Amendment of Act 5 of 2003

The Micro Finance Deposit-Taking Institutions Act, 2003 in this Act, referred to as the principal Act, is amended in section 2—

(a) by inserting in the appropriate alphabetical order, the following—

“agent” means an entity contracted by an institution and approved by the Central Bank to provide microfinance deposit taking services on behalf of that institution;

“branch” means a place of business which forms a dependent part of a microfinance bank and which conducts all or some of the operations inherent in the business of that microfinance bank;

“compulsory savings” means monies that shall be contributed by a borrower as a condition for receiving a loan or other credit;

“islamic contract” means a contract designed to comply with the Shari’ah and which satisfies conditions specified by the Central Bank for purposes of complying with the Shari’ah;

“islamic microfinance business” mean—

- (a) the business of receiving money into profit sharing investment accounts or of managing those accounts;
- (b) the business of providing finance, whether through the acquisition, disposal or leasing of assets or otherwise; or other services which have a similar economic effect or are otherwise economically equivalent to any other microfinance business;
- (c) any other microfinance business which involves or is intended to involve entering into Islamic contracts, or which is otherwise carried out or purported to be carried out in accordance with the Shari’ah;

“islamic microfinance bank” means a company licensed to carry on microfinance business, whose entire

business comprises Islamic microfinance business and which has declared to the Central Bank that its entire operations are to be conducted in accordance with the Shari'ah;

“*islamic window*” means the part of a microfinance bank, other than an Islamic microfinance bank, which conducts Islamic microfinance business;

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

“*profit sharing investment account*” means an account managed by a microfinance deposit taking institution—

- (a) in relation to property of any kind including currency specified in this Act, held for or within the account;
- (b) as part of its Islamic microfinance business; and
- (c) under the terms of an agreement where—
 - (i) the account holder agrees to share any profit with the microfinance deposit taking institution as a manager of the account in accordance with a predetermined specified percentage or ratio; and

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(ii) the account holder agrees that he or she alone will bear any losses in the absence of negligence or breach of contract on the part of the microfinance bank;

“related interest” means business interests of affiliates, associates and their related persons;

“Shari’ah advisory board” means a board established in accordance with section 20B of this Act;

“significant shareholder” means a shareholder holding five percent or more of the allotted shares of an institution;

(b) by substituting for the definition of “credit facilities” the following—

“credit facility” means—

(a) an institution granting an advance, loan or other facility in which a customer of the institution has access to funds or financial guarantees, including any economically equivalent arrangement in connection with Islamic microfinance business; or

(b) an institution incurring a liability on behalf of a customer;

(c) by substituting for the definition of “deposit” the following—

“deposit” means a sum of money received or paid on terms under which it will be repaid either on demand or at a time

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or in circumstances agreed upon by or on behalf of the person making the payment and the person receiving it, with or without interest, premium or other economic return, except that the following shall not qualify as deposits—

(i) 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 service, where the sum is repayable only if the property or service is not in fact sold, hired or otherwise provided;

(ii) a sum of money which is paid by way of security for performing a contract; or

(iii) a sum of money which is paid as security for a credit facility which has been advanced or granted to any person making the payment, except that such sum or interest on it shall not be on-lent;

(d) by substituting for the definition of “institution” the following—

“institution” means a microfinance finance deposit taking institution or registered society;

(e) by substituting for the definition of “group guarantee” the following—

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“group guarantee” means a guarantee mechanism including any economically equivalent arrangement relating to Islamic microfinance business by which a group of borrowers undertake to be liable jointly or severally for a loan or any other credit facility of any one of them;

(f) by substituting for the definition of “loan insurance fund” the following—

“loan insurance fund” means a fund consisting of contributions of group customers of an institution to act as collateral for a credit facility”;

(g) by substituting for the definition of “manager” the following—

“manager” means an officer of a microfinance deposit taking institution who directs, controls or influences the decision-making of the institution;

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

“microfinance business” means the business of—

(a) acceptance of deposits from members of the public by any person or institution, regardless of the business form, whether licensed by Central Bank or not;

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

(i) by substituting for the definition of “non-performing loan” the following—

“non-performing loan” means a loan or other credit facility or asset in respect of which the principal, interest or other payment has been due and unpaid for a period specified in the Regulations, or where the principal or interest payment is overdue and has been capitalized;

(j) by substituting for the definition of “registered society” the following—

“registered society” means a cooperative society registered under the Cooperatives Society Act and licensed under this Act;”

(k) by substituting for the definition of “reputable financial institution” the following—

“reputable financial institution” means a financial institution licensed to conduct banking or other financial institution business, under the laws of any other country or territory and which meets the criteria prescribed by the Central Bank;

(l) by substituting for the definition of “short-term loan” the following—

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

(m) by substituting for the definition of “small loan” the following—

“small credit” means a loan or other credit which is less than one percent of the core capital prescribed in this Act, in the case of individual borrower; and five percent of the core capital prescribed in this Act, in the case of a group borrower;

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

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

“(2) 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 apply to—

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

- (i) the arrangement provides for a person who is the financier, to pay a sum of money to another person who is the customer;
- (ii) the arrangement identifies assets, or a class of assets, which the customer acquires;
- (iii) the arrangement specifies a finance term which shall be the period at the end of which the arrangement shall cease to have effect;
- (iv) the customer undertakes, under the arrangement, to make a payment in respect of the capital 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; and

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- (v) the arrangement satisfies such other conditions as may be specified by the Central Bank by regulations.
- (b) any finance arrangement other than the finance arrangement referred to in subsection 2 (a) which satisfies the following conditions—
 - (i) the arrangement provides for a customer to make a payment in respect of capital to the financier to purchase, lease, hire or otherwise acquire or use assets which are identified; and
 - (ii) the financier agrees to sell, lease, hire or otherwise dispose of or allow the use of assets or classes of assets to the customer or to pay a sum of money to another person;
- (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 conditions as may be specified by the Central Bank by regulations.

2. Amendment of section 3 of principal Act

The principal Act is amended by substituting for section 3 the following—

“3. Application of Act

“This Act shall apply to micro finance deposit-taking institutions and registered societies.”

3. Amendment of section 4 of principal Act

Section 4 of the principal Act is amended by inserting immediately after subsection (1) the following—

- “(1a) A person licensed to carry out microfinance business may carry out the licensed business through an agent.
- (1b) The Central Bank shall, in consultation with the Minister make regulations in respect of agents and agent banking.”

4. Amendment of section 5 of principal Act

Section 5 of the principal Act is amended—

- (a) in subsection (1), by inserting immediately after the word “Uganda” appearing at the end of the subsection the words “or a micro finance deposit-taking institution”
- (b) by substituting for subsection (2) the following—
 - “(2) Notwithstanding section 7 of the Financial Institutions Act, 2004 a micro finance deposit-taking institution licensed under this Act shall use the word “MDI” or “Microfinance Bank” after its name.”

5. Amendment to section 7 of the principal Act

Section 7 of the principal Act is amended—

(a) in subsection (1), by substituting for paragraph (a) 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 microfinance business, a statement stating that the business of the institution shall be conducted in accordance with the Shari’ah;”

(b) in subsection (1) by inserting immediately after paragraph (h), the following—

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

6. Insertion of section 9A in principal Act

The principal Act is amended by inserting immediately after section 9, the following—

“9A. Duration and display of licence

(1) A licence granted under section 7 shall remain valid unless it is revoked.

(2) A licence granted under section 7 shall be displayed in its original form, in a conspicuous place in the premises in which the institution carries on its lawful business, and copies of it shall be similarly displayed in each of the branch offices of the institution.”

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7. Amendment of section 18 of principal Act

Section 18 of the principal Act is amended in subsection (1) (a) (i), by substituting for the word “one” the word “two”.

8. Amendment of section 19 of principal Act

Section 19 of the principal Act is amended—

(a) by substituting for paragraph (g) the following—

“(g) taking deposits or funds or other property into sharing investment accounts and lending in foreign exchange;”

(b) in paragraph (i), by inserting immediately after the word “loan” the words “or other credit facility”;

(c) by substituting for paragraph (j) the following—

“(j) dealing in derivatives including, to any Islamic contract or combination of contracts which are economically equivalent to derivatives.”

9. Insertion of new Parts IIIA and Part IIIB

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

“PART IIIA—ISLAMIC BANKING

20A. Licensing of institutions to conduct Islamic microfinance business

(1) An institution carrying on microfinance business at the commencement of this Act may apply to the Central Bank for a licence to carry on Islamic microfinance business in addition to its licensed microfinance business.

(2) An institution which is licensed to carry out Islamic microfinance business, under subsection (1), shall carry out that business through an Islamic window.

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

20B. Shari'ah Advisory Board

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

(2) A Shari'ah Advisory Board appointed by an institution under this Act shall advise, approve and review the activities of an Islamic financial business in order to ensure that the 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 member of a Shari'ah Advisory Board; and

(d) policies, procedures, record-keeping, reviews, reporting and disclosure.

(4) The appointment, maintenance, operation and conduct of a Shari'ah Advisory Board shall at all times be carried

out in accordance with the applicable rules and policies of the institution and shall be answerable to the board of directors of that institution.

**PART IIIB—CONDUCT OF BANCASSURANCE BY
MICRO FINANCE DEPOSIT – TAKING INSTITUTIONS**

20C. Engaging in bancassurance business

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

(2) An institution shall engage in the business of bancassurance, insurance or Islamic insurance in a form and manner prescribed by the Insurance Regulatory Authority of Uganda, in consultation with the Central Bank.

(3) Subject to subsections (1) and (2), the bancassurance, insurance or Islamic insurance business activities of an institution shall comply with the Insurance Act, 2017.

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

10. Amendment of section 21 of principal Act

Section 21 of the principal Act is amended—

- (a) in subsection (4), by substituting for the word “ten” the word “five”;
- (b) in subsection (5), by substituting for the word “ten” the word “five”;

(c) by inserting immediately after subsection (6) the following—

“(7) A significant shareholder of an institution shall not participate in the day to day management of an institution.”

11. Amendment of section 22 of principal Act

Section 22 of the principal Act is amended by inserting immediately after subsection (2) the following—

“(3) A director serving on the board of an institution shall hold office for a term of five years, renewable once”.

12. Amendment of section 24 of principal Act.

Section 24 of the principal Act is amended—

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

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

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

“(2) For the purposes of this Act, “corporate governance” includes the overall environment in which an institution operates, comprising a system of checks and balances which promotes a healthy balancing of risk and return, and in the case of an institution which conducts Islamic microfinance business, promotes compliance with the Shari’ah”

13. Amendment of section 25 of the principal Act

Section 25 of the principal Act is amended in subsection (2)—

- (a) in paragraph (c) by inserting immediately after the word “kind” the words “or any transfer or delivery of any asset”
- (b) by inserting immediately after paragraph (c), the following—
 - “(d) the institution does not, or may not be able to meet its capital requirements as prescribed by this Act.”;
- (c) by inserting immediately after subsection (3) the following—
 - “(4) An individual director who intends to report to the Central Bank in accordance with subsection (2), shall make his or her intention known to the board in writing, prior to reporting to the Central Bank.
 - “(5) Where the board of directors or a director fails to report to the Central Bank any matter required to be reported under subsection (2), the Central Bank may withdraw its approval of—
 - (a) the board of directors as an organ; or
 - (b) an individual director.”

14. Amendment of section 26 of principal Act

Section 26 of the principal Act is amended in subsection (4) by substituting for the word “two” the words “at least half of the”;

15. Amendment of section 27 of the principal Act

Section 27 of the principal Act is amended—

(a) by substituting for the head note the following—

“27. Other staff of the institution”;

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

“(2) The officers referred to in subsection (1) shall include a finance manager who shall have the following duties—

(a) perform such functions as the board of directors shall specify in relation to establishing guidelines for the institutions tolerance for risk, and expectations from investment; and

(b) introduce such measures as, in his or her opinion, may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the institution”;

(c) in subsection (3), by substituting for paragraph (a) and (b) the following—

“(a) limits on loan or other credit facility to deposit ratio;

(b) limits on loan or other credit facility to capital ratio;”.

16. Amendment of section 28 of principal Act
Section 28 of the principal Act is amended—

(a) in subsection (2)—

- (i) by repealing the word “and” appearing at the end of paragraph (f);
- (ii) by substituting for paragraph (j), the following—
 - “(j) review, evaluate and approve the internal control procedures and other systems;”
- (iii) by inserting immediately after paragraph (m) the following—
 - “(n) any other duties as the Central Bank may specify by regulations; and
 - “(o) any additional duties as the board of directors of an institution or its committee may specify.”

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

- “(3) Notwithstanding subsection (1), a registered society may with the approval of the Central Bank appoint a supervisory committee to perform the duties of an internal auditor specified under subsection (2).”

17. Amendment of section 32 of principal Act

Section 32 of the principal Act is amended by inserting immediately after subsection (2) the following—

“(3) An institution which contravenes subsection (1) is liable to a civil penalty of two hundred currency points.”

18. Amendment of section 33 of principal Act

Section 33 of the principal Act is amended by inserting immediately after the words “commencement of” the words “and during the entire duration”.

19. Amendment of section 34 of principal Act

Section 34 of the principal Act is amended by substituting for the word “three”, the word “four”.

20. Amendment of section 35 of principal Act

Section 35 of the principal Act is amended in paragraph (a)—

(a) by substituting for sub-paragraph (i) the following—

“(i) to perform an audit in accordance with the standards adopted by the relevant accounting and auditing regulatory bodies in Uganda;”;

(b) by substituting for sub-paragraph (iii) (cc) the following—

“(cc) the risks faced by the institution;”

21. Amendment of section 40 of principal Act

Section 40 of the principal Act is amended—

(a) in subsection (1) by inserting immediately after the words “audit report” the words “ and a management letter”;

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

“(2) The institution shall ensure that an audit report and management letter made and submitted to it under subsection (1) are forwarded to the Central Bank within three months after the end of its financial year.”

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

“(3) Any institution which fails to submit a report required under subsection (2) shall pay to the Central Bank a civil penalty of fifty currency points and an additional penalty of ten currency points for each day of default.”

22. Amendment of section 43 of principal Act

Section 43 of the principal Act is amended by substituting for paragraph (b) the following—

“(b) existence and enforcement of a proper policy of non-accrual of interest or other economic return on non-performing loans or other credit facilities.”

23. Amendment of section 46 of principal Act

Section 46 of the principal Act is amended—

- (a) in subsection (1) (a) by substituting for the words “or credit accommodation”, the words “and other credit facilities”;
- (b) by inserting immediately after subsection (4) the following—

“(5) An institution shall perform a credit check on all its customers at the time they apply for credit facilities, unless the Central Bank otherwise directs.

(6) The Central Bank may provide for any other circumstances under which institutions may be required to perform a credit check on their customers.”

24. Amendment of section 52 of principal Act

Section 52 of the principal Act is amended—

- (a) In subsection (1) by substituting for the word “four” the word “three”;
- (b) by inserting immediately after subsection (2) the following—

“(3) An institution shall, by 31st August of every year, exhibit in the banking hall of each of its offices and branches, a copy of its unaudited financial statement, stating the fact that the accounts are not audited.

(4) Subsection (1) shall not apply to a registered society.”

25. Amendment of section 57 of principal Act

Section 57 of the principal Act is amended by substituting for subsection (3), the following—

“(3) Any institution which fails to submit a report required under this section shall pay to the Central Bank a civil penalty of fifty currency points and an additional penalty of ten currency points for each day of default.”

26. Amendment of section 59 of principal Act

Section 59 of the principal Act is amended—

(a) by inserting immediately after paragraph (d) the following—

“(e) restrict the rate of interest or other economic return on savings and time deposits, payable by the institution, to rates that the Central Bank shall determine.”;

(b) in subsection (6) by substituting for paragraph (b) the following—

“(b) before the end of that period the Central Bank is of the opinion that the financial position of the institution continues to deteriorate the Central Bank shall close the institution and place it under receivership;

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

“(8) For the purposes of this Act, a significantly undercapitalised institution is one which does not comply with any of the following—

- (a) hold minimum capital funds, unimpaired by losses, of at least fifty percent of the requirement prescribed in section 15;
- (b) hold core capital of at least fifty percent of the requirement prescribed in section 16; or
- (c) hold total capital of at least fifty percent of the requirement prescribed in section 16.”

27. Amendment of section 60 of principal Act

Section 60 of the principal Act is amended—

- (a) by inserting “(1)” before the word “Where”; and
- (b) in subsection (2) by substituting for paragraph (g), the following—
 - “(g) any lending or other credit facility 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 or other economic return accrued.”

28. Amendment of section 61 of principal Act

Section 61 of the principal Act is amended in subsection (1) (g), by inserting immediately after the word “advance” the words “, other credit facility”.

29. Amendment of section 68 of principal Act

Section 68 of the principal Act is amended—

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

“(2) The Central Bank or any person appointed as a receiver shall take action under subsection (1), which in the opinion of the Central Bank—

- (a) is most likely to result in marshalling the greatest amount of the assets of the institution;
- (b) protects the interests of the depositors of the institution including their interest in the unprotected deposit amounts and other creditors;
- (c) minimises costs of the Deposit Protection Fund and losses to other creditors; or
- (d) ensures stability of the financial sector.” and;

(b) by repealing subsection (4).

30. Amendment of section 70 of principal Act

Section 70 of the principal Act is amended in paragraph (a), by inserting immediately after the word “Central Bank” the words “or its appointed agent”;

31. Amendment of section 74 of principal Act

Section 74 of the principal Act is amended—

(a) in subsection (1), by inserting immediately after paragraph (k) the following—

“(l) arrange, negotiate and conclude, in the interests of the depositors of an insolvent institution, an agreement for the purposes of—

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- (i) benefiting the depositors;
- (ii) releasing the liquidator from its obligations in respect of the depositors' claims for payment of their deposits out of the liquidation proceeds; and
- (iii) imposing those obligations on any third party as shall be agreed; or

(m) by notice in writing, requiring any person who is or has been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the financial institution or any person who has custody of any funds or other assets of the institution being liquidated, to—

- (i) give to the liquidator all reasonable assistance in connection with the liquidation;
- (ii) appear before the liquidator for examination concerning matters relevant to the liquidation; and
- (iii) produce any books or documents that relate to the affairs of the institution being liquidated.”;

(b) in subsection (2),

- (iv) by substituting for paragraph (d) the following—

“(d) make any compromise or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or

future, certain or contingent, ascertained or sounding only damages against the institution or by which the company may be rendered liable;”

(v) by inserting immediately after paragraph (d) the following—

“(e) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the institution and a contributory or to another debtor or person apprehending liability to the institution and all other questions in any way relating to or affecting the assets or the liquidation of the institution on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.”

32. Amendment of section 81 of principal Act

Section 81 of the principal Act is amended by substituting subsection (6) the following—

“(6) Any institution which contravenes subsection (1), (2) or (5) shall pay to the Central Bank a civil penalty of fifty currency points and an additional penalty of ten currency points for each day of default.”

33. Amendment of section 83 of principal Act

Section 83 of the principal Act is amended—

(a) in subsection (1), by inserting the words “or funds or other property placed in a profit-sharing investment account” immediately between the word “made”;

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

“(6) Unclaimed balances shall, after a period of five years from the date of the advert in subsection (3), 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.”

34. Amendment of section 84 of principal Act

Section 84 of the principal Act is amended by inserting the words “or a member of its Shari’ah Advisory Board” immediately after the word “institution”.

35. Amendment of section 88 of principal Act

Section 88 of the principal Act is amended—

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

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

(b) by substituting for subsection (4) the following—

“(6) Any institution which fails to comply with an order issued by the Central Bank under this Act shall pay to the Central Bank a civil penalty of fifty currency points.”

(c) by substituting for subsection (4) the following—

“(4) Where a director or officer of an institution or a member of its Shari’ah Advisory Board authorises 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.”;

(d) in subsection (5), by inserting immediately after “an institution” the following—

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

(e) in subsection (6), by inserting immediately after “an institution” the following—

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

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Cross Reference

The Financial Institutions Act, 2004