FINAL REPORT

PROPOSED REGULATORY REFORMS IN THE BANKING SECTOR

Uganda Bankers' Association
Promoting Partnerships. Transforming Banking

fsduganda
Financial Sector Deepening

UKaid
from the British people

BILL & MELINDA GATES foundation


LEGACY

This report was researched and produced by a team from FRIENDS' Consult and Ortus Advocates led by Andrew Obara, working with Apollo Obbo, Asa Mugyenyi, Silver Kayondo, Emily Gakiza and Joseph Musisi. The report also benefited from the valuable feedback and thoughtful comments provided by the Uganda Bankers' Association (UBA) team, including Wilbrod Owor, Eva Ssewagudde and Patricia Amito, and the Financial Sector Deepening (FSD) Uganda team, Rashmi Pillai, Joseph Sanjula Lutwama, Jackie Kitiibwa, and Anthea Paelo, with final production coordinated by Diana Ngaira. In addition, we thank all industry actors who participated in the extensive stakeholder consultations that led to the preparation of this document. The report has been made possible through support from the Foreign and Commonwealth Development Office (FCDO) and the Bill & Melinda Gates Foundation. The findings and conclusions contained within are those of the authors and do not necessarily reflect the positions or policies of our donors.

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DISCLAIMER:

This report was written after interviews and research on the necessary regulatory reforms in Uganda's banking and non-banking financial sector affiliated to or forming part of Uganda Bankers' Association. The sole aim is to inform regulatory reforms in the financial sector as stipulated in the assignment contract. The report is a culmination of activities and analyses stipulated under the Terms of Reference (ToR) for the assignment and is prepared for the Regulatory Review Committee formed by Bank of Uganda and UBA in March 2019. The financial sector is dynamic, and things change every day, thus a few of the observations or recommendations may with time need updating.

While the consultant has done the best to present the relevant information and objective analysis at the time of the study, they do not guarantee that all the information presented remains the same with time. The report is intended solely to inform possible regulatory reform for the financial sector. The consultants and their clients (UBA, RCC and FSDU) do not accept any liability to anyone using this information for any purpose.


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Acronyms

ACH	Automated Clearing House
AISP	Account Information Service Provider
ALCO	Asset & Liability Committee
AML	Anti-Money Laundering
APRA	Australian Prudential Regulation Authority
ATM	Auto Teller machine
BNM	Bank Negara Malaysia
BoU	Bank of Uganda
BRRD	Bank Recovery and Resolution Directive-
BUBU	Buy Uganda Build Uganda
CAR	Capital Adequacy Ratio
CBK	Central Bank of Kenya
CBM	Central Bank of Malaysia
CBR	Central Bank Rate
CCG	Consolidated Corporate Governance
CCO	Chief Compliance Officer
CCRIS	Central Credit Reference Information System
CFPB	Consumer Financial Protection Bureau
CFT	Countering the Financing of Terrorism
CGG	Corporate Governance Guidelines
CGTMSE	Credit Guarantee Fund Trust for Micro and Small Enterprises
CHAPS	Clearing House Automated Payments System
CIA	Chief Internal Auditor
CISCO	Commercial & Industry Security Corporation
CMA	Capital Markets Authority
CRB	Credit Reference Bureau
CRR	Cash Reserve Requirement
CSD	Central Depository System
CSSF	Commission de Surveillance du Secteur Financier
DFS	Digital Financial Services
DLTs	Distributed Ledger Technologies
DNDI	Documento Nacional de Identidad
DPF	Deposit Protection Fund of Uganda

DPPA	Data Protection and Privacy Act
DRI	Differential Rate of Interest
DSIBs	Domestically Systemic Important Banks (DSIBs)
DSM	Data Standards Manual
DTB	Diamond Trust Bank
EAC	East African Community
EEA	European Economic Area
EFRAG	European Financial Reporting Advisory Group
EFT	Electronic Funds Transfer
EPC	European Payments Council
ESAAML	Eastern and Southern Africa Anti-Money Laundering Group
eSPICK	Electronic Cheque Information Clearing System
ET	Electronic Transactions
EU	European Union
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FCEM	Financial Consumer Empowerment Mechanism
FCPGs	Financial Consumer Protection Guidelines
FIA	Financial Institutions Act
FINREP	Financial Reporting
FIs	Financial Institutions
FSDU	Financial Sector Deepening Uganda
FX	Foreign Exchange
GCR	Global Compact on Refugees GCR
GDPR	General Data Protection Regulation
GPRS	General Packet Radio Services
ICOs	Initial Coin Offerings
ICPAU	Institute of Certified Accountants of Uganda
ICPAU	Institute of Certified Public Accountants of Uganda
IFI	Islamic Financial Institution
IFRS	International Financial Reporting Standard
IRA	Insurance Regulatory Authority
IRs	Indian Rupees
ITA	Income Tax Act
JCA	Java Connector Architecture

JDBC	Java Database Connectivity
JMS	Java Message Service
JTA	Jewish Telegraphic Service
KYC	Know Your Customer
LIBOR	London Inter-Bank Overnight Rate
LR	Liquidity ratio
MAS	Monetary Authority of Singapore
MDI	Micro Deposit-taking Institution
MF	Microfinance
MFI	Microfinance Institution
MFML	Micro Finance and Money Lenders
MICR	Magnetic Ink Character Recognition
MiFIR	Markets in Financial Instruments Directive
MNOs	Mobile Network Operators
MoFPED	Ministry of Finance, Planning & Economic Development
NABARD	National Bank for Agriculture and Rural Development
NDAs	Non-Disclosure Agreements
NDIC	Nigerian Deposit Insurance Corporation
NID	National Identity Card
NIMC	National Identity Management Commission
NIN	National Identification Number
NIRA	National Identification Registration Authority
NITA-U	National Information Technology Authority Uganda
NPA	Non-Performing Asset
NPL	Non-Performing Loans
NPS	National Payment Systems
NPSA	National Payment Systems Act
OECD	Organisation for Economic Cooperation and Development
OPI	Open Programming Interfaces
OTT	Over The Top
PISP	Payment Initiation Service Provider
PRA	Prudential Regulation Authority
PWDs	People with Disabilities
RBI	Reserve Bank of India
RCC	Regulatory Reform Committee

REPOs	Repurchase Agreements
RLA	Registration of Land Act
ROU	Right-of-Use
RRC	Regulatory Reforms Committee
RTGS	Real Time Gross Settlements
SACCOs	Saving and Credit Cooperatives Organisations
SACs	Sharia Advisory Councils
SAMOS	South African Multiple Options System
SARB	South African Reserve Bank SARB
SC	Shariah Committee
SEPA	Single Euro Payments Area
SFI	Supervised Financial Institution
SIDBI	Small Industries Development Bank of India
SIMP	Security Interest in Movable Property
SLAs	Service-Level Agreements
SPOF	Single Point of Failure
SSR	Short Selling Regulation
SWIFT	Society for Worldwide Interbank Financial Telecommunication
UBA	Uganda Bankers Association
UCC	Uganda Communications Commission
UMRA	Uganda Microfinance Regulatory Authority
UNHCR	United Nations High Commission for Refugees
USSD	Unstructured Supplementary Service Data
VPNs	Virtual Private Networks

Uganda Bankers' Association Foreword

15th March 2019 was an important day the industry will continue to remember.

On this day, CEOs of member financial institution gathered together with the Bank of Uganda (BoU), led by the Governor, and the Bank Supervision leadership at BOU, coupled with representation from several development partners and agencies including FSD Uganda, World Bank, IMF, EU, UNCDF, aBi, GIZ among others at Serena Hotel Kigo for a retreat.

The session took stock of developments in the banking and financial services industry including emerging issues, trends, opportunities and challenges including factors constraining the operating environment for regulated financial institutions.

At the end of the retreat, key among several actions and takeaways agreed on was to undertake a study/review of areas where reforms would be required to improve the operating environment, including legislative and regulatory changes where necessary. It was further agreed that a joint team from Uganda Bankers Association (UBA) and Bank of Uganda would be constituted to undertake this assignment.

I am delighted to see we have come this far with the assignment by way of the report of recommendations on banking and financial sector reforms. The team that undertook this assignment have walked this journey with several participants and informants, reviewed various reports for purposes of benchmarking and had numerous hours of stakeholder engagements.

Special thanks therefore go to the various persons, teams, partners, institutions whose views, insights, suggestions and recommendations shaped this report. Gratitude goes to Friends Consult and all their associates, who together with the various UBA committees and the UBA secretariat staff did all the kitchen work to deliver this assignment.

Salutations are very much in order to Financial Sector Deepening Uganda (FSDU) who stood by and anchored this assignment in all aspects and provided the much-needed technical guidance to ensure this important assignment is delivered.

As we complete this phase of handing over the report to Bank of Uganda, it is clear that more work is cut out for all of us looking at the recommendations that this report contains. We are encouraged by the spirit, enthusiasm and goodwill with which this assignment was conceived, received and undertaken, and remain optimistic that implementation of the proposed reforms will carry the same velocity.

We envisage that if most of the recommendations see the light of day and are implemented, banking and financial services in Uganda will be different in the future ahead of us. We beseech the Good Lord to continue walking this journey with us and to enable us be witnesses of the results.

Wilbrod Humphreys Owor
Executive Director,
Uganda Bankers Association

August 2021

FSD Uganda Foreword

Since its inception in 2015, Financial Sector Deepening (FSD) Uganda has been committed to promoting greater access to, and usage of financial services in Uganda. We do this by supporting innovation, conducting research, and supporting regulatory processes that shape the financial sector in collaboration with various partners in Uganda's financial ecosystem, such as the Uganda Bankers' Association (UBA).

It is, therefore, with great pleasure that we provided UBA with support to produce this extensive report with recommendations for the review and amendment of banking regulation in Uganda. The review covered 11 thematic areas, including Governance, Legal, Compliance, Credit, Credit Reference Bureau, Information & Communications Technology (ICT), Digital Financial Services (DFS) & Agent Banking, Operations, Clearing & Settlements, Finance, and Treasury. It involved a comprehensive review of the laws, regulations and related documents, and consultative interviews with stakeholders. The result is a comprehensive document with recommendations for amendments in banking regulation accompanied by a framework for implementing these changes, including ranking by importance and priority and method of regulatory change. The submission of this report comes at a time of significant technological growth involving artificial intelligence, robotics, the internet of things, cloud computing, and in the financial sector, innovation in payments, insurance, equity crowdfunding, and the microcredit space. It also comes amidst the Covid-19 pandemic, which has emphasised the need for increased use of digital channels for financial services. While regulators and policymakers have striven to keep abreast of new technologies, the rapid pace of innovation and novelty of products and services developed has meant that several regulations remain outdated.

Therefore, this work, the first of its kind to our knowledge, is essential in enabling banking regulation in Uganda to keep pace with the economic and technological changes happening locally and globally. Significantly, this work contributes directly to a key goal identified in the National Development Plan 2020/21-2024/25 to "develop the financial sector and its infrastructure in an effort to catalyse the mobilisation of domestic savings and investments" to transform Uganda from a peasant to a modern and prosperous country within 30 years.

FSD Uganda is proud to have facilitated this vital work. We are especially delighted that the proposed reforms are being driven by the Bankers' Association - our support to industry associations and other meso institutions is aimed at empowering them to advocate on behalf of their members and accelerate reforms that will promote inclusive financial sector development. We remain committed to working alongside our partners to promote improved inclusive financial markets that foster job creation, reduce poverty and improve Uganda's competitiveness.

Rashmi Pillai,
Executive Director,
Financial Sector Deepening Uganda

August 2021

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LIGHT UP
PROSPER
GROW
TVS

EXECUTIVE SUMMARY

BACKGROUND

The banking sector in Uganda is aligning itself to national priorities through initiatives to reduce costs and increase access to and efficiency in delivering financial services. This will significantly increase its contribution to attainment of the goals of the Third National Development Plan (NDP III), and thus the realisation of Uganda's Vision 2040[1]. The sector is doing this by harnessing inter and intra-industry collaboration, embracing suitable technology for mass access to financial services, and reviewing regulations to ease banking business. All this is aimed at directly contributing to the implementation of the Financial Sector Development Strategy (FSDS) and Agricultural Finance Strategy (AFS). This is intended to eventually see all Ugandans accessing suitable and affordable financial services. For this to be realised, the sector needs a supportive regulatory environment.

This report is a result of 12 months of study and analysis, it identifies key issues for regulatory reforms and makes recommendations intended to help the banking sector play its economic catalytic role more optimally. The Financial Institutions Act (FIA) was enacted in 2004 (amended in 2016) and the related regulations and guidelines were issued at various times from 2005 to date. The fast-changing developments in the sector have occasioned the need for a comprehensive review of the laws, regulations, and other instruments. In 2019, Uganda Banking Association (UBA) and Bank of Uganda (BoU) set up a Regulatory Reforms Committee (RRC), tasked with reviewing and making recommendations on the relevant reforms necessary to improve the regulatory environment of Uganda's banking sector in order to help it play its role in national development better. This report makes the necessary recommendations.

THE ASSIGNMENT AND ITS INTENDED OUTCOMES

In May 2020 FSDU contracted FRIENDS Consult to work for 12 months[2] with UBA/ RRC to:

i) Review the existing banking sector laws, regulations/ guidelines, and to identify limitations, constraints, and gaps they pose to the banking business.

ii) Recommend regulations and legislations for improvement to enhance the banking business environment.

iii) Review laws and regulations from other regulatory authorities that affect financial institutions business in Uganda.

1 "A Transformed Ugandan Society from a Peasant to a Modern and Prosperous Country within 30 years"

2 Later extended to 15 months

iv) Recommend any other related reforms, changes, adaptations.

The recommendations are intended to boost financial inclusion in the country by improving efficiency, reducing cost of access, enhancing the safety and soundness of the financial sector, further unlocking the potential of financial technology, and streamlining laws and regulations to enable regulated financial institutions to fully play their role in realising Uganda's Vision 2040.

Formalisation of businesses leading to increased financial inclusion will help broaden the tax base by bringing more establishments to fore.

METHODOLOGY USED AND TASKS ACCOMPLISHED

In line with the terms of reference and strategic intent of the assignment, the consultants adopted 11 thematic areas: Governance, Legal, Compliance, Credit, CRB, ICT, DFS & Agent Banking, Operations, Clearing & Settlements, Finance, and Treasury.

The key sequential steps of the study included comprehensive review of the laws, regulations and related documents; consultative interviews with stakeholders; internet search and further document reviews to understand respective practices in other jurisdictions; analysis of the findings; drafting of the respective report on issues and recommendations; discussion and validation with the respective of UBA committees; consolidating the reports into one, and subjecting it for an independent review; four-day validation by various stakeholders[3]; and refining the draft into the final report.

SUMMARY OF RECOMMENDATIONS

Each of the recommendations made is intended to help the banking sector enhance its contribution to the national development agenda by reducing the costs or charges, increasing access by existing and potential customers, making transactions more efficient or improving institutional and systemic soundness of the sector. The recommendations under the respective thematic areas are summarised below.

1. Governance

In regard to governance, recommendations here take a good balance between principles-based regulation (strategic intent broadly defined and specifics left to discretion on the basis of potential risks) and rules-based regulation (specifics laid down in the laws/ regulations to address common risks that can be reduced through compliance). The former is applicable for risks that are fluid with diverse causes and not accurately verifiable, while the latter is suitable for easily identifiable risks with common or similar causes. Some aspects need the former and others need the latter approach.

The overall purpose of recommendations under this category is improved institutional

3 All tiers of financial institutions, regulators, trade associations, relevant Government departments, development partners and others

oversight, based on updated regulations, by capable board members who exercise optimum independence and objectivity.

1.1 In the context of the ongoing discussion on the Consolidated Corporate Governance (CCG) Guidelines, it is recommended to conduct a comprehensive review of the Financial Institutions (Corporate Governance) Regulations 2005, to align it with current and emerging future trends in the banking environment so that SFI governance remains relevant and highly effective.

1.2 Issue more guidance on professional qualifications/ experience of a bank director to ensure that all the non-executive directors of SFIs have the desired capability and aptitude.

1.3 Apply a governance deep dive in all cases of SFIs where owners (10% or more) and/ or their close relations access credit facilities from the bank they own. This would mean that for such SFIs, the regulator/ supervisor pays keen attention and delves deeper into the details of governance practices of such institutions in examination and supervision.

1.4 Introduce requirement that all Board members who are corporate business owners or executives are ineligible to be elected chairpersons of the Board and of Board Committees concerned with credit, recovery, or risk, so as to keep these vital committees clear of potential conflicts of interest.

1.5 Limit the maximum tenure for bank Board members to ten years, to promote both institutional memory retention and fresh perspectives in governance.

1.6 Prohibit significant shareholders (10% or more) and their relations from being appointed into executive and senior management positions of banks.

1.7 Resolve the aspect of BoU being the receiver/ liquidator in cases of banks in distress, to eliminate perceived conflicted situations and align with international trends.

Non-regulatory recommendations on Governance

a) *Chief Internal Auditor (CIA) Independence:* Give more emphasis to the existing legislation regarding the empowerment and stature of the role of the Chief Internal Auditor to enable him/her to independently exercise his/her agency role on behalf of the board (resp'[4] - SFI boards and management).

b) *Governance cost:* Lower the cost of governance (strategic action within the SFIs) by reviewing internal governance structures without sacrificing effectiveness (resp'- *SFI boards).*

c) *Bank examination and supervision:* Consider increasing bank examination and supervision depth, to apply the existing laws/ regulations more comprehensively and avoid subtle cases of noncompliance by SFIs *(*resp'-*BoU).*

4 Responsibility

d) *CEO/ ED roles:* The four-eyes principle, which is very good and useful for several SFIs in Uganda, is sometimes a source of conflict for others. Clarify the roles of the Managing Director (MD)/ Chief Executive Officer (CEO) and the Executive Director (ED) to reduce such cases *(SFIs* resp'*-boards)*.

e) *Skills for non-executive Board members:* Equip Board members of SFIs with necessary working knowledge of the banking business, to enhance governance and strengthen SFIs *(SFI boards and management)*.

f) *Lessons learnt from past bank failures:* Document the learnings from prior bank failures and governance challenges to provide learnings for improving regulation and compliance *(resp'-UBA & BoU)*.

g) Firm up regulation on the independence of directors on the Board Audit Committee (BAC), to enhance contribution by this committee *(resp'-BoU)*.

h) Include the Head of Risk among ex-officios of the BAC so that all oversight functions are represented in this important committee *(resp'- BoU & SFI Boards)*.

2. Legal

The overall purpose of recommendations under this category is to improve lending conditions for both the lender and borrower, improve the resolution of bank related cases and disputes, further clarify what constitutes "banking business" that requires licensing, and improve regulatory environment for Tier 4 lenders.

2.1 Limit spousal consent requirement on collateralised property to matrimonial homes, and fully criminalise false or incomplete spouse disclosure, to reduce borrowers' manipulation to fleece SFIs through legal means after defaulting and thus raise SFIs' appetite for lending.

2.2 Clarify what constitutes effective notice of default and service thereof, for fairness to both the SFI and borrower so that "notice" does not become a point of contention in cases of foreclosure in default situations.

2.3 Increase deposit from 30% to 50% for pending disputes related to loan recovery, for consistency and to reduce SFI funds being tied up while years of litigation roll.

2.4 Abolish penal interest on reported non-performing loans, to ease loan service by borrowers who are in default.

2.5 Clarify the legal position on land occupants in mortgage situations, to unlock the potential for using informal/ non-traditional collateral in borrowing from SFIs.

2.6 Clarify on the incidence of unassumed liabilities in a P&A bank resolution, to help the resolution process conclude speedily in such cases.

2.7 Uphold the status quo of non-arbitration between the resolution authority and distressed SFI, since introducing arbitration could weaken the effectiveness of the resolution authority.

2.8 Gradually de-link BoU from management or liquidation of troubled banks and amend the law on non-suability of SFIs in receivership, so as to ensure independence of resolution and retain legal capabilities of the receiver.

2.9 Address the issues that cause lengthy litigation of loan default cases through amendments of certain provisions, training, and enhanced awareness creation for judicial officers.

2.10 Resolve the need for clarity on the length of validity of collateral property valuations (three years suggested), to reduce cases of countersuits based on valuation of mortgaged property.

2.11 Review and amend Tier 4 MFI & ML Act to make it more effective and facilitative in providing low-income Ugandans with suitable financial services.

2.12 Allow some discretion to DPF to waive penalties under exceptional circumstances, so that SFIs are not penalised for remittance delays in rare times of general hardships like the Covi-19 pandemic.

2.13 Provide legal framework for DPF borrowing from the Central Bank, to ensure smooth pay out without hurried sale of DPF securities in cases of SFI resolution requiring pay out.

2.14 Clarify the legal position on lending by foreign & non-BoU licensed institutions, to guide future determination of cases arising from lending and maintain confidence of such financiers to lend in Uganda.

2.15 Review exemption to shareholding(s) in banks and other financial institutions to permit BoU discretion to allow financially sound and reputable financial institutions own more SFI shares.

2.16 Review factors to be considered by the BoU in acquisition of control of an SFI, in order to encourage and attract more investments in Ugandan SFIs.

2.17 Review the constitution of the Sharia Advisory Councils (SAC) for Islamic Banking so that this line of business can take off in institutions that want to pursue it.

2.18 Review tax laws to treat Islamic Banking fairly like other products, and thus further create an enabling environment for this line of business.

2.19 Introduce mandatory resolution and recovery planning for all SFIs, to create tailored guides in case any SFI gets into distress.

2.20 Amend Section 61 (2) (f) of the FIA 2004 to remove "certifying returns submitted to the Central Bank by the Financial Institution" from the duties of an Internal Auditor, so that this role remains independent enough to play its oversight function.

2.21 Waive the requirement for CRB reports for digitally delivered micro loans to a given limit (like UGX 1 million), set by BoU from time to time, to expand financial inclusion in a cost-effective way.

2.22 Amend R. 6 (5) of the Bancassurance Regulations 2017 to allow one person to cov-

er more than one branch, especially given the size of bancassurance business, to make bancassurance less costly.

2.23 Amend FIA to provide for the vetting of all persons proposed to be part of senior management[5] of an SFI, so that the current practice is backed by law.

Non-regulatory recommendations - Legal

a) *Fraudulent garnishee orders:* Enact or implement penal punishment for fraudulent garnishee orders, to reduce this practice which diverts justice *(Resp'-Judiciary)*.

b) *Occupational health cases:* Require the scope of medical certificates relied on for work related suits to be wider and issued by specialist occupational illness practitioners in cases of labour disputes. Additionally, the Industrial Court should be granted jurisdiction to hear such matters that are currently restricted to the magistrate's courts *(Resp'-MOGLSD)*.

c) *Registrar role:* The Court Registrar should be empowered by statute to handle some matters which will ease up the case back log for the financial sector *(Resp'-Judiciary)*.

d) Review the Companies Act to be more relevant amidst fast paced changes *(Resp'-MTIC)*.

e) Provide/ issue guidelines to provide for handling blind and other customers living with disability so as to have equitable access to financial services *(Resp'-BoU)*.

3. Compliance

Recommendations under this category aim at reducing the cost of and access barriers to banking services by integrating KYC with NIRA and other entities for speedy service, reduction of overall compliance cost, harmonisation of laws/ regulations and speedy move towards automation of compliance reporting.

3.1 Permit effective Compliance function to exist without having a department dedicated to it for small banks, as long as the role profile is senior and independent enough. This will reduce the cost of risk governance and management.

3.2 Provide banks with access to KYC - adequate information from the NIRA database, to reduce customer cost and inconvenience by making KYC and customer due diligence faster.

3.3 Harmonise anti-money laundering requirements by BoU and FIA, to eliminate contradictions and ease compliance by SFIs.

3.4 Streamline customer identification requirements from different regulators to reduce the cost and time spent by both customers and SFIs on proving/ verifying identity.

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3.5 Speed up automation of systems for reporting so as to reduce compliance cost and time spent.

3.6 Resolve the differences in provisions of the Mobile Money Guidelines and the NPS Act, to eliminate contradictions and ease compliance.

3.7 Put in place a provision for quick, effective arbitration of bank/borrower disputes that need not go to court and yet cannot be resolved between the two.

3.8 Study the principles-based versus rule-based regulation and supervision, to guide and assess the best model (combination of the two) for Uganda's present and future financial sector, to guide a refinement of the overall regulatory approach.

4. Credit

The Credit-related recommendations aim at enabling greater access to credit by Ugandans and a boost in bank lending portfolios through easing regulatory constraints, providing suitable regulatory environment for high potential credit products like leasing, further regulatory support to digital lenders, recognising non-conventional collateral and completing the comprehensive review of the MDI Act for increased micro lending.

4.1 Gradually move to align the FIA credit reporting requirements for periodic regulatory reporting with IFRS 9, to make loan reporting less cumbersome and more consistent.

4.2 Differentiate between funded and non-funded exposures (including those that are not direct credit substitutes) in determining statutory concentration limits, to increase lending opportunities.

4.3 Differentiate between sovereign and other exposures in determining the single obligation limits; and identify past-dues occasioned by delayed Government payment to its suppliers (the borrowers) to except them from the strict provision rules to help reflect asset quality better.

4.4 Recognise realisable value of collateral in determining provisions, to ensure fair asset values are carried.

4.5 Amend Insider Lending regulations to reduce both inequity and pertinent risks, without being too prescriptive.

4.6 Remove the cap on the number of times a loan can be rescheduled or restructured (subject to a downgrade on each rescheduling that is reversible only after 12 months of good performance from the time restructuring), to help SFIs deal constructively with redeemable "bad" borrowers. This should be coupled with a requirement that in case the loan period is extended, all related collateral and insurance are also extended to match.

4.7 Permit and require some data sharing between mobile money companies (and other digital finance service providers) and regulated financial institutions, to reduce the cost of customer due diligence.

4.8 Champion an enabling law related to leasing and similar financial services, to unlock asset financing possibilities to corporate businesses and MSMEs.

4.9 Restrict lending in foreign currency, to help UGX earning borrowers avoid adverse effects of currency depreciation.

4.10 Recognise Security Interest in Movable Property (SIMPO) as effective collateral, to stimulate SFI lending to good customers who do not have immovable property to pledge as collateral.

4.11 Conclude MDI Act amendment to support enhanced access to financial services by low-income Ugandans through MDIs (BoU).

Non-regulatory recommendations

a) *Reintroduce tax incentive* on interest income received by financial institutions from agricultural loans, to reduce the cost of agriculture credit and increase uptake and improve access to low priced loans by more Ugandans engaged in agriculture *(resp'-MoFPED).*

b) *Guide on lending to priority sectors* (through incentives and guidelines) to help banks further align with national priorities and adequately finance customers in priority sectors identified by the Government *(resp'-MoFPED).*

c) *Establish well priced long-term funds* from Government to banks to finance start-up and expansion capital costs for private enterprises in priority sectors including agriculture, selected manufacturing subsectors, hospitality, ICT among others, to solve the persistent inadequacy of funding liabilities for term lending by SFIs *(resp'-MoFPED & BoU).*

d) *BoU guidance on interest rates:* Work to resolve the CBR/ bank lending rates anomaly to reduce the high cost of borrowing for Ugandans (*resp'*-BoU/UBA).

e) *Regulation of Tier 4s:* When finally, BoU starts regulating the selected Tier 4 institutions (mature SACCOs) it will be helpful to keep in mind that SACCOs are cooperative societies with certain structures and principles embedded, which make them dissimilar to some other institutional types – they can only thrive on cooperative principles (*resp'-BoU)*.

f) *Government borrowing:* Address the crowding out effect of Government borrowing, to shift more of SFIs' appetite to private sector lending.

g) *Asset Reconstruction Company:* Speed up the issuance of the regulatory framework for and operationalisation of the Asset Reconstruction Company (ARC) to help banks in management of toxic debt, and to restructure/reconstruct/turnaround companies with systemic ramifications.

h) *Agricultural Credit Facility (ACF)*: Improve the speed of ACF refund process, which SFIs presently find too long and discouraging.

i) Remove *fiscal constraints* to banks' credit business, like delays (often more than three months) in settlement of arears with Government suppliers/ service provid-

ers, to avoid NPL build-up resulting from this.

j) Complete and implement the Financial Sector Development Strategy, Agricultural Finance Policy and Agricultural Finance Strategy, to ensure that financial inclusion is high on the national strategy action and is supported in a well-defined, holistic and consistent way.

5. Credit Reference Bureau (CRB)

Recommendations for the proposed regulatory improvements in the CRB aim to reduce the overall cost of extending credit (and passing the lower cost advantage to the customers) enable access to all types of stakeholders and reduce the cost of usage by opening up CRBs to all types of credit givers, expanding and standardising data/ information into and out of the CRBs, making them more time efficient and integrating CRBs information with national databases (including NIRA).

5.1 Allow other lenders/ creditors to access the CRB, to expand sources of data from all credit givers (including unregulated lenders and utility providers) and thus increase usage.

5.2 Introduce a maximum response-time limit of five working days to CRBs, to ensure up-to-date, reliable information is released to users, to shorten the turnaround time of loans

5.3 Place the responsibility and consequences of providing inaccurate information on the CRBs (unless the error was from source), to enhance data reliability and thus reduce the cost of customer due diligence, and the cost advantage passed on to the customers.

5.4 *CRB reports period:* Extend the communicable information history from five to six years (maximum that corresponds with the Statute of Limitations), so that the information on each borrower is optimum and adequate for the lending decision, further reducing the time and cost of extending credit.

Non-regulatory recommendations - CRB

a) Establish a centralised credit reference system for reporting, for easy access by both contributors and users of information. A centralised credit reference system could be created at BoU into which all the information from the CRBs is automatically reported.

b) Consider availing credit reference by CRBs on mobile phones and other electronic devices such as wearable smart watches, to ease access and popularise use.

c) Lower the costs/fees of obtaining CRB information to increase usage: Although operational in nature, the high cost of access has been cited as a challenge by several SFIs and will be even more critical with the proposal.

d) Enable CRBs to allow the uploading of facilities with 'Zero' days linked to non-per-

forming accounts of the same customer, to more accurately report on the borrowers' credit behaviour.

e) *Validation of portal: Consider* a *validation portal hosted at BoU* such that Participating Institutions (PIs) will be in a position to also validate the National Identification Numbers (NIN) online.

f) *Audit of CRB reports to SFIs:* BoU issued directives for annual audit of CRB activities on the reporting side of SFIs, and this should be included in the Risk report of SFIs to BoU.

g) *Proactive consumer/ borrower listing:* Permit a voluntary and client-based system for interested people/citizens with little or no credit history to voluntarily supply basic digital consumer data so that they build a voluntary credit profile that can be used to assess their credit worthiness in accessing financing.

h) *NIRA connectivity to ease credit reference:* The ongoing discussion on NIRA connectivity with the financial sector is important for CRBs, especially the move to eliminate the financial card and have SFIs access the NIRA identification database.

i) *Access to Big Data:* CRBs are interested in and should strive to access *"alternative data"* to improve the usefulness report and credit profiling of corporate/ non-individual borrowers.

j) *Develop CRB Data sharing standards* across the formal and non-formal financial sectors to ensure adequacy of credit information, in the right format and truthful, fair content.

k) *Qualify some defaulter reports in exceptional cases* to give due consideration to otherwise good borrowers who were constrained due to circumstances beyond their control but who have since remedied their credit.

6 Information and Communications Technology (ICT)

Recommendations for regulatory changes in the ICT area aim at enabling the use of robust infrastructure for increased outreach by supervised financial institutions and a reduction of related costs and risks, so that they can reduce cost of access and serve more people.

6.1 Re-examine the Data Centre directive and allow mirrored data centres and/or shared cloud facilities where BoU would limitlessly have access to the data for regulatory functions as and when required. This would reduce the related costs while satisfactorily cushioning against the pertinent risk.

6.2 Create a specific Risk Management Framework for ICT, to ensure there is elaborate regulatory focus on cyber and other ICT related risks and limit, thus limit cyber related disruptions to financial services.

6.3 Review the Outsourcing Guidelines to oblige service providers more than SFIs for misuse of data by the service providers, so that the service providers know there are serious consequences of breach to them.

6.4 Clarify and align "data processing function" to the definition in the Data Protection and Privacy Act, 2019 (DPPA), for ease of compliance by SFIs.

6.5 Align the Evidence Banker's Books Act to the Electronic Transactions Act, 2011 so as to make electronic banking transactions evidence strong in cases where they are needed, which will ease handling for such transactions.

6.6 Lobby for a specific regulatory framework for private internet networks in order to minimise banking disruption at critical times, so that people continue accessing financial service even when there is a country-wide internet shutdown.

Non-regulatory recommendations - ICT

a) *Assess SFIs' respective ICT maturity levels* to inform the approaches to responsive regulation in this area.

b) *Encourage updating or migration of ICT systems* to support digital banking and technical robustness better.

c) *Devise means of authenticating e-statements* for better customer convenience.

7 Recommendations on Digital Financial Services & Agent Banking

Recommendations under digital financial services and agent banking aim at maximising and optimising the use of fast-unfolding digital technology, in a future-focused way, to reduce transaction costs and increase financial inclusion by streamlining key aspects like-KYC, data sharing, agent onboarding, evidential validity of digital transactions, tax incidence, and technology nurturing.

7.1 Enact and implement a specific e-KYC framework, to streamline digital customer onboarding and service as a way of giving access to increasing numbers of people to formal financial services.

7.2 Amend the 2nd Schedule of the ETA to recognise digital negotiable instruments (authenticate truncated cheques remitted digitally), which would reduce the cost and increase efficiency of related transactions.

7.3 Harmonise customer due diligence requirements among various regulators to help SFIs comply more easily and reduce inconvenience to customers.

7.4 Review requirement of business experience from 12 to 6 months for a bank agent, so that SFIs can onboard more bank agents to increase service locations and further extend access to formal financial services.

7.5 Review the requirement of vetting every agent location by BoU, to enable bank agents establish additional locations with approval of the respective SFIs and thus spread the service points and serve more.

7.6 Review vetting of multiple agencies by BoU, to allow already vetted agents to be onboarded by other SFIs in tripartite agreement between the "old" and "new" SFI and the agent – this will increase service availability for customers.

7.7 Provide exceptions to allow agents to do business away from primary locations, to cater for situations like refugees, temporary internal displacement, or road construction worker payments in remote sites.

7.8 Expressly recognise SMS, voice consent, and electronic signoffs to ease legally recognised transaction involving digital instructions in banking and save customers' time as and reduce related transaction costs.

7.9 Repeal movable securities re-registration requirements under the Security Interest in Movable Property Act, 2019 to make SIMP collateralisation less costly and less cumbersome for the borrowers.

7.10 Issue Guidelines/Circular under the NPS Act and Regulations thereunder to facilitate more open banking and interoperability between fintech firms and SFIs, which would increase access to transaction points and increase financial inclusion.

7.11 Create specific offences for payment cloning, skimming and unauthorised use of payment mechanisms including debit, credit and other electronic/ digital cards, reduce abuse of payment mechanism, making it safer for customers and SFIs.

7.12 Clarify regulatory position on digital assets such as crypto assets and Smart Contracts to eliminate regulatory uncertainty and pave way for eventual approval of digital assets as a form of property that can be transacted by SFIs to boost their business portfolios.

7.13 Implement facilitative regulation of Digital Ledger Technologies (DLTs).

7.14 Provide specific regulatory guidance on international/cross-border data transfers and processing, to enhance business related collaborations among SFIs in Uganda and those elsewhere, while remaining in compliance with Section 19(a) of the Data Protection and Privacy Act, 2019.

7.15 Lobby for removal of user taxes on Mobile Money and internet access, to attract more users and thus increase both digital and financial inclusion.

7.16 Engage the Capital Markets Authority (CMA) on proposals for a regulatory framework for digital securities and online crowdfunding platforms. This should facilitate reduction of regulatory risk and drive market demand through sensitisation and awareness of such solutions in developing Uganda's capital markets, and thus the broader financial sector.

7.17 Engage the Insurance Regulatory Authority (IRA) on proposals for a regulatory framework for digital insurance products, which would ease both bancassurance business and processes for insuring collateral security.

7.18 Engage the Uganda Retirement Benefits Regulatory Authority (URBRA) on proposals for a regulatory framework for digital pension products, to ease the onboarding and pension related transactions and enhance financial institutions' business, especially deposits and payments.

7.19 UBA and BoU to engage the Uganda Communications Commission (UCC) and National Information Technology Authority of Uganda (NITA-U) on minimum standards for interactive webs/apps and assistive technologies for people with disabilities (PWDs), to facilitate digital inclusion for them to use digital financial services.

7.20 UBA to engage Ministry of Trade, Industry and Cooperatives to expedite the Competition Bill, to ensure fair competition across the economy so that even fintech providers compete in a way beneficial to users.

Non-regulatory recommendations – DFS

a) *UBA should spearhead the campaign to lower the cost of internet and digital access.* In lobbying Government and private sector players like internet service providers to work on significantly lowering the cost of internet/ data access, the gain for them is that once the number of users increase, the gains in terms of profits and taxes would come from volume rather than higher prices.

b) *Strengthen the focus of cooperation in the forum of regulators* that affect SFIs (such as BoU, CMA, URSB, NITA-U, UMRA, IRA, URBRA, UCC, FIA, UMRA) with a view of regularly sharing experiences and reviewing regulations with the aim of improving the ease of doing business.

c) *Steer an enabling environment for enhanced digital asset custodial services.* The custodial offerings currently on the market do not have the proper security required for clients to store millions of dollars in digital assets.

d) *Align regulations applicable to fintech*. Fintechs are driving convergence in product and service offerings such as digital insurance, digital pensions, and digital securities.

e) *Operationalise electronic signatures.* UBA should also engage the Ministry of ICT to operationalise electronic signatures under the Electronic Signatures Act, 2011 and the Electronic Signatures Regulations, 2013 to enable electronic signoffs on financial documents as long as the clients' e-signatures can be properly authenticated.

f) *Harmonise cross-regulation between BoU and UCC with regard to payment systems*. There is cross-regulation between the proposed National Payment Systems Regulations, 2020 and the Uganda Communications (Fees and Fines) Regulations, 2019.

g) *Synergise to promote gainful innovations*. UBA members should periodically review

and refine their digital financial service strategies to cater for emerging innovations and new market opportunity dynamics.

8. Operations

Recommendations under Operations aim at streamlining processes for more effectiveness, reducing transaction costs, risk control, extending financial inclusion and instituting a mechanism of regular reviews to keep abreast with fast pace of developments in the financial services market.

8.1 Extend the timeline for AML risk assessment reports from two to three working days after risk assessment, to give SFI management time to check and ensure report accuracy.

8.2 Adjust the timeline for response to customer complaints involving third parties to four weeks, so that the SFI has time to engage all concerned parties and give conclusive response.

8.3 Align customer identification requirements of different stakeholders, to ease KYC and make it less expensive for the SFI and customer.

8.4 Establish an effective framework (risk-focused deep-dive into governance and control issues where undue informal control is suspected), aimed at mitigating strategic control risks beyond documented ownership and governance. This will reduce the potential for owners/ directors to circumnavigate the law in exercising concentrated control of SFIs.

8.5 Effect guidelines on environmental and social risk (ESR), so that SFIs do not finance environmentally destructive ventures and they can access "green finance".

8.6 Review the CRR from 8% down to 6%, which would release funds for private sector lending, and the ratio would be comparable to similar African countries such as Kenya and Rwanda.

8.7 Continue addressing the need to include some forex assets in CRR at the regional level and advocating for it, which if successful would further release more cash for SFIs to finance business.

8.8 Reduce excise duty on financial services to 5%, to make the service less costly to SFI customers.

8.9 Amend regulations to allow refugee identification cards (national and UNHCR) as part of the key KYC documents to enhance financial inclusion of refugees.

8.10 Amend the Outsourcing Guidelines to require that SFIs institute comprehensive and legally binding agreements with service providers in respect of unlimited access to service providers' contingency plans for periodic verification. This should reduce possibilities of fraud originating from outsourced entities, and lift burdens beyond SFIs control from them, while maintaining the necessary requirement.

8.11 To keep fair pace with the fast-changing developments in the market, BoU should work with key stakeholders (including UBA, SFIs FIA, IRA, MoFPED, UCC, NIRA, and the CRBs) to review the Risk Management Guidelines every two years.

Non-regulatory recommendation - Operations

To address increasing complex fraud that accompanies digitisation UBA should, alongside BoU, initiate an active anti-fraud cooperation through a financial fraud prevention and mitigation alliance. Key partners here would be UBA, BoU, FIA, Police, Judiciary, fintechs association, UMRA, AMFIU, ICPAU, Mobile Money companies, private IT forensic auditors, UCC, NIRA, Uganda Law Society (ULS).

9 Clearing & Settlements

Recommendations under this category aim at encouraging use of electronic payment mechanisms, reducing the cost and transaction time of payments for further customer advantage.

9.1 Include requirement for timely ACH updates (in cases of ACH failure) in the regulations and indemnity for SFIs in cases of delayed or no communication on ACH downtime, so that SFIs do not take responsibility for what is outside their control.

9.2 Implement same day reports generation from the ACH system and configure the system to reject only transactions with error rather than whole batches in which they are submitted. This will ensure speedy and better service to customers.

9.3 Permit electronic delivery of direct debit mandates, to reduce delays and possibilities of human error in the related transactions and enhance transaction speed for customer service.

10 Finance

Recommendations under Finance aim at enhancing standardised and compliant financial reporting in a way that reduces cost and enhances efficiency for SFIs.

10.1 Communicate timelines for full adoption and alignment of FIA to IFRS, which will reduce time spent on reporting, and the bases for the asset recognition. This will ensure consistent and more realistic statement of assets in the reports.

10.2 Establish task force to explore and resolve conformity of tax accounting and IFRS reporting for SFIs, to ensure that SFIs are fairly taxed on the basis of profits assessed using contemporary professional standards.

10.3 Permit restricted investment in immovable property, to enable SFIs diversify earning asset base without overly investing outside of financial services.

10.4 Amend the definition of "banking services" in the FIA to reflect evolution of banking services and related product scope, so that services supplementary to banking that SFIs render, like transaction communication, are not disallowed.

10.5 Clarify the carrying amount approach of reporting leases under IFRS to SFIs in the computation of Capital Adequacy, to ensure that SFIs' capital adequacy reporting is accurate.

10.6 Enhance the clarity SFIs' of understanding of FIA and regulations provisions through relationship management set-ups, regular workshops, and other scheduled events.

10.7 Clarify on prudential treatment of net interbank balances (for banks with sister institutions outside Uganda) in the computation of capital adequacy, so that all SFIs report correctly and uniformly.

11 Treasury

Recommendations under Treasury aim at ensuring that SFIs have the right balance between statutory cash reserves and cash holdings for other SFI business – by redefining liquid assets, easing Lombard borrowing and recognising some forex as part of cash reserves constituting CRR.

11.1 Review the definition of liquid assets to include Government of Uganda Treasury Bills and Bonds maturing beyond 91 days. This will help SFIs to comply with liquidity requirements while releasing funds for lending to customers.

11.2 Permit some forex deposits at BoU as part of CRR (up to 2% points)[6] for banks, to release cash for lending and other SFI business.

11.3 Introduce regulations on netting of the asset and liability positions resulting from money market operations, to guide SFIs on the conduct, principles, and prohibitions netting. This will help SFI to get more efficient by reducing the numbers of payment and related costs in money and time.

11.4 Include foreign exchange swaps in the admissible collateralised products to support borrowing under the Lombard window, to improve SFI Lombard borrowing capability without compromising the quality of collateral to BoU.

6 Of the recommended 6% therefore, up to a third would be allowance in forex

INTRODUCTION

BACKGROUND

The financial sector in Uganda would like to significantly increase its contribution to the realisation of Uganda's Vision 2040[7], which provides development paths and strategies to transform Uganda from a predominantly peasant and low-income country to a competitive upper middle-income country.

Uganda Vision 2040 identifies key core projects for concentrated action, including:

- A Hi-tech ICT city and associated ICT infrastructure;
- Large irrigation schemes in different parts of the country and mega industries for iron ore and phosphates;
- Five regional cities and five strategic cities;
- Four international airports and a standard gauge railway network with high-speed trains;
- Oil Refinery and associated pipeline infrastructure;
- Multi-lane paved national road network linking major towns, cities and other strategic locations;
- Globally competitive skills development centres;
- Nuclear and hydro power plants; and
- Science and Technology parks in each regional city.

In the Vision implementation, Government has decided to front-load investments in infrastructure targeting areas of maximum opportunities with a focus on oil, energy, transport, and ICT. Government will also directly invest in other strategic sectors to stimulate faster, inclusive growth of the economy and facilitate private sector growth. To achieve all this, public and private financing will be essential, and the banking sector is aligning itself to take up the opportunities while positively contributing towards the Vision's achievement.

The grand goal of the Third National Development Plan (NDP III), which is the current implementation strategy for Vision 2040, is "*Increased Household Incomes and Improved Quality of Life*" under the theme of *Sustainable Industrialisation for Inclusive Growth, Employment and Wealth*.

The banking and wider financial sector in Uganda has a vital role to play in catalysing

7 "A Transformed Ugandan Society from a Peasant to a Modern and Prosperous Country within 30 years"

the attainment of the goals of NDP III (and thus Vision 2040) by aligning itself to the implementation plans like Financial Sector Development Strategy (FSDS) and Agricultural Finance Strategy (AFS), both nearing conclusion. For optimal contribution to FSDS objectives (financial services for all; financial services for markets and financial services for growth), the banking sector is working on a number of fundamental enablers, among them regulatory reforms. The reforms are aimed at making financial services more accessible, affordable, responsive, and less costly to increase financial inclusion while maintaining the sector's safety and soundness.

The FIA was enacted in 2004 and amended in 2016, while regulations and guidelines for implementation were issued at various times from 2005 to date. BoU has done a commendable job of issuing guidelines and regulations as and when need arose. With the fast-changing developments in the sector, need for review of the laws, regulations and other instruments/ bases for supervision emerged. In a March 2019 strategy retreat by Uganda Bankers Association (UBA) and BoU, it was resolved that a joint task force be constituted to focus on regulatory reforms required in the banking sector. The Regulatory Reforms Committee (RRC) was thus formed and tasked with reviewing and making recommendations on the relevant reforms that are necessary to improve the regulatory environment of Uganda's banking sector.

PROBLEM STATEMENT

Both BoU and UBA realised the need to comprehensively review the regulations so as to provide an environment in which SFIs can thrive while optimally contributing to the national development agenda. They agreed that the FIA 2004 (as amended) and some of the related regulations need a review to make them more enabling for SFIs to tap into emerging opportunities and address challenges in extending the frontiers of formal financial inclusion. Industry operations and channels are increasingly driven by technological innovations which present significant opportunities as well as risks. These must be comprehensively addressed in the regulatory environment.

Among the key aspects precipitating the need for regulatory review are:

- Rapid proliferation of fintech, automation and other types of digitisation
- Establishment of regulatory bodies for sectors that affect the banking business (IRA, URBRA, UCC etc)
- Some court decisions of potentially far-reaching consequences, in part due to interpretation of unclear sections of banking laws
- Emergence of pandemics like COVID-19, with far-reaching economic and financial impacts
- A thriving Tier 4 financial sector which has become more of the mainstream financial sector ecosystem and therefore a need to include into the use of facilities such as CRB.

ASSIGNMENT SUMMARY

Under this regulatory review assignment, FRIENDS Consult worked with UBA and the RRC to:

i) Review the existing laws and regulations in the banking sector including the Financial Institutions Act (FIA), Regulations, Guidelines, Circulars, and Risk Management Guidelines to identify limitations, constraints and gaps impacting business opportunities for the banking sector in the key areas[8].

ii) Identify and recommend regulations and legislations for improvement to enhance the business environment including products, services, emerging financial industry risks and the risk mitigation mechanisms.

iii) Review laws and regulations from other regulatory authorities which affect financial institutions business in Uganda.

iv) Recommend any other reforms, changes, adaptations, in the oversight and practice of banking operations as appropriate.

INTENDED OUTCOMES

This comprehensive report from the assignment makes recommendations for:

i) Improving regulation to ease the business of banking and make it more accessible to all Ugandans, thus extending the frontiers of formal financial inclusion.

ii) Improve efficiency and reduce costs (including compliance costs), with possible passing on of the lower costs to financial service consumers.

iii) Enhance the safety and soundness of the financial sector through improved oversight and regulations.

iv) Further unlock the increasing potential of financial technology and related developments in deepening reach/ access and reducing the cost of financial services.

v) Overall, enable financial intermediation to play its economic catalytic role more effectively.

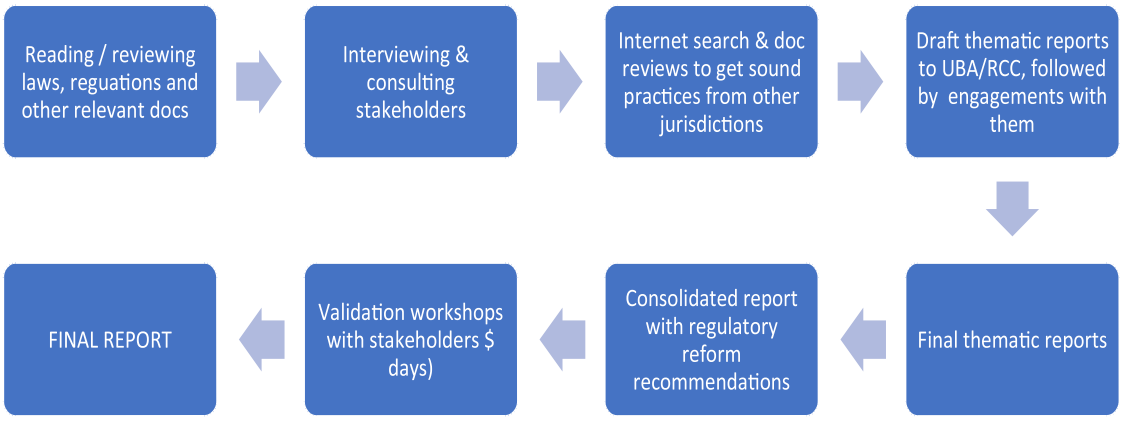
The increased financial inclusion resulting from the reforms would further stimulate business/economic activities and help broaden the tax base through the formalisation of businesses necessary to access a full range of formal financial services.

8 Credit; Compliance; Legal; Operations (including HR and Bancassurance); Clearing; Finance; Treasury; Credit Reference Bureau (CRB); Information and Communications Technology (ICT); Agent Banking/Digital Financial Services; Governance

APPROACH TAKEN AND TASKS ACCOMPLISHED.

In line with the terms of reference and strategic intent of the assignment, the consultants adopted 11 thematic areas: Governance, Legal, Compliance, Credit, CRB, ICT, DFS & Agent Banking, Operations, Clearing & Settlements, Finance, and Treasury. The following methodology was used in executing the assignment:

Overview of process followed



BRIEF OF THE REPORT CONTENT

The findings, analyses, and recommendations pertinent to the different thematic areas are presented in parts A to D of the report as follows:

Part A - thematic areas pertinent to legal and oversight aspects (Governance, Legal, Compliance).

Part B - thematic areas pertinent to advances and loan portfolio management (Credit, CRB).

Part C - thematic areas pertinent to service delivery, channels, and technology (ICT, DFS & Agent Banking, Operations, Clearing & Settlements).

Part D - thematic areas pertinent to financial management and reporting (Finance, Treasury).

Part A

OVERSIGHT AND LEGAL

1. GOVERNANCE

At the start of March 2021, BoU circulated a draft Consolidated Corporate Governance (CCG) Guidelines which address some of the issues identified in this report. The document embraces all the governance-related circulars and guidelines, as well as identifies and addresses governance issues not previously addressed. Where the issues earlier identified by the consultants for regulatory review are addressed by the draft CCG, they are maintained in this report in agreement with the latter, which are yet a draft for comments.

Part I (3) of the Financial Institutions (Corporate Governance) Regulations 2005 defines Corporate Governance as:

"the process and structure used to direct and manage the business and affairs of a financial institution with the objective of ensuring its safety and soundness and enhancing shareholder value and 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".

By this definition, the practice and impact of corporate governance permeates the entire organisation; it is not restricted to board affairs. The definition is also consistent with those in other jurisdictions reviewed such as Zimbabwe, United Kingdom (UK), the USA, Kenya, and Nigeria.

The Regulations place the responsibility for proper corporate governance on the Board, who must put in place proper structures and processes to adequately oversee the operations of the institution while avoiding interference with management responsibilities. As the partners through which the Central Bank executes its monetary policy programmes, regulated financial institutions play a vital role in the economy. Depositors and investors

need to have confidence in financial institutions for them to entrust their assets to the financial system. Controls and safeguards are therefore critical in protecting the deposits and investments received as well as lending/ investing the money for safety and good return.

For SFIs, good corporate governance ensures that the end-to-end exercise of controls and safeguards in financial intermediation are in place, and that they are overseen by competent, impartial directors with overall responsibility for institutional health.

1.1 GENERAL REVIEW OF REGULATIONS TO CAPTURE RECENT DEVELOPMENTS

Regulations give operational effect to laws. In Uganda, the Financial Institutions (Corporate Governance) Regulations 2005 give operational guides for implementation of governance provisions under the Financial Institutions Act (2004) as amended. The law (and more relevantly the regulations) should continuously evolve along with the local and global business environment. This has not fully been the case for Uganda, where current Corporate Governance regulations were developed in 2005. This renders them not fully adequate in addressing emerging governance and control weaknesses like financial crises, bank failures, criminal conspiracies (like the LIBOR manipulation which came to light in 2012), sophisticated offshore ownership structures such as those exposed by the Panama papers or closer-to-home failed banks in East Africa. A review of other jurisdictions confirms the need for continual regulatory reviews.

Practices elsewhere

UK: In the United Kingdom, major reviews were made in 2012 when the Financial Services Act 2012 led to the creation of the Prudential Regulations Rulebook and the Financial Conduct Handbook in 2016.

Nigeria: In 2014, the Central Bank of Nigeria issued the "Code of Corporate Governance for Banks and Discount Houses in Nigeria" which superseded the "Code of Corporate Governance for Banks Nigeria Post Consolidation". Notably, the newer code took cognisance of more pro-active risk management and compliance regime informed by the global financial crisis of 2008.

Kenya: The Prudential Guidelines and the Risk Management Guidelines were both finalised in 2013, while the Kenya banking Sector Charter 2019 has aspects aimed at more effective strategic risk governance and management.

An in-depth, comprehensive review of the Financial Institutions (Corporate Governance) Regulations 2005 should be considered as part of the process to conclude the CCG.

1.2 SKILL REQUIREMENTS OF A BANK BOARD MEMBER

Part VII of FIA 2004 (amended) and the Financial Institutions (Corporate Governance) Regulations 2005 both mention generic qualifications of board members, but the specific determination of board membership is in the "fit-and-proper test". While the fit-and-proper test has a provision for academic and professional experience, a significant part of the test falls towards moral disposition, the "proper". Perhaps the regulations consider emphasis on academic and professional aspects to have the potential of curtailing diversity. While in the past skill requirements beyond educational level and probity were seldom emphasised for banks' board member selection, recent developments have resulted into specification of needed skills in some jurisdictions.

Practices elsewhere

Nigeria: The Code of Corporate Governance for Banks and Discount Houses (2014) in part states:

"Members of the Board shall be qualified persons of proven integrity and shall be knowledgeable in business and financial matters, in accordance with the extant CBN Guidelines on Fit and Proper Persons Regime"

The Central Bank of Nigeria's Guidelines on Fit and Proper Persons Regime further states:

"An Independent Director shall have a minimum academic qualification of first degree or its equivalent with not less than 10 years of relevant working experience, proven skills and competencies in their fields"

The Code of Corporate Governance for Banks and Discount Houses further lays specific emphasis on the need for the Board Audit Committee to be comprised of at least *three financially literate members*, with at least one of them a qualified accountant or finance professional with experience in financial and accounting knowledge. This adds useful specificity to requirements.

UK: The UK's Supervisory Statement of July 2018 makes no specific mention of academic or professional credentials of a bank director but demands that a board member should be capable of *"effectively challenging"* management on matters of running the Bank. To effectively challenge management of a bank clearly demands that board members' have adequate academic and professional competence.

South Africa: Every director of a bank or a bank's controlling company is required to have a basic knowledge and understanding of the business conduct of the bank, and of the laws and business customs that govern such institutions.

Kenya: The law and regulations make no specific mention of academic and/ or professional qualifications, but they highlight the importance of knowledge of finance, accounting, economics, and other relevant disciplines. All these requirements are best evidenced through minimum academic and professional qualifications.

Zimbabwe: Zimbabwe's "*Minimum Requirements for Bank Licensing*" mentions minimum

qualifications for directors/ board members as an "academic and professional diploma or degree".

Spain: All Board members of a bank must have demonstrated experience in banking, as must all executives, senior management and heads of internal audit, and risk.

India: At least 51% of directors must have experience in banking, finance, accounting, or economics while at least two directors of each bank should have practical knowledge of agriculture and the rural economy.

Hong Kong: At least a third or three directors (whichever is higher) must be independent, non-executive directors, and at least two of these should have a finance and/ or accounting qualification and experience.

Overall, it would be good for Uganda to consider introducing mandatory minimum academic and professional qualifications of board members as a means to evidence their ability to effectively engage with management on matters of running the bank.

1.3 OWNER ACCESS TO A BANK'S CREDIT FACILITIES

Owner access to credit facilities from the bank, sometimes causes serious governance and financial problems for the banks. This has been a major aspect leading to past bank failures in Uganda and the East African region and needs to be controlled. In Uganda, defaults on large loans to bank owners and their other businesses caused the failure of International Credit Bank, Greenland Bank, and others. In Kenya, too, access to credit facilities by shareholders of banks caused several bank failures (examples are Chase, Imperial)[9]. It seems that as long as there is a window for significant shareholders of banks (5% and more) to borrow from the banks, problems of similar bank failures will continue.

During interviews there were some strong views that shareholders, whether majority or minority, can have a lot of undue influence when it comes to their own and their associates' loans. It may be very difficult to recover from a shareholder, especially if the loan is non-performing, therefore the contention in many circles that shareholders with 10% or more equity stake should not take any loan facilities from that bank.

Practices elsewhere

South Korea: A bank cannot extend credit facilities to its large shareholders for investment in other companies.

9 "…For instance, the bank operated two general ledger accounts: CBK Settlement account number 04005459002 worth Sh9, 222,606,805 and Sundry Debtors account number 100004715 worth Sh1, 453,589,511. Although the two accounts worth Sh10.67 billion were initially classified as other assets in Chase Bank's accounting records, they were later reclassified as loans and advances during the 2016 statutory audit…". Extract from the report of Chase Bank failure https://www.the-star.co.ke/news/2019-02-18-revealed-how-insiders-loans-fraud-sank-chase-bank/

Nigeria: Directors are now not allowed to borrow funds from the financial institution, its subsidiaries, and affiliates.

Past precedence around bank failure in Uganda, especially family-owned/controlled ones, point to a significant risk associated with exposures to shareholders. The barring of significant owners from accessing credit accommodation from the same institution should be given significant consideration as it would be extreme but extra regulatory/ supervisory needs to be taken in cases where bank owners access credit facilities from it.

1.4 BUSINESSMEN AND INDUSTRIALISTS ON BANK BOARDS

In Uganda there is a practice of banks appointing prominent businesspersons to boards, sometimes as Board Chair. This is perhaps on the expectation that the appointed businessmen and industrialist will attract fellow businessmen and industrialists to do business with the bank. Whether or not this objective is well founded, it may lead to frustration both to board members and the bank for the following reasons:

a. The businessman/industrialist board member may feel more pressure to play a strategic business development role rather than oversight and guidance to management.

b. The businessman/industrialist board member may indirectly convince management to give credit accommodation to his/her business colleagues, which often erodes the objectivity of the board member and their effectiveness in oversight. In some cases, this could cause reduced regard for the provisions of credit policy.

c. There is the potential for the business development objective to interfere with other board composition requirements such as academic and professional competence as well as time commitment and focus to board affairs.

d. Banking, which is becoming increasingly technical with technological advance, the introduction of regulatory requirements like Basel accords and heightened risk governance, could be beyond the businessperson's competence, further reducing their governance effectiveness (although the fit-and-proper tests to some extent address this).

e. Sometimes, there may be deliberate refusal and/or sluggishness in servicing the facility, sometimes with the mindset that he/she has done so much for the bank as a director (as is reported in some cases).

This practice of appointing businesspeople on bank boards was not previously envisaged as a potential issue and therefore it is not directly addressed in the current financial sector laws and guidelines in Uganda. It needs to be addressed by appropriately limiting their influence on committees of the board.

Practices elsewhere

India: Bank directors are not allowed to own any industrial, commercial, or trading concerns. A bank director must not have substantial interest in, or be connected with (as an employee, manager or managing agent) any company or firm carrying on trade, commerce or industry which is not a small-scale industrial concern.

Indonesia: A bank director cannot own more than 25% of another company.

Kenya: The Kenya legislation only identifies senior executives in public service and professionals like lawyers and accountants serving the bank as excluded from board appointment, and only where a conflict of interest may arise.

Zimbabwe: Zimbabwe legislation excludes professionals serving the bank and individuals who are directors in more than seven other organisations. Particularly in Zimbabwe, the legislation emphasises the need for a board member to meaningfully dedicate adequate time and focus to the affairs of the bank as the basis for this exclusion.

It is worth considering the potential conflict of interest that arises when business owners/ executives sit on bank boards, and to check the possible negative aspects by limiting the roles they may play on the board.

1.5 MAXIMUM TENURE OF A BANK BOARD MEMBER

The law is silent on the tenure of bank board members but emphasises the importance of independence of board members as well as the need for cross availability of skill and competence among the members of the board. While it is necessary for a board member to stay long enough to oversee the execution of bank strategy, prolonged stay may also impact objectivity, especially as it is likely to result into familiarisation between that board member and management, which may result into complacency. It is also reasonable to expect that prolonged stay starves the board (and by extension the bank) of the much-needed new perspectives that would arrive with new board appointments. A review of how other jurisdictions approach board tenor is revealing.

Practices elsewhere

Nigeria: Nigerian regulations limit board tenure of non-executive directors to a maximum of three terms each of a maximum of four years.

Singapore: Each board member is limited to a maximum duration/tenure of nine years.

India: A bank director cannot hold office for more than eight consecutive years.

UK, Kenya, and Zimbabwe: While UK, Kenya, and Zimbabwe (all Common Law jurisdictions) are silent on the issue of board tenure, they emphasise independence and diversity.

The general move across most jurisdictions reviewed is towards term limits for board

members of banks. Although some of the reviewed jurisdictions do not specify the maximum tenure of board membership, their emphasis on independence and diversity of the board (and the likelihood that independence and diversity could be compromised by prolonged stay) suggests the need to specify term limits for boards, which Uganda should also consider adopting.

1.6 INDIRECT CONTROL OVER BANKS BY SIGNIFICANT SHAREHOLDERS THROUGH APPOINTMENTS ON BOARD AND SENIOR MANAGEMENT

The Financial Institutions (Ownership and Control) Regulations 2005 puts in place several checks to ensure significant shareholders do not exercise undue control over the affairs of the bank. These checks are well articulated for board level, but they do not put emphasis on control and influence exercised at executive and senior management levels. A significant shareholder can exercise indirect but effective control and influence by arranging for the appointment of their (1st, 2nd, or 3rd level) relations into an Executive Director or senior management role, who then provides a conduit for control and influence into the day-to-day affairs of the Bank. Furthermore, experience in the region has shown that significant shareholders can circumvent the control concentration prohibitions by appointing business associates on the board. There seems to be a need for a double-pronged solution in this aspect: strengthening the regulation and implementing it more robustly.

Practices elsewhere

Nigeria: Section 2.3 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria (2014) restricts "*2 members of the same extended family*" from occupying the roles of Chairman and/or Executive Director of the same Bank at the same time. But the regulation falls short of tying the extended family to significant shareholding.

No director, either executive or non-executive, is allowed to serve on the board of a bank and a holding company within a Group to which the bank belongs at the same time.

Kenya: In Kenya, Prudential Guidelines on Corporate Governance, Part 3.2.2., restrict a significant shareholder (over 5% shares) from being appointed into any executive director or managerial role in the financial institution. The guideline however does not extend beyond the actual shareholder to mention 1st or more levels of relations.

Zimbabwe: The "Bank Licensing and Supervision and Surveillance Guideline No. 01/2004 BSD- Corporate Governance" prohibits a significant shareholder (10% shares or more) from being appointed in management, as Board Chairman or Deputy Board Chairman of a bank or the holding company of that bank. The guideline however does not extend to the 1st, 2nd, or 3rd levels of the significant shareholder's relations.

India: A bank cannot have more than three directors connected with companies that together exercise voting rights of 20% or higher of the total rights of the shareholders.

Indonesia: A director cannot have an extended family member (up to 2nd degree) working in the same bank.

In all, there is a strong likelihood of occurrence and therefore a need to limit significant owners from overly influencing the running of a bank by arranging for the appointment of their relations (1st, 2nd, 3rd) into executive and senior management positions of the Bank.

1.7 ROLES OF REGULATOR AND RECEIVER/LIQUIDATOR

Under Sections 94 and 95 of FIA (2004) as amended, BOU is the receiver for financial institutions placed under receivership. During the interviews for this assignment, respondents' predominant views were that although this role is anchored in the law, receivership, and liquidation of failing/failed financial institutions presents an apparent conflict of interest to BoU.

In the long run, there is need to resolve the aspect of BoU being the receiver/liquidator in cases of banks in distress. The law gives BoU the powers and responsibilities of the resolution authority including liquidation of banks. This means for a bank under receivership or statutory management, it is managed, governed, and regulated by the same entity. Stakeholders consider this to be a conflict of interest occasioned by the law itself.

The positive argument for BoU being the receiver is that it has proper visibility and knows well the status of distressed banks from the supervision function and can thus provide capable leadership as the receiver. The counterargument is that in a receivership situation BoU gets conflicted because the receiver reports to the EDS and the Governor of BoU, the very people who make the decision to take the bank into receivership and who supervise it before and during receivership. Stakeholders cite debates and episodes following recent bank failures as events that should trigger a re-examination of this aspect.

Nigeria

On the issue of the regulator taking over as receiver or managing a distressed bank it regulates, Nigeria has gone away from vesting the responsibility on the Central Bank of Nigeria (CBN). The *Banks and Other Financial Institutions Act* and the *Nigerian Deposit Insurance Corporation (NDIC) Act* both vest receivership, management, and control of failing banks to the NDIC.

Kenya

Kenya's Banking Act (Amended) 2015 empowers the Central Bank of Kenya (CBK) to appoint Kenya Deposit Insurance Corporation (KDIC) to assume the management, control and conduct of the affairs and business of an institution in distress. It also empowers CBK to remove any officer or employees, appoint a competent person to the

distressed institution's board of directors to hold office as a director. The Act, however, does not state that CBK can directly take over the management of a distressed financial institution.

Zimbabwe

The Banking Act [Chapter 24:20] stipulates that when banks and other regulated financial institutions become distressed, the Reserve Bank of Zimbabwe (Central Bank) appoints a Curator (overseer or caretaker) to manage its affairs. The curator has full powers of a receiver-manager.

USA

The Federal Deposit Insurance Corporation (FDIC), whose other roles are to insure banks and thrift deposits, and to regulate state-chartered banks that are not part of the Federal Reserve System, has receivership mandate and powers over FDIC insured banks and certain other financial institutions.

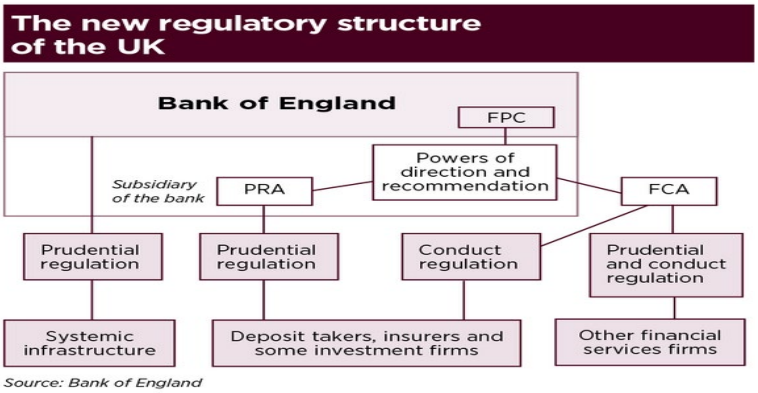
UK

Bank of England (BoE) is the UK's resolution authority. In this capacity, it works closely with the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). BoE's other key roles are currency issuance and maintenance of systemic financial infrastructure. The PRA and FCA work to ensure banks are safe and sound, and fair to customers. PRA is concerned with prudential regulations. Notably, the PRA and the FCA are the two key banking regulators in the UK. The 2020 version of the Global Legal Insights (gli)[10] states in part:

There are two key regulators in the UK. The Prudential Regulation Authority ("PRA") is responsible for the financial safety and soundness of banks. The Financial Conduct Authority ("FCA") is responsible for how banks treat their clients and behave in financial markets.

10 Bank Regulation in the UK: https://www.google.com/search?q=Bank+regulation+in+the+UK&rlz=1C1SQ-JL_enUG880UG880&oq=Bank+regulation+in+the+UK&aqs=chrome..69i57j0i22i30l8.5187j0j4&-sourceid=chrome&ie=UTF-8

Figure 1: Regulatory Structure in the UK--



Recommendations on Governance

With regard to governance, recommendations here take a balance between principles-based regulation (strategic intent broadly defined and specifics left to discretion on the basis of potential risks) and rules-based regulation (specifics laid down in the laws/regulations to address common risks that can be reduced through compliance). The former is applicable for risks that are fluid with diverse causes and not accurately verifiable, while the latter is suitable for easily identifiable risks with common or similar causes. Some aspects need the former and others need the latter approach.

The overall purpose of recommendations under this category is improved institutional oversight, based on updated regulations, by capable board members who exercise optimum independence and objectivity.

Recommendation 1.1 *Undertake holistic review of banking legislation to align it with current emerging trends in the banking environment*. The ongoing consultations on the draft consolidated Corporate Governance Guidelines (CCG) are a step in the right direction. Alongside the recommendations in this report, the result should be an enriching of the Financial Institutions (Corporate Governance) Regulations 2005 and issuance of an up to date, more comprehensive set of guidelines, to address the changing banking environment. Among other aspects, the following should be considered in the review:

i) Incorporating governance principles from Basel accords, to align with the international advances in banks corporate governance.

ii) Stipulating minimum number or proportion of independent directors. Save for the requirement that Board Chairperson must be independent (clause 7(b) of the corporate governance regulations), the Regulations are silent on any other independent directors, yet BoU has at times come up with recommendations on increasing the number of independent directors through the onsite examination. This ought to be backed up by regulation to eliminate subjectivity from the different examiners. The draft Guidelines stipulate that each board committee must be chaired by an independent non-exec director, and this should be upheld.

iii) Abolishing the concept of alternate directors. The alternate director concept is not covered by the regulations, yet it is sometimes recommended by BoU to some SFIs. The concept should be codified and clearly substantiated in the regulations or dropped by the regulator.

iv) Providing regulatory backing for remote/virtual meetings. The review of the regulations should cater for the new normal through recognition of online meetings of shareholders, directors, and management. The review also needs to define IT governance and what it entails.

v) Providing guidance on director remuneration. To ensure value addition from directors, reduce the possibility of board remuneration excesses and for the SFI's to attract the best quality of directors, the reforms should consider issuing guiding notes on minimum and maximum director remuneration scale for all SFIs.

vi) Addressing governance weaknesses that caused recent bank failures in Uganda and the East African region (like subtle concentration of control, related party transactions, lifting the veil off relationships that affect governance, board member competence) and the changing business/risk environment in which banks now operate.

vii) Addressing the changing business and risk environment in which banks operate.

viii) Relevant competencies for other committee chairs.

ix) Setting up a framework that allows for more frequent updates of the regulations.

x) Including guidelines such as BCBS 239.

xi) Technology/digitisation committee for SFIs.

Recommendation 1.2: *Issue more elaborate guidelines about professional qualifications/ experience of a bank director.* There is need to specify mandatory minimum academic and/ or professional qualifications of board members, to harmonise the criteria and ensure the capability to engage management effectively and constructively. Particular attention needs to be paid to skills requirements of the more delicate positions of Board Chair, and committee chairs of Audit (qualified accountant), ALCO (Banking, accounting, or other finance related experience) and Risk (banking or accounting/audit experience). Among the probable qualifications, consider:

- A degree or professional qualification from a recognised institution for all Board members.
- Experience in governance through past board or executive positions.
- For the Board as a whole should have a mixture of experience including, but not limited to, banking, legal, strategy, ICT, HR, leadership, and accounting.
- Experience in accounting or auditing for Audit Committee chairperson.

Recommendation 1.3: *Apply a governance deep dive in all cases of SFIs where owners (10% or more) and/or their close relations access credit facilities from the bank they own.* This would mean that for such SFIs, the regulator/supervisor pays keen attention to the details of governance practices in examining these institutions. Whereas this might sound restrictive, the consequences of influence-induced lending to bank owners can be extreme and catastrophic. The current regulations have good provisions for arms-length lending to directors and shareholders, but "arms-length" is very subjective, and anything can be manipulated to look like it. There is, therefore, need for regulations to provide for closer governance scrutiny of such institutions.

Recommendation 1.4: *Introduce requirement that all Board members who are corporate business owners or executives are ineligible to be elected chairpersons of Board Committee concerned with credit, recovery, or risk*. To check the potential conflicts of interest that could arise from business executives being chairpersons of these sensitive committees, legislation or regulation should be revised to exclude prominent industrialists and business executives from becoming chairpersons. This way, the SFIs get the benefit of business of such directors without risking conflicting interests.

Recommendation 1.5: *Impose maximum tenor for bank board members to ten (10) years.* Following the example of jurisdictions like Nigeria, where there was a spate of bank failures and adequate lessons learnt, Uganda should proactively limit the tenor of a board member to 10 years. This is adequate time to oversee major strategic initiatives and make significant contributions without extending so long as to create laxity or complacency. Furthermore, a person who has been an SFI board member should have a cooling off period of three years before being eligible for appointment to another SFI board.

Recommendation 1.6: *Prohibit significant shareholders (10% or more) and their immediate relations from being appointed into executive and senior management positions of banks.* Noting that a significant shareholder can bypass board and instead significantly influence management by having his/her relative appointed in executive and/or senior management of the bank, the legislation should be reviewed to prevent this as it directly impairs the governance principles of independence, impartiality and separation between management and ownership.

Recommendation1.7: *Resolve the aspect of BoU being the receiver/liquidator in cases of banks in distress.* FIA (2004) as amended provides that in cases of distressed or failing banks, BoU is the resolution authority, receiver, and liquidator. There is a perception that as a regulator and supervisor, BoU gets into a conflict-of-interest situation when it becomes a receiver/manager of banks in distress. In this case the bank in distress is seen as being managed, governed, and regulated by the same entity. Some jurisdictions such as the USA, Nigeria and Kenya have addressed this issue by having a different entity as receiver for failing banks. Legislation should be put in place to eventually have this role weaned out from direct BoU execution.

Non-regulatory recommendations on governance

a) *Give more emphasis to the existing legislation regarding the empowerment and stature of the role of the Chief Internal Auditor (CIA), to enable him/her independently exercise his/her agency role on behalf of the board.* The CIA is the official eye of the board in the day-to-day affairs of management of the Bank. But while the regulations recognise this independent function, in some cases at the management level the CIA's gets "absorbed" into management and its independence is thereby weakened. As part of internal good governance, SFI boards should put in place and monitor effective structures and processes to ensure that the CIA is adequately empowered.

b) *Lower the cost of governance.* Admittedly, banks and other financial institutions are among the most elaborately regulated and supervised organisations. This makes related costs high, but necessary. However, boards can improve on cost efficiency in areas such as executive remuneration and training expenses by hiring nationals, and sourcing training, capacity building and coaching services from competent Ugandan nationals and institutions. Cost efficiency could also be boosted by combining critical roles for smaller banks.

c) *Improve bank examination and supervision.* There seems to be a need for significant strengthening of SFI supervision/examination by BoU. In several areas, (governance, control, insider lending, checks and balances within the institution, review of the implementation of audit findings by the external auditors etc), financial sector stakeholders express the view that the depth, intensity, and quality of bank examination/supervision needs to be significantly strengthened.

d) *Clarify the roles of the MD/CEO and the Executive Director (ED).* The four-eyes principle, which is very good and useful for several SFIs in Uganda, is sometimes a source of conflict for others. Having two executive directors helps banks to make good high-level decisions by the two. In other cases, the personal differences and approaches can make the work difficult because of apparent or hidden conflicts. To reduce the impacts of such, regulation should situate the role of the MD/CEO and ED of an SFI. As a broad example, the MD's role could be more of strategic and overall oversight while the ED takes on all business, operational and reporting responsibilities (or vice-versa).

e) *Equip Board members of SFIs with necessary knowledge of the banking business.* In the requirement for directors' there should be the requirement for continual learning. BoU should require that non-executive members of a SFI Board should interact with line function heads/managers for one day every quarter to understand fundamental concepts and aspects of banking in the different functions. SFIs should, on their own accord, organise such interactive workshops whether or not regulation requires it. Effective Board skills and aptitude development enhances governance quality, which should have positive impact on institutional performance.

f) *Document the learnings from prior bank failures and governance challenges to improve regulation.* BoU as the sector authority and reservoir of information should publish, or cause to be published, fundamental causes of Bank failures in Uganda and East Africa. It should use them to improve on regulation and supervision. Such publication should also help SFIs avoid pitfalls that bedevilled the failed banks.

g) *Firm up regulation on the independence of directors on the Board Audit Committee (BAC).* Section 59(1) of the FIA 2004 (amended), on the composition of the BAC should specify that the directors should be independent and not only non-executive. This will be in tandem with the BoU recommendations to FIs.

h) *Include the Head of Risk among ex-officios of the BAC.* Section 59(6c) of the FIA 2004 as amended on Board Audit committee requires that the Head of Finance and the Head of Treasury be the representatives from management on the Board Audit committee. This needs to be amended to include the Head of Risk as a third management representative. In the interim, SFIs should do internal procedures to invite heads of Risk to be in attendance to tap their input without breaking the law.

2 LEGAL

Banks play a central role in the development of every economy by mobilising resources for productive investments and by being the conduit for the implementation of monetary policy.

Financial sector reforms on banking regulations and related laws and supervision are expected to streamline banking operational performance, improve service provision and financial stability. The focus and scope of this section is on the legal challenges and their effect on banking business (competitiveness, expansion/growth and enhancement, business environment).

The legal issues addressed in this report include licensing, shareholding restrictions and control and implications, Islamic Banking, bank/financial institution's resolution, fair banking practice(s), recoveries, realisation of securities, litigation issues and recommendations for improvement. It involves looking at both the practice and the theory in law of aspects of financial sector regulation that are not covered by the other ten thematic areas and those aspects which also affect or are affected by other laws.

A good portion of banking law is case law or common law. Therefore, where statutory provisions are not stated, then the law is in common law.

2.1 SPOUSAL CONSENT AND FALSE DISCLOSURES IN LENDING.

Lending is big business of every financial institution and property mortgage is the key fall-back position. Anything that affects this becomes a strategic issue for banks' business. The Mortgage Act S.6 provides for spousal consent, requiring that the mortgagor's spouse or spouses consent to mortgage their matrimonial home. This leaves the mortgagee exposed to litigation risk when the mortgagor gives false or incomplete information.

S.38 of the Land Act states that every spouse shall enjoy security of occupancy on family land, which means a right to have access to it and to live on it. S.39 of the same Act provides that no person shall sell, exchange, transfer, pledge, mortgage, or lease family land without the consent of the spouse.

There are polygamous marriages in Uganda. This creates legal challenges especially when a borrower does not disclose and obtain consent from all his/her spouses. There is also failure to disclose the existence of a spouse in monogamous marriages. This happens mostly in cases of traditional marriages. As a result, there is an increasing number of litigations where the spouse who was not disclosed and did not give consent challenges the sale of a security in a civil suit.[11]

11 Helen Kipsoy Wafula v Equity Bank (U) Ltd Civil Suit 153 of 2013 the threatened sale of the suit property by the 1st defendant was stopped on the grounds that her requisite spousal consent was not obtained for the

Sound Practices Elsewhere.

Commonwealth

The law in Uganda is *pari material* with the law in other commonwealth countries. However, the challenges differ depending on the level of technology, culture, and other factors. In the UK there is use of General Packet Radio Services (GPRS), marriages are monogamous, and the criminal system is effective and efficient. Defaulters are tracked using the Credit Reference Bureaus. Some of the challenges Uganda experiences are like those of other developing countries like Kenya, Tanzania, and Nigeria. In Kenya, Nigeria and other commonwealth countries spousal consent is required before mortgage of the matrimonial home.

Tanzania

In the Tanzanian case of ***Hadija Issa Arerary v Tanzania Postal Bank***[12] the Court of Appeal considered what amounted to reasonable steps taken by lenders to verify spousal consent in mortgages. The mortgagor made an affidavit. The mortgagee argued that a caveat must be filed to protect the interests of a third party over a mortgaged property. The court stated that the appellant cannot challenge the affidavit as she was not the one who swore it. The court held that the mortgage was correct to disburse the loan believing there was no third-party interest. From the said case, it is clear that a mortgagor has a legal obligation to disclose details of his/her spouse and to seek spousal consent before creating a mortgage over matrimonial property. Lenders should ensure that they obtain affidavits and take reasonable steps to verify the matrimonial status of mortgagors. Spouses who do not hold a joint registration on the title deed of their matrimonial properties should undertake to either obtain joint registration or to file a caveat over the property to protect themselves.[13]

Considering the above decision, the law should have been clearer on the burden of disclosure on the part of the mortgagee. The law on spousal consent in Uganda places a heavy burden on mortgagees when there is false or misleading disclosure by a mortgagor on his marital status when obtaining a loan, and this is not fair.

Kenya

Section 28 of the Land Registration Act recognises spousal rights over matrimonial property as an overriding interest. Spousal consent is therefore required before a spouse can sell matrimonial property. In the absence of such a consent, the sale becomes null and void. In ***TWM v PKM and 2 others*** [2017] eKLR. The court noted that the fact that the mortgaged property is a matrimonial property would only become relevant if the applicant alleging lack of consent of the spouse in the creation of the mortgage herein or notice on the spouse or spouses had not been accordingly issued as by law required. But

mortgage. Bukenya and another v Kirumira and 2 others Civil suit 220 of 2008

12 Civil appeal 135 of 2017 decision made on 11th May 2020

13 www.Clydecom.com 2020/06

where the right of mortgagee's statutory power of sale has lawfully accrued, it will not be stopped or postponed because the mortgaged property is a matrimonial home. The judge found that unlike the plaintiff's written submission that she did not give consent to the matrimonial property being charged to the 2nd defendant, there is a spousal consent to that effect with the plaintiff's identity number and signature affixed thereon, no criminal proceedings have been instituted or a report made to the police alleging that the document was a forgery. The court required a report from the police to show forgery.

Nigeria

In the Property (Right of Spouses) Act a spouse includes a single woman who has cohabited with a single man for not less than five years. Where the title to a family home is in the name of one spouse only then the other spouse may take such steps as may be necessary to protect his/her interests including the lodging of a caveat pursuant to section 139 of the Registration of Titles Act. Where one spouse enters into a transaction concerning the family home without the consent of the other spouse then that transaction may be set aside by the Court on an application by the other spouse if such consent had not been previously dispensed with by the Court. However, that shall not apply in any case where an interest in the family home is acquired by a person as bona fide purchaser for value without notice of the other spouse's interest in the family home.

India

The Indian Lands Registration Manual describes the procedures where spousal consent is required. This includes mortgages. A Mortgage is a registered charge upon interests in land for payment of a debt. Under the Family Homes on Reserves and Matrimonial Interests or Rights Act, "spouse" includes either of two persons who have entered in good faith into a marriage that is voidable or void. And a "common-law partner" means a person who is cohabiting with another individual in a conjugal relationship, having so cohabited for a period of at least one year; Section 13 confirms the right of each spouse or common-law partner to occupy the family home during the conjugal relationship. Section 15 provides requirement for consent of spouse or common-law partner to dispose of or encumber the family home. There is a requirement for spousal consent to dispose or encumber family property.

It follows that the matter of spousal consent ought to be legislated further with a view to render it less ambiguous, reduce the burden of proof on a mortgagee in events of fraudulent disclosure, as well as provide remedies where any such fraud or incomplete disclosure is sighted.

2.2 NOTICES OF DEFAULT AND SERVICE THEREOF

A notice of default informs a borrower that he/she has defaulted on a loan payment. It is the action a lender takes before activating the lien, seizing a collateral for foreclosure or sale. Section 19 of the Mortgage Act states that where money secured by a mortgagee under this Act is made payable on demand, a demand in writing shall create a default

in payment. Section 19 (4) requires a mortgagee to serve upon a mortgagor notice of default. Regulation 22 of the Mortgage Regulations 2012 states that a mortgage shall be in Form 6 Schedule 2 and Regulation 7 and requires a mortgagor to notify a mortgagee any change in address. However, the Mortgage Act and Regulations do not state how a notice of default should be served. Such an omission makes it possible to challenge a sale of security on the ground that there was no service. It does not indicate what happens when a defaulter refuses to acknowledge receipt of a default notice. In Ecumenical Church Loan Fund Uganda Ltd. v Ways KM Uganda Ltd. OS 11 of 2014 the court noted that a mortgagee is under obligation to the court to prove entitlement under the Mortgage Act by proving that it has complied with the statutory provisions provided for under Section 19 and 26 of the Mortgage Act. The judge stated, "I have duly considered the unsatisfactory state of affairs in terms of service of the Defendant where there is no evidence of acknowledgement, there is no physical address mentioned in the supporting documents, there is no compliance with section 19 of the Mortgage Act whose provisions are mandatory with regard to the prayer for foreclosure of the right of the Mortgagor to redeem the suit property". The court dismissed the application of originating summons. The court did not take into consideration that a mortgagor may have refused to acknowledge receipt, or the physical address may have changed.

The position in other common law countries does differ. In the Australian case of Secure Funding Pty Ltd. v West [2017] QDC 169, for instance, the lender claimed it had posted to the borrower a default notice inter alia. The borrower denied receiving the default notices. There was no evidence that the notices were actually posted or of the addresses they were posted to. The court noted that while there was a copy of the default notice on the lender's file, the lender failed to establish that the default notice required by the loan agreement had in fact been given to the borrower. The court held that there was factual dispute about service of the default notice that would need to be established by a trial.

Best practices elsewhere

New South Wales (Australia)

In New South Wales, any notice to be served must be in writhing, and shall be sufficiently served:

- If delivered personally.
- If left at or sent by post to the last known residential or business address in or out of New South Wales of the person to be served.
- In the case of a mortgagor in possession or a lessee, if left at or sent by post to any occupied house or building comprised in the mortgage or lease.
- In the case of a mining lease, if left at or sent by post to the office of the mine.
- If delivered to the facilities of a document exchange of which the person on whom it is to be served is a member

- In such manner as the court may direct.

The most common method in New South Wales is by post to the last known address. It is the cheapest and mortgagees are keen to keep costs down. Usually, express post is used so that delivery can be tracked and confirmed if necessary.

South Africa and Tasmania

In South Africa and Tasmania, service can also be done by leaving the notice on the security property itself, commonly called Affixing. This is where you may come home and find notices plastered on your door.[14]

The above cited legal provisions mainly refer to physical delivery of the notices.
Owing to technological advances, in Uganda we need to include electronic means of communication (in addition to clarifying what constitutes effective notice under physical delivery).

Singapore

Under the Conveyancing and Property Act S. 22 a mortgagee shall be entitled, in the absence of any stipulation to the contrary in the mortgage deed, to three months' notice in writing previous to payment or to three months' interest in lieu of that notice. Under S. 72(3) of the Act any notice required or authorised to be served shall be sufficiently served if left at the last known place of abode or business, in Singapore, of the lessee, lessor, mortgagee, mortgagor or other person to be served, or in case of a notice to required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage. Under S.72(4) any notice required or authorised by this Act to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business, or office, and if that letter is not returned through the post office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

Kenya

In Kenya, the Land Act provides that a chargee may serve on the chargor a notice of intention to enter, in the prescribed form, notifying the chargor that the chargee intends to enter into possession of the whole or a part of the charged land at a date that is at least one month from the date of the service of the notice. Under S.99 of the Act a purchaser is protected. He is not obliged to inquire whether there has been a default by the chargor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper, or regular.

14 Ibid

The matter of notice needs to be legislated to ensure the notice does not stand in the way of enforcement of a legally binding mortgage.

2.3 DEPOSIT FOR OBJECTION OF COLLATERAL SALE AND LENGTHY COURT PROCESSES

Under Regulation 13(1) of the Mortgage Regulations, a court may on application of the mortgagor, spouse, agent of the mortgagor or any other interested party and for reasonable cause, adjourn a sale by public auction to a specified date and time upon payment of 30% of the forced sale value of the mortgaged property or outstanding amount. Regulation 13(5) provides for 50% deposit. Related court decisions in cases of disputes seem very much subject to discretion. In Agnes Katushabe v Housing Finance Bank Ltd. and Apollo Katushabe Misc. application 134 of 2015 the plaintiff claimed that she was married by custom to the 2nd respondent with whom she resides in the suit property with their four children. The court held that the applicant had not satisfied it that she was entitled to statutory exemption against paying of the 30% statutory deposit. In Mutumba v Crane Bank Ltd. Misc. Application 1536 of 2017 the court gave the applicant a grace period of 120 days from the date of the order to deposit 30% of the forcible sale value or outstanding amount.

The requirement to deposit 30% of the forced sale value or outstanding loan amount while a civil dispute continues deprives lenders funds to lend out to other borrowers and does not help the lender much. The civil suits, if not resolved expeditiously, affects the liquidity of banks.

Best practices elsewhere

Generally, there is no requirement to pay a percentage of the forced sale value or outstanding loan amount in other jurisdictions, but cases are handled efficiently and timely.

Kenya: In Kenya, under the Transfer of Property Act S. 83, there is power to deposit in court money due on mortgage. The amount is usually the entire loan amount. There is no requirement to pay 30% or any fraction of it.

Canada: In Ontario, Canada, the court may require payment into court of an additional sum to answer any claim by the mortgagee for subsequent interest and costs.[15]

15 The Mortgage Act RSO 1990 Chapter M.40

2.4 HIGH PENAL INTEREST

When a borrower defaults on loan instalments, it attracts penal interest. Interest and penalties may become too high and unconscionable after a long period of default making it difficult for the borrower to pay off.

Where penal interest is high, and maybe compounded, it increases the loan amount payable making it difficult for the borrower to pay. Customers stand to lose the securities mortgaged.

Practices elsewhere

UK: Halsbury's Law of England 4th Edition Vol. 12 states that the rate of interest agreed to will be the measure of damages no matter what inconvenience the plaintiff has suffered on the day payment was due.

India: India passed the Interest Act 1978, where the court has power to allow interest to the person entitled to the debt at a rate not exceeding the current rate of interest, or as it deems fit.

In Central Bank of India v Ravindra and others Petition 2421 of 1993 it was stated that "Penal interest has to be distinguished from 'interest'. Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrong doer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action". This is a clear case that penal interest is not the price of borrowing but punishment for defaulting.

Netherlands: Most banks in Netherlands add an interest rate surcharge to mortgages that exceed a certain percentage of the property value. Failure to comply with a purchase agreement will make you pay a non-compliance penalty.[16]

Spain: In Spain, if the penal interest for payment delay of a loan is more than 2% above the agreed interest rate of the loan or mortgage, the judge must maintain the rest of the clauses of the contract and cancel the clause relating to delay/penal interest. The Supreme Court in Spain has considered 2% as the maximum and will not apply a disproportionately high penalty in compliance with obligations of the Consumer Act.[17]

Canada: Under Section 347 of the Criminal Code (Canada) interest rates exceeding 60% per annum are criminal rates of interest. The Section contain two separate offences. The first applies to those who enter into an agreement to receive interest at a criminal rate

16 www.snsbank.nl

17 Costaluzlawyers.es

and the second to those who actually receive interest rate at a criminal rate.18. The law should protect customers from unconscionable high penal interest.

2.5 LAND TENURE VIS-A-VIS MORTGAGE

Land tenure is the legal regime in which land is owned by an individual. To financial institutions, the system of land tenure affects the obtaining and realisation of collateral securities. Land systems include customary tenants, bona fide occupants, leased landownership, mailo landownership, and free hold ownership.

A *bona fide occupant* is any person who before the coming into force of the 1995 Constitution of Uganda had either occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or had been settled on land by the Government or an agent of the Government, which may include a local authority.[19]

Lawful occupants include persons occupying land by virtue of the repealed i) Busuulu and Envujjo Law of 1928 ii) Toro Landlord and Tenant Act of 1937; and iii) Ankole Landlord and Tenant Law of 1937.[20]

Customary tenant/kibanja holders include persons who have settled on land as customary tenants with the consent of the mailo landowner under the Busuulu and Envujjo law 1928, and a person who had occupied land as customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate under the 1975 Land Reform Decree and a successor in title of the persons listed. This tenure is the most common in Uganda. In 2015, the government of Uganda introduced *Certificates of Customary Ownership (CCOs)* for owners of customary land.[21] Customary land includes customary communal land and individual customary land.

In relation to mortgages/lending, the land tenure related challenges are:

a) Bona fide and lawful occupants cannot pledge the land as collateral for loans because they do not have titles.

b) Landowners who may be interested in obtaining loans have problems accessing loans where there are occupants on the land.

c) For disbursed loans secured on land with bona fide or lawful occupants, realisation of securities is problematic because the several interested parties must all be catered for.

18 Macmillan. Ca.

19 Handbook on Land ownership, Rights, Interests and Acquisitions in Uganda. S. 29(2) of the Land Act.

20 These laws were repealed by the Land Reform Decree of 1975.

21 Op cit note 12 p. 22

d) The law is not clear on the rights of customary landowners to pledge as collateral security.

It is, therefore, imperative that the law clarifies the position in regard to bona fide and lawful occupants, in relation to the rights of the mortgagor and mortgagee.

Practices elsewhere

*Kenya:*Kenya has leases on public land granted by government and freeholds. Different legal systems govern different categories of land and owners thereof. The Registration of Land Act (RLA) and Transfer of Property Act govern individual ownership of land in Kenya. The RLA applies to land formerly under customary law, namely native reserves, and trust land. Trust land consists of areas that were occupied by the natives during the colonial period, and which have not been consolidated, adjudicated and registered in individual's or group names and native land that has not been taken over by the government.[22] Because of their nature, they are not registered nor have title deeds thus there are challenges using native reserves and trust to get mortgages.

Nigeria: Land Use Act No.6 of 1978 regulates the ownership, alienation, acquisition, administration, and management of land within the Federal Republic of Nigeria. Section 1 of the Land Use Act vests all land comprised in the territory of each state in the Federation of Nigeria in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act. Section 5(1) of the Act empowers the Governor of a state to grant statutory right of occupancy to any person for all purposes in respect of land, whether or not in an urban area and issue a certificate of occupancy in evidence of such right of occupancy in accordance with the provisions of Section 9(1) of the Act. Also, Section 5(2) of the Act provides that: "Upon the grant of a statutory right of occupancy under the provisions of sub–section (1) of this section, all existing rights to the use and occupation of the land, which is the subject of the statutory right of occupancy shall be extinguished". Thus, the statutory right of occupancy granted by a Governor is presently the highest right to land in Nigeria. This right of occupancy is a right which allows the holder to use or occupy land to the exclusion of all other persons except the Governor and is granted for a maximum holding period of 99 years, subject to the payment of ground rent fixed by the Governor throughout the holding period. Sections 21 and 22 of the Act prohibit alienation, assignment, mortgage, transfer of possession, sub–lease or otherwise howsoever customary or statutory rights of occupancy in Nigeria without the consent and approval of the Governor of the state where such right of occupancy was granted. Section 21 states that it shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever

Southern Africa: The two principal forms of land tenure systems found in Southern Africa, that is Malawi, Zambia and Zimbabwe are customary and statutory tenure. Land

22 Patrica Kameri-Mbote "Land Tenure, Land Use and Sustainability in Kenya." IELRC Working paper 2005 -4

ownership under the statutory tenure system is often built on freehold or leasehold entitlements to the land and offer exclusive rights to the owner, which guarantee land security.[23] Customary tenure poses the same challenges as in other jurisdiction as it involves land which is not registered nor has title deeds.

There are two main types of land tenure in Swaziland: freehold or Title Deed Land and Swazi Nation Land. This can be subdivided into: land held under customary tenure, which may not be sold, mortgaged or leased and is under the control of the chiefs; and land which is leased or held in trust by private companies controlled by the monarch.

2.6 LIABILITY INCIDENCE IN CASE OF INCOMPLETE PURCHASE AND ASSUMPTION ACQUISITION

Section 112 of the Financial Institutions Act deals with amalgamation of financial institutions. It has to be done with the consent of Bank of Uganda. S. 112(3)(a) provides:

"all the assets and liabilities of the amalgamating financial institutions or, in the case of the transfer of assets and liabilities, those assets and liabilities of the transferor financial institution that are transferred under the transaction, shall vest in and become binding upon the amalgamated financial institution or, as the case may be, the financial institution taking transfer of those assets and liabilities;"

There are instances where all the assets and liabilities are transferred to another institution. However, there are situations where the assets are transferred but not all the liabilities. Under S. 112(6) the licenses of the transferor will be cancelled. This means that it may not be able to carry on business to meet its liabilities. Section. 112(1) provides:

"This section shall not affect the rights of any creditor of a financial institution which has amalgamated with or transferred all its assets and liabilities to any other financial institution or taken over all the assets and liabilities of any other financial institution, except to the extent provided in this section."

However, the said Section does not provide that the transferee will meet the liabilities. This leaves the fate of those who have liabilities from the transferor or the creditors hanging. There should be an express statement in the law of where the liabilities fall in cases of bank acquisitions, where not all the liabilities are assumed by the acquiring entity.

Best practices elsewhere

India: The Banking Regulation of India provides that on the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order be transferred to, and become the liabilities of the banking company. Under Indian Law, Mergers and Acquisitions safeguards

23 Sarpn.org P67-ECA report

the interest of the secured creditors and aim to protect investors and appreciable adverse effect on trade-related competition covered under Companies Act.[24]

Bangladesh: In Bangladesh, once a scheme of merger/amalgamation has been approved by Bangladesh Bank, the transferor and the transferee shall proceed to comply with other formalities as required under the Companies Act 1994 and shall file an application before the High Court and submit the scheme for the reconstruction, merger/amalgamation.[25]

UK: The Government proposed a safeguard that aims to ensure that creditors remaining in the residual company will be no worse off after a partial transfer compared to the hypothetical counterfactual of a whole-bank liquidation. This is determined by the nature of the merger and acquisition. These are governed by Competition and Anti-trust Laws.

2.7 AVENUE FOR SFIS IN DISTRESS RAISE ISSUES AGAINST BOU

There is a view among some SFIs that fairness includes a right to be heard. In cases of supervision and closure of banks (FI Act S. 82), where decisions taken are "arbitrary and unfair", the suggestion is that banks need to have a tribunal to listen to complains against the Central Bank.

This idea, though appealing, would make the bank resolution process much longer and prone to extreme risks of fraud or asset transference during the long delays. It is not recommended. However, there could be some arbitration mechanism to listen and advise on the less grave grievances of SFIs against the Central Bank (but not in a resolution situation).

2.8 RESOLUTION OF SFI AND SUABILITY UNDER RECEIVERSHIP

Whereas the law currently stipulates that BoU is the resolution authority for failing banks, there may be conflicts of interest where the Central Bank, who has been the regulator and supervisor of a financial institution, turns into a manager/receive/liquidator of the bank. There is need to get an independent manager in cases of banks under receivership or statutory distress management.

Under S. 88(1) of the Financial Institutions Act 2004 (amended), the Central Bank may take over management of a financial institution. Under S. 89(1) the Central Bank shall, on taking over management of a financial institution under section 88 of this Act, have exclusive powers of management and control of the affairs of the financial institution. Two questions arise here:

a) Would the institution that has been regulating/supervising a failing financial institutions be the best receive-manager/liquidator of the same?

24 https://blog.ipleaders.in/why-do-banks-merge

25 https://www.jb.com.bd/includes/pdf/guidemargerbfi.pdf

b) During the management by BoU, is it prudent to have the same entity as manager and regulator?

Views on the above are covered under the Governance focus area of this study.

The other aspect to consider is non-suability of a bank in receivership. Under 91(1) of the Act a person shall not except with leave of court, on ground that he/she would be caused exceptional hardship if leave were not granted; or with the prior written consent of the Central Bank, commence or continue with any legal proceeding in any court against a financial institution, while the financial institution is under management of the Central Bank. In *Sudhir Ruperalia and Meera Enterprises v Crane Bank (in receivership)* Civil Suit 0493 of 2017, the court held that having insulated the bank against it they could not have enabled it to sue because suit expect responses and counterclaims. There is no legal basis to allow it to sue. The effect of such a decision would also mean a bank in receivership/liquidation by the Central Bank cannot sue loan defaulters. This legal issue needs to be resolved.

Uzbekistan: In Uzbekistan, the liquidator or receiver-manager is appointed by the Resolution Board of the Central Bank on revocation of the SFI license. The receiver-manager is appointed from among legal persons (auditing, consulting, law firms) or physical persons or specialists of the Central bank. The candidacy for the liquidator position is approved by Creditor Committee. The liquidator is an authorised representative of the Creditor Committee. The shareholders of the bank and their connected persons cannot be appointed by the liquidator-authorised representative in any capacity.[26]

Serbia: In Serbia, liquidation proceedings shall be initiated over a bank when a competent court issues a decision on initiating the liquidation proceedings, on the basis of the decision of the National Bank of Serbia on the fulfilment of conditions for the initiation of liquidation proceedings over a bank or an insurance undertaking.[27]

2.9 LONG PERIODS OF LITIGATION AFFECT SFI BUSINESSES

There are several cases filed by banks against defaulters, and others filed by defaulters against banks. However, the disposal rate by courts is slow. At the unveiling of the Alternative Dispute Resolution Framework for the Banking and Finance Sector on March 23, 2019, in Kampala by the Bank of Uganda Deputy Governor, Louis Kasekende, said:

"It is estimated that, on average, commercial litigation requires four years to be completed. Delays of this magnitude are extremely costly for financial institutions … This in turn raises the cost of credit or induces banks to curtail the volume of their lending."

26 https://cis-legislation.com/document.fwx?rgn=29534

27 Law on Bankruptcy and Liquidation of Banks and Insurance Companies (RS Official Gazette, No 14/2015), as well as Article 25 of the Law on Financial Collateral (RS Official Gazette, No 44/2018).

The Case Backlog Reduction Committee, chaired by Justice Richard Buteera, revealed that there was a backlog of cases totaling around 3,000 in the country's commercial courts. Fabian Kasi, the then UBA Chairperson and the Managing Director of Centenary Bank said case back log had a significant negative impact on the banking sector over the years, leading to subdued profitability.[28] There is need to expedite disposal of civil suits. A case is considered a backlog if it is not completed withing two years after filing.

There is need to address the possibility of courts using summary suit and originating summons to dispose of suits. Also, there is a need to train judges and judicial officers in banking law and other topics connected thereto to avoid unfavourable decisions. There is also need to look at arbitration and mediation as an alternative dispute resolution mechanisms. Will defaulters be willing to pay arbitration and mediation fees?

Mediation and arbitration can be funded by third parties by sourcing for funds to meet costs involved.

There is need to embrace mediation in resolution of loan and other related disputes in Uganda. However, since it may be difficult for a defaulter who has failed to pay his/her loan to meet the costs of a mediator or arbitrator there is need to obtain funds and facilitate the costs of alternative dispute resolution.

The Bank of Uganda operates a Financial Consumer Empowerment Mechanism (FCEM). The purpose of this mechanism is to coordinate information, inquiries, complaints handling and resolution. The Financial Consumer Protection Guidelines (FCPGs) were issued by the Bank of Uganda in June 2011 to all supervised financial institutions (SFIs; commercial banks, credit institutions and microfinance deposit-taking institutions). The Guidelines have the following objectives:

1) To promote fair and equitable financial services practices by setting minimum standards for financial services providers in dealing with consumers;
2) To increase transparency in order to inform and empower consumers of financial services;
3) To foster confidence in the financial services sector; and
4) To provide efficient and effective mechanisms for handling consumer complaints relating to the provision of financial products and services.

There is need to strengthen the guidelines and use the mechanism as a forum for settling disputes between banks and their customers. This may lead to decongestion in courts.

Practices elsewhere

UK: The UK, like the USA, Italy, Germany, and France, has well-established mediation and arbitration mechanisms because, for certain types of transaction, its flexibility can be ex-

28 https://www.independent.co.ug/banks-to-embrace-mediation-to-resolve-disputes

tremely advantageous.[29] In UK, the average litigation period is just over 500 days, about a year and a half. The average for cases that go all the way to judgment is just under 700 days, nearly two years.[30]

Canada: In Canada, currently courts are responding to the lockdown arising from the COVID pandemic. For instance, a party seeking a hearing or other steps in a proceeding that permits or requires the parties to attend must propose whether the hearing should be heard (1) in person; (2) by telephone conference; or (3) by video conference. Parties may object to the proposed method of hearing by delivering a notice of objection (Form 1A). If a party delivers such an objection, the Court will determine the method of hearing at a case conference. Unreasonable objections to proceeding by telephone or video conference may be considered in awarding costs. Such measure may be used to reduce on backlog of cases.

South Africa: A case is "backlogged" if it is still open six months after first appearance at a district court, or nine months at regional court. The South African justice system is already overburdened and under-resourced. This has resulted in a perpetual state of backlog. Cases are delayed and postponed as a result of overworked legal professionals, ineffective investigations, and corruption. The e-Scheduler is already being used in 332 courts. It is a system that uses computers to make court procedures more efficient.[31]

Singapore: By the 1990's, *Singapore* had a massive *backlog* of *cases* waiting to be disposed of (Tan 2015, p. 237). As described by Kevin Tan, there were over 10,000 inactive *cases*, some more than a decade old, and 2,000 *cases* set down for trial at the Supreme *Court*. To address the case backlog, the Singapore Judiciary implemented a host of measures in the 1990s aimed at eliminating "court congestion and excessive delay[s] in the resolution of … cases". These included initiatives in case management, change management, and procedural reforms.

2.10 VALIDITY PERIOD OF COLLATERAL VALUATIONS

Need for a legal stand on the reliance on valuations (length of validity and decision in case of multiple valuations) stems from the frequent disputes arising out of valuation reports on the contention that they are old. Although this might seem a small detail, it is fundamental for lenders and thus it becomes a major issue. The length of time a valuation should remain legally valid and the decision to be taken in cases of multiple valuations are both issues that breed disputes between borrowers and SFIs. The Mortgage Act should be amended to resolve these issues.

29 https://www.independent.co.ug/banks-to-embrace-mediation-to-resolve-disputes

30 https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/imported/banking-and-finance-disputes-review.

31 dailymaverick.co.za/opinionista/2020-05-21-justice-delayed-is-justice-denied-we-must-speed-up-the-court-system-under-lockdown

Practices from elsewhere

Canada: As a general rule, an appraisal will be valid for so long as it appropriately reflects the factors that supported the determination of value and will not be invalidated or require updating merely as a result of the passage of time. If the requestor believes there is a material change (+/- 10%) in market value within the first 12 months, then an update may be required to the valuation. The requestor shall provide their rationale in writing to RPD (Real Property Division in the Ministry of Technology) for consideration. The guiding principle in determining whether a market value requires updating is that generally market conditions do not change quickly during a 12 months' period without significant market dislocation that would be readily apparent to the casual observer. After 12 months from the valuation date, the determination of whether or not a Market Value requires updating will ultimately be made by RPD, in consultation with the applicable requestor and external appraiser (as applicable).[32]

Brazil: A valuation of the real estate which will be the minimum value of such property for the first auction purposes if enforcement takes place is made at time of mortgage. [33]

Nigeria: The Nigerian financial market, lenders often require interest in real property as collateral to secure mortgage loans. The valuation of such interests for secured lending purposes has continued to attract the attention of key participants in the financial market due to the fact that lending institutions had lost substantial amount of money to bad mortgage loans. On the other hand, valuers have been sued for negligence in valuation by their clients (mostly lending institutions) and third parties who experienced financial losses as a result of reliance on professional valuations to grant mortgage loans.[34]

2.11 NEED TO REVIEW THE TIER MFI AND MONEY LENDERS ACT

The microfinance industry in Uganda continues to grow and advance with innovations in technology, delivery channels and product features. This necessitates regulation to keep up to date. The *Tier 4 Microfinance Institutions and Money Lenders Act 2016* is now five years old, and it has not been reviewed. The Tier 4 Microfinance institutions and their regulator UMRA consider the Act old, though generally well-constructed to address pertinent issues at the time it was enacted. The Tier 4 stakeholders interviewed during this assignment believe there is need for amendments in Tier 4 MFIs and Money Lenders Act, so as to de-fragment regulation, eliminate contradictions[35] within the Act and better

32 https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/real-estate-space/transaction_guidelines_and_valuation_procedures.pdf

33 https://uk.practicallaw.thomsonreuters.com/6-501-2354?__lrTS=20180429210601656&transitionType =Default&contextData=(sc.Default)&firstPage=true#co_anchor_a917539

34 Namnso Bassey Udoekanem:" Valuation of Urban Commercial Properties in Nigeria for Secured Lending: Issues and Developments". International Journal of Built Environment and Sustainability. http://www.ijbes.utm.my

35 UMRA explains that as they implement the MF/ML Act, there are several inconsistencies whose entirety needs a fresh review of the entire Act. Additionally, a review is necessary given that the environment has changed fast

enable Tier 4 finance business to thrive in safety and soundness.
It would be useful to conduct a thorough review of the Tier 4 MFI & ML Act with the view of amending to be more facilitative and up to date.

2.12 NEED FOR LIMITED FLEXIBILITY FOR DPF PENALTIES TO CFIS

There are strict and inflexible legal provisions for the Deposit Protection Fund of Uganda (DPF) to penalise SFIs even during exceptional economic circumstances. The Financial Institutions (Deposit Protection Fund) Regulations of 2019 does not give the DPF any discretion to waive or defer penalty under any circumstances. In economic circumstances, such as that precipitated by the COVID-19 pandemic, a few financial institutions might need some exceptions. Whereas premiums and penalties as laid out in the Regulations are sound, some limited discretion should be given to DPF to make decisions in such extraordinary situations. This adjustment is proposed in the principles paper for the possible DPF Bill and should be upheld till the Bill is drafted and the law passed.

2.13 FRAMEWORK FOR DPF BORROWING FROM BOU

There is need for a framework for DPF to borrow from BoU in the rare circumstances where DPF needs to make a pay-out to depositors of a bank under liquidation. While DPF is unlikely to need this often, in peculiar cases when DPF needs to pay out large amounts of insured depositors it should not release large sums of its Treasury instruments on the market as that might destabilise the market. Also, holding to maturity could yield better for DPF and it is not certain that when DPF needs money for pay-out, it will readily sell all the securities it needs to. The East African Integration Protocol prohibits central banks from lending to government. Since DPF is more of a financial sector safety-net player and it does not draw funds from the Treasury's Consolidated Fund, there is a case for this.

The international pandemic response by deposit insurers is not yet well documented and therefore this section seeks to aid recommendation on the basis of practical and needful solutions, not citation of best practice elsewhere.

2.14 LICENSING OF SYNDICATED AND FOREIGN LENDING

In a growing economy with upcoming large ventures and limited means to finance them locally, syndicated lending is often a good solution. A typical arrangement is that a group of banks (including foreign ones) lend money to a borrower at the same time in a coordinated way, to enable project or venture build up and start operations. The banks in a syndicate cooperate with each other for the duration of the project, even if they are competitors. It is common for Ugandan banks to syndicate with regional or international banks in this regard. Recently, however, gaps in relation to syndicate lending were exposed where one or more of the lending parties is not a Uganda registered institution.

An example is the recent decision ***in Ham Enterprises v Diamond Trust Bank*** Misc. Application 654 of 2020 where the 2nd respondent admitted being licenced in Kenya but had conducted a lending business in Uganda, in syndicate with a Ugandan lender. The applicant contended that the 2nd respondent was carrying on business in Uganda without a licence under the Financial Institutions Act. The respondent contended that the applicant applied for a credit facility in Kenya, which was obtained in Kenya and transferred to his account in Uganda. The court stated that the 2nd respondent was a foreign bank. Section 117 of the Financial Institutions Act requires a foreign bank to seek authorisation of Bank of Uganda before it can engage in "financial services business" in Uganda (which is defined as taking deposits and lending). The court noted that the 1st applicant was an agent of a foreign bank, which contravened Financial Institutions Regulations No. 5. The court concluded that the respondents acted illegally, unethical and in breach of Trust. The judgement would imply that any international lender cannot lend in Uganda without a licence from the Bank of Uganda (which BoU clarifies is not the intended position). The lending capacities of local banks may be reduced. If all foreign lenders were to receive a licence from Bank of Uganda before they can extend credit facilities to persons in Uganda it would make banking cumbersome and costly.

While the merits of the case are not discussed here, the uncertainty that aided the court's decision needs to be addressed. The FIA needs to be amended to clarify what international, non-Ugandan lender should be subjected to and what they should not.

2.15 REVIEW OF EXEMPTION TO SHAREHOLDING(S) IN SFIS

The existing shareholding restrictions in section 18 of the Financial Institutions Act, 2004 and section 21 of the Micro Finance Deposit-Taking Institutions Act, 2003 were inserted into the law because concentration of ownership into a few hands had in Uganda's financial sector led to an abuse of that controlling position. Following the Basel Committee's recommendations on ownership and ownership structures, these shareholding restrictions were intended to bring about diversification of shareholding in order to countermand abuse by single or related majority shareholding of their controlling position. However, the shareholding restrictions have an unintended consequence of restricting foreign direct investments in Ugandan banks/financial institutions. It is proposed that section 18(4) of the Financial Institutions Act, 2004 be amended to create more latitude by the Central Bank to grant exemptions to the rule in section 18(1) of that Act. This should permit financially sound and reputable financial institutions, reputable public companies (in particular in relation to the type of business that the bank/financial institution pursues) as is the case in section 21(3) of the Micro Finance Deposit-Taking Institutions Act, 2003. In granting the proposed exemptions to section 18(1) of the Financial Institutions Act, 2004, the Central Bank should ensure that the bank/financial institution/MDI will be able to comply with applicable prudential requirements and that the Central Bank can effectively supervise the group including the target institution in which shares are being acquired.

2.16 FACTORS TO BE CONSIDERED BY THE CENTRAL BANK IN AN ACQUISITION OF CONTROL OF A BANK/FINANCIAL INSTITUTION

In order to diversify shareholding in banks/financial institutions/MDIs and further encourage/attract more investments in the sector, it is proposed that the Financial Institutions Act, 2004 and the Micro Finance Deposit-Taking Institutions Act, 2003 be amended to provide that the Central Bank may only object to an acquisition on the basis of the following matters (or the submission of incomplete information):

a) The reputation of the acquirer;

b) The reputation and experience of any person who will direct the business of the Ugandan bank/financial institution/MDI;

c) The financial soundness of the acquirer, in particular, in relation to the type of business that the bank/financial institution/MDI pursues;

d) If the bank/financial institution/MDI will not be able to comply with the applicable prudential requirements;

e) If the Central Bank cannot effectively supervise the group including the target; or

f) If there are reasonable grounds to suspect money laundering or terrorist financing in connection with the proposed acquisition; and

g) If the acquisition would be to the disadvantage of Uganda's economy (including the impact on healthy competition in the sector and excessive market dominance).

Sound practices elsewhere

United Kingdom: The Prudential Regulatory Authority has already changed its regulatory approach on the factors it considers in an acquisition of a bank in the UK. The assessment criteria used or taken into consideration by the UK mirror the above proposed amendments to the Ugandan law on acquisition of control of a financial institution/bank/MDI. The PRA must take into consideration any representation made to it by the Financial Conduct Authority (FCA) in relation to the above matters. The FCA can, however, only direct the PRA not to approve the acquisition if it has reasonable grounds to suspect money laundering or terrorist financing in connection with it.

2.17 REVIEW OF THE CONSTITUTION OF THE SHARIA ADVISORY COUNCIL (SAC)

Dynamic and good shariah corporate governance is vital in the development of Islamic banking, which was part of the FIA 2004 amendment. In Islamic finance, shariah corporate governance refers to the management, establishment, and affairs of the SAC.

The Shariah Committee (SC) is a committee set up either in Islamic financial institutions or takaful operators with a purpose to ensure Shariah compliance of the operations and product. It is a statutory requirement to all Islamic Financial Institutions (IFI) provided under the Financial Institutions Act, 2004 (as amended in 2016) and the Financial Institutions (Islamic Banking) Regulations, 2018.

The SC will evaluate the concept and structure of the new product and will review the existing products. For example, home financing under the concept off Bay "Bithaman Ajll". From observation, Islamic banking products under the concept off "All Bay"" or contract off exchange are the biggest contributor in terms of growth and profit to the Islamic financial institutions in most countries. The SC will vet meticulously and endorse all products documentation. The SC will monitor the Islamic banking operations from time to time. If any institution refers the SAC on certain products and fishy issues, the SC must explain the shariah issues involved upfront and they must provide recommendations for a decision. The explanation and recommendation must be supported by relevant shariah jurisprudential literature from the recognised sources. The SC will also deal with certain general duties and tasks relevant to their job scope and this includes to assist the related parties on shariah matter and to determine the zakat policy of the banks. Zakat is compulsory to every Muslim and Islamic institutions, such as a bank. To ensure that the SAC would be able to function effectively, the composition of the SC should consist of an effective membership that is knowledgeable and experienced in Islamic/Sharia law and to ensure that its mandate does not overlap with that of the Shariah Advisory Board. Their affairs will be managed by a shariah secretariat of the respective Islamic financial institutions. This will require an amendment of the law. An effective Sariah governance framework requires involvement of the SC as the key player, the government as the regulatory body, the Islamic financial institutions as the implementer and other persons relevant to the business such as auditors, accountants, lawyers.

2.18 ISLAMIC BANKING AND TAX LAWS

Islamic finance is a way of conducting financial transactions that does not offend the principles of Islam (like prohibition of payment of a price for money without reference to tangible exchange of goods or services). This means the financing must be consistent with the principles of the Sharia. It is a growing sector in the financial industry today and there is an opportunity for Uganda to participate in the growing Islamic finance market, which is estimated to be worth US$1 trillion.

However, the success of Islamic finance in Uganda depends not only on introducing regulatory reforms (the recent amendments in 2016 to the Financial Institutions Act, 2004 that introduced provisions on Islamic Banking-Part XIIIA, sections 115A,115B & 115 C and the Financial Institutions (Islamic Banking)Regulations,2018-SI.No.2 of 2018) but also introducing specific tax reform to remove prohibitive tax costs associated with Islamic finance products when compared to more conventional financial and investment products available in Uganda.

Below is an outline of some of reasons why there should be specific tax rules to develop Islamic finance in Uganda:

Lack of certainty and clarity

- In terms of taxation, one barrier to the development of Islamic finance in Uganda is the uncertainty and lacunae in the current tax legislation.
- In Uganda, unlike some other jurisdictions, transactions are taxed on the basis of their legal form, rather than their economic substance.
- While it is possible that some types, at least, of Sharia-compliant arrangement might be accorded a fair and equivalent tax treatment on basic principles, there is usually considerable uncertainty.

Unfairness and double taxation

a) The other feature of Islamic finance is that it is invariably backed by an asset. Many of the Islamic finance structures involve the transfer of assets. This may cause a tax charge to arise such as capital gains tax or transactional tax charge such as stamp duty or registration tax. These taxes, which would not be present in a conventional loan, are passed on to the customer thus increasing the cost of financing in comparison to conventional financing. For example, in relation to Islamic mortgages, these products envisage a structure whereby the property is bought and sold twice (that is, the vendor sells to the Islamic bank which then, in turn, sells to the customer).

b) In the case of property transactions, this would typically result in stamp duty being borne twice, once by the Islamic bank and then by the end borrower. Consequently, providers of Sharia-compliant mortgages are faced with an additional cost, which has proven to be prohibitive to the commercial development of this type of Islamic facility.

For it to take root and thrive, Islamic finance arrangements should be taxed neither more harshly nor more lightly than equivalent structures involving interest-bearing debt or deposits. The taxation of Islamic finance arrangements should also be simple and clear to apply.

It is recommended that the Government of Uganda should remove tax obstacles that might hinder the development of Sharia-compliant finance but should not grant it preferential treatment over other forms of finance. A review of Ugandan tax legislation reveals a need for some of the following necessary statutory changes:

a) Section 22 of the Income Tax Act (ITA, Cap. 340, L.O.U.) does not appear to allow for a deduction for the interest-equivalent amount inherent in a Sharia-compliant financing.

b) Section 27 ITA, Cap. 340 needs to be amended to ensure that deductions are given

only by reference to the customer, by reference to the purchase price excluding the interest-equivalent amount.

c) Generally, Section 52 ITA, Cap. 340 would need to be amended, but specifically on Section 52(3) ITA, Cap. 340 – How should the market value rule interact with Sharia-compliant asset-backed financings?

d) The thin capitalisation rules in Section 89 would need to be amended to prevent avoidance through Islamic finance structures.

e) Part XIII (withholdings) needs to be amended to ensure that tax is required to be withheld on payments under Sharia-compliant arrangements, so as to ensure that there is no revenue loss to the Ugandan government.

f) Section 88 ITA, Cap. 340, dealing with International Agreements, may need to be amended to ensure those agreements also work with Sharia structures.

g) There is a need to amend the Stamps Act, Cap. 342 to avoid a double charge to stamp duty.

h) There is a need to amend the Value Added Tax Act, Cap. 349 to ensure that the VAT treatment for Islamic purchases is the same as for non-Islamic purchases.

i) Consideration should be given to introducing a general anti-avoidance rule to prevent Islamic finance structures being used to avoid Ugandan tax

Some work has commenced to address some of the above issues. The scope of the proposed amendments to Ugandan tax laws should be expanded to cover all the aforementioned issues and progression of the work in this regard should be expedited to completion.

2.19 MANDATORY RECOVERY AND RESOLUTION PLANNING

To reduce the possibility of SFI failures, financial institutions and MDIs should be required to develop and have in place recovery and resolution plans (colloquially referred to as 'living wills'). These go beyond the ordinary Business Continuity Plans to address preparedness for response in the face of major calamities to the institution, the sector or entire economy.

Recovery Plan

A recovery plan spells out a series of measures that a bank/financial institution or MDI or its group could take to turn the business around following adverse trading conditions, which threaten its very existence. The recovery plan would postulate a range of options that the SFI would take to return to normalcy (including adequate levels of capital and liquidity) following a grave mishap. Recovery plan options may include:

- Disposals of assets or part of the business;

- Practical mechanisms for raising new equity in a timely way;
- Elimination of dividend payments or related liabilities;
- Liability management under stress; and
- Sale of the entire business or part of it to a deep-pocket strategic investor.

Recovery plans would be developed by the SFIs, but their adequacy is evaluated by the Central Bank.

Resolution Plans

SFIs should be required to produce a resolution plan, a document with information to enable the Central Bank to draw up a quick and effective resolution plan, and to resolve the SFI if it fails. The resolution data and analysis provided by the SFI is intended to identify significant barriers to resolution, to facilitate the effective use of the Central Bank's resolution powers under the law, and so reduce the risks and cost resolution. An executive director of the bank/financial institution/MDI must have the responsibility for the recovery plan and the resolution plan and related arrangements.

The bank's *recovery plan* as well as the processes for producing *resolution plan* should be subjected to oversight and approval by the institution's board or senior governance committee and subject to review by the audit committee.

Sound practices from elsewhere

United Kingdom: The Prudential Regulatory Authority (PRA) requires UK banks and banking groups to develop recovery and resolution plans as described above. Recovery plans are developed by the banks, but their adequacy is evaluated by the PRA. The PRA expects a bank's recovery plan, as well as the processes for producing the resolution proposals, to be subject to oversight and approval by the board or a senior governance committee and subject to review by the audit committee with overall surveillance by the institution's executive director.

As an SFI comes under increasing stress, the PRA will assess its 'proximity to failure' which is captured by the firm's position within the PRA's Proactive Intervention Framework (PIF), and is designed, in part, to guide the Bank of England's contingency planning as a resolution authority. The PIF assessment is derived from the DSFI's ability to manage the following risks it may face:

- External context;
- Business risk;
- Management and governance;
- Risk management and control; and
- Capital and liquidity.

There are five progressive PIF stages guided by "proximity to failure" at any given point. Every SFI will be allocated to a particular stage. If an SFI migrates to a higher risk category (i.e., the PRA determines that its viability has deteriorated) the intensity of supervision will increase, and elements of the recovery and resolutions plans come into play. The five categories are:

Stage 1—Low risk to viability

Stage 2—Moderate risk to viability

Stage 3—Material risk to viability

Stage 4—Imminent risk to viability

Stage 5—Resolution/winding-up under way

The SFI's senior management will be expected to ensure appropriate remedial action is taken to reduce the likelihood of failure, while PRA has stated that the regulatory authorities will ensure appropriate preparedness for resolution. The appropriate remedial actions that an SFI may be required to take includes drawing on the menu of options set out in the SFI's approved recovery plan. The PRA has additional statutory powers to change the management or board composition, restrict capital distribution and leverage and set tight liquidity or capital requirements.

The PRA's framework for recovery and resolution plans is based on parts of Directive 2014/59/EU (BRRD) establishing a framework for the recovery and resolution of credit institutions and investment firms, which entered into force on 2nd July 2014.The UK implemented the BRRD through a combination of changes to primary and secondary legislation, new PRA and FCA rules and amendments to the Treasury's SSR Code of Practice.

Luxembourg: In Luxembourg, credit institutions must draw up and maintain a recovery plan that provides for measures to be taken by the credit institution to restore its financial position following a significant deterioration of its financial situation, which must be updated at least once a year and is subject to an assessment by the *Commission de Surveillance du Secteur Financier* (CSSF). Recovery plans must be kept confidential and may be shared only with third parties that have participated in their drafting and transposition. The failure to draw up, maintain and update recovery plans is subject to specific administrative penalties. Where there is a significant deterioration in the financial situation of a bank, or where there are serious infringements of applicable laws or regulations or of the statutes of the bank, or serious administrative irregularities, and the taking of early intervention measures is not sufficient to reverse that deterioration, the CSSF may also require the removal of the authorised management or management body.[36]

Finally, where the replacement of the authorised management or management body

36 https://www.lexology.com/library/detail.

is deemed to be insufficient, the CSSF may appoint a temporary administrator to temporarily replace the management body or temporarily work with the management body. The powers, role and duties of the temporary administrator are determined by the CSSF.

Recommendations on Legal

Recommendation 2.1: *Limit spousal consent requirement on collateralised property to matrimonial homes, and fully criminalise false or incomplete disclosure*

While S. 39 of the Mortgage Act 2009 makes it an offence to present a person who is not a spouse for spousal consent, it is not wide enough to cover all offences in respect of disclosure. Amend the Mortgage Act 2009 to criminalise a mortgagor's incomplete disclosure or disclosure of false or misleading information on spouses. Banks should be able to recover damages from the borrower who gives false information.

Furthermore, amend the Mortgage Act 2009 to require that only the signature of the spouse who lives in the mortgaged property at the time of the loan agreement will suffice. Spouses should thus be required to lodge caveats only in cases of matrimonial homes, not on any other kind of property.

Recommendation 2.2: *Clarify what constitutes effective notice of default and service thereof*

Amend the regulations to clarify that service of notice of default shall be made to the last known address disclosed. Service may also be affected online by email, SMS, recorded voice message or WhatsApp to last disclosed address. Service may also be affected by affixing notice of default on mortgaged property if the mortgagor is in possession or occupation.

Recommendation 2.3: *Increase deposit from 30% to 50% for pending disputes (related to loan recovery) in court.*

In cases of a borrower filing a dispute against a bank/SFI in court to counteract recovery under default, it is recommended that the borrower should pay the 50% of the principal loan amount outstanding for dispute hearings to start. For other third parties or spouses challenging security, 50% of the forced sale value or amount outstanding (whichever is higher) should be deposited with the bank. There is need to synchronise the regulations in the Mortgage Regulations, which spell out the requirement of deposit of security to read 50%.

Recommendation 2.4: *Abolish penal interest on reported NPLs.*

In cases of non-performing loans, abolish penal interest. It is recommended that penal interest for NPLs reported the CRB as such are abolished but normal interest continues to accrue.

For businesses that are struggling and whose loans are already reported to the CRB as non-performing, charging penal interest worsens their positions with little prospect of achieving any intended result.

Recommendation 2.5: *Clarify the legal position on land occupants in mortgage situations, to unlock the potential for using informal/non-traditional collateral in borrowing from SFIs.*

Work with stakeholders to amend the Mortgage Act to clarify the legal position with regard to customary, bona fide, and lawful occupants in a mortgage situation. Certificates should be given to different land holders indicating their interests in land. The said interest should be registered. The holders of the certificates should be able to obtain loans using the certificates as security. The law should also protect banks when people occupy mortgaged land, after mortgages have been created and loans disbursed. All interests on land should be disclosed before a mortgage is created.

Recommendation 2.6: *Clarify on the incidence of non-assumed liabilities in a P&A resolution*

Amend the law or regulations to clarify where the liability incidence falls in the P&A type of bank resolution under which the acquiring entity does not assume all the liabilities. Presently, it is not clear what the legal position is on who bears this liability – the receiver, liquidator or BoU?

Recommendation 2.7: *Uphold the status quo on non-arbitration between the resolution authority and distressed SFI.*

From some stakeholders, there is a view that before or after a bank in distress is put under receivership or statutory management, the directors and stakeholders should be given a hearing through arbitration if they feel the BoU action was unfair or arbitrary. This would complicate and lengthen the management of banks distress and resolution. This is not advisable and thus not recommended in this report. Moreover, review of other legislations did not find any such precedence.

Recommendation 2.8: *De-link BoU from management/liquidation of troubled banks, and amend the law of non-suability of SFIs in receivership*

To avoid apparent conflicts of interest and enhance effective governance/oversight of SFIs in distress and allow SFIs in receivership latitude to sue:

a) Consider de-linking BoU from direct management of banks in distress. Over the long term, there is need to get an independent manager in cases of banks under receivership or statutory management.

b) Review the provision of the non-suability of a bank under receivership, because this also denies them the right to sue.

Recommendation 2.9: *Address the chronic lengthy litigation of loan default cases*

BoU/UBA should work with the judiciary and other stakeholders to:

a) Train all judges on the critical, peculiar aspects of bank/credit business and how judicial decisions impact on the banks and the whole economy.

b) Determine the viable alternative dispute resolution mechanisms and encourage them.

c) In cases where court action is inevitable, look at how courts can encourage the use of summary suits in the recovery of unpaid loans.

Recommendation 2.10: *Resolve the need for clarity on the length of validity of collateral property valuations.*

Amend the Mortgage Act to limit the validity of the valuation of mortgaged property to three years from the date of valuation, and to allow the pre-loan collateral appraisal to have no limit of validity.

Recommendation 2.11: *Review and amend Tier 4 MFI & ML Act*

Conduct a thorough review of the *Tier 4 MFI & ML Act* with the view of amending to be more facilitative, up-to-date, and comprehensive. The review should also be done with the aim of de-fragmenting regulation and eliminating contradictions within the Act.

Recommendation 2.12: *Allow some discretion to DPF to waive penalties under exceptional circumstances*

Amend the FI (DPF) Regulations 2019 to allow DPF, only in extreme situations of economy-wide disaster lasting more than three months, to waive penalty on late payment of premiums as long as the delay does not extend beyond three months from the date on which such premiums were due. This would have the benefit of allowing struggling SFIs during a force majeure to comply after a few days, but it could also potentially present the downside of being used for situations other than those that merit. To avoid use outside of the right circumstances, the discretion should only be exercised after approval by the line minister, on recommendation of the DPF Board.

Recommendation 2.13: *Provide legal framework for DPF borrowing from the Central Bank*

Provide a legal framework to allow for DPF to borrow from BoU under reasonable terms, for the purposes of effecting pay-out. The borrowing would be fully secured by Treasury instruments, into which DPF puts most of its funds. MoFPED intends to come up with an Act specific to DPF and deposit protection. This is presently at the Principles Paper stage and being discussed with stakeholders. DPF borrowing from BoU should be provided therein.

Recommendation2. 14: *Clarify the legal position on syndicated lending and sole lending by institutions not regulated by BoU*

In Uganda, like in all the other countries in the world, entities borrow both domestically and from foreign lenders. The ongoing Ham vs DTB case has brought to light the fact

that FIA 2004 (amended) provisions are unclear and are subject to a wide range of interpretation by courts, including negating the legality of external borrowing by Ugandan businesses. There is need for legal clarity on the requirements for foreign lenders and the scope of the provisions on Agent Banking.

Recommendation 2.15: *Review of exemption to shareholding(s) in banks and other financial institutions*

It is proposed that section 18(4) of the Financial Institutions Act, 2004 be amended to create more latitude by the Central Bank to grant exemptions to the rule in section 18(1) of that Act to permit financially sound and reputable financial institutions, reputable public companies (in relation to the type of business that the bank/financial institution pursues) as is the case in section 21(3) of the Micro Finance Deposit-Taking Institutions Act, 2003. In granting the proposed exemptions to section 18(1) of the Financial Institutions Act, 2004, the Central Bank should ensure that the bank/financial institution/MDI will be able to comply with applicable prudential requirements and that the Central Bank can effectively supervise the group including the target institution in which shares are being acquired.

Recommendation 2.16 *Review of factors to be considered by the Central Bank in an acquisition of control of an SFI*

In order to encourage and attract more investments in Ugandan SFIs, it is proposed that the Financial Institutions Act, 2004 and the Micro Finance Deposit-Taking Institutions Act, 2003 be amended to provide that the Central Bank may only object to an acquisition on the basis of the following matters (or the submission of incomplete information):

a) The reputation of the acquirer;

b) The reputation and experience of any person who will direct the business of the Ugandan bank/financial institution/MDI;

c) The financial soundness of the acquirer, in particular, in relation to the type of business that the bank/financial institution/MDI pursues;

d) Whether the bank/financial institution/MDI will be able to comply with the applicable prudential requirements;

e) Whether the Central Bank can effectively supervise the group including the target; and

f) Whether there are reasonable grounds to suspect money laundering or terrorist financing in connection with the proposed acquisition.

Recommendation 2.17: *Review the constitution of the Sharia Advisory Council (SAC) for Islamic Banking*

For the SAC to function effectively, the composition of the Shariah Committee (SC) should be reviewed with a view to having an effective membership that is knowledgeable and experienced in Islamic/Sharia law, and that its mandate does not overlap with that of the Shariah Advisory Board. Their affairs will be managed by a shariah secretariat of the respective Islamic financial institutions. This will require an amendment of the law. An effective Shariah governance framework requires involvement of the SC as the key player, the government as the regulatory body, the Islamic financial institutions as the implementer and to other persons relevant to the business such as auditors, accountants, lawyers.

Recommendation 2.18: *Review tax laws to treat Islamic banking fairly*

Specific tax reform should be introduced to remove prohibitive tax costs associated with Islamic finance products when compared to more conventional financial and investment products available in Uganda. The following are some of the necessary statutory changes:

a) Amend section 22 of the Income Tax Act (ITA, Cap. 340, L.O.U.) to allow for a deduction for the interest-equivalent amount inherent in a Sharia-compliant financing.

b) Amend section 27 ITA, Cap. 340 to ensure that deductions are given only by reference to the customer by reference to the purchase price excluding the interest-equivalent amount.

c) Generally, amend section 52 ITA, Cap. 340, and specifically Section 52(3) ITA, Cap. 340 – to clarify how the market value rule applies with Sharia-compliant asset-backed financings.

d) Amend the thin capitalisation rules in Section 89 to prevent tax avoidance through Islamic finance structures.

e) Amend Part XIII (withholdings) to ensure that tax is required to be withheld on payments under Sharia-compliant arrangements, so as to ensure that there is no revenue loss to the Ugandan government.

f) Amend section 88 ITA, Cap. 340, dealing with International Agreements, to ensure those agreements also work with Sharia structures.

g) Amend the Stamps Act, Cap. 342 to avoid a double charge to stamp duty.

h) Amend the Value Added Tax Act, Cap. 349 to ensure that the VAT treatment for Islamic purchases is the same as for non-Islamic purchases.

i) Consider introducing a general anti-avoidance rule to prevent Islamic finance structures being used to avoid Ugandan tax.

Recommendation 2.19 *Introduce mandatory resolution and recovery planning*

To reduce the likelihood and impact of SFI failures, the SFIs should be required to prepare pragmatic and detailed resolution plans and recovery plans and their "living wills". This will be a way of stipulating principles for action in adverse cases, and the plans should be specific to the SFI and approved by BoU.

Recommendation 2.20 *Amend Section 61 (2) (f) of the FIA 2004 to remove "certifying returns submitted to the Central Bank by the Financial Institution" from the duties of an Internal Auditor.*

The maker-checker controls are sufficient for this requirement, and Internal Audit needs independence, which gets impaired when it must certify routine operational reports. The returns are daily, weekly, monthly, and quarterly. The same Internal Auditor is required to independently review operations of finance department and the entire institution.

Recommendation 2.21 *Waive the requirement for CRB reports for digitally delivered micro loans to a given limit (like UGX 1 million) to expand financial inclusion in a cost-effective way.*

If Mobile Money operators freely share data with other lenders, this can be used instead of CRBs for the exempted amounts. Given the small size of the micro loans involved, it is inconveniencing and costly for CRB reports to be sought, with no clear benefit.

Recommendation 2.22 *Amend R. 6(5) of the Bancassurance Regulations 2017 to allow one person to cover more than one branch especially given the size of bancassurance business*

As it is now, the section requires a bancassurance person in each branch, which is not necessary. The branch staff can sell and offer bancassurance products like they do others and on this particular product, they should report to a responsible person in the region or head office.

Recommendation 2.23 *Amend FIA to provide for the vetting of all persons proposed to be part of senior management*[37] *of an institution*

Section 52 of the Financial Institutions Act deals with the appointment of directors. Section 53 deals with disqualification of directors. However, both Sections are silent on the appointment of senior management of financial institutions. However, the practice is that senior managers are vetted by BoU. This is the right procedure and should be backed by law.

Non-regulatory recommendations - Legal

a) *Enact or implement penal punishment for fraudulent garnishee orders*. Judicial officials involved in the issuance of these orders need to be penalised under statute.

37 Especially heads of Finance, Internal Audit, Risk, Credit and Operations

b) *The scope of medical certificates should be wider and issued by specialist occupational illness practitioners in cases of labour disputes. Additionally, the Industrial Court should be granted jurisdiction to hear such matters currently restricted to the magistrate's courts*. In labour disputes, the evaluation of medical certificates in a claim for severance arising out of voluntary termination on grounds of physical incapacity and worker's compensation should be strict. The medical certificates are vague and consider the workplace as the trigger for the causation of the incapacity without considering lifestyle outside the workplace. Secondly, the medical certificates are issued by general medical practitioners and not occupational illness practitioner.

c) *The Registrar should be empowered by Statute to handle some matters which will ease up the case back log*. The Registrar in the Industrial Court is not given as much powers as in other courts and does not handle matters which would ideally expedite cases in the court. This worsens the delays in completion of trials in the industrial court.

d) *Review the Companies Act*. The current Companies Act, 2012 is modelled after the UK 1986 Companies Act and is therefore outdated due to the transformation in the laws and trends. The UK Companies Act, 2006 should be looked at for purposes of amending the current law.

e) *Issue guidelines to provide for handling blind and other disabled customers* so as to protect the SFIs from the rampant frivolous cases that are being instituted by persons with disabilities. There is an increase in frivolous suits by persons with disabilities for example incidents that involve the verification of blind customers unable to sign a cheque but use fingerprints.

3 COMPLIANCE

For purposes of clarity, the compliance issues that fall in other thematic areas- such as Credit, ICT, Governance, Legal, Operations, Clearing, Finance or Treasury- have been moved to those specific themes and will not be repeated here. This is because even though they are compliance issues, they have an underlying function from which they arise. Therefore, whilst some of the issues may fall under regulatory compliance, they will be addressed under the business areas/themes from where they originate. Only areas that do not have obvious specific business areas are addressed in this Compliance theme.

The ever-changing regulatory requirements and expectations in various jurisdictions take time to track and due to this fluidity, these requirements do not support the implementation of timely policies. It has been noted globally, as a result of these changes and challenges, that cost pressures have instigated the search to achieve better compliance risk management at a lower cost and increased expectations for compliance to make better use of technology. The other issue of concern is that with compliance sitting in different areas of an institution, monitoring and surveillance activities of the first line of defence (internal controls within line departments/functions) may not be in sync with the activities of the second line of defence (Compliance function).

Compliance in the financial services industry is mainly about conduct and culture. Compliance functions have seen a massive expansion since the 2008 financial crisis in all corners of the globe, including Uganda. For Uganda, the collapse of banks in the 1990s due to governance issues brought increased focus on regulatory compliance in the financial services sector. During the COVID-19 pandemic, there has been a need to ensure that the compliance function and compliance in financial institutions continues to be more effective and efficient in ensuring that there is both support and challenge to the business by the Compliance department, operating in a more strategic capacity. Challenges also abound in managing issues created by a new reality of increased remote working, disruption of full offices due to COVID-19 cases being found in a given office and the unpredictable changes in the external environment. It has long been argued that Compliance should spend less time firefighting and take a more proactive approach to risk identification. However, proactivity is affected by the tools available to the compliance teams.

Financial institutions in Uganda are generally doing their best to enhance compliance effectiveness and sustainable response to the evolving regulatory expectations. This is being done through enhanced monitoring, testing, and supporting the increased use of management information systems to deliver operational value and for Compliance to become a more integrated part of the business. Some entities have done this by enabling the business to better self-identify issues of compliance and identify the root causes, and through enhanced use of technology and with increased focus on data and process optimisation.

Issues around conduct and culture continue to be a challenge for most financial

services entities working in Uganda, which is the 137th least corrupt nation out of 180 countries, according to the 2019 Corruption Perceptions Index, reported by Transparency International. Examples abound regarding bank clients alleging mis-selling, misrepresentations with regard to products, sales practices, employee sales goals and services.

3.1 INDEPENDENT COMPLIANCE DEPARTMENTS

According to *S. 15.6.1 of the Risk Management Guidelines,* it is stated that the Compliance function should be independent with compliance staff positioned in places where there would be no conflict in performing their roles and responsibilities. An independent Compliance department for a small bank might, however, be very expensive.

As a profession and a department, compliance is still relatively young. Debates still rage about whether compliance needs to be independent, and what *"independence"* actually means in practice in this context. "Independent" is defined as *"not influenced or controlled by others in matters of opinion or conduct".* The compliance function is one of the only *internal* checks on how a company operates apart from Internal Audit.

In larger banks, compliance may alone be tasked with creating the processes that will prevent and detect misconduct. Regulators expect the Compliance function to be independent and to have access to the board. Compliance officers are in a complicated position because they are in the bank but, in some important ways, can be said to be on the outside of its mainstream business operations. The best compliance officers are expected to form close bonds of trust with the banks' executives and other leaders and be aware of what is going on throughout the bank. Keeping one's independence can be challenging when human emotions are involved, and that is why structural controls promoting and enforcing independence are considered critical.

Some SFIs argue that this is one of the areas that increases the cost of compliance and yet it is not the only way that compliance risks can be fully addressed. The suggestion is that the guidelines should allow for flexibility so that banks of different sizes and risks to determine the appropriate form of their Compliance functions. It is also argued that for a smaller FI, the departments or roles of Compliance and Risk can be merged as they are both second line and independent in their reporting obligations.

Sound Practices from Elsewhere

The Bank of International Settlements

The Bank of International Settlements (2005) Basel Committee believes that a single framework of principles for effective compliance risk management does *not* restrict individual banks to a single organisational or operational approach. However, each bank

must be prepared to demonstrate that the approach adopted is effective in dealing with the bank's unique compliance risk challenges. This somehow guides on the operational implications for smaller banks that cannot - and do not need to - put in place the same structure and processes necessary in larger or more complex institutions.

Malaysia

Bank Negara Malaysia – BNM (the Central Bank of Malaysia) in 2017 identified the compliance function as one of the key control functions in a financial institution, right up the structure with senior management, risk management function, and finance and reporting functions. It advises that staff involved in implementing Compliance should be accorded continuous training to match the development trends in the financial sector.

Some complexity in regulation is inevitable, due to rapid advancements in the business of banking, compounded by the process of globalisation and changes in the banks' operating landscape and interactions with other components of the financial system. BNM therefore recognises that continuous regulatory changes are necessary and will be the norm as efforts are continuously taken to safeguard financial stability.

The view is that the existence of a strong compliance function protects the integrity of the regulatory framework. When banks' internal functions cannot be relied upon to achieve financial stability objectives, experience shows that regulation will then tend to be more intrusive. In the process of intervening to remedy such gaps in the stability framework, tensions often surface over the delicate balance in regulation. The degree of intrusiveness in regulatory requirements will swing from one end of the pendulum to the other, before settling somewhere in the between (depending on the effectiveness of internal compliance).

Emphasis appears to be on the effectiveness of the compliance function rather than the structural form it takes within a financial institution. Although these two are related, the former determines the latter.

South Africa

Regulation 49(1) of the *Regulations Relating to the Banks Act* ("the regulations"), *Act 94 of 1990* (SARB, 2008:740), states that: "a bank shall establish an independent compliance function as part of its risk management framework, in order to ensure that the bank continuously manages its regulatory risk; that is, the risk that the bank does not comply with applicable laws and regulations or supervisory requirements". The regulations also require that *a compliance officer of the bank should head the independent compliance function of that bank,* and that the compliance function shall have adequate resources (SARB, 2008:740).

India

The Reserve Bank of India (RBI) on Compliance functions in banks, advises that as part of robust compliance system, banks are required, inter-alia, to have an effective

compliance culture, an independent corporate compliance function and a strong compliance risk management programme at bank and group level. Such an independent compliance function is required to be headed by a designated Chief Compliance Officer (CCO) selected through a suitable process with an appropriate 'fit and proper' evaluation/ selection criteria to manage compliance risk effectively. However, the RBI provides for an exception regarding dual hatting and states as follows:

"There shall not be any 'dual hatting' i.e., the CCO shall not be given any responsibility which brings elements of conflict of interest, especially the role relating to business. *Roles which do not attract direct conflict of interest like role of anti-money laundering officer,* etc. can be performed by the CCO *in those banks where principle of proportionality in terms of bank's size, complexity, risk management strategy and structures justify that.*"

It is logical that principally the Compliance office should ideally be independent. However, in cases where the size and complexity of the entity do not warrant a fully functional compliance team/department, the compliance could be embedded in another suitable department or unit like Risk (as already proposed in the comprehensive corporate governance guidelines presently under discussion).

3.2 DOCUMENTATION REQUIRED TO COMPLY WITH KYC

The *FI (AML) Regulations*, 2010, requires banks to identify customers and their places of abode or residence using various means including *utility bills*. This process is laborious and non-inclusive as some potential customers of licenced financial institutions have alternative sources of utilities, which do not provide hard copy bills to be presented to FIs. Utilities, like water and electricity, which used to be receipted on payment with hard copy bills with residential address, are no longer availed with hard copy receipts with all relevant residential information for consumers paying digitally. A number of utility providers have upgraded to digital payment channels. Electricity, especially for residences, is done through payment of *Yaka* tokens which are sent electronically to the phone. Some water access points for residences can also be paid for using tokens. Furthermore, for clients that are renting, the process to change any of these utility payments into their names is a laborious process that means that tenants do not actually ever or rarely do have their names reflected on a utility bill. Continued reliance on hard copy utility bills is, therefore, not an option that allows for financial services inclusiveness.

With regard to National Identity Cards (NID), the process to acquire one is lengthy and should one's original NID be stolen or get lost, the process for replacement also takes a long time. In certain circumstances, the period of replacement may take longer than 12 months. During this period, any service that requires the use of an original NID, which includes any banking services, will not be accessible to such person.

The process of identifying clients is also currently cumbersome for FIs in that they do not seem to be able to instantly verify the identity of a potential client leading to delays in opening bank accounts and access to accounts. If checking access/rights and NID reader

machines are accorded to banks, this action will have a positive effect on reduced waiting time and cost at account opening and for any other bank services requiring verification of identity.

Sound practices from elsewhere

India

The Indian Government has made it mandatory for people to link their *Aadhaar* (National ID card) with their Bank account. Banks have also been given the authority to deactivate accounts that are not linked with *Aadhaar*. The process of linking the Bank account with *Aadhaar* can be done both online and offline. A client can self-activate, especially for accounts that may be facing challenges of inactivity or dormancy.

The Aadhaar card is a unique number issued to every citizen in India and is a centralised and universal identification number, with a biometric document that stores an individual's personal details in a government database. It is the only government-issued document that is available anywhere and everywhere. An *Aadhaar* card can be applied for online, the e-Aadhar is a downloadable version of the physical copy of *Aadhar* and can be accessed anywhere, anytime.

Pakistan

Banks in Pakistan are also able to directly authenticate individuals in addition to verifying credentials. This makes it convenient for individuals to always have a copy of a valid government-issued identity document. This also reduces the risk of an original document being stolen/misplaced, since it can be downloaded onto any device and displayed when required.

Peru

The Documento Nacional de Identidad (DNI), is a personal identity card recognised in Peru for all cases (civil, banking, commercial, administrative, and judicial) in which a person has to identify themselves for services such as account opening in banks. There are specific guidelines determining what information is available in the ID database and can be used by other government agencies.

Kenya

Kenya has "Huduma" centres around the country to allow for one stop access to Government services, including identification. This is linked to the Huduma ID cards that the Kenyan Government rolled out in 2019 to all its citizens. With power and connectivity, the system works promptly as portals for useful points of access to online identity services. Banks or their Agents can house these centres and check in real time.

Nigeria

Nigeria's National Identity Management Commission (NIMC) collects 10 digital fingerprints and deduplicates using advanced ABIS technology that matches the biometric templates in real time while the applicant remains in office. This ability to deduplicate an identity on the spot using digital fingerprint readers networked

to a central database has significantly improved the processing time for all relevant transactions in the service sector that require such ID checks. Banks are connected to the system, and this eases customer identification.

For Uganda, streamlining KYC will need NIRA connection so that it is done through the National ID system.

3.3 VARIOUS OBLIGATIONS IN COMPLIANCE WITH ANTI MONEY LAUNDERING RULES

Bank of Uganda requires banks to comply with its FI (AML Regulations) 2015, which still have obligations that are incompatible with the AML Act, 2013, (as amended in 2017). The Anti-Money Laundering (AML) Act, 2013 is now the primary AML legislation and where there is conflict between the BoU AML guidelines and the AML Act, then the Act should take precedence. It is necessary to eliminate any potential confusion by aligning the two documents. AML and counter-terrorist financing (CTF) matters are of great relevance world over and Uganda is no exception. Most countries have adopted specific legislation, mostly following, or trying to adapt to international practices and standards, such as those under the Financial Action Task Force (FATF) and its regional counterparts like ESAAMLG (Eastern and Southern Africa Anti-Money Laundering Group) and continue making efforts to address their AML and CTF risks.

Whilst Bank of Uganda continues to supervise FIs under its ambit using risk-based supervision, it is noted that there are some clauses that are not in conformity with the current legal obligations and therefore need to be reviewed and amended. It is prudent that the regulations are amended to agree with the AML Act.

Sound Practices from elsewhere

New Zealand

The Reserve Bank of New Zealand Guidelines on Anti Money Laundering and Countering Financial Terrorism issued in 2016 give a very short guideline and make reference to the main law. Guidelines from the Reserve Bank state as follows:

(1) Registered banks in New Zealand are "reporting entities" under the AML/CFT Act. As such they are obligated to comply with the AML/CFT Act and related regulations. The Reserve Bank is AML/CFT supervisor of registered banks for the purposes of the AML/CFT Act. The Reserve Bank expects that:

(a) each registered bank will at all times post-registration have policies, systems, and procedures to detect and deter money laundering and the financing of terrorism.

(b) those policies, systems and procedures will comply with the AML/CFT Act and related regulations, including (without limitation) satisfying:

(i.) the minimum requirements for AML/CFT programmes contained in section 57 of the AML/CFT Act;

(ii.) the requirements to undertake a risk assessment pursuant to section 58 of the AML/CFT Act; and

(iii.) the requirements to review and audit the risk assessment and AML/CFT programme pursuant to section 59 of the AML/CFT Act.

(c) each registered bank will implement those policies, systems, and procedures in an effective manner, so as to maximise the likelihood that the bank will at all times comply with its obligations under the AML/CFT Act and related regulations.

The way this was done in New Zealand might be a helpful way in drafting regulations where there might be a substantial law in operation, and which might have come into operation later after regulations were passed. This methodology allows the regulator to still fulfil their supervisory obligations and ensure that the space that FIs operate in will remain free from possible risk of AML/CFT.

3.4 COST OF COMPLIANCE

Compliance cost is expenditure of time and/or money in conforming to government requirements such as regulation or legislation. The Basel Committee on Banking Supervision in 2003 issued a discussion paper on compliance risk and the compliance function in banks, which became the blueprint for most compliance functions globally, including Uganda. The paper stipulated that compliance should become part of the culture of a bank (BIS, 2005) and that bank's compliance function should be adequately resourced (BIS, 2005). Compliance, however, is an ongoing process that goes beyond the testing and the evaluation of internal controls to ensure security and system integrity as well as managing changes.

The cost of compliance in Uganda has been increasing frequently, due to various regulators coming up with different requirements and directives with very wide scopes. There must, for instance, be AML audits every two years, on top of Annual Statutory Audits and ICT Audits every three years. Additionally, Compliance becomes fragmented and complicated with different regulators having their own distinct requirements. Collaboration among regulators, or even more radically, amalgamation of regulation under one regulator, could help focus more and reduce fragmentation of regulation centres for SFIs. Compliance costs are already estimated to be significant, and it is often the case that compliance costs are more severe on the smaller banks.

Best practices from elsewhere

South Africa

In South Africa (2011), a study on the cost of compliance was carried out with 12 banks to determine the various costs associated with compliance. It was noted that it was difficult to calculate these compliance costs accurately, due to frequent changes to regulations, the distinction between start-up and ongoing costs was not clear, causing banks to incur both types of costs on a continuous basis. Staff-related costs encompass fixed and variable compensation, including salaries, bonuses, medical aid contributions and leave pay. Banks mentioned that these costs are easily quantifiable for certain functions in the institution, such as the compliance and legal department. It could, however, be more difficult to calculate cost of compliance for business areas where staff members spend only some of their time performing compliance duties. The banks further mentioned that experienced compliance staff were in short supply and that higher salaries had to be paid in order to attract such the right personnel. Another contributing factor mentioned was that the pace of regulatory change has necessitated a premium to be paid to Compliance people in terms of higher compensation.

In regard to regulatory compliance, it was observed that this usually extends beyond the compliance department, and it was clear regulatory compliance affected each employee of the bank. Carlson and Fernandez (2006:3) held the same view and noted that depending on the structure of a bank, the compliance function could reside in several areas within the bank, in addition to the compliance department. Such areas included the Risk Management department, Treasury department, Internal Audit department, the branch network, and the Human Resources department.

All banks in the study had either a centralised model or a combination of a centralised and decentralised business model for compliance, where "*centralised*" means that the head office of the bank is dictating compliance activities and "*decentralised*" means that business units manage their own other activities. Most banks deploy permanent compliance staff on a decentralised basis by placing them in different business units in the bank. Participating banks in the study, however, indicated that this deployment of staff could, and often does, lead to the duplication of compliance work performed, thereby adding to the cost of compliance.

To ease the complexity of reporting, it was argued that there was need for one regulator in place. This regulator should be responsible for the prudential supervision of all financial institutions including banks and non-banks such as insurance companies. Such a measure would ensure the necessary consistency and uniformity of the currently fragmented South African regulatory structure. It was argued that one financial service regulator was justifiable because of the continued blurring of institutional and product boundaries, as well as growth in financial conglomerates.

It was also argued that the main advantages of such a single financial regulator would be the following:

- maintenance of high confidence in South Africa's financial system;
- promotion of greater public understanding of the risks, rewards, and other key features of the financial system;
- maintenance of adequate security and protection for consumers of financial products and services, reflecting the different levels of risks, tastes and sophistication possessed by various types of investors; and
- reduction of criminal activity of a financial nature among regulated institutions.

The Twin Peaks model in South Africa

In June 2011, the South African Cabinet approved the move towards the Twin Peaks model. The Twin Peaks model for financial sector regulation was proposed as a means to reform the regulatory and supervisory system for financial institutions and market infrastructures.

The Financial Sector Regulation (FSR) Act was signed into law on 21 August 2017, marking an important milestone on the journey towards a safer and fairer financial system that can serve all citizens.

The FSR Act gives effect to three important changes to the regulation of the financial sector. Firstly, it gives the SARB an explicit mandate to maintain and enhance financial stability. Secondly, it creates a prudential regulator – the Prudential Authority (PA) – within the administration of the SARB. The PA is responsible for regulating banks (commercial, mutual, and co-operative banks), insurers, co-operative financial institutions, financial conglomerates, and certain market infrastructures. Thirdly, the FSR Act establishes a market conduct regulator – the Financial Sector Conduct Authority (FSCA) – which is a national public entity.

The transition to the Twin Peaks model of regulation is being implemented in phases. The first phase was to establish the respective regulatory authorities – the PA and FSCA. The second phase entailed developing, harmonising and strengthening the legal frameworks for prudential and market conduct regulation and supervision.

Nordic Countries

Expanding shared utilities as one KYC and back-office services (such as customer background checks or counterparty risk assessments) as seen in the Nordic Countries. Six Nordic Banks secured the European Commission's approval to develop a joint platform to manage KYC data. The partner banks established a joint venture (JV) company, Nordic KYC Utility, to develop the KYC platform, which was driven by the need to standardise processes for handling KYC data.

The JV is equally owned by all six stakeholders and was launched in 2020 to operate

independently. It is expected to offer KYC services to the large and medium-sized companies based in the Nordic region.

The collaboration between all partner banks has, in a short period of time, worked on a Nordic KYC Utility standard for compliant KYC information and explored alternatives for a future digital solution. The JV also sought to improve customer experience by simplifying the KYC processes and assisting in combatting financial crime in the Nordics region. This was expected to significantly reduce KYC-related compliance for each of the banks.

The type of collaboration and partnership that has been successfully implemented by Banks in the Agency Banking sector would be one area where the FIs in the sector can work together and standardise processes to reduce some of the compliance costs experienced due to working independently.

3.5 AUTOMATING SYSTEMS FOR REGULATORY REPORTING

Regulation in the banking industry has increased significantly since the financial crisis of 2007/2008, and the cost and time resources associated with keeping in line with these rules have also increased for many SFIs.

Regulatory expectations regarding financial, trade, transaction and position reporting continue to increase and create compliance challenges for financial institutions. There are still very many manual processes and reconciliations to be kept.

Automating systems to receive various compliance reports would solve problems of both efficiency and cost-effectiveness of reporting. Consideration should be given to having an automated system to receive reports and not hard copies. This could also help solve challenges such as those experienced during the COVID-19 pandemic lockdown. When it comes to financial reporting, banks still rely too much on spreadsheets for the collection, entry, and verification of data, which requires manual intervention and adjustments that consume a lot of staff resource. Reporting needs to be repeatable and auditable on a regular basis, and the evolving nature of regulation means futureproofing will always be required of the software.

This could include the regulator working on an automated interface with the SFIs through which supervisory resources may be shared. This could be enhanced by introducing the use of artificial intelligence for some processes.

Best practices elsewhere

Australia

Preparations are advanced for standardised automation of all financial sector regulatory reporting in 2021. The Australian Prudential Regulation Authority will role a tested and proven software for regulatory/compliance reporting, which will be used by all reporting entities. This will be applicable to all *Authorised Deposit-Taking Institutions (ADIs), which*

include all commercial banks, credit institutions and other entities that take deposits from the public. The software is called Vizor, and it is robust, versatile, and compatible with many other banking systems.

A December 2020 article[38] on this reads in part:

Automated APRA Reporting

Streamlined reporting for ADIs, Insurance and Superannuation

Are you ready for APRA Connect?
The Australian Prudential Regulation Authority (APRA) is overhauling its core data collection solution and Vizor Software is replacing the D2A system. APRA Connect will go live in September 2021, with a progressive cutover of financial data reporting to the new solution. All reporting entities will use APRA Connect for reporting of entity information and financial data.

Why Vizor?

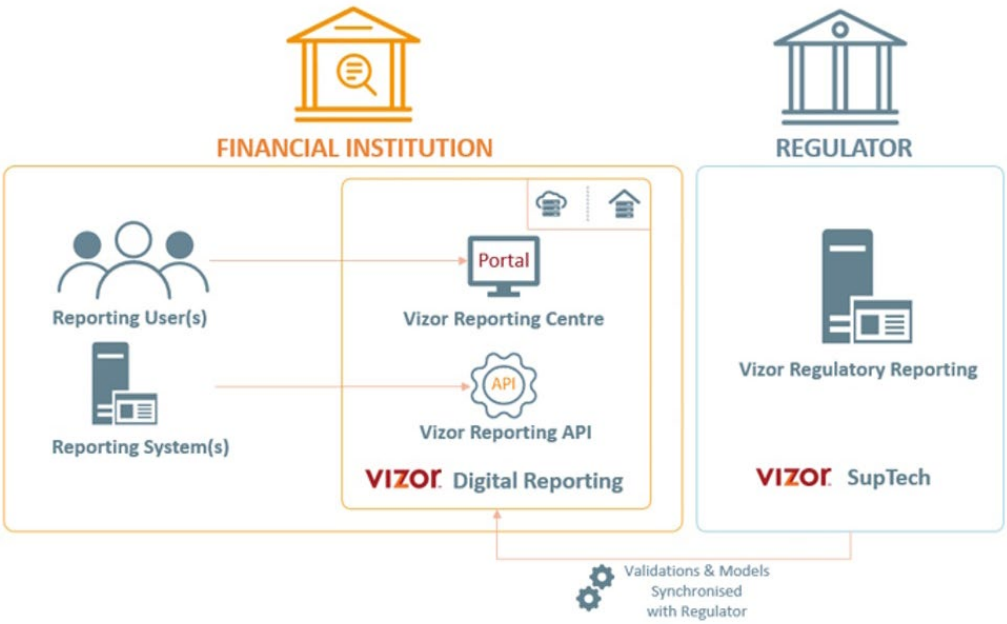
Vizor has the first solution to automatically synchronise with all published APRA Connect reporting forms and rules across ADIs, insurers and super funds. Simply import your financial reporting data from Excel or connect via REST API to your data warehouse and Vizor will validate and populate the data into the correct format for submission. It is:

- Cost Efficient
- Scalable and Flexible
- Stays in sync with APRA Connect

Architecture of the Vizor reporting system is depicted in the figure below:

38 Automated APRA Reporting: https://www.vizorsoftware.com/regtech/apra-reporting/?gclid=CjwKCAiAx-Kv_BRBdEiwAyd40N9V77Wu_lOQYjGVjt_Oj1Ivovq8K6D-rCPn3BAycz9my5qrIjNbd4BoCINkQAvD_BwE

Figure 2: RegTech Ecosystem[39]



The rolling out of this standard and automated system is expected to reduce costs, avoid time wastage, and improve efficiency. An integrated and automated system minimises data redundancy, integration requirements and tedious (and error prone) vetting of regulatory reports.

FinRep[40] *(Europe)*

The acronym "FINREP" refers to "Financial Reporting." The European Economic Area (EEA) and the European Banking Authority (EBA) require banks to create FINREP reports. Enacted September 30, 2014, FINREP increased the amount of information banks had to disclose in their financial reports, specifically in the income statement and balance sheet that are expected to highlight more granular data from the general ledger. In addition, FINREP requires banks to submit quarterly reports that contain a whopping 40+ forms/ templates and 3,500 data fields.

FINREP's objectives are summarised below:

i) Standardise reporting: To standardise reporting requirements across Europe in order to reduce the impact of multiple regular reporting requirements from different European supervisors.

ii) Central repository: Establish a central repository for European banking data to enable improved risk identification and management for cross-border institutions.

39 Source: https://www.vizorsoftware.com/regtech/apra-reporting/?gclid=CjwKCAiAxKv_BRBdEiwAyd40N-9V77Wu_lOQYjGVjt_Oj1Ivovq8K6D-rCPn3BAycz9my5qrIjNbd4BoCINkQAvD_BwE

40 FINREP (EBA): https://www.tagetik.com/en/glossary/finrep#.X-waFNgzbD5

iii) Enable analysis: Facilitate peer reviews, trend predictions, risk analysis and provide greater transparency, especially on cross-border institutions.

iv) Data Sharing: Enable data to be easily shared with national and international authorities, supervisory colleges, ESRB, and ESAs.

v) Promote greater transparency.

FINREP applies to credit institutions, banks and investment firms that are listed on a stock exchange, prepare IFRS compliant financial statements, and are subject to the Fourth Capital Requirements Directive (CRD IV).

Many regulatory reporting requirements are now getting standardised and fortunately, this makes automation a realistic proposition.

3.6 CHECKING UNUSUAL MOBILE MONEY TRANSACTIONS (NPS ACT VS MM GUIDELINES)

Presently, the Mobile Money Guidelines issued by BoU vest the responsibility for checking large and unusual mobile money transactions on the SFIs that hold escrow accounts. This implies that the SFIs must replicate and monitor mobile money transactions on the MNOs. Since the MNOs that operate mobile money have their own systems connected to their various agents, they are in a better position to hold responsibility for suspicious and large transactions rather than the banks. Alternatively, the Mobile Money Guidelines should be scrapped, and all the relevant provisions therein transferred to the NPS Regulations

Practices elsewhere

Zambia, South Africa, Nigeria, and other African countries

In Zambia, South Africa and Nigeria, mobile money operators are required to hold a license from the banking regulator to operate a mobile money service, placing them under the supervision of the regulator.

With the passing of the National Payments Systems Act in Uganda, the Mobile Money Guidelines need to be amended and to make telco's responsible for their own checks.

3.7 CUSTOMER DISPUTES AND ARBITRATION

Whereas the Consumer Protection Guidelines 2011 offer guiding principles for consumer protection and conflict resolution/redress, the remedies provided for under regulation 9 of the Guidelines are left to the discretion of the SFI and thereafter to the checks conducted by the regulator to determine the quality, fairness, resolution of the dispute

and the clarity of communications. There is presently no arrangement in place for third party mediation in cases where the SFI and customer fail to agree. Such kind of mediation would be particularly necessary where the parties need not resort to court action.

Generally, from perusing a number of cases in court and from client's feedback, it can be argued that there are various unfair and deceptive practices bordering on abusive behaviour by the financial service providers (*regulated and unregulated*) on their unsuspecting clients. There is increased need to protect consumers in the financial markets with enhanced focus on third party relationships especially regarding retail clients. This focus, together with the growth of agency banking, will align with the general heightened focus on cyber security and other aspects of consumer protection.

Mis-selling in the financial services sector occurs in many countries. It happens quite a bit in Uganda, largely because of the tight quantitative targets that banks give their salespeople and in some cases due to inadequate knowledge of the product details by the banks' salespeople. While bank clients may benefit from the increased competition that may enable them to choose financial services at lowest cost, it has been noted that there has been an increase in complaints alleging mis-selling that end up with a dispute between the financial services provider and its clients. Some examples of mis-selling are misrepresentation of information, overly complex product design that is difficult to explain to modestly informed clients and non-customised advice.

In most countries, liability for mis-selling of products will fall to the sales agent, rather than the creator of the product. However, a creator may be liable if an agent sells the product, under a jurisdiction's rules of principal and agency. Where a third party makes the recommendation, the suitability obligation will generally fall on that person. With Agent Banking, there may be increased disputes that will require quicker resolution through third parties other than the court.

Sound practices from elsewhere

In some jurisdictions, an independent third party (Ombudsman) deals with unresolved disputes while in others an industry-based dispute resolution scheme is available. However, even within countries there can be varying financial limitations applicable to the availability of dispute settlement mechanisms. These options would reduce on the number of disputes that would end up in courts of law.

The European Union

European regulators have addressed the problem of mis-selling in the "Markets in Financial Instruments Directive" (MiFID) I and II and the "Markets in Financial Instruments Regulation" (MiFIR), by setting behavioural requirements for banks, regulating the compensation of employees, and imposing requirements on offered financial products and disclosure rules. Franke, Mosk and Schnebel (2016), argue that MiFID II protects clients but is not as effective as it could be because (1) it does not differentiate between client groups with different levels of financial literacy. Effective advice requires different

advice for different client groups; (2) MiFID II uses too many rules and too many instruments to achieve identical goals and thereby generates excessive compliance costs. High compliance costs and low revenues would drive banks out of some segments of retail business.

They further argue that in order to improve customised advice, client protection should be based on fewer regulations worded as rules and more regulations phrased as principles. Tight rules are appropriate when details of effective interaction between banks and clients are well-known. Principles, by contrast, provide behavioural guidelines and grant more discretion so that interaction can be adapted to a broad range of situations, including heterogeneity of clients and of employees. In their paper, they propose a three-pillar approach, rules for banks' interactions with retail clients are encoded in Pillar 1, principles for fair treatment of clients in Pillar 2. A supervisory review process to check the bank's interaction with retail clients is the core of Pillar 2. Market discipline, finally, forms Pillar 3 and may be promoted through feedbacks of clients on their interaction with banks and standardised product disclosures. This approach should ensure high levels of client protection and promote the quality of advice, while limiting the compliance costs of banks so that they are able to earn the cost of capital retail banking entails through retail banking activities. Thus, the approach aims at a fair and viable compromise between the interests of clients and those of banks.

The European Ombudsman is much wider in its application and investigates complaints from individuals, businesses, and organisations about maladministration by the institutions, bodies, and agencies of the European Union. Maladministration occurs if an institution or body fails to act in accordance with the law or the principles of good administration or violates human rights.

Maladministration can include administrative irregularities, unfairness, discrimination, or the abuse of power, for example in the managing of EU funds, procurement, or recruitment policies. It also includes the failure to reply, or the refusal or unnecessary delay in granting access to information in the public interest. Complainants do not have to have been affected by the issue(s) complained about.

The European Ombudsman cannot investigate complaints against national, regional, or local administrations in the Member States, even when the complaints are about EU matters (but the member-states have their own internal mediation arrangements). A complaint must be made within two years of the date when the person affected became aware of the facts. The complainant must first have contacted and tried to resolve the matter with the institution in question. The Ombudsman cannot investigate matters that are subject to legal proceedings.

Canada, Japan, United States

With regard to client education, many regulators have websites containing useful information about investing generally and what to look for in selecting financial products. For example, in the securities sector of a number of countries (like United States, Canada, Japan, and the European Union) a suitability determination must be

made at the time of solicitation (recommendation) and the suitability standards apply upon such recommendation. However, there is no uniform standard across sectors and countries as to when the obligation to make a suitability determination arises. Given their focus, regulators with responsibility for conduct of business regulation appear to provide more information. In some cases, the website is but one part of a broad consumer education programme. These should address would-be conflict issues.

In the *USA*[41], an ombudsman provides an alternate, informal way to resolve issues. Many organisations, both government and private, have an ombudsman. The (CFPB) Ombudsman's Office was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which created the CFPB.

The CFPB Ombudsman assists in the resolution of individual and systemic process issues that a consumer, financial entity, consumer or trade group, or anyone else may have with the CFPB by advocating for a fair process. In general, the Ombudsman analyses and learns about all perspectives on a process issue and may:

- Review the applicable laws, regulations, policy, and data,
- Talk with the individual and/or stakeholders involved, and
- Meet with CFPB officials.

Upon completion of that review and to assist, the Ombudsman can:

- Facilitate discussions,
- Brainstorm and evaluate options and resources,
- Share independent analyses,
- Offer an impartial perspective,
- Ensure confidentiality of someone's identity, with few exceptions
- Engage in shuttle diplomacy, and
- Provide recommendations.

Although the CFPB Ombudsman arrangement addresses disputes between the bureau and financial sector stakeholders, a similar arrangement would be suitable for disputes between the bank and its client.

Nigeria

The Central Bank of Nigeria (CBN) directed that Financial Institutions shall develop a Customer Compensation policy to address various categories of complaints which may arise due to service failures. The policy must be published by the institutions, either on the bank's website or in branches. In Nigeria, the law allows for arbitration in cases of commercial disputes that need to be determined speedily. Banks often include provisions for such arbitration in contracts with their clients. They are, however, reportedly reluctant

41 https://www.consumerfinance.gov/cfpb-ombudsman/ombudsman-faqs/

to go for arbitration in the frequent cases of non-performing loans because of:

a) High cost

b) Standards and competence of arbiters

c) Lengthy processes/ delays

Good arbitration should therefore be modest in cost, fast in speed and conducted by well trusted, knowledgeable people.

Note: For Uganda, the option would be to retain the current regulations basing on principles but then provide for competent third parties that would ensure fairness and impartiality to both the FIs and their clients in arbitration. This is particularly necessary for the high and increasing cases of loan repayment/ NPL disputes, some of which takes years in the court system.

Recommendations on Compliance

Recommendation 3.1: Permit effective Compliance function to exist without having a department dedicated to it for small banks, as long as the role profile is senior and independent enough

Allow smaller banks to embed the Compliance function as part of the Risk or other line-of-defence department, with the Risk person at an adequate level of seniority and independence. As long as these small banks can demonstrate that the compliance approach adopted is effective in dealing with the bank's unique compliance and risk challenges, this should be preferable and less costly to them.

Recommendation 3.2: *Provide banks with adequate access to NIRA database*

To ensure consistent and more reliable due diligence, UBA and BoU should work with NIRA to speed up the rolling out of access by SFIs to the NIRA and other relevant databases (passports and driving permits). This should obviate the need for documents such as utility bills and speed up account opening processes. This should be subject to other laws and Constitutional requirements regarding Data protection.

Recommendation 3.3: *Harmonise anti-money laundering requirements*

To eliminate inconsistencies in compliance with anti-money laundering provisions, amend the FI (AML) Regulations 2015 to align it with AML Act, 2013 (as amended) using a principles-based methodology to counter any frequent amendments. Furthermore, consider reducing the content of the AML Regulations and obliging the SFIs to always conform with the mainstream AML laws instead.

Recommendation 3.4: *Streamline compliance requirements from different regulators to reduce compliance cost*

BoU should consider having a Memorandum of Understanding with other regulators to channel their requirements so that BoU's Regulations, circulars, supervision, and inspections cover them. This way the various regulatory audits will also be synchronised and handled by one regulator.

Furthermore, BoU should consider collaborating with the UBA to develop a viable framework for conducting cost/benefit analysis and implications of any new directives before they are implemented.

Recommendation 3.5: *Speed up completion of fully automated the systems for reporting so as to reduce compliance cost*

BoU should fully automate systems for reporting (including all regulatory/compliance aspects), to improve timeliness and reduce costs of reporting compliance. Automation will in the long run assist in managing costs in a sustainable manner and put Uganda in line with the trends internationally. Aspects for automated compliance reporting should include all BoU reporting/compliance requirement as well as requirements from other regulatory authorities like the FIA.

Recommendation3.6: *Resolve the differences in provisions of the Mobile Money Guidelines NPS Act*

Under NPS Regulations (pursuant to the NPS Act 2020), telco's will be required to monitor their own systems including checking unusual, suspicious, and large transactions. Accordingly, the Mobile Money Guidelines should be amended to remove the checking responsibility from the SFIs. Alternatively, the Mobile Money Guidelines should be scrapped, and all the relevant provisions therein transferred to the NPS Regulations.

Recommendation 3.7: *Put in place a Customer Dispute and Compensation Guidelines to address various categories of complaints that cannot be resolved by customer-bank dialogue, yet need not go to court*

Put in place a provision for quick arbitration to look into disputes that cannot be handled conclusively by dissenting customers and SFIs. Since such cases are numerous (which is why they delay in courts), a practical solution would be to have them handled by third-party ombudsmen. To implement this, consider putting in place Customer Dispute and Compensation Guidelines to address various categories of complaints that cannot be resolved by customer-bank dialogue, yet need not go to court. BoU should also screen possible arbiters/ombudsmen for "fit-and-proper" suitability and then license/oversee them through regulation.

Recommendation 3.8: *Study the principles-based versus rule-based regulation and (supervision, and determine the best model for Uganda's present and future financial sector)*

Some stakeholders consider that further to the regulatory issues covered in this report, there should be close examination of the merits and de-merits of principles-based regulation and supervision (relying more on high-level, outcomes based and broadly stated rules or principles to set the standards for SFIs that then use discretion to determine how

the comply) and rules based (detailed, prescriptive rules and precepts to address regulatory issues). This might be a good suggestion and would need a deep and broad study, which is outside the scope of the assignment that produced this report. Varying degrees and types of principles-based and rules-based regulation/supervision have been used in different countries and a study of the key elements, upsides and downsides would be good in future. Elements of both approaches are necessary in Uganda and to determine the right mix, the suggested study could among other aspects cover:

i. The meaning and forms of principle-based and rules-based regulation;

ii. Approaches to principles-based regulation (PBR) and rules-based regulation (RBR), and their distinct features

iii. Experiences with PBR and RBR in developed, emerging, and developing economies, including comprehensive case studies

iv. Strengths and weaknesses/dangers of either approach

v. Conditions for success of PBR and RBR

vi. Criteria for determining the right balance between the two approaches

vii. Regulation/compliance areas in which the regulator needs more PBR and those in which it needs RBR

viii. An assessment of Uganda's financial sector realities regarding the application of and need for PBR and RBR.

Part B

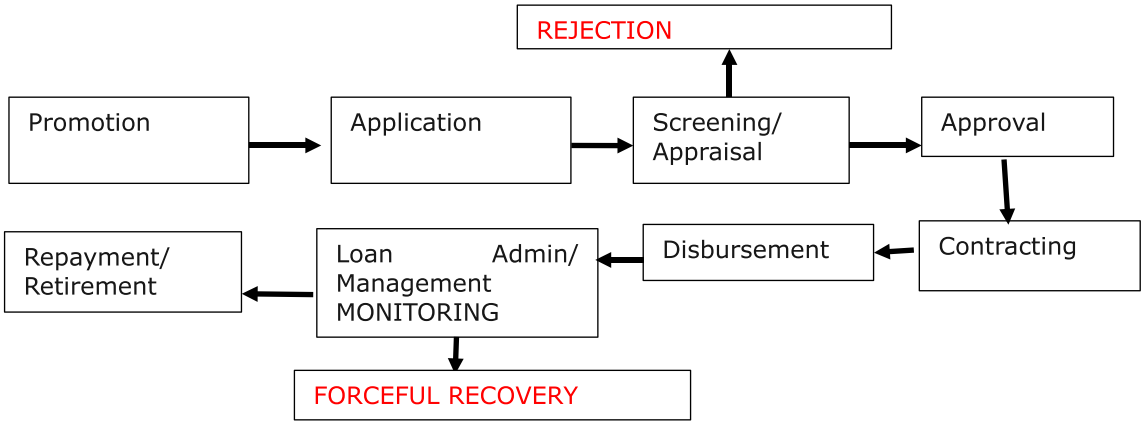
ADVANCES AND PORTFOLIO MANAGEMENT

4 CREDIT

Credit is a broad area of banking that accounts for the bulk of any bank's assets (the loan portfolio). In the context of this report, credit includes all types of advances from a bank/ SFI to its customers – overdrafts, trade finance facilities, short term loans, long term loans, leases, mortgages, and other forms of debt financing. It also includes off-balance sheet exposures, where the SFI lends its credibility to its customers through Guarantees, Letters of Comfort, and Indemnities. Because of its vitality to financial institutions, proper credit regulation is necessary. Over-regulation would stifle asset build up and under-regulation could result in deterioration in asset quality to the extent of posing a systemic threat to the financial sector. The findings and recommendations in this report are intended to enhance both business volumes and credit quality for financial institutions.

Intermediation has and continues to be the backbone of banking. The process involves harnessing the opportunities and managing the risks of using the deposits and other liabilities to lend to customers. The end-to-end credit processes vary from one financial institution to another, but it is usually some slight variation of the depiction in the figure below:

Figure 3: Typical Credit Process



The detailed end-to-end credit process for each FI is normally documented in its Credit Manual or equivalent document(s), which must be approved by both the regulator and the respective FI's Board of Directors. Once approved, the FI is supposed to follow the provisions of the manual, and thereby comply with approved end-to-end process. In relation to Credit, regulation therefore seeks to stipulate not the detailed processes but the key touchpoints and indicators to ensure good asset quality, safety and soundness of the portfolio, prudent and accurate reporting to ensure institutional as well as systemic stability. This report looks at aspects that affect these regulatory focus points and proposes and makes recommendations that would make regulation more adequate without overly restricting business competitiveness and growth.

4.1 FIA REPORTING REQUIREMENTS DIFFER FROM IFRS

For financial reporting, all regulated FIs now must use IFRS 9 in valuing and reporting investment assets including loans. Asset classification and recognition as required by FIA 2004 (amended) differs from the IFRS 9, which is consistent with Basel III. Whereas the data used for both FIA and IFRS reporting are captured from the same source, double reporting is costly in time and effort. As banks are endeavouring to adapt IFRS 9, they must still use the FIA stipulations for periodic loan portfolio reporting. For better efficiency and avoidance of error, SFIs would be better off if IFRS were used for both periodic regulatory and year-end financial reporting.

Sound Practices Elsewhere

UK - In the UK and most other developed economies, asset classification and provisioning have been fully aligned with IFRS 9. Part of the reason is that such countries were already highly Basel III compliant, and IFRS 9 provisions on asset recognition align with Basel III. This means that periodic reporting to the regulator is done on the same basis and using the same principles, focusing on the same variables as are used for normal financial reporting. Thus, the banks do not have to extract figures from IFRS 9 compliant reports in order to prepare periodic reports for the regulator. This is efficient.

Singapore: The IFRS 9 accounting standard has been implemented in Singapore through the adoption of Singapore Financial Reporting Standard (SFRS) 109[42]. Under SFRS 109, banks are required to recognise a loss allowance for Expected Credit Losses (ECL) when calculating their financial statements and other reports beginning on or after 1 January 2018. These impact regulatory calculations and reporting requirements covered by Lombard Risk Agile REPORTER (reporting software for regulated FIs).

Under IFRS 9/ SFRS 109 accounting standard, the loss allowance for credit exposures is measured at an amount equal to 12-month ECL if the credit risk on the exposure has not increased significantly since initial recognition. For credit exposures on which the credit risk has increased significantly since initial recognition, the loss allowance is measured at an amount equal to the lifetime ECL. Like is in the UK, Singaporean regulation also affords efficiency to the banks by fully aligning the financial and regulatory reporting and thus avoiding the inefficiency of double reporting.

Nigeria and Botswana: Both have fully adopted the IFRS 9 for all reporting, including periodic reporting to their regulatory authorities. Lessons from Nigeria suggest that the process should be gradual as many SFIs usually grapple with fully using IFRS 9.

Senior bankers familiar with the Nigerian situation, and with experience across East and West Africa, advise that countries like Uganda should aim at moving towards using IFRS for all reporting but warn that the process needs to be gradual. People (both on the SFI and regulator sides) take long to master IFRS principles and practice. This sounds like good advice since internationally, both IFRS and Basel principles will assume increasing importance in bank regulation going forward.

Tanzania: It has adapted IFRS 9 for both year-end financial and periodic regulatory reporting but very likely, they still run a parallel reporting system to adhere to national regulatory stipulations.

Kenya: *The* Central Bank of Kenya has given banks guidelines and a five-year timeline (starting 2017) to fully adapt IFRS 9 in regulatory reporting. This means that after the five years, regulatory reporting will be fully aligned with IFRS 9.

4.2 EXCLUSION OF NON-FUNDED EXPOSURES IN CALCULATING CONCENTRATION

Concentration of exposure can be risky if something goes wrong with the counterparty(ies). For unfunded exposures, however, such risk is not grave. Under the Financial Institutions (Limits on Credit Concentration and Large Exposures) Regulations 2005, both funded and non-funded exposures are aggregated in determining concentration, and this can overly restrict business. These Regulations aim at addressing concentration risk. Credit products, however, carry different risks. The risk profile of

42 https://www.lombardrisk.com/solutions/regulatory-reporting/singapore-credit-loss-provisioning-ifrs9-singapore/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funded advances (overdrafts, term loans, short loans etc) have far higher implications compared to unfunded exposures (guarantees, letters of credit). Adding such unfunded exposures, therefore, needlessly restricts business for the banks, although a blanket exception might also expose the bank too much.

It would appear reasonable to exclude non-funded exposures secured by cash, a guarantee from Government or a guarantee from another bank from credit concentration limits.

Practices from elsewhere

The UK: Regulations make no distinction between funded and non-funded exposures in determining credit concentration and single obligatory limits.

Nigeria and Botswana: Regulations make no distinction between funded and non-funded exposures in determining credit concentration and single obligatory limits.

Tanzania: Regulation makes no distinction between funded and non-funded exposures, but allows exceptions based on collateral quality (like government or bank guarantee and liquid collateral). Well secured non-funded exposures can be excepted.

India: Exposure limits apply to both funded and non-funded obligations, but they distinguish between a single borrower and single group borrowing, the latter limit being slightly more than twice the former.

Although most of the reviewed jurisdictions do not differentiate between funded and non-funded exposures in determining single borrower limits, there is a business case for such differentiation in Uganda, especially if it is done in such a way that only solidly secured unfunded exposures are excepted. Excluding well secured, unfunded exposures would enable the banks to extend more facilities to a good customer without adding to the risk of single-exposure concentration.

4.3 SOVEREIGN-BACKED LENDING AND SINGLE OBLIGATORY LIMITS

For single the obligatory limits in Uganda, there is no distinction between sovereign and corporate debt and yet they are different in risk profiles. Sovereign exposures are by nature of a far lower risk profile than other types. In Uganda, some Government owned enterprises/entities might need significantly more private sector funding than exposure limits permit, yet they carry lower risks than normal private sector borrowing if they are guaranteed by Government.

There is a good business case for relaxing sovereign-backed single obligatory limits. There are cases in which a government owned business entity needs financing that would affect a bank's single obligatory limit, even in cases of syndicated lending. Examples are housing construction and power generation/distribution.

Such opportunities are unlocked if sovereign exposures are not as strict as they are for purely private borrowers.

Sound Practices from Elsewhere

Brazil: According to Resolution CMN[43] 4,677 of July 31, 2018 (legislation that establishes maximum limits for client exposure and a maximum limit for the amount of large exposures), all government and government-controlled entities are not subject to single exposure limits. Chapter II Article 6 of the legislation reads in part:
"A client is any natural or legal person that is a counterparty in an exposure. The following entities are considered as single clients:

I - the Federal Government, including the Central Bank of Brazil.

II - each entity whose voting stock is directly owned in more than 50% (fifty percent) by the Federal Government together with the legal persons controlled by or economically dependent on this entity…

III - each state of the Federation or the Federal District together with: a) it is controlled or economically dependent legal persons…and b) entities that are economically dependent on its controlled legal persons…

IV - each Brazilian municipality together with: a) it is controlled or economically dependent legal persons…

V - the central government of a foreign jurisdiction

VI - the central bank of a foreign jurisdiction, if not comprised in item V VII - each entity whose voting stock is directly owned in more than 50% (fifty percent) by the central government of a foreign jurisdiction together with the legal persons controlled by or economically dependent on this entity… "

Article 8 Paragraph 1 (Exposures Considered for The Purpose of Complying with The Limits) states:

"For the purpose of compliance with the limits mentioned in the heading, the following exposures are not considered:

I - exposures to a client mentioned in Art. 6 (I to VI above), solo paragraph, items I, V and VI…

II - the following exposures to a QCCP related to clearing activities: a) trade exposures to be settled in this entity; b) assets posted as an initial margin guarantee; and Resolution CMN 4,677 of July 31, 2018, 6 c) commitments to a mutualised default fund; III - exposures of savings and loans association arising from an agreement authorised by the Central Bank of Brazil…

43 https://www.bcb.gov.br/ingles/norms/brprudential/Resolution4677.pdf

Clearly, sovereign exposures are not subject to single obligatory limits in Brazil. Uganda could learn something useful here because in Brazil, unlike in the more developed UK or Europe, many government-owned or government-supported business entities are active in business and are banks' borrowing customers.

Nigeria: The single obligatory limit in Nigeria is not applicable to sovereign exposure. The management of banks' exposure to sovereign entities is guided by sector concentration risk limits. While sector exposure includes lending to government entities in a sector, therefore, government entities are not subjected to SOL. This enables regulated financial institutions to lend to well performing sovereign entities without taking the sector concentration risk.

Kenya: There is differentiated treatment between sovereign and other exposures. Sovereign lending and sovereign-backed (guaranteed) lending is not subject to the statutory singly obligatory limit. The Kenyan Banking Act 2015 Section 10.1 (Limits on Advances, Credits and Guarantees) states in part:
An institution shall not in Kenya grant to any person or permit to be outstanding any advance, credit facility or give any financial guarantee or incur any other liability on behalf of any person, so that the total value of the advances, credit facilities, financial guarantees, and other liabilities in respect of that person at any time exceed twenty-five per cent of its core capital.

Subsection 2 of this section goes on to state:

The provisions of this section shall not apply to transactions with a public entity or to transactions between banks or between branches of a bank, or to the purchase of or advances made against clean or documentary bills of exchange or documents of title to goods entitling some person to payment outside Kenya for imports.

There is no distinction between sovereign and corporate debt in determining credit concentration and single obligatory limit. This could be suitable for the UK where Government is less in business than developing countries.

For Uganda, it would be helpful to consider exempting sovereign backed lending.

4.4 REGULATIONS DISREGARD COLLATERAL VALUE IN PROVISIONING

Provisioning, a prudent practice for accuracy of the balance sheet as well as profitability, affects the level of Tier 1 capital and overall capital adequacy. This in turn affects the credit business through aspects like sector concentration and single borrower limits. It is, therefore, necessary to ensure that provisions are based on fair assessment of potential loan losses, considering everything that determines the likelihood of loss and how much would be lost in case of default.

Presently, SFIs in Uganda are supposed to make provisions regardless of collateral security and while this is very high level of prudence, it overly understates the asset value and profits. Recognition of the net realisable value of the collateral, even if this means significantly discounting the appraised collateral value, would be consistent with the Expected Loss model of provisioning under IFRS 9. Moving towards IFRS 9 for regulatory reporting would put Uganda in alignment with what most countries in the world are moving towards.

Expected Loss under IFRS 9 is calculated using the formula EL=PD*LGD*EAD where:

- EL is the expected loss
- PD is potential default
- LGD is the loss given default (what the bank would lose if default occurred)
- EAD is the exposure at default (what the borrower would be owing the bank at the time the default occurs)

In the above formula, the LGD already factors in the realisable value of the collateral. Since full adaptation of IFRS 9 for regulatory reporting will be a gradual journey that might take a few years, it is reasonable to consider starting to recognise the value of collateral in loan loss provisioning as an initial step.

Sound Practices from Elsewhere

EU countries and Emerging Europe: A 2014 study of 26 European countries by the World Bank's Financial Sector Advisory Centre[44] on Loan Classifications and Provisioning observed the following:

i More than half of the surveyed countries indicated that they consider collateral for provisioning purposes.

ii Almost three quarters of the countries that allow collateral to be considered differentiate between prime and other types of collateral.

The UK: Provisioning is fully based on IFRS 9 principles. Projected cashflows, probability of default, loss given default and expected loss (which factors the net realisable value of the collateral) all feed into the computation of provisions. The UK therefore recognises the value of collateral in making loan loss provisions.

Nigeria: Regulation takes collateral into consideration in the computation of provisions. This relates only to the portion of the loan that is not yet due and that is not yet 90 days past due and is subject to collateral secured by legal title to leased assets or perfected realisable collateral.

44 Loan Classification and Provisioning: Current Practices In 26 Countries (FiSAC)C http://pubdocs.worldbank.org/en/314911450690270267/FinSAC-LoanClassification-Provisioning-Paper.pdf

Kenya: Regulation takes collateral into consideration in the computation of provisions. The discounted value of collateral is deducted from the loan balance before making provisions, for a maximum period of five years from commencement of non-performing status. The forced sale value of collateral is progressively discounted at a rate of 20% per annum, (5% per quarter) for purposes of reporting. This way, provisions are made more realistic while remaining prudent.

Botswana: Considers the value of realisable security when computing provisions.

4.5 INSIDER LENDING REGULATIONS -NEED FOR MORE EQUITABILITY AND CAUTION

The current regulations prohibit executives and allows other bank staffs to get unsecured loans from the institutions they work for. Banks in Uganda therefore advance to their non-executive staff various types of loans. According to several Bank CEOs interviewed, access to staff loans is becoming one of the bases of competition for staff among banks. This can be counterproductive when staff become overindebted and their payroll deductions for loan service leave them with little to take home.

There seems to be a real need for further refinement of insider lending regulations – who is an insider? What are their limits? Why should regulation prohibit insider lending to executives and permit lending to other staff? This line of inquiry, which arose only from reported "discrimination" between executives and other staff, led the consultants to a realisation that there is an even bigger problem: potential downsides of insider lending such as abuse, staff over-indebtedness and all its attendant ills, defaults as insider borrowers leave or are terminated, temptations to make illicit money because of net pay inadequacy, and possibility of staff running personal lending businesses using the cheap loans from the bank. Emerging sound practice appears to require that insider lending be well regulated against these.

Sound Practices from Elsewhere

USA

According to a publication in the Investopedia of October 2019[45], the U.S. and many other countries require that the terms of insider loans match those given to comparable bank customers. This is done to ensure fairness and limit the access to bank funds by insiders.

Thus, while allowable, insider lending in the USA is subject to many restrictions, including limitations on the amount based on the loan purpose. Regulations also stipulate that bank insiders do not get any special treatment, incentive rates, or other benefits not offered to regular bank customers.

45 https://www.investopedia.com/terms/i/insider-lending.asp

The Federal Deposit Insurance Corporation Improvement Act of 1991 introduced new restrictions on the loan terms offered to bank insiders. The restrictions include requiring the same loan rates, repayment terms, and appraisal of the insider borrower's ability to repay the loan as those extended to non-insider, non-employee borrowers. In special cases where a bank offers a special interest rate or waives certain loan fees for all employees, then it may offer that same special consideration to insider borrowers (directors, executives), even though it does not offer those same special rates or fee reductions to non-insider, non-employee borrowers.

It is advisable that a bank use the same loan limits for insider loans as it does for non-insider loans. Some recourse loans and secured loans may not count toward this limit.

There are specific restrictions on insider loans to executive officers:

Where an insider loan will bring the combined amount of credit offered to that insider to more than $500,000, or more than the greater of $25,000, or 5% of the bank's unimpaired surplus or unimpaired capital, the bank's board of directors must vote to approve the loan. The insider seeking the loan may not participate in this vote.

- A bank can loan money or extend a line of credit to its executive officer if that loan is used to finance or refinance the officer's home or to fund the education of his or her children. Loans for other purposes cannot be made in an amount in excess of 2.5% of the bank's unimpaired surplus or unimpaired capital, or $25,000, up to $100,000. This limit also applies to partners of executive officers, so that if one executive officer borrows $35,000, the other partner may borrow only $65,000.

Singapore: It has no special treatment for insider borrowers. Although Board members, executives and staff are all considered insiders, Singapore's Banking Act (Amendment) 2016 repealed the provision that made bank directors jointly and severally liable for any bank losses arising from exposure to directors and their related parties. So, insider loans are restricted, and no insider is liable for borrowings by another.

Nigeria: There is no prescription on secured versus unsecured lending to executives in Nigeria versus other employees. The regulation, however, requires banks to have prudent policies in place to govern insider lending and there must be full disclosure. Regulation also restricts unsecured borrowing by insiders. Insider lending in Nigeria also relates to lending to any other employees and extends to their spouse, parents, siblings, and children. Nigeria has experienced serious issues with insider lending in the past, mainly due to abuse by staff and executives.

Kenya: Loans to all board members, executives and employees are considered insider loans and all insider lending requires provision of adequate security. Kenya's Banking Act 2015 forbids:

a) Granting any unsecured advances, loans, or credit facilities to any of its employees or their associates

b) Granting any advances, loans or credit facilities which are unsecured or advances,

loans or credit facilities which are not fully secured to:

- any of its officers or significant shareholders or their associates; or
- any person of whom or of which any of its officers or significant shareholders has an interest as an agent, director, manager, or shareholder; or
- any person of whom or of which any of its officers or significant shareholders is a guarantor.

c) Granting any advance, loan, or credit facility to any of its directors or other person participating in the general management of the institution unless such advance, loan or credit facility is approved by the full Board and offered in normal course of business and in terms comparable to facilities to other businesses.

Tanzania: All officers of a bank are considered insiders. Unsecured credit accommodation to employees is restricted to the equivalent of their annual remuneration. Anything beyond that is required to be secured.

Botswana: There is no restriction on secured versus unsecured lending to insiders in Botswana relative to other employees. However, disclosures are required for all insider lending.

UK: There is no differentiation between executives and other employees in determining and treatment of insider lending. Insider lending is however, significantly restricted and rather similar to the situation in the USA.

4.6 MAXIMUM OF TWO TIMES RESTRUCTURING - TOO RESTRICTIVE

Rescheduling and restructuring of facilities is like a double-edged sword. It can be used to help a good borrower get out of temporary difficulty or misused to hide poor loan performance. While being prudent that loan classification and provisions are done the right way, this should be done in such a way that it does not disadvantage otherwise good borrowers who could benefit from a third or subsequent rescheduling.

Regulation 13 (c) of the FI (Credit Classification and Provisioning) Regulations 2005 stipulates that a commercial credit facility shall not be restructured more than twice over the life of the original facility, and a mortgage or personal credit facility not more than twice in a five-year period. This is prudent but can sometimes constrain viable but struggling businesses that would have recovered with some nurturing. Furthermore, SFIs see the definition of "restructuring" as prohibitive because even a rescheduling of the payment dates or other simple loans terms are included. If a customer is suffering temporary cash flow problems caused by unforeseen circumstances, the bank should have some discretion to reschedule the facility further – but this should be accompanied by a review of the underlying assets classification.

Sound practices from elsewhere

India: There is no limit to the number of restructures, but when restructured, a standard ("performing") loan must be downgraded to sub-standard and must remain in that status for at least one year of satisfactory performance under renegotiated or rescheduled terms before upgrade to performing. In case of sub-standard and doubtful loans, rescheduling does not permit banks to upgrade the loan status unless there is satisfactory performance under the rescheduled/renegotiated terms for a year. This helps the bank to decide on when further restructuring/rescheduling should be done, and in the process apply adequate prudence in recognising the effect on the loan quality.

Nepal: There is no limit to the number of restructures. Banks may restructure NPAs upon receipt of a written plan of action from the borrower, with payment of at least 25% of total accrued interest up to the date of rescheduling or restructuring. Restructured loans attract additional provisioning of at least 12.5%. This also caters for both customer responsiveness and prudence.

Pakistan: No limit to the number of restructures. The rescheduling/restructuring of NPAs does not change the status of asset classification unless terms and conditions of rescheduling/restructuring are fully met for at least one year (excluding grace period, if any) from the date of such rescheduling/restructuring and at least 10% of the outstanding amount is recovered in cash.

Nigeria: There is no limitation on the number of restructures. However, banks are expected to have 100% provision on the outstanding balance after the 2nd round of restructuring.

Kenya: For Kenya, there is no limitation on the number of restructures.

Tanzania: Regulation restricts credit restructuring of non-performing accommodations to two times. Under COVID relief, restructuring may be done an additional two times, making four in total.

Botswana: There is no limit to the number of times a loan can be restructured. Regulation in this regard follows a case-by-case approach, but any restructuring triggers additional provisions

Ghana: Loan restructuring is not rigidly regulated in terms of number of times, but each case is treated on its own merit.

UK: There is no limitation on the number of restructures.

4.7 LIMITED TO NO DATA SHARING BETWEEN BANKS AND OTHER LENDERS

In the information age, financing decisions are increasingly driven by reliable data. Whereas in the financial ecosystem a lot of data is generated by both regulated and non-regulated institutions, there is limited and sometimes no data sharing between banks and other lenders (Mobile Money telephone companies; Tier 4 FIs). This makes due diligence on small borrowers more expensive than it should otherwise be. Since mobile money and Tier 4 MFIs operate in the financial sector space, it would be mutually beneficial for them and the banks to freely share KYC information including reporting to the CRB platforms.

The National Payments Systems Act, which is a good step in regulation of mobile money and other digital financial service providers, seems rather strict on mobile money providers sharing customer information. The NPS Regulations are silent on sharing of information by electronic money issuers. Section 64 of the Act (Protection of Customer Information) states:

A licensee or the central bank shall protect the privacy of a participant and customer information and not disclose information of a participant or customer unless the disclosure is made in compliance with the law, an order of a court or with the express consent of the system participant or customer.

A positive development in this regard is the initiation by BoU of amendments to the CRB Regulations, in part to broaden the scope of creditors that report to it. In the proposed amendments, all persons and organisations that give any kind of credit (trade credit, utilities credit, SACCO/ MFI loans, supplier credit etc) should be able to report to the CRB by applying to become Accredited Credit Providers. If this becomes part of the regulations, the basis of information sharing for credit assessments will have been significantly enhanced.

Sound Practices from Elsewhere

Mexico: There are three credit reference bureaus, known as Sociedades de Información Crediticia, in Mexico. They collect all available credit related information from banks, non-bank financial intuitions, credit card companies, utility companies that have payment plans for their customers, and other lenders/creditors. These institutions collect, organise, and keep credit information of each and every person and enterprise within the Mexican territory, with or without a banking institution relationship – as long as they get any credit of any kind, from any organisation. Anyone in the CRB data base can ask for their own Special Credit Report (Reporte de Crédito Especial or RCE), which are free every 12 months, but can be paid for at any time if one needs more frequent reports. Different financial service providers and other credit providers require the RCE and take it into account in making credit decisions. Credit information stored is not restricted to banks or regulated institutions. Banks and other lender can check the credit behaviour of anyone

from a wide variety of creditors/ lenders from the bureaus.

Kenya: Borrowers from mobile money companies must report to the CRB save for very micro transactions of KES 1,000 (USD 10) or less. Additionally, the CRBs are open to lenders and creditors of various types who can apply to the Central Bank of Kenya (CBK) to be allowed as reporting members. More than 2,200 entities now report to the CRBs, meaning that it is open to different lenders and other creditors. This allows information sharing and access by banks to credit behaviour of potential borrowers from many sources. A 12th October 2020 report[46] states:

"…the number of firms allowed to blacklist defaulters with the bureaus has dropped to 2,254 in September, from 2,332 in May last year. The drop is linked to the directive by the Central Bank of Kenya (CBK) delinking unregulated digital mobile lenders from CRBs following public outcry over widespread misuse of the credit information sharing (CIS) mechanism…"

4.8 LEGISLATION AND REGULATIONS TO SUPPORT LEASING AND FACTORING

Finance leasing is a well-developed mechanism for productive asset finance world-wide, but less so in Africa and lesser still in Uganda. According to the World Leasing Report 202047, leasing is now a USD 1.29 trillion industry (annual new leasing business). The six countries with well-developed laws and infrastructure for leasing (USA, China, UK, Germany, Japan, and France) account for about 75% of the annual aggregated leases in value. The report goes further to say the global leasing business has grown by more than 130% in the last nine years. This can be attributed, at least in part, to the suitability of leasing to productive to asset finance[48]. Debt factoring, another form of finance especially for businesses with long service-to-cash cycles that need cash continually, could with supportive regulation and legislation help bank serve such customers better.
Leasing and factoring presently have little specific legal/regulatory backing that is conducive to business. Finance Leasing is not treated like other financial products. VAT is applied, and this makes leasing an expensive form of financing. While leasing is a very important means of productive asset financing in progressive economies that have enabling laws and regulations, it is underdeveloped and not very popular in Uganda.

46 https://businessfocus.co.ug/kenya-ejects-337-digital-mobile-lenders-from-credit-reference-bureau-list/

47 World Leasing Report 2020: https://pages.whiteclarkegroup.com/rs/187-PFS-866/images/WCG%20Global%20Leasing%20Report_2020.pdf?mkt_tok=eyJpIjoiTUdRM01XRm1abU5rTVRVMSIsInQiOiJHWG41V080Nmk0NDRnSnBxOHFJV1I1eFE0czJGS01OT2VwWlpqV1dxdmdMaUYyVDgxMjQzR3Y5ZitHVFNacGFiV05JZzBGdENSVjYrOGJjckRkdnNpTzlNN2NNaGpcL0dpZFFRZHhDUHEwNG9QTjJ4bkQ5N1FqM2dVWFhUVG9lNnAifQ%3D%3D

48 Self-liquidating

Sound practices from elsewhere

USA, EU, UK: In developed countries like the USA, UK, EU and Singapore, there are laws guiding and enabling the business of finance leasing. In some of these countries, leasing is the main mechanism for asset finance especially for productive assets.

Kenya has a law and regulations on leasing, and registers considerable volumes of transactions through finance leasing, partly because of the enabling law.

Ghana has a Finance Lease law. Ghana's leasing sector is subject to prudential and market conduct regulation through the Finance Lease Law and others such as Financial Institutions (Non-Banking) Law. The Bank of Ghana has powers to regulate and supervise the establishment, operations, and closure of leasing companies.

Nigeria has the Equipment Leasing Act 2015, aimed at promoting the business of leasing in Nigeria by creating clarity and certainty in the practice of leasing and ensuring protective mechanism, for both the lessor and lessee, and establishing legal relationships between lessees, lessors and third parties.

Cyprus has the Finance Leasing law (72)(I)/2016 with a follow-up Financial Leasing Directive issued by the Central Bank of Cyprus in 2017. The legislation aims to provide a regulatory and supervisory framework for the operation of financial leasing companies providing leasing services to the public. Several local banks and private companies offer Finance Leasing services.

4.9 REGULATING FOREX DENOMINATED LENDING

In Uganda's liberalised market, banks can lend and denominate the loans in any currency. This is good because of its flexibility, especially if forex lending is done prudently by banks, only to customers who have businesses with sustainable cash inflows in the currency of the loan denomination. Forex lending exposes borrowers to foreign exchange rate risks especially if their businesses earn mainly in Uganda Shillings. Whereas many banks have safeguards for this in their Credit policies and practices, there have been cases of ill-advised forex borrowing by businesses that sell primarily in the local market. Some failed after being chocked by worsening loan service capability as the UGX weakened.

While the seemingly low interest rates in USD, for instance, might attract borrowers in that currency, not many of them have the analytical capability to consider the likely effects of UGX depreciation on their ability to service the forex denominated facilities. It would be prudent to regulate this kind of lending.

Suitable comparative sound practice for this aspect needs to be from countries whose

national currencies experience considerable fluctuations, especially depreciation. Here, we look at Nigeria, Kenya, and India.

Best practices elsewhere

Nigeria: In August 2015, the Central Bank of Nigeria (CBN), as part of its efforts to regulate the Nigerian foreign exchange market, issued a circular[49] restricting Nigerian banks from granting foreign currency denominated loans to Nigerian companies that do not generate revenue in foreign currency. In addition, banks are prohibited from re-denominating Naira loans into foreign currency. Based on this directive, foreign currency loans can only be extended to companies that generate revenues in foreign exchange. The circular is one of the policy initiatives of the CBN aimed at:

- Facilitating the stability of the foreign exchange market
- Limiting foreign exchange risk exposure of Nigerian banks
- Reducing undue pressure on the demand for foreign exchange
- Cushioning bank borrowers against taking the critical risk of high exchange fluctuation/depreciation
- Limiting the likelihood of default on repayment of foreign currency denominated loans.

The Nigerian scenario offers a good example for Uganda.

Kenya: Kenyan banks are allowed to lend in forex to Kenya residents if the lending banks maintain stipulated information including copies of duly executed loan agreements, a declaration that the borrower shall remain a resident during the term of the credit facility or advise the bank of any residential status changes. Kenyan banks can advance forex denominated loans to non-residents if the lending banks maintain appropriate information including loan agreements duly executed (specifying terms and conditions of the loans), documents to show that the collateral(s) pledged are realisable in foreign currency and a declaration that funds for repayment shall be from abroad.

India: There is considerable restriction on forex lending/borrowing in India. Article 3 of the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, issued by the Reserve Bank of India, states:

Prohibition to Borrow or Lend: -
Save as otherwise provided in the Act, Rules or Regulations made thereunder, no person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India and no person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India:

49 Referenced BSD/DIR/GEN/LAB/08/037

Provided that the Reserve Bank may, for sufficient reasons, permit a person resident in India to borrow or lend in foreign exchange from or to a person resident in or outside India and/or permit a person resident in India to borrow in rupees from, or lend in rupees to, a person resident outside India…"

4.10 RECOGNISE SECURITY INTEREST IN MOBILE PROPERTY (SIMP)

One of the historical challenges to credit access in Uganda has been the absence, or inadequacy, of collateral in the form of landed property. Whereas some financial institutions innovated ways of accommodating non-landed collateral through charges on chattels, for a long timer there no law, backed by a firm registry for implementation, supporting movable property collateral.

The Security Interest in Movable Property Act 2019 now provides for the use of movable property as collateral for credit, the creation and perfection of such security interests, the rules for determining priority of claims, the registration of related security interests by notices, a Register of Security Interests in Movable Property, enforcement of security interests, search of the register and related matters.

URSB now operates the Security Interest in Movable Property Registry, a fully electronic notice-based registry system that can be accessed online by persons authorised to register and the public for searches, at any time of the day for purposes such as:

i. Registration, amendment, cancellation and discharge of security interests and liens in movable property

ii. Conducting searches

iii. Certifications

iv. Ascertaining of priority between registered competing claims in the same movable collateral.

With this law and registry in place, it would be helpful for regulation to recognise SIMP collateral in assessing whether or not a facility is secured. Perfected, registered, and certified SIMP collateral should be considered, as a discounted value.

4.11 CONCLUDE THE MDI AMENDMENT TO EASE LENDING BUSINESS FOR MDIS

The MDI Act was enacted in 2003 and it has since never been reviewed or amended, whereas things have dramatically changed in both the business environment and business models of institutions regulated under this Act. Among other things, the following fundamental changes have occurred in the MDI lending business environment:

a) *The market focus and business model, which was by 2003 mainly very small, group delivered*, and unsecured microloans backed by semi-formal peer-guarantees, has now changed. Owing to increased customer awareness, preference for confidentiality and ability to offer collateral for personal loans, the once popular group loans are now typically less than 15-20% of MDI portfolios – and reducing in significance. The loans which were usually less than 12 months in duration with weekly payments in meetings, are now longer – most over a year, with repayment structured in line with the cashflow realities of the borrower. All this calls for alignment of the now the stringent asset classification and provisioning regulations to the current business realities of MDIs.

b) Other regulated financial institutions are now permitted to run *new lines of business like bancassurance, agent banking and Islamic banking*, which MDIs cannot explore because the MDI Act does not permit.

c) *Changes in the business environment* are now so fast (presenting both good opportunities and critical risks) that certain strategic but often changing aspects (like product types) are better subjected to Regulations rather than the Act itself.

d) Since MDIs now lend mainly individuals and in some cases institutions, the limitation on lending a *maximum of one percent of their core capital* to any single borrower constrains business.

The long overdue process of amending the MDI Act, for which consultations started in 2011, needs to be concluded.

Recommendations on Credit

Recommendation 4.1: *Gradually move to align the FIA credit reporting requirements for periodic regulatory reporting with IFRS 9, to make loan reporting less cumbersome and more consistent.*

Since banks have largely adopted IFRS 9 for statutory financial reporting, it is necessary to integrate this fully with regulatory reporting, to make loan reporting less cumbersome and more consistent. BoU should review the FIA (amended) 2004 and the FI (Asset Classification and Provisioning) Regulations 2005 to fully align with IFRS 9 guidelines. Owing to the necessary readjustments and skill updates that might be needed on both sides of regulation, this should be done gradually, with the aim of full alignment within two or three years.

Recommendation 4.2: *Differentiate between funded and non-funded exposures in determining statutory concentration limits to* increase lending opportunities.

Amend the FI (Credit Reporting and Provisions) Regulations 2005 to recognise non-funded exposures as contingent liabilities and thus:

a) Exclude 100% cash backed non-funded exposures (like cash backed guarantees or LCs) from single exposure calculation.

b) For otherwise secured non-funded exposures, only take the related expected loss (in keeping with IFRS principles) in determining concentration. Alternatively, just determine a percentage to take into consideration for credit concentration determination, like 25 percent.

Recommendation 4.3: *Differentiate between sovereign and other exposures in determining the single obligation limits and identify past-dues occasioned by delayed Government payment to its supplier (the borrower), except them from the strict provision rules.*

Exempt lending to sovereign entities or with sovereign-guarantees from the single obligatory limit. This exemption should be restricted to:

a) Loans and advances unconditionally guaranteed by Government

b) Such exempted loans and advances not exceeding sector concentration limits imposed on banks by BoU or by any law.

For defaults occasioned by delays in Government payment to its suppliers (the borrower), with documented evidence of Government dues exceeding the defaulted amounts, differ downgrading to substandard by 90 days.

Recommendation 4.4: *Recognise realisable value of collateral in determining provisions, to ensure fair asset values are carried.*

By way of moving towards IFRS for regulatory reporting, review the FI (Credit Classification and Provisioning) Regulations 2005, deduct the discounted immovable collateral in computation of provisions. For this, BoU could have its own guidelines for collateral valuation/discounting. This could for instance be a 50% discount of the appraised forced sale value of the collateral in case of property, 20% discount in the case of cash collateral and a 30% in the case of bank or Government guarantee.

Recommendation 4.5: *Amend Insider Lending regulations to reduce both inequity and pertinent risks.*

Regulation should:

a) Redefine insiders to include all Board members, substantive shareholders, executives, managers, and staff plus all spouses and children.

b) Introduce a regulatory limit on bank staffs borrowing (including executives) so that banks' staff loans are limited to:

   i. A maximum of three loans outstanding at any time.

ii. The equivalent of 60 months (or half the remaining employment contract period, whichever is lower) net pay.

iii. Any other loans to staff should be arm's length, commercially priced, well secured according the FI's policy on collateral, and subject to total monthly loan service deductions not exceeding 50% of net salary.

Recommendation 4.6: *Remove the cap on the number of times a loan can be rescheduled or restructured, to help SFIs deal constructively with redeemable "bad" borrowers.*

Amend the FI (Credit Classification and Provisioning) Regulations to:

i. Redefine "restructuring" to exclude minor repayment rescheduling like varying the dates of the month or quarter when repayment becomes due

ii. Lift the limit on the number of times a facility can be restructured, subject to a downgrading each time a restructuring is done, which downgrading can only be redone after 12 months of satisfactory performance from the date restructuring.

iii. Require that in case the loan period is extended, all related collateral and insurance are also extended to match.

Recommendation 4.7: *Permit and require some data sharing between mobile money companies (and other digital finance service providers) and regulated financial institutions, to reduce the cost of customer due diligence.*

Permit the sharing of data between Tier 4 institutions regulated by UMRA, mobile money companies and other digital financial service finance service providers and financial institutions for a limited range of purposes including credit due diligence. To back this, require that all digital loans transacted on mobile money and other digital platforms be reported to the CRB.

Recommendation 4.8: *Champion an enabling law related to leasing and similar financial services, to unlock asset financing possibilities to corporate businesses and MSMEs*

UBA and BoU should spearhead the drafting of a Bill for an enabling law on leasing, factoring and related transactions like invoice discounting and securitisation and financial products or mechanisms, or amend the FIA to accommodate them as financial products for intents including tax (especially VAT). The laws should help define these products, their enforceability of transactions, the rights and obligations of lessors and lessees and other aspects. This should ideally be preceded by a market diagnostic/feasibility study which evaluates different legislative and regulation models for these services and ranks them to recommend the best.

Recommendation 4.9: *Restrict lending in foreign currency, to help UGX earning borrowers avoid adverse effects of currency depreciation.*

Restrict foreign exchange lending to only corporate borrowers who earn mainly on forex, and who have established and sustainable forex inflows from their normal operations. The exceptions would if the forex denominated loans includes a forward/ future contract fixing the exchange to be used throughout the loan period, and thus making it predictable.

Recommendation 4.10: *Recognise Security Interest in Movable Property (SIMP) as effective collateral, to stimulate SFI lending to good customers who do not have immovable property to pledge as collateral.*

In regulating and supervising FIs and MDIs, BoU should consider recognising the value of SIMPO charges as valuable collateral. This should be done only for perfected, registered, and certified, first ranking SIMPO from the URBS registry. Since SIMPO items are mobile, their appraised values should be:

- Significantly discounted at first registration (by at least 50% discount for machinery and equipment; 40% for motor vehicles and other assets)
- Reviewed every three or six months depending on the nature of the movable asset.

Recommendation 4.11: *Conclude MDI Act amendment to support enhanced access to financial services by low-income Ugandans through MDIs*

The long overdue process of amending the MDI Act, for which consultations started in 2011, needs to be concluded. Among other things, this should help the MDI lending business in:

a) Aligning the presently stringent asset classification and provisioning regime to the current business realities of MDIs

b) Permitting lines of business like bancassurance, agent banking

c) Leaving certain strategic but often changing aspects (like product types) to be subjected to Regulations rather than the Act

d) Allowing MDIs to lend more than one percent of their core capital to one borrower

Non-regulatory recommendations - Credit

During execution of this assignment, the consultant came across a few related issues that also need to be addressed in the financial sector in addition to those that directly pertain to regulation of SFIs. These are herein recommended for consideration and possible action:

a) *Reintroduce tax incentive on interest income received by financial institutions from agricultural loans (to reduce the cost of agriculture credit)*. Because Agriculture is the main economic activity for about two thirds of working Ugandans, the sector needs nurturing in terms of financial access. One effective way of doing this is attracting banks to lend to the sector by tax-exempting the income from agriculture lending.

A 2015 publication of the International Institute for Sustainable Development[50] explains, with empirical evidence from several developed and developing countries, the need to support agricultural sector to make it more viable for financing. The publication suggests among others:

(i) Support to farmers in the form of payment of indemnities, reductions in social security contributions and *exemption of taxes*…

(ii) Subsidising private insurance schemes – for example, Israel covers part of the insurance premiums of agricultural producers, and in Brazil, Garantía Safra was created as a disaster assistance program that compensates small-scale farmers for production losses following weather-related and other events (OECD, 2013)

(iii) Creating credit guarantee funds or supporting credit guarantee schemes offered by private institutions through counter guarantees as is the case with the Mexican Fideicomisos Instituidos en Relación con la Agricultura (FIRA), the Indian Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) and the Nigerian Agricultural Credit Guarantee Scheme Fund – all of which have been very effective and helpful.

b) *Guide on lending to priority sectors*. Government of Uganda has well-articulated priority sectors[51] and private sector financing, which is critical for economic growth, need guidance to give preference to those sectors. Requiring a minimum proportion of the loan portfolio of every bank to be in a priority sector could help boost these sectors. This kind of move might at first seem odd, but in the long run works for national development including deepening and broadening the financial sector itself.

Example from Asia. Prudential regulations of India and Nepal have clearly directed the commercial banks to lend certain portion of their credit portfolio to priority sectors. In India, all banks must lend 40% of their net loan to the priority sectors, out of which 18% should be to agricultural sector, 10% to the 'weaker sections' and 1% of previous year's total advances is given under the Differential Rate of Interest (DRI) scheme.

Foreign banks in India must make 32% of their loans to the priority sectors, out of which, no less than 10% should be allocated to small-scale industries sector and

50 https://www.iisd.org/system/files/publications/financing-agriculture-boost-opportunities-devloping-countries.pdf

51 Among them Agriculture, Tourism/ hospitality, Manufacturing, and ICT

no less than 12% to the export sector. The priority sector broadly covers businesses or schemes to which the government wants to channel credit to achieve its social objectives, including agriculture, small-scale industries, retail trade, small transport operators, professional and self-employed persons, housing, education loans and micro-credit. If banks are unable to meet this target, they may deposit an amount equal to the shortfall with the Small Industries Development Bank of India (SIDBI) or the National Bank for Agriculture and Rural Development (NABARD), both of which invest in such sectors. In recent years, the government has broadened the definition of priority sector lending to include more commercially viable areas like ICT and housing loans up to IRs.1 million.

c) *Establish well priced long-term funds to finance start-up or expansion capital costs* for private enterprises in priority sectors (agriculture, selected manufacturing subsectors, hospitality, ICT etc) borrowing from commercial banks. Government should provide funding and fiscal incentives for banks to end to priority sectors, in line with the Financial Inclusion Strategy, the upcoming National Agricultural Finance Strategy and Financial Sector Development Strategy. These well thought out frameworks need adequate fiscal backing. ACF is a good start, which focuses only on agriculture and is not adequate to cause the kind of economic impact desired.

Practices elsewhere: Both India and Nigeria, both high growth middle income countries, have low-cost funds provided by Government to banks for lending to priority sectors.

d) *BoU guidance on interest rates – resolve the CBR/bank lending rates anomaly.*

As a regulator, BoU has a very healthy business relationship with SFIs. There is a lot of constructive discussion with the SFIs and BoU listens to the logic from the SFI side. The ongoing debate on why SFIs are slow in lowering their interest whereas BoU has lowered the CBR to 7% and further to 6.5% is healthy and needs to be informed by factual reality. It should consider the SFIs' weighted average cost of capital, which may or may not necessarily be dominated by the CBR.

It is, however, imperative that the seemingly wide gap between the CBR and the average commercial bank/SFI lending rates be probed and resolved. A quick comparison with Kenya will highlight this need. CBK lowered its CBR to 7% in April 2020, as has BoU. Whereas both central banks now have a CBR of 7%, Kenya's average lending rates by SFIs have ranged between 11.75% and 12.29% from April to Dec 2020, while Uganda's has ranged between19.3% to 19.9%. Since it cannot be argued that Uganda has higher inflation than Kenya's, this is clearly an anomaly to be resolved through a deep study of the comparative dynamics that make Ugandan interest rates so much higher.

e) *Regulation of Tier 4s*

When finally, BoU starts regulating the selected Tier 4 institutions (mature SACCOs), it will be helpful to keep in mind that SACCOs have certain structures and principles embedded, which might make them dissimilar to some other institutional types. They are member-based, member-governed and member-used. Regulation

should, while ensuring safety and soundness, mind this context. Accordingly, the ownership and governance regulations should use the normal principles in the context of a cooperative setting.

f) Address the crowding out effect of Government borrowing

There is considerable and well-founded concern over the cost of accessing financial services in Uganda, especially loans. Among the factors contributing towards less private sector lending is the high yielding, risk free lending to Government through Treasury instruments. While this is not the only cause, the volume of treasury bonds issued needs to be reduced so that banks channel more money into private sector lending.

g) Asset Reconstruction Company

Speed up the issuance of the regulatory framework for and operationalisation of the Asset Reconstruction Company (ARC) to help banks in management of toxic debt, and to restructure/reconstruct/turnaround companies with systemic ramifications. This will reduce SFIs' time spent on NPLs and improve related inflow of liquidity.

h) Making ACF more effective

Improve the speed of Agricultural Credit Facility Refund process, which SFIs presently find too long and discouraging.

i) Remove fiscal constraints to banks' credit business, like delays (often more than three months) in settlement of arears with Government suppliers/ service providers, to avoid NPL build up resulting from this.

j) Complete and implement the Financial Sector Development Strategy, Agricultural Finance Policy and Agricultural Finance Strategy, to ensure that financial inclusion is high on the national strategy action and is supported in a well-defined, holistic, and consistent way. These national policy and strategy documents lay down pragmatic, well thought out strategic intent to boost financial inclusion comprehensively.

5 CREDIT REFERENCE BUREAU (CRB)

Credit reference is a vital function of the financial ecosystems for its role in facilitating speedy due diligence for credit and related forms of financing. In both developed and developing countries, lenders and other creditors depend a lot on customers' credit history to make informed judgements on whether to advance credit, and how much. The credit reference system, to be effective in informing credit and decisions, needs to have the following attributes:

a) Breadth of coverage, to accommodate large numbers and variety of users (those that report and those that use the CRB data) and to ensure that information about every debtor/borrower captures their credit history comprehensively

b) Timeliness in responding to information request, to help the creditors/requestors use the information efficiently and when still relevant

c) Accuracy of information, to ensure that the information stored and given out is reliable and up to date

d) Completeness of disseminated information, so that data requestors receive information for periods long enough to help in judging the borrowers' credit behaviour.

Regarding CRB aspects, this assignment sought to ascertain whether the CRB system in Uganda is as effective as it should be and if not, what the key areas of improvement are.

There is presently a draft of amended FI (CRB) Regulations which proposes to broaden access to and use of the CRB. Since this is not yet in effect, its provisions cannot be quoted or taken as an accomplished solution to gaps that exist. The observations and recommendations on the CRB system here are, therefore, based on existing law and regulations in force.

5.1 NARROW BASE OF CRB INFORMATION PROVIDERS AND USERS

An effective credit reference system must be broad in terms of access and sources of information/ reporting. The credit behaviour of any person or organisation can best be determined by examining wholesomely how they pay their dues and obligations. In Uganda, this should ideally include loan repayment to regulated and unregulated financial institutions, utility companies, digital lenders, providers of goods and services on payment plan (hire purchase, solar power companies, car dealers, property vendors etc).

In Uganda presently, the use of CRB (both data reporting and requesting) is restricted. Regulation 16(1) of the current Financial Institutions (Credit Reference Bureaus)

Regulations, 2005 narrows credit information sharing to only BoU supervised institutions (FIs and MDIs). This leaves out data related to borrowing and debts from other credit providers such as money lenders, SACCOs, Tier 4 Microfinance companies, utilities providers, and non-BoU supervised digital lenders. The credit information from the CRB system is, therefore, of limited use since its coverage is thus restricted. Inclusion of all lenders and creditors in CRB reporting and usage is necessary to make the CRB more effective for financial institutions.

Sound Practices from Elsewhere

UK: The Consumer Credit (Credit Reference Agency) Regulations 2000 allow for access to CRB data by all credit providers. This includes financial institutions, Insurance companies, credit card companies, hire purchase and leasing companies/ schemes, and all persons/ organisations that sell on or otherwise advance credit to their customers.

Kenya: The Kenya Reference Bureau Regulations 2020 widened access of CRB data to all credit providers, including regulated financial institutions, digital/mobile money lenders like M-Pesa, unregulated MFIs and other types of credit providers.

Tanzania: The Bank of Tanzania (Credit Reference Bureau) Regulations 2012 grants access to CRB data to all credit providers in the country, not only regulated financial institutions.

Malawi

Regulation 14(2) of Malawi's Credit Reference Bureau Act, 2010 permits CRBs to share customer data with financial credit providers freely. It also permits sharing with non-financial credit providers if the customer consents.

Mexico: The three credit reference bureaus in Mexico, known as Sociedades de Información Crediticia, collect all available credit related information from banks, non-bank financial intuitions, credit card companies, utility companies that have payment plans for their customers, and other lenders/ creditors. This credit information on every person and enterprise within the Mexican territory, with or without a banking institution relationship – as long as they get any credit of any kind, from any organisation. Use of the bureaus is also open to the public.

5.2 LAXED REGULATORY REQUIREMENT FOR TIMELY CRBS' RESPONSE

Timeliness is crucial for CRB information to aid credit decisions. Among the users interviewed, the length of time the CRBs take to respond to information request was a common concern. The ten days' maximum time in the regulations is too long and holds SFIs back in making credit decisions. Often, there are delays in CRB's availing

credit information to SFIs thus exposing the SFIs to potential liability for customer inconvenience and delays in decision making. It also slows down credit analysis and decision making by SFIs and other lenders. While SFIs would like very speedy response to their requests since this is very critical to the financial sector, speediness of the CRB response should be a regulatory issue. A regulatory requirement for a shorter time (say five working days) should be put in place to address the issues and reduce such delays.

Sound Practices from Elsewhere

UK, Kenya, Tanzania, Nigeria, Malawi: A review of regulations from these countries suggests none of them imposes liability on CRBs for delays in availing credit information. This would, however, be a good move occasioned by specific need that may be peculiar to Uganda (need for speedier CRB response). It could be, by way of a regulatory sanction, because even if SFIs commit CRBs to strict timelines, the SFIs themselves would have very little recourse in case the CRBs still delayed. Regulatory provision in this area would address the problem and perhaps help Uganda introduce a best practice.

5.3 MISLEADING DATA FROM CRBs

Alongside inclusive access/usage and timeliness, the other need for improvement is in accuracy and correctness of information, with content that is detailed enough to aid credit decisions. There are instances in which CRBs give wrong or misleading data information on borrowers. Furthermore, the SFIs have some frequent complaints that the information disseminated by the CRBs is too brief and restricted in content to be useful in certain cases. It would be helpful to include in the CRB regulations provisions that would:

- Put the responsibility of ensuring accurate and complete CRB information on the CRB companies (unless the error arose from inaccurate reporting by the creditor(s)
- Stipulate the minimum content that CRB reports to requestors should have.
- Consequences including bearing of financial burden on the CRB that provides inaccurate reports or information to SFI or any other financial institution
- Consider consequences, including action for fraud, to the staff who issue these reports – and the implication of limiting employability in the financial sector due to fraud.

Sound Practices from Elsewhere

Nigeria: Section 6.7 of Nigeria's Guidelines for The Licensing, Operations and Regulation Of Credit Bureaus, 2008 provides that where there are legal liabilities or costs arising from the inaccurate data, the data provider (CRB in this case) shall be liable. This appropriately obliges the CRB company to report accurate information as contained in its possession.

Kenya: Regulation 72(4)(d) of Kenya's CRB Regulations 2020 provides that the Central Bank may direct the bureau to compensate or take remedial measures in respect of any loss or damage suffered by a customer because of the use of any inaccurate, erroneous, or misleading credit information supplied by a credit information provider.

Australia: Part III (A) of the Australian Privacy (Credit Reporting) Code 2014 (Version 2) provides that where the CRB is satisfied that the default information is inaccurate, out-of-date, incomplete, irrelevant, or misleading, having regard to the purpose for which the information is held by the CRB, the CRB must agree to correct the credit reporting information about the individual by destroying the default information within thirty (30) days. Thus, the CRB is required to give current, up-to-date information at all times.

Thailand*:* Section 26 of Thailand's Credit Information Business Act, B.E. 2545 mandates the CRB (Credit Information Company) to correct any misleading or erroneous data within thirty (30) days in case of detection of the inaccuracy. Furthermore, the law imposes an obligation on the CRB to report any corrected information immediately without delay to other relevant stakeholders such as lenders. This creates an accountability framework for the CRB to periodically review and cross-check the accuracy of credit information supplied to the financial ecosystem.

5.4 EXCLUSION OF WRITTEN OFF/POORLY PAID LOANS AFTER 5 YEARS

For some lenders who have long term facilities, restricting the age of CRB report content to five years may not be a sound idea. In such cases, the credit report period needs to be longer. Regulation 21(1) of the FI (CRB) Regulations states:

"A credit reference bureau shall maintain a historical database covering a five-year period for the purpose of providing detailed credit information, and shall keep the database for a period of not less than ten years"

It is not clear when the five-year period starts to run – whether from the time the default incidence occurs, the time the loan is eventually paid off or written off. Whatever the case, exclusion of written off and/or poorly paid loans from the CRB reports after five years may sometimes compromise prudent credit risk assessment by omitting vital credit history of the borrower. Ten years, on the other hand, would be so long that former defaulters who has since repaired their credibility would still have a not-so-good report. Seven years would be more helpful (long enough to help good opinion and short enough to avoid negative reports on reformed borrowers).

Sound Practices from Elsewhere

Malaysia: The Credit Reporting Agencies Act, 2010 (as amended in 2016) does not contain any time limitation of reporting of a credit facility by a CRB. Thus, the customer info can be disseminated for as far back as it is available.

Singapore: The Credit Bureau Act 2016 does not contain a time limit on reporting on CRB status.

UK: The Consumer Credit (Credit Reference Agency) Regulations 2000 do not contain provisions on credit profile deletion under any circumstances/retention period. It would thus appear that "the right to be forgotten" does not apply in case of loan defaults and data held by CRBs since compliance with credit agreements/contracts is a public interest issue impacting not just the borrower, but the integrity of the financial services sector.

Tanzania: Regulation 36 of Tanzania's CRB Regulations mandates CRBs to retain all data for a period of six (6) years and thereafter archive the same. This applies from the date of final loan repayment, bankruptcy, assignment, or write-off.

Nigeria: Regulation 5.6(1) of Nigeria's CRB Guidelines provides that a credit bureau shall maintain a historical database covering a five (5) year period for the purpose of providing detailed credit information and shall keep the database for a period of not less than ten (10) years after which it shall be archived.

Kenya: Regulation 34 of Kenya's CRB Regulations 2020 provides that each bureau shall retain customer information on non-performing loans until the expiry of five years from the date of final settlement of the amount in default including the settlement of the amounts payable under a scheme of arrangement; or until the expiry of seven years from the date of the customer's discharge from bankruptcy as notified to the bureau by the customer. Where a customer notifies the bureau of the customer's discharge from bankruptcy, the customer shall provide the relevant certificate of discharge issued by the High Court or by a written notice from the Official Receiver stating that the Official Receiver has no objection to a certificate of discharge being issued to the person, irrespective of any write-off by the institution of the amount in default in full or in part at any time.

Recommendations on Credit Reference Bureau (CRB)

Recommendation 5.1: *Allow other lenders/ creditors to access the CRB*

To broaden and enrich the sources and utility of information, open the CRB system to creditors and lenders of the following categories:

- Tier 4 MFIs and money lenders regulated by UMRA
- Unregulated Tier 4 MFIs
- SACCOs, regulated by UMRA or MTIC
- Utility providers like National Water and Sewerage Corporation and electricity distribution companies like Umeme

- Hire purchase equipment vendors, motor vehicle and house/home sellers under payment plans
- Digital lenders including those using Mobile Money platforms.

The above should be permitted to register with the CRBs and submit as well as use CRB data. This would be in line with Section 25 of the Financial Institutions (Amendment) Act, 2016, which gives BoU powers to make Regulations providing for the access and use of the Credit Reference Bureau by other credit providers in consultation with the Minister of Finance).

Recommendation 5.2: *Introduce a maximum response-time limit of five working days to CRBs*

Include in the FI (Credit Reference Bureau) Regulations a requirement that CRBs respond to information request from SFIs, with adequate information, within five working days of receiving of receiving such request. This should be accompanied by a reporting mechanism by SFIs to BoU of any CRB response delays beyond the stipulated time limit. If the CRBs work with SFIs to standardise the reports and make them comprehensive, it is reasonable to expect that within five working days each request is responded to.

Recommendation 5.3 *Place the responsibility and consequences of providing inaccurate information on the CRB*

An attempt to address this is already underway through a provision in the new draft CRB regulations. BoU and UBA now need to ensure that Clause 37 of the Draft FI (Credit Reference Bureau) Regulations 2020 (which imposes liability on CRBs where they supply misleading or inaccurate information to any user) remains intact in substance when the Regulations are gazetted. CRB staff members who knowingly and/or negligently supply inaccurate data should also be liable personally where instances of fraud are involved.

Recommendation 5.4 *Extend the communicable information history from five to seven years*

Extend the age limit for default information to be communicated by CBRs from five to seven years from the date of final settlement or write-off of the defaulted loan. This will create a longer data retention-for-communication period for borrower defaults and written off loans in order to give more comprehensive credit profile of borrowers.

Non-regulatory recommendations - CRB

a) *Centralised credit reference system for reporting.* A centralised credit reference system could be created at BoU into which all the information from the CRB is automatically reported. This system would process all the info from the CRBs into individual credit reports, to be accessed by information requestors who might need this kind of processed credit info rather than the detailed data from the CRBs. An example of this is in Malaysia.

Malaysian system: In Malaysia, the information reported to the Credit Bureau is stored in a computerised database system known as the Central Credit Reference Information System (CCRIS). The CCRIS automatically processes the credit-related data received from participating financial institutions and synthesises the information into credit reports, which are made available to the financial institutions and the borrowers, upon request. Subject to the approval by Bank Negara Malaysia (Central Bank), credit reporting agencies (CRA) registered under the Credit Reporting Agencies Act 2010, can access the credit information of individual borrowers in CCRIS. It is a system created by Bank Negara Malaysia (BNM) which synthesises credit information about a borrower or potential borrowers into standardised credit reports.

b) *Consider credit reference by CRBs on mobile phones and other electronic devices such as wearable smart watches.* CRBs could be mandated to develop mobile credit score systems with both a mobile USSD Code and internet link where clients interested in mobile financial products or internet banking services can log in and the credit check is done online. This would address the issues of a good case study is Hong Kong where the website CreditGo.com.hk offers a basic free credit score and report platform, to obtain a personalised credit report. The customer can pay a very minimal fee and self-assess on the financial products they qualify for thus enhancing convenience and saving on time and cost for all the parties involved. This will enhance alternative credit scoring and algorithmic tools that can be used as data points for consumer credit.

c) H*igh costs/fees of obtaining CRB information,* although operational in nature, the cost of access has been cited as a challenge by several SFIs. The detailed cost and pricing analytics of the CRB information are beyond the scope of this assignment and thus it is recommended that:

- FIs (through UBA) should engage the CRBs to work out pricing that is viable to the CRBs but not too high for the SFIs. This is a negotiation/contractual issue since there cannot be regulations on pricing.
- Determination of the pricing should include a study of costing and pricing models of comparable CRBs in other jurisdictions.

d) *Downgrade of performing facilities linked to a borrower with a non-performing facility.* The CRB should be enabled to allow the uploading of facilities with 'Zero' days linked to non-performing accounts of the same customer (CRB reporting rejects credit facilities with 'Zero' days in arrears that are reported as 'non-performing'. On the other hand, the Central Bank requires Banks to downgrade all credit facilities to Non-Performing Assets (NPA) if a customer with multiple credit facilities has any of the facilities as non-performing).

e) *Validation of borrower identification* - The SFIs have suggested that a *validation portal be hosted at BoU* such that Participating Institutions (PIs) will be in position to also validate the National Identification Number (NIN) online. This will require a tripartite Memorandum of Understanding between NIRA, NITA-U and BoU. Although

this is not a strictly CRB issue, it should at least be discussed in the context of CRBs.

f) *Audit of CRB reports to SFIs* - BoU issued directive for annual audit of CRB activities on the reporting side of SFIs. There is a recommendation that this activity to be included in the Risk report of SFIs to BoU. This requires follow up because BoU already has the regulatory mandate under the existing Financial Institutions (Credit Reference Bureaus) Regulations, 2005. The directive can be amended to provide for risking of annual CRB audit.

g) *Proactive consumer/borrower listing* - permit a voluntary and client-based system for interested people/citizens with little or no credit history to voluntarily supply basic digital consumer data such as phone airtime purchases, Safe Boda/Uber ride payments data, utilities, etc in order to build a voluntary credit profile that can be used to assess their own credit worthiness with an incentive to lend them and bring them into the financial inclusion and access brackets.

h) *NIRA connectivity* - The ongoing discussion on NIRA connectivity with the financial sector is important for CRBs, especially the move to eliminate the financial card and have SFIs access the NIRA identification database. Borrower profiles can be uploaded directly via their NINs just like it is in India where the Aadhaar, a 12-digit unique identity number is obtained voluntarily by residents or passport holders of India, based on their biometric and demographic data.

In India, the data is collected by the Unique Identification Authority of India (UIDAI), a statutory authority established in January 2009 by the government of India, under the jurisdiction of the Ministry of Electronics and Information Technology. This followed the provisions of the *Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits, and services) Act, 2016*. This card is directly linked to the CRB system and participating entities can access the electronic credit scores of the intending borrower whenever the prospecting borrower expresses interest in obtaining credit. This proposal was also covered in the Agent Banking/DFS report.

i) *Access to Big Data* - CRBs are interested in accessing *"alternative data"* (data used to obtain insight into the investment process) in order to harness big data and do credit profiling for corporate/non-individual borrowers. Where automated/algorithm credit scores are used, CRBs must disclose how the scoring algorithm weighted various credit scoring factors and how the reference groups used to arrive at a credit score are comprised/generated for transparency and giving the data subjects an opportunity to correct any errors or algorithmic biases that may be generated by automated processes.

j) *Development of CRB Data sharing standards* across the formal and non-formal financial services sector would also be a suitable recommendation. For instance, Kenya has an elaborate CRB Data Standards Manual (DSM) that harmonises the legal framework providing for mandatory sharing of information on NPLs and voluntary sharing of information on Performing Loans covering aspects such as data specification, data sets, required fields, cut off period, et cetera. This will be vital as the CRB opens up to non SFIs as proposed.

k) *Qualify some defaulter reports in exceptional cases*. Due consideration should be accorded to otherwise good borrowers who were constrained due to circumstances beyond their control, but who have remedied their credit credibility and whose credit behaviour is now regular. It is worthwhile considering having a standard note to the reports for such. This also means that if an SFI had reported a default to the CRB before and the borrower exhibits good credit behaviour for five years, they should be reported to the CRB as reformed.

Some best practice recommendation from South Africa

Section 9 of the South African Credit Rating Services Act, 2012 provides for a systematic framework on CRB methodologies, models, and key rating assumptions. Specifically, section 9(2) empowers CRBs to periodically assess and modify credit assessment models and methodologies and modify them for appropriateness to new financial products. This creates adequate self-regulatory mechanisms to keep lenders and CRBs adept with new products and risks to adequately support the pace of innovation and market evolution.

Section 29 of the same Act also gives the Registrar powers to cooperate with other regulatory authorities on matters of common interest. This may include both domestic and cross-border cooperation.

Part C

SERVICE DELIVERY AND TECHNOLOGY

6 INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

For purposes of clarity on scope of this report, the ICT section is limited to SFIs' internal and external ICT challenges. It does not address products and new delivery channels, which are covered in the section on Digital Financial Services (DFS).

Although the term ICT is commonly used as a synonym of Information Technology (IT), ICT has a far greater scope than IT. It entails the role of unified communication and the integration of telecommunications (telephone lines and wireless signals), computers as well as necessary enterprise software, middleware, storage, and audio-visual systems, which enable users to access, store, transmit and manipulate information. This definition implies that ICT is not limited to use of internet, computers, and telephone. To illustrate, a typical simple ICT is composed of four components as follows.

6.1 THE DATA CENTRE DIRECTIVE – CIRCULAR EDS.306.2 ON A FULLY FLEDGED IN-COUNTRY PRIMARY DATA CENTRES

When an ICT related directive or circular makes compliance very expensive and the intended solution could be provided by a more affordable alternative, SFIs suffer. The Data Centre Directive, Circular EDS.306.2, requires SFIs to operate on a fully fledged in country Primary Data Centre, which impacts the smooth running of the SFIs in various ways. Compliance includes very high capital expenditure and a double cost burden for

banks belonging to groups for which primary data centre is already set up at a global or regional level to serve several markets. Costs of both setting up and running an in-country data centre for each bank are reported to be very high. This may lead to non-compliance to the capital adequacy requirements as set out in section 26 and 27 of the FIA 2004; and loss of technical support from highly specialised teams and the benefits of a centrally managed data centre, which may also impact the operations of the SFIs.

This requirement appears to have been motivated by BoU's need to have data access immediately available for regulatory action in the event of distressed/failing SFIs. Access to data, however, does not necessarily require physical servers to be located in the country. Therefore, there is need to consider the viability of the suggested alternatives such as cloud and mirrored data centres. It would also be helpful to consider a shared data centre for Ugandan banks with no international group linkages.

Sound Practices Elsewhere

South Africa

The South African Reserve Bank (SARB)/Prudential Authority issued a directive (D3/2018) and guidance note (G5/2018) on cloud computing and the offshoring of data by banks requiring banks to follow a risk-based approach that is aligned with their risk appetite, based on the nature and size of operations, when implementing cloud computing and offshoring the data. The directive specifies that banks must have in place a formally defined and board-approved data strategy and data governance framework.
Banks must ensure that their risk and control frameworks, including their application, are designed and operative effectively to manage risks associated with the use of cloud computing and/or the offshoring of data. Banks that use cloud computing and/or offshore their data must ensure that they remain compliant with applicable legislation and regulations, both locally and in the country where cloud services and/or data are hosted.

SARB Directives and Guidance Notes relating to outsourcing. All South African banks falling within the scope of the South African Banks Act No. 94 of 1990 (Banks Act) are required in terms of section 6(6) to comply with the requirements/directives imposed on them by the SARB (SARB Directives), in particular:

- outsourcing arrangements generally in its Directive on Reporting Requirements relating to Material Outsourced Service Providers and Critical Third-Party Service Providers (D8/2016) (SARB Outsourcing Directive) and the Guidance Note on the Outsourcing of Functions within Banks (G5/2014) (Outsourcing Guidance Note); and
- cloud computing and offshoring of data arrangements in its Directive on Cloud Computing and the Offshoring of Data (D3/2018) (SARB Cloud Computing Directive) and the Guidance Note issued by the SARB on this (G5/2018) (Cloud Guidance Note).

The SARB Outsourcing Directive and Outsourcing Guidance Note only apply to a South

African bank to the extent that the outsourcing arrangement is for a material business activity or function of the bank and requires the bank to, among other things:

a) have a board-approved outsourcing policy, dealing specifically with the outsourcing of material business activities and functions;

b) have a plan for outsourcing activities, including performing risk assessments surrounding the outsourcing of material business activities and functions;

c) have due diligence processes in place for the selection of suppliers;

d) ensure all outsourcing with third parties is recorded in written contracts;

e) have a monitoring process in place to manage outsourced material business activities and functions;

f) develop viable contingency and business continuity plans;

g) have administrative measures and reporting in place that facilitate oversight, accountability, monitoring and risk management;

h) obtain written approval from the SARB before outsourcing its internal audit function, core banking IT systems or its financial reporting IT system;

i) notify the SARB before entering into agreements to outsource material business activities or functions other than those requiring prior written approval;

j) have a formally defined and board approved data strategy and data governance framework;

k) ensure that its risk and control frameworks are designed and operating effectively to manage the risks associated with the use of cloud computing and/or the offshoring of data;

l) take all reasonable measures to ensure the confidentiality, integrity and availability of its data, information technology applications or systems; and

m) ensure that all cloud computing and/or offshoring of data arrangements are contained in a legally binding agreement.

Kenya

The Central Bank of Kenya issued a Guidance Note on Cybersecurity to SFIs in August 2017. It details aspects such as cyber governance, independent assessment and testing and IT audits. It also provides templates for incident reporting.

Specifically, clause 3.3 permits outsourcing arrangements with guidance that SFIs should ensure their third parties comply with legal and regulatory frameworks as well as international best practices in data and cyber security.

European Union: *EU data residency requirements*

The European Union has a unified data protection law called the GDPR (General Data

Protection Regulation). This law regulates processing of personal data within the EU and is an important component of the EU's privacy and human rights law.

While the EU does not currently have specific data localisation requirements, recent invalidation of Privacy Shield (the EU–US Privacy Shield was a framework for regulating transatlantic exchanges of personal data for commercial purposes between the European Union and the United States) could mean the requirement of such. Many companies have already taken steps to ensure their data strategies ensure data localisation of regulated data before it leaves their countries of origin.

Singapore: Does not have data localisation requirements and in fact, the Monetary Authority of Singapore (MAS) has criticised laws aimed at data localisation.
"Not all data localisation is bad: there may be some legitimate concerns about national security. But a good part of data localisation that is happening in the world today is due to misguided notions of cyber security or data privacy or, worse still, old-fashioned protectionism."[52]

USA: No data localisation/in-country data centre requirement.

6.2 INADEQUATE CLASSIFICATION OF IT/CYBER RISK (CURRENTLY HANDLED UNDER OPERATIONAL RISK)

With the advent of fast changing ICT systems and related technology in financial service delivery, ICT/cyber risk is an important area that needs to be addressed as a stand-alone challenge. Recent frauds and other crimes in the banking sector in Uganda highlight this. It might well be argued that the greatest threat facing financial institutions today is the risk posed by cyber-attacks and systems manipulation.

From a regulatory perspective, there is inadequate classification of IT/Cyber risk because it is handled under operational risk, which makes it just a part of something bigger whereas it is, itself, a serious challenge. There is need for a comprehensive IT/Cyber risk framework for SFIs to enable consistency in reporting obligations and to cater for new emerging risks.

Sound Practices from Elsewhere

Bangladesh: The Bangladesh Bank (Central Bank of Bangladesh) issued elaborate guidelines on ICT Security for Banks and Non-Bank Financial Institutions in May 2015 encompassing key aspects such as:

- ICT Security Management
- ICT Risk Management
- ICT Service Delivery Management

52 Source: https://www.reuters.com/article/singapore-cenbank-idUSL4N1XN2G9

- ICT Infrastructure Service Management
- Access Control of Information System
- Acquisition and Development of Information Systems
- Business Continuity and Disaster Recovery Management
- Alternative Delivery Channels (ADC) Security Management
- Service Provider Management
- Customer Education

Kenya: The Central Bank of Kenya (CBK) has issued Cybersecurity Guidelines for Payment Service Providers (PSPs) with the objectives of creating a safer and more secure cyberspace that underpins information system security priorities; and promote stability of the Kenyan payment system sub-sector. With the ongoing rapid integration of IT systems between SFIs and PSPs, this would be highly recommended for BoU to adopt given that the National Payment Systems Act, 2020 has been assented to by the President.

European Union: The European Banking Authority (EBA) has developed guidelines on ICT Risk Assessment under the Supervisory Review and Evaluation Process (SREP) [2]. ECB Banking Supervision together with the respective national competent authorities developed a dedicated IT risk assessment methodology. This includes the IT Risk Questionnaire (ITRQ) as a form of standardised information collection from supervised institutions for the comprehensive assessment of all IT risk areas.[53]

Hong Kong:[54] The Hong Kong Monetary Authority has issued a detailed framework for IT Risk Management. This includes;

- Security controls for internet trading services.
- Implementation of Cyber Resilience Assessment Framework
- Small-value payment services through internet banking
- Supervisory Policy Manual (SPM): Revised module TM-E-1 on Risk Management of E-banking
- High-level principles on Artificial Intelligence

Germany: In accordance with Article 74 of the Capital Requirements Directive, Section 25a of the German Banking Act requires banks to establish robust governance arrangements to identify and manage the risks to which the bank is exposed, including an appropriate technical infrastructure. As a starting point, ICT risks - including cyber

53 Further info accessible at: https://www.bankingsupervision.europa.eu/ecb/pub/html/ssm.aroutcomesrepitriskquestionnaire202007~9ed9aaa17d.en.html

54 Source: https://www.hkma.gov.hk/eng/regulatory-resources/regulatory-guides/by-subject-current/technology-risk-management/

incidents - must be managed within the overall risk management framework of the bank and not in isolation. At the same time, the Federal Financial Services Supervisory Authority (Bundesanstalt für Finanzdienstleistungs-aufsicht, BaFin) issued guidance on its administrative practice specifically concerning IT-related risk management requirements. First, AT 7.2 of the Minimum Requirements for Risk Management, Circular 09/2017 (BA) specifies what constitutes an appropriate technical infrastructure and requires that IT systems and processes are based on recognised standards such as those published by the Federal Office for Information Security or the International Organisation for Standardisation (ISO/IEC 2700X on information security management systems).

6.3 BOU OUTSOURCING GUIDELINES REQUIRING RETRIEVAL OR DESTRUCTION OF DATA ON TERMINATION OF OUTSOURCING AGREEMENTS

ICT outsourcing is becoming a norm for FIs. Whereas banks and other FIs must strive to be in maximum control of their IT systems, it is in some cases inevitable to outsource certain aspects. Whereas FIs can sign and enforce contracts for confidentiality and non-disclosure with suppliers, they cannot fully take responsibility for suppliers' behaviour after the business relationship is terminated.

Section 2.6.3 of the BoU Outsourcing Guidelines requires that in the event of termination of outsourcing agreement, for whatever reason, SFIs should ensure that all data is either retrieved from the service provider or destroyed. However, this is hard for the SFIs to implement given that some rogue IT service providers may/could abuse their position and misuse the data hosted in their systems after termination without the SFI knowing. It is fairer and more practical for the SFIs to include a strong warranty by providers that they will securely delete all info after the contract period. Furthermore, the SFIs should have elaborate, effective screening procedure that weed out back service providers.

Sound Practices from Elsewhere

European Union: Clause 55(d) of the European Banking Authority (EBA) guidelines on outsourcing to cloud service providers provides that in the event of termination, the financial institution should secure an undertaking from the outsourcing service provider that its data will be completely and securely deleted by the service provider in all regions of operation. This places the responsibility of securing the undertaking by the service provider on the SFI but leaves the service provider liable in case of breach.

Kenya: Clause 3.3 of the Central Bank of Kenya's Guidance Note on Cybersecurity to the banking sector requires SFIs to monitor contracted third parties for changes in their business and cyber posture, including expansions, divestitures, breaches and new attacks that may alter the third parties' exposure. It also advises that Service Level Agreements (SLAs) should have robust provisions in relation to security, service availability, performance metrics or penalties. SFIs are also guided to develop exit management

strategies and contingency plans in their arrangements with contracted outsourcing arrangements. Again, this requires the SFIs to sign committal contracts with service providers which, in case of breach, leave the service provider liable.

Malaysia: Section 9.6 of the Central Bank of Malaysia's Outsourcing Guidelines, 2019 gives regulated entities autonomy to provide a minimum period to execute the outsourcing termination provisions, including providing sufficient time for an orderly transfer of the outsourced activity to the financial institution or another party.

New York state*:* Clause 10E of New York Federal Reserve's Outsourcing Financial Services Activities: Industry Practices to Mitigate Risks requires the supervised financial institution to conduct independent validation of the service provider's operation to ensure the service is being delivered in a way that is consistent with the institution's objectives. An institution's internal audit function or evaluation by a third-party reviewer can accomplish this. The right of independent validation must be established in the contract. The SFI's responsibility is to secure a strict contract and then monitor the service provider during the relationship.

With the above countries as examples, for Uganda it could suffice to require that the outsourcing contract be tight and binding on non-disclosure and deletion of records upon termination of the outsourcing agreement (in addition to performance). There should an unequivocal undertaking from the terminated party that it has deleted/erased all consumer data in its system.

6.4 AMBIGUITY IN DEFINITION OF "MAJOR PART OF DATA PROCESSING FUNCTION" IN THE BOU'S OUTSOURCING GUIDELINES

Since data processing is at the heart of all function for SFIs, provisions relating to it in regulatory documents needs to be clear and well defined. There is ambiguity in Section 2.10.2 of the BoU Outsourcing Guidelines, which does not define what amounts to *"major part of its data processing function"* and requiring a local SFI to have a robust back-up system and contingency plan in an acceptable jurisdiction outside Uganda. This causes regulatory uncertainty and risk of unintended violations since the jurisdictions acceptable to the regulator for purposes of data processing have not been stipulated by the regulator.

It would be helpful to clearly define the boundaries of data processing/IT outsourcing and what amounts to it.

Sound practices from elsewhere

European Union: Article 4(2) of the European Union General Data Protection Regulations

(GDPR) defines data processing as any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. This is important because the GDPR applies to data collectors and processors such as banks even if located outside the European Union, provided they collect and process data of European Union citizens.

UK

The UK Data Protection Act of 2018 adopts the above standard (EU). Furthermore, the data protection regulator in the UK (the Information Commissioner's Office) provides periodic guidance on aspects such as joint data processors, codes of conduct and checklists of regulatory requirements in cases of cross-border data collection and processing.

South Africa

Section 1 of South Africa's Protection of Personal Information Act, 2013 defines data "processing" as any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including:

(a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, or use.

(b) dissemination by means of transmission, distribution or making available in any other form; or

(c) merging, linking, as well as restriction, degradation, erasure, or destruction of information.

Kenya

Section 2 of the Data Protection Act, 2019 defines "data processing" as any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means, such as:

(a) collection, recording, organisation, structuring.

(b) storage, adaptation, or alteration.

(c) retrieval, consultation, or use.

(d) disclosure by transmission, dissemination, or otherwise making available; or

(e) alignment or combination, restriction, erasure, or destruction.

Malaysia

Section 2 of the Personal Data Protection Act, 2012 defines "processing" in the context of data as the carrying out of any operation or set of operations in relation to the personal data, and includes recording, holding, organisation, adaptation or alteration, retrieval, combination, transmission, erasure, or destruction.

In all the countries cited above, data processing is clearly defined. Uganda should do the same.

6.5 THE EVIDENCE (BANKERS BOOKS) ACT 1930 NOT RECOGNISING ELECTRONIC RECORDS

Old laws that are not amended to keep up with technological advances can cause incongruencies. The Evidence (Bankers Books) Act, 1930 does not specifically stipulate ICT generated online/internet books and transactions for evidence purposes, thus creating a legal and regulatory gap in terms of authentication of such electronic bank records. This Act needs to be aligned with the Electronic Transactions Act, 2011 and any amendments thereto.

Section 1 of the same Act (Evidence Bankers Books) defines bankers' books to include ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank. However, this definition envisages hard copies of such documents. Section 4 of the Act further provides that a copy of an entry in a banker's book must not be received in evidence unless it is further proved that the copy has been examined with the original entry and is correct, yet with modern ICTs, the electronic copies are usually the original entries of bankers' books. If an old law like this remains in place, cases involving banks can sometimes be drawn out or complicated should lawyers choose to cite it.

Sound Practices from Elsewhere

Singapore

Singapore has amended the Evidence Act (Cap. 97) to introduce Section 116A of the Act containing certain presumptions, which a party seeking to use electronic records as evidence in court may rely on. In particular, the court will presume the authenticity of electronic records if certain conditions are met and there is no conflicting evidence to the contrary.

One of the conditions is using a certified imaging system (known as an "approved process") which has been certified by an independent body appointed by the Ministry of Law (known as a Certifying Authority under the Act) as reasonably ensuring the accurate conversion of physical documents to electronic images.

Kenya

Kenya operationalised the Business Laws (Amendment) Act, Number 1 of 2020 in March with the aim of facilitating digitisation of core processes such as e-contracts, e-signatures, e-receipts, e-stamps and electronic land registration among others. Consequently, all prior laws are being aligned to the latest developments in ICT and the digital economy.

6.6 LACK OF A SPECIFIC REGULATORY FRAMEWORK GOVERNING PRIVATE INTERNET NETWORKS (VPNs)[55]

Private internet networks like Virtual Private Networks (VPNs) are software tools that extend private networks across public networks and enable users to send and receive data across shared or public networks as if their computing devices were directly connected to the private network. Applications running across a VPN may, therefore, benefit from the functionality, security, and management of the private network.

For security, the private network connection may be established using an encrypted layered tunnelling protocol, and users may be required to pass various authentication methods to gain access to the VPN. In other applications, internet users may secure their connections with a VPN to circumvent geo-blocking and censorship or to connect to proxy servers to hide their IP address from the target server.

Recently, the Uganda Communications Commission (UCC) issued a directive to Internet Service Providers (ISPs) to block VPNs (which was not very effective). However, this directive did not distinguish between consumer/individual VPNs and corporate/enterprise VPNs that are used by entities such as banks for their data and information security protocols. Such occurrences severely affect banking business whereas they could be avoided through regulatory exceptions.

Practices elsewhere

China: Unapproved VPNs are illegal in China, as they can be used by the citizens to circumvent the Great Firewall. However, the ban does not apply to foreign companies, domestic government institutions and companies. This is also the same practice in Russia, North Korea, and the UAE.

USA: Running a VPN in the US is legal, but anything that is illegal without a VPN remains illegal when using one (for example copyright infringement).

United Kingdom: There is no specific legislation that explicitly prohibits the use of VPNs in the UK. However, just like other tech companies, VPN service providers can, under the Investigatory Powers Act of 2016, be compelled to divulge users' internet activity to the government. While this is not commonplace, it could still happen.

South Africa: In South Africa, the use of VPNs is not illegal. However, Chapter XIII of The Electronic Communications and Transactions Act No 25 of 2002 makes it a criminal offense to gain unauthorised access to data through hacking and packet sniffing, intercepting or interference with data and committing computer related extortion, fraud, and forgery. It is also unlawful to intentionally spread viruses and Trojan horses. If a person uses a VPN to mask their illegal online activity, they will still be guilty of an offence.

55 Thus, creating regulatory uncertainty during internet/social media shutdowns

Recommendations on Information and Communications Technology (ICT)

Recommendation 6.1: *Re-examine the Data Centre directive*
BoU should review or revise its Data Centre directive and allow mirrored data centres and/or shared cloud facilities where BoU would limitlessly have access to the data for regulatory functions as and when required. Banks with regional or international centralised data processing/storage could, therefore, use their group or parent infrastructure as their primary data centres.

Other SFIs could, at their discretion, use secure, shared cloud storage. Alongside this, BoU should recall the directive to have physical primary data centres in Uganda for all banks.

Recommendation 6.2: *Create a specific Risk Management Framework for ICT*
BoU should create a specific Risk Management Framework for ICT/Cyber risk to adequately address emerging risks associated with banks' automation and digitisation. This should involve developing a separate set of ICT guidelines to ensure related risks are exhaustively covered in the guidelines. An alternative could be to review the Risk Management Guidelines 2010 to give ICT/Cyber risk more prominence and detail, but this would still make ICT/Cyber risk just one topic among many.

Recommendation 6.3: *Review the Outsourcing Guidelines to oblige service providers*
BoU should review the Outsourcing Guidelines to require that SFIs secure warranties and undertakings that outsourcing service providers will irretrievably delete the data in their possession/custody upon termination of contracts by SFIs. These warrantees should, to the extent possible, include assumption of criminal liability by the service provider in case they misuse data or fail to destroy/delete them after the engagement period.

Recommendation 6.4: *Clarify and align "data processing function"*

The phrase "data processing function" in Section 2.10.2 of the BoU Outsourcing Guidelines should be well explained and aligned to the definition in the Data Protection and Privacy Act, 2019 (DPPA). Alternatively, it should be deleted from the guidelines since data processing is now regulated under a specific legal framework (the DPPA), which defines "processing" as any operation which is performed upon collected data by automated means or otherwise including:

(a) Organisation, adaptation or alteration of the information or data:

(b) Retrieval, consultation or use of the information or data.

(c) Disclosure of the information or data by transmission, dissemination or otherwise making available; or

(d) Alignment, combination, blocking, erasure or destruction of the information or data.

Furthermore, BoU should harmonise positions with the data protection and privacy regulator (NITA-U) to generate a catalogue of countries/jurisdictions which offer similar

data protection and processing standards. This is necessary for SFIs to adequately advise themselves on the various jurisdictions' data protection and processing standards *vis-à-vis* the compliance standards in Uganda. Section 19 of the DPPA states that where a data processor or data controller based in Uganda processes or stores personal data outside Uganda, the data processor or controller must ensure that:

(a) the country in which the data is processed or stored has adequate measures in place for the protection of personal data at least equivalent to the protection provided for in Uganda; or

(b) the data subject has consented to his/her personal data to be processed outside Uganda.

Recommendation 6.5: *Align the Evidence Bankers Books Act to the Electronic Transactions Act, 2011*

There is need to amend the Evidence Bankers Books Act to align it to the Electronic Transactions Act, 2011 which in part provides that data shall not be denied admissibility as evidence because it is in the form of electronic evidence/record. SFIs' Information Officers can also be designated as officials who can authenticate banks' evidence for purposes of admissibility as evidence.

Recommendation 6.6: *Lobby for a specific regulatory framework for private internet networks and VPNs to minimise banking disruption*

Work with UCC and Ministry of ICT & National Guidance to initiate and conclude amendment of the Electronic Transactions Act, 2011 to introduce a specific regulatory framework for VPNs as information security tools and enterprise software solutions.

In doing this, UBA should engage UCC to grant member SFIs exemptions/authorisations and waivers for private networks and VPNs to ensure business continuity in times of internet shutdowns affecting critical infrastructure services. This can be further crystallised by amending the Electronic Transactions Act, 2011 and the Uganda Communications

Act, 2013 (as amended) to recognise enterprise VPNs as critical software/applications that should enjoy legal and regulatory protection from denial of service/internet shutdowns.

Non-regulatory recommendations - ICT

d) *Assessment of respective SFIs' ICT maturity levels.* Regulation sometimes assumes uniformity or similarity of circumstances that matter among all SFI, which in this case does not hold. Different SFIs are at different levels of ICT maturity, and this will require a detailed assessment of the ICT situations as well as engagement at Board and senior management levels to create an ICT regulatory framework that works for all the respective SFIs. Aspects to consider could include institutional

size, geographical and functional scope of operations, risk profile and overall institutional strategy, among others.

e) *Systems and vendors.* Many banks are still running their Core Banking Systems through a traditional approach and are not ready to enhance their ICT systems to go to market with a digital banking approach. The common reasons are due to budget constraints and lack of management approval. For instance, many SFIs are running with single point of failure (SPOF) infrastructure, meaning that a single system failure will stop the entire system from working. There is need to upgrade or replace these systems.

   Related to this, most ICT solutions used by SFIs are not local. They are mostly CISCO Systems due to robust security systems and protocols, thus resulting in limited support for local content (BUBU) in terms of locally developed solutions. In turn, this leads to high licensing and maintenance costs incurred by SFIs. Through regulatory sandboxes (for which consultations are currently ongoing to establish) and other similar initiatives, local development of ICT solutions could be nurtured.

f) *Client views on e-statements and data migration (in cases of acquisition).* From the customers' viewpoint, there are challenges with authentication of e-statements in the sense that banks cannot authenticate such statements online. Everything still must be printed, letters written and bank stamps imprinted on hard copies yet such processes can be automated.

   Also, SFIs intending to do mergers and acquisitions should have a redundancy system in place and fall-back plan for data migration from the acquired SFIs to the acquiring SFIs.

ICT is not a panacea/magic bullet for all banking problems/inefficiencies. There are still challenges relating to process (such as overall cost of doing business in Uganda) and people (staff culture, skills, et cetera). These too need to be addressed so that SFIs obtain holistic regulatory and institutional reforms. There are also other external factors, such as network quality and reliability, that influence the quality of service of critical ICT facilities such as ATMs, self-service machines and interbank communication. A proper technology impact assessment survey of the sector would be a step in the right direction to ensure that the various interventions are practical and enhance the key business objectives of the respective SFIs.

7 DIGITAL FINANCIAL SERVICES & AGENT BANKING

Digital Financial Services (DFS) include a broad range of financial services accessed and delivered through digital channels (the internet, mobile phones, ATMs, POS terminals and other electronic means). The services include payments, credit, savings, remittances, insurance and other banking/financial services.

Because banking and the rest of the financial sector has gone digital and continues to evolve fast in this direction, the consultants looked at the related challenges already identified by the RRC/UBA as well as likely needs for regulation to address emerging aspects. Issues that need regulatory attention are herein addressed under "Findings and Analysis". The other strategic areas that need attention are covered under "Other Areas of Need".

In terms of methodology, the consultants reviewed documents from various committees of the UBA, interacted with UBA executives, produced and presented the inception Report and then:

- Interviewed key personnel as agreed in the Engagement Plan plus others
- Reviewed several websites and documents on the national and regional Agent Banking/DFS elsewhere in the world
- Attended the Strategic Review session on National Payment Systems convened at the Sheraton Hotel in September 2020
- To gain further practical insight and extract more input in the regulatory review process, attended the National Payment Systems (NPS) Act implementing Regulation's stakeholder engagement sessions held by Bank of Uganda (BoU) at Imperial Royale Hotel, Kampala in December 2020
- Undertook a cross-border analysis of other international jurisdictions in terms of regulatory initiatives and innovation facilitation/development
- Extracted and analysed sound practices that can guide the financial sector regulatory reform process in Uganda.

7.1 HARMONISED E-KYC FRAMEWORK

E-KYC (Electronic Know Your Customer) is the remote, paperless process of identifying, recognising and ascertaining the identity of customers. It minimises costs, travel inconvenience, paperwork and traditional bureaucracy associated with manual KYC processes. At present, most SFIs have their KYC process still paper based and this is an inconvenience to both the SFIs and clients.

Whereas the BoU directive on maintenance of depositor records has stipulated the use of National Identification Numbers to identify account holders, there is no clearly defined legal framework to cover Electronic KYC.

BoU, together with Uganda Bankers Association (UBA), National Identification and Registration Authority (NIRA) and Laboremus are working to launch a shared e-Gateway between NIRA, the SFIs and BoU. This will improve on the process of the verification and authentication of SFIs' current and prospective customer information/identity against records maintained by NIRA. This is an important milestone in digitising financial systems in Uganda. Financial service providers will have access to a joint system to verify if the customer's identification is authentic and correct. This makes KYC checks easier, less risky and less cumbersome. BoU believes the system will offer a secure, multi-factor digital authentication that will eventually be available to all companies in the financial services sector. Once done, then the BoU e-KYC system should be standard procedure for the entire financial sector.

Sound Practices from Elsewhere

Singapore: The Monetary Authority of Singapore (MAS) has rolled out the National Digital Identity (NDI) programme to facilitate Digital ID and e-KYC. This facilitates features such as client on-boarding, fingerprint authentications, paperless and remote digital authorisations and signatures, non-face-to-face Customer Identification and secure API connectivity to build and test solutions quickly and securely.

In 2018, MAS recommended that real-time video conferencing for identity verification must be "comparable to face-to-face communication".

The government had introduced a digital personal data platform known as MyInfo in May 2016 to streamline identity verification during online transactions. Since then, MAS does not require financial institutions that have been given access to a customer's MyInfo data to obtain additional documents to verify the customer's identity. Singapore has been more successful in protecting the MyInfo user data by designing a highly secure system that works without distributing said data in multiple places.

India: Another case study would be the Unique Identification Authority of India (UIDAI), which is mandated to issue an easily verifiable 12-digit random number as Unique Identity - Aadhaar to all Residents of India. The e-Aadhaar ecosystem comprises of core infrastructures with the objective of providing enrolment, update and authentication services. Launched in 2009 and seen as the global e-ID archetype, Aadhaar now has 1.21 billion users. Put simply, Aadhaar is an individual identification number issued by UIDAI for the purposes of establishing the unique identity of every subscribed individual.

Additionally, the Reserve Bank of India (RBI) in January 2020 announced it would allow

video-based KYC as an option to establish a customer's identity. In India, the financial industry has long sought permission to perform video KYC to address the high costs of physically reaching out to customers in remote locations.

The Hong Kong model: Identity authentication & matching

Hong Kong's Anti-Money Laundering Ordinance and Counter-Terrorist Financing Ordinance (AMLO), 2011 are the city's principal pieces of legislation covering customer due diligence and record keeping requirements. They include special requirements for when customers are not physically present for identification purposes but maintain a somehow high-level approach. In February 2019, the Hong Kong Monetary Authority (HKMA) released an updated circular on "remote on-boarding of individual customers". The new guidance does not provide a specific checklist of actions to follow, but states that technology adopted for remote on-boarding purposes should cover both identity authentication/verification and identity matching (like facial recognition and liveness detection).

Variations of this model exist in Malaysia and the overall European Union guidance. In December 2019, Bank Negara Malaysia (BNM) issued draft requirements for financial institutions looking to implement e-KYC, including the use of biometric technology, fraud detection and liveness detection.

The upside of this flexible model – which relies on identity documents plus liveness detection – is that it results in a broad ecosystem of solutions that is not prone to any one attack that could work across the whole financial system.

A downside would be the uncertainties that relatively vague requirements cause for responsible compliance teams that want to adopt innovative new technologies.

The German model: Video verification

This e-KYC process replaces in-person meetings with two-way video calls. Germany was one of the first jurisdictions to adopt a video verification approach. BaFin, the German regulator, responded to demands for more convenient onboarding processes in a 2014 directive that was updated in 2017. For the first time, it enabled customer identification and verification via a live two-way video link with a compliance professional.

Video verification has the advantage of preventing some versions of identity theft and is simply understood as a digital version of traditional face-to-face onboarding by regulators and financial institutions alike. But it places a huge burden on the team managing the flood of incoming video calls.

The Swedish model: Digital ID schemes

Arguably one of the more radical approaches to e-KYC involves the creation of either

federated digital IDs or centralised KYC utilities. This model mandates the creation of a trustworthy official source of information – often, but not always provided by the government – that financial institutions can refer to when checking the identity of a prospective customer. India, with its Aadhaar e-KYC system, was one of the pioneers of the centralised variety of this model.

A centralised scheme is, however, prone to huge risks from hacking attacks or implementation faults. Aadhaar of India experienced this in January 2019, when the Indian government announced that millions of complete biometric records of Aadhaar users were leaked, prompting a temporary halt in any non-governmental use of the system.

Sweden presents another interesting example of the other variety of digital ID schemes: a federated digital ID scheme first introduced by banks, but the eIDs thus created are now also accepted as a form of identification by government authorities. A group of large Swedish banks – including Danske Bank, Länsförsäkringar Bank and Swedbank — introduced the BankID system in 2003. It is estimated that 80 percent of Sweden's population are now consistently using it. The identity data in this scheme resides with the user's bank, not in a centralised place and is, therefore, less prone to hacking attacks or insecure implementations.

The UK model: Enhanced vs simplified due diligence:

While most KYC schemes and AML requirements take a risk-based approach (advising different levels of scrutiny based on the potential risk associated with a prospective customer), the Financial Conduct Authority (FCA) in the UK follows a different approach. The Joint Money Laundering Steering Group (JMLSG) is the body tasked with offering guidance to assist financial services providers with their obligations in terms of UK AML/CTF legislation. Under the current JMLSG guidance, low-risk customers are eligible for simplified due diligence (SDD). Under SDD, financial institutions can verify customers' identities by simply collecting their name, date of birth and residential address information and verifying the provided pieces of information against official sources (e.g., electoral register, court judgements, credit institutions).

Under JMLSG rules, the criterion for enhanced verification is called 2+2 as it requires financial institutions to match two data points given by the customer to two data points from a trustworthy source. For example, the name of the person plus their date of birth, or the name plus their address. With its simplified vs enhanced due diligence, the UK model might have been a key source of inspiration for the Bangladeshi regulator when preparing its newly introduced e-KYC requirements. It appears that regulators' understanding and willingness to adopt RegTech on a large scale has increased vastly. Familiarity with functionalities such as facial comparison/recognition, AI-powered ID verification and liveness detection has increased and, as a result, references to such innovations are being explicitly included in regulations around the world.

Note: Of all the analysed models[56], the most popular standards are the ones adopted in Hong Kong (identity authentication/matching) and Singapore (digital ID). It appears that this is the route Uganda is taking.

7.2 EXCLUSION OF DIGITAL CHEQUES FROM THE ELECTRONIC TRANSACTIONS ACT, 2011

In Uganda, digital cheques and other electronic negotiable instruments of title will likely continue to gain popularity of use and replace physical cheques in the near future. Paper cheques have already been largely abandoned in many countries, including the UK and most of the EU. This is consistent with digitised, non-contact banking which is the driver of future volumes in banking business. Their exclusion from legal or regulatory purview negatively affects legitimacy of use and thus overall efficiency of payments. The 2nd Schedule of the Electronic Transactions Act, 2011 (ETA) excludes negotiable instruments (as well as negotiable instruments of title) from documents covered under the ETA. This creates a legal gap in terms of regulation of digital cheques.

Sound Practices from Elsewhere

The UK: The UK amended The Bills of Exchange Act, 1882 via the Small Business, Enterprise, and Employment Act, 2016 (section 13) by eliminating the need for cheques to be physical, thus making it clear that once paid into a bank account, the image that has been created may be exchanged with the payer's bank for payment rather than the physical cheque. This is how the Image Clearing System operates. Furthermore, the Electronic Presentment of Instruments (Evidence of Payment and Compensation for Loss) Regulations, 2018 were enacted to ensure that customers can offer proof of payment with a cheque image and have legally binding compensation rights in the case of fraud or error when using the Image Clearing System.

India: It is moving towards the Cheque Truncation System to make its clearing system more efficient. An online article[57] on this in part reads:

"Cheque Truncation System (CTS) is a cheque clearing system undertaken by the Reserve Bank of India (RBI) for quicker cheque clearance. As the term proposes, truncation is the course of discontinuing the flow of the physical cheque in its way of clearing. Instead of this, an electronic image of the cheque is transferred with vital essential data.

Cheque Truncation System brings elegance to the whole activity of cheque processing & clearing and offers numerous benefits to banks like time and cost savings, cost effectiveness, including human resource rationalisation, business process re-engineering and enhanced customer service.

56 The Four e-KYC Models Around the World accessible via https://www.regulationasia.com/the-four-e-kyc-models-around-the-world/

57 Source: https://www.nelito.com/blog/what-is-cheque-truncation-system-cts-benefits-and-highlights-of-cts-check.html

Reserve Bank of India (RBI) will be introducing pan-India CTS by Sept 2020 to make cheque clearing safer, faster.

CTS will be a great move towards Digital India. IMPS, RTGS and NEFT were the game changers for the banking sector. Cheques are still one of the prominent modes of payments in India, and the speedy cheque clearance cycle via CTS will result in better customer experience. It will also make the process more efficient, cost-effective and safer for the banks."

New Zealand: New Zealand was one of the first countries to introduce truncation and imaging of cheques, when in 1995 the Cheques Act, 1960 was amended to provide for the electronic presentation of cheques. Electronic cheques are now in full use and are are recognised payment instruments.

USA: In 2004, the United States enacted *The Check Clearing for the 21st Century Act (or Check 21 Act)* to authorise cheque truncation by permitting conversion of an original paper check into an electronic image for presentation through the clearing process. The law also enacted the recognition and acceptance of a "substitute check" created by a financial institution in place of the original paper cheque/check. Any bank that receives the original paper cheque can remove or "truncate" it from the clearing process.

7.3 LACK OF HARMONISED FRAMEWORK FOR KYC AND CDD

Different regulatory stipulations, all to be adhered to by SFIs, can be confusing and sometimes result into unintended non-compliance. It can also lengthen and/or slow down financial transaction processes as SFIs check multi-compliance in each KYC.

Guideline 11 of the Mobile Money Guidelines, 2013 provides for Anti Money Laundering (AML) and Countering the Financing of Terrorism (CFT) and adherence to international Know Your Customer (KYC) standards at account opening by carrying out Customer Due Diligence (CDD). The entity conducting customer verification should require at least one of the following documents to verify the identity of the customer: A valid passport, driving permit, identity card, voter's card, financial card, local administration letter or business registration certificates.

The identifications listed above differ from those in the AML Regulations and the Deposit Protection Fund. Harmonisation is, therefore, necessary.

Sound Practices from Elsewhere

The UK: The Money Laundering Regulations, 2017 are the underlying rules that govern all KYC in the UK. This eliminates disjointed requirements or fragmentation in the framework. They have since been updated and re-named the Money Laundering and Terrorist Financing (Amendment) Regulations, 2019.

South Africa: In South Africa, The Financial Intelligence Centre Act 38 of 2001 stipulates the required KYC documentation for various types of transactions. Having a single point of compliance eliminates duplication and ambiguity in terms of requirements.

EU: The European Union is assessing a harmonised KYC/CDD framework. This entails aspects such as customer information (CI) attributes, key AML/CFT tasks involved in attribute management processes, digital identity guidance, assessing higher risk situations and enhanced due diligence requirements, KYC attributes for individuals and legal entities, clarifying the attribute-related tasks required for KYC processes, addressing liability implications for the harmonised AML/CFT standards, and achieving KYC reusability with existing IT standards.

United States: The Treasury Department issued new and harmonised KYC and CDD anti-money laundering requirements for US banks in May 2018. The Treasury's Financial Crimes Enforcement Network (FinCEN)[58] harmonised framework also considers other emerging areas, such as beneficial ownership. The requirements are harmonised across the entire financial services sector covering banks, mutual funds, brokers or dealers in securities, futures commission merchants and introducing brokers in commodities.

7.4 TWELVE MONTHS BUSINESS EXISTENCE REQUIREMENT FOR AGENTS

Regulation 7 (1) of the Agent Banking Regulations, 2017 requires a financial institution to put in place an effective agent selection process and carry out due diligence on every person it intends to engage as an agent. Under clause (e), the bank must ascertain that the agent has been engaged in the licensed business for at least twelve months. This excludes many businesses in Uganda which are start-ups, and those that would ably put up a fresh agency without having another business which is 12 month or more old. This twelve-month requirement limits the probable agent pool from which SFIs can select - which affects the growth of agent banking. Reducing it to six months would be a reasonable suggestion.

Sound Practices from Elsewhere

Kenya: Guideline 3.1.2 (x) of Kenya's Agent Banking Guidelines allows financial institutions to consider any other information presented by the proposed Agent. This could include mobile money statements, receipts from suppliers, utility bills, etc. if they are verifiable and indeed confirm that the proposed Agent is the rightful owner of such alternative proof of business/transactions.

Jamaica: Regulation 3(2) of Jamaica's Banking Services (Deposit Taking Institutions) (Agent Banking) Regulations, 2016 is not strict on longevity of experience of agents' operations for purposes of approval. It only requires an applicant to state duration of their in-

58 Source: https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule

volvement in business, profitability, liquidity, and solvency assessments. This mixed blend offers sufficient flexibility for SFIs to widen the agent pool to select from.

Pakistan: Does not have the 12 months requirement. Instead, Regulation 4.2 of the Branchless Banking Regulations for Financial Institutions desirous to undertake Branchless Banking (Revised on December 30, 2019) provides that financial institutions shall adopt simplified due diligence procedures for opening of Branchless Bank accounts to extend benefits of financial services to ordinary people, especially unbanked/under banked segments of the population through agents and alternate delivery channels.

7.5 APPROVAL OF AGENT LOCATIONS

Bank of Uganda, in implementing Regulation 7 of the Financial Institutions (Agent Banking Regulations) 2017, requires that it approves each agent location. Even for an approved agent, BoU must approve any new location, thus causing delays in agent approval.

It is reasonable to have BoU approve every bank agent, but not every additional location for an already approved agent. This requirement that BoU approves every outlet is cumbersome and reduces efficiency in on-boarding agents by banks. For already approved agents, BoU could leave the approval of new locations to the banks.

Sound Practices from Elsewhere

Kenya: The Kenyan Agent Banking Guidelines gives more autonomy to the financial institutions to establish their agent networks and specific agents. For instance, under Guideline 2.6.1, an application for specific agent approval is made on an annual basis and is renewable, without the need for monthly reporting of new agents and new outlets providing agent banking services.

Jamaica: Section 8 of Jamaica's Agent Banking Regulations entrusts the agents' management and ongoing monitoring mandate with the appointing deposit taking institution.

Pakistan: The Pakistan Branchless Banking Regulations do not have monthly notification requirements; however, Regulation 10(a) imposes monitoring and risk management functions on the SFI seeking to use agents for its Branchless Banking operations.

Mexico[59]*:* Experience has shown that overly restrictive location requirements can complicate the business case for viable agent-based banking and ultimately work against financial inclusion goals. In addition, the real-time nature of most agent services has enabled remote supervision, thereby obviating one of the central arguments for location restrictions. Mexico, having originally enacted agent location-based restrictions, ultimately decided against them and had a policy shift.

7.6 BOU APPROVAL PROCESS FOR MULTIPLE AGENTS

Regulation 7(4) of the Agent Banking Regulations requires BoU to vet and approve each person selected by a financial institution to act as its agent for purposes of conducting agent banking. This is alright for new agents. For persons who are already agents of other financial institutions, it would be duplication of due diligence, which slows down the process of concluding agency arrangements. If an agent has been successfully vetted once by BoU in relation to one bank, there should be no need to go through another vetting process before entering into an agreement with another bank as long as the second bank has carried out its own due diligence on the agent. This could make the signing up with multiple agents more efficient.

Sound practice elsewhere

Kenya: Regulation 3.2.6 of the Kenyan Agent Banking Guidelines provide that any entity whose proprietors, partners or officers have or any individual who has been vetted by the Central Bank under any law, may be exempted from vetting further under the Agent Banking Guidelines.

59 Source: CGAP, Regulating Banking Agents (2011), pg.3 accessible via https://www.cgap.org/sites/default/files/CGAP-Focus-Note-Regulating-Banking-Agents-Mar-2011.pdf

Jamaica and Pakistan also do not require regulatory approval for multiple agents once the initial approval is granted.

Maldives: The Monetary Authority requires any agent, once signed up by one bank, to be able to process transactions on behalf of customers of any bank participating in the payments system.

Brazil, Colombia, and Peru do not require regulatory approval for multiple agents once the initial approval is granted.

7.7 REQUIREMENT FOR AGENTS TO ONLY DO BUSINESS AT PRIMARY LOCATION

Regulation 15 (l) of the Agent Banking Regulations states that the Agent should not provide agent banking services at a location other than the physical address of the agent. However, in some instances, there is need for agent banking services in remote locations for temporary projects. Examples are refugee payments and road construction worker payments. This limits service penetration and agility of agents in response to such temporary business activities.

Sound practices elsewhere

Nigeria and Kenya: Guideline 10 of the Nigerian Agent Banking Guidelines and Guideline 6.4 of the Kenyan Agent Banking Guidelines give autonomy of agent location and relocation monitoring to the Financial Institutions. It is a contractual issue between SFIs, and agents governed by the requirement that agents should not relocate without prior notice to the FI at least thirty days or such as other period as agreed between the parties. This creates adequate flexibility for agents to handle temporary business and assignments and seek renewals as and when need arises. The FI then submits reasons for the relocation to the Central Bank thirty (30) days prior to the relocation of the agent banking premises.

Zimbabwe: It does not require agents to only do business from primary locations. Regulation 5.3 of Zimbabwe's Agent Banking Regulations manages relocation risk by giving SFIs the mandate to ensure that no agent relocates its agency banking premises without notifying and obtaining prior written consent of the banking institution. The relocation notice is 14 days period and customers are informed. Regulation 5.2 also empowers the banks to manage the agent location process by publishing an updated list of all their agents and their locations on their websites, flyers, corporate gifts and such other publications as banks deem appropriate.

Brazil: The Brazilian framework is flexible and takes into account zoning in terms of areas facing a deficit of suitable agents and severely underserved "last mile" agent locations.

7.8 LACK OF SPECIFIC PROVISIONS ON VOICE CONSENT, FACIAL RECOGNITION TOOLS, SMS CONSENT AND ELECTRONIC SIGN OFFS

The current legal and regulatory framework does not have specific provisions on voice consent, facial recognition tools, SMS consent and electronic sign offs. Limiting the use of electronic consent in transaction processing is often costly and time consuming for the bank clients. Furthermore, physical conveyance requires contact, which could increase the probability of disease spread.

Even though Uganda enacted the Electronic Signatures Act, 2011 and the Electronic Signatures Regulations in 2013, the electronic signatures system is not yet rolled out by NITA-U and therefore, entities such as the Uganda Registration Services Bureau (URSB), and land registries do not officially accept electronically executed/signed documents – neither do most banks.

Sound practices elsewhere

USA

The US Telephone Consumer Protection Act (TCPA) allows SMS consent under specific circumstances. For example, a call-to-action is the message that prompts the individual to opt into your SMS campaign. It should consist of the following:

(a) SMS Campaign Purpose- Let your subscribers know what they are signing up for. Are they getting reminders? Coupons? Tips? Specify what SFIs are offering to eliminate surprises.

(b) Message Frequency- Include the approximate number of messages the customer should expect to receive in a given week or month. This will prevent any unexpected or intrusive texts.

(c) Message and Data Rates- Even though unlimited texting has become more common, some users may have to pay a small fee to receive text messages. You must inform your subscribers that these charges may be incurred if they sign up to your programme.

(d) Terms and Conditions- List all the terms and conditions in full beneath the CTA or provide a link nearby. This list should contain: The identity of your company/brand/programme, customer care contact information, description of the product people are signing up for, opt-out instructions in bold type (e.g., Reply STOP to unsubscribe), and Privacy Policy or provide a web link.

The US state of Illinois enacted the Biometric Information Privacy Act (BIPA) in 2008 to govern collection and use of biometric identification data like facial recognition features for both publicly and privately collected and controlled data. It offers a comprehensive

definition of a "Biometric identifier" to mean a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. This would also facilitate electronic KYC.

Kenya: It enacted The Business Laws (Amendment) Act, Number 1 of 2020, which came into force on 18 March, 2020 with a view of focusing on the use of electronic signatures and digitising certain legal processes. For instance, reforming the Contracts Act to cater for e-signatures, remote editing and signing capabilities; permitting the Registrar of Documents to accept and store documents in electronic form and giving transacting parties the option of filing documents in electronic form; permitting land surveyors to execute and deposit any survey plans, field notes and computations both physically and digitally; allowing digital stamps to reduce the hassle of physical stamping for stamp duty purposes; and certification guidelines for such e-business service providers. To a large extent, Uganda's Electronic Transactions Act, 2011 and Electronic Signatures Regulations, 2011 fall short on actual implementation of similar initiatives.

India permits biometric and video-supported consents and electronic signatures. See details on e-KYC above. The Reserve Bank of India (RBI) allowed video-based authentication as an alternative to the accepted e-KYC (know-your-customer) practices, but such verification must be Aadhaar-based (citizen ID), either online or offline.

7.9 RE-REGISTRATION REQUIREMENTS UNDER THE SECURITY INTEREST IN MOVABLE PROPERTY ACT, 2019

Sections 60(3) and (5) of the Security Interest in Movable Property Act, 2019 (SIMPA) are to the effect that prior security interests that is not perfected under the SIMPA within one hundred and fifty calendar days shall be deemed to be an unperfected security interest thereafter. This re-registration has the potential effect of retrospectively negating the ranking of security validly created under Part IV (Registration of Charges) of the Companies Act, 2012 which has not been repealed. Whereas the Uganda Registration Services Bureau (URSB) has advised that the requirement to re-register is being considered, there is need to align the different legal provisions so that there is clarity on the actual legal position since guidance from URSB cannot override an Act of Parliament.

7.10 LACK OF REGULATORY GUIDANCE ON FINANCIAL SECTOR OPEN APPLICATION PROGRAMMING INTERFACES (APIS)

BoU has not yet issued any regulatory guidance on open application programming interfaces (APIs) and the extent of data sharing with third parties to facilitate open banking. Open banking is a practice that provides third-party financial service providers open access to consumer banking, transaction and other financial data from banks and non-bank financial institutions through the use of APIs. Open banking will allow the networking of accounts and data across institutions for use by consumers, financial

institutions, and third-party service providers. Lack of such open bank data sharing guidance stifles innovation and data sharing for new products, services, and delivery channels. Well-known examples of open APIs include PayPal and Apple Wallet.

Sound practices elsewhere

United Kingdom: The UK has formed the Open Banking Implementation Entity (OBIE) as the custodian of the Open Banking Standards for APIs. The OBIE owns and maintains the directory of open banking participants (also referred to as the Open Banking Directory), which provides a "whitelist" of Participants able to operate in the Open Banking Ecosystem. There are set Guidelines for Open Banking Participants.

The European Union: The EU enacted the *Second Payment Services Directive (PSD2),* which among other innovations, permits financial firms in the payments market to collaborate with third-party payment service providers offering services based on access to information from the payment account.

Nigeria: The Nigerian Inter-Bank Settlement System (NISS) issued a position paper in December 2018 advocating for open banking to facilitate interoperability and collaboration between banks and fintech's[60].

Open Banking has now been established in Nigeria and several financial institutions are joining it. In a June 2020 article *"Open Banking and competition in Nigeria's banking ecosystem"*, Simon Aderinlola and Adedeji Olowe[61] in part explain:
"…Open banking is good news for customers, on the grounds that an open banking model will enable them to gain easier access to a wider array of financial services offered by a larger selection of providers. With open APIs, customers can choose to share their financial information with other financial institutions and third-party providers, in order to access personalised product and service offerings.

Open APIs will make it much easier for banking customers to transfer their accounts, manage payments, and conduct transactions through other banks and Fintechs — thereby creating new opportunities for banks, Fintechs and aggregators to offer products and services from multiple providers on a single platform.

Banks are also set to benefit from Open Banking, with it leading to, the introduction of new channels, creation of a new wave of products and services, enhanced innovation and competition, and opportunity to increase revenue, amongst other benefits…".

Australia: Parts 2, 3 and 7 of Australia's Competition and Consumer (Consumer Data Right) Rules 2020 support open banking by designating data that banks can share with third party providers for purposes of product development with accredited data recipients.

60 See https://nibss-plc.com.ng/nibss-position-paper-on-open-banking-december-2018/

61 https://openbanking.ng/open-banking-and-competition-in-nigerias-banking-ecosystem/

7.11 LACK OF A SPECIFIC OFFENCE AGAINST CLONING/ SKIMMING OF PAYMENT CARDS AND OTHER DIGITAL PAYMENT MECHANISMS AND UNAUTHORISED USE BY CARD HOLDERS

There is no specific offence against payment cards cloning/skimming and unauthorised use by card holders thus rendering prosecution of such offences complicated because the Computer Misuse Act, 2011 and the Electronic Transactions Act, 2011 are general laws without specific offences on card frauds and abuses. There is thus inadequate criminal sanction against cloning and skimming (copying of credit or debit card information using software or an electronic device, in order to gain unauthorised access to funds/accounts) and unauthorised use by card holders aiding and abetting such crime, thus making prosecution of ATM and cards fraudsters complex.

Sound practices elsewhere

UK: The UK enacted the Fraud Act, 2006 and the Consumer Credit (Amendment) Act, 2006 to deal with specific offences of retail frauds, including ATM/credit/debit/gift card frauds such as lost and stolen card fraud, false application fraud and card skimming fraud. Beyond criminal prosecution, these statutes provide for other ancillary orders, such as compensation for loss, restraint orders, financial reporting, ban from applying for any form of credit and confiscation orders.

South Africa[62]*, Australia and New Zealand:* In all these jurisdictions, there has been specific regulatory guidance on handling of card cloning. This entails key assessments such as negligence, attribution of liability, civil recovery and mitigation of loss.

7.12 NEED FOR CLARITY ON BOU'S REGULATORY STANCE ON CRYPTO ASSETS

A fast-growing area which affects banking worldwide is now crypto assets. There is, so far, inadequacy of guidance in this area by the regulator63. BoU's public notice only stated that cryptocurrencies are not recognised legal tender in Uganda. It did not adequately guide on regulatory treatment of crypto aspects as digital assets, thus creating regulatory uncertainty over business such as custodial services, trading, and exchanges for such assets. The Capital Markets Authority has also not yet designated cryptocurrencies as securities. Clarity from the regulator is essential.

62 Case Study: South African Financial Ombudsman Guidance on Card Cloning, accessible via https://www.obssa.co.za/wp-content/uploads/2018/02/Bulletin-12-Card-Cloning-Final-30.01.2018.pdf

63 *N.B: On this issue, BoU advised that we await the guidance from the National Taskforce on the Fourth Industrial Revolution.*

Sound practices elsewhere

Singapore: Singapore has created a specific regulatory framework for "digital payment tokens". Section 2 of Singapore's Payment Services Act, 2019 defines a digital payment token as any digital representation of value that:

a) is expressed as a unit
b) is not denominated in any currency, and is not pegged by its issuer to any currency
c) is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt
d) can be transferred, stored, or traded electronically and
e) satisfies such other characteristics as the Monetary Authority of Singapore may prescribe.

As such, crypto businesses in Singapore are required to first register and then apply for a license to operate in the jurisdiction. This makes the related enforcement of anti-money laundering (AML) and counterterrorist-financing (CTF) easier.

South Africa: In 2018, South Africa formed a joint working group called the Crypto Assets Regulatory Working Group, consisting of members of the intergovernmental Fintech Working Group (IFWG) and the South African Revenue Service (SARS) was established for the specific purpose of reviewing the country's position on crypto assets. Much as crypto assets are not recognised as legal tender, there is an established clear framework under which clients can purchase crypto assets from abroad through utilisation of his/her single discretionary allowance (SDA) (ZAR1 million) and/or individual foreign capital allowance (FCA) (ZAR10 million with a Tax Clearance Certificate), per calendar year, which a local Authorised Dealer in foreign exchange (local commercial bank) will be able to assist individuals with. Protection of the parties involved is a matter of contract and common law principles.

UK: The UK established a Cryptoasset Taskforce in March 2018 comprised of representatives from the Financial Conduct Authority (FCA), HM Treasury and the Bank of England. The Taskforce issued a report in October 2018, which recognises that there is increasing institutional investment in this space. Numerous banks are starting to explore how they can interact with this growing market. Cryptoassets are treated as property under English law. They are not disqualified from being property by their distinctive features such as intangibility, cryptographic authentication, use of a distributed transaction ledge, decentralisation, rule by consensus, nor by the fact that they are pure information.

Furthermore, the Bank of England issued a discussion paper on opportunities, challenges, and design of a Central Bank Digital Currency (CBDC) in March 2020 and noted that a CBDC could provide households and businesses with a new form of Central Bank money

and a new way to make payments. It could ensure that the public has continued access to a risk-free form of money issued by the Central Bank, which may be especially important in the future as cash use declines and new forms of privately issued money become more widely used in payments. CBDC could also be designed in a way that contributes to a more resilient, innovative, and competitive payment system for UK households and businesses.

7.13 LACK OF A REGULATORY FRAMEWORK FOR DISTRIBUTED LEDGER TECHNOLOGIES AND SMART CONTRACTS[64]

Uganda does not have a specific regulatory framework for DLTs such as blockchain and non-blockchain distributed ledger tables.[65] Furthermore, there is also a framework for smart contracts.[66] This has limited innovation and adaptability of such emerging technologies by SFIs and their partners. Since this is the future of banking and related industries, regulation for it should be put in place.

Sound practice from elsewhere

United Kingdom: In 2019, the UK Jurisdiction Taskforce (UKJT), a taskforce of the UK's Lawtech Delivery Panel, stated that a smart contract can satisfy the requirements of a legal contract under English law. It further says that smart contracts are not different, in principle, from the traditional contracts.

South Africa: South Africa has taken a proactive stance towards understanding DLTs and smart contracts by participating in "Project Khokha", a proof-of-concept interbank payment and settlement system by the South African Reserve Bank (SARB) that is based on JP Morgan's Quorum blockchain. The project was the first blockchain-based initiative in Africa to receive global recognition. Project Khokha was launched to assess the performance, scalability, privacy, resilience, and finality of a DLT solution under conditions as realistic as possible to those in the banking sector. It was designed, built, and delivered in less than three months in 2018.

The European Union*:* The EU created the European Blockchain Partnership in April 2018 to join at a political level all EU Member States and members of the European Economic Area (Norway and Liechtenstein). The signatories of this declaration are working together towards realising the potential of blockchain-based services for the benefit of citizens, society, and economy. As part of this commitment, the partnership is

64 N.B: Here too, BoU has advised that we await guidance from the National Taskforce on the Fourth Industrial Revolution.

65 Blockchain is a digital/electronic list of records, called blocks, that are linked using cryptography (secure communication) in an open, distributed ledger that can record transactions between two or more parties efficiently and in a verifiable and permanent/immutable way.

66 A smart contract is a computer program or a transaction protocol which is intended to automatically execute, control or document legally relevant events and actions according to the terms of a contract or an agreement.

building a European Blockchain Services Infrastructure (EBSI) which will deliver EU-wide cross-border public services using blockchain technology by deploying a network of distributed blockchain nodes across Europe, supporting applications focused on selected use cases. It is very likely that banking systems in the EU will use this infrastructure.

7.14 LACK OF REGULATORY GUIDANCE ON CROSS-BORDER/ INTERNATIONAL DATA TRANSFERS AND PROCESSING

The National Information Technology Authority (NITA-U) has not yet issued any regulatory guidance on cross-border data transfers, especially concerning a list of countries with adequate data protection measures/standards equivalent to those guaranteed under the Ugandan Data Protection and Privacy Act, 2019. This creates regulatory uncertainty for SFIs that might want to do international data externalisation, transfer, and processing offshore yet section 19 of the Data Protection and Privacy Act, 2019 mandates entities processing data outside Uganda to ensure that the countries from which they are processing the data have adequate measures of data protection; or data subjects have consented to processing personal data outside Uganda.

It is anticipated that NITA-U will avail a list of countries that meet the criteria suitable for purposes of transfer of Ugandan citizens' data. In the meantime, SFIs should align their data collection and transfer policies to make sure that data subjects explicitly consent to external/international data processing outside Uganda.

Sound practice elsewhere

The European Union: Generally, transfers of personal data to countries outside the European Economic Area may take place if the countries where the recipient entities are located are deemed to ensure an adequate level of data protection. *Article 45 of the General Data Protection Regulation (GDPR)* provides that the third countries' level of personal data protection is assessed by the European Commission. According to the GDPR, the Commission's adequacy decision may be limited also to specific territories or to more specific sectors within a country. The countries that have been evaluated thus far as having an adequate level of data protection are listed in an accessible website. The GDPR envisages that the European Commission will review its adequacy decisions at least every four years. Such a decision can be repealed, amended or suspended without retro-active effect.

The United Kingdom[67]*:* The Information Commissioner's Office (ICO) offers periodic guidance and reviews of adequacy decisions in international data transfers to eliminate uncertainty and enable entities intending to externalise data to third countries to know and comply with their respective obligations.

67 Further information on: https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/international-transfers/)

South Africa: Section 72 of the Protection of Personal Information Act, 2013 (POPI) deals with transfers of personal information outside South Africa or trans-border information flows. It essentially provides that a responsible party may not transfer personal information about a data subject to a third party who is in a foreign country unless certain protections are in place. For example, if:

(a) The foreign country has a law that provides adequate protection

(b) There are binding corporate rules that provide adequate protection

(c) There is an agreement between the sender and the receiver that provides adequate protection

(d) The data subject consents

(e) The transfer is necessary for the responsible party to perform in terms of a contract

The South African approach gives wider flexibility than section 19 of Uganda's Data Protection and Privacy Act, 2019.

Kenya: section 25(h) of the Kenyan Data Protection Act, 2019 provides that every data controller or processor shall ensure that personal data is not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject. This is further augmented by Part IV of the same Act which generally provides that the Data Commissioner may request a person who transfers data to another country to demonstrate the effectiveness of the security safeguards or the existence of compelling legitimate interests.

7.15 DIGITAL TAXES SUCH AS MOBILE MONEY TAX NEGATIVELY AFFECTING FINANCIAL INCLUSION

Uganda introduced the Mobile Money Tax and Over-the-top (OTT) tax which have negatively impacted financial inclusion by driving up the cost of access to digital platforms such as Mobile Money and WhatsApp banking thus hindering innovation and digital products development. This works against both Government's Financial Inclusion Strategy and banks' conduct of business through digital means. Such taxes need to be removed or reviewed.

Sound practice from elsewhere

The UK: I*ts* Digital Service Tax (DST) is levied as 2 percent tax on the gross UK-generated/sourced revenues of large businesses providing social media platforms, search engines, and online marketplaces as per Part 2 of the Finance Act 2019/20. It is not an access tax on end-users.

Kenya*: Kenya's* Finance Act, 2020 introduced withholding tax on digital marketplaces.

The said tax changes took effect on January 1, 2021 and lay down specific enforcement details such as:

(a) the tax shall take the form of withholding tax which shall be payable at 1.5% of the gross revenues earned by either a resident or non-resident person

(b) the tax shall be payable at the time of transfer of payment to the service provider

(c) the Commissioner General will appoint a digital services tax agent to collect and remit the tax; and

(d) the tax shall be used to offset against the tax payable by the resident or non-resident supplier for that particular year of income.

Since in Kenya's case, the digital services tax is a withholding tax that providers can offset, it should not affect the cost of access by service user (contrarily in Uganda's case, OTT is a tax on the service user).

France: Rolled out a digital services tax (DST), however, it is not levied on the infrastructure/access, but it is levied as a standard three percent tax (3 percent) on the revenue of digital companies providing advertising services, selling user data for advertising purposes, or performing intermediation services.

Benin and Cameroon: Both Benin and Cameroon have repealed taxes they had imposed on mobile phones and mobile payments.

7.16 LACK OF A SPECIFIC REGULATORY FRAMEWORK FOR DIGITAL SECURITIES AND ONLINE CROWDFUNDING

Capital markets entities include stock exchanges, commodity exchanges, stockbrokers, asset management companies (managing mutual funds), investment/merchant bankers, primary dealers, depositories, custodians, registrars, online share trading service providers and credit rating agencies. Digital crowdfunding entails the practice of funding a project or venture by raising money from a large number of people who each contribute a relatively small amount, typically via the internet. All these platforms are being digitised and in Uganda's case, there is no specific regulatory framework governing such activities thus creating regulatory uncertainty and impeding market development for such products.

Sound practices elsewhere

USA: The Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) have provided specific regulatory guidance on digital securities such as initial coin offerings (ICOs), digital asset exchange-traded funds (ETFs) and online crowdfunding platforms. The guidance covers aspects such as distribution,

custody, reporting, and record keeping and market oversight aimed at eliminating scam products.

Germany: A ministerial draft of a proposal to introduce electronic securities has been submitted. Under the proposed law, Germany will treat electronic and physically securitised instruments equally to guarantee investor protection. It is proposed that an entry in a securities register can replace the currently mandatory physical security certificate for bearer bonds. In electronic bonds, the security certificate is to be replaced by an entry in a securities register. Such a securities register can be kept electronically and crypto based via DLT, especially in the blockchain.
The electronic securities registers' management is to be monitored by the Federal Agency for Financial Market Supervision (BaFin). At the same time, there should be a central register for electronic securities. A fundamental point for the acceptance of securities is their legally secure simple transfer. Accordingly, it is provided in the law that the transmission of ownership of electronic security is possible on the holder's instructions to the purchaser by an appropriate agreement and that the securitised right is also transferred. At the same time, it is regulated that acquisition in good faith is always possible as long as the acquirer did not know positively at the time of his entry or was unknown to him as a result of gross negligence that the contents of the securities register were incorrect or that the owner was not authorised, or the seller was authorised to dispose of.

Kenya: A publication by the Capital Markets Authority (CMA) and FSD Africa outlines a planned move to establish a specific regulatory framework for digitisation of securities in Kenya[68]. This includes core aspects such as immobilisation (process whereby physical share certificates are deposited with the central depository with a view to having them eventually entered into electronic form ready for trading).
It could also be argued that Kenya's Finance Act, 2020 which broadly defines a digital marketplace "as a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means" is applicable to digital exchange of value such as digital securities.

South Africa: The Intergovernmental Fintech Working Group (IFWG) and the Crypto Assets Regulatory Working Group (the CARWG) released a joint consultation paper titled the "Consultation Paper on Policy Proposals for Crypto Assets" (the "Consultation Paper") for public comment in January 2019. This document could act as a benchmark on key regulatory aspects such as the purchase and sale of crypto assets; payments using crypto assets; capital raising through initial coin offerings; digital derivatives and funds; and market provisioning.

India: The Securities and Exchange Board of India issued (and periodically amends) the Broad Guidelines on Algorithmic Trading in March 2012 and Broad Guidelines on Algorithmic Trading for National Commodity Derivatives Exchanges in September 2016, to be followed by stock/commodity exchanges when allowing algorithmic trading. The

68 Regulations and Market Practice Kenya, May 2016 accessible via file:///C:/Users/user/Downloads/Regulations%20and%20Markets%20Practice%20(Kenya)%20Edition%201%20(1).pdf

guidelines, among other things, require the exchanges to have:

- Systems capable of achieving consistent response times to all brokers
- Economic disincentives for a high daily order-to-trade ratio of algorithmic orders (charges per algorithm order)
- Monitoring systems to impede order flooding by algorithms
- Appropriate risk control mechanisms, including price checks and quantity limit checks
- Monthly reports on algorithmic trading to the Securities and Exchange Board of India and periodic algorithm systems audit reports to the stock exchange

Under these guidelines, stockbrokers can only provide algorithmic trading with prior permission of the stock exchange and must have risk controls and proper systems to carry out algorithmic trading.

The European Union[69]: The EU enacted Crowdfunding Regulations in 2020 to amend Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 to regulate digital crowdfunding. For instance, one safeguard to avoid regulatory arbitrage and to ensure their effective supervision, crowdfunding service providers are prohibited from taking deposits or other repayable funds from the public, unless they are also authorised as a credit institution.

The UK: In August 2020, the UK's Financial Conduct Authority (FCA) authorised London-based Archax to be the country's first regulated digital securities exchange and custodian. The firm is also the first company to receive its FCA cryptoasset registration to become a fully compliant Virtual Asset Service Provider (VASP)[70].

Note: There is justification for inclusion of this asset class as Uganda recently amended the Anti-Money Laundering Act to make Virtual Asset Service Providers (VASPs) as accountable persons under Uganda's AML law.

7.17 LACK OF A SPECIFIC REGULATORY FRAMEWORK FOR DIGITAL INSURANCE PRODUCTS

Insurance is touched on here because of the emerging convergence of insurance and mainstream banking products. Bancassurance, payment mechanisms for insurance and insurance policies related to bank lending are a few examples of such convergence. If banking is going digital, so should insurance. The traditional insurance model, based on serving customer needs through provision of homogenous products with prices decided through actuarial models, has started its gradual but inevitable decline. Evolving customer expectations, as well as the opportunities presented by new technological capabilities, present insurers with a choice: Evolve your offerings or face obsolescence.

One way that some insurers are embracing a digital future is through the provision of

69 The EU Crowdfunding regulations can be accessed via https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32020R1503&from=EN

70 Source:https://www.thetradenews.com/archax-becomes-first-fca-regulated-uk-digital-securities-exchange/

ecosystem products. Digital ecosystems can be broadly described as networks of companies, individual contributors and consumers that, through interactions, create combined services and mutual value. Insurers who participate in or partner with companies in these digital ecosystems are then enabled to sell targeted products to the customer community on a preferred access basis.

Alliances with technology partners are thus creating opportunities for insurers to improve distribution and reach through partner technologies, methodologies and distribution channels. These partnerships provide value to all participants; more robust online offerings, improved service and more targeted options for customers and accelerated customer acquisition for insurers.[71]

Despite opening up the market to permit bancassurance Uganda has not yet enacted a specific regulatory framework for digital/electronic insurance products and services, thus creating regulatory risk in the market.

Sound practices elsewhere

India: Insurance technology (InsurTech) is regulated at national level by the Insurance Regulatory and Development Authority (IRDA), which has issued the Insurance Web Aggregators Regulations 2017 (Web Aggregators Regulations). This is to supervise web aggregators as insurance intermediaries providing a website for price comparison and information about insurance products. To act as an insurance web aggregator or telemarketer, interested entities must obtain a registration certificate after satisfying the eligibility criteria in these regulations. Insurance web aggregators must comply with various obligations, such as:

- Displaying information about the products of insurers that have signed agreements with the aggregators
- Carrying out lead generation for insurers
- Using adequate encryption technologies for data

They cannot engage in activities such as displaying information about products or services of other financial institutions, displaying adverts, operating multiple websites, or tying up with other entities for lead generation. The Web Aggregators Regulations now allow for Web Aggregators to be wholly foreign controlled, subject to furnishing an undertaking.

South Africa, Brazil, Indonesia, and Chile[72]: The regulatory framework governing intermediaries, alternative distribution regulation and insurance representatives apply to mobile insurance (m-insurance) products.

71 Source: The Rise of Digital Ecosystem Insurance Products accessible via https://www.the-digital-insurer.com/the-rise-of-digital-ecosystem-insurance-products/

72 Source: Regulating Mobile Insurance, accessible via https://a2ii.org/sites/default/files/reports/2018_05_02_mobile_insurance_regulation_web.pdf

Hong Kong- The Insurance Authority launched a special programme called "Fast Track" in 2017, with the major objective of providing a dedicated queue for firms seeking to enter the insurance market in Hong Kong using solely digital distribution channels. Applicants seeking authorisation through this channel must possess an innovative and robust business model, while satisfying all the prevailing regulatory requirements on solvency, capital, and local asset requirements.

7.18 LACK OF A SPECIFIC REGULATORY FRAMEWORK FOR DIGITAL PENSION PRODUCTS

Pensions Technology (PenTech) is rapidly evolving as pension and social security systems face forces influencing reform —changing demographics, shortfalls in retirement funding and others. This has also been witnessed in Uganda where institutions like the National Social Security Fund (NSSF) have rolled out some digital tools and applications seeking to mobilise and manage retirement benefits. However, this is happening in an environment that does not have a specific regulatory framework for such digital and electronic pension solutions, thus exposing partners such as SFIs to this technological and regulatory risks. Expansion or contraction of the pension sector has direct bearing on banking business (deposits, payments, and other transactional business).

Sound practice elsewhere

Greece: There is an established legal framework for the digital procedure of awarding pension benefits set out in Chapter B΄ of the Law 4670/2020 entitled 'Digital Procedure of Awarding of The Pension' that includes articles 16, 17 and 18, by the of the Minister of Labour and Social Affairs of May 4, 2020.

European Union: The EU has established a regulatory framework for a pan-European Personal Pension Product (PEPP)[73] that is digital and portable (through data sharing) across all the EU member States.

Switzerland[74]: Switzerland has a decentralised structure with about 1,500 pension funds (many of them small and not yet able to put in place digital architectures). The solution is a portal whereby insured members can find relevant information on pensions across different pillars of the system. Pension funds have started to explore new applications. PKZH, the pension fund of the city of Zurich, has provided know-how and testing capacity to Clear Pension, a solution that connects insured members and pension funds through an app and portal.

73 The regulation can be accessed via

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1238

74 Switzerland: The road to digital pensions, accessible via https://www.ipe.com/reports/switzerland-the-road-to-digital-pensions/10048618.article

Ghana: The National Pensions Act, 2008 specifically provides for electronic payment of members' benefits. Sections 63 and 92 of the Act expressly give the Social Security and National Insurance Trust of Ghana the option to record, file, maintain or transfer in electronic form, records of members required under the Act or Regulations made under the Act and may receive electronic transmitted information in respect of the scheme.

7.19 LACK OF A SPECIFIC REGULATORY FRAMEWORK DIGITAL INCLUSION OF PEOPLE WITH DISABILITIES

Digital access ensures inclusive communication for all people regardless of their gender, age, ability or location. Since financial services are rapidly becoming more digital and less analogue, digital inclusion directly affects financial inclusion and thus affects customer outreach of financial institutions. To achieve digital inclusion/accessibility, ICTs should not only be available but also accessible to all. They should be designed to meet the needs and abilities of as many people as possible – including those with disabilities. Accessibility of digital ICT is key given that they have become the primary medium for communications, information, transactions, education, and entertainment worldwide. Promotion of enhanced access to digital technology by legislators and policy makers is essential for complete digital and financial inclusion.

To ensure that "no one is left behind" in the digital world, digital accessibility is recognised as a key priority in several global commitments related to inclusiveness such as: the Convention on the Rights of Persons with Disabilities (CRPD), the Transforming the World 2030 Agenda, the Sustainable Development Goals (SDG) and, more recently, the UN Disability Inclusion Strategy. Financial inclusion of PwDs necessitates their digital inclusion[75].

Uganda, however, does not have a specific regulatory framework on digital access for persons with disabilities. This limit financials access for such people.

Sound practices elsewhere

USA: The Americans with Disabilities Act of 1990 has been defined to include a requirement for electronic/digital service providers such as financial institutions to make their websites and applications interactive enough to facilitate self-service functions for people with disabilities such as visual impairment.

European Union[76]**:** The EU has proposed "The EU Web Accessibility Directive" to improve the functioning of the internal market by establishing common accessibility requirements for websites and mobile apps all over Europe.

75 International Telecommunications Union, accessible via https://www.itu.int/en/ITU-D/Digital-Inclusion/Persons-with-Disabilities/Pages/Persons-with-Disabilities.aspx)

76 Source: https://ec.europa.eu/digital-single-market/en/news/digital-inclusion-and-web-accessibility-brochure

South Africa[77]: Telecom company Vodacom partnered with the GSMA Assistive Tech (an industry organisation that represents the interests of mobile network operators worldwide) in 2016 to launch the '*Principles for Driving Digital Inclusion of People with Disabilities*,' a framework for action aimed at increasing the digital inclusion of people with disabilities. This ensures a high-quality customer experience for those living with disabilities through well-designed, end-to-end products and services.

Recommendations on Digital Financial Services & Agent Banking

Recommendation 7.1: *Enact and implement a specific e-KYC framework*
We propose a specific amendment to the Registration of Persons Act, 2015 by inserting under Part X a provision to the effect that BoU guidelines may be adopted for the minimum KYC required for account opening and timelines required to achieve the National Identification Number (NIN) as unique identifiers for personal account holders in order to pave way for the initiative to implement and leverage direct integration with the National Identification and Registration Authority (NIRA) identity store for electronic KYC.

Explore amending KYC requirements to include contact details such as phone contact and e-mail as a mandatory requirement to build a strong base for digital penetration and to boost financial inclusion.

Recommendation 7.2: A*mend the 2nd Schedule of the ETA to recognise digital negotiable instruments*
The 2nd Schedule of the Electronic Transactions Act should be amended to include digital cheques as documents covered under electronic transactions. This will create an enabling and protective legal framework for transactions involving cheque truncation.

Recommendation 7.3: *Harmonise CDD requirements*
The National Payment Systems Regulations should provide a harmonised list of required identity requirements for Customer Due Diligence (CDD) to streamline and harmonise with the identity requirements under the AML Regulations and the Deposit Protection Fund. This will operationalise section 59(2) of the National Payment Systems Act, 2020 which is to the effect that the minimum CDD requirements expected of an electronic money issuer shall be prescribed by the regulations.

Recommendation 7.4: *Review requirement of business experience from 12 to 6 months for a bank agent*
This ensures suitable businesses with less than 12 months of operations experience are not excluded from setting up agency business. It would also increase the pool from which to select agents, with potential faster growth in bank agencies, positively affecting both financial inclusion and business volumes.

77 Source:https://africabusinesscommunities.com/tech/tech-news/south-africa-vodacom-partners-with-gsma-to-drive-the-digital-inclusion-of-persons-with-disabilities/

Recommendation 7.5*: Review the requirements of vetting every agent location by BoU*
Regulation 7(2) of the Agent Banking Regulations requiring BoU approval for each agent location should be reviewed to provide that BoU approves an entity rather than each branch[78]. Responsibility for vetting new locations for an approved agent could be placed on the SFI, which should report on such new locations regularly.

Recommendation 7.6: *Review process of vetting multiple agents by BoU*
Regulation 7(4) of the Agent Banking Regulations requiring BoU to vet and approve bank agents should be reviewed to allow BoU to undertake one time vetting of the agents. If an agent has been vetted once by BoU, there should not need to go through another BoU vetting process before entering into an agreement with another bank as long as the second bank has carried out sufficient KYC on the agent and has been authorised by BoU to use the agent vetted by BoU for another bank.

Recommendation 7.7: *Provide exceptions to allow agents to do business away from primary locations*
Amend Regulation 15 (l) of the Agent Banking Regulations which states that the Agent should not provide agent banking services at a location other than the physical address of the agent in order to cater for the need for agent banking services in remote locations for temporary projects. Examples are refugee payments, road construction worker payments/ deposits, temporary settlements after disasters like floods or landslides etc.[79]

Recommendation 7.8: *Expressly recognise SMS, voice consent and electronic signoffs*
The Data Protection and Privacy Regulations being enacted should, among other aspects, specifically address the following areas:

(a) Make it permissible for service providers to get customer consent to terms and conditions through digital channels such as SMS, email and electronic signature

(b) Permit adoption of electronic sign off by customers for loan applications, offer letters, account opening and any other instructions by enacting specific Regulations to the effect under the Electronic Signatures Act, 2011

(c) Permit teleconferencing roll out to engage customers for consent to account opening, loan applications and any other negotiations between the bank and customers under the Data Protection and Privacy Regulations

(d) Permit the use of facial recognition tools.

Recommendation 7.9: *Repeal movable securities re-registration requirements under the Security Interest in Movable Property Act, 2019*
We propose repealing of Sections 60(3) and (5) of the Security Interest in Movable Property Act 2019 (SIMPA), which retrospectively negates the ranking of movable security

78 BoU is mandated by the FIA 2004 to approve all outlets where banking services are conducted, which might need to be addressed as well. The Consultant will seek to harmonise the position with RRC on this during the validation workshop

79 *The consultant will seek to harmonise views on this and BoU's mandate under FIA 2004 at the validation*

interests such as debentures validly created under Part IV (Registration of Charges) of the Companies Act, 2012 which is a prior existing law.

Recommendation 7.10: *BoU to issue Guidelines/Circular to facilitate more open banking and interoperability between Fintechs and SFIs under the NPS Act and Regulations thereunder.*

This aims at facilitation of more open banking between fintechs and SFIs. This can be achieved by enacting specific provisions in the National Payment Systems Regulations permitting open banking through authorised third-party providers (like financial technology companies and retail merchants), thus simplifying standard banking operations for consumers. The European Union achieved this by enacting the Second Payment Services Directive (PSD2), which is focused on the standardisation of Application Programming Interfaces (APIs) and the creation of a third-party payment service provider (TPP) register. Additionally, it establishes two types of certified payment institutions to provide users with more choices and freedom in how they manage finances:

i) Payment Initiation Service Provider (PISP) - allowed to obtain account data collected by financial and banking institutions.

j) Account Information Service Provider (AISP) - enabled to initiate payments to or from a customer's account.

To become a TPP and get access to a client's account information and transaction, firms should go through a strict application process and obtain either a PISP or AISP license. Such approach defines what data will be retrieved and with whom it will be shared. Additionally, it underlies a data processing flow under the EU General Data Protection Regulation (GDPR). This facilitates business by:

(a) Expanding service offerings: Through partnering with digital platforms, banking institutions can enhance their standard offerings and services by creating comprehensive packages and cross-selling complementary products

(b) Unlocking underserved and unserved markets: By cooperating with the right digital platforms, new financial entrants can ensure a smooth and less risky start in untapped markets. A longer history of engagement with clients would facilitate building trust and grant a company with a top-of-the-mind advantage when they decide to deepen relationships with customers

(c) Generation of new revenue streams: New-age challengers such as digital only banks (digital banks) offer 24⁄7 and quick features, along with data-driven solutions and services tailor-made to customers' preferences and affordability through interactive services and personalised/targeted marketing

Recommendation 7.11: *Create specific offences for cloning and skimming of payment cards and all other digital payment mechanisms*

We propose creation of specific offences against retail fraud involving cloning and

scheming of payment mechanisms, including ATM/credit/debit/gift card fraud such as lost and stolen card fraud, false application fraud and card skimming fraud. Beyond criminal prosecution, these statutes should provide for stronger/punitive ancillary orders such as compensation for loss, restraint orders, financial reporting, ban from applying for any form of credit, and confiscation orders. This can be achieved by reviewing the Computer Misuse Act, 2011 and the Electronic Transactions, Act 2011 since a lot of new electronic/computer-related developments have emerged since these electronic laws were enacted in 2011.

Recommendation7.12: *Clarify regulatory position on digital assets such as crypto assets, DLTs and Smart Contracts*

We propose enactment of specific regulatory guidance on treatment of digital assets such as crypto tokens and coins, Distributed Ledger/Blockchain systems and use of smart contracts to eliminate regulatory uncertainty. This can be done by specific regulations under the National Payment Systems Regulations, or by way of a BoU public approval of digital assets as a form of property that can be transacted by SFIs and other counterparties.

Recommendation 7.13: *Implement facilitative regulation Digital Ledger Technologies (DLTs)*

Explore opportunities for facilitative regulation of DLTs. This is a highly specialised and increasingly common area for banking and benchmarking with other emerging economies such as South Africa will be useful.

Recommendation 7.14: *Provide specific regulatory guidance on international/cross-border data transfers and processing*

We propose that BoU engages NITA-U on issues of specific regulatory guidance on international/cross-border data transfers and processing, especially a checklist of adequate measures SFIs should look out for before transferring and processing personal data outside Uganda, for purpose of compliance with Section 19(a) of the Data Protection and Privacy Act, 2019.

Recommendation 7.15: *Lobby for removal of user taxes on Mobile Money and internet access*

UBA and BoU should be at the forefront of lowering the cost of both mobile money and internet access by removing the taxes on them (OTT and tax on mobile money transactions). This should aim to facilitate digital products such as WhatsApp Banking and Facebook-based KYC. Since increased financial inclusion is now premised on digital access, anything that constrains the latter compromises the former.

Recommendation 7.16: *Engage the Capital Markets Authority (CMA) on proposals for a regulatory framework for digital securities and online crowdfunding platforms.*

BoU and UBA should engage the CMA to create a regulatory framework for digital securities and online crowdfunding platforms and solutions. This should facilitate reduction of regulatory risk and drive market demand through sensitisation and awareness of such solutions in developing Uganda's capital markets.

Recommendation 7.17: *Engage the Insurance Regulatory Authority (IRA) on proposals for a regulatory framework for digital insurance products.*

BoU and UBA should engage the IRA with proposals on enacting a specific regulatory framework for digital/electronic insurance products and services. This should be aimed at eliminating regulatory risk and providing market participants with formal regulatory guidance on such products and services to facilitate innovation, partnerships, and collaborations within the Insurtech sub-sector. This would have an enhancing effect on the banking business, especially payments and bancassurance.

Recommendation 7.18 *Engage the Uganda Retirement Benefits Regulatory Authority (URBRA) on proposals for a regulatory framework for digital pension products.*

UBA should engage URBA on proposals for a formal and specific legal and regulatory framework governing digital pension and insurance benefit products to create a formal regulatory framework for SFIs to follow in engaging with issuers and providers of such asset classes and products. This would enhance financial institutions' business, especially deposits and payments.

Recommendation 7.19: *UBA and BoU to engage the Uganda Communications Commission (UCC) and National Information Technology Authority of Uganda (NITA-U) on minimum standards for interactive webs/apps and assistive technologies for people with disabilities (PWDs) to facilitate digital inclusion in digital financial services.*

The rationale for such engagement is the need to boost both digital and financial inclusion. UBA should engage UCC and NITA-U for a formal framework on digital access and inclusion to avoid potential discrimination and improve inclusion in digital financial access.

Recommendation 7.20: *UBA to engage Ministry of Trade, Industry and Cooperatives to expedite the Competition Bill.* The rationale is to ensure fair competition across the economy. At industry level, UBA has a code of conduct providing for self-regulation and co-regulation of members to enhance fair market competition.

Non-regulatory recommendations – DFS

a) UBA should spearhead the campaign to lower the cost of internet and digital access. In lobbying Government and private sector players like internet service providers to work on significantly lowering the cost of internet/data access, the gain for them is that once the number of users increases, the gains in terms of profits

and taxes would come from volume rather than higher prices.

b) Strengthen the focus of cooperation in the forum of regulators that affect SFIs (such as BoU, CMA, URSB, NITA-U, UMRA, IRA, URBRA, UCC, FIA, UMRA) with a view of regularly sharing experiences and reviewing regulations with the aim of improving the ease of doing business.

c) Steer enabling environment for enhanced digital asset custodial services. The custodial offerings currently in the market do not have the proper security required for clients to store millions of dollars in digital assets.

d) Align regulations applicable to Fintechs. Fintechs are driving convergence in product and service offerings such as digital insurance, digital pensions, and digital securities.

e) Operationalise electronic signatures. UBA should also engage the Ministry of ICT to operationalise electronic signatures under the Electronic Signatures Act, 2011 and the Electronic Signatures Regulations, 2013 to enable electronic signoffs on financial documents as long as the clients' e-signatures can be property authenticated.

f) Harmonise cross-regulation between BoU and UCC with regard to payment systems. There is cross-regulation between the proposed National Payment Systems Regulations, 2020 and the Uganda Communications (Fees and Fines) Regulations, 2019.

g) Synergies to promote gainful innovations. UBA members should periodically review and refine their digital financial service strategies to cater for emerging innovations and new market opportunity dynamics.

8 OPERATIONS

Operations is an important area for any financial institutions since it deals with the vital and frequent aspects like:

- Customer onboarding and account opening
- Customer account maintenance and management
- Customer service and management of related back-office processes
- Transaction processing, notifications, and reporting
- Branch management and business processes
- Other activities and processes related to customer interface and transactions.

There are aspects of operations that are covered under the section 7 of this report (Digital Financial Services) and others under section 6 (ICT) of this report, which are therefore not repeated in this section.

8.1 TIGHT TIMELINE FOR REPORTING ANTI-MONEY LAUNDERING (AML) RISK ASSESSMENT TO FIA

Money laundering is a major problem for the banking sector and economies world-wide. Addressing the problem becomes more vital the more digital and sophisticated banking processes become. Money laundering involves activities and processes intended to show revenue from criminal or illicit activities as if it were from legitimate or legal activities. Money laundering poses major threats to the country and the world economy. While promptness of detection and action is always of high essence in cases of suspected money laundering, reporting of incidents requires thoroughness that needs reasonable time. The lead time from incident assessment to reporting should not be long but if it is too short, accuracy and completeness might sometimes be sacrificed.

AML Reg. 2016 8(3) requires that an accountable person shall within forty-eight hours upon conducting a risk assessment, give a copy of the assessment report to the Financial Intelligence Authority. Forty-eight hours is considered too short a period for internal quality assurance, even when the issues being dealt with need speedy reporting. After conducting a risk assessment, the results must be reviewed by senior management of the SFI before submission to the FIA. Such a review ensures accuracy and may add valuable perspective to the report.

Sound Practices from Elsewhere

Kenya: In Kenya, Sec 44(2) of Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2015 requires that an accountable person shall within seven days of conducting risk assessment file a report with the Financial Reporting Centre.

Tanzania: In Tanzania, Anti-Money Laundering Reg. 2012 (27) requires an accountable person to report within 24 hours. So, like Uganda, Tanzania also has tight timeframes for submission of risk assessment reports to the Financial Intelligence Authority.

South Africa: Time deadlines for reporting of suspected AML activities in South Africa is tiered: maximum of five days for reporting institutions' association with terrorist activities; 15 days for reporting large and suspicious transactions; and two days for reporting cash transactions above the prescribed imit. The Money Laundering and Terrorist Financing Control Regulations 2017[80] in part states:

24. Period for reporting

(1) A report under section 28A of the Act *(Property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council)* must be sent to the Centre as soon as possible but not later than 5 days after a natural person who is an accountable institution or is in charge of, manages or is employed by an accountable institution, had established that the accountable institution has property associated with terrorist and related activities in its possession or under its control, unless the Centre has approved of the report being sent after the expiry of this period.

(2) A request for a report referred to in sub-regulation (1) to be sent to the Centre after the period referred to in that sub-regulation must reach the Centre before the expiry of that period.

(3) A report under section 29 of the Act *(Suspicious and unusual transactions)* must be sent to the Centre as soon as possible but not later than fifteen days after a natural person or any of his or her employees, or any of the employees or officers of a legal person or other entity, has become aware of a fact concerning a transaction on the basis of which knowledge or a suspicion concerning the transaction must be reported, unless the Centre has approved of the report being sent after the expiry of this period.

(4) A report under section 28 of the Act (Cash transactions above prescribed limit) must be sent to the Centre as soon as possible but not later than 2 days after a natural person or any of his or her employees, or any of the employees of officers of a legal person or other entity, has become aware of a fact of a cash transaction or series of cash transactions that has exceeded the prescribed limit.

80 Money Laundering and Terrorist Financing Control Regulations 2017 (under the Financial Intelligence Centre Act) https://www.fic.gov.za/Documents/FIC%20Act%20Web%20File.pdf

For Uganda, it would be reasonable to give a maximum of three working days for submitting a risk assessment report to the Financial Intelligence Authority.

8.2 NEED FOR TIMELINE FLEXIBILITY IN RESPONSE TIME TO CLIENT COMPLAINTS

Part of good customer service among financial institutions is effective response to complaints. BoU appropriately issued Consumer Protection Guidelines, and one of the many provisions therein is timely response and conclusion of customer complaints. This needs to be done in such a way that clients are satisfied and the SFIs have adequate (but not too much) time to address the issues.

BoU Consumer Protection Guidelines Part iii Section 9 (6) in respect of time limit for resolving complaints stipulates that SFIs shall send final response to a client complainant by the end of two weeks after it has received the complaint. While this is adequate for normal cases whose solutions lie totally within the SFI, however, it is often not possible in cases involving the SFI getting information from third parties. For such cases to be resolved, it often takes a longer than expected to get response from third persons and thus four weeks would be more appropriate.

Sound Practices from Elsewhere

Kenya: Recognising that often disputes may arise between a customer and bank, Kenya Bankers Association has developed an internal process through which the bank and the customer can reach an amicable agreement. A customer's first port of call in any dispute is the bank relationship manager, branch manager or bank customer service department of the branch where the problem arose. The dispute should normally be resolved within a maximum of fifteen (15) days.

External dispute resolution support (mediation or arbitration) can be sought by the customer or the bank once all internal efforts have been exhausted. The Kenya Bankers Association has developed the Industry Standard for Complaint Handling and Dispute Resolution, which promotes the use of Alternative Dispute Resolution (ADR) and is informed by the CBK Prudential Guidelines and Consumer Protection Act 2012.

India: Complaints under the Consumer Protection Act are dealt with as follows:

- District Forum – deals with complaints of up to Rs 2 million
- State Commission – deals with complaints of Rs 2 million to 10 million
- National Commission – deals with complaints of over Rs 10 million

In addition, banks are subject to the Banking Ombudsman Scheme for purposes of adjudication of disputes between the bank and its clients. These processes are not only laborious but also time consuming and may not yield timely solutions to the

complainants. They might work for India, which is a very large country with several states, but they do not offer a suitable benchmark for Uganda.

Nigeria: In Nigeria, an aggrieved bank customer is required to lodge a complaint at the bank branch where the issue originated. If after two weeks the complaint is not resolved, the customer may escalate the case to the Consumer Protection Department of the Central Bank of Nigeria for necessary action.

The EU: The European Banking Authority (EBA) offers a cascaded sequence of complaint handling but does not stipulate the time limits for handling complaints. The process is summarised below:

How to complain[81]

As a consumer you have the right to complain against a credit or financial institution in case you are not satisfied with the products or services provided. Although the EBA has no direct competence regarding complaints against a credit or financial institution, in this section you will find some suggestions on the submission of complaints:

1. Contact the credit or financial institution
2. Submit an official complaint
3. Contact your national competent authority or Ombudsman

    a) Contact the credit or financial institution: If you are not satisfied with the products or services provided by a credit or financial institution, you should first contact the customer service department of the respective institution. Contact details are usually available on their websites. For a prompt identification of the problem, it is always advisable to support your claim with relevant documents (i.e., the contract you concluded with the institution or any other document that would help identify the products and services for which you are complaining).

    At this stage, credit or financial institutions are usually willing to help consumers in addressing their disappointment. Nevertheless, in case you are not satisfied with the solution proposed, you can still submit an official complaint.

    b) Submit an official complaint: Each credit or financial institution shall have in place specific procedures for dealing with complaints, which are usually available on their website. Therefore, you should follow the procedure indicated for the submission of official complaints (preferably in written form). Again, supporting documents will be useful.

    c) Contact your national competent authority or Ombudsman: In case you are not satisfied with the response provided by the addressed credit or financial institution, you can refer to either the respective national competent authority or the Ombudsman, when appropriate.

The BoU Consumer Protection Guidelines which stipulate a maximum two-week period for resolving customer complaints appear reasonable and should be upheld for normal complaints but for those complaints involving third parties, this could be extended to four weeks.

8.3 NEED TO ALIGN CUSTOMER IDENTIFICATION REQUIREMENTS

Currently, there are variations in customer identification requirements in the Mobile Money Guidelines, AML Regulations, and the Deposit Protection Fund, which render

81 https://eba.europa.eu/consumer-corner/how-to-complain

customer identification quite cumbersome. There is need to harmonise these customer identification requirements with what is captured by the National Identification Registration Authority data base to facilitate a standard identification process in all financial transactions.

It is recommended that Uganda adopts a standard personal identification document, which should agree with the personal details at the National Identification & Registration Authority for the nationals and passports for foreigners, as recommended under DFS/ Agent Banking section of this assignment. Efforts in this regard have progressed quite significantly but are not yet concluded.

Sound Practices from Elsewhere

USA: In the US, KYC for financial institutions is stipulated in the *Customer Identification Programs* (CIP) under Section 326 of the USA Patriot Act. The CIP has several provisions intended to facilitate the prevention, detection and prosecution of international money laundering and the financing of terrorism. A CIP prescribes the minimum standards for financial institutions and their customers regarding the identity of the customer that applies in connection with the opening of an account at a financial institution. An institution's CIP procedures should be "appropriate for its size and type of business" and must enable it "to form a reasonable belief that it knows the identity of each customer."

The kinds of identification required vary from citizens to non-citizens. For a US citizen or resident, a tax identification number is sufficient. For a "Non-US citizen/ resident, any of the following:

a) Tax ID number

b) Passport number and country of issuance

c) Alien ID card number

d) Number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

The regulation gives each institution reasonable discretion to determine which specific forms of identification it will accept.

Kenya: In Kenya, standard customer identification, which is the enhanced National Identity Card (Huduma, containing all the necessary vital information about the holder, including biometric data) is the key document recognised by service providers for registration across the board. Where the person is a foreigner, a passport is applicable. Hence, incidents of variation in customer identification requirements across different institutions does not arise.

8.4 NEED TO STRENGTHEN CONTROL-RELATED STRATEGIC RISK MANAGEMENT REQUIREMENTS

Among all the risks that SFIs face, strategic risk is the most fluid, elusive, and fatal to the institutions. In Uganda, as in the rest of East Africa, the root causes of past bank failures can be traced to strategic risks associated with ownership and governance, such as:

a) Concentration of control, outside of what is documented

b) Insider lending dressed up as arms-length transactions with other parties

c) Related party lending to entities that were related to the financial institution but not in the organisational chart of disclosed relationships

Such risks are seldom covered by on-the-surface requirements which SFIs respond to by drawing up structures and processes. In most cases, "Strategic Risk" is mainly addressed as possible downsides of wrong or poorly implemented strategy.

The BoU Risk Management Guidelines spell out minimum risk management standards to be implemented by SFIs. BoU requires SFIs to develop their own internal risk management policies, which adequately cover to their business risk profiles. Some SFIs can adequately and objectively identify their strategic risks including those related to ownership and control. In some cases, this enables them to objectively identify, measure, monitor and control risks pertinent to areas like ownership, governance, effective control, and related strategic issues. Some other SFIs, on the other hand, often do not delve into ownership and control related risks. They may not be able to put in place a strategic risk framework that constrains the very persons who have and want to have excessive control. This seems to be a risk area in which BoU needs to take more keen and proactive interest because it will often not be addressed by conventional documentation.

Best practices elsewhere

India: India's banking laws and regulations try to approach the control-related strategic risk from the Board composition standpoint. A bank cannot, for instance:

- Have any director who owns an industrial, trading, or commercial concern
- Have any director holding office for more than eight years
- Have more than three directors who are also directors of companies holding in aggregate more than 20 percent of the bank's voting rights of shareholders.

Kenya: The Kenyan scenario, like the case is in most of EAC, offers the antithesis of focus on risks emanating from real (not just documented) control of the financial institutions. In the Risk Management Guidelines issued by CBK, there is an elaborate chapter on strategic risk management. This covers the details of oversight responsibilities of the Board, executive management responsibilities, responsibility for policies and procedures, strate-

gic planning, and strategy implementation, change management, succession planning, monitoring & evaluation, internal audit, and controls. These are vital aspects of strategic risk management for banks, if active and effective spotlight can be shed on institutional control. Kenya's recent history of bank failures emanated not from the absence of documented strategic risk management, but from concentration and misuse of effective control (which also seems to be a subtle missing link in banks' strategic oversight in Uganda).

Basel Committee on Banking Supervision

Basel III offers the following guidance on sound corporate governance of banks (numbered paragraphs inserted as found in Basel Corporate Governance Principles Banks)[82]:

"159. Supervisors should establish guidance or rules, consistent with the principles set forth in this document, requiring banks to have robust corporate governance policies and practices. Such guidance is especially important where national laws, regulations, codes or listing requirements regarding corporate governance are too generic or not sufficient to address the unique corporate governance needs of banks. Regulatory guidance should address, among other things, expectations for checks and balances and a clear allocation of responsibilities, accountability and transparency among the board and senior management and within the bank. In addition to guidance or rules, where appropriate, supervisors should also share industry best practices regarding corporate governance with the banks they supervise.

160. Supervisors should have processes in place to fully evaluate a bank's corporate governance. Such evaluations may be conducted through regular reviews of written materials and reports, interviews with board members and bank personnel, examinations, self-assessments by the bank, and other types of on- and off-site monitoring.

161. Supervisors should evaluate whether the bank has in place effective mechanisms through which the board and senior management execute their respective oversight responsibilities. Supervisors should evaluate whether the board and senior management have processes in place for the oversight of the bank's strategic objectives…

165. Supervisors should interact regularly with boards of directors, individual board members, senior managers and those responsible for the risk management, compliance, and internal audit functions. This should include scheduled meetings and ad hoc exchanges, through a variety of communication vehicles (e.g., e-mail, telephone, in-person meetings) … The purpose of the interactions is to support timely and open dialogue between the bank and supervisors on a range of issues, including the bank's strategies…

82 This text is included to highlight the extent to which ownership/ governance/ control risks are considered crucial internationally

167. Supervisors should have a range of tools at their disposal to address governance improvement needs and governance failures. They should be able to require improvement steps and remedial action and assure accountability for the corporate governance of a bank. These tools may include the ability to compel changes in the bank's policies and practices, the composition of the board of directors…"

Clearly, the Basel guidance draws from experiences with governance failures of SFIs and the resulting grave effects.

BoU should, therefore, implement a more pragmatic, robust, and effective mechanism for identifying and managing control risks among beyond the documented ownership and control.

8.5 ISSUE GUIDELINES ON ENVIRONMENTAL AND SOCIAL RISK MANAGEMENT

Environmental and social risks can have both financial and reputational costs for banks and other financial institutions. With global warming and increasing environmental and social disruptions caused by economic activity, there are potential liabilities for enterprises and their funders. Environmental and social risks are fast moving from being pure elements of good corporate citizenry to obligations. The regulatory framework of SFIs in Uganda have not yet formally incorporated environmental and social risk management (ESRM). This omission poses future challenges and risks to social viability of the projects funded and their sustainability in the long run. Whereas some banks have in-house policies on environment and social issues, there presently are no express regulatory obligations in this regard. SFIs need minimum ESRM compliance.

Sound Practices from Elsewhere

Basel III view

An online article titled *"Are environmental risks missing in Basel III?"*[83] argues for national and regional regulation on environmental and social risks for financial institutions in holistic ways in order to address the related systemic issues. Among other things it mentions that:

- Basel III already requires banks to assess the impact of specific environmental risks on a bank's credit and operational risk exposures.
- Basel III is not yet being used to its full capacity to address systemic environmental risks.
- China, Brazil, and Peru have engaged in a variety of innovative regulatory and market practices to control environmental systemic risks.

83 https://www.ius.uzh.ch/dam/jcr:00000000-39e6-3af1-ffff- ffffb4eb9b84/Environmental risks _missing_in_Basel_III.pdf

by all SFIs. It is a key monetary policy instrument engaged by central banks and other monetary authorities world-wide to regulate money supply and control inflation. Setting up the CRR considers the balance between these two aims.

Currently, the BoU Cash Reserve Ratio (CRR) stands at 8 percent. SFIs consider this ratio to be high, holding back substantial funds that could be used for lending or other business. SFIs therefore propose a reduction to 6 percent. This proposal could, however, be challenged since SFIs have not yet exhausted their loan-to-deposit ratio, hence are still operating below the indicative upper ceiling of 80 percent set by BoU (current average is about 65 percent). In setting the CRR, however, the regulator needs to look forward. With Uganda's oil revenue about to start flowing in, infrastructure (roads, rail, power stations) enhanced and/or being worked on, private sector investment growing and imminent return to normalcy after the COVID lockdowns, private sector business activity in coming years will likely spike, generating high demand for loans.

Sound Practices from Elsewhere

Kenya, Rwanda, Tanzania, South Africa, Nigeria, India, Singapore, and USA.

The other central banks in the East African Community and around the world currently have CRR as follows:

Central Bank/Monetary Authority	CRR
Bank of Uganda	8.0%
Central Bank of Kenya	4.25%
National Bank of Rwanda	4.0%
Bank of Tanzania	6.0%
South African Reserve Bank	2.5%
Central Bank of Nigeria	27%
Reserve Bank of India	3.0%
Monetary Authority of Singapore	4.0%
Federal Reserve Bank (USA)[1]	0.0%[2]

As can be inferred from the table above, the CRR varies from country to country and Uganda's 8 percent is comparatively high. BoU should, therefore, consider reducing the CRR to 6 percent.

8.7 PERMITTING SFIS TO HOLD CASH RESERVE IN FOREX

BoU does not permit SFIs to hold cash reserve in foreign currencies. This often results into high cost of compliance with CRR in case of SFIs which may hold large cash balances in foreign currencies. It would be prudent to consider permitting SFIs to hold part of their

cash reserves in an established, internationally used currency like the US dollar.

Arising from the requests by UBA to allow banks hold CRR in foreign currency, BoU embarked upon a regional initiative by submitting this issue for consideration at the Monetary Affairs Committee of the East African Community. However, no resolution has yet been concluded on this subject. Other EAC central banks have also not allowed banks to hold CRR in foreign currency. While this is a shared challenge within the EAC, Uganda could continue taking the lead in addressing it.

Sound Practices from Elsewhere

India: The Reserve Bank of India has taken a position against broad basing CRR in forex on account that it would entail additional cost burden to lenders. As CRR is maintained in domestic currency, it would entail additional cost on the part of the bank to maintain forex as the values keep fluctuating vis-à-vis the local currency.

East Africa and other African countries: So far, no central bank/monetary authority has been identified, which permits holding reserves in forex. The reasons for this are several, among them the repricing of the reserve amounts held in forex each time the CRR is calculated and the possible effects of forex depreciation on CRR adequacy.

Since the issue is being addressed at the EAC regional level, BoU should take a lead in advocating for it.

8.8 HIGH EXCISE DUTY ON FINANCIAL TRANSACTIONS

Banks must at present charge a tax of 10 percent on fees, interest payable and other financial transactions and remit to URA. This is a local fiscal policy initiative by Government to raise revenue collection. While boosting revenue collections for the Government, the medium and long-term impact could be a slowdown in financial inclusion as banking transactions become more expensive.

Sound Practices from Elsewhere

Tanzania: Excise duty is levied on financial transactions in Tanzania. The rate applicable is 10 percent.

Brazil: The *Imposto sobre Operações Financeiras* (IOF) is the tax on financial transactions — including foreign exchange, investments, and credit. It is levied at a range of rates depending on what kind of transaction is being carried out. IOF is intended to be a regulatory instrument — meaning that it helps the government measure and manage the volumes of credit and foreign exchange. Application of IOF is multi-stage (depends on amounts the rates are applied on), and different rates apply to different kinds of financial transactions. However, the rates usually range from 0 to 2 percent, with an

exceptional rate of 6.3 percent applied on sending money from abroad to Brazil for a period of 180 days or less.

Whereas there is a case for maintaining the tax on financial transactions in Uganda (government revenue), it would be helpful to consider revising it downwards to 5 percent to reduce the cost of accessing financial services.

8.9 NEED TO CATER FOR REFUGEES' ACCESS TO BANKING SERVICES

Uganda is lauded internationally for its refugee-friendly policies, chiefly because refugees are not strictly kept in camps, but are free to engage in economic activities which enable them become more self-reliant. The 2018 Global Compact on Refugees (GCR) reiterated the need to ensure access to identity documents for refugees as a key tool to achieve their legal protection, as well as to contribute to their self-reliance and resilience. By gaining access to financial services through appropriate documentation, it emphasised, refugees are better empowered to choose how to meet their needs and avoid aid-dependency and negative coping mechanisms. In a March 2019 article[84], UNHCR puts a strong case for refugee financial inclusions, make the following recommendations to refugee host countries:

1. Provide flexible approaches towards proof-of-identity for forcibly displaced persons
2. Allow the use of UNHCR-issued identification for SIM card registration and KYC (know your customer) requirements for opening accounts
3. Increase familiarity of the financial services providers in the mobile wallet market segment
4. increased use of mobile wallet payments in the marketplace
5. Counter misconceptions surrounding refugees that they are high risk customers

The use of a refugee identification system for financial access may be an ongoing practice but the search during this assignment did not find a jurisdictional regulation which specifically mentions them as a KYC identification mechanism. This is partly because most of the regulations stipulate the depth and authenticity rather than the specific names of the documents of identity. Several SFIs in Uganda, especially those with a microfinance portfolio, serve refugees and are looking forward to broadening this market segment. Refugees, upon entry into Uganda at the border points, are registered and granted identification numbers. In addition, the UNHCR also allocates every refugee an identification number. These two categories of identification could be utilised in enabling refugees access banking services.

84 Refugee Access to Financial Services: file:///C:/Users/AndrewObara/Downloads/Refugee%20Access%20to%20Financial%20Services%20March%202019.pdf

SFIs are required to obtain credible customer identification before on-boarding any clients. Certain documents are listed but they do not include refugee identification. The UNCHR and Government identification documents for refugees should be included among the accepted KYC documents by the guidelines.

8.10 SFIS ROLE IN SERVICE PROVIDERS' CONTINGENCY PLANS

SFIs of necessity outsource some functions/services to entities that are better placed to handle them. In such cases, it is the responsibility of the SFI to ensure that the integrity of its own operations is not compromised. This should ideally include the SFI having its clear contingency plan in case the outsourcing does not work and satisfying itself that the entity to which it outsources has the right capability and controls to handle the function.

Article 2.8.1 Of BoU's Outsourcing Guidelines requires that SFIs ensure contingency plans are maintained and regularly tested by SFIs and the service providers to ensure business continuity. It is helpful to firm this up by requiring that a legally binding Agreement be signed between SFIs and the service providers with regard to SFIs' unlimited access to the service providers' contingency plans for periodic verification and testing. Such agreement should also stipulate triggers for disengagement.

Sound Practices from Elsewhere

India: The Reserve Bank of India Code of Outsourcing prohibits SFIs from outsourcing of core functions, to avoid critical challenges which may arise from the provider's weaknesses including inadequate contingency plans. These challenges include technical capacity, legal restrictions, and ease of access, among others. In the event of outsourcing, such impediments need to be sorted out prior to engagement. Having a contract granting the SFI unlimited access to the records and information of the entity to which the function is outsourced is, therefore, a necessary requirement.

South Africa: On outsourcing of functions by banks, the following requirements apply in South Africa:

a) A bank must ensure that all outsourced functions are performed adequately and in accordance with proper internal policies and standards and that the integrity of the bank's systems and controls is always maintained

b) The management of the bank should be able to demonstrate to the Regulator the steps taken regarding the verification of a supplier's performance, including contingency plans

c) Comprehensive Service-Level Agreements (SLAs), which should be exposed to legal scrutiny before implementation, should precede the outsourcing and should clarify contingency plans

d) The bank should have adequate contingency planning of its own because outsourcing of any function always carries a risk that the supplier may fail, or that the contract may be terminated prematurely.

e) Supervisory access to information on the outsourced role, during the regulator's supervision visits, must be granted

f) Prohibition of outsourcing of internal audit and compliance functions.

Recommendations on Operations

Recommendation 8.1: *Extend the timeline for AML risk assessment reports to three (3) working days after risk assessment to give SFI management time to check and ensure report accuracy.*

Amend AML Regulations 2016 8(3) to provide for three working days - for submitting a risk assessment report to the Financial Intelligence Authority. The maximum allowed time needs to be adequate for counterchecking and, where necessary, addressing urgent portions of the problem without compromising need for timeliness.

Recommendation 8.2: *Adjust the timeline for response to customer complaints involving third parties to four weeks so that the SFI has time to engage all concerned parties and give conclusive response.*

For routine complaints, the two-week timeframe for response to client complaints is adequate and should be maintained. In case of complaints which require external party involvement, however, amend the BoU Consumer Protection Guidelines to a maximum of four weeks in cases where the SFI needs third party information to respond to a complaint.

Recommendation 8.3: *Align customer identification requirements*[85] *of different stakeholders, to ease KYC and make it less expensive for the SFI and customer.*

BoU should work with FIA and DPF to synchronise the customer identification requirements (Under the FIA 2004, Mobile Money Guidelines, AML Regulations, NPSA 2020 and the Deposit Protection Fund). This should further be synchronised with what is captured by the National Identification Registration Authority data base to facilitate standard identification process in all financial transactions. For the different persons, the identification requirements could be:

i) National Identity Number (NIN) issued by NIRA

ii) Refugee Identity Card issued by the UNHCR or Government

iii) Passports for Ugandan residents or visitors

85 Mobile Money Guidelines, AML Regulations and in DPF

Recommendation 8.4: *Establish an effective framework for regulating strategic control risks beyond documented ownership and governance, to reduce the potential for owners/directors to circumnavigate the law in exercising concentrated control of SFIs*

Implement a more pragmatic, robust, and effective framework for identifying and managing ownership and control risks among SFIs. This should go beyond what is stated in the organisational charts and other strategy/ governance documents. Some ideas could be to:

- Document and use a mechanism for assessing potential High Control Risk (HCR) institutions (elements of this could be the existence of one or a few natural persons with absolute control, existence of a Ugandan group of companies/ businesses related to the SFI by way of ownership or governance, close relationships – business associates, family, other owned companies – among shareholders and directors etc).
- Identify existing SFI that should be categorised as HCR
- At the licensing stage, classify HCR SFIs as such, and review the effects of their high control concentration every year
- Develop and apply HCR metrics to all SFI and add this to the areas looked at in normal supervision for all SFIS
- Develop additional set of guidelines for all HCR supervised financial institutions, which they must strictly adhere to.

Recommendation 8.5: *Guidelines on environmental and social risk (ESR) so that SFIs do not finance environmentally destructive ventures and can they access "green finance".*

Issue guidelines on environmental and social risk management for SFIs. In keeping with national and international development agenda and to avoid potential losses resulting from legal action on projects financed by SFIs, it is good to include environmental and social aspects in the Risk Management Guidelines and/ or related regulations. While it might be argued that ESRs are not bank or finance specific, financial institutions need to take a lead in good citizenship and the best way of ensuring that the subject matter is clearly included in their operational policies and procedures. Furthermore, liability for environmental and social adverse impacts can precipitate serious liabilities for banks as financiers of development projects/ businesses.

Recommendation 8.6 *Review the CRR down to 6 percent, to release funds for private sector lending, and make the ratio more comparable to similar African countries like Kenya and Rwanda.*

Consider reducing the CRR to at most 6 percent. Being a statutory requirement and key monetary policy instrument, it is not advisable to arbitrarily reduce it. In this case, however, the proposed new ratio is feasible and compares well with the situation in other jurisdictions. Moreover, it will release funds for lending to the private sector (the current circumstances notwithstanding).

Recommendation 8.7: *Continue addressing the need to include some forex assets in CRR at the regional level and advocating for it, which if successful would further release more cash for SFIs to finance business.*

This is a subject matter with a bearing on monetary policy implementation, hence, no one central bank/monetary authority in the region wants to go it alone. As of now, none has so far given a go-ahead to hold reserves in forex. Given that the issue has already been escalated to a regional forum, the Monetary Affairs Committee of the East African Community, SFIs in the region could lobby for a speedy resolution.

Recommendation 8.8 *Reduce excise duty on financial services to 5 percent, to make the services less costly to SFI customers.*

To lower the cost of access to financial services and attract more Ugandans to bank, revise the 10 percent excise duty on financial service transactions to 5 percent. SFIs under their network the UBA should lobby Government to address this issue. The interest rates in Uganda are already very high compared to the other countries in the region and adding excise duty makes financial access even more expensive. This works against the drive for financial inclusion.

Recommendation 8.9 *Regulate to enable KYC for refugees, to enhance financial inclusion of refugees.*

Amend the guidelines and regulations to allow national and UNHCR refugee identification cards as part of the key KYC documents to enable refugees access banking services. SFIs, especially those with a microfinance portfolio, would like to afford more access to financial services for refugees.

If refugee identification comes under the purview of NIRA and NIRA's server becomes freely accessible by SFIs, this recommendation will not apply.

Recommendation 8.10 *Firm up on outsourcing guidelines to oblige service providers more and leave the SFIs responsible only for aspects within their control*

Amend the Outsourcing Guidelines to require SFIs to institute comprehensive and legally binding agreements with service providers in respect of unlimited access to service providers' contingency plans for periodic verification. Recent events have highlighted the need for the regulator to enhance requirements in this area.

Contingency plans pertaining to outsourced activities should also be reviewed regularly. Issues that require consideration by management are availability of alternative suppliers and hand-over procedures to new suppliers. Management should pay special attention to procedures that need to be in place to ensure minimum disruption to business when an alternative supplier is sought. Since the hand-over process may be time consuming, detailed planning is required to ensure a smooth hand-over process to a new supplier.

A bank might also need to reinstate an outsourced function or activity in-house should a supplier fail. Such reinstatement is likely to require a high level of detailed planning and consideration of issues such as resources, system capacity, etc.

Recommendation 8.11: *More regular review of risk management guidelines to keep fair pace with the fast-changing developments in the market.*

BoU should review the Risk Management Guidelines every two years, in consultation with the UBA, all SFIs and the other stakeholders like FIA, IRA, MoFPED, UCC, NIRA and CRBs. The reason for this is that presently, changes in the financial services industry are fast, far-reaching and in some cases sudden. Holding onto a set of regulations for longer than two years would mean the regulations may become outdated and inadequate to address ongoing needs in the industry.

Non-regulatory recommendation - Operations

Collaboration to fight fraud: With the opportunities presented by the high growth of digitisation and fintech come numerous types of subtle, complex, and dangerous fraud. For the sector to remain safe as it grows, these frauds must be prevented and minimised. UBA should, alongside BoU, initiate an active anti-fraud cooperation through a financial frauds' prevention and mitigation alliance. Key partners here could among other institutions include UBA, BoU, FIA, Police, Judiciary, Fintechs association, UMRA, AMFIU, ICPAU, Mobile Money companies, private IT forensic auditors, UCC, NIRA, Uganda Law Society (ULS).

9 CLEARING AND SETTLEMENTS

Clearing includes all the steps involved in transferring funds from one party to another through the Clearing House arrangement. Settlement is the final process in funds transfer, and thus in a sense, the culmination of the clearing process. Efficient c*learing* is necessary to facilitate faster speed of trade and other business.

Most aspects of payments, some of them touching on clearing, are covered under the Operations and Digital Financial Services themes of this report, leaving Clearing and Settlements theme to address only the aspects related to the actual process of clearing.

According to Uganda Clearing House Rules and Procedures 2018[86], the Clearing House Committee first introduced the initial clearing house rules in 2009. Since then, it has been revised three times (2011, 2014 and 2018). The latest review of 2018 updated the rules to reflect the requirements for the new automated clearing house (ACH) with cheque truncation capability and provided for an inward EFT credits exceptions management process.

The ACH addressed many of the challenges that banks faced in relation to clearing prior to its introduction. The system processes both debit and credit EFTs and cheques in five currencies (UGX, USD, EUR, GBP, and KES). The system obviated the need for participants to congregate at a single venue to exchange instruments because the cheque truncation functionality enables participants to present cheques electronically as digital images. Since the ACH advent addressed most concerns (which then reduced regulatory and other clearing related issues to just a few), a brief explanation of the features and benefits of the ACH follows.

Among the features of the ACH are:

1. Payment entry and processing using standard message formats with or without image records, bulk payment, and country specific message formats
2. Instant funds clearing 24/7 with flexible settlement
3. Cheque truncation and data capture from cheques at point of presentation, including image capture
4. Settlement of net positions in one or more sessions per day at pre-specified times set by the ACH operator
5. Supports pre-funded netting, protected netting via pooled funds, and open netting arrangements

86 https://www.bou.or.ug/bou/bouwebsite/bouwebsitecontent/PaymentSystems/Automated-Clearing-House-Rules-2018.pdf

6. Capability to interface directly, or via SWIFT, to RTGS and CSD systems for collateral provisioning and final settlement
7. Integrated with the Mandate Management, Dispute Management and AML modules
8. Capability to carry over queues and balances between intraday clearing cycles
9. Real-time monitoring, including count and volumes of payments in sessions or daily totals, actual and projected positions, account balances for both the ACH operator and participating institutions
10. Complete monitoring of projected positions available to both the ACH operator and Participants
11. Operational reliability with backup and contingency arrangements
12. Maintenance of a statistical database with query and reporting facilities, including charts
13. Secure encrypted, digitally signed, interactive communication for system monitoring and file exchange
14. ACH file submission and payment data entry modules
15. Calculating and requesting the required collateral in anticipation of a settlement session
16. Capability to suspend payments
17. Processing high priority payments or VIP cheques in real time mode with continuous settlement
18. Store and forward function to allow submission of files overnight, to optimise network bandwidth usage
19. A multi-currency clearing capability
20. A standard browser based "thin client" user interface
21. Interoperability using standardised Java API (JDBC, JMS, JTA, JCA), Interface adapters and SOA integration

The ACH therefore has several key benefits, including cheque truncation, thus improved cheque processing efficiency, reduced risk of fraud, lowered cheque handling costs (no courier costs for cheques, no cost of transporting clearing house participants, no time wasted in clearing house meetings), the whole country being on a single clearing platform, use of ISO20022 message type which has facilitated greater compliance with the Anti-Money Laundering and terrorism Financing Act, and allowing commercial banks to monitor the progress of files that enables real-time interventions where necessary. The system enables early notification of the status of the files presented for clearing and the settlement position to commercial banks enabling better liquidity management and full integration with all other systems that support clearing.

Owing to all the above clearing improvements afforded by the ACH, the Clearing and Settlements issues[87] to be addressed have reduced to only a four: Promptness by BoU in sending the ACH system failure notices, generation of transaction success/ failure reports, manual communication of direct debit mandates among banks (practice among banks, not from regulation), and the somewhat high cheque capping.

9.1 TIMELY UPDATES ON ACH SYSTEM FAILURES

BoU is the operator for ACH system, a role which involves managing the technical infrastructure and executing the procedures involved in operating the system. Initially, there were delays in notifying commercial banks of system failures on the ACH whenever they occurred. More recently, this situation has been addressed and prompt notifications are now issued through E-mail and WhatsApp facilities linking up the Clearing & Settlement Managers of commercial banks. To firm this up and avoid future delays, a regulatory provision would be helpful. This could be by way of a statement of maximum lead period permissible in cases of ACH systems downtime.

Sound Practices from Elsewhere

Kenya: The ACH, operated by the Kenya Bankers' Association under the Clearing House Rules, has inbuilt email and WhatsApp communication links with Clearing and Settlement Managers of commercial banks to ensure prompt notification in case of any systems failures. Enforcement of timely updates is backed up by the Clearing House Rules.

South Africa: The South African Multiple Options System (SAMOS), which is the Clearing Payments and Settlements system, disseminates all information/messages to the member commercial banks through the Society for Worldwide Interbank Financial Telecommunication (SWIFT) standard messages. In addition, all SAMOS participants must be registered at SWIFT and use a SWIFT BIC-8 code. Each participant has a unique number which identifies it to other users of the system.

UK: The UK has two ACH systems – one for large and voluminous transactions accessible only to 30 leading banks (the Clearing House Automated Payments System -CHAPS) and the other for retail type transactions (Faster Payments). In both cases, instant notification of the participating banks is built into the payment system so that in case the system is down, all participating banks are notified instantly.

Malaysia: The eSPICK was implemented throughout the nation in July 2009. eSPICK is an image-based cheque clearing system where the cheque image and the data of the magnetic ink character recognition (MICR) code line data are captured and transmitted electronically to facilitate clearing. With cheque truncation, cheques are scanned by

87 Though important enough to be included ere, these issues are mainly operational in nature regarding ACH operations – thus search for international best practices have not yielded much since web-published information seldom include micro-specifics

the collecting banks before the images, including the cheque information, are sent electronically to the eSPICK system for clearing. Under eSPICK, all cheques deposited at the collecting banks before the cut-off time set by the bank, generally at 4.00 p.m., are collected, scanned, and converted into digital mode by the collecting banks. The images of the cheques and the data in the MICR code line are sent electronically by the collecting banks to MyClear for clearing, which will then be made available to the issuing banks for verification. Submission of cheque images and information takes place between 8.30 a.m. to 9.00 p.m. on business days while issuing banks have until 1.00 p.m. of the next day (T+1) to confirm the status of the cheques. The processed physical cheques are retained by the respective collecting banks for safekeeping. Participating institutions get promptly informed in the unlikely cases of downtime, although there is no published regulatory requirement of lead time to information dissemination.

9.3 GENERATION OF TRANSACTION SUCCESS/FAILURE REPORTS BY THE ACH SYSTEM.

The ACH system is open to receipt of files (validated transactions as well as failed ones). However, the communication on success or failure of files is submitted to commercial banks the next working day in the morning. This gives commercial banks a short timeframe within which to resolve any failed items. These challenges featured in the earlier stages of implementing the ACH. Submission of transaction success/failure reports are now instantly issued and transmitted to the respective commercial banks for appropriate actions. This is enforced through the Clearing House Rules and E-mails and WhatsApp links with Clearing and Settlements Managers of commercial banks. This has enhanced operational efficiency which should be maintained.

Sound Practices from Elsewhere

Kenya: The ACH of Kenya under the management of Kenya Bankers' Association has been in operation since 2011 and has over the period perfected its communication links with member banks so that transaction success/failure reports are instantly issued at the conclusion of each clearing & settlement session. This is clearly stated in the Clearing House Rules and Procedures and are facilitated by electronic communication links such as E-mail and WhatsApp to promptly notify participating banks of any urgent messages. Enforcement is through the Clearing House Rules and Procedures.

South Africa: Under the National Payments Systems Act 1998, South African Reserve Bank launched the South African Multiple Option Settlement (SAMOS) in 2009 as its Automated Clearing House.
The system has since been modified from time to time as need arose. SAMOS messages transmissions to clearing house participants are based on the SWIFT standards and all SAMOS participants, which are banks, are required to register at SWIFT and use SWIFT BIC – 8 code.

Nigeria: Nigeria uses the electronic system including cheque truncation. The Central Bank of Nigeria is moving towards real time clearing (T+0). An October 2020 related article[88] reads in part:

Cheque Clearing: The Bank shall continue to improve the clearing infrastructure to increase the efficiency of the system. The cheque truncation system shall continue to be used for the exchange of images of the instruments and Magnetic Ink Character Recognition (MICR) data. The cheque clearing cycle remains T+1 and maximum cap on cheque at N10.0 million. The Bank will continue to take necessary steps to achieve a clearing cycle of T+0.

9.4 COMMUNICATING DIRECT DEBITS MANDATES

The current practice of communicating Direct Debit Mandates among commercial banks in Uganda is through hard copies delivered by courier. This is inefficient, slow and susceptible risk of fraud. This is an engagement among commercial banks themselves, which requires the recipient banks to obtain counter-confirmations of the Direct Debits Mandates by the issuing banks. There is no regulation behind the current practice. Pursuant to the recently enacted National Payments Act, 2020, therefore, BoU should develop facilitative regulation which permits electronic transmission of Direct Debit Mandates.

Sound Practices from Elsewhere

The EU: The Single Euro Payments Area (SEPA) Direct Debit is a Europe-wide Direct Debit system that allows merchants to collect Euro-denominated payments from accounts in the 34 SEPA countries and associated territories. SEPA Direct Debit has now been implemented in all Eurozone countries and non-Eurozone SEPA countries. In these countries all Euro-denominated payments must be collected via the SEPA payment scheme. SEPA - the Single Euro Payments Area - is a European Union (EU) initiative to harmonise payments across the Eurozone. Its goal is to make European payments as easy and cheap as domestic ones by creating a single market for euro-denominated payments. To achieve this, the European Payments Council (EPC) has created three SEPA payments schemes. Each scheme is a set of interbank "rules, practices and standards" that defines a payment instrument:
With rapid advances in technology, most countries no longer require hard copies.

Mauritius: In Mauritius, the communication of DD mandates is required to be done electronically, not by courier hard copies. The two paragraphs below are directly copied from Mauritius' *Port Louis Automated Clearing House Direct Debit Scheme Rules*[89]:

88 CBN Approves New Cheque Standard for Bank https://nairametrics.com/2020/10/05/cbn-approves-new-cheque-standard-for-banks/

89 https://www.bom.mu/sites/default/files/amended_rules_10_01_2019.pdf

For recurrent Direct Debit, the Originating Bank shall send a *scanned copy* of the Mandate to the Paying Bank in the form of a special batch file which may contain up to 10 items in the same format as a cheque with code '07' as batch reference number, amount set to zero, 'Mandate Reference No' field replacing the 'Cheque Serial No' and the image of the Mandate replacing the cheque image. The field 'payment reference' shall contain the keyword 'MANDATE'. The mandate shall be a single sided document which does not exceed A4 size.

This batch shall provide an *electronic version* of the mandate for use in STP as well as an image of the signed Mandate. The Mandate shall be sent to the Paying Bank only once.

UK: Direct Debit mandates can be completed in three primary ways:

1. Signed on paper the traditional way
2. Over the phone, also known as electronic file transfer
3. Online.

South Africa: Direct debit mandates can be signed on paper or electronically.

Kenya: In February 2019, the Kenya Bankers' Association enhanced the functions of the ACH system to facilitate electronic transmission of direct debit mandates across of participating banks. Execution of direct debit mandates across all participating banks have been centralised and automated under the ACH, resulting in enhanced accuracy, faster processing time and improved security.

Recommendations on Clearing & Settlements

Recommendation 9.1: *Include requirement for timely updates in regulations, so that SFIs do not take responsibility for what is outside their control.*

A provision in the regulations should require that BoU always sends timely updates in cases of systems upgrades/failures encountered by the ACH. There should also be a provision that the affected financial institutions shall not be held liable and shall be indemnified by BoU in the event of loss arising from uncommunicated or delayed communication of ACH system outages/failures.

While there have been significant improvements in notification of commercial banks in regard to ACH system failures by BoU, there are still incidents when these delays persist. In the circumstances, BoU should embark upon an upgrade of the ACH IT operating system to incorporate prompt auto generation of e-mails or WhatsApp on incidents of ACH systems failures and thereafter notify commercial banks accordingly.

Recommendation 9.2: *Implement same day reports generation from the ACH system and configure the system to reject only transactions with error rather than whole batches, for better service to customers.*

BoU should affect an upgrade of the ACH IT operating system to ensure same day notification of the success and failure reports to enable commercial banks effect prompt corrective actions to ensure speedy clearing of instruments. In addition, further modification of the ACH IT operating system should be implemented to ensure that only erroneous instruments are rejected as opposed to the current practice where the entire file is rejected on account of just one erroneous instrument in the transaction.

Recommendation 9.3: *Permit electronic delivery of Direct Debit Mandates to reduce delays and possibilities of human error in the related transactions and enhance transaction speed for customer service.*

Under the NPS Regulations, include a provision that expressly recognises electronic delivery of direct debit mandates as an option alongside the hard copy/ courier delivery. The system at BoU should be configured to enhance SWIFT and ACH to accommodate electronic delivery of direct debit mandates.

BoU should also use the ACH IT operating system to accommodate electronic delivery of direct debit mandates by commercial banks to eliminate the current manual circulation of documents through the currier system, which is susceptible to fraud and errors. In addition, the electronic option of delivering the Direct Debit Mandates will foster speedy conclusion of transactions.

Part D

FINANCIAL MANAGEMENT AND REPORTING

10 FINANCE

Financial outcomes are a culmination of all operations, transactions, and processes of the SFI. The finance function, therefore, has a "helicopter view" of the business and operations of financial institutions. Internationally, guidelines for financial reporting are issued as International Financial Reporting Standards (IFRS) and these are adopted by the Institute of Certified Public Accountants of Uganda (ICPAU), the national authority for the accounting profession.

The law (in this case FIA as amended) and its regulations touch on issues that are related to financial reporting (such as asset valuation, provisions etc). To the extent that international regulations in the accounting profession are dynamic and are regularly being reviewed while the FIA is less frequently reviewed, there arise discrepancies between FIA requirements and those of the accounting profession. Several issues identified in this report relate to such discrepancies. Issues of technical detail like provisions, asset recognition etc should preferably be dealt with under Regulations and Guidelines from BoU rather than a mainstream law like the FIA.

10.1 CONTRADICTIONS BETWEEN FIA REQUIREMENTS AND INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

The banking sector financial reporting is guided by the international accounting framework, the IFRS. In Uganda, however, banks must still use FIA stipulations for periodic reporting, yet some aspects of the FIA 2004 (amended) are not consistent with IFRS

application. Whereas the data used for both FIA and IFRS reporting is captured from the same source, double reporting is costly in time and effort. It would be more efficient and effective if IFRS was used for both periodic regulatory and year-end financial reporting to avoid keeping two sets of records.

In the circular issued to SFIs Ref.306.2 dated December 17, 2018 *(Guidance notes on some Implementation aspects of IFRS 9: Financial Instruments)*, SFIs were granted a four (4) year transition period within which to absorb additional impairment due to IFRS 9 (if any) for the affected FIs. It is not clear whether regulatory reporting will be fully aligned with IFRS 9 effective January 1, 2022, when the transition period elapses. The approach to phase the convergence towards IFRS is a prudent way to allow SFIs' gradual adjustment to this change in financial reporting.

Sound Practices Elsewhere

UK and the EU: In the UK and most other developed economies, asset classification and provisioning (Impairment) have been fully aligned with IFRS 9. Part of the reason is that at the passing of IFRS 9, these countries were already highly Basel III compliant, and IFRS 9 provisions on asset recognition align with Basel III. This means that periodic reporting to the regulator is done on the same basis and using the same principles, focusing on the same variables as are used for normal financial reporting. Thus, the banks do not have to extract figures from IFRS 9 compliant reports and adjust them to prepare periodic reports for the regulator. This is efficient.

Nigeria and Botswana: Nigeria and Botswana have fully adopted the IFRS 9 for all reporting, including periodic reporting to their respective regulatory authorities. Accordingly, the SFIs there do not have the problem of double reporting. Lessons from Nigeria are that the process cannot be hurried. It should be gradual as many SFIs grapple with fully applying IFRS 9.

During the interviews for this assignment, senior bankers familiar with the Nigerian experience and with experience across East and West Africa, advised that countries like Uganda should aim at moving towards using IFRS for all reporting but the process needs to be gradual. People (both on the SFI and regulator sides) take long to master IFRS principles and practice. This is good advice because internationally, both IFRS and Basel principles are assuming increasing importance in bank regulation going forward.

Tanzania: has adapted IFRS 9 for both year-end financial and periodic regulatory reporting but very likely, they still run a parallel reporting system to adhere to national regulatory stipulations.

Kenya: The Central Bank of Kenya has given banks guidelines and a five-year timeline (starting 2017) to fully adapt IFRS 9 in regulatory reporting. This means that after the five years, regulatory reporting will be fully aligned with IFRS 9.

10.2 MISMATCH BETWEEN TAX-FOCUSED REPORTING REQUIREMENTS VIZ IFRSS

Tax treatment is referenced to the regulatory accounting to determine taxable income and introduce adjustments which are usually due to departure from IFRS. For example, URA disallows general provisions computed as per FIA whereas specific provisions and write-offs are allowable deductions. Whereas alignment between tax and accounting systems is not the overriding objective, it would lead to reduction in compliance cost for FIs who currently need to comply with a tax and an accounting system. Although the full broad spectrum of alignment between accounting and tax systems may not be possible due to competing objectives, it may be useful to consider those significant points of departure where SFIs would best derive value in alignment like IFRS 9 – Impairment of loans.

Sound Practices Elsewhere

UK: The Finance Bill passed in 2004 permitted the use of IFRS based accounts when filing tax returns and made a number of changes to the UK tax law to accommodate IFRS. It also enabled the Government to make further detailed changes by issuing statutory instruments (which are legally binding but are faster to implement than changes to legislation). Currently, significant parts of the UK corporate tax system are still closely linked to accounting.

Germany: Germany has a long, established history and a direct statutory relationship between financial reporting (based on German national accounting standards) and the tax system. The calculation of taxable profit in Germany is based on the calculation of accounting profit. Some deviations apply, but there is generally a high degree of conformity/alignment.

10.3 NEED TO ALLOW BANKS TO HAVE INVESTMENTS IN IMMOVABLE PROPERTY

Under the FIA 2004, FIs are prohibited from purchase or acquisition of any immovable property or any right in it except for the purpose of conducting its business or of housing or providing amenities for its staff. Whereas the prohibition was introduced in the 1990s to curb excesses of investing in buildings, some level of income from immovable property could be allowed to help the SFIs diversify their sources of income (without significantly diverting from their mainstream business). Holding companies have been incorporated to circumvent this law. The Insurance Sector allows investment of up to 35 percent of paid-up capital in the purchase or development of company land and buildings, capable of generating investment income that is fitting to that particular asset and locality.

Sound Practices Elsewhere

Malaysia: The Central Bank of Malaysia (CBM) policy on Holding of Immovable property issued in December 2019 permits FIs to acquire, hold or rent immovable properties for the following purposes among others - conducting its business and letting the remaining floors of the immovable property which are in excess of its current needs.[90]

Singapore: The Monetary Authority of Singapore (MAS) prohibits banks from acquiring or holding interest in or rights over immovable property, wherever situated, the value of which exceeds in aggregate 20 percent of the capital funds of the bank or such other percentage as the MAS may prescribe.[91]

10.4 NEED FOR A DYNAMIC, FUTURE-FOCUSED REDEFINITION OF "BANKING BUSINESS"

According to the Second Schedule of FIA 2004, banking services are defined to include: "Acceptance of call, demand, savings and time deposits withdrawable by cheque or otherwise; Provision of overdrafts and short to medium term loans; Provision of foreign exchange facilities; Acceptance and discounting of bills of exchange; Provision of financial and investment advice; Participation in inter-bank clearing systems; Give guarantees, bonds or other forms of collateral, and accept and place third party drafts and promissory notes connected with operations in which they take part".

The FIA definition is, with developments, limiting on the innovative services SFIs can get into to support their banking services. With the evolution of banking services there is need to update the FIA with the product scope of banking services. The FIA acts as the reference point for the scope of banking services (broadly) as defined in the licenses to SFIs. There are instances, however, where SFI income streams from new products - digital and MNO services (SMS alerts etc.) have been disallowed (because SFI license do not indicate so) as not conforming to the definition of banking services. In some cases, where other regulatory bodies like URA reference the FIA in their application of tax rules, SFIs remain in a weaker position to justify/prove their chargeable/taxable incomes where there is no clear definition in the FIA.

Since the limits imposed by the definition are felt at the implementation rather than legislation level, the search for sound practices elsewhere did not yield comparable scenarios.

90 https://www.bnm.gov.my/documents/20124/938039/pd_holding+of+immovable+properties_dec2019.pdf/18d313ce-f3cc-f564-9197-7163f786a48c?t=1592251164843

91 https://sso.agc.gov.sg/Act/BA1970#pr33-

Sound Practices Elsewhere

Singapore: The Banking Act of Singapore defines "banking business" to mean the business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers, the making of advances to customers, and includes *such other business as the Authority may prescribe for the purposes of the Act*.[92]

Malaysia: The Financial Services Act 2013 (FIA) of Malaysia defines Banking Business as the business of — (i) accepting deposits on current account, deposit account, savings account, or other similar account; (ii) paying or collecting cheques drawn by or paid in by customers; and (iii) provision of finance; and (b) *such other business as may be prescribed*.[93]

India: The Banking Regulation (Amendment) Act, 2017 of India defines "banking" to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawal by cheque, draft, order or otherwise.[94] A comprehensive list of other incidental products is also listed in the Act.

Luxembourg: For Luxembourg, the Law of April 5, 1993 on the Financial Sector (Amended) refers to Credit Institution and banks' activities to consist of receiving from the public deposits or other repayable funds and in granting credits for their own account. Annexe I of the of the same document details a comprehensive schedule of ancillary services that are included in the scope of definition of credit institutions and banking services.[95]

South Africa: The Bank Act, 1990 (Amended) details "the business of a bank" to include - the acceptance of deposits from the general public, the soliciting of or advertising for deposits; the utilisation of money, or of the interest or other income earned on money, accepted by way of deposit, the obtaining, as a regular feature of the business in question of money through the sale of an asset, to any person other than a bank, and any other activity which the Registrar has, after consultation with the Governor of the Reserve Bank, by notice in the Gazette declared to be the business of a bank.[96] This description acknowledges the possibility that the range of banking services is likely to change.

92 https://sso.agc.gov.sg/Act/BA1970#pr40-

93 https://www.bnm.gov.my/documents/20124///35ed2b4c-1995-f91d-3891-75d69d247d55

94 https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/BANKI15122014.pdf

95 https://www.cssf.lu/wp-content/uploads/files/Lois_reglements/Legislation/Lois/L_050493_lfs_upd270218.p

96 https://www.resbank.co.za/en/home/publications/publication-detail-pages/prudential-authority/pa-deposit-takers/banks-banks-act/2002/2591

10.5 LEASED ASSETS IN CALCULATION OF RISK-WEIGHTED ASSETS

IFRS 16 (applicable effective January 1, 2019) requires entities to recognise the Right-of-Use (ROU) assets arising from leases of property, plant, and equipment as tangible assets (branch networks, contracts over ATM networks and the related space occupied by such machines, data storage facilities etc.), if they are not presented within their own line item on the balance sheet. These result in an increase in the total assets and total liabilities of the bank. As per the guidance issued by the Basel Committee in April 2017, the ROU asset should be included in the risk-based capital and leverage denominators. The intent of the revisions to the lease accounting standards was to more appropriately reflect the economics of leasing transactions, including both the lessee's obligation to make future lease payments, as well as a ROU asset reflecting the lessee's control over the leased item's economic benefits during the lease term.

Grossing up of the balance sheet has the effect on capital adequacy ratio (CAR) as the recognition of the ROU asset and the lease liability resulted in banks being required to set aside further capital. The assets are amortised on a straight-line basis while at the same time, the unwinding of the interest on the lease liability has the effect of higher interest expense at the beginning of the lease and thus a higher liability, compared to the end of the lease, when interest expense will be reduced after several of the rental instalments are paid.

The capital adequacy template as provided by BoU has a provision for risk weighting fixed assets under the line "*Bank premises and other fixed assets net of depreciation*" where the net lease figure should be recorded as the carrying amount of the leased, that is ROU lease asset net of the corresponding accumulated depreciation. Some SFIs are still reporting the Gross ROU lease asset without recognising the accumulated depreciation and thus varied capital adequacy computations amongst SFIs. This prudential treatment of recording the carrying amount should be clarified to SFIs for consistency in their reporting. For ease of reference, the BoU template is presented below.

Table 1: Capital Adequacy Template

III CAPITAL REQUIREMENT BASIS (Enter Risk Weighted Figures only)	
1 Notes, coins and other cash assets	
2 Balance with BOU	
3 Due from financial insitutions in Uganda	
4 Due from financial insitutions outside Uganda with long-term rating as follows :-	
(1) Rated AAA to AA(-)	
(2) Rated A (+) to A (-)	
(3) Rated A (-) and non rated	
5 Uganda Government securities	
6 Bank of Uganda loan scheme	
7 Loans and advances (net of specific provisions, cash covers and those secured by government securities)	
8 Investments	
9 Bank premises and other fixed assets (net of depreciation)	
10 Items in transit, own offices	
11 All other assets (to be reduced by deductions made for goodwill, intangible assets investments in unconsolidated subsidieries and future income tax benefits)	

Sound practices elsewhere

European Union: The European Financial Reporting Advisory Group (EFRAG) highlighted that the actual effects of IFRS 16 on solvency, leverage and liquidity ratios of financial services entities subject to prudential capital requirements will depend on the decisions taken by the relevant prudential Regulators[97].

India: In March 2019, The Reserve Bank of India (RBI) deferred the implementation of India's new accounting standards (Ind AS). The equivalent accounting standard applicable to IFRS 16 is Ind AS 116 whose adoption together with Ind AS for Banks is yet to progress.[98]

Kenya: Whereas no information is available from the Central Bank of Kenya (CBK) on adoption guidelines for IFRS 16, the capital adequacy template used by the banks is similar to BOU's approach of recording bank assets as "net of depreciation" (Annex II – Capital to Risk Weighted Assets)[99].

97 https://www.afme.eu/portals/0/globalassets/downloads/divisions/prudential/afme-prd-ifrs16-regulatory-treatment-of-leases-final-position-paper.pdf

98 https://www.iasplus.com/en/news/2019/07/india

99 https://www.centralbank.go.ke/wp-content/uploads/2018/04/CBK-Guidance-Note-on-Implementation-of-IFRS-9.pdf


Gavi

10.6 ADDRESSING RECURRING NEED FOR CLARITY OF PROVISIONS IN THE FIA AND RELATED REGULATIONS

There are instances of unclear provisions/terms in the FIA that are interpreted differently by different stakeholders and at times lead to financial consequences to SFIs. These come to surface on different topics and aspects and often there is disagreement (internally within an SFI or between the SFI and an external stakeholder). Because they keep on coming up, a definitive list is not available, but the issues need to be clarified each time they arise. The BoU has on several occasions been at the fore front of leading numerous forums where ambiguities in the FIA or banking sector operations are resolved with declarations / issuance of new guidelines with the objective of effective regulation and harmony.

The BoU should continue with the periodic workshops with SFI teams with the objective of improving the uniformity of understanding (and thus improving the quality of reporting and data output from SFIs). This is critical especially with the dynamic movement of staff who are responsible for collating information that is later used for decision making by shareholders, investors, and government.

10.7 REMOVE THE "DOUBLE-PUNISHMENT" IN LIQUIDITY RATIO CALCULATION FOR INTERBANK DEPOSITS.

On Liquidity ratio, international/regional banks are "double-punished" because their cross-border deposits (from sister FIs outside Uganda) are disallowed while cross-border liabilities are maintained.

The basis of computation of liquidity ratio (LR) as per prudential guidelines is such that the required Liquid Assets held by SFIs must exceed 20 percent of Total deposit liabilities. Included in the Total Liquid Assets held, are the line items of "Net due from bank inside and outside Uganda". The treatment is that the Net Inter-Bank Balance with Other Banks is added to either assets or liabilities depending on whether it is positive or negative. When the net balance is positive, it should be added to assets, but when it is negative, it should be added to liabilities.

There is a suggestion that the "net-off" of interbank balances while taking the full effect of liabilities to other banks included in total deposit liabilities is at the detriment of SFIs as this leads to the requirement to hold higher Liquid Assets. While this submission does not consider the fact that such deposits may be committed to settlement of borrowings from other banks, BoU may need to clarify the correct prudential treatment for SFIs' consideration in their liquidity management strategies.

Recommendations on Finance

Recommendation 10.1: *Communicate timelines for full adoption and alignment of FIA to IFRS, which will reduce time spent on reporting, and the bases for the asset recognition.*

Amend the Financial Institutions (Credit Classification and Provisioning) Regulations, 2005 to align with the IFRS 9 requirements for impairment. After this, BoU should communicate timelines for full adoption and alignment of FIA (including FI-Credit Classification and Provisions) to IFRS 9. banks have largely adopted IFRS for statutory financial reporting and a transition period of alignment of FIA provisioning to IFRS 9 has been set and will elapse at the end of 2021, BoU should check and confirm readiness of SFIs owing to the necessary readjustments and skill updates that might be needed on both sides of regulation.

Recommendation 10.2: *Establish task force to explore conformity of tax accounting and IFRS reporting for SFIs, to ensure that SFIs are fairly taxed.*

Since banks have largely adopted IFRS for statutory financial reporting, BOU should lead the establishment of a task force with Uganda Bankers Association (UBA) and Uganda Revenue Authority (URA) to pursue the alignment of tax accounting and SFIs financial reporting.

Recommendation 10.3: *Permit restricted investment in immovable property, to enable SFIs diversify earning asset base without overly investing outside of financial services.*

To promote diversity in incomes of SFIs, it is recommended that BOU re-considers the prohibition of investments in immovable properties and permits SFIs that own buildings as part of their office space to lease the extra space. It is recommended that those SFIs that have capital leverage are allowed to invest in immovable property up to a limit that may be determined by BOU, say 10% of SFIs' core capital.

This is appropriate considering the development of the Real Estate sector, mortgage servicing assets and certain types of commercial real estate loans that SFIs administer and the application of risk weighting regime that SFIs can appropriately use in compliance to prudential frameworks.

Recommendation 10.4: *Amend the definition of "banking services" in the FIA to reflect evolution of banking services and related product scope, to expand the allowable range of services for banks.*

Several banks have been positioning themselves as a one-stop shop financial service provider with increasing ranges of products and transactional services. In the era of digital channels and fast-paced innovations, some of the services fall outside the traditional definition of banking services. BOU should amend the FIA Act 2004 to appropriately

permit current scope of services incidental to banking (like SMS alerts on transactions) and accommodate emerging innovations by SFIs. A Task Force may be set up by BOU to explore all sources of changes with clear timelines to reporting.

Recommendation 10.5: *Clarify the carrying amount approach of reporting leases under IFRS to SFIs in the computation of Capital adequacy, to ensure that SFIs' capital adequacy reporting is accurate.*

Bank of Uganda should send specific guidelines to SFIs clarifying the prudential treatment that provides for recording the carrying amounts of leased assets as per adequacy reporting template. Capital adequacy reporting numbers for SFIs that have not been reporting leases correctly should be rectified for consistency in monitoring of the capital adequacy for SFIs. This communication should be done as soon as possible because of its impact to computation of capital adequacy of SFIs.

Recommendation 10.6: *Enhance the clarity and understanding of the law and regulations provisions among SFIs through regular information sharing sessions and other means.*

Although this recommendation is not for a legislation or regulation to be amended, it is placed here because of its importance in optimising understanding of regulatory and other industry issues. Bank of Uganda should strengthen and enhance the workshops with SFIs that are intended to clarify and understand FIA provisions. These workshops should be sufficiently frequent enough to given due importance on improvement of quality of reporting. Meeting between BOU and SFIs for this purpose, twice a year would be useful.

BoU should designate Liaison Officers to SFIs as contact persons, to facilitate the communication and coordination with SFIs on matters relating to the understanding of the different provisions in FIA, regulations, guidelines, and circulars. The periodic feedback sessions should be entrenched in the normal dialogue between BOU and SFIs with clear timetables.

Recommendation 10.7: *Clarify on prudential treatment of net interbank balances in the computation of capital adequacy, so that all SFIs report correctly and uniformly on this.*

Bank of Uganda should send a circular to SFIs, on Computation of Liquidity and Capital Adequacy ratio computation clarifying the treatment of Net Inter Bank Balance with Other Banks. The circular should indicate that - the net interbank balance should be added to either assets or liabilities depending on whether it is positive or negative and that when the net balance is positive, it should be added to assets, but when it is negative, it should be added to liabilities. This communication should be done as possible because of its importance to computation of capital and liquidity ratios. This should help the international banks that presently take the view that the cross-border liabilities are allowed, and assets disallowed in the capital adequacy determination.

11 TREASURY

Broadly, Treasury in a financial institution is the function that manages liquid assets for the smooth functioning of the institution, and for optimum benefit to the institution in terms of profitability. In this role, the Treasury function ensures that a bank's assets match its liabilities in a suitable and compliant way, and that liquidity for operations and earnings from treasury products are both optimised. In fulfillment of its key objectives, the Treasury function typically undertakes various operations like:

a) Planning for and ensuring adequate liquidity of the bank

b) Funding the balance sheet on current and forward basis as cost-effectively as possible those

c) Managing treasury-related risks (including fraud) of the bank within the approved and prudential norms and regulations

d) Managing the trade/dealings in treasury instruments

e) Managing FX and its pertinent risks

f) Managing all the other functions that affect or are related to the above.

As a fundamental part of a bank's business, Treasury today relies on four fundamental pillars:

i. *Technology*: Technology is essential to access real-time information on financial markets, calculate the price of the different products for purchase/ sale and the associated risks, properly confirm and liquidate transactions, and comply with regulatory requirements.

ii. *Products*: Treasury products[100] afford the bank (and its customers) choices for risk coverage and investment solutions, both simple and complex.

iii. *Distribution channels*: The capacity to provide the product to customers at a competitive price, when and where they need it is vital.

iv. *Risk hedging:* Mechanisms for managing and hedging the risks associated with treasury.

Globally, Treasury functions of banks have changed considerably since the start of the financial crisis in 2007. In many jurisdictions, regulations have been established that discourage banks from taking on their own risks (proprietary trading). Regulations also create greater control, management and monitoring of the risks derived from treasury operations with customers. Greater transparency and customer/shareholder protection as well as organisational safety and soundness are also fundamental.

100 Like fixed income investments, interest rates, equities, and FX.

Treasury activities and policies of a bank will have impact on all the other areas of its business. The regulations related to treasury will therefore affect the bank and the sector significantly. Banks typically organise their Treasury into three constituent sub-functions: Front Office (*Dealing,* to harness opportunities and manage risks), Mid-Office (Risk management and information generation) and Back-Office (Confirmations, settlements, accounting and reconciliation). As in some other cases, regulation looks more at the potential and actual effects of these processes rather than the operational procedures. Accordingly, many of the treasury-related issues are captured under liquidity regulations.

From the interviews and earlier issues documented by UBA's Treasury Committee, there are four[101] substantive issues raised on the Treasury function. These are:

i. Need to include all Government securities among liquid assets.

ii. Including some forex deposits as part of the CRR.

iii. Need for a law or regulation on Netting.

iv. Admitting FX swaps as collateralised facility to support borrowing under the Lombard Window from BoU.

11.1 INCLUDING ALL GOVERNMENT SECURITIES AMONG LIQUID ASSETS

The FI (Liquidity) Regulations 2005; Section 7 (1) (d), liquid assets are defined to include "… Uganda Treasury Bills maturing within a period not exceeding ninety-one days…" This means all Treasury Bills and Bonds which mature beyond ninety-one days are excluded from liquid assets. Whereas this was suitable in 2005 when the market was shallow and thus long-maturity instruments were not very liquid, the market situation has since changed with more liquidity.

SFIs suggest that the definition of a liquid asset, in terms of financial instruments, should also include those instruments with maturity periods longer than 91 days, as long as they are freely tradable. This would mean that Treasury Bills and Treasury Bonds are included in the liquid assets regardless of the period of/ to their maturity.

The argument for inclusion of marketable, held-to-maturity instruments under liquid assets looks at opportunities for the banks to have adequate cash to lend to the private sector, to trade and do business with. The box below summarises the SFIs' arguments on this matter.

101 The fifth issue, "short-selling" was agreed to be removed from the report

Given the evolution of the government securities market especially the secondary market; where banks make prices for securities across all tenors, this current definition is quite limited. In addition, banks on their banking books, hold significant amount of "liquid" assets beyond 90days supporting both monetary and fiscal needs, which assets should be included in the definition. Lastly the Lombard guidelines apply a haircut to reflect the liquidity nature for tenors above 90days. The SFIs therefore argue that the proposed change would:

a) improve and correctly reflect the liquid assets that a financial institution holds (adjusted for haircuts for tenors above 91days)

b) potentially increase banks' participation in government issuances in tenors beyond 91days on the basis that with a haircut applied, tenors above 90days can be included.

c) Result into lower yields because of increased competition for the Treasury instruments, potentially driving banks to lend more to the private sector.

d) make the recognition imprudent because of the cautiously liberal haircut applied as a standard in recognising long maturity securities (>91 days),

While there is reasonable justification for recognition of all freely tradable Government securities as liquid assets, adequate prudence should be applied in implementing it (by way of stipulation of haircuts in recognising the >91-day instruments).

Sound Practices from Elsewhere

Kenya: The Banking Act, 2015 section 19 (e) defines liquid assets to include Treasury Bills and Bonds whose maturities do not exceed ninety-one days and are freely marketable and discountable at the Central Bank of Kenya. This is consistent with what BoU does presently.

Nigeria: The Banking and other Financial Institutions Act, 1991 (as amended in 2002) section 15 (5) (d) defines liquid assets as Treasury Bills, Bonds and Certificates issued by the Federal Government freely marketable and discountable at the Central Bank of Nigeria. "Liquid assets include cash and due from banks, trading securities and at fair value through income, loans and advances to banks, reverse repos and cash

collaterals"[102]. As long as Government securities are freely traded in the market, they are included in the liquid assets.

South Africa: In South Africa, the definition of "liquid assets" for a bank include all Government securities.
"Liquid assets are cash and assets that can be converted to cash quickly if needed to meet financial obligations. Examples of liquid assets generally include central bank reserves and government bonds"[103].

Nigeria and South Africa, both African countries with financial markets that offer Uganda an example of the growth path in the market maturity continuum, include all traded Government securities in the liquid asset category.

11.2 INCLUDING FOREX AS PART OF THE CRR

The statutory Cash Reserve Ratio (CRR) for banks in Uganda is eight percent (8 percent) of all deposits (forex and local). The reserves, however, must be held wholly in local currency with the Central Bank and cash held (portion dependent of branch distribution). A change in this regard, to reflect the present dynamics and market realities, would useful.

In support of market development and improved client experience, the Central Bank has made it possible to settle locally (through the BoU) the major foreign currencies via RTGS. With the growing FX volumes being settled locally, banks tend to hold substantial amounts of foreign currency locally with BoU. This comes at a significant cost as well as operational challenges of moving funds between the Central Bank and offshore clearing banks. At times when balances are insufficient, the clearing sessions have been disrupted. If SFIs do not hold adequate FX with BoU, there would be adverse effects like:

a) Frustrated clients due to hitches or delays in clearing and settlement.

b) Increased compliance costs to the institutions (including foregone earnings, penalties due to failed sessions).

Regulations should, while being preventive against risk, permit adequate resources to finance the private sector which is the engine of the economy. The more money is tied up in the banking system as statutory reserves, the less is available to lend. In this regard, banks that have forex reserves with BoU should be able to take some of it as part of the CRR.

Recognising forex as part of the CRR might pose a slight challenge of fluctuating exchange rates, which could be addressed by fixing rates every two weeks or dynamically calculating the UGX equivalent of the forex included in the CRR. The other challenge

102 https://www.google.com/search?client=firefox-b-d&q=nigeria+definition+of+liquid+assets

103 https://www.google.com/search?client=firefox-b-d&q=What+are+the+liquid+assets+of+a+-bank%3F&sa=X&ved=2ahUKEwiBpr-QsYfuAhVCSxoKHYf4A58Qzmd6BAgQEAU&biw=1536&bih=750

would be the extent to which forex deposits at BoU should be allowed as part of CRR. BoU could determine a maximum level to which forex can constitute CRR (the recommendation is 2 percent points).

Sound practices elsewhere

Review of literature from other jurisdictions[104] did not yield conclusive answers to the question as to whether they include foreign currencies in their determination of liquid assets for inclusion into CRR. The relevant websites do not state clearly whether foreign currencies can be included as part of CRR. In the US, for instance, there are cascaded levels of CRR requirement (according to the asset endowment and capital levels of the banks), and it would appear that banks can include internationally convertible currencies into USD equivalents for the sake of constituting CRR. This can only be inferred from several sources anecdotally.

11.3 LAW OR REGULATION ON NETTING POSITIONS

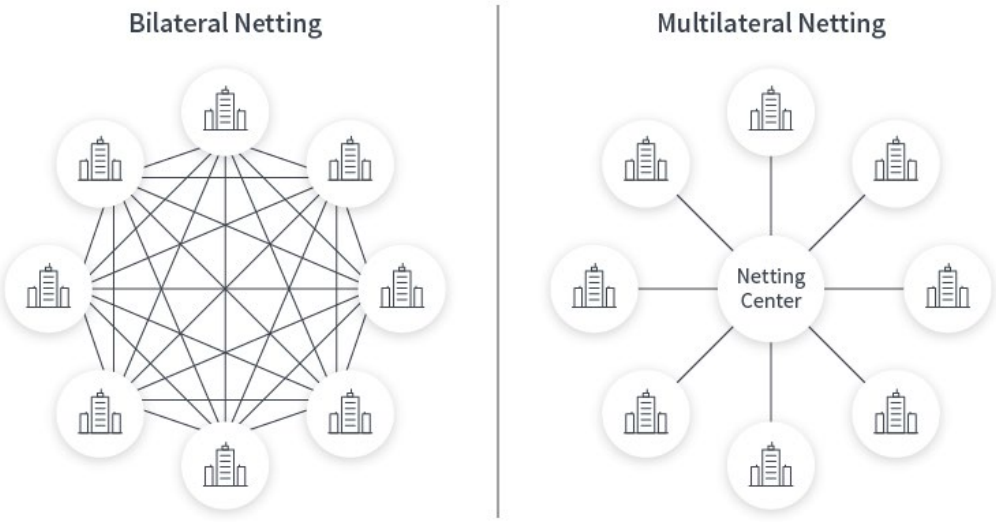
Netting entails offsetting the values of multiple positions or dues to be exchanged between any two or more parties to transactions. In payment/ settlement netting, counterparties that exchange multiple cash flows during a given day or period can agree to combine all those cash flows into one payment (amounts due and amounts owed are netted off) and only the difference is paid by the party that owes it.

Broadly, there are two types of netting practice: bilateral and multilateral.

Bilateral netting: Two parties reconcile invoices they owe to each other, and one party pays the other the net sum due.
Multilateral netting: Three or more parties reconcile invoices, using a netting centre. The parties that owe net amounts then pay.

104 Countries reviewed include Germany, the UK, Ireland, Nigeria, South Africa, Tanzania, India, Singapore

Figure 5: Types of netting



Since the multilateral netting mode is complex and might require time and resources to set up, regulation in Uganda could at this time look at bilateral netting.

At present, there is no *netting* law or regulation in place whereas there are several financial markets products (swaps, repos, depos) in the market would qualify for netting, thereby significantly reducing both effort and pertinent risks.

Netting would ease business in the following ways:

a) Better risk control as positions is netted off, reducing on the necessary credit lines

b) In cases of a SFI insolvency/resolution, the outstanding positions can be netted off. Currently based on the Insolvency Act, the party that remains a going concern with receivables due from the insolvent entity ranks 4th in receiving compensation. This in a sense restricts credit lines between financial institutions, which in turn slows down the development of money markets

c) International/offshore players will increase their activity in our markets with reduced credit requirements.

Netting, while an enabler of faster transactions and reducer of risk, needs to be backed by specific regulatory provisions.

Practices elsewhere

USA: Regulation EE (also referred to as netting eligibility for financial institutions) is a rule set forth by the US Federal Reserve Board. It gives banks permission to settle mutual obligations at their net value instead of their gross value. It was updated on August 15, 2018.

Brazil, Malaysia, South Korea, Chile and India: All these countries allow netting but only in the local currencies. A bank or other company cannot net positions in currencies other than the domestic one. This restriction is largely aimed at reducing incidences of money laundering and other malpractices that can sometimes be aided by not "opening the books" to transactional scrutiny.
South Africa: Allows payables or receivables to be netted. Banks and companies wishing to net their South African subsidiaries need to be careful to make sure that their netting rules are set up for this.

China: Although netting is not prohibited, Government's desire to keep money within its borders makes netting in China a difficult process; one which the central bank keeps an eye on. It is easier to open the books to the central bank than to net positions.
Eastern Europe and the Baltic States, Greece, and Japan: Netting is not prohibited, but in al[105]l these countries the regulations require that you open your books to the Central Bank. The transactions that gave effect to the netting need to be declared.

Belgium, Canada, Poland, Portugal, Lithuania, Slovenia, and Slovakia: Netting is permissible and regulated, and reporting of netting is a statutory requirement.

11.4 BROADENING THE RANGE OF COLLATERALISED PRODUCTS THAT SUPPORT LOMBARD FACILITIES

For the banking sector, Lombard lending is the advancing of credit to banks by a regulatory authority (in Uganda, by BoU) against pledged sellable/ marketable securities. BoU extends Lombard funds to a commercial bank applicant of not more than 75% of the market value of the Treasury securities pledged as collateral, whose time to maturity is not more than twenty-five years. The term of the Lombard loan does not exceed three months. This is the instrument BoU uses as the lender of last resort.

The key terms and requirements are:

a) Loan amount, not more than 25 percent of the Cash Reserve Requirement (CRR) of the borrowing commercial bank for that maintenance period, unless extended at the Governor's discretion.

b) Eligible collateral is Government Treasury securities (Treasury Bills and Treasury Bonds).

c) Loan value cannot be more than 75 percent of the market value of the Treasury securities pledged.

d) The term of the loan shall not exceed three months.

e) Interest is charged at the prevailing Bank Rate.

105

Through the Lombard Window, the SFIs can have the opportunity of getting short term money from the Central Bank when they are in need. Presently, the Lombard facilities can only be secured with Government securities, which limited access because of the narrow product options (securities) that can support the borrowing under the Lombard window.

Wider product suite could be done by including FX swaps. This would broaden access to Lombard window while reducing on FX volatility as the FI would not be required to sell and buy the forex in the market.

Sound practices elsewhere

EU: Lombard credit is common in EU countries. Central banks like Bundesbank lend to SFIs on the collateral of marketable securities including Government securities, insurance policies and other money market instruments.

USA: Lombard facilities can be secured on Government securities, REPOs, and other marketable money market securities.
Switzerland[106]*:* Lombard facilities can be secured with tradeable securities such as bonds, equities, and investment.

Recommendations on Treasury

Recommendation 11.1: *Review the definition of liquid assets to include Government of Uganda Treasury Bills and Bonds maturing beyond 91 days, to help SFIs better comply with liquidity requirements while releasing funds for lending to customers.*
This will help SFIs to comply with liquidity requirements while releasing funds for lending to customers. To take care of possible lower sale values as the securities are discounted in the secondary market, BoU could set a standard haircut to be applied on the various instruments depending on their maturity profiles. Wholly recognising long term, held-to-maturity Treasury instruments as liquid assets, even if they are tradable in the market, would be imprudent. Strictly leaving out all Government securities with more than 91 days of maturity would, however, be an extreme that overly restricts SFIs' business.

Recommendation11. 2: *Permit forex deposits at BoU as part of CRR for SFIs, to release cash for lending and other SFI business.*
Recognising forex deposits (in currencies for which payments can be cleared locally) as part of the CRR will allow banks a bit more liquidity for lending/ operations without impacting on their adequacy of liquid assets. The Central Bank could set a maximum limit of how much foreign currency deposits by SFIs with the Central Bank would quality as part of the commercial bank's overall statutory cash reserve requirements (CRR). The recommendation is that up to 2 percent points of the CRR should be permitted in forex.

106 https://www.credit-suisse.com/ch/en/private-clients/investments/lombard-loan.html

The exchange fluctuation effect could be addressed by fixing rates every 2 weeks or dynamically calculating the CRR position in real time.

Recommendation 3: *Introduce regulations on netting of the asset and liability positions resulting from money market operations to help SFI to get more efficient by reducing the related numbers of payment.*
The regulation should*:*

- Pemit netting of positions among banks and other SFIs
- Stipulate the types of assets and liabilities whose positions can be netted off (short term, liquid, tradable)
- Factor in safeguards against possible downsides (like money laundering or fraud) that can be occasioned by netting
- Stipulate which types of SFIs are permitted to their net positions
- Require that all the netted positions and the underlying transactions are reported to BoU quarterly.

Recommendation 4: *Include FX swaps in the admissible collateralised products to support borrowing under the Lombard window.*
This will improve banks' Lombard borrowing capability without compromising the quality of collateral to BoU.

NEXT STEPS

A World Bank paper titled *"Framework for Financial Regulatory Reform in Low Income Countries"* suggests logical steps that can be summarised as follows:

1. A first step consists in identifying those financial sector issues and challenges that are of great importance to maintain financial stability or to achieve greater financial deepening in a particular country.
2. There is a need to evaluate – and quantify where possible – for each of the identified issues and challenges
    a) the potential benefits for financial deepening and
    b) the risks for financial stability taking into consideration the central bank's risk mitigation/management mandate and capacity.
3. Existing regulations and their effectiveness as well as potential new regulatory tools are identified to define the regulatory gap for each area of concern and how each of these gaps might appropriately be addressed.
4. Based on the identification of regulatory gaps and associated opportunity costs of

inaction the benefits for financial deepening and the risks for financial stability in each of the areas of concern are prioritised.

5. Reforms designed to close the identified gaps are classified according to how difficult they are to implement, i.e., as to whether they require legislative, regulatory, or technical changes, thus defining both responsible stakeholder groups and likely implementation time horizons.

6. Finally, implementation planning requires that identified reform priorities are assessed against stakeholder implementation capacity, political constraints and on-going cooperation with international partners as regards delivery of technical assistance. The above multi-step process needs to be designed in as interactive and cooperative manner as possible between local stakeholders, appropriate advice in interpreting and adapting international best practice as well as relevant development partners.

The whole of this assignment including prioritisation of recommendations covers steps 1 to 4. The next steps, to cover steps 5 and 6 will be:

i) For quick-win recommendations (recommendations requiring only BoU action like guidelines, circulars, or other strategic action):

- Start implementation of the recommendations that require "immediate" action – quick wins according to their priority rankings and work plan to be done in stages 5 and 6 (outside of this assignment).

ii) For mid-term and long-term actions (those that require development/amendment of legislation or regulations):

1. Evaluate (and where possible quantify) the costs & benefits.
2. Evaluate potential impacts of the recommended actions.
3. Assess ease (or complexity of implementation)
4. Stakeholder implementation capacity & capability.
5. Sequence the recommended activities according to the evaluation aspects above.
6. Start implementation following priority rankings.
7. Specific sector strategies for big impact areas like DFS and ICT.

APPENDIX A

SUMMARY OF REGULATORY RECOMMENDATIONS

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
GOVERNANCE						
1.Need to update Financial Institutions (Corporate Governance) Regulations 2005. It is over 15 years since the Financial Institutions (Corporate Governance) Regulations 2005 were enacted. A lot has since changed and evolved in the banking space locally and globally (like the 2007-2008 financial crisis, fast-paced digital finance, recent bank failures, Basel updates and new guidelines, emerging risks including cyber, virtual and others) whose implications need to be reflected in the guidelines.	In the context of the ongoing discussion on the Consolidated Corporate Governance (CCG) Guidelines, conduct a comprehensive review of the Financial Institutions (Corporate Governance) Regulations 2005, in part to: ▪ Align with the international advances in banks corporate governance, including embrace of Basel Accords. ▪ Stipulate minimum number or proportion of independent directors. ▪ Abolish the concept of alternate directors. ▪ Provide regulatory backing for remote/ virtual meetings. ▪ Provide guidance on director remuneration. ▪ Address governance weaknesses that caused recent bank failures in Uganda and the East African region like informal but powerful control and default by owner-borrowers. ▪ Address the changing business and risk environment in which banks operate. ▪ Stipulate relevant competencies for other committee chairs. ▪ Setting up a framework that allows for more frequent updates of the Regulations in addition to circulars BoU often issues. ▪ Include relevant aspects of guidelines such as BCBS 239 -Governance. ▪ Provide for technology/ digitisation committees of SFIs Boards.	Better regulatory guidance for SFIs to align with national and international trends, boosting institutional stability and public confidence to deposit in SFIs.	1	R	MT	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
2. Need to more clearly stipulate minimum skills and experience for Board members, to ensure that those governing banks have the relevant knowledge and expertise to do so, over, and above general knowledge or aptitude.	Clarify the minimum qualifications for a bank director, including specific ones for the Board Chair and the Committee chairs for critical board committees including Audit, Finance, Risk, ALM and ICT. Among others consider: ▪ A degree or professional qualification from a recognised institution for all Board members ▪ Experience in governance through past board or executive positions ▪ For the Board as a whole, the mixture of experience including but not limited to banking, legal, strategy, ICT, HR, leadership, ICT, and accounting.	Improved overall governance of SFIs by suitably qualified Board members.	2	R	MT	BoU
3. Credit facilities to bank owners often breeds governance challenges. Owner access to credit facilities from the bank sometimes causes serious governance and financial problems for the banks. This has been a major aspect leading to past bank failures in Uganda and the region and needs to be controlled.	Apply a governance deep dive[6] in all cases of SFIs where owners (10% or more) and/or their close relations access credit facilities from the bank they own.	Lower likelihood of SFI failures arising from owner-related borrowing.	1	L	LT	BoU
4. Corporate business owners on bank boards. There is need to control the practice of prominent businessmen and industrialists being appointed to bank boards and to chairmanship of critical committees (often driven by business development rather than oversight considerations). When corporate business owners become Board members of banks, they sometimes have more interest as customers/ borrowers (themselves or their friends) than as guardians of the safety and soundness of the bank. This normally shows when loan defaults occur.	Without compromising diversity and business insights businesspeople bring, consider making owners of corporate industrial and commercial concerns, who sit on bank boards, non-eligible to become Board Chair or Chairpersons of the ALM, Credit/ Recovery or Risk Committees so that at this level there is utmost independence.	Enhanced credit & risk governance by reducing potential conflicts of interest in critical Board committees	1	R	MT	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
5. Board member term limits. Extended stay of board members gradually erodes board/ management roles separation and may lead to familiarised board members inadequately holding management to account. It may also starve the board of the much-needed injection of new ideas.	Specify maximum term limits for the Board and the Chairperson to allow banks maintain independence as well as attract new perspectives, skills, and competences into the boards. A limit of 10 years would be adequate. A person who has served for 10 years as an SFI Board member should not become a Board member of another SFI within three years after the final year of Board membership.	Good governance through healthy rotation	1	R	MT	BoU
6. Need to limit the control of banks by significant shareholders through appointment of their relations and business associates to boards, executive directorship, or senior management roles. Personal, corporate, and family relationships in the ownership and governance of a bank can make it vulnerable to inappropriate control concentration.	Prohibit significant owners (10% or more) and their direct relations from serving as executive directors or senior managers of banks.	Clear independence of management from ownership to an extent limiting the potential for mal governance.	1	R	MT	BoU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ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
7. Resolve the aspect of BoU being the receiver/ liquidator in cases of banks in distress. Whereas the law mandates BoU to be the receiver and liquidator of failing banks, there is a perception that as a regulator and supervisor, BoU is perceived as being in a conflict-of-interest situation when it becomes a receiver/ manager of banks in distress. In this case the bank in distress is seen as being managed, governed, and regulated by the same entity, which also regulated it before distress.	Work to eventually wean the roles of bank resolution (starting with receiverships and liquidation) function from BoU, to another entity in the future.	Elimination of the perceived conflict of interest in SFI receivership/ distress situations.	1	L	LT	BoU & MoFPED
LEGAL						
1. Spousal consent and false disclosures in mortgage transactions. Mortgage Act S.6 requires that the mortgagor's spouse or spouses consent to mortgage of their matrimonial home. This leaves the mortgagee exposed to litigation risk when the mortgagees, in case of polygamous marriages the mortgagor gives false or incomplete information.[7] Also, persons in monogamous marriages may not disclose their spouses especially where there are customary marriages.	The Act should criminalise all mortgagor's incomplete disclosure or misleading information on spouses Although S. 39 of the Mortgage Act 2009 makes it an offence to present a person who is not a spouse for spousal consent, it is not wide enough to cover all offences in respect of disclosure. Spousal consent should be required only on matrimonial homes, not on any other kind of property.	Make mortgages more enforceable in a lawful way, to raise lender confidence and enhance appetite for lending to customers.	3	L	LT	UBA & BoU; MLHUD
2. Mortgage Act S.19 Service of notice of default does not clearly spell out types of service or conditions for validity of service	Clarify what constitutes effective notice of default and service thereof - specify that the service should be at last address declared by mortgagee or online service like email, SMS, or recorded voice message.	Clarity to avoid diversion and delaying tactics around the issue of notice in foreclosure situations, further helping SFIs to lend more.	3	L	LT	UBA & BoU; MLHUD

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
3. Mortgage Regulations. Deposit of 30% in court when a civil suit is pending is small. The said deposit is in most cases less than the principal amount the financial institution has lent. This affects the liquidity of the bank when the dispute is not resolved.	Increase deposit from 30% to 50% for pending disputes (related to loan recovery) in court. Regulation 13(1) of the Mortgage Regulations provides for 30% while Regulation 13(5) provides for 50%. Both should be at 50%	SFIs resources that they would lend other customers are not tied up in lengthy court cases.	2	R	MT	UBA & BoU; MLHUD
4. The Mortgage Act: interest and penalties on bad loans may become too high and unconscionable after a long period of default making it difficult for the borrower to pay off.	In cases of non-performing loans, abolish penal interest.	Ease the defaulting borrower's ability to settle.	2	G	I	UBA & BoU; MoFPED
5. The Land Act: does not clarify on the rights of bona fide occupants and customary tenants of the mortgaged land.	Amend the Mortgage Act to clarify the legal position with regard to customary, bona fide, and lawful occupants in a mortgage situation.	Increased access to loans by MSMEs, secured on property interest other than traditional land titles.	1	L	LT	MLHUD
6. Liability incidence of incomplete P&A acquisition	Amend the law or regulations to clarify where the liability incidence falls in P&A type of bank resolution under which the acquiring entity does not assume all the liabilities	Clear incidence of non-assumed liabilities in this kind of bank resolution.	1	R	MT	BoU
7. In cases of supervision and closure of banks (FI Act S. 82) – where decisions taken are "arbitrary and unfair". Some SFIs hold that banks need to have a tribunal to listen to complaints against the Central Bank.	In cases of distressed banks, this is not advisable and thus not recommended in this report. Moreover, review of other legislations did not find any such precedence.	Maintain resolution authority strength.	n/a	n/a	n/a	n/a
8. Bank resolution: Management and liquidation by the Central Bank (Financial Institutions Act S. 91) – apparent conflict of interest, and non-suability of the receiver renders them unable to sue.	Further to de-linking BoU from receiverships (recommended under Governance), review the provision of the non-suability of a bank under receivership, because this also denies them the right to sue.	Independence of the resolution authority and adequate legal options for the receiver.	3	L	LT	BoU & MoFPED

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
9. Litigation against Financial Institutions. Cases pile up in courts and all of them being civil cases, take exceptionally long to determine. In the meantime, banks' businesses are adversely affected	BoU/UBA should work with the judiciary and other stakeholders to: 1) Train all judges on the critical, peculiar aspects of bank/ credit business and how judicial decisions impact on the banks and the whole economy 2) Determine the viable alternative dispute resolution mechanisms and encourage them 3) In cases where court action is inevitable, how courts can encourage the use of summary suits in the recovery of unpaid loans.	Better case assessment and informed judgements involving SFI related disputes.	1	strategic action	I	UBA & BoU, Judiciary
10. Need for a legal stand on the reliance on valuations (length of validity and decision in case of multiple valuations). The length of time a valuation should remain legally valid and the decision to be taken in cases of multiple valuations are both issues that breed disputes between borrowers and SFIs.	Amend the Mortgage Act to limit the validity of a *pre-sale valuation*[8] of mortgaged property to three years.	Reduce valuation disputes at foreclosure.	2	L	LT	UBA & BoU; MLHUD
11. Need to review Tier 4 MFI & ML Act UMRA and some Tier 4 stakeholders believe there is need for amendments in Tier 4 MFIs and Money Lenders Act, so as to: de-fragment regulation eliminate contradictions within the Act better enable Tier 4 finance business to thrive in safety and soundness.	Review and amend Tier 4 MFI & ML Act to make it more effective and facilitative in providing low-income Ugandans with suitable financial services.	Greater access to suitable financial services by low-income Ugandans.	1	L	LT	BoU & MoFPED
12. Inflexible conditions for the DPF penalties during exceptional economic circumstances.	Allow some discretion to DPF to waive penalties under exceptional circumstances, so that SFIs are not penalised for remittance delays in rare times of general hardships like the pandemic	Burdens not added to SFIs in exceptionally difficult times.	2	L	LT	DPF and MoFPED

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
13. Need for a framework for DPF borrowing from BOU: While DPF is unlikely to need this often, in peculiar cases when DPF needs to pay out large amounts of insured deposits on bank failure it should not release large sums of its Treasury instruments on the market as that might destabilise the market. Also, holding to maturity could yield better for DPF and it is not certain that when DPF needs money for pay-out, it will readily sell all the securities it needs to.	Provide the legal framework to allow for DPF to borrow from BoU under reasonable terms, for the purposes of effecting pay-out.	Smooth pay outs without offloading DP's securities into the market.	1	L	LT	DPF; BoU; MoFPED
14. There is lack of clarity as to whether syndicated and foreign-based lending is regulated under Ugandan law (the Financial Institutions Act, 2004).	Amend the FIA to clarify that there is no need of foreign lenders to have BoU license before they lend in Uganda, and to further clarify what constitutes Agent Banking, and have the information disseminated to the Judiciary.	Access to financial services from non-BoU regulated institutions by Ugandan businesses.	2	L	LT	BoU & MoFPED
15. The existing shareholding restrictions in section 18 of the Financial Institutions Act, 2004 and section 21 of the Micro Finance Deposit-Taking Institutions Act, 2003 have an unintended consequence of restricting foreign direct investments in Ugandan banks/ financial institutions.	Section 18(4) of the Financial Institutions Act, 2004 should be amended to create more latitude by the Central Bank to grant exemptions to the rule in Section 18(1) of that Act. Section 21(3) of the Micro Finance Deposit-Taking Institutions Act, 2003 should be amended for a similar purpose. In granting the proposed exemptions, the Central Bank should ensure that the bank/ financial institution/MDI will be able to comply with applicable prudential requirements and that the Central Bank can effectively supervise the group including the target institution in which shares are being acquired.	Attraction of capital into SFIs.	3	L	LT	BoU & MoFPED

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
16. There is a need to review of factors to be considered by the Central Bank in an acquisition of control of a bank/financial institution in order to diversify shareholding in banks/financial institutions/MDIs and further encourage/ attract more investments in Ugandan banks/financial institutions and MDIs.	Subject to anti-trust/ fair competition laws and considerations, the Financial Institutions Act, 2004 and the Micro Finance Deposit-Taking Institutions At,2003 should be amended to provide that the Central Bank may only object to an acquisition based on the following matters (or the submission of incomplete information on them): • The reputation of the acquirer • The reputation and experience of any person who will direct the business • Uncertain financial soundness of the acquirer, in relation to the type of business that the bank/financial institution/MDI pursues. • Likely inability to comply with the applicable prudential requirements. • Likelihood that the Central Bank can effectively supervise the group including the target • If there are grounds to suspect money laundering or terrorist financing.	Attraction of capital into SFIs	3	L	LT	BoU & MoFPED
17. The constitution of the Sharia Advisory Councils (SACs) under the law is problematic and this needs to be resolved.	To ensure that the SAC would be able to function effectively, the composition of the Shariah Committees should be reviewed with a view to having an effective membership that is knowledgeable and experienced in Islamic/Sharia law and to ensure that its mandate does not overlap with that of the Shari Advisory Board. Their affairs will be managed by a shariah secretariat of the respective Islamic financial institutions. This requires an amendment of the law and will need double checking on implementation in a non-Sharia country to avoid any loopholes that borrowers can exploit.	Enabling conditions for Islamic Banking operations.	3	R	MT	BoU and MoFPED

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
18. Islamic Banking and Tax laws: The success of Islamic finance in the Uganda depends not only on introducing regulatory reform (the recent amendments in 2016 to the Financial Institutions Act, 2004 that introduced provisions on Islamic Banking-Part XIIIA, sections 115A,115B & 115 C and the Financial Institutions (Islamic Banking) Regulations,2018-SI. No.2 of 2018) but introducing specific tax reform to remove prohibitive tax costs associated with Islamic finance products when compared to more conventional financial and investment products available in Uganda.	Review tax laws to treat Islamic banking fairly like other products, thus further create enabling environment for this line of business.	Enabling a fair tax environment for Islamic Banking.	3	L	LT	BoU and MoFPED
19. Mandatory resolution Planning To avert bank/financial institution failures, banks/ financial institutions and MDIs should be required to develop and have in place recovery and resolution plans (colloquially referred to as 'living wills').	Introduce mandatory resolution and recovery planning, setting out information required by the resolution authority to enable them to draw up a resolution plan and to resolve the SFI if it fails. The bank's recovery plan as well as the processes for producing resolution proposals should be subjected to oversight and approval by the institution's board or senior governance committee and subject to review by the audit committee.	Ready turnaround/ resolution guide and blueprint in case of an SFI distress	2	R	MT	BoU
20. Section 61 (2) (f) of the FIA 2004 lists 'certifying returns submitted to the Central Bank by the Financial Institution' among other duties of an Internal Auditor. The returns are daily, weekly, monthly, and quarterly. Certifying BoU returns impairs the independence of the Internal Auditor since the same Internal Auditor is required to independently review operations of finance department and the entire institution.	Remove this requirement. This is because the maker-checker controls are sufficient for this requirement, an Internal Audit needs independence which gets impaired when it must certify routine operational reports.	Independent internal audit functions	2	L	LT	BoU and MoFPED

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
21. In order to obtain a loan or other type of credit facility, there is need to obtain a Credit Reference Bureau (CRB) report. However, given the small size of some micro loans delivered electronically (like through mobile money), it is costly for CRB reports to be sought.	Waive the requirement for CRB reports for digitally delivered loans to a given limit (like UGX 1 million), which BoU sets from time to time, to expand financial inclusion in a cost-effective way. When Mobile Money operators freely share data with other lenders, this can be used instead of CRBs for the exempted amounts.	More and low-cost lending to low-income Ugandans due to easier and free due diligence.	2	R	MT	BoU
22. R. 6(5) of the Bancassurance Regulations 2017 requiring a Specified Person for each branch.	Amend this section to allow one specified person to cover more than one branch especially given the size of bancassurance business at some locations. The branch staff can, however, sell bancassurance products like they do others.	Bancassurance less costly to deliver.	3	L	LT	BoU
23. S. 52 of the Financial Institutions Act deals with the appointment of directors. S. 53 deals with disqualification of directors. However, both Sections are silent on appointment of senior management of financial institutions. However, the practice is that senior management is vetted by BoU.	Amend Section 52(4) and 53 to include vetting of all persons proposed to be part of Senior Management (especially heads of Finance, Internal Audit, Risk, Credit and Operations) of a financial institution since currently this is a mandatory practice. Alternatively address it in the Regulations.	F&P tests for senior management mandated in law.	3	L	LT	BoU and MoFPED
COMPLIANCE						
1. The BoU Risk Management Guidelines, 2010, state that '*Supervised financial institutions are required to establish adequately staffed autonomous compliance departments/ divisions.*	Permit effective Compliance function to exist without having a department dedicated to it for small banks, as long as the role profile is senior and independent enough. This will reduce the cost of risk governance and management.	Lower cost of compliance without reducing effectiveness.	1	G	I	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
2. FI (AML) Regulations 2010 require banks to identify customers. The AML Act 2013 and pursuant to it, the AML Regulations 2015 the places reliance on the National Identity as the primary document. The determination of place of residence using hard paper Utility Bills is being impacted by the increase due to online registrations and payments.	Speed up the rolling out of access by Supervised Financial Institutions to the NIRA database for KYC-adequate customer identification information.	Faster customer due diligence to improve service and reduce inconvenience to customers	1	R	MT	BoU
3. FI (AML) Guidelines 2010 and AML Act, 2013, (*as amended*) and its related Anti-Money Laundering Regulations 2015 address the same issue but are not fully aligned.	Harmonise anti-money laundering requirements by BoU and FIA, to eliminate contradictions and ease compliance by SFIs. Amend the FI (AML) Guidelines, 2010, to align them with AML Act, 2013, (*as amended*) and the AML Regulations 2015.	Ease of compliance by SFIs	1	L	LT	BoU & FIA
4. High and increasing costs of compliance due to multiple regulators and requirements.	BoU should consider having a Memorandum of Understanding with other regulators to channel their requirements so that BoU's Regulations, circulars, supervision, and inspections cover them. This way the various regulatory audits will also be synchronised and handled by one regulator. Furthermore, BoU should consider collaborating with the UBA to develop a viable framework for conducting cost/benefit analysis and implications of any new directives before they are implemented	Lower cost of SFI compliance	1	G	I	BoU & co-regulators
5. There is need for increased use of automated systems to submit and receive regulatory/compliance reports.	Speed up automation of systems for reporting so as to reduce compliance cost and time spent.	More efficient and cost-effective compliance	2	G	I	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
6. The responsibility on banks to replicate and monitor systems of mobile money Telco's is burdensome. The AML Act made the MNO responsible, but the AML Guidelines 2013 still place responsibility on the SFI.	Resolve the differences in provisions of the Mobile Money Guidelines and the NPS Act, to eliminate contradictions and ease compliance.	Streamlined regulations to ease compliance	2	G	I	BoU
7. Consumer protection and the determination of disputes that take very long	Put in place an ombudsman arrangement to look into SFI/ customer disputes that cannot be handled conclusively by the dissenting customers and FIs.	Speedy conflict handling, thus faster customer service	1	R	MT	BoU
8. Need to examine approaches to financial sector regulation.	Study the principles-based versus rule-based regulation and supervision, to guide and assess the best model (combination of the two) for Uganda's present and future financial sector, to guide a refinement of the overall regulatory approach.	Refined approaches to regulation and supervision	1	R	MT	BoU
CREDIT						
1. Asset classification and recognition as required by FIA 2004 (amended) differs from the IFRS 9 which bases on Basel III. Double reporting is costly for banks.	Gradually move to align the FIA credit reporting requirements for periodic regulatory reporting with IFRS 9, to make loan reporting less cumbersome and more consistent.	Harmonised asset recognition and reporting, less cumbersome loan portfolio reporting	1	L	LT	BoU
2. Under the Financial Institutions (Limits on Credit Concentration and Large Exposures) Regulations 2005, both funded and non-funded exposures are aggregated in determining concentration, and this overly restricts business.	Differentiate between funded and non-funded exposures (including those that are not direct credit substitutes) in determining statutory concentration limits, to increase private enterprise borrowing opportunities	More opportunities for SFI financing to viable private enterprises	2	R	MT	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
3. For single obligatory limit purposes, there is no distinction between sovereign and corporate debt as they are different in risk profiles.	Differentiate between sovereign and other exposures in determining the single obligation limits to enhance financing opportunities of public owned enterprises. Also, identify past-dues occasioned by delayed Government payment to its suppliers (the borrowers) except them from the strict provision rules.	Ease lending restrictions without affecting portfolio quality; avoid lowering asset quality due to government delays in payment	3	L	LT	BoU
4. Need to consider discounted collateral in computation of provisions	Amend Regulations to allow financial institutions recognise realisable value of collateral in determining provisions, to ensure fair asset values are carried.	More realistic asset values carried	1	R	MT	BoU
5. Insider lending regulations – who is an insider? What are their limits? The current regulations discriminate against executives and allows far too much lending to other staff.	Amend Insider Lending regulations to reduce both inequity and pertinent risks, i.e.: • Redefine "insider lending" to include all staff of a bank in addition to the executives and Board members • Allow executives reasonable access to advances other staff get, with a strict maximum amount and repayment periods. • Limit the proportion of insider loans that can go to the bank's executives.	More equitable and well-regulated access to loans by executives and staff.	3	G	I	BoU
6. Regulation 13 (c) of the (Credit Classification and Provisioning) Regulations of 2005 provides that a commercial credit facility shall not be restructured more than twice over the life of the original facility, and a mortgage or personal credit facility not more than twice in a five-year period. This can constrain viable but struggling businesses that would recover with some nurturing.	Remove the cap on the number of times a loan can be rescheduled or restructured (Amend regulations to allow restructuring based on merit but subject to adequate risk management considerations). Accompany this with a requirement to degrade a facility on each restructuring.	SFIs' ability to turnaround a good loan that can be improved through further restructuring/ rescheduling	3	R	MT	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
7. Limited/no data sharing between banks and other lenders (Mobile Money telephone companies; Tier 4 FIs), making the due diligence on small borrowers more expensive than it would otherwise be.	Permit and require some data sharing between mobile money companies (and other digital finance service providers) and regulated financial institutions, to reduce the cost of customer due diligence.	Lower the cost of due diligence and thus of lending to bottom-of-the-pyramid borrowers	1	L	LT	BoU
8. Leasing and factoring presently have no specific legal/ regulatory backing that is conducive to business	Spearhead the enactment of laws on leasing and factoring or amend the FIA to accommodate them as financial products for intents including tax (especially VAT) aspects. The laws should help define these products, their enforceability of transactions, the rights and obligations of lessors and lessees and other aspects.	Enabling environment for lease finance, which offers financing solutions for expansion for enterprises with good prospect but no adequate collateral security.	1	L	LT	UBA & BoU
Finance Leasing is not treated like other financial products. VAT is applied, and this makes leasing an expensive form of financing						
9. Need to reduce the downside effects of forex denominated lending	Restrict lending in foreign currency, to help UGX earning borrowers avoid adverse effects of currency depreciation (unless the repayments are properly hedged through fixed rates).	Cushion borrowers from the adverse effects of exchange rates on their ability to service the facilities.	3	G	I	BoU
10. Need to recognise Security Interest in Movable Property (SIMP) as valid collateral	Recognise Security Interest in Movable Property (SIMPO) as effective collateral, to stimulate SFI lending to good customers who do not have immovable property to pledge as collateral	Increased borrowing opportunities by enterprises short of landed property to pledge; fair valuation of the loan book, which positively affects capital adequacy.	1	G	I	BoU
11. Overdue review/ amendment of the MDI Act 2003	Conclude MDI Act amendment to support enhanced access to financial services by low-income Ugandans through MDIs	Increased access to finance by MSME due to a more enabling legal environment.	1	L	LT	BoU
CREDIT REFERENCE BUREAU						

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
1. Regulation 16(1) of the Financial Institutions (Credit Reference Bureaus) Regulations, 2005 narrows credit information sharing to only BoU-supervised institutions thus leading to incomplete customer credit profiles and undisclosed credit from other credit providers.	Allow other lenders/creditors to access the CRB, to expand sources of data from all credit gives (including unregulated lenders and utility providers) and thus increase usage Follow up with MoFPED to ensure that gazetting of the draft FI (Credit Reference Bureau) Regulations 2020 is expedited.	Popular, wider use of CBR as a catalyst for increase in private sector financing/ lending	1	R	MT	UBA/ BoU
2. Absence of regulatory requirement for timely response by the CRBs. Delays in availing information slow down Credit decision making and exposes SFIs to potential legal action.	Introduce a maximum response-time limit of five working days to CRBs, to ensure up-to-date, reliable information is released to users, to shorten the turnaround time of loans	Speedy credit decisions to save customers' time and avail them financing when they need	2	R	MT	BoU
3. CRBs providing inaccurate or erroneous data and hence exposing SFIs to lawsuits and losses.	Ensure that Clause 37 of the Draft FI (Credit Reference Bureau) Regulations 2020 (which imposes liability on CRBS where they supply misleading or inaccurate information to any user) is retained in the gazetted Regulations unless the error was from original source.	More reliable CRB information for credit decisions, shortening the loan cycle to the customer's advantage.	3	R	MT	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
4. Exclusion of written off/ poorly paid loans from the debtors'/borrowers' CRB reports after 5 years thus compromising prudent credit risk assessment. Clause 21(2) (a) and (f) of the Draft FI (Credit Reference Bureau) Regulations 2020 appear to maintain the requirement that information on non-performing credit facilities settled, written off or where no payment has been made after 5 years should not be included in a credit report.	Extend the communicable information limit to six[9] years so that full records can be accessed, and information availed to lenders/ creditors.	More informative CRB reports on borrower behaviour	3	R	MT	BoU
5. So far, the CRBs use only data from SFI reports to respond to credit reference requests. This could be significantly boosted (by way of both speeds, reliability, and content) if alternative reference sources were used in addition.	Provide a regulatory framework for algorithmic and alternative credit scoring/rating engines.	More robust credit reference systems.	2	R	MT	BoU
INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)						
1. BoU requirement that all SFISs should have In-Country Data Centres (ICDCs) – expensive and does not eliminate the targeted risk and is expensive to the SFIs – need to address the spirit rather than the letter of the law in the regulations.	Re-examine/review the Data Centre directive so as to: • Allow SFIs to continue running on their parent/outsourced Technology Infrastructure but have back up Data Centre infrastructure/mirrored data centres in country which includes the Core banking platform and financial reporting platform. • Provide for a shared Data Centre/cloud facilities that could then provide similar services to other tiers of FIs. • Leave the directive/regulations flexible enough to accommodate advances in technology.	Moe cost-effective data storage and processing.	1	R	MT	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
2.Inadequate classification of IT/Cyber risk (currently handled under operational risk)	Create a specific, elaborate risk management framework for ICT, and review often to update and align it with new developments in the financial sector.	Better guanaco on management of cyber and general ICT risks	1	R	MT	BoU
3. Section 2.6.3 of the BoU Outsourcing Guidelines require that in the event of termination of outsourcing agreement, SFIs ensure that all data is either retrieved from the service provider or destroyed. The duty of care should remain with the SFI, but the consequences of wilful of subtle breach by the service provider should not be on the SFI	Review the Outsourcing Guidelines to Oblige service providers. Require SFIs to use tightly committal data security and Non-Disclosure Agreements (NDAs) with service providers which bind the service providers not to use the data for any other purpose than the requirements of the outsourcing services and in case of termination, the data should be retrieved or destroyed. The extreme cases of service providers flouting this agreement should impact on them, not the SFI	Fair responsibilities to both SFIs and service providers	3	G	I	BoU
4. Section 2.10.2 of the BoU Outsourcing Guidelines does not clearly define what amounts to "major part of its data processing function" thus requiring a local SFI to have a robust back-up system and contingency plan in an acceptable jurisdiction outside Uganda.	Clarify and align "data processing function". The phrase "data processing function" should be well explained and aligned to the definition the Data Protection and Privacy Act, 2019 (DPPA), or be deleted from the guidelines since data processing is now regulated under a specific legal framework (the DPPA).	Better compliance by SFIs	2	G	I	BoU
5. The Evidence (Bankers Books) Act 1930 not specifically stipulating online/internet books and transactions for evidence purposes	Align the Evidence Banker's Books Act to the Electronic Transactions Act, 2011. Amend the Evidence Banker's Books Act to align it to the Electronic Transactions Act, 2011 which is to the effect that data shall not be denied admissibility as evidence because it is in the form of electronic evidence/record.	Electronic evidence recognised in the law, further boosting confidence in digital transactions.	1	L	LT	UBA & BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
6. Lack of a specific regulatory framework governing private internet networks like Virtual Private Networks (VPNs) thus creating regulatory uncertainty in times of internet/ network disruptions.	Lobby Parliament to amend the Electronic Transactions Act, 2011 to introduce a specific regulatory framework for VPNs and other private internet networks as information security tools and enterprise software solutions.	Service continuity to SFI customers during internet lockdowns	2	L	LT	UBA; MI&NG
DFS & AGENT BANKING						
1. Lack of harmonised e-KYC framework thus making customer due diligence and compliance with key laws such as AML difficult.	Enact and implement a specific e-KYC framework, to streamline digital customer onboarding and service as a way of giving access to increasing numbers of people to formal financial services.	Increased financial inclusion using digital access.	1	L	LT	UBA & MIA
2. Regulatory exclusion of digital negotiable instruments such as digital cheques under the Electronic Transactions Act, 2011 (ETA) thus creating regulatory risk for cheque truncation processes.	Amend the 2nd Schedule of the ETA to recognise digital negotiable instruments (authenticate truncated cheques remitted digitally), which would reduce the cost and increase efficiency of related transactions.	Faster and lower-cost payments, benefitting SFI customers.	2	L	LT	UBA & MI&NG
3. Guideline 11 of the Mobile Money Guidelines, 2013 provisions are somewhat different Anti Money Laundering (AML) and Countering the Financing of Terrorism (CFT) Act and requirements of the Deposit Protection Fund - thus creating regulatory ambiguity in terms of compliance.	Harmonise customer due diligence requirements among various regulators to help SFIs comply more easily and reduce inconvenience to customers.	Easier onboarding and more convenience to customers, driving up usage of financial services.	1	R	MT	BoU, FIA, DPF
4. Regulation 7 (2) of the Agent Banking establishing regulations and pre-requisites for conducting agent banking by making it mandatory that anyone intending to conduct agent banking business should have been in business for more than 12 months thus restricting agent acquisition and expansion.	Review requirement of business experience from 12 to 6 months for a bank agent, so that SFIs can onboard more bank agents to increase service locations and further extend access to formal financial services.	Greater financial inclusion through increased numbers of bank agents	1	R	MT	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
5. In implementing Regulation 7 of the FI (Agent Banking Regulations)2017, BoU requires its approval for each agent location thus causing delays in agent approval.	Review the requirement of vetting every agent location by BoU, to enable bank agents establish additional locations with approval of the respective SFIs and thus spread the service points and serve more.	Expansion of agent service points for wider coverage thus more inclusion.	2	R	MT	BoU
6. Under Regulation 7(4) of the Agent Banking Regulations, BoU vets proposed bank agents even when it has approved them for another bank - thus causing delays in agent acquisition.	Review vetting of multiple agencies by BoU, to allow already vetted agents to be onboarded by other SFIs in tripartite agreement between the "old" and "new" SFI and the agent – this will increase service availability for customers.	Easier onboarding of already vetted agents by SFIs, thus availing services of more SFIs by agents close to customers.	2	R	MT	BoU
7. Regulation 15 (l) of the Agent Banking Regulations requiring that Agents should not provide agent banking services at a location other than the physical address of the agent thus negatively impacting temporary projects for examples Refugee payments, road construction compensations *et cetera*.	Provide exceptions to allow agents to do business away from primary locations, to cater for situations like refugees, temporary internal displacement, or road construction worker payments in remote sites.	Expansion of agent service points for wider coverage thus more inclusion.	2	R	MT	BoU
8. Lack of specific regulation permitting voice and SMS consent, thus requiring physical signatures which delay decision making as clients must visit bank branches physically to sign documents.	Expressly recognise SMS, voice consent, and electronic signoffs to ease legally recognised transactions involving digital instructions in banking and save customers' time as and reduce related transaction costs.	Save transaction time, reduce costs for the customers	1	R	MT	UBA & MI&NG
9. Potential downside effects of the re-registration requirements under the Security Interest in Movable Property Act, 2019, in view of the provisions of Part IV (Registration of Charges) of the Companies Act, 2012	Repeal movable securities re-registration requirements under the Security Interest in Movable Property Act, 2019 to make SIMP collateralisation less costly and less cumbersome for the borrowers.	Lower the cost of borrowing on SIMP collateral for customers	2	L	LT	UBA & MLHUD
10. Lack of regulatory guidance on financial sector open programming interfaces (OPIs), thus limiting development of open banking and interoperability between Fintechs and SFIs	Issue Guidelines/Circular under the NPS Act and Regulations thereunder to facilitate more open banking and interoperability between Fintechs and SFIs, which would increase access to transaction points and increase financial inclusion	Greater financial access/ inclusion through interoperability.	3	R	MT	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
11. Lack of a specific offence against cloning/skimming of payment cards and other digital payment mechanisms	Create specific offences for cloning, skimming and unauthorised use by card holders to reduce abuse of this payment mechanism, making it safer for customers and SFIs.	Improved safety for digital financial transaction, thus pushing up their use.	2	L	LT	BoU & MoFPED
12. BoU's regulatory stance on crypto assets is not offering adequate guidance on how SFIs should engage in the crypto assets market.	Clarify regulatory position on digital assets such as crypto assets and Smart Contracts to eliminate regulatory uncertainty and pave way for eventual approval of digital assets as a form of property that can be transacted by SFIs to boost their business portfolios	Broadening the range of financial products/assets SFIs can hold and transact on customers' behalf.	2	G	I	BoU
13. Lack of a regulatory framework for Distributed Ledger Technologies (DLTs) and smart contracts, thus limiting innovation in areas such as settlements, KYC, payments processing, etc. that would reduce cost and ease business for SFIs.	Implement facilitative regulation of DLTs. Benchmarking with other emerging economies such as South Africa might be useful.[10]	Further integration of SFIs into the international market for digital assets.	3	G	I	BoU
14. Although Section 19 of the Data Protection and Privacy Act regulates data processing outside Uganda, there is lack of regulatory guidance on cross-border data transfers especially those concerning data of European Union citizens in light of the EU's General Data Protection Regulation (GDPR) and Uganda's Data Protection and Privacy Act, 2019 thus creating risk of penalties.	BoU to engage NITA-U (the Data Protection Regulator) to provide regulatory guidance on cross-border data transfer and processing of data in order to avoid penalties.	Beneficial collaboration for cross-border due diligence by SFIs.	2	G	I	BoU
15. Digital taxes such as Mobile Money Tax reducing digital inclusion thus limiting financial inclusion by reducing affecting uptake of digital financial services.	Lobby for removal of user taxes on Mobile Money and internet access, to attract more users and thus increase both digital and financial inclusion	Lower cost of popular digital financial services.	1	L	LT	UBA

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
16. Lack of a specific regulatory framework for digital securities and online crowdfunding.	BoU should engage the Capital Markets Authority (CMA) on proposals for a regulatory framework for digital securities and online crowdfunding platforms. This should facilitate reduction of regulatory risk and drive market demand through sensitisation and awareness of such solutions in developing Uganda's capital markets, and thus the broader financial sector	Greater access to capital markets through digital means	3	G	I	UBA & BoU
17. Lack of a specific regulatory framework for digital insurance products.	Engage the Insurance Regulatory Authority (IRA) on proposals for a regulatory framework for digital insurance products and digitising existing insurance products, which would ease both bancassurance business and processes for insuring collateral security	Greater uptake of insurance, including bancassurance, through digital platforms.	2	G	I	UBA & BoU
18. Lack of a specific regulatory framework for digital pension products.	Engage the Uganda Retirement Benefits Regulatory Authority (URBRA) on proposals for a regulatory framework for digital pension products and digitising existing pension products, to ease the onboarding and pension related transactions and enhance financial institutions' business, especially deposits and payments	Broadening pension market and access through easy, digital means, thus enhancing SFI payments business	3	G	I	UBA & BoU
19. Lack of a specific regulatory framework on interactive websites and applications for people with disabilities.	UBA and BoU to engage the Uganda Communications Commission (UCC) and National Information Technology Authority of Uganda (NITA-U) on minimum standards for interactive webs/apps and assistive technologies for people with disabilities (PWDs), to facilitate digital inclusion for them to use digital financial services	Greater financial inclusion for marginalised people	2	G	I	UBA & BoU
20. Need for economy-wide regulations of competitive behaviour	UBA to engage Ministry of Trade, Industry and Cooperatives to expedite the Competition Bill, to ensure fair competition across the economy so that even fintech providers compete in a way beneficial to users	SFIs and their service providers maintain healthy competition	3	L	LT	MTIC

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
OPERATIONS						
1. The timeline for reporting AML risk assessment to FIA is unrealistically short. Under Reg. 8(3) and 9(3) of the Anti-Money Laundering Regulations 2015, an accountable person shall within *forty-eight hours* after conducting a risk assessment, give a copy of the assessment results to the Authority	Extend the timeline for AML risk assessment reports from 2 to 3 working days upon conclusion of the exercise, to allow for timely checking and corrections.	More accurate and reliable risk assessment reports	2	L	LT	BoU & MoFPED
2. Need for flexibility in response time to client complaints. Under section 6 of the Customer Protection Guidelines, a financial services provider is required send a final response to a complainant by the end of two weeks after it has received the complaint. In cases that involve third parties, however, the SFI may not be fully in control of time they take to respond	Adjust the timeline for response to customer complaints involving third parties to four weeks. For routine complaints, the two-week timeframe for response to client complaints is adequate but for cases involving third parties, it is not. Amendment of the BoU Consumer Protection Guidelines is therefore necessary to take care of such.	Adequate time for resolving complaints involving third parties	2	G	I	BoU
3. Need to align KYC requirements under FIA, BoU and DPF	BoU should work with FIA and DPF to synchronise the customer identification requirements (Under the FIA 2004, Mobile Money Guidelines, AML Regulations, NPSA 2020 and the Deposit Protection Fund).	Easier KYC compliance for both the SFIs and their customers	2	R	MT	BoU
4. Need to review strategic risk management requirements. Because this touches on executive management and Board, its implementation needs broader approach than is used for other risks.	Establish an effective framework for regulating strategic control risks beyond documented ownership and governance (risk-focused deep-dive into governance and control issues where undue informal control is suspected).	Reduced possibilities of informal controls detrimental to the soundness of the SFIs	1	R	MT	
5. Environmental and social risk management is imperative for banks. Financial regulation therefore needs to ensure that SFIs are subjected to effective ESR management.	Include environmental and social risk management in the Risk Management Guidelines and/or related regulations and include these in the annual reports of SFIs as mandatory.	Sector compliance with international and national ESR requirements; responsible lending.	2	G	I	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
6. The Cash Reserve Requirement (CRR) of 8% is very high, tying up moneys the banks could be using to lend or otherwise do business with to generate income.	Reduce Cash Reserve Requirement (CRR) from 8% to 6% to release funds for lending. The current 8% ratio is higher than most other countries.	More cash available to SFIs for lending, thus increased access to loans for customers.	3	L	LT	BoU MoFPED
7. Banks are not allowed to hold CRR in forex. No central bank in the EAC has done it either. BoU addressed this with the Monetary Affairs Committee of the EAC for discussion, but no position has yet been taken.	Continue engaging with the regional forum on this and championing the cause for including some forex in the CRR.	More cash available to SFIs for lending, thus increased access to loans for customers.	3	L	LT	BoU
8. The excise duty on financial transactions makes the transactions very expensive. Whereas the excise duty is a fiscal policy initiative by Government to boost revenue collection, its long-term effects will be to undermine financial inclusion if the rate is too high.	Lobby for the reduction of excise duty on financial transactions from 10% to 5%. SFIs under their network the UBA, supported by BoU, should lobby Government to address this issue.	Reduced cost of access to financial services	2	L	LT	MoFPED
9. Need to cater for refugees accessing banking services. Refugees are registered upon entry into the country and given identification document. In addition, refugees bear the UNHCR identification number. Presently, however, refugee IDs are not among the identification documents permitted for KYC.	Amend the guidelines and regulations to allow national and UNHCR refugee identification cards as part of the key documents to enable refugees access banking services.	Financial inclusion of refugees.	3	G	I	BoU
10. SFIs role in outsourced service providers' contingency plans: regulations currently require that SFIs *ensure* their service providers have contingency plans, whereas it is more practical that the SFIs oblige service providers legally.	Amend the Guidelines to require that a legally binding Agreements be signed between SFIs and the service providers, giving SFIs unlimited access to service providers' contingency plans for periodic verification.	Lift burdens beyond SFIs control from them, while maintaining the necessary requirements for service providers.	2	G	I	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
11. Need to enrich the Risk Management Guidelines and keep them updated. The Risk Management Guidelines were developed in 2010 and are now somewhat outdated, given rapid developments. Moreover, fast paced change requires regular reviews	BoU should review the Risk Management Guidelines every two years, in consultation with the UBA and other stakeholders.	Up-to-date Risk Management Guidelines always.	2	G	I	BoU & UBA
CLEARING & SETTLEMENTS						
1. Effect of BoU delays sending timely updates on ACH system failures. BoU is the operator for ACH system which involves managing the technical infrastructure of the system and executing the procedures involved in operating the ACH system. However, sometimes, BoU gets system failures but communication to commercial banks is not sent on time. This has recently been solved but a firm basis is desirable to avoid reoccurrence.	Include requirement for timely ach updates (in cases of ACH updates) in the regulations There should also be a provision for waiver that the affected financial institution shall not be held liable in the event of loss arising from uncommunicated or delayed ACH system outages/ failures.	Speedier service and appropriate responsibility on ACH related delays.	2	G	I	BoU
2. Delayed generation of transaction success/failure reports by the ACH system. While the BoU system is open to receipt of files (validated transactions as well as failed ones), response on success or failure is received the next working day and this gives commercial banks inadequate time to resolve any failed items.	Implement same day reports generation from the ACH system and configure the system to reject only transactions with error rather than whole batches in which they are submitted.	Speedier service for SFI customer delight.	3	G	I	BoU
3. Direct Debit Mandates. The current practice of communicating outcome of Direct Debit Mandates through hard copies delivered by courier is not only inefficiency but also susceptible risk of fraud.	Permit electronic delivery of direct debit mandates, to reduce delays and possibilities of human error in the related transactions and enhance transaction speed for customer service The system at BoU should be configured to enhance SWIFT and ACH to accommodate electronic delivery of direct debit mandates.	Move to more efficient automated/digital transmission and payment mechanisms	3	G	I	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
FINANCE						
1. Contradictions between FIA requirements and international standards (IFRS) to which SFIs also need to conform – on several aspects including Impairment of Assets under IFRS 9 viz loan loss provisioning (BOU/FIA). Whereas BoU issued a circular (EDS.306 dated July 12, 2017) for SFIs to align their financial reporting with IFRS, FIA has not been updated to reflect this. Thus, SFIs prepare two sets of reports – one IFRS compliant for financial reporting and the other FIA compliant for quarterly performance reporting.	Communicate timelines for full adoption and alignment of FIA to IFRS, which will reduce time spent on reporting, and the bases for the asset recognition. This will ensure consistent and more realistic statement of assets in the reports	Consistent and less laborious reporting of assets	1	R	MT	BoU
2. Mismatch between tax-focused reporting requirements viz IFRS. The tax allowable deductions by URA are guided by FIA instead of IFRS, yet the FIA guidelines result in different tax income than the IFRS ones. In the tax laws, the allowable loan loss provisions which are specific and general as defined by BoU, whereas the asset impairment approach of IFRS 9 results into different taxable income.	Establish task force to explore and resolve conformity of tax accounting and IFRS reporting for SFIs, to ensure that SFIs are fairly taxed based on profits assessed using contemporary professional standards	Fair taxes to SFIs		G	I	BoU
3. Need to allow banks to have investments in immovable property. Whereas the prohibition was introduced in the 1999s to curb excesses of investing in buildings, some level of income from immovable property should be allowed to help the SFIs diversify their incomes (without significantly diverting from their mainstream business). Holding companies have been incorporated to circumvent this law.	Permit restricted investment in immovable property. As an example, regulation could stipulate that SFIs cannot have more than 10% of their total asset value in immovable property.	Diversification of income without vying off the core business of SFIs	3	L	LT	BuU & MoFPED

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
4. Need for a dynamic, future-focused redefinition of Banking Business. This should broaden the range of services and products included, and recognise services incidental to banking as part of banking services	Amend the definition of "banking services" in the FIA to reflect evolution of banking services and related product scope, so that services incidental to banking that SFIS render, like transaction communication, are not disallowed.	Diverse sources of fee income for SFIs for offering complimentary services to customers	2	L	LT	BoU & MoFPED
5. IFRS 16 now requires all lease rentals to be included in the Balance Sheet. Whereas BOU wants it treated as off-balance sheet finance. In long term asset leases where the bank is the lessee, they are presently required to recognise the leased items as their assets even if the nature of the transaction is an operating lease. This could understate operating costs and overstate taxable income to the extent that SFIs have such leases. Moreover, creating this asset on the Balance Sheet "consumes capital" because it must be included in the RWA for capital adequacy calculation.	Clarify the carrying amount approach of reporting leases under IFRS to SFIs in the computation of Capital adequacy, to ensure that SFIs' capital adequacy reporting is accurate.	Fair and accurate reporting of capital adequacy	1	G	I	BoU
6. There are several unclear provisions in the FIA and related regulations, which sometimes get interpreted differently by the Finance people, other functions of the SFI, tax authorities, the regulator(s), and other parties. These come to surface when there is disagreement and therefore a definitive list is not available, but the issues need to be clarified each time they arise.	Enhance the clarity SFIs' understanding of FIA and regulations provisions through regular workshops and other scheduled events and consider relationship manager-roles for SFIs at BoU.	Clearer understanding of regulatory issues by SFIs	1	G	I	BoU
7. On Liquidity ratio, international/ regional banks are "double-punished" because their cross-border deposits (from sister FIs outside Uganda) are disallowed while cross-border liabilities are maintained.	Clarify prudential treatment of net cross-border interbank balances in the computation of capital adequacy. This should, in effect, state that the net interbank balance should be included.	Correct and uniform reporting of values relating to cross-border interbank balances.	3	G	I	BoU

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
TREASURY						
1. Government securities maturing in longer than 91 days excluded from liquid assets: According to Financial Institutions (Liquidity) Regulations 2005, section 7(2) (d), only Treasury Bills maturing within ninety-one days or shorter are deemed liquid assets. However, all Treasury Bills and Bonds are eligible for trading in the secondary market for liquidity purposes and the market is presently much deeper than it was when the regulations were formulated. These instruments are therefore liquid. SFIs argue that the regulation restricts business for banks and does not accurately reflect the substance of the underlying assets.	Review the definition of liquid assets to include Government of Uganda Treasury Bills and Bonds maturing beyond 91 days, to help SFIs to comply with liquidity requirements while releasing more funds for lending to customers. To take care of possible lower sale values as the securities are discounted in the secondary market, BoU could advise on a standard haircut to be applied on the various instruments depending on their maturity profiles.	More cash available for customers to borrow from SFIs	1	L	LT	BoU & MoFPED
2. *Forex are not allowed as part of the CRR.* Exclusion of SFIs' forex deposits with BoU from the CRR ties up liquid resources that banks could use for private sector lending. It also checks the extent to which banks can use liquid assets to trade in money market. It would be reasonable to recognise the currencies in which payment can be cleared locally as partially eligible for inclusion in CRR.	Permit some forex deposits at BoU as part of CRR (up to 2% points) for SFIs, to release cash for lending and other SFI business. The exchange fluctuation effect could be addressed by fixing rates every two weeks or dynamically calculating the CRR position in real time.	More cash available for customers to borrow from SFIs	2	L	LT	BoU & MoFPED

ISSUE/ CHALLENGE & IMPLICATIONS	RECOMMENDATION	TARGET IMPACT	PTY[3]	IFW[4]	TS[5]	RESP'
3. *Need for a law or regulation on netting positions:* There is no netting law or regulation in place now, whereas there are several financial markets products on offer whose positions the SFIs could be netted off, reducing both workload and risk.	Introduce regulations on netting. The regulations should permit SFIs to bilaterally or multi-laterally net off positions on financial market instruments, to help SFIs to get more efficient by reducing the number of payment and related costs in money and time. The items eligible for netting off should be those that are liquid and tradable. Netted positions and the underlying transactions should be mandatorily reported to BoU as part of the quarterly reports.	More efficient and cost-effective payments among SFIs that trade with one another.	2	G	I	BoU
4. *Broadening collateralised products that support Lombard facilities*. The Lombard Window, through which BoU does its function as lender of last resort, only accepts Government securities as collateral. This limits access to the facility.	Include swaps[11] in the admissible collateralised products to support borrowing under the Lombard window.	Enhanced capability of SFIs to borrow from BoU's Lombard widow and thus meet temporary cash shortages.	2	G	I	BoU

APPENDIX B

SUMMARY OF NON-REGULATORY RECOMMENDATIONS

RECOMMENDATION	*PRIORITY*[12]	*ACTION PARTIES*
Governance		
a. Give more emphasis to the existing legislation regarding the empowerment and stature of the role of the Chief Internal Auditor, to enable him/her to independently exercise his/her agency role on behalf of the board	2	BoU/ UBA
b. Lower the cost of governance, to contribute to lower overheads that could reduce the cost accessing financial services	1	BoU/UBA/SFIs
c. Improve bank examination and supervision to fully apply laws and regulations in ensuring compliance	2	BoU
d. Clarify the roles of the MD/CEO and the Executive Director, to broadly guide the two	3	BoU/ UBA
e. Equip Board members of SFIs with necessary knowledge of the banking business to continually improve their effectiveness.	2	UBA/ SFIs
f. Document the learnings from prior bank failures and governance challenges for learnings to improve regulation	2	BoU/ UBA/ UIBFS
g. Firm up regulation on the independence of directors on the Board Audit Committee (BAC)	2	BoU
h. Include the Head of Risk among ex-officios of the BAC, to ensure the BAC get a total picture of risk and compliance	1	BoU
Legal		
a. Enact or implement penal punishment for fraudulent garnishee orders, to reduce or stop the practice	3	Judiciary
b. The scope of medical certificates should be wider and issued by specialist occupational illness practitioners in cases of labour disputes. Additionally, the Industrial Court should be granted jurisdiction to hear such matters so that both the playoffs and respondents	3	Judiciary
c. Court Registrars should be empowered by Statute to handle some matters, to ease up the case back log	1	Judiciary
d. Review the Companies Act to reflect developments in the business landscape	2	MTIC
e. Issue guidelines to provide for handling blind and other disabled customers, to further inclusion	1	BoU
Credit		

RECOMMENDATION		PRIORITY[12]	ACTION PARTIES
a.	Reintroduce tax incentive on interest income received by financial institutions from agricultural loans, to reduce the cost of agriculture credit and make the sector more attractive	1	BoU/MoFPED
b.	Issues some guidance (or even legislation) to SFIs on lending to priority sectors, to increase the banking sector's contribution to attainment of NDP III	1	MoFPED
c.	Establish well priced long-term funds to finance start-up or expansion capital costs for private enterprises in priority sectors (agriculture, selected manufacturing subsectors, hospitality, ICT etc) borrowing from commercial banks	2	BoU/MoFPED
d.	BoU guidance on interest rates – resolve the CBR/bank lending rates anomaly	1	BoU/UBA
e.	Regulation of Tier 4s – take cooperative principles into consideration	3	BoU
f.	Address the crowding out effect of Government borrowing	1	MoFPED/BoU
g.	Speed up the issuance of the regulatory framework for and operationalisation of the Asset Reconstruction Company (ARC)	1	MoFPED/BoU
h.	Improve the speed of Agricultural Credit Facility refund process	1	MoFPED/BoU
i.	Remove fiscal constraints to banks' credit business, like delays in settlement of arears with Government suppliers	1	MoFPED/BoU
j.	Complete and implement the Financial Sector Development Strategy, Agricultural Finance Policy and Agricultural Finance Strategy, to ensure that financial inclusion is high on the national strategy action and is supported in a well-defined, holistic, and consistent way	1	MoFPED/BoU
CRBs			
a.	Consider a centralised credit reference system for reporting, to make it more reliable and faster	2	BoU
b.	Consider credit reference by CRBs on mobile phones and other electronic devices such as wearable smart watches, so as to popularise and make CRB usage more accessible to all user	1	BoU/CRBs
c.	Reduce the high costs/fees of obtaining CRB information and cascade the charges from a reasonable level down to zero	1	CRBs/BoU
d.	CRBs should a have functionality for downgrade of performing facilities linked to a borrower with a non-performing facility	1	CRBs/BoU
e.	Validation of borrower identification – port at BoU	3	BoU/UBA
f.	Audit CRB reports to SFIs to ensure adequacy		
g.	Proactive consumer/borrower listing - permit voluntary system for interested people/citizens with little or no credit history to supply basic digital consumer data	1	CRBs/BoU

RECOMMENDATION		*PRIORITY*[12]	*ACTION PARTIES*
h.	NIRA connectivity – pace up so that CRB becomes more efficient and reports more accurate	1	UBA/BoU
i.	Allow CRBs access to Big Data to enhance sources of reference for users	2	BoU
j.	Develop CRB Data sharing standards across the formal and non-formal financial services sector	1	CRBs/BoU
k.	Qualify some defaulter reports in exceptional cases of minor defaults lasting a short time	3	CRBs/BoU
ICT			
a.	Assess respective SFIs' ICT maturity levels to inform ICT regulatory framework improvements.	2	BoU
b.	Systems and vendors – need for SFIs to upgrade	2	SFIs
c.	Customer challenges with e-statements and data migration (in cases of acquisition) – redundant backups needed.	3	BoU
Agent banking & DFS			
a.	Spearhead the campaign to lower the cost of internet and digital access	1	UBA
b.	Strengthen the focus of cooperation in the forum of regulators that affect SFIs (such as BoU, CMA, URSB, NITA-U, UMRA, IRA, URBRA, UCC, FIA, UMRA)	1	BoU
c.	Steer enabling environment for enhanced asset custodial services	2	BoU
d.	Align regulations applicable to Fintechs	1	BoU/other regulators
e.	Operationalise electronic signatures UBA should also engage the Ministry of ICT to operationalise electronic signatures	1	UBA/ICT Min
f.	Harmonise cross-regulation between BoU and UCC regarding payment systems	1	BoU/UCC
g.	Synergies to promote gainful innovations. SFIs are should periodically review and refine their digital financial service strategies to cater for emerging innovations and new market opportunity dynamics	3	SFIs
Operations			
To address increasing complex fraud that accompanies digitisation UBA should, alongside BoU, initiate an active anti-fraud cooperation through a financial frauds' prevention and mitigation alliance.		2	UBA/BoU

APPENDIX C

PERSONS INTERVIEWED

NAMES	POSITION	ORGANISATION
1. Legal Committee/Co Sec's (18)	Heads of Legal	UBA
2. Fabian Kasi	CEO	Centenary Bank
3. Henry Lubwama	Ex-Chairman	Ecobank Uganda
4. Annette Kihuguru	Managing Director	Ecobank Uganda
5. Bernard Robinson Magulu	Executive Director	Bank of Africa Uganda
6. Mbabazi Emejeit	Head Legal and Company secretary	Diamond Trust Bank Uganda
7. Judy Wambaire	Head Legal/ Company Secretary	UBA Bank Uganda
8. Jimmy Lumu	Chief Internal Auditor	Bayport Financial Services Uganda
9. Titus Mulindwa	Deputy Head – Legal	BoU
10. Hon. Abdu Katuntu	Member of Parliament & former Chair, COSASE	Parliament of Uganda
11. Wilbrod Owor	CEO/ ED	UBA
12. Brenda Magoba	Company Secretary	Equity Bank
13. Dr. Tumubweinee Twinemanzi	ED Supervision	BoU
14. Francis Gimara	Head	ICAMEK
15. Judiciary (3)	Judges	Commercial Court
16. Evelyn Kihingi	Board Chair	Finance Trust Bank
17. Patricia Kemirembe	Company Secretary	Finance Trust Bank
18. Mathias Katamba	CEO	DFCU (& UBA Board Chair)
19. Anne Nakawunde Mulindwa	CEO	Finance Trust Bank
20. Benedict Kizza	Head, Compliance, Chair Compliance Committee	Exim Bank
21. Cecilia Muhwezi	Head, Compliance	Standard Chartered Uganda
22. Abdul	Head, Compliance	Housing Finance
23. Patricia Omallah	Head, Compliance	Ecobank
24. David Kaahwa	Head Compliance	Absa
25. T K Sabhapathy	CEO	Exim Bank

NAMES		POSITION	ORGANISATION
26.	Daniel Birungi	Executive Director	Uganda Manufacturers Association
27.	Margaret Kasule	Legal Counsel	Bank of Uganda
28.	Richard Ekoot	Chief Compliance Officer	Standard Chartered Bank, UAE
29.	Stanley Katwaza	Head, Compliance	Citibank Uganda
30.	Manzi Tumubweine	BoU Director Comm Banking	BoU
31.	Various	Compliance RRC team (Heads of Compliance)	Various Banks
32.	Michael Mugabi	Managing Director/ CEO	Housing Finance Bank
33.	Peter Kalangwa	Senior Manager Strategy and Business Analysis	Housing Finance Bank
34.	Noel Kaijabwango	Senior Manager – Projects	Housing Finance Bank
35.	Irene Bagenda	Manager Compliance	Housing Finance Bank
36.	Sabhapathy Chrishnan	Managing Director/ CEO	Exim Bank Uganda
37.	Albert Salton	Managing Director/ CEO	Standard Chartered Bank Uganda
38.	Lekan Senusi	Managing Director/ CEO	GT Bank
39.	Edgar Byamah	Managing Director/ CEO	KCB Bank Uganda
40.	Tashin Morjaria	Executive Director	Orient Bank
41.	Kumaran Pather	Managing Director/CEO	Orient Bank
42.	Amarjeet Singh	Finance Manager	Orient Bank
43.	Andrew Ssekamwa	–CFO	Orient Bank
44.	Anthony Mariiro	Head of Credit/ Chairman	Exim Bank/ RRC
45.	Edward Nkangi	Executive Director	Pride Microfinance
46.	Robert Kakande	Executive Director	Finca Uganda (MDI)
47.	Anne Nakawunde	MD/ CEO	Finance Trust Bank
48.	Leonard Mutesasira	MD/ CEO	Rapid Finance (Tier 4 lender)
49.	Dunstan Kasuule	MD/ CEO	Y-Save
50.	UBA Credit Committee	Members	UBA
51.	Edith Tusuubira	ED	UMRA
52.	Julia Olima Oyet	CEO	DPF Uganda
53.	Joseph Luboyera	Head Legal/ Board Dec	DPF Uganda
54.	Paul Kavuma	CEO	Insurers Association
55.	Nicholas Sseruwajje	Deputy Chair	Private Schools Association
56.	Veronica Namwanje	Executive Secretary	USSIA
57.	Mark Mwanje	Chief Executive Officer	Compuscan/Experian
58.	Barbra Among Arinda	Legal and Compliance Manager	Compuscan/Experian

NAMES		POSITION	ORGANISATION
59.	Dr. Tumubweine Twinemanzi	Executive Director - Supervision	Bank of Uganda
60.	Anne Nakawunde Mulindwa	CEO	Finance Trust Bank
61.	Brian Ssemambo	Software Engineer	Compuscan/Experian
62.	Dhuani Joshua	Emeritus Chair of the CRB Committee-UBA	Housing Finance Bank
63.	Aidah Nantege	Current Chair of the CRB Committee- UBA	Standard Chartered Bank
64.	Elly Kibuuka	Executive Director	Metropol
65.	Kenneth Kwesiga	Chief Operations Officer	Mcash
66.	Sheila Kawooya	Compliance- Mobile Financial Services	MTN Uganda
67.	Allan Rwakatungu	CEO/Board member	Xente/FITSPA
68.	Daniel Birungi	Executive Director	Uganda Manufacturers Association
69.	Richard Yego	Managing Director/ CEO	Agent Banking Company
70.	Edith Kababure	Chair Agent Banking/DFS Committee UBA	Centenary Bank
71.	Peter Kawumi	CEO	Interswitch Uganda
72.	Jimmy Ebong	Research Specialist	FSDU
73.	Joseph Lutwama	Programs Director	FSDU
74.	Nick Kamanzi	Fintech Lead	Safe Boda
75.	Zianah Muddu	General Secretary/Engagement Partner	Africa Fintech Network/ Financial Technology Service Providers Association (FITSPA).
76.	Allan Rwakatungu	CEO	Xente
77.		Head, Agency Banking	Stanbic
78.	Sheila Kawooya	Head Compliance, Mobile Financial Services	MTN Uganda
79.	Andrew Rugamba	Head Financial Services	Airtel Uganda
80.	Ronnie Mungazi	Agent Banking Head	Equity Bank
81.	Kenneth Kwesiga	Chief Operations Officer	Mcash Uganda
82.	Allan Rwakakooko	Senior Legal Manager	Umeme
83.	Bernard Obel	Director of Supervision	Insurance Regulatory Authority
84.	Wasswa Rita Nansasi	Director Legal Services	Uganda Retirement Benefits Regulatory Authority (URBRA)
85.	Agnes Tibayeita Isharaza	Corporation Secretary	National Social Security Fund
86.	Keith Kalyegira	Chief Executive Officer	Capital Markets Authority

NAMES		POSITION	ORGANISATION
87.	Mackay Aomu	Director National Payments Systems	Bank of Uganda
88.	Haruna J. Mawanda, PhD	Lead, Fly Hub Uganda	Stanbic's fintech subsidiary
89.	Herbert Olowo	Chief Information Officer	Stanbic Bank
90.	Francis Musinguzi	Senior Manager ICT	Bank of Africa
91.	Peter Kawumi	Chief Executive Officer	Interswitch Uganda
92.	Suresh	ICT Solutions Dealer	Copycat Uganda Limited/ICT Association of Uganda
93.	Noel Kaijabwango	Senior Manager – Projects	Housing Finance Bank
94.	Irene Bagenda	Manager Compliance	Housing Finance Bank
95.	Michael Mugabi	Managing Director/ CEO	Housing Finance Bank
96.	Ken Stober	Chief Executive Officer	Simplifi Networks
97.	Hosea Naturinda	Manager Technology Risk and Information Security	Stanbic Bank
98.	John Mwesigye	Chief Information Officer	Standard Chartered Bank Uganda
99.	Faisal Kasujja	IT Head	EFC Uganda Limited (MDI)
100.	Arthur Byabasaija Nyakoojo	ICT Head	BRAC Uganda Limited
101.	Esther Nyanzi	CEO	UNREEA
102.	Julius Kiyemba	Head of Operations	Absa Bank Uganda Limited
103.	David Sekirembeka	Head of Operations	Citi Bank Uganda Limited
104.	Gilbert Musaanya	General Manager Operations	Bank of Africa Uganda Limited
105.	Eva Naisanga	Head of Operations	DFCU Bank Limited
106.	James Bukulu	Deputy Director Commercial Banking Dept	BoU
107.	Patrick Oketayot	Senior Principal Banking Officer Commercial Banking	BoU
108.	Andrew Kamugisha	Senior Principal Banking Officer Commercial Banking	BoU
109.	Rose Namutebi	Head Clearing & Settlements	Centenary Bank Limited
110.	Enid Katusiime	Head Clearing & Settlements	Equity Bank Limited
111.	Simon Peter Opolot	Head Clearing & Settlements	Absa Bank Uganda Limited
112.	Nelson Bwire	Head Clearing & Settlements	Finance Trust Bank Limited
113.	David Nsajja	Head Clearing & Settlements	Equity Bank Limited
114.	Charles Katongole	Head of Treasury	Standard Chartered Bank
115.	Benoni Okwenje	Head of Treasury	Centenary Bank
116.	Ronal Muyanja	Head of Trading	Stanbic Bank Uganda Ltd
117.	Kenneth Kitungulu	Head of Global Markets	Stanbic Bank Uganda Ltd

NAMES	POSITION	ORGANISATION
118. UBA Treasurers Forum	Heads of Treasury of Commercial Banks	UBA
119. CFO Forum (25 CFOs)	Members	UBA
120. Godfrey Byekwaso	CFO	Centenary Bank
121. Ronald Makata	CFO	Stanbic Bank
122. Jovita Babirye	Snr Manager	KPMG CPAs
123. Derrick Nkajja	CEO/Secretary	ICPAU
124. Jackie Nampala	Snr Manager	PWC CPAs
125. Julius Rwajekare	Partner	Ernst & Young CPAs
126. Freda K Agaba	Assoc. Director	

APPENDIX D

DOCUMENTS REVIEWED

1. Global Legal Insights (gli) – Banking Regulations Summary 2019
2. Global Legal Insights (gli) – Banking Regulations Summary 2020
3. Kenya- Kenya Banking Act 2015
4. Kenya- Risk Management Guidelines 2013
5. Kenya- Prudential Guidelines for Institutions licensed under the Central bank of Kenya 2013
6. Nigeria- Banks and other Financial Institutions Act 1991 (As amended)
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(Footnotes)

1 https://www.federalreserve.gov/monetarypolicy/reservereq.htm

2 On March 15, 2020, the US's Federal Reserve Bank Board reduced reserve requirement ratios to zero percent effective March 26, 2020. This action eliminated reserve requirements for all deposit taking institutions

3 PTY=Priority - Ranked according to potential impact on stability and/ or inclusion (1= very high; 2= high; 3= moderate)

4 Implementation Framework (L=Change in legislation; R = Amendment/ development of regulations; G = Issuance of Guiding Notes or Circulars)

5 TS=Timespan - proposed timing of implementation (I=Immediate; MT= Midterm; LT = Long term)

6 The regulator/ supervisor pays keen attention to the details of governance practices

7 Like a man with three wives declaring only one or two of them as spouses.

8 To be done by a valuer mutually accepted by both the FI and borrower

9 Long enough to be prudent and short enough to avoid negative reports on reformed former defaulters

10 The South African Reserve Bank is taking the le ad on use of distributed ledger technology for interbank payments settlement (Project Khoka). The SARB initiated Project Khokha in 2017, with the project team consisting of seven banking industry participants, a technical service provider (ConsenSys), and consulting practice

11 A foreign currency swap, also known as an FX swap, is an agreement to exchange currency between two foreign parties. The agreement consists of swapping principal and interest payments on a loan made in one currency for principal and interest payments of a loan of equal value in another currency.

One party borrows currency from a second party as it simultaneously lends another currency to that party.

12 A= Critically important B= Important C= Good to have


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