



**PARLIAMENT OF UGANDA**

**REPORT OF THE COMMITTEE ON COMMISSIONS, STATUTORY  
AUTHORITIES AND STATE ENTERPRISES (COSASE)**

ON

**THE SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON DEFUNCT  
BANKS**

Office of the Clerk to Parliament

February, 2019

**LIST OF ACRONYMS AND ABBREVIATIONS**

- Bn - Billion
- BoU - Bank of Uganda
- CBL - Crane Bank Limited
- CBR - Central Bank Rate
- CID - Criminal Investigations Department
- COSASE - Committee on Statutory Authorities and State Enterprises
- DIS - Deposit Insurance Scheme
- DPF - Deposit Protection Fund
- EDS - Executive Director, Supervision
- GBL - Greenland Bank Limited
- GTBU - Global Trust Bank Limited
- ICB - International Credit Bank
- FIA - Financial Institutions Act, 2004
- FIS - Financial Institutions Statute, 1993
- NBC - National Bank of Commerce
- OAG - Office of the Auditor General
- PAC - Public Accounts Committee
- P & A - Purchase and Assumption of Assets and Liabilities
- PWC - Price Waterhouse Coopers
- ToR - Terms of Reference

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UGX. - Uganda Shillings

USD - United States Dollars

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## 1.0. Introduction

**Rt. Hon Speaker and Honorable Members,**

Having received numerous complaints about the closure of commercial banks by the Bank of Uganda vide letter Ref:AB:70/288/01 dated 28<sup>th</sup> November, 2017, the Committee on Commissions, State Authorities and State Enterprises (COSASE) requested the Auditor General to undertake a special audit on the closure of commercial banks by Bank of Uganda.

Section 13 (3) of the National Audit Act, 2008 empowers Parliament or the Minister to request the Auditor General to conduct a special audit and to make a special audit report. In this respect, it should be noted that under Section 18 of the Act, the Auditor General is empowered to inquire into, examine, investigate and report as he considers necessary, on the expenditure of public monies disbursed, advanced or guaranteed to a private organization or body in which Government has no controlling interest.

This report covers a total of seven (7) defunct banks that were closed during the period 1993 to 2016.

These banks include:-

1. Teefe Trust Bank
2. International Credit Bank
3. Cooperative Bank
4. Greenland Bank
5. Global Trust Bank Uganda
6. National Bank of Commerce
7. Crane Bank Limited

## 2.0: Objectives of the Investigation

The objectives of the enquiry were as follows;

1. To establish whether proper inventory of the assets and liabilities of the banks was undertaken at closure in line with section 89 (3) of the FIA, 2004 and section 32 (3) of the FIS, 1993
2. To establish whether the Liquidator appropriately managed the sale of assets and accounted for the funds resulting from the sale and whether the Receiver appropriately transferred assets under the Purchase and Assumption Agreement
3. To ascertain whether the liabilities and all the creditors' claims after closure were properly ascertained, recorded and settled
4. To ascertain whether the funds from the DPF/DIS were properly used to settle insured deposits of closed banks
5. To establish the total cost of liquidation of the defunct banks
6. To establish whether the Statutory Managers performed the functions in line with the FIS 1993 and FIA, 2004 and ascertain the total cost incurred by BoU during the intervention period.
7. To carry out any procedures that may be appropriate in the circumstances

## 3.0: Methodology

In a letter dated AB:70/288/01 dated 28<sup>th</sup> November, 2017 the Parliamentary Committee on Commissions, Statutory Authorities and State Enterprises (COSASE); requested the Auditor General to undertake a special audit on the closure of commercial banks by Bank of Uganda.

The Clerk to Parliament and her technical officers, Office of the Auditor General and the CID PAC Squad assisted the Committee during the proceedings in keeping custody of confidential documents, verification of the documents tabled, and follow-up of other functions as assigned from time to time.

During the probe, the Committee interfaced with the following-

- Board, Management and retired officers of the Bank of Uganda.
- Shareholders and former Board members of the defunct banks except Teefe Trust Bank.
- Hon. MatiaKasaija, Minister of Finance, Planning and Economic Development
- Ms. J.N. Kirkland Associates
- Ms. SIL Investments Ltd
- DFCU Bank Ltd
- MMAKS Advocates
- Uganda Registration Services Bureau (URSB)
- Mr. Chris Tushabe
- Mr. Ssekiziyivu
- Mr. Bitwire
- Mr. Charles Owor, former Corporation Secretary, Cooperative Bank Ltd.
- Uganda Cooperative Alliance Members

#### 4.0: FINDINGS ACCORDING TO AUDIT OBJECTIVES

#### 4.1: TO ESTABLISH WHETHER PROPER INVENTORY OF THE ASSETS AND LIABILITIES OF THE DEFUNCT BANKS WAS UNDERTAKEN AT CLOSURE IN LINE WITH SECTION 89 (3) OF THE FIA, 2004 AND SECTION 32 (3) OF THE FIS, 1993

**Rt. Hon. Speaker and Members,**

To answer this audit objective, like all other objectives, the committee interrogated the closure of all banks and interacted with key stakeholders.

Section 89 (3) of the FIA, 2004 provides that:

"(3) The Central Bank shall as soon as possible after taking over management of a financial institution, appoint an auditor at the cost of the financial institution to make an inventory of the assets and liabilities of the financial institution and submit a report to the Central Bank".

Further, Section 32 (3) of the FIS, 1993 provides that:

"The Central bank may, in carrying out its duties as receiver, either arrange a merger with another financial institution, in which case the acquiring financial institution will assume all **recorded deposit** liabilities of the insolvent financial institution or proceed with liquidation of the insolvent financial institution".

The Auditor General at page 5 of his special audit report observed that the documentation relating to Teefe Trust Bank specifically the inventory report, loan schedules, customer deposit schedules, statement of affairs and any reports supporting assets and liabilities taken over by BoU was not availed to him. As a result he observed, that he could not fulfil the specific audit objectives.

In the case of the International Credit Bank (ICB), the Auditor General, at page 6 of the special audit report observed that he was never availed with the inventory report although the other required statutory documents were availed.

Inventory reports were availed in respect of Greenland Bank, Cooperative Bank, Global Trust Bank, National Bank of Commerce and Crane Bank Ltd.

The purpose of conducting an inventory under the herein above cited provisions is to ensure that the assets and liabilities of the insolvent financial institution are properly recorded in order to aid in decision making. It also determines the value of the assets and liabilities of the financial institution.

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Further, it forms the basis for accountability to both the shareholders and other stakeholders.

**BoU Management Response:**

The management explained that they would continue to search in the archives for the inventory. Management subsequently forwarded a balance sheet prepared by a Bank of Uganda staff which the committee rejected as not being sufficient as it lacked the fundamental components of an inventory.

**Committee Observations**

The Committee observes that-

**1. Teefe Trust Bank Limited:**

The Auditor General was not availed with an inventory report contrary to Section 32 (3) of the FIS, 1993. The committee observes that whereas BoU claims that the bank was closed under the provisions of the Banking Act, 1969 which did not require preparation of an inventory, the closure was actually in November 1993 pursuant to the FIS, 1993, which required the Central Bank to prepare an inventory as soon as possible after taking over of the financial institution. Whereas the Central Bank provided a balance sheet, we observe that the same was not an inventory as required by the law.

The committee further observed that there are no documents relating to the post closure and management of Teefe Trust Bank assets and liabilities. This further complicates the process of winding up including resolving claims and some securities still in possession of the Central Bank.

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**2. International Credit Bank Limited:**

No inventory report was availed in respect of ICB but an inception report for liquidation by the Liquidation Agent (KPMG) dated 30<sup>th</sup> September 2001. An inception report for liquidation is a means of ensuring mutual understanding of the consultant's plan of action and timeline for conducting the liquidation. It also provides additional guarantee of adherence to, and interpretation of the TORs. Indeed the inception report is not an inventory as it lacks the fundamental components including but not limited to the list of depositors, book values of the physical assets, cash balances, balances due from other banks, list of assets and liabilities. Without a proper inventory report, BoU did not know what it was taking over in terms of entirety of assets and value. Accordingly, BoU acted in breach of section 32 (3), of the FIS, 1993.

**3. Co-operative Bank Limited:**

The Bank was closed on the 19<sup>th</sup> day of May 1999. The date for the Auditors' appointment was not ascertained by the Committee but a report was issued in June 1999. Considering that a report was availed in June 1999, a month after closure, the Committee observes that there was compliance with the requirement of Section 32 (3) of the FIS, 1993.

**4. Greenland Bank Limited:**

The Bank was closed on the 1<sup>st</sup> day of April 1999. The Auditors were appointed on the same day and an inventory report was produced in July 1999. The Committee therefore observes that there was compliance with the requirement of Section 32(3) of the FIS, 1993.

**5. National Bank of Commerce:**

The Bank was closed and sold on the same day, 27<sup>th</sup> September 2012.

The Auditors were appointed on 17<sup>th</sup> October 2012 and an inventory report was produced on 15<sup>th</sup> January 2013. The Committee therefore

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observes that there was non-compliance with the requirement of Section 89(3) of the FIA, 2004 in that-

- (i) The auditors were appointed three weeks after takeover and sale which contravened section 89 (3) that requires the said appointment to be made as soon as possible;
- (ii) Due to the absence of an inventory report, the Central Bank could not ascertain with certainty the value of what it took over and sold.

The takeover and sale of the Bank happened on the same day and was concluded within six hours in contravention of Section 99 (1) and (2) of the FIA, 2004 which require that the Central Bank can only intervene after making a winding up order and publishing the same in the newspaper for general circulation. The Committee observes that this section is impracticable.

**6. Global Trust Bank (U) Limited:**

The Bank was closed and sold on the same day, 25<sup>th</sup> July 2014. The auditors were appointed on 22<sup>nd</sup> August, 2014 and the inventory report was submitted in November 2014. The Committee therefore observes that there was non-compliance with the requirement of Section 89(3) of the FIA, 2004 in that-

- (i) Without an explanation, the auditors were appointed one month after takeover and sale which contravened section 89 (3) that requires the said appointment to be made as soon as possible;
- (ii) Due to the absence of an inventory report, the Central Bank could not ascertain with certainty the value of what it took over and sold.
- (iii) The takeover and sale of the Bank happened on the same day in contravention of Section. 99 (1) and (2) of the FIA, 2004 which require that the Central Bank can only intervene after making a

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winding up order and publishing the same in the newspaper for general circulation. The Committee observes that this section is impracticable.

7. **Crane Bank Limited:**

The Bank was placed under statutory management on the 20<sup>th</sup> day of October 2016. The auditors were appointed on 28<sup>th</sup> October 2016 and the inventory report was produced on 13<sup>th</sup> January, 2017. This bank was sold on 25<sup>th</sup> January 2017.

The Committee therefore observes, as it earlier did with other defunct banks, that there was no compliance with the requirement of Section 89(3) of the FIA, 2004.

- (i) Without an explanation, the auditors were appointed on 28<sup>th</sup> October 2016, one week after takeover and sale which contravened section 89 (3) that requires the said appointment to be made as soon as possible as earlier observed.
- (ii) Due to the absence of an inventory, the Central Bank could not ascertain the value of what it took over.
- (iii) The auditors produced the inventory report on 21<sup>st</sup> of December 2016 however, BoU had invited DFCU to bid for the purchase of assets and assumption of liabilities of CBL on 9<sup>th</sup> December 2016 and subsequently DFCU submitted the bid on the 20<sup>th</sup> December 2016 a day before the production of the inventory report.
- (iv) BoU did not carry out valuation of the assets and liabilities of CBL **BUT** relied on the inventory report and due diligence undertaken

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by DFCU to accept their bid to arrive at the P&A. However, the final inventory report was submitted on 13<sup>th</sup> January 2017. In essence, the final inventory report was never used in evaluating the bid for the purchase of assets and assumption of liabilities of CBL.

- (v) A perusal of some of the Non-Disclosure Agreements (NDAs) revealed that the Central Bank was disclosing confidential information of distressed financial institutions to potential purchasers who are competitors without their knowledge in contravention of section 40 (3) of the Bank of Uganda Act.
- (vi) Whereas section 95 (3) of the FIA requires the Central Bank to appoint auditors on assumption of management of a distressed bank as soon as possible, in numerous cases, BoU has been appointing auditors after the sale. **It is the committee's further observation that the Bank is not clothed with the authority to appoint an auditor for an institution that it has already sold and whose assets and liabilities have been passed on to a third party.**

**Recommendations:**

1. The Central Bank should strictly follow the provisions of section 89 (3) of FIA, 2004 and invoke its mandate of appointing auditors **ONLY** when it is in statutory management.
2. The BoU Board, in consultation with the Minister of Finance, Planning and Economic Development should, by Statutory Instrument in not more than six months, issue procedures and guidelines under the FIA on the resolution of financial institutions in distress.

3. The FIA, 2004 should be amended to make specific provision for the timelines of undertaking all the activities related to and connected with resolution of financial institutions.
4. Whereas the resolution of financial institutions in distress has been under the BoU supervision department, it is recommended that the mandate of resolving financial institutions in distress be independent of the bank supervision function. This would mitigate the risk of conflict of interest.
5. The Central Bank should strengthen the supervision function to ensure that it is able to adequately supervise financial institutions in real time. This may require investment in human resource and systems, technological or otherwise.

**4.2: TO ESTABLISH WHETHER THE LIQUIDATOR APPROPRIATELY MANAGED THE SALE OF ASSETS AND ACCOUNTED FOR THE FUNDS RESULTING FROM THE SALE AND WHETHER THE RECEIVER APPROPRIATELY TRANSFERRED ASSETS AND LIABILITIES UNDER THE P & A AGREEMENT(S)**

Rt. Hon Speaker and Hon Members, in respect to this audit objective-

Section 33 (5) (a) and (d) of the FIS, 1993 provided that-

*"(5) Where the Central Bank decides to liquidate a financial institution-*

*(a) it shall realize the assets of the insolvent financial institution*

*(b) .....*

*(c) .....*

*(d) in winding up the affairs of the insolvent financial institution, eliminate the interest of shareholders and may purchase, sell, or*

*transfer assets in order to recover the maximum amount of a pro-rata distribution to depositors and creditors of an insolvent financial institution”*

Currently, Section 95(1) (b) of the FIA, 2004 provides that-

*(1) The Central Bank shall within 12 months from the date of taking over as a Receiver, consider and implement any or all of the following options either singly or in combination-*

*(a) .....*

*(b) arrange for the purchase of assets and assumption of all or some of the liabilities by other financial institutions.*

Further, section 95 (3) (a) and (b) of the FIA, 2004 provides that-

*“(3) In determining the amount of assets that is likely to be realized from the financial institution’s assets, the receiver shall-*

*(a) evaluate the alternatives on a present value basis, using a realistic discount rate; or*

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

Further, section 106 (1) of the FIA, 2004 provides that-

*“A liquidator shall keep proper financial ledgers and financial records in a manner prescribed by the Central Bank in which shall be recorded all financial transactions relating to the liquidation.”*

The purpose of all the above cited provisions is to statutorily ensure that the liquidator keeps proper financial ledgers and records in which shall be

recorded all financial transactions relating to the liquidation. They also seek to statutorily ensure that all alternatives have been evaluated and assumptions on which evaluations are based have been documented. The liquidator owes the shareholders a fiduciary duty while managing the assets and liabilities of the financial institution in distress.

The Auditor General-

- (i) at pages 26 and 48 of the special audit report observed that there were no guidelines/regulations or policies in place to guide the identification of the purchasers of banks and to determine the procedures for the sale and transfer of assets and liabilities of the defunct banks to the eventual purchasers. Further, he was not provided with the negotiation minutes leading to the P&A agreement and therefore, could not determine how BOU selected the best evaluated bidder and how the terms of the P&A were arrived at.

**Management Response:**

BOU management conceded the absence of operating guidelines on resolution of financial institutions in distress. They however, stated that the circumstances of each institution's resolution differ and cannot always be predicted in advance.

BOU management stated that the process of selecting a purchaser commences by identifying prospective purchasers within the industry and sharing with them preliminary information of the institution in distress. Once the potential buyer expresses credible interest to purchase the bank, the buyer is required to sign a Non-Disclosure Agreement in order to access information on the targeted institution.

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BoU further responded that minutes of the negotiations are not taken due to confidentiality reasons and they further stated that in the report of the Judicial Commission of Inquiry into the closure of Banks, 1999 (famously known as the Justice Ogoola Report) at pages 1 to 8 "that BoU had the responsibility to keep the integrity of information until final conclusion of the closure and resolution of the bank concerned. At that particular time, no other person or authority had need for such confidential information."

**Committee Observations:**

The committee observed that-

1. Whereas BoU stated the above, it is the committee's observation that resolution of financial institutions is such a fundamental process and the informality with which these processes were handled is contrary to sections 95 (3) (a) and (b) of the FIA, 2004 and in breach of all sound corporate governance principles. For example, a perusal of the Justice Ogoola report in fact reveals a requirement to record and keep minutes confidential until final resolution. The committee is of the view that a post resolution report by the liquidator can never be prepared without proper and accurate record of the minutes of meetings.

Secondly, all government institutions are required to keep and preserve records for accountability and institutional memory. In this regard, section 7 of the National Records and Archives Act, 2001 requires all heads of organs of State to create and maintain adequate documentation of the function and activities of their respective institutions through the establishment of good record keeping practices. Further, section 106 FIA requires a liquidator to keep proper financial ledgers and financial records in a manner prescribed by the Central Bank in which shall be recorded all financial transactions relating to the liquidation. It was therefore in breach of the National Records and Archives Act, 2004 and

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FIA, 2004 for officers in the bank supervision function to negotiate, evaluate bids and dispose of the financial institutions assets and liabilities without ensuring proper documentation. The committee, like the Auditor General, could not determine how BoU negotiated and selected the buyers and how the terms in the P&A were determined.

2. By sharing information of a financial institution in distress with a third party, more so, with a competitor in the industry, BoU has, in all resolutions, acted in breach of section 40 (3) of the Bank of Uganda Act which provides that the bank shall not publish or disclose any information regarding the affairs of a financial institution or of a customer of a financial institution unless the consent of the institution or the customer has been obtained.
3. In light of the observation in 2 above, section 40 (3) makes it impracticable for the Central Bank to resolve a financial institution through a P&A which, would of necessity require disclosure of fundamental information regarding the institution in distress.
4. It is the committee's view that in the absence of guidelines and minutes of the proceedings relating to the resolution of financial institutions in distress the BoU staff who handled the transactions greatly compromised the principles of transparency.

**Committee Recommendations:**

1. The committee recommends that BoU should never resolve any financial institution without strictly adhering to the provisions of the law to wit sections 95 (3) (a) and (b) of the FIA, 2004, section 40 (3) of the Bank of Uganda Act and section 7 of the National Records and Archives Act, 2001.
2. The individual officers who handled the transactions should be held personally responsible.

(ii) At pages 27, 35 and 48 of the special audit report the Auditor General noted that BoU did not carry out valuation of the assets and liabilities of GTB, NBC and CBL yet in absence of such valuations, he could not establish how the terms for the transfer of assets and liabilities in the P&A were determined.

**Management Response:**

BoU management stated that estimating the recoverable amount of closed banks loan portfolios cannot be done with precision.

BoU further stated that they did not carry out valuation of the assets and liabilities of CBL but relied on the interim inventory report of 12<sup>th</sup> December 2016 and due diligence undertaken by the eventual purchaser, DFCU bank, to arrive at the P&A.

BoU further informed the committee that in addition, they relied on the on-site and off-site inspection reports by their staff as well as the forensic audit report which together informed the valuation of assets and liabilities at the time of the CBL P&A.

**Committee observations:**

The committee observes that-

1. Whereas BoU stated that estimating the recoverable amount of closed banks loan portfolios cannot be done with precision it has a legal obligation under the FIA to undertake valuation of all assets and liabilities on a present value basis as required by section 95 (3) (a) of the FIA, 2004. It is such valuation that can form the basis for determining the amount of consideration. Without that valuation and minutes or records, it is impossible to determine how the BoU negotiating team arrived at the figures in the P&As of GTB, NEC and CBL.

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2. Similarly, the committee observes that BoU did not document the evaluation of alternatives and the assumptions on which the evaluation was based including interest rates, asset recovery rates, inflation, asset holding and other costs contrary to section 95 (3) (b) of the FIA, 2004. Therefore, without the requisite evaluation as provided for under the herein above cited provision of the law, it is incomprehensible to determine whether BoU evaluated the different options as required by the law and how they eventually arrived at the options they chose resulting in the P&As of GTB, NBC and CBL.
3. Whereas section 95 (2) (a) of the FIA requires the Central Bank/ Receiver, while undertaking any receivership decision, that is most likely to result in marshalling the greatest amount of the financial institutions assets, protecting the interests of the depositors, minimizing costs to the DPF and losses to other creditors as well as ensuring stability of the financial sector, the committee received no evidence of any such activity undertaken by the bank in this regard. On the contrary, there is evidence of actions and inactions on the part of the Central Bank that undermine adherence to such standards of professional prudence as required by the law. The matter or situation is made worse by the non-availability of any records. It was not only careless but also contravened section 95 (2) (a) to (d) of the FIA, 2004. Accordingly, in relation to the resolution of CBL, GTB and NBC the Central Bank failed in its statutory obligation.

**Recommendations:**

The Committee recommends that-

1. The Central Bank should at all times when exercising its mandate as Receiver under the FIA, 2004, value all assets and liabilities of a received

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financial institution before any action is taken in accordance with section 95 (1) (a), (b), (c) and (d).

2. The Central Bank must, at all times, **DOCUMENT** all processes in management and resolution of financial institutions as by law required.

(iii) at pages 8 to 9 of the special audit report the Auditor General observed that the asset movement schedules for Greenland Bank, ICB and Co-operative Bank indicating details of assets at closure, assets sold, selling price, period of sale, unsold assets, performing and nonperforming loans from time of closure to the year 2001 when the liquidation role was outsourced were availed. However, for the period starting 2002 when the liquidation role was directly performed by BoU, no asset movement schedules were availed. As a result, the Auditor General could not adequately verify the movement of assets of the three banks from UGX 117.6bn at closure to UGX 19.7bn as at 30<sup>th</sup> June 2016.

**Management Response:**

BoU explained that the information shared with the Auditor General did show the value of assets (mainly loans and advances) at closure, recoveries made, interest accrued and outstanding balances. In their opinion, this was adequate to explain the movement of assets.

**Committee observations:**

1. The committee observes that the recovery accounts provided to the Auditor General and later to the committee by BoU did not include payee details of assets at closure, assets sold, selling price, period of sale, unsold assets, performing and nonperforming loans from the time of closure to date. Further, a perusal of the documents that were submitted to the committee did not reflect the asset movement instead they were incomplete statement of accounts

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without payees or details of assets sold and it was also not authenticated by the preparer.

2. BoU did not keep the asset movement ledgers and all records relating to the liquidation of the three financial institutions in distress i.e. *ICB, Greenland and Co-operative Banks* (whose liquidation started under the FIS, 1993 and continued under the FIA, 2004). This offended the provisions of section 106 (1) of the FIA, 2004.
3. With respect to CBL, BoU lacked financial ledgers contrary to section 106 (1) of the FIA, 2004.
4. BoU failed in its statutory duty under section 106 (1) of FIA, 2004 to prescribe the manner in which liquidators should prepare and keep proper financial ledgers and financial records during resolution period.

**Committee Recommendations:**

The Committee recommends that-

1. Maintenance of financial ledgers and records of all financial transactions relating to financial institutions in distress is a requirement which must be adhered to by the Central Bank when exercising its mandate under the FIA.
2. The Central Bank should, by instrument, manual, guidelines or operating procedures, prescribe the manner in which liquidators should prepare and keep proper financial ledgers and financial records relating to all liquidation transactions.
3. All officers who flouted the law as herein above indicated should take personal responsibility.

(iv) at pages 10, 11, 12, 27, 35 and 36 of the special audit report the Auditor General observed that BoU sold assets worth UGX 164Bn of the five defunct banks (ICB, Greenland, Co-operative, GTB and NBC).

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However, the assets were sold at the respective discounted rates as per the table below yielding UGX 32bn.

**Table showing assets sold at a discount for 5 defunct banks**

BANK	Assets	BOOK VALUE	SALE PROCEEDS	DISCOUNT OFFERED
ICB, Greenland and Coop Bank	Loans	135,054,430,888	8,898,736,349	93%
GTBU	Loans and overdrafts	28,287,640,820	22,630,112,656	20%
NBC	Secured performing loans	297,771,411	208,439,988	30%
	Land	400,000,000	300,000,000	25%
<b>Total</b>		<b>164,039,843,119</b>	<b>32,037,288,993</b>	<b>80% (average)</b>

(Source: GTB P&A, NBC P&A and agreement signed between BOU and NRAC from BOU)

In the case of ICB, Greenland Bank and Co-operative bank, the total loan portfolio sold of UGX 135bn included secured loans of UGX 34.5bn which had valid legal or equitable mortgage on the real property and were supported with legal documentation **BUT** were sold to M/s Nile River Acquisition Company at 93% discount. Further, the negotiation minutes detailing the evaluation of alternatives and assumptions of the sale of GTB and NBC assets were not provided and as such the Auditor General could not determine the basis for selling assets at such a discount.

**Management Response:**

BoU stated that estimating the recoverable amount of a closed bank's loan portfolio cannot be done with precision. Further, that finding a prospective buyer for the loan portfolio of an institution in distress is difficult due to uncertainty of the prospects of recovery.

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BoU further stated that they relied on a desktop valuation of the available securities to confirm the market and forced sale values in a bid to estimate recoverable debt amount as per letter dated 25<sup>th</sup> September 2007 from the Executive Director Bank Supervision to the Governor.

**Committee observations:**

The Committee observes that-

1. Whereas the GTB and NBC discount percentages of 20 and 30% respectively appear reasonable, the 93% discount in respect of the loan portfolio of ICB, Greenland Bank and Co-operative Bank acquired by M/s NRAC was incredibly outrageous.
2. Whereas it could be difficult to establish with certainty and precision the prospects of sale and recoverable amount, the decision by BoU to undertake a desktop valuation of properties which had been mortgaged to the various banks more than eight years does not represent the realistic values at the time of sale.
3. The consultant, M/s JN Kirkland and Associates employed by BoU to implement the exit strategy, identified the purchaser of the loan portfolio M/s Octavian Advisors which incorporated M/s Nile River Acquisition Company in Mauritius as a special purpose vehicle for purposes of entering into contract with BoU on 5<sup>th</sup> December 2007. The said JN Kirkland and Associates ended up as the local agent of the M/s Nile River Acquisition Company with for example, the rights to run an account in Citi Bank in which all recoveries of the sold loan portfolio are deposited.
4. The committee obtained evidence from the Uganda Registration Services Bureau that M/s Nile River Acquisition Company, was not registered in Uganda as a local or foreign company which is a violation of sections 369 and 370 (1) of the Companies Act. M/s Octavian Advisors Plc was also never registered in Uganda.

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5. Records available to the committee indicate that the then Director Commercial Banking – Bank of Uganda, Mr. Ben Ssekabira, who was the agent of the liquidator/Receiver of the three defunct banks (ICB, Greenland Bank and Co-operative Bank) was up to the 12<sup>th</sup> August 2009 the agent of M/s Nile River Acquisition Company. It is further noted that between 12<sup>th</sup> and 16<sup>th</sup> February 2007, Mr. Ben Ssekabira together with Mr. KakemboKatende of JN Kirkland and Associates travelled to the United States of America to meet the management of M/s Octavian Advisors Plc. However, while appearing before the committee he stated that he did not know the purpose for his travel to the USA.

6. BoU vide a letter dated 25<sup>th</sup> September 2007 herein above mentioned from the then Executive Director Bank Supervision, Mrs. Justine Bagyenda, to the Governor, the committee observes that BoU had granted exclusivity at pre-bidding stage as she thus wrote, "... hence upon confirming its interest in writing, Octavian Advisors Plc requested exclusivity from any competitor, a request which BoU granted". This grant did not allow any competition that would return the highest possible bidder. BoU as a liquidator owes a distressed financial institution a duty to marshal the greatest amount from its assets. The action of the then EDS as communicated in the above letter is contrary and in breach of the fiduciary duty owed to a financial institution in distress which ultimately shoulders the burden of the liquidation costs. Besides, the Governor Bank of Uganda being the Chief Executive and ultimately the decision maker was only briefed for his information of a decision already taken by subordinate officers. The letter ends thus "...the above brief is submitted for your information".

7. The committee observes that by the time a delegation of JN Kirkland together with Mr. Ssekabira travelled to the USA to meet

the prospective purchaser M/s Octavian Advisors Plc had already made a deposit of USD 5m on an escrow account with Citi Bank, New York. It is therefore, mind boggling that only USD 200,000 would later be paid added to constitute the full purchase price of USD 5.2m as the full consideration for a portfolio whose original offer was USD 10m. The exclusivity that had already been granted meant that M/s Octavian Advisors Plc had no impetus to up or meet their earlier offer.

8. The committee further notes that in all the business transactions involved in this transaction, the purchaser and her agent have not paid the requisite tax.

9. The loan portfolio sold to M/s Nile River Acquisition Company is now being managed on their behalf by M/s SIL Investments Ltd. M/s SIL Investment has been charging an interest rate varying between 21 and 25% on the loan portfolio and recovering monies from different debtors.

10. While appearing before the committee BoU and M/s SIL Investments Ltd, when tasked, failed to produce evidence on the legal existence of M/s Nile River Acquisition Company at the time of making this report. This notwithstanding, a quick internet search reveals that M/s NRAC, company No. C074673, incorporated on 26<sup>th</sup> September 2007 (over eleven years ago), company type - limited by shares, jurisdiction Mauritius, status 'defunct'. Source of information is the Mauritius Ministry of Finance and Economic Development, companies division at <https://portalmns.mu/cbris-name-searc>.

The page contains numerous handwritten signatures and initials, some of which are written over the printed text. On the left margin, there are several vertical signatures, including one that appears to be 'James'. At the bottom of the page, there are several larger signatures, including one that says 'Eric' and another that says 'Holly'. There are also various initials and scribbles scattered throughout the page, particularly near the numbered items.

11. M/s Nile River Acquisition Company's agent, SIL Investments Ltd, is not VAT registered and accordingly has never remitted tax derived from the income earned on their commission.

**Committee Recommendations:**

1. The committee concludes that the transaction between BoU and M/s Octavian Advisors Plc and her agents lacked transparency and the officers involved should be held responsible for commissions and omissions which resulted in not marshaling the greatest amount from the assets of the distressed financial institutions.
2. The committee further recommends that the officers involved should be held responsible for conflict of interest.
3. The fraudulent business activities being conducted by M/s SIL Investments on behalf of a nonexistent M/s NRAC should immediately cease and-
  - (a) The Inspector General of Police is required to immediately, on adoption of this report, seize all the land titles in the possession of Mr. KakemboKatende of M/s JN Kirkland and Associates and M/s SIL Investments arising from their management of the loan portfolio sold to M/s NRAC by Bank of Uganda.
  - (b) M/s SIL Investments and Mr. KakemboKatende should render an account to the public trustee of all monies received from the time M/s NRAC ceased to exist.
4. The agency of M/s SIL Investments Ltd cannot legally exist upon dissolution of the Principal (M/s NRAC).
5. The Uganda Revenue Authority should take interest in the tax activities of M/s Nile River Acquisition Company and its agents, M/s JN Kirkland and M/s SIL Investments Ltd, to recover unpaid tax.

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(v) At pages 50, 51 and 52 of the special audit report the Auditor General observed that under clause 1.1.1 (ix) of the P & A signed between BoU and DFCU all loans and advances of CBL were transferred to DFCU except-

- (1) the insider loans referred to in schedule 2 of the P&A.
- (2) All liabilities provided in schedule 3 of the P&A

According to the BoU memo from the EDS to the Governor ref. EDS 122.10G dated 31<sup>st</sup> July 2017, the nonperforming loans (bad book) was UGX 570.38bn out of the gross loans of UGX 1,159bn which (bad book) was transferred to DFCU to provide a resource for repayment of loans of UGX 200bn and bridge the shareholders' deficit of UGX 439.72bn at the date of takeover. The Auditor General could not establish how the consideration of UGX 200bn was derived from the bad book of UGX 570.38bn.

**Management Response:**

1. BoU stated that the bid price by DFCU comprised of two elements-
  - (a) Assumption of net assets/liabilities at fair value (excluding the BoU loan and adjusted for a 10% discount on the standard book, additional provisions and contingent liabilities) of CBL as finally determined on the completion date;
  - (b) a deferred cash consideration of up to UGX 200bn was based on net recoveries on fully provisioned non-performing assets as adjusted following DFCU Bank's due diligence (approximately UGX 500bn at reference date)
2. During the process of negotiating the P&A agreement, focus was shifted from the bid position referring to amount recoverable from fully provisioned assets to ensuring recovery of the BoU loan to CBL. In that light, the UGX 63bn of insider loans was tactfully

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retained by the receiver (BoU) to contribute towards repayment of the BoU loan to CBL.

3. It should be noted that although the nonperforming loans of CBL was UGX 570.3bn, all of it was not fully provisioned because part was assessed to be either substandard or doubtful requiring 20% and 50% provisions respectively. The fully provisioned amount (loans and advances for which CBL made 100% provision in its books) were assessed to be UGX 458bn

**Committee observations:**

The committee observed that-

1. in the absence of a proper valuation of all assets and liabilities which contravened section 95 (3) of the FIA, 2004 it is difficult to ascertain adherence to the principles of prudence, transparency and fairness. The principles of legality therefore, were highly compromised. This is exacerbated by the absence of minutes or any record detailing the process of arriving at the figures.
2. The committee further observes that whereas the P&A in schedules 2 and 3 clearly state excluded assets and liabilities respectively, there was no indication or schedule for total assets purchased and liabilities assumed by DFCU. The inevitable conclusion therefore, is that BoU did not know the exact assets and liabilities it was disposing of.
3. The reliance by the Central Bank on the due diligence undertaken by an interested party and eventual purchaser to purport to determine the value of assets and liabilities was imprudent, and an abdication of statutory responsibility enshrined in section 95 (3) of the FIA, 2004 which requires determining the value of assets on the present value basis using a realistic discount rate.
4. The committee also notes that whereas in other financial institutions in distress (NBC and GTB), the bad book was never

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transferred to the purchaser, in the case of CBL, the general clause in the P&A of all assets and liabilities being transferred would automatically include it. A scrutiny of the DFCU bid reveals that the differed cash consideration of up to UGX 200bn based on net recoveries on fully provisioned nonperforming assets was the only consideration.

5. There are no special circumstances explained by BoU to warrant different treatment. Again, as earlier stated in this report there are no records and/or minutes regarding the assumptions and evaluations undertaken in support of this decision.
6. Given the fact that the UGX 200bn differed cash consideration was to be paid from the recoveries from the bad book estimated by DFCU in its bid (of 20<sup>th</sup> December 2016) to be in the region of UGX 500bn was fully provisioned by CBL, the only prudential decision would have been to treat the bad book like in the case of GTB and NBC. Secondly, whereas the outstanding liability owed to BoU by CBL was UGX 478bn, DFCU only assumed liability to the extent of UGX 200bn whose value was to be recovered from the bad book. This, in the committee's considered opinion resulted in a financial disadvantage to both BoU and CBL.
7. At the BoU Board of Director's sitting on 15<sup>th</sup> December 2016 it was resolved under minute no. 3754 paragraph 10, Board observations and Resolutions, that-

*(a) The buyer of CBL would take all the assets and liabilities; and a report of a forensic audit was still awaited.*

The Board having resolved as above, it was *ultra vires* (acting without legal authority) for management to agree, conclude and indeed execute a P&A that excluded some assets and liabilities as stipulated in schedules 2 and 3 contrary to the resolutions of the Board. These exclusions disadvantaged both BoU and CBL.

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However, in a strange turn of events, the Board at its 335<sup>th</sup> special meeting held on the 27<sup>th</sup> January 2017 was presented for ratification with an already signed agreement which excluded some assets and liabilities. Further, the terms of the P&A as presented to the Board included charging interest on the UGX 200bn differed consideration at the Central Bank Rate on reducing balance basis and the same would be recovered from the claims to be made by BoU on the CBL shareholders. Despite this, the term on charging of interest was never included in the P&A and the subsequent UGX 200bn liability agreement executed between BoU and DFCU. This in the opinion of the committee was irregular to commit the CBL shareholder for negligence on the part of the BoU officials. By their actions, the BoU officials occasioned loss to CBL and ultimately BoU. Further, by the Board's Resolution to charge the interest on the shareholder for money 'lent' to DFCU, the committee finds it inconceivable that CBL shareholders who were not party to the P&A and the UGX 200bn liability agreement between DFCU and BoU would be called upon to bear the cost of negligence on the part of BoU officials.

8. The committee observes that BoU in conducting this sale owed a fiduciary duty and indeed duty of care to ensure that all its activities are conducted in the best interests and to marshal the greatest amount from the assets of the financial institution. By conducting the sale in a casual and informal manner, deviating from the basic principles enshrined in FIA and acting in a manner incongruous with the best interests of all concerned BoU acted high handedly. For example, one wonders how, without minutes and records, the BoU management generated a report that they used to brief the Board.

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**Committee Recommendations:**

The committee recommends that-

1. The committee finds that BoU's failure to observe principles of financial prudence and in the course breaching their statutory duties provided under the FIA thereby financially disadvantaging CBL, it should make good the loss occasioned to the commercially fair extent of the value of the Bad Book.
2. The BoU having failed to value the assets and liabilities of GTB, NBC and CBL and considering the lapse of time and impossibility in revaluation of assets should address the probable financial loss occasioned.
3. All BoU officials who failed to properly execute their duties in accordance with the law should be held responsible for their commissions and/or omissions.

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At pages 29, 40 and 41 of the special audit report the Auditor General observed that under the Purchase and Assumption agreements signed between BOU and the purchasers to take over the assets and assume liabilities of NBC and GTB, the purchasers were required to manage the Assets in Escrow (non-performing and performing loans that remained with the insolvent bank) on behalf of BOU for purposes of debt collection. Any proceeds realized from the Assets in Escrow were to be shared between the Purchaser and BoU at agreed ratios. He noted that at the time of writing the special audit report, UGX.4.442bn had been recovered from Assets in Escrow leaving a balance of UGX.10.017bn.

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**Table showing recoveries on NBC and GTB Assets in Escrow**

Details	Bank	Commission to the purchaser	Total Amount of assets in Escrow	Expected recovery by BoU	Recoveries
Performing Loans and Non-Performing Loans	NBC	65%	1,514,485,401	530,069,890 (35%)	349,573,866
Non-performing loans	GTB	35%	21,430,201,395	13,929,630,906 (65%)	4,093,052,663
<b>Total</b>			<b>22,944,686,796</b>	<b>14,459,700,796</b>	<b>4,442,626,529</b>

(Source: NBC purchase and assumption agreement from BOU)

**Management Response**

Management stated that they continue to follow up on the collection of the outstanding balances.

**Committee observations:**

The committee observed that-

1. Due to the absence of records relating to the procurement and negotiations leading to the P&A, it is difficult to discern how the sharing percentages were arrived at. Accordingly, the entire transaction was lacking in terms of transparency. This offended the principles and provisions of section 95 (2) (a) of the FIA, 2004.
2. It is further observed by the committee that under article 3 of the Addendum to the NBC P&A, the liquidator was, on execution of the agreement, to pay UGX 285,133,824 to the purchaser being the value of liability transferred in excess of the assets. No explanation was provided as to why BoU would, on top of the small sharing percentage go ahead to make an additional payment to the purchaser.
3. In all the commitments on resolutions of financial institutions the Board of the BoU has played minimal role, if any.

**Committee Recommendations:**

The committee recommends that-

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1. All the procurements and negotiations in relation to resolutions of financial institutions should be properly documented and records properly secured in compliance with section 95 (3) of the FIA, 2004.
2. Having noted that the Board of Directors of BoU has literally divested itself from its Constitutional and statutory obligations under article 161 (2) of the Constitution and section 10 (a) and (b) of the Bank of Uganda Act respectively, it is recommended that the current BoU Board should carefully re-examine their delegated responsibility and constitute a subcommittee of the Board to monitor financial stability and bank resolution matters.

(vii) At pages 12, 13, 30 and 39 of the special audit report the Auditor General observed that a sum of UGX.3,467,753,732 due from Cooperative and GTB foreign banks at closure was recovered by BOU and deposited on their respective loan recovery and collection accounts. Similarly, a sum of UGX.2,616,462,000 out of UGX.6,596,695,000 due from the six (6) Greenland bank foreign accounts as at 30<sup>th</sup> June 2016 was recovered as full and final settlement following the conclusion of a court case filed in London. However, UGX.464,571,000 on six(6) NBC foreign accounts had not been recovered by BOU because the liquidation process was halted by a court order. In addition, UGX.44,672,000 due from eight(8) ICB foreign accounts as at 30<sup>th</sup> June 2016 had also not been recovered.

**Management Response:**

1. BOU explained that following the conclusion of a court case relating to Greenland Bank, funds due from the foreign accounts filed in London UK, funds (less costs of the legal suit) amounting to UGX.2,616,462,000 were recovered in full and final statement.
2. BOU stated that in the case of ICB, management wrote to the foreign banks, however the banks have never responded.

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**Committee observations:**

The committee observed that-

1. BoU did not provide evidence of the costs incurred in the suit. Looking at the awarded sum and the UGX 2,616,412,000 that ended up on the account of Greenland leads to the conclusion that the cost incurred by the bank was too high.
2. BoU acknowledged an error in its preparation of the Greenland bank's Statement of Affairs as at 30<sup>th</sup> June 2016 where full provision of UGX 6.596bn was made to write off funds due from foreign banks despite partly recovering UGX 2,616,462,000 from the court case which was credited on the Greenland Bank loan recovery and collection account on 31<sup>st</sup> march 2015.

**Committee Recommendations:**

The committee recommends that-

1. BoU should rectify the error on the Greenland Bank's Statement of Affairs for proper financial reporting.
2. BoU should take full responsibility for any probable loss to Greenland Bank.

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(vii) At page 13 of the special audit report Auditor General observed that Greenland Bank equity investment in African Export-Import Bank (Egypt) worth USD.45,000 had accumulated dividends of USD.22,410 as at 30<sup>th</sup> November 2015, however, the liquidator (BOU) had not sold off the shares and therefore the funds have not been recovered.

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**Management Response:**

BoU management stated that the process of selling the shares commenced on 30<sup>th</sup> October 2017 and a reminder was sent in September 2018 upon which they were advised by Afreximbank to look for a buyer who qualifies to take on

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the shares and this process is still ongoing. They also stated that over time the investment has yielded dividends of \$22,410 over the period.

**Committee observations:**

The committee observes that-

1. Not until the beginning of this audit process that BoU took further steps in September 2018 to dispose of the shares the bank held. There has been laxity in the disposal of the shares so as to realise value from them.

**Committee recommendations:**

1. BoU should expedite the disposal of the shares so as to realise the attendant value.
2. Dr Louis Kasekende the Board member of the afreximbank should expedite the process of disposal.

**4.3: TO ESTABLISH WHETHER ALL LIABILITIES AT CLOSURE AND CREDITORS' CLAIMS AFTER CLOSURE WERE PROPERLY ASCERTAINED, RECORDED AND SETTLED IN LINE WITH SECTIONS 102, 105, AND 106 FIA, 2004 AND SECTION 34(3) FIS, 1993**

Rt. Hon Speaker and members,

Section 34(3) of the FIS 1993 provided that;

*The Minister from time to time, in consultation with the Central Bank and by notice in the Uganda Gazette, fix the size of the fund sufficient to protect the interests of the depositors to be made up by contributions under Section 35 and may authorize the Central Bank to borrow any such amounts as it may require for temporary purposes of making up deficiency in the fund pending collection of contribution.*

Currently, Section 102, of the FIA, 2004 provides that-

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*"The Central Bank or its appointed liquidator shall, within a period not exceeding forty five days from the date of publication of the intention to liquidate a financial institution, for the purpose of making an estimate of the debts and liabilities of the financial institution, publish in a local newspaper of national circulation a notice calling upon all creditors, secured and unsecured, including depositors, to submit to the Central Bank or the liquidator within one month from the date of publication, a statement of the amount claimed and the particulars of the claim".*

Further, Section 105 of the FIA, 2004 provides that-

*"(1) The liquidator shall, within two months after submission of a report of the assets and liabilities of the financial institution commence the payment to depositors and creditors of the financial institution except that—*

- (a) payment shall be made first to the Deposit Protection Fund;*
- (b) second to the liquidator for all expenses incurred in the process of liquidating the financial institution;*
- (c) third to employees for all wages and salaries due net of any*
- (d) fourth to secured creditors in paripassu;*
- (e) fifth to depositors for deposits which are in excess of the protected deposit amount;*
- (f) then to other creditors to rank in paripassu.*

*(2) Section 315 of the Companies Act shall not apply to a liquidation of a financial institution.*

*(3) Where any assets remain after the payment by the liquidator of all claims against the financial institution, the remaining assets shall be distributed among the shareholders in accordance with their respective rights and interests".*

Section 106 of the FIA, 2004 provides that;

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- (1) A liquidator shall keep proper financial ledgers and financial records in a manner prescribed by the Central Bank in which shall be recorded all financial transactions relating to the liquidation.
- (2) When the liquidator has realized all the property of the financial institution, or so much of it as can, in his opinion, be realized without needlessly protracting the liquidation, and has made distribution to all depositors and creditors, he or she shall cause audited financial statements to be submitted to the Central Bank”..

**Audit Generals observations**

At pages 15, 16, 31 and 32 of the special audit report the Auditor General observed that liabilities amounting to UGX.503.76bn were still outstanding as at the time of writing this report from a total liability of UGX.1,617bn held at closure as detailed in the table below. The process of settling liabilities for ICB, Cooperative Bank and Greenland Bank has taken over 17 years and this has affected the winding up process of these banks despite the three (3) banks in Receivership holding cash balances of UGX.19.5bn on their recovery accounts as at 30<sup>th</sup> June 2016.

**Table showing liabilities as at closure and at the last date of the statement of affairs**

Bank	Amount at Closure/intervention	Amount outstanding as at the last date of the statement of affairs
ICB	40,219,554,000	18,434,839,000
Cooperative	65,208,335,334	16,484,366,000
Greenland	102,228,907,125	112,138,192,000
GTBU	75,541,020,000	2,051,862,000
NBC	11,514,765,000	1,943,650,000
CBL	1,322,655,920,000	352,709,193,735*

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TOTAL	1,617,368,501,459	503,762,102,735
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(Source: Statements of affairs from BOU)

(\*BOU injected funds amounting to UGX.478,830,609,910 less amount settled by DFCU.)

### Management response

Bou stated that the process of settling GTB creditors' claims was still ongoing pending full verification on account of missing supporting documentary evidence.

They further stated that settlement of NBC creditor claims had not commenced as a result of the Court order that halted the liquidation process.

They also stated that CBL outstanding liabilities are funds that were injected by BoU during statutory management and according to BoU these will be recovered from DFCU bank and BOU claims against CBL shareholders.

### Committee observations

The committee observed that;



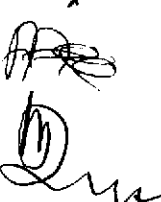

1. The winding up process of all the defunct banks has taken an unjustifiably long time to settle creditor claims. For Teefe Trust Bank (26 years), Co-operative Bank (20 years), ICB (21 years), Greenland Bank (20 years), NBC (7 years), GTB (5 years) and CBL (2 years)!!! Regrettably, many of the creditors and shareholders have and indeed continue to die.
2. The unsatisfactory explanation by BoU on their failure to verify and settle creditor claims has unreasonably delayed the process of winding up and consequently increases the liquidation costs which under section 93 are charged on the financial institution in distress thereby reducing the residual amounts due to shareholders.


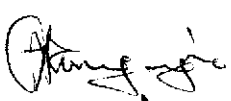

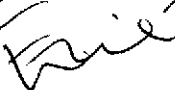
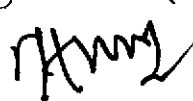

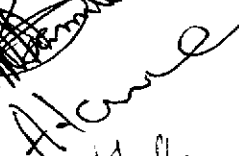



3. The failure to verify and settle creditor claims has unreasonably delayed the process of winding up and consequently causing the creditors to lose out on the time value of the money owing.
4. The BoU failure to-
  - (i) publish the creditor calls within the time prescribed by section 102 of the FIA, 2004 constituted a violation of the law. Indeed, calls on creditor claims have come as late as end of 2018 decades after the closure of the financial institutions. In effect, the BoU action constitutes a revival of causes of action that had long been extinguished by operation of law.
  - (ii) as liquidator to keep the proper financial ledgers and records contravened section 106 (1) of the FIA, 2004
  - (iii) prescribe the manner and procedures of keeping and maintaining financial records contravened section 106 (1) of the FIA.

**Committee Recommendations:**

The committee recommends that-

1. BoU should immediately put in place procedures and guidelines for the proper functioning of all liquidation related activities.
2. BoU should strengthen the legal and compliance functions to ensure compliance with all legal requirements related to resolution of financial institutions.
3. Government should consider amending the FIA, 2004 to provide for sanctions against noncompliance with any provision by the Bank or any agent thereof including but not limited to liquidation agents.
4. BoU should end the winding up processes of all defunct banks within a period not exceeding one year.
5. Government should consider amending the FIA to provide a time limit within which liquidation of financial institutions in distress should be concluded.



At pages 20, 56 and 57 the Auditor General in the special audit report observed that prior to closure, BoU injected a sum of UGX.504.507bn into three closed banks (Greenland, ICB and CBL) to avert a run on the banks. At the time of writing his report, a sum of UGX.374.64bn was outstanding and due to BoU as indicated in the table below.

**Table showing intervention costs by BOU**

s/n	Banks	Amount injected (UGX) bn	Amount recovered (UGX) bn	Amount outstanding (UGX) bn
1.	Greenland	24.053	3.477	20.576
2.	ICB	1.624	0.269	1.355
3.	CBL	478.830	126.121	352.709
	<b>Total</b>	<b>504.507</b>	<b>129.867</b>	<b>374.64</b>

(Source: Statements of affairs of Greenland and ICB, BOU-CBL funding accounts and BOU-DFCU Limited receivable accounts statement from BOU)

At this point, it should be noted that in the course of the inquiry, the committee found it prudent to interrogate the funds injected into CBL for liquidity support and other interventions costs amounting to UGX 478bn in a period of three months. As a consequence, the committee requested the Auditor General to conduct a special audit on the same. At pages 9, 10, 11, 12, 13, 14 and 15 the Auditor General observes that-

- (a) Real Time Gross Settlement System (RTGS) amounting to UGX 87.25bn and USD 20.51M (approximately UGX 73.8bn) the Auditor General confirmed transfer of funds from CBL customers to the respective beneficiaries.
- (b) Letters of Credit (LCs) amounting to USD 9.95M (Approximately UGX 35.8bn) were settled by CBL during statutory management.
- (c) Telegraphic Transfers (TTs) amounting to USD 53.16M (approximately UGX 195bn) the Auditor General could not confirm the recipients of

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the respective transfers from the CBL Nostro account as the account did not indicate the beneficiary account names, account numbers and beneficiary banks.

- (d) Cash to CBL branches amounting to UGX 77.5bn. The Auditor General confirmed that the cash was transferred to the CBL by BoU and recorded in the cash accounts of the various branches. However, he was not able to confirm that the funds were paid to the bonafide claimants/ account holders since the daily transaction reports provided by BoU did not indicate the customer name and account numbers.

**Management response:**

BoU stated that the amount due from Greenland bank and ICB were written off on 30th June, 2009 and 31st march, 2009 respectively due to very low likelihood of recovery.

BoU further stated that the amount due from CBL would be recovered through the implementation of the P&A and claims against CBL shareholders.

**Committee observations**

1. Whereas BoU claims to have spent UGX 504.5bn as liquidity support and intervention costs to avert a run on the banks, the committee was not availed any documentation in proof of the claim in respect to ICB and GBL. The amount in issue for the two defunct banks was UGX 25.6bn.
2. In respect to CBL-
  - (a) BoU spent UGX 12bn on other intervention activities (for service providers i.e. lawyers, auditors, surveyors, valuers, security and BoU staff allowances. Part of this money was also paid as terminal benefits to CBL staff).

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- (b) BoU accounted for UGX 87.25bn and USD 20.51M (approximately UGX 73.8bn) disbursed through Real Time Gross Settlement System (RTGS), and USD 9.95M (Approximately UGX 35.8bn) disbursed to settle Letters of Credit (LCs) of the remaining UGX 466bn they injected as liquidity support.
- (c) There was no accountability for the Telegraphic Transfers (TTs) amounting to USD 53.16M (approximately UGX 195bn) as there was no confirmation of the recipients of the respective transfers from the CBL Nostro account especially because the account did not indicate the beneficiary account names, account numbers and beneficiary bank (s).
- (d) While cash to CBL branches amounting to UGX 77.5bn was transferred to the CBL by BoU and recorded in the cash accounts of the various branches the committee was not able to confirm that the funds were paid to the bonafide claimants/ account holders since the daily transaction reports provided by BoU did not indicate the customer name and account numbers.
- (e) By their response dated 13<sup>th</sup> February 2019 BoU explained that the requisite details can only be sourced from CBL banking correspondent, Standard Chartered Bank, New York. Alternatively, they stated that the OAG could review the Swift messages for the details and as such it requested DFCU bank to retrieve the swift messages and provide them to the OAG. That also applies to the cash at CBL. The committee therefore observes that by the time of writing this report it was not possible for the OAG to verify and confirm what BoU claimed. Parliament may follow up this matter with the OAG after this report.

3. In failing to prepare and submit reports, the statutory manager did not adhere to the requirements of section 89 (10) of the FIA, 2004 which required him to upon assumption of office control and conduct affairs

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and business of the institution with diligence in accordance with sound banking and financial principles and in particular with due regard to the interest of the institution, its depositors and other creditors which would form a basis of sound decision making for resolution of the bank.

4. The failure of BoU to involve the statutory manager in the sale of the bank he was managing more so, when they had no reports from him giving the status of assets and liabilities of the bank was a serious irregularity. There was even no opportunity for the statutory manager to formally handover the bank and indeed, MrKatimboMugwanya only learnt of the sale of the bank when he received a picture of loan files being ferried on his phone by WhatsApp while he was on his farm. He was told of the sale by his staff at CBL.

#### Committee recommendations

1. BoU should at all times produce reports regarding the affairs of the financial institution in issue and share the same with the shareholders who ultimately shoulder the burden of the management costs incurred by the Central Bank as per section 93 of the FIA, 2004.
2. The law and policy regulating resolution of financial institutions should expressly provide a mechanism of sharing information on accountability for funds generated from the financial institution as well as injected by BoU as liquidity support.
3. The law should provide penalties and sanctions against noncompliant bank officers.
4. The statutory manager should be involved in matters regarding the resolution of financial institutions under his/her management.
5. Further investigations should be carried out by the Uganda Police Force to establish if financial loss was occasioned and hold the responsible officers personally accountable to the extent of the loss, if any.

**4.4: TO ASCERTAIN WHETHER THE FUNDS FROM THE DPF/DIS WERE PROPERLY USED TO SETTLE INSURED DEPOSITS OF CLOSED BANKS IN LINE WITH SECTION 34 (3) OF THE FIS, 1993 AND SECTION 105 AND 108 OF THE FIA, 2004.**

Section 34(3) of the FIS, 1993 provided that-

*The Minister from time to time, in consultation with the Central Bank and by notice in the Uganda Gazette, fix the size of the fund sufficient to protect the interests of the depositors to be made up by contributions under Section 35 and may authorize the Central Bank to borrow any such amounts as it may require for temporary purposes of making up deficiency in the fund pending collection of contribution.*

Currently, Section 102, of the FIA, 2004 states that-

*“The Central Bank or its appointed liquidator shall, within a period not exceeding forty five days from the date of publication of the intention to liquidate a financial institution, for the purpose of making an estimate of the debts and liabilities of the financial institution, publish in a local newspaper of national circulation a notice calling upon all creditors, secured and unsecured, including depositors, to submit to the Central Bank or the liquidator within one month from the date of publication, a statement of the amount claimed and the particulars of the claim”*

Further, Section 105 of the FIA, 2004 provides that-

*“(1) The liquidator shall, within two months after submission of a report of the assets and liabilities of the financial institution commence the payment to depositors and creditors of the financial institution except that—*

- (a) payment shall be made first to the Deposit Protection Fund;*
- (b) second to the liquidator for all expenses incurred in the process of liquidating the financial institution;*

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- (c) third to employees for all wages and salaries due net of any liabilities to the financial institution;
- (d) fourth to secured creditors in paripassu;
- (e) fifth to depositors for deposits which are in excess of the protected deposit amount;
- (f) then to other creditors to rank in paripassu.

(2) Section 315 of the Companies Act shall not apply to a liquidation of a financial institution.

(3) Where any assets remain after the payment by the liquidator of all claims against the financial institution, the remaining assets shall be distributed among the shareholders in accordance with their respective rights and interests”.

Further section 108 of FIA, 2004 provides that;

- (1) The Fund in the Central Bank known immediately before the commencement of this Act as the Deposit Protection Fund, in this Part referred to as the Fund, shall continue in existence.
- (2) The Fund shall be managed and controlled by the Central Bank
- (3) There shall be paid into the Fund all contributions and other payments required by this Part of this Act to be paid into it and there shall be paid out of the Fund all monies required by this Part of this Act be paid out of it.
- (4) The Minister may, from time to time, by notice in the Gazette, fix the size of the Fund sufficient to protect the interests of depositors to be made up by the contributions under section 109 and the Central Bank may borrow any such amount as it may require for temporary purposes of making up deficiency in the Fund pending collection of contributions.
- (5) The Fund shall consist of—
  - (a) moneys contributed to the Fund by financial institutions under section 109;
  - (b) income credited to the Fund under subsection (6) of this section;
  - (c) money borrowed for purposes of the Fund under subsection (4).

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- (6) *The money constituting the Fund shall be placed in an account with the Central Bank to be invested in such manner as the Central Bank shall deem appropriate and any income from the investment shall be credited to the Fund.*
- (7) *There shall be chargeable to the Fund the administrative expenses of the Central Bank, repayment of money borrowed by the Fund and payments made in respect of protected deposits."*

At pages 15, 16, 17, 18 and 23 the Auditor General observed that in line with Section 34(3) of the FIS, GoU and BoU came up with an intervention policy in May 1997 which provided that when a bank is liquidated, BoU commitment to depositors would be limited to the UGX.3m per depositor (Secured deposits) covered under the Deposit Insurance Scheme (DIS).

According to the financial statements of the DIF for the six years ended 30<sup>th</sup> June 2000 (from 30<sup>th</sup> June 1994 to 30<sup>th</sup> June 2000), the balance of DIF at the time of closure was only UGX.5.841bn which was insufficient to cover the total insured deposits of the three(3) closed banks was UGX.41.152bn. Consequently, Government intervened with a contribution of UGX.91.221bn in July 2001 to settle both Insured and Uninsured deposits of the three (3) closed banks.

Despite Government intervening with a contribution of UGX.91.221bn in July 2001 to settle both insured and uninsured deposits of the three (3) closed banks, there was no Memorandum of Understanding to enable the Auditor General assess the terms of lending to BOU and how the funds would be repaid.

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The Auditor General further observed that depositors worth UGX.101.073bn of Cooperative bank, ICB and Greenland bank were verified and paid in full as pledged by Government. The funds used to pay depositors were obtained from four (4) sources namely; GoU, DPF, BoU and Cooperative bank ltd (bank assets were used to pay its own customers) as per the table below.

**Table showing source of funds used to settle the depositors**

Bank	GOU (bn)	DPF(bn)	BOU (bn)	Cooperative (bn)	Total contribution to depositors (bn)
Cooperative	49,126,648,621	1,073,231,645	1,137,399,703	8,101,734,669	59,439,014,638
ICB	3,257,282,358	279,745,829	450,000,000	0	3,987,028,187
Greenland	*38,837,069,621	1,799,792,511	471,734,636	0	2,271,527,147
<b>Total</b>	<b>91,221,000,000</b>	<b>3,152,769,985</b>	<b>2,059,134,339</b>	<b>8,101,734,669</b>	<b>104,534,638,993</b>

(Source: MOFPED communication refunding of payments made to account holders of closed banks, memo reference ACC.414.3 dated 6th March 2017 and BOU memoref EDS122.6B from BOU)

\*The schedule to support the balancing figure of UGX.33.838 was not availed

Following the verification by BOU, customer deposits totalling UGX.101.073bn were verified but UGX.104.532bn was paid resulting into a variance of UGX.3.461bn. At the time of writing this report, this variance had not been reconciled.

The Auditor General also noted that the Liquidator (BOU) refunded a sum of UGX.25.063bn to refund the DPF which was in excess of the DPF contribution of UGX.21.912bn, therefore the funds should have been used to offset Government contribution towards Insured depositors.

**Management Response:**

BOU stated that the decision to pay the depositors was taken by the Government and there was no legal requirement for execution of a memorandum of understanding. The Government commitment was

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documented in the budget speech of 1999/2000 and the Memorandum of Economic and Financial policies of the Government of Uganda 2000/2001.

The deposits that needed verification and therefore not paid were UGX.7.21bn of which UGX.3.46bn was later verified and paid.

BoU stated that after reconciliation, Government outstanding claim was UGX.70.538bn. Government subrogated the rights of the depositors with respect to the uninsured portion of their deposits. It therefore ranks as a creditor that will participate in the distribution of the realised value of assets on a pro rata basis, after conclusion of the winding up process that has been on going.

The UGX.21.912bn is still held at DPF account in BOU and will be disbursed to government after the conclusion of the liquidation exercise of the three (3) closed banks.

### Committee observations

The committee observed that-

- (i) Whereas there was no memorandum of understanding between Government and the Bank of Uganda, it is the opinion of the committee that public monies being expended in the resolution processes of distressed financial institutions should be on terms clearly defined and documented. This should be applied *mutatis mutandis*. In the absence of such defined and documented terms, it is difficult to ascertain the terms upon which UGX.91.22bn was given to the Bank and would be recovered.
- (ii) The Committee was not availed any document relating to the authority that approved/authorised payment of the funds in issue from both Bank of Uganda and Ministry of Finance. The committee observes further that whereas government paid UGX.91.22bn to be refunded by Bank of

Uganda from the asset recovery accounts of the three defunct banks only UGX.21.92bn has been recovered and is held in the DPF leaving an outstanding sum of UGX.70.538bn unrecoverable since the remaining assets of the three defunct banks were lumped up and sold to M/s Nile River Acquisition Company at UGX.8.9bn.

(iii) Due to absence of documents, it was not possible to ascertain whether the UGX.91.22bn used to settle customer claims of ICB, Cooperative bank and Greenland bank went to the bonafide beneficiaries. The absence of documents could among others be attributed to the long delay in concluding the winding up process.

**Committee recommendations:**

The committee recommends that-

- (i) The DPF should within one month refund the UGX 21.9bn, due to Government, to the consolidated fund.
- (ii) The Minister of Finance, Planning and Economic Development should regularly review and fix the size of the fund to ensure sufficient protection of the depositors interests and avoid recourse to the public purse.

**4.5: TO ESTABLISH THE TOTAL COST OF LIQUIDATION OF THE DEFUNCT BANKS**

Section 106 of the FIA, 2004 provides that-

(1) "A liquidator shall keep proper financial ledgers and financial records in a manner prescribed by the Central Bank in which shall be recorded all financial transactions relating to the liquidation".

At pages 20, 33 and 43, the Auditor General in the special audit report observed that a sum of UGX.18.774bn was incurred by the Liquidator (BoU) as liquidation costs as illustrated in the table below. Liquidation costs incurred by

NBC and CBL could not be ascertained since BoU had not commenced the process of liquidation.

**Table showing liquidation costs of the defunct banks**

Bank	Total liquidation cost
ICB	2,725,178,759
COOPERATIVE	7,076,115,000
GREENLAND	8,219,188,000
GTBU	754,346,000
NBC	0
CBL	0
<b>TOTAL</b>	<b>18,774,827,759</b>

*(Source: Statements of affairs of ICB, Cooperative, Greenland and GTBU and contracts, invoices, receipts and detailed statement of account of CBL from BoU)*

It was further observed that BoU did not maintain full ledgers in relation to liquidation costs of ICB, Co-operative bank and Greenland bank. As such, the Auditor General could not confirm the total liquidation costs for these three (3) banks.

**Management response:**

BoU stated that in the case of ICB, Greenland and Co-operative financial ledgers in relation to liquidation are maintained. They also stated that because of a court injunction in respect of NBC, they could not prepare a statement of affairs detailing the liquidation costs so far incurred.

In the case of CBL, the BoU management stated that CBL is still under Receivership and has not yet progressed into liquidation. Following the completion of the current court cases a statement of affairs will be prepared in accordance with the law.

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**Committee observations**

1. BoU provided recovery accounts for ICB, Co-operative Bank, GTB, NBC and Greenland Bank detailing the liquidation costs, creditor claims settled and proceeds from sale of assets. However, the recovery accounts for ICB, Greenland and Co-operative banks did not have clear details of the transactions and could therefore not confirm the accumulated liquidation costs reported.
2. Whereas BoU management explained that they can not avail the sums spent in the liquidation of NBC because of a court injunction issued on 28<sup>th</sup> September 2012 and extended on 27<sup>th</sup> December 2012 and 15<sup>th</sup> February 2013, a perusal of the interim order does not reveal the same. The interim order did prohibit the BoU from proceeding with winding up of the bank until the final determination of the Constitutional Application No. 52 of 2012. It is also of concern to the committee that a court interim order can last for seven (7) years without BoU, an affected party, taking steps to fix Constitutional Petition No. 44 of 2012 for hearing and disposing of it.
3. Whereas it is correct that there are contestations in court about issues in regard to CBL liquidation, it is the committee's observation that that does not stop BoU from preparing the statement of affairs as at the time of the special audit. Further, it is obvious, like indeed in NBC that BoU has already incurred ascertainable liquidation costs including but not limited to legal, audit, security and survey.
4. It is the committee's observation that the cost of liquidation would have been mitigated had BoU relied on its internal human resource as opposed to outsourcing professional services.
5. The committee has already made critical observations in relation to record keeping in resolving audit objectives 1 and 2 earlier in this report.

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**Committee recommendations**

1. That BoU should strictly adhere to the requirements of section 106 (1) of the FIA by keeping proper financial ledgers and financial records in a manner prescribed by the Central Bank in which shall be recorded all financial transactions relating to the liquidation.
2. The fiduciary duty owed to the person who is ultimately bearing the burden of paying the liquidation cost dictates that such cost should be minimized.
3. Decisions to hire external professional help should be done under authority of the Board upon justification by management.

**4.6: TO ESTABLISH WHETHER THE STATUTORY MANAGERS PERFORMED THE FUNCTIONS IN LINE WITH SECTION 90(4) OF THE FIA, 2004 AND ASCERTAIN THE TOTAL COST INCURRED BY BOU DURING THE INTERVENTION PERIOD.**

Under this audit objective, it is important to note that of all closed financial institutions only CBL was placed under statutory management under section 89 (2) (g) of the FIA, 2004. For clarity, the relevant provision reads as follows-

*"(1) The Central Bank shall, on taking over the 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.*

**(4) The powers referred to in subsection (1) of this section shall include power to-**

- (a) .....
- (b) .....
- .....

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- (g) **Appoint a person to be known as a statutory manager to manage, control and direct the affairs of the financial institution.**

The duties of the said statutory manager are detailed in section 90(4) of the FIA, 2004. It provides-

(4) *The duties of a statutory manager shall include-*

- (a) *tracing and preserving all the property and assets of the institution;*
- (b) *recovering debts and other sums of money due and owing to the institution;*
- (c) *evaluating the capital structure and management of the institution and recommending to the Central Bank any restructuring or re-organization which he or she considers necessary and which, subject to the provisions of any other written law, may be implemented by him or her on behalf of the institution;*
- (d) *entering into contracts in the ordinary course of the business of the institution, including raising of funds by borrowing on such terms as he or she may consider reasonable;*
- (e) *obtaining from any officers or employees of the institution any documents, records, accounts, statements or information relating to its business;*
- (f) *issuing a new balance sheet and profit and loss accounts; and*
- (g) *any other duties that may be assigned to him or her by the Central Bank*

At pages 52 to 59 the Auditor General in the special audit report observed that CBL was placed under statutory management from 20<sup>th</sup> October 2016 to 20<sup>th</sup> January 2017. During this period, the Statutory Manager did not prepare a plan detailing efforts to return the bank into compliance with prudential standards despite BoU injecting UGX.478.8bn to support the operations of CBL. In absence of any documented assessment to revive the bank, he could

not provide assurance as to whether Sections 89(5) and 90(4) (c) of the FIA 2004 were complied with.

**Management response**

BoU stated that the intervention and subsequent resolution of CBL was done under section 87(3) and section 89(5) of the FIA, 2004 did not come into play as indicated by the OAG.

BoU further stated that when BoU took CBL into statutory management, it was found to be grossly insolvent. It is not possible to revive a bank with this level of insolvency and restore it to full compliance with capital adequacy and other requirements. Therefore BoU pursued other means to resolve the bank.

**Committee observations**

1. The committee established that during the period of statutory management the statutory manager recovered UGX 16.2bn from loans in the performance of his functions and compliance with section 90 (4) (b) of the FIA, 2004.
2. The committee further established that the processes leading to the sale of CBL (in Receivership) commenced during the period of statutory management contrary to section 95 of the FIA, 2004.
3. Whereas the letter of appointment dated 20<sup>th</sup> October 2016 made no reference to section 89 (5) of the FIA as claimed by BoU, it is the duty of the statutory manager in the exercise of statutory functions to observe and comply with all the provisions of the Financial Institutions Act and other laws of Uganda. Accordingly, section 89 (5) of the FIA applied to his functions.
4. In light of the findings in 2above, the committee observed that BoU management did not provide a plan or assessment detailing efforts to return the bank into compliance with prudential standards despite funding with UGX.478.8bn.

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5. The above notwithstanding, at pages 7 and 8 of the special audit report of February 2019 on the accountability for the UGX 478bn injected into CBL, the Auditor General observed that CBL liquidity position was significantly below compliance level for the first two months of the statutory management period. However, in the last month of statutory management, from 1<sup>st</sup> January 2017 to 24<sup>th</sup> January 2017, CBL met the required liquidity compliance levels. Therefore the bank's liquidity position had stabilized.

**Table showing CBL's liquidity assessment for the period 1<sup>st</sup> January to 24<sup>th</sup> January 2017**

Date	(A)- Total Deposits	(B)-20% compliance level of Liquidity assets	(C)- Actual liquid Assets Held	(D=C-B)-Variance
01/01/2017	718,705,870,000	143,741,174,000	143,375,330,000	(365,844,000)
02/01/2017	693,384,000,000	138,676,800,000	141,001,156,000	2,324,356,000
03/01/2017	695,062,958,000	139,012,591,600	142,396,687,000	3,384,095,400
06/01/2017	688,331,758,000	137,666,351,600	141,168,274,000	3,501,922,400
07/01/2017	687,852,870,000	137,570,574,000	134,072,358,000	(3,498,216,000)
08/01/2017	692,886,134,000	138,577,226,800	145,631,476,000	7,054,249,200
09/01/2017	686,688,907,000	137,337,781,400	147,724,133,000	10,386,351,600
10/01/2017	684,336,992,000	136,867,398,400	138,509,732,000	1,642,333,600
13/01/2017	673,368,669,000	134,673,733,800	113,065,738,000	(21,607,995,800)
14/01/2017	673,859,924,000	134,771,984,800	125,569,253,000	(9,202,731,800)
15/01/2017	669,844,078,000	133,968,815,600	117,391,724,000	(16,577,091,600)
16/01/2017	691,884,616,000	138,376,923,200	165,462,815,000	27,085,891,800
17/01/2017	693,311,563,000	138,662,312,600	165,764,742,000	27,102,429,400
20/01/2017	688,982,692,000	137,796,538,400	161,010,369,000	23,213,830,600
21/01/2017	688,682,047,000	137,736,409,400	152,103,869,000	14,367,459,600
22/01/2017	688,954,547,000	137,790,909,400	160,682,090,000	22,891,180,600
23/01/2017	684,030,329,000	136,806,065,800	157,545,986,000	20,739,920,200
24/01/2017	680,706,495,000	136,141,299,000	157,421,545,000	21,280,246,000

(Source: Bank of Uganda liquidity assessment reports for the period)

A critical analysis of the table above reveals that CBL had recovered from liquidity distress from mid-January 2017 to the time it was disposed of on 25<sup>th</sup> January 2017. In fact, BoU had stopped injecting money on 9<sup>th</sup> January 2017. Therefore the bank's liquidity position had stabilized.

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6. The committee established that during the period of statutory management the statutory manager recovered UGX 16.2bn from loans in the performance of his functions and compliance with section 90 (4) (b) of the FIA, 2004.

7. The committee further established that the processes leading to the sale of CBL (in Receivership) commenced during the period of statutory management contrary to section 95 of the FIA, 2004. Whereas BoU is mandated under the cited section to arrange for a P&A, such powers can only be exercised after BoU has taken over as Receiver. As observed herein, the process for the P&A was commenced on 9<sup>th</sup> December 2017 when the bids were invited from selected prospective buyers. This indicates that the decision to sell was conceived while the bank was under statutory management.

8. The committee is therefore satisfied that the statutory manager performed his functions in compliance with section 90 (4) of the FIA, 2004. The committee observes however, that the statutory manager did not provide the accountability and handover report as required by the law owing to the termination of his services upon placing the bank in receivership without his knowledge or input.

9. From the report of the audit on the accountability for the UGX 478bn injected into CBL at page 6 thereof, the committee observes that the Statutory Manager prepared CBL annual report and financial statements for the year ended 31<sup>st</sup> December 2016 as required by section 90 (4) (f) of the FIA, 2004. KPMG Auditors were engaged to audit the financial statements prepared by the statutory manager during the time of his management. The requisite professional fees were fully paid however; the financial statements were never signed by the statutory manager or BoU.

### Committee recommendations

1. The committee recommends that in the process of taking a decision to liquidate a financial institution, detailed plans for the revival should be

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exhausted before taking the most extreme action of liquidating a financial institution which act has far reaching implications to the financial sector. The absence of such plans would connote premeditated intentions to windup a financial institution instead of reviving it to the extent that such is possible.

2. The committee further recommends that the statutory manager's assessment as may be revealed in his report prior to liquidation should be key in forming the basis for the decisions of the Central Bank in relation to liquidation. Such a report would reveal the financial status of the institution including its ability to return to prudential compliance.

#### 4.7: TO CARRY OUT ANY PROCEDURES THAT MAY BE APPROPRIATE IN THE CIRCUMSTANCES

In the course of the inquiry, the committee came across several matters incidental to and connected with its terms of reference. These relate to the seven financial institutions in issue and the Bank of Uganda. They included the following:

##### 1. Co-operative Bank Ltd

The committee in the course of interaction with the Uganda Co-operative Alliance (representing the cooperators that formed the Co-operative Bank in 1964), established that in 1997, the Government of Uganda together with USAID made attempts to recapitalize the distressed Co-operative Bank. They complained that in the process a new company (the Co-operative Bank Ltd incorporated in 1997) in the same name with a new set of directors and subscribers. This was done without deregistering or liquidating the previous Co-operative Bank Ltd of 1964 registered under the Cooperative Societies Act.

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In interrogating this matter, the committee interfaced with the subscribers of the Co-operative Bank Ltd 1997, officers from the Uganda Registration Services Bureau, Mr. Charles Owor, former Bank Secretary of the both banks, BoU officials and the Minister of Finance, Planning and Economic Development, Hon. Matia Kasaija. The committee also received copies of correspondences from the Minister of Trade, Industry and Co-operatives to the Governor Bank of Uganda inquiring about the final report on the closure of the Co-operative Bank. In those correspondences, Hon. Amelia Kyambadde informed the Governor that her Ministry was considering reviving the Co-operative Bank.

It was the observation of the committee that, it is true that a new co-operative Bank was incorporated in 1997 with the same name as the original (1964) Co-operative Bank Ltd. By having two Co-operative banks duly registered without winding up the first one resulted into confusion leading to the question as to which bank was closed in 1999. This explains the concern by the Uganda Cooperative Alliance as to what happened to the assets of the Co-operative Bank of 1964. The committee was availed with a complete asset register of Co-operative Bank as at 1997.

**The committee therefore recommends that BoU, Ministry of Trade, Industry and Co-operatives and the Ministry of Finance, Planning and Economic Development resolves the concerns of the Uganda Co-operative Alliance regarding the closure and assets of the Co-operative Bank of 1964.**

**It is further recommended that Government reports on this matter to this House within six months.**

**2. The Bank of Uganda Board of Directors**

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In the process of the inquiry, the committee reviewed the legal regime establishing and governing the BoU Board particularly the Constitution of the Republic of Uganda and the Bank of Uganda Act. A perusal of article 161 (2) of the Constitution reveals a conflict thereof with section 10 of the BoU Act in as far as the number of directors and their appointment. Whereas article 161 (2) of the Constitution provides that the Board shall consist of the Governor, Deputy Governor and not more than five other members the BoU Act in section 7 provides that the Board of Directors shall consist of the Governor, Deputy Governor, Secretary to Treasury and not less than four nor more than six other Directors.

In terms of appointment, whereas the Constitution provides, in article 161 (3) (a) that the Board shall be appointed by the President with approval of Parliament, the BoU Act provides under section 7 (2) that the Directors shall be appointed by the Minister. Whereas the Act in section 7 (1) (c) provides for Secretary to the Treasury to be a statutory member of the Board the Constitution has no such requirement. Currently, the committee observes that Mr. Keith Muhakanizi is a voting member of the BoU Board.

**The committee recommends that the Secretary to the Treasury or his or her representative (not below the rank of Commissioner), like it is in other jurisdictions, should be a non-voting member of the Board.** This will be a good safe guard against any likely compromising of the Bank of Uganda independence guaranteed under article 162 (2) of the Constitution.

With respect to the term of office of BoU Board of Directors, whereas the Constitution, under article 161 (3) (b), provides for a term of five years for Board members, section 7 (3) of the Act provides for a renewable term of four years.

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In terms of the functions of the Board, the Committee observed that **THE BOARD DID NOT ADEQUATELY SUPERVISE MANAGEMENT** in the process of liquidating the financial institutions. And indeed, their failure is exemplified in the fact that up to the time of writing this report they have never demanded for final reports on the liquidated financial institutions.

The committee observes it is against the letter and spirit of article 161 (2) of the Constitution which provides that **"the authority of the BoU shall vest in the Board..."** Indeed, section 10 of the BoU Act clearly provides for the duties of the Board as being responsible for the general management of the affairs of the bank, ensuring the functioning of the bank, the implementation of its functions and formulation of policies.

1. It is recommended that the Board reminds itself of its obligations and mandate under both the Constitution of Uganda and the Bank of Uganda Act. The appointing authority may in the event of any failure on the part of the Board in effective supervision of the management of the Bank consider reviewing their appointments.
2. The Constitution of Uganda, in article 161 (4), provides that the Governor and deputy Governor shall be Chairperson and Vice Chairperson of the Board respectively. Good corporate governance principles would require that the position of Chairperson and vice Chairperson of the Board is separated from the position of Chief Executive Officer and his Deputy. In line with G20/OECD Principles of Corporate Governance 2015 it is observed that in countries with single Tier Board systems, objectivity of the Board and its independence from management may be strengthened by the separation of the role of the Chief

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**Executive and Chair. Separation of these two positions is generally regarded as good practice, as it can help to achieve an appropriate balance of power, increase accountability and improve the Board's capacity for decision making independent of management. It is the recommendation of this committee therefore, that article 161 (4) be reviewed to separate the offices of the leadership of the Board and top management of BoU.**

**3. Security of the Central Bank**

While conducting the inquiry, the committee came across evidence of serious security laxity at the Central Bank. This involved movement of persons contrary to the provisions of the security policy and unverified items in and out of the bank. A Central Bank of any country is a highly security sensitive installation and the casual and unprofessional handling of security at the BoU is unacceptable. The practice of senior staff at the BoU violating the security policy should immediately cease.

**It is recommended that-**

- 1. The bank strengthens its monitoring and observance of its security policy.**
- 2. All bank officials should strictly adhere to the security policy and any found in breach should be subjected to the disciplinary procedures of the Bank.**

**4. Reports raised by the internal auditor of the bank.**

The committee was not provided with the response on issues raised by the BoU internal auditor's reports in regard to liquidation processes, neither was evidence of compliance with the Internal Auditor's recommendations provided.

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The Board should take serious consideration of the reports generated by the internal auditor as a basis for formulation of policies and accountability.

**5. Confidentiality: Section 40 (3) of the Bank of Uganda Act, 1993**

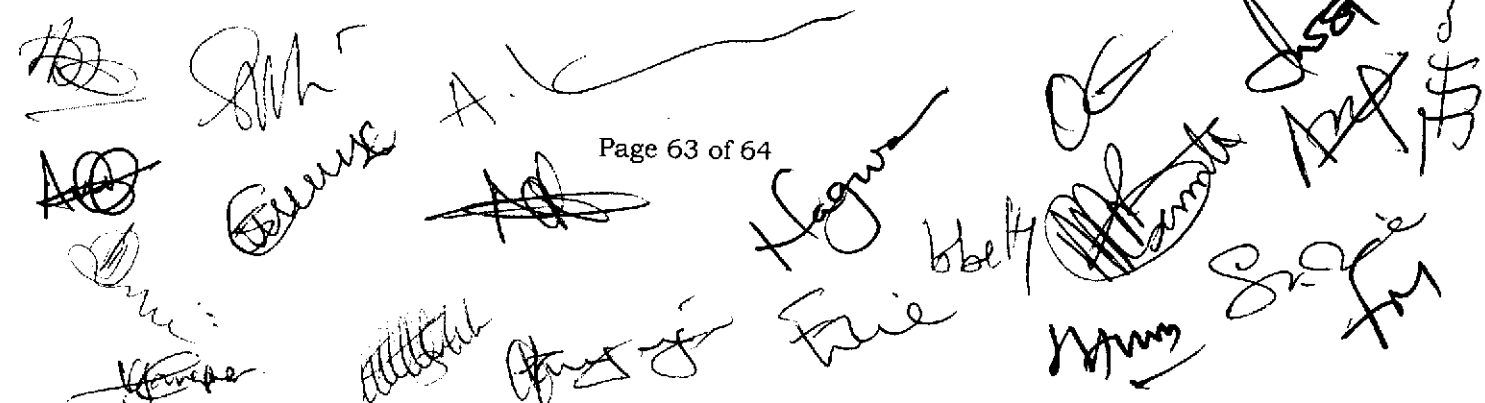
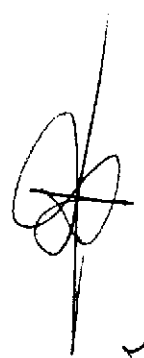
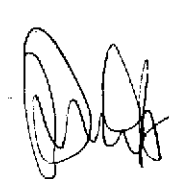
Section 40 (3) of the BoU Act provides that *"the bank shall not publish or disclose any information regarding the affairs of a financial institution or of a customer of a financial institution unless the consent of the institution or customer has been obtained"*. The committee observed that BoU in pursuit of its mandate is duty bound to make decisions including procuring prospective purchasers of a financial institutions in distress. This may be before takeover. In such cases, it is impossible for a prospective purchaser to express interest without sufficient information. The section on the other hand prohibits disclosure of such information yet section 95 (1) (b) of the FIA allows the option of sale by a P&A which would guarantee the interest of depositors without resorting to tax payers money. Accordingly, the committee observes that section 40 (3) places an unreasonable restriction on the Central Bank.



**It is recommended that section 40 (3) of the BoU Act be amended to provide for exceptional circumstances.**

**6. Securities of Petitioners.**

Upon inviting stakeholders for interaction with the committee on matters within its terms of reference, a number of customers of the defunct banks appeared with complaints relating to the management of their securities by BoU and/or its liquidation agents. The complaints ranged from irregular sale of securities, contempt of court orders and illegal withholding of securities upon clearance of obligations.



The committee observes that the management of securities during liquidation process has not been fully transparent. Indeed, BoU itself is still in possession of certificates of title which they have failed to explain.

**The committee therefore, recommends that BoU establishes a mechanism of receiving and resolving complaints including against its liquidation agents.**

Rt. Hon Speaker and Honorable members, I beg to submit.

I thank you.

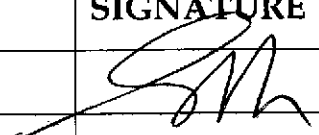


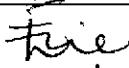
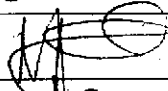

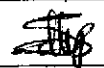


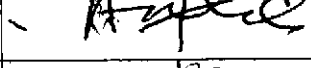

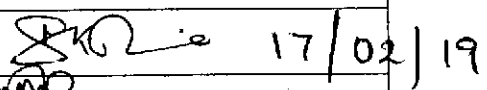
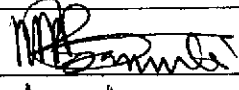
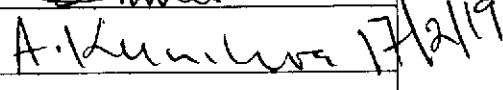
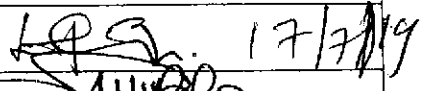
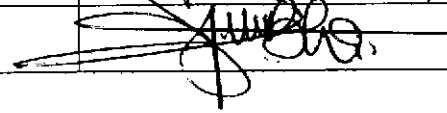
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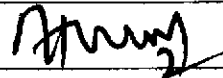


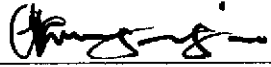
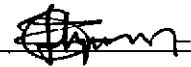
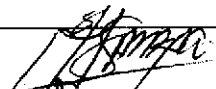
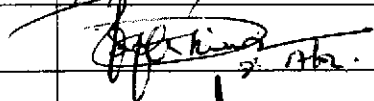

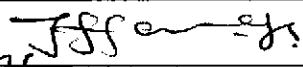
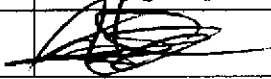
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**SIGNATURE SHEET FOR MEMBERS OF THE COMMITTEE ON  
COMMISSIONS, STATUTORY AUTHORITIES AND STATE ENTERPRISES**

NO	NAME	SIGNATURE
1.	Hon. Abdu Katuntu (Chairperson)	
2.	Hon. Anita Among Annet (Vice Chairperson)	
3.	Hon. Abigaba Cuthbert	
4.	Hon. Achilla Margaret Aleper	
5.	Hon. Ameede Agnes	
6.	Hon. Angundru Moses	
7.	Hon. Atim Anywar Beatrice	
8.	Hon. Ayebazibwe Justine	
9.	Hon. Muhanga Margaret	
10.	Hon. Baryayanga Andrew	
11.	Hon. Babirye Veronica Kadogo	
12.	Hon. Byandala Abraham James	
13.	Hon. Diri Baba Margaret	
14.	Hon. Hood Katuramu	
15.	Hon. Kahwa Tophace	
16.	Hon. Kabaganyi Rose	
17.	Hon. Kabajja Sheila Mwine	 17/02/19
18.	Hon. Kasibante Moses	
19.	Hon. Kunihira Agnes	 17/2/19
20.	Hon. Mbabaali Muyanja	
21.	Hon. Mbabazi Janepher	 17/2/19
22.	Hon. Medard Lubega Ssegona	



23.	Hon. Mugema Peter	
24.	Hon. Nabakooba Judith	
25.	Hon. Nagwomu Moses	
26.	Hon. Nakawunde Sarah	
27.	Hon. Namayanja Florence	
28.	Hon. Odur Jack	
29.	Hon. Okello Bonny	
30.	Hon. Okupa Elijah	
31.	Hon. Takirwa Francis (Brig.)	
32.	Hon. Turyahikayio Paula	
33.	Hon. Tusiime Micheal	
34.	Hon. Twesigye Nathan Itungo	
35.	Hon. Woboya Vicent	

Bamukwatsa Betty

betty

