THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING THE MANAGEMENT OF COMMERCIAL BANKS IN UGANDA

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DEDICATION

To God for richly blessing me. To my loving mother Mrs. Mirembe Aida Kimumwe, my father Mr. Simba Herbert, grand mother Maleka Gladys, and my uncle Dr. Francis Maleka: they have all nurtured and supported me.

Lastly, to the memory of my late grandfather, YK Maleka, who inspired me from childhood.

DECLARATION OF ORIGINALITY

I Kyeyago Edward, hereby declare that the work presented in this dissertation has not been presented in any other University, and where such material is adopted, it has been duly acknowledged.

PRESENTER: ....Kyeyago.....

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LIST OF ACTS

Banking Act, Cap. 88 1969

Bank of Uganda Act, No.5 of 1969

Bank of Uganda Act, Cap. 51 1993

Bankruptcy Act, Cap. 71

Bills of Exchange Act, Cap. 68

Companies Act, Cap. 110

Constitution of Uganda, 1995

Financial Institutions Act, Cap. 54

Land Act, Cap 227 as amended

Penal Code Act, Cap. 120

Anticorruption Act 2009

LIST OF ABBREVIATIONS

B.O.U	Bank of Uganda
B.O.U. Act	Bank of Uganda Act
B.E. Act	Bills Of Exchange Act
F.I.A	Financial Institutions Act
I.C.B	International Credit Bank
I.M.F	International Monetary Fund
U.B.A	Uganda Bankers Association
U.C.B	Uganda Commercial Bank
U.B.I	Uganda Bankers Institute
U.C.C	Uniform Commercial Code
P.C	Penal Code
W.B	World Bank

ABSTRACT

The surprise closure of commercial banks in the last two decades has raised concerns about the state of affairs in the banking sector. There has been so much public outcry as members of the general public lost huge sums of money in the defunct commercial banks.

It is for this major reason amongst others, that the researcher seeks to study the legal framework under which Commercial Banks in Uganda operates. This research shall also examine the role of the various institutions responsible for the management of commercial banks in Uganda.

For a better understanding of the arguments in this paper, the strengths and weaknesses of the legal and institutional frame work will be concurrently analyzed, as well as their links to commercial banks in Uganda.

TABLE OF CONTENTS

CHAPTER ONE

A general introduction to the law and institution governing Commercial banks in Uganda

1.0 Introduction.

Owing to the commercial bank scenarios that transpired in Uganda in the last two decades, there is need to critically examine the legal and institutional framework governing the banking sector.

In Uganda, commercial banks were established by our colonial masters; the British, and were generally aimed at promoting the colonial economy. These commercial banks were charged with the duty to mobilize all local surpluses not for the near future use by the local population. These surpluses were then repatriated to metropolitan Britain as surplus value gained from the colonies.

Accomplished authors like A.W. Fleetwood, laboured to explain the grounds upon which these banks were established in Africa. That first, it was due to the ever-increasing trade in Africa.

Secondly, it was due to the growing demands of the expatriate population and colonial government for banking facilities. Thirdly, it was the desire to overcome the cumbersome routine of shipping and carrying large quantities of currency to Britain and its metropole states.[1]

In line with the fact that his argument holds some truth most commercial banks operating in Uganda then were actually expatriate

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[1] A.W Fleetwood: Money and Finance in Africa 6th Edition Pg.43

banks based in Britain and its metropoles. These included the National Bank of India, which Opened branches in Entebbe, Jinja and Kampala as early as 1910. The Standard Bank of South Africa had two branches at the time and Barclays Bank of Britain had one branch with its headquarters in London. All these banks had a common and basic function that included; mobilizing deposits, financing colonial production, trade as well as financing transportation of the proceeds to Britain.

At independence, the commercial banks operating in Uganda included Barclays Bank, Standard Chartered Bank, ANZ Grindlays Bank and Bank of Baroda, all of which were foreign owned. Due to the discontent over the lending policies of these banks, the government of the day intervened to ensure that the banking system played a more supportive role in the development of the economy[2].

Immediately after independence,[3] significant steps were taken towards building the local economy to cope with the new expectations of an independent state. This period marked the birth of local commercial banks. Two public sector banks were established in the period following independence: the Uganda Commercial Bank (herein after referred to as U.C.B.) was set up in 1965 as a successor to the Savings and Credit Bank and this was followed in 1972 by the Co-operative Bank.

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[2] Julius Kakuru: A Review Of Commercial Banking in Uganda: The Uganda Banker Vol.4 No.2 December. 1996 Pg.5

[3] The period after 1962

Both banks were expected to fulfill developmental objectives; but unfortunately, the said banks did not fulfill this objective. Both ignored basic commercial principles and incurred huge losses from bad debts[4]. As at 31st October 1980, the number of commercial banks in Uganda had steadily increased in number and included; Libyan-Arab Bank (now Tropical Africa Bank), Grindlays Bank (now Stanbic Bank), Bank of Baroda, U.C.B., Co-operative Bank, Teefe Trust Bank, Standard Chartered Bank and Barclays Bank.

The 1980's and 1990's registered a number of private sector banks but unfortunately, most of them were de-registered and closed down by the Central Bank when they started facing severe liquidity problems.

The Teefe Trust Bank was the first casualty that was closed down in 1994. Four years later, Greenland Bank and International Credit Bank (herein after referred to as ICB) respectively joined the list of de-registered banks. A few months later, the popular Co-operative Bank was also closed down due to heavy losses of over Shs.4 billion it had accumulated[5].

It should be borne in mind the fact that the Bank of Uganda had been established way back in 1966 for the purposes of maintaining economic stability in Uganda.

It is also worth mentioning however, that this institutional fabric of the industry was severely damaged during the 1970's and 1980's as a result

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[4] Ibib Pg.5
[5] Grace Bibala: Lessons From the Bank Crisis in Uganda: The East African Newspapers, May 14-20, 1999. Pg.17

of misguided financial policies, the effects of civil war and economic decline.

Notably also, the weak legal framework failed to effectively curb the prolonged mismanagement of public sector banks and further allowed the emergence of several undercapitalized and imprudently managed local banks[6] in the 1980's and 1990's.

Against this background in the commercial banking sector, chapter two shall discuss the legislative deficiencies in the 1969- Banking Act, the 1966- Bank of Uganda Act, the Bills of Exchange Act Cap. 68 amongst others. Also to be discussed are the positive aspects of the banking law. In the same line, subsequent amendments to these laws shall be examined.

Chapter Three shall also delve into the institutional framework in the banking industry.

The Uganda Bankers Institute, the Bank of Uganda and the Ministry of Finance shall be analyzed with respect to the management of commercial banks.

The research is summed up in Chapter Four with suggestions and ideas touching on certain key areas in the legal and institutional banking framework.

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[6] Elamu Peter- LL.B 1999. The Supervision Of Commercial Banks In Uganda: The Case For Reform Pg.22

1.1 Statement of the problem.

The closure and de-registration of Teefe Trust Bank, Co-operative Bank, Greenland Bank and ICB although justifiable, has injured the popularity and confidence in the commercial banking industry of Uganda. This has raised questions as to why the B.O.U waited for so long to take appropriate action.

Majority of the de-registered banks were local private sector banks and bearing in mind that there are other commercial banks of this nature still in business today, the depositors need to be re-assured and confident that their funds are properly and prudently managed[7].

Needless to say, the whole system in the management of commercial banks is infested with unethical practices like nepotism, corruption, cronyism, embezzlement and appointments based on religious affiliations. It should be noted that some of these acts are criminal offences and are punishable under the Penal Code Act Cap- 120. The punishments prescribed by law notwithstanding, the criminality appear to continue unabated which in itself is proof that these punitive measures are not deterrent enough. In the circumstances, it is important that more drastic steps, as shall be proposed in the recommendations under the last chapter be set up.

It is also note worthy that for a stable and efficient commercial banking system to be achieved, the legal and institutional framework has to be in a. position of solving the issues that have a negative bearing on the proper management of commercial banks.

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[7] Joan Mugenzi: Another Closed Bank: Why Should We Complain?
The New Vision Newspaper: Friday, 13th July, 1998. Pg.5

In a nutshell, the problem this research sets out to examine is the weakness and ineffectiveness of the legal and institutional framework in the management of commercial banks.

1.2 Methodology

For the most part, this research will involve a critical analysis of statutory and case law on the subject. The law in issue includes the 1995 Constitution of Uganda, Bills of Exchange Act Cap 68, The Bank of Uganda Act cap 51-1993, the Financial Institutions Act cap 54 -1993 and leading cases in this area of banking.

Data collection shall be based on library research from available literature by acknowledgeable authors, B.O.U working papers, World Bank working papers, journals, news-reports and editorials in line with the management of commercial banks in Uganda.

Informal interviews shall be conducted with knowledgeable bankers in Bank of Uganda, Uganda Bankers Institute and a select group of commercial banks which will include United Bank of Africa, Barclays Bank and Orient Bank.

Internet surfing to a limited extent, at http//www.worldbank.org and http://www.bou.co.ug shall be used to derive updated views on the institutional framework with respect to the management of commercial banks.

1.3 Justification for the research

In view of the financial reform program initiated in 1991 which led to the enactment of the Financial Institutions Act Cap 54 -1999, this research hopes to bring forth ideas with regards to legal and institutional reforms. In addition, the findings and recommendations of this research if given due consideration may be a valuable resource with regard to further legal analysis of commercial banking in Uganda.

1.4 Hypothesis

The banking law and the institutional framework in Uganda does not adequately protect commercial banks from imprudent management and misuse of public funds by bank personnel. In effect, this has cast doubt in the minds of the members of the public because people are skeptical about depositing their money with certain banks, which are not that reputable in the business[8].

Another hypothesis is that the Central Bank employs double standards with regards to the management of commercial banks.

This research shall delve into concerns expressed that the institutional framework is actually biased and accords preferential treatment. A case in point is whereby Nile and Sembule commercial banks were recapitalized and restructured with the exception of International Credit Bank which was at that time, facing similar liquidity problems.

1.5 Objectives of the study.

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[8] Leo Kibirango: Tough Times For Local Commercial Banks: The Ugandan Banker Vol. No.1 September 1998 Pg.6

The main objective is to examine the law and institutional framework in commercial banking in Uganda with the view to finding out how adequately they manage the affairs of commercial banks in a bid to protect public funds from being misused or misappropriated.

Among the objectives, is to bring to the fore the efficacy of the present banking rules and regulations with the aim of identifying the weak points in the legal framework that may call for amendments.

In order to critically analyze the legal challenges and prospects in the management of commercial banks, this study shall reveal how such challenges can be countered and how the prospects could be realized. The study shall compare the institutional framework in Uganda with that of other jurisdictions. This comparison shall provide a guide in amending the loopholes in both the legal and institutional framework, as such; this would make the legal and institutional framework to be more effective in the governing and managing the commercial banks in the country.

1.6 Scope of the study.

The geographical scope of the study is largely limited to the Ugandan jurisdiction. The law to be critically discussed is the domestic statutory laws and a few cases in the area of commercial banking. These includes the law codified in 1995 -Uganda Constitution, Financial Institution's Act, Bill of Exchange Act and the Bank of Uganda Act.

With regards to the institutional framework, focus shall be centered on Bank of Uganda, Uganda Bankers Association and a few multilateral institutions like the World Bank. The role these institutions play in the management of commercial banks in Uganda shall be examined.

As of July 2011, the Central Bank has with it a total of 33 registered commercial banks.[9] Analysis of all these banks was however not possible and therefore, for purposes of research, the banks focused on include: Bank of Africa, Barclays Bank and Orient bank which all together reflect a fair cross section of the commercial banks in contemporary Uganda

The managerial scope is two fold; first it shall be examined from the institutional point of view and secondly from the internal management level which is concerned with the legal aspects other than the detailed management systems.

1.7 Chapterisation

Chapter One covers an in depth introduction of the establishment and growth of commercial banks in the Ugandan jurisdiction.

This chapter shall also highlight the justifications for the research, the methods to be employed in achieving the set objectives, the scope under which the research is to be focused and a number of hypotheses to be tested.

Chapter Two mainly deals with the legal aspects in the management of commercial banks and literature review. The core of this chapter is the banking law that is examined pointing out the deficiencies and the positive aspects in it.

Like it has been previously highlighted, these laws includes the 1995-Constitution, the Bank of Uganda Act as amended, the Financial Institution Act (and also the repealed 1969 Statute)

[9] Obtained from Bank of Uganda Registry, July 2011

Chapter Three covers issues of institutional framework in the management of commercial banks.

The institutions to be examined include the Bank of Uganda, Uganda Bankers Association, and The Inspector General of Government; (IGG) World Bank and also the Judiciary. In this chapter, the areas where the institutional framework needs reform for purposes of better performance shall be highlighted through the exposure of institutional weaknesses, However, credit shall be rightly given for the positive aspects in the framework.

Chapter Four shall cover the summary of the research findings. This chapter shall unveil the answers to the research hypothesis and also give recommendations on the respective legal and institutional matters.

1.8 Conclusion

Here, presented are arguments, opinions and recommendations for practical and more effective methods of governing commercial banks in Uganda.

CHAPTER TWO

THE LEGAL FRAMEWORK GOVERNING

COMMERCIAL BANKS

2.0 Introduction:

This chapter covers the various laws pertinent to the operation of commercial banks. For the most part, the legal banking framework in Uganda is a product of British colonialism. Since independence, the main type of legislation has been Acts[10] of Parliament and in the revised edition of laws 1964; all ordinances remaining in force were referred to as Acts.

Chapter I shall evaluate the adequacy of the current law for the management of commercial banks and detail its relevance in the banking industry. These will include the 1995 constitution, the Financial Institution Act (now referred to as F.I S.), the Bank of Uganda Act (now called B.O.U. Act) and the Bills of Exchange Act (now called B.E. Act).

2.1 Historical Background of Banking.

Banking, it should be noted developed with developments in the society. During the communal era, man was pre-occupied with subsistence production. But with the development of society, division of labour and specialization also came to be realized for the first time. It should noted that during this era, the mode of exchange was trade by barter system.

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[10] Oketcho Patrick –LL.B 1999 Computer Crime: A Challenge to Uganda's Legal System in the Quest for Technological Security in the Information Age Pg.21

From the communal era, then rose the mercantile period that was characterized by commercial productivity that later became universal. There came a need for a universal equivalent in measuring and exchange for value. The merchants realized that there was need to develop a common currency. The commodity money was transformed into paper money: hence banks came as an intermediary of exchange. The merchants also formed themselves into a guild to develop the trade industry: as the money increased, they started financing the peasant proprietors in the countryside to carry on with the crafts industry. Trade was being carried out in specified centers. There was increased specialization of labour and this brought about the system of organized credit which in turn increased money supply[11].

Three types of banks emerged during this era: public, private and state banks. The Public banks were initially set up by the church to save the poor from exploitation, whereas merchants set up private banks and the state banks were established by states. The state required the merchants of the banks to keep certain deposits in the state banks. The state banks acted as banks of all currencies. But with the increase in state debt due to wars, private banks began to advance credit to the state and in return they acquired state privileges like monopolies; private banks also started to issue gold to their customers and this gold was acknowledged that certain amount of money was supposed to be paid by the bank to the bearer of such receipt[12]. This was the beginning of private credit by private banks. They started dealing in negotiable instruments like promissory notes and Bills of Exchange. After the mercantile period: a time of increased production based on private ownership, then came the

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[11] Ernest Mandel-Origin Of Banking: Marxist Economic Theory 2nd Edition Pg .21
[12] Ibid pg.2

industrial revolution in form of industrial chemistry and engineering[13]. This was an era of competitive trade and commerce therefore banks also had to rise up to the competition.

2.1.1 Pre- Independence.

As reknown scholar of Uganda's political history S.R. Karugire[14] observed that Uganda as a political entity did not exist until 1894 when the British protectorate signed treaties with the neighboring African chiefs in the kingdoms of Buganda, Bunyoro, Toro and Ankole which subsequently made Uganda a single administration units.

Although it is largely accepted that banking in Uganda followed the British advent in the protectorate, a concise study of the evolution of Uganda's economic history shows that it was the monetization of Uganda as well as other African nations that culminated in the development of the institution of banking.[15] The introduction of a cash economy in which the fertile soils of Uganda, which lies at the head of the Nile in the proximity of the might Lake Victoria, made the production of coffee, cotton, tea and copper very profitable, thus making Uganda an enviable buffer zone for the British.[16]

For the above economic reason, it became increasingly important that the transport industry be developed to cut down costs. As a result, the Uganda railway became a focal point in the economic development of the Uganda protectorate and the Indian coolies who had demonstrated skill

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[13] Dan Nabudere- Feudalism with the rise of Merchantilism Pg.1
[14] S.R Karugire- A Political History of Uganda Pg.20
[15] Ibid no.12 Pg. 21
[16] Ibid no. 12Pg.22

in railway construction were brought in bringing with them the rupee[17] which was the first real symbol of money.

The Uganda railway made the growth of trade and the development of the economy to increase in volume and importance so much so that the expatriate population grew correspondingly, making the need of taking care of the massive economic proceeds a necessity. This was especially with regards to the stabilization of currency and introduction of banks to make deposits more secure. It was also in order to harness the increasing demand for money by the expatriate population and colonial government which was coupled with the need to overcome the cumbersome processes of shipping out and carrying out large quantities of money.

Increasing trade made the spread and circulation of money faster in the protectorate, which resulted into problems of integration of the local currencies[18] in a matter of time. The foreign office instituted a commission, which considered the idea of making colonies British sterling areas, but later recommended that the government should assess with precision the productivity of each colony[19] This recommendation is perhaps the most elaborate explanation for the creation of the East African Currency Board area in 1914, to stabilize, issue, control and regulate the circulation of the rupee[20]. It was however not until 1921 that the shilling became the operational currency of East Africa when the Kenyan and Ugandan currency was established by Order No. 2 of 1921[21]

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[17] Ibid no. pg.22
[18] Ibidno.12 pg 23
[19] Ibid no.12 pg.24
[20] Ibid no.12 pg.24
[21] Kenya and Uganda (Currency) Order 1921: Laws of Uganda 1964 vol.12, cap.151 pg2529.

It was about this time that commercial banks by British and Asians merchants were set up with the cardinal goal of deposit banking and operating short-term lending. It should be noted that the commercial banks were allowed to issue currency against securities of the colonial government[22]. By this currency, the East African Board acquired lending authority to the commercial banks but was in no way a central bank. The years preceding independence showed that the indigenous businessmen had limited involvement and relationship with the commercial banks. It was the Asian community, a few elite civil servants, international organizations and expatriate personnel that made up the bulk of bank customers[23].

2.1.2 Post Independence.

After independence, the East African countries agreed to introduce a Regional Central Bank as part of the East African Federation. A committee was set up to look into this idea of establishing a regional central bank. The 1962 Blumental Commission recommended the following:

i. Creation of a domestic central Bank
ii. Creation of a regional central Bank.

These recommendations however were not implemented and in 1965, the three East African countries sought help from the I.M.F., which sent experts to assess the situation. The I.M.F found that the East African Countries had divergent views and recommended that each country should establish its own central bank. The government of Uganda established its Central Bank: the Bank of Uganda, in 1966[24] to regulate

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[22] Supra No.12 pg.28
[23] A.W. Fleet wood: Money and Finance in Africa pg. 26
[24] Elmau Peter - LL.B 1999, The supervision of Commercial Banks in Uganda: The Case of Reform pg. 19

and supervise the post independence commercial banks and the whole financial system.

The British legacy of private ownership of banks was soon thereafter challenged with the establishment of indigenous banks. Their main objective was to provide banking services to individuals and organizations that were not adequately served by the foreign banks. They quickly set out to establish a network of branches in various parts of the country, including areas whose monetary economic activities could not sustain profitable banking operations; on the other hand, foreign banks judiciously restricted their network to areas that were booming with economic operations. They continued to prosper until the late 1960's when the governments led by President Milton Obote embarked on socialist ideology and consequently partially nationalized them. This move marked the beginning of a downward lasting for about 20 years[25].

In 1972, the military administration decreed the mass expulsion of the Asians who formed the core of the business community and a fair proportion of the professional elite in the country[26]. This development had several adverse effects on the foreign owned commercial banks' operations. First, it robbed them of many of their customers. Secondly, it decimated substantially the monetary private sector and thirdly, the indigenous business community, which replaced the Asian entrepreneurs, was extended substantial credit by namely: the newly created Uganda Development Bank, even in cases where they were clearly not credit worthy. This hindered the emergence of a credit worthy indigenous business community. Nevertheless, the foreign banks maintained their presence in the Uganda economy after independence. It

[25] S.R Karugire A Political History of Uganda pg. 34
[26] Supra no. 15 pg.20

should be noted that note all foreign Banks were nationalized by Obote's government some of them like Barclays Bank remained in the hands of the foreigners.

In May 1987, the National Resistance Movement government embarked on an economic recovery programme aimed at monetary and fiscal stabilization, liberalization and expanding the private sector, liberalization of foreign trade and stimulation of exports and reforming the financial sector[27].

Subsequently, the financial sector reform programme was designed by government in collaboration with the World Bank and was implemented between April 1991 and June 1997. Remarkable success was registered in the following areas: improvement in the effectiveness of monetary policy formulation, revision of financial sector legislation and improvement of the regulatory framework for banks and finally the strengthening of the role and capacity of Bank of Uganda (now referred to as B.O.U) in performing its supervisory functions[28]

From the foregoing discussion therefore, the development of banking and commercial banks in particular, apparently shows the nature of Uganda's political — economic history and emphasizes its central role in a society on course for an economic revolution.

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[27] Supra no. 22 pg.20
[28] Dr. Evarist Mugisha - The Process of Reform and Liberation Instituted by the National Resistance Movement: The Ugandan Banker Vol.3 NO.1 1995 Pg.12

2.2. Evolution of Commercial Bank Laws

As far as the history of banking laws in Uganda is concerned, the Bills of Exchange Law is first in line because it was adopted earlier than any other legislation[29]. Uganda's Bills of Exchange Act Cap. 68 is a replica of the British Bills of Exchange Act-1882, which is an objective reflection of the commercial and banking developments at that time. The 1882 Act was imported to Uganda by virtue of the 1902 Order in Council, which made modifications necessary to suit local conditions.

A closer look at the history of the British Bills of Exchange Act shows that in the 19th century, bills of exchange were a means of settlement of debts between English and foreign merchants. Prior to the introduction of this law, merchants were forced to send gold and silver, risking loss by shipwreck or theft, to discharge debts.

In Uganda, the Bills of Exchange Act eventually came into force on August 15th 1932 by virtue of Ordinance 15 of 1933[30]. After several Amendments, it was codified by the post independence codification of laws in 1964. Until now, no substantial changes have been made other than a supplement now contained in section 385 of the Penal Code Act Cap. 120 prohibiting issue of false cheques.

The general law regulating the business of banking in Uganda was consolidated from the Indian Banking Ordinance of 1890 and codified under Ordinance No. 20 of the laws of Uganda 1936.

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[29] Mwebe K. Henry LLB 1999- The Law On Bills Of Exchange and Enhancement of Private Sector Development Pg. 19

[30] Ibid pg. 19

This Ordinance also went through a series of amendments in 1941 and 1952 respectively. On 20th January. 1955, the Banking Act Cap.88 was enacted to govern banking business in Uganda.

This Act laid down interpretations of the words: bank, banking business, company, registrar and scheduled bank. The scheduled banks were those specified in the 1st schedule to the Act and they included: Standard Chartered Bank, ANZ Grindlays, Barclays Bank, Bank of Baroda[31], National Bank of India Limited and Netherlands Trading Company.

It also embedded restrictions on banking business to the effect that no business was to be transacted except by a company and only if its paid up capital is not less than one million shillings[32].The authority for licensing commercial banks lay squarely with the Ministry of Finance[33]. The Act obliged banks to keep books of accounts in English[34], to exhibit balance sheets periodically and also have them audited[35].

It also declared bank holidays and under section 15, outlined the offences related to banking with their respective penalties.
It should be noted however, that the 1955 Banking Act was not comprehensive possibly due to the fact that there were very few banks in the industry. On the face of it, this Act was broken down into 16 sections and some of its provisions were too general to address particular commercial bank issues precisely.

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[31] Section 1 Ordinance no. 15 of 1933.
[32] First schedule. Banking Act Cap 88
[33] Ibid no.30 section 4
[34] Ibid no.3o section 5
[35] Ibid no.30 section 8

In 1964, the Post Office Savings Bank Act was enacted for purposes of supplementing the 1955 Banking Act and more specifically to establish a savings bank.

With the establishment of the Central Bank in 1966, the Ugandan government accordingly promulgated the B.O.U. Act No.5 of 1966, this law conferred rights, duties and power on B.O.U. over all the commercial banks and financial institutions in Uganda. This authority of B.O.U. was to be exercised with approval of the Minister of Finance in a number of instances, for example section 45 empowered the Minister of Finance to give direction in writing of general nature relating to the financial and economic policy of the bank, and the bank shall be bound to comply but this should be done in consultation with the governor. Further, section 13 also empowers the Minister on the recommendation of the board of directors, by statutory instrument, to determine the per value of the shilling in terms of gold.

The Bank of Uganda in 1968 and 1970 respectively the Bank of Uganda Act section 5 was amended and provided for heads of department of the bank who shall be appointed by the board with the approval of the Minister and the Minister may require the Bank at any time, to furnish him/her with information in the exercise and performance of his duties. In 1970, Section 4 of the Act was also amended to provide for any external funds or security which the Minister considers acceptable for the inclusion in the external assets of the Bank.

Subsequent amendments were made to the Act in 1971 by the Amendment Decree 22 of 1971 with provision under section 26 (a) that required the Central Bank to submit to the Minister on the bank's outstanding adverse or holding off securities.

In 1973, 1976 and 1986, the Act was amended to provide among other things that when the office of the governor and deputy governor at the same time falls vacant, the Minister may designate any Head of Department to perform such functions per section 8 (2) of the Amendment Decree 6 of 1976. Further, Bank of Uganda Amendment Decree No.1 of 1986 increased the authorized paid up capital from 10Million to 5 Billion.

All these amendments were intended to cater for the change in the circumstances which had happened over time ever since the main Act was enacted in 1966.

Until 1993, the laws mentioned above governed the management of commercial banks in Uganda. After that period, commercial laws reformed to create the present day legislation on commercial banks with provisions intended to ensure that those entering the market had a stable and viable financial base.

2.3 The Law Relating to Commercial Banks in Uganda.

Since commercial banks play a central role in the economy of a nation, it is imperative that the sector be controlled and governed to ensure that it is properly organized and run on definite rules. The aim is not to hinder the free flow of investment but rather to ensure that in the conduct of banking business, unscrupulous bankers do not cheat the public of their savings. The aim is to avoid or at least minimize the collapse of banks such as happened with Teefe Trust Bank in 1994, International Credit Bank, Greenland and Co-operative Banks in 1998. It is in this respect,

that this study seek to examine the law governing commercial banks in Uganda.

2.3.1. The 1995 Constitution of Uganda.

Under article 161 (1) of the Constitution, the law makes provision for the establishment of the Central Bank. This provision has been maintained from the earlier Constitutions of 1966 and 1967. But the B.O.U. was actually established way back in July 1966:

The 1995 constitution further delegates authority to B.O.U. for it to take charge of particular activities and operations of commercial banks in Uganda per Article 162[36]. Amongst the duties the B.O.U is constitutionally obliged to undertake includes but not limited to the following:

a) To promote and maintain the stability of the value of currency in Uganda.
b) To regulate the currency system in the interests of economic progress of Uganda
c) To encourage and promote economic development and the efficient utilization of Uganda's resources through effective operation of the banking and credit system.

The Central Bank practically governs the Commercial Banks through licensing procedures: by screening the new entrants into the banking industry, with a primary aim of disqualifying applicants who are not business worthy from joining commercial banking business. If a particular bank meets the set requirements as prescribed under the Financial Institutions Act, then a license to transact banking business

[36] Article 162- 1995 Constitution of the Republic Of Uganda

shall be granted. These provisions empower the Central Bank to judiciously exercise its discretion in determining whether or not to grant the licence, taking in to account all considerations and requirements stipulated by Statute.

B.O.U also governs commercial banks in other ways for example, through regular supervision of these banks, imposing restrictions on the range of loans, advances, and type of trade or investment engaged in by the Commercial Banks. Constitutionally, the Central Bank can in extreme cases seize, re-organize or liquidate a Commercial Bank.

2.3.2 The Bills of Exchange Act Cap 68.

This law governs the issue, operation and use of cheques, promissory notes and bills of exchange[37]. A bill of exchange under the Act, is an unconditional writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed date a sum certain in money, to the order of a specified bearer[38].

Section 8 of the Act lays down the form of bills of exchange specifying which bills are negotiable. When a bill contains words prohibiting transfer, it is valid as between the parties there to, but is not negotiable. It describes when a bill may be treated as payable to bearer, payable to the order for payable to the order of a specified person.

The Act also allows for antedating and post dating of a bill under section 12 and such date shall be deemed to be date of endorsement or acceptance. Further, the Act provides for the time for the acceptance of

[37] G.P Tumwine Mukubwa - Essays on African law of banking pg.12
[38] Section 2 Bills of Exchange Act Cap. 68

the bill while section 17 provides that the bill may be accepted when it is over due or before it has been signed by the drawer.

Section 22 of the Act provides that no person is a liable as a drawer of a bill who has not signed it. Therefore, for a person to be liable as a drawer of a bill, the drawer must have signed it.

Section 23 provides that were a signature on a bill is forged, the forged signature is inoperative but section 54 (2) (b) provides that a drawer of a bill by endorsing it is precluded from dying the genuineness of the drawer's signature and previous endorsements. Section 55 makes a stranger liable for a bill he has endorsed to a holder in due course.

Section 46 and 47 of the Act requires that were a bill is dishonored by non payment after being duly presented for payment, notice of dishonour must be given to the drawer.

The paying Bank under section 59 of the Act is exonerated from liability when it pays a bill in good faith and in the ordinary course of the business where the endorsement on the bill is forged. However the payee can show that the alleged endorsement was not made under the authority of the person it purports to be, and the bill was not paid in the ordinary course of business.

The Act further discusses fully the types of bills[39], drawing of bills, time limits, holders in due course, the rights and liabilities of the parties to the bill, the formalities for presentment and payment amongst many other procedures.

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[39] Ibid

Under section 71, the Act gives rules to be followed where laws are in conflict. This section has specific regard to inland bills and it stipulates that where the laws of two or more countries are in conflict in respect to Bills of Exchange Act, the rights, duties and liabilities of the parties to a bill, matters related to such bill shall be determined according to the law of the country where it was issued. This position is in tandem with the law of contract.[40]

It should be noted that since the Uganda Bills of exchange Act is a replica of the old 1882 British Act, it has lagged behind time and is of little use with respect to certain banking aspects in this day and agç. Unlike Britain, which passed a **Cheques Act in 1957** in order to eliminate the necessity of cheques and other orders to pay, Uganda has taken no initiative in this regard. Uganda's B.E Act does not cater for the many forms of negotiable instruments that have arisen during the 20th century and are now in wide spread use due in part to international trade and mass tourism[41]. Examples of such new forms of negotiable instruments include travelers' cheques, money orders, and negotiable orders of withdrawal, certified cheques, cashiers cheques and telegraphic transfers.

It is necessary at this juncture to mention that the B.E. Act omitted some important definitions and terms. For example, the term "money" is rather ambiguous. This makes it necessary to look at common law and business uses, to interpret the Act.

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[40] This is Uganda is stipulated under the Contract Act, Cap. 73
[41] Ibid no. 36 section 8

Under the Act, the banking custom and practice is used to determine issues such as maturity dates of bills of exchange after the date of issue and whether the maturity dates of bills of exchange issued in a foreign currency, are the same as those for inland bills or not[42].

When dealing with cheques, the Act is not specific on the date a cheque expires. The exact right of a bank to reverse a credit entry after a cheque has been paid is not enumerated. It is not clear whether the "current cheque funds" on a balance slip indicates that a cheque is cleared through a full clearing process or that it is cleared only as in a given banks clearing circle[43]. It is also unclear as to how a cheque should be retained by a bank after the date of payment where there is a dispute and whether a cheque marked "not negotiable account payee only" can be banked only in the payee's account or whether it can be transferred by way of endorsement even though the person who received the endorsed cheque has no better title to it than person who endorsed[44] it.

2.3.3 The Financial Institutions Act-1993.

In matters of banking, other than the Constitutional provisions on the subject, this Act takes precedence over other bank laws according to section 133.

The Act begins with a short title and then proceeds to disclose the meaning of certain technical terms in banking[45] like "off balance sheet terms", "supplementary capital" "credit institutions" time deposits and

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[42] Mwebe K. Henry LLB. 1999- The law on Bills of Exchange and Enhancement of Private Sector Development pg.39

[43] Ibid no.39 Pg. 40

[44] Supra no. 39 pg. 14

[45] Section 3 Financial Institutions Act Cap 54

many other concepts. Like all Acts in Uganda, the rationale of an interpretation section is to simplify the language used in the law and to make certain, the meaning of the concepts or words contained in it.

Section 11 of the Act stipulates the conditions for a banking license and also discloses the factors considered by the Central Bank in granting such license. Amongst these, B.O.U shall consider the financial history of the applicant,[46] the competence and integrity of the proposed management, adequacy of the applicants' capital and whether it will serve the public interests. The Act confers total discretion on the Central Bank in licensing a Commercial Bank. The Minister of Finance can only intervene in such a matter on application of the unsuccessful applicant to review the decision of the Central Bank and make recommendations accordingly.

Section 26 of the Act is in the process of being amended to conform with the Financial Institutions (Licensing) Regulations 2010 which requires existing commercial Banks to have a minimum of 10 Billion by March 2011 and 25 billion by March 2013. This change in the trends has been due to the need to harmonizing regulations under the East African Community framework and addressing challenges from global integration of finance. The Governor of the Bank of Uganda has been had saying that all the 23 licensed Commercial Banks in Uganda have hit the target of 10 Billion set by the Central Bank. It should be noted that the Minister may in consultation with the Central Bank review the minimum capital[47] requirements under this Act.

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[46] Ibid no.42 section 11

[47] Ibid section 26 (5) and David Mugabe: Banks Beat Capital Deadline: The New Vision Monday 6th June 6, 2011 pg.58

The law further restricts and prohibits commercial banks from advancing credit against the security of their own shares or engaging directly in industrial, agricultural and other capital investments. This is aimed at avoiding loss of customers' money due to business shocks that may occur to such investment[48].

The Act also obliges commercial banks to keep proper books of accounts and records[49] to show a clear and correct state of its affairs and preserve such records for not less than ten years. In the same respect, commercial banks should credit their records of accounts through their appointed creditors.

The Central Bank may under this Act, take possession of any commercial bank that is insolvent[50], conducting business in a manner contrary to the law or refuses to submit to the supervision of B.O.U.

Under section 98, a commercial bank may with the prior approval of the Central Bank, apply to the High Court for voluntary liquidations of its operations.

The Act addresses depositors' interests by providing for the establishment of a Deposit Protection Fund to be managed and controlled by the Central Bank[51].
B.O.U may in consultation with the Minister of Finance make regulations and byelaws providing for the licensing of commercial banks, computation of on going capital and generally for giving effect to the

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[48] Ibid no.42 section 30
[49] Ibid no.42 section 46
[50] Ibid no.42 section 88
[51] Ibid no.42 section 108

provisions of this Act[52].Under section 25, the law stipulates the offences relating to the business of banking: carrying out any activity which is an offence to the business of a financial institution, a director, manager or officer of a commercial bank failing to reasonably secure compliance of a bank with the requirements of this Act are among other acts, classified as offences.

The penalties for the above include; liability on conviction to a fine of not exceeding one hundred current points or imprisonment for a term not less than one year or both[53]. With respect to offences however, the Act did not describe the types and grades of the offences as they are comprehensively laid out in the Penal Code Act47.

The Act restricts financial institutions on credit concentration, according to section 21 it restricts, commercial banks to grant or promise the single or group of related persons any credit accommodation which is more than 20% of its total capital. This is intended to safeguard the commercial banks liquidity.

Section 34 of the Act prohibits commercial banks from advancing outstanding loans to any of its affiliates, associates, directors, persons with executive authority or shareholders, this is also intended to keep the financial stability of commercial banks.

Section 40 is to the effect that the Central Bank may by notice impose restrictions on the foreign exchange business of a financial institution when such commercial banks has failed to comply with the set down rules. Further the Central Bank is empowered to suspend any financial

[52] Ibid no 42 section (5)
[53] Ibid no- 42 section 52

institution from conducting foreign exchange business if it is under any criminal investigation concerning same. This is intended to protect the public from being cheated their money.

Section 50 requires the financial institution to publish their audited annual financial statements together with the auditors report in the news paper of wider coverage and such financial statements shall be submitted to the Central Bank. This is intended to inform the public about the financial stability of that particular financial institution.

The Act per section 54 repeals the Banking Act-1969 and further declares its authority and supremacy over the other banking laws.

2.3.4. The Bank of Uganda Act Cap. 51.

This law, for the most part, specifically provides for the establishment and operation of the Central Bank.

Section 2 of the Act provides for the establishment of B.O.U which shall be the Central Bank.

Section 4 of the Act reiterates the provisions of Article 162 of the Constitution 1995 by stipulating the functions of the Central Bank.

In a nutshell. B.O.U shall formulate and implement monetary policy directed at economic development. It shall maintain monetary stability external assets reserve, issue currency notes and coins and be the banker of government among other duties, roles or obligations.

Under section 7, the Act states the affairs of the directors: they shall ensure functioning of the bank and implementation of its functions, formulate policies, and do anything that is incidental to the functions of the bank. Per section 14, B.O.U's the Bank of Uganda Authorized capital

shall be 30 Billion shillings and the paid up capital should not be below twenty billion shillings. The Law provides for a general reserve fund, which shall be determined by the board from time to time.

Under section 19 of the Act, the foreign exchange market is liberalized such that the Central Bank may buy and sell foreign currency at a rate determined by market conditions and on terms determined by the board. B.O.U has the sole right to issue notes and coins, which shall be the legal tender at its face value and the Government or any other person, cannot issue currency notes to be accepted as legal tender.

The Act clarifies on B.O.U's relationship with commercial banks.[54]B.O.U shall provide facilities for clearing financial instruments on terms that may be determined by the Central Bank. It may also make regulations prescribing the procedure and other provisions for the participation in the clearing house and for the clearing of cheques and other credit instruments

B.O.U's relationship with government, per section 36[55], is primarily on its advisory role to government and assistance in development financing by granting advances mainly. The Minister of Finance has authority to give directions to B.O.U. if he /she is of the opinion that the policies pursued by the Central Bank are not adequate to achieve predetermined economic objectives.

As discussed in the key areas, for the most part, this Act confers autonomous authority on the Central Bank in the banking industry of Uganda.

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[54] Section 36 Bank of Uganda Act cap 51
[55] Ibid no.51

2.4 Critique of the Legal Framework.

Most loopholes under the Bills of Exchange Act are due to factors that were not anticipated as at the time of its coming into effect in 1882[56]. The Act has many sections that negate the proper governance of commercial banks in Uganda.

In the first place, cheques, which are the most commonly used type of bills of exchange in Uganda, present several problems to businessmen and depositors in general. There has been an increase in the fraudulent use and presentment of cheques and the law has not done much to help the victims of such fraud. This resulted in the enactment of **S.385** of the Penal Code Act, which is aimed at reducing issuance of false cheques. The section makes the issue and presentment of false cheques by private or public officials a crime punishable for a maximum of 7 years imprisonment and a fine of not less than ten times the face value of the cheque.

This law has been noted to be of little commercial value because all the money paid by the convicted person is paid to the state, so that only the state is the beneficiary of the successful prosecution of the offender[57]. This practice applies in several other common wealth jurisdictions.

Although not expressly provided, cheques expire 6 months after issue or after presentation to the bank when there no sufficient funds in that particular account to cash the cheque, it technically expires[58]. This period of expiration of a cheque should be made longer in order to encourage the use of Bill of Exchange and this strengthen commercial Bank transactions.

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[56] Supra no. 39 pg. 37
[57] Leo Kibirango comments on our Banking laws: The Uganda Banker Vol.2 no. 1 July 1996 pg. 12
[58] Ibid pg.12

The exact rights of a bank to reverse a credit entry after a cheque has been paid are not enumerated. It is unclear whether the notation "current cleared fund" on a balance slip indicates that the cheque is cleared through the full clearance process or that it is cleared only in a given banks clearing circle[59].

Despite the provisions of section 385 of the Penal Code Act cap 120 which prohibits issuance of false cheques, many people still issue such cheques and drafts knowing well that they do not have sufficient funds in their Bank accounts to pay for such cheques or obtain funds by deception.

There have also been several reported cases of alteration of cheques. For instance in the case of **Mair v. Bank of Nova Scotia**[60] , where there was an addition to the name of the payee, the cheque had been altered without the consent of the appellant and thereby avoided under section 64 of the UK. Bills of Exchange Act. In the case of **United States of America v. Nasser Ssebagala**[61], where the former mayor of Kampala was convicted for alteration of cheques and dealing in counterfeit currency.

Cases of fraud have been common in most Common Wealth countries where the U.K. Bills of Exchange Act of 1882 is the adopted operative legislation. There have been cases of fictitious and non-existent payees. For instance in **Bank of Credit and Commerce v. U.D.C**[62]. The defendant finance company was induced by fraud to make out a cheque to a nonexistent company.

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[59] Supra no. 39 pg. 41
[60] (1937) ALLER 90
[61] (Unreported) The New Vision Newspaper Monday 4th October 1999 vol.2 N0.1 pg5
[62] (1959) E.A 714

Bearing in mind the fact that an increase in the use of counterfeit notes and cheques, alteration and fraud by negligence by a collecting bank can lead to loss of confidence in the law, the penalties under the Bills of Exchange Act should be strengthened to deter such crime.

The Financial Institutions Act has many flaws and loopholes, which have highlighted the need for legislative reforms to take care of the aforementioned functions more effectively.

With respect to licensing of commercial banks for example, the Act governs the screening of a company whose creation and operation is governed by another law: the Companies Act.

Similarly, certain pertinent aspects of commercial banking such as foreign exchange[63] are not well addressed under the Act, but the comprehensive details can be traced from other Acts which further limits the law believed to "take precedence" in as far as matters of banking are concerned.

The offences disclosed under the Act are simply too shallow and general to address the crimes related to the business of commercial banks. There is no single clause in the Act which makes reference to Penal Code Act for redress on the various types of crimes and their penalties[64].

The minimum paid up capital is still currently low, though Bank of Uganda is in the process of rising capital minimum requirements to Uganda shilling 25Billion by March 2013. This was the reason ICB

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[63] Section 41 financial Institutions Act.
[64] Erisa O. O chieng: Critical Comments on Our Banking Law:
The Uganda Banker Vol.1 N0.1 October 1996 Pg.7

moved out of business because it had paid up capital of less than 500,000, 000 as was required by law that time[65].

The Bank Laws have really lagged behind, most operations in commercial banks are computerized as compared to the manual operations which are now outdated and cumbersome. However, this computerized banking includes a host of problems, which were not addressed under the law. Among the said problems is computer crime such as code card misuse in ATM's and computer-based fraud[66]. These days, the Central Bank allows the operation of electronic treasury bills but there is no definite law governing their operations. The Financial Institutions Act in this regard has not been updated to suit the changing modes of operations in Uganda's commercial banks.

The B.O.U Act on its part has done very little to safeguard the banking Industry from political influence[67]. For instance section 48 is to the effect that the Minister of Finance may, after consultation with the governor, give directions of a general nature in writing, relating to the financial and the economic policy of the Central Bank.

In the same regard, by limiting the autonomy of the Central Bank, its capacity to carry out the functions it is obliged, to some extent crippled. In this instance, under the Act it seems very hard for B.O.U to make independent decisions but should rather do so in consultation with the Minister of Finance. Ideally the rationale of the lawmakers was to hold the Central Bank accountable and answerable to an authority (Minister of Finance) but their wisdom in this respect has been greatly criticized.

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[65] Ibid pg 8

[66] Oketch Patrick LLB 1999: Computer Crime: A Challenge To Uganda's Legal System in The quest for technological security during the information age pg.44

[67] Lydia Ochieng LL.M Thesis 1996 (unpublished): The financial sector: supervision and regulation of Financial Institutions by Bank of Uganda. Pg.30

2.5 Conclusion

It is quite clear that the legal framework governing commercial banks in Uganda is inadequate. It addresses some issues with respect to Uganda's commercial banks but does not exhaustively cater for the new developments.

These laws need to be reformed frequently to make them suit the changing circumstances in society within which commercial banks operate.

In the light of the fact that the law has some major weaknesses as discussed, the institutions that implement the law should be examined, how they govern commercial banks with in the parameters of the legal framework and the way forward for Uganda's commercial banks.

CHAPTER THREE

The institutional Framework for the management of Commercial Banks.

3.0 Introduction.

As noted in the proceeding chapters, Uganda has grappled with the confusion regarding local commercial banks. The legal framework for regulation, supervision and governing of commercial banks looks impressive in the statute books but the events that unfolded in the recent years do not portend well for the future of the banking industry[68].

The role of commercial banks in Uganda is acknowledged because they generally mobilize and allocate resources thereby influencing the pattern of development. In contradiction however, if not properly governed, they may inhibit the growth of the economy and in some cases cause economic crisis in the country. With such a risky situation, the spotlight is focused on B.O.U together with the other institutions like the Ministry of Finance and the Banker's Institute to govern commercial banks in Uganda[69].

In light of the above, the objective of this chapter is to point out the institutional inadequacies and where credit is due, acknowledge the effective aspects of the institutional frame work in managing Uganda's commercial banks.

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[68] Elamu Peter: LL.B. 1999: The supervision of Commercial Banks in Uganda: The case for reform pg.8
[69] Supra no.65 pg.35

3.1 The Bank of Uganda

With respect to licensing of commercial banks in Uganda, the authority is vested in B.O.U, which is supposed to screen the applicants' application for a license thoroughly. This is to ensure that people of questionable character are prevented from entering the banking industry. The requirements to satisfy an application for a licence in this respect are laid down in the Financial Institutions Act[70].

For instance, it is reported that the former B.O.U governor, **Mr. Charles Nyonyintono Kikonyogo** while appearing before the joint parliamentary committee on finance and economic planning alleged that the former Minister of State for Finance, **Mr. Mathew Rukikaire** used his political position to have I.C.B licensed to operate against the objections of B.O.U[71].

He is reported to have said that while he was away in 1992 for a working visit in the USA, the Minister wrote directing him to licence I.C.B.

According to the Governor, by the time he left the B.O.U. he refused I.C.B's application because the bank did not comply with the stipulated regulations[72]. For instance, its initial working capital was below the standard Shs.500,000,000 required by law then. Therefore, under normal circumstances, I.C.B's application for a license to operate a commercial bank should have been rejected by the Central Bank. It is possible therefore; that the existing political fraternity worked in favour of the application to override established legal requirements.

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[70] Section 11 Financial Institutions Act.

[71] Daniel Kalinaki: Rukikaire named in I.C.B crisis:
The monitor Newspaper-Friday October 6th 1998 pg.2

[72] Ibid no.68 pg.2

Furthermore, according to the Financial Institutions Act,[73]the Central Bank should consider inter-alia "the competence and integrity of the proposed management" in considering an application to operate a commercial bank. However, reflecting on the 1998 commercial bank failures, it seems that B.O.U's inability to set standards for board members qualifications was over looked; yet this is vital for better corporate governance.

Consider for instance, the case of I.C.B, which was closed by the Central Bank, I.C.B. was family owned, its board consisted of its chairman, his wife and his two sons, none of whom had any experience whatsoever in managing a commercial bank. Under normal circumstances, their application for a license to operate a commercial bank should have been rejected by the Central Bank. The licence was nevertheless granted.

One would think that B.O.U. reviews each bank's individual performance before renewing its license. So, when the B.O.U argues that for two years the situation at I.C.B and Greenland Bank had been so bad to the extent that 16 billion and 17 billion shillings respectively had been depleted[74] then, one could conclude that if there was any supervision at all, it was shoddy and that B.O.U should be held liable for the consequences of its negligence.

I.C.B. had actually overdrawn its clearing account with B.O.U. The Central Banks Rules and Procedures require that each bank should keep transactions or clearing accounts with B.O.U and the balance on this account should not go below the minimum cash reserves required under

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[73] Section 11 of Financial Institution Act

[74] Paul Muhimbwa: B.O.U must pay for closure of Banks. The Monitor Newspaper Saturday 24th October 1998 pg.3

the B.O.U Act. Under section 38(3)[75] a commercial bank's cash reserves are to be kept up to 25% of the banks deposit and other liabilities.

The rules further provides that if a bank realizes a deficit in the clearinghouse, which takes place between 9:30- 12:30pm, it will be allowed up to 4:00pm to raise the required funds. If by that time, funds are not secured, the bank may apply to the executive director- Domestic Operations of the B.O.U, for an overnight credit, which can only be granted against a pledge of treasury bills or other acceptance security. If these borrowing requirements are not fulfilled, the deficit bank is excluded from the clearinghouse and the committee meets the following day to review the membership of that commercial bank[76].

A commercial bank, which has been expelled from the clearing house, becomes subject to inspection and special surveillance[77] under section 82 of the Financial Institutions Act.

That section gives the Central Bank authority to oblige commercial banks to take extra measures in rectifying such situations. Amongst these include the signing an agreement between the directors and management of a commercial bank with the Central Bank. It can appoint a competent person to advise the commercial bank on the measures to be taken in order to rectify the situation. It can for instance, prohibit the declaration of dividends until the financial situation improves.

The above mentioned provision clearly imposes a duty on B.O.U. to warn the public in case of foreseeable problems. With regard to certain de-registered commercial banks, the available data shows that the Central Bank did not take all these measures.

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[75] Financial Institutions Act
[76] The Kampala Clearing House Rules & Procedures-January 1995.
[77] Supra no.71 Pg.3

It is submitted that when it is found to have been negligent and in breach of its statutory duties, B.O.U should be held liable for the losses incurred by the defunct banks and their customers. In brief therefore, most banks in Uganda experienced a serious problem of under capitalization and this has affected their liquidity and effectiveness.

The Financial Institution Act imposes obligations upon commercial banks to publish their audited balance sheets and detailed profit and loss statements.[78] Disclosure has been a contentious issue in accounting and even more so in banking, and the issue is always what to disclose and the method of disclosure has been deficient and unsatisfactory in the Uganda Banking Industry.[79]

The hallmark of disclosure in Uganda has been about jumbled facts, for instance, the Public Relation Officer of B.O.U was quoted to have said that the reports submitted to B.O.U by I.C.B were falsified and that is why they could not detect the problem at I.C.B.[80]

It is however contended that this not true and is in the circumstances difficult to happen on the grounds that under the Financial Institutions Act, section 48 (1), it must be approved by board of directors with the auditors report and a letter from management and accounts of a commercial bank to the Central Bank[81].

The B.O.U is also empowered under the same Act, at its discretion, to cause inspection to be made by its officers on any Commercial Bank[82]. In

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[78] Section 50 (1) Financial Institutions Act.
[79] Jim Muginga: Something Fishy in B.O.U Sage: The Monitor Newspaper Monday 19th October 1998 Pg.3
[80] Paul Muhimbwa: B.O.U. Must Pay For The Closure Of Commercial Banks: The Monitor Newspaper Saturday 24th October 1998 Pg.4
[81] Ibid no.75
[82] Section 79 Financial Institutions Act

such an inspection, all such books, accounts and other documents as well as assets including cash and security held by the bank in its custody or power may be inspected. Surely, if the B.O.U was inspecting I.C.B, Greenland or Co-operative Bank periodically, the problem would not have grown to such magnitude. Possibly it would have been discovered earlier when the customers' deposits could still be saved and not wait for the core-capital to be "completely wiped out" and then close the bank.

It does not seem to make sense closing the bank when the whole purpose is defeated. The same should have been closed earlier in time to save customer's deposits[83].

The B.O.U Public Relations Officer put up an argument that when they fist noticed the problem at I.C.B. three years before its closure, they were not duty bound to warn the public[84].

Section 4 of the Bank of Uganda Act is to the effect that the functions of the Central Bank are to supervise, regulate, control and discipline all Financial Institutions. Section 80 of the Financial Institution Act requires all financial institutions to furnish information to the Central Bank relating to their operations in Uganda, audited books of accounts and report of all loans granted to insiders.

The above provision gives the Bank of Uganda powers to ensure effective control and supervision of commercial banks in Uganda. Therefore, the bank of Uganda can not claim that they are not duty bound to inform the public that a certain bank will soon be closed down. Thus, the bank of Uganda has not lived to the expectations of the public as was evidenced by the closure of many banks in 1998.

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[83] Supra no. 77 Pg.4
[84] Supra no.77 pg4

To illustrate this, worthy of consideration are some of the media reports which quoted comments made by some B.O.U officials after the closure of I.C.B. "For two years the situation at I.C.B had been so bad to the extent that shillings 16 billion was depleted".[85] One wonders why B.O.U gave I.C.B a grace period of two years yet the situation was evidently going from bad to worse.

Over the past twenty years or more, many countries have faced crises in their respective banking systems. The crisis have led many countries including Uganda, to consider or to adopt deposit insurance evidenced by the provisions of the Financial Institutions Act.[86]

This is in a bid to protect their financial systems from the impact of bank failures, to protect depositors when commercial banks become insolvent and are liquidated. However, learning from the 1998 bank closures, the reality is that this deposit fund is not a total security in that the figure is inadequate given the current income levels that ought to be revived. For instance, when I.C.B and Greenland were closed by B.O.U, customers with huge deposits were compensated to the tune of Uganda shillings 3 million only, without any means of recovering the rest.

Like it has been put forward by some commercial bank analysts, without a Central Bank which can adequately safeguard customers' deposits kept with the commercial banks, this country is no longer a safe place to invest[87] in view of the fact that in case of liquidation customers with huge deposits will only be entitled to Uganda shillings 3 million.

The B.O.U is required by law to vet directors and among other things, the qualifications and experience and other relevant particulars of the

[85] Supra no. 68 pg.2
[86] James Mabire: East Asian Economic Crisis: The Economist Newspaper July 1994 pg.1
[87] Fredrick Musoke: Uganda Liberalizing its way to poverty: The New Vision Newspaper Friday 13th July 1998 pg.5

proposed management when considering an application for operating bank business. Going by the 1998 commercial banking crisis however, B.O.U seems to have failed to perform in this respect looking at I.C.B for example; this was a family owned commercial bank.

Its board consisted of personalities that lacked the experience in managing a commercial bank, so under the circumstances, the B.O.U ought to have not granted the bank licence from the onset.

It is true that common law imposes very light duties of care and skill on the directors. A director need not exhibit in the performance of his duties a greater skill than may be reasonably be expected from a person of his knowledge and experience. This proposition applies to both executive and non-executive directors. A director is not duty bound to give continuous attention to the affairs of his company. His duties are of intermittent nature to be performed at periodic board meetings and at meetings of any committee of the board upon which he happens to be placed[88]. He is not however bound to attend such meetings though he ought to attend when in the circumstances, it is reasonable to do so. This proposition does not apply to executive directors. Even in the developed economies, the competence of an enterprises board of directors is unfortunately often overlooked; yet, most business analysts agree that improved board performance translates into better corporate governance[89]. A director is in the absence of grounds for suspicion, justified in trusting the officials to perform such duties honestly.

But as **Professor Gower** points out,

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[88] Randolph Harris: the East Asian Economic Crisis Lessons for Uganda: The Ugandan Banker vol.2 N0.1 march 1998 pg.6
[89] Ibid no. 87 pg.7

"Duties must not be entrusted to an obviously inappropriate or unqualified official. The handling of the investments of a finance company must not be left to an office boy[90]*."*

The Third Schedule, the Financial Institution Act Cap. 54 lays out the parameters to be followed by the Central Bank when approving board of directors or share holders in Financial Institutions and these include; having regard to the previous conduct and activities of the persons concerned in the business, to the effect to if he or she has been convicted of the offence of fraud or any other offence of which dishonesty or violence, is an element.

In a nutshell, B.O.U is supposed to vet director's experience and other relevant particulars of management and staff of commercial banks. It is therefore contended that light duties of care and skill under the common law have been displayed in the case of banking companies. Banking companies definitely require a degree of diligence greater than that suggested by the common law.

Low levels of savings has affected Uganda's banking sector. This is also a major concern for the institutional framework governing management of commercial banks in the sense that one of the contributing factors to this situation are the negative interest rates. However section 39 (1) (b) of the B.O.U Act however obliges B.O.U to control effectively the credit and interest rates in commercial banks.

The commercial banking environment is also polluted by bribery and corruption, which are encouraged by big investors. On this issue, **Brian Cooksey** says that:

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[90] Grower L.B: Grower's Principles of Modern Law 5th Edition Sweet & Maxwell- London pg 37

"In Uganda they have bought 49% shares in U.C.B Ltd.[91]"

Corrupt and secretive African governments have proved easy prey for Malaysian and Chinese venture capital. A few million dollars can buy access to state house, launch joint ventures with local compradors, by pass all the usual bureaucratic red tape which frustrates investors and obtain formal promises of priority to get all the anticipated profits from commercial bank investment[92].

It has been reported that an opinion survey conducted in Kampala revealed that people think, by a big margin of 64% that the current government of Uganda is the most corrupt regime since independence[93].

On this issue, **Onyango Obbo** says that the Ugandan commercial banks dished out a lot of money to politicians, security and government officers to get them to deposit the vast project funds handed out by donors into their banks. The bulk of their profits disappear in the process, what is left is embezzled by relatives and tribesmen[94].

Apart from corruption and bribery **Onyango Obbo** contends that there is also some influence peddling and sheer arrogance on the part of the political decision-makers on virtually all government organizations. The smart money card required users to deposit a certain amount of money with I.C.B. and then draw on that money to buy fuel at various petrol stations in and around the country. When the card was first introduced there were few takers. Many organizations saw little or no value in using the card. Then all of a sudden, the Minister of Finance decreed that all

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[91] Brain Cooksey: Why Malaysia Money Should Worry Africa: The Monitor Newspaper 16th November 1998 Pg. 16

[92] Ibid no. 90 pg. 16

[93] Twase Tumusiime: Museveni's Government Most Corrupt. The Monitor Newspaper Tuesday 17th November 1997 Pg.3

[94] Charles Onyango Obbo: Banks Make Profit That Is Un-Ugandan: The East African Newspaper September 28th 1998 Pg.12

government organizations should start using the card, ostensibly to reduce fuel costs and yet in the end, this objective was not achieved.

Media reports estimate that some 4 billion shillings was stuck in I.C.B. on its closure. The total loss when the count is done may be even more staggering[95]. He concludes by saying that capitalism often operates hand in hand with political activity. In light of the foregoing, the B.O.U's efforts to combat corruption in Uganda's commercial banks have on the whole been inadequate.[96]

Some analysts attributed the inadequacy of the Central Bank to its lack of autonomy in banking matters. The legal framework embodies numerous provisions often obliging it to work in consultation and approval by the Minister of Finance.

Lastly, the globalization of business may have undesirable consequences completely not attributable to the local factors.

After the fall of the house of Barring followed by even more spectacular crashes around the world, banks are proving more explosive than nuclear bombs[97].

3.2 The Uganda Bankers Institute

The Uganda Bankers Institute is an informal institution made up of representatives of the respective Commercial Banks in Uganda. Its establishment is not literally provided for under the law, but is a result of collective efforts and agreement amongst Uganda's Commercial Banks to have an institution supplementary to B.O.U that could stream line and

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[95] Ibid
[96] Ibid
[97] John Nagenda: I.C.B. Yes , but surely not U.C.B: The new vision newspaper Saturday 14th November 1998 pg.4

govern the management of Commercial Banks. This institution is a creation of the Uganda Bankers Association.

Historically, the Uganda Bankers Institute (now called U.B.I) is believed to have been born in Kenya as a mirror image of the Kenya Bankers Institute[98] although the records available with the Uganda Bankers Association date only from January 1972.[99]

Ideally, this is due to the fact that all commercial banks operating in Uganda before 1970 were branches of foreign owned banks, most of which used Nairobi as their headquarters or regional offices.

Due to its very nature, this institution largely works on the basis of a gentleman's agreement. Bankers being the gentlemen that they are, decisions have generally been adhered to under this arrangement.[100]

It should be borne in mind that whereas the U.B.I discusses and deals with matters of common interest in so far as the banking industry is concerned; it is simply not a cartel.

Member banks reserve the right to determine their day to day operations and there continues to be a healthy competition in the industry.

U.B.I carries on a supervisory role, to clean out any unfair and unlawful advantages by particular banks at the expense of other commercial banks. The effect of supervision by U.B.I has been widely criticized for not being adequate. This is primarily due to the fact that the institution

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[98] Leo Kibirango: The Uganda Bankers Association: The Ugandan Banker N0.1 vol.1 1982 pg.3
[99] Ibid no.97 pg.3
[100] Ibid no.97 pg.3

has no power under the law to sanction or deal with problems confronting Banks effectively[101].

Mr. Kibuka Musoke public commentator however contends that on this issue the U.B.I takes the initiative of raising the matter to B.O.U who could take appropriate action. Take for example the cooperative bank scenario in 1998.

"We had to bring to light the banks failure to curb the graft and outright theft of customers' funds in the bank. We really had to highlight this to B.O.U[102]."

Like it has been previously mentioned, U.B.I almost entirely works on the basis of a gentleman's agreement such that should a commercial bank fail or refuse to take its advise, then such matter is brought to the attention of B.O.U and the Minister for appropriate action.

The U.B.I. has, in the interest of managing commercial banks in Uganda, emphasized the practice of ethical conduct by bankers.

Society has found it a necessary measure to institute alternative norms of ethical conduct within segmented groups to narrow the regulatory function within easily controllable jurisdictions. In the banking arena, like other professions, this behaviour regulation finds expression in the form of codes of conduct. In the drive for a competitive edge some commercial banks have resorted to exaggerated and sometimes confusing advertising methods regarding their strengths or painting rosy pictures before the largely un-informed public.

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[101] Kibuka Musoke: Who is responsible for all this mess: The Monitor Newspaper Tuesday 16th June 1998 pg.2

[102] Ibid no.100 pg. 2

In 1998, the Co-operative Bank launched a media campaign in a bid to assure the public and most especially its customers that their business was thriving.

The news paper advert for example, showed an elephant walking through water with words that echoed strength and stability even in the most pressing circumstance. However, upon Co-Operative Bank's closure, members of the public expressed dissatisfaction as to why the institutional framework mandated with governing commercial banks in Uganda, simply let the defunct bank to promote itself by using misleading adverts in the newspaper, radio and television, yet it was already in severe liquidity problem to the tune of Eight Billion Uganda Shillings.

It had been argued by some analysts that this act was contrary to bankers' ethics because it amounts to giving false information causing the customer great loss[103]. The kind of customers most affected by such aggressive advertising were those who opened up accounts based on the information passed to them, in this case, the guarantee of financial stability and strength was surely inappropriate and misleading.

It should be noted that there is no specific authority from where the codes of conduct were derived. What actually happens is that bankers themselves agree and set out accepted standards by which they shall do business and compete in the commercial banking industry.

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[103] Supra no. 93 pg.12

However, as **Mr. Tumwine Mukubwa** a re-known author on African Banking and practice contends, when codes of conduct promote frivolous values they then tend to remain only on paper and may not effectively bear influence on the conduct of managers. For the most part however, U.B.I represents the interest of the commercial banks and would in most cases go out to defend them where appropriate before the B.O.U, government and other banking circles.

3.3 The Ministry of Finance.

The Finance Ministry is an establishment of the Government of Uganda.

Like the U.B.I, this ministry is not literally provided for under the law but is simply a branch of government. Under both the **Financial Institution Act** and the **Bank of Uganda Act**, specific reference is made to the "Minister"[104] but it should be noted that he does not work alone. The Minister actually has a team of administrators, economists and other officials who form part of the ministry that has a hand in the management of commercial banks in Uganda.

On the issue of licensing of commercial banks, this institution has appellate authority in the event that an applicant has been turned down by B.O.U[105]. The Financial Institutions Act provides that where B.OU refuses to grant a license, the aggrieved applicant may appeal to the Minister who shall reconsider the application in consultation with B.O.U[106]. However, the above legal provision had been often abused by the Minister for political reasons.

For instance, the former Minister of Finance, **Mr. Mathew Rukikaire** is alleged to have used his political influence to ensure that the defunct

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[104] Section 1 (g) 48 B.O.U Act Cap
[105] Section 131 of the Financial Institution Act 54
[106] Ibid

I.C.B. got registered thus overriding B.O.U's objections together with the established legal requirements. I.C.B actually did not meet the set minimum capital requirements of Uganda shillings 500 million but instead got registered with less than 250 million shillings as initial capital[107].

In the same line, when it comes to revocation of a banking license, like it was with the defunct commercial banks, the law requires prior consultations with the Minister. This revocation is based on the ground that a Commercial Bank had been declared insolvent, had gone into liquidation or had been dissolved. Again, it should be noted that when B.O.U consults the Minister, more often than not, it is bullied and forced to take action against established commercial principles.

In 1988, B.O.U noted that both U.C.B and the now defunct Co-operative banks where severely under capitalized. The situation became serious in 1991 and furthermore in 1994 mostly due to bad debts leading to loss of money in loans. Since these two banks were major avenues through which payment of salaries for government workers in the country was effected, not to mention other government programs, the Minister adamantly sidelined the B.O.U. advice[108]. It was not until 1998 that the Minister agreed that Co-Operative Bank be closed and its license revoked.

Per section 125[109] the Minister may, by statutory instrument declare bank holidays.

The Minister is further to be consulted by B.O.U in making regulations, for the general governing of Commercial Banks.[110]Among these

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[107] Supra no.96
[108] Supra no. 12
[109] Financial Institutions Act cap 54

regulations are provisions for lending limits on credits extended to insiders, provisions for the licensing of financial institutions and provisions for generally giving effect to the Financial Institutions Act.

3.4 Comments and Analysis

At this juncture, it is important to clearly identify the major problems with Uganda's institutional framework for the management of commercial banks. The idea here is to further highlight and emphasize areas of weaknesses for purposes of correction and improvement, where reasonably possible.

The first observation is that entry conditions were lowered and unduly influenced. This development has given birth to many unviable commercial banks, which now suffer the fits of distress. For instance, the Ugandan Banker Journal of 2nd June 1998 carried a report to the effect that, before the Financial Sector Reform Program was initiated in 1991, there were less than ten commercial banks in Uganda. But as at 30th June 1998, there were 20 commercial banks and many other non-banking financial institutions. This fact has also increased the fragility of the financial sector and its susceptibility to shocks, both internal and external, as already discussed.

Another observation is that undesirable people appeared in Uganda's banking sector and this brings into question, the effectiveness of the screening and vetting system. As it has been discussed in this chapter, many individuals rushed into the banking sector with little or no previous training or experience in banking matters. Ownership and management functions were poorly delineated: notably relatives with little specialist experience in commercial banking sat on the boards, all

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[110] Ibid section 131

with a view to keeping things in the family when what was needed was an injection of compentent ideas and judgment.

Again, it should be noted that many Ugandan borrowers have not acquired the culture of paying back loans and this has led to a large share of non- performing loans and assets liability mismatch.

It is further observed that some private banks engaged in insider lending. This practice has been mainly identified with commercial banks owned by an industrial or trading group and such actions are fundamental violations of the general banking practice; it is also observed that delays in dealing with distressed banks have increased the cost to society.

It is also observed that most commercial banks in Uganda experience a serious problem of under capitalization and this has affected their solvency, liquidity and effectiveness. There is also a low rate of national savings and low level of financial deepening.

Another observation is that the **B.O.U Act** and the Financial Institutions Act gives B.O.U a high degree of autonomy in dealing in with commercial banking matters but, political influence still linger on, through the invisible hand.

It is further observed that poor management of banks is often the primary source of commercial bank failures.

According to media reports, the former governor of B.O.U was quoted as blaming some of the problems witnessed in the commercial banking sector as stemming from the apparent failure of their respective boards of directors to adequately monitor their management.

It is also observed that the weakness of B.O.U has been part of the problem rather than a solution to the financial distress in the country.

Furthermore, Uganda's commercial banking sector, like other sectors of the economy is surrounded by inadequate legal framework that consequently render little help to strengthen the institutional framework. Also observed that the disclosure and accounting practice in Uganda's commercial banks, has been generally deficient and unsatisfactory.

Execution of cases under banking law has provided significant stern tests under Uganda's banking law. In the American case of **Lankford State Bank Com'r vs First National Bank of Lawton**[111] and the Ugandan case of **Fredrick J.K Zabwe vs Orient Bank & Others**[112] the specimen mortgage form set out in the schedules to the Statutes in question influenced the decisions of both courts. In Zabwe's case, it was observed that the specimen mortgage given under the 11th schedule should have been adhered to in as far as what it provided as requisite requirements for the valid mortgage. At no time has the legislature ever attempted to change this form or amend the section to do away with witnessing by corporate bodies that opt to affix the seal instead of the signature, but have seen it fit to permit it to stand in its original form. The specimen mortgage provides for a blank space for the witness. The UK has made several changes in its laws regarding execution of deeds and instruments by corporate bodies; specifically The Regulatory Reform (Execution of Deeds and Documents) Order 2005 (SI 2005/1906) Amendment of Section 36A of the Companies Act 1985, section 74 of the Law of Property Act 1925 and the Law of Property (Miscellenous Provisions) Act 1989. Thus the UK Law has expressly made it clear that

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[111] 1919 OK 216, 75.159,183
[112] SCCA No. 4 of 2006

where a company has affixed a Seal on a Deed, it does not require witnessing. The previous position required the appending of the seal in the presence of one director and the clerk secretary or other permanent deputy of that company. Witnessing has since been expressly done way with, with the import of the new amendments. Definitely no similar provision is discernable in our RTA or Companies Act.

3.5 Conclusion

From the foregoing discussion, it is clear that institutional capacity manifested the existence of the inadequate legal framework. It has further been disclosed that banking practice has for the most part not adhered to, the law and observance has been more in breach than compliance. Some of the facts that have led to these factors include the following: institutionalized graft, institutional set backs such as lack of incentives and expertise, immature government policies such as liberalization, low cash flow among many other impediments.

The above mentioned institutional inadequacies therefore calls for legal and institutional reforms in the banking industry for the better management of commercial banks in Uganda.

CHAPTER FOUR

4.0 CONCLUSIONS

1. Banking like the commercialization of Uganda's economy, is one of the few lasting welcome innovations that came up as a result of the white man's subjugation of the African independence. The monetization of African economies in what came to be called the British East African territory culminated in the birth of the East African Currency Board whose goals amongst other things, were to stabilize the currency and pave way for banking institutions in the region.

2. As noted in the preceding chapters, the first set of banks which opened their doors for depositing, borrowing and guaranteeing of security were branches of foreign banks based in metropolitan Europe and Asia, but the independence of Uganda also ensured the birth of indigenous banks which had limited state control.

3. The liberalization of the economy in the past two decades has however made the Ugandan economy very versatile so much so that state control over commercial banks has reduced in magnitude, hence allowing citizens to set up commercial banks with a limited level of state interference.

4. The failure of the East African Central Bank at independence and the difference in political aspirations in the years that immediately followed independence, made the creation of national Central Banks and the need for enabling financial laws more of a necessity. The 1966 B.O.U Act established the bank of Uganda. This Act was later amended by the 1969 Banking Act, which granted the Ministry of Finance more powers to regulate the formation and operation of commercial banks. Whether the above named Acts and the B.E.A provided a new legal regime or whether the institutions of B.O.U,

Ministry of Finance and the Uganda Bankers Institute provided a framework competent to manage commercial banks in Uganda, has been the central focus of this research.

5. It is not contestable that even with the empowerment of B.O.U having monitoring and controlling roles in the banking industry, there remains an undesirable level of gaps in banking practice with sky high insider lending, poor management styles, defective accounting procedures and many other irregularities which constitute an embarrassment to the banking system as evidenced in the 1998-1999 bank closures which were generally blamed on the weak legal and institutional framework.

6. It should be noted that the damning situation as witnessed in the commercial banking developments in the last decade, are likely to erode customers' confidence in the banking sector though unbecoming and undesirable, could still be reversed with new legal and institutional reforms based on certain considerations which shall be recommended if taken into account.

7. In the final analysis, what is critical is that Uganda's commercial banks are a function of a distressed economy and unless the later is dealt with first, the legal and institutional framework put together will not provide a lasting solution to our distressed commercial banks.

4.1 RECOMMENDATIONS

1. Owing to the fact that the law is of paramount importance, the **B.E. Act** and Regulations made under the Act should be modernized to bolster and upgrade the legal framework governing commercial banks.

For instance, **S.1 .B.E.Act** sets forth general definitions and S.2 defines a **Bill of Exchange**. These sections need to be modernized to adopt the definitions set forth for instance, in the **U.S. Uniform Commercial Code (U.C.C)**. Section 2 should also be amended to define the more general term 'negotiable instruments' which encompasses cheques and promissory notes, rather than the narrower "bills of exchange".

2. In addition to the above, S.3 (1) B.E. Act defines "inland bill' as a bill drawn and paid within East Africa upon some person resident therein. The creation of the Common Market for East and Central Africa (C.O.M.E.S.A), South African Development Association Cooperation (S.A.D.A.C) and Preferential Trading Area (P.T.A) necessitates amendment to this section to include member countries of these organizations and encourage wider use of bills of exchange especially by investors. Because of the small local markets in each country, an investor in Uganda may wish to take advantage of provisions, which would expand the acceptability in Uganda, of bills drawn within the various common markets.

3. Further still, S. 12 (1) should be amended to specifically allow for ante and post dating of cheques which is a common business practice. For example, a tenant whose rent is due on the first day of the month may mail a cheque to his landlord before the due date of payment but postdate the cheque to the first of the month, so that the landlord can not deposit the cheque until the date the cheque is actually due. This would also disallow the holder to insert a fraudulent date on the cheque where the cheque provides evidence in litigation. Thus, if this section is amended as suggested above, drawers of cheques will be better protected and drawees shall maintain defined rights with a

statutory date rather than following a holder to insert whatever date he sees fit.

4. The B.E Act should also be amended to establish standards for determining the validity of incomplete instruments. Under S.2 (4) an instrument may be valid even if it is not dated, it does not take into account the value given and does not specify the place where it is payable. This lack of specificity and clarity subjects the process to abuse. The essence of a negotiable instrument is that it can be freely transferred in commerce without the conditions or terms that might increase the risk that a party undertakes. Negotiable instruments are thus designed to be couriers without luggage. Section 2(4) burdens the instrument with the baggage of uncertainty. It should be noted that the above provision was intended to avoid unnecessary dishonours because of omissions in an instrument to facilitate the transaction in times without telephones, word processors or computers.

   However, the logistical speed of the transactions has increased in modern times, the volume of instruments is higher and will increase even more rapidly as the private sector economy grows. Dishonesty of users has elevated the risk of uncertainty of instruments in modern times, a prospective purchaser must be able to determine precisely how much will be paid to him pursuant to the instrument. Therefore, the Act should be amended to provide for a fixed amount' (rather that a sum ascertainable) on the face of the instrument. Thus to be negotiable, the face of an instrument must indicate the value stated in numbers and currency and that it is payable on demand or at a definite time.

5. In addition to the above, the Act should be amended to establish rules for instruments that are paid with interest. Section 9(3) B.E.A provides that where an instrument is expressed as payable with interest, unless the Act otherwise provides, interest was from the date of issue thereof. The Act did not state whether interest is to be fixed or variable, compounded periodically or simple or whether provisions allowing variable rate of interest can be determined from the face of the document without affecting negotiability. The Act did not establish rules for determining interest when referring to information not contained in the instrument or when the amount of interest is not ascertainable.

6. Further still, the Act should be revised for different types of cheques. Sections 72-81 B.E.A deals with cheques, sets forth rules for presentment and payment of cheques as well as provides for statutory protection of collecting banks, to facilitate use of cheques by making it safer and more effective. Section 72 of the Act should be amended to provide for other types of cheques: like cashiers cheques and traveler's cheques. The Act should also be amended to provide to banks for payment of unendorsed or irregularly endorsed cheques and for collecting of payment of cheques as well as rights of banks collecting endorsed cheques.

7. To bridge the gap in global commerce, provisions relating to cheque presentment and clearance ought to be modernized to provide for electronic clearance. Section 44 of the Act sets forth the system of bill and cheque clearance. Under S.44(c), cheques must be presented at the proper place: only such presentation of the cheque to the paying bank branch on which it is drawn, is good presentment. This provision has also been amended under the British law to allow for electronic clearance of cheques. The electronic age offers the

possibility of presentment of cheques by means other than the physical presentment.

Paperless settlement of cheques is common practice in many industrialized countries because technology allows the main details of a cheque to be read and transmitted electronically, thus making physical presentation of the cheque unnecessary. In Uganda, banks and customers suffer the attendant additional costs of "physical clearance" of cheques. This additional cost have increased overhead costs and also slowed down commerce in the process. Thus S. 44 should be amended to allow for both physical and electronic presentment of cheques.

8. The Act should also establish penalties to deter the issuance of bad cheques. Under S.56, where a cheque is dishonuored, the aggrieved party may recover the amount thereof plus interest for costs in a criminal action for damages. There are also criminal remedies under S.385 of the Penal Code Act against public or private officials who issue false cheques.

   Section 56 needs to be amended to provide for additional remedies against makers of bad cheques, for instance, to allow the aggrieved party to bring a civil action, in which penal damages may be awarded in addition to recovery of the original amount of the cheque plus interest and collection cost as set out under the law of torts.

9. There is also need for amendment of the Act to enumerate the rights of a holder. Sections 38-51 B.E.A sets forth the duties of a holder of the instrument. Such duties mainly relate to presentment, acceptance and dishonour. However the Act does not specifically enumerate the

rights of a holder thus Section 37 should be amended to specifically provide for the rights of a holder.

10. Under Ss.58-63 B.E.A, a party is not discharged of liability if he pays a holder who is not the true holder or a party who has taken up or paid the instrument and knows at the time of payment that the holder or the party acquired the instrument by theft, or forged the signature as endorsee, or participated in the theft. The Act does not include negligent provisions imposing an express duty of care on the bank. In this respect therefore, S.59 should be amended to impose liability on banks for negligence. If the bank has diligently executed its duty of cross checking with the specimen signatures with those on the cheque presented to the bank, then it will escape liability on its part.

11. To further encourage private investment, S.2 needs to be amended too, it relates to the effect of a separate writing and provides that an order must be unconditional to ensure that there is no wish inherent in the purpose of negotiability.

This section ought to be amended to address cases where the writing contains an express condition to payment: secondly, where the writing is subject to or governed by any other writing, and lastly, the rights or obligations with respect to the promise made in a writing are stated in a second writing.

In order for a written promise or order to be negotiable, it must be paid immediately by available funds of an accepted currency.

Section 2 (1) attempts to ensure transferability by providing for a "sum certain in money"

The term 'sum certain' require: that the entire amount due including interest be ascertainable in. almost all instances by looking at the face of the instrument above without reference to outside sources.

However under S.2 (1), an instrument is not invalid by reason of omission of value given. Therefore, this section ought to be amended to allow for a "fixed amount" of money with or without interest or other charges.

12. There is need to improve and tighten regulations under the Financial Institutions Act to further improve on the quality and effectiveness of bank supervision and regulation. Current observation indicates that top priority should be directed at the following:

    1. Strengthening regulatory framework on external auditors of commercial banks.

    2. Strengthening the capacity and skill in supervision department of Bank Reconciliation Officer in order to ensure more frequent onsite inspection of commercial banks.
    3. Enhancing the regulatory framework with regards to holding companies and concentration of ownership.
    4. Doubling of minimum capital requirements like the proposed 25 Billion to be met by commercial banks by March 2013.

13. It has also been noted that delay in dealing with distressed banks increases the costs to society. An effective legal framework is therefore needed to protect authorities, to provide clear signals to bank owners and to force policy makers to act promptly.

The legal system should clearly specify the circumstances that warrant liquidation, conservation ship, rehabilitation or restructuring the range of reviews or conservator's action, powers and rights, and the timing of these actions.

14. The supervision and regulation of the banking industry must also be thorough, fair and even handed. A system, which gives preferential treatment to certain individuals or institutions, will not create confidence in the commercial banking industry or any industry for that matter. Supervision in the view of the researcher does not have to be traditional fault finding. Institutions for instance, would need help rather than condemnation: Whereas strictness on prudent standards seems to stifle local initiations, speculative banks should not be allowed to distort the financial system and cause public distress.

15. Disclosure and accounting practice has been deficient and unsatisfactory. This therefore calls for a greater level of corporate disclosure, even if it may lead to the collapse of weaker commercial banks. Disclosure should be frequent, perhaps quarterly and the B.O.U should issue disclosure statistics concerning commercial banks that it is supposed to oversee. Regarding reliability of information and the objectivity of auditor's reports, an effective bill that holds auditors liable for falsified accounts should be instituted. Auditors who are suspected of unethical and unprofessional conduct must be put to book. This would minimize situations whereby the public is misled. External auditors should also be made responsible for informing the Central Bank about the bad lending of banks. B.O.U should also have the option of taking legal action against erring banks for professional misconduct.

16. There must be stringent checks on the history, suitability and integrity of proposed owners and managers of commercial banks. There has to be a provision for post licensing re-screening and this should be a continuous activity through the B.O.U's supervision department.

17. The forum for solving certain commercial banking issues like the bank failures should be insulated from political influence and the regulators should also be granted immunity from any undue political pressure. To begin with, all appointments in the B.O.U must be completely and thoroughly be out of politics for a delicate institution like B.O.U, meritocracy is fundamental and of national strategic importance to Uganda. Assuming if the Central Bank can not have total independence, it is possible to separate the normal functions of a Central Bank from those of commercial bank supervision.

18. Autonomous commercial banks supervision agencies should be set up solely to ensure compliance with the regulations. These would work closely with the Central Bank and would leave it free to concentrate on its core functions. However, this recommendation requires further research to be carried out on whether it is practicable to have an autonomous banking supervisory agency.

19. B.O.U also needs to focus on capacity building so as to fulfill its role of regulating and governing commercial banks. The subject of human resource and system development is very important and must be given the seriousness it deserves. Current observations show that to control and govern commercial banks should be on top of B.O.U's priority list. In other jurisdictions, a representative from the Central Bank is supposed to sit on the board of directors of a commercial bank. These representatives would enable proper credit approval and would report to the Central Bank about the exact financial position of a particular commercial bank. It is established that B.O.U has now

adopted this idea but the argument is that this method should be emphasized by having a rotation system for the various representatives to the various commercial banks in Uganda.

20. This study recommends that B.O.U should team up with the Uganda Bankers Association in stamping our internal mismanagement in the commercial banks.

21. Commercial banks should be allowed to merge or enter into joint ventures with foreign banks. This would enable the local banks to acquire the much needed expertise, technical know how and financial support.

22. Liberalization and deregulation in Uganda seem to be moving at a much faster pace than could have been anticipated. It is likely therefore that we may be drawn into converging global markets sooner than later. Banks must equip their personnel with modern skills and the technicalities of modern commercial banking.

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