



# *Central Bank of Somalia*

## Financial Institution Law

An Act to provide for the licensing, regulation and supervision of the business of entities taking deposits from the public; to repeal and replace the Financial Institution Decree Law No. 37 of 23 Nov. 1989 and for matters related thereto

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BE IT ENACTED by the President and the Parliament of the Somalia, as follows:-

***Law No. 130 of 22 April, 2012***

4/22/2012

Mogadishu

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## **THE FINANCIAL INSTITUTIONS BILL 2011**

An Act to provide for the licensing, regulation and supervision of the business of entities taking deposits from the public; to repeal and replace the Financial Institution Decree Law No. 37 of 23 Nov. 1989 and for matters related thereto

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BE IT ENACTED by the President and the Parliament of the Somalia, as follows:-

***Law No. 130 of 22 April, 2012***

### **1. Commencement.**

**This Act shall come into operation on a date appointed by the Minister in the Official Bulletin**

### **2. Interpretation**

In this Act, unless the context otherwise requires;

'bank' means bank licensed to carry on banking business under this Act and includes a commercial bank, mortgage bank, merchant bank, and all branches or offices of such bank in Somalia;

'Banking business' means the business of:

### **CHAPTER I - PRELIMINARY**

- a. accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice;
- b. accepting from members of the public of money on current account and payment on and acceptance of cheques;
- c. employing of money held on deposit or a current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money; and
- d. Any other activity that the Central Bank may by regulation defines as banking business.

'book' includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written, printed form or on microfilm or by electronic process or otherwise;

'Branch' means any premises, other than its head office, at which a bank

transacts business in Somalia;

'Capital' means paid up share capital funds;

'Central Bank' means the Central Bank of Somalia established by the Central Bank of Somalia Act;

"Commercial bank" means any bank in Somalia whose business includes the Acceptance of deposits withdrawable by cheque, issue of short term and medium term loans, guarantees, foreign exchange transactions and such other activities as the Central Bank may by regulation classify.

'company' means any company defined in any written law for the time being in force relating to companies, and any company incorporated or registered under any written law in force in Somalia and includes; anybody corporate or unincorporate, whether incorporated, formed or established outside Somalia;

'core capital' means permanent shareholders equity in the form of issued and fully paid up shares of common stock plus all disclosed reserves, less goodwill or any other intangible assets;

'Penalty currency point' [*USD 1000 or its equivalent in Somalia currency*]

'current account' means an account maintained by a bank for and in the name of, or in the name designated by a customer of the bank into which money is paid by or for the benefit of such customer and on which cheques and other bills of exchange may be drawn by, and transfers and other banking transactions made on the instructions of, the customer:

"Deposit" means

(a) Money lodged by a person with another person-

(i) On terms that it will be repaid at a later date with or without interest, or at negative interest; and

(ii) Which does not relate to the provision of property or services under a contract of sale, hire, or security for performance of a contract?

And any references in this Act to the taking or the making of a deposit shall be construed accordingly;

'director' includes any person occupying the position of director of a company by whatever name called and includes a person in accordance with whose directions or instructions the directors of a company are accustomed to act and an alternate or substitute director;

'disclosed reserves' includes all reserves created or increased through share premiums, retained profits (after deducting all expenses, provisions, taxation and dividends) and general reserves if the disclosed reserves are permanent and unencumbered and thus able to absorb losses;

'Entity' means a body corporate, trust, partnership, fund, or organization;

'Financial year' means the financial year prescribed in section 21 subsection (3);

'Financial Statements' includes the balance sheet, profit and loss accounts, statement of funds flow and notes;

'Fit and proper criteria' means the criteria set out in First schedule to this Act;

'fit and proper person' means a person means one who is financially sound, competent, honest, reputable and reliable and who is determined by the Central Bank as meeting the fit and proper criteria as described under the First schedule to this Act;

'foreign bank' means a bank which is incorporated outside Somalia lawfully licensed to carry out banking business in that jurisdiction under the supervision of the relevant banking supervisory authority;

'Land' includes freehold and leasehold land in Somalia and all buildings and permanent improvements thereon;

'License' means a license granted by the Central Bank under section 8;

'Members of the public' mean individuals, partnerships, corporate bodies and trustees or managers of trusts, pension and provident funds or other similar funds;

"merchant bank" means a bank whose business includes receiving deposits on deposit account, provision of finance, consultancy and advisory services relating to corporate and investment matters, making of managing investments on behalf of any person;

'Minister' means the minister for the time being responsible for matters relating to finance;

"money laundering" means the conversion or transfer of any property including money, knowing it is derived from a criminal offence, for the purpose of concealing or disguising its illegal origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of its actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property knowing that it is derived from a criminal offence; or the acquisition, possession or use of property knowing at the time of its receipt that it is derived from a criminal offence;

“Mortgage Bank” means any bank in Somalia, whose business includes acceptance of deposits, financing of loans for commercial and residential real estate construction and purchase

'officer', in relation to a bank, means a director or any other person, by whatever name or title he may be called or described, who carries out or is empowered to carry out functions relating to the overall direction, in Somalia, of that bank or takes part in the general management thereof in Somalia;

'Public entity' means the Government, a local authority or a public body declared by the Minister to be a public entity for the purposes of this Act;

'Person' means any individual, a personal representative, company, partnership, trust, fund, foundation or enterprise wherever located or incorporated

“Related person” or “group of related persons” means—

(a) in relation to natural persons—

- (i) An associate or close relative of the person;
- (ii) any person who has entered into an agreement or arrangement with the first-mentioned person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of shares in the financial institution in question;

(b) In relation to a company means any—

- (i) subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;

(ii) Associate of the company;

(c) In relation to a non-natural person which is not a company, means another non-natural person which would have been a subsidiary of the first mentioned non- natural person—

- (i) Had the first-mentioned non-natural person been a company; or
- (ii) Where that other non-natural person, is not a company, had both the first mentioned non natural person and that other non- natural person been a company;

- (d) any person in accordance with whose direct or indirect directions or instructions the board of directors or where the non-natural person is not a company, the governing body of that non-natural person is accustomed to act; and
- (e) In relation to any person—
  - (i) means any non- natural person of which the board of directors or, where that non- natural person is not a company, of which the governing body is accustomed to act in accordance with directions or instructions of the person first-mentioned in this paragraph; and
  - (ii) includes any trust controlled or administered by that person;

'Related interest' means interests of affiliates, associates and their related persons and the business interests of any of them;

'supplementary capital' means general provisions which are held against future and presently unidentified losses that are freely available to meet losses which subsequently materialize, and revaluation reserves on banking premises which arise periodically from independent valuation of such premises, and any other form of capital as may be determined from time to time by the Central Bank;

'Total capital' means the total sum of core capital and supplementary capital;

'Total deposit liabilities' means the total deposits, in Somalia, in any bank which are repayable on demand or after a fixed period or after notice;

'Unimpaired reserves' means capital and revenue reserves not subject to any charge or other encumbrance or option or liable to reduction by payment of dividend or otherwise.

For the purposes of this Act, 'associate':

- 1) In relation to a company or other body corporate means:
  - (i) its holding company or its subsidiary;
  - (ii) a subsidiary of its holding company;
  - (iii) a holding company of its subsidiary; or
  - (iv) any person who controls the company or body corporate whether alone or with his associates or with other associates of it;
- 2) In relation to an individual means:
  - (i) Any member of his/her family;
  - (ii) any partner of the individual or a partnership in which the

- (iii) individual is a partner; any company or other body corporate controlled directly or indirectly, by him/her, whether alone or with his/her associates; and
- (iv) any associate of his/her associates;

and a person shall be deemed to be a member of a family if he/she is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild' and adopted child of the person concerned, and in case of an adopted child his/her adopter or adopters.

## **CHAPTER II- LICENSING**

### **1. Restrictions on Carrying on of Banking Business**

- (1) A person shall not, in Somalia:
  - (a) Transact any banking business;
  - (b) Describe himself (in whatever terms) as authorized to transact banking business; or
  - (C) behave, or otherwise hold himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is authorized to transact banking business,

Unless he holds a valid license granted under this Act for carrying out the specific banking business;

- (2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to pay a fine not exceeding 5 penalty currency points for every day on which the offence continues or to imprisonment for a term not exceeding 3 years, or both.
- (3) A bank which, at the commencement of this Act, holds a valid license to carry on banking business in Somalia issued under the Financial Institution Decree Law No. 37 of 23 Nov. 1989 shall be deemed to have been granted a license under section 8
- (4) Notwithstanding the provisions of subsection (2), the Central Bank shall within three months of the commencement of this Act, issue to such bank a new license certificate under this Act.

## **2. Examination of persons suspected of transacting banking business in violation of this Act and access to premises**

- (1) Whenever the Central Bank has reason to believe that a person is transacting or holding himself out as transacting banking business without a license, the Central Bank shall, at all times —
  - (a) have full and free access to the premises at which that person is suspected of transacting or holding himself out as transacting banking business without a license or at which that person may have any books or records including electronic records; and
  - (b) have the power to examine, copy or take possession of any books, records, computers and other electronic storage medium of that person in order to ascertain whether or not that person has violated, or is violating, any of the provisions of this Act.
- (2) Any refusal to allow full and free access to such premises or to submit such books, or electronic records or equipment shall be prima facie evidence of the fact of operation without a license.
- (3) Any person who obstructs any Central Bank officer or agent in the performance of the duties under this section commits an offence and shall be liable on conviction to pay a fine of 20 penalty currency points or imprisonment for a term of not less than 2 years, or both

## **3. Restriction on use of the word Bank or its derivatives.**

- (1) A person shall not, unless licensed by the Central Bank under the provisions of this Act, use the word 'Bank' or any of its derivatives or any other word indicating the transaction of banking business, or the equivalent of the foregoing in any other language, in the name, description or title under which it transacts business in Somalia or make any representation whatsoever that it transacts banking business;
- (2) Any person who contravenes subsection (1) commits an offence and shall be liable to pay a fine not exceeding 5 penalty currency points for every day on which the offence continues or to imprisonment for a term not exceeding 3 years, or both.

## **4. Application for License**

- (1) Every applicant for a license, other than a public entity, shall be incorporated as a limited liability company under the Companies Act no..... or a body corporate under similar laws of another jurisdiction.

- (2) Every person intending to transact banking business in Somalia shall, apply in writing to the Central Bank for a license using the form prescribed and shall together with the application, pay a non refundable application fee to be prescribed by the Central Bank, and submit the following documents:
  - (a) the Memorandum and Articles of Association duly certified;
  - (b) the certificate of incorporation duly certified;
  - (c) duly certified authority from the Board of Directors authorizing the submission of the application;
  - (d) the proposed ownership structure which must be transparent;
  - (e) the proposed management structure and their competencies;
  - (f) a business plan for at least 3 years (including the assumptions underlying the projections and a sensitivity analysis on varying assumptions) detailing the nature of business and services proposed, financial projections, internal control and risk management systems (for credit, liquidity, foreign exchange, interest rate, operational and other risks);
  - (g) capital structure including source of initial capital and a demonstration of the financial ability to meet the ongoing capital requirements;
  - (h) audited financial statements for 2 years from companies already in any other business, and most recent management accounts showing the current trading results of the applicant; and
  - (i) Any other information that the Central Bank may request from the applicant from time to time.
- (3) A person who knowingly or recklessly furnishes any document or information which is false or misleading in a material particular, in connection with an application for a license falling within subsection (2), commits an offence and shall be liable on conviction to pay a fine not less than 30 penalty currency points or to imprisonment for a term not exceeding 3 years, or to both.

## **5. Evaluation of the Application for a license**

- (1) The Central Bank shall evaluate every application for a license and satisfy itself as to the ability of the applicant to fully meet the prudential, capital, regulatory, management and corporate governance requirements for the efficient, safe and sound running of the Banking business.
- (2) The Central Bank shall also require to be satisfied that the shareholders, directors and management are fit and proper persons within the meaning of the fit and proper criteria prescribed in the second schedule to this Act.
- (3) In considering an application for a license, the Central Bank shall require to be satisfied as to:
  - (a) The financial condition and history of the applicant
  - (b) The professional competence and integrity of the proposed management and directors;
  - (c) The adequacy of its capital structure (both minimum and ongoing) and the earning prospects;
  - (d) The convenience and needs of the area to be served;
  - (e) The public interest which will be served by the granting of the license; and
  - (f) Any other matter which the Central Bank may in its sole discretion consider as relevant.
- (4) The Central Bank may upon receipt of the application for a license by notice to the applicant in writing request the applicant for additional information or clarifications to assist in the evaluation process.
- (5) Every applicant, requested for additional information or clarifications, shall submit such information or clarifications in full within the period so specified in the request notice.
- (6) The Central Bank shall where an applicant fails neglects or omits to submit the information or clarifications, place the evaluation of the application for a license on hold until such a time when the information so requested shall have been provided in full.

## **6. Grant or Refusal of license**

- (1) The Central Bank may, upon evaluating an application under section 7, grant a license, with or without conditions, or refuse to grant a license with reasons.

- (2) The Central Bank shall in each license granted specify banking business activities for which the licensee has been permitted to transact and a bank or branch of a foreign Bank shall not engage in any banking business activity not specified in its license.
- (3) Where a conditional license is granted, the Central Bank, May from time to time, add, vary, revoke or substitute such conditions as it may consider appropriate and the bank shall comply with those conditions.
- (4) The Central Bank shall before taking any action under subsection (3) of this section;
  - (a) notify the licensee of its intention to take that action ; or
  - (b) give the licensee an opportunity to submit reasons why the conditions of its license should not be so added to, varied, revoked or substituted;
- (5) Any licensee which fails to comply with any of the conditions of its license commits an offence and shall, on conviction be liable to a fine not less than 20 penalty currency points and, in the case of a continuing violation, to a further fine of 5penalty currency points for every day during which the violation continues.

## **7. Validity and Renewal of License**

- (1) Unless revoked under section 12, a license shall be valid for a maximum period of twelve months beginning on the day it is granted, provided that every license shall expire on 31<sup>st</sup> December in each year.
- (2) A license shall be renewable subject to payment of the applicable license fees.
- (3) Every application for renewal of a license shall be submitted to the Central Bank not less than 90 days before the expiry of the current license.
- (4) Provided that a complete application for renewal is submitted to the Central Bank within the time prescribed under subsection (3), the license shall be deemed to continue to be in force for a further 90 days

after the date of its expiry, or until the Central Bank determines the application for renewal.

- (5) The Central Bank may for reasonable cause extend the period within which an application for renewal of a license may be made provided that such extension shall not extend beyond the date of expiry of the current license.
- (6) Where the Central Bank is satisfied that the applicant has complied with the provisions of this Act and the regulations made hereunder, the Central Bank may, upon payment of the prescribed fee, renew a license with or without restrictions or conditions.

## **8. License fees**

- (1) Every applicant for a license shall pay such annual license fee as the Central Bank may, by notification in the *official Bulletin*, prescribe.
- (2) The Central Bank may prescribe different license fees in respect of different classes or categories of banks and the fees shall apply uniformly to those classes or categories.
- (3) An applicant that fails to pay the prescribed license fees on the due date shall incur a penalty double the amount payable as the license fee and the penalty shall be payable to the Central Bank before the renewal of a license for a subsequent year.

## **9. Amendments or Restrictions to a license**

The Central Bank may with notice, at any time amend or impose restrictions on any license issued under this Act if:

- (1) The licensee requests the amendment or restriction and the Central Bank considers the request appropriate; or
- (2) The Central Bank considers the amendment necessary for compliance with the provisions of this Act or desirable to protect depositors or public interest.

## **10. Revocation of the Licenses issued under this Act**

- (1) The Central Bank may by order revoke, a license issued under this Act
  - (a) If the Central Bank is satisfied that the holder of that license (licensee) —

- (i) has ceased to transact the licensed business in Somalia;
  - (ii) has furnished information or documents to the Central Bank, in connection with its application for a license, which is or are false or misleading in a material particular;
  - (iii) being a branch of a foreign bank incorporated outside Somalia, has had its license or authority to operate revoked by the supervisory authority which is responsible, under the laws of the country where the bank is incorporated, formed or established;
  - (iv) proposes to make, or has made, any composition or arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved;
  - (v) is in the opinion of the Central Bank, carrying on its business in a manner detrimental to the interests of its depositors or customers;
  - (vi) is unable to pay its liabilities to its depositors or the public as they mature;
  - (vii) has contravened the provisions of this Act in a manner which is serious or persistent;
  - (viii) has without the consent of the Central Bank amalgamated with another entity or sold or otherwise transferred its assets and liabilities to another entity;
  - (ix) has failed to comply with any direction given by the Central Bank;
  - (x) has been convicted of any offence under this Act or any of its directors or officers holding a managerial or executive position has been convicted of any offence under this Act or ceased to be a fit and proper person within the criteria set under this Act;
  - (xi) has failed to commence operations within twelve months from the date of the issue of the license; or
  - (xii) Has been engaged in money laundering or financing of terrorism.
- (b) If, after consultations with the Minister, the Central Bank considers that it is in the public interest to revoke the license.
- (2) The Central Bank shall, before revoking any license under subsection (1), serve a notice in writing on the licensee to show cause why the license should not be revoked and specifying a date, not less than 21

days after the date of the notice, upon which the revocation will take effect.

- (3) An order of revocation shall not take effect until after the expiration of a period of 21 days mentioned in subsection (2).
- (4) A person served with a notice under subsection (2) may, upon receipt of the notice, make written representations to the Central Bank to justify why the license should not be revoked.
- (5) The Central Bank shall, upon revoking a license under subsection (1), immediately inform the licensee of the revocation.
- (6) The Central Bank shall cause, to be published forthwith in the Official Bulletin the name of every licensee whose license is revoked under this section,
- (7) The Central Bank shall, upon revocation of the license, take over control of the business of the licensee and wind up its affairs.

## **11. Branches of foreign banks**

- (1) A foreign Bank which intends to carry on banking business in Somalia through a branch, may on the form prescribed by the Central Bank apply to the Central Bank for a license to set up a branch in Somalia.
- (2) The application shall be accompanied by all the information prescribed in section 6 and in addition thereto, the Central Bank may request such other information in relation to its operations in the foreign country, any group which the applicant forms part of, the nature and extent of supervision exercised or to be exercised by the supervisory authority of the foreign bank's country of domicile.
- (3) The Central Bank shall evaluate the application in accordance with the provisions of section 7 of this Act.
- (4) The Central Bank shall, in evaluating the application, seek a no objection from the banking supervisory authority in the foreign banks home country.
- (5) The provisions of sections 7, 8, 9, 10, 11, 12 of this Act shall apply to an application for a license under this section *mutatis mutandis*.
- (6) The Central Bank shall not grant an application in terms of subsection (2) unless it is satisfied that appropriate arrangements are in place for

the supervision of the branch by the foreign supervisory authority in the foreign bank's country of domicile.

- (7) A foreign bank which conducts the banking business by means of a branch in Somalia without a license commits an offence and the provisions of section 3 subsection (2) shall apply.

## **12. Publication of list of Banks and branches**

The Central Bank may, from time to time, publish a list of banks and branches of foreign banks:

- (1) In the *Official Bulletin*; or
- (2) In such other manner as the Central Bank determines.

## **13. Location of the Branches outside Somalia**

- (1) A bank shall not open a branch outside Somalia unless it has obtained prior approval of the Central Bank.
- (2) A bank shall not close any of its branches outside Somalia without seeking the approval of;
  - (a) The Central Bank; and
  - (b) The regulatory authority of the country where the branch is located.

## **CHAPTER III- PRUDENTIAL REQUIREMENTS**

### **14. Minimum Capital Requirements**

- (1) A bank shall maintain, at all times, the minimum cash capital unimpaired by losses, in such ratio to all or any assets or to all or any liabilities or to both such assets and liabilities of the bank and all its offices in and outside Somalia as may be prescribed the Central Bank by regulations but which shall in no case be less than USD 5,000,000 (Five million United States Dollars).
- (2) The Central Bank shall make prudential regulations prescribing:
  - (a) The Minimum paid up cash capital required for any person to commence or to continue to conduct Banking business in Somalia.
  - (b) Revising the minimum capital requirements.
  - (c) The composition of the cash capital.

- (d) The instruments in which such capital shall be invested.
  - (e) Such other matters as relating to minimum capital as shall be necessary
- (3) A licensed entity operating in Somalia shall not directly or indirectly reduce its paid-up capital without the approval of the Central Bank.
- (4) Any licensed entity which fails to comply with any requirement prescribed under subsections (1) and (2) shall immediately notify the Central Bank.
- (5) Where any licensed entity fails to comply with any provision of this section, the Central Bank may, by notice in writing to that entity —
- (a) Restrict or suspend the operations of the licensed entity;
  - (b) Give such directions to the licensed entity as the Central Bank considers appropriate, and the licensed entity shall comply with such directions; or
  - (c) Direct the entity to draw up within a specified time a capital reconstitution plan acceptable to the Central Bank.
- (6) The Central Bank may, by notice in writing, require any bank in Somalia to maintain capital funds in Somalia of such amount (not being less than the minimum prescribed in section 16 subsections (1) and (2), as the case may be) and in such manner as the Central Bank considers appropriate, having regard to the risks arising from the activities of the bank and such other factors as the Central Bank considers relevant.

## **15. Minimum ongoing capital requirements**

- (1) The Central Bank shall make prudential regulations prescribing;
- (a) The core capital of licensed entities;
  - (b) The ongoing capital of licensed entities;
  - (c) The calculation of the core capital and total capital;
  - (d) Such other matters relating to capital requirements as it may deem necessary; and
  - (e) A revision of any matter prescribed under sub section (1)

- (2) The Central Bank may by notice to any licensed entity prescribe higher on-going capital requirements for a specific licensed entity in line with the risk profile of such entity.
- (3) Where an entity fails to meet the capital adequacy ratios prescribed under subsection (1) it shall forthwith notify the Central Bank of that contravention.
- (4) Every manager or officer who, knowing of a contravention of subsection (1) fails to report the contravention to the Central Bank commits an offence and is liable on conviction to a fine of 2 penalty currency points for every day on which the violation continues.
- (5) The capital requirements prescribed by the Central Bank in this section shall be formulated in accordance with internationally accepted standards on capital adequacy.

**16. Minimum holding and computation of liquid assets**

- (1) The Central Bank shall by regulation prescribe-
  - (a) the minimum holding of liquid assets by licensed entities;
  - (b) the method of computation of minimum holding of liquid assets;
  - (c) the list of assets which qualify as "liquid assets";
  - (d) such other matters relating to holding and computation of liquid assets as it may deem necessary; and
  - (e) A revision of any matter prescribed under sub section (1).
- (2) A licensee that fails to comply with the minimum holding of liquid assets requirements as prescribed by the Central Bank under sub section (1) shall immediately report such failure to the Central Bank and shall pay, to the Central Bank, a civil penalty of one-tenth of one percent of the amount of the deficiency for every day on which the deficiency continues.
- (3) For the purposes of this section "liquid assets" means all or any of the following:
  - (a) notes and coins which are legal tender in Somalia and any other currency prescribed by the Central Bank;
  - (b) balances held at the Central Bank as may be approved by the Central Bank;

- (c) moneys at call and balances at banks in Somalia other than the Central Bank after deducting balances owed to those banks;
  - (d) marketable Government securities that are held by the bank for trading purposes;
  - (e) uncommitted balances at banks outside Somalia withdrawal on demand and money at call outside Somalia after deducting there from balances owed to banks outside Somalia, if the balances and money at call are in currencies which are freely negotiable and transferable in international exchange markets consistent with the articles of agreement of the International Monetary Fund;
  - (f) commercial bills and promissory notes which are eligible for discount by commercial banks or by the Central Bank; and
  - (g) Any other asset that the Central Bank may by prudential regulation approves.
- (6) The Central Bank shall allow reasonable time after a minimum holding is prescribed or increased under subsection (1) of this section to enable a bank to comply with the requirement.
- (7) Every manager or officer who, knowing of a contravention of subsection (1) fails to report the contravention to the Central Bank commits an offence and is liable on conviction to a fine of 2 penalty currency points for every day on which the violation continues.
- (8) Where a bank is not in compliance with the minimum amount of liquid assets, it shall not grant any new or additional loan or credit accommodation to any person without the prior written approval of the Central Bank.

## **17. Effectiveness of prudential regulations**

- (1) The prudential regulations made by the Central Bank under sections 16, 17, 18 above shall come into force on the day on which the regulation is made; or if that regulation specifies a later day as the day on which the regulation comes into force on the day so specified; and shall continue in force until revoked.
- (2) The Central Bank may, in writing, vary or revoke a regulation.

**18. Submission of forms for Capital Adequacy computation.**

- (1) Every Bank shall, in order to assist the Central Bank determine whether the bank is complying with Capital Adequacy requirements submit on a quarterly basis to the Central Bank, a form entitled "Quarterly Computation of Capital Adequacy" as set out in the regulations to be issued by the Central Bank.
- (2) The Quarterly Computation of Capital Adequacy form shall be prepared and submitted to the Central Bank on a quarterly basis at the close of business on the last calendar day of the months of March, June, September, and December.
- (3) Where the last calendar day falls on a Bank holiday, a public holiday or a Sunday, the form shall be submitted on the next working day.
- (4) The Central Bank may verify the accuracy of the form submitted under subsection (1) and may direct a bank to adjust or make corrections on the form submitted.
- (5) The Central Bank may, at any time and at its discretion, call upon the external auditors of a financial institution to verify the accuracy of any quarterly data reported on the form submitted under subsection (1).
- (6) The Central Bank may by regulation amend the form from time to time.

**CHAPTER IV- ACCOUNTS AND AUDITS**

**19. Accounts**

- (1) It shall be the duty of the Board of every bank:
  - (a) To keep proper books of accounts and proper financial records in relation to the accounts which show a complete, true and fair state of affairs of the bank;
  - (b) To prepare in respect of each financial year a statement of accounts showing the state of affairs and income and expenditure of the Bank; and
  - (c) To ensure that all accounts and financial records comply with International Accounting Standards (as revised from time to time) and with all applicable laws.

- (2) The books of accounts shall be kept at the principal place of business of the bank and at the branches of each bank in the English language or any other language approved by the Government.
- (3) A bank shall prepare annual accounts based on a financial year covering a period of 12 months ending on 31<sup>st</sup> December of every year.

**20. Submission and approval of audited annual accounts.**

- (1) A bank shall within three months of the end of its financial year, submit to the Central Bank a true and full yearly statement of its accounts covering all its operations as certified by its external auditor, and approved by the board of directors together with the external auditor's report and the management letter.
- (2) The accounts shall be signed by the chairman of the board, the chief executive officer of the bank, and the secretary.
- (3) The Central Bank may make regulations prescribing the form and content of accounts to be submitted under this section.
- (4) A bank which fails to submit the accounts required under subsection (1) in the period specified shall, unless an extension is granted by the Central Bank under subsection (7) pay a penalty of 5 penalty currency points for each day on which the default continues.
- (5) The Central Bank shall review the accounts submitted and may:
  - (a) approve the accounts for publication;
  - (b) direct the bank and its external auditors to amend or rectify the accounts;
  - (c) reject the accounts and order the bank and its external auditors to re-issue and re-audit the accounts; or
  - (d) Request the bank and its external auditor for any further information as it may deem necessary.
- (6) Where the Central Bank issues an order or direction under subsection (5), a bank and the external auditor shall comply with the order or direction and re-submit the accounts in such period as shall be specified by the Central Bank.

- (7) The Central Bank may for reasonable cause and upon application by a bank extend the period for submission of accounts specified in subsection (1) or publication of accounts for such period as the Central Bank shall determine which extension shall in any case not exceed 90 days from the date prescribed.
- (8) An application for extension under subsection (7) shall be submitted by a bank to the Central Bank no later than 30 days before the end of the period prescribed and shall be accompanied with such documentary evidence to support the reasons why the bank is unable to comply with the deadline.
- (9) The Central Bank shall have the discretion to reject an application for extension with reasons and its decision shall be final.

## **21. Publishing of Accounts**

- (1) A bank shall within four months of the end of its financial year publish, in the official bulletin and a widely circulating newspaper, accounts of all its operations as certified by its external auditor and approved by the Central Bank.
- (2) If any bank fails to comply with the requirements of subsections (1) within four months to the end of its financial year, it shall be liable to pay a penalty of 5 penalty currency points for every day when such default continues, except when an extension to the period has been granted by the Central Bank.
- (3) A bank may not publish its accounts except in such form and with such content as the Central Bank shall approve.
- (4) The Central Bank may by regulation prescribe, in conformity with International Accounting Standards/International Financial Reporting Standards, the formats of the financial statements (balance sheet, income statement, statement of comprehensive income, statement of changes in shareholders' equity and statement of cash flows), the notes to the financial statements and the report on operations that a bank and a banking group (on a consolidated basis) is required to prepare and publish.

## **22. Appointment and re-appointment of external auditor**

- (1) The Board of directors of a Bank shall appoint annually an external auditor whose principal duty shall be to examine the books and records and to prepare and submit to the shareholders a report on the annual balance sheet and profit and loss account of the bank, and of its results for the period then ended.
- (2) Every such report shall contain an opinion stating whether or not the balance sheet and profit and loss account give a true and fair view of the state of affairs of the bank and of its results for the period then ended, and contain such other matters and information as may be prescribed from time to time by the Central Bank by regulation.
- (3) Notwithstanding the provisions of any other law no person shall be appointed or re-appointed as an external auditor of a bank unless the Central Bank approves the appointment.
- (4) Every bank shall submit to the Central bank the name of the person proposed for approval as external auditor.
- (5) The Central Bank may request for such information as it shall deem fit for purposes of evaluating the approval request.
- (6) The Central Bank may-
  - (a) approve the appointment or re-appointment of the external auditor;  
or
  - (b) Refuse the request for approval with reasons.
- (7) A person who has been the external auditor of a bank for 3 consecutive years shall not be eligible for re-appointment until after the lapse of 2 years.

## **23. Disqualification of certain persons as external auditors**

A person:-

- (1) having any interest in a bank otherwise than as a depositor;
- (2) who is a director, officer or agent of a bank;

- (3) being a firm in which a director of a bank has any interest as partner or director; or
- (4) who is indebted to a bank;

Shall not be eligible for appointment as the external auditor for that bank.

## **24. Removal of external auditors**

- (1) The Central Bank may by written notice order a bank to remove any person from the position of external auditor if the Central Bank is satisfied that the external auditor:
  - (a) has failed to adequately and properly execute the functions and duties of the external auditors required under this Act or any regulations made under this Act;
  - (b) does not meet the criteria for a fit and proper person set out in this Act;
  - (c) has reasonable grounds for believing that the bank is insolvent, or there is a significant risk that the bank will become insolvent; or the bank has failed to comply with the prudential requirements under this Act; or knowing existing facts about the bank which may materially prejudice the interests of depositors, fails to report to the Central Bank;
  - (d) has been convicted of an offence of which dishonesty is an element;
  - (e) is incompetent or unfit to perform the functions of an external auditor;
  - (f) is under investigation by the Public Accountants' and Auditors' Board; or
  - (g) Fails to disclose any direct or indirect interests which may constitute a conflict of interest in respect of such auditor's duties.
- (2) The Central Bank shall before issuing the order in subsection (1) give written notice to:
  - (a) the external auditor; and

- (b) the bank;

Allowing them a reasonable opportunity to submit representations on the matter within the period specified in the notice.

- (3) The Central Bank shall consider the representations and make its decision.
- (4) The decision of the Central Bank shall be communicated to the external auditor and to the bank.
- (5) If the Central Bank removes an auditor under this section, the board of directors of the bank shall propose another person as auditor under the provisions of section 24.

## **25. Tenure of appointment of external auditor.**

- (1) Every external auditor shall be appointed for an initial period of 12 months covering the financial year of the bank, and may thereafter be renewed for a maximum of two successive periods.
- (2) Except where the current period of engagement has expired, a bank shall not, without the prior written approval of the Central Bank, remove any person duly appointed as external auditor under this Act.
- (3) The resignation of the external auditor shall not take effect until then Central Bank has granted its approval of the resignation.

## **26. Duty of the external auditor to report to the Central Bank.**

- (1) A person who is or has been an external auditor of a bank shall have a duty to inform the Central Bank immediately he becomes aware or has reasonable grounds to believe that:
  - (a) the bank is insolvent, or there is a significant risk that the bank will become insolvent;
  - (b) the bank has failed to comply with the requirements of this Act or the regulations made under this Act;

- (c) there are existing facts about the bank which may be detrimental to the interests of depositors
- (2) A person, who is or has been an external auditor of a bank, who fails to comply with the provisions of subsection (1) commits an offence and shall on conviction be liable to pay a fine of not less than 20 penalty currency points or to imprisonment for a term not less than 3 years, or both.
- (3) A person convicted under subsection (2) shall cease to be a fit and proper person, and shall be removed as the external auditor of the bank without any requirement for further notice.
- (4) The reporting in good faith by an external auditor of information in terms of subsection (1) (a) (b) or (c) of this section, and section 29 subsection (1) shall in no circumstances be held to constitute a contravention of any provision of the law or a breach of any provision of any code of professional conduct to which such auditor may be subject, or any contract provisions on confidentiality.
- (5) No right of action in law shall accrue to any person against an external auditor who has in good faith submitted to the Central Bank any information required under subsection (1).

**27. Audit assignments by the Central Bank.**

- (1) The Central Bank may, in writing, direct an external auditor or an internal auditor to carry out such assignment in relation to the bank and its operation as the Central Bank may consider appropriate.
- (2) Any costs for assignments ordered under this section shall be met by the bank.

**28. External auditors access to information.**

- (1) The external auditor shall have access to any records, files or data of the bank, including management information and the minutes of all committees of management and of the board and its committees, whenever it is relevant to the performance of his duties.

- (2) A person who fails, refuses or neglects to provide any information, to the external auditor, requested for under subsection (1), or obstructs the external auditor in the performance of his duties under this Act commits an offence and shall on conviction be liable to pay a fine not exceeding 10 penalty currency points or imprisonment not exceeding 2 years or both.

## **29. Audit committee**

- 1) The board of directors of a bank shall appoint amongst its members an audit committee of the Board.
- 2) The following persons shall be disqualified for appointment as members of the audit committee of the Board:
  - (a) any person employed by the bank;
  - (b) any person employed by the holding or subsidiary company of the bank; and
  - (c) The chairperson of the board of directors.
- 3) The committee shall meet at least once every quarter, of the financial year of the bank, and at such other times and with such frequency as the business may require.
- 4) The mandate of the audit committee shall be to—
  - (a) Assist the board of directors—
    - (i) To ensure that there is in place within the bank effective internal control and financial reporting policies and procedures, management information systems and auditing processes;
    - (ii) to facilitate and promote communication, regarding the matters referred to in paragraph (i) of subsection (a) or any other related matter, between the board of directors and the chief executive officer, the external auditor, and internal auditor;
  - (b) Procure the recruitment of the internal auditor and consider any matters related to his remuneration, performance and dismissal;
  - (c) Approve the terms of reference for the internal audit function, and monitor the execution of the internal audit program;

- (d) Promptly review all the internal audit reports and the implementation of the recommendations;
  - (e) Consider and make recommendations to the board on the appointment, re-appointment and independence of the external auditor;
  - (f) meet with the external auditor at least twice each financial year, once at the planning stage, where the scope of the audit will be considered, and once post audit at the reporting stage, and ensure that any external auditors management letters and managements responses are reviewed;
  - (g) Review the consistency of the accounting policies on a year to year basis;
  - (h) review the banks financial statements, make comments thereon concerning accuracy, unusual transactions, lack of clarity in disclosures, significant adjustments, going concern assumption, compliance with International Accounting Standards, compliance with this Act, insider transactions and any other matter deemed of significance;
  - (I) determine the fees payable to the external auditor;
  - (j) To determine the nature and extent of any non-audit services that the external auditor may or may not provide to the bank; and
  - (k) Perform such further functions as may be assigned by the board or the Central Bank from time to time.
- (2) The audit committee shall prepare a report, to be included in the annual accounts and financial statements for every financial year describing how the audit committee carried out its functions; stating whether the audit committee is satisfied that the auditor was independent of the bank and commenting, in any way the committee considers appropriate, on the financial statements, the accounting practices and the internal financial control of the bank.

### **30. Internal Auditor**

- (1) Every bank shall set up an independent internal audit function, and appoint a professionally qualified and competent person in the field of auditing as the internal auditor.
- (2) The duties of the internal auditor shall be to:
  - (a) examine and evaluate the appropriateness and effectiveness of the internal control systems and of the manner in which assigned responsibilities are fulfilled;
  - (b) review and report on the banks compliance with internal policies;
  - (c) report on the reliability (including integrity, accuracy and comprehensiveness) and timeliness of financial and management information;
  - (d) evaluate compliance with this Act, regulations made there under, supervisory directives, and any other laws;
  - (e) provide an investigative service to management;
  - (f) make an assessment of the bank's internal capital adequacy and its compliance with regulatory capital ratios; and
  - (g) Report on the functioning of the staff departments.
- (2) The internal auditor appointed under this section shall have a direct reporting line to the audit committee of the board.
- (3) The internal auditor shall, upon request, be allowed access to any records, files or data of the bank, including management information and the minutes of the board and its committees and of all committees of management.

### **31. Duty of the internal auditor to report to the Central Bank.**

- (1) A person who is or has been an internal auditor of a bank shall have a duty to inform the Central Bank and the audit committee immediately he becomes aware or has reasonable grounds to believe that:
  - (a) the bank is insolvent, or there is a significant risk that the bank will become insolvent;

- (b) the bank has failed to comply with the requirements of this Act or the regulations made under this Act; or
  - (c) there are existing facts, about the bank, which may be detrimental to the interests of depositors
- (2) Any person who is or has been an internal auditor of a bank who fails to comply with the provisions of subsection (1) commits an offence and shall on conviction be liable to pay a fine of not less than 20 penalty currency points or imprisonment for a term not less than 2 Years.
  - (3) A person convicted under subsection (2) shall cease to be a fit and proper person, and shall be removed as the internal auditor of the bank without any requirement for further notice.
  - (4) The reporting in good faith by an internal auditor of information in terms of subsection (1) (a) (b) or (c) shall in no circumstances be held to constitute a contravention of any provision of the law or a breach of any provision of any code of professional conduct to which such auditor may be subject, or any contract provisions on confidentiality.
  - (5) No right of action in law shall accrue to any person against an internal auditor who has in good faith submitted to the Central Bank any information required under subsection (1).

**32. Consultations between external auditor and internal auditor**

- (1) The external auditor and the internal auditor shall consult regularly.
- (2) The external auditor shall have access to relevant internal audit reports and be kept informed by the internal auditor of any significant matter that comes to the internal auditor's attention which may affect the work of the external auditor.

**CHAPTER V- REGULATORY SUPERVISION**

**33. onsite and off site Examinations**

- (1) The Central Bank shall from time to time through its officers or any appointed agent examine or cause an onsite and or offsite examination to be made of each bank, its financial records, books of accounts, and all such other records as it may require in order to determine that such

bank is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

- (2) For the purpose of determining the financial condition of a bank and its compliance with this Act, protecting the safety of depositors' funds, and to ensure that the operations of the affiliate, associate, holding or subsidiary company of a bank will not adversely affect the financial soundness of the bank, the Central Bank may at any time:
  - (a) through its officers or any appointed agent examine or cause an onsite or offsite examination to be made of the operations and financial condition of any affiliate, associate, holding or subsidiary company of a bank;
  - (b) request any affiliate, associate, holding or subsidiary company of a bank to submit to the Central Bank within such time as shall be specified in the request such information on its operations the Central Bank may deem necessary; or
  - (c) Summon in writing the principal officers, directors, shareholders, controllers of any affiliate, associate, holding or subsidiary company of a bank to attend any meeting and answer any queries.
- (3) The Central Bank may discuss with an executive officer, chief executive officer or employee in charge of a risk management function of a bank or controlling company, internal or external auditor of the bank, a member of the board of directors any matters related to compliance by the bank with this Act, the financial soundness of the bank, the management of the bank and any such related matters.
- (4) In order to carry out an examination of a bank under subsection (1), the Central Bank may duly authorize any person in writing to-
  - (a) administer an oath or affirmation or otherwise examine any person, if he or she has reason to believe that such person may be able to provide information relating to the affairs of the bank;
  - (b) at any time without prior notice—
    - (i) enter any premises and require the production of any document relating to the affairs of the bank;
    - (ii) enter and search any premises for any documents relating to the affairs of the bank;

- (iii) open any strong room, safe or other container which he or she suspects contains any document relating to the affairs of the bank;
  - (iv) examine, make extracts from and copy any document relating to the affairs of the bank or, against the issue of a receipt, remove such document temporarily for that purpose;
  - (v) against the issue of a receipt, seize any document relating to the affairs of the bank, which, in his or her opinion, may afford evidence of an offence or irregularity; or
  - (vi) Retain any seized document for as long as it may be required for criminal or other proceedings.
- (2) A person who fails, refuses or neglects to provide any record, document, or information requested for under subsection (1), commits an offence and shall on conviction be liable to pay a fine of not less than 10 penalty currency points to imprisonment not exceeding 2 years ,or both. In the case of a continuing offence to a further fine of 2 penalty currency points for each day on which the offence is continues after conviction.
- (3) If any information supplied or item produced is false in any material particular, the financial institution or affiliate, or both, commit an offence and shall be liable on summary conviction to pay a fine of not less than 10 penalty currency points.

#### **34. Supervisory Standards.**

- (1) The Central Bank may implement in Somalia such international regulatory or supervisory standards and practices as it may deem appropriate.
- (2) The Central Bank may from time to time make regulations implementing any international regulatory or supervisory standards and practices.

### **35. Special Enquiry Directives to banks and related companies.**

- (1) The Central Bank may through its officers or any appointed agent carry out a special enquiry, relating to the operations of any bank or an affiliate, associate, holding or subsidiary company of a bank, if in the opinion of the Central Bank such enquiry is necessary to safe guard the bank and ensure its compliance with this Act, or to assure the financial soundness of the bank, and protect the interests of the depositors.
- (2) For purposes of carrying out the enquiry, the Central Bank may by notice in writing -
  - (a) direct a bank or an affiliate, associate, holding or subsidiary company of a bank to furnish the Central Bank, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as may be specified in the notice and as the Central Bank may reasonably require for the performance of its functions under this Act; or
  - (b) direct such bank, or an affiliate, associate, holding or subsidiary company of a bank to furnish the Central Bank with a report by an auditor approved for that purpose by the Central Bank or by any other person with appropriate professional skill, on any matter, or any aspect of any matter, about which the Central Bank has directed or may direct.
- (3) The costs of the special enquiry and of any reports by an auditor issued under this section shall be met by the bank or affiliate, associate, holding or subsidiary company of a bank in question.
- (4) A person who fails, refuses or neglects to provide any record, document, or information requested for under subsection (2), commits an offence and shall be liable, on conviction, to pay a fine of not less than 10 penalty currency points or to imprisonment not exceeding 3 years, or both and in the case of a continuing offence, to a further fine of 2 penalty currency points for each day on which the offence is continues after conviction.

## **CHAPTER VI – INTERVENTION BY THE CENTRAL BANK**

### **36. Intervention Directions**

- (1) The Central Bank may give a direction to a bank under this section if it appears to the Central Bank that–
  - (a) One or more of the conditions or requirements of the license issued to the bank have not been complied with;
  - (b) The provisions of this Act are not being complied with;
  - (c) The financial affairs of the bank are being conducted in a manner that endangers the interest of the depositors;
  - (d) The management of the bank has failed to comply with and orders, directives or requirements issued by the Central Bank;
  - (e) the bank has, in purported compliance with any requirement under this Act, knowingly or recklessly given the Central Bank information which is false or misleading in a material particular; or
  - (f) None of paragraphs (a) to (e) applies, but it is desirable to give a direction in order to protect the interests of depositors, or to safeguard the financial sector.
- (2) A direction under this section may–
  - (a) Require the bank to do, or cease and desist from doing any act or thing that may be specified in the direction; or
  - (b) Require the bank to take any remedial action as may be specified in the direction.
- (3) If the license of a bank is revoked under the provisions of this Act, the revocation does not affect any direction under this section which is then in force.
- (4) Where a bank fails, refuses or neglects to comply with any direction issued under subsection (1) the Central Bank may–
  - (a) Remove or suspend any person who has failed, refused or neglected to comply with the direction;

- (b) Remove or suspend any person from the management of the bank;
  - (c) appoint a person suitably qualified and experienced in the opinion of the Central Bank to manage the affairs of the bank for such period as the Central Bank shall determine; or
  - (d) Take any other punitive or remedial action as the Central Bank shall deem appropriate to rectify the problem and deter any further violations.
- (5) A person who contravenes a direction issued by the Central Bank under this section commits an offence and shall on conviction be liable to pay a fine of not less than 10 penalty currency points or imprisonment for a term not exceeding 2 years, or both.
- (6) The Central Bank may, either on its own initiative or on the application of the bank revoke or vary a direction given under this section if it appears to the Central Bank–
- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force; or
  - (b) In the case of variation, that the direction should take effect or continue in force in a different form.
- (7) On an application by the bank to revoke or vary a direction given under this section, the Central Bank may–
- (a) Vary the direction in any way including otherwise than in accordance with the application;
  - (b) Refuse to revoke or vary the direction; or
  - (c) Revoke the direction,

And the decision of the Central Bank shall be final.

- (8) A direction takes effect–
- (a) Immediately, if it is expressly stated in the direction notice given; or
  - (b) On such date as may be specified in the direction notice;

- (9) If the Central Bank gives a direction under this section, it shall serve a direction notice on the bank and such direction notice shall—
  - (a) Give details of the direction;
  - (b) State the date when the direction takes effect; and
  - (c) State the Central Bank's reasons for giving the direction.
- (10) The Central Bank may, on its own initiative, by notice revoke a direction issued under this section.

### **37. Special administration by the Central Bank**

- (1) The Central Bank may take over the management of a bank where in its opinion:
  - (a) The bank has engaged in serious violations of the provisions of this Act or regulations made hereunder;
  - (b) The bank has incurred or is likely to incur serious capital losses;
  - (c) The bank is being managed in a manner likely to endanger the safety of depositors funds; or
  - (d) The license issued to the bank has been revoked.
- (2) The Central Bank shall upon taking over management under subsection (1) have exclusive powers of management of the bank and may—
  - (a) appoint any of its officers as Interim Administrator of the bank, pending the appointment of a Special Administrator;
  - (b) appoint any person as Special Administrator of the bank for such period and upon such terms as the Central Bank shall deem necessary;
  - (c) appoint any person other than a person who is in the employment of the bank, who in the opinion of the Central Bank has wide experience of and is knowledgeable about the specific field of activities in which the bank is predominantly engaged, to assist the Special Administrator in the management of the affairs of the bank;

- (d) appoint an Advisory Board of Directors for the Bank upon such terms and with such mandate as the Central Bank may deem necessary; or
  - (e) remove any person appointed under subsection (2) (a), (b), (c) or (d)
- (3) The costs incurred shall be met out of the funds of the bank.
- (4) Upon take-over of the management of the bank under subsection (1), the functions of the management, board of directors, and other governing bodies of the bank shall be suspended.
- (5) The Central Bank shall have powers to issue such advice, directions, instructions, orders to any person appointed under subsection 2.
- (6) The Central Bank shall upon taking over management of the Bank require the outgoing management to deliver to the Central Bank the following documents:
- (a) a most recent (not exceeding 30 days) set of accounts which shall include a balance sheet, profit and loss accounts, statement of funds flow and notes to the accounts;
  - (b) the assets register;
  - (c) all policy manuals;
  - (d) all minutes of the Board, management committees, and other internal bodies; and
  - (e) Any other documents that the Central Bank shall in writing request.
- (7) A person who:
- (a) obstructs the Central Bank, the Interim Administrator, the Special Administrator in taking over management of a bank;
  - (b) falsifies, or submits to the Central Bank any false documents; or
  - (c) fails or refuses to submit to the Central Bank any documents requested for,

Commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 2 years.

### **38. Powers of Administrators**

The Interim Administrator or Special Administrator (as the case may be) shall have powers to:

- (1) exercise all the management functions of the bank, subject to the supervision of the Central Bank;
- (2) recover from any person and take possession of all the assets of the bank;
- (3) employ and dismiss staff;
- (4) execute any document or instrument in the name of the bank;
- (5) commence or defend any legal proceedings in the name of the bank;
- (6) exercise the powers of the board of directors collectively and individually, including the board's powers of delegation and use of the seal until such a time as the Central Bank shall appoint an Advisory Board of Directors;
- (7) dispose of any of the bank's assets in the ordinary course of the bank's business;
- (8) suspend or limit the payment of the bank's obligations and such action shall not constitute an act of insolvency or bankruptcy;
- (9) cancel any loan agreement or credit facility entered into by the bank or any disbursement if, in the opinion of the Special Administrator such disbursement or any loan under such loan or credit facility would not be adequately secured or would not be repayable on terms satisfactory to the Special Administrator or if the bank lacks the necessary funds to meet its obligations under any such agreement or if it would not otherwise be in the interests of the bank;
- (10) suspend or reduce, the right of creditors of the bank to claim or receive interest on any money owing to them by that bank;
- (11) convene the annual general meeting and any other meeting of members of the bank provided for the under the law regulating companies;

- (12) convene a meeting of the creditors of the bank for purposes of establishing the liabilities of the bank;
- (13) keep such accounting records and prepare such annual financial statements, interim reports and provisional annual financial statements as the bank would be required under this Act or any other law;
- (14) ensure compliance by the bank with its obligations under this Act; and
- (15) Do any other act or thing which is necessary and expedient to facilitate the carrying out of acts authorized above.

### **39. Functions of the Advisory Board of Directors**

The Advisory Board shall exercise control functions, advice the Special Administrator on Governance and corporate strategy issues, and carry out such other functions as may be assigned by the Central Bank from time to time.

### **40. Bar on Legal Action**

- (1) No actions, legal proceedings, execution or other legal process shall be commenced or continued against a bank that is in administration or in liquidation.
- (2) No action shall be commenced or continued against any person appointed by the Central Bank under subsection (2) of section 39, or a liquidator for anything done in good faith in the exercise of their powers granted under this Act or in execution of any direction, order or instructions from the Central Bank.

### **41. Duration of Administration**

The period of administration shall be initially up to 12 (twelve) months but may be extended for such further period not exceeding 6 months as the Central Bank may determine.

## **42. Administration Reports**

The Special Administrator shall every thirty days, submit to the Central Bank a report of his activities in the period covered and a statement of affairs on solvency and going concern status of the bank, and shall also submit a set of accounts of the bank which shall include a balance sheet, profit and loss accounts, statement of funds flow and notes to the accounts.

## **43. Termination of Administration**

- (1) The Central Bank may at any time terminate its management of the bank and the administration thereof by the Special Administrator where;
  - (a) within six months of appointment of the Special Administrator, the bank is unable to comply with the capital or prudential requirements;
  - (b) the bank fails to meet its obligations to its depositors and other depositors as and when due;
  - (c) there is no reasonable probability that the bank will continue as a going concern; or
  - (d) It is in the best interest of the financial sector.
- (2) Upon termination of the administration under this section:
  - (a) the Central Bank shall close the bank;
  - (b) the appointment of the Special Administrator shall cease with immediate effect notwithstanding any contractual provisions to the contrary; and
  - (c) The appointment of the Advisory Board shall cease with immediate effect.

## **44. Withdrawal from Administration**

- (1) The Central Bank may withdraw its management and the administration of a bank where in the opinion of the Central Bank, the bank has during the period of administration returned to solvency, its capital has been

restored, and it is able to meet its obligations to its depositors as and when due for the foreseeable future.

- (2) The Central Bank may impose such conditions, restrictions, and directives on the bank as it may deem fit to be satisfied by the bank before and or after the withdrawal of administration under this section.

#### **45. Non application of insolvency laws**

Neither Title IV of the Bankruptcy Law nor Article 2409 of the Civil Code shall apply to banks licensed under this Act.

#### **46. Significantly Undercapitalized banks**

- (1) Where a bank is significantly under-capitalized to the extent that its risk weighted assets ratio is below 5 per cent but above 2 per cent, the Central Bank may:-
  - (a) order the bank to submit a re-capitalization plan acceptable to the Central Bank within such period as shall be stipulated in the order; and
  - (b) Prohibit the bank from extending any further credit and incurring any additional capital expenditure without the approval of the Central Bank; and or
  - (c) Remove, for reasons to be recorded in writing and with effect from any date as may be specified, any director, manager, officer or employee of the bank; and
  - (d) Order the bank to take such steps or to do or not to do any act or thing whatsoever in relation to the business of the bank or its directors or officers, which the Central Bank may consider necessary;
- (2) If the capital position of a significantly undercapitalized bank deteriorates further, the Central Bank may immediately appoint a Special Administrator or a liquidator over its business.

#### **47. Bank Closure and Resolution:**

- (1) The Central Bank may close a bank and take possession of its operations and assets if, the bank-

- (a) is unable, or likely to become unable, to pay its debts;
  - (b) is failing, or is likely to fail, to satisfy the capital requirements under this Act; or
  - (c) Has incurred or is likely to incur significant losses that will deplete its capital.
- (2) Upon closure of a bank under this section, the Central Bank shall have powers to-
- (a) sell all or part of the business of the bank to a commercial purchaser and for that purpose the Central Bank may make one or more-
    - (I) share transfer instruments;
    - (ii) Property transfer instruments.
  - (b) arrange a merger with another bank; or
  - (c) Place the bank into compulsory liquidation.
- (3) The powers of the Central Bank in subsection (2) of this section shall be exercised with the objective of taking the most appropriate action in each case which shall-
- (a) protect and enhance the stability of the financial systems of Somalia;
  - (b) protect and enhance public confidence in the stability of the banking systems of Somalia; and
  - (c) Protect the depositors.

#### **48. Temporary public ownership**

- (1) The Central Bank may transfer any bank closed under the provisions of section 45 into temporary public ownership where-
- (a) the Government through the Minister of Finance agrees to provide financial support to the bank in the public interest in order to avert a serious threat to the stability of the banking sector in Somalia; and
  - (b) Both the Central Bank and the Government through the Minister of Finance have agreed on the action.

- (2) The Central Bank may in consultation with the Minister of Finance make regulations governing the temporary public ownership of banks.

## **CHAPTER VII – REGULATION OF MONEY TRANSFER BUSINESS (HAWALAS)**

### **49. Compulsory Registration of money transfer businesses**

- (1) Every person who owns or controls a money transfer business shall register the business (whether or not the business is licensed as a money transfer business) with the Central Bank not later than the end of the 3 months period from the date of commencement of this Act.
- (2) The Central Bank shall prescribe, by regulation, the form and manner for registering a money transfer business pursuant to subsection (1).
- (3) The registration of a money transfer business under this section shall not be construed as superseding the requirement for application for a license under subsection 6.
- (4) A person who:
  - (a) files a false or materially incomplete information in connection with the registration of a money transfer business under this section; or
  - (b) Fails to register a money transfer business as required under this section,  
  
commits an offence under this Act and shall be liable to a civil penalty of 2 penalty currency points for every day on which the offence continues and shall be disqualified from applying for a license for the money transfer business under section 52 subsection (5), for a period of 2 (two) years.
- (5) The registration of a money transfer business under subsection (1) shall include the following information:
  - (a) The name and location of the business.
  - (b) The name and address of each person who—
    - (i) Owns or controls the business;

- (ii) Is a director or officer of the business; or
  - (iii) Otherwise participates in the conduct of the affairs of the business.
- (c) The name and address of any bank at which the business maintains a transaction account;
  - (d) An estimate of the volume of business in the previous 2 years of operation;
  - (e) A list of the names and addresses of all persons authorized to act as an agents for such money transfer business; and
  - (f) Such other information as the Central Bank may require.

**50. Licensing of money transfer business**

- (1) A person shall not carry on or engage in money transfer business without a valid license issued by the Central Bank for that purpose.
- (2) The prohibition in subsection (1) shall apply to any person who engages as a business in the transfer of funds, including any person who engages, as a business, in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional banking system.
- (3) An application for a license to engage in money transfer business may be made to the Central Bank by:
  - (a) A body corporate; or
  - (b) A partnership.
- (4) A bank authorized to carry on banking business in Somalia which is expressly permitted under its license to carry on money transfer business as a licensed activity shall not require permission under this section.
- (5) A person proposing to carry out a money transfer business in Somalia shall apply for the grant or renewal of a license from the Central Bank:

- (a) using such form as the Central Bank may by regulation prescribe;
  - (b) shall submit such information as the Central Bank may reasonably require; and
  - (c) Shall pay such application fees as the Central Bank may by regulation prescribe.
- (6) The Central Bank shall evaluate the application to determine whether it is satisfactory.
- (7) In considering any application for a money transfer license, the Central Bank may require to be satisfied as to:
- (a) the good character of the applicant or, if the applicant is a company, the general character of the management of the company;
  - (b) the financial condition of the applicant;
  - (c) whether the public interest will be served by the granting of the money-transfer license; and
  - (d) Whether the applicant will comply with money laundering and reporting requirements.
- (8) The Central Bank shall, at any time after receipt of the application but before determining it, require the applicant to provide it with such further information as it reasonably considers necessary to enable it to better evaluate and determine the application.
- (9) The Central Bank shall have the discretion to impose different requirements in relation to different applications as it may deem prudent to protect customers and for the safety of the financial sector.
- (10) The Central Bank may vary or add to the requirements imposed on any license.
- (11) The Central Bank may, upon evaluating an application, grant or renewal of a license, with or without conditions, or refuse to grant or renewal of a license with reasons.

- (12) Where a license is issued, it shall be valid for 12 months but may be renewable.
- (13) The Central Bank shall in each license granted or renewed describe in such manner as it may consider appropriate the specific money transfer activities which the licensee has been permitted to conduct and a person shall not engage in any activity not specified in the license.
- (14) The Central Bank may from time to time upon grant or renewal of a conditional license, add, vary, revoke or substitute such conditions as it may consider appropriate and the bank shall comply with those conditions.

## **51. Power to enter premises, inspect and investigate**

- (1) The Central Bank may upon reasonable suspicion that any person:
  - (a) is carrying on money transfer business in contravention of this Act;
  - (b) has failed to register a money transfer business as required under the provisions of this Act; or
  - (c) has failed to comply with any provision of section 52,

Authorize any person acting on its behalf to enter any premises, inspect the premises and take possession of any book, document or record which he reasonably requires for the purpose of ascertaining whether a contravention of this Act or any regulations made there under is being or has been committed.

- (2) A person who:
  - (a) fails without reasonable excuse to provide access to any premises, documents, records or obstructs in any way the person appointed by the Central Bank under subsection (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of 2 years or to pay a fine not exceeding 10 penalty currency points, or both and, in the case of a continuing offence, to a further fine of 2 penalty currency points for every day during which the offence continues after conviction.

**52. Imposition of conditions on the money transfer license**

- (1) A money transfer license granted or renewed under section 52 may be subject to such conditions as the Central Bank considers appropriate.
- (2) A condition may, in particular, be imposed so as to require the licensee to–
  - (a) Take specified action; or
  - (b) Refrain from taking specified action.
- (3) A condition shall expire at the end of such period as the Central Bank may specify.

**53. Variation and voluntary cancellation of license for money transfer**

- (1) The Central Bank may, on the application of any person holding a valid money transfer license, vary the authority granted in the license by–
  - (a) Adding an activity previously not permitted by the license;
  - (b) Removing an activity from those already permitted by the license; or
  - (c) Varying the description of an activity permitted in the license;
- (2) The Central Bank may, on the application of any person holding a license cancel the license.
- (3) The Central Bank may refuse an application under this section if it appears to it that:
  - (a) The interests of the customers or the public, would be adversely affected if the application were to be granted; or
  - (b) It is desirable in the interests of public, for the application to be refused.
- (4) If, as a result of a variation under this section, any person holding a license no longer carries on any regulated activities permitted under the license, the Central Bank shall cancel the license.

- (5) A person who knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transfer business, shall be liable on conviction to pay a fine not exceeding 30 penalty currency points or imprisonment for a term of not more than 5 years, or both and in the case of a continuing offence, to a fine not exceeding 2 penalty currency points for every day during which the offence continues after conviction.
- (6) In relation to this section, the following terms shall carry the meaning assigned below
  - (a) "Unlicensed money transfer business" means a money transfer business which:
    - (i) is operated without an appropriate money transfer license granted under this Act, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;
    - (ii) Fails to comply with the money transfer business registration requirements under this Act or regulations prescribed there under; or
    - (iii) Otherwise involves the transportation or transfer of funds that are known to the transmitter to have been derived from a criminal offence or are intended to be used to promote or support unlawful activity;
  - (b) The term "money transfer" includes transferring funds on behalf of the public by any and all means including but not limited to transfers within Somalia or to locations abroad by electronic means, IOU, cheque, draft, facsimile, mobile phone or courier.

#### **54. Performance Security for money transfer license**

- (1) Every person licensed to carry on money remittance business shall maintain with the Central Bank a security in the sum of United States Dollars 60,000 or its equivalent in Somali currency, or such other amount as may be prescribed by the Central Bank by regulation, in respect of its place of business, for the due performance of its obligations to its customers who will deposit or have deposited moneys with the licensee for remittance purposes.

- (2) Where a licensee carries on remittance business at more than one place of business, the licensee shall maintain with the Central Bank additional security as may be prescribed by the Central Bank in respect of each additional place of business.
- (3) The security referred to in subsection (1) or (2) above shall be —
  - (a) in the form of a cash deposit; or
  - (b) In such other form as the Central Bank may, in any particular case, permit.
- (4) All moneys deposited by a licensee who carries on remittance business under this section shall be treated as a single security and may be applied by the Central Bank, in respect of that licensee, for the purposes of subsection (5).
- (5) Where a licensee which carries on remittance business;
  - (a) Surrenders its license;
  - (b) Fails to renew its license upon expiry; or
  - (c) Has had its license revoked,

the Central Bank shall enforce the security referred to in subsection (1) or (2) to the extent required to pay any sums outstanding and claimed by the customers of the licensee who had given money to the licensee for remittance purposes; and if the security is insufficient to cover all sums claimed by such customers.
- (6) Where the security referred to in subsection (1) or (2) is provided in the form of a guarantee, bond, or undertaking it shall be lawful for the enforce it for the purposes of subsection (5).
- (7) Where a licensee which carries on remittance business has surrendered its license or its license has lapsed or expired or has been revoked, and the Central Bank is satisfied that there is no outstanding claim by any customer of the licensee, the Central Bank release the security or any unutilized part thereof, as the case may be, to the licensee.
- (8) Any security furnished by a licensee which carries on remittance business under this section shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever, and if the licensee is declared insolvent or is wound up by

an order of the court, the security shall be deemed not to form part of the property of the licensee.

## **55. Revocation of license for money transfer**

The Central Bank may revoke a money transfer license:

- (a) if the licensee has contravened any of the provisions of this Act;
- (b) if the licensee has failed to comply with or observe any of the conditions of his or its license;
- (c) if the licensee has failed to comply with or observe any written direction issued to him or it by the Central Bank under this Act;
- (d) if the licensee has made a false or misleading statement in his or its application for a license;
- (e) if the licensee has carried on or is carrying on business in a manner likely to be detrimental to the interests of the public or of his or its customers;
- (f) where the licensee is an individual, if the licensee has been convicted, whether in Somalia or elsewhere, of an offence —
  - (i) involving fraud or dishonesty; or
  - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly;
- (g) where the licensee is a partnership, if any of its partners has been convicted, whether in Somalia or elsewhere, of an offence —
  - (i) Involving fraud or dishonesty; or
  - (ii) The conviction for which involved a finding that he had acted fraudulently or dishonestly;
- (h) Where the licensee is a limited liability company, if:
  - (i) A receiver, a receiver and manager, liquidator or an equivalent person has been appointed, whether in Somalia or elsewhere, in relation to or in respect of any property of the licensee.

- (ii) The licensee, or any of its directors or substantial shareholders has been convicted, whether in Somalia or elsewhere, of an offence —
  - (A) Involving fraud or dishonesty; or
  - (B) The conviction for which involved a finding that it or he had acted fraudulently or dishonestly.
- (i) The licensee has been involved in money laundering or the financing of terrorism; or
- (h) it is the public interest for the license to be revoked

## **56. Preservation of accrued rights and obligations**

The lapse, surrender, revocation, or expiry of a license shall not operate so as to avoid or in any way affect any accrued rights or obligations to any person under any agreement, transaction or arrangement relating to the money-changing business or remittance business, as the case may be, entered into with the licensee, before the lapse, surrender, revocation, or expiry of the license, as the case may be.

## **57. Maintenance of client's account**

- (1) Every money remittance business shall maintain a current or deposit account entitled "Client's Trustee Account" at a bank.
- (2) All moneys received from the customers for remittance purposes, (minus fees and charges for transfer services) shall be deposited into the account referred to in subsection (1) no later than the next business day following the day of receipt.
- (3) No withdrawals shall be made from the Client's Trustee Account except money properly required for a payment to or pursuant to the customers instructions;
- (4) The licensee shall not deposit its own funds unto the Client's Trustee Account except such minimum funds required, for account opening, and to meet bank fees and charges.

- (5) The licensee shall be prohibited from pledging, charging or in any other way encumbering the Client's Trustee Account.
- (6) Any money paid into the Client's Trustee Account by mistake shall be withdrawn immediately when the mistake is discovered and the licensee shall keep a separate record of all such withdrawals including the names and identity of the depositor, the sum withdrawn and the names and identity of the payee.
- (7) The moneys in a customers' account maintained by a licensee at a bank shall not be liable to be attached, sequestered or levied upon for or in respect of any debt of the licensee or any claim whatsoever against the licensee, and if the licensee is declared insolvent or is wound up by an order of court, the moneys in the customers' account shall be deemed not to form part of the property of the licensee.
- (8) Any licensee who contravenes any of the provisions of this section commits an offence and shall be liable on conviction to pay a fine not exceeding 20 penalty currency points or to imprisonment for a term not exceeding 2 years or to both.
- (9) The Central Bank shall by regulation prescribe procedures for supervision of money transfer companies

## **58. Accounts and other financial records**

- (1) Every licensee for a money transfer business shall keep all his or its transactions in such books, accounts, records and registers as the Central Bank may by regulation prescribe from time to time and shall produce such books, accounts, records and registers for inspection by the Central Bank upon written request.
- (2) The books, accounts, records and registers shall be retained for a period of at least 3 (three) years after the date of the transaction.
- (3) Any person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding 20 penalty currency points
- (4) Every licensee for a money transfer business shall at his or its own expense appoint annually an auditor to carry out an audit of the transactions in its money remittance business and submit a copy of the

audit report to the Central Bank within 3 (three) months from the end of its financial year.

## **CHAPTER VIII – BOARD OF DIRECTORS**

### **59. Board of Directors**

- (1) The shareholders of a bank shall, subject to the final approval of the Central Bank nominate for appointment such persons who-
  - (a) satisfy the fit and proper criteria; and
  - (b) are appropriately qualified and experienced;

To the board of directors of the bank.

- (2) The board of directors shall consist of at least five directors and shall be headed by a Chairperson.
- (3) A person who is an employee in the bank or an employee or a director in a company which is an associate, affiliate, holding, or controlling company of the bank shall not qualify as Chairperson of the Board.
- (4) Notwithstanding anything to the contrary in any other written law, or any agreement, not more than fifty percent of the directors of the bank shall be employees of the bank or any of its subsidiaries or affiliates except, in such cases where the Central Bank is satisfied that all those directors who are employees have been deemed fit and proper to be directors of a financial institution by the home country regulator of the financial institution.
- (5) All persons nominated as directors, shall before confirmation of appointment be vetted by the Central Bank in accordance with the fit and proper test and any person who fails to satisfy the requirements of the test shall not become or remain a director of a bank.
- (6) The Central Bank may request for such information as it may deem fit from any person nominated as a director of a bank. Any person who knowingly or recklessly provides to the Central Bank information which is false or misleading in a material particular commits an offence and is liable on conviction to pay a fine not exceeding 20 penalty currency points or imprisonment not exceeding 2 years, or both.
- (7) All persons who at the commencement of this Act are directors of a bank shall be vetted in accordance with the fit and proper test.

## **60. Disqualified persons**

The following persons shall not qualify to be appointed as directors in a bank-

- (a) Any one below eighteen years of age;
- (b) A person of unsound mind;
- (c) An undercharged bankrupt;
- (d) A corporate entity.

## **61. Approval, rejection of proposed director**

The Central Bank may—

- (a) Approve any person nominated to become a director; or
- (b) Withhold its approval on the ground that the person concerned is not a fit and proper person to become a director.

## **64. Conflict of Interest**

- (1) A director of a bank, who is in any way, whether directly or indirectly, interested in any matter, shall have a duty to declare the nature of this interest at a meeting of the Board of Directors of the bank.
- (2) Notwithstanding the provisions of the Memorandum and Articles of the bank, no director or officer of a bank shall take part in the discussion of or taking a decision on any matter in which that person or any of his or her related persons has a direct or indirect interest.
- (3) Where subsection (2) of this section applies, every officer or director who has an interest in the matter referred to in subsection (2) shall notify the meeting of his or her interest or that of any of the parties mentioned in subsection (2) and shall recuses himself from the meeting whilst the matter is under discussion or decision.

## **62. Core functions of the Board**

- (1) The board of directors of a financial institution shall be responsible for—
  - (a) approving and periodically reviewing the overall business strategies;

- (b) approving and ensuring compliance with significant policies of the bank;
  - (c) understanding the major risks of the bank and setting acceptable risk levels;
  - (d) ensuring that senior management takes the steps necessary to identify, measure, monitor and control these risks;
  - (e) approving the organizational structure;
  - (f) establishing and maintaining an effectiveness of the internal control system;
  - (g) approval of interim and final financial statements;
  - (h) approval of significant changes in accounting policies;
  - (i) approval of dividends;
  - (j) approval of the bank's principle professional advisers;
  - (k) good corporate governance;
  - (l) regulatory compliance; and
  - (m) Any other functions as shall be assigned by the Central Bank or by the shareholders in the board mandate.
- (2) The directors of a bank shall appoint, from among their number, two executive directors who must:
- (a) be ordinarily resident in Somalia;
  - (b) have knowledge of the manner in which the institution's longer term strategy is pursued in practice and an ability to influence its policies; and
  - (c) Effectively direct the business of the financial institution.

### **63. Fiduciary duties of Directors**

- (1) A director shall, in relation to the bank in which he or she serves, stand in a fiduciary relationship and shall in addition and without derogation owe the bank and its shareholders the following duties, breach of which may be actionable in suit—
  - (a) a duty to act honestly and in good faith;
  - (b) a duty to act in the best interest and for the benefit of the bank;
  - (c) a duty to act independently, free from undue influence of any other person; and
  - (d) A duty to access necessary information to enable him or her to discharge his or her responsibilities.
- (2) The board of directors as an organ and each director individually shall immediately report in writing to the Central Bank (with a copy to the board of directors) if they have reason to believe that the bank will not or does not meet the capital requirements or that the bank may not be able to continue its business as a going concern.
- (3) The Central Bank may, where the board of directors or a director fails, omits or neglects to report to it any matter required to be reported under subsection (2) of this section, withdraw its approval of the board of directors as an organ, or its approval of any of the directors who was privy to such information but withheld it.

### **64. Removal of Directors**

- (1) The Central Bank may, for sufficient cause:
  - (a) remove a director of a bank;
  - (b) remove or suspend the whole board of directors of a bank; or
  - (c) Bar any member of the board from serving on a board of any bank in Somalia for such period as it shall deem fit.
- (2) For the purposes of subsection (1), 'sufficient cause' means—

- (a) In relation to a director or directors', ceasing to comply with the fit and proper test;
- (b) In relation to the board of directors—
  - (i) Failure, omission or neglect of their responsibilities in section 65;
  - (ii) Failure, omission or neglect to report to the Central Bank as required by subsection (2) of section 66;
  - (iii) Failure or omission or neglect of duties as prescribed by subsection (1) of section 66; or
  - (iv) Failure to attend without a lawful excuse, two consecutive meetings of the board or being absent from three board meetings for a consecutive period of six months.
- (3) A director serving on the board of a financial institution shall not simultaneously serve as a board member, or in any executive capacity, with any other bank or a subsidiary or affiliate of the bank in or outside Somalia.
- (4) Where the Central Bank—
  - (a) Removes or suspends the whole board of directors; or
  - (b) Removes any directors from the board and as a result of the removal the number of board members falls below the minimum prescribed in this Act, the Central Bank shall immediately assume the powers of the board of directors and shall within fourteen days summon a meeting of the shareholders for the purpose of electing a new board of directors, which shall be required to satisfy the provisions of this Act relating to the appointment of directors.

## **65. Board Secretary, minutes and meetings**

- (1) Every bank shall have a board secretary who shall attend all meetings of the Board of directors and the board committees.
- (2) The secretary shall record in writing with adequate detail the proceedings of all meetings of the Board of Directors and board committees and the Central Bank may, by notice, order any bank to

provide the Central Bank within a period specified in the notice, a copy of the minutes and resolutions duly certified as a true record by the Secretary and Chairperson of the board.

- (3) Notwithstanding anything in this Act and the memorandum and articles of association of a financial institution, or the Companies Act, the Central Bank may, in the interest of the safety of depositors order the board of directors of a bank to meet within such time and at such place as shall be specified.
- (4) The central bank shall have the powers to set the agenda of the meeting convened under subsection (3).
- (4) The Central Bank may upon notice, attend at any meeting of the board, but shall have no right to vote.

## **66. Mandatory Board Committees**

- (1) The board of directors shall constitute from among its members the following committees and assign a written mandate to each committee:
  - (a) Risk Committee;
  - (b) Human Resources and Administration Committee;
  - (c) Audit Committee; and
  - (d) Remuneration Committee.

## **CHAPTER IX - SHAREHOLDING AND CONTROL OF BANKS**

### **67. Limit on bank share ownership**

- (1) No person or group of related persons shall acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such person or group of related persons directly or indirectly owns or controls more than 20 per cent of the voting shares of the bank.
- (2) The Central Bank may dispense with the prohibition under subsection (1) and grant permission for a person or group of related persons to hold more than 20 percent but not exceeding 49 per cent of the shares of a bank in order to prevent a probable failure of the bank.

- (3) The provisions of this section shall not apply where the bank is placed under temporary public ownership pursuant to section 50.
- (4) The provisions of this section shall not apply to a publicly owned bank, or subsidiary of a foreign bank which is fully owned by the foreign bank.

**68. Requirement for consent to acquire shares**

- (1) It shall be unlawful, except with the prior approval of the Central Bank;
  - (a) for any person or group of related persons acting in concert to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such person or group of related persons directly or indirectly owns or controls more than 5 per cent of the voting shares of a bank.
  - (b) for any person or group of related persons acting in concert to acquire all or substantially all of the assets of a bank.
- (2). No bank shall register a transfer of shares comprising more than 5 percent of the voting shares of a bank without having written proof of the transferee having obtained the approval of the Central Bank under subsection (1) above.
- (3) Applications for approval under subsection (1) shall be made to the Central Bank in writing with the following details:
  - (a) Names and addresses of the applicant/s and of the person/s from which the applicant proposes to take a transfer of shares;
  - (b) The proposed share sale agreement;
  - (c) Proof that the applicant/s is or are fit and proper persons; and
  - (d) Any other information that the Central Bank may request.
- (4). Upon receipt of any application for approval under this section, the Central Bank shall consider the application and vet the applicants for the fit and proper test, and shall within 30 days either grant or deny the application and forthwith give written notice of that fact to the applicant/s.
- (5) The Central Bank may approve a foreign bank to acquire control of or acquire all or substantially all of the assets of, a bank located in Somalia without regard to the provisions of Section 70 provided the foreign bank is-

- (a) rated at least AAA by an international rating agency duly approved by the Central Bank for that purpose;
  - (b) adequately capitalized and properly managed; and
  - (c) Approved by the supervisory authority in its home country for the transaction.
- (6) The Central Bank may make regulations on the procedure for approval of acquisitions by foreign banks under subsection (5).

**69. Prohibition on registration of shares in the names of third parties**

- (1) Notwithstanding the provisions of the Companies Act, no bank shall without the written approval of the Central Bank—
- (a) Allow or issue any of its shares to, or register any of its shares in the name of any person other than the owner of the shares;
  - (b) Transfer any of its shares in the name of a person other than the owner; or
  - (c) Allow any of its shares to remain registered in the name of a person other than the owner at any time after 90 (ninety) days after the commencement of this Act.
- (2) Subsection (1) shall not affect the allotment or issue, or the registration of the transfer of shares in a bank in the name of —
- (a) Any executor, administrator, trustee of a fund, curator, guardian or liquidator;
  - (b) a stockbroker or a company established by him or her for the purposes of securities trading on account of customers in order to facilitate delivery of the shares to the purchaser of the shares for a period not exceeding 90 days from the date of registration.
- (3) A person who contravenes subsection (1) of this section commits an offence and is liable on conviction to forfeit to the Government all the shares registered in contravention of the subsection (1).
- (4) The Central Bank may make regulations governing the procedure for forfeiture under subsection (3).

## **70. Prohibition on exercising rights in respect of shares**

- (1) No person shall—
  - (a) Either personally or by proxy granted to any other person, cast a vote attached to; or
  - (b) Receive a dividend payable on any share in a bank allotted or issued to him or her or registered in his or her name in contravention of this Act.
- (2) The validity of any resolution adopted by a bank shall not be affected by a vote being cast in contravention of paragraph (a) of subsection (1), if that resolution was adopted by the requisite majority of votes which were validly cast.
- (3) Every bank shall have a secretary who shall keep and update the register of its shareholder's, and who shall immediately notify the Central Bank of any intended or actual changes in the shareholder's register.
- (4) The secretary shall not register any transfer which contravenes any provision of this Act and shall immediately report to the Central Bank any attempt by any person to effect such a transfer.
- (5) A person who contravenes subsection (1) or (3) of this section commits an offence and is liable on conviction to a fine of 10 penalty currency points

## **71. Sanctions and remedial orders for violating provisions on shareholding**

Notwithstanding the penal provisions imposed for violation of any provisions in this Chapter, the Central Bank may by regulation prescribe further administrative sanctions, and or remedial orders to be imposed on any person as it shall deem fit in relation to any violation of any provision in this Chapter.

## **72. Bar on controlling a bank**

- (1) Except with the written consent of the Central Bank, no person or group of related persons shall exercise a controlling influence over the board, management or policies of a bank.

- (2) If in the opinion of the Central Bank any person or group of persons is contravening the provisions of subsection (1), the Central Bank, may serve a cease and desist order to such person or group of persons citing the basis of its finding.
- (3) A person served with a cease and desist order under subsection (2) may within 7 (seven) days of receipt of the order contest the finding by making presentations to the Central Bank to prove that they do not contravene the provisions of subsection (1).
- (4) Upon receipt of the presentations in subsection (3) the Central Bank shall consider the presentation and make a finding either confirming the cease order or where it is convinced that the person does not control the bank, rescind the order.
- (5) A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable to pay a fine of 30 penalty currency points
- (6) A person convicted under subsection (5) shall cease to be a fit and proper person to be a shareholder in a bank.

## **CHAPTER X – CORPORATE RE-ORGANIZATIONS**

### **73. Restructuring, re-organization, mergers and disposal of banks**

- (1) Except with the prior consent of the Central Bank, no bank shall enter into an agreement or arrangement -
  - (a) Which results in a change in the control of the bank?
  - (b) For the sale, disposal or transfer howsoever, of the whole or any part of the business, of the bank;
  - (c) For the purchase of all or substantially all the assets and assumption of all or substantially all of the liabilities of a bank by another person;
  - (d) For the amalgamation or merger of the bank with any other person;
  - (e) For the reconstruction in which a bank or a controlling company or subsidiary of a bank is a member;
  - (f) To employ a management agent or to transfer its business to any such agent.
- (2) In relation to any proposed transaction mentioned in subsection (1), title to any shares or assets shall not pass and no contractual rights

shall accrue or be recognized until the Central Bank has provided its written consent.

- (3) Any agreement entered into in contravention of the provisions of subsection (1) shall be void ab initio and unenforceable at the option of any party.
- (4) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable to a fine not exceeding 50 penalty currency points or imprisonment for a term of 3 years or both and in the case of a continuing offence to an additional fine of 10 penalty currency points for each day during which the offence continues.

#### **74. Approval of asset transfer transactions**

- (1) If a bank licensed under this Act (in this part referred to as the transferor) intends to transfer in whole or in part to another bank (in this part referred to as the transferee) the assets and liabilities of the bank, or to enter into a merger, both banks shall submit to the Central Bank a request for approval of the transaction at least four months in advance of the effective date.
- (2) The Central Bank may either approve (with or without conditions) or decline to approve the transaction.
- (3) The Central Bank may include in the approval such additional conditions as it shall deem necessary to facilitate the effective implementation of the transaction, and to secure the safety of the depositor's funds.
- (4) The Central Bank shall not approve any transaction under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of Somalia.

#### **75. Transfer of Bank Accounts and balances**

On the effective date of the merger or transfer of assets and assumption of liabilities, any account maintained by any person at any branch or office of the transferor which is included in the business agreed to be transferred or merged shall be transferred or deemed to be transferred to the transferee and from that date an account between the transferee and that person with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such account between the transferor and the person had continued and any order, instruction, direction, mandate or authority given, whether before or after

that date, by that person in relation to such account or any obligation entered into by the transferor in relation to any person and subsisting at that date shall apply and have effect after the transfer of the account to the transferee as aforesaid, and any moneys owing on such account by that person to the transferor at that date shall become due and payable by that person to the transferee instead of to the transferor, and any moneys owing on such account by the transferor to that person at that date shall become due and payable by the transferee to that person instead of by the transferor.

#### **76. Saving of contracts**

All contracts, agreements, conveyances, covenants, settlements, trusts, deeds, leases, licenses and other instruments or undertakings entered into by or made with or addressed to the transferor or to which the transferor is a party (whether alone or with any other person) before and in force on the effective date shall as from that date be binding and of full force and effect in every respect against or in favour of the transferee as fully and effectually as if, instead of the transferor, the transferee had been a party thereto or bound thereby or entitled to the benefit thereof

#### **77. Transfer of securities**

On the transfer date, any security held by the transferor in connection with the business agreed to be transferred as security for the payment of the debts or liabilities (whether present or future, actual or contingent) of any person at any office or branch of the transferor shall be transferred or deemed to be transferred and be held by and be available to the transferee as security for the payment of such debts and liabilities to the transferee; and where the moneys secured by such a security include future advances to or liabilities of any person, the said security shall as from that date be held by and be available to the transferee as security for future advances to that person by and future liabilities of that person to the transferee to the same extent to which future advances by or liabilities to the transferor were secured thereby immediately before that date.

#### **78. No requirement for re-registration of securities.**

The transferee shall, in relation to any security transferred or deemed to have been transferred to the transferee in accordance with the transfer agreement and the moneys thereby secured, be entitled to the same rights and priorities and subject to the same obligations and incidents as the transferor would have been entitled and subject to if the same had continued to be held by the transferor, and the transfer of any such security shall not require re-registration.

### **79. Pending legal proceedings**

In any legal proceedings which are pending before any court or tribunal immediately before the transfer date to which the transferor is a party and which relate to any part of the business agreed to be transferred, the name of the transferee shall on the transfer date be substituted for that of the transferor and the proceedings shall not abate by reason of such substitution

### **80. Cancellation and re-issue of license**

Upon approval by the Central Bank of a merger of two or more banks, or of the transfer of all or substantially all of the assets and assumption of all or substantially all of the liabilities of a bank by another bank, the licenses issued to both banks under this Act shall lapse, and a new license shall be issued to the transferee to be valid from the effective date.

### **81. Exemption from tax and fees upon forced merger**

Where a merger or transfer of assets has been made under the order of the Central Bank, the transaction and all related transfers of assets under the transaction shall be exempt from any fees, taxes, or other charges.

### **82. Transfer of custodial obligations**

The custody of any document, goods or other property held by the transferor as bailee for any other person at any office or branch of the transferor shall be transferred or deemed to be transferred to the transferee on the effective date and the rights and obligations of the transferor under any contract of bailment relating to such document, goods or property shall be transferred or deemed to be transferred on that date to the transferee.

### **83. Interpretation of documents**

Where any document whensoever's made or executed contains any reference express or implied to the transferor, such reference shall, on and after the effective date and except where the context otherwise requires, be read, construed and have effect as a reference to the transferee.

## **CHAPTER XI - LIQUIDATION AND WINDING UP**

### **84. Compulsory Liquidation**

(1) A bank shall not be subject to any insolvency or winding up proceedings other than compulsory liquidation as provided for in this section and the

provisions of insolvency laws of Somalia shall not apply to banks unless expressly provided for in this Act.

- (2) The Central Bank may revoke the license of any bank and place it in liquidation, where:
  - (a) the bank is insolvent;
  - (b) the bank is unable, or likely to become unable, to pay its debts;
  - (c) the winding up of the bank would be in the public interest;
  - (d) the bank is failing, or is likely to fail, to satisfy the capital requirements under this Act;
  - (e) the bank is involved in serious and persistent violations of this Act; or
  - (f) Through a resolution of its general meeting approved in accordance with constitutional documents, resolves to be wound up voluntarily.
- (3) Upon taking the action prescribed in subsection (1), the Central Bank shall issue an order for the liquidation of the Bank appointing a person as the liquidator of the bank.
- (4) The Central Bank may at any time remove any person appointed as liquidator.
- (5) With effect from the date of appointment of the liquidator, the functions of the Management, the Board of directors, administrative and control bodies, general meetings and every other governing body of the bank shall cease.

## **85. Duration of Appointment**

A bank liquidator appointed by the Central Bank shall remain in office until-

- (1) he/she resigns under section 89;
- (2) he/she is removed or released by the Central Bank under section 104,
- (3) the date of appointment of a replacement; or
- (4) the death of the liquidator.

### **86. Resignation of liquidator**

- (1) A bank liquidator may resign by serving a 14 days' notice on the Central Bank.
- (2) The Central Bank may at any time after the resignation of the liquidator appoint any person as liquidator.

### **87. Publication of appointment of liquidator**

- (1) The Central Bank shall cause an order appointing a liquidator to be published in the Official Bulletin.
- (2) The liquidator appointed by the Central Bank shall within 7 days of his appointment cause to be published in a widely circulating news paper in Somalia a notice of his appointment.

### **88. Effects of Insolvency Order**

From the date of appointment of the liquidator under section 90;

- (1) all payment of liabilities of whatever kind due from the bank to any person shall be suspended; and
- (2) no actions against the bank in liquidation may be brought, continued or prosecuted, and no executions or attachments shall be levied on the assets of the bank in liquidation.

### **89. Oversight Committee**

- (1) The Central Bank may appoint a liquidation oversight committee to oversee the conduct of the liquidation process by the liquidator.
- (2) The Central Bank may remove any person appointed under subsection (1) from the liquidation oversight committee.

### **90. Directions by the Central Bank on liquidation process**

- (1) The Central Bank may issue written directions to the Oversight Committee and or to the liquidator on any matter concerning the

liquidation process and the Oversight Committee and the liquidator shall comply with the directions.

- (2) Any person who fails or omits to comply with the directions issued by the Central Bank under this section shall be personally liable for the failure or omission.

### **91. Report on Assets and Liabilities by Liquidator**

- (1) The liquidator shall within 6 months from the date of his or her appointment, submit to the Central Bank a report on the assets and liabilities of the bank and on the progress of the liquidation.
- (2) The report under subsection (1) shall first be approved by the Oversight Committee.

### **92. Costs of Liquidation**

All costs of the liquidation shall be charged to the bank in liquidation.

### **93. Invitation of creditor's claims**

- (1) The liquidator shall within 30 days of appointment publish a notice inviting the depositors and all other creditors of the bank to submit their claims with such proof as shall be specified and any creditor who fails to submit a claim within the period specified in the notice shall not be entitled to be paid in priority to other debts but shall be treated as an ordinary debt due from the bank provided that every depositor of the bank shall be deemed to have filed his or her claim for the amount shown in the books of the bank as standing to his or her credit .
- (2) The liquidator shall review all creditors claims received and may admit or reject any claim provided that where a claim is rejected; the claimant shall be notified in writing of the fact of rejection and the reasons.
- (3) A person whose claim has been rejected under subsection (2) may submit an appeal to the Oversight Committee within 15 days of receipt of notice of rejection of the claim.

- (4) The Oversight Committee shall consider the appeal and either accept or reject the claim.
- (5) The decision of the Oversight Committee in subsection (4) shall be final.

#### **94. Meeting of Contributories**

The liquidator shall within 60 days of appointment summon a meeting of such person as he may consider being liable as contributories.

#### **95. Powers of the liquidator**

- (1) The liquidators shall be vested with powers to:
  - (a) bring or defend any action or other legal proceedings in the name and on behalf of the bank;
  - (b) carry on the business of the bank so far as may be necessary for the beneficial winding up of the bank;
  - (c) retain advocates, notaries, accountants, appraisers and other professional advisers as may be approved by the Oversight Committee;
  - (d) make any compromise or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the bank;
  - (e) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the bank and a contributory or alleged contributory or other debtor or person apprehending liability to the bank and all questions in any way relating to or affecting the assets or the liquidation of the bank on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it; or
  - (f) make a forensic investigation on the bank and report on among other things, significant related party transactions, violations of the law and the bank's policies and regulations.

- (2) The liquidator may:
- (a) sell the movable and immovable property and things in Action of the bank by public auction or private contract, with power transfer the whole of it to any person or company or to sell the same in parcels;
  - (b) do all acts and execute in the name and on behalf of the bank all deeds, receipts and other documents, and for that purpose to use, when necessary, the seal;
  - (c) prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his or her estate, and receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;
  - (d) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the bank with the same effect, with respect to the liability of the bank as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the bank in the course of its business;
  - (e) raise on the security of the assets of the bank any money required;
  - (f) take out in his or her official name letters of administration to any deceased contributory, and do in his or her official name any other act necessary for obtaining payment of any money due from a contributory or his or her estate which cannot be conveniently done in the name of the bank, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator;
  - (g) appoint an agent to do any business which the liquidator is unable to do himself or herself; enforce the individual liability of the shareholders and directors of the bank;
  - (h) eliminate the interests of shareholders;
  - (i) where liquidation proceedings have been commenced in respect of the bank in one country or more, make such payments to a liquidator of the bank as may be necessary;

- (j) generally realize the assets of the insolvent bank;
  - (k) arrange, negotiate and conclude in the interest of the depositors of the bank an agreement to the benefit of the depositors; or
  - (l) by notice in writing require any person who is or has been a director, managing director, secretary, principal officer, manager officer or employee, agent, accountant or auditor of the bank or any person who has custody of any funds or other assets of the institution being liquidated, to-
    - (i) give to the liquidator all reasonable assistance in connection with the liquidation;
    - (ii) appear before the liquidator for examination concerning matters relevant to the liquidation; or
    - (iii) produce any books or documents that relate to the affairs of the institution being liquidated.
- (3) The exercise by a liquidator of the powers conferred by this section shall be subject to the control of the Oversight Committee and the Central Bank;
- (4) A person who:
- (a) refuses or fails to comply with a requirement of the liquidator which is applicable to him or her, to the extent to which he or she is able to comply with it; obstructs or hinders a liquidator in the exercise of the powers conferred under this Act;
  - (b) furnishes information or makes a statement which he or she knows to be false or misleading in any material particular; or
  - (c) when appearing before a liquidator for examination in accordance with such requirement, makes a statement which he or she knows to be misleading in any material particular;

Commits an offence and is liable on conviction to a fine not exceeding 10 penalty currency points, or imprisonment not exceeding 1 year, or both.

## **96. Bar on stay of winding up proceedings**

Notwithstanding anything to the contrary in any other law, a court shall

not entertain any application for stay of proceedings in relation to the liquidation or winding up of a bank under this Act.

### **97. Payment to creditors and ranking of claims**

- (1) The liquidator shall, within two months after submission of a report of the assets and liabilities of the bank commence the payment to depositors and creditors of the bank according to the following ranking:
  - (a) first to the liquidator for all expenses incurred in the process of liquidating the bank;
  - (b) second to the deposit protection board for all payments made to the depositors;
  - (c) third to employees of the bank for all wages and salaries due net of any liabilities to the bank;
  - (d) fourth to secured creditors in pari passu;
  - (e) fifth to depositors for deposits which are in excess of the protected deposit amount;
  - (f) sixth other creditors to rank in pari passu; and
  - (g) last to shareholders
- (2) Payments to depositors and other creditors shall be net of any liability for any amounts due from the depositor or creditor to the bank.

### **98. Keeping and auditing of books of accounts by the liquidator**

- (1) The liquidator shall;
  - (a) Keep proper books of accounts and proper financial records in relation to the accounts which show a complete, true and fair state of affairs of the bank in liquidation;
  - (b) Prepare in respect of every 3 months a statement of accounts showing the statement of affairs of the bank in liquidation;
  - (c) Ensure that all accounts and financial records comply with International Accounting Standards (as revised from time to time) and with all applicable laws;
  - (d) Every 6 months procure the services of an auditor to audit the accounts of the bank in liquidation. The audited accounts shall be submitted to the Oversight Committee for approval; and

- (e) Submit the accounts as approved by the Oversight Committee to the Central Bank.
- (2) When the liquidator has realized all the property of the bank, or so much of it as can, in his opinion, be realized without needlessly protracting the liquidation, and has made distribution to all depositors and creditors, he or she shall cause final audited financial statements to be submitted to the Oversight Committee and the committee shall submit the final accounts to the Central Bank.

### **99. Release of liquidator**

- (1) Where the Central Bank is satisfied that the final audited accounts present a correct state of affairs of the liquidation, and that the liquidator has fully discharged his obligations, the Central Bank may release the liquidator and discharge him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the bank; except that such order may be revoked on proof that it was obtained by fraud or by suppression or Concealment of any material fact.
- (2) The release of the liquidator shall operate as his or her removal from office.

### **100. Deposit Protection Fund.**

- (1) The Central Bank shall in consultation with the Minister of Finance set up in Somalia a deposit protection fund whose objective shall be to contribute to the stability of the financial system in Somalia and to protect depositors of banks.
- (2) The Central Bank shall make regulations consistent with the core principles of effective deposit insurance systems, for the purposes of regulating the operation of the Deposit Protection Fund, and such other matters related there

## CHAPTER XII - GENERAL PROHIBITIONS

### 101. Prohibition on financial exposures

- (1) A bank shall not incur any financial exposure to:
  - (a) another bank,
  - (b) a single person, or a group of related persons;  
in excess of twenty five percent of its core capital.
- (2) Notwithstanding the provisions of subsection (1) a bank may have financial exposures of up to 50 percent of its core capital to-
  - (a) A single person or a group of related persons provided that the financial exposures are self liquidating , have a maturity or expiry not exceeding three years and are adequately secured by—
    - i. Government securities pledged to the bank;
    - ii. fixed deposits held by the bank and secured by a lien; or
    - iii. Other qualifying securities as the Central Bank may by regulation prescribe.
  - (b) a bank provided that the maturity or expiry of the financial exposure does not exceed one year, and shall immediately be reported to the Central Bank.
- (3) Where a bank avails to another bank any financial exposures under subsection 2 (b) of this section, and the maturity/expiry of the financial exposure exceeds one year, they shall be secured in accordance with subsection 2 (a) of this section.
- (4) In considering the threshold set under subsection (1) and (2) of this section, the Central Bank shall aggregate as a single financial exposure all loans and credit accommodations made by a bank to one or more persons with a common interest.
- (5) For the purpose of this section, a common interest shall be deemed to exist between persons if:

- (a) The exposure to those persons constitutes a single exposure because of the fact that one of them directly or indirectly exercises control over others;
  - (b) although the persons to whom the bank is exposed are different entities, they are so interconnected that if one of them experiences financial difficulties, another one or all of them are likely to experience lack of liquidity;
  - (c) The persons are affiliates within the meaning of this Act;
  - (d) Those persons are related persons within the meaning of this Act;
  - (e) Those persons have common control; or
  - (f) Those persons are associates within the meaning of this Act.
- (6) In addition to but without derogation from subsections (1), (2) and (3) of this section, a bank shall not be financially exposed in the excess of 800% (eight hundred percent) of its total capital.
- (7) A bank which at the commencement of this Act has outstanding financial exposures in excess of the limits set in this section take steps to comply with those provisions within such time as the Central Bank shall by order prescribe in respect of that institution.
- (8) For purposes of this section, financial exposure shall include but not be limited to loans, advances, guarantees, letters of credit and such other credit accommodations as the Central Bank may specify.

## **102. Prohibition against issuing of stored value cards**

- (1) A person shall not in Somalia issue a stored value card accept, in the case of:
- (a) a bank, where authorization is granted by the Central Bank upon satisfying the terms and conditions imposed; or
  - (b) a person, where the stored value card is for payment only of goods or services or both goods and services provided directly by that person.
- (2) The proceeds arising from a stored value card, issued to a bank, shall be subject to such reserve and liquidity requirements as the Central Bank may by notice in accordance with this section prescribe.
- (3) A person or bank who contravenes subsection (1) and (2) of this section commits an offence and shall on conviction pay a fine of not less

than 30 penalty currency points or imprisonment not exceeding three years, or both.

- (4) For the purpose of this Act, issuer of a store value card shall, until his or her claim is settled by the bank, be considered as a creditor of the bank and holder of a store value card shall be considered as a depositor and the financial institution.
- (5) In this section "stored value card" means a card for which a person pays in advance a sum of money to the issuer in exchange for an undertaking by the issuer that on production of the card to the issuer or a third party (whether or not some other action is required), the issuer or the third party, as the case may be, will supply goods or services or both goods and services; and for the purpose of this section "card" includes any token, coupon, stamp, form, booklet, other document or thing.

### **103. Prohibition on insider transactions**

- (1) A bank shall not grant or permit to be outstanding a loan or credit accommodation to any of its affiliates and associates, directors, persons with executive authority, substantial shareholders or to any of their related persons or their related interests except on terms which are non-preferential in all respects including creditworthiness, term, interest rate and the value of the collateral.
- (2) For the purpose of subsection (1) "non-preferential" means upon terms no more favourable than those which would be offered under prevailing conditions to persons other than those referred to under sub-section (1).
- (3) A bank shall not grant or permit to be outstanding loans or credit accommodations to its affiliates and associates,, substantial shareholders or to any of their related persons or group of related persons or their related interests which, in the aggregate, exceed twenty percent of its core capital.
- (4) Every loan or credit accommodation by a bank to any of its affiliates and associates, directors, persons with executive authority, substantial shareholders or to any of their related persons or group of related persons or their related interests shall be secured at all times by

- collateral having a market value of at least one hundred and twenty percent of the outstanding amount of the loan throughout its term.
- (5) Any collateral required by subsection (4) shall be assigned to the bank and shall at all times be an enforceable or realizable security.
  - (6) A bank shall not grant or permit to be outstanding aggregate loans and credit accommodations to any one of its employees, including executive directors, in excess of two years' salary of the officer or executive director.
  - (7) Subsection (6) shall not apply to any residential mortgage loan which is governed by subsection (9) of this section.
  - (8) A bank shall not grant or permit to be outstanding loans or credit accommodations to any one of its nonexecutive directors and his or her related interests, in excess of 1percent of core capital of the bank.
  - (9) Notwithstanding subsection (6), a bank may grant to an employee a secured loan or credit accommodation which aggregate up to three times one year's salary of the employee for the purpose of purchasing or constructing a primary residence for the employee.
  - (10) A loan or credit accommodation shall not be granted to any officer including an executive director under subsection (6) and (9) while any other loan to that person is non-performing.
  - (11) "Non-performing" shall have the same meaning as that assigned to it in subsection (2) of section 35 of this Act.
  - (12) A director of a bank who contravenes this section, shall immediately cease to be a 'fit and proper' person for the purposes of this Act and shall cease to be a member of the board of directors of the bank and in addition, shall not be permitted to be reappointed to the board of directors of that bank or appointed to any board of directors of a bank in Uganda without the prior written permission of the Central Bank.
  - (13) A person who grants or receives a loan or credit accommodation which contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of fifty percent of the amount in excess of the limit or imprisonment not exceeding one year or both.

- (14) Notwithstanding subsection (13) of this section, the Central Bank may order for—
- (a) Repayment by the offending officer and director of any amount which exceeds the legal lending limits prescribe in this section;
  - (b) The execution of proper security documentation where applicable;
  - (c) Delivery of adequate collateral;
  - (d) Regularization of any preferential terms or conditions of a loan as the case may be;
  - (e) Dismissal from the bank of the offending officer;
  - (f) Bar the offending officer from any future employment at any bank for a specified or indefinite period.
- (15) Where a bank enters into a transaction that it is prohibited from entering into by this section, the institution shall deduct the outstanding amount of the loan or sum granted or extended to the insider when computing the on-going capital requirements of the institution.

**104. Prohibition on gratuities and similar payments**

Any director or employee of an entity licensed under this Act, who asks for or receives any gift, commission, emolument, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relatives, for procuring or endeavoring to procure for any person any advance, loan, overdraft, financial guarantee or credit facility from that entity commits an offence and is liable on conviction to a fine of double the amount received or imprisonment for 3years or both.

**105. Prohibition on lending against security of own shares**

- (1) An entity licensed under this Act shall not grant any advances, loans or credit facilities (including letters of credit), or give any financial guarantee or incur any other liability, against the security of its own shares.
- (2) An entity licensed under this Act shall not, except with the approval in writing of the Central Bank, which approval shall be subject to such conditions as the Central Bank impose, grant any advances, loans or credit facilities (including letters of credit), or give any financial guarantee or incur any other liability, against the security of the shares of-
- (a) Any holding company of the entity;

- (b) Any subsidiary of the entity; or
- (c) Any other subsidiary of any holding company of the entity.

## **CHAPTER XIII - MANAGEMENT**

### **106. Requirement for consent to appoint Managers and Executive Officers**

- (1) A person shall not-
  - (a) become an executive officer, managing director, senior manager at the level of the management committee of a bank, manager in charge of treasury or chief dealer ; or
  - (b) act or continue to act in any capacity mentioned in (a) above without having obtained the prior written consent of the Central Bank.
- (2) The Central bank grants the consent with or without conditions or refuse to give consent with reasons.
- (3) Where the Central Bank gives consent, or refuses to give consent, under subsection (1), it shall as soon as is reasonably practicable thereafter give notice of its decision in writing.
- (4) Where Central Bank may for sufficient cause withdraw its consent
- (5) The Central Bank shall not exercise in exercise of the power under subsection (4) withdraw any consent without first giving the person affected an opportunity of being heard.

### **107. Observance of four eyes principle in management**

Every bank shall appoint not less than two individuals as executive officers who shall be responsible for the business.

## **CHAPTER XIV - MISCELLENOUS**

### **108. Powers of the Central Bank to issue guidelines**

- (1) The Central Bank may, from time to time publish for the guidance of entities licensed under this Act, guidelines, not inconsistent with this Act, specifying business practices which should not be engaged in by those entities, if in the opinion of the Central Bank, the engagement in or continuation of such business practices is likely to affect the financial

soundness of the entities and endanger the safety of the depositors funds.

- (2) The guidelines issued under subsection (1) may be directed to a specific entity or to all entities

**109. Death of a customer**

- (1) If a customer of a bank dies, the bank may on receipt of sufficient proof of death and without any requirement for probate of the will or letters of administration apply an amount not exceeding .....held to the credit of the deceased customer’s account with the bank:
  - (a) In payment of the deceased person’s funeral expenses; or
  - (b) In payment to the executor of the deceased person’s will.
- (2) No action lies shall lie against a bank for acting, or failing to act, under the provisions of subsection (1) of this section.

**110. Business days and Hours**

- (1) The Central Bank may by notice prescribe the days and hours of business for banks in Somalia during which banks shall remain open for business, except where such days are official public holidays duly recognized.
- (2) Any obligation of a bank falling due on a day on which the bank is not open for business under subsection (1) shall be deemed to fall due on the next day thereafter which on which banks are open for business.

**111. Confidentiality**

All information of customers of a bank shall be protected by confidentiality and no person who is possessed of customer confidential information shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a customer except:

- (1) with the written authorization of the customer or his or her legal personal representatives;
- (2) for the purpose of the performance of his duties within the scope of his employment;

- (3) in conformity with the provisions of this Act or any other law; or
- (4) as compelled or obliged under the law make disclosure by any court of competent jurisdiction within Somalia.

**112. Prohibition on gratuities and similar payments**

Any director or employee of an entity licensed under this Act, who asks for or receives any gift, commission, emolument, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relatives, for procuring or endeavoring to procure for any person any advance, loan, overdraft, financial guarantee or credit facility from that entity commits an offence and is liable on conviction to a fine of double the amount received or imprisonment for 3 years or both.

**113. Exclusion of liability**

Neither the Central Bank nor any of its officers or employees, servants or agents shall be liable in any legal action, inquiry or investigative process for any loss sustained by or damage caused to any person as a result of anything done or omitted to be done in the bona fide performance of any function, powers or duty under this Act.

**114. Publishing of interest rates**

Every bank shall display at its offices and at all its branches its most recent lending and deposit interest rates and shall submit to the Central Bank information on interest rates as may be specified, from time to time, by the Central Bank.

**115. 118. Orders for removal of officers**

- (1) The Central Bank may by order direct a bank to remove any executive officer, manager, or other officer of a bank from office if the Central Bank is satisfied that such officer-
  - (a) has willfully contravened or willfully caused the bank to contravene any provision of this Act;
  - (b) has, without reasonable excuse, failed to secure the compliance of the bank with any provision of this Act or any orders or directions issued by the Central Bank under this Act; or
  - (c) has failed to discharge any of the duties of his office; or
  - (d) has ceased to be a fit and proper person
  - (e) such officer has had —

- (2) Any bank which fails to comply with an order notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 20 penalty currency points and, in the case of a continuing offence, to a further fine not exceeding 5 penalty currency points for every day or part thereof during which the offence continues after conviction.

**119. Maintenance of adequate provision for bad and doubtful debts**

Every bank in Somalia shall make provision for bad and doubtful debts in accordance with the provisioning rules as shall be prescribed by the Central Bank by regulations and shall at all times before any profit or loss is declared ensure that that provisions are adequate.

**120. General Power to make regulations**

The Central Bank may make such Regulations as may be required from time to time for giving effect to the provisions of this Act.

**CHAPTER XV - OFFENCES**

**121. Falsification of records and returns**

A person being a director, manager, employee or agent of any entity licensed under this Act who, with intent to deceive-

- 1) willfully makes, or causes to be made, a false entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution or in any form or return required to be submitted to the Central Bank under the provisions of this Act or any regulations made there under;
- 2) willfully omits to make an entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution in any form or return required to be submitted to the Central Bank under the provisions of this Act or any regulations made there under, or willfully causes any such entry to be omitted; or
- 3) willfully alters, abstracts, conceals or destroys an entry in any book of record, or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution in any form or return required to be submitted to the Central Bank under the provisions of this Act or any regulations made there under, or willfully causes any such entry to be altered, abstracted, concealed or destroyed commits an offence and shall be liable on conviction to a fine

of 20 penalty currency points or and to imprisonment for 3 years or both.

## **122. Power of Central Bank to impose summary civil penalties**

- (1) The Central Bank shall be empowered to impose a summary civil penalty on any bank where it has reasonable grounds to believe that a bank has contravened or failed to comply with this Act.
- (2) A summary civil penalty imposed under subsection (1) shall not exceed 5 penalty currency points-for every day during which contravention or non-compliance with this Act continues.
- (3) The Central Bank shall prior to imposing a penalty under subsection (1) in writing-
  - a. notify the bank of its intention to impose a penalty;
  - b. specify the particulars of the alleged contravention or non-compliance;
  - c. provide reasons for the penalty intended to be imposed;
  - d. specify the amount of the penalty intended to be imposed;
  - e. Invite the bank to make give reasons and explanations within such period as shall be given on why it should not be penalized.
- (4) The Central Bank shall after considering the representations made either impose the penalty or decide not to impose a penalty in writing.
- (5) The power of the Central Bank to impose summary civil penalties shall not apply where a specific offence and punishment therefore has been expressly provided for in any section of this Act.

## **123. Repeal of laws and savings**

- (1) Subject to the provisions of subsection (2), the Financial Institution Decree Law No. 37 of 23 Nov. 1989 are hereby repealed.
- (2) Any regulation made, direction, order or directive issued, request made or requirement laid down, and any other thing done under the Financial Institution Decree Law No. 37 of 23 Nov. 1989, shall be deemed to remain in force unless specifically repealed.

## **FIRST SCHEDULE**

1. The following broad guidelines shall be considered in assessing whether a person complies with the fit and proper test:
  - (a) financial status or solvency;
  - (b) educational or other qualifications or experience having regard to the nature of the functions to be performed;
  - (c) ability to carry on the regulated activity competently, honestly and fairly; and
  - (d) Reputation, character, reliability and financial integrity.
  
2. In the case of an Individual, he or she:
  - (a) is an un-discharged bankrupt, is currently subject to bankruptcy proceedings or is a bankrupt who has recently been discharged;
  - (b) is subject to receivership or other similar proceedings;
  - (c) Has failed to meet any judgment debt; or
  - (d) Was found to be of poor reputation, character or reliability, lacking in financial integrity, or dishonest and includes instances where one is:
    - i. convicted by a court or other competent authority for fraud, dishonesty or misfeasance;
    - ii. convicted of a criminal offence or is the subject of unresolved criminal charges which are of direct relevance to fitness and properness;
    - iii. censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession;
    - iv. refused or restricted from the right to carry on any trade, business or profession for which a specific license, registration or other authorization is required by law; or

- v. disqualified by a court of competent jurisdiction from being a director;

3. In the case of a Corporation or Public Entity, it:

- (a) is subject to receivership, administration, liquidation or other similar proceedings;
- (b) has failed to meet any judgment debt;
- (c) is unable to meet any financial or capital requirements applicable to it; or
- (d) has non-executive directors, key personnel (such as manager, officer, director, and chief executive), substantial shareholders or other controllers who fail to meet the fit and proper criteria, as provided under this Act.