



**PARLIAMENT OF UGANDA**

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

ON

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

Office of the Clerk to Parliament

February, 2019

**LIST OF ACRONYMS AND ABBREVIATIONS**

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

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UGX. - Uganda Shillings

USD - United States Dollars

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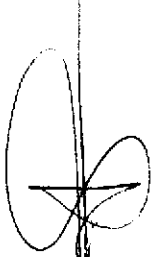
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**1.0. Introduction**

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

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

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

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

These banks include:-

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

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## 2.0: Objectives of the Investigation

The objectives of the enquiry were as follows;

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

## 3.0: Methodology

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

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

During the probe, the Committee interfaced with the following-

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

#### 4.0: FINDINGS ACCORDING TO AUDIT OBJECTIVES

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

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

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

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

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

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

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

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

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

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

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

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

**BoU Management Response:**

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

**Committee Observations**

The Committee observes that-

**1. Teefe Trust Bank Limited:**

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

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

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**2. International Credit Bank Limited:**

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

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

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

**4. Greenland Bank Limited:**

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

**5. National Bank of Commerce:**

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

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

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

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

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

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

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

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

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

(v) A perusal of some of the Non-Disclosure Agreements (NDAs) revealed that the Central Bank was disclosing confidential information of distressed financial institutions to potential purchasers who are competitors without their knowledge in contravention of section 40 (3) of the Bank of Uganda Act.

(vi) Whereas section 95 (3) of the FIA requires the Central Bank to appoint auditors on assumption of management of a distressed bank as soon as possible, in numerous cases, BoU has been appointing auditors after the sale. **It is the committee's further observation that the Bank is not clothed with the authority to appoint an auditor for an institution that it has already sold and whose assets and liabilities have been passed on to a third party.**

**Recommendations:**

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

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

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

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

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

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

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

*(b) .....*

*(c) .....*

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

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

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

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

*(a) .....*

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

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

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

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

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

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

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

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

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

The Auditor General-

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

**Management Response:**

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

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

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

**Committee Observations:**

The committee observed that-

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

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

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

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

**Committee Recommendations:**

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

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

**Management Response:**

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

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

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

**Committee observations:**

The committee observes that-

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

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

**Recommendations:**

The Committee recommends that-

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

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

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

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

**Management Response:**

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

**Committee observations:**

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

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

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

**Committee Recommendations:**

The Committee recommends that-

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

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

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