

Uganda

## Non-Performing Assets Recovery Trust Act Chapter 76

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# Uganda

## Non-Performing Assets Recovery Trust Act Chapter 76

Commenced on 10 October 1994

*[This is the version of this document at 31 December 2023.]*

*[Note: This legislation was revised and consolidated as at 31 December 2000 and 31 December 2023 by the Law Reform Commission of Uganda. All subsequent amendments have been researched and applied by Laws.Africa for ULII.]*

**An Act to provide for the establishment of the Non-performing Assets Recovery Trust; to provide for an expeditious machinery for the eventual recovery of certain loans and investments made by the Uganda Commercial Bank and the Uganda Development Bank whose recovery are overdue and for related matters.**

*[History: [Statute 11/1994](#); S.I. 255/1994; [Statute 13/1996](#), s.14; Cap. 95]*

### Part I – Interpretation

#### 1. Interpretation

In this Act, unless the context otherwise requires—

“**administrator**” means the administrator of the Trust appointed under section [6](#);

“**bank**” means the Uganda Commercial Bank and the Uganda Development Bank;

“**Board**” means the Board of trustees of the Trust established under section [4](#);

“**bond**” means a debt instrument to be used by the Treasury for the recapitalisation of the bank;

“**Minister**” means the Minister responsible for finance and economic planning;

“**non-performing asset**” means—

(a) a loan or an advance, including—

- (i) any advance in respect of which the principal or interest or its scheduled instalment has remained overdue for any period specified by the Bank of Uganda for the purposes of this Act;
- (ii) any advance to a borrower who has subsequent to the granting of the advance gone into insolvency or whose industrial or commercial operations have remained non-operational for any period specified by the Bank of Uganda for the purposes of this Act;
- (iii) any overdraft in respect of which interest is due and unpaid or which has remained outstanding after the expiry of its authorisation or which is consistently at or exceeding the credit limit for such period as the Bank of Uganda may specify or in respect of which the credit limit is regularly increased by the bank;
- (iv) any advance, overdraft or guarantee for which the borrower is unable or unwilling to discharge his or her obligation to service the interest or principal repayment; or

(b) any investment made in, or debenture issued by, a body corporate established in Uganda where—

- (i) the body corporate has suffered losses which in the aggregate exceed its paid-up capital, declared reserves and surpluses;
- (ii) insolvency proceedings have been or could be initiated against the body corporate; or

- (iii) the commercial or industrial operations of the body corporate have remained non-operational for a period longer than a period specified by the Bank of Uganda for the purposes of this Act and its marketability or realisable value has been so substantially impaired as to expose the bank to serious risk of loss;

“**parastatal organisation**” means a statutory corporation or other body in which the State owns the greater part of the proprietary interest or otherwise has a controlling interest;

“**sinking fund**” means the sinking fund established under section 8;

“**Tribunal**” means the Non-performing Assets Recovery Tribunal established by section 13;

“**Trust**” means the Non-performing Assets Recovery Trust established by section 2;

“**trustee**” means a member of the Board.

## Part II – Non-performing Assets Recovery Trust

### 2. Establishment of Non-performing Assets Recovery Trust

- (1) There is established a body to be known as the Non-performing Assets Recovery Trust.
- (2) The Trust shall be a body corporate with a common seal and may sue or be sued in its corporate name.
- (3) The Trust shall, for the purposes of discharging its object and functions under this Act, have power to acquire, hold and dispose of any movable or immovable property or to enter into any contract or transaction.

### 3. Object of Trust

The object of the Trust is—

- (a) to hold for and on behalf of the Republic of Uganda any nonperforming asset of the bank which has been transferred to the Trust under section 9;
- (b) to take such action as may be necessary to recover all amounts outstanding in respect of all transferred non-performing assets;
- (c) to establish, administer and manage a sinking fund into which shall be deposited all recoveries from the non-performing assets for redemption of the bonds subject to section 8;
- (d) to examine the circumstances leading to farmers’ default in making good the debt owing to loans received under the rural Farmers Scheme, USAID/R.P.E. and to recommend and take corrective measures so that the farmers’ loans schemes can benefit the farmers;
- (e) to perform any other function conferred on the Trust under this Act; and
- (f) to perform such other function as is reasonably related or incidental to the foregoing object.

### 4. Board of trustees

- (1) The Trust shall have as its governing body a Board of trustees consisting of the following persons—
  - (a) a Chairperson appointed by the Minister, who shall be a person knowledgeable or experienced in banking, corporate law, finance, accountancy and similar disciplines;
  - (b) not less than four nor more than six other members, appointed by the Minister from among persons who, in the opinion of the Minister, have a sound knowledge and experience in matters pertaining to the object of the Trust.

- (2) The Board shall meet for the dispatch of business at such times and places as it may decide but shall meet at least once in every month.
- (3) The Chairperson or, in his or her absence, the Vice Chairperson shall preside over all meetings of the Board; and in the absence of both of them, a member elected by the members present shall preside.
- (4) Decisions of the Board shall be made by a simple majority of members present and voting; and where there is an equality of votes, the Chairperson or other person presiding shall have a second or casting vote.
- (5) The quorum at any meeting of the Board is four.
- (6) The Board may, at any time, co-opt any person to act as an adviser at any of its meetings, but no person so co-opted shall be entitled to vote on any matter for decision by the Board.
- (7) Subject to this section and to the other provisions of this Act, the Board shall regulate its own procedure.
- (8) The Board shall elect one of the members of the Board to be a Vice Chairperson of the Board.
- (9) Where a Minister has any interest, financial or otherwise, whether direct or indirect, in any undertaking which is the subject matter of the Trust, the Minister shall disclose that interest to the Cabinet before making any proposals of names for approval for appointment to the Board, and the Cabinet shall take collective responsibility for the appointment.
- (10) The members of the Board shall work on a part-time basis and shall hold office for a period of three years but may be re-appointed for such further period as the Minister may determine.
- (11) The Minister may revoke the appointment of any member of the Board for misconduct or inability to perform the functions of his or her office on the ground of infirmity of mind or body.
- (12) A person who has any interest, financial or otherwise, whether direct or indirect, in any undertaking which is the subject matter of the Trust, shall not qualify for appointment to the Board.
- (13) A member who has any interest, financial or otherwise, whether direct or indirect, in any undertaking which is the subject matter of any matter for decision before the Board shall disclose in writing to the Board the nature of his or her interest and shall not participate in any discussion or decision of the Board relating to the matter.
- (14) A member of the Board who fails or refuses to disclose his or her interest under subsection (13) commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding two years, or both, and shall also be removed from the Board.

## 5. Functions of Board

The Board shall be responsible for the formulation of policies and the supervision of the management of the Trust and shall, subject to any general or policy directions given to it by the Minister, exercise all the functions of the Trust under this Act.

## 6. Administrator and other staff of Trust

- (1) There shall be an administrator of the Trust who shall be appointed by the Board.
- (2) The administrator shall be appointed on such terms and conditions as the Board may determine, and as may be specified in the instrument of appointment.
- (3) The administrator shall, subject to such directions as may be given by the Board, be responsible for the day-to-day administration of the Trust and shall be accountable to the Board.

- (4) The Trust may engage such other employees, and consultants and advisers as may be necessary for the proper and efficient performance of its functions and on such terms and conditions as the Board may determine.

## **7. Allowances of members of Board**

The members of the Board shall not be paid any salary but shall be paid such allowances as the Minister may determine.

## **Part III – Powers and operations of Trust**

## **8. Sinking fund**

There shall be a sinking fund into which shall be paid all money provided to the Trust by the Government or derived by the Trust from any other source and out of which shall be paid such sums of money as may be required by the Trust under this Act.

## **9. Transfer to the Trust of non-performing assets, etc.**

- (1) Notwithstanding any law or agreement to the contrary, the Trust may direct the bank and the bank shall, upon such direction, transfer to the Trust such of its non-performing assets—
  - (a) in existence at the commencement of this Act; or
  - (b) as may exist as determined by a special audit and valuation undertaken in relation to the assets, at the commencement of this Act, and the cost of the audit and valuation shall be added to the balance of the non-performing assets.
- (2) In the case of Uganda Development Bank, the reference in subsection (1)(a) to the commencement of this Act shall be 2nd February, 2001.
- (3) All assets, rights, liabilities and obligations attached to a nonperforming asset transferred by the bank to the Trust under this section, which immediately before the date of transfer were held by or subsisted against the bank shall, subject to any directions given by the Minister in writing, vest in or, as the case may be, subsist against the Trust.

## **10. Ancillary functions of Trust**

- (1) The Trust shall, in respect of any non-performing asset transferred to it by the bank under section 9, cause to be paid to the bank out of the fund for the transferred asset, such sum as may be determined by the Trust and at such rate, in such form and subject to such other terms and conditions as the Trust may determine.
- (2) The Trust may require in writing, any debtor or client of the bank whose non-performing assets have been transferred to the Trust, to furnish to the Trust any information concerning the asset as may be required for the discharge of the functions of the Trust.
- (3) The information referred to in subsection (2) may include such legal documents and correspondence as the Trust may specify.
- (4) It shall be the duty of any person required to furnish any information under this section to provide the information.
- (5) Any person who, without reasonable excuse, fails to furnish any information requested from him or her under this section or who furnishes any such information knowing it to be false or without having any ground to believe it to be true, commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding two years, or both.

- (6) The Trust shall exercise such powers and take such actions as appear to it to be advantageous or necessary for or in connection with the achievement of its object under this Act.
- (7) Without prejudice to the general effect of subsection (6), the Trust may—
  - (a) sell at the best price realisable enterprises or ventures which are the subject of any transferred non-performing assets or the assets of such enterprises or ventures;
  - (b) take such actions as may be necessary for the recovery of all non-performing assets;
  - (c) negotiate and reschedule payments incidental to the object of the Trust; and
  - (d) take any other action which is incidental to the object of the Trust.

#### **11. Investigation of debtor institutions, etc.**

- (1) The Tribunal may, upon an application made to it by the Trust—
  - (a) order an investigation into the expenditure and income patterns of any debtor institution, its directors and officers; and
  - (b) where it appears to the Tribunal appropriate, order that any part of the income of the debtor institution be paid to the Trust in order to reduce the value of any non-performing asset related to the institution and transferred to the Trust.
- (2) In this section, “debtor institution” means any body corporate or other body whose non-performing asset has been transferred to the Trust under this Act.

#### **12. Protection of trustees and employees of Trust**

An act of a member of the board or an employee of the Trust shall not, where that act was done in good faith in the course of his or her duties, subject that member, employee or any person acting under his or her direction, personally, to any action, liability or claim.

### **Part IV – Non-Performing Assets Recovery Tribunal**

#### **13. Non-Performing Assets Recovery Tribunal**

- (1) There is established a Tribunal to be known as the Non-Performing Assets Recovery Tribunal.
- (2) The Tribunal shall consist of—
  - (a) a Chairperson who shall be a person holding or who has previously held office or is qualified to be appointed as a justice of Appeal, appointed by the Minister after consultation with the Chief Justice; and
  - (b) four other persons appointed by the Minister.
- (3) Persons appointed to the Tribunal under subsection (2)(b) shall be from among experts in law, accountancy, business or public affairs.
- (4) A person who has any interest, financial or otherwise, whether direct or indirect, in any undertaking which is the subject matter of the Trust shall not qualify for appointment to the Tribunal.

#### **14. Jurisdiction of Tribunal**

- (1) The Tribunal shall have exclusive jurisdiction to hear and determine all matters arising under this Act or relating to any non-performing asset transferred to the Trust under this Act.

- (2) For the avoidance of doubt, the jurisdiction of the Tribunal does not include the trial of any criminal offence.
- (3) The Tribunal shall in the exercise of its jurisdiction under this Act have all the powers of the High Court, and for that purpose, the civil procedure rules applicable to a civil action before the High Court shall, with necessary modifications, apply to proceedings before the Tribunal.

#### **15. Judgments of Tribunal, appeals, etc.**

- (1) The Tribunal shall have power to review its own judgments and orders.
- (2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.
- (3) Any person aggrieved by a decision or order of the Tribunal may, within one month after the decision or order, appeal to the Court of Appeal against the decision or order.
- (4) A written law applicable to appeals to the Court of Appeal from the High Court in civil cases shall, with necessary modifications or such other modifications as the Chief Justice may direct in writing, apply to appeals from the Tribunal to the Court of Appeal under this section.
- (5) Except in the case of an appeal under this section, it shall not be lawful for any court or tribunal to entertain any action or proceedings of any nature for the purpose of questioning any judgment, finding, ruling, order or proceeding of the Tribunal.

#### **16. Procedure of Tribunal**

- (1) The Tribunal shall, in the exercise of its functions under this Act, be guided by the rules of natural justice.
- (2) Without prejudice to the general effect of section 14(3), the Tribunal shall, in the discharge of its functions under this Act, have all the powers of the High Court in respect of—
  - (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
  - (b) compelling the production of documents; and
  - (c) the issue of a commission or request to examine witnesses abroad.
- (3) The Tribunal shall at any time be deemed to be duly constituted if the Chairperson and one other member are present.
- (4) A decision shall be taken to be a decision of the Tribunal if it is supported by a majority of the members.
- (5) A witness before the Tribunal shall have the same immunities and privileges as if he or she were a witness before the High Court.

#### **17. Registrar and other staff of Tribunal**

The Minister shall, after consultation with the Chief Justice, appoint an officer to be designated as the registrar of the Tribunal, and shall provide to the Tribunal the services of such other officers as the Tribunal may reasonably require for carrying out its functions under this Act.

#### **18. Expenses of Tribunal, etc.**

- (1) The members of the Tribunal, the registrar and staff of the Tribunal may be paid such remuneration and allowances as the Minister may determine.

- (2) The remuneration and allowances under subsection (1) shall be paid from the vote of the Ministry responsible for finance.

## 19. Obstruction of Tribunal

Any person who—

- (a) when summoned, fails or refuses without reasonable excuse to attend as a witness before the Tribunal;
- (b) being in attendance as a witness, refuses or fails to take an oath or to make an affirmation as required by the Tribunal;
- (c) makes any statement before the Tribunal which he or she knows to be false or which he or she has no reason to believe to be true;
- (d) omits or suppresses any information required by the Tribunal in the discharge of its functions or relevant to the discharge of those functions; or
- (e) in any manner misleads, obstructs, insults or disturbs the Tribunal, commits an offence and is liable, on conviction, to a fine not exceeding twenty five currency points or to imprisonment for a term not exceeding one year, or both.

## Part V – Financial and other matters

### 20. Financial year

The financial year of the Trust shall be the period of twelve months commencing on the 1st day of July and ending on the 30th day of June of the following year.

### 21. Accounts and audit

- (1) The Trust shall keep books of accounts and maintain proper records in relation to them; and the books of accounts and records of the Trust shall be kept in accordance with international accounting standards.
- (2) The books of accounts of the Trust shall be audited by auditors appointed by the Board at such times as the Board may determine but shall be audited at least at the end of each financial year.
- (3) The audited accounts shall be submitted to the Board not later than three months after the end of the financial year to which they relate.
- (4) The Board shall, as soon as possible, but in any case not later than one month after receipt of the report of the auditor under this section, forward the report to the Bank of Uganda with a copy to the Minister.
- (5) A copy of the report shall also be submitted by the Board to the Permanent Secretary or Secretary to the Treasury and to the Auditor General.
- (6) The Board shall pay in respect of the audit such fees as it may determine.

### 22. Annual report

- (1) The Board shall, not later than four months after the end of each financial year, submit to the Minister an annual report on the management of the Trust in respect of that financial year, including the balance sheet of the Trust in respect of that year, the audited accounts, the auditor's report on the accounts and such other information as the Minister may require.
- (2) The Minister shall cause any report received by him or her under this section, together with his or her observations on it, to be laid before Parliament.

**23. Exemption from taxes**

The Trust shall be exempted from the payment of all taxes, rates and duties.

**Part VI – Miscellaneous****24. Seal**

- (1) The common seal of the Trust shall not be affixed on any document except in accordance with a resolution of the Board.
- (2) The application of the common seal shall be authenticated by the signatures of the Chairperson, or the Vice Chairperson and the administrator or the officer for the time being performing the functions of the administrator.
- (3) The authentication required under subsection (2) is independent of the signing by any other person as witness.

**25. Committees of Board**

The Board may, on such terms and conditions as it may determine, appoint such committees as it may consider expedient to perform such functions or advise the Board on such matters as it may direct.

**26. Minutes of meetings of Board**

- (1) The administrator shall cause proper minutes of the proceedings of the Board to be kept and in such form as the Board may approve.
- (2) The minutes of any meeting of the Board shall be subject to confirmation at the next subsequent meeting of the Board and when confirmed shall be signed by the person presiding at the latter meeting in the presence of the other members attending the meeting.

**27. Regulations**

The Minister may, by statutory instrument, make such regulations as may be necessary or expedient for the effective and full implementation of the purposes and provisions of this Act.

**28. Schedule**

- (1) The regulations in the Schedule to this Act shall have effect in respect of the recovery of non-performing assets.
- (2) The Minister may, by statutory order, with the approval of Parliament, amend the Schedule to this Act.

**29. Duration of Act, winding up Trust, etc.**

This Act shall continue in force for three years unless, upon the recommendation of the Minister, Parliament by resolution, extends its duration for a further period.

**Schedule (Section 28)****Regulations for recovery of Non-Performing Assets**

1. The Board members and staff of the bank who granted loans which are listed as non-performing assets in disregard of established regulations shall be held individually and severally responsible.

2. Where collateral security given in respect of a non-performing asset is not sufficient to cover the principal, the Trust shall have the right to attach other personal assets of the defaulter.
3. Where an asset which was mortgaged in respect of a non-performing asset is not realisable, any such asset shall, at the time of winding up of the Trust, vest in the Uganda Land Commission which shall hold it on behalf of the Government of Uganda.
4. Where there is proof that a director of a company has on the list of nonperforming assets benefited from a loan, and where the director was not a guarantor of the loan, he or she shall be held responsible for the loan to the extent of that benefit.
5. Where a company becomes moribund before or during the term of office of the Trust, the company directors shall be held responsible for the loan which is listed as a non-performing asset.