

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2005 No. 59.

**THE FINANCIAL INSTITUTIONS (CREDIT REFERENCE
BUREAUS) REGULATIONS, 2005**

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STATUTORY INSTRUMENTS

2005 No. 59.

The Financial Institutions (Credit Reference Bureaus) Regulations, 2005.

(Under sections 78 (1) and 131(1)(k) and (m) of the Financial Institutions Act, Act No.2 of 2004)

IN EXERCISE of the powers conferred on the Central Bank by sections 78(1) and 131(1) (k) and (m) of the Financial Institutions Act, 2004 and in consultation with the Minister responsible for finance, these Regulations are made this 1st day of June, 2005.

PART I—PRELIMINARY

1. These Regulations may be cited as the Financial Institutions (Credit Reference Bureaus) Regulations, 2005. Title
2. These Regulations apply to all credit reference bureaus licensed under the Financial Institutions Act, 2004. Application
3. In these Regulations, unless the context otherwise requires— Inter-pretation
 - “Act” means the Financial Institutions Act, 2004;
 - “Board of Directors” means the Board of Directors of a credit reference bureau;
 - “credit reference bureau” means a legal entity established as a company that allows financial institutions and MDIs to exchange information on their clients’ repayment history and current debt profiles and

which compiles a database that collects, stores, consolidates and processes information related to persons, companies and enterprises;

“credit reference bureau business” means the business of disseminating credit information among financial institutions or micro finance deposit-taking institutions for their businesses;

“credit information” means the history of an individual or entity with regard to credit and financial obligations that a credit reference bureau may collect from financial institutions or micro finance deposit-taking institutions;

“database” means a set of information administered by a credit reference bureau;

“debt” means direct, indirect and contingent obligations incurred by an individual or entity with third parties;

“holder” means any person or entity whose credit information is administered by the credit reference bureau;

“MDI” means a micro finance deposit institute licensed under the Micro Finance Deposit- Taking Institutions Act, 2003;

“reputation collateral” means a good payment record which can be used as collateral for new credit;

“user” means any financial institution or micro finance deposit-taking institution or person or entity that is entitled to request credit information from a credit reference bureau.

4. The purpose of these Regulations is to regulate—

Purpose

(a) the licensing and operation of credit reference bureaus licensed under the Financial Institutions Act, 2004; and

(b) the obligations of MDI's with regard to credit reference bureaus under section 46 of the Micro Finance Deposit-Taking Institutions Act, 2003.

5. The rationale for these Regulations is as follows—

Rationale

(a) timely and accurate information on borrowers' debt profile and repayment history reduces information asymmetry between borrowers and lenders and enables lenders to make informed decisions about allocation of credit which reduces default probabilities of borrowers and contributes to financial stability and efficient allocation of resources in an economy;

(b) when financial institutions compete with each other for customers, multiple borrowing and over indebtedness increases and loan default may rise unless the financial institutions have well developed credit information systems or access to databases that capture relevant aspects of client's borrowing behavior;

(c) information in credit registries is vital for the development of a credit culture where borrowers seek to protect their reputation collateral by meeting their obligations in a timely manner and borrowers can also use the good repayment record as collateral for new credit; and

(d) credit reference bureaus provide the necessary infrastructure to ensure information integrity, security and up-to-date information on borrowers.

PART II—LICENSING

Prohibition
of operating
without
licence

6. A person shall not operate a credit reference bureau unless that person is licensed to do so in accordance with these Regulations.

Application
for licence

7. (1) An application for a licence to operate a credit reference bureau shall be made to the Central Bank, and shall be accompanied by the information set out in subregulation (2) and the supporting documents set out in regulation 10.

(2) An application for a licence under subregulation (1) shall provide the following information—

- (a) a description of the applicant's premises and their suitability for customer service and the description of the security measures to be adopted;
- (b) details of the applicant's promoters, proposed directors and officers in the form set out in Schedule 1; in order to determine their respective fit and proper status;
- (c) sworn declarations of proposed directors, managers or substantial shareholders in the forms set out in Schedule 2;
- (d) information necessary for assessing the trustworthiness of the applicant;
- (e) information necessary for assessing the qualifications of the proposed managers of the bureau;
- (f) overview of operations including the description of systems and the design of the data collection;
- (g) management processes, including—
 - (i) development schedule of the software required for operation;
 - (ii) characteristics of products and services to be provided to users;

(iii) service provision policies; and

(iv) proposed security and control measures aimed at preventing improper management of information; and

(h) the proposed fee and cost structure of products.

8. At the time of filing an application, the applicant shall pay to the Central Bank an application-processing fee of one hundred currency points.

Processing
fee

9. The Central Bank shall take into account the following factors when evaluating an application for a licence to operate a credit reference bureau in Uganda—

Licensing
criteria

(a) the background, reputation, integrity, experience and capacity of the proposed owners, directors and board members of the applicant company as evidenced by curriculum vitae and professional record of the proposed persons;

(b) the business plan of the applicant, including plans to conduct national coverage and a mechanism to integrate, gather, input, update and validate the data;

(c) a unique identification system for individuals and enterprises that is adequate to ease the collection of data and the handling of the database and to help avoid confusion and mistakes due to homonyms and duplicities; and

(d) the design of data collection for negative and positive information and flexibility in structuring the information in accordance with the Act.

10. An application for a licence shall be accompanied by the following supporting documents—

Information
and
supporting
documents

- (a) a copy of the applicant's memorandum and articles of association and documents supporting the proprietary right and value of the contribution of capital in tangible assets, where applicable;
- (b) a feasibility study by the applicant company, showing the nature of the planned business, organisational structure and internal monitoring procedures of the company and covering the following aspects—
- (i) mission statement and goals;
 - (ii) market analysis;
 - (iii) ownership and governance;
 - (iv) management;
 - (v) financial analysis including—
 - (A) balance sheet;
 - (B) description and projected investments;
 - (C) year (minimum projection of financial statements);
 - (D) profitability analysis;
 - (vi) business plan and copy of the certificate of incorporation;
 - (vii) business continuity plan, especially in case of disaster;
 - (viii) operation manuals that ensure the accuracy of the information contained in its database as well as the timely updating of the information, through signing of contracts with information sources which must be known to the Central Bank and the manuals must include—

- (A) query module manual of the application;
- (B) data loading module manual;
- (C) source quality control manual;
- (D) maintenance module manual;
- (E) security module manual;
- (F) operating manual;
- (G) user manual; and
- (H) manual and procedures for handling holder complaints;

(c) sworn statements of directors, managers and shareholders, specifying their respective assets and liabilities, income and expenditure; and

(d) submission of a prototype of the final product, in order to verify that the information is provided.

11. (1) The minimum capital for establishment of a credit reference bureau shall be ten thousand currency points, invested in such liquid assets as the Central Bank may approve.

Minimum
capital
requirements

(2) The minimum capital funds of a credit reference bureau referred to in subregulation (1), unimpaired by losses, shall, at all times, not be less than ten thousand currency points.

12. The Central Bank shall carry out on-site inspection of the applicant's premises to determine the adequacy of the applicant's security system and to confirm the following matters—

Pre-
licensing
inspection

(a) suitability of premises for the business operations;

(b) separation of credit reference bureau business from other business performed by the credit reference bureau; and

(c) the adequacy of the management information system, administrative and operational processes and the internal control systems.

Grant of licence

13. Where the Central Bank is satisfied that all the necessary conditions have been fulfilled, it shall issue to the applicant a licence to permit the commencement of operations.

Licence fee

14. An applicant shall pay a licence fee of fifty currency points, on approval of the application.

Refusal to grant licence

15. (1) The Central Bank may, when it deems fit, refuse to grant a licence to an applicant.

(2) The Central Bank shall communicate the reasons for its refusal to grant a licence to the applicant in a letter of refusal, within a period not exceeding one hundred and twenty working days after the date of receipt of the application.

Scope and duration of licence

16. (1) The business of a credit reference bureau shall mainly be the dissemination of credit information to financial institutions and micro finance deposit-taking institutions as provided for by section 46 of the Micro Finance Deposit-Taking Institutions Act, 2003 and section 78 of Financial Institutions Act, 2004.

(2) A credit reference bureau licence is valid until revoked by the Central Bank.

Expiry of licence

17. A licence shall automatically expire if a credit reference bureau has not commenced business during the first six months immediately after the date of issue of the licence.

PART III—OPERATION OF CREDIT REFERENCE BUREAUS

18. (1) A credit reference bureau shall collect negative information on the background and credit history relating to the non-performing obligations of persons and enterprises and other organisations as required by law.

Collection
of
information

(2) A credit reference bureau shall, with the authorisation of the customer, collect positive information regarding economic, financial and commercial obligations of persons or enterprises in order to determine their overall debt exposure and capacity to repay.

(3) At the time of receiving the information referred to in subregulations (1) and (2), a credit reference bureau shall ensure that the financial institution or the MDI has obtained the following—

(a) identification particulars of the holder; and

(b) waiver of consent for disclosure of information across financial institutions and MDIs for positive information.

(4) A credit reference bureau may consult public sources of information, except that the rights and liberties of the customer shall not be violated.

19. (1) A credit reference bureau shall provide credit information services only to financial institutions regulated under the Financial Institutions Act, 2004 and MDIs.

Dissemin-
ation of
credit
information

(2) In the case of users other than Financial Institutions and MDI's, authorisation by the holder to provide the holder's credit information shall be submitted by the user, in writing, before accessing the information, to a credit reference bureau.

(3) For purposes of collecting, recording and keeping positive information, a credit reference bureau shall require that the financial institution or MDI has received express written authorisation to access the information from its customers.

20. A credit reference bureau shall—

- (a) implement strict quality control procedures in order to ensure the quality of its database and the continuity of its services;
- (b) utilise the information collected solely for the purposes set out in these Regulations;
- (c) provide authentic, legitimate, reliable, accurate, truthful and current information that reflects the existing situation of the holder at any given time and if the information is found to be illicit, inaccurate or no longer valid, the credit reference bureau shall promptly take the corrective measures necessary to remedy the deficiencies;
- (d) provide to the Central Bank, unrestricted access to all the information managed by the credit reference bureau, whether through access to its systems according to published services, or in the manner stipulated by the Central Bank, for the purpose of supervision; and
- (e) observe, through its shareholders, directors and officers, a perpetual duty of confidentiality with regard to the information divulged to them by financial institutions and MDIs.

21. (1) A credit reference bureau shall maintain a historical database covering a five year period for the purpose of providing detailed credit information, and shall keep the database for a period of not less than ten years.

(2) A credit reference bureau shall implement procedures that ensure that the information registered in its database is updated on an ongoing basis.

(3) A credit reference bureau shall update its data base as and when information is provided by the user institution responsible for the timely updating of the information submitted

to the Credit Reference Bureau and contained in the database and the information shall be updated on a weekly basis, or as often as necessary, in accordance with the nature of the information.

22. (1) A credit reference bureau shall take the necessary security and control measures in order to avoid improper use or mismanagement of information.

Database
management
and security

(2) For the purposes of subregulation (1), improper use or mismanagement of information means any act or omission that causes damage to the customer's estate or that produces a benefit of any kind in favour of a credit reference bureau or its employees, provided that it does not derive from the attainment of the bureau's corporate purpose.

23. A credit reference bureau may charge fees for its services, which shall be agreed upon between the financial institutions or the MDIs and the credit reference bureau and shall be denominated in Uganda Shillings.

Fees

24. (1) A credit reference bureau may establish offices throughout Uganda for the purpose of carrying out the business permitted by these Regulations, in its central office or other specific activities authorised by the Board of Directors, in accordance with the business of the credit reference bureaus.

Opening,
relocation
and closing
of offices

(2) The Chief Executive Officer of a credit reference bureau shall—

(a) ensure that the report of a credit reference bureau substantiating any opening or relocation of its offices is approved by the Board of Directors;

(b) submit to the Central Bank, the application of the credit reference bureau for the opening or relocating of the bureau;

(c) ensure that the credit reference bureau complies with these Regulations in the operation of its offices;

(d) ensure that the credit reference bureau complies with legal formalities for the closing of its offices.

(3) A credit reference bureau must obtain the approval of the Central Bank before opening, relocation or closing of its offices.

Restrictions

25. A credit reference bureau shall not request, collect or grant information, other than information related to its official business.

Rights of holders

26. (1) Customers shall access, when necessary, any credit information relating to them that is registered in a database administered by a credit reference bureau.

(2) The information referred to in subregulation (1) may be obtained by the holder—

(a) free of charge, by viewing the data on a screen or;

(b) by paying a fee prescribed by the credit reference bureau, by notice in the *Gazette*, to cover the cost of replacing the stationary used for the issuance of the corresponding document.

Right of modification and cancellation

27. (1) Where the holder believes that the information contained in the database is illegal, inaccurate, erroneous or outdated, he or she may request a review by the credit reference bureau of the information, and any deficiencies identified shall be promptly remedied, except that where any legal liability or cost arises from the illegal, inaccurate, erroneous or outdated information, the person providing the wrong information is liable for the relevant cost of reviewing the information.

(2) Where the error is attributable to the source from which the information originated, a credit reference bureau shall notify the holder that the claims must be directed to the financial institutions or MDIs from which the information originated.

(3) Where the error is attributable to a credit reference bureau, the credit reference bureau shall, at its own expense, rectify its database, immediately, and notify any person who may have used the information, of the error and its rectification.

(4) Where the holder has made an unfounded claim, a credit reference bureau may charge the holder for the cost of its services.

28. Where a credit reference bureau—

Penalties

(a) delays in providing information and documents to the Central Bank;

(b) wrongfully alters, modifies or deletes records from its database; or

(c) fails to adopt security and control measures that are necessary to prevent the wrongful use and management of information,

it shall pay a civil penalty of one hundred currency points, and in the case of a continuing offence, an additional fine not exceeding fifty currency points for each day on which the offence continues.

29. The Central Bank may, basing on a report establishing violations committed by a credit reference bureau, cancel the bureau's licence.

Cancellation and revocation of licence

PART IV—DISSOLUTION AND LIQUIDATION

30. A credit reference bureau may be dissolved and liquidated in accordance with the laws of Uganda and with the prior authorisation of the Central Bank, and shall comply with the decision of the Central Bank with regard to the management and control of its database.

Dissolution and liquidation

31. A company's petition to the Central Bank to obtain authorisation for dissolution and liquidation must be accompanied by the following documents—

Authorisation of the Central Bank for voluntary liquidations

(a) a copy of the minutes of the special meeting of shareholders in which the agreement to dissolve was recorded;