

Dated as of the 20th day of March, 2017

THE BANK OF UGANDA

CRANE BANK LIMITED
(in receivership)

and

DR. SUDHIR RUPARELIA

**Acting for himself and on behalf of the Shareholders Current and Former Directors and
Current and Former Employees (including their associates and affiliates) of Crane
Bank Limited (In Receivership)**

CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT



THIS CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT is made this
20th day of March 2017

PARTIES

- (1) **THE BANK OF UGANDA**, established as the Central Bank of Uganda under the Bank of Uganda Act (Chapter 51 of the Laws of Uganda) for the purposes hereof of Plot 37/45 Kampala Road, P.O. Box 7120, Kampala, Republic of Uganda (hereinafter referred to as **BOU** which expression shall, where the context permits, include BOU's successors in title and transferees or assignees from time to time);
- (2) **CRANE BANK LIMITED (IN RECEIVERSHIP)**, a financial institution established under the laws of Uganda of Plot 38 Kampala Road P.O. Box 22572, Kampala, Republic of Uganda, acting through the statutory regulator and receiver, the Bank of Uganda (hereinafter referred to as **CBL** which expression shall, where the context permits, include CBL's successors in title, transferees or assignees from time to time); and
- (3) **DR. SUDHIR RUPARELIA**, of P.O. Box 3673, Kampala, (hereinafter referred to as **SR** which expression shall, where the context permits include SR's personal representatives, heirs and permitted assigns), acting for himself and on behalf of all of the Shareholders, Current and Former Directors and Current and Former Employees (including their associates and affiliates) of CBL.

(together the **Parties** and individually a **Party**)

BACKGROUND

- (A) BOU is established as a body corporate with perpetual succession under the Bank of Uganda Act (Chapter 51 of the Laws of Uganda) (**BOU Act**) and is required as one of its functions to, inter alia, "...*supervise, regulate, control and discipline all financial institutions...*" in Uganda.
- (B) Pursuant to its supervisory mandate, BOU is required, in the discharge of its functions, to co-operate with financial institutions in order, inter alia, "... *to ensure high standards of conduct and management throughout the banking system...*".
- (C) Under section 45 of the BOU Act, the members of the board and officers and employees of BOU (including former members of the board, former officers



and former employees of BOU) are bound by a declaration of secrecy requiring them "... not, except as may reasonably be in the performance of their functions, disclose to any person any material information acquired in the performance of their functions unless called upon to give evidence in a court of competent jurisdiction or to fulfil other obligations imposed by law".

- (D) It is agreed that this Confidential Settlement and Release Agreement and its terms and conditions constitute material information for the purposes of section 45 of the BOU Act.
- (E) In the due and proper exercise of its power, BOU took over management of CBL on 20th October, 2016 pursuant to sections 87(3) and 88(1) (a) and (b) of the Financial Institutions Act, 2004 (as amended) (the **FIA**) and subsequently placed CBL under receivership on 24th January 2017 in furtherance of powers under section 94 of the FIA.
- (F) Following the placing of CBL in statutory management and subsequently receivership, BOU contends that the matters relating to the shareholding, control management and capitalisation of CBL, spanning from the foundation of CBL in 1995 through to the 26th October 2016, gave rise to the prospect of legal proceedings (whether civil, administrative or criminal claims) against SR (whether individually, or through his associates, employees, affiliates or the employees of affiliates); current and former Shareholders; current and former Directors; current and former employees of CBL; as well as the associates and affiliates of the aforementioned persons matter (hereinafter referred to as the **Covered Conduct**).
- (G) This Confidential Settlement and Release Agreement is neither an admission of fact nor liability by SR in connection with the Covered Conduct or a concession or acceptance by SR that he would not have any well-founded defences to the claims and demands made by BOU in connection with the Covered Conduct or a waiver of any advocate-client privilege which or his advisers would benefit from.
- (H) This Confidential Settlement and Release Agreement is not a concession by BOU that its claims with respect to the Covered Conduct, are not well-founded.
- (I) To avoid the delay, uncertainty, inconvenience and expense of protracted investigations and/or legal proceedings of any kind (whether civil, criminal or administrative) in connection with the Covered Conduct, and in consideration

of the mutual promises and obligations under this Confidential Settlement and Release Agreement, the Parties have settled their differences and have agreed terms for the full, final and complete settlement and release of claims relating to the Covered Conduct and wish to record those terms of settlement, on a legally binding and enforceable basis, in this Confidential Settlement and Release Agreement.

- (J) This Agreement is subject to the Director Public Prosecution (DPP) and Attorney General (AG)'s no objection to the arrangements contemplated in this Confidential Settlement and Release Agreement which no objection shall be sought by BOU on a upon the draft terms of this Agreement being agreed by the parties and prior to signing hereof.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Confidential Settlement and Release Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

Related Parties: means "associates" and "affiliates" as defined in the Financial Institutions Act 2004 as amended and, for the avoidance of doubt, includes a Party's parent, subsidiaries, assigns, transferees, representatives, principals, agents, officers or directors and any person controlled by a Party and any representatives, principals, agents, officers or directors of a person controlled by a Party.

- 1.2 The Background recited above shall form an integral part of this Confidential Settlement and Release Agreement and shall accordingly be legally binding and enforceable
- 1.3 This Confidential Settlement and Release Agreement is the product of mutual negotiation and each of the Parties has had the benefit of legal counsel and therefore this Confidential Settlement and Release Agreement shall not be construed strictly as against a Party solely on the basis that any clause or provision was incorporated by it.

2. EFFECT OF THIS CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

- 2.1 The Parties hereby acknowledge and agree that upon execution, this

Confidential Settlement and Release Agreement shall immediately be fully and effectively binding on them.

The Parties hereby acknowledge that the Agreement shall be without prejudice to and entirely independent of the agreement between BOU and Rasiklal Kantaria. For the avoidance of doubt, the parties have agreed Rasiklal Kantaria cannot make any claim against BOU or CBL based on this Agreement.

3. SETTLEMENT CONSIDERATION

3.1 In consideration of BOU and CBL agreeing to settle and release claims as specified in this Confidential Settlement and Release Agreement, SR agrees;

- a) to pay and/or procure the payment to BOU of the aggregate amount to **US \$ 60,000,000.00 (Sixty Million United States Dollars)** (the **Settlement Consideration**); and
- b) to transfer to CBL (In Receivership) or its nominee the Freehold and Mailo titles set out in "**Annexure A**" (the **Branch Titles**).

3.2 The Settlement Consideration in Clause 3.1(a) above shall be paid by SR as follows:

3.2.1 **US\$ 8,000,000 (Eight Million United States Dollars)** which will be paid within a period of no more than 30 days from the date of Execution.

3.2.2 **US\$ 10,000,000 (Ten Million United States Dollars)** which will be paid within a period of no more than 90 days from the date of Execution. The said total sum of **US \$ 18,000,000.00 (Eighteen Million United States Dollars)** shall be paid into BOU's **USD account no. 317.144034.1** in the names of **Crane Bank Limited Funding** (the **Nominated Account**)

3.2.3 The balance of **US \$ 42,000,000 (Forty Two Million United States Dollars)** by way of transfer to BOU (or its nominee) as Receiver of CBL of real property with an aggregate fair market value of **US \$ 42,000,000 (Forty Two Million United States Dollars)**(the **Required Value**).

3.2.4 The fair market value of the real property shall be reached by joint valuation of the parties. BOU and SR shall each appoint one valuer or firm of valuers to the joint valuation team (the **Joint Valuation Team**) within 7 days of Execution of the Agreement.

3.2.5 SR will identify and supply a list of properties (free of all encumbrances, claims whether legal or equitable, and whether

registered or unregistered) whose collective fair market value shall meet the Required Value under this Agreement and shall submit the list to BOU at the date of Execution.

3.2.6 The list of properties shall be subjected to the joint valuation process to determine the agreed value by the Parties. In the event of the Joint Valuation Team failing to agree on the valuation of any of the listed properties, the Joint Valuation Team shall refer to a mutually acceptable third party Valuer appointed by the Joint Valuation Team (the **Umpire**), whose valuation shall be taken to be the joint valuation.

3.2.7 In the event that the properties satisfy the Required Value under this Agreement, the Joint Valuation Team shall list the properties under their joint hand and the properties on this duly executed list shall then comprise the **Settlement Titles**. Once the list of Settlement Titles has been set out as agreed in this clause, the joint valuation will be binding on the Parties and neither Party shall be at liberty to question or resile from the valuations.

3.2.8 Immediately upon receiving the list of Settlement Titles from the Joint Valuation Team, SR shall hand over the Duplicate Certificates of Title and the duly sealed/executed and witnessed transfer deeds in respect thereof to BOU and BOU shall be at liberty to place the same on market for sale to recover the balance outstanding on the Settlement Consideration.

3.2.9 In the event that the Settlement Titles do not satisfy the Required Amount, SR shall within another 7 days provide additional real property to satisfy any shortfall in value identified and the value of the additional property shall be determined in the same manner as the earlier titles.

3.3 The Settlement Consideration in Clause 3.1(b) above shall be effected by SR causing the delivery to BOU of duly sealed and witnessed transfer deeds in respect of the Branch Titles together with the Duplicate Certificates of Title thereto;

4. **THE AGREED LOANS AND THE RETURN OF THE LEGAL ENTITY CBL**

4.1 Upon execution of this Agreement, BOU and CBL shall assign the Agreed Loans set out in "Annexure "B" to SR or his nominees, (including the securities and duly executed releases of encumbrances of such securities). Handover of securities shall be done through a mutually agreeable escrow arrangement between the parties where SR and BOU each exchange value for value.

4.2 It is agreed by the Parties that any payments made by any of the debtors on account of any of the Agreed Loans from 20th October, 2016 to BOU (or to DFCU Bank, if applicable) shall be considered as a payment from SR and shall be credited to SR for the purposes of payment of the Settlement Consideration.

4.3 BOU shall upon receipt of all the consideration from SR set out in this Agreement lift the state of Receivership from CBL and it shall return to SR (or his nominees) the ownership and control of the legal entity CBL (although it is expressly understood by all parties that the legal entity CBL shall not be licensed to conduct Financial Institution Business within the meaning of the FIA and will, as first order of business, change its name to remove the word "Bank" or any derivative thereof as well as amend its Memorandum and Articles of Association to remove all reference to Financial Institution Business in the objects or elsewhere).

5. DISMISSAL OF ACTIONS AND TERMINATION OF INVESTIGATIONS, ADMINISTRATIVE ACTIONS AND PROSECUTION IN RESPECT OF COVERED CONDUCT

BOU and CBL hereby agree to cease all current proceedings and investigations or the prosecution of other administrative actions against SR and/or any of SR's Related Parties in connection with or relating to (whether directly or indirectly) the Covered Conduct and not to institute, direct, procure, instigate, maintain or take part in any new proceedings or investigations or the prosecution of any action or proceedings or other administrative actions against SR and/or SR's Related Parties in connection with arising out of or relating to (whether directly or indirectly) the Covered Conduct.

6. RELEASE

This Confidential Settlement and Release Agreement is in full, complete and final settlement of all claims that either Party (or the Related Parties or shareholders) may have against the other, and each of BOU and CBL, hereby fully and finally releases and forever discharges and shall refrain from

instituting, directing, procuring, instigating or maintaining, all and/or any actions, claims, sanctions (whether administrative, civil or criminal in nature) rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to the Parties or to the law, and whether in law or equity, that each of BOU and CBL, their Related Parties or any of them ever had, may have or hereafter can, shall or may have against SR and/or any of SR's Related Parties arising out of relating to or connected with:

- (a) the Covered Conduct; and
- (b) any existing or ongoing proceedings, prosecutions or administrative actions in respect of the Covered Conduct;
- (c) all any other matter of any kind and of whatever description arising out of CBL between the Parties, whether currently known or claimed or not;

(Collectively, the **Released Claims**)

7. AGREEMENT NOT TO SUE

Each Party agrees, on behalf of itself and on behalf of its Related Parties not to sue, commence, voluntarily aid in any way, procure, instigate, prosecute or cause to be commenced or prosecuted against any other Party or its Related Parties any action, suit or other proceeding concerning the Released Claims, in Uganda or in any other jurisdiction.

8. COSTS

- 8.1 The Parties shall each bear their own legal costs in relation to this Confidential Settlement and Release Agreement and its implementation and any costs incurred prior to the signing of this Confidential Settlement and Release Agreement in connection with the Covered Conduct.
- 8.2 The Parties shall each bear costs of their nominee to the Joint Valuation Team and the costs of the Umpire, if their services should be required, shall be borne equally by the Parties.
- 8.3 This clause 8 supersedes and overrides any and all previous agreements between the Parties and any administrative order regarding the legal costs in relation to any antecedent disputes, investigations or proceedings and in relation to this Confidential Settlement and Release Agreement (including the implementation of all matters provided by this Confidential Settlement and Release Agreement).

9. WARRANTIES AND AUTHORITY

9.1 Each Party warrants and represents to the other that it has not sold, transferred, assigned or otherwise disposed of its interest in the Released Claims.

9.2 Each Party warrants and represents to the other Party with respect to itself (and in the case of BOU, both in its capacity as the Central Bank of Uganda and in its capacity as statutory manager and/or receiver of CBL) that it has the full right, power and authority (in the case of BOU including under the FIA) to execute, deliver and perform this Confidential Settlement and Release Agreement and that this Confidential Settlement and Release Agreement creates valid, legal, binding and enforceable obligations of each Party. on the basis that BOU obtained the DPP's and AG's no objection to the arrangements contemplated in this Confidential Settlement and Release Agreement prior to the signing hereof.

9.3 Each Party warrants and represents that it has freely and voluntarily entered into this Confidential Settlement and Release Agreement without any degree of duress or compulsion.

10. INDEMNITIES

10.1 Each Party hereby indemnifies, and shall keep indemnified, the other Party against all costs and damages (including reasonable legal expenses) properly incurred in all future actions, claims and proceedings in respect of any of the Released Claims which it or its Related Parties or any of them may bring against the other Parties or its Related Parties or any of them.

11. NO ADMISSION OR ADVERSE FINDING

11.1 This Confidential Settlement and Release Agreement is entered into in connection with the compromise of the Covered Conduct and in the interest of avoiding the delay, uncertainty, inconvenience and expense of protracted investigations, legal proceedings (whether civil or administrative or criminal) as well as in the light of limiting destabilisation of Uganda's banking system and economy. It is not, and shall not be represented or construed by the Parties as an admission of liability or wrongdoing in connection with the Covered Conduct or the Released Claims on the part of SR or his Related Parties and nor is it a concession by BOU that its claims with respect to the Covered Conduct, are not well-founded.

12. SEVERABILITY

If any provision or part-provision of this Confidential Settlement and Release Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 12 shall not affect the validity and enforceability of the rest of this Confidential Settlement and Release Agreement.

Without prejudice to the immediately foregoing, should any legal or administrative proceedings of any kind ensue against SR (as defined in this agreement), the Agreement stands voided and BOU shall immediately return to SR the value of the Settlement Consideration in immediately available funds.

13. ENTIRE AGREEMENT

This Confidential Settlement and Release Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14. CONFIDENTIALITY

14.1 The terms of this Confidential Settlement and Release Agreement, and the substance of all negotiations in connection with it, the documents, records, testimonies and sources of information on which each party's claims are based are confidential to the Parties and their advisers, who shall not disclose them to, or otherwise communicate them to, any third party without the written consent of the other Parties other than:

- (a) the DPP and the AG for the purposes of procuring their no objection to the arrangements contemplated in this Confidential Settlement and Release Agreement mentioned above. BOU will ensure that both the DPP and the AG are bound by the confidentiality obligations set out herein, in the consultation process and after the no objection has been obtained;



- (b) to the Parties' respective auditors, and lawyers on a need-to-know basis and on terms which preserve confidentiality;
- (c) pursuant to an order of a court of competent jurisdiction, or pursuant to any lawful and proper order or demand made by any competent authority or body where they are under a legal or regulatory obligation to make such a disclosure; and
- (d) as far as necessary to implement and enforce any of the terms of this Confidential Settlement and Release Agreement.

14.2 If disclosure should be required / permitted under any of the exceptions set out in clause 14.1 (b), (c) and (d) above, the disclosing Party shall give written notice to the other Party as soon as reasonably practical prior to making such disclosure.

14.3 BOU further acknowledges that under section 45 of the BOU Act, the members of the board and officers and employees of BOU (including former members of the board, former officers and former employees of BOU) are bound by a declaration of secrecy requiring them "*... not, except as may reasonably be in the performance of their functions, disclose to any person any material information acquired in the performance of their functions unless called upon to give evidence or in a court of competent jurisdiction or to fulfil other obligations imposed by law*". BOU undertakes to use its best endeavours to procure compliance with this statutory obligation.

15. GOVERNING LAW

This Confidential Settlement and Release Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of the Republic of Uganda.

16. JURISDICTION

Each Party irrevocably agrees that the courts of Uganda shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Confidential Settlement and Release Agreement or its subject matter or formation.

17. CO-OPERATION

17.1 The Parties shall deliver or cause to be delivered such instruments and other documents at such times and places as are stipulated in this agreement, or failing such stipulation, as are reasonably necessary or desirable, and shall take any other action reasonably requested by the other party for the purpose of putting this Confidential Settlement and Release Agreement into full force and effect in accordance with its terms.

17.2 Nothing in this clause 17 or elsewhere in this Confidential Settlement and Release Agreement shall be deemed to constitute a waiver by any Party of any advocate-client privilege or a waiver by any Party of any defences that may be available to such Party in the event of any claims asserted in respect of the Released Claims.

18. COPIES

18.1 This Confidential Settlement and Release Agreement shall be executed in four (4) original copies, each signed or sealed by each of the Parties without obligation for any or all of the Parties to do so in the presence of the other.

19. VARIATION

No variation of this Confidential Settlement and Release Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).


This Confidential Settlement and Release Agreement has been entered into on the date stated at the beginning of it.

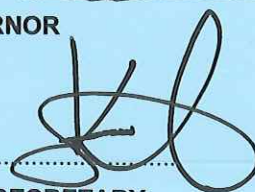
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Handwritten signatures in blue ink, including a large stylized signature and a smaller one below it.

The Seal of BOU was hereto affixed:
In the presence of




GOVERNOR


BANK SECRETARY

Signed by **CRANE BANK LIMITED**
(IN RECEIVERSHIP)


RECEIVER

In the presence of:

.....

Signed by **SUDHIR RUPARELIA**


.....

SUDHIR RUPARELIA

In the presence of:


.....



**ANNEXTURE A: LIST OF BRANCH
FREEHOLD TITLES**

ANNEXTURE B: LIST OF AGREED LOANS