



Beyond collateral: A legal analysis of the challenges and prospects of credit – Worthy lending in Uganda

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Abstract

Debt recovery is still a significant challenge in Uganda's Banking Sector and among the factors that exacerbate it are the lending conditions which are largely influenced by the collateral value. Financial Experts including the current Governor Bank of Uganda, have on several occasions urged Commercial Lenders (Bank) to shift from collateral lending to credit-worthy based lending citing challenges associated with collateral lending such as the legal dynamics in perfecting securities and foreclosure. Thus, this article underscores the challenges and prospects of credit-worthy lending in Uganda as an alternative to collateral lending. The study is entirely based on doctrinal approach encompassing review of both primary and secondary sources including statutes and other scholarly literature. The findings indicate that indeed, the pursuit of credit-worthy lending is a noble ambition that seeks to base financial relationships on trust and future potential rather than tangible possessions. However, this model is fraught with challenges rooted in informal sector dominance, information asymmetry, risk management, scalability and technology as well as the heightened moral hazard. In conclusion, stakeholders, including policymakers, regulators, and financial institutions, are advised to support the growth of credit-worthy lending culture in Uganda by leveraging technology to make credit-worthiness assessment more objective and efficient, while still using collateral judiciously to manage risk and align incentives effectively.

Keywords: Collateral, credit worthy, lending, Uganda

Introduction

The financial landscape in Uganda is steadily growing with the increase in the number of financial institutions (including Banks and Non-Banks) as well as financial products and services. As such, traditional lending practices which heavily rely on collateral, are becoming a stumbling block to the country's growing need for inclusive and sustainable financial systems. A good number of collaterals are stuck in courts as a result of injunctions arising from third party claims on such collaterals. Thus, there is a need to drive focus towards *credit – worthy lending* which looks at the borrower's creditworthiness rather than collateral. This shift is largely necessitated by the increasing rate of non-performing loans (NPLs) and the hurdles involved in debt recovery processes. The credit – worthy lending approach, beyond collateral, has the potential to improve financial inclusion and reduce on the rate of NPLs. However, the approach also raises important legal and regulatory questions. Hence, this paper provides a legal analysis of the prospects and challenges of credit-worthy lending in Uganda, examining the existing legal framework, potential benefits, and obstacles to implementation. By exploring the legal dimensions of credit-worthy lending, this article aims to contribute to the ongoing discussion about how Uganda can harness this approach to promote financial inclusion and stability.

There is limited literature on the subject of credit-worthy lending in Uganda as most scholars focus on addressing factors mitigating risks associated with collateral lending and NPLs such as credit risk management. For instance, Nshabire, Javira, David Nyambane, Michael Manyange, and Muniru Sewanyina, examined the relationship between credit risk management practices and loan performance, with a focus on identifying gaps and proposing strategies to

enhance banking stability and in the end, recommend that banks should invest in strengthening their risk mitigation strategies, focus on enhancing their risk management frameworks, train staff to effectively utilize these tools and fostering a culture of proactive risk management can significantly improve outcomes and, provide support to borrowers facing financial difficulties to reduce defaults as well as enhancing customer loyalty and trust^[1].

Sewanyina M, Nyambane D, Manyange M and Ongesa T, while reviewing the approaches to managing NPLs in the banking sector, their findings reveal the importance of integrating traditional risk management practices with innovative financial technologies and policy reforms to enhance banking sector resilience and in the end, they urge banks, in order to address NPL challenges, to adopt advanced credit scoring models, refine loan evaluation processes, and leverage FinTech solutions such as AI-driven credit scoring and blockchain technology^[2]. Chibawe and Lamine, in their paper addressing the persistent challenge of high NPLs in Zambia's banking sector, concluded that the need for a multi-pronged strategy combining macroeconomic stability, tighter regulatory oversight, and institutional reforms may curb NPLs and as such, recommended for the establishment of dedicated loan recovery units, forming asset management corporations, and strengthening credit vetting through a national credit reference bureau^[3].

1. Current Legal Framework on Lending in Uganda

Lending and borrowing in Uganda is largely regulated by the Financial Institutions Act (FIA) Cap. 57, National Payment Systems Act (NPSA) Cap. 59, Microfinance Deposit-Taking Institutions Act Cap. 58, Tier 4 Microfinance Institutions and Money Lenders Act Cap. 61,

Mortgages Act Cap. 239, Security Interest in Moveable Property Act (SIMPA) Cap. 293 as well as the Regulations, Guidelines and Rules made thereunder. The Mortgage Act, is primarily the law regulating the creation of mortgages^[4], the rights and duties of both a Mortgagor (Borrower) and a Mortgagee (Lender), as well as other related matters^[5]. Similarly, SIMPA deals with regulating the use of movable properties as collateral for credit, perfection of security interests in movable properties, enforcement and other related matters^[6].

NPSA on the other hand, deals with the establishment of payment systems, their safety and efficiency, duty of the Bank of Uganda (BoU), financial collateral arrangement, issuance of electronic money and other related matters^[7]. The Microfinance Deposit-Taking Institutions Act and Tier 4 Microfinance Institutions and Money Lenders Act; generally, regulates the licensing, control and discipline of Microfinances and Money Lenders in Uganda. Finally, the FIA focuses on regulating the establishment, control and discipline of financial institutions by Central Bank (BoU)^[8]. In summary, it provides for licensing, shareholding, capital requirement and restrictions on financial institutions.

In as far as *credit – worthy based lending* is concerned; the FIA also provides for the establishment of the Credit Reference Bureau (CRB) and allows financial institutions to disclose information to such licensed CRBs relating to the credit worthiness of customers^[9]. It also imposes a mandate on every financial institution to carry out credit checks on customers applying for credit^[10]. In that way, the statute calls upon BoU after consultations with the Minister, to pass a statutory instrument providing for the access and use of the CRB as well as prescribing other circumstances requiring a financial institution to perform a credit check on a customer.

Following this development, the Governor of the Bank of Uganda (then), on the 3rd of December 2008, launched the Credit Reference Bureau. And recently in 2022, still the BoU passed the Financial Institutions (Credit Reference Bureau) Regulations which operationalized the said provisions of the FIA by providing for the licensing and management of CRBs and re-echoed the mandate of financial institution, microfinance deposit-taking institution or registered society, to conduct mandatory credit check at a CRB on all their customers at the time they apply for credit^[11].

2. Credit – Worthy vs. Collateral Lending

Collateral lending involves the use of security (collateral) to obtain a loan. It essentially depends on the availability and value of an asset (movable or immovable, tangible or intangible). The arrangement begins with valuing the collateral – to ascertain whether it can settle the credit in case of default of the Borrower, perfection of the collateral by creating a charge or lien – legally recognizable right of the lender on the collateral and at the end, depending on whether the credit has been fully repaid or not, such collateral may be redeemed by the Borrower or forfeited by the Lender – upon foreclosing the Borrower’s redemption right. In Uganda’s legal framework, the Mortgage Act and SIMPA regulate the said process (from creation of a charge or lien on the collateral to redemption of the same or foreclosure of the redemption right). Credit – worthy lending approach on the other hand, is where a Lender, focuses mainly on the credit history of the Borrower or

his/her creditworthiness. A clear example of a pure credit – worthy lending approach is the use of a credit card (a card provided by the bank or financial institution allowing the Customer to spend credit and repay in future) and, an overdraft (where a bank allows its customer to transact or spend in excess of the funds available on the Customer’s account).

Electronic money issuers and commercial banks in Uganda have recently taken an approach of collaborating to build systems which may enable lending beyond collateral that is, basing on credit – worthiness of customers. These collaborations have resulted into for example; “quick loan” – which is a service by Airtel Money and Housing Finance Bank, that enables customers to complete their transactions when they have insufficient funds on their account^[12]. “Kwasa Kwasa” – a recent product of a tripartite arrangement between Diamond Trust Bank (DTB) Uganda, Credable Group and Airtel Money, which offers Airtel Money customers an opportunity to instantly access affordable short-term loans from as low as UGX 5,000 (Five Thousand Uganda shillings) without collateral to enable them meet day-to-day personal and business needs through their Airtel Uganda phones^[13].

Likewise, MTN Mobile Money Ltd (MoMo) in collaboration with KCB Bank introduced “MoPESA” – a product which allows MoMo Customers to access instant cash^[14]. MoMo Users also enjoy another credit-worthy lending form of product referred to as “MoKash Loan” – a service that allows MoMo Customers to take loan of between UGX 3,000 and up to UGX 1,000,000 (depending on the Customer’s credit scoring) on a short-term basis^[15].

As it can be deduced from the above discussion, the conditions and circumstances surrounding collateral lending largely differ from those under credit-worth lending. For example, collateral lending involves a lot of paperwork executed by both the Lender and the Borrower which include; mortgage/collateral deed in addition to loan/credit facility agreement^[16]. Thus, they are regulated by both the general law of contracts (Contracts Act Cap. 284) and laws on securities (Mortgage Act and SIMPA). During recovery, in case of default by the Borrower, depending on the terms under the mortgage/collateral deed, the Lender may foreclose and sale the collateral to recover her credit or pursue other remedies as provided by law including, appointing a Receiver or even taking possession of the security^[17]. However, the recovery process under collateral lending is susceptible to several challenges including, legal actions challenging the validity of the mortgage/collateral deed or opposition of the foreclosure process on legal technical grounds like non – observation of the notice period provided by the law^[18]. Challenging the validity of the mortgage/collateral deed may be premised on various grounds including; the mortgage/collateral being subjected to other third-party rights for example, family or matrimonial property or a property jointly owned. Such issues when raised, usually delay the debt recovery process. On the other hand, credit – worthy lending denotes unsecured debts whose recovery and/or enforcement is solely dependent on loan/credit facility agreement alone. This is why interest charged on such loans is usually higher than that attached to collateral loans and credit offered is a bit less than that capable of being extended on a collateral loan – which depends on the value of the collateral/security. Certainly, our current legal regime as already discussed

above, imposes a mandatory obligation on every Lender (Financial Institution) to carry out a thorough credit check on every Borrower at a CRB at the time they apply for credit ^[19]. This has automatically influenced the Banking Sector to adopt a hybrid approach of considering the Borrower's credit – worthiness in addition to the collateral/security offered by him/her to secure a credit facility. This is currently the status of lending in Uganda.

3. Hybrid Lending Model

This evolution towards a hybrid model signifies a pragmatic recalibration of risk assessment, blending the security of traditional collateral-based lending with the forward-looking potential of cash-flow analysis ^[20]. In a hybrid approach, the lender's due diligence is divided: first, it involves a conventional valuation of the collateral offered, establishing a secured fallback position in the event of Default. Concurrently, and with increasing importance, the lender conducts a comprehensive analysis of the borrower's creditworthiness, leveraging data from CRBs as to evaluate historical repayment behaviour, existing debt levels, and income stability. The legal foundation for this dual analysis creates a better risk profile, potentially allowing for more favourable loan terms such as a higher loan-to-value ratio or a reduced interest rate than would be available under a pure collateral model ^[21]. This hybrid system effectively mitigates the extremes of both models; it tempers the bank's risk exposure, thereby aligning with the risk-weighting requirements of the Basel Accords ^[22], while also providing a pathway to credit for borrowers whose strong financial standing may compensate for less substantial or more illiquid collateral.

One clear example of a hybrid model is "Project financing" – where a lender focuses primarily on the projected cash flows or revenue of the project itself, rather than the balance sheets of its sponsors ^[23]. Under project financing, a special purpose vehicle (SPV) is typically created as a legally independent project company, shielding the sponsors from the project's financial risks ^[24]. While the loan is ultimately repaid from the project's revenue streams, the legal architecture is fundamentally security-based as lenders require a comprehensive suite of securities over all the project's assets, contracts, and rights ^[25]. This creates a complex network of interlinking legal agreements, including concession agreements, off-take/purchase agreements, and supply contracts, which are precisely designed to allocate risks among the various parties ^[26]. The primary challenge for the Ugandan context, however, is that the high transaction costs associated with the extensive legal due diligence and documentation make this model largely inaccessible to small and medium-sized enterprises (SMEs), thereby reinforcing the very financial exclusion that a shift to credit-worthy lending seeks to address.

Thus, a hybrid model can be characterized as a security-anchored yet increasingly character-conscious framework, reflecting a transitional phase towards a more inclusive financial ecosystem.

4. Challenges facing a shift to Credit – Worthy Lending

Informal Sector Dominance: The informal sector, often defined as economic activities that are not regulated or

protected by the State, dominates the economic landscape of many African nations. In Uganda, the informal sector is estimated to employ over 90% of the workforce ^[27]. With credit scoring becomes almost impossible. Although the government has tried to rationalize digital registration of businesses and tax clearance, the level of public awareness especially in rural areas where, informality is dominant, is still low. Thus, credit – worthy lending which solely rely on data gathered through analyzing the credit history of individuals and business, may be had to implement in an informal-sector-dominant environment.

The Informational Challenge: Another profound challenge of credit-worthy lending is overcoming information asymmetry. In collateral lending, the bank's due diligence is heavily weighted towards asset valuation which is a relatively standardized process. The primary question thus, being "What is the collateral forced sale value?" ^[28] while under credit-worthy lending, the bank must answer a far more complex question of "What is the probability of this specific borrower generating sufficient future income to meet their obligations?". Answering the latter requires gathering and analyzing a vast array of data that is often difficult to verify objectively. This includes the borrower's character, business acumen, industry reputation, and the viability of their business plan ^[29]. Unlike asset appraisal, assessing character and future cash flows is subjective and susceptible to misrepresentation by the borrower. The subjective nature of credit-worthiness assessment makes it difficult to create uniform, scalable models. This can lead to inconsistent lending decisions across different branches or loan officers, potentially introducing bias and reducing operational efficiency ^[30].

The Risk Management Challenge: Collateral serves as a powerful risk-mitigation tool that directly addresses the problem of moral hazard (the risk that a borrower will act irresponsibly after receiving a loan because they do not bear the full cost of failure) ^[31]. The threat of losing a valuable asset, such as a home or machinery, motivates prudent behavior and diligent repayment. Credit-worthy lending, by its nature, lacks this automatic disciplinary mechanism. Without significant skin in the game, a borrower facing financial difficulty may prioritise other payments over an unsecured loan. This increases the bank's exposure to default risk. While a credit assessment might predict ability to pay, it is less effective at guaranteeing willingness to pay in adverse circumstances. Consequently, banks pursuing this model must invest heavily in ongoing monitoring and relationship management, which further escalates costs ^[32]. In the event of default, the recovery process for an unsecured loan is often lengthier, more expensive, and yields lower returns than the relatively straightforward process of seizing and liquidating collateral. Yet, a secured creditor (Collateral Lender) stands outside the winding up process and can realize and enforce its security by sale *de hors* (outside of) the winding up proceedings or without intervention of the court ^[33]. From a regulatory standpoint, the Basel Accords, which govern international banking standards, recognise the risk-mitigating effect of collateral. Loans secured by high-quality collateral carry lower risk-weights, meaning banks are required to hold less capital against them ^[34]. Unsecured loans, typical of credit-worthy lending, attract the highest risk-weights.

The Scalability and Technological Challenge: Collateral lending is inherently more scalable. The development of Automated Valuation Models (AVMs) and standardized legal frameworks for security interests allows for high-volume, algorithm-driven lending. This model underpins everything from large-scale mortgage origination to asset-based corporate finance. Credit-worthy lending, traditionally reliant on personal relationships and banker discretion, struggles to achieve similar scale efficiently. However, technological advancements are beginning to address this challenge. The emergence of alternative data (using non-traditional information such as utility bill payments, social media activity, and psychometric testing) and the application of artificial intelligence and machine learning offer new ways to assess credit-worthiness at a lower cost and greater scale^[35]. While promising, these technologies raise new concerns about data privacy, algorithmic bias, and the potential to exclude those with a thin or non-digital credit history.

5. Prospects of shifting to Credit-worthy Lending

Reduced non-performing loans (NPLs): A loan is classified as non-performing when the borrowers do not pay the interest or principal for 90 days or longer^[36]. NPLs greatly affect the profitability banks and may directly cause their collapsing or insolvency. This is so because banks primarily profit from interests garnered on loans. The accumulation of NPLs increases a bank's credit risk, which results in heightened regulatory examination and sanctions^[37]. Management's inability to minimize the accumulation of NPLs also reduces a shareholder's trust in the bank, potentially damaging a bank's reputation. As a result, it decreases a bank's general competitiveness, and they face difficulties adapting to shifts in the financial landscape^[38]. To ensure financial stability and sustained growth in a fast-changing industry, it is only prudent that banks should adopt efficient mechanisms for managing NPLs.

Financial Inclusion and Market Expansion: Credit – worthy lending has the ability to extend credit to a broader section of the public. Many potential borrowers, particularly the low-income earners and small starting businesses of young entrepreneurs, lack substantial tangible assets to offer as collateral but may have strong future earning potential with bankable business ideas. By focusing on cash flow and character, lenders can tap into this underserved market, nurturing entrepreneurship and economic participation. The heavy reliance on collateral can ultimately exclude potentially viable but asset-poor businesses or firms from accessing credit, thereby stifling innovation and growth^[39].

Promotion of a Dynamic and Innovative Economy: A shift from security-based lending to cash-flow lending is vital for financing the intangible-intensive, innovative firms that drive modern economic growth^[40]. Collateral-based lending tends to favour established firms with physical assets in form of real property and machinery. This can bias the credit market against promising, knowledge-based, or service-oriented companies whose main assets are intellectual property or human capital. Credit-worthiness lending by evaluating business models and projected revenues, supports a more dynamic and modern economy where ideas and cash flow are key drivers of value.

Boosting Public Confidence in Financial System: Historically, relationship banking, built on knowledge of the borrower's character and affairs, has been shown to 'reduce information asymmetry and allow for more flexible financing arrangements during periods of borrower distress^[41]. The process of assessing credit-worthiness requires a deeper engagement between the lender and borrower. The lender must understand the borrower's business, industry, and personal financial habits. By analyzing these, the Lender becomes acquainted with the Borrower's credit history and credit scoring. This eventually, fosters a stronger and a more relational banking model, as opposed to a transactional one based solely on asset valuation. This relationship can lead to greater customer loyalty, cross-selling opportunities, and more flexible long-term support thereby boosting public confidence in the financial system.

Low Transaction/Administrative Costs: In developed economies with robust credit bureaus, scoring systems, and data analytics, assessing credit-worthiness can be highly efficient. Automated systems can process unsecured loan applications such credit cards and small personal loans very quickly and at low cost. While valuing collateral also has established mechanisms, it can involve valuation costs, legal fees for perfecting security interests, and ongoing monitoring of the asset's value. These costs are eventually added on the credit advanced and interest thus, increasing the debt and adding a burden to the Borrower.

Avoidance of Pro-Cyclical Lending Behavior: Collateral-based lending can be extremely pro-cyclical. In an economic boom, asset prices inflate, increasing borrowing capacity and potentially fueling asset bubbles. During a downturn, asset values fall, leading to margin calls, reduced credit availability, and forced asset sales, which exacerbates the crisis. For instance, during the financial crisis between 2007 – 2009 the widespread use of collateral amplified the financial cycle and contributed to the severity of the crisis through mechanisms like leverage cycles and fire sales^[42]. Credit-worthiness lending, if based on sustainable cash flow rather than volatile asset prices, can potentially provide a more stable source of credit throughout the economic cycle.

Social and Ethical Considerations: Lending against collateral can create a stark power dynamic where the lender's primary concern is the asset, not the person. Credit-worthiness lending, by its nature, implies a degree of trust in the borrower's promise and ability to repay. This can be seen as a more equitable and socially beneficial form of finance that empowers individuals based on their potential and integrity rather than their existing wealth.

Conclusion

The pursuit of credit-worthy lending is a noble ambition that seeks to base financial relationships on trust and future potential rather than tangible possessions. It is essential for promoting entrepreneurship and financial inclusion, particularly for small and medium-sized enterprises (SMEs) and individuals without significant assets. However, this model is fraught with challenges rooted in informal sector dominance, information asymmetry, risk management, scalability and technology as well as the heightened moral hazard. While technology offers promising tools to mitigate these challenges, the collateral-based model remains

dominant due to its simplicity, scalability, and clear risk-mitigation framework. A sophisticated modern banking system likely requires a hybrid approach, leveraging technology to make credit-worthiness assessment more objective and efficient, while still using collateral judiciously to manage risk and align incentives effectively.

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