



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**BANKING ACT**

CHAPTER 488

Revised Edition 2017 [2010]

Published by the National Council for Law Reporting  
with the Authority of the Attorney-General

[www.kenyalaw.org](http://www.kenyalaw.org)



**CHAPTER 488**

**BANKING ACT**

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## CHAPTER 488

## BANKING ACT

[Date of assent: 13th September, 1989.]

[Date of commencement: 1st November, 1989.]

**An Act of Parliament to amend and consolidate the Law regulating the business of banking in Kenya and for connected purposes**

[Act No. 9 of 1989, Act No. 20 of 1989, L.N. 342/1989, Act No. 8 of 1991, L.N. 443/1992, Act No. 4 of 1993, Act No. 13 of 1994, Act No. 8 of 1997, Act No. 10 of 1997, Act No. 5 of 1998, Act No. 4 of 1999, Act No. 9 of 2000, Act No. 7 of 2001, Act No. 15 of 2003, Act No. 6 of 2005, Act No. 9 of 2006, Act No. 10 of 2006, Act No. 19 of 2006, Act No. 9 of 2007, Act No. 8 of 2008, Act No. 8 of 2009, Act No. 10 of 2010, Act No. 4 of 2012, Act No. 57 of 2012, Act No 38 of 2013, Act No. 41 of 2013, Act No. 14 of 2015, Act No. 19 of 2015, Act No. 25 of 2016, Act No. 38 of 2016, L.N. 105/2017.]

## PART I – PRELIMINARY

**1. Short title**

This Act may be cited as the Banking Act.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**agency**” means an entity contracted by an institution and approved by the Central Bank or sub-contracted by such entity to provide the services of the institution on behalf of the institution, in such manner as may be prescribed by the Central Bank:

Provided that where such entity is a co-operative society, prior approval to provide the services shall be sought from the Sacco Societies Regulatory Authority established under the SACCO Societies Act, 2008 (No. 14 of 2008);

“**assigned capital**” has the meaning given to it in section 7(4);

“**bank**” means a company which carries on, or proposes to carry on, banking business in Kenya but does not include the Central Bank;

“**banking business**” means—

- (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice;
- (b) the accepting from members of the public of money on current account and payment on and acceptance of cheques;
- (c) the employing of money held on deposit or on current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money; and
- (d) such other business activity as the Central Bank may prescribe;

“**banking group**” means a licensed institution and its subsidiaries, non-operating holding companies and subsidiaries of its non-operating holding companies;

“**Board**” means the Deposit Protection Fund Board established by section 36;

“**branch**” means any permanent premises, other than its head office, at which an institution transacts business in or outside Kenya;

“**capital**” means paid-up share capital or, in the case of an institution incorporated outside Kenya, its assigned capital;

“**competent authority**” means any of the bodies set out in the Third Schedule;

“**convertible currency**” means currency which is freely negotiable and transferable in international exchange markets at exchange rate margins consistent with the Articles of Agreement of the International Monetary Fund;

“**co-ordinator**” means the Central Bank;

“**core capital**” means permanent shareholders’ equity in the form of issued and fully paid-up shares of common stock, or in the case of foreign incorporated banks, of the assigned capital, plus all disclosed reserves, less goodwill or any other intangible assets;

“**current account**” means an account maintained by a bank for and in the name of, or in a name designated by, a customer of the bank into which money is paid by or for the benefit of such customer and on which cheques and other bills of exchange may be drawn by, and transfers and other banking transactions made on the instructions of, the customer;

“**disclosed reserves**” includes all reserves created or increased through share premiums, retained profits (after deducting all expenses, provisions, taxation and dividends) and general reserves if such disclosed reserves are permanent and unencumbered and thus able to absorb losses;

“**financial business**” means—

- (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice; and
- (b) the employing of money held on deposit or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money;

“**financial institution**” means a company, other than a bank, which carries on, or proposes to carry on, financial business and includes any other company which the Minister may, by notice in the *Gazette*, declare to be a financial institution for the purposes of this Act;

“**financial year**” means the financial year prescribed in section 20A;

“**group**” means a non-operating holding company, its subsidiaries and all associated companies of the parent or its subsidiaries;

“**institution**” means a bank or financial institution or a mortgage finance company;

“**land**” includes freehold and leasehold land in Kenya and all buildings and permanent improvements thereon;

“**licence**” means a licence granted under section 5;



**“members of the public”** means individuals, partnerships, corporate bodies and trustees or managers of trusts, pension and provident funds or other similar funds;

**“Minister”** means the Minister for the time being responsible for matters relating to Finance;

**“mortgage finance company”** means a company (other than a financial institution) which accepts from the members of the public, money—

- (a) on deposit repayable on demand or at the expiry of a fixed period or after notice; or
- (b) on current account and payment on and acceptance of cheques,

and is established for the purpose of employing such money in accordance with section 15;

**“non-operating holding company”** means a company, other than the institution, which has approved control of an institution and whose activities are limited to holding investments in subsidiaries, holding properties used by group members; raising funds to invest in, or to provide support to, subsidiaries, raising funds to conduct its own limited activities, investing funds on behalf of the group, conducting the banking activities required for its own limited functions, and providing administrative, risk management and financial services to support the efficient operation of the group;

**“officer”**, in relation to an institution, means a Director or any other person, by whatever name or title he may be called or described, who carries out or is empowered to carry out functions relating to the overall direction in Kenya of that institution or takes part in the general management thereof in Kenya;

**“place of business”** means any premises, other than the head office, including a branch, an agency or a mobile unit, or such other premises as may, from time to time, be prescribed by the Central Bank, at which an institution transacts banking or financial business and which is open to the public;

**“public entity”** means the Government, a local authority or a public body declared by the Minister to be a public entity for the purposes of this Act;

**“representative office”** means an office established in Kenya under the provision of Part IX;

**“significant shareholder”** means a person, other than the Government or public entity, who holds, directly or indirectly, or otherwise has a beneficial interest amounting to, five per cent or more of the share capital of an institution or a corporate entity seeking to become an institution;

**“significantly undercapitalized”** in relation to an institution, means that the institution holds less than-fifty percent of the capital requirements prescribed under section 18;

**“supplementary capital”** means general provisions which are held against future and presently unidentified losses that are freely available to meet losses which subsequently materialize, and revaluation reserves on banking premises which arise periodically from independent valuation of such premises, and any other form of capital as may be determined from time to time by the Central Bank;

“**the Central Bank**” means the Central Bank of Kenya established by the Central Bank of Kenya Act (Cap. 491);

“**total capital**” means the total sum of core capital and supplementary capital;

“**total deposit liabilities**” means the total deposits in or outside Kenya in any institution which are repayable on demand or after a fixed period or after notice;

“**undercapitalized bank**” means an institution that does not fully comply with the capital requirements prescribed in section 18;

“**unimpaired reserves**” means capital and revenue reserves not subject to any charge or other encumbrance or option or liable to reduction by payment of dividend or otherwise.

(2) For the purposes of this Act, “**associate**”—

(a) in relation to a company or other body corporate means—

- (i) its holding company or its subsidiary;
- (ii) a subsidiary of its holding company;
- (iii) a holding company of its subsidiary;
- (iv) its non-operating holding company as its subsidiary;
- (v) a subsidiary of a non-operating holding company;
- (vi) any person who controls the company or body corporate whether alone or with his associates or with its associates;

(b) in relation to an individual means—

- (i) any member of his family;
- (ii) any company or other body corporate controlled directly or indirectly, by him whether alone or with his associates;
- (iii) *deleted by Act No. 57 of 2012, s. 38(b)(iii)*,

and a person shall be deemed to be a member of a family if he is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild and adopted child of the person concerned, and in case of an adopted child his adopter or adopters.

(3) For purposes of subsection (2), the term “**control**” includes—

- (a) the ability to influence, whether directly or indirectly, the composition of the board of directors of a company or any other body corporate;
- (b) holding, directly or indirectly, whether personally or through a holding company or companies or subsidiaries thereof, or in any other way, an aggregate of twenty per centum or more of the voting power of a company or body corporate, whether alone or with associates or with other associates of the company or body corporate; or
- (c) as may be determined by the Central Bank, where a person has the ability to exercise a dominant influence over the management or policies of a company or body corporate on the basis of an agreement

or by any other means, regardless of the amount of formal ownership or voting rights.

[Act No. 10 of 1997, Sch. Act No. 4 of 1999, s. 76, Act No. 7 of 2001, s. 2, Act No. 6 of 2005, s. 43, Act No. 9 of 2006, s. 2, Act No. 10 of 2006, s. 40, Act No. 8 of 2009, s. 52, Act No. 10 of 2010, s. 63, Act No. 57 of 2012, s. 38, Act No. 38 of 2013, s. 27, Act No. 14 of 2015, s. 33.]

## PART II – LICENSING OF INSTITUTIONS

### 3. Restrictions on carrying on banking business, etc.

(1) No person shall in Kenya—

- (a) transact any banking business or financial business or the business of a mortgage finance company unless it is an institution or a duly approved agency conducting banking business on behalf of an institution which holds a valid licence;
- (b) unless it is a bank and has obtained the consent of the Central Bank, use the word “bank” or any of its derivatives or any other word indicating the transaction of banking business, or the equivalent of the foregoing in any other language, in the name, description or title under which it transacts business in Kenya or make any representation whatsoever that it transacts banking business;
- (c) unless it is a financial institution or mortgage finance company and has obtained the consent of the Central Bank, use the word “finance” or any of its derivatives or any other word indicating the transaction of financial business or the business of a mortgage finance company, or the equivalent of the foregoing in any other language, in the name, description or title under which it transacts business in Kenya or make any representation whatsoever that it transacts financial business:

Provided that—

- (a) the provisions of paragraphs (b) and (c) of this subsection shall not apply to investment banks licensed under section 11 (3) of the Capital Markets Act and microfinance banks licensed under section 6(1) of the Microfinance Act, 2006; and
- (b) a person granted consent by the Central Bank under paragraph (b) or (c) and who does not obtain a licence within twelve months of such grant shall forthwith cease the use of those words.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

(3) Where an institution conducts business through an agent, the institution shall be liable for the acts or omissions of the agent in so far as such acts or omissions relate to that business.

[Act No. 15 of 2003, s. 47, Act No. 9 of 2006, s. 3, Act No. 10 of 2006, s. 41, Act No. 9 of 2007, s. 63, Act No. 8 of 2009, s. 53, Act No. 57 of 2012, s. 39, Act No. 41 of 2013, Sch.]

### 4. Application for licence

(1) Every institution intending to transact banking business, financial business or the business of a mortgage finance company in Kenya shall, before commencing such business, apply in writing to the Central Bank for a licence.

(2) Deleted by Act No. 9 of 2006, s. 4(b).

(3) The Central Bank shall, where it is satisfied as to the professional and moral suitability of persons proposed to manage or control the institution, certify that such persons are fit and proper persons to manage or control the institution.

(4) For the purposes of this section, the criteria for assessing the professional or moral suitability of persons proposed to manage or control an institution shall be as prescribed in the First Schedule.

(5) In considering an application for a licence, the Central Bank may require to be satisfied as to—

- (a) the financial condition and history of the institution;
- (b) the character of its management;
- (c) the professional and moral suitability of the persons proposed to manage or control the institution;
- (d) the adequacy of its capital structure and earning prospects;
- (e) the convenience and needs of the area to be served; and
- (f) the public interest which will be served by the granting of the licence.

(6) The Minister may, by notice in the *Gazette*, amend the First Schedule.

(7) If a person, other than the Government or a public entity, holds, directly or indirectly, or otherwise has a beneficial interest in, more than five percent of the share capital of an institution or if it is proposed that such a person shall so hold or have such a beneficial interest, that person shall be deemed, for the purpose of this section, to be a person proposed to manage or control the institution.

[Act No. 10 of 1997, Sch., Act No. 9 of 2006, s. 4.]

## 5. Licensing of institutions

(1) Subject to section 4, the Central Bank may, upon payment of the prescribed fee, grant a licence to an institution to carry on business.

(2) The Central Bank may endorse on a licence granted under this section such conditions as the Central Bank considers necessary and may from time to time add, vary or substitute such conditions as the Central Bank deems appropriate.

(2A) An institution which fails to commence business in Kenya within twelve months of the grant of a licence under this section shall, if it still proposes to transact business in Kenya, make fresh application under section 4.

(3) A licence issued under this section shall remain valid unless revoked under section 6:

Provided that a licence which was in force on the date of commencement of this subsection shall be deemed to be a licence to which this subsection applies.

(4) An institution shall pay annual fees in such amount and in such manner as the Central Bank may prescribe.

(5) An institution that fails to pay the annual fees by the end of the financial year shall pay double the annual fee, if payment is made within ninety days after the end of the financial year.

(6) An institution which fails to pay the annual fees within ninety days after the end of the financial year referred to in subsection (5) shall have its licence revoked under section 6.

(7) Any fee or other amount payable under this section shall be paid into the Central Bank.

(8) Deleted by Act No. 14 of 2015, s. 34.

(9) Deleted by Act No. 14 of 2015, s. 34.

(10) Deleted by Act No. 14 of 2015, s. 34.

(11) Deleted by Act No. 14 of 2015, s. 34.

## 6. Revocation of licence

(1) The Central Bank may, by notice in writing to the institution, revoke a licence if the institution—

- (a) ceases to carry on business in Kenya or goes into liquidation or is wound up or is otherwise dissolved; or
- (b) fails to comply with this Act, the Central Bank of Kenya Act (Cap. 491), or any rules, regulations, orders or directions issued under any of those Acts or any condition of a licence:

Provided that—

- (i) the Central Bank, before revoking a licence, shall give to the institution not less than twenty-eight days' notice in writing of the Central Bank's intention, and shall consider any representations made to the Central Bank in writing by the institution within that period before revoking the licence;
- (ii) the institution may, notwithstanding that its licence has been revoked under this subsection, continue to carry on its business for the purpose of winding up its affairs for such period as the Central Bank may determine so long as it does not accept new deposits, open new current accounts or make any loans or investments.

(2) Notwithstanding the revocation of a licence under this section, the Central Bank may exercise any of the powers conferred on it under Part VII if it is necessary for the protection of the interests of the depositors.

(3) The Central Bank shall cause the name of every institution whose licence is revoked under this section to be published forthwith in the *Gazette*.

[Act No. 13 of 1994, s. 3, Act No. 4 of 1999, s. 77, Act No. 9 of 2006, s. 6.]

## 7. Minimum capital requirements

(1) A licence shall not be granted to an institution unless the institution meets the minimum capital requirements specified in the Second Schedule.

(2) The Cabinet Secretary may, by order published in the *Gazette*, amend the Second Schedule.

(3) Every order made under subsection (2) shall be laid before the National Assembly without unreasonable delay, and unless a resolution approving the order is passed by the Assembly within twenty days on which it next sits after the order is so laid, it shall thenceforth be void, but without prejudice to anything previously done thereunder or to the issuing of a new order.

(4) The board of management or other controlling authority of an institution incorporated outside Kenya shall, in addition to meeting the minimum capital requirements specified in the Second Schedule, give an undertaking satisfactory to the Cabinet Secretary to keep within Kenya at all times during the currency of its licence, out of its own funds, a capital assigned to its Kenya branches (in this Act referred to as “assigned capital”) of such minimum amount as may be prescribed.

[Act No. 13 of 1994, s. 4, Act No. 19 of 2015, s. 74.]

## **8. Location of places of business**

(1) No institution shall open in Kenya a branch or a new place of business or change the location of a branch or an existing place of business in Kenya without the approval of the Central Bank.

(2) Before granting an approval under subsection (1), the Central Bank may require to be satisfied as to—

- (a) the history and financial condition of the institution;
- (b) the character of its management;
- (c) the professional and moral suitability of its management;
- (d) the adequacy of its capital structure and earning prospects;
- (e) the convenience and needs of the area to be served and that the public interest will be served by the opening of a branch or a new place of business or, as the case may be, the change of location of the place of business.

(2A) If the opening or change for which approval has been given under subsection (1) does not occur within twelve months after the approval is given, the approval shall lapse.

(2B) Subsection (2A) shall not apply to an approval given before that subsection came into operation.

(3) No institution shall close any of its places of business in Kenya without first giving to the Central Bank six months’ written notice of its intention to do so or such shorter period of notice as the Central Bank may allow.

(4) The Central Bank shall prescribe the manner in which approvals under this section shall be granted.

[Act No. 13 of 1994, s. 5, Act No. 9 of 2006, s. 7, Act No. 10 of 2010, s. 64.]

## **8A. Branches and subsidiaries**

(1) No institution shall open a branch or establish a subsidiary outside Kenya, except with the prior approval of the Cabinet Secretary.

(2) An institution seeking approval under subsection (1) shall apply, in writing, to the Cabinet Secretary through the Central Bank.

(3) Before granting approval under subsection (1), the Cabinet Secretary may require to be satisfied as to—

- (a) the history and financial condition of the institution;
- (b) the adequacy of the institution’s capital structure;
- (c) the viability and earning prospects of the proposed branch or subsidiary;

- (d) such other matter as may have a bearing on the institution or proposed branch or subsidiary as the Central Bank may require.

(4) An institution intending to close any of its branches or subsidiaries outside Kenya shall give notice in writing to the Cabinet Secretary, through the Central Bank of its intention, at least six months before the date of the intended closure, or within such shorter period as the Cabinet Secretary may, in any particular case, allow.

(5) Notwithstanding the provisions of this section, the Central Bank may, subject to such conditions or limitations as it may prescribe, permit an institution to provide such services as it may, in any particular case, specify, to its customers who are outside the country through banking institutions located outside Kenya.

[Act No. 10 of 2006, s. 42, Act No. 4 of 2012, s. 41, Act No. 19 of 2015, s. 75.]

## **9. Amalgamations and transfers of assets and liabilities**

(1) No amalgamation or arrangement which involves an institution as one of the principal parties to the relevant transaction, and no arrangement for the transfer of all or any part of the assets and liabilities of an institution to another person, shall have legal force except with the prior written approval of the Cabinet Secretary.

(2) The Cabinet Secretary may grant his approval under subsection (1) if—

- (a) he is satisfied that the transaction in question will not be detrimental to the public interest;
- (b) in the case of an amalgamation, the amalgamation is of institutions only; or
- (c) in the case of a transfer of assets and liabilities which entails the transfer by the transferor institution of the whole or any part of its business as an institution, such transfer is effected to another institution approved by the Cabinet Secretary for the purpose of the said transfer.

(3) Upon the coming into effect of a transaction effecting the amalgamation or acquisition of one institution by another institution, or effecting the transfer of all or part of the assets and liabilities of one financial institution to another institution pursuant to this section—

- (a) all the assets and liabilities of the amalgamating institutions or, in the case of a transfer of assets and liabilities, those assets and liabilities of the transferor institution that are transferred in terms of the transaction shall vest in and become binding upon the amalgamated institution or, as the case may be, the receiving institution;
- (b) the amalgamated institutions or, in the case of the transfer of assets and liabilities, the receiving institution shall have the same rights and be subject to the same obligations as those which the amalgamating institution or, as the case may be, the transferor institution may have had or to which they or it may have been subject immediately before the amalgamation or transfer;
- (c) all agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by or in favour of any of the amalgamating institutions or, as the case may be, the transferor institution and in force immediately prior to the amalgamation or transfer, but excluding such agreements, appointments, transactions and documents that, by virtue of the terms and conditions of the amalgamation or transfer, are not to be retained in force, shall remain

in full force and effect and shall be construed for all purposes as if they had been entered into, made, drawn up or executed with, by or in favour of the amalgamated institution or, as the case may be, the receiving institution or person to whom the assets and liabilities in question are transferred; and

- (d) any bond, pledge, guarantee or instrument to secure future advances, facilities or services by any of the amalgamating institutions or, as the case may be, by the transferor institution, which was in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated institution or, as the case may be, the receiving institution or person to whom such assets and liabilities are transferred, as security for future advances, facilities or services by that financial institution or person except where, in the case of such transfer, any obligation to provide such advances, facilities or services is not included in the transfer.

(4) Any amalgamation or arrangement or any arrangement for the transfer of assets and liabilities, shall be subject to—

- (a) confirmation at a general meeting of shareholders of each of the institutions concerned; or
- (b) in the case of a transaction effecting the transfer of assets and liabilities of one institution to another institution, to confirmation at a general meeting of shareholders of the transferor institution and the receiving institution and the notice convening such a meeting shall contain or have attached to it the terms and conditions or the relevant agreement or arrangement.

(5) Notice of the passing of the resolution confirming any amalgamation or arrangement, or any arrangement for the transfer of assets and liabilities, together with a copy of such resolution and the terms and conditions of the relevant agreement or arrangement, duly certified by the chairperson of the meeting at which such resolution was passed and by the secretary of the institution concerned shall be sent to the Central Bank by each of the institutions involved and after receipt of such notices from all the parties to the relevant agreement or arrangement, the Central Bank shall publish those notices.

(6) Upon the publication by the Central Bank of the notices referred to in subsection (5)—

- (a) of any amalgamation of two or more institutions, the licences of each of the amalgamating institutions shall be deemed to be cancelled and shall be withdrawn by the Central Bank, and on payment by the resulting institution of the prescribed licence fee, the Central Bank shall register such institution subject *mutatis mutandis* to the provisions of section 5 as an institution; or
- (b) of any arrangement for the transfer of all the assets and liabilities of an institution, the licence of such institution shall be deemed to be cancelled and shall be withdrawn by the Central Bank.

(7) Upon the licensing of an institution pursuant to subsection (6), the Central Bank shall issue a licence to the institution.



(8) The Registrar of Companies and the Registrar of Titles, and every officer or person in charge of a deed registry or any other relevant office shall, if in his office or in any register under his control—

- (a) there is registered any title to property belonging to, or any bond or other right in favour of, or any appointment of or by; or
- (b) there is registered any share, stock, debenture or other marketable security in favour of; or
- (c) there has been issued any licence to or in favour of,

any amalgamating or transferor institution, and if satisfied—

- (i) that the Cabinet Secretary has approved the amalgamation or transfer pursuant to subsection (1); and
- (ii) that such amalgamation or transfer has been duly effected,

and upon production to him of any relevant deed, bond, share, stock, debenture, certificate, letter of appointment, licence or other document, make such endorsements thereon and effect such alterations in his registers as may be necessary to record the transfer of the relevant property, bond or other right, share, stock, debenture, marketable security, letter of appointment or licence and of any rights thereunder to the resulting institution or, as the case may be, to the receiving institution.

(9) No transfer fees, stamp duty, registration fees, licence duty or other charges shall be payable in respect of—

- (a) a transfer of assets and liabilities under subsection (3); or
- (b) any endorsement or alteration made to record such transfer, upon submission to the Registrar of Companies, Registrar of Titles or any other person referred to in subsection (8).

(10) The provisions of this section shall not affect the rights of any creditor or any institution which has amalgamated with or transferred all its assets and liabilities to any other institution or taken over all the assets and liabilities of any other institution, except to the extent provided in this section.

(11) In this section—

**“amalgamation institutions”** means the institutions contemplating effecting an amalgamation;

**“receiving institution”** means the institution to which assets and liabilities are transferred through a transaction effected under this section;

**“resulting institution”** means the institution resulting from an amalgamation effected under this section;

**“transferor institution”** means the institution which transfers its assets and liabilities to a receiving institution.

[Act No. 9 of 2000, s. 95, Act No. 9 of 2006, s. 8,  
Act No. 9 of 2007, s. 64, Act No. 19 of 2015, s. 76.]

#### **9A. Directors, Chief Executive Officers and significant shareholders to be fit and proper persons**

(1) An institution shall ensure that no person is appointed or elected as a director or appointed as a senior officer unless the Central Bank has certified the person as a fit and proper person to manage or control the institution.

(2) A person shall ensure that the person does not become a significant shareholder of an institution unless the Central Bank has certified the person as a fit and proper person to manage or control the institution.

(3) For the purposes of certification under subsection (2), the Central Bank shall vet a significant shareholder—

- (a) when the shareholder initially becomes a significant shareholder after the commencement of this section;
- (b) when a new institution is applying for a licence to commence business under the provisions of this Act;
- (c) when new evidence becomes available to the Central Bank indicating that an already existing significant shareholder does not fulfil the fit and proper criteria as set out in Part B of the First Schedule.

(3A) Notwithstanding any other provision in this section, the Central Bank may vet any shareholder who is not a significant shareholder if—

- (a) the Central Bank has reason to believe or reasonably suspect that such shareholder has reduced its direct or indirect shareholding in an institution or in a corporate entity to below 5 % in order to avoid vetting; or
- (b) the shareholder exercises or has the capacity to exercise direct or indirect control of the institution or corporate entity through his or its associates.

(3B) For the purposes of subsection (3A) (b) "control" means—

- (a) the ability to influence the management of an institution, a corporate shareholder of an institution or a corporate entity seeking to become an institution; or
- (b) the ability to influence, directly or indirectly, the decisions of the shareholders of an institution, a corporate shareholder of an institution or a corporate entity seeking to become an institution.

(3C) Any non-significant shareholder proposed to be vetted under this section shall be vetted in accordance with the criteria set out in Part B of the First Schedule and the vetting requirements for significant shareholders set out in the Prudential Guidelines.

(3D) A non-significant shareholder, upon being determined by the Central Bank as not fulfilling the fit and proper criteria as set out in Part B of the First Schedule shall be subject to the limitation set out in subsection (4) (a) of this section and may in addition be directed by the Central bank to cease any form of association or relationship with a particular person or institution.

(4) A significant shareholder, upon being determined by the Central Bank as not fulfilling the fit and proper criteria as set out in Part B of the First Schedule, shall—

- (a) cease to exercise all his voting rights immediately upon the institution being notified by the Central Bank in writing that the shareholder does not fulfil the fit and proper criteria as set out in Part B of the First Schedule; and
- (b) reduce the holding of shares to below five percent of the share capital in the institution within twelve months, or such longer period as the Central Bank may determine.

(5) The Central Bank may determine that a person who already is a director or senior officer of an institution is not a fit and proper person to manage or control the institution and upon the institution being notified in writing of that determination, the person shall, if he is a Director or senior officer, cease to hold office.

(6) *Deleted by Act No. 14 of 2015, s. 35.*

(7) In determining whether or not a person is a fit and proper person to manage or control an institution the Central Bank shall apply the criteria prescribed in the First Schedule to determine whether the Central Bank is satisfied as to the professional and moral suitability of the person.

(8) For the purposes of this section and of the First Schedule, “**senior officer**” means a person who manages or controls an institution licensed under the Act, and includes—

- (a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary to the board of directors, treasurer, chief internal auditor, or manager of a significant unit of an institution licensed under this Act;
- (b) a person with a similar level of position or responsibilities as a person described in paragraph (a).

[Act No. 9 of 2006, s. 9, Act No. 14 of 2015, s. 35.]

### PART III – PROHIBITED BUSINESS

#### 10. Limit on advances, credits and guarantees

(1) An institution shall not in Kenya grant to any person or permit to be outstanding any advance or credit facility or give any financial guarantee or incur any other liability on behalf of any person, so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of that person at any time exceed twenty-five per cent of its core capital:

Provided that the Central Bank may authorize a mortgage finance company to permit the total value of the advances, credit facilities, financial guarantees or other liabilities in respect of any such person at any time to exceed 25 per centum of its capital by such per centum as the Central Bank may in each particular case prescribe.

(2) The provisions of this section shall not apply to transactions with a public entity, or to transactions between banks or between branches of a bank, or to the purchase of or advances made against clean or documentary bills of exchange or documents of title to goods entitling some person to payment outside Kenya for imports.

(3) For the purposes of subsection (1), references to any person include that person and his associates; and—

- (a) the advances, credit facilities, financial guarantees and other liabilities of that person and his associates shall be aggregated for the calculation of their total value; and
- (b) the restriction imposed by subsection (1) shall apply to advances, credit facilities, financial guarantees and other liabilities to or in respect of that person and his associates.

(4) The provisions of subsection (1) shall not apply to any advance or credit facility granted, or any financial guarantee given, or any other liability incurred, by an institution on behalf of any person before the commencement of this section.

[Act No. 13 of 1994, s. 7, Act No. 4 of 1999, s. 78, Act No. 9 of 2006, s. 10.]

#### **11. Restrictions on advances, credits and guarantees**

(1) An institution shall not in Kenya—

- (a) grant or permit to be outstanding any advance or credit facility against the security of its own shares; or
- (b) grant or permit to be outstanding any advance or credit facility or give any financial guarantee or incur any other liability to, or in favour of, or on behalf of, any company (other than another institution) in which the institution holds, directly or indirectly, or otherwise has a beneficial interest in, more than twenty-five percent of the share capital of that company; or
- (c) grant or permit to be outstanding any unsecured advances in respect of any of its employees or their associates; or
- (d) grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured—
  - (i) to any of its officers or significant shareholders or their associates; or
  - (ii) to any person of whom or of which any of its officers or significant shareholders has an interest as an agent, Director, manager or shareholder; or
  - (iii) to any person of whom or of which any of its officers or significant shareholders is a guarantor; or
- (e) grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the institution unless such advance, loan or credit facility—
  - (i) is approved by the full board of directors of the institution upon being satisfied that it is viable;
  - (ii) is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution,  
and the institution shall notify the Central Bank of every approval given pursuant to subparagraph (i) of this paragraph, within seven days of such approval; or
- (f) grant or permit to be outstanding any advances or credit facilities or give any financial guarantees or incur any other liabilities to, or in favour of, or on behalf of, a person mentioned in paragraph (c), (d) or (e) and his associates amounting in the aggregate, for that person and all his associates, to more than twenty percent of the core capital of the institution; or
- (g) grant or permit to be outstanding advances or credit facilities or give any financial guarantee or incur any other liabilities to or in favour of, or on behalf of, its associates and the persons mentioned in paragraphs

(c), (d) and (e) amounting in the aggregate to more than one hundred percent of the core capital of the institution; or

- (h) grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance with the provisions of this Act.

(1A) In relation to conduct contemplated under paragraph (h) of subsection (1)—

**“fraudulent”** includes intentional deception, false and material representation, concealment or non-disclosure of a material fact or misleading conduct, device or contrivance that results in loss and injury to the institution with an intended gain to the officer of the institution or to a customer of the institution;

**“reckless”** includes—

- (a) transacting business beyond the limits set under this Act or the Central Bank of Kenya Act (Cap. 491);
- (b) offering facilities contrary to any guidelines or regulations issued by the Central Bank;
- (c) failing to observe the institution’s policies as approved by the Board of Directors; or
- (d) misuse of position or facilities of the institution for personal gain.

(1B) If the Central Bank determines that the interest of a group of two or more persons are so inter-related as to cause them to be considered as a single person or that an associate relationship exists, then for the purposes of this section, the total indebtedness of that group shall be combined and shall be deemed to be in respect of a single person or a person and the person’s associates;

(2) The prohibitions contained in subsection (1) shall apply whether or not the advance, loan or credit facility in question is granted to any person alone or with others.

(3) Where an institution contravenes any of the provisions of this section—

- (a) all officers of an institution shall be liable jointly and severally to indemnify the institution against any loss arising in respect of the advance, loan or credit facility:

Provided that in the case of an advance, loan or credit facility to a person other than a director of the institution or a person participating in the general management of the institution, an officer shall not be so liable if he shows that, through no act or omission on his part, he was not aware that the contravention was taking place or was intended or about to take place, or he took all reasonable steps to prevent it taking place;

- (b) the Central Bank may, in the case of an advance, loan or credit facility to a director of the institution, direct the removal of such director from the board of directors of the institution and may direct the suspension of any other officer or employee of the institution who sanctioned the advance, loan or credit facility and the institution shall comply with every direction of the Central Bank under this paragraph forthwith.

(4) If any Director removed, or officer or other employee of an institution suspended under subsection (3) is aggrieved by such decision, he may apply to the High Court for determination of the matter and the High Court may confirm, reverse or modify the decision and make such other order in the circumstances as it thinks just; and pending the determination of any application or appeal therefrom, the order, removal or suspension shall remain in effect.

(5) A director of an institution who defaults in the repayment of any advance or loan made to him by the institution for three consecutive months shall forthwith be disqualified from holding office as such.

(6) An institution which—

- (a) fails to comply with any direction of the Central Bank under subsection (3)(b); or
- (b) permits a director who is disqualified by virtue of subsection (5) to continue holding office as such,

shall be guilty of an offence.

(7) Where an offence under subsection (6) continues, the institution shall, in addition to the penalty prescribed under section 49, be liable to such penalty as may be prescribed for each day or part thereof during which the offence continues.

(8) The regulations under section 55 may govern the steps an institution is required to take to ensure that it does not, contrary to subsection (1)(f), permit to be outstanding anything described in that provision and, without limiting the generality of the foregoing, the regulations may impose time limits within which the steps must be taken.

(9) The provisions of subsections (1) and (2) shall apply to a banking group on a consolidated basis.

[Act No. 5 of 1998, s. 57, Act No. 4 of 1999, s. 79, Act No. 9 of 2000, s. 96, Act No. 9 of 2006, s. 11, Act No. 57 of 2012, s. 40.]

## **12. Restriction on trading and investments**

An institution shall not—

- (a) engage, alone or with others, in wholesale or retail trade, including the import or export trade, except in the course of the satisfaction of debts due to it; and any trading interest carried on by an institution at the commencement of this Act shall be disposed of by the institution within such time as the Central Bank may allow;
- (b) acquire or hold, directly or indirectly, any part of the share capital of, or otherwise have a beneficial interest in, any financial, commercial, agricultural, industrial or other undertaking where the value of the institution's interest would exceed in the aggregate twenty-five per cent of the core capital of that institution:

Provided that—

- (i) an institution may take an interest in such an undertaking in satisfaction of a debt due to it but, if it does so, it shall dispose of the interest within such time as the Central Bank may allow;
- (ii) a shareholding in any corporation established for the purpose of promoting development on Kenya and approved by the Cabinet Secretary; or in a foreign company which is licensed to carry on

the business of the institution in its country of incorporation and approved by the Central Bank;

- (iii) approval granted by the Central Bank shall be subject to such conditions as the Central Bank may deem appropriate;
- (c) purchase or acquire or hold any land or any interest or right therein except such land or interest as may be reasonably necessary for the purpose of conducting its business or for housing or providing amenities for its staff, where the total amount of such investment does not exceed such proportion of its core capital as the Central Bank may prescribe:

Provided that—

- (i) this paragraph does not prevent an institution from—
  - (A) letting part of any building which is used for the purpose of conducting its business; or
  - (B) securing a debt on land and, in the event of default in payment of the debt, holding the land for so long as, in the opinion of the Central Bank, is needed for the realization of the debt; or
  - (C) acquiring land for the purpose of its own development; and
- (ii) an institution that had purchased or acquired land or any interest or right therein prior to the commencement of this paragraph, shall endeavour to bring its holding or interest in that land within the prescribed limits as soon as reasonably practicable after such commencement, and in any event, not later than the 31st December, 2010.

[Act No. 4 of 1999, s. 80, Act No. 9 of 2000, s. 97, Act No. 6 of 2005, s. 44, Act No. 10 of 2006, s. 43, Act No. 8 of 2009, s. 54, Act No. 19 of 2015, s. 77.]

### **13. Restrictions on ownership of share capital of an institution**

(1) No person other than—

- (a) another institution;
- (b) the Government of Kenya or the Government of a foreign sovereign State;
- (c) a State corporation within the meaning of the State Corporations Act (Cap. 446);
- (d) a foreign company which is licensed to carry on the business of an institution in its country of incorporation; or
- (e) a non-operating holding company approved by the Central Bank;

shall hold, directly or indirectly, or otherwise have a beneficial interest in, more than twenty-five per cent of the share capital of any institution:

Provided that a non-operating holding company shall obtain prior written approval from the Central Bank before acquiring or holding more than twenty-five per cent of the share capital of an institution.

(1A) For the purposes of subsection (1), reference to "person" shall include a reference to that person's associates.

(2) No financial institution or mortgage finance company shall acquire or hold, directly or indirectly, any part of the share capital of, or otherwise have beneficial interest in, any bank.

(3) Where any share is held by a company, other body corporate or by a nominee on behalf of another person, the company, other body corporate or the nominee, as the case may be, shall disclose to the institution and to the Central Bank the full particulars of the individual who is the ultimate beneficial owner of the share.

(4) No institution shall transfer more than five per cent of its share capital to an individual or an entity except with the prior written approval of the Central Bank.

[Act No. 4 of 1999, s. 81, Act No. 9 of 2000, s. 98, Act No. 4 of 2012, s. 42, Act No. 57 of 2012, s. 41, Act No. 14 of 2015, s. 36.]

#### **14. Restrictions on advances for purchase of land**

(1) No institution, other than a mortgage finance company, shall make loans or advances for the purchase, improvement or alteration of land, so that the aggregate amount of those loans or advances exceeds forty percent of the amount of its total deposit liabilities.

(2) The Central Bank may authorize an institution to exceed the percentage specified in subsection (1) up to a maximum of seventy per cent.

(3) The provisions of this section shall not prevent an institution accepting a security over land for a loan or advance made in good faith for any other purpose.

[Act No. 10 of 2010, s. 65.]

#### **15. Mortgage finance companies**

(1) A mortgage finance company shall make loans—

- (a) for the purpose of the acquisition, construction, improvement, development, alteration or adaptation for a particular purpose of land in Kenya; and
- (b) the repayment of which, with interest and other charges, is secured by first mortgage or charge over land with or without additional security or personal or other guarantees.

(2) Subject to this Act, a mortgage finance company may grant other types of credit facilities against securities other than land and may engage in other prudent investment activities.

(3) *Deleted by Act No. 7 of 2001, s. 3.*

(4) *Deleted by Act No. 7 of 2001, s. 3.*

#### **16. Restrictions on deposit-taking**

(1) Subject to this section, no person, other than an institution which holds a valid licence or a duly approved agency conducting banking business on behalf of an institution, shall invite or accept deposits in the course of carrying on a deposit-taking business.

(2) For the purposes of this section, “**deposit**” means a sum of money paid on terms—

- (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and



- (b) which are not referable to the provision of property or services or the giving of security.

(3) For the purposes of subsection (2)(b), money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if—

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property whether in a particular state of repair or otherwise.

(4) For the purposes of this section, “**deposit**” does not include—

- (a) a sum paid by the Central Bank or by an institution or the persons mentioned in section 54; or
- (b) a sum which is paid by a person to an associate of that person.

(5) For the purposes of this section, a business is a deposit-taking business if—

- (a) in the course of the business money received by way of deposit is lent to others; or
- (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(6) Notwithstanding that paragraph (a) or (b) of subsection (5) applies to a business, it is not a deposit-taking business for the purposes of this section if—

- (a) the person carrying it on does not hold himself out as accepting deposits on a day-to-day basis; and
- (b) any deposits which are accepted are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.

(7) For the purposes of subsection (5), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

(8) In determining, for the purposes of subsection (6)(b), whether deposits are accepted only on particular occasions regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(9) Any person who contravenes subsection (1) shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred thousand shillings or to both.

[Act No. 8 of 2009, s. 55.]

#### **16A. Imposition of charges and payment of interest**

(1) No institution shall impose any form of charges on a savings, seven day call or fixed deposits account.

(2) An institution shall, in respect of a savings account, pay interest accruing or a return in the case of an institution carrying out business in accordance with Islamic law to that account as long as the minimum balance is maintained.

(3) An institution shall, in respect of a seven day call or fixed deposit account, pay interest accruing to the account on agreed contractual terms:

Provided that such interest may be forfeited where the deposit is uplifted before the maturity date.

[Act No. 9 of 2006, s. 12, Act No. 8 of 2008, s. 67.]

#### PART IV – RESERVES AND DIVIDENDS

##### **17. Ratio between core capital and deposits**

The core capital of an institution shall at all times be not less than eight per cent of its total deposit liabilities.

[Act No. 4 of 1999, s. 82.]

##### **18. Ratio between capital and assets**

(1) The Central Bank may prescribe the minimum ratios which shall be maintained by institutions and banking groups as between their core capital and total capital on one hand and their risk-weighted assets (including their total loans and advances) and risk-weighted off balance sheet items on the other and for that purpose, may also determine the method of classifying and evaluating assets:

Provided that the Central Bank may prescribe higher minimum ratios based on its assessment of an institution's or banking group's risk profile.

(2) A non-operating holding company or any other vehicle of ownership which controls a group shall, in relation to its business, maintain adequate capital and adequate forms of liquidity to demonstrate that it is a source of strength for the institution and shall comply with any regulations issued by the Central Bank on minimum ratios or capital requirements in any other form.

[Act No. 4 of 1999, s. 83, Act No. 57 of 2012, s. 42.]

##### **19. Minimum liquid assets**

(1) An institution shall maintain such minimum holding of liquid assets as the Central Bank may from time to time determine.

(2) For the purpose of this section, "**liquid assets**" means all or any of the following—

- (a) notes and coins which are legal tender in Kenya;
- (b) balances held at the Central Bank;
- (c) balances at other banks in Kenya after deducting therefrom balances owed to those other banks;
- (d) balances at banks abroad withdrawable on demand or short notice and money at call abroad after deducting therefrom balances owed to banks abroad where the balances and money at call and short notice are denominated in convertible currencies; and for the purposes of this paragraph "**bank abroad**" means a bank outside Kenya or an office outside Kenya of any bank;
- (e) Kenya treasury bills and bonds of a maturity not exceeding ninety-one days which are freely marketable and rediscountable at the Central Bank;

(f) such other assets as the Central Bank may specify.

(3) Any institution which fails to comply, within such time as the Central Bank may prescribe, with any requirement of subsection (1) shall be liable to pay, on being called upon to do so by the Central Bank, a penalty interest charge not exceeding one per cent of the amount of the deficiency for every day on which the offence continues.

## **20. Restrictions on dividends**

(1) No institution incorporated in Kenya shall pay any dividend on its shares or make any other form of distribution to its shareholders until all its capitalized expenditure (including preliminary expenses, share-selling commission, brokerage, amount of losses incurred and items of expenditure not represented by tangible assets) has been written off and provision has been made for loans, advances and other assets in accordance with subsection (2).

(2) Every institution shall—

- (a) make provision for loans, advances and other assets before any profit or loss is declared; and
- (b) ensure that the provision for loans, advances and other assets made under paragraph (a) is adequate according to such guidelines as may be prescribed by the Central Bank.

[Act No. 8 of 2009, s. 56.]

## **PART V – ACCOUNTS AND AUDIT**

### **20A. Financial year**

(1) The financial year of every institution shall be the period of twelve months ending on the 31st December in each year.

(2) Where the financial year of an institution is different from that prescribed in this section, the institution shall, within twelve months of the commencement of this section, change its financial year to comply with the provisions of this section.

[Act No. 13 of 1994, s. 8.]

### **21. Form of accounts**

(1) All entries in any books and all accounts kept by an institution shall be recorded and kept in the English language, using the system of numerals employed in Government accounts.

(2) The Central Bank may, at any time, issue directions to an institution requiring it to maintain such books, records or information, in addition to any books, records or information then already maintained by it, as the Central Bank may consider to be necessary.

(3) The financial statements shall be in accordance with international financial reporting standards, including applicable consolidated accounting principles for groups.

(4) The Central Bank may, for regulatory purposes, require an additional accounting consolidation which excludes insurance and such other subsidiaries as the Central Bank may prescribe.

[Act No. 57 of 2012, s. 43.]

**22. Accounts to be exhibited**

(1) Every institution shall—

- (a) exhibit throughout the year in a conspicuous position in every office and branch in Kenya a copy of its last audited financial statements which shall be in conformity with the minimum financial disclosure requirements prescribed from time to time by the Central Bank together with the full and correct names of all persons who are officers of the institution in Kenya; and
- (b) within three months of the end of each financial year, cause a copy of the balance sheet and last audited income statements for that financial year to be published in a newspaper with wide circulation.

(2) The financial statements shall be in keeping with international financial reporting standards, including applicable consolidated accounting principles for groups.

[Act No. 13 of 1994, s. 9, Act No. 8 of 1997, s. 58, Act No. 57 of 2012, s. 44.]

**23. Submission of accounts to the Central Bank**

(1) An institution shall, not later than three months after the end of its financial year, submit to the Central Bank an audited balance sheet, showing its assets and liabilities in Kenya, and an audited profit and loss account covering its activities in Kenya together with a copy of the auditor's report, in the prescribed form.

(2) An institution which is incorporated outside Kenya, and an institution which is incorporated in Kenya and maintains subsidiaries or branches outside Kenya, shall submit to the Central Bank, with the balance sheet and accounts referred to in subsection (1), an audited balance sheet and an audited profit and loss account of the institution as a whole.

[Act No. 13 of 1994, s. 10, Act No. 8 of 2008, s. 68.]

**24. Appointment of auditors**

(1) Subject to subsection (7), every institution shall appoint annually an auditor (within the meaning of section 3(1) of the Companies Act, 2015) and approved by the Central Bank.

(1A) An auditor appointed under subsection (1) shall audit and report on the annual balance sheet and profit and loss account required to be submitted to the Central Bank in accordance with section 23(1).

(2) If an institution fails to appoint an approved auditor under subsection (1), or to fill any vacancy for an auditor which may arise, the Central Bank may appoint an auditor and fix the remuneration to be paid by the institution to him.

(3) The Central Bank may require an auditor to undertake the following duties in addition to those provided under subsection (1)—

- (a) to submit such additional information in relation to his audit as the Central Bank may consider necessary;
- (b) to carry out any other special investigation; and
- (c) to submit a report on any of the matters referred to in paragraphs (a) and (b),

and the institution concerned shall remunerate the auditor in respect of the discharge by him of all or any of such additional duties.

(4) If the auditor of an institution, in the course of the performance of his duties under this Act, is satisfied that—

- (a) there has been a serious breach of or non-compliance with the provisions of this Act, the Central Bank of Kenya Act or the regulations, guidelines or other matters prescribed by the Central Bank (Cap. 491);
- (b) a criminal offence involving fraud or other dishonesty has been committed by the institution or any of its officers or employees;
- (c) losses have been incurred which reduce the core capital of the institution by fifty per cent or more;
- (d) serious irregularities have occurred which may jeopardize the security of depositors or creditors of the institution; or
- (e) he is unable to confirm that the claims of depositors and creditors of the institution are capable of being met out of the assets of the institution,

he shall immediately report the matter to the Central Bank.

(5) The Central Bank may arrange trilateral meetings with an institution and its auditor from time to time, to discuss matters relevant to the Central Bank's supervisory responsibilities which have arisen in the course of the statutory audit of the institution including relevant aspects of the institution's business, its accounting and control system and its annual accounts.

(6) If an auditor of an institution fails to comply with the requirements of this Act, the Central Bank may remove him from office and appoint another person in his place.

(7) A person shall not be qualified for appointment as an auditor of an institution if he is—

- (a) a director, officer or employee of that institution; or
- (b) a person who is a partner of a Director, officer or employee of that institution; or
- (c) a person who is an employer or employee of a director, officer or employee of that institution; or
- (d) a person who is a director, officer or employee of an associate of that institution; or
- (e) a person who, by himself, or his partner or his employee, regularly performs the duties of secretary or book-keeper for that institution; or
- (f) a firm or member of a firm of auditors of which any partner or employee falls within the above categories.

[Act No. 4 of 1999, s. 84, Act No. 19 of 2015, s. 78.]

## **25. Change of auditors to be notified to the Central Bank**

(1) No institution shall remove or change its auditor except with the prior written approval of the Central Bank.

(2) An auditor of an institution shall forthwith give written notice to the Central Bank if he—

- (a) resigns from office;
- (b) does not seek to be re-appointed; or

(c) includes in his report or draft report on the institution's accounts any qualification which did not appear in the accounts for the preceding financial year.

(3) An institution aggrieved by a decision of the Central Bank under subsection (1) may appeal to the Minister within 14 days.

(4) The decision of the Minister under subsection (3) shall be final.

[Act No. 13 of 1994, s. 11.]

## **26. Auditor's duty of confidence**

(1) No duty to which an auditor of an institution may be subject shall be regarded as contravened by reason of his communicating in good faith to the Central Bank, whether or not in response to a request made by it, any information or opinion on a matter to which this Part applies and which is relevant to any function of the Central Bank under this Act.

(2) This section applies to any matter of which an auditor becomes aware in his capacity as an auditor or in the discharge of his duties under this Part and which relates to the business or affairs of the institution or any associate of that institution.

## **PART VI – INFORMATION AND REPORTING REQUIREMENTS**

### **27. Collection of information by Central Bank**

The Central Bank shall collect such data and other information as may be necessary to enable it to maintain supervision and surveillance of the affairs of institutions or their duly authorised agencies and the protection of their depositors and, for this purpose, may require institutions to submit statistical and other returns on a periodic basis in addition to any other returns required by law.

[Act No. 8 of 2009, s. 57.]

### **28. Furnishing of information**

(1) The Central Bank may require any institution and their agencies to furnish to it, at such time and in such manner as it may direct, such information as the Central Bank may reasonably require for the proper discharge of its functions under this Act.

(2) The information required to be furnished under subsection (1) may include information relating to any company which is an affiliate, an associate or a non-operating holding company of the institution required to furnish information under that subsection.

(3) In addition to information required from institutions and their agencies pursuant to subsection (2), the Central Bank shall require in writing any associate, non-operating holding company or subsidiary company or any person holding a significant shareholding in an institution, to provide the Central Bank or its appointed agent such information or documents, including financial statements and other financial records, as it may deem necessary to determine whether the provisions of this Act are being duly complied with, and to ascertain—

- (a) the legal, managerial and operational structure of a group or banking group;
- (b) the risk profile of a group or banking group and its individual subsidiaries;

- (c) the way in which internal risk management is organized and conducted within a group or banking group; and
- (d) the corporate, financial and other linkages existing between members of a group or banking group.

[Act No. 4 of 1999, s. 85, Act No. 8 of 2009, s. 58, Act No. 57 of 2012, s. 45.]

### **29. Minister may require further information**

The Cabinet Secretary may require the Central Bank or an institution to furnish to him, at such time and in such manner as he may direct, such information as the Cabinet Secretary may require.

[Act No. 19 of 2015, s. 79.]

### **30. Time to furnish information**

Where the Central Bank or an institution is required to furnish information under this Part, it shall furnish that information and any supplemental material that may be required as a result of that information within the period specified in this Part or the relevant direction or within such reasonable period thereafter as may be agreed.

### **31. Publication of information**

(1) The Central Bank or the Cabinet Secretary may publish in whole or in part, at such times and in such manner as it or he thinks fit, any information furnished to it or him under this Act:

Provided that the information so furnished shall not be published if it would disclose the financial affairs of any person, unless the consent in writing of that person has first been given.

(2) Except as provided in this Act, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties or responsibilities under this Act and, if he does so, he shall, for the purposes of section 49, be deemed to have contravened the provisions of this Act.

(3) Notwithstanding the provisions of this section—

- (a) the Central Bank may disclose any information referred to in subsection (2) to any monetary authority or financial regulatory authority, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority fiscal or tax agency, fraud investigations agency;
- (b) the Deposit Protection Fund Board institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006), institutions licensed under the Sacco Societies Act, 2008 (No. 14 of 2008), institutions registered under the Co-operative Societies Act (Cap. 490), public utility companies and any other institution mandated to share credit information under any written law shall, in the ordinary course of business and in such manner and to such extent as the Cabinet Secretary may, in regulations, prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Central Bank in guidelines under section 33 (4):

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement;

- (c) the Central Bank and institutions licensed under this Act and institutions licensed under the Microfinance Act, 2006 (No. 19 of 2006) may, in the ordinary course of business, in such manner and to such extent as the Cabinet Secretary may, in regulations prescribe, exchange such other information as is reasonably required for the proper discharge of their functions.

(4) Without prejudice to the generality of subsection (3)(b) or (c), regulations under that subsection may provide for the establishment and operation of credit reference bureaus, for the purpose of collecting prescribed credit information on clients of institutions licensed under this Act, and institutions licensed under the Microfinance Act, 2006, and the Sacco Societies Act, 2008, and public utility companies and any other institution mandated to share credit information under any written law and disseminating it amongst such institutions for use in the ordinary course of business, subject to such conditions or limitations as may be prescribed.

(5) No duty to which the Central Bank, Kenya Deposit Insurance Corporation, a credit reference bureau, an institution licensed under this Act, or the Microfinance Act or institutions licensed under the Sacco Societies Act, 2008, institutions registered under the Co-operative Societies Act (Cap. 490), public utility companies and any institution mandated to share credit information under any written law or their respective officers may be subject, shall be breached by reason of the disclosure, in good faith, of any information under subsection (2), to or by, as the case may be—

- (a) the Central Bank;
- (b) the Kenya Deposit Insurance Corporation;
- (c) an institution licensed under this Act or the Microfinance Act;
- (d) a credit reference bureau established under subsection (4);
- (da) institutions licensed under the Sacco Societies Act, 2008;
- (db) institutions registered under the Co-operative Societies Act (Cap. 490);
- (dc) public utility companies;
- (dd) any institution mandated to share credit information under any written law; and
- (e) any person carrying out an inspection under section 32; or
- (f) any person, authority, agency or entity referred to in subsection (3)(a) or any other person or authority which may be authorized under any written law or otherwise to share information,

in the course of the performance of their duties and no action shall lie against the Central Bank, the Kenya Deposit Insurance Corporation, a credit reference bureau, an institution licensed under this Act or the Microfinance Act, 2006 or any of their respective officers on account of such disclosure.

(6) Nothing in this Act shall prevent the cross-border sharing of credit information between—

- (a) regulators or supervisory authorities and credit reference bureaus or entities performing similar roles;
- (b) institutions and credit reference bureaus or entities performing similar roles;



- (c) regulators or supervisory authorities and institutions;
- (d) institutions:

Provided that—

- (i) there is a mutual legal framework for the sharing of credit information; and
- (ii) the credit information is required for the discharge of a lawful duty or the performance of a lawful purpose by the person requesting for the information.

[Act No. 9 of 2000, s. 99, Act No. 7 of 2001, s. 4, Act No. 15 of 2003, s. 48, Act No. 10 of 2006, s. 44, Act No. 9 of 2007, s. 65, Act No. 8 of 2009, s. 59, Act No. 4 of 2012, s. 43, Act No. 57 of 2012, s. 46, Act No. 38 of 2013, s. 28, Act No. 19 of 2015, s. 80, Act No. 38 of 2016, s. 51.]

### **31A. Disclosure of information on loans**

A bank or financial institution shall, before granting a loan to a borrower disclose all the charges and terms relating to the loan.

[Act No. 25 of 2016, s. 2.]

## **PART VII – INSPECTION AND CONTROL OF INSTITUTIONS**

### **32. Inspection of institutions**

(1) The Central Bank may, at any time and from time to time, and shall, if so directed by the Cabinet Secretary, cause an inspection to be made by any person authorised by it, in writing, of any institution and its agencies and of their books, accounts and records.

(2) When an inspection is made under subsection (1), the institution concerned and every officer and employee thereof shall produce and make available to the person making the inspection all the books, accounts, records and other documents of the institution and such correspondence, statements and information relating to the institution, its business and the conduct thereof as the person making the inspection may require and within seven days or such longer time as he may direct in writing; and any failure to produce any books, accounts, records, documents, correspondence, statements or information within the period specified in the relevant direction shall constitute a contravention of the provisions of this Act for the purposes of section 49:

Provided that—

- (a) the books, accounts and other documents required to be produced shall not, in the course of the inspection, be removed from the premises of the institution or other premises at which they are produced;
- (b) the person making the inspection may make copies of any books, accounts and other documents required for the purposes of his report; and
- (c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act and of the Central Bank of Kenya Act (Cap. 491).

(3) The person making the inspection shall submit his report to the Central Bank; and the report shall draw attention to any breach or non-observance of the requirements of this Act and any regulations made thereunder, any irregularity in the manner of conduct of the business of the institution inspected, any apparent mismanaging of the business or lack of management skills in that institution and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the person making the inspection, remedial action or further investigation.

(4) The Central Bank may assist investigative agencies or other authorities in matters related to suspected fraud or malfeasance in institutions by identifying such matters for referral to or at the request of, such agencies or authorities.

(5) For purposes of this Act, the Central Bank shall be the coordinator of the consolidated supervision of groups, and as such may appoint a competent authority from—

- (a) amongst the bodies set out in the Third Schedule; or
- (b) any other entity or entities with expertise in the relevant field,

to carry out an inspection of the operations of the associate, holding or subsidiary company of an institution, or of any person who exercises control of an institution, in order to satisfy itself that the operations of such associate, company or other person are not detrimental to the safety and soundness of the institution concerned.

[Act No. 8 of 2009, s. 60, Act No. 57 of 2012, s. 47, Act No. 19 of 2015, s. 81.]

### **32A. Vetting of officials**

(1) Notwithstanding any other provisions of this Act, the Central Bank may, from time to time, where it deems it necessary to do so, carry out an assessment of the professional and moral suitability of the persons managing or controlling institutions.

(2) An assessment under subsection (1) shall be in accordance with the criteria set in the First Schedule.

(3) Where, upon an assessment under this section, the Central bank is satisfied as to the professional and moral suitability of the persons managing or controlling an institution, it shall so certify in writing to the institution.

(4) A person who, upon an assessment under this section, is not certified by the Central Bank as fit and proper to manage or control an institution, shall be deemed to be disqualified from holding office under section 48.

[Act No. 10 of 2006, s. 45.]

### **32B. Examination and control of Groups**

(1) The Central Bank may upon receipt of a report under section 32(5)—

- (a) require changes to the legal or management structure of a group or banking group if it determines that such structures in their current form constitute an impediment to the discharge of the Central Bank's supervisory responsibilities; and
- (b) require a group or banking group to retain a single auditor to provide an overall review of the group or banking group, including such consolidated financial statements as the Central Bank may prescribe.

[Act No. 57 of 2012, s. 48.]

**33. Powers of Central Bank to advise and direct**

- (1) If, at any time, the Central Bank has reason to believe that—
- (a) the business of an institution is being conducted in a manner contrary to or not in compliance with the requirements of this Act or of any regulations made thereunder or in any manner detrimental to or not in the best interests of its depositors or members of the public; or
  - (b) an institution, any of its officers or other person participating in the general management of the institution is engaged in any practice likely to occasion a contravention of any of the provisions of this Act or any regulations made thereunder,

the Central Bank may—

- (i) give advice and make recommendations to the institution with regard to the conduct of its business generally;
  - (ii) issue directions regarding measures to be taken to improve the management or business methods of the institution or to secure or improve compliance with the requirements of this Act, any regulations made thereunder or any other written law or regulations;
  - (iii) in any case to which paragraph (b) applies, issue directions to the institution, officer or other person to cease such practice;
  - (iv) appoint a person, suitably qualified and competent in the opinion of the Central Bank, to advise and assist the institution generally or for the purposes of implementing any directions under subparagraphs (ii) and (iii) and the advice of a person so appointed shall have the same force and effect as a direction made under subparagraphs (ii) and (iii) and shall be deemed to be a direction of the Central Bank under this section.
- (1A) If the Central Bank determines—
- (a) that any member of a group other than an institution has committed any violation of this Act; or
  - (b) that the activities of any such member are having a detrimental impact on the institution or may jeopardize the interest of depositors,

the Central Bank may direct the member to eliminate such irregularities within such period as it may determine.

(1B) The Central Bank may appoint a competent authority from amongst the bodies set out in the Third Schedule or any other entity with expertise in the relevant field to carry out the enforcement of the direction issued under subsection (1A).

(1C) The Central Bank may, in addition to the actions specified under subsection (1B), further direct the concerned party to—

- (a) suspend any further investment by the institution in a subsidiary company;
- (b) suspend the exercise of a non-operating holding company's control of the institution;
- (c) suspend transactions between any associated entity and the institution; or
- (d) suspend participation of any person in the affairs of the institution.

(2) The Central Bank shall, before issuing a direction under subsection (1), serve upon the institution, officer or other person, a notice of such intent specifying the reasons therefor and requiring the institution, officer or other persons, within such period as may be specified in the notice, to show cause why such direction should not be issued.

(3) An institution which receives a direction under the provisions of this section shall comply with the direction within such period as may be specified in the direction and, if so required, shall produce evidence that it has done so.

(4) The Central Bank may issue directions to institutions generally for the better carrying out of its functions under this Act and in particular, with respect to—

- (a) the standards to be adhered to by an institution in the conduct of its business in Kenya or in any country where a branch or subsidiary of the institution is located; and
- (b) guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

(5) A person who fails to comply with any direction under this section commits an offence and shall, in addition to the penalty prescribed under section 49, be liable to such additional penalty as may be prescribed, for each day or part thereof during which the offence continues.

[Act No. 5 of 1998, s. 58, Act No. 4 of 2012, s. 44, Act No. 57 of 2012, s. 49.]

### **33A. Powers upon audit or inspection report**

Where an auditor's report under section 24(4) or an inspection report under this Part reveals that an institution conducts its business in a manner contrary to the provisions of this Act, or in any manner detrimental to or not in the best interests of its depositors or members of the public, or that an institution is undercapitalized, the Central Bank may—

- (a) restrict, suspend or prohibit the payment of dividends by the institution;
- (b) prohibit the conversion of any profits of the institution into capital;
- (c) direct the suspension or removal of any officer involved in such conduct from the service of the institution;
- (d) require the institution to reconstitute its board of directors in accordance with the criteria set out in the First Schedule;
- (e) withhold branch or other corporate approval with respect to such institution;
- (f) undertake more frequent inspections of that institution;
- (g) order the institution to submit to the Central Bank, within forty-five days, a capital restoration plan to restore the institution to the capital adequacy prescribed in section 18, or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Central Bank;

- (h) prohibit the institution from awarding any bonuses or increments in salary, emoluments or other benefits to the directors and officers of the institution;
- (i) at the expense of the institution, appoint a person suitably qualified and competent, in the opinion of the Central Bank, to advise and assist the institution in designing and implementing a capital restoration plan or other corrective action plan under paragraph (g), and the person appointed shall regularly report to the Central Bank on the progress of the plan;
- (j) impose restrictions on growth of assets or liabilities of the institution as it deems fit;
- (k) restrict the rate of interest on savings and time deposits payable by the institution to such rates as the Central Bank shall determine; or
- (l) order the institution to do any or take such other actions as it may deem necessary to rectify a capital deficiency or other weaknesses.

[Act No. 5 of 1998, s. 59, Act No. 10 of 2010, s. 66.]

### **33B. Powers of Central Bank to enforce interest ceilings**

(1) A bank or a financial institution shall set—

- (a) the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the base rate set and published by the Central Bank of Kenya; and
- (b) the minimum interest rate granted on a deposit held in interest earning in Kenya to at least seventy per cent, the base rate set and published by the Central Bank of Kenya.

(2) A person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of that prescribed by law.

(3) A bank or financial institution which contravenes the provisions of subsection (2) commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or in default, the Chief Executive Officer of the bank or financial institution shall be liable to imprisonment for a term not less than one year.

[Act No. 25 of 2016, s. 3.]

### **34. Powers of Central Bank to intervene in management**

(1) This section applies, and the powers conferred by subsection (2) may be exercised, in the following circumstances—

- (a) if the institution fails to meet any financial obligation, when it falls due including an obligation to pay any depositor;
- (b) if a petition is filed, or a resolution proposed, for the winding up of the institution or if any receiver or receiver and manager or similar officer is appointed in respect of the institution or in respect of all or any part of its assets;
- (c) if the auditor of an institution makes a report to the Central Bank under the provisions of subsection (4) of section 24;

- (d) if the Central Bank discovers (whether on an inspection or otherwise) or becomes aware of any fact or circumstance which, in the opinion of the Central Bank, warrants the exercise of the relevant power in the interests of the institution or its depositors or other creditors;
- (e) if the institution is significantly undercapitalized; or
- (f) if the institution fails—
  - (i) to submit a capital restoration plan or a plan to resolve all deficiencies as directed under section 33A; or
  - (ii) to add more capital, and it fails, neglects or refuses to comply, with an order or to implement a plan of correction.

(2) In any case to which this section applies, the Central Bank may in consultation with the Cabinet Secretary—

- (a) enter into an agreement with the board of directors of an institution requiring the institution to rectify its deficiencies within three months:  
Provided that in the case of reckless or fraudulent conduct, the Central Bank shall have discretion to enter an agreement based on its judgment as to the efficacy of such an approach;
- (b) appoint Kenya Deposit Insurance Corporation to assume the management control and conduct of the affairs and business of an institution and to exercise all the powers of the institution to the exclusion of its board of directors including the use of its corporate seal;
- (c) remove any officer or employee of an institution who, in the opinion of the Central Bank, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder, or to any deterioration in the financial stability of the institution, or has been guilty of conduct detrimental to the interests of depositors or other creditors of the institution;
- (d) appoint a competent person familiar with the business of the institution to its board of directors to hold office as a director, who shall not be capable of being removed from office without the approval of the Central Bank;
- (e) by notice in the *Gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the institution in favour of any officer or employee or any other person;
- (f) restrict the institution from engaging in new foreign exchange business;
- (g) prohibit the institution from engaging in new off-balance sheet transactions; and
- (h) prohibit the institution from engaging any new agents or direct the institution to terminate any agency arrangement.

(3) The appointment of a manager shall be for such period, not exceeding twelve months, as the Central Bank shall specify in his instrument of appointment and may be extended by the High Court, upon the application of the Central Bank, if such extension appears to the Court to be justified.

(3A) Deleted by Act No. 14 of 2015, s. 37.

(3B) Deleted by Act No. 14 of 2015, s. 37.

(4) A manager shall, upon assuming the management, control and conduct of the affairs and business of an institution, discharge his duties with diligence and in accordance with sound banking and financial principles and, in particular, with due regard to the interests of the institution, its depositors and other creditors.

(5) The responsibility of a manager shall include—

- (a) tracing and preserving all the property and assets of the institution;
- (b) recovering all debts and other sums of money due to and owing to the institution;
- (c) evaluating the capital structure and management of the institution and recommending to the Central Bank any restructuring or reorganization which he considers necessary and which, subject to the provisions of any other written law, may be implemented by him on behalf of the institution;
- (d) entering into contracts in the ordinary course of the business of the institution, including the raising of funds by borrowing on such terms as he may consider reasonable; and
- (e) obtaining from any officers or employees of the institution any documents, records, accounts, statements or information relating to its business.

(6) For the purposes of discharging his responsibilities, a manager shall have power to declare a moratorium on the payment by the institution of its depositors and other creditors and the declaration of a moratorium shall—

- (a) be applied equally and without discrimination to all classes of creditors:

Provided that the manager may offset the deposits or other liabilities owed by the institution to any depositor or other creditor against any loans or other debts owed by that depositor or creditor to the institution;

- (b) limit the maximum rate of interest which shall accrue on deposits and other debts payable by the institution during the period of the moratorium to the minimum rate determined by the Central Bank under the provisions of section 39 of the Central Bank of Kenya Act (Cap. 491) or such other rate as may be prescribed by the Central Bank for the purposes of this section provided that the provisions of this paragraph shall not be construed so to impose an obligation on the institution to pay interest or interest at a higher rate to any depositor or creditor than would otherwise have been the case;
- (c) suspend the running of time for the purposes of any law of limitation in respect of any claim by any depositor or creditor of the institution;
- (d) cease to apply upon the termination of the manager's appointment whereupon the rights and obligations of the institution, its depositors and creditors shall, save to the extent provided in paragraphs (b) and (c), be the same as if there had been no declaration under the provisions of this subsection.

(7) If any officer or employee of an institution removed under the provisions of subsection (2)(b) is aggrieved by the decision, he may apply to the High Court and the Court may confirm, reverse or modify the decision and make such other in the circumstances as it thinks just; and pending the determination of any application or appeal therefrom, the order of removal shall remain in effect.

(8) Neither the Central Bank nor any officer or employee thereof nor any manager nor any other person appointed, designated or approved by the Central Bank under the provisions of this Part shall be liable in respect of any act or omission done in good faith by such officer, employee, manager or other person in the execution of the duties undertaken by him.

[Act No. 13 of 1994, s. 12, Act No. 4 of 1999, s. 86, Act No. 9 of 2006, s. 13, Act No. 10 of 2010, s. 67, Act No. 57 of 2012, s. 50, Act No. 14 of 2015, s. 37, Act No. 38 of 2016, s. 52.]

### **34A. Voluntary liquidation**

(1) An institution may, with the approval of the Central Bank, voluntarily liquidate itself if it is able to meet all its liabilities.

(2) An application for the Central Bank's approval for the purposes of subsection (1) shall be in the prescribed form.

(3) The Central Bank may, upon receipt of an application under subsection (2), approve the application if satisfied as to the solvency of the institution.

(4) Where the Central Bank approves an application by an institution under this section, such institution shall forthwith cease all its operations except such activities as are incidental to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

(5) While the institution is in liquidation under this section, the liability of the shareholders of the institution for uncalled subscriptions to the capital stock of the institution continues.

(6) The institution shall discharge its liability to its depositors as soon as practicable after the commencement of the liquidation and shall then rank all other creditors in accordance with the Insolvency Act, 2015.

[Act No. 4 of 1999, s. 87, Act No. 9 of 2006, s. 14, Act No. 14 of 2015, s. 38, Act No. 19 of 2015, s. 82.]

### **35. Liquidation of insolvent institutions**

(1) If satisfied on reasonable grounds that an institution has become insolvent, the Central Bank may appoint the Board to be a liquidator of the institution.

(2) Such an appointment has the same effect as the appointment of a liquidator by the High Court under Part VI of the Insolvency Act, 2015, and for that purpose, references in that Act to "the relevant date" and "commencement of the liquidation" are taken to be references to the date on which the Board is appointed as liquidator.

(3) A person may not be appointed as liquidator of an institution under Part VI of the Insolvency Act, 2015—

- (a) if the Board has already been appointed as its liquidator; or
- (b) if the Board has not already been so appointed without the approval of the High Court.



(4) The Court may give approval under subsection (3)(b) only if the Central Bank—

- (a) has certified that it does not intend to exercise its powers under this section; or
- (b) has failed to exercise its powers within such period, not exceeding three months, as the High Court may specify.

(5) When a liquidator (other than the Board) has been appointed as liquidator of an institution, the Central Bank may, at any time, apply to the High Court for an order that the liquidator be removed and the Board be appointed as liquidator instead.

(6) If the High Court appoints the Board instead of the liquidator, the provisions of the Insolvency Act, 2015, apply to a liquidation by the Board but only to the extent that they are not inconsistent with this Act and any regulations made under it.

(7) When the Board is appointed as liquidator of an institution, it may do all or any of the following—

- (a) carry on the business of the institution so far as may be necessary for its beneficial liquidation;
- (b) appoint an advocate to assist it in the performance of its functions;
- (c) pay any classes of creditors in full;
- (d) enter into any compromise or arrangement with creditors or persons claiming to be creditors;
- (e) compromise—
  - (i) all calls and liabilities to call, debts and liabilities capable of resulting in debts, and all claims (whether present or future, certain or contingent, or ascertained or sounding only in damages) subsisting or alleged to be subsisting between the institution and a contributory or other person who may have a liability to the institution; and
  - (ii) all questions affecting the assets or liquidation of the institution,

on such terms as may be agreed;

- (f) take security for the discharge of any such call, debt, liability or claim and give a complete discharge for it.

(8) In addition to the powers conferred by subsection (7), the Board may when acting as a liquidator of an institution—

- (a) set off payment made to a protected depositor out of the fund against any dividend subsequently determined as payable to such depositor;
- (b) recover interest payable to the institution on loans, overdrafts and other credit facilities outstanding as at the date of liquidation;
- (c) offset deposits and any other liabilities to the institution's customers against any loans or debts owed to the institution as at the date of liquidation;
- (d) invest surplus funds in the liquidation account that are not immediately required for the purpose of financing day to day operations in short-term placements with reputable institutions approved by the Board or in such Government securities as the Board may determine.

(9) In the exercise of its powers as a liquidator, the Board may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the institution or any person who has custody of any funds or other assets of the institution being liquidated to—

- (a) give to the liquidator all reasonable assistance in connection with the liquidation;
- (b) appear before the liquidator for examination concerning matters relevant to the liquidation;
- (c) produce any records or documents that relate to the affairs of the institution being liquidated.

(10) In performing its functions under this section, the Board is subject to the supervision of the Central Bank.

(11) When the Board has been appointed as liquidator in respect of an institution, the powers of the Board are exercisable only if and to the extent authorised by the Central Bank.

(12) When the High Court has appointed a liquidator in respect of an institution, the powers of the liquidator are exercisable only if and to the extent authorised by the High Court.

(13) On the application of any interested party, the High Court may, if it considers it appropriate to do so, appoint a liquidation committee having the same powers as a liquidation committee appointed under Part VI of the Insolvency Act, 2015.

(14) The Cabinet Secretary may make regulations generally for carrying out the liquidation of an institution under this section, and in doing so may—

- (a) apply relevant provisions of the Insolvency Act, 2015, with or without modifications; and
- (b) include provision as to the manner and time in which depositors and other creditors of the institution (preferential or otherwise) are required to submit proofs of their debts to the Board.

(15) For the purpose of this section, an institution becomes insolvent if—

- (a) it is unable to pay its debts within the meaning of section 383 of the Insolvency Act, 2015;
- (b) a liquidation order is made against it, or a resolution for creditors' voluntary liquidation is passed, under Part VI of the Insolvency Act, 2015;
- (c) it is unable to pay amounts due and payable to its depositors; or
- (d) the Central Bank determines on investigation that the value of its assets is less than the amount of its liabilities.

[Act No. 5 of 1998, s. 60, Act No. 15 of 2003, s. 49, Act No. 19 of 2015, s. 83.]

**35A.** *Repealed by Act No. 14 of 2015, s. 39.*

**35B. Power to place institutions in administration in certain circumstances**

(1) The Central Bank may appoint the Board as administrator to manage to manage the institution's affairs and property, but only if it is satisfied that—

- (a) the institution is or is, likely to become unable to pay its debts; and
- (b) the administration order is reasonably likely to achieve at least one of the objectives of administration.

(2) For the purpose of subsection (1)(b), the objectives of administration are the following—

- (a) to maintain the institution as a going concern;
- (b) to achieve a better outcome for the institution's creditors as a whole than would likely to be the case if the institution were liquidated (without first being under administration);
- (c) to realise the property of the institution in order to make a distribution to one or more secured or preferential creditors.

(3) The appointment of the Board as administrator of an institution has the same effect as the appointment by the High Court of an administrator of a company under Division 3 of Part VIII of the Insolvency Act, 2015.

(4) A person may not be appointed as administrator of an institution under Part VIII of the Insolvency Act 2015—

- (a) if the Board has already been appointed as its administrator; or
- (b) if the Board has not already been so appointed without the approval of the High Court.

(5) The Court may give approval under subsection (4)(b) only if the Central Bank—

- (a) has certified that it does not intend to exercise its powers under this section; or
- (b) has failed to exercise its powers within such period, not exceeding three months, as the High Court may specify.

(6) When an administrator (other than the Board) has been appointed in respect of an institution, the Central Bank may, at any time, apply to the High Court for an order that the administrator be removed and the Board be appointed as administrator instead.

(7) If the High Court removes the administrator and appoints the Board instead, the provisions of Part VIII of the Insolvency Act, 2015, apply to an administration by the Board but only to the extent that they are not inconsistent with this Act and any regulations made under it.

(8) A receiver or receiver and manager may not be appointed in respect of an institution and any provision purporting to confer power to appoint such a receiver or a receiver and manager is taken to be a power to appoint an administrator under Part VIII of the Insolvency Act, 2015.

(9) If, before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015, a receiver or receiver and manager of an institution has been appointed in respect of an institution, the receiver, or receiver and manager, is taken to be an administrator appointed under Part VIII of the Insolvency Act, 2015.

(10) When the Board is appointed as administrator in respect of an institution are exercisable only if and to the extent authorised by the Central Bank.

(11) The powers of an administrator (other than the Board) appointed or taken to have been appointed in respect of an institution are exercisable only if and to the extent authorised by the High Court.

(12) In the exercise of its powers as an administrator, the Board may, by notice in writing, require a person to whom subsection (13) applies—

- (a) to give to the liquidator all reasonable assistance in connection with the administration;
- (b) to appear before the Board for examination concerning matters relevant to the administration;
- (c) to produce any records or documents that relate to the affairs of the institution under administration.

(13) This subsection applies to the following persons—

- (a) any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the institution;
- (b) any person who has custody of funds or other assets of the institution under administration.

(14) The Cabinet Secretary may make regulations generally for carrying out the administration of an institution under this section, and in doing so may apply relevant provisions of the Insolvency Act, 2015, with or without modifications.

[Act No. 19 of 2015, s. 84.]

### **35C. Right of appeal in respect of Board's exercise of powers under section 35 or 35AA**

(1) Any interested person who is dissatisfied with the exercise by the Board of a power conferred on it by section 35 or 35AA may apply to the High Court for an order or orders under subsection (2).

(2) On the hearing of an application made under subsection (1), the High Court may either dismiss the application or, if it considers that that the Board has exercised the power unfairly or unreasonably in relation to the applicant, make either or both of the following orders—

- (a) an order quashing any decision of the Board purporting to be made in the exercise of the power, and any action taken as a result of that decision;
- (b) an order directing the Board to exercise the power in such a way as the Court determines, subject to such terms as the Court considers appropriate.

(3) The Board is entitled to be served with a copy of an application made under subsection (1) and to appear as respondent at the hearing of the application.

[Act No. 19 of 2015, s. 84.]

### **35D. Offences under sections 35 and 35B**

(1) A person who—

- (a) refuses or fails to comply with a requirement of a liquidator appointed under section 35, or of an administrator appointed under section 35B, that is applicable to the person, to the extent to which the person is able to comply with it;

- (b) obstructs or hinders such a liquidator or administrator in the exercise of the powers conferred under this Act;
- (c) provides information, or makes a false statement, to such a liquidator or administrator knowing it to be false or misleading in any material respect; or
- (d) when appearing before such a liquidator for examination in accordance with such a requirement – makes a statement knowing it to be false or misleading in a material respect,

commits an offence and on conviction is liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(2) If, after being convicted of an offence under subsection (1)(a), a person continues to refuse or fail to comply with the relevant requirement, the person commits a further offence on each day or part of a day on which the refusal or failure continues and on conviction is liable to a fine not exceeding one hundred thousand shillings for each such offence.

[Act No. 19 of 2015, s. 84.]

## PART VIII – THE DEPOSIT PROTECTION FUND

### 36. Deposit Protection Fund Board

(1) There is hereby established a body corporate to be known as the Deposit Protection Fund Board.

(2) The Board shall have perpetual succession and a common seal and shall in its corporate name or in the name of an institution be capable of—

- (a) suing and being sued, without sanction of the court or a Committee of Inspection;
- (b) taking, purchasing or otherwise acquiring, holding, charging, leasing or disposing of movable or immovable property;
- (c) borrowing money;
- (d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate or a liquidator.

(3) The Board shall—

- (a) hold, manage and apply in accordance with the provisions of this Part, the Deposit Protection Fund (hereinafter referred to as “the Fund”); and
- (b) levy contributions for the Fund, in accordance with the following provisions of this part, from institutions; and have such other functions as are conferred on the Board by these provisions.

(4) The Board shall consist of—

- (a) the Governor of the Central Bank who shall be the chairman;
- (b) the Permanent Secretary to the Treasury; and
- (c) five members appointed by the Minister in consultation with the Central Bank to represent the interests of institutions.

(5) Subject to this Part, the Board shall determine its own procedure.

(6) The Central Bank shall make available to the Board such facilities and the services of such officers as are necessary for the proper and efficient exercise of the functions of the Board.

(7) The affixing of the common seal of the Board shall be authenticated by the signatures of the chairman and of one other member of the Board authorised by the Board in that behalf and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and one member as aforesaid:

Provided that the Board shall, in the absence of the chairman or the authorised member in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the chairman or such other member.

(8) The Board may, by a power of attorney, appoint the chief executive officer of the Board to execute or authenticate by a seal on behalf of any institution under liquidation, any documents on behalf of the institution.

[Act No. 13 of 1994, s. 14, Act No. 7 of 2001, s. 5, Act No. 9 of 2006, s. 15.]

**36A.** *Repealed by Act No. 14 of 2015, s. 40.*

**36B.** *Repealed by Act No. 14 of 2015, s. 41.*

**36C.** *Repealed by Act No. 14 of 2015, s. 42.*

### **37. Deposit Protection Fund**

(1) The Cabinet Secretary may, from time to time in consultation with the Central Bank and by notice in the *Gazette*, fix the size of the Fund sufficient to protect the interests of depositors to be made up by contributions under section 38 or under the provisions of any other written law and may authorize the Board to borrow from the Central Bank or any other person such amount as it may require for the purposes of discharging its functions under this Part.

(2) The Fund shall consist of—

- (a) moneys in the Deposit Protection Fund established by section 17 of the Banking (Amendment) Act, 1985 (No. 17 of 1985);
- (b) moneys contributed to the Fund by institutions under section 38 or under the provisions of any other written law;
- (c) income credited to the Fund under subsection (3);
- (d) moneys borrowed for the purposes of the Fund under subsection (1); and
- (e) money received as subventions, grants or donations to the Fund.

(3) The moneys constituting the Fund shall be placed in an account with the Central Bank to be invested by the Board in treasury bills, treasury bonds or other securities issued by the Government and any income from the investments shall be credited to the Fund.

(4) There shall be chargeable to the Fund the administration expenses of the Board, repayment of money borrowed by the Fund and payments made in respect of protected deposits.

[Act No. 20 of 1989, Sch., Act No. 19 of 2006, s. 51, Act No. 19 of 2015, s. 85.]

### **38. Contribution to the Fund**

(1) Every institution which is licensed to carry on business in Kenya shall be a contributor to the Fund and shall pay into the Fund such annual amount, and at such times, as the Board may determine.

(2) The Board shall serve on every institution a notice specifying the amount and the period, which shall not be later than twenty-one days after the date of service of the notice, within which the amount shall be paid into the Fund by the institution.

(3) The amount of a contribution to the Fund under this section shall not be less than one hundred thousand shillings nor exceed 0.4 percent of the average of the institution's total deposit liabilities during the period of twelve months prior to the date of the notice served under subsection (2); but the Cabinet Secretary may, after consultation with the Board, by order, amend the minimum and maximum amounts of contributions prescribed by this subsection.

(4) An institution which, for any reason, fails to pay its contribution to the Fund within the period specified in a notice issued under subsection (2) shall be liable to pay to the Fund a penalty interest charge not exceeding one-half percent of the unpaid amount for every day outside the notice period on which the amount remains unpaid.

(5) If it appears to the Board that the affairs of an institution are being conducted in a manner detrimental to its own interests or to the interests of its depositors, the Board may increase the contributions of that institution beyond the maximum set out in subsection (4) or terminate the protection of the deposits of such institution.

(6) The Board shall, as soon as reasonably practicable after terminating the protection of the deposits of an institution under subsection (5), cause the name of that institution to be published in the *Gazette*.

(7) The Board shall cause a list of all institutions whose deposits are protected to be published in the *Gazette* annually.

[Act No. 13 of 1994, s. 15, Act No. 19 of 2015, s. 86.]

### **39. Protection of deposits**

(1) The amount being the aggregate credit balance of any accounts maintained by the customer to an institution, less any liability of the customer to the institution, shall be a protected deposit to the extent determined by the Minister from time to time by order published in the *Gazette*.

(2) A customer of an institution may upon the institution becoming insolvent, lodge a claim with the Board, in such form as the Board may approve, for payment to him out of the Fund of any protected deposit which he would, but for the insolvency, have been paid had he demanded payment from the insolvent institution.

(3) The Board may, before paying any claim lodged under subsection (2), require the claimant to furnish it with such documentary proof as may be proper to show that he is entitled to payment out of the Fund; and the Board may decline to make any payment under this section to a person who, in the opinion of the Board, had any responsibility for, or may have profited directly or indirectly from the circumstances leading up to the institution becoming insolvent.

(4) The Board may, at any time and from time to time, require the Central Bank to have an inspection carried out under section 32 to ascertain the type, number and value of the protected deposits of any institution and the information obtained pursuant to the inspection shall, subject to section 31, be made available by the Central Bank to the Board.

(5) Upon payment of a protected deposit, the Board shall be entitled to receive from the institution or its liquidator, as the case may be, an amount equal to the insolvency payment paid by the Fund on account of its subrogation to the claims of any customer or depositor:

Provided that the Board shall be entitled to payment of its subrogated claims prior to further payment of any other depositor or creditor of the institution.

(6) An institution becomes insolvent for the purposes of this Part if—

- (a) a liquidator or provisional liquidator is appointed in respect of the institution under Part VI of the Insolvency Act, 2015;
- (b) a liquidator or interim liquidator is appointed in respect of the institution under this Act; or
- (c) a liquidation order or administration order is made in respect of it, or a resolution for creditors' voluntary liquidation is passed, under the Insolvency Act, 2015.

(7) For the purposes of this section “**customer**” includes persons entitled to a deposit as trustees or persons holding any deposit jointly.

[Act No. 7 of 2001, s. 7, Act No. 19 of 2015, s. 87.]

**39A.** *Repealed by Act No. 14 of 2015, s. 43.*

#### **40. Rights of the Board on insolvency**

Whenever an institution becomes insolvent, the Board shall be entitled to receive any notice or other document required to be sent to a creditor of the institution whose debt has been proved, and a duly authorized representative of the Board shall be entitled to attend any meeting of creditors of the institution and to be a member of any committee of inspection appointed under the Companies Act (Cap. 486) or this Act and in the case of a winding-up by the High Court, the Board shall be entitled to appear at the hearing of the petition and to make representations.

[Act No. 20 of 1989, Sch.]

#### **40A. Rights of assignment**

(1) The liquidator may assign the assets or liabilities of an institution or of a customer under this Act, the Insolvency Act, 2015, or under any other written law to third parties for the benefit of the creditors and depositors of the institution under liquidation.

(2) The right of assignment conferred by this section shall override all other rights and interests of parties under contracts of employment, leases, charges, mortgages or any other agreements the institution may have entered into before going into liquidation.

(3) Every public officer having the power or duty to accept and register or amend any entry in any register relating to an assignment of an asset or liability pursuant to subsection (1) shall, upon request made by the liquidator, customer or other person, do all such things as are by law necessary to complete the registration of the assignment.

[Act No. 5 of 1998, s. 61, Act No. 19 of 2015, s. 88.]

**41.** *Repealed by Act No. 13 of 1994, s. 16.*



**41A. Administration of assets**

(1) The Board shall hold, manage and dispose of all the assets of an institution remaining unsold at the time of the institution's liquidation.

(2) The Registrar of Companies and the Registrar of Titles, and any officer or person in charge of a deeds registry, or any other relevant office, shall upon production of any relevant deed, bond, share, stock, debenture or other document, make such endorsement and effect such alterations as may be necessary to record the transfer of the relevant property or asset, as the case may be.

[Act No. 10 of 2010, s. 69, Act No. 19 of 2015, s. 89.]

**42. Annual reports, etc.**

(1) The Board shall, within three months after the close of each financial year, submit to the Cabinet Secretary a report on the Board's operations throughout the year.

(2) The financial year of the Board shall be the same as the Central Bank's financial year.

[Act No. 19 of 2015, s. 90.]

**PART IX – REPRESENTATIVE OFFICES OF FOREIGN INSTITUTIONS****43. Representative offices of foreign institutions**

(1) The Central Bank may, in writing and subject to such conditions as the Central Bank may consider necessary, authorize a bank or a financial institution incorporated outside Kenya which does not propose to transact banking or financial business in Kenya but which proposes and applies in writing to the Central Bank to establish a representative office in Kenya, to open an office in a place in Kenya approved by the Central Bank.

(2) The Central Bank may require a representative office to furnish such information as the Central Bank may require at such time and in such manner as the Central Bank may direct.

(3) Where a representative office is required to furnish information under subsection (2), it shall furnish that information and any supplemental material that may be required as a result of that information within the period specified in the direction or within such reasonable period thereafter as may be agreed.

(4) The Central Bank may at any time, if it appears to the Central Bank that a representative office is engaged in banking or financial business or that the affairs of a representative office are being conducted contrary to any condition of an authority granted under subsection (1) or in a manner detrimental to banking or financial business in Kenya, issue directions to the representative office to take such corrective action as the Central Bank considers to be necessary within such period as may be specified in the directions; and, if the representative office fails to comply with such directions, the Central Bank may order that the affairs of a representative office in Kenya be wound up and the office closed within such time as the Central Bank may direct.

[Act No. 9 of 2006, s. 16.]

**PART X – MISCELLANEOUS PROVISIONS****44. Restrictions on increase in bank charges**

No institution shall increase its rate of banking or other charges except with the prior approval of the Minister.

**44A. Limit on interest recovered on defaulted loans**

(1) An institution shall be limited in what it may recover from a debtor with respect to a non-performing loan to the maximum amount under subsection (2).

(2) The maximum amount referred to in subsection (1) is the sum of the following—

- (a) the principal owing when the loan becomes non-performing;
- (b) interest, in accordance with the contract between the debtor and the institution, not exceeding the principal owing when the loan becomes non-performing; and
- (c) expenses incurred in the recovery of any amounts owed by the debtor.

(3) If a loan becomes non-performing and then the debtor resumes payments on the loan and then the loan becomes non-performing again, the limitation under paragraphs (a) and (b) of subsection (1) shall be determined with respect to the time the loan last became non-performing.

(4) This section shall not apply to limit any interest under a court order accruing after the order is made.

(5) In this section—

- (a) “**debtor**” includes a person who becomes indebted to an institution because of a guarantee made with respect to the repayment of an amount owed by another person;
- (b) “**loan**” includes any advance, credit facility, financial guarantee or any other liability incurred on behalf of any person; and
- (c) a loan becomes non-performing in such manner as may, from time to time, be stipulated in guidelines prescribed by the Central Bank.

(6) This section shall apply with respect to loans made before this section comes into operation, including loans that have become non-performing before this section comes into operation:

Provided that where loans become non-performing before this section comes into operation, the maximum amount referred to in subsection (1) shall be the following—

- (a) the principal and interest owing on the day this section comes into operation; and
- (b) interest, in accordance with the contract between the debtor and the institution, accruing after the day this section comes into operation, not exceeding the principal and interest owing on the day this section comes into operation; and
- (c) expenses incurred in the recovery of any amounts owed by the debtor.

[Act No. 9 of 2006, s. 17.]

**45. Cabinet Secretary to consult with the Central Bank**

(1) The Cabinet Secretary shall consult with the Central Bank in the exercise of his functions under this Act.

(2) Where the approval of the Cabinet Secretary is required under any provision of this Act, the application for such approval shall be submitted through the Central Bank.

[Act No. 19 of 2015, s. 91.]

**46. Bank holidays**

(1) Where the Cabinet Secretary considers that it is in the public interest that banks, or a particular bank, or a particular branch of a bank, should remain closed on a day which is not a public holiday, he may by notice in the *Gazette*, declare that day to be a bank holiday for all banks, or for that particular bank, or for that particular branch, as the case may be, and every licensed bank, or that particular bank, or that particular branch, as the case may be, shall remain closed on that day.

(2) Without prejudice to subsection (1), the Central Bank may, on application by an institution or a branch of an institution, if satisfied that it is necessary to do so, authorize the institution or branch to remain closed on such day or part thereof, or on such days as may be specified in the authorization, subject to such terms and conditions as the Central Bank may impose.

[Act No. 8 of 2008, s. 69, Act No. 19 of 2015, s. 92.]

**47. Orders by High Court**

(1) The High Court, on application made *ex parte* by the Minister or, where a manager or liquidator has been appointed by the Central Bank, may, if it considers it to be in the interests of the depositors of an institution, make an order—

- (a) prohibiting the institution from carrying on business; or
- (b) staying the commencement or continuance of any actions or proceedings against the institution in regard to any business for a specified period of time on such terms and conditions as it considers reasonable,

and may from time to time extend the specified period up to a total of six months from the beginning of the stay.

(2) So long as an order under paragraph (a) of subsection (1) remains in force, the licence granted to the institution under this Act shall be deemed to be suspended.

**48. Disqualification of officers**

(1) A person who is an officer of an institution shall cease to hold office and shall not thereafter be eligible to hold office in any institution if he—

- (a) becomes bankrupt or suspends payment or compounds with his creditors; or
- (b) is convicted of an offence involving dishonesty or fraud; or
- (bb) is disqualified from holding office under section 32A; or
- (c) is removed from office under the provisions of section 34.

(2) Any person who continues to act as an officer of an institution after he has been disqualified by virtue of this section shall be guilty of an offence.

[Act No. 10 of 2006, s. 46.]

**49. Penalties for offences**

Where any institution or other person contravenes any of the provisions of this Act—

- (a) if it is a body corporate, it shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings; and
- (b) every officer of that institution or person shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to

imprisonment for a term not exceeding two years or to both unless he proves that, through no act or omission on his part, he was not aware that the contravention was taking place or was intended or about to take place, or that he took all reasonable steps to prevent it taking place.

**50. Penalties for default by officers**

(1) Any officer of an institution who—

- (a) fails to take all reasonable steps to secure the compliance of the institution with this Act; or
- (b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act or any other written law applicable to banks or financial institutions; or
- (c) fails to supply any information required under this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand shillings or to both.

(2) It shall be a defence to a charge under subsection (1) for an officer to show that he reasonably thought that another competent person had been charged with the responsibility or duty in respect of which the default arose.

**51. Misleading advertisement for deposits**

(1) Any institution or other person who issues any advertisement, brochure, circular or other document inviting any person to make a deposit which—

- (a) falsely represents that he is authorized to accept deposits or is otherwise licensed under the provisions of this Act; or
- (b) is issued contrary to any direction given by the Central Bank under the provisions of subsection (2),

shall be guilty of an offence.

(2) The Central Bank may, at any time direct any person to withdraw, amend or refrain from issuing any advertisement, brochure, circular or other document relating to deposits which, in its sole discretion, it considers to be misleading.

**52. Civil obligations**

(1) For the avoidance of doubt, no contravention of the provisions of this Act or the Central Bank of Kenya Act (Cap. 491) shall affect or invalidate in any way any contractual obligation between an institution and any other person.

(2) The provisions of subsection (1) shall apply with retrospective effect to the Banking Act (now repealed) and the Central Bank of Kenya Act (Cap. 491).

(3) This section shall not permit any institution to recover in any court of law interest and other charges which exceed the maximum permitted under the provisions of this Act or the Central Bank of Kenya Act.

**52A. Act to prevail in event of conflict**

(1) Subject to subsection (2), where there is a conflict between the provisions of this Act and the provisions of any other written law applicable to an institution licensed under this Act, the provisions of this Act shall prevail.

(2) For the purposes of subsection (1), the expression “**written law**” does not include the Central Bank of Kenya Act (Cap. 491), the Income Tax Act (Cap. 470), the East African Community Customs Management Act, the Value Added Tax Act (Cap. 476) or any of the other laws set out in the First Schedule to the Kenya Revenue Authority Act (Cap. 469).

[Act No. 13 of 1994, s. 17, Act No. 4 of 1999, s. 88, Act No. 9 of 2007, s. 66.]

### 53. Exemptions

(1) The Cabinet Secretary may, by notice in the *Gazette*, exempt an institution from the provisions of section 12, 13 or 14 subject to such conditions as the Cabinet Secretary considers necessary.

(2) An exemption granted under subsection (1) shall remain in force for such period specified in the notice as the Cabinet Secretary shall deem fit.

[Act No. 4 of 1993, s. 64, Act No. 10 of 2006, s. 47, Act No. 19 of 2015, s. 93.]

### 54. Act not to apply to certain institutions

(1) This Act does not apply to—

- (a) the Kenya Post Office Savings Bank established under the Kenya Post Office Savings Bank Act (Cap. 493B);
- (b) the Agricultural Finance Corporation established under the Agricultural Finance Corporation Act (Cap. 323);
- (c) a society registered as a co-operative society under the Co-operative Societies Act (Cap. 490);
- (d) a microfinance bank licensed under the Microfinance Act, 2006.

(2) Notwithstanding the provisions of subsection (1), where any of the bodies referred to in that subsection is contracted by an institution as an agent to provide banking services on behalf of the institution, this Act shall apply to such body to the extent of the services contracted.

[Act No. 8 of 2009, s. 61, Act No. 10 of 2010, s. 70, Act No. 41 of 2013, Sch.]

### 55. Regulations

(1) The Central Bank may make regulations generally for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Central Bank may, in regulations, prescribe penalties to be paid by institutions, credit reference bureaus (or any other person) that fail or refuse to comply with any directions of the Central Bank under this Act or Prudential Guidelines, which shall not exceed twenty million shillings in the case of an institution or credit reference bureau, or one million shillings in the case of a natural person, and may prescribe additional penalties not exceeding one hundred thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

[Act No. 5 of 1998, s. 62, Act No. 8 of 2008, s. 70,  
Act No. 38 of 2013, s. 29, Act No. 38 of 2016, s. 53.]

### 56. Repeal and savings

(1) The Banking Act (Cap. 488) is repealed.

(2) Notwithstanding subsection (1), whereupon the commencement of this Act any bank or financial institution is licensed to transact banking business or the business of a financial institution in Kenya, that licence shall have effect as if granted under section 5 of this Act.

(3) If—

- (a) any act or thing that was done or omitted to be done by or to the Cabinet Secretary under this Act before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 had effect immediately before that commencement; and
- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary.

[Act No. 19 of 2015, s. 95.]

## **57. Amendments of other laws**

The several written laws specified in the first column of the Second Schedule are amended, in relation to the provisions thereof specified in the second column, in the manner specified in the third column.

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### FIRST SCHEDULE

[Sections 4 & 32A, Act No. 8 of 1991, s. 82, L.N. 443/1992, Act No. 13 of 1994, s. 18, Act No. 9 of 2006, s. 18, Act No. 10 of 2006, s. 48, Act No. 8 of 2008, s. 71.]

#### PART A - CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY

- (a) In order to determine, for the purposes of this Act, the professional and moral suitability of persons, proposed to be Directors and senior officers of an institution under section 4, or managing or controlling institutions under section 32A, the Central Bank shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—
  - (i) his possession of adequate professional credentials or experience or both for the position for which he is proposed;
  - (ii) his ability to recommend sound practices gleaned from other situations;
  - (iii) his ability provide dispassionate advise;
  - (iv) his ability to avoid conflicts of interest in his activities and commitments with other organizations;
  - (v) his ability to absent himself from decisions when he is incapable of providing objective advice.
- (b) For the purpose of and without prejudice to the generality of the provisions of paragraph (a), the Central Bank, may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—
  - (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
  - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to

- the dishonesty or incompetence of or malpractices by persons engaged in the provision of banking, insurance, investment or other financial services;
- (iii) was a Director or a senior officer of an institution that has been liquidated or is under liquidation or statutory management under Part VII of this Act;
  - (iv) has taken part in any business practices that, in the opinion of the Central Bank, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;
  - (v) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment;
  - (vi) has defaulted in the repayment of any advance or loan made to him by any institution licensed under the Act or a society licensed under the Building Societies Act (Cap. 489) for three consecutive months.
- (c) The Central Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person as stipulated under the Act.

[Act No. 9 of 2006, s. 18, Act No. 10 of 2006, s. 48, Act No. 8 of 2008, s. 71.]

**PART B — CRITERIA FOR DETERMINING MORAL  
SUITABILITY OF SIGNIFICANT SHAREHOLDERS  
PROPOSED TO MANAGE OR CONTROL INSTITUTIONS**

- (a) In order to determine, for the purposes of this Act, the moral suitability of significant shareholders of an institution, the Central Bank, shall have regard to the previous conduct and activities of the significant shareholder concerned in business or financial matters and, in particular, to any evidence that such person—
- (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
  - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services.
- (b) For the purposes of determining the moral suitability of -a corporate entity, its directors and senior officers shall satisfy the criterion prescribed in paragraph (a) of Part B of this Schedule.
- (c) The Central Bank, may request any person or corporate entity to furnish such information as may be necessary in determining the moral suitability of the person stipulated in the Act.
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*Banking*

## SECOND SCHEDULE

[Section 7, Act No. 13 of 1994, s. 19, Act No. 8 of 1997, s. 59, Act No. 5 of 1998, s. 63, Act No. 4 of 1999, s. 89, Act No. 15 of 2003, s. 51, Act No. 8 of 2008, s. 72.]

## MINIMUM CAPITAL REQUIREMENTS

Every institution shall, at all times, maintain—

- (a) a core capital of not less than eight percent of total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank;
- (b) a core capital of not less than eight percent of its total deposit liabilities;
- (c) a total capital of not less than twelve percent of its total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by Central Bank;
- (d) a core capital of at least two hundred and fifty million Kenya shillings in the case of a bank or a mortgage finance company:  
Provided that the provisions of this paragraph shall apply in accordance with the following table;
- (e) a core capital of at least two hundred million Kenya shillings in the case of a financial institution.

*Minimum Core Capital*

<i>Compliance date</i>	<i>Banks and Mortgage Finance Companies (Kshs. Millions)</i>	<i>Financial Institutions (Kshs. Millions)</i>
31st December, 1999	200	150.00
31st December, 2000	250	187.50
31st December, 2001	300	225.00
31st December, 2002	350	262.50
31st December, 2003	400	300.00
31st December, 2004	450	337.50
31st December, 2005	500	375.00

## AMENDMENTS OF OTHER WRITTEN LAWS

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
The Bills of Exchange Act (Cap. 27)	s. 93(2)	In paragraph (a)(iii), delete "section 25" and substitute "section 46".
The Income Tax Act (Cap. 470)	s. 2(1)	In the definition of "banker" insert "or mortgage finance company" immediately after "financial institution".



*Banking*


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.	Fourth Schedule	Delete "A bank or financial institution licensed under the Banking Act" and insert "A bank or financial institution or mortgage finance company licensed under the Banking Act".
.		
The Investment Promotion Centre Act (Cap. 485)	s. 4(c)	Insert "or mortgage finance company" immediately after "financial institutions".
.		
The Companies Act (Cap. 486)	s. 386(5)	Insert "or financial institution or mortgage finance company" immediately after "bank".
.		
The Co-operative Societies Act (Cap. 490)	s. 43(d)	Delete the word "registered" and insert "licensed".
.		
The Central Bank of Kenya Act (Cap. 491)	s. 2	Delete the word "licensed" appearing in the definition of "specified bank".
.		
		Delete the definition of " <b>specified financial institutions</b> " and insert the following— " <b>specified financial institution</b> " means a financial institution or mortgage finance company within the meaning of the Banking Act which is specified by the Bank for the purposes of this Act.
.		
The Insurance Act (No. 1 of 1985)	s. 2G	Delete the definition of " <b>financial institution</b> " and insert— " <b>financial institution</b> " has the meaning assigned to it in the Banking Act and includes a mortgage finance company within the meaning of that Act.

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## THIRD SCHEDULE

[Section 32(5), Act No. 57 of 2012, s. 51, 2015, Act No. 19 of 2015, s. 96.]

## COMPETENT AUTHORITIES

1. The Central Bank of Kenya;
  2. The Capital Markets Authority;
  3. The Insurance Regulatory Authority;
  4. The Retirement Benefits Authority;
  5. The Communications Commission of Kenya;
  6. The SACCO Societies Regulatory Authority;
  7. Such other Regulatory Authority established by an Act of Parliament and specified by the Cabinet Secretary by notice in the *Gazette* for purpose of this Act.
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