

GUIDELINES ON PROHIBITED BUSINESS - CBK/PG/07

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PART I PRELIMINARY

1.1 Title - Guideline on Prohibited Business

1.2 Authorisation - This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3 Application- All institutions licensed under the Banking Act (Cap. 488) and non-operating holding companies.

1.4 Definition - Terms used within this guideline are as defined in the Banking Act, or as defined below, or as reasonably implied by contextual usage.

1.4.1 **“Insider”** may be used interchangeably with “related party” to mean any officer, director, employee or shareholder, or their associates. However, for publicly quoted companies, holders of 5% or more of the shares are considered insiders.

1.4.2 **“Reckless” means –**

- a) Transacting business beyond the limits set under the Banking Act or the Central Bank of Kenya Act;
- b) Offering facilities contrary to any guidelines or regulations issued by the Central Bank;
- c) Failing to observe the institution’s own policies as approved by the Board of Directors; or
- d) Misuse of position or facilities of the institution for personal gain.

1.4.3 **“Fraudulent”** – means 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.

1.4.4 **“Large exposure”** - for the purpose of this guideline, means all credit facilities granted to a person and his associates above 10% of an institution’s core capital.

1.4.5 **“Public Entity”** – for the purpose of this guideline, means the Government, a local authority or a public body declared by the Cabinet Secretary to be a public entity for the purpose of implementation of this Guideline and the Banking Act.

PART II STATEMENT OF POLICY

- 2.1 **Purpose** - This guideline is intended to prevent prohibited business practices as specified in Part III of the Banking Act and as restricted elsewhere in the Act.
- 2.2 **Scope** - This guideline applies to all transactions conducted by an institution and reflected on the balance sheet or reflected as off-balance sheet items. Notwithstanding the limits set forth in this guideline and the provisions of the Banking Act, institutions shall comply with sound banking practices and written policies, which have been adopted and approved by the institution's board of directors.
- 2.3 **Responsibility** - The board of directors of an institution shall be responsible for establishing appropriate policies and procedures which ensure that:
- (a) All business transactions made are fully compliant with the limitations set forth in Part III of the Banking Act and in this guideline, and
 - (b) All business decisions made are administered in accordance with prudent banking practices.

PART III SPECIFIC REQUIREMENTS

3.1 Single Borrower Limits (Banking Act Section 10)

- 3.1.1 An institution shall not grant to any person or permit to be outstanding any advance, credit facility or give any financial guarantee or incur any other liability (on and off balance-sheet) 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 exceeds 25% of its core capital.
- a) The Central Bank of Kenya may authorize a mortgage finance company to give advances, credits, guarantees or incur liabilities whose values exceed 25% of the institution's core capital.
 - b) The limit shall not apply to transactions with a public entity, transactions between banks or branches of a bank, or to the purchase of or advances made against clean or documentary bills of exchange or documents of title of goods entitling some person to payments outside Kenya for imports
- 3.1.2 The term "person" includes that person and his associates. For this reason, facilities for the person and the associates shall be aggregated and the 25% of core capital rule shall apply to the aggregate amount. Where the association is as a result of common

directorship, the loans need not to be grouped if the common director does not have a controlling interest in the associates.

3.1.3 Where a credit facility is non-performing, the outstanding balance should be net of provisions for purposes of determining the single borrower exposure.

3.2 Restrictions on Facilities to Insiders (Banking Act Section 11)

3.2.1 General Restrictions

Sub-Sections 11(1) (a), (b), (c) and (d) of the Banking Act prohibit an institution from granting or permitting to be outstanding:

- a) Any advance or credit facility against the security of its own shares.
- b) 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 25% of the share capital of that company.
- c) Any unsecured advances in respect of any of its employees or their associates. However, facilities granted to staff members within schemes approved by the board and serviced by salary through a check-off system are allowed.
- d) Any advances, loans or credit facilities, which are unsecured, or advances, loans or credit facilities, which are not fully secured to:
 - i) Any of its officers or directors or significant shareholders or their associates; or
 - ii) Any person of whom or of which any of its officers or directors or significant shareholders has an interest as an agent, Director, manager or shareholder; or
 - iii) Any person of whom or of which any of its officers or directors or significant shareholders is a guarantor.
- e) For purposes of this section, where facilities to insiders are secured by guarantees, these guarantees should be supported by tangible or other securities with proven market value that are duly charged and registered in favour of the institution.

3.2.2 Restrictions on Granting Facilities to Insiders on Preferential Terms

- a) Sub-section 11(1)(e) of the Banking Act prohibits institutions from granting or from permitting to be outstanding any advance or credit facility to any of its directors or other

person participating in the general management of the institution or their associates, 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. An institution must ensure that all members of the Board are made aware of the facility before it is disbursed.
 - ii) Is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution. The institution shall notify the Central Bank of every approval given pursuant to subparagraph (a) of this paragraph, within seven days of such approval, using form IF 12-4 annexed to Guideline No. CBK/PG/12.
- b) Loan facilities to Executive Directors and Chief Executives are to be treated and reported as insider lending facilities.
 - c) Review of overdraft and re-scheduling of existing credit facilities should be treated as new facilities in compliance with (a) and (b) above.
 - d) Loans and other facilities to staff members should be within schemes approved by the Board.

3.2.3 Restrictions on Aggregate Credit Limits to Insiders

Sub-Sections 11(1) (f) and (g) of the Banking Act prohibit an institution from granting or permitting to be outstanding:

- a) Any advance or credit facility or financial guarantee or incurring any other on-balance sheet or off-balance liability to, or in favour of, or on behalf of, any one insider in excess of 20% of the core capital of the institution.
- b) Any advance or credit facility or financial guarantee or any other liability to, or in favour of, or on behalf of, all insiders amounting in aggregate to more than 100% of the core capital of the institution.

3.2.4 Prohibition on Reckless and Fraudulent Activities

- a) Sub-section 11(1) (h) of the Banking Act prohibits an institution from granting, advancing or permitting to be outstanding any advance or credit facility or giving a guarantee or incurring any liability or entering into any contract or transaction or conducting its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance with the provisions of the Banking Act.

- b) The above prohibitions (contained under section 11 of the Banking Act) are applicable whether or not the advance, loan or credit facility in question is granted to any person alone or with others.

3.3 Restriction on Large Exposures

The aggregate credit facilities to all large exposures at any one time shall not exceed 5 times (500%) of the institution's core capital.

3.4 Restrictions on Trading and Investments (Banking Act Section 12)

The bulk of funds held by an institution constitutes depositors' funds. For this reason, it would be imprudent for an institution that has been licensed to carry on banking, financial or mortgage finance business to venture into trading or investments that may be risky, thereby jeopardising depositors' funds. The Banking Act, therefore, prohibits an institution from:

- a) Engaging alone or with others in wholesale or retail trade in the course of satisfaction of a debt due to it.
- b) Acquiring or holding, directly or indirectly, any part of the share capital of, or otherwise having 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 25% of the institution's core capital.

This provision is not applicable where:

- (i) such an undertaking is in satisfaction of a debt due. Such interests have to be disposed of within such time as the Central Bank may allow.
- (ii) the shareholding is in a corporation established for the purpose of promoting development in Kenya, and such shareholding has been approved by the Cabinet Secretary.
- c) Purchasing or acquiring or holding any land or any interest or right therein except as reasonably necessary for the purpose of conducting its business or holding or providing amenities for staff not exceeding prescribed limits. These conditions are subject to limits prescribed by the Central Bank of Kenya from time to time. Currently, the prescribed limit for land and buildings is restricted to 20% of an institution's core capital. Acquiring and developing land should therefore be strictly within the specified limit. The institution is, however, not prevented from:
 - i) Letting part of any building which it uses for conducting its business.

- ii) 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 its realisation or,
- iii) Acquiring land for the purpose of its own development.

3.5. Restrictions on Ownership of Share Capital of an Institution (Banking Act, Section 13)

- a) To diversify ownership of an institution for prudent management, the direct or indirect shareholding of an institution has been restricted to a maximum of 25% to any one person other than:
 - i) another institution;
 - ii) the Government of Kenya or the Government of a foreign sovereign state;
 - iii) a state corporation within the meaning of the State Corporations Act; or
 - iv) a foreign company which is licensed to carry on the business of an institution in its country of incorporation,
 - v) a non-operating holding company approved by the Central Bank.
- b) 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.
- c) An institution is required to disclose to the Central Bank the natural person(s) behind a nominee, corporate body or company.
- d) A shareholder shall not transfer more than five percent of an institution's share capital to an individual or an entity except with the prior written approval of the Central Bank.

3.6 Restrictions on making advances for Purchase of Land (Banking Act Section 14)

- a) An institution is restricted from making advances or loans for the purchase, improvement or alteration of land so that the aggregate is in excess of 40% of the amount of its total deposit liabilities unless it is a mortgage finance company.
- b) The Central Bank may, however, authorise an institution to exceed the limit up to a maximum of 70%.
- c) These provisions, however, do not prevent an institution from accepting security over land for a loan or an advance made in good faith for any other purpose.

3.7 Imposition of Charges and Payment of Interest (Banking Act Section 16A)

- a) No institution shall impose any form of charge on a savings, seven-day call or fixed deposits account.
- b) 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.
- c) An institution shall, in respect of a seven-day call or fixed deposit account, pay interest accruing to the account on agreed contractual terms.
- d) The interest in (ii) or (iii) may be forfeited if the deposit is uplifted before the maturity date.

3.8 Restrictions on deposit taking (Banking Act Section 16)

No person other than an institution or a duly approved agency conducting banking business on behalf of an institution which holds a valid license shall invite or accept deposits in the course of carrying on a deposit-taking business.

3.9 Restriction on interest recovered on non-performing Loans (Banking Act Section 44A)

Under Section 44A of the Banking Act, an institution shall be limited in what it may recover from a debtor with respect to non-performing loans to a maximum amount hereunder.

The maximum amount shall be 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.

3.10 Restriction on bank charges (Banking Act Section 44)

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

3.11 Restrictions on Dividend Payment (Banking Act Section 20)

No institution incorporated in Kenya shall pay any dividends on its shares or make any form of distribution to its shareholders until all its capitalised 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 provisions for loans, advances and other assets have been made in accordance with the Banking Act.

3.12 Periodic Returns to the Central Bank of Kenya

An institution must ensure that it submits the returns under this guideline at monthly intervals: The returns should be submitted by the 5th day of the following month. The intervals for reporting may change from time to time as the Central Bank may require.

- a) Advances, Bill Discounts and Other Facilities to any Person or Connected Group Exceeding 25% of Core Capital (Form CBK/PR 7-1).
- b) Restrictions on interest recovered on non-performing loans (Form CBK/PR 7-2).

PART IV: REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

4.1 Remedial measures

When an institution contravenes any of the provisions of this guideline or is not in compliance with these guidelines, then:

- a) All officers of the institution shall be liable jointly and severally to indemnify the institution against any loss arising in respect of the advance, loan or credit facility.
- b) In the case of an advance, loan or a 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. Provided he or she shows that, through no act or omission on his or her part, he or she was not aware that the contravention was taking place, or he or she took all reasonable steps to prevent it taking place.
- c) 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.

The Central Bank may direct the suspension of any other officer or employee of the institution who sanctioned the advance, loan or credit facility. The institution shall comply with every direction of the Central Bank under this paragraph forthwith.

- d) Any director or senior officer 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.

An institution which:

- i) Fails to comply with any direction of the Central Bank under subsection 4.1 (c) or,
- ii) Permits a director or senior officer who is disqualified by virtue of subsection 4.1 (d) to continue holding office as such shall be guilty of an offence and, in addition to the penalties provided for under the Banking Act, shall be subject to the remedial action specified in (4.2) below.
- iii) Where an offence under subsection (b) persists, the institution shall, in addition to the penalty prescribed under sections 49 and 50 of the Banking Act, be liable to such penalty as may be prescribed for each day or part thereof during which the offence continues.

4.2 Administrative sanctions

In addition to the remedial measures available to it as given above in Part IV (4.1), the Central Bank of Kenya may impose any or all of the following administrative sanctions with regard to an institution that fails to comply with this guideline and against an institution, its board of directors, or its officers:

- i. Restrict, suspend or prohibit the payment of dividends by the institution;
- ii. Prohibit the conversion of any profits of the institution into capital;
- iii. Direct the suspension or removal of any officer involved in such conduct from the service of the institution;
- iv. Require the institution to reconstitute its board of directors in accordance with the criteria set out in the Banking Act.
- v. Withhold branch or other corporate approval with respect to such institution;
- vi. Prohibit the institution from awarding any bonuses or increments in salary, emoluments or other benefits to the directors and officers of the institution;
- vii. Impose restrictions on the growth of assets or liabilities of the institution as it deems fit;
- viii. Order the institution to do any or take such other actions as it may deem necessary to rectify capital deficiency or other weaknesses.

4.3 Legal Notice No. 116 of 2025

This Guideline should be read together with Legal Notice No. 116 on Banking (Penalties) Regulations, 2025.

PART V: EFFECTIVE DATE

5.1 Effective date - The effective date of this Guideline is 1st January 2027.

5.2 Supersedence - This Guideline supersedes Prudential Guideline No. CBK/PG/07 on Prohibited Business issued on 1st January 2013.

ENQUIRIES:

Enquiries on any aspect of these guidelines should be referred to:

The Director
Bank Supervision Department
Central Bank of Kenya
P. O. Box 60000- 00200
NAIROBI
Telephone: 2860000
E-mail: fin@centralbank.go.ke

Name of Institution.....
 Period Ending.....
 Core Capital (Ksh.).....

[illegible]

Name of Officer.....

Designation.....

Signature.....

Date.....

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Institution:		
Financial Year:		
Start Date:		
End Date:		

[illegible]

