

GUIDELINE ON ENFORCEMENT OF BANKING LAWS AND REGULATIONS - CBK/PG/13

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PART I: PRELIMINARY

1.1 Title: Guideline on Enforcement of Banking Laws and Regulations

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

1.3 Purpose - This Guideline is intended to provide information and guidance to the banking industry on the approach the Central Bank will take in issuing prompt supervisory directives and corrective orders to institutions. Supervisory enforcement actions, contained herein have attempted to set forth the banking practices, conditions, and violations of law giving rise to the particular problems or weaknesses identified, ordinarily through on-site examinations. Supervisory enforcement actions are also to be used to provide an outline of specific corrective/remedial measures, including appropriate time frames and goals for achievement of compliance. Specific courses of enforcement action which may be considered for use by the Central Bank will be communicated to each individual institution as and when the need arises.

1.4 Definition - Terms used in this Guideline are as defined in the Banking Act.

1.4.1 “Central Bank” means the Central Bank of Kenya.

PART II: IMPLEMENTATION AND SPECIFIC REQUIREMENTS

The following actions will be taken if, ordinarily, the management of institutions subject to such actions has demonstrated a disregard for safe and sound banking practices and/or the lack of willingness or ability to correct weaknesses or problems on their own. It should be noted that the enforcement actions contained herein are not exhaustive and CBK is at liberty to prescribe any remedial action that it considers appropriate in light of the lapses/violations being addressed.

2.1 Board Resolutions

The Central Bank may require an institution to pass Board Resolutions which are acceptable commitments or responses from institutions that exhibit supervisory concerns, where such actions clearly evidence a board’s commitment to effect prompt correction of weaknesses or violations. Such resolutions should indicate the time frame within which compliance will be attained.

2.2 Commitment Letter

This is a letter from the Central Bank to an institution's board of directors outlining specific corrective actions to be undertaken by the bank management which should be accepted and signed by the bank's directors indicating their commitment to comply with the specific recommendations. The concerns raised will have been identified whether through on-site inspection or off-site surveillance. The signed original letter should be returned to the Bank Supervision Department within 30 days and a copy retained with the institution's official records.

2.3 Memorandum of Understanding

This is a written agreement initiated by the Central Bank setting forth specific corrective/remedial actions to be undertaken by an institution's board of directors. Failure to comply within a specified time frame by the board of directors could result in subsequent action of a legal nature. The weaknesses in need of correction will also have been identified either through on-site or off-site supervision.

2.4 Issuance of Directives

The following corrective actions are authorized by Section 33(1) of the Banking Act if 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 the Act or of any guideline made there under or in any manner detrimental to or not in the best interest 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 the Act or any regulations made there under, 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 or to secure or improve compliance with the Act, regulations or other written law or regulations;

- iii. **issue directions**, in the case of Section 33 (1) (b) of the Banking Act, to an institution, officer or other person **to cease such practice**;
- iv. **appoint a person** to advise and assist the institution generally or for the purposes of implementing any directions under (i) and (ii) above and such person's advice shall have the same force and effect as a direction and shall be deemed to be a direction of the Central Bank.

However, prior to the above action, notice of intention shall be served on the institution or the officer as the case may be, to show cause why such a direction should not be issued.

2.5 Removal of Officers and Denial of Corporate Approvals

The following corrective actions are authorized by Section 33A of the Banking Act and may be issued where an auditor's report, under Section 24 (4) or an inspection report under Part VII of the Banking Act reveals that an institution conducts its business in a manner contrary to the provisions of the Act or any regulations made there under or in any manner detrimental to or not in the best interests of its depositors or members of the public:

- a) restrict, suspend or prohibit the payment of dividends;
- b) prohibit the conversion of any profits into capital;
- c) direct the suspension or removal of any officer involved in such conduct;
- d) require the institution to reconstitute its board of directors;
- e) withhold branch or other corporate approvals.

2.6 CBK Intervention in the management of an institution

Corrective actions are authorized under the provisions of Section 34 of the Banking Act by the Central Bank if:

- a) the institution fails to meet any financial obligation, when it falls due, including an obligation to pay any depositor;

- b) 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;
- c) the auditor makes a report to Central Bank of Kenya under the provisions of subsection (4) of section 24 of the Banking Act; or
- d) the Central Bank discovers or becomes aware of any fact or circumstance which 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 of the Banking Act;
 - or
 - (ii) to add more capital, and it fails, neglects or refuses to comply with an order or to implement a plan of correction.

The following corrective actions may be taken:

- (i) **appoint a person (Manager)** to assume the management, control and conduct of the affairs and business of an institution to the exclusion of its board of directors;
- (ii) **remove any officer or employee** who has caused or contributed to any contravention of the Act or any regulations made there under 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;
- (iii) **appoint a competent person** 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 Central Bank;
- (iv) **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.

- (v) **restrict the institution** from engaging in new foreign exchange business;
- (vi) **prohibit the institution** from engaging in new off-balance sheet transactions;
and
- (vii) **prohibit the institution** from engaging any new agents or direct the institution to terminate any agency arrangement.

2.7 Removal of Directors and Officers and Levying of Penalties

Where an institution contravenes any of the provisions of the Banking Act, the Central Bank may impose any of the following conditions/actions:

- (a) Joint and several liabilities of officers to indemnify the institution against any loss arising in respect of an advance, loan or credit facility in contravention of this section;
- (b) Direct the removal of a director and/or direct the suspension of any officer or employee who sanctioned the advance, loan or credit facility.
- (c) Levy penalties as provided for by the Banking (Penalties) Regulations, 2025 (Legal Notice No. 116 of 2025) pursuant to section 55(2) and section 55(3) of the Banking Act.
- (d) Non-compliance may also result in enforcement action being taken pursuant to the provisions of the Banking Act.

2.8 Revocation of Banking License

Pursuant to the provisions of Section 6 of the Banking Act, the Central Bank may, by not less than 28 days' notice in writing to the institution, revoke the license of an institution 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 the Banking Act, the Central Bank of Kenya Act, or other rules, regulations, orders or directions issued under those Acts or any condition of its license.

As a practical matter, the revocation of an institution's license should be immediately followed by closure and the initiation of liquidation proceedings.

- 2.9 In addition to the above listed measures and or sanctions, the Central Bank may take such enforcement and or corrective action as it deems necessary and as provided for under Central Bank's Guideline on Prompt Corrective Action Guideline (CBK/PG/21).

2.10 Banking (Penalties) Regulations, 2025 (Legal Notice No. 116 of 2025)

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

PART III EFFECTIVE DATE

- 3.1. **Effective Date** - The effective date of this guideline shall be 1st January 2027.
- 3.2. **Supersedence** - This Guideline supersedes and replaces the Guideline on Enforcement of Banking Laws and Regulations issued at 1st January 2013.

ENQUIRIES

Enquiries on any aspect of the guideline should be referred to:

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