

GUIDELINE ON VOLUNTARY LIQUIDATION CBK/PG/18

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PART I: PRELIMINARY

1.1 Title – Guideline on Voluntary Liquidations

1.2. Authorization - This Guideline is issued under section 33(4) and 34A 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 – This Guideline applies to all institutions licensed under the Banking Act (Cap 488),

1.4. Definitions – Terms used in this Guideline are as defined in the Banking Act.

1.4.1 “Solvency” means the ability of an institution to have enough assets to cover its liabilities and obligations.

1.4.2 “Companies Act” refers to the Companies Act (2015)

PART II: STATEMENT OF POLICY

2.1. Purpose - This Guideline has been prepared pursuant to sections 33(4) and 34A of the Banking Act to assist institutions intending to liquidate voluntarily.

2.2. Scope - This Guideline provides clear regulatory requirements that should be fulfilled prior to an institution being granted an approval to carry out voluntary liquidation.

2.3. Responsibility - It is the responsibility of the shareholders and the directors to ensure that the provisions of this guideline are adhered to by the institutions intending to voluntarily liquidate.

PART III: SPECIFIC REQUIREMENTS

3.1 Application and Approval Procedures

3.1.1. Every institution seeking to voluntarily liquidate shall, prior to commencing the voluntary winding up process, apply and obtain written approval from the Central Bank of Kenya. Institutions should submit their application using the Form CBK/PG/18-1 provided under this Guideline.

- 3.1.2.** All applications duly completed, together with the necessary attachments specified in section 3.2 of this Guideline, should be submitted to: The Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000 – 00200, Nairobi at least 21 days prior to the date appointed to commence voluntary winding up. The application package may be delivered physically at the Central Bank’s premises or by post. A copy of the complete application package should also be e-mailed to the Central Bank to an address provided by the Central Bank of Kenya for such purposes.
- 3.1.3.** Upon receipt of the application for voluntary winding up together with the attachments thereto, the Central Bank of Kenya will appraise the application.
- 3.1.4** The Central Bank of Kenya will only approve an application submitted under this section if it is satisfied as to the solvency of the institution. The institution’s board of directors will have to submit to the Central Bank a declaration to the effect that they have made a full inquiry into the affairs of the institution, and that, having done so, they have formed the opinion that the institution will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration. Such a declaration must embody a statement of the institution’s assets and liabilities as at the latest practicable date before the making of the declaration and must be signed by all members of the board.
- 3.1.5** An institution granted approval by the Central Bank to voluntarily liquidate shall have its licence revoked. From the date of receiving the approval of the Central Bank, an institution is to cease all its operations except such activities as are incidental to the orderly realization, conservation and preservation of its assets and settlement of its obligations.
- 3.1.6.** Upon receipt of Central Bank’s approval to voluntarily wind up operations, the institution is required to send a notice of voluntary liquidation, by registered mail and or other authorized means of electronic communication, to all its depositors, creditors and any persons otherwise entitled to the funds or property held by the institution as a trustee, lessor of a safe deposit box. The notice of voluntary liquidation should be submitted to the Central Bank for noting prior to release.
- 3.1.7** The notice should also be posted conspicuously on the premises of each office branch and agency of the institution and in addition thereto, the institution should publish the notice in at least two daily newspapers with national circulation.
- 3.1.8** A copy of the notice shall be submitted to the Central Bank of Kenya for noting prior to release.

- 3.1.9** Every institution being voluntarily wound up shall be required to first discharge its liability to its depositors and thereafter rank all other creditors in accordance with the provisions of the Companies Act (2015) and any other applicable legislation.
- 3.1.10** An approval granted by the Central Bank under this section shall not prejudice the rights of a depositor or other creditor of the institution to payment in full of a claim nor the right of the owner of funds or other property held by the institution to the return thereof.
- 3.1.11** Any funds payable to a depositor or other creditor who has not claimed them must be dealt with as per the requirements of the Unclaimed Financial Assets Act No. 40 of 2011. This will also include any funds and property held by the liquidating institution that could not be returned to the owners. Any funds or property not claimed within the periods provided for under the Unclaimed Financial Assets Act, 2011 shall be presumed to be unclaimed property.

3.2. Information Required

Every institution seeking to voluntarily wind up its operations should provide the following information and documentation to the Central Bank:

- (a) The resolution of the Board of Directors of the institution sanctioning the voluntary liquidation of the institution;
- (b) An extract of the minutes of shareholders meeting passing the resolution to voluntarily liquidate;
- (c) A detailed plan, signed off by the Board of Directors, including the relevant timeframes for the completion of voluntary liquidation in an orderly manner; this should include a clear data migration plan for all customer or stakeholder data held by the institution.
- (d) Confirmation from the directors, auditors and liquidators that the institution has ceased to carry on any banking business except in so far as may be required for the orderly winding up of the institution;
- (e) An audited balance sheet, as at the date of the commencement of the liquidation of the institution, signed by the approved external auditor and signed by the Board of Directors reflecting all existing assets and liabilities of the institution;

- (f) A certified listing of all unresolved, unsatisfied or un-discharged complaints or legal actions against the institution or instituted by the institution.
- (g) Quarterly financial reports of assets and liabilities to be furnished to Central Bank by the liquidator including any information that the Central Bank may require. The reports may also include schedules on paid claims, pending claims, and collected debts of the winding up institution.

PART IV: REMEDIAL MEASURES

- 4.1** Where the Central Bank finds that the assets of an institution whose voluntary liquidation has been authorized under this Guideline shall not be sufficient for the full discharge of all the institution's obligations or that completion of the voluntary liquidation is unduly delayed, it shall appoint the Kenya Deposit Insurance Corporation to take possession of the institution and commence proceedings on its compulsory liquidation.
- 4.2** The liability of shareholders of the institution for unpaid share capital of the institution shall continue until the end of the liquidation.
- 4.3** The Central Bank shall revoke the institution's licence once the liquidator has confirmed that the liquidation is complete and all required documentation has been received.

PART V: EFFECTIVE DATE

The effective date of this Guideline shall be 1st January 2027. This Guideline supersedes Prudential Guideline CBK/PG/18 on Voluntary Liquidation issued on 1st January 2013.

ENQUIRIES

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

The Director,
Bank Supervision Department,
Central Bank of Kenya,
P.O. Box 60000 - 00200

NAIROBI.

TEL.2860000 e-mail: fin@centralbank.go.ke

FORM CBK/PG 18-1

APPLICATION FOR AN INSTITUTION TO LIQUIDATE VOLUNTARILY

1. Name of the institution
2. Proposed date of commencement to liquidate voluntarily
3. Date of last license issued by the Central Bank of Kenya
4. Please provide full details for the reasons for opting to wind up operations.
.....
.....
5. Has the institution provided the Central Bank with all the required information as provided for under this guideline.....

6. DECLARATION OF SOLVENCY

We the Board of Directors, of....., being all the board members do solemnly and sincerely declare that we have made a full inquiry into the affairs of this institution, and that, having so done, we have formed the opinion that this institution will be able to pay its debts in full within a period of..... months from the commencement of the winding up, and we append a statement of the Company's assets and liabilities as at....., being the latest practicable date before the making of this declaration. And we make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Oaths and Statutory Declarations Act.

7. DECLARATION

We, the undersigned, declare that to the best of our knowledge and belief, the information contained herein and any attachments is complete and accurate.

- a) Chairman of the Board of Directors
(Name).....
Signature..... Date.....
- b) Director
(Name).....
Signature..... Date.....
- c) Director
(Name).....
Signature..... Date.....

WITNESSED BEFORE ME:

SIGNED..... (Witness)

COMMISSIONER FOR OATHS/ MAGISTRATE

Note: *This application must be accompanied by all the relevant documents and requirements here below, as detailed in Clause 3.2 of this Guideline. This Form must also be signed by all members of the Board of Directors.*