

GUIDELINE ON PROMPT CORRECTIVE ACTION - CBK/PG 21

CONTENTS

PART I: Preliminary

- 1.1 Title
- 1.2 Authorization
- 1.3 Application
- 1.4 Definition

PART II: Statement of Policy

- 2.1 Purpose
- 2.2 Scope
- 2.3 Responsibility

PART III: Background

- 3.1 Prompt Corrective Action
- 3.2 The Purpose of Prompt Corrective Action
- 3.3 The Supervision of Institutions

PART IV: Specific Requirements

- 4.1 Institutions rated “Strong” or “Satisfactory”
- 4.2 Institutions rated “Fair”
- 4.3 Institutions rated “Marginal”
- 4.4 Institutions Rated “Unsatisfactory”

PART V: Remedial Measures

PART VI: Effective Date

- 6.1 Effective Date
- 6.2 Supersedence

PART I: PRELIMINARY

- 1.1 **Title** - Guideline on Prompt Corrective Action.
- 1.2 **Application** - All institutions licensed under the Banking Act (Cap.488).
- 1.3 **Authorization** - This Guideline is issued under Sections 33 and 34 of the Banking Act, which empowers the Central Bank of Kenya (CBK) to issue Guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.
- 1.4 **Definitions** – Terms used in this regulation are as defined in the Banking Act.
- 1.4.1 **“Banking Act”** means the Banking Act as amended from time to time.
- 1.4.2 **“CAMELS”** refers to an acronym for Capital Adequacy, Asset Quality, Management, Liquidity and Sensitivity to Market Risk”.
- 1.4.3 **“Capital Restoration Plan”** means a plan to restore the institution to capital adequacy pursuant to Section 18 of the Banking Act, or in the case of issues unrelated to capital such as violations of the law or regulations, a plan to resolve all deficiencies to the satisfaction of the Central Bank. A capital restoration plan can be implemented voluntarily by an institution under the oversight of its board of directors or, its implementation can be mandated by the CBK.
- 1.4.4 **“Capital Compliant”** “An institution will be considered to be capital compliant if it fully meets the core capital requirements fully stipulated in Section 18 of the Banking Act.
- 1.4.5 **“Final Agreement”** means an agreement made between the CBK and a significantly undercapitalized institution’s board of directors for the purpose of recapitalizing the institution in a timely manner.
- 1.4.6 **“PCA Order”** is a written directive by the CBK to an institution stipulating the actions and violations from which the institution must cease. The remedial actions that the institution should take, include:
- 1) Adopt a Capital Restoration Plan; and
 - 2) Strengthen the board of directors and management.

- 1.4.7 “Significant Shareholder”** - A person, other than the Government or a public entity, who holds (directly or indirectly) or otherwise has beneficial ownership in more than five percent of an institution or who otherwise has the ability to exert a significant influence on the decision-making process of the institution as determined by the CBK.
- 1.4.8 “Significantly Undercapitalized”** means an institution which holds less than 50 percent of the capital requirements prescribed under Section 18 and/or Section 7 of the Banking Act.
- 1.4.9 “Undercapitalized bank”** means an institution that does not fully comply with the capital requirements prescribed in section 18 and/or Section 7 of the Banking Act.
- 1.4.10 “Viable”** - For purposes of implementing this guideline, an institution is considered to be “viable” if, in the opinion of the CBK, it meets *all* of the following criteria:
- The institution’s business is being conducted in a lawful manner;
 - The institution is not significantly undercapitalized; its solvency is not threatened; if the institution is undercapitalized (but not significantly undercapitalized), then it is projected to meet its minimum capital requirement within a reasonable period of time based upon an approved capital restoration plan;
 - The institution is able to meet its financial obligations when they fall due; it has not suspended payment nor is it expected to miss a payment;
 - There is no evidence of reckless or fraudulent conduct, other malpractices, or public pronouncements that clearly adversely impact the financial standing of the institution; and
 - The business of the institution is being conducted in compliance with the Banking Act and regulations, and in a manner which is in the best interests of its depositors and members of the public.

PART II: STATEMENT OF POLICY

- 2.1 Purpose** – This Guideline has been prepared pursuant to sections 33, 33A and 34 of the Banking Act to assist institutions that are facing difficulties to take prompt corrective action so as to avoid failure or instability in the banking sector.

- 2.2 Scope** - This guideline shall apply to all institutions licensed to transact business under the Banking Act. It highlights the corrective actions that can be taken depending on the extent of the difficulties an institution is experiencing. This is meant to restore the financial condition of the institution and protect the interests of depositors from systemic risks.
- 2.3 Responsibility** – It is the responsibility of the Board of Directors and Senior Management to ensure that the provisions of this guideline are adhered to by the institution and to ascertain that the affected institution improves its capital position, management, an /or business methods.

PART III BACKGROUND

3.1 Prompt Corrective Action

Prompt Corrective Action (PCA) is a framework of supervisory actions of increasingly severe enforcement actions that are applied to institutions that regularly violate laws and regulations, fail to meet prudential guidelines or regulations or in some other way operate in an unsafe and unsound manner. These actions become increasingly severe as an institution falls within lower capital categories. Some supervisory actions associated with prompt corrective action are mandatory; that is, the actions immediately apply to the institution as it is classified in a particular category. Other supervisory actions associated with prompt corrective action are not mandatory as they are imposed by the Central Bank of Kenya (CBK) through a series of remedial actions to be taken by an institution to address problems while they are still of a magnitude that can be managed.

An institution shall be subject to PCA whenever any or all of the following conditions occur:

- (1) When it fails to meet the capital requirements prescribed under section 18 and / or the second schedule (Section 7) of the Banking Act;
- (2) The CAMELS composite rating is less than “3” and Management component rating of less than “3”;

- (3) A serious supervisory concern has been identified that places the institution at more than normal risk of failure in the opinion of the CBK. Such concerns could include, but are not limited, to any one or a combination of the following:
 - (a) Finding of unsafe and unsound activities that could adversely affect the interest of depositors and/or creditors;
 - (b) A finding of repeat violations of law or the continuing failure to comply with CBK Directives; and
 - (c) Significant reporting errors that materially misrepresent the institution's financial condition.
- (4) The institution's overall composite risk rating is high while the quality of risk management is weak.

3.2 The purpose of enforcing PCA is to ensure that institutions under the purview of the Central Bank of Kenya:

- (a) Comply with the Banking Act, regulations and guidelines issued thereunder.
- (b) Conduct business in a safe, sound & authorized manner thus enhancing the efficiency of the financial sector.
- (c) Maintain a sound financial condition.
- (d) Protect reputation, solvency, interests of depositors, banking system, and the Public.
- (e) Reduce dependence on the regulator for bailouts.
- (f) Provides effective supervisory remedies that minimize losses to the Kenya Deposit Insurance Corporation (KDIC).

3.3 Supervision of Institutions

- 3.3.1 The CBK supervises all banks, financial institutions, and mortgage finance institutions (together, "institutions") in Kenya using both off-site and on-site supervisory methods, meetings with management, and its powers of enforcement.
- 3.3.2 The CBK conducts off-site supervision which entails applying financial monitoring and analysis techniques, including financial soundness indicators which are based on the CAMELS bank rating system.

3.3.3 On-site examinations of institutions is conducted in order to appraise the quality and competence of an institution's management and attain an in-depth understanding of the risk profile and operations of an institution.

3.3.4 Meetings may be held with management and/or the board of directors as deemed necessary based on results of off-site financial monitoring or at the conclusion of each on-site examination or for any other supervisory reason.

PART IV: SPECIFIC REQUIREMENTS

Specific Measures: The Board of Directors of an institution shall ensure that management at all times adheres to the prescribed requirements for capital adequacy as set out Under Section 18 and the second schedule of the Banking Act and the relevant prudential and risk management guidelines issued thereunder.

The prompt corrective actions to be undertaken by institutions will be dependent upon the capital adequacy, CAMELS and risk rating .

4.1 For Institutions rated “Strong” or “Satisfactory” and capital compliant

For Institutions rated “Strong” or “Satisfactory” with CAMELS Composite Rating of 1, or CAMELS Composite Rating of 2 and are capital compliant, CBK may take the following actions;

- a) Direct that a special meeting of the Board of Directors be held within 30 days or such other time that CBK may approve from the date that the report of on-site examination is released.
- b) Within 15 days from the date of the Board Meeting, the institution shall take the following actions:
 - (i) The institution will respond to the onsite examination report.
 - (ii) Furnish CBK with a signed copy of certificate of director's awareness confirming that the board has read and understood the transmittal letter and the onsite examination report.
 - (iii) The Board commits to ensuring that all required actions stipulated in the onsite examination report will be taken in a timely manner.

4.1.1 The Commitment Letter

If the Board of Directors of an otherwise strong or satisfactorily rated institution delays in complying with CBK directive for corrective action, the CBK in addition to the board resolution may direct the institution to provide a Commitment Letter.

In this case, the response from the institution is to include a certified copy of an official board resolution stating that:

- (1) The Board of Directors has read the report of on-site examination, the transmittal letter from the CBK, the Chief Executive Officer's response, and the proposed Commitment Letter;
- (2) The Board approves the Chief Executive Officer's response and the proposed Commitment Letter;
- (3) The Board agrees to and has adopted and signed the Commitment Letter; and
- (4) The Board commits to ensuring that all required action will be taken in a timely manner.

- 4.1.1.1 The Board Resolution, together with the Certificate of Awareness and Commitment Letter signed by each director and the Chief Executive Officer's response must be sent to the CBK within 15 days from the date of the board meeting.

4.2. For Institutions rated "Fair" and Capital compliant

CAMELS Composite Rating of 3; *and* Capital Compliant

4.2.1 Memorandum of Understanding

- 4.2.1.1 The institution's Board of Directors and Senior Management will be required to enter into a Memorandum of Understanding with the Central Bank of Kenya wherein the Board gives a commitment to undertake to developing, adopting and implementing prompt corrective measures to improve the management, business methods, compliance and condition of the institution.

4.2.1.2 The Memorandum of Understanding shall be presented to the Board of Directors within 30 days of the inspection report being released; a special Board meeting should be called if necessary for the Board to respond to the CBK in a timely manner.

4.2.1.3 The Board Resolution:

After the Board Meeting the Board of Directors is to issue to the Central Bank of Kenya a certified copy of an official board resolution stating that:

- a) The Board of Directors has read the report of on-site examination, the transmittal letter from the CBK, the Chief Executive Officer's response, and the Memorandum of Understanding;
- b) The Board approves the Chief Executive Officer's response;
- c) The Board agrees to, and has adopted and signed, the Memorandum of Understanding and;
- d) The Board has directed the institution's officers to implement the provisions of the Memorandum of Understanding and commits to ensuring that the institution will comply with all provisions in the established prompt timeframes.

4.2.1.4 The Board Resolution and a Certificate of Awareness and the Memorandum of Understanding should be signed by each director and the Chief Executive Officer's response must be submitted to the CBK within 15 days from the date of the Board Meeting.

4.2.2 Supervisory Actions

4.2.2.1 Once the Memorandum of Understanding has been signed, throughout the period that it is in effect, the CBK will continue to monitor the institution, using specialized reporting and off-site surveillance. The regular annual on-site examination shall be supplemented with periodic interim examinations that target the institution's specific problem areas and verify the institution's adherence to the provisions of the Memorandum of Understanding.

4.2.2.2 If the institution's financial condition continues to deteriorate in spite of the increased supervisory attention, then additional action may be taken as the CBK may deem fit.

Either the Memorandum of Understanding could be amended to strengthen its provisions, or a PCA Order be issued to the institution.

4.2.2.3 On a consecutive on-site examination, an institution should be assigned a composite rating of “4,” instead of a “3,” when:

- a) A Memorandum of Understanding has not been adopted as requested by the CBK;
- b) A Memorandum of Understanding has been adopted but not complied with, including the failure of the institution to meet any target, adopt any measure, or report any result in the time frame required; and/or
- c) The institution’s capital or other measure of its financial condition has significantly deteriorated since the previous examination.

4.3 For Institutions rated “Fair” and Undercapitalized

CAMELS Composite Rating of 3; and Undercapitalized

4.3.1 Additional Measures

The CBK may implement additional measures to those specified under clause 4.2 for institutions with CAMELS Composite Rating of 3, and Undercapitalized including;-

- Prohibiting the institution from implementing measures which may lead to further deterioration of its capital position such as declaration and payment of dividends.
- Intensifying oversight and monitoring of the Institution in accordance with the principles of risk – based supervision;
- Issue cease and desist orders;
- Suspend or remove any director, officer or any other person in a managerial position; and
- The Central Bank of Kenya, in addition to any other actions prescribed above, may impose monetary penalties in accordance with the Banking (Penalties) Regulations, 2025.

4.4. For Institutions rated “Marginal” and Undercapitalized

CAMELS Composite Rating = 4; *and/or* Undercapitalized.

4.4.1. Assign a Resolution Specialist

The Central Bank will assign a Resolution Specialist to the institution. A Resolution Specialist is an official of CBK who is designated to supervise marginal and unsatisfactory institutions.

4.4.2 Determine whether the institution is Viable

The Resolution Specialist will make an initial determination as to whether the institution is “viable.” An institution shall be deemed to be “viable” if it meets *all* of the prescribed criteria outlined in Section 1.4. An institution that does not meet the prescribed criteria shall be found to be non-viable shall be rated “unsatisfactory” or “5” for the purposes of using the CBK’s powers of enforcement as outlined in Section 4.5.

4.4.3 Develop a Supervisory Strategy

As soon as the institution receives a rating of “4” (or “5”) and is deemed to be “viable, CBK will develop a supervisory strategy. The supervisory strategy will require the institution to:

- resolve its problems,
- restores the institution through prompt corrective action to financial and managerial health, and
- enforces compliance with the Banking Act, regulations, and directives of the Central Bank.

4.4.4 Issue a PCA Order

In accordance with the provisions stipulated in Sections 33 and 34 of the Banking Act, the Central Bank of Kenya, will issue a PCA Order to the institution and/or one or more individual persons, including a director, officer, employee, significant shareholder, associate, or other person. The order will specify:

4.4.4.1 The target(s) of the Order, either:

- The institution; and/or
- One or more individual persons, including a director, officer, employee, significant shareholder, associate, or other person.

4.4.4.2 The legal ground(s) on which the Central Bank is enforcing compliance:

- The institution or person conducts its business in a manner contrary to the provisions of the Banking Act or of any regulations made there under or any other Act.
- The institution or person conducts its business in a manner detrimental to, or not in the best interests of, its depositors or members of the public.
- The institution is undercapitalized or significantly undercapitalized

4.4.4.3 The actions and violations from which the institution or person should cease.

4.4.4.4 State the affirmative actions which the institution or person should take to correct the conditions at the institution.

4.4.4.5 If deemed appropriate and necessary as part of the supervisory strategy developed for the institution, order the suspension or removal from office in the institution any person who has engaged in, or is about to engage in, or is otherwise responsible for, the actions or violations that are the basis of the order or for violations of or non-compliance with a Memorandum of Understanding or order from the Central Bank.

4.4.4.6 Additional Measures

The Central Bank may in addition impose the following additional provisions which the Banking Act requires the Central Bank to impose on undercapitalized institutions:

- 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 of the Banking Act.

- 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 CBK, within forty-five days, a capital restoration plan to the capital adequacy prescribed in section 18 of the Banking Act or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the CBK.
- h) Prohibit the institution from awarding any bonuses, or increments in salary, emoluments, and other benefits to 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 CBK, to advise and assist the institution in designing and implementing a capital restoration plan or other corrective action plan under paragraph (g). The person appointed shall regularly report to the CBK 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 CBK shall determine; or
- l) Order the institution to take such other actions that may be deemed necessary to rectify a capital deficiency or other weakness.

4.4.4.7 If the institution is a member of a group, and if another member of that group (other than the institution) is a cause (in whole or in part) of the actions or violations that are the basis of the order or for violations of or non-compliance with a Memorandum of Understanding or order from the CBK, the CBK may impose the following measures:

- Suspend any further investment by the institution in the affected company or entity;
- Suspend the exercise of a non-operating holding company's control of the institution; and/or

- Suspend transactions between any associated entity and the institution.

4.4.4.8 The CBK may also set forth the institution's reporting obligations to the CBK regarding compliance with the Order and the Capital Restoration Plan. A program of meetings may be planned with the board of directors, the senior and/or other officers, and the institution's independent auditors (as deemed necessary through the supervisory strategy process).

4.4.4.9 In addition to the above corrective measures, the CBK may in addition assess monetary penalties consistent with the requirements of *The Banking (Penalties) Regulations, 2025*

4.5. Require a Capital Restoration Plan

The CBK may require an undercapitalized institution to present it with a Capital Restoration Plan. The Capital Restoration Plan is a written document which will outline the steps that the institution will take to become adequately capitalized.

4.5.1 Appoint a Management Advisor

For undercapitalized institutions, and for institutions with a composite CAMELS rating of "4" (or "5") for reasons other than undercapitalization, the Central Bank of Kenya will appoint a Management Advisor to advise and assist the institution in designing and implementing the Capital Restoration Plan and other plans for corrective action.

Institutions should note that the actual role of a Management Advisor will vary between institutions depending upon the particular needs and problems of those institutions. The terms-of-reference for the position would be customized on a case-by-case basis. In a situation where an institution's problems are isolated and its underlying financial soundness is not threatened, then the terms-of-reference for the Management Advisor appointed to it may be quite short and include only a few responsibilities.

4.5.2 Require the Board of Directors and Senior Management to be strengthened

4.5.2.1 The Central Bank may direct that the board of directors and management of an institution should be strengthened by adding new persons who are experienced with the particular problems confronted by the institution, with other business work-outs,

or with other experience deemed relevant. All persons so appointed should be deemed professionally and morally suitable to hold such positions and their appointment should be subject to the approval of the CBK.

4.5.2.2 In very urgent and serious cases and when the Board of Directors is unwilling, unable, or slow to act, the CBK may suspend or remove and replace the following persons. A person who:

- Caused, contributed to, participated in, assented to, did not correct, or caused to worsen the institution's undercapitalization (or significant undercapitalization), violations of law, or other problems for which the institution was assigned the rating of "4" (or "5");
- Is not considered competent to implement the Capital Restoration Plan;
- Obstructed an auditor in the proper performance of his/her duties;
- Obstructed a duly-authorized examiner of the CBK in a lawful examination of the institution;
- With intent to deceive, made a false or misleading statement or entry, or omitted a statement or entry that should have been made, in a book, account, report or statement of the institution;
- Committed gross negligence or intentional wrong in the course of his/her duties;
- Failed to take all reasonable steps to secure compliance by the institution with any requirement of the Banking Act, regulations, order, or Capital Restoration Plan;
- Engaged in an act of, or convicted of an offense involving, dishonesty, fraud, or money-laundering.

4.5.2.3 Supervisory Follow-up

4.5.2.4 The Resolution Specialist will regularly monitor the institutions:

- (1) capital and financial condition;
- (2) compliance with the PCA Order; and
- (3) implementation of, and adherence to, the Capital Restoration Plan.
- (4) The institution's adherence to required time-frames and reporting requirements shall be carefully monitored and enforced through follow-up action if necessary.

4.5.2.5 More frequent on-site examinations shall be undertaken, either comprehensive or targeted in scope, in order to:

- (1) assess compliance with the PCA order and Capital Restoration Plan;
- (2) ensure that the Central Bank can rely upon the institution's special compliance reports; and
- (3) assess the current condition of the institution.

4.5.2.6 During the period of time that an institution is operating under an order, the CBK shall not accept from the institution:

- applications to open a new branch,
- engage in new activities,
- assume new risks, or
- make capital distributions (including the payment of dividends).

4.5.2.7 In certain instances, an order will require an institution to receive CBK's approval prior to making certain investments, including those above a certain amount, or enter into some other transaction.

4.5.2.8 When the results obtained from the Resolution Specialist's off-site monitoring and from subsequent on-site examinations of the institution warrant, the CBK shall recommend updates, revisions, and more stringent enforcement measures to the supervisory strategy and order.

4.5.2.9 When there is reasonable cause to believe that: (1) the Board of Directors and/or officers of an institution are unwilling or unable to effect compliance with, or to continue to operate pursuant to, the provisions of the order and/or Capital Restoration Plan; or (2) the institution has become, or is expected to become within six months, significantly undercapitalized, then the institution shall be rated "5" (unsatisfactory) and be made subject to the provisions of Section 34 of the Banking Act, "Powers of the Central Bank to Intervene in Management."

4.6 For Institutions Rated "Unsatisfactory" and Undercapitalized or Significantly Undercapitalized

- CAMELS Composite Rating = 5 *and* Undercapitalized or Significantly Undercapitalized
- CAMELS Composite Rating = 4 *and* Deemed "Not Viable";

4.6.1 Assign the Institution to a Resolution Specialist –

4.6.1.1 An institution which receives a rating of “5” without having previously exhibited warning signs of serious problems (for example, when criminal or fraudulent acts are first exposed) which has not yet been assigned to a Resolution Specialist shall be assigned one at this time.

4.6.1.2 For an institution that was previously rated “3” and is rated “5” subject to a Memorandum of Understanding shall be assigned to a Resolution Specialist. The Resolution Specialist will revise the supervisory strategy for the institution which will now include much more stringent features due to the institution’s significant drop in rating (from “3” to “5”). The institution shall now be subject to an order by the CBK.

4.6.1.3 Issue, or Strengthen, PCA Order to the Institution

4.6.1.4 In the case of an undercapitalized institution that has remained stable with a “5” rating while registering no significant improvement in its capital position, or in the case of a 5-rated institution which has been downgraded from a previous “4” rating., the CBK shall re-assess both the supervisory strategy (including the order) and the abilities and attitude of the institution’s Board of Directors and officers. Some of the factors to be considered in carrying out this assessment include the following;

- Whether the provisions of the Order should be strengthened or new provisions be added.
- Whether the provisions of the Capital Restoration Plan should be amended.
- Whether any officer should be removed or suspended from office.
- Whether any other employee should be terminated.
- Whether any new competent person(s), familiar with the business of institutions, should be appointed to its board of directors.
- Whether the responsibilities of the Management Advisor should be revised or expanded.

4.6.2 Supervisory Follow-up

4.6.2.1 When a 5-rated institution that is “undercapitalized” shows progress in implementing its Capital Restoration Plan, specifically showing improvement in its capital position; and compliance with the order of the CBK, then the CBK shall continue to

closely monitor the institution through off-site and on-site supervision in accordance with established procedures for marginal and unsatisfactory institutions.

- 4.6.2.2 A 5 rated institution shall be presented with a Final Agreement by the Central Bank of Kenya if it fails to comply for whatever reason with either a Capital Restoration Plan or an Order of the CBK and/or its capital declines to a level where it becomes “significantly undercapitalized.”
- 4.6.2.3 Other circumstances that may lead to a Final Agreement between the CBK and an institution being drawn up is when one or more of the following additional criteria contained in the Banking Act have been met:
- a) The institution failed to meet a financial obligation, when it fell due including an obligation to pay any depositor;
 - b) A petition has been filed, or a resolution proposed, for the winding-up of the institution;
 - c) If the auditor of an institution makes a report to the CBK under the provisions of Subsection 4 of Section 24 of the Banking Act, which is required when:
 - 1) There has been a serious breach of or non-compliance with the Banking Act, the Central Bank of Kenya Act or the regulations, guidelines or other matters prescribed by the Central Bank;
 - 2) A criminal offence involving fraud or other dishonesty has been committed by the institution or any of its officers or employees;
 - 3) Losses have been incurred which reduce the core capital of the institution by fifty percent (50%) or more;
 - 4) Serious irregularities have occurred which may jeopardize the security of depositors or creditors of the institution; or
 - 5) The auditor 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.
 - d) There is evidence of reckless or fraudulent conduct or other malpractices or public pronouncements that clearly adversely impact the financial standing of the institution or the CBK has become aware of another fact or circumstance

which warrants making the institution subject to the provision of Section 34 of the Banking Act.

- e) There is evidence that the institution knowingly engaged in serious criminal or fraudulent acts that are likely to cause insolvency, substantial dissipation of assets or earnings or may otherwise weaken the institution's condition or seriously prejudice the interests of depositors.
- f) The institution is part of a group, the complex structure of which prevents the receipt of information necessary for supervision on a consolidated basis.
- g) The institution ceases to do business in Kenya.
- h) If the institution is significantly undercapitalized; or
- i) 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

4.7.1. The Final Agreement

4.7.1.1 Entering into a final agreement represents the institution's last chance to voluntarily recapitalize and to rectify its other deficiencies.

4.7.1.2 The Final Agreement gives the institution three months in which to finalize the plans to consummate its recapitalization and to rectify its other deficiencies.

4.7.1.3 Entering into the Final Agreement represents the institution's last chance to voluntarily:

- (1) Raise new capital;
- (2) Merge with another institution;
- (3) Agree to be acquired by another institution or investor;
- (4) Conclude another tangible, reasonable, and timely solution to its problems; or;
- (5) Demonstrate good faith effort to do so.

4.7.2 Appoint a Manager to Assume Control of an Institution

In the event that an institution's Board of Directors refuses to sign the Final Agreement, delays signing it, or makes changes to it that are unacceptable to the Central Bank, then the Central Bank shall, without delay, start the process of revoking the institution's license and either appoint a Manager pursuant to Section 34 of the Banking Act or appoint the Kenya Deposit Insurance Corporation as liquidator pursuant to Section 35 of the Banking Act.

4.7.2.1 At the expiration of the three-month period covered by the Final Agreement (or sooner if there is an emergency per Section 34(2) of the Banking Act) if the capital of the institution has not been restored to the legally-compliant level, then the Central Bank shall appoint a Manager to assume the management, control, and conduct of the affairs and business of the institution. The term of a Manager shall last for three months unless the appointment is extended by the High Court for good cause shown by the Central Bank.

4.7.2.2 A person appointed as Manager of an institution on behalf of the Central Bank must be highly competent, experienced, and reputable and must be deemed to meet the Central Bank's "fit and proper" standards of the First Schedule to the Banking Act

4.7.3. Plan for the Take-over of the Institution

The Central Bank of Kenya shall issue an order that states

- (1) The effective date and time of the order;
 - (2) The appointment of a Manager; the term of such appointment, the powers and responsibilities of the Manager;
 - (3) The removal and suspension of identified officers, employees, and/or other persons;
 - (4) The appointment of any persons to the board of directors;
 - (5) A restriction on engaging in new foreign exchange business;
 - (6) A prohibition on the institution engaging in new off-balance sheet transactions;
- and

- (7) The unfulfilled requirements of the Central Bank's existing order to the institution and of the Capital Restoration Plan.

4.7.4. Terminate the Appointment of a Manager

- 4.7.4.1 By the end of the 90-day period after assuming control of an institution, the Manager shall be in a position to make a report to the Central Bank regarding the prospects for recapitalizing or restructuring the institution.
- 4.7.4.2 If a recapitalization plan is recommended, and if the Central Bank concurs, then an application should be prepared and presented to the High Court showing good cause as to why the period of appointment of the manager should be extended beyond the original 90-day period. A reasonable estimate of time should be provided for the extension.
- 4.7.4.3 If, instead, the Manager recommends that the institution be liquidated, then the CBK should appoint the Kenya Deposit Insurance Cooperation as liquidator of the institution.

PART V: REMEDIAL MEASURES

Central Bank may pursue any or all remedial actions provided under sections 33, 34 of the Banking Act

PART VI: EFFECTIVE DATE

5.1 Effective Date - The effective date of this guideline shall be 1st January 2027.

ENQUIRIES

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

Director,
Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000 00200
NAIROBI
TEL. 2860000 e-mail: fin@centralbank.go.ke