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THE BANKING ACT

(Cap. 488)

THE BANKING (CREDIT REFERENCE BUREAU)
REGULATIONS, 2008

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THE BANKING ACT

(Cap. 488)

IN EXERCISE of the powers conferred by sections 31 (3) and (4) and 55(1) of the Banking Act, the Minister for Finance makes the following Regulation:—

THE BANKING (CREDIT REFERENCE BUREAU) REGULATIONS, 2008.

PART I—PRELIMINARY

1. These Regulations may be cited as the Banking (Credit Reference Bureau) Regulations, 2008 and shall come into force on such date as the Minister may prescribe in the gazette.

Citation and commencement.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“adverse action notice” means a notice issued by an institution to a customer conveying denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavourable change in the terms of coverage or amount of, any loan, existing or applied for, or any other action or determination adversely affecting the customer, based on customer information obtained from a Bureau;

“amendment notice” means a written notice from an institution advising the Bureau of an amendment to credit information previously incorrectly reported to the Bureau by that institution;

“Bureau” means a credit reference bureau licensed under these Regulations;

“credit information” means any positive or negative information bearing on an individual’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, including but not limited to the history and/or profile of an individual or entity with regard to credit, assets, and any financial obligations;

“credit report” means a customer information file containing a subject’s credit history compiled by a Bureau and may include publicly available information;

“customer” means any consumer of financial services who has a formal engagement to receive services and products on agreed terms and conditions from an institution licensed under the Act;

“customer information” means credit information, or any other positive or negative information provided by a customer or obtained from a third party, or public record information, which may be exchanged pursuant to these Regulations;

“database” means a set of customer information collected, managed and disseminated by a Bureau;

“director” means a member of the board of directors of a Bureau;

“institution” for the purposes of these Regulations, means an institution within the meaning of section 2 of the Act;

“loan” means direct, indirect and contingent obligations incurred by an individual or entity with third parties and includes any loan, discount, advance, overdraft, export bills purchased, other bills receivable or purchased, import bills, customers’ liability on off-balance sheet items or any other credit facilities extended to a customer of an institution;

“negative information” means any adverse customer information relating to a customer including but not limited to—

- (a) dishonour of cheques other than for technical reasons;
- (b) accounts compulsorily closed other than for administrative reasons;
- (c) proven cases of frauds and forgeries;
- (d) proven cases of cheque kiting;
- (e) false declarations and statements;
- (f) receiverships, bankruptcies and liquidations;
- (g) credit defaults or late payments on all types of facilities;
- (h) tendering of false securities; and
- (i) misapplication of borrowed funds;

“non -performing loan” means customer information relating to a customer’s non -performing loan as defined by the Central Bank in Prudential Guidelines issued under Section 33(4) of the Act;

“notice of change” means a written notice sent by the Bureau to an institution concerning a significant change to customer information that had previously been obtained by the institution from the Bureau, no more than twelve months prior to the date of the notice of change;

“notice of resolution” means a written notice sent from an institution to the Bureau, advising the results of an investigation the institution has made into customer information previously reported to the Bureau by the institution where the customer has disputed the accuracy of information reported;

“performing loan” means a performing loan as defined by the Central Bank in Prudential Guidelines issued under Section 33(4) of the Act;

“place of business” means the premises of a Bureau where Bureau business is or is intended to be carried out, whether it is owned by the Bureau or leased or rented.

“officer” means any person who takes part in the general management of a Bureau and includes the secretary to the board, the chief executive officer, deputy chief executive officer, chief financial officer, treasurer, chief internal auditor, or manager of a significant unit of the Bureau or a person with a similar level of position or responsibility;

"significant shareholder" means a person other than the Government or a public entity, who holds directly or indirectly or otherwise has a beneficial interest in more than ten per cent of the share capital of a Bureau or if it is proposed that such a person shall so hold or have such a beneficial interest;

"subscriber" means an institution subscribing to receive customer information from a Bureau, and

PART II—ESTABLISHMENT AND LICENSING OF A BUREAU

3. (1) A person shall not establish or operate a bureau or carry out or conduct Bureau business in Kenya, or otherwise hold himself out to the public as engaging in any Bureau business for the benefit of institutions licensed under the Act unless such person is—

Qualification and prohibition to operate without a licence.

(a) established and incorporated as a limited liability company under the Companies Act; and

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(b) licensed under these Regulations.

(2) A person who contravenes the provisions of this regulation commits an offence and shall, on conviction, be liable to a fine of one hundred thousand shillings or to imprisonment for a term of six months or to both.

4. (1) An application for a licence to conduct credit reference Bureau business shall be made to the Central Bank in the prescribed form set out in the First Schedule

Application for a licence.

(2) The application shall be accompanied by the following information and supporting documents and any other information that the Bureau considers necessary or as may be required by the Central Bank from time to time—

(a) certified copies of the applicant's certificate of incorporation and its memorandum and articles of association;

(b) feasibility study by the applicant, showing the nature of the planned business, organizational structure and internal control systems and monitoring procedures of the company, covering, *inter-alia*, the following aspects—

(i) market analysis;

(ii) ownership structure;

(iii) governance and management structure;

(iv) business plan;

(v) business continuity plan;

(vi) operation manuals that ensure the accuracy of the information contained in its database as well as the

- timely updating of the information, through signing of contracts with information sources which must be known to the Central Bank and the manuals must include query module manual of the applicant, data loading module manual, source quality control manual, maintenance module manual, security module manual, operating manual, user manual, and manual for procedures for handling complaints;
- (c) sworn declarations of proposed directors, officers and significant shareholders in the forms set out in the Second Schedule;
- (d) management processes, including—
- (i) development schedule of the software required for operation;
 - (ii) characteristics of products and services to be provided to subscribers;
 - (iii) service provision policies and procedures manuals; and
 - (iv) proposed security and control measures aimed at preventing misuse or improper management of information;
- (e) overview of operations including the description of systems and the design of the data collection including the unique identification system for individuals and enterprises that is adequate to ease the collection of data and handling of the database;
- (f) a description of the applicant's premises and their suitability for customer service and the description of the security measures to be adopted;
- (g) the proposed fees structure;
- (h) a prototype of the final product that demonstrates the principal features and functions of the system; and
- (i) a bankers cheque of ten thousand shillings payable to the Central Bank, being non-refundable application processing fee.

Evaluation of application.

5. When evaluating an application for a licence to operate a credit reference Bureau business in Kenya, the Central Bank shall take into account all relevant matters within its discretion including the following —

- (a) the background, reputation, integrity, experience and capacity of the proposed directors and significant shareholders of the applicant as evidenced by amongst others, the curriculum vitae and professional records of the proposed persons;
- (b) the business plan of the applicant, including a mechanism to

integrate, gather, input, update and validate the data; and

- (c) the design of data collection for customer information and flexibility in structuring the information in accordance with the Act and these Regulations or other guidelines that may be issued by the Central Bank under section 31 (3) and (4) of the Act.

6. (1) An applicant shall submit to the Central Bank a security audit report prepared by a registered audit firm giving expert opinion on the suitability of the premises, adequacy of the management information systems, and any other aspects that may be considered relevant with respect to Bureau operations.

Inspection of premises and systems.

(2) The Central Bank shall carry out on-site inspection of the applicant's premises to determine the adequacy of the applicant's safety and security system and to confirm—

- (a) suitability of the premises for Bureau operations;
- (b) adequacy of the management information system, administrative and operational processes and the internal control systems; and
- (c) security of information.

7. (1) A Bureau licence shall only be issued if the applicant meets the requirements set out in these Regulations.

Issuance of licence.

(2) Where the Central Bank is dissatisfied with the adequacy of information submitted by the applicant for purposes of processing the application, the Central Bank may request for additional information before making a final determination.

(3) Where the Central Bank is satisfied that all the necessary requirements have been met, the Central Bank shall notify the applicant to submit to the Central Bank—

- (a) a bankers cheque for one hundred thousand shillings payable to the Central Bank being licence fee;
- (b) a statutory declaration in the form set out in the Third Schedule sworn under oath by the chief executive officer of the applicant, confirming that the applicant will adhere to the provisions of these Regulations and in particular, that the applicant will not disclose to any person any information obtained pursuant to the applicant's obligations under these Regulations except as provided herein.

(4) Where the Central Bank is satisfied that the requirements of sub-regulation (3) have been complied with; the Central Bank shall issue a licence to the applicant permitting it to carry out the Bureau business operations.

8. (1) Where a Bureau is licensed under these Regulations, it shall within thirty days of being granted the licence, submit to the Central Bank an irrevocable bank guarantee for one million shillings in a format acceptable to the Central Bank.

Bank guarantee.

(2) Where a Bureau is required to pay a penalty under these Regulations and fails to do so within such time as may be prescribed by the Central Bank, the Central Bank may recover the amounts due on the penalty from the bank guarantee issued under sub-regulation (1)

(3) Where a penalty has been recovered from the bank guarantee in accordance with sub-regulation (2), the Bureau shall within thirty days of being notified, furnish the Central Bank with a new irrevocable bank guarantee of one million shillings, in a format acceptable to the Central Bank.

(4) Where a Bureau fails to comply with sub-regulation (1) and (3), its licence shall be revoked.

Refusal to issue a licence.

9. (1) Where the requirements of issuance of a licence as provided in these Regulations are not met, the Central Bank may refuse to grant a licence to an applicant.

(2) An aggrieved party may appeal to the Minister within fifteen days after being notified of the refusal.

(3) In considering an appeal under sub-regulation (2), the Minister shall have consideration to the material in the administrative record developed by the Central Bank and may not consider information or events that occurred after the Central Bank took its decision.

(4) The Minister may reverse the decision of the Central Bank only if—

- (a) the Central Bank failed to follow the laid down procedure;
- (b) the Central Bank's decision was contrary to law;
- (c) there was no factual basis for the Central Bank's decision; or
- (d) based on a review of the record, the Central Bank committed a manifest error in its assessment of facts, or abused its discretion.

(5) The Central Bank shall be bound by the decision of the Minister.

Validity of the licence.

10. A licence issued under these Regulations shall remain valid unless revoked.

Annual licence fee.

11. (1) A Bureau shall be required to pay to the Central Bank an annual licence fee of one hundred thousand shillings.

(2) The annual licence fee prescribed in sub-regulation (1) shall be paid before the anniversary date.

(3) A Bureau that fails to pay the annual licence fee before the anniversary date shall pay double the licence fee, if payment is made within ninety days after the anniversary date.

(4) If a Bureau fails to pay the fee within ninety days after the anniversary date as prescribed in sub-regulation (3), its licence shall be revoked

(5) In this regulation, "anniversary date" means the date when the Bureau was issued with a licence.

12. A Bureau must obtain approval from the Central Bank before opening a branch or relocating and shall notify the Central Bank three months prior to closing its place of business.

Place of business.

PART III—OPERATIONS OF BUREAUS

13. (1) A Bureau licensed under these Regulations may engage in the following activities—

Activities of the Bureau.

- (a) obtain and receive customer information;
- (b) store, manage, evaluate, update and disseminate the customer information to subscribers in accordance with these Regulations;
- (c) compile and maintain database and generate reports from customer information database;
- (d) assess the creditworthiness of a customer;
- (e) sell to institutions specialized literature and other informational material related to its activities;
- (f) carry out market and statistical research relating to matters set out under these Regulations; and
- (g) carry out any other activity as may be approved by the Central Bank from time to time in accordance with the Act.

(2) A Bureau shall not engage in activities other than those specified in these Regulations or as approved by the Central Bank in accordance with the Act.

(3) Where a Bureau fails to comply with sub-regulation (2) it shall be liable to pay a penalty of five hundred thousand shillings and in the case of continued failure, it shall be liable to an additional penalty of ten thousand shillings for each day on which such failure continues.

14. (1) Customer information which shall be exchanged pursuant to these Regulations is any customer information concerning a customer's non-performing loans, and may include details specified in sub-regulation (2).

Nature of information to be shared.

(2) Customer information which may be exchanged pursuant to these Regulations is any Customer information concerning a customer's performing loans, and may include details specified in sub-regulation (3).

(3) The nature of customer information to be shared pursuant to sub-regulation (1) and (2) include—

(a) the customer's identity, including—

(i) in the case of a natural person his name, date of birth,

- national identity card number, personal identification number, passport number, driving licence number, past and current addresses and other contact details and related matters;
- (ii) in the case of a customer who is not a natural person, its name, registration number, personal identification number, names of directors, shareholders or partners, past and current addresses and other contact details and related matters;
- (b) the customer's employment, income, career, professional or business history, and related matters;
- (c) the customer's credit history, including the nature and amounts of loans or advances and other credit facilities granted or to be granted to a customer, amounts outstanding thereof and related matters;
- (d) the nature and details of security or securities taken or proposed to be taken by an institution as security for the loans, advances and other credit facilities mentioned in sub-regulation (c), and related matters;
- (e) details of patterns of payment of credit facilities or default in payment by the customer, debt restructuring and actions taken by the institution to recover unpaid amounts including realization of securities, legal proceedings and related matters.
- (4) Customer information shall be furnished using a standard format established by agreement of the institutions furnishing information and licensed Bureaus, or otherwise issued by the Central Bank.
- (5) The nature of information to be shared under this regulation shall not adversely affect the rights and freedoms of the customer.

Restrictions on the use of customer information.

15. (1) A Bureau shall—

- (a) protect the confidentiality of customer information received in terms of these Regulations and shall only report or release such customer information—
- (i) to the customer concerned;
- (ii) to the Central Bank of Kenya;
- (iii) authorized in writing by the customer concerned; or
- (iv) as required by law.
- (b) utilize the information collected solely for the purposes set out in these Regulations;
- (c) take all such steps as are reasonably necessary to ensure that the customer information maintained by it is duly protected against any loss or unauthorized access or use or unauthorized disclosure;

- (d) ensure that the customer information maintained by it is not mortgaged or charged for any purpose whatsoever;
 - (e) observe, through its shareholders, directors, officers, employees or agents, a perpetual duty of confidentiality with regard to the information divulged to them in terms of these Regulations.
- (2) A Bureau shall only release customer information in accordance with sub-regulation (1) (a) (iii) to a subscriber—
- (a) that requires customer information to evaluate a customer's application for credit or other customer-initiated business transaction;
 - (b) that has certified to the Bureau that it will use the customer information for the purpose of making a permitted eligibility decision and for no other purpose; and
 - (c) that has agreed to properly dispose of customer information so that it cannot reasonably be read or reconstructed.
- (3) No subscriber of information from a Bureau shall use such information for any purpose other than for reaching decisions on the business of the subscriber in the ordinary course of such business.
- (4) Under no circumstances may a subscriber release such information to any third party other than the subscriber's appointed agent for the purpose of assisting the subscriber in the recovery of any of its debts.
- (5) A Bureau or a person who fails or refuses to comply with sub-regulation (1) shall be liable to penalty of five hundred thousand shillings in the case of a Bureau or one hundred thousand shillings in the case of a natural person.

16. (1) A bureau may charge such fees, for its services, as shall be agreed between the subscribers and the Bureau.

Fees.

(2) The Bureau shall notify Central Bank of such fees through periodic returns submitted in accordance with regulation 27.

17. A bureau shall—

- (a) implement strict quality control procedures in order to ensure the maximum possible accuracy of its database and the continuity of its services;
- (b) utilize the information collected solely for the purpose set out in these Regulations; and
- (c) take all such steps as are reasonably necessary to ensure that customer information maintained by it is current, authentic, legitimate, reliable, accurate, truthful and that it reflects the existing situation of the subject at any given time and if the information is found to be illicit, inaccurate or no longer valid, the Bureau shall promptly take the corrective measures necessary to remedy the deficiencies.

Data management
and quality control.

Updating and
maintaining
information.

18. (1) A Bureau shall retain customer information on non-performing loans until the expiry of seven years from the date of final settlement of the amount in default (including settlement of the amounts payable pursuant to a scheme of arrangement with the institution); or upon the expiry of seven years from the date of the person's discharge from bankruptcy, as notified to the Bureau by such person and evidenced by the relevant certificate of discharge issued by the High Court or by a written notice from the Official Receiver stating that the Official Receiver has no objection to a certificate of discharge being issued to the person, irrespective of any write-off by the institution of the amount in default in full or in part at any time.

(2) Information kept in accordance with sub-regulation (1) may not be used solely to affect the customers' chances of obtaining credit but to inform the decision making process.

(3) A Bureau shall implement procedures that ensure that the information registered in its database is updated on an ongoing basis.

(4) An institution that furnishes customer information to a Bureau shall, on a monthly basis or within such earlier time as an update is necessary, ensure that the customer information furnished is consistently updated.

(5) A Bureau shall update its data base as and when information is provided by the institutions responsible for the timely updating of the information submitted to the Bureau and the information shall be updated on an on-going basis, or as often as necessary, in accordance with the nature of the information.

Security and control
measures.

19. (1) A Bureau shall take the necessary security and control measures in order to avoid unauthorized access to, improper use or mismanagement of information.

(2) For the purposes of sub-regulation (1), improper use or mismanagement of information means any act or omission not authorized by these Regulations.

(3) A Bureau shall record and make available to the customer the name and date each subscriber obtains access to customer information about the subject.

Customers' rights of
access and
correction.

20. (1) A customer has a right to know what information the institution has submitted to the Bureau regarding that customer.

(2) A customer shall be entitled to access credit reports relating to the customer that is kept in a database administered by a Bureau.

(3) A customer shall be entitled to a free copy of the customer's credit report at least once per year and within thirty days of receiving an adverse action notice issued under regulation 28 (1) (b).

(4) Where a customer requests a Bureau for a credit report pursuant to sub-regulation (2), the Bureau shall, within five working days of receiving a request in writing and such particulars as the

Bureau may reasonably require to enable it identify the customer, provide to the customer a copy of all customer information relating to the customer held by the Bureau.

(5) Where the customer believes that the information contained in the database is inaccurate, erroneous or outdated, the customer may notify the Bureau in writing of the information disputed.

(6) Within five working days of being informed that information in a customers' credit report is disputed, the Bureau shall—

- (a) attach a note to the credit information report, warning that the disputed information is under investigation, which notice shall remain on the file until resolution of the dispute; and
- (b) give the institution that supplied the information a notice of dispute requesting confirmation from the institution as to the accuracy of the information.

(7) Within fifteen working days, the Bureau shall conduct a reasonable investigation, based on all relevant information provided by the customer, and contacting the furnisher of the information as necessary.

(8) Where an institution receives a notice of dispute from the Bureau it shall, within ten working days of receiving the notice, complete all necessary investigations into the disputed information and give the Bureau a notice of resolution, advising whether the disputed information is to be deleted, corrected, or remain unchanged.

(9) Where the investigation reveals an error, the Bureau shall promptly remedy the error.

(10) If the Bureau does not complete its investigation within fifteen days, it shall delete the disputed or correct information as requested by the customer.

(11) If the Bureau later completes its investigation, it may re-insert or revise disputed information based on the results of such investigation.

(12) Upon receipt of a notice of resolution or an amendment notice from an institution the Bureau shall, within five working days of such receipt; send a notice of change to any subscriber that has in the previous twelve months obtained a credit information report from the Bureau containing the incorrect information.

(13) Should the customer disagree with the resolution of the disputed information, the customer may request the Bureau to attach a statement of not more than one hundred words to the customer's credit report, setting out the customer's claim that the information is not accurate and the Bureau shall take reasonable steps to comply with the customer's request.

(14) A Bureau may charge the customer for the reasonable cost of its services in conducting an investigation of disputed customer information only if the information disputed by the customer turns out to be true.

PART IV—GOVERNANCE AND MANAGEMENT OF BUREAUS

Composition and responsibilities of the board.

21. (1) Every Bureau shall have a board of directors consisting of not less than five directors.

(2) A person shall be qualified for appointment as a director, if such person is—

(a) approved by the Central Bank for that purpose; and

(b) is not disqualified from holding office as such under these Regulations.

(3) The board of directors shall elect a non-executive chairman from amongst their members.

(4) Members of the board of directors shall—

(a) have an overall understanding of the operations and information technology systems of the Bureau;

(b) meet at least once quarterly;

(c) ensure that the activities conducted in all offices of the Bureau are in full conformity with these Regulations

(d) facilitate the appointment of a competent chief executive officer and chief information technology officer;

(e) ensure that the Bureau maintains, at all times, an effective system of internal controls;

(f) ensure that the Bureau maintains a customer claims and inquiry service section to attend to customers who may be affected by the information contained in the database and who allege that the information is illegal, inaccurate, erroneous or outdated; and

(g) ensure that the Bureau has adequate staff to undertake the functions of the Bureau and to sufficiently meet customers demands.

Criteria for appointment of directors.

22. A person shall not be qualified to hold office as a director if such person—

(a) is a minor or is under a legal disability;

(b) has been convicted of an offence involving theft, fraud, forgery, causing financial loss or perjury;

(c) has been removed from an office of trust on account of misconduct, abuse of office, corruption or incompetence in the immediately preceding ten years; or

(d) is an auditor of the Bureau licensed under these Regulations or associated companies.

Disqualification of officers and employees.

23. (1) A Bureau shall ensure that no person shall be an officer or

an employee of a Bureau, or, if already in office or employment, shall be disqualified and shall not thereafter be eligible to hold office or be in the employment of any Bureau for a period of ten years, if such person is—

- (a) an undischarged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (b) convicted of an offence involving fraud or dishonesty; or
- (c) removed from office under the provisions of these Regulations.

(2) Where a Bureau allows a disqualified person to continue acting as an officer or being in employment, or is otherwise in breach of this regulation, it shall be liable to a penalty of five hundred thousand shillings and the disqualified person acting as an officer or employee shall be liable to pay a fine of one hundred thousand shillings.

24. (1) The Central Bank shall, where it is satisfied as to the professional and moral suitability of a significant shareholder, or officer of the Bureau, certify that such person is fit and proper to be a significant shareholder or officer.

Fit and proper test.

(2) In order to determine, for the purposes of this Regulation, the professional and moral suitability of a significant shareholder or officer of a Bureau the Central Bank shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned —

- (a) his general probity;
- (b) his competence and soundness of judgement for the fulfilment of the responsibilities of the office in question; and
- (c) the diligence with which the person concerned is likely to fulfil those responsibilities.

(3) For the purposes of these Regulations and without prejudice to the generality of the provisions of sub-regulation (2), the Central Bank may have regard to the previous conduct and activities of the person concerned in the Bureau business, and in particular, to any evidence that such person —

- (a) has been convicted of an offence of fraud or any other offence of which dishonesty is an element;
- (b) 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;
- (c) was an officer of an institution that has been liquidated or is under liquidation or statutory management under the relevant law

(d) 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; or

(e) 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 judgement.

(4) The Central Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of that person as prescribed in these Regulations or as deemed necessary.

PART V—POWERS OF THE CENTRAL BANK

Powers of the
Central Bank.

25. (1) The Central Bank shall have the powers to regulate and supervise all Bureaus licensed under these Regulations

(2) The Central Bank may issue directions, guidelines or rules generally for the better carrying out of its supervisory functions under these Regulations.

26. The Information held by the Bureau remains the property of the Central Bank and where a bureau winds up the information shall revert to the Central Bank.

Periodic returns.

27. (1) The Bureau shall furnish the Central Bank with periodic reports of their business operations, including annual systems report, in such form as the Central Bank may from time to time require.

(2) A Bureau which fails or refuses to comply with this regulation or which furnishes the Central Bank with an incomplete, inadequate, inaccurate or late return shall be liable to a penalty of five hundred thousand shillings.

PART VI—GENERAL PROVISIONS

Responsibilities of
institutions.

28. (1) Institutions shall be required to—

(a) notify each customer of the name and address of the Bureaus to which the customer's information has been submitted under these Regulations, within thirty days of the first listing of the customers' information with the Bureaus;

(b) issue an adverse action notice to a customer against whom a decision has been taken or determination made, in whole or in part, that is adverse to the interests of the customer based on information obtained from a Bureau;

(c) the adverse action notice shall be provided at the time the adverse decision or determination is communicated to the customer and shall notify the customer—

(i) that customer information played a role in the decision;

- (ii) the name, address and telephone number of the Bureau that provided the customer information;
- (iii) the customer's right to a free copy of the information provided by the Bureau, and
- (iv) the customer's right to dispute such information with the bureau and, if erroneous or outdated, have it corrected.

(2) Institutions shall be deemed to have notified the customer if they send the notifications issued subsequent to sub-regulation (1) to the customer's last known address by registered mail or by certificate of posting.

(3) Institutions shall be responsible for providing accurate information to Bureaus.

(4) Institutions shall be entirely responsible and under obligation to submit and update all customer information to the Bureau in accordance with these Regulations:

(5) Where an institution has provided customer information to the bureau and subsequently becomes aware that the information was inaccurate at the time of it was provided, the institution will within five working days from the day the institution becomes aware of the inaccuracy, give the Bureau an amendment notice instructing it to delete the inaccurate information and replace with the correct information

(6) Institutions shall ensure that the customer information furnished pursuant to regulation 14 (3) is provided to all licensed Bureaus.

29. (1) For purposes of performing its activities and obligations under these Regulations, a Bureau shall comply with any guidelines, rules or directives issued by the Central Bank.

Compliance with guidelines, rules or directives.

(2) A Bureau or a person who fails or refuses to comply with any guidelines, rules or directives issued by the Central Bank under regulation 25 (2) shall be liable to a penalty of five hundred thousand shillings in the case of a Bureau or, one hundred thousand shillings in the case of a natural person.

(3) For the purposes of sub-regulation (1), the Central Bank may request, at any time, any information it may require in order to evaluate any matter arising from these Regulations or from the operations of the Bureau.

30. (1) Where a Bureau—

Penalties.

- (a) is in breach of, or fails to adopt or implement the data management and quality control measures outlined in regulation 17; or,
- (b) is in breach of or fails to update and maintain information as required in regulation 18; or,
- (c) is in breach of or, fails to observe or adhere to the security and control measures outlined in regulation 19; or

- (d) wrongfully alters, modifies or deletes records from its database; or
- (e) fails to adopt security and control measures that are necessary to prevent the unauthorised access to, or wrongful use and management of information,

it shall be liable to pay a penalty of five hundred thousand shillings and in the case of continued failure, it shall be liable for an additional penalty of ten thousand shillings for each day on which such failure continues.

(2) Where an institution contravenes any of the provisions of these Regulations the Central Bank may pursue any or all of the remedial actions provided for under the Act.

(3) Before imposing a penalty on any Bureau under these Regulations, the Central Bank shall give not less than seven days notice in writing requiring the Bureau to show cause why the penalty prescribed should not be imposed.

(4) Where a penalty is prescribed under these Regulations, such penalty shall—

- (a) be paid to the Central Bank;
- (b) be paid within ten days unless otherwise stated;
- (c) in the first instance, be paid by the Bureau; and
- (d) where the Bureau fails to make payment, in the second instance, be paid immediately by the bank issuing the bank guarantee upon being called upon to do so by the Central Bank.

(5) Where no payment is made or received under sub-regulation (4) (d), the licence of the Bureau shall be revoked

(6) Where any provision of this Regulations imposes a penalty on any Bureau, the amount of the penalty shall constitute a debt due from the Bureau to the Central Bank, and the Central Bank may

- (a) in addition to the provisions of sub Regulation (4), sue the Bureau for the recovery of the penalty;
- (b) direct that any part of the penalty which remains unpaid after a particular period notified to the Bureau and the officers concerned, shall constitute a debt payable by the Bureau and the particular officers of the Bureau specified in the notification; and, the Central Bank shall be entitled to recover from that Bureau and officers jointly and severally.

Repeals.

31. The Banking (Exchange of Information) Regulations, 2004, are repealed.

FIRST SCHEDULE
APPLICATION FORM FOR A LICENCE TO CARRY OUT THE
BUREAU BUSINESS

1. Name: _____

2. Former name(s)(if any) by which the applicant has been known: _____

3. Head/main office: _____

(a) Address: _____

(b) Telephone No: _____

(c) Telefax No: _____

4. Branches (Including physical location): _____

Subsidiaries & affiliates:

<i>Name and type of business</i>	<i>Amount of shares held</i>	<i>% of shares held in total</i>
_____	_____	_____
_____	_____	_____

5. Management:

(1) Board of Directors:

<i>Name:</i>	<i>Designation</i>	<i>Present term</i>	<i>No. of years as board member</i>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Board committees

<i>Name and purpose of committee(s):</i>	<i>Names of members:</i>
_____	_____
_____	_____
_____	_____

(2) Officers:

Name: _____ Position: _____ No. of years as officer _____

6. Ownership profile:

Name Country of citizenship Residence Paid up capital %

1. _____

2. _____

Other shareholders owing less than 5% (Number _____)

TOTAL _____

7. Organisation profile:

- (a) Organisation chart—Attach one indicating major departments or divisions with names, positions and titles of officers heading each department or division.
- (b) Functions—Attach a list of functions or responsibilities for each department or division listed in the organisation chart indicating the number of personnel or staff for each.
- (c) Qualifications of significant shareholders, directors and officers.
- (d) Annex personal declaration form of each significant shareholder and officer and an information sheet for each significant corporate shareholder.
- (e) Powers and purposes—attach the latest copies of the Memorandum and Articles of Association if not previously submitted to the Central Bank.

8. Shareholding in any other financial institution:

Name of financial Institution	Shares owned - No.	Number	% of capital amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9. Name(s) and address(es) of the applicant's bankers within the last 10 years. (Please also indicate the applicant's principal bankers).....
.....
.....

10. Name and address of the applicant's external auditors.....
.....
.....

11. Does the applicant hold, or has it ever held, any authority from a supervisory body to carry on any business activity in Kenya or elsewhere? If so, give particulars. If any such authority has been revoked, give particulars.....
.....
.....
.....

12. Has the applicant ever applied for any authority from a supervisory body to carry on any business in Kenya or elsewhere other than the authority mentioned in answer to Question 11?.....

..... If so, give particulars. If any such application was for any reason refused or withdrawn after it was made, give particulars.....
.....
.....
.....

13. Has the applicant or any company in the same group within the last 10 years failed to satisfy a judgment debt under a court in Kenya or elsewhere within a year of the making of the order?.....

If so, give particulars.....
.....
.....

14. Has the applicant or any company in the same group made any compromise or arrangement with its creditors within the last 10 years or otherwise failed to satisfy its creditors in full?

If so, give particulars.....
.....
.....
.....

15. Has a receiver or an administrative receiver of any property of the applicant or any company in the same group been appointed in Kenya, or has a substantial equivalent of any such person been appointed in any other jurisdiction, in the last 10 years?

If so, give particulars, including whether the receiver is still acting under the appointment

16: Has a petition been served in Kenya for an administrative order in relation to the applicant or company in the same group, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last 10 years?

If so, give particulars.....

17. Has a notice of resolution for the voluntary liquidation of the applicant or any company in the same group been given in Kenya, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last 10 years?

If so, give particulars

18. Has a petition been served in Kenya for the compulsory liquidation of the applicant institution or any company in the same group, or has the substantial equivalent of such a petition been served in any other jurisdiction, in the last 10 years?.....

If so, give particulars

19. State whether the applicant company has ever been under any criminal investigation, prosecution disciplinary action(s), public criticism or trade sanctions in connection with banking and financial services in Kenya or elsewhere.....

20. Are there any material matters in dispute between the applicant company and the Kenya Revenue Authority or any equivalent tax authority in any other jurisdiction?

If so, give particulars.....

21. Is the applicant company engaged or does it expect to be engaged, in Kenya or elsewhere, in any litigation which may have a material effect on the resources of the institution?

If so, give particulars.....
.....
.....
.....

22. Is the applicant company engaged, or does it expect to be engaged, in any business relationship with any of its (prospective) officers?.....

If so, give particulars.....
.....
.....
.....

23. Is the business of the applicants' officers or of companies connected with the applicant guaranteed or otherwise underwritten or secured, or expected to be guaranteed or underwritten or secured, by the applicant company?

If so, give particulars.....
.....
.....
.....

24. Please provide any other information which may assist the Central Bank in reaching a decision on the application.....
.....
.....
.....

DECLARATION

We certify that all the information contained in and accompanying this form is accurate and complete to the best of our knowledge, information and belief and that there are no other facts relevant to this application of which the Central Bank should be aware. We undertake to inform the Central Bank of any material changes to the application which may arise while the Central Bank is considering the application. We further undertake that, in the event that the institution is granted a licence under these Regulations we will notify the Central Bank of any material changes to or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in any event not later than twenty one days after the date that the changes come to our attention.

Sworn at Nairobi this _____ day of _____

1.

Name

Position held

Signed

Date

SECOND SCHEDULE

R 4(2) (c)

PERSONAL DECLARATION FORM FOR INDIVIDUALS PROPOSED TO BECOME
OFFICERS OR SIGNIFICANT SHAREHOLDERS OF A BUREAU

Name and capacity of person making this declaration:

1. Name of Bureau in connection with which this form is being filled:

2. Full names of deponent:

3. Former surname(s) and /or forenames by which you may have been known:

4. Please state the capacity in which you are completing this form, i.e. as a current or prospective officer or any combination of these. Please state your full title and describe the particular duties and responsibilities attaching to the position(s) which you hold or will hold. If you are completing this form in the capacity of director, indicate whether, in your position as director, you have or will have executive responsibility for the management of the applicant's business. In addition, please provide a copy of your curriculum vitae unless it is already provided by the applicant in response to Schedule 1.

5. Date and place of birth:

6. (1) Citizen of: _____ (2) Resident of: _____

(Country)

(Country)

Since _____

Since: _____

(Year)

(Year)

7. Addresses:

(1) Present business address

(Kenya since _____) (Outside Kenya since _____)

(2) Present residential address:

(Kenya since _____) (Outside Kenya since _____)

(3) Last two addresses in Kenya, if any, during the past ten (10) years:

(Since _____) (Since _____)

8. Professional & academic qualifications:*Particulars**Year obtained***(1) Highest academic qualification**

(2) Special awards or honors (if any)

(3) Training courses and seminars

(4) Membership in professional organisations

9. Occupation or employment (Present or most recent and for the past ten years)

<i>Name & business of employer</i>	<i>Positions held</i>	<i>Inclusive date (month & year) from year</i>

10. Names and address(es) of your bankers within the last 10 years

.....

11. Bodies corporate (other than the applicant) where you are now an officer, shareholder, or manager? Give relevant dates

.....

12. Bodies corporate other than the applicant and those listed above where you have been a director, shareholder, controller or manager at any time during the last 10 years. Give relevant dates

.....

13. Have you, in Kenya or elsewhere, been dismissed from any office or employment, or been subjected to disciplinary proceedings by your employer or barred from entry to any profession or occupation? If so give particulars:

.....

14. Past and present business affiliations (direct and indirect):

<i>Nature of business:</i>	<i>Nature of affiliation i.e. director, officer, shareholder with 5% and above year) specified etc. to</i>	<i>Inclusive date (month and from)</i>

15. Do any of the above business affiliations maintain a business relationship with the institution? If so, give particulars:

.....

16. Do you hold or have you ever held or applied for a licence or equivalent authorization to carry on any business activity in Kenya or any other country? If any such application was refused or withdrawn after it was made or any authorization was revoked, give particulars:

17. State whether the applicant with which you are, or have been, associated as a significant shareholder or officer holds, or has ever held or applied for a licence or equivalent authorization to carry on any business activity? If so, give particulars. If any such application was refused, or was withdrawn after it was made or any licence revoked, give particulars

18. State whether any of your past or current employer(s) or institution in which you were affiliated as shareholder, officer, etc has ever been under criminal investigation, placed under receivership or insolvent liquidation by any regulatory body or court of law.

19. Family group: Business affiliation (State name of business and nature of affiliation i.e. director, officer, significant shareholder. Also indicate the nature of the family group member's relation to the Applicant. A family group member can be a spouse, child, parents, brothers or sisters)

<i>Name of business</i>	<i>Nature of family member's affiliation to the business</i>	<i>Nature of the family group member's relation to the applicant</i>
1		
2		
3		

20. Have you failed to satisfy any debt adjudged due and payable by you as a judgment debtor under an order of a court in Kenya or elsewhere or made any compromise arrangement with your creditors within the last 10 years? If so, give particulars:

21. Have you been adjudicated bankrupt by a court in Kenya or elsewhere or has a bankruptcy petition ever been served on you? If so, give particulars:

22. Have you, in connection with the formation or management of any body corporate, partnership or unincorporated institution, been adjudged by a court in Kenya or elsewhere, civilly liable for any fraud, misfeasance or other misconduct by you towards

29. Do you or does any related party, hold any shares in the applicant as trustee or nominee?

If so, give particulars:

30. Are any shares in the applicant mentioned in answer to questions 27, 28, and 29 above equitably or legally charged or pledged to any party?

If so, give particulars:

31. What proportion of the voting power at any general meeting of the applicant (or another body corporate of which it is a subsidiary) are you or any related party entitled to exercise or control the exercise of?

32. Personal record of court cases or any investigation by governmental, professional or any regulatory body (including pending and prospective cases or on-going investigations):

Name of court or particulars of investigative body	Details of Status

33. Documentary requirements:

- (1) Certified statement of assets and liabilities;
- (2) Latest tax compliance certificate or certified true copy of income tax returns;
- (3) Two letters of character references from individuals other than relatives who have personally known the undersigned for at least ten years; and
- (4) Two letters, duly certified from financial institutions with whom the undersigned has had dealings for the last two years on the performance of past and present accounts such as unauthorised overdraft on deposit accounts, past due or delinquent accounts.

34. If this questionnaire is submitted in connection with an application for licensing, please provide any other information which may assist the Central Bank in reaching a decision on the application.

DECLARATION

I certify that all the information contained in and accompanying this form is complete and accurate to the best of my knowledge, information and belief and that there are no other facts relevant to this application of which the Central Bank should be aware.

I further undertake that, in the event that the Bureau is granted a licence under these Regulations, I will notify the Central Bank of any material changes to, or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in any event not later than twenty one days from the date that the changes come to our attention.

Sworn at Nairobi, this _____ day of _____

Name Position held

Signed Date

I know and understand the contents of this declaration and that I am making it under oath.

Sworn at Nairobi, Kenya

This _____ day of _____

Signature of deponent (Position)

The deponent understands the contents of this affidavit.

Before me,

COMMISSIONER FOR OATHS

N.B.

1. All Sections of this form must be filled
2. If any space provided is inadequate, the required information may be supplied as an attachment labelled accordingly and reference shall be made to the relevant section of the form by placing the words "REFER TO ANNEX....."
3. Information provided in this form is confidential and cannot be made available without the consent of the Governor of the Central Bank.

THIRD SCHEDULE

REPUBLIC OF KENYA

IN THE MATTER OF OATHS AND STATUTORY DECLARATIONS ACT

(Cap. 15)

STATUTORY DECLARATION

I, _____ of _____ (insert address) in the Republic of _____ do hereby make oath and solemnly state as follows:

1. THAT I am the deponent herein hence competent to swear this affidavit.
2. THAT I am the Chief Executive Officer of _____ (insert name of Bureau) hereinafter referred to as the Applicant.
3. THAT I am holder of _____ (insert National registration card/ Identification documentation details.)
4. THAT I make this affidavit and hereby undertake that the applicant shall adhere to the provisions of these Regulations and in particular that the applicant will not disclose to any person any information obtained pursuant to the applicant's obligations under these Regulations except as provided herein.
5. THAT the facts herein deponed to are true to the best of my knowledge information and belief.

Sworn by _____ at Nairobi this _____ day of _____ 2007)

) _____)DEPONENT

Before Me

Commissioner for Oaths

AMOS KIMUNYA,
Minister for Finance.