Central Bank of Kenya

Presentation on Section 33C of the Banking Act

to the
National Assembly Committee
on Finance and National Planning

February 26, 2019

Dr. Patrick Njoroge
Governor

Section 33C of the Banking Act - Summary

Section 33 of the Banking Act became effective on October 1, 2018 requiring:

- CBK to develop regulations prescribing conditions on deposits and withdrawals
- The regulations should be developed within thirty days from the date of coming into force of Section 65 of the Finance Act (i.e., by October 31, 2018)
- No other persons other than CBK can issue regulations on deposits and withdrawals
- All existing guidelines or regulations on deposits and withdrawals by customers would become null and void within fourteen days of the coming into force of the regulations made under Section 33C
- Preparing the regulations should comply with the requirements of the Statutory Instruments Act, 2013

Section 33C of the Banking Act - Current Status

- Amendment became effective on October 1, 2018. The stipulated 30-day period to make regulations ended on October 31, 2018
- CBK was not consulted in formulation of this amendment
- CBK commenced developing the indicated regulations and encountered significant difficulties
- CBK sought guidance from the Attorney General (AG) on October 26, 2018
- On November 30, 2018, a civil rights group sued the National Assembly and the AG on the amendment through High Court Constitutional Petition No. 426 of 2018
- CBK was enjoined in the suit as an interested party
- The case is scheduled for hearing on March 29, 2019
- CBK Governor was invited by the National Assembly Departmental Committee on Finance and National Planning to discuss implementation of the amendment on February 12, 2019

Some Difficulties Implementing Section 33C of the Banking Act

- There are a variety of requirements in the Banking Act and other laws on deposits and withdrawals which need to be wrapped into the proposed regulations
- The amendment attempts to overide other requirements on deposits and withdrawals that may be set by banks for their customers in terms and conditions
- The amendment will conflict with POCAMLA
- The amendment attempts to annul the United Nations Security Council Resolutions that relate to AML/CFT. Kenya is a signatory of the UN Treaty and is therefore bound by these resolutions
- The amendment does not ensure the safety and soundness of bank transactions. Current processes were intended to strengthen safety and soundness of bank transactions benefitting from experiences in other countries

Effective AML/CFT Framework

The tenets of an effective AML/CFT framework are:-

Know Your Customer/ Customer Due Diligence measures

identity of customer, beneficial owner, nature of business and source of funds

Monitoring of transactions

monitoring of all complex, unusual, suspicious, large transactions and reporting of suspicious transactions

Cash Reporting

reporting of large cash transactions

Record keeping

obtaining and keeping records of all transactions and customers

Internal controls

obligation to establish robust governance structures and internal reporting procedures

Criminalization

criminalizing money laundering and terrorism financing

- Global AML/CFT standards are set by the FATF
- Kenya committed to adhering to global AML/CFT standards in 1999

Kenya's AML/CFT Framework

The framework is aligned to international best practices as formulated by FATF, comprising of:-

- Proceeds of Crime and Anti Money Laundering Act (POCAMLA) (2010) and Regulations (POCAMR) (2013)
- Prevention of Terrorism Act (POTA)(2012) and Regulations (2013)
- Banking Act
- CBK's Prudential Guideline on Proceeds of Crime and Money Laundering (Prevention) and Combatting the Financing of Terrorism (2013)
- Banking Circular Number 1 of 2016 (Additional Guidelines on Large Cash Transactions)
- Periodic United Nations Security Council Resolutions

Requirements for Large Cash Transactions

- Section 44(3) POCAMLA provides for the reporting of all cash transactions above a specified threshold to the Financial Reporting Centre (FRC)
- POCAMR requires reporting of all cash transactions of USD 10,000 and above to the FRC whether they are suspicious or not
- CBK's Banking Circular Number 1 of 2016 (Additional Guidelines on Large Cash Transactions):-
  - Reminded banks of the requirements in POCAMLA and POCAMR on legitimacy of funds and keeping track of large cash transactions
  - Informed by findings from target inspections that revealed that corruption proceeds had been transacted through large cash transactions
  - Sought compliance with international best practice on large cash transactions

Adverse Impact on the Banking Sector

The adverse effects of the Amendment on the banking sector, would be immediate:-

- Termination of relationships by foreign correspondent banks and closure of accounts of Kenyan banks (derisking). Regional linkages of Kenyan banks will be adversely impacted
- Kenya's banking sector will be blacklisted internationally and the country will most likely be blacklisted by the Financial Action Task Force (FATF)
- Kenya's banking sector will be perceived as risky and less attractive to investors. Risk of some banks collapsing after these changes, threatening financial stability
- The war against corruption will be lost resoundingly. Kenya will become a safe haven for money laundering, terrorist financing, and other illicit flows

Adverse Impact on the Wider Economy

The effects of the Amendment on the economy will be devastating:-

Impaired ability to detect terrorism financing

Inability to transact with the rest of the world

Collapse of the economy (e.g., as followed the Goldenberg Scandal)

Next Steps

STEP 1

The identified difficulties make it impossible to implement Section 33C of the Banking Act

STEP 2

Legal interpretation has been sought from the High Court

Parties have filed and matters are pending determination

Hearing on March 29, 2019

STEP 3

Engagement with Parliament and the Public on possible refinements

Key Messages

1. The Amendment (Section 33C, Banking Act) strikes at the heart of Kenya's AML/CFT framework and anti-corruption efforts
2. CBK's Banking Circular No. 1 of 2016 is part of complementary efforts to enhance the effectiveness of cash monitoring
3. The war against corruption, money laundering and terrorism financing will be significantly impaired if requirements for cash deposits and withdrawals are weakened. The economic consequences would be devastating
4. Kenya will be locked out of the global financial system
5. These matters have been brought to the High Court for determination (HC Constitutional Petition No. 426 of 2018). Hearing is on March 29, 2019

Thank You!

Haile Selassie Avenue P. O. Box 60000 - 00200 Nairobi
Tel: (+254) 20 286 0000 / 286 1000 / 286 3000 Email: comms@centralbank.go.ke