

THE BANKING ACT
(Chapter 488 of the Laws of Kenya)

IN EXERCISE of the powers conferred by section 55(1) and 55(2) of the Banking Act, the Central Bank of Kenya makes the following Regulations:–

THE BANKING (PENALTIES) REGULATIONS, 2017

PART 1- PRELIMINARY

Citation

1. These Regulations may be cited as the Banking (Penalties) Regulations, 2017.

Interpretation

2. In these Regulations unless the context otherwise requires:–

“Act” means the Banking Act.

“Central Bank” means the Central Bank of Kenya.

“Credit Reference Bureau Regulations” means the Credit Reference Bureau Regulations, 2013 or any subsequent Credit Reference Bureau Regulations which may be made in addition to or in substitution of the Credit Reference Bureau Regulations, 2013 and the enforcement of which falls within the mandate of the Central Bank.

“Penalty” means monetary penalty.

“Person” includes an individual or natural person, company, association or other entity whether incorporated or unincorporated.

“Prudential Guidelines” means any Guideline issued by the Central Bank which is meant to apply to institutions generally.

Application

3. These Regulations shall apply to-

- (i) Any institution licensed under the Act;
- (ii) Any credit reference bureau licensed by the Central Bank, except as is otherwise provided for in these Regulations;

- (iii) Any person who is subject to or affected by the Act, Prudential Guidelines, Credit Reference Bureau Regulations or these Regulations.

Purpose

4. The purpose of these Regulations is to:–

- (i) Provide a clear framework for assessing and levying of monetary penalty against an institution, credit reference bureau or any other person who has: –
 - (a) violated any provision of the Act, Prudential Guidelines, these Regulations, Credit Reference Bureau Regulations or any other Regulation or Guideline issued under the Act; or
 - (b) failed to comply with any direction or order issued by or any condition imposed by the Central Bank.
- (ii) Enhance the integrity of the banking sector by ensuring that any violation of the Banking Act, Prudential Guidelines, these Regulations, Credit Reference Bureau Regulations or any other Regulation or Guideline issued under the Act; any direction or order issued by or condition imposed by the Central Bank is penalized.
- (iii) Promote greater compliance with the Act, Prudential Guidelines, these Regulations, Credit Reference Bureau Regulations or any other Regulation or Guideline issued under the Act, any direction or order issued by or any condition imposed by the Central Bank.
- (iv) Deter institutions, credit reference bureaus or any other person from engaging in delinquent acts or omissions.
- (v) Provide guidance for the assessment of quantum of monetary penalty to be levied by the Central Bank.

Guiding Principles

5. In assessing and levying of monetary penalties, the Central Bank may be guided by the following principles:–

- (i) The penalty to be levied should not paralyze an institution, credit reference bureau or any other person to be penalized.
- (ii) The Central Bank may take into account the financial condition of the institution, credit reference bureau or any other person to be penalized in determining the amount of the penalty to be levied.

- (iii) The penalty should be sufficiently deterrent to discourage further or future violation of the law, direction, order or condition that may be imposed by the Central Bank.
- (iv) The Central Bank may take into account the nature of the provision of law violated, the severity of the violation and any other relevant factor.
- (v) The penalty should to the extent possible be reasonably commensurate with the severity of the violation.
- (vi) The assessment and levying of penalty should be expeditious, efficient, lawful, reasonable and procedurally fair.

PART II - PENALTIES

Duty to comply with the Act, Prudential Guidelines, direction, order and condition

- 6. (1) Every institution or any other relevant person shall comply with the provisions of the Act, the Prudential Guidelines, these Regulations, or any other Regulation or Guideline issued under the Act and every direction, order as may be given and every condition as may imposed by the Central Bank.
- (2) Non-compliance with the requirements of sub-regulation (1) may attract a penalty.

When monetary penalty may be levied

- 7. The monetary penalties prescribed in these Regulations shall apply in any of the following instances:—
 - (i) Violation of or non-compliance with any of the provisions of the Act;
 - (ii) Violation of or non-compliance with any of the provisions of the Prudential Guidelines;
 - (iii) Violation of or non-compliance with or any other Regulation or Guideline issued under the Act;
 - (iv) Failure, refusal or neglect to comply with any of the provisions of these Regulations;
 - (v) Failure, refusal or neglect to comply with any direction or order given, or any condition imposed by the Central Bank under the Act, the Prudential Guidelines, these Regulations or any other Regulation or Guideline issued under the Act.

Penalties for institutions and other persons

- 8. Any institution or any other person who fails, neglects or refuses to comply with any provision of the Act, the Prudential Guidelines, these Regulations, any other Regulation or Guideline

issued under the Act or any direction or order given, or condition imposed by the Central Bank under the Act, the Prudential Guidelines, these Regulations, any other Regulation or Guideline issued under the Act shall be liable to a penalty not exceeding: –

- (a) Twenty Million Shillings in the case of an institution or other non-natural person;
- (b) One Million Shillings in the case of a natural person;
- (c) One Hundred Thousand Shillings for each day or part thereof during which such failure, neglect or refusal continues.

Penalties for credit reference bureaus

- 9. (1) The monetary penalties prescribed in the Credit Reference Bureau Regulations, 2013 or any subsequent or succeeding Regulations relating to credit information sharing shall apply as against any credit reference bureau licensed by the Central Bank or any other person covered by or subject to those Regulations.
- (2) Except as is provided for under this Regulation, the other provisions of these Regulations shall apply to a credit reference bureau.

Application of penalty to each violation

- 10. The penalties prescribed in these Regulations apply to each and every violation and assessment of the penalty may be carried out for each and every single violation.

Maximum penalty for several violations

- 11. The provisions of section 55(2) of the Act shall not be deemed to have been breached by reason of the fact that the total amount of the penalty assessed and levied by the Central Bank for several violations against an institution, credit reference bureau or other person in any given case exceeds the maximum that is prescribed under section 55(2) of the Act.

Provided that the Central Bank shall expressly specify how much penalty has been assessed for each violation.

Factors to consider in assessing monetary penalty

- 12. (1) In assessing the amount of monetary penalty to levy in respect of a particular violation or non-compliance, the Central Bank may consider the following factors:–
 - (i) Whether the person sought to be penalized is a natural person or non-natural person.

- (ii) The nature of the legal or regulatory requirement, direction, order or condition which has been violated or not complied with;
- (iii) The nature and severity of the violation;
- (iv) The impact of the violation on the institution, credit reference bureau or other person;
- (v) The benefits that could be or may have been derived from the violation and the Central Bank may impose a penalty equal to the benefit which may have been derived from the violation if this does not exceed the maximum amount prescribed under the Act;
- (vi) The amount of financial loss or other losses suffered or likely to be suffered by the institution, depositors, creditors, shareholders of the institution or other person;
- (vii) The circumstances under which the violation occurred;
- (viii) The financial condition of the institution, credit reference bureau or any other person at fault in terms of liquidity, size, assets, capital, solvency, loan portfolio, annual turnover and any other relevant financial condition;
- (ix) The frequency of violation of the same law, other laws, direction, order or condition;
- (x) General level of compliance with the law by the institution, credit reference bureau or any other person as demonstrated over a period of time;
- (xi) The public interest affected by the violation;
- (xii) The identity, rank, job description of the officer or employee of the institution or credit reference bureau, or any other person involved;
- (xiii) Whether the violation has been rectified or remedied or can easily be rectified or remedied; and
- (xiv) Such other relevant factor as the Central Bank may consider.

(2) The provisions of sub-regulation (1) may be used as a guide in assessing the amount of the penalty to be levied but shall not oblige the Central Bank to impose a lesser penalty than what is reasonable.

PART III - SPECIFIC VIOLATIONS

Specific violations

13. (1) Without prejudice to the generality of Regulation 6, the following are examples of specific violations by an institution, its officers, employees, agent or any other person, which may be subject to assessment of monetary penalty under these Regulations:–

- (a) Failure to maintain, at all times, the minimum capital requirements prescribed under the Act or Prudential Guidelines or such capital requirements as may be determined by the Central Bank from time to time;
- (b) Failure to maintain the prescribed minimum liquid assets;
- (c) Failure to maintain the prescribed insider lending limits;
- (d) Failure to obtain prior written approval from the Central Bank before opening, relocating or closing a place of business;
- (e) Allowing a representative office to carry out banking business without the approval of the Central Bank;
- (f) Allowing a person to become, or becoming a significant shareholder, director or senior officer of an institution before the Central Bank has certified the person as fit and proper to manage and control the institution;
- (g) Failure by a disqualified significant shareholder to reduce his shareholding to below five percent or voting when he is prohibited from voting;
- (h) Transferring five percent or more of the shares of an institution without the prior approval of the Central Bank;
- (i) Allowing a person to hold shares directly or indirectly in an institution in excess of the statutory limits;
- (j) Failure to remove or cause the removal from employment or office, a person who has been disqualified by the Central Bank from managing or controlling an institution;
- (k) Allowing any person to hold office when the person has been disqualified by the Central Bank from holding any office;
- (l) Failure to implement an effective internal control system;
- (m) Failure to put in place or implement a risk management framework;
- (n) Failure to classify and assign risk weights in the evaluation of capital adequacy measurements;
- (o) Failure to review, classify or make appropriate and adequate provisions and write-offs for loans and assets as prescribed;
- (p) Failure to undertake performance evaluation of an institution's board;

- (q) Granting loans, advances or other credit facilities granted by the institution to any person exceeding of twenty five percent of the institution's core capital;
- (r) Granting any advance, loan or credit facility to any director or other person participating in the general management of the institution which: –
 - (i) has not been approved by the full board of directors of the institution upon being satisfied that it is viable;
 - (ii) has not been made in the normal course of business and on terms similar to those offered to ordinary customers of the institution; and
 - (iii) has not been reported to the Central Bank within seven days thereof as being approved under (i) above.
- (s) Granting credit facilities to any one of the institution's shareholders, directors, officers or employees exceeding twenty percent of the institution's core capital;
- (t) Granting loans, advances and other credit facilities to an institution's associates, its significant shareholders, directors, officers, person participating in general management of the institution and employees and their associates whose aggregate is in excess of one hundred percent of the institution's core capital;
- (u) Granting any advance or credit facility or giving any guarantee or incurring any liability or entering into any contract or transaction or conducting business or part thereof in a fraudulent or reckless manner otherwise than in compliance with the provisions of the Act or the Prudential Guidelines;
- (v) Permitting to remain outstanding: –
 - (i) unsecured advances to any of the institution's employees or their associates;
 - (ii) advances, loans or credit facilities by an institution which are unsecured or not fully secured: –
 - a. to any of its officers or their associates; or
 - b. to any person of whom or of which any of its officers has an interest as an agent, principal, director, manager or shareholder; or
 - c. to any person of whom or of which any of its officers is a guarantor.
- (w) Purchasing, acquiring or holding any land or any interest in land in excess of such proportion of an institution's core capital as prescribed by the Central Bank;
- (x) Failure to: –

- (i) maintain accurate records at all times;
 - (ii) produce any books, accounts, records, documents, correspondence, statements or other information as specified in the Act, Prudential Guidelines or Regulations;
 - (iii) record or keep all bank transactions in the official banking system;
 - (iv) provide such information as the Central Bank may require.
- (y) Failure to: –
- (i) exhibit annual audited accounts, throughout each year, in a conspicuous place in every office and branch in Kenya; or
 - (ii) publish annual audited accounts in a national newspaper within the number of months at the end of each financial year as may be prescribed from time to time by the Central Bank.
 - (iii) publish unaudited quarterly financial statements.
 - (iv) submit, not later than three months after the end of its financial year to the Central Bank, its annual audited accounts and a copy of the auditor's report in the prescribed form;
- (z) Failure to: –
- (i) identify, monitor or report suspected money laundering and terrorism financing activities;
 - (ii) verify customer identity and/or establish and maintain customer records;
 - (iii) establish and maintain internal money laundering and terrorism financing activities reporting procedures;
 - (iv) report a cash transaction above the prescribed limit;
 - (v) establish or maintain affective control mechanism for anti-money laundering and countering the financing of terrorism; and
 - (vi) comply with other laws relating to anti-money laundering and countering the financing of terrorism.

13. (2) Additional examples of specific violations which may be subject to assessment of monetary penalty under these Regulations include:–

- (a) Violation of the restrictions on trading and investments;
- (b) Engagement in parallel banking activities;
- (c) Paying interest or return on deposits below the prescribed statutory minimum;
- (d) Paying of dividend when an institution's capital expenditure has not been written off or provision has not been made for loans, advances and other assets;

- (e) Preventing an officer of the Central Bank or any other person appointed by the Central Bank from carrying out any inspection, obtaining any document or accessing any system, record, office or premises during an inspection;
- (f) Preventing an auditor from carrying out any audit of an institution, obtaining any document or accessing any system, record, office or premises during an audit;
- (g) Changing an auditor without the prior approval of the Central Bank;
- (h) Sharing confidential information with an unauthorized person;
- (i) Failure to disclose total cost of credit or charges to a customer;
- (j) Imposition of any charge on any product or service without prior written approval;
- (k) Increasing any charge on any product or service without the prior written approval;
- (l) Charging interest on loans or other credits in excess of the prescribed statutory maximum;
- (m) Recovering interest or other charges on non-performing loans in excess of the prescribed limit;
- (n) Failure to comply with any direction, instruction or order issued by the Central Bank;
- (o) Failure to comply with any condition imposed on a license or other approval given by the Central Bank;
- (p) Failure to heed the advice of the Central Bank;
- (q) Violation of any other provision or requirement of the Act, the Prudential Guidelines or these Regulations or;
- (r) Failure to take remedial action within such reasonable period as may be specified by the Central Bank in a notice to that effect.

Penalty for other violations

14. The Central Bank may assess and levy penalties for any other violation of any provision of the Act, Prudential Guidelines, these Regulations, Credit Reference Bureau Regulations, any direction or order issued by or condition imposed by the Central Bank.

PART IV - ASSESSMENT AND PAYMENT OF PENALTIES

Assessment of penalty on case-by-case basis

15. The assessment of monetary penalty may be carried out on a case-by-case basis and different amounts may be imposed for different violations or against different institutions, credit reference bureaus or any other person.

Provided that any differential treatment of institutions, credit reference bureau or any other person shall be justified by the Central Bank.

Penalty to be commensurate with the severity of violation

16. Without prejudice to Regulation 15, any monetary penalty levied by the Central Bank shall be reasonable, effective and commensurate with the severity, impact or likely impact of the violation.

Provided that in appropriate cases and where the circumstances so render necessary, the Central Bank may impose against an institution, credit reference bureau or any other person, the maximum penalty prescribed under section 55(2) of the Act.

Notice to Show Cause

17. If the Central Bank determines that an institution, credit reference bureau or any other person has violated any provision of the Act, these Regulations, Credit Reference Bureau Regulations, the Prudential Guidelines, any other Regulation or Guideline issued under the Act, or has failed to comply with any direction given, or condition imposed by the Central Bank, the Central Bank shall notify the institution, credit reference bureau or any other person of the violation and shall invite the institution, credit reference bureau or the other person to show cause why monetary penalty should not be assessed and levied.

Content of Notice to Show Cause

18. The Notice to Show Cause may-

- (a) Describe in general terms the facts or circumstances that constitute the violation or non-compliance;
- (b) State the legal or regulatory requirement which was violated or the direction, order or condition which was not complied with;
- (c) Describe the person or entity which may have been involved in the violation if such information is within the knowledge of the Central Bank;

- (d) Indicate time or period, if this has been ascertained, when the violation may have occurred;
- (e) Notify the institution, credit reference bureau or any other person of the intention of the Central Bank to assess and levy monetary penalty;
- (f) State the period within which the Notice to Show Cause shall be responded to, which period shall not be less than fourteen days;
- (g) Contain any other relevant information which the Central Bank may find necessary.

Invitation to a meeting

19. The Central Bank may in its discretion invite the institution, credit reference bureau or any other person to make oral representations in relation to the violations in issue and may thereafter record in writing a summary of the oral representations.

Consideration of representations received

20. Upon receipt of any representations from the institution, credit reference bureau or any other person within the specified period, the Central Bank may consider the representations made, the principles or factors prescribed in these Regulations and any other available information in determining:—

- (a) Whether or not an institution, credit reference bureau or other person should be penalized.
- (b) The amount of monetary penalty to be levied.
- (c) Whether the penalty should be paid by an institution, credit reference bureau or other person.

When no representation is made

21. (1) Where the Central Bank has not received any representation from the institution, credit reference bureau or any other person within the specified period or where the representation is received after the specified period, the Central Bank may proceed to assess the monetary penalty.

(2) The Central Bank may at its sole discretion extend the time within which the Notice to Show Cause may be responded to by an institution, credit reference bureau or any other person.

Notification on assessment of penalty

22. Upon assessment of monetary penalty, the Central Bank may notify the institution, credit reference bureau or other person of the assessed penalty and may state:–
- (i) The violations for which the assessment has been made;
 - (ii) The amount of monetary penalty that has been assessed;
 - (iii) The timeframe within which the monetary penalty should be paid to the Central Bank;
 - (iv) The manner in which the payment shall be made to the Central Bank;
 - (v) The identity of the person or entity that should pay the penalty;
 - (vi) The consequences of not paying the penalty within the specified period;
 - (vii) Any additional penalty that may apply if the violation continues or if the penalty is not paid within the specified period.

Duty to pay penalty

23. Upon being notified of any assessed penalty, an institution, credit reference bureau or any other person shall pay to the Central Bank the penalty either immediately or within such timeframe and in such manner as may be indicated in the notification.

Debit of account held at the Central Bank

24. Where an institution or other person has been found liable to pay a penalty under these Regulations and it is established that the Central Bank holds an account for that institution or person, the Central Bank may debit the account of the institution or person to recover the penalty levied hereunder.

Provided that such a debit shall be promptly notified to the institution or person concerned.

Civil debt

25. Any unpaid penalty shall constitute a civil debt and may be recovered by the Central Bank through any lawful process.

Rectification of the violation

26. The Central Bank may in a Notice to Show Cause or in any other communication require an institution, credit reference bureau or any other person to:–

- (a) desist from any action or omission in order to bring to an end any continued violation of the Act, Prudential Guidelines, Credit Reference Bureau Regulations, these Regulations, any other Regulation or Guideline issued under the Act, or any direction, order or condition imposed by the Central Bank;
- (b) take any action to rectify or remedy any violation which has occurred.

Period within which rectification is to be made

- 27. Where the Central Bank requires an institution, credit reference bureau or any other person to take a specific action to rectify or remedy a violation, the Central Bank may specify the period within which the remedial action should be taken.

Provided that an institution, credit reference bureau or any other person may on his own motion, rectify or remedy any violation.

Daily penalty

- 28. Where the Central Bank is not satisfied, either by evidence provided by the institution, credit reference bureau or any other person, or by information obtained by the Central Bank, that the violation has been rectified as directed, the daily monetary penalty prescribed in Regulation 7 shall continue to accrue.

Aggregation of daily penalties

- 29. Upon the Central Bank being fully satisfied that the violation has been rectified, the daily penalty shall cease to accrue and the institution, credit reference bureau or other person shall be assessed the aggregate penalty and the penalty shall be paid to the Central Bank in accordance with these Regulations.

PART VI REVIEW

Application for review of the decision

- 30. (1) Any institution, credit reference bureau or any other person aggrieved by the decision of the Central Bank under these Regulations, may apply to the Central Bank to review the decision.
- (2) The lodging of an application with the Central Bank under this Regulation shall not suspend the requirement of the institution, credit reference bureau or any other person to pay the penalty as directed by the Central Bank unless the applicant applies to the Central Bank for such suspension pending the hearing of the review

application and the Central Bank has in writing granted the application for the suspension of the payment of the penalty.

- (3) Any application for the suspension of the payment of the penalty shall be made within the period within which the penalty is payable to the Central Bank.

Grounds for review

31. An application for review under Regulation 30 may be based on any of the following grounds:–

- (i) The violation did not take place;
- (ii) The applicable law does not support the findings on violation;
- (iii) New facts have emerged which were hitherto not there but have a direct bearing on the findings on the violation;
- (iv) The Central Bank took into account irrelevant facts or failed to take into account relevant facts in its conclusion that there was a violation;
- (v) The aggrieved party was not given an opportunity to show cause why monetary penalty should not be levied;
- (vi) The monetary penalty levied by the Bank was too severe.

Request for additional information

32. The Central may request the applicant to submit such additional information as the Central Bank may require to enable it determine the application for review.

Determination of the application for review

33. (1) The Central Bank may within thirty days from the date of receipt of the application or any requested additional information, whichever comes last, consider the application for review.

- (2) The Central Bank may in its discretion or if so requested by the applicant, invite the applicant for a meeting to hear representations on the application for review.

Communication of decision

34. The Central Bank shall in writing inform the applicant of its decision and may state the grounds on which the application for review is decided.

Judicial Redress

35. Where the applicant is aggrieved by the decision of the Central Bank on the application for review, the applicant may seek legal redress in a court of law.

PART VII – OTHER PROVISIONS

Personal liability of officers or members of staff

36. (1) An officer, member of staff or agent of an institution, credit reference bureau or other person may be personally liable for any violation or non-compliance with any provision of the Act, Prudential Guideline, Credit Reference Bureau Regulations, these Regulations, any other Regulation or Guideline issued under the Act or any direction, order or condition imposed by the Central Bank.
- (2) Any person referred to in subregulation (1) may be penalized either individually or jointly with the institution, credit reference bureau or any other person if it is demonstrated that it was his responsibility either individually or jointly with others to ensure compliance with the particular provision of the Act, Prudential Guidelines, Credit Reference Bureau Regulations, these Regulations, any other Regulation or Guideline issued under the Act or any direction, order or condition imposed by the Central Bank that has been breached or not complied with.
- (3) An officer, employee or agent of an institution, credit reference bureau or other person may be held personally liable where the officer, employee or agent:–
- a) fails to take all reasonable steps to secure the compliance of the institution, credit reference bureau (where applicable) or other person with this Act, Prudential Guidelines, Credit Reference Bureau Regulations, these Regulations, any other Regulation or Guideline issued under the Act or any direction, order or condition issued or imposed by the Central Bank;
 - b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under the Act, Prudential Guidelines, Credit Reference Bureau Regulations, these Regulations, any other Regulation or Guideline issued under the Act or any direction, order or condition imposed by the Central Bank; or
 - c) fails to supply any information required under the Act, Prudential Guidelines, Credit Reference Bureau Regulations, these Regulations, any other Regulation or Guideline issued under the Act or any direction, order or condition issued or imposed by the Central Bank.

Penalty to be paid from own resources

- 37. (1) The Central Bank may direct that any monetary penalty levied against a person other than an institution or credit reference bureau, shall be paid by that person directly from his or its own personal or private financial resources and such penalty shall not be borne or paid by the institution or credit reference bureau on his or its behalf.
- (2) Any institution, credit reference bureau or other person who pays a penalty contrary to the requirements of sub-regulation (1) shall be liable to such monetary penalty as the Central Bank may determine.

Aggregation of penalties

- 38. An institution, credit reference bureau or other person who has violated several provisions of the Act, Prudential Guidelines, Credit Reference Bureau Regulations, these Regulations, any other Regulation or Guideline issued under the Act or any direction, order or condition referred to in these Regulations may be penalized for each and every violation unless the Central Bank, in any particular case decides otherwise.

Penalties not to affect other forms of penalties

- 39. The imposition of a monetary penalty against an institution, credit reference bureau or other person shall not bar the Central Bank from imposing any other or additional sanction as is provided for under any other law.

Repeal of LN 77 of 1999

- 40. **The Banking (Penalties) (Amendment) Regulations, 1999 are repealed.**

Savings

- 41. Anything which was lawfully commenced, done or executed under the Authority of the Banking (Penalties) (Amendment) Regulations, 1999 (now repealed) by the Central Bank shall continue to be valid and shall be continued under these Regulations as if it was originally commenced, done or executed under these Regulations.

DATED2017

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