IN EXERCISE of powers conferred by section 57 (2) of the Central Bank of Kenya Act, the Central Bank of Kenya makes the following Regulations

CENTRAL BANK OF KENYA (MORTGAGE REFINANCE COMPANIES) REGULATIONS, 2019

PART I: PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019.

Interpretation

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

   "Act" means the Central Bank of Kenya Act;

   "Associate" means —

   (a) in relation to a company or other body corporate —

   (i) its holding company or its subsidiary;
   (ii) a subsidiary of its holding company;
   (iii) a holding company of its subsidiary;
   (iv) its non-operating holding company as its subsidiary
   (v) a subsidiary of a non-operating holding company;
   (vi) a significant shareholder to that company; and
   (vii) any person who controls the company or body corporate whether alone or with his associates or with its associates.

   (b) in relation to an individual —

   (i) any member of his family; and
   (ii) any company or other body corporate controlled directly or indirectly, by him whether alone or with his associates.

   and a person shall be deemed to be a member of a family if he is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild and adopted child of the person concerned, and in case of an adopted child his adopter or adopters.

"Bank" means the Central Bank of Kenya;

"Capital" means paid-up share capital;

"Core capital" means permanent shareholders' equity in the form of issued and fully paid-up shares of common stock plus all disclosed reserves, less goodwill or any other intangible assets;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters related to finance;

"Control" includes —

(a) the ability to influence, whether directly or indirectly, the composition of the board of directors of a company or any other body corporate; or
(b) holding, directly or indirectly, whether personally or through a holding company or companies or subsidiaries thereof, or in any other way, an aggregate of twenty per centum or more of the voting power of a company or body corporate, whether alone or with associates or with other associates of the company or body corporate.

"Corporate governance" means the process and structure used to direct and manage the business and affairs of a company towards enhancing business prosperity and corporate accountability with the ultimate objective of realizing long-term shareholder value, whilst taking account of the interests of other stakeholders;

"Eligible mortgage" means a mortgage loan that meets the criteria under the eligibility standards as may be set by a mortgage refinance company and approved by the Central Bank;

"Housing loan" means a loan to purchase a residential house;

"Leverage" means the use of debt to finance operations;

"Mortgage" means a loan to purchase a residential house or commercial property;

"Mortgage refinance company" means a non-deposit taking company established under the Companies Act and licensed by the Bank to conduct mortgage refinance business;

"Multi-Lateral Development Banks" include —

(a) The International Bank for Reconstruction and Development;
(b) The Inter-American Development Bank;
(c) The Asian Development Bank;
(d) The African Development Bank;

(e) The European Investment Bank; and
(f) Other MDBs in which G10 countries (Belgium, Netherlands, Canada, Sweden, France, Switzerland, Germany, United Kingdom, Italy, United States and Japan) are shareholding members.

"Primary mortgage lender" means an entity involved in mortgage finance including licensed banks, microfinance banks, and Savings and Credit Co-operative Societies and any other entity that the Bank may by notice in the gazette declare;

"Qualified collateral" means a collateral that meets underwriting standards set out by the law and the mortgage refinance company, and approved by the Central Bank for the purpose of granting a loan to a primary mortgage lender;

"Significant shareholder" means a person, other than the Government or a public entity, who holds, directly or indirectly or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a Mortgage Refinance Company;

"Senior officer" means a person who manages or controls an entity, and includes —

(a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary to the board of directors, treasurer, chief internal auditor, or manager;
(b) a person with a similar level of position or responsibilities as a person described in paragraph (a) above.

"Supplementary capital" means general provisions which are held against future and presently unidentified losses that are freely available to meet losses which subsequently materialize, and revaluation reserves on business premises which arise periodically from independent valuation of such premises, and any other form of capital as may be determined from time to time by the Central Bank;

"Total capital" means the total sum of core capital and supplementary capital.

PART II: THE BUSINESS OF MORTGAGE REFINANCE COMPANIES

Authorized activities

3. (1) A mortgage refinance company shall engage in the following activities —

(a) refinancing or purchasing of eligible mortgage loans;
(b) investment in debt securities issued by the Government of Kenya or any guaranteed debt;
(c) extending finance to primary mortgage lenders for financing of eligible mortgages;

(d) issuing bonds, notes and other financial instruments for purposes of meeting its objectives; and
(e) other activities as may be prescribed by the Bank from time to time.

(2) Any person who contravenes the provisions of this regulation commits an offence and is liable to a penalty as provided in the Act.

PART III: LICENSING

Application for a Licence

4. (1) A mortgage refinance company shall apply to the Bank for a licence to conduct mortgage refinance business in Form CBK MRC 1-1 set out in the First Schedule.

(2) An applicant under sub-regulation (1) shall —

(a) be a company incorporated under the Companies Act;
(b) ensure that its significant shareholders, directors and senior officers meet the fit and proper criteria set out in the Third Schedule; and
(c) meet the capital adequacy requirements set out in the Second Schedule.

(3) An applicant shall be required to submit the following additional information —

(a) A certified copy of the certificate of incorporation of the mortgage refinance company from the Registrar of Companies;
(b) A certified copy of the memorandum and articles of Association of the proposed mortgage refinance company;
(c) A certified copy of the memorandum and articles of Association of any corporate body that proposes to have a significant shareholding in the mortgage refinance company;
(d) A certified copy of the constitutive documents of an unincorporated person that proposes to have a significant shareholding in the mortgage refinance company;
(e) A duly completed "fit and proper" form for proposed significant shareholders, directors, chief executive officer and other senior officers in form CBK MRC 1-2 set out in the First Schedule;
(f) Description of accounting system, information and communication technology to be used in the operations of the mortgage refinance company;
(g) Organization chart, number of employees, positions and job descriptions of senior officers;
(h) Description of internal control procedures that the mortgage refinance company shall implement;
(i) Description of shareholders, board and senior officers and strategy for the successful operation of the applicant;
(j) Description of any intended products and services which the proposed mortgage refinance company intends to provide and how such products and services shall be of benefit to the country;

(k) Master Servicing and Refinancing Agreement (MSRA) governing the lending operations between the mortgage refinance company and the participating primary mortgage lenders;

(l) Shareholders or investment agreement (where applicable) governing the relationships between shareholders and ensuring that ownership is accessible for primary mortgage lenders meeting the requirements and standards specified by the Central Bank, in the agreement or in the mortgage refinance company's Memorandum and Articles of Association;

(m) Evidence of payment of application fee set out in the Fourth Schedule;

(n) Names and addresses of the Shareholders in form CBK MRC 1-3 set out in First Schedule;

(o) Investment policy, credit policy, asset liability management, liquidity management, financial management, code of ethics and business conduct;

(p) A sworn declaration signed by every officer as specified in the application form;

(q) A business plan of the intended business with financial projections of at least three years; and

(r) Financial statements for the last three years where applicable.

Issuance of a licence

5. (1) The Bank shall consider an application made under regulation 4 and may, if satisfied that the applicant meets the requirements of these Regulations, grant a licence to the applicant, within ninety days of the application, upon payment of the licence fee set out in the Fourth Schedule.

(2) In assessing the application, the Central Bank shall consider the following factors —

(a) the financial condition and history of the applicant;

(b) adequacy of the business strategy of the applicant;

(c) the professional and moral suitability of the persons proposed to manage or control the proposed mortgage refinance company;

(d) the adequacy of its capital structure and earning prospects; and

(e) the public interest which will be served by the granting of the licence.

(3) The Bank may endorse on a licence granted under sub regulation (1), such conditions as it considers necessary and may, from time to time, add, vary or substitute such conditions.

(4) A person granted a licence shall pay an annual fee to the Bank as set out in the Fourth Schedule at such time as the Bank may determine.

(5) A licence granted under these Regulations shall remain valid unless suspended or revoked by the Bank in accordance with these regulations.

(6) The Bank shall cause the name of a mortgage refinance company to be published in the Gazette within seven days of grant of licence.

Licence not transferable

6. The licence granted shall not be transferred, assigned or encumbered in any way.

Fit and proper obligations

7. (1) A person shall not be a director, a senior officer or a significant shareholder of a mortgage refinance company unless the Bank has certified the person as fit and proper in accordance with the criteria set out in the Third Schedule.

(2) The Bank may, from time to time, where it deems it necessary, carry out an assessment of the professional and moral suitability of the persons managing or controlling a mortgage refinance company.

(3) A significant shareholder, upon being determined by the Bank as not fulfilling the fit and proper criteria, shall —

(a) cease to exercise all voting rights immediately upon the mortgage refinance company being notified by the Bank in writing that the shareholder does not fulfil the fit and proper criteria; and
(b) reduce the holding of shares to below ten percent of the share capital in the mortgage refinance company within twelve months, or such longer period as the Bank may determine.

(4) The Central Bank may direct a significant shareholder who has been found not to be fulfilling the fit and proper criteria to dispose of all of his shares in a mortgage refinance company within such period as the Bank may direct.

(5) The Central Bank may disqualify any director or senior officer from holding any office in a mortgage refinance company if he is found not to meet the fit and proper criteria or for any other good cause shown.

Suspension or Revocation of licence

8. (1) The Bank may, suspend or revoke a licence of a mortgage refinance company, if the licensee —

(a) ceases to carry on mortgage refinance business;
(b) goes into liquidation or an order is issued for winding up;
(c) has contravened any of the conditions in the licence;
(d) has contravened any of the provisions of the Act or any regulations made thereunder or any other relevant written law; or
(e) conducts its business in a manner detrimental to its customers, creditors or members of the public.

(2) A suspension of a licence under this regulation shall not exceed a period of three months; provided that the Bank may, if it considers necessary extend the suspension for a period not exceeding three months.

(3) The Bank shall at the expiry of the suspension period specified under sub-regulation (2) lift the suspension or revoke the licence as the Bank considers appropriate.

(4) The Bank shall cause the names of mortgage refinance companies whose licences have been revoked to be published in the Gazette within seven days of the revocation.

(5) The Bank may, where a licence has been revoked, by notice in writing –

(a) require the licensee to transfer to its customer, records relating to customer property or the affairs of the customer held at any time for the customer, in such manner, as the Bank may specify in the notice; or

(b) permit the licensee, subject to such conditions as the Bank may specify in the notice, to carry on business operations for the purpose of closing down the business connected with the revocation.

(6) The Bank shall, in all cases where the Bank takes action under this section give the licensee affected by such action an opportunity to be heard.

Amalgamations and transfer of assets and liabilities

9. A mortgage refinance company shall not enter into an amalgamation or an arrangement to transfer all or any part of its assets and liabilities to another entity except with the prior written approval of the Central Bank.

PART IV: GOVERNANCE

Corporate governance

10. A licensee shall comply with the corporate governance requirements issued by the Bank provided that where the licensee issues securities to the public the applicable corporate governance requirements for issuers of securities to the public shall apply.

Mortgage refinance company's board and Committees

11. (1) Every mortgage refinance company shall be managed by a board which shall have at least two thirds of its members being non-executive members.

(2) Every board shall constitute at least an Audit Committee, Risk Committee and Credit Committee.

(3) The board and board committees shall meet at least once in a quarter, to deliberate on the affairs and financial condition of the mortgage refinance company and provide oversight and guidance to the management.

(4) Every member of the board shall attend at least two thirds of the board meetings in any financial year.

Membership of committees

12. (1) Every committee of the board shall consist of at least three members, two of whom shall be non-executive directors of the mortgage refinance company and who are qualified in finance, audit, information technology, banking, economics or law;

Provided that the chief executive officer of a mortgage refinance company shall not be a member of the Audit Committee, while the Chairperson of the Board shall not be a member of the credit and Audit Committees, but may attend by invitation for consultation only.

(2) The committee members shall elect a chairperson among themselves who shall be a non-executive director.

(3) The quorum for meetings shall be at least two-thirds of the committee members, where at least one attendee must be a non-executive director of the mortgage refinance company.

(4) Every committee shall report to the board, at least every three months.

(5) No person shall hold the position of a director in more than one mortgage refinance company, unless the mortgage refinance company are subsidiaries or holding companies of the mortgage refinance company.

Roles and responsibilities of the board

13. (1) The board shall have the overall responsibility for the mortgage refinance company, including approving and overseeing the implementation of the mortgage refinance company's strategic objectives, risk strategy, corporate governance and corporate values.

(2) The board shall be responsible for providing oversight of senior management.

(3) The board shall have the following specific responsibilities —

(a) formulate a Board Charter that outlines, among others, the principal role of the Board of Directors (BOD), the demarcation of the roles, functions, responsibilities and powers of the Board, various Board Committees and matters reserved for final decision-making or pre-approval by the Board; and the policies and practices of the Board in respect of matters such as conflicts of interest and convening of Board meetings. The charter should require all directors to declare any interests that may give rise to a potential or perceived conflict including multiple directorships, business relationships or other circumstances that could interfere with exercise of objective judgment. It should define the policy on directorships in other entities by board members and the terms/tenure limits for board members where applicable.

(b) regulating the manner in which the business is conducted.

(c) hold Board meetings regularly to effectively participate in the conduct of the business of the Board.

(d) be informed about business condition of the mortgage refinance company on a regular basis.

(e) observe Laws, Regulations and Guidelines.

(f) constitute an organizational structure that facilitates effective decision making and good governance.

(g) define the duties of management and appoint those persons who are competent, qualified and experienced to administer the mortgage refinance company's affairs effectively and soundly.

(h) regularly review policies, processes and controls with senior management and/or internal control functions (including internal audit, risk management and compliance) in order to determine areas needing improvement, as well as to identify and address significant risks and issues.

(i) ensure that appropriate steps are taken to communicate throughout the mortgage refinance company the corporate values, professional standards or codes of conduct it sets, together with supporting policies and procedures.

(j) maintain positive image within the industry and the economy as a whole.

(4) Board members shall be and remain qualified, including through training and Continuous Professional Development (CPD), for their positions and shall have a clear understanding of their role in corporate governance and be able to exercise sound and objective judgment about the affairs of the mortgage refinance company.

Role and responsibilities of Audit Committee

14. (1) The Audit Committee shall assist the board in raising the standards of corporate governance and internal controls in the following areas —

(a) ensuring that financial and operational information is prepared in a timely and accurate manner;

(b) improving the quality of financial record keeping and reporting;

(c) strengthening the effectiveness of internal and external audit functions;

(d) strengthening the internal control environment and risk management;

(e) enhancing public confidence in the credibility and stability of the mortgage refinance company;

(f) monitoring incidences of non-compliance with the Act, the Regulations and guidelines issued there under as well as any other relevant legislations and regulations, and advising the board on the best solutions; and

(g) monitoring the ethical conduct of the mortgage refinance company and developing the code of conduct and ethical standards and requirements, including effectiveness of procedures for handling and reporting complaints.

(2) The external and internal auditors of a mortgage refinance company shall have free access to the Audit Committee.

(3) The external auditor, upon request may attend and be heard at any meeting of the Audit Committee.

(4) Upon the request of the external auditors, the chairperson of the audit committee shall convene a meeting to consider any matter that external auditor deems necessary to be brought to the attention of directors or shareholders.

Responsibilities of Credit Committees

15. Every Credit Committee shall —

(a) review and oversee the overall lending policy, including monitoring and risk management tools;
(b) review loan applications based on established discretionary approval limits;
(c) review lending practices and quality of loan portfolio;
(d) ensure that there are effective procedures and adequate resources to identify and mitigate credit risk;
(e) monitor and evaluate all issues that may materially impact on the present and future quality of the loan portfolio and credit risk management;
(f) delegate and review lending limits to the sanctioning arms of the mortgage refinance company;
(g) ensure adequate provisions for loans and advances, bad and doubtful debts and write off policy;
(h) conduct loan reviews independent of any person or committee responsible for sanctioning credit;
(i) ensure that the credit policy and risk lending limits are reviewed at least once on an annual basis and as and when the environment so dictates; and
(j) set limits on lending exposure in line with the mortgage refinance company's risk management programs and market conditions.

Assets and Liabilities Management Committee (ALCO)

16. (1) Every mortgage refinance company shall establish a management committee to be known as the assets and liabilities committee hereinafter referred to as ALCO.

(2) The ALCO shall drive the strategy for the mortgage refinance company in terms of the mix of assets and liabilities and its expectations of the future and the potential consequences of interest rate movements, liquidity constraints, and capital adequacy.

(3) The responsibilities of the ALCO shall include —

(a) to review and assess the integrity of the internal and risk control systems;
(b) to ensure that the risk policies and strategies are effectively managed;
(c) to set out the nature, role, responsibility and authority of the risk management function of the mortgage refinance company;
(d) to provide an independent and objective oversight and review of the information raised by management at different levels;
(e) to monitor limits on loans to capital ratios;
(f) to monitor limits on maximum and minimum maturities for all categories of assets and liabilities as set by the board;
(g) to monitor limits on the sensitivity of the net interest margin on changes in market interest rates as set by the board;
(h) to monitor maximum percentage imbalance between rates and sensitive assets and liabilities as set by the board;
(i) to monitor limits on minimum spread acceptable between costs and yields of liabilities and assets as set by the board;
(j) to monitor limits on minimum liquidity provision to be maintained to sustain operations while longer term adjustments are set by the board;
(k) to monitor sources of funds;
(l) to monitor the mortgage refinance company's policies, procedures and holding portfolio to ensure that it achieves its goals; and
(m) generally, to implement the funds management policy of the mortgage refinance company.

(4) In order to perform its duties and responsibilities efficiently and effectively, the assets and liabilities management committee, may access or obtain professional advice, both inside and outside the mortgage refinance company, as it may consider necessary.

(5) The assets and liabilities management committee shall have access to any information and records it needs to fulfil its duties and responsibilities.

Monitoring and evaluation

17. (1) The board shall assess its own performance and that of the management in the discharge of their duties and responsibilities and shall —

(a) develop and submit to the Central Bank a self-assessment questionnaire in the manner as may be prescribed; and
(b) develop and submit to the Central Bank an annual self-assessment board evaluation, not later than three months after the end of each financial year.

(2) A mortgage refinance company that contravenes sub-regulation (1) shall be subject to the prescribed administrative sanctions.

Appointment of the Chief Executive

18. (1) Every mortgage refinance company shall have a chief executive officer who shall be appointed by the board and whose terms and conditions of service shall be determined by the board in the instrument of appointment.

(2) A chief executive officer shall be a member of the board.

(3) No chief executive officer shall be appointed without the prior approval of the Central Bank.

(4) No person shall be appointed as chief executive officer of a mortgage refinance company unless such person has at least five years' experience in banking business, economics, law, or finance at senior management level with experience in microfinance practices or such other conditions as may be determined by the board.

(5) The board of every mortgage refinance company shall report to the Central Bank the resignation or removal of the chief executive officer of its mortgage refinance company within seven days of such resignation or removal.

Responsibilities of the Chief Executive Officer

19. The Chief Executive shall undertake the following key responsibilities —

(a) ensure that the policies spelt out by the board in the institution's overall corporate strategy of the institution are implemented;
(b) identify and recommend to the board competent officers to manage the operations of the institution. In the fulfilment of this duty, the Chief Executive should ensure that the institution's human resources policy is adhered to;
(c) co-ordinate the operations of the various departments within the institution;
(d) establish and maintain efficient and adequate internal control systems;
(e) design and implement the necessary management information systems in order to facilitate efficient and effective communication within the institution; and
(f) ensure that the board is frequently and adequately apprised about the operations of the institution through presentation of relevant board papers, which must cover, but not limited to, the following areas —

(i) actual performance compared with the past performance and the budget together with explanations of all the variances.
(ii) capital structure and adequacy.
(iii) advances performance in particular problem loans, losses, recoveries and provisions.

(iv) income and expenses.
(v) funding: sources and distribution profile.
(vi) all insider transactions that benefit directly or indirectly any officer or shareholder of the institution.
(vii) report on violation of laws and remedial activities undertaken to ensure compliance with the banking laws and CBK guidelines.
(viii) large exposures.
(ix) non-performing insider loans.
(x) CBK, external, internal and Audit Committee reports.
(xi) any other areas relevant to the institution's operations.
(xii) ensure that the institution complies with all the relevant banking and other applicable laws in the execution of its operations.
(xiii) any other duties as may be assigned by the board from time to time.

Integrity of Records and Transactions

20. (1) Accounting records and reports shall be complete and accurate.

(2) Directors, chief executive officers, senior officers, employees and agents of a mortgage refinance company shall not make entries or allow entries to be made for any account, record or document of the mortgage refinance company that are false and would obscure the true nature of the transaction or to mislead the true authorization limits or approval authority of such transactions.

(3) All records and computer files or programmes of the mortgage refinance company, including personnel files, financial statements and customer information shall be accessed and used only for management purposes for which they were originally intended.

Confidentiality

21. (1) Directors, chief executive officers, senior officers, employees and agents of a mortgage refinance company shall take precaution to protect the confidentiality of customer information and transactions.

(2) No director, chief executive officer, senior officer, employee or agent of a mortgage refinance company shall during, or upon and after termination of engagement or employment with the mortgage refinance company (except in the proper course of his duty and or with the mortgage refinance company's written consent) divulge or make use of any secrets, copyright material, or any correspondence, accounts of the mortgage refinance company or its customers.

(3) No person shall in any way use information so obtained for financial gain.

Reckless and fraudulent activities

22. (1) No mortgage refinance company shall —

(a) allow a credit facility or guarantee to be outstanding;
(b) incur any liability;
(c) enter into any contract or transaction; or
(d) conduct its business or part thereof;

in a fraudulent or reckless manner detrimental to the mortgage refinance company's interest or the interest of its customers or the general public.

(2) In relation to sub-regulation (1) —

"reckless" means:

(a) transacting the business beyond the limits set under the Act;
(b) offering facilities contrary to any guidelines or regulations issued by the Central Bank;
(c) failing to observe the mortgage refinance company's policies as approved by the board of directors; or
(d) misuse of position or facilities of the mortgage refinance company for personal gain;

"fraudulent" means intentional deception, false and material misrepresentation, concealment or non-disclosure of a material fact or misleading conduct, device or contrivance that results in loss and injury to the mortgage refinance company with an intended gain to the officer of the mortgage refinance company or to a customer of the mortgage refinance company.

Places of business

23. (1) No branch of a mortgage refinance company shall be opened, relocated or closed without the prior written approval of the Central Bank.

(2) The Central Bank may prescribe in guidelines other forms of places of business and the manner in which they may be opened, relocated or closed.

(3) The guidelines shall provide a framework for notification to the Central Bank of places of business whose opening, relocation or closure of places do not require the approval of the Central Bank.

Use of agents

24. (1) The Central Bank may prescribe a framework for the appointment and operation of agents by mortgage refinance companies.

(2) A mortgage refinance company shall be liable for the acts or omissions of its agents if the acts or omissions relate to the agency business.

PART V: LOANS

Credit Extensions

25. (1) A mortgage refinance company may extend loans to primary mortgage lenders who are in good standing.

(2) A primary mortgage lender is considered to be in good standing if it —

(a) meets its payment obligations;
(b) has not received a qualified opinion on its most recent audited financial statements;
(c) meets the capital adequacy requirements;
(d) complies with regulatory requirements; and
(e) meets any other conditions as may be set by the Central Bank and a mortgage refinance company.

(3) A mortgage refinance company shall set single borrower limits in its credit policy and the limits shall comply with any requirement prescribed by the Central Bank.

(4) A mortgage refinance company shall extend a loan to a primary mortgage lender subject to its credit policy and any requirements of the Central Bank and shall provide clear disclosures of the terms and conditions of the loan to the borrower including —

(a) charges and fees, if any;
(b) interest rate to be charged and whether on a reducing balance or not; and
(c) total cost of credit which shall include the principal amount, interest, fees and charges.

(5) A mortgage refinance company shall not grant direct finance to any primary mortgage lender or permit to be outstanding any advance or credit facility, so that the total value of the advances or credit facilities in respect of direct finance to that primary mortgage lender at any time exceeds twenty-five per cent of its core capital.

Provided that the Central Bank may approve a higher limit for any primary mortgage lender for good cause shown and on such conditions as the Central Bank may specify.

(6) The Central Bank shall approve the criteria for mortgages eligible for refinancing under these Regulations.

Qualified Collateral

26. (1) A mortgage refinance company loan shall be fully secured by qualified collateral.

(2) A loan shall be deemed to be fully secured when —

(a) in the case of eligible loans or housing loans, the qualified collateral covers at least one hundred twenty percent of that loan amount;
(b) it is secured by cash or government securities of equal amount; and
(c) any other qualified collateral as may be approved by the Central Bank.

(3) The qualified collateral shall be limited to the following assets —

(a) assignment of receivables;
(b) lien or assignment of a portfolio of first ranking charges or mortgages over owner-occupied properties which are fully insured and not in arrears;
(c) securities issued, insured or guaranteed by the Government of Kenya;
(d) cash deposits; or
(e) any other qualified collateral as may be determined by the Bank from time to time.

(4) The mortgage refinance company shall —

(a) assess the book value of the qualified collateral securing the outstanding loans at least every six (6) months.
(b) require primary mortgage lenders to provide additional qualified collateral to compensate for any diminution in the market value or book value of the pledged collateral securing their outstanding loans.
(c) require primary mortgage lenders to substitute qualified collateral if any security or residential mortgage securing an outstanding loan matures, redeemed, defaults, or becomes more than ninety (90) days delinquent.
(d) require the primary mortgage lenders to provide such additional information as it may reasonably require.
(e) carry out such site inspection as may be necessary or reasonable to verify the information provided by the primary mortgage lender.

(5) The outstanding loans to a mortgage refinance company shall become due and payable if the primary mortgage lender is unable to provide sufficient qualified collateral to support its outstanding loans.

PART VI: RISK CLASSIFICATION AND PROVISIONING OF LOANS

Loan review function of mortgage refinance company

27. (1) Every mortgage refinance company's loan review function shall ensure that —

(a) the loan portfolio and lending function conforms to a sound written lending policy, which has been approved and adopted by the board;
(b) management and the board are adequately informed regarding credit risk, among other risks and risk management control effectiveness;
(c) problem accounts are identified properly and on a timely basis and internally classified in accordance with the classification criteria in these regulations; and

(d) appropriate and adequate level of provisions for potential loss are made and maintained at all times.

(2) A mortgage refinance company that contravenes sub-regulation (1) shall be liable to such administrative sanction as the Central Bank may prescribe.

Review and classification of Loans

28. (1) Every mortgage refinance company shall review, classify and appropriately make provisions for its loan portfolio at least once every three months.

(2) Every mortgage refinance company shall classify loans and advances in the manner as may be prescribed by guidelines prescribed by the Central Bank.

(3) Where a mortgage refinance company has granted multiple loans to a single borrower, and any one of such loans is non-performing, the mortgage refinance company shall evaluate every other loan to that borrower and place such loans on non-performing status accordingly.

(4) Every mortgage refinance company shall classify a group loan as past due in its entirety, when any of the members of the group defaults and the amount due is not covered by the members of the group:

Provided that if the amount due is guaranteed by the members of the group, only the portion in arrears shall be accounted for as past due and the group members shall pay up for the guarantee.

(5) A mortgage refinance company that contravenes this Regulation is liable to such administrative sanction as may be prescribed by the Central Bank.

Classification of Renegotiated or Restructured Loans

29. (1) Every mortgage refinance company shall classify a renegotiated or restructured loan in the Substandard category unless —

(a) all past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to ‘Normal’ classification.
(b) all past due interest is repaid in full at the time of renegotiation in which case it may revert to ‘Watch’ classification.

(2) A renegotiated or restructured loan classified as doubtful or loss shall continue to be classified as doubtful or loss unless —

(a) all past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to ‘Watch’ classification or;
(b) all past due interest is repaid in full at the time of renegotiation in which case it may revert to ‘Substandard’ classification; and

(c) all past due principal and interest is repaid in full at the time of renegotiation and there has been consistent repayment of three instalments in which case it may revert to ‘Normal’ classification.

(3) No mortgage refinance company shall restructure or renegotiate any loan or credit facility more than twice over the life of the original loan or credit facility.

(4) Any loan or credit facility restructured for the second time shall be classified as substandard if all past due principal and interest is repaid in full at the time of renegotiation:

Provided that if all past due interest is repaid in full at the time of renegotiation, the loan or credit facility shall be classified as doubtful.

(5) A person who contravenes this regulation is liable to such administrative sanction as may be prescribed by the Central Bank.

Loan provisioning

30. (1) In determining the amount of potential loss in specific loans or in the aggregate loan portfolio, every mortgage refinance company shall be guided by the following minimum provisioning percentage —

(a) For loans classified “Normal”, 1%;
(b) For loans classified “Watch”, 5%;
(c) For loans classified “Substandard”, 25%;
(d) For loans classified “Doubtful”, 75%; and
(e) For loans classified “Loss”, 100%.

(2) Where the impairment charges computed under International Financial Reporting Standards (IFRS) are lower than provisions required under these Regulations, the excess provisions shall be treated as an appropriation of retained earnings.

(3) Where the impairment charges computed under IFRS are higher than provisions required under these Regulations, the IFRS impairment charges shall be considered adequate for the purposes of these Regulations.

(4) A mortgage refinance company that contravenes this Regulation is liable to such administrative sanction as the Central Bank may prescribe.

Write-off of loans

31. (1) A mortgage refinance company shall write-off a loan or a portion of a loan from its balance sheet when —

(a) the mortgage refinance company loses control of the contractual rights over the loan;
(b) all or part of a loan is deemed uncollectible or there is no realistic prospect of recovery;

(c) the borrower becomes insolvent; or
(d) efforts to collect debt are abandoned for any other reason.

(2) Every mortgage refinance company shall write off a loan or a portion of a loan classified as loss, within 180 days of their being classified as loss, if there are no recoveries within that period.

(3) A mortgage refinance company that contravenes this Regulation is liable to such administrative sanction as may be prescribed by the Central Bank.

Review of assets and reporting

32. (1) Every mortgage refinance company shall, at least every year, review its assets and make necessary provisions as the need arises, if an actual loss of an asset occurs or when the recoverable amount of the asset is less than its carrying value.

(2) Every mortgage refinance company shall submit a copy of the review report to the Central Bank within fifteen days from the date of review.

(3) Every mortgage refinance company shall submit returns in such manner as may be prescribed by the Central Bank.

(4) A mortgage refinance company that fails to submit accurate information to the Central Bank on a timely basis is liable to such administrative sanction as may be prescribed by the Central Bank.

(5) A mortgage refinance company that contravenes this Regulation is liable to such administrative sanction as may be prescribed by the Central Bank.

Limit on interest recoverable from non-performing loans

33. (1) A mortgage refinance company shall be limited in what it may recover from a debtor with respect to a non-performing loan to the maximum amount under sub-regulation (2).

(2) The maximum amount referred to in sub-regulation (1) is the sum of the following—

(a) the principal owing when the loan becomes non-performing;
(b) interest, in accordance with the contract between the debtor and the mortgage refinance company, not exceeding the principal owing when the loan becomes non-performing; and
(c) expenses incurred in the recovery of any amounts owed by the debtor.

(3) If a loan becomes non-performing and then the debtor resumes payments on the loan and then the loan becomes non-performing again, the limitation under paragraphs (a) and (b) of sub-regulation (1) shall be determined with respect to the time the loan last became non-performing.

(4) This Regulation shall not apply to limit any interest under a court order accruing after the order is made.

A mortgage refinance company shall not recover through a court of law any interest which is affected by the requirements of this Regulation.

(5) In this Regulation —

(a) "debtor" includes a person who becomes indebted to a mortgage refinance company because of a guarantee made with respect to the repayment of an amount owed by another person;
(b) "loan" includes any advance, credit facility, financial guarantee or any other liability incurred on behalf of any person; and
(c) a loan becomes non-performing when principal or interest is due and unpaid for ninety days or more; or interest payments for ninety days or more have been re-financed, or rolled-over into a new loan.

PART VII: CAPITAL REQUIREMENTS AND LIQUIDITY MANAGEMENT

Shareholding limit

34. (1) A mortgage refinance company shall at all times maintain capital requirements as set out in the Second Schedule.

(2) No shareholder of a mortgage refinance company shall directly or indirectly hold more than twenty-five percent of the shares of the mortgage refinance company unless it is a public entity or a multilateral development bank.

(3) The Central Bank may exempt any other person from the provisions of this Regulation on such condition and after meeting such requirements as the Central Bank may specify.

(4) A mortgage refinance company shall maintain such leverage ratio as may be specified by the Central Bank in the Kenya Gazette.

Market risk

35. A mortgage refinance company shall not engage in activities that may lead it to incur foreign exchange, commodity or equity risks, or use financial derivatives except as hedging instruments.

Liquidity management

36. (1) A mortgage refinance company shall —

(a) adopt sound and prudent liquidity management and funding policies; and

(b) maintain sufficient liquid assets for meeting its maturing obligations and liabilities.

(2) For purposes of sub-regulation (1), liquid assets include —

(a) notes and coins which are legal tender in Kenya;
(b) balances held at the Central Bank;
(c) balances at other banks in Kenya after deducting therefrom balances owed to those other banks;
(d) balances at banks abroad withdrawable on demand or short notice and money at call abroad after deducting therefrom balances owed to banks abroad where the balances and money at call and short notice are denominated in convertible currencies; and for the purposes of this paragraph "bank abroad" means a bank outside Kenya or an office outside Kenya of any bank;
(e) Kenya treasury bills and bonds of a maturity not exceeding ninety-one days which are freely marketable and re-discountable at the Central Bank; and
(f) such other assets as the Central Bank may specify.

Liquidity risk management plan

37. (1) Every mortgage refinance company shall plan and fund its liquidity requirement over specific time periods as set by the mortgage refinance company.

(2) A liquidity risk management plan shall, at a minimum, address the following —

(a) management structures and information systems;
(b) measuring and monitoring net funding requirements;
(c) contingency planning schemes; and
(d) internal controls for liquidity management.

(3) A mortgage refinance company that fails to comply with this Regulation is liable to such administrative sanctions as the Central Bank may prescribe.

Risk Management

38. (1) A mortgage refinance company shall establish a robust risk management framework that covers all plausible risks to its business including —

(a) strategic risk;
(b) credit risk;
(c) liquidity risk;
(d) market risk;
(e) operational risk;
(f) information and communication technology risk;
(g) reputational risk; and
(h) compliance risk.

(2) A mortgage refinance company shall identify, assess, manage, control and mitigate risks.

(3) A mortgage refinance company shall comply with any risk management guidelines that may be issued by the Central Bank.

Group structure

39. The Central Bank may issue guidelines on group structures of mortgage refinance companies and such guidelines may provide for —

(a) powers of the central bank over group entities;
(b) consolidated supervision;
(c) reporting on consolidated basis;
(d) restrictions relating to group structures; and
(e) such other requirements as the central bank may prescribe.

Prohibited activities

40. A mortgage refinance company shall not —

(a) engage, alone or with others, in wholesale or retail trade, including the import or export trade, except in the course of the satisfaction of debts due to it; or
(b) acquire or hold, directly or indirectly, any part of the share capital of, or otherwise have a beneficial interest in, any financial, commercial, agricultural, industrial or other undertaking where the value of the mortgage refinance company's interest would exceed in the aggregate twenty-five per cent of the core capital of that mortgage refinance company.

Provided that an institution may take an interest in such an undertaking in satisfaction of a debt due to it and such interest shall be disposed of within such time as the Central Bank may allow.

(c) purchase or acquire or hold any land or any interest or right therein except such land or interest as may be reasonably necessary for the purpose of conducting its business, or for housing or providing amenities for its staff, where the total amount of such investment does not exceed such proportion of its core capital as the Central Bank may prescribe.

Provided that a mortgage refinance company may let part of any building which is used for the purpose of conducting business.

(d) purchase non-performing loans or mortgages.

PART IX: INTERNAL CONTROLS

Internal Controls

41. (1) Every mortgage refinance company shall implement an effective internal control system that is consistent with the nature, complexity and risk inherent in their on- and off-balance sheet activities and that is designed to respond to changes in the mortgage refinance company's environment and circumstances.

(2) Every mortgage refinance company shall develop and maintain internal control systems and activities that shall form an integral part of the daily activities of a mortgage refinance company and shall consist of —

(a) a comprehensive financial, operational and compliance data and information, as well as external market information about the mortgage refinance company's operations and activities, events and market conditions that are relevant for decision making. The information shall be accurate, reliable, timely, and accessible and maintained in a consistent format;

(b) reliable information systems to cover all significant activities and operations of the mortgage refinance company including the use of data in an electronic form; and

(c) effective channels of communication to ensure that staff fully understand and adhere to policies and procedures affecting their duties and responsibilities and that other relevant information is communicated to the appropriate personnel.

(3) Every Mortgage refinance company shall review at least once a year, its internal controls with a view to appropriately addressing any new or previously uncontrolled risks and changing market conditions.

(4) A mortgage refinance company that contravenes this Regulation commits an offence.

(5) A mortgage refinance company that contravenes this Regulation is liable to such administrative sanctions as may be prescribed by the Central Bank.

Internal Audit

42. (1) Every mortgage refinance company shall —

(a) appoint an internal auditor; and

(b) have a written internal audit charter that specifies and enhances the standing of the internal audit purpose, authority and responsibility within the mortgage refinance company.

(2) A mortgage refinance company that contravenes sub-regulation (1) commits an offence.

(3) Every internal audit charter shall include —

(a) the objectives and scope of the internal audit function;

(b) internal audit's role and responsibility for governance, risk management, consulting services, and fraud investigations, among others; and
(c) internal auditor's position within the mortgage refinance company, its powers, responsibilities and relations with other control functions;

(4) Every mortgage refinance company shall review its audit charter at least once every year.

(5) The audit charter shall be approved by the Audit Committee and subsequently ratified by the board as part of their supervisory role before the start of each financial year.

(6) A mortgage refinance company that contravenes sub regulation (4) commits an offence and is liable to such administrative sanctions as may be prescribed by the Central Bank.

Audit Plan

43. (1) Every internal auditor shall prepare an annual audit work plan for the assignments to be performed during the next financial year and present it to the Audit Committee for review.

(2) The annual audit plan shall include —

(a) the scope;
(b) objective;
(c) timing;
(d) frequency; and
(e) resources of the planned internal audit work.

(3) The report of the internal auditor shall contain the findings and recommendations as well as the responses of the officers.

(4) The reports and working papers of the internal auditors shall be kept for at least five years.

(5) The board Audit Committee shall follow up its recommendations to verify whether the recommendations provided are implemented and the status of the recommendations shall be communicated to the board audit subcommittee at least on a quarterly basis and permanent coordination shall be maintained with all functional officers.

PART VIII: REPORTING REQUIREMENTS

Examinations

44. A mortgage refinance company shall make its books and records readily available for inspection and other supervisory purposes within a reasonable period upon request by the Bank.

Reporting Requirements, On-site and Off-Site Monitoring

45. (1) A mortgage refinance company shall be subject to the Central Bank's on-site and off-site monitoring and shall make periodic reports in accordance with the form, instructions and schedules specified by the Central Bank including —

(a) quarterly financial statements;
(b) semi-annual financial statements;
(c) annual audited financial statements; and
(d) any other information which, in the opinion of the Bank, is relevant to the discharge of its supervisory role under this regulation.

(2) The reports referred to above shall be submitted no later than 30 days after the end of each reporting period in the case of paragraph (a) and (b) and three months in the case of paragraph (c).

(3) The financial statements shall be prepared in accordance with international financial reporting standards and such accepted Kenyan reporting standards as may be prescribed.

(4) Any person who contravenes the provisions of this regulation commits an offence and is liable to a penalty as provided in the Act.

Financial year

46. The financial year of a mortgage refinance company shall be the period of twelve months ending on the 31st day of December in each year.

Appointment of external auditor

47. (1) A mortgage refinance company shall, in each year, appoint an external auditor who shall be a member of the Institute of Certified Public Accountants of Kenya in good standing and approved by the Bank.

(2) A mortgage refinance company shall not remove or change its external auditor except with the prior approval of the Bank.

(3) An external auditor shall make a report to the Board of Directors identifying key concerns with respect to the financial condition of the business.

(4) An external auditor shall, within three months after the end of each financial year, submit an audit report to the Bank, on the financial condition of the business.

(5) An external auditor's reports submitted under sub-regulation (4) shall contain information on the —

(a) solvency of the business;
(b) any violation of a condition imposed on the licence; and

(c) any other contravention of this Act or Regulations.

(6) The Bank may require an external auditor to undertake such additional duties as may be determined from time to time.

(7) If the external auditor of a mortgage refinance company, in the course of the performance of his duties under this Act, is satisfied that —

(a) there has been a serious breach of or non-compliance with the provisions of the Act, or the regulations, guidelines or other matters prescribed by the Bank;
(b) a criminal offence involving fraud or other dishonesty has been committed by a mortgage refinance company or any of its officers or employees; or
(c) losses have been incurred which reduce the core capital of a mortgage refinance company by fifty per cent or more,

shall immediately report the matter to the Bank.

(8) If an external auditor of a mortgage refinance company fails to comply with the requirements of the Act or Regulations, the Bank may remove the auditor from office and appoint another auditor.

Form of accounts

48. (1) All entries in any books and all accounts kept by a mortgage refinance company shall be recorded and kept in the English language, using the system of numerals employed in Government accounts.

(2) The Central Bank may, at any time, issue directions to a mortgage refinance company requiring it to maintain such books, records or information, in addition to any books, records or information then already maintained by it, as the Central Bank may consider to be necessary.

(3) The financial statements shall be in accordance with international financial reporting standards, including applicable consolidated accounting principles for groups.

Accounts to be exhibited

49. (1) Every mortgage refinance company shall —

(a) exhibit throughout the year in a conspicuous position in every office and branch in Kenya a copy of its last audited financial statements which shall be in conformity with the minimum financial disclosure requirements prescribed from time to time by the Central Bank together with the full and correct names of all persons who are officers of the mortgage refinance company in Kenya; and

(b) within three months of the end of each financial year, cause a copy of the balance sheet and last audited income statements for that financial year to be published in a newspaper with wide circulation.

(2) The financial statements shall be in keeping with International Financial Reporting Standards (IFRS), including applicable consolidated accounting principles for groups.

Uniform Underwriting Standards

50. A mortgage refinance company shall set and uphold underwriting standards for the purpose of granting a loan to a primary mortgage lender.

Information sharing

51. The Bank may disclose any information received in the performance of its duties or responsibilities under the Act to any financial regulatory authority, fiscal or tax agency or fraud investigations agency within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Bank or the requesting financial regulatory authority, fiscal or tax agency or fraud investigations agency.

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement.

Powers of Central Bank to advise and direct

52. (1) If, at any time, the Central Bank has reason to believe that —

(a) the business of a mortgage refinance company is being conducted in a manner contrary to or not in compliance with the requirements of the Act, these Regulations or guidelines issued by the Central Bank or in any manner detrimental to or not in the best interests of its creditors or members of the public; or
(b) an institution, any of its officers or other person participating in the general management of the mortgage refinance company is engaged in any practice likely to occasion a contravention of any of the provisions of the Act, these Regulations or guidelines issued,

the Central Bank may —

(i) give advice and make recommendations to the mortgage refinance company with regard to the conduct of its business generally;
(ii) issue directions regarding measures to be taken to improve the management or business methods of the mortgage refinance company or to secure or improve compliance with the requirements of the Act, the Regulations or guidelines issued or any other written law or regulations;

(iii) in any case to which paragraph (b) applies, issue directions to the institution, officer or other person to cease such practice;

(iv) appoint a person, suitably qualified and competent in the opinion of the Central Bank, to advise and assist the mortgage refinance company generally or for the purposes of implementing any directions under subparagraphs (ii) and (iii) and the advice of a person so appointed shall have the same force and effect as a direction made under subparagraphs (ii) and (iii) and shall be deemed to be a direction of the Central Bank.

(2) The Central Bank may, before issuing a direction under sub-regulation (1), serve upon the mortgage refinance company, officer or other person, a notice of such intent specifying the reasons therefor and requiring the mortgage refinance company, officer or other persons, within such period as may be specified in the notice, to show cause why such direction should not be issued.

(3) A mortgage refinance company which receives a direction under the provisions of this regulation shall comply with the direction within such period as may be specified in the direction and, if so required, shall produce evidence that it has done so.

(4) The Central Bank may issue directions to mortgage refinance companies generally for the better carrying out of its functions and in particular, with respect to —

(a) the standards to be adhered to by a mortgage refinance company in the conduct of its business; and

(b) guidelines to be adhered to by mortgage refinance companies in order to maintain a stable and efficient banking and financial system.

Power to intervene in management

53. (1) The Central Bank may intervene in the management of a mortgage refinance company in the following circumstances —

(a) if the mortgage refinance company fails to meet any financial obligation, when it falls due including an obligation to pay any creditor;

(b) if a petition is filed, or a resolution proposed, for the winding up of the mortgage refinance company or if any receiver or receiver and manager or similar officer is appointed in respect of the mortgage refinance company or in respect of all or any part of its assets;

(c) if the auditor of a mortgage refinance company makes a report to the Central Bank that a mortgage refinance company has violated the law in a serious manner or conducts its business in a detrimental way;

(d) if the Central Bank discovers (whether on an inspection or otherwise) or becomes aware of any fact or circumstance which, in the opinion of the Central Bank, warrants the exercise of the relevant power in the interests of the mortgage refinance company or its creditors;

(e) if the mortgage refinance company is significantly undercapitalized; or
(f) if the mortgage refinance company fails —

(i) to submit a capital restoration plan or a plan to resolve all deficiencies as directed by the Central Bank; or
(ii) to add more capital, and it fails, neglects or refuses to comply, with an order to implement a plan of correction.

(2) The Central Bank shall take over the management of a mortgage refinance company and may appoint an officer of the Bank or any other person to manage the mortgage refinance company in such manner, for such purpose and for such period as may be prescribed in guidelines.

Enforcement and Administrative Sanctions

54. (1) The Bank may order a mortgage refinance company to submit within forty-five days, a capital restoration plan to restore the capital adequacy should it fall below the set limit or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Bank;

(2) The Bank may impose any or all of the following administrative sanctions with regard to a mortgage refinance company that fails to comply with the Act, these regulations or its directives and against its board of directors, or its officers —

(a) monetary penalty on a mortgage refinance company, its directors, officers or employees responsible for non-compliance in such amounts as may be determined by the Bank;
(b) prohibition from declaring or paying dividends;
(c) suspension of lending and investment operations;
(d) suspension of capital expenditure;
(e) suspension of issuance of debt instruments;
(f) suspension from office of the defaulting director, officer or employee;
(g) disqualification from holding any position or office in any licensed or financial institution in Kenya;
(h) undertake more frequent inspections of that mortgage refinance company;
(i) order the mortgage refinance company to submit to the Central Bank, within forty-five days, a capital restoration plan to restore the mortgage refinance company to the capital adequacy or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Central Bank;
(j) at the expense of the mortgage refinance company, appoint a person suitably qualified and competent, in the opinion of the Central Bank, to advise and assist the mortgage refinance company in designing and implementing a capital restoration plan or other corrective action plan under paragraph (i), and the person appointed shall regularly report to the Central Bank on the progress of the plan;
(k) impose restrictions on growth of assets of the mortgage refinance company;

(l) revocation of the licence; and
(m) Any other action as the Bank may consider appropriate.

Voluntary Liquidation

55. (1) A mortgage refinance company may, with the approval of the Central Bank, voluntarily liquidate itself if it is able to meet all its liabilities.

(2) An application for the Central Bank's approval for the purposes of sub-regulation (1) shall be in such form as may be prescribed.

(3) The Central Bank may, upon receipt of an application under sub regulation (2), approve the application if satisfied as to the solvency of the mortgage refinance company.

(4) Where the Central Bank approves an application by a mortgage refinance company under this Regulation, such mortgage refinance company shall forthwith cease all its operations except such activities as are incidental to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

(5) Where a mortgage refinance company goes into liquidation under this regulation —

(a) the liability of the shareholders of the mortgage refinance company for uncalled subscriptions to the capital stock of the mortgage refinance company shall continue until the end of the liquidation process; and
(b) the mortgage refinance company shall first discharge its liability to its secured creditors and thereafter rank all other creditors in accordance with the provisions of the Companies Act.

(6) The Central Bank shall upon approval of a voluntary liquidation, follow up with the mortgage refinance company to ensure smooth execution of the liquidation process.

FIRST SCHEDULE

FORM CBK MRC 1-1 **(Regulation 4(1))**

APPLICATION FOR A LICENCE TO CONDUCT THE BUSINESS OF A MORTGAGE REFINANCE COMPANY

NB: This form should be submitted, duly completed, accompanied by the complete set of documents required under Part III of these regulations

1. Name of Mortgage Refinance Company.

   ……………………………………...

2. Physical Address of Head Office: L.R. No……..……….. Street: …………………… Building & Town/City…………………………………………..

3. Postal Address and Postal Code...................………........……………………………………

   Telephone No: .... P.I.N.: ……………………………………......

   E-mail address……………………...……………………….……………………………..

4. Date of Incorporation ....……………………...Certificate Reg. No...….........................

5. Former name(s) (if any) by which the mortgage refinance company has been known:………...

6. **Particulars of shareholding:**

Present & Former Name(s) of share-holder(s)	Postal Address of shareholder(s)	PIN No. & Identification No.	Incorporation or Registration Details	No. of shares held/allocated

7. **Particulars of Officers:**

A. Directors

	Name of Proposed Director	Age and Nationality	Proposed Capacity (Executive /Non-Executive)	ID No./ Passport No.	Qualification (academic and professional)	Postal and E-mail address	Tele-phone contacts	Experience /previous employment	Other Current Director ship (s)
1.									
2.									
3.									
4.									

(Attach all necessary supportive documentation; please indicate N/A where requested details are not applicable)

B. Senior Officers

	Name of Proposed Senior Officer	Age and Nation -ality	Proposed Designation	ID No./ Passport No.	Qualification (academic and professional)	Postal and E-mail address	Tele-phone contacts	Experience /previous employment	Current Position
1.									
2.									
3.									
4.									

(Attach all necessary supportive documentation; please indicate N/A where requested details are not applicable)

8. Names of the proposed mortgage refinance company's –

a. bankers, branch and their address

………………………………………………………………………………

b. bankers, branch and their address

………………………………………………………………………………

c. name of law firm and their address

………………………………………………………………………………

d. name of corporate secretary and their address

………………………………………………………………………………

9. Sources of funds for the proposed business

………………………………………………………………………………………..
…………………………………………………………………………………………
…………………………………………………………………………………………
………………………………………………………………………………

10. Does the mortgage refinance company hold, or has it ever held any authority from a supervisory body to carry on any business activity in Kenya or elsewhere?

……………………………………………………………………………………………
………………………………………………………………………………………

If any such authority has been revoked, give particulars

…………………………………………………………………………………………
……………………………………………………………………………………………
………………………………………………………………………………………

11. Has the mortgage refinance company been put under receivership in the past or made any compromise or arrangement with its creditors in the past or otherwise failed to satisfy creditors in full?

……………………………...

If so, give particulars….…………...

12. Has the mortgage refinance company been the subject of investigation by a government agency during the last three years

?……………………………………………………………………………...............................
…………………………………………………………………………………………………

13. Is the mortgage refinance company engaged or does it expect to engage in Kenya or elsewhere in any litigation which may have a material effect on the resources of the mortgage refinance company?...
14. If YES, give particulars………………...

DECLARATION

We, the undersigned, being directors of the mortgage refinance company, declare that to the best of our knowledge and belief, the information contained herein is complete and accurate. We also certify that the capital to be invested in the mortgage refinance company is not from proceeds of crime.

Director (Name) ……………………………..…….………..….................

Signature…………………………….….……Date..

Director (Name).…………..…………………………..…..………………………

Signature..Date……………………………

FORM CBK MRC 1-2 **(Regulation 4 and 7)**

FIT AND PROPER FORM FOR DIRECTORS AND SENIOR OFFICERS

NB: This form should be duly completed, accompanied by the complete set of documents required under Part III and submitted to the Bank.

1. **THE MORTGAGE REFINANCE COMPANY**

Name...

Type…………………………………………………………………………………

Proposed position……………………..…………………………………………….

2. PERSONAL INFORMATION

a) Surname ....
Other Names ....

b) Previous Names (if any) by which you have been known:
....
....
Reasons for change of names……………………...…………

c) Year and Place of birth: ....
d) Nationality and how acquired…………………….......................
e) Personal Identification Number (PIN) ………...............................
f) (i) Identification Card number and date of issue …...........................
(ii) Passport number, place and date of issue………………………...
g) Postal Address: ……………………..
h) Previous Postal Addresses (if any) …………………….....................

(i) Physical Address..
(ii)Telephone numbers…………..…………………………………

Educational Qualifications

…………………………………………………………

	Qualifications	**Year Obtained**	**Examining Body**	**Grade Obtained**
1.				
2.				
3.				

Professional Qualifications and years obtained
………………………………………………………………

	Qualifications	Year Obtained	Examining Body	Grade Obtained
1.				
2.				
3.				

h) Name(s) of your bankers during the last 5 years
……………………………………………………………………………………
……………………………………………………………………………………
……………………………………………………………………………………

i) Responsibilities of Proposed position

3. EMPLOYMENT/ BUSINESS RECORD

Period	Name of Employer/ Business and	Position Held & Dates	Responsibilities	Reasons for Leaving (where applicable)

4. DESCRIPTION OF PAST AND PRESENT ACTIVITIES IN KENYA AND ABROAD

4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

Company's Name	Certificate of registration No.	Number of Shares held	% of Shareholding

4.2 DIRECTORSHIPS

Company's Name	Certificate of registration No.	Executive or Non-executive	Position held	Date of appointment	Reasons for leaving

4.3 MEMBERSHIP TO PROFESSIONAL BODIES

Name of the institution	Membership No.	Position held	Current status of membership	Reasons for leaving

5. BORROWINGS

5.1 Have you ever defaulted in your financial obligations in the last five years?...

If yes, give details

……………………………………………………………………………………

5.2 Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction ……………………..

………………………………………………………………………………………

5.3 Have you ever been disqualified, under any legislation or regulation from acting as a director or serving in a managerial capacity?

………………………………………………………………………….......…..

…………………………………………………………………………………..

5.4 Have you, in any country, ever been dismissed from any office or employment, or been asked to resign or resigned from employment or position of trust or fiduciary appointment? If so give particulars

………………………...

....

5.5 Have you ever been diagnosed as being mentally unfit or of unsound mind?

…..............................…………..………………………….………………………

…………………………………………………………………………………………

5.6 Have you ever been adjudged bankrupt? ……………………………………………

If so, give particulars

………………………..…………………………

………………………………………………………………………………………

5.7 Have you ever been convicted of fraud or theft by a court of law in any country?

If so, give particulars

………………………...………….............

5.8 Has any entity with which you were associated as a director, shareholder or manager in any country been in financial distress, made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within three year after you ceased to be associated with it?

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

………………………...……………………………..

…………………………………………………………………………………………

5.9 Indicate the names, postal and e-mail addresses, telephone numbers and positions of at least three individuals of good standing who would be able to provide a reference on your personal and professional integrity. The referees must not be related to you, and should have known you for at least five years.

	Name of Referee	**Postal Address**	**E-mail address**	**Tel no. (s)**	**Position (where applicable)**	**Relationship with applicant**
1						
2						
3						

5.10 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise for the position(s) held/to be held? The omission of material facts may represent the provision of misleading information

…………………………………………………………………………………………

6. **DECLARATION**

I am aware that it is an offence to knowingly provide any information, which is false or misleading. I am also aware that omitting material information intentionally shall be construed to be an offence.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Bank should be aware.

I undertake to inform the Bank of any material changes to the information provided herein

NAME........……………................... POSITION HELD ……………………............................

DATED........…………….………........... AT.................. THIS DAY OF…………….................…

SIGNED........…………..

(Applicant)

(This declaration must be signed <u>in the presence</u> of the witness named below)

WITNESSED BEFORE ME:

COMMISSIONER FOR OATHS/MAGISTRATE

Name: ……………………...

Signature: ………………..

Address: …………………...

Date………………….and Stamp…………………………………………………………………...

N.B. The information given in response to this questionnaire shall be kept confidential by the supervisory authorities, except in cases provided for by law.

……………………………………..

FORM CBK MRC 1-3 **(Regulation 4 and 7)**

FIT AND PROPER FORM FOR SIGNIFICANT SHAREHOLDERS

NB: This form should be duly completed, accompanied by the complete set of documents provided under Part III.

1. **THE MORTGAGE REFINANCE COMPANY**

Name...
....
Registration No. ....
....

2. **INFORMATION**

a) Name of the corporate body
……………..…………………………………………………………
b) Previous Names (if any) by which you have been known:
....
c) Year and date of incorporation
…………..…………………………………………..…………………
d) Country of incorporation
……………………………...…………..……………………………
e) Personal Identification Number...

f) Contacts details ....

g) Name(s) of your bankers over the last 5 years ……………………………

3. DESCRIPTION OF PAST AND PRESENT ACTIVITIES IN KENYA AND ABROAD

3.1 SOURCES OF FUNDS

1. Please provide details of the actual source(s) of funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the mortgage refinance company.
   a) …………………………………………………
   b) …………………………………………………
   c)……………………………………….................

2. Declaration on the sources of funds

   Please provide a sworn statement that the funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the mortgage refinance company are not from proceeds of crime.

4. DECLARATION

I am aware that it is an offence to knowingly provide any information, which is false or misleading. I am also aware that omitting material information intentionally shall be construed to be an offence.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Bank should be aware.

I undertake to inform the Bank of any material changes to the information provided herein

NAME: ……………………..

DATED AT:………………..…THIS……………..…DAY OF……...…… 20…………….

WITNESSED BEFORE ME:

SIGNED ……………………………........ (Applicant)

COMMISSIONER FOR OATHS/MAGISTRATE

Name: …………………...

Signature: ………………...

Address: …………………...

Made on …………………………………………………20……..

SECOND SCHEDULE

(Regulation 13)

CAPITAL REQUIREMENTS FOR MORTGAGE REFINANCE COMPANIES

(a) A minimum core capital of not less than One billion Kenya Shillings (Ksh. 1.0 billion);

(b) A core capital of not less than 10.5% of total risk weighted assets plus risk weighted assets and off-balance sheet items;

(c) A total capital of not less than 14.5% of its total risk weighted assets plus risk weighted assets and off-balance sheet items;

(d) The computation of risk weighted assets and off-balance sheet items shall be computed as may be determined by the Bank from time to time.

THIRD SCHEDULE

(Regulation 4 and 13)

PART A

CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY OF DIRECTORS AND SENIOR OFFICERS

a) For the purposes of determining the professional and moral suitability of persons, proposed to be directors and senior officers of a mortgage refinance company the Bank shall have regard to the following qualities, in so far as they are reasonably determinable —

   i) possession of relevant qualification, knowledge, skills and experience;
   ii) ability to recommend sound practices based on previous business experience;
   iii) ability to provide objective advice;
   iv) ability to avoid conflicts of interest in activities and commitments with other organizations

b) Without prejudice to the generality of the provisions of paragraph (a), the Bank, may have regard to the present and previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person —

   i) has been convicted of an offence of fraud or any other offence of which dishonesty is an element;
   ii) 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;
   iii) was a director or a senior officer of an institution that has been liquidated or is under liquidation or statutory management;
   iv) has taken part in any business practices that, in the opinion of the Bank, were fraudulent, prejudicial or otherwise improper (whether unlawful or not);
   v) 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 judgment;
   vi) has defaulted in the repayment of a loan for three consecutive months advanced by a licenced financial institution; and
   vii) has been adjudged bankrupt.

c) The Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person.

PART B

CRITERIA FOR DETERMINING MORAL SUITABILITY OF SIGNIFICANT SHAREHOLDERS

a) For the purposes of determining the moral suitability of significant shareholders of a mortgage refinance company the Bank shall have regard to the previous conduct and activities of the significant shareholder concerned in business or financial matters and, in particular, to any evidence that such person —

   i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
   ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or malpractices by persons engaged in the provision of banking, insurance, investment or other financial services.

b) Where the significant shareholder is a corporate entity, its directors and senior officers shall satisfy the criterion specified in paragraph (a) above.

c) The Bank may request any person or corporate entity to furnish such information as may be necessary in determining the moral suitability of significant shareholders.

FOURTH SCHEDULE

(Regulation 4 and 5)

FEES

a)	Application for a licence	Ksh. 5,000
b)	On the granting of a licence and annually thereafter	Ksh. 100,000

DR. PATRICK NJOROGE
GOVERNOR, CENTRAL BANK OF KENYA