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THE MICROFINANCE BILL, 2019

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SCHEDULE I

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Microfinance Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“agency” means—

- (a) an institution’s place of business operated within premises or structures owned or occupied by a third party by means of an agreement between the institution and the third party in the provision of microfinance bank business; or
- (b) an entity contracted by an institution and approved by the Central Bank or sub-contracted by such entity to provide the services of the institution on behalf of the institution, in such manner as may be prescribed by the Central Bank.

Provided that where such a third party or entity is regulated under any written law, prior approval to provide the services shall be sought from the regulator or the oversight authority;

“associate” means—

in relation to a natural person, means any person—

- (i) related to that person by marriage, affinity or consanguinity; or
- (ii) who is a partner or an employee of that person;

in relation to a company or other body corporate, means—

- (i) its non-operating holding company or its subsidiary;
- (ii) a subsidiary of its non-operating holding company;
- (iii) its holding company or its subsidiary;
- (iv) a subsidiary of its holding company;
- (v) a holding company of its subsidiary;
- (vi) any company in which an individual is a director; or
- (vii) any person who controls that company or body corporate, whether alone or with his associates or with other associates of the company or body corporate;

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**” or “**financial institution**” have the meanings respectively assigned to them in the Banking Act (Cap. 488);

“**beneficial owner**” means ownership directly or through one or more trustees, legal representatives, nominees, agents or other intermediaries;

“**branch**” means an institution’s place of business, used for the provision of microfinance bank business in Kenya and directly responsible to the head office of the institution for the conduct of business, and which is situated at a permanent location and address;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“**capital**” means paid-up share capital or, in the case of an institution incorporated outside Kenya, its assigned capital;

“**Central Bank**” means the Central Bank of Kenya established under Article 231 of the Constitution of Kenya;

“**charges**” means the fee, cost, expense and commission or any other payment by whatever name called levied by an institution to its customer for services rendered by that institution but does not include interest rates;

“**competent authority**” means the national authority empowered by law or regulation to license or supervise financial or non-financial entities;

“**control**” in relation to a company or other body corporate, includes—

- (a) to influence, whether directly or indirectly, the composition of at least half of the board of directors of the company or other body corporate;
- (b) to hold, directly or indirectly, whether personally or through a holding company or companies or subsidiaries thereof, or in any other way, an aggregate of fifty percent or more of the voting power of the company or body corporate, whether alone or with associates or with other associates of the company or other body corporate; or
- (c) the ability, in the opinion of the Central Bank, to exercise a dominant influence over the management or policies of the company or other body corporate on the basis of an

agreement or by any other means, regardless of the amount of formal ownership or voting rights;

“coordinator” means the authority among the competent authorities that is designated to coordinate the consolidated supervision and enforcement of microfinance banks, non-operating holding companies and their associates, which shall be the Central Bank;

“core capital” means shareholders equity in the form of issued and fully paid-up shares of common stock, plus all disclosed reserves, and fifty percent of unaudited after tax profits less goodwill or any other intangible assets;

“corporate governance” means the set of relationships between a company’s management, its’ Board, its’ shareholders and other stakeholders;

“current account” means an account maintained by a microfinance bank for and in the name of, or in a name designated by, a customer of the microfinance bank into which money is paid by or for the benefit of such customer and on which cheques and other bills of exchange may be drawn by, and transfers and other banking transactions made on the instructions of, the customer;

“deposit” means a sum of money received or paid on terms under which it shall be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, but does not include a sum of money which is paid as an advance or part payment under a contract for the sale, hire or other provision of property or service, where the sum is repayable only if the property or service is not sold, hired or otherwise provided;

“deposit-taking business” means microfinance bank business;

“deposit-taking microfinance institution” means microfinance bank;

“Director” means a member of the Board of Directors of a microfinance bank;

“disclosed reserves” include all reserves created or increased through share premiums, retained profits (after deducting all expenses, provisions, taxes and dividends) and general reserves if such disclosed reserves are permanent and unencumbered and thus able to absorb losses;

“group” means a licensed institution and its subsidiaries, non-operating holding companies and subsidiaries of its non-operating holding companies;

“institution” means a microfinance bank licensed under this Act;

“investment” means property acquired or expenditures made for the purpose of producing income or for some other form of return on capital;

“microfinance bank” means a company which is licensed to carry on microfinance bank business;

“microfinance bank business” means—

- (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice;
- (b) the accepting from members of the public of money on current account and payment on and acceptance of cheques;
- (c) the employing of money held on deposit or on current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money including the provision of short-term loans to small or micro enterprises or low income households; and
- (d) such other business activity as the Central Bank may prescribe;

“non-deposit-taking microfinance business” means a business, other than microfinance bank business as defined under this Act;

“non-executive director” means an individual not involved in the day-to-day management and not a full time salaried employee of an institution or of its subsidiaries. An individual in the full time employment of the non-operating holding company or its subsidiaries, other than the institution concerned, would also be considered to be a non-executive director of the institution concerned, unless such individual, by his conduct or executive authority, could be construed to be directing the day to day management of the institution and its subsidiaries;

“non-performing loan” means a loan or asset whose principal or interest has been due and unpaid for sixty days or more;

“non-operating holding company” means a locally or foreign-incorporated company, other than the institution, which has approved control of an institution and whose activities are limited to holding investments in subsidiaries, holding properties used by group members; raising funds to invest in, or to provide support to subsidiaries, raising funds to conduct its own limited activities, investing funds on behalf of the group, conducting the banking activities required for its own limited functions, and providing administrative, risk management and financial services to support the efficient operation of the group;

“officer” means a director or any other person, of whatever title, who carries out or is empowered to carry out functions relating to the overall direction, in Kenya, of an institution or takes part in the general management thereof, or a manager of a significant unit of an institution licensed under this Act;

“Outsourcing” means the use of a third party (either an affiliated entity within a group or an entity that is external to the group) to perform activities on a continuing basis that would normally be undertaken by the institution itself, now or in the future;

“place of business” means any premises, other than the head office, including a branch, agency, marketing office or such other premises as may be approved by the Central Bank, at which an institution transacts microfinance bank business and which is open to the public;

“public entity” means the National Government, or a public body declared by the Cabinet Secretary to be a public entity for the purposes of this Act;

“Shariah Compliant Product” means a product designed and offered in compliance with the principles of Islamic law;

“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 percent or more of the share capital of an institution or a corporate entity seeking to become an institution;

“significantly undercapitalized” in relation to an institution, means that the institution holds less than fifty percent of the prescribed capital requirements;

“undercapitalized institution” means an institution that does not fully comply with the prescribed capital requirements.

3. Application

(1) Subject to subsection (3), this Act shall apply to—

- (a) microfinance bank business;
- (b) Specified non-deposit taking business as may be prescribed under subsection (2)(b).

(2) For the purposes of subsection (1)(b), the Cabinet Secretary may make regulations—

- (a) specifying non-deposit taking business, business to which that subsection applies; and
- (b) prescribing requirements for the conduct of specified non-deposit taking business.

- (3) Any person conducting a non-deposit taking business shall not take any form of deposit or cash collateral from any person.
- (4) Any person who fails to comply with the requirement of subsection (3) commits an offence and shall be liable, upon conviction to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or both.
- (5) Except as provided in Section 4(1), this Act shall not apply to—
 - (a) a bank, a financial institution or a mortgage finance company licensed under the Banking Act (Cap. 488) except as may be provided in the said Act;
 - (b) a building society registered under the Building Societies Act (Cap. 489);
 - (c) the Kenya Post Office Savings Bank established under the Kenya Post Office Savings Bank Act (Cap. 493B);
 - (d) a Sacco society registered as a co-operative society under the Co-operative Societies Act or licensed under the Sacco Societies Act (Cap 490B); and
 - (e) a mortgage refinance company licensed under the Central Bank of Kenya Act (Cap 491).
- (6) Notwithstanding the provisions of subsection (5), where any of the entities referred to in that subsection is contracted by an institution as an agent to provide microfinance bank business on behalf of the institution, this Act shall apply to such entity to the extent of its position as an agent of the institution.

PART II – LICENSING PROVISIONS

4. Prohibition from carrying out microfinance bank business

- (1) No person shall carry out microfinance bank business without a licence issued under this Act.
- (2) A person who contravenes the provision of subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding three years, or to both.
- (3) The provisions of subsection (1) shall not apply to a duly approved agent conducting microfinance bank business on behalf of an institution.

- (4) Where an agent conducts microfinance bank business on behalf of an institution in accordance with this Act, the institution shall be liable for the acts or omissions of the agent in so far as such acts or omissions relate to that business.

5. Application for licence

- (1) An application for a licence to carry out microfinance bank business shall be made to the Central Bank, in the prescribed form.
- (2) An application under subsection (1) shall be accompanied by such documents and shall comply with such requirements as may be prescribed by the Central Bank.

6. Issuance of licence

- (1) The Central Bank shall consider an application made under Section 5 and shall take into account the following factors and other factors as may be prescribed—
- (1) the financial condition and history of the applicant;
 - (2) the suitability of the persons proposed to manage or control the applicant;
 - (3) the true identity and background of the ultimate beneficiaries;
 - (4) the proposed organizational and shareholding structure of the applicant;
 - (5) the organizational and shareholding structure of the group of which the applicant forms a part or intends to form a part and whether the group structure will hinder effective supervision of the applicant;
 - (6) the adequacy of its capital structure and earning prospects;
 - (7) the risk management framework to be put in place; and
 - (8) viability of the business.
- (2) The Central Bank, if satisfied that the applicant has met the licensing requirements, may grant a licence to the applicant upon payment of the prescribed fee.
- (3) The Central Bank may endorse on a licence such conditions as it considers necessary and may, from time to time, add, vary or substitute such conditions.
- (4) A licence issued under this Act shall remain valid unless revoked.

Provided that an institution—

- (a) shall pay annual fees of such amount and in such manner as the Central Bank may prescribe;

- (b) that fails to pay annual fees by the end of the current year shall pay double the annual fees, if the fees are paid ninety days after the end of the current financial year.
- (5) Where the annual fees are not paid within ninety days after the end of the current year, the Central Bank may revoke or suspend the licence.
- (6) The Central Bank may in the public interest and for reasons stated, suspend issuance of licences for such period as may be specified.

7. Refusal to grant licence

- (1) Where in the opinion of the Central Bank, an applicant has not met the requirements for the issuance of a licence, the Central Bank shall decline to grant a licence to an applicant.
- (2) An applicant aggrieved by the decision of the Central Bank in subsection (1) may within ninety days from the date of notification of the decision, apply to the Central Bank for a review of the decision.
- (3) In considering a review application under subsection (2), the Central Bank may consider any relevant information including events that occurred after the Central Bank made its decision.
- (4) The Central Bank may reverse its decision in subsection (1) if it establishes that information provided by the applicant addresses the reasons why the licence application was declined.

8. Classes of microfinance bank business

- (1) The Central Bank may prescribe different requirements for institutions and such requirements may relate to—
 - (a) Licensing;
 - (b) Operations;
 - (c) Fees payable;
 - (d) Reporting obligations; or
 - (e) Any other matter as the Central Bank may deem necessary.

- (2) The Central Bank may direct that certain provisions of the Act may not apply to a certain category of institutions, if the nature, mode or place of its business render the application of the provisions unnecessary.

9. Central Bank's power to examine

- (1) The Central Bank may without a warrant enter any premises and examine the books, accounts, records, equipment, computer systems, software or fixtures of any person whom the Central Bank, on reasonable grounds, believes to be carrying out microfinance bank business contrary to the provisions of this Act.
- (2) In the course of an examination under subsection (1), the Central Bank may take documents or copies thereof; or any other item which the Central Bank finds relevant for purposes of further investigation or judicial proceedings.
- (3) The Central Bank may, in the course of an examination under this section direct any person to produce any information, document, item or to answer any question in writing or orally; or to carry out such activity or refrain from carrying out such activity as the Central Bank may direct.
- (4) Any person who fails, refuses or neglects to—
- (a) grant Central Bank access to his business premises or system;
 - (b) produce any document, information or item requested by the Central Bank; or
 - (c) comply with any direction given by the Central Bank;
- commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding two years or a fine not exceeding five million shillings.
- (5) The Central Bank may seek the assistance of, or may refer any matter to, a law enforcement agency for investigation.

10. Revocation of licence

- (1) The Central Bank may, by notice, revoke a licence where an institution—
- (a) fails to commence business within twelve months from the date of the licence;
 - (b) voluntarily requests for revocation;
 - (c) ceases to carry out microfinance bank business;
 - (d) is wound up, liquidated or otherwise dissolved;
 - (e) is conducting business in a manner detrimental to the interests of its depositors or the public;

- (f) has been amalgamated with another company or has been sold or its assets or liabilities have been transferred to another company without the approval of the Central Bank;
 - (g) has failed to comply with any of the conditions in the licence or to take any remedial measures as directed by the Central Bank;
 - (h) has contravened any of the provisions of this Act or any regulations, or guidelines made thereunder;
 - (i) has failed to pay the annual fees within the prescribed time;
 - (j) provided false or misleading information when applying for a licence;
 - (k) has failed to pay any monetary penalty imposed by the Central Bank; or
 - (l) has materially misrepresented its financial condition, ownership, management, operations or other facts material to its business to the Central Bank or the general public.
- (2) The Central Bank, before revoking a licence, shall give an institution not less than twenty-eight days' notice to show cause why the licence should not be revoked.
- (3) The Central Bank shall consider any representations made to it under subsection (3).
- (4) Notwithstanding the revocation of a licence under this section, the institution may continue to carry on its business for the purpose of winding up its affairs for such period as the Central Bank may determine, so long as it does not accept new deposits, open new accounts or make any loans or investments.
- (5) The Central Bank may exercise any of the powers conferred on it under Part IV if necessary for the protection of the interests of the depositors.
- (6) The Central Bank shall cause the name of every institution whose licence has been revoked to be published in the Kenya Gazette within seven days from the date of revocation.

11. Restriction on ownership of share capital

- (1) No person other than—
- (a) another institution;
 - (b) a bank or mortgage finance companies licensed under the Banking Act (Cap. 488);
 - (c) the Government of Kenya or the Government of a foreign sovereign state;
 - (d) a state corporation within the meaning of the State Corporations Act;
 - (e) a foreign company which is licensed to carry on the business of an institution in its country of incorporation; or

(f) a non-operating holding company approved by the Central Bank;

shall hold, directly or indirectly, or otherwise have a beneficial interest in more than twenty-five percent of the share capital of an institution.

- (2) A non-operating holding company shall obtain prior written approval from the Central Bank before acquiring or holding more than twenty-five percent of the share capital of an institution.
- (3) The Central Bank shall prescribe requirements for a company to qualify as a non-operating holding company for purposes of this Act.
- (4) Shareholding limit under subsection (1) shall not apply to the shareholders of the exempted entities specified in subsection (1).
- (5) Notwithstanding the exemptions under subsection (1), the Central Bank may grant an exemption to any other person from the shareholding limit under subsection (1) for such period and on such conditions as the Central Bank may specify.

12. Amalgamation and transfer of assets and liabilities

- (1) No amalgamation or arrangement which involves an institution as one of the principal parties to the relevant transaction, and no arrangement for the transfer of all or any part of the assets or liabilities of an institution to another person, shall have legal force except with the prior written approval of the Central Bank.
- (2) The Central Bank may grant approval under subsection (1) if—
 - (a) it is satisfied that the transaction in question will not be detrimental to the public interest;
 - (b) in the case of an amalgamation, the amalgamation is of institutions only; or
 - (c) in the case of a transfer of assets and liabilities which entails the transfer by the transferor institution of the whole or any part of its business as an institution, such transfer is effected to another institution approved by the Central Bank for the purpose of the said transfer.
- (3) The Central Bank may prescribe the conditions to be met before an amalgamation or transfer of assets or liabilities is effected and the consequential rights and liabilities of the parties after the amalgamation or transfer.

PART III – PROVISIONS RELATING TO OPERATIONS OF MICROFINANCE BANKS

13. Capital requirements

- (1) An institution shall maintain the minimum capital requirements as may be prescribed by the Central Bank.
- (2) The Central Bank may prescribe other forms of capital to be maintained by institutions.

14. Ratio between capital and assets

- (1) The Central Bank may prescribe the minimum ratios which shall be maintained by institutions and their groups as between their core capital and total capital on one hand and their assets (including their total loans and advances) and off balance sheet items on the other and for that purpose, may also determine the method of classifying and evaluating assets.
- (2) The Central Bank may require higher minimum capital ratios for an individual institution based on, but not limited to the following criteria—
 - a) if an institution has losses resulting in capital deficiency;
 - b) if an institution has significant exposure to risk;
 - c) if an institution has a high, or particularly severe volume of poor asset quality;
 - d) if an institution is growing rapidly, either internally or through acquisitions without adequate capitalization and risk management system;
 - e) if there is a likelihood that an institution may be adversely affected by the activities or conditions of its holding company, associates or subsidiaries;
 - f) if the institution is systemically important; or
 - g) any other reason as the Central Bank may determine based on its assessment of the institution's or group's risk profile.
- (3) A non-operating holding company or any other vehicle of ownership which controls a group shall, in relation to its business, maintain adequate capital and adequate forms of liquidity to demonstrate that it is a source of strength for the institution and shall comply with any regulations or guidelines issued by the Central Bank on minimum ratios or capital requirements in any other form.

15. Minimum liquid assets

- (1) An institution shall maintain at all times such minimum holding of liquid assets as may be prescribed by the Central Bank.
- (2) For the purposes of this section, “liquid assets” means—
 - (a) notes and coins which are legal tender in Kenya;
 - (b) balances held at the Central Bank;
 - (c) balances held at banks, microfinance banks and mortgage finance companies after deducting therefrom any balance owed to those banks, microfinance banks and mortgage finance companies;
 - (d) Kenya Government treasury bills and treasury bonds which are freely marketable and re-discountable at the Central Bank;
 - (e) balances held 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; or
 - (f) such other assets as the Central Bank may specify.

16. Risk management

- (1) An institution shall at all times take measures to identify, assess, manage, monitor and control all risks relating to its business, and shall comply with such risk management requirements as may be prescribed by the Central Bank.

17. Place of business

- (1) The Central Bank may specify—
 - (a) places of business which shall require the prior approval of the Central Bank to open, relocate or close; and
 - (b) places of business which shall be notified to the Central Bank before or after opening, relocating or closing.
- (2) Without prejudice to subsection (1)(a), no institution shall open a branch in Kenya or any place of business outside Kenya without the prior approval of the Central Bank.

- (3) No institution shall establish a subsidiary in or outside Kenya without prior approval of the Central Bank.
- (4) The Central Bank may prescribe other requirements relating to opening, relocating and closing of places of business in Kenya or outside Kenya.
- (5) The Central Bank may permit an institution to enter into an arrangement with a foreign bank or a foreign institution to enable customers of the institution while outside Kenya to access limited services through the foreign bank or foreign institution.

18. Prohibited activities

(1) An institution shall not—

- (a) engage in wholesale or retail trade, including the import or export trade, except-
 - (i) in the course of satisfaction of debts due to it; or
 - (ii) when providing Shariah Compliant products approved to the Central Bank to its customers;
- (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 institution's interest would exceed in the aggregate twenty-five percent of the core capital of that institution:

Provided that an institution may take an interest beyond the limit prescribed in subsection (1)(b)—

- (i) in satisfaction of a debt due to it but, if it does so, it shall dispose of the interest within such time as the Central Bank may allow;
 - (ii) as may be approved by the Central Bank and on such conditions Central Bank may impose.
- (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 this paragraph does not prevent an institution from—

- (i) letting part of any building which is used for the purpose of conducting its business;
 - (ii) securing a debt on land and, in the event of default in payment of the debt, holding the land for so long as, in the opinion of the Central Bank, is needed for the realization of the debt; or
 - (iii) Purchasing, acquiring or holding land for purposes of its microfinance bank business when providing Shariah Compliant products approved by the Central Bank.
- (2) The Central Bank may, by notice in the Gazette, exempt an institution from the provisions of this section subject to such conditions as the Central Bank may consider necessary.

19. Provisions and declaration of dividends

- (1) No institution shall pay dividends on its shares or make any other form of distribution to its shareholders until all its capitalized expenditure has been written off and provision has been made for bad and doubtful debts in accordance with subsection (2).
- (2) Every institution shall—
- (a) make provision for bad and doubtful debts before any profit or loss is declared; and
 - (b) ensure that such provision is adequate in accordance with such guidelines as may be prescribed by the Central Bank.

20. Limit on loans and credit facilities

- (1) No institution shall grant a loan or credit facility to an end-user single borrower and his associates where the loan or credit facility, in the aggregate, exceeds such limit of its core capital as the Central Bank may prescribe.
- (2) The provisions of this section shall not apply to transactions with a public entity or to transactions between institutions.
- (3) For the purposes of subsection (1), reference to “person” includes that person and his associates; and—
- (a) the loans, credit facilities, financial guarantees and other liabilities of that person and his associates shall be aggregated for the calculation of their total value; and

(b) the restriction imposed by subsection (1) shall apply to loans, credit facilities, financial guarantees and other liabilities to or in respect of that person and his associates.

(4) No institution shall grant a loan or credit facility against the security of its own shares and those of its subsidiaries.

(5) A person who contravenes the provisions of this section commits an offence and shall be liable, to such penalty as the Central Bank may prescribe.

21. Insider lending

(1) No institution shall grant a loan or credit facility to its associate, or to an officer or member of staff of the institution, or their associates, in excess of such limits as the Central Bank may prescribe.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years, or to both.

(3) Where an institution contravenes any of the provisions of this section—

(a) all officers and significant shareholders of the institution shall be liable jointly and severally to indemnify the institution against any loss arising in respect of the advance, loan or credit facility;

Provided that in the case of an advance, loan or credit facility to a person other than a director of the institution or a senior officer or significant shareholder, an officer shall not be so liable if he shows that, through no act or omission on his part, he was not aware that the contravention was taking place or was intended or about to take place, or he took all reasonable steps to prevent it from taking place;

(b) the Central Bank may, in the case of an advance, loan or credit facility to a director of the institution, direct the removal of such director from the board of directors of the institution and may direct the suspension of any other officer or employee of the institution who sanctioned the advance, loan or credit facility and the institution shall comply with every direction of the Central Bank under this paragraph forthwith.

(4) If any director, officer or other person is aggrieved by a decision or action taken under subsection (3), he may apply to the High Court for determination of the matter and the High Court may confirm, reverse or modify the decision and make such other order in the

circumstances as it thinks just; and pending the determination of any application or appeal therefrom, the decision or action taken shall remain in effect.

(5) A director who, without any justifiable cause has a non-performing asset in his name directly or indirectly from any institution licensed under this Act or the Banking Act (Cap. 488), shall forthwith be disqualified from holding office.

(6) An institution which—

- (a) fails to comply with any direction of the Central Bank under subsection (3) (b); or
- (b) permits a director who is disqualified by virtue of subsection (5) to continue holding office as such;

shall be guilty of an offence.

(7) Where an offence under subsection (6) continues, the institution shall, in addition to the penalty prescribed under subsection (2) be liable to such penalty as may be prescribed for each day or part thereof during which the offence continues.

(8) The provisions of subsections (1) and (2) shall apply to a group on a consolidated basis.

(9) Except as is otherwise provided for under this section, any person who contravenes the provisions of this section shall be liable to such penalty as the Central Bank may prescribe.

22. Restriction on shares

(1) No person shall transfer, or cause to be transferred, ten percent or more of the shares of an institution except with the prior approval of the Central Bank.

(2) Where any share is held by a company or other corporate body, or by a nominee on behalf of another person, the company or other corporate body, or the nominee, as the case may be, shall disclose to the Central Bank the full particulars of the individual person who is the ultimate beneficial owner of the shares.

(3) No person shall become a significant shareholder except with the prior written approval of the Central Bank.

(4) The Central Bank may require an institution to submit to it on a periodic basis, a list of current shareholders of the institution showing shares held on own account, by nominees

and the individual ultimate beneficiaries of shares held by nominees or corporate shareholders.

- (5) A person who contravenes any of the provisions of this section shall be liable to such penalty as the Central Bank may prescribe.

PART IV CORPORATE GOVERNANCE

23. Participation of significant shareholders in management

- (1) No significant shareholder of a microfinance bank shall be an executive director or form part of the senior management of the institution or institution's non-operating holding company.

24. Board of Directors

- (1) Every institution licensed under this Act shall have a board of directors comprising of at least five directors—
 - a) three fifths of whom shall be non-executive directors;
 - b) one third of whom shall be independent non-executive directors; and
 - c) the board of directors shall be headed by a Chairperson who shall be a non-executive director.
- (2) No person shall become or remain as a director of an institution unless such person has been vetted by the Central Bank and found to be a fit and proper person in accordance with the fit and proper test as the Central Bank may prescribe.
- (3) Notwithstanding that a person has already been vetted as a director of an institution, no director shall assume the office of the Chief Executive Officer of the institution or the Chairperson of the board unless he or she has been re-vetted by the Central Bank and found to be fit to discharge the responsibilities of that office.
- (4) No person shall be permitted to hold the position of director in more than one institution licensed under the Act unless the institutions are subsidiaries of non-operating holding companies.

25. Duties of directors

- (1) A director shall in relation to the institution in which he or she serves, stand in a fiduciary relationship and shall in addition and without derogation owe the institution and its shareholders the following duties—
 - (a) a duty to act honestly and in good faith;
 - (b) a duty to act in the best interest and for the benefit of the institution;
 - (c) a duty to act independently, free from undue influence of any other person; and
 - (d) a duty to access necessary information to enable him or her to discharge his or her responsibilities.
- (2) The board of directors as an organ and each director individually shall immediately report in writing to the Central Bank if they have reason to believe that—
 - (a) the institution may not be able to properly conduct its business as a going concern;
 - (b) the institution appears to be or is likely in the near future to be unable to meet all, or any of its obligations to its depositors or creditors;
 - (c) the institution does not, or may not be able to meet its capital requirements as prescribed in this Act.
- (3) Where the board of directors or a director fails, omits or neglects to report to the Central Bank any matter required to be reported under subsection (2) of this section, the Central Bank may—
 - (a) remove the board of directors as an organ;
 - (b) withdraw its approval of any of the directors; or
 - (c) take such other action as it may deem appropriate.

PART V: ACCOUNTS AND AUDIT

26. Financial Year

- (1) The financial year of an institution shall be the period of twelve months ending on the 31st December in each year.

27. Form of Accounts

- (1) All entries in any books of accounts and all accounts kept by an institution shall be recorded in the English language and in the system of numerals employed in government accounts.

- (2) An institution shall maintain proper books of accounts and, at the expiration of each financial year, prepare an annual statement of accounts, including a statement of comprehensive income and statement of financial position and other disclosures in the format prescribed by Central Bank.
- (3) An institution shall keep accounts and records which-
 - (a) reflect a true and fair state of affairs; and
 - (b) explain all transactions and financial positions to enable the Central Bank determine whether the institution has complied with the provisions of this Act.
- (4) The Central Bank may, at any time, issue directions to an institution requiring it to maintain such books, records or information, in addition to any books, records or information as the Central Bank may consider necessary.

28. Preparation and Reporting of Financial Statements

- (1) The accounts and other financial records of an institution shall be denominated in Kenya shillings and shall comply with the requirements of—
 - (a) the Companies Act;
 - (b) International Accounting Standards, International Financial Reporting Standards; and
 - (c) such other requirements as the Central Bank may prescribe.
- (2) The Central Bank may, for regulatory purposes, require an additional accounting consolidation which excludes insurance and such other subsidiaries as the Central Bank may prescribe.

29. Submission of Accounts to the Central Bank

- (1) An institution shall, not later than three months after the end of its financial year, submit to the Central Bank audited financial statements covering its activities.
- (2) An institution with foreign operations shall submit to the Central Bank audited statement of financial position and comprehensive income of the institution as a whole.

30. Appointment of Internal Auditor

- (1) Every institution shall establish an internal audit function which shall report to the board's audit committee and whose responsibility shall be to examine, evaluate and

report on the adequacy on financial matters and internal controls as a contribution to the proper, economic, efficient and effective use of resources.

- (2) No person shall be appointed as an internal auditor under this section unless the person holds such relevant academic and professional qualifications and has such experience as may be prescribed.

31. Appointment of External Auditors

- (1) An institution shall, in each year, appoint an external auditor who shall be a person qualified under section 32 and approved for appointment as such by the Central Bank.
- (2) If an institution fails to appoint an approved external auditor under subsection (1), or to fill any vacancy for an external auditor which may arise, the Central Bank may appoint an external auditor and fix the remuneration to be paid by the institution.
- (3) The Central Bank may require an external auditor to undertake the following duties in addition to those provided under subsection (3)—
 - (a) to submit such additional information in relation to his audit as the Central Bank may consider necessary;
 - (b) to carry out any other special investigation; and
 - (c) to submit a report on any of the matters referred to in paragraphs (a) and (b);

and the institution concerned shall remunerate the auditor in respect of the discharge by him of all or any of such additional duties.

- (4) The external auditor shall audit the accounts and activities of the institution and shall make a report on the annual statement of comprehensive income and the annual statement of financial position of the institution and the audit report shall be submitted to the Central Bank.
- (5) If the external auditor of an institution, 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 this Act, the Central Bank of Kenya Act, the regulations, guidelines or other matters prescribed by the Central Bank;
 - (b) a criminal offence involving fraud or other dishonesty has been committed by the institution or any of its officers or employees;

- (c) losses have been incurred which reduce the core capital of the institution by fifty percent or more;
- (d) serious irregularities have occurred which may jeopardize the security of depositors or creditors of the institution; or
- (e) he is unable to confirm that the claims of depositors and creditors of the institution are capable of being met out of the assets of the institution,

he shall immediately report the matter to the Central Bank.

- (6) The Central Bank may arrange trilateral meetings with an institution and its auditor from time to time, to discuss matters relevant to the Central Bank's supervisory responsibilities which have arisen in the course of the statutory audit of the institution including relevant aspects of the institution's business, its accounting and control system and its annual accounts.
- (7) If an external auditor of an institution fails to comply with the requirements of this Act, the Central Bank may remove him from office and appoint another person in his place.
- (8) An institution shall not remove or change its external auditor except with the prior approval of the Central Bank.
- (9) An external auditor shall make a report to the board of directors identifying key concerns with respect to the financial condition of the institution.
- (10) An external auditor shall, within three months after the end of each financial year, submit an audit report to the Central Bank, on the financial condition of the institution including the management letter.
- (11) An external auditor's report submitted under subsection (10) shall contain information on the—
 - (a) solvency of the institution; and
 - (b) any violation of this Act, guidelines, regulations; or conditions imposed on the licence.

32. Qualifications of an External Auditor

- (1) A person shall be qualified for appointment as an external auditor of an institution if that person—
 - (a) is qualified as an auditor under the Companies Act; and,

(b) is not—

- (i) an officer or employee of the institution;
- (ii) a partner of an officer or employee of the institution;
- (iii) an employer or employee of an officer or employee of the institution;
- (iv) an officer or employee of an associate of the institution;
- (v) a partner or an employer of a person who regularly performs the duties of secretary or book-keeper for the institution; or
- (vi) a firm or member of a firm of auditors of which any partner or employee falls within the categories enumerated in this section.

33. Auditor's duty of confidence

- (1) No duty to which an auditor of an institution may be subject shall be regarded as contravened by reason of his communicating in good faith to the Central Bank, whether or not in response to a request made to it, any information or opinion on any matter to which this Act applies and which is relevant to any function of the Central Bank under this Act.
- (2) This section applies to any matter of which an auditor becomes aware in his capacity as an auditor or in the discharge of his duties under this Act and which relates to the business or affairs of the institution or any associate of that institution.

34. Exhibition and publication of audited accounts

(1) Every institution 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 directors and significant shareholders of the institution in Kenya;
- (b) within three months after the end of each financial year, cause a copy of the last audited statement of comprehensive income and last audited statement of financial position for that financial year to be published in a newspaper with wide circulation; and
- (c) the financial statements referred to in paragraph (b) of subsection (1) shall be approved by the Central Bank before publication.

- (2) The financial statements shall be in conformity with international accounting standards and international financial reporting standards, including applicable consolidated accounting principles for groups.

- (3) An institution that does not comply with the provisions of this section shall be liable to such penalty as the Central Bank may prescribe.

35. Rectification of audited accounts

- (1) Where the Central Bank is satisfied that the audited accounts of an institution do not comply with the requirements of this Act or that the audited accounts contain information that may be misleading or are not published in the specified form, the Central Bank may require the institution to—
- (a) amend the audited accounts to comply with the Act;
 - (b) correct the misleading information;
 - (c) re-publish the amended audited accounts; or
 - (d) submit to the Central Bank further documents or information relating to any document or information.

PART VI - INFORMATION AND REPORTING REQUIREMENTS

36. Collection of information and submission of returns to the Central Bank

- (1) The Central Bank shall collect such data and other information as may be necessary to enable it maintain supervision and surveillance of the affairs of an institution, its group, its agents and the protection of depositors and, for that purpose, the Central Bank may require an institution and its group and agents to submit statistical and other returns on a periodic basis in addition to any other returns required by law.
- (2) The Central Bank may require any institution, its group and its agents to furnish it with such information as it may reasonably require for the proper discharge of its functions under this Act.
- (3) The information required to be furnished under subsection (2) may include information relating to any company which is an affiliate, an associate, a non-operating holding company of the institution or its agents.
- (4) In addition to information required from institutions, its group and agents pursuant to subsection (2), the Central Bank shall require in writing any associate, non-operating holding company or subsidiary company or any person holding a significant shareholding in an institution, to provide the Central Bank or its appointed agent such information or documents, including financial statements and other financial records, as it may deem

necessary to determine whether the provisions of this Act are being duly complied with, and to ascertain—

- (a) the legal, managerial and operational structure of the group;
- (b) the risk profile of the group and its individual subsidiaries;
- (c) the way in which internal risk management is organized and conducted within the group; and
- (d) the corporate, financial and other linkages existing between members of the group.

37. Notification of new developments to Central Bank

- (1) An institution shall promptly and in advance notify the Central Bank of any substantive changes in its activities, structure and overall condition, or as soon as it becomes aware of any material adverse development, including breach of legal or prudential requirements.

38. Publication of information

- (1) Subject to subsection (2), the Central Bank may publish in the Gazette, in whole or in part, any information furnished to it under this Act.
- (2) No information shall be published under subsection (1) if it would disclose the financial affairs of any person, except with the prior consent, in writing, of that person.
- (3) Except as provided in this Act or any other written law, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties under this Act.
- (4) Notwithstanding the provisions of this section the Central Bank may disclose any information referred to in subsection (3) to the Kenya Deposit Insurance Corporation, Financial Reporting Centre, any monetary authority, financial regulatory authority, foreign deposit protection institution, 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 Central Bank or the requesting Kenya Deposit Insurance Corporation, foreign deposit protection institution, Financial Reporting Centre, monetary authority, financial regulatory authority, fiscal or tax agency; or fraud investigations agency;

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

- (5) The Kenya Deposit Insurance Corporation and institutions licensed under this Act, the Banking Act (Cap 488) and Sacco Societies Act (Cap 490B) shall, in the ordinary course of business and in such manner and to such extent as the Central Bank may, in regulations, prescribe, exchange such information on performing and non-performing loans and such other credit information as may, from time to time, be specified by the Central Bank.
- (6) The Central Bank and institutions licensed under this Act, institutions licensed under the Banking Act (Cap. 488) and Sacco Societies Act (Cap 490B) may, in the ordinary course of business, in such manner and to such extent as the Central Bank may, in regulations, prescribe, exchange such other credit information as is reasonably required for the proper discharge of their functions.
- (7) Without prejudice to the provisions of subsection (6), regulations under that subsection may provide for the establishment and operation of credit reference bureaus for the purpose of collecting prescribed credit information on clients of institutions licensed under this Act and institutions licensed under the Banking Act (Cap 488) and Sacco Societies Act (Cap 490B), and disseminating the information among such institutions for use in the ordinary course of business, subject to such conditions or limitations as may be prescribed.
- (8) No duty to which an institution, its officers or employees may be subject, shall be breached by reason of the disclosure, in good faith, of any information under this section, to—
- (a) the Central Bank or to another institution;
 - (b) a credit reference bureau established under subsection (7), in the course of the performance of their duties and no action shall lie against the institution or any of its officers or employees on account of such disclosure;
 - (c) a bank, financial institution or mortgage finance company licensed under the Banking Act (Cap. 488) or a Sacco licensed under the Sacco Societies Act (Cap 490B);
 - (d) any person carrying out an inspection under section 38; or
 - (e) any person, authority, agency or entity referred to in subsection (4) or any other person or authority which under any written law may be authorised to receive information.
- (9) Nothing in this Act shall prevent the cross-border sharing of credit information between—
- (a) regulators of supervisory authorities and credit reference bureaus or entities performing similar roles;

- (b) institutions and credit reference bureaus or entities performing similar roles;
- (c) regulators or supervisory authorities and institutions;
- (d) institutions:

Provided that—

- (i) there is a mutual legal framework for the sharing of information; and
- (ii) the credit information is required for the discharge of a lawful duty or the performance of a lawful purpose by the person requesting for the information.

PART VII – SUPERVISION BY CENTRAL BANK

39. Inspection of institutions

- (1) The Central Bank may, at any time cause an inspection of an institution, its agents or outsourced service providers to be made by any person authorized by the Central Bank in writing.
- (2) When an inspection is made, the institution concerned, agent or outsourced service provider and every officer or employee thereof shall produce and make available to the person making the inspection, all the books, accounts, records, other documents, equipment, computer systems, software or fixtures relating to the microfinance bank business and such correspondence, statements and information relating to the business as the person making the inspection may require, within such period as he may direct in writing.
- (3) A person who fails to produce the information or items required under subsection (2), within the period specified in the relevant direction, commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding five years and a fine not exceeding ten million shillings.
- (4) The person making the inspection shall make and submit a report to the Central Bank, and the report shall state, in detail, whether or not there is—
 - (a) any breach or contravention of this Act, any guidelines and regulations made thereunder or any direction issued by the Central Bank;
 - (b) any irregularity in the manner of conduct of the inspected institution;
 - (c) any mismanagement of the institution; and
 - (d) any other matter relating to the institution not consistent with sound business practice.

- (5) The Central Bank may assist investigative agencies or other authorities in matters related to suspected fraud or malfeasance in institutions by identifying such matters for referral to or at the request of, such agencies or authorities.
- (6) For purposes of this Act, the Central Bank shall be the coordinator of the consolidated supervision of groups, and as such may appoint a competent authority from—
- (a) amongst the bodies set out in the First Schedule, or
 - (b) any other person or entity with expertise in the relevant field;

to carry out an inspection of the operations of the associate, holding or subsidiary company of an institution, or of any person who exercises control of an institution, in order to satisfy itself that the operations of such associate, company or other person are not detrimental to the safety and soundness of the institution concerned.

40. Examination and control of Groups

- (1) The Central Bank may upon receipt of a report under section 31(5)—
- (a) require changes to the legal or management structure of a group if it determines that such structures in their current form constitute an impediment to the discharge of the Central Bank's supervisory responsibilities; and
 - (b) require a group to retain a single auditor to provide an overall review of the group, including such consolidated financial statements as the Central Bank may prescribe.

41. Powers of Central Bank to advise and direct

- (1) If, at any time, the Central Bank has reason to believe that—
- (a) the business of an institution is being conducted in a manner contrary to or not in compliance with the requirements of this Act or of any regulations or guidelines made thereunder or in any manner detrimental to or not in the best interest of its depositors or members of the public; or
 - (b) an institution, any of its officers or other person participating in the general management of the institution is engaged in any practice likely to occasion a contravention of any of the provisions of this Act or any regulations or guidelines made thereunder,

the Central Bank may—

- i. give advice and make recommendations to the institution 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 institution or to secure or improve compliance with the requirements of this Act, any regulations or guidelines made thereunder 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 institution 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 under this section.

(2) An institution which receives a direction under the provisions of this section 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.

(3) The Central Bank may issue directions to institutions generally for the better carrying out of their functions under this Act and in particular, with respect to—

(a) the standards to be adhered to by an institution in the conduct of its business in Kenya or in any country where a branch or subsidiary of the institution is located; and

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

(4) A person who refuses fails or neglects to comply with any direction under this section shall be liable to such penalty as may be prescribed.

42. Appointment of competent authority to enforce Central Bank direction

(1) If the Central Bank determines—

(a) that any member of a group other than an institution has committed any violation of this Act, regulations or guidelines made thereunder, or

(b) that the activities of any such member are having a detrimental impact on the institution or may jeopardize the interest of depositors;

the Central Bank may direct the member to eliminate such irregularities within such period as it may determine.

- (2) The Central Bank may appoint a competent authority from amongst the bodies set out in the First Schedule or any other entity with expertise in the relevant field to carry out the enforcement of the direction issued under subsection (1).
- (3) The Central Bank may, in addition to the actions specified under subsection (2), further direct the concerned party to—
 - (a) suspend any further investment by the institution in a subsidiary company;
 - (b) suspend the exercise of a non-operating holding company's control of the institution;
 - (c) suspend transactions between any associated entity and the institution; or
 - (d) suspend participation of any person in the affairs of the institution.

43. Online access by Central Bank

- (1) An institution shall grant to the Central Bank a secure remote online access at all times to its information technology infrastructure and information management systems as the Central Bank may require for purposes of discharging its functions under the Act.
- (2) The Central Bank may view, extract or download any information accessed pursuant to subsection (1).

44. Powers upon audit or inspection report

- (1) Where an external auditor's report or an inspection report under this Act reveals, or the Central Bank otherwise becomes aware that an institution conducts its business in a manner contrary to the provisions of this Act, regulations or guidelines issued thereunder or in any manner detrimental to or not in the best interests of its depositors or members of the public, or that an institution is undercapitalized, the Central Bank shall take any of the following actions—
 - (a) restrict, suspend or prohibit the payment of dividends by the institution;
 - (b) prohibit the conversion of any profits of the institution into capital;
 - (c) direct the suspension or removal of any officer involved in such conduct from the service of the institution;
 - (d) require the institution to reconstitute its board of directors;
 - (e) withhold any corporate approvals with respect to such institution;
 - (f) undertake more frequent inspections of that institution;

- (g) order the institution to submit to the Central Bank, within forty-five days, a capital restoration plan to restore the institution to the prescribed capital adequacy or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Central Bank;
- (h) prohibit the institution from awarding any bonuses or increments in salary, emoluments or other benefits to the directors and officers of the institution;
- (i) at the expense of the institution, appoint a person suitably qualified and competent, in the opinion of the Central Bank, to advise and assist the institution in designing and implementing a capital restoration plan or other corrective action and the person appointed shall regularly report to the Central Bank on the progress of the plan;
- (j) impose restrictions on growth of assets or liabilities of the institution as it deems fit;
- (k) restrict the rate of interest on savings and time deposits payable by the institution to such rates as the Central Bank shall determine; or
- (l) order the institution to do any or take such other actions as it may deem necessary to rectify a capital deficiency or other weaknesses.

45. Power of Central Bank to intervene in management

- (1) The Central Bank may, in accordance with this section, intervene in the affairs of an institution where—
 - (a) the institution has contravened the provisions of this Act or the conditions upon which its licence was granted;
 - (b) the business of the institution is being conducted in a manner detrimental to the interests of its depositors or creditors;
 - (c) the institution has failed to maintain the prescribed minimum core capital;
 - (d) the institution has insufficient assets to cover its liabilities;
 - (e) the institution is significantly undercapitalized;
 - (f) the auditor of an institution makes a report to the Central Bank under the provisions of section 31 (5);
 - (g) 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 institution or its depositors or other creditors.
 - (h) the institution 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 or to implement a plan of correction.

- (2) The Central Bank shall, before intervening in the affairs of an institution under subsection (1), issue the institution with a notice specifying the defaults noted in the conduct of the business and require the institution to take remedial action within such reasonable period as may be specified in the notice.
- (3) Where an institution does not comply with the notice issued under subsection (2), the Central Bank may—
- (a) direct the institution to take such steps as the Central Bank may consider necessary to rectify the default;
 - (b) prohibit the receipt of any fresh deposits or limit lending operations;
 - (c) remove any officer or employee of an institution who, in the opinion of the Central Bank, has caused or contributed to any contravention of any provision of this Act or any regulations or guidelines made thereunder, or to any deterioration in the financial stability of the institution, or has been guilty of conduct detrimental to the interests of depositors or other creditors of the institution;
 - (d) prohibit any declaration of dividends;
 - (e) impose on any member of the management responsible for the default such penalty as may be prescribed;
 - (f) close the institution and revoke its licence;
 - (g) impose any restriction or condition it may consider necessary on any arrangement between the institution and its agencies; or
 - (h) direct the institution to terminate any agency arrangement.
 - (i) levy a monetary penalty of such amount as the Central Bank may deem fit.
- (4) Where the Central Bank intervenes in the management of an institution, it may—
- (a) appoint a competent person familiar with microfinance bank business to its Board of Directors, to hold office as a Director for a period not exceeding twelve months, who shall not be removed from office except with the prior approval of the Central Bank;
 - (b) by notice in the Gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by an institution in favour of any officer or employee or any other person;
 - (c) appoint the Kenya Deposit Insurance Corporation to assume control and management of the institution in accordance with the Kenya Deposit Insurance Act.

46. Voluntary liquidation

- (1) An institution 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 subsection (1) shall be in the prescribed form.
- (3) The Central Bank may, upon receipt of an application under subsection (2), approve the application if satisfied as to the solvency of the institution.
- (4) The Central Bank shall upon approval of voluntary liquidation, appoint Kenya Deposit Insurance Corporation to undertake the approved voluntary liquidation.
- (5) Where the Central Bank approves an application by an institution under this section, such institution shall forthwith cease all its operations except such activities as are incidental to the orderly realization, conservation and preservation of its assets and settlement of its obligations.
- (6) Where an institution goes into voluntary liquidation under this section—
 - (a) the liability of the shareholders of the institution for uncalled subscriptions to the capital stock of the institution shall continue until the end of the liquidation process; and
 - (b) the institution shall first discharge its liability to its depositors and thereafter rank all other creditors in accordance with the provisions of the Companies Act.
- (7) The institution shall provide the Central Bank with all documents, information and access to records and premises as the Central Bank may request.

47. Protection from liability

- (1) Neither the Central Bank nor any officer or employee thereof nor any manager nor any other person appointed, designated or approved by the Central Bank to act on its behalf, under the provisions of this Act shall be liable in respect of any act or omission done in good faith by the Central bank or such officer, employee, manager or other person in the execution of the duties undertaken by him.
- (2) The Central Bank shall indemnify any officer, employee, or any other person acting on its behalf who is made liable on acts or omissions done in the discharge of his duties.

PART VIII – MISCELLANEOUS PROVISIONS

48. Consumer protection

- (1) An institution shall take measures to ensure that existing and potential consumers of its services are adequately protected and such measures shall include—
 - (a) transparency of services;
 - (b) provision of safe, quality and reliable services;
 - (c) fair treatment;
 - (d) prompt and adequate resolution of consumer complaints;
 - (e) consumer awareness;
 - (f) protection of confidential information; and
 - (g) such other measures as may be prescribed.

49. Declaration of holidays

- (1) Where the Central Bank considers that it is in the public interest that all institutions, or a particular institution should remain closed on a day which is not a public holiday, the Central Bank may, by notice in the Gazette, declare that day to be a holiday for all institutions or for the particular institution, and shall remain closed on that day.
- (2) A bank holiday declared under subsection (1) of this section shall not necessarily be a public holiday and nothing in this section shall be deemed to affect the provisions of any law in force relating to public holidays.
- (3) Without prejudice to subsection (1), the Central Bank may, on application by an institution or a branch of an institution, if satisfied that it is necessary to do so, authorize the institution or branch to remain closed on such day or part thereof, or on such days as may be specified in the authorization, subject to such terms and conditions as the Central Bank may impose.

50. Orders by the High Court

- (1) The High Court may, on application made *ex parte* by the Central Bank or a manager or liquidator appointed by the Central Bank, if it considers it to be in the interests of the depositors of an institution, make an order—
 - (a) prohibiting the institution from carrying on business; or
 - (b) staying the commencement or continuance of any action or any proceedings against the institution for a specified period of time on such terms and conditions as the High

Court considers reasonable and may extend the specified period up to a total of six months from the beginning of the stay.

- (2) Where an order is made under subsection (1) (a), a licence granted under this Act shall be deemed to be suspended.

51. Restriction on use of words “microfinance bank”, “microfinance” or “deposit-taking microfinance”

- (1) No person shall use the word “microfinance bank”, “microfinance” or “deposit taking microfinance” or any of its derivatives or any other words indicating the transaction of microfinance bank business or the equivalent, in the name, object, description or title under which it transacts business in Kenya or make any representation that the person transacts microfinance bank business unless such person is licensed under this Act.

- (2) Where a company registered under the Companies Act as a microfinance bank fails to acquire a licence to operate under this Act within a period of one year from the date of such registration, the company shall forthwith cease the use of the words "microfinance bank" in its name.

52. Extension of time

- (1) If anything is prescribed under this Act, Regulations or Guidelines to be done within a specified time, the Central Bank may on its own motion or on an application, on good cause shown, extend time for the doing of such thing notwithstanding that the time may have expired.

53. Default by officers or employees

- (1) Any officer or employee of an institution who fails to—

- (a) take all reasonable steps to secure the compliance of the institution with this Act;
- (b) take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act; or
- (c) supply any information required under this Act to the Central Bank;

commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

54. Outsourcing of services

- (1) An institution may outsource its non-core activities to a third party service provider and shall comply with such outsourcing requirements as may be prescribed by the Central Bank.
- (2) The following activities are deemed core and shall not be outsourced—
 - (a) corporate planning;
 - (b) organization;
 - (c) management and control; and
 - (d) decision-making functions.
- (3) An institution shall not outsource any of its non-core activities without the prior written approval of the Central Bank.

55. Approval of products and fees

- (1) No institution shall introduce a new product or service or any substantial change in the features of an existing product or service without the prior approval of the Central Bank.
- (2) No institution shall impose or increase its rate of charges on any product or service without the prior written approval of the Central Bank.
- (3) The Central Bank may prescribe the conditions to be met before any charge on a product or service is imposed or increased.

56. Disclosure of information on loans

- (1) An institution shall, before granting a loan to a borrower disclose all the charges, terms and conditions relating to the loan.
- (2) An institution shall disclose to a borrower the total cost of credit before granting the loan or credit facility.
- (3) An institution shall give a notice of at least thirty days to its customer before changing or increasing any rate of charge, terms and conditions.

57. Limit on interest recovered on defaulted loans.

- (1) An institution shall be limited in what it may recover from a debtor with respect to a non-performing loan to the maximum amount under subsection (2).

- (2) The maximum amount referred to in subsection (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 institution, 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 subsection (2) shall be determined with respect to the time the loan last became non-performing.
- (4) This section shall not apply to limit any interest under a court order accruing after the order is made.

Provided that the sum ordered by the court does not include the sum affected by the limitation in subsections (1) and (2).

- (5) In this section—
- (a) "debtor" includes a person who becomes indebted to an institution 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 in such manner as may, from time to time, be stipulated in guidelines prescribed by the Central Bank.
- (6) This section shall apply to existing performing and non-performing loans made at the time the Law comes into operation.

Provided that where loans became non-performing before this section comes into operation, the maximum amount referred to in subsection (1) shall be the following—

- (a) the principal and interest owing on the day this section comes into operation; and
- (b) interest, in accordance with the contract between the debtor and the institution, accruing after the day this section comes into operation, not exceeding the principal and interest owing on the day this section comes into operation; and
- (c) expenses incurred in recovery of any amounts owed by the debtor

58. Fees

- (1) The Central Bank may prescribe fees payable by institutions and their agents under this Act.

59. General penalty

- (1) The Central Bank may prescribe penalties to be paid by institutions which fail or refuse to comply with the Act and any Regulations, guidelines or directions issued by the Central Bank under this Act.
- (2) A person who commits an offence under this Act for which no penalty is stipulated shall be liable, on conviction, to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding one year, or to both.

60. Monetary penalties

- (1) Any institution or other person who fails or refuses to comply with any provision of this Act, Regulations or guidelines made thereunder or any direction or order issued by the Central Bank under the Act or those Regulations or guidelines shall be liable to a monetary penalty not exceeding one million shillings in the case of an institution, or one hundred thousand shillings in the case of a natural person.
- (2) The Central Bank may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.
- (3) Any monetary penalty payable under this section shall be paid to the Central Bank within such period as the Central Bank may specify.
- (4) The Central Bank may, subject to prior notice to the institution, debit the account of the institution held by the Central Bank if the institution fails to pay any monetary penalty ordered or imposed under this section.
- (5) The Central Bank shall may exercise discretion while assessing the monetary penalty and may consider the following factors in determining the amount to impose—
 - (a) nature of the violation;
 - (b) the seriousness of the violation;
 - (c) the nature of the law violated;

- (d) whether the law violated is meant to protect depositors, creditors or members of the public;
- (e) whether the violation was deliberate;
- (f) the amount of financial loss or other losses involved;
- (g) the people affected by the violation;
- (h) the public interest affected by the violation;
- (i) the size of the institution;
- (j) the capital position of the institution;
- (k) its liquidity status;
- (l) whether a harsh penalty will cripple its operations;
- (m) whether the institution has taken remedial measures to address the violation; or
- (n) any other fact the CBK may consider relevant.

61. Guidelines

(1) The Central Bank may issue guidelines—

- (a) prescribing any matter which under this Act may be prescribed by the Central Bank; and
- (b) for the implementation of any provision of this Act.

(2) Any guideline issued under this Act shall have the force of law.

62. Regulations

(1) The Central Bank may, make regulations prescribing any matter which under this Act may be prescribed by the Central Bank in Regulations.

63. False advertising

(1) Any entity, institution or other person who issues any advertisement, brochure, circular or other document inviting any person to make a deposit which—

- (a) falsely represents that the entity, institution or person is authorized to accept deposits or is otherwise licensed under the provisions of this Act; or
- (b) is issued contrary to any direction given by the Central Bank under the provisions of subsection (2),

commits an offence.

(2) The Central Bank may, at any time, direct an institution to withdraw, amend or refrain from issuing any document to which subsection (1) applies.

64. Repeal and savings

(1) The Microfinance Act, No. 19 of 2006 is repealed.

(2) Notwithstanding subsection (1), where upon the commencement of this any institution Act was licensed to transact microfinance bank business, that licence shall have effect as if granted under this Act.

(3) Anything which was lawfully commenced, done or executed under the authority of the Microfinance Act, No. 19 of 2006 shall continue to be valid and shall be continued with under this Act as if it was originally commenced, done or executed under this Act.

FIRST SCHEDULE

COMPETENT AUTHORITIES

- (1) Central Bank of Kenya;
- (2) Capital Markets Authority;
- (3) Financial Reporting Centre;
- (4) Communications Authority of Kenya;
- (5) Insurance Regulatory Authority;
- (6) Retirement Benefits Authority;
- (7) SACCO Societies Regulatory Authority.