

LEGAL NOTICE NO. ....

**THE BANKING ACT**

*(Cap. 488)*

**THE BANKING (PENALTIES) REGULATIONS, 2024**

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*Regulation*

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**THE BANKING ACT**  
(Cap. 488)

**IN EXERCISE** of the powers conferred by section 55(2) of the Banking Act, the Central Bank of Kenya makes the following Regulations—

**THE BANKING (PENALTIES) REGULATIONS, 2024**

**PART I—PRELIMINARY**

Citation.                    1. These Regulations may be cited as the Banking (Penalties) Regulations, 2024.

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

Cap. 488.                    “Act” means the Banking Act;

                                  “Bank” means the Central Bank of Kenya;

                                  “bureau” means a credit reference bureau established in accordance with section 31(3) of the Act

                                  “direction” means—

(a) an order made by the Bank under sections 33A, 34 or 43 of the Act;

(b) a directive issued by the Bank under sections 9A, 11, 21, 28, 33A, 43 or 51 of the Act;

(c) a condition imposed by the Bank under sections 5, 12, 43 or 46 of the Act; or

(d) an instruction made by the Bank under section 34 of the Act; or

(e) a provision of the Prudential Guidelines,

requiring remedial action to be taken by an institution;

                                  “institution” has the meaning assigned to it under section 2 of the Act; and

                                  “violation” means the failure to comply with a direction and includes the violations specified in Part II.

Application of  
these Regulations.

3. These Regulations shall apply to all institutions and persons.

Purpose of the Regulations.

4. The purpose of these Regulations shall be to—

- (a) provide a clear framework for assessing a violation and imposing a penalty;
- (b) ensure that an institution or person is penalised for a violation;
- (c) promote greater compliance with the Act and Prudential Guidelines;
- (d) deter an institution or person from committing a violation; and
- (e) provide for the assessment of a violation and quantum a penalty to be imposed by the Bank.

#### **PART II—SPECIFIC VIOLATIONS**

Minimum capital requirements.

5. (1) An institution or person who—

- (a) does not maintain the minimum liquid assets as determined by the Bank under section 19 of the Act; or
- (b) does not classify and assign risk weights in the evaluation of capital adequacy measurements as prescribed by the Bank under section 18 of the Act,

commits a violation and is liable, upon assessment, in the case of an institution, to a penalty not exceeding twenty million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

(2) An institution or person who does not ensure that the provision for loans, advances and other assets made is adequate according to such guidelines as may be prescribed by the Bank under section 20 of the Act commits a violation and is liable, upon assessment, in the case of an institution, to a penalty not exceeding five million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

Loans, advances and credit facilities.

6. In relation to a loan, advance or credit facility—

- (a) a mortgage finance company which permits the total value of the advances, credit facilities, financial guarantees or other liabilities in to the per centum prescribed by the Bank under section 10(1) of the Act;

- (b) an institution or person who does not review, classify or make appropriate and adequate provisions and write-offs for loans and assets as prescribed by the Bank under section 20 of the Act;

commits a violation and is liable, upon assessment, in the case of an institution to a penalty not exceeding twenty million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

Place of business.

7. (1) In relation to its place of business, an institution or person who does not obtain prior written approval of the Bank under section 8 before opening, relocating or closing a place of business commits a violation and is liable, upon assessment, in the case of an institution to a penalty not exceeding two million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

(2) In relation to the place of business of a representative office of an institution or person, the representative office which—

- (a) carries out banking business without the approval of the Bank issued under section 8(5) of the Act; or
- (b) does not comply with a direction issued by the Bank under 43(4) of the Act,

commits a violation and is liable, upon assessment, in the case of an institution to a penalty not exceeding five million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

Shareholding.

8. (1) A significant shareholder who does not comply the determination of the Bank made under section 9A(4)(b) of the Act commits a violation and is liable, upon assessment to—

- (a) where the significant shareholder is an institution, a penalty not exceeding ten million shillings; and
- (b) where the significant shareholder is a natural person, a penalty not exceeding one million shillings.

(2) A significant shareholder who does not comply the determination of the Bank made under section 9A(4)(a) of the Act commits a violation and is liable, upon assessment to—

- (a) where the significant shareholder is an institution, a penalty not exceeding ten million shillings; and

(b) where the significant shareholder is a natural person, a penalty not exceeding one million shillings.

(3) A shareholder who does not obtain the approval of the Bank issued under section 13(4) of the Act commits a violation and is liable, upon assessment to—

(a) where the shareholder is an institution, a penalty not exceeding eight million shillings; and

(b) where the shareholder is a natural person, a penalty not exceeding one million shillings.

(4) A shareholder who does not obtain the approval of the Bank issued under section 13(1) of the Act commits a violation and is liable, upon assessment to—

(a) where the shareholder is an institution, a penalty not exceeding eight million shillings; and

(b) where the shareholder is a natural person, a penalty not exceeding one million shillings.

Fit and proper persons.

9. (1) An institution or person who appoints or elects a person as a director or senior officer without certification by the Bank that the person is a fit and proper person to manage or control the institution under section 9A (1) of the Act commits a violation and is liable upon assessment, in the case of an institution to a penalty not exceeding five million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

(2) An institution or person who becomes a significant shareholder of an institution without being certified by the Bank that the institution or person is a fit and proper person to manage or control the institution under section 9A (2) of the Act commits a violation and is liable upon assessment, in the case of an institution to a penalty not exceeding five million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

(3) An institution or person who does not terminate the employment of a person who has been disqualified by the Bank from managing or controlling an institution under section 9A(5) of the Act commits a violation and is liable upon assessment, in the case of an institution to a penalty not exceeding eight million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

(4) An institution or person who does not terminate the employment of a person who has been disqualified by the Bank from managing or controlling an institution under section 32A of the Act commits a violation and is liable upon assessment to, in the case of an institution, a penalty not exceeding eight million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

Corporate  
governance.

10. An institution or person who does not provide the Bank with information on—

- (a) the implementation of an effective internal control system; or
- (b) the establishment or implementation a risk management framework,

as required by the Bank under section 28(3) of the Act commits a violation and is liable, upon assessment, in the case of an institution, to a penalty not exceeding twenty million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

Records.

11. (1) An institution or person who does not—

- (a) maintain books, records or information in accordance with the directions issued by the Bank under section 21 of the Act; or
- (b) provide such information as the Bank may direct under section 28 of the Act,

commits a violation and is liable, upon assessment, in the case of an institution to a penalty not exceeding twenty million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

(2) An institution or person who does not produce any books, accounts, records, documents, correspondence, statements or other information as directed by the Bank under section 32 of the Act commits a violation and is liable, upon assessment, in the case of an institution, to a penalty not exceeding ten million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

Exhibition and  
submission of  
accounts.

12. An institution or person who does not exhibit last audited financial statements in a conspicuous place in every office and branch in Kenya in accordance with the minimum financial disclosure requirements prescribed by the Bank under section 22(1)(a) of the Act commits a violation and is liable, upon assessment, in the case of an institution, to a penalty not exceeding five million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

Trading and  
investments.

**13. An institution or person who—**

- (a) purchases, acquires or holds any land or any interest in land in excess of the proportion of an institution's core capital contrary to the proportion of its core capital prescribed by the Bank under section 12 (b) of the Act; or
- (b) engages in the restrictions on trading and investments without the approval issued by the Bank under section 12(b) of the Act,

commits a violation and is liable, upon assessment, in the case of an institution, to a penalty not exceeding five million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

Audit and  
inspection.

14. (1) An institution or person who does not comply with a directive issued by the Bank when carrying out an inspection, obtaining any document or accessing any system, record, office or premises during an inspection under section 32(2) of the Act commits a violation and is liable, upon assessment, in the case of an institution, to a penalty not exceeding twenty million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

(2) Any institution or person who changes an auditor without the prior approval of the Bank issued under section 25(1) of the Act commits a violation shall be liable, upon assessment, in the case of an institution, to a penalty not exceeding five million shillings and where the violation is committed by a natural person, a penalty not exceeding one million shillings.

**PART III—ASSESSMENT OF VIOLATION**

Notice of  
suspected  
violation.

15. (1) Where the Bank suspects that an institution or person has committed a violation, the Bank shall—

- (a) issue a written notice to the institution or person specifying the violation the Bank suspects has been committed; and
- (b) invite the institution or person to show cause why a penalty should not be imposed and produce any evidence in response to the suspected violation.

(2) The notice referred to in sub-regulation (1) shall contain—

- (a) a description, in general terms, of the facts or circumstances that constitute the violation;
- (b) the direction which was not complied with;



- (c) a description of the person or entity involved in the violation, where the Bank has such information;
- (d) the time or period when the violation is suspected to have occurred;
- (e) documentary or other form of evidence that the Bank has relied on to suspect the violation;
- (f) the intention of the Bank to assess and impose a penalty on the institution or person; and
- (g) the period within which the institution or person may respond to the notice.

(3) The period referred to in paragraph (2) (g) shall be at least fourteen days from the date the notice is received by the institution or person.

Responses to suspected violation.

**16.** (1) Upon receiving the notice issued under regulation 15, an institution or person, within the period specified in the notice, may—

- (a) make a verbal response to the violation specified in the notice; or
- (b) submit a written response to the violation specified in the notice.

(2) In addition to the response submitted under paragraph (1), an institution or person may submit documentary or other form of evidence in response to the violation within seven days of submitting the response.

(3) An institution or person who makes a verbal response under paragraph (1)(a) may thereafter record in writing a summary of the verbal response made and submit the recording to the Bank within seven days of submitting the response.

(4) Where the Bank has not received any response under paragraphs (1), (2) or (3), or where the response is submitted after the period specified in regulation 15(3), the Bank may proceed to assess the violation.

(5) Despite sub-regulation (4), the Bank may, upon a request made in writing by an institution or person who has received the notice issued under regulation 15, consider a response submitted under paragraphs (1), (2) or (3) after the period specified in regulation 15(3).

Consideration of responses.

**17.** (1) Upon receipt of the responses under regulation 16, the Bank conduct an assessment of the suspected violation and determine—

- (a) whether the institution or person is liable to pay the penalty; and
- (b) where liable, the amount of the penalty to be imposed.

(2) The Bank shall make a determination under paragraph (1) within thirty days from—

- (a) the date of receipt of responses under regulation 16 (1), (2), (3) and (5); or
- (b) where no response is submitted, the date the notice issued under regulation 15 is received by an institution or person.

Notification of determination of assessment.

18. Upon making a determination under regulation 17, the Bank shall issue a notice to the institution or person its assessment specifying—

- (a) the violation for which the assessment was made;
- (b) the amount of penalty that has been imposed;
- (c) the period within which the penalty is to be paid;
- (d) the manner in which the penalty is to be paid;
- (e) the identity of the institution or person that is to pay the penalty; and
- (f) the additional penalty that is to be paid where the violation continues.

#### **PART IV—IMPOSITION OF PENALTIES**

Considerations when imposing a penalty to be imposed.

19. (1) When imposing a penalty for a violation, the Bank shall consider—

- (a) whether the violation was committed by an institution or person;
- (b) the nature of the direction which has been violated;
- (c) the severity of the violation;
- (d) the impact of the violation on the institution or person who committed the violation and any other institution, bureau or person;

- (e) the benefit that may have derived from the commission of the violation by the institution or person who committed the violation, or any other institution, bureau or person,;
  - (f) the financial loss, or other form of loss, suffered or likely to be suffered by the depositors, creditors or shareholders of the institution or person who committed a violation, or the depositors, creditors or shareholders any other institution, bureau or person;
  - (g) the circumstances under which the suspected violation was committed;
  - (h) the financial condition of the institution or person who committed a violation, or of any other institution, bureau or person;
  - (i) any previous penalty for violation of the same direction that was imposed on the institution or person who committed a violation;
  - (j) the effect the suspected violation has on public interest;
  - (k) the identity, rank and job description of an officer or employee of the institution or person, who committed a violation;
  - (l) whether the suspected violation has been remedied by the institution, bureau or person who committed the violation; and
  - (m) whether the suspected violation is capable of being remedied by the institution, bureau or person who committed the violation.
- (2) When imposing a penalty the Bank shall consider whether the penalty—
- (a) is likely to render an institution, bureau or person who committed the violation unable to function properly to be penalized;
  - (b) is capable of deterring the institution, bureau or person who committed the violation from violating the same direction; and
  - (c) is reasonably commensurate to the severity of the violation.
- (3) An imposition of a penalty shall be expeditious, efficient, lawful, reasonable and procedurally fair.

**20. (1) The Bank shall impose a separate penalty for each violation.**

Separate  
imposition of  
penalty for each  
violation.

(2) The Bank shall impose a penalty on a case-by-case basis.

Commensurate penalty to severity of violation.

21. The Bank shall impose a penalty that is reasonable, effective and commensurate penalty imposed by to the severity, impact or likely impact of a violation.

(2) Where the Bank considers it necessary and subject to the maximum penalty that may be imposed as specified in section 55(2) of the Act, the Bank may impose a penalty equal to the benefit which may have been derived from violation.

Personal liability of officers or members of staff.

22. Any officer or member of staff of an institution or person may be subjected to a penalty under these Regulations, either individually or jointly with the institution or person if it is determined that the person was individually or jointly responsible with the institution or person for the violation.

#### **PART V—REVIEW OF ASSESSMENT OF VIOLATION OR IMPOSITION OF PENALTY**

Request for review

23. (1) Any institution or person who is dissatisfied by a decision of the Bank under these Regulations, may submit a written request to the Bank for review.

(2) The request made under in sub-paragraph (1) under shall be made within fourteen days from the date of receipt of the decision.

Consideration of request for review.

24. (1) When considering a request made under regulation 23, the Bank may invite the applicant to submit written representations or such additional information as it considers necessary to enable it consider the request.

(2) The Bank shall make a decision on the request made under regulation 23 within thirty days from the date of receipt of the request, and notify the applicant of its decision and the reasons for the decision.

Appeal.

25. (1) A person aggrieved by the decision of the Bank made under regulation 24 may appeal to the High Court.

(2) A person aggrieved by the decision of the Bank made under these regulation and has not made a request for review under regulation 23, may appeal to the High Court.

#### **PART VI—PAYMENT OF PENALTIES**

Duty to pay penalty.

26. Upon receipt of the notice issued under regulation 18, an institution or any other person shall pay the assessed penalty to the Bank within the time and in the manner specified in the notice.

Default in payment of penalty.

27. Where a penalty has not been paid in full within the period specified in the notice issued under regulation 18, the amount due shall constitute a civil debt and may be recovered by the Bank from the institution or person liable to remit the penalty.

Daily penalty.

28. Where a penalty has not been paid in full within the period specified in the notice issued under regulation 18, the institution or person shall be liable to pay an additional penalty that does not exceed one hundred thousand shillings in each case and for each day or part thereof where the penalty specified in the notice issued under regulation 18 remains unpaid.

Penalty imposed on person not to be paid by institution.

29. (1) Where the Bank imposes a penalty upon a person, the penalty shall not be paid by the institution on behalf of the person.

#### **PART VII—MISCELLANEOUS**

Revocation of L.N. 77 of 1999.

30. The Banking (Penalties) Regulations, 1999 are revoked.

Made on this ....., 2024.

**KAMAU THUGGE,**  
*Governor of the Central Bank of Kenya.*

