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MICROFINANCE ACT

No. 19 of 2006

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NO. 19 OF 2006

MICROFINANCE ACT

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SCHEDULE – MINIMUM CAPITAL REQUIREMENTS

NO. 19 OF 2006

MICROFINANCE ACT

[Date of assent: 30th December, 2006.]

[Date of commencement: 2nd May, 2008.]

An Act of Parliament to make provision for the licensing, regulation and supervision of microfinance business and for connected purposes

[L.N. 56/2008, Act No. 8 of 2009, Act No. 10 of 2010, Act No. 4 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Microfinance Act, 2006.

2. Interpretation

In this Act, unless the context otherwise requires—

“**agency**” means—

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

“**associate**”—

- (a) 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.
- (b) in relation to a company or other body corporate, means—
 - (i) its holding company or its subsidiary;
 - (ii) a subsidiary of its holding company;
 - (iii) a holding company of its subsidiary; or
 - (iv) 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.

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

“**branch**” means an institution’s place of business, used for the provision of deposit-taking microfinance 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;

“Central Bank” means the Central Bank of Kenya established by the Central Bank of Kenya Act (Cap. 491);

“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 per centum 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.

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

“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—

- (a) 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; or
- (b) security for performing a contract.

“Deposit Protection Fund Board” means the Deposit Protection Fund Board established under the Banking Act (Cap. 488);

“deposit-taking business” means deposit-taking microfinance business;

“deposit-taking microfinance business” means—

- (a) a microfinance business in which the person conducting the business holds himself out as accepting deposits on a day-to-day basis; and
- (b) any other activity of the business which is financed, wholly or to a material extent, by lending or extending credit for the account and at the risk of the person accepting the deposit, including the provision of short-term loans to small or micro enterprises or low income households and characterised by the use of collateral substitutes;

“Director” means a member of the Board of Directors referred to in section 20;

“**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;

“**Fund**” means the Deposit Protection Fund established under the Banking Act (Cap. 488);

“**institution**” means a deposit-taking microfinance institution licensed under this Act;

“**International Accounting Standards**” means international accounting standards set by the International Accounting Standards Council of the United Kingdom;

“**microfinance business**” means the business of—

- (a) receiving money, by way of deposits or interest on deposits, which is lent to others or used to finance the business; or
- (b) providing loans or other facilities to micro or small enterprises and low income households;

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

“**non-deposit-taking microfinance business**” means microfinance business, other than deposit-taking microfinance business;

“**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 a deposit-taking microfinance institution or takes part in the general management thereof;

“**place of business**” means any premises, other than the head office, including a branch, sub-branch, satellite branch, agency, outlet, mobile unit, marketing office or such other premises as may be approved by the Central Bank, at which an institution transacts deposit-taking microfinance business and which is open to the public.

[Act No. 10 of 2010, s. 82, Act No. 4 of 2012, s. 53.]

3. Application

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

- (a) every deposit-taking microfinance business;
- (b) specified non-deposit-taking microfinance business, in the manner prescribed under subsection (2)(b).

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

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

- (3) 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);
 - (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).

PART II – LICENSING PROVISIONS

4. Qualifications for carrying out deposit-taking microfinance business

(1) No person shall carry out any deposit-taking microfinance business, hereinafter referred to as “deposit-taking business”, unless such person is—

- (a) a company registered under the Companies Act (Cap. 486) whose main objective is to carry out such business; or
- (b) a wholly-owned subsidiary of a bank or a financial institution whose main objective is to carry out such business; and
- (c) licensed under this Act.

(2) The provisions of subsection (1) shall not apply to a duly approved agency conducting deposit-taking business on behalf of an institution.

(3) Where an agency conducts deposit taking business on behalf of an institution in accordance with this Act, the institution shall be liable for the acts of the agency in so far as such acts relate to that business.

(4) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

[Act No. 10 of 2010, s. 83.]

5. Application for licence

(1) An application for a licence to carry out deposit-taking business shall be made to the Central Bank, in the prescribed form.

- (2) An application under subsection (1) shall be accompanied by—
- (a) copy of the memorandum and articles of association or other instrument under which the company is incorporated;
 - (b) a verified official notification of the company’s registered place of business;
 - (c) the prospective place of operation, indicating that of the head office and branches, if any;
 - (d) evidence that the company meets the minimum capital requirements prescribed in the Schedule;
 - (e) the prescribed fee; and

- (f) a report of a feasibility study undertaken by the company covering the following—
 - (i) objectives of the business;
 - (ii) domestic economic situation;
 - (iii) financial sector environment;
 - (iv) legal framework;
 - (v) risk analysis;
 - (vi) economic and financial analysis;
 - (vii) organizational structure;
 - (viii) proposed management, detailing the professional qualifications, skills and relevant experience in deposit-taking business of the proposed managers;
 - (ix) equity and ownership of the business;
 - (x) such other requirement as the Central Bank may prescribe.

6. Issuance or renewal of licence

(1) The Central Bank shall consider every application made under section 5 and may, if satisfied that the applicant meets the requirements of this Act, grant a licence to the applicant upon payment of the prescribed fee.

(2) The Central Bank may endorse on a licence granted under this section, such conditions as it considers necessary and may, from time to time, add, vary or substitute such conditions.

(3) A licence issued under this Act shall, unless earlier revoked, be valid up to the 31st day of December of the year in which it is issued and may, on expiry, be renewed on application:

Provided that where an application for its renewal is made, the licence shall be deemed to continue in force until the application is determined.

(4) An application for the renewal of a licence shall be made to the Central Bank, in the prescribed form and shall be—

- (a) made within three months of the expiry of the licence;
Provided that a late application may be made upon payment of such penalty as may be prescribed;
- (b) accompanied by the particulars specified in section 5(2); and
- (c) be considered in the same manner as an application under section 5.

(5) Subject to subsection (4) the Central Bank may renew an institution's licence upon payment of the prescribed fee.

7. Categories of deposit-taking business

For the purposes of this Act, the Minister may prescribe categories of deposit-taking business based on geographical, administrative or such other criteria as the Minister may deem necessary.

8. Central Bank's power of inspection

The Central Bank may, under a warrant issued by the High Court, enter any premises and examine the books, accounts or records of any person whom the Central Bank, on reasonable grounds, believes to be carrying out deposit-taking business contrary to the provisions of this Act.

9. Revocation of licence

(1) The Central Bank may, by notice to the licensee, revoke a licence where—

- (a) the licensee ceases to carry on deposit-taking business;
- (b) the institution is wound up, liquidated or otherwise dissolved;
- (c) the Central Bank is reasonably satisfied that the business of the institution is being conducted in a manner detrimental to the interests of its depositors or customers;
- (d) the institution 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 Minister;
- (e) the licensee has contravened any of the conditions in the licence; or
- (f) the licensee has contravened any of the provisions of this Act or any regulations made thereunder.

(2) The Central Bank shall cause the names of institutions whose licences have been revoked to be published in the *Gazette* within seven days of the revocation.

10. Restriction of a licence

(1) Where it appears to the Central Bank that there are reasonable grounds for the revocation of a licence, but that the circumstances are such as not to justify a revocation, the Central Bank may restrict the licence in accordance with subsection (2).

(2) A licence may be restricted by imposing—

- (a) a limit on the duration of the licence for a period, not exceeding one year; or
- (b) such additional conditions for the protection of depositors as the Central Bank may deem necessary.

PART III – PROVISIONS RELATING TO GOVERNANCE**11. Minimum capital requirements**

(1) An institution shall maintain the minimum capital requirements set out in the Schedule.

(2) The Minister may, by order in the *Gazette*, amend the Schedule.

12. Minimum liquid assets

(1) An institution shall maintain 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 banks after deducting therefrom any balance owed to those banks;
- (c) treasury bills and bonds which are freely marketable and re-discountable at the Central Bank; or
- (d) such other assets as the Central Bank may specify.

(3) An institution which does not comply with the requirements of subsection (1), within such period as the Central Bank may prescribe, shall be liable to pay, on being called upon to do so by the Central Bank, a penalty interest charge not exceeding one percent of the amount of the deficiency, for every day during which the offence continues.

13. Place of business

(1) No person carrying out deposit-taking business shall—

- (a) open a branch or place of business outside Kenya; or
- (b) open or close a branch or place of business in Kenya without the prior approval of the Central Bank.

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

(3) The Central Bank may make regulations to prescribe the manner in which approvals shall be granted under this section.

[Act No. 10 of 2010, s. 84.]

14. Prohibited activities

(1) An institution shall not engage in the following activities—

- (a) issuing of third party cheques;
- (b) opening current accounts;
- (c) foreign trade operations;
- (d) trust operations;
- (e) investing in enterprise capital;
- (f) wholesale or retail trade;
- (g) underwriting or placement of securities;
- (h) purchasing or otherwise acquiring any land except as may be reasonably necessary for the purpose of expanding the deposit-taking business; or
- (i) such other activity as the Central Bank may prescribe.

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

15. 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.

(3) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

16. Application for loan or credit facility

(1) Any person may apply to an institution for a loan or credit facility.

(2) A person who applies for a loan or credit facility under subsection (1) shall provide evidence of his ability to repay the loan or credit facility.

17. Limit on loans and credit facilities

(1) No institution shall grant a loan or credit facility to an end-user single borrower or 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) No institution shall grant a loan or credit facility against the security of the shares of its deposit-taking business.

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

[Act No. 4 of 2012, s. 54.]

18. 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, by regulations, 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 one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

[Act No. 4 of 2012, s. 55.]

19. Limit on shares

(1) Subject to subsections (2) and (3), no person shall hold, directly or indirectly, or otherwise have a beneficial interest in, more than twenty-five percent of the shares of an institution.

(2) A person who holds more than twenty-five percent of the shares of a deposit-taking business existing at the commencement of this Act, which makes an application for a licence pursuant to section 49, shall—

- (a) comply with the requirements of subsection (1) within four years of the business being licensed; and
- (b) present a plan of action for the reduction of the shareholding at the time the application for the initial licence of the business is made.

(3) The provisions of subsections (1) and (2) shall not apply in the case of—

- (a) a wholly-owned subsidiary of a bank or a financial institution;
- (b) any other company which the Minister may, on the recommendation of the Central Bank, specify.

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

(5) 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.

(6) A person who contravenes any of the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

[Act No. 4 of 2012, s. 56.]

20. Management of institutions

(1) Every institution shall be managed by a Board of Directors consisting of not less than five Directors.

(2) A person shall be qualified for appointment as a Director if such person—

- (a) is approved by the Central Bank for that purpose; and
- (b) is not disqualified from holding office as such under this Act.

(3) The Board of Directors shall elect a non-executive Chairman from amongst their number.

(4) The Board of Directors may, in writing, delegate, any of the powers to the Board to any Director or to any other officer of the institution.

21. Disqualifications of Directors

A person shall not be qualified to hold office as a Director if such person—

- (a) is a minor or is under a legal disability;
- (b) has been convicted of an offence involving theft, fraud, forgery, causing financial loss or perjury;
- (c) has been removed from an office of trust on account of misconduct, abuse of office, corruption or incompetence in the immediately preceding ten years;

- (d) is an auditor of a company licensed to conduct deposit-taking business;
- (e) was a director or senior officer of an institution that has been liquidated or is under liquidation or statutory management under any written law dealing with banking, insurance, investment or other financial services:

Provided that such a director or senior officer shall not be disqualified unless the Central Bank forms a reasonable opinion that such a director or senior officer may have, directly or indirectly through commission or omission, contributed to the collapse of the financial entity;

- (f) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services;
- (g) has taken part in any business practices that, in the opinion of the Central Bank, were fraudulent, prejudicial or otherwise improper or which otherwise discredited his methods of conducting business; or
- (h) has taken part in or been associated with such other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment.

[Act No. 4 of 2012, s. 57.]

22. Disqualifications of officers

(1) A person shall not be an officer of an institution, or, if already in office, shall be disqualified and shall not thereafter be eligible to hold office in any institution for a period of ten years, if such person is—

- (a) an undischarged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (b) convicted of an offence involving fraud or dishonesty; or
- (c) removed from office under the provisions of this Act.

(2) Any person who continues to act as an officer after being disqualified under this section commits an offence.

22A. Assessment of officers

(1) Notwithstanding any other provision of this Act, the Central Bank may, from time to time, where it deems it necessary to do so, carry out an assessment of the professional and moral suitability of a person managing or controlling an institution.

(2) An assessment under this section shall be in accordance with such criteria as may be prescribed.

(3) Where, upon an assessment under this section, the Central Bank is satisfied as to the professional and moral suitability of the person managing or controlling an institution, it shall so certify in writing to the institution.

(4) A person who, upon an assessment under this section, is not certified by the Central Bank as fit and proper to manage or control an institution, shall be deemed to be disqualified from holding office and shall cease to hold office.

[Act No. 4 of 2012, s. 58.]

23. Financial year

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

24. 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 keep accounts and records which—

- (a) show a true and fair state of affairs;
- (b) explain all transactions and financial positions to enable the Central Bank determine whether the institution has complied with the provisions of this Act.

25. Accounts to be denominated in shillings

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 (Cap. 486);
- (b) international accounting standards; and
- (c) such other requirements as the Central Bank may prescribe.

26. Submission of accounts to the Central Bank

(1) An institution shall, not later than three months after the end of each financial year, submit to the Central Bank—

- (a) an audited balance sheet, showing its assets and liabilities;
- (b) an audited profit and loss account; and
- (c) a copy of the auditor's report.

(2) Any person who contravenes the provisions of this section commits an offence.

27. Disclosures in financial statements

The financial statements of an institution shall disclose—

- (a) the persons, if any, who hold more than twenty-five percent of the total shares of the institution;
- (b) any advance or credit facility exceeding such limit of its core capital as may be prescribed by the Central Bank; and
- (c) any lending to insiders.

28. Appointment of internal auditor

(1) Every institution shall appoint an internal auditor who shall report to the Board of Directors on the financial matters of the institution.

(2) No person shall be appointed as an internal auditor under this section unless the person holds such professional qualifications in accounting and has such experience in deposit-taking microfinance business, as may be prescribed.

29. Appointment of external auditor

(1) An institution shall, in each year, appoint an external auditor who shall be a person qualified under section 30 and approved for appointment as such by the Central Bank.

(2) The external auditor shall audit the accounts of the institution and shall make a report on the annual balance sheet and profit and loss account to be submitted to the Central Bank.

(3) An institution shall not remove or change its external auditor except with the prior approval of the Central Bank.

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

(5) An external auditor shall, not less than four months after the end of each financial year, submit an audit report to the Central Bank, on the financial condition of the business.

(6) An external auditor's reports submitted under subsection (5) shall contain information on the—

- (a) solvency of the business;
- (b) any violation of prudential standards or a condition imposed on the licence; and
- (c) any other contravention of this Act.

30. Qualifications of an external auditor

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 (Cap. 486); 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) 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.

31. Exhibition and publication of audited accounts

(1) An institution shall exhibit, throughout the year, in a conspicuous position in every office and branch, a copy of its last audited financial statements and shall, within four months of the end of each financial year, cause a copy of the balance sheet and profit and loss account for that year to be published in a national newspaper, in such form as the Central Bank may prescribe.

(2) An institution that does not comply with the provisions of this section shall be liable to pay to the Central Bank such penalty, not being less than one hundred thousand shillings, as may be prescribed.

32. Rectification of audited accounts

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;
- (d) submit to the Central Bank further documents or information relating to any document or information.

33. Collection and furnishing of information by 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 and its agencies and the protection of depositors and, for that purpose, the Central Bank may require an institution and its agencies 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 and its agencies 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 or a holding company of the institution and its agencies required to furnish information under that subsection.

(4) The Minister may require the Central Bank or an institution and its agencies to furnish to the Minister, at such time and in such manner the Minister may direct, such information as the Minister may require for the proper discharge of his functions under this Act.

[Act No. 10 of 2010, s. 85.]

34. Publication of information

(1) Subject to subsection (2), the Minister may publish in the *Gazette*, in whole or in part, any information furnished to him or to the Central Bank 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, 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.

(3A) The Deposit Protection Fund Board and institutions licensed under this Act and institutions licensed under the Banking Act (Cap. 488) and institutions licensed under the Banking Act shall, in the ordinary course of business and in such manner and to such extent as the Minister may, in regulations, prescribe, exchange such information on non performing loans as may, from time to time, be specified by the Central Bank in regulations.

(4) The Central Bank institutions licensed under this Act and institutions licensed under the Banking Act (Cap. 488) may, in the ordinary course of business, in such manner and to such extent as the Minister may, in regulations, prescribe, exchange such other information as is reasonably required for the proper discharge of their functions.

(5) Without prejudice to the provisions of subsection (4), 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 disseminating the information among such institutions for use in the ordinary course of business, subject to such conditions or limitations as may be prescribed.

[Act No. 8 of 2009, s. 72, Act No. 4 of 2012, s. 59.]

PART IV – SUPERVISION BY CENTRAL BANK

35. Inspection of institutions

(1) The Central Bank may, at any time, and shall, if so directed by the Minister, cause an inspection of an institution and its agencies to be made by any person authorized by the Central Bank in writing.

(2) When an inspection is made, the institution or agency concerned and every officer or employee thereof shall produce and make available to the person making the inspection, all the books, accounts, records and other documents of the deposit-taking 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 any books, accounts, records, documents, correspondence, statements or other information required under subsection (2), within the period specified in the relevant direction, commits an offence.

(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 and any regulations made thereunder;
- (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.

[Act No. 10 of 2010, s. 86.]

36. Periodic returns

(1) The Central Bank may require an institution to furnish it with periodic reports of its business operations in such form as the Central Bank may prescribe.

(2) The periodic reports referred to in subsection (1) shall include information on—

- (a) compliance by the institution with the prescribed capital requirements;
- (b) the composition and quality of assets and liabilities;
- (c) the quality of its earning assets;
- (d) the adequacy and performance of its management;
- (e) any other matter which, in the opinion of the Central Bank, is relevant to the discharge of its supervisory role under this Act.

37. 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.

(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 in order to comply with this Act.

(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 or suspend any person responsible for the default in question from the management 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; or
- (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.

(4) Where the Central Bank intervenes in the management of an institution, it may—

- (a) appoint a person to manage the affairs of the institution and to exercise all the powers of the institution to the exclusion of the Board of Directors, including the use of the corporate seal of the institution;
- (b) appoint a competent person familiar with deposit-taking 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; and
- (c) 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.

(5) A person appointed to manage an institution under this section shall hold Office for a period not exceeding six months but the High Court may, on the application of the Central Bank, extend such period as it may deem necessary.

[Act No. 10 of 2010, s. 87.]

PART V – PROTECTION OF DEPOSITS

38. Liquidation of an institution by the Central Bank

(1) Where an institution becomes insolvent, the Central Bank may appoint the Deposit Protection Fund Board to be a liquidator of the institution and the appointment shall have the same effect as the appointment of a liquidator by the High Court under the provisions of the Companies Act (Cap. 486).

(2) Any reference in the Companies Act (Cap. 486) to the “relevant date” and “commencement of the winding-up” shall be deemed to be a reference to the date on which the Deposit Protection Fund Board is appointed as liquidator.

(3) An institution shall be deemed to be insolvent where—

- (a) it is unable to pay its debts within the meaning of the Companies Act (Cap. 486);
- (b) a winding-up order is made against the institution or a resolution of creditors to voluntarily wind up the business is passed under the Companies Act (Cap. 486);
- (c) the institution is unable to pay sums due and payable to its depositors; or
- (d) the Central Bank determines that the value of the assets of an institution is less than the amount of its liabilities.

(4) In exercising its functions under this section, the Deposit Protection Fund Board shall be subject to the supervision of the High Court which may, upon the application of an interested party, or where the High Court deems it fit, appoint a committee of inspection which shall have the same powers as a committee of inspection appointed under the Companies Act (Cap. 486).

(5) No person shall be appointed a receiver or manager of an institution without the prior approval of the High Court.

(6) The High Court shall not grant an approval under subsection (5) unless the Central Bank certifies that it does not intend to exercise its powers under this section.

(7) Where a receiver or a manager of an institution has been appointed and a manager or liquidator is appointed under the provisions of this Part, the powers of the receiver or manager may only be exercised to the extent authorized by the Central Bank or the High Court.

39. Contributions to the Deposit Protection Fund

(1) All institutions shall contribute to the Deposit Protection Fund.

(2) An institution shall pay into the Deposit Protection Fund, such annual amount and at such times as the Deposit Protection Fund Board may prescribe.

(3) Notwithstanding subsection (2), where it appears to the Deposit Protection Fund Board that the affairs of an institution are being conducted in a manner detrimental to the interests of the deposit-taking business or of the depositors of the institution, the Deposit Protection Fund Board may increase the contributions of that institution beyond the prescribed maximum.

(4) An institution that does not contribute to the Deposit Protection Fund within the period prescribed under subsection (2) shall be liable to pay to the Fund a penalty interest charge, not exceeding one-half percent of the unpaid amount, for every day during which the amount remains unpaid.

(5) The Deposit Protection Fund Board shall cause a list of all institutions whose deposits are protected to be published in the *Gazette* annually.

40. Protection of deposits

(1) The Deposit Protection Fund Board shall, by order in the *Gazette*, determine the amount of the balance to be maintained by a customer of an institution, as a protected deposit.

(2) A customer of an institution may, upon the institution becoming insolvent, lodge a claim with the Deposit Protection Fund Board, in such form as the Deposit Protection Fund Board may approve, for payment to the customer out of the Fund of any protected deposit which the customer would, but for the insolvency, have been paid had the customer demanded payment from the insolvent institution.

(3) The Deposit Protection Fund Board may, before paying any claim lodged under subsection (2), require the claimant to furnish such documentary proof as may be proper to show that the customer is entitled to payment out of the Fund.

(4) The Deposit Protection Fund Board may decline to make any payment under this section to a person who in its opinion, had any responsibility for or may have profited directly or indirectly from the circumstances leading to the institution becoming insolvent.

(5) The Deposit Protection Fund Board may require the Central Bank to carry out an inspection to ascertain the type, number and value of the protected deposits of any institution and the information obtained pursuant to the inspection shall, be made available to the Deposit Protection Fund Board.

(6) Upon payment of a protected deposit, the Deposit Protection Fund Board shall be entitled to receive from an institution or its liquidator, an amount equal to the insolvency payment paid by the Fund on account of its subrogation to the claims of any customer or depositor.

41. Rights of Board on insolvency

Whenever an institution is closed or becomes insolvent, the Deposit Protection Fund Board shall be entitled to receive any notice or other document required to be sent to a creditor of the institution, and a duly authorized representative of the Deposit Protection Fund Board shall be entitled to attend any meeting of creditors of the institution.

42. Right of assignment

(1) A liquidator may assign the assets or liabilities of an institution or of a customer under this Act, or the Companies Act (Cap. 486) or under any other written law to third parties for the benefit of the creditors and depositors of the institution under liquidation.

(2) The right of assignment conferred by this section shall override all other rights and interests of parties under contracts of employment, leases, charges, mortgages or any other agreements the institution may have entered into before going into liquidation.

PART VI – MISCELLANEOUS PROVISIONS

43. Declaration of holidays

Where the Minister 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 Minister may, by notice in the *Gazette*, declare that day to be a holiday for all institutions or for the particular institution, shall remain closed on that day.

44. 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.

45. Restriction on use of words “deposit-taking microfinance business”

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

(2) Where a company registered under the Companies Act (Cap. 486) as a deposit-taking micro finance institution 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 “deposit taking microfinance” or the acronym “DTM” in its name.

(3) Any person who contravenes the provisions of this section commits an offence.

[Act No. 4 of 2012, s. 60.]

46. Default by officers or employees

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 Minister or to the Central Bank,

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

47. General penalty

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 one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

48. Regulations

(1) The Central Bank may, with the approval of the Minister, make regulations for prescribing anything which under this Act may be prescribed by the Central Bank.

(2) Subject to this Act, the Minister may, on the recommendation of the Central Bank, make regulations generally for the better carrying out of the provisions of this Act.

(2A) The Central Bank may issue directions and guidelines to institutions generally for the better carrying out of their functions, and in particular, with respect to—

- (a) the standards to be adhered to in the conduct of their business in Kenya or in countries where their branches or subsidiaries are located;

- (b) guidelines to be adhered to by institutions in order to maintain a stable and efficient deposit taking microfinance system.

(3) Without prejudice to the generality of subsection (2), the Minister may, in regulations, prescribe penalties to be paid by institutions which fail or refuse to comply with any directions of the Central Bank under this Act, which shall not exceed one million shillings in the case of an institution, or one hundred thousand shillings in the case of a natural person, and 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.

[Act No. 8 of 2009, s. 73.]

49. Transitional provision

(1) Subject to section 19, a person who, at the commencement of this Act, is carrying out deposit-taking microfinance business shall, within twelve months from the date of commencement, or within such longer period as the Minister may, by notice in the *Gazette* prescribe, comply with the requirements of this Act or cease to carry out such business.

(2) A person who fails to comply with the requirements of this section within the prescribed period commits an offence under section 4 and shall be liable, on conviction, to the penalty prescribed in that section.

50. Amendment of section 36A of Cap. 488

Section 36A of the Banking Act (Cap. 488) is amended—

- (a) by adding the words “or any other written law” immediately after the word “Act” appearing at the end of subsection (1);
- (b) by inserting the following new subsection immediately after subsection (1)—

“(1A) Where, under the provisions of any other written law, the Board is—

- (a) required to provide a deposit scheme for customers of any institution; or
- (b) appointed as a liquidator in respect of any insolvent institution,

the institution shall, subject to the provisions of that other written law, be deemed to be an institution for the purposes of this Part and the relevant provisions of this Part shall, with the necessary modifications, apply to that institution.”;

- (c) in subsection (2), by adding the words “or the provisions of any other written law” at the end of paragraph (b).

51. Amendment of section 37 of Cap. 488

Section 37 of the Banking Act (Cap. 488) is amended—

- (a) in subsection (1), by inserting the words “or under the provisions of any other written law” immediately after the expression “section 38”;
- (b) in subsection (2), by adding the words “or under the provisions of any other written law” at the end of paragraph (b).

52. 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.

[Act No. 4 of 2012, Section 61.]

SCHEDULE

[Section 11.]

MINIMUM CAPITAL REQUIREMENTS

Every institution shall, at all times, maintain minimum capital ratios indicated below or such other ratios as may be determined by the Central Bank—

- (a) a core capital of not less than ten percent of total risk-adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank;
- (b) a core capital of not less than eight percent of its total deposit liabilities;
- (c) a total capital of not less than twelve percent of its total risk-adjusted assets plus risk-adjusted off balance sheet items as may be determined by the Central Bank;
- (d)
 - (i) a core capital of at least sixty million Kenya shillings; or
 - (ii) in the case of a deposit-taking business of a category prescribed for the purposes of this subparagraph under section 7, a core capital of at least twenty million Kenya shillings.

NO. 19 OF 2006

MICROFINANCE ACT

SUBSIDIARY LEGISLATION

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MICROFINANCE (CATEGORIZATION OF DEPOSIT-TAKING MICROFINANCE INSTITUTIONS) REGULATIONS, 2008

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2. Interpretation.
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4. Factors for assessing categorization.
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6. Application for categorization.
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8. Application to convert community to nationwide.
9. Central Bank to grant approval.
10. Prohibition to convert from nationwide to community.
11. General penalty.

SCHEDULE – APPLICATION FORM TO CONVERT A COMMUNITY MICROFINANCE INSTITUTION TO A NATIONWIDE MICROFINANCE INSTITUTION

[Subsidiary]

MICROFINANCE (CATEGORIZATION OF DEPOSIT-TAKING MICROFINANCE INSTITUTIONS) REGULATIONS, 2008

[L.N. 57/2008.]

1. Citation

These Regulations may be cited as the Microfinance (Categorization of Deposit-Taking Microfinance Institutions) Regulations, 2008.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**community microfinance institution**” means an institution licensed to carry out deposit-taking microfinance business in the manner prescribed in regulation 3(b);

“**nationwide microfinance institution**” means an institution licensed to carry out deposit-taking microfinance business in any part of Kenya.

3. Types of categories

The Central Bank may licence any institution in Kenya, either as a—

- (a) nationwide microfinance institution, which may carry out its deposit-taking business operations countrywide; or
- (b) community microfinance institution which may carry out its deposit-taking business operations—
 - (i) within one Government Administration District; or
 - (ii) within one Government Administrative Division, where the deposit-taking business is operated in a City; or
 - (iii) in any other specified region as the Central Bank may deem appropriate.

4. Factors for assessing categorization

The Central Bank shall consider the following factors necessary for categorizing an institution—

- (a) the reasons given by an institution on the proposed area of operation;
- (b) adequacy of the capital structure of the applicant;
- (c) corporate governance, information technology system and internal controls;
- (d) character, experience and qualifications of proposed directors and officers;
- (e) the target clientele, feasibility study and viability of the institution;
- (f) all other requirements specified in the Act and the regulations; and
- (g) any other factors that the Central Bank may deem appropriate.

5. Persons not to operate outside prescribed categories

(1) No person shall carry out deposit-taking microfinance business outside the prescribed categories.

(2) A person who contravenes paragraph (1) commits an offence.

6. Application for categorization

(1) A person wishing to carry out deposit-taking microfinance business shall submit an application to the Central Bank indicating the category within which the applicant wishes to operate.

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(2) The Central Bank, in making its decision as to licence an institution as a nationwide microfinance institution or community microfinance institution, shall consider the factors set out in regulation 4 of these Regulations.

(3) The decision of the Central Bank shall be final.

7. Conversation without approval prohibited

(1) No person shall convert a community microfinance institution into a nationwide microfinance institution without the written approval of the Central Bank.

(2) A person who contravenes paragraph (1) commits an offence.

8. Application to convert community to nationwide

An application to convert a community microfinance institution into a nationwide microfinance institution shall be made to the Central Bank as set out in the Schedule to these Regulations.

9. Central Bank to grant approval

The Central Bank, if satisfied that an institution meets the requirements necessary to convert into a nationwide microfinance institution, shall grant an approval for conversion and may attach such conditions as the Central Bank may deem necessary.

10. Prohibition to convert from nationwide to community

A nationwide microfinance institution shall not convert into a community microfinance institution.

11. General penalty

A person who contravenes these Regulations commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

SCHEDULE

[Rule 8.]

APPLICATION FORM TO CONVERT A COMMUNITY MICROFINANCE INSTITUTION TO A NATIONWIDE MICROFINANCE INSTITUTION

1. Name of Institution
2. Situation of Registered Office
3. Physical Address of Head Office: L R No.
Street
- Building
4. Postal Address and Postal Code
- Telephone No P. I.N. No
5. Date of incorporation and certificate no.
6. Date licensed as a community microfinance institution and license number
-
7. Reasons/justification of the need to convert to a nationwide microfinance institution including but not limited to the following:
 - (a) Feasibility study report and business plan,

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SCHEDULE—continued

- (b) Capitalisation levels, and
- (c) Governance structure
- 8. Is an inspector or other authorized officer of any government ministry, department or agency, professional association or other regulatory body investigating or has such an investigation ever previously taken place into the affairs of the institution?
If so, give particulars
- 9. Is the institution currently engaged or does it expect to be involved in Kenya or elsewhere, in any litigation which may have a material effect on the business of the institution?
.....
If so, give particulars
- 10. Is the institution engaged or does it expect to be engaged in any business relationship with any of its officers or significant shareholders
.....
If so, give particulars
- 11. The Central Bank shall consider the institution's performance and compliance with the Act and Regulation, and any other relevant material in making its decision to approve the conversion.
- 12. DECLARATION
We, the undersigned, being officers of the institution, declare that to the best of our knowledge and belief, the information contained herein and any attachments is complete and accurate.
(a) Director (Name)
Signature
Date
- (b) Director (Name)
Signature
Date



**MICROFINANCE (DEPOSIT-TAKING MICROFINANCE INSTITUTIONS)
REGULATIONS, 2008**

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**MICROFINANCE (DEPOSIT-TAKING MICROFINANCE INSTITUTIONS)
REGULATIONS**

[L.N. 58/2008.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Microfinance (Deposit Taking Microfinance Institutions) Regulations, 2008.

2. Interpretations

In these Regulations unless the context otherwise requires—

“agency” means—

- (a) an institution’s place of business operated within a third party premises or structure by means of agreements between the institution and the third party in the provision of deposit-taking microfinance services; or
- (b) a third party contracted by an institution to provide deposit-taking microfinance services in the manner set out in regulation 12.

“branch” means an institution’s place of business, used for provision of the deposit-taking microfinance 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;

“capital adequacy” means the maintenance of minimum capital requirements at all times in accordance with the Act and Regulations;

“capital deficiency” means the failure by an institution to meet and maintain at all times the minimum capital requirements in accordance with the Act and Regulations;

“capital requirement basis” means the basis upon which total capital, core capital and supplementary capital are measured to determine capital adequacy;

“contingent claim” includes direct credit substitutes, such as guarantees, acceptances and endorsements; transaction related items such as performance bonds; formal commitments such as standby facilities, credit lines and unused facilities;

“classification” means the determination of the quality and collectibility of a credit facility;

“credit facility” includes—

- (a) loans, advances or any other facilities, by which a customer of the institution has access to funds or financial guarantees, or
- (b) the incurring by the institution of other liabilities on behalf of a customer.

“group loan” means a loan given to an individual within a group and which is jointly guaranteed by all the members of that particular group;

“head office” means an institution’s principal place of business responsible for the overall management, coordination and operations of the institution, in which it conducts its business at a permanent location and address;

“internal controls system” includes the policies and procedures established and implemented individually or with other policies or procedures, to manage and control risks or business activities, to which the institution is exposed or in which it is engaged;

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“**insider**” includes a significant shareholder, an officer or employee of an institution or their associates;

“**large exposure**” means a loan or credit facility granted to a person and his associates that exceeds two per centum (2%) of an institution’s core capital;

“**marketing unit**” means an institution’s place of business, which the institution uses only as a marketing point without carrying out or transacting any deposit-taking business;

“**microfinance loan**” means a credit facility granted to an individual single end user whose maximum amount shall not exceed 2% of the institution’s core capital;

“**mobile unit**” means an institution’s place of business operated by means of using air, land or water transportation modes in carrying out deposit-taking microfinance services to its clients;

“**non-executive director**” means an individual not involved in the day-to-day management and not a full time salaried employee of the institution;

“**non-performing loan**” means a credit facility that is not generating income and the principal or interest is due and unpaid for, for than thirty days and includes a loan or credit facility classified either as substandard, doubtful or loss;

“**outlet**” means an institution’s place of business, directly responsible to a branch or head office, used for the provision of deposit-taking microfinance business and includes a mobile unit and an automated teller machine;

“**past due loan**” means a loan that has not been repaid within a day of the agreed repayment term in the loan contract;

“**place of business**” means an institution’s premises where the deposit-taking business is carried out, and includes the institution’s head office;

“**premises**” means an institution’s building or structure, whether owned, rented or leased, that is used in the deposit-taking business in Kenya;

“**renegotiated loan**” or “**restructured loan**” means any loan that has been rescheduled or refinanced in accordance with an agreement setting forth a new repayment plan on a periodic basis;

“**significant shareholder**” means a person, other than the Government or a public entity, who holds, directly or indirectly or otherwise has a beneficial interest in, more than forty (40%) per centum of the share capital of an institution;

“**supplementary capital**” means general provisions which are held against future and presently unidentified losses that are freely available to meet losses which subsequently materialize and revaluation reserves on the premises of an institution which arise periodically from the independent valuation of those premises, and any other form of capital as may be determined by the Central Bank.

PART II – LICENSING

3. Application for licence

(1) No person shall carry out deposit-taking business without a valid licence.

(2) An application for a licence to carry out deposit taking microfinance business shall be in Form 1 set out in the First Schedule to these Regulations and shall be accompanied by the following information—

- (a) incorporation of the words “Deposit Taking Microfinance” or the acronym “DTM” in their business name;

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- (b) the “Fit and Proper” Test of the professional and reputational suitability of persons proposed to manage or control an institution, completed in Forms 2a and 2b set out in the First Schedule to these Regulations;
- (c) feasibility study and three-year business plan of the proposed deposit-taking business in Kenya, detailing the mission, vision, scope and nature of business operations, profitability analysis and internal controls and monitoring procedures, including but not limited to—
 - (i) the proposed shareholding structure;
 - (ii) the proposed organizational structure;
 - (iii) the domestic economic situation and its relevance for the operation of the proposed institution and an analysis of the financial sector environment and the market to be served by the proposed business company;
 - (iv) a schedule of all the preliminary expenses including the institutions costs, all expenses relating to the establishment or transformation of the institution;
 - (v) projected balance sheets, income and expenditure statements and cash flow for three years supported by—
 - (aa) projected deposit mobilization and interest payable, stating separately anticipated sources of deposits;
 - (bb) forecasted lending and advances to be made and interest receivable, stating major areas of lending including the intended sectoral lending composition;
 - (cc) forecasted cash and other liquid assets to be maintained;
 - (dd) the expected provision for bad and doubtful debts and loan write-offs, including the policy and procedures manual;
 - (ee) probable areas of investments to be made and earnings, stating overall investment policy and categories of business and productive activities to be financed;
 - (ff) projected operating expenses including rents, salaries, employee benefits, and director’s remuneration, etc.;
 - (gg) proposed levels of fixed assets, including business premises and equipment;
 - (hh) other income, including commissions, fees and discounts etc.;
 - (ii) interest rate sensitivity analysis on the projections submitted or other similar analysis, providing necessary levels of scenario planning should economic conditions change or when business expectations fall short; assumptions underpinning the proforma financial statements, the sensitivity analysis and scenario planning must be fully elaborated;
 - (jj) statistical data and other market information, which may have been collected and analyzed covering population, economic activities and the planned areas of operation, where revenue and expenses will be incurred, including detailed competitive analysis; and
 - (kk) the planned scope of operations including services and products to be offered, the capability of the applicant to provide these services, the projected demand for the services, and different groups of customers or market segments the institution wants to serve;

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- (II) the applicant's risk-management policies and internal control systems including, among others, board and senior management oversight, internal controls, physical infrastructure, geographical presence, use of information technology, including but not limited to the following—
- (aaa) deposit mobilization strategies or plans and marketing methodologies;
 - (bbb) lending and credit administration policy manual;
 - (ccc) human resource development manual;
 - (ddd) investments policy manual;
 - (eee) assets manual;
 - (fff) liquidity and funds management policies and procedures;
 - (ggg) management information system;
 - (hhh) capital, planning and budgeting;
 - (iii) accounting procedures manual; and
 - (jjj) internal audit and control manuals.
- (mm) evidence of sources and availability of capital including copies of bank statements, Treasury Bills, or other forms in which the capital is held;
- (nn) curriculum vitae and biographical data on each of the significant shareholders and proposed officers;
- (oo) in the case of a wholly owned subsidiary of a bank or financial institution licensed under the Banking Act (Cap. 488), a copy of the resolution of the board approving the proposed investment and a copy of the approval granted by the Central Bank;
- (pp) pay a non-refundable application fee to the Central Bank by bankers cheque as prescribed in the Second Schedule to these Regulations; and
- (qq) such other requirements as the Central Bank may require.

(3) All documentation submitted shall be in the English language.

(4) A person who contravenes paragraph (1) commits an offence.

4. Company incorporated outside Kenya may establish an institution

(1) A company incorporated outside Kenya intending to establish an institution in Kenya shall apply to the Central Bank and shall in addition to the requirements set out in regulation 3, furnish the following information—

- (a) evidence that the company operates an entity on a going concern basis;
- (b) a signed statement by its board of director to adhere to the Act and these Regulations and other relevant Kenyan Laws during the validity of the licence; and
- (c) such other conditions as the Central Bank may deem necessary.

(2) The Central Bank shall obtain a letter from the relevant authority in the country of the foreign company—

- (a) confirming that the promoters of the foreign incorporated company operates an entity on a going concern basis, and may grant a no objection to the establishment of the branch or subsidiary in Kenya; and

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- (b) undertaking that the supervisory authority shall exchange supervisory information with the Central Bank before the institution is licensed and continuously as long as the institution is in operation.

5. Issuance of letter of intent and licence

(1) The Central Bank shall consider an application for licence and if satisfied that the applicant meets the requirements, it may issue a letter of intent to the applicant, which shall act as an interim approval of the application.

(2) Upon being issued with a letter of intent, an applicant shall proceed to –

- (a) prepare the premises to meet the prescribed standards;
- (b) to put in place management information systems and such other institutional structures required for carrying out the deposit-taking business in Kenya; and
- (c) pay the prescribed fee as set out in the Second Schedule to these Regulations.

(3) The Central Bank may, on being satisfied that the applicant has fulfilled all the requirements in paragraph (2), issue a licence to the applicant, which shall signify an approval to commence operations.

(4) A licence issued under this Regulation shall be in Form 3 and 3(a) and 3(b) set out in the First Schedule to these Regulations.

(5) A licence issued under these Regulations shall not be transferable or assignable.

6. Validity of licence

(1) A licence issued under these Regulations shall, unless revoked, be valid up to the 31st December of the year in which it is issued and may, on expiry, be renewed.

(2) An application for the renewal of a licence shall be made in writing to the Central Bank at least three months before the date of expiry.

(3) An institution which fails to commence business within twelve months of the grant of a licence, shall if it still proposes to carry out the deposit-taking business, make a fresh application for licence.

7. Institutions to use the word ‘deposit-taking microfinance’

(1) Every institution shall prominently display at its usual place of business in a part thereof to which the public has access the words “deposit-taking microfinance”.

(2) No person shall carry on business under a name which is likely to mislead the public or give the impression that the institution is carrying on any other business than deposit-taking microfinance business.

(3) A person who contravenes this Regulation commits an offence.

8. Central Bank to publish names of licensed institutions

(1) Upon issuing a licence to an institution, the Central Bank shall, within fourteen days of licensing, publish in the *Kenya Gazette*, the names of the newly licensed institution.

(2) The Central Bank shall, every twelve months, publish in at least two newspapers of nationwide circulation, the names of all institutions licensed to carry out the deposit-taking business in Kenya.

9. Central Bank's power to inspect

(1) If the Central Bank has reason to believe that a person is carrying out the deposit-taking business in Kenya without a valid licence, the Central Bank shall, under a warrant issued by the High Court, shall, at all times—

- (a) have full and free access to the premises at which that person is suspected of carrying out the deposit-taking business in Kenya without a valid licence or at which that person may have books, accounts and records; and
- (b) have the power to examine copy or take possession of the books, accounts and records of that person in order to ascertain whether or not that person has contravened, or is contravening any of the provisions of the Act and regulations.

(2) Refusal to allow the Central Bank full and free access to the premises or to submit any books, accounts or records shall be *prima facie* evidence that the person is operating a deposit-taking business without a licence.

PART III – PLACE OF BUSINESS**10. Opening or relocating or closing place of business**

(1) No institution shall open, relocate or close a place of business without the prior written approval of the Central Bank.

(2) An application to open, relocate or close a place of business shall be made to the Central Bank in the manner prescribed in these Regulations and shall be accompanied by the prescribed fee.

(3) A person who contravenes paragraph (1) commits an offence.

11. Opening head office or branch

(1) No institution shall open a head office or branch without a valid licence.

(2) An application for opening a branch shall be in the form set out in the Third Schedule to these Regulations and shall be accompanied by the following information—

- (a) a summary report showing performance of the institution;
- (b) an organization structure for the proposed place of business;
- (c) a feasibility study of the future operations and development of the new place of business for a minimum of three years from the date of application including projections for—
 - (i) expected deposit mobilization and interest payable stating separately the proposed major sources of deposits;
 - (ii) projected investments to be made and earnings, stating policy and categories of business to be funded;
 - (iii) operating expenses including rent, salaries, employees benefits and director's remuneration;
 - (iv) liquid and cash reserve assets;
 - (v) provisions for loans and advances;
 - (vi) fixed assets including business premises;
 - (vii) other incomes including commissions and discounts, among others; and
 - (viii) net operating profit/loss.

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- (d) statistical and other data which may have been collected in respect to the area in which the applicant intends to serve including population of the area, sectoral activities such as agricultural activities, micro business and industrial development, among others and existing financial intermediaries; and
- (e) a schedule of all the preliminary expenses.

(2) Every institution shall notify the Central Bank of its readiness to operate a head or branch and shall invite the Central Bank for inspection of the premises before commencing operations.

(3) The Central Bank shall undertake the inspection of the head office or branch premises and examine compliance with the standards and the operational readiness of the institution for commencing operations.

(4) The Central Bank shall, if satisfied that all requirements have been fulfilled, grant a licence upon payment of the prescribed fee.

12. Opening of an agency or outlet

(1) No institution shall open or operate an agency or outlet without the prior written approval by the Central Bank.

(2) An institution that contravenes paragraph (1) commits an offence.

(3) An application to open an agency or outlet shall be in the form set out in the Third Schedule to these Regulations and shall be accompanied by the following information—

- (a) the reasons for opening the agency or outlet;
- (b) a duly executed copy of the agency agreement between the parties concerned, if any; and
- (c) the security features and space available for carrying out the deposit-taking business in Kenya.

(4) The Central Bank shall, if satisfied that the applicant fulfils all the requirements, grant an approval for opening an agency or outlet.

(5) An institution granted an approval to open an agency or an outlet shall ensure that the agency or outlet opens for business no later than ninety days after the date of approval and the institution shall notify the Central Bank of the opening within fourteen days from the date of opening.

(6) An institution that contravenes this Regulation is liable to such administrative sanction as the Central Bank may prescribe.

13. Relocation of place of business

(1) No institution shall relocate a place of business without a written approval by the Central Bank.

(2) An application for an approval to relocate a place of business shall be made to the Central Bank in the Form set out in the Fourth Schedule to these Regulations and shall be accompanied by the following information—

- (a) the reasons given for the change of location and plan for settlement or transfer of claims and liabilities;
- (b) completion of the preparations of the new place of business premises; and
- (c) analysis of the potential and feasibility for changing the place of business location.

(3) A person who contravenes paragraph (1) commits an offence.

(4) The Central Bank may impose the prescribed monetary penalties on an institution that contravenes this Regulation.

14. Closure of place of business

(1) No person shall, without the written approval of the Central Bank—

- (a) close or cause to be closed a place of business, in a manner so as to permanently cease operation of business; or
- (b) close temporarily or cause the temporary closure of a place of business.

(2) An application to close a place of business shall be made to the Central Bank in the Form set out in the Fourth Schedule to these Regulations and shall be accompanied by—

- (a) the reasons for such closure; and
- (b) a plan for settlement or transfer of assets and liabilities.

(3) An application for temporary closure of a place of business excluding public holidays and Sundays shall be accompanied by the following information—

- (a) the reasons for closure;
- (b) period of closure; and
- (c) the date at which the place of business shall reopen.

(4) In deciding on the approval to authorize the closure of a place of business, the Central Bank shall be satisfied that—

- (a) the public interest in the location of the institution will not be jeopardized by the closure; and
- (b) alternative financial service provided by the institution are available in the locality.

(5) The Central Bank shall consider the application for permanent closure of a place of business and if satisfied, shall grant an approval for permanent closure of an institution.

(6) An institution granted approval to close its business permanently shall—

- (a) report closure to the Central Bank not later than fourteen days after closure; and
- (b) give a notice of the closure to the public, at least six months prior to such closure.

(7) An institution granted approval to close a place of business, whether permanently or temporarily, shall ensure that the notices of the closure are made—

- (a) in at least two newspapers of nationwide circulation;
- (b) to all government administrative offices in the area of the place of business.

(8) An institution that contravenes this Regulation is liable to such administrative sanction as the Central Bank may prescribe.

15. Points to consider

(1) In determining the application to open, relocate or close a place of business, the Central Bank shall take into consideration the following factors—

- (a) the public interest that was being served in the area of the location of the institution will not be jeopardized by the closure;
- (b) alternative financial services that were being provided by the institution at current place of business are available in the locality;

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- (c) institution's performance strengths;
- (d) capital adequacy and structure;
- (e) current and future earning capabilities;
- (f) managerial capabilities;
- (g) liquidity position;
- (h) track record on adherence to the provisions of the Act and Regulations including the Central Bank directives;
- (i) credit tools and discipline; and
- (j) safety and security arrangements.

PART IV – CAPITAL ADEQUACY**16. Minimum Capital Requirements**

(1) Every institution shall, at all times—

- (a) maintain records including balance sheets and periodic statements of income and expenditure to enable proper computation of the institution's capital adequacy; and
- (b) maintain the prescribed minimum capital requirements.

(2) The Central Bank shall determine whether an institution is in compliance with the capital adequacy requirements in accordance with the Act and these Regulations.

(3) An Institution that contravenes paragraph (1) is liable to such administrative sanctions as may be prescribed by the Central Bank.

17. Criteria for Higher Minimum Capital Ratios

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 a 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 among other resource needs as may be determined by the Central Bank; or
- (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.

18. On-Balance Sheet Items

(1) Every institution shall assess and provide for risks in the evaluation of their respective capital adequacy measurement.

(2) Every institution shall classify and assign risk weight to credit exposures into four categories according to their relative risk exposures, in the following manner—

- (a) zero weight may be assigned to the on-balance sheet items including cash, balances with the Central Bank, claims on the Kenya Government by way of investments in Treasury Bills, Treasury bonds and promissory notes, loans fully secured by cash and loans duly guaranteed by the Government of Kenya or Organisation for Economic Co-operation and Development (OECD) central governments;

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- (b) twenty per centum (20%) weight, where deposits and balances due from commercial banks, financial institutions, mortgage finance and building societies in Kenya, deposit-taking microfinance institutions in Kenya, securities issued by foreign governments and balances due from foreign banks (including banks in groups) and claims (loans and advances) guaranteed by a multilateral development bank (MDB), a Regional Development Bank, or a development agencies;
- (c) fifty per centum (50%) weight where loans are fully secured by a first legal charge over residential property located within cities and municipalities in Kenya that are either occupied by the borrower or rented:
 Provided that the fifty per centum (50%) will not be applied to loans granted to companies engaged in speculative residential building or property development or any portion of loans in excess of 80% of the forced sale value of the residential property or rescheduled facilities;
- (d) the one hundred per centum (100%) weight shall apply to all other claims on the public and private sector which are not covered under the other categories, and include- deposits in banks, financial institutions, mortgage finance building societies, and deposit-taking microfinance institutions, that are all under statutory management; premises and other fixed assets, loans and advances, bills discounted and all other assets of these institutions.

(3) For the purpose of this Regulation "Multilateral Development Banks (MDBs)" include international financial intermediaries whose shareholders include both borrowing developing countries and donor developed countries.

(4) An institution that fails to comply with this Regulation shall be subject to such administrative sanction as may be prescribed by the Central Bank.

19. Off-Balance Sheet Items

(1) Every institution shall ensure that—

- (a) off-balance sheet items fully secured by cash or cash equivalent and those that are guaranteed by Government of Kenya or OECD Central Government shall be assigned zero per centum (0%) risk weight; and
- (b) off balance sheet items with the maturity exceeding a year are assigned a risk weight of fifty per centum (50%), including performance bonds and bid bonds.

(2) An institution that fails to comply with this Regulation is liable to such administrative sanctions as may be prescribed by the Central Bank.

20. Returns to Central Bank

(1) Every institution shall prepare and submit to the Central Bank, at the end of every month to be received by the tenth day of the following month, returns on Capital to Risk Weighted Assets in the form set out in the Fifth Schedule to these Regulations.

(2) An institution that fails to comply with this Regulation is liable to such administrative sanctions as may be prescribed by the Central Bank.

21. Administrative sanctions

Where an institution defaults in meeting the provisions of this Part, the Central Bank may pursue any or all the following administrative sanctions against an institution and its officers—

- (a) prohibition from declaring or paying dividends;
- (b) prohibition from establishing new places of business;

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- (c) from engaging in new activities or from expanding existing activities;
- (d) suspension from lending, investment, and credit extension operations;
- (e) prohibition from acquiring, through purchase or lease, additional fixed assets;
- (f) prohibition from accepting further deposits;
- (g) prohibition from declaring or paying bonuses, salary incentives, severance packages, management fees or other discretionary compensation to directors or officers.

PART V – LIQUIDITY**22. Liquidity risk management plan**

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

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

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

(3) An institution that fails to comply with this Regulation is liable to such administrative sanctions as the Central Bank may prescribe.

23. Statutory minimum

(1) Every institution shall maintain a minimum holding of liquid assets of twenty per cent of all its deposit liabilities, matured and short term liabilities.

(2) An institution that contravenes paragraph (1) shall be liable to the prescribed penalty and an additional charge not exceeding one percent of the amount of deficiency for every day during which the default continues.

24. Returns

(1) Every institution shall provide, twice a month, as at the fifteenth and the last day of each month, liquidity information to the Central Bank as set out in the Sixth Schedule to these Regulations.

(2) Where the date of submission falls on a weekend or a public holiday, the deadline shall be the Friday or the day before the public holiday.

(3) Every institution shall ensure that every return on liquidity requirement shall be submitted to the Central Bank within five working days of the date stipulated in paragraph (1).

(4) An institution that fails to comply with this Regulation is liable to such administrative sanctions as the Central Bank may prescribe.

PART VI – GOVERNANCE**25. Institution's board and Committees**

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

(2) Every board shall constitute at least an Audit committee and Credit committee.

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

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

26. Membership of committees

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

Provided that the chief executive officer of an institution shall not be a member of the Audit Committee, while the chairperson of the Board shall not be a member of the credit and audit committees, but may attend meetings by invitation, for consultation only.

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

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

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

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

27. Role and responsibilities of audit committee

(1) The audit committee shall assist the board in raising the standards of corporate governance and internal controls in the following areas—

- (a) ensuring that financial and operational information is prepared in a timely and accurate manner;
- (b) improving the quality of financial record keeping and reporting;
- (c) strengthening the effectiveness of internal and external audit function;
- (d) strengthening the internal control environment and risk management;
- (e) enhancing public confidence in the credibility and stability of the institution;
- (f) monitoring incidences of non-compliance with the Act and regulations issued there under as well as any other relevant legislations and regulations, and advising the board on the best solutions; and
- (g) monitoring the ethical conduct of the institution and developing the code of conduct and ethical standards and requirements, including effectiveness of procedures for handling and reporting complaints.

(2) The external and internal auditors of an institution shall have free access to the audit committee.

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

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

28. Responsibilities of credit committees

Every credit committee shall—

- (a) review and oversee the overall lending policy, including monitoring and risk management tools;

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

29. Assets and liabilities management committee (ALCO)

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

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

(3) The responsibilities of the ALCO shall include—

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

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

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

30. Monitoring and evaluation

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

- (a) develop and submit to the Central Bank a self assessment questionnaire in the manner set out in the Seventh Schedule to these Regulations; and
- (b) develop and submit to the Central Bank an annual self assessment board evaluation, not later than three months after the end of each financial year.

(2) An institution that contravenes paragraph (1) shall be subject to the prescribed administrative sanctions.

31. Appointment of the chief executive

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

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

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

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

32. Reckless and fraudulent activities

(1) No institution shall—

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

in a fraudulent or reckless manner detrimental to the institution's interest or the interest of depositors or the general public.

(2) In relation to paragraph (1)—

“reckless” means—

- (a) transacting the deposit-taking business beyond the limits set under the Act or Central Bank of Kenya Act (Cap. 491);
- (b) offering facilities contrary to any guidelines or regulations issued by the Central Bank;
- (c) failing to observe the institution's policies as approved by the board of directors; or
- (d) misuse of position or facilities of the institution for personal gain.

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

33. Scheme of arrangement

- (1) No institution shall enter into any scheme or arrangement with creditors.
- (2) An institution that contravenes paragraph (1) commits an offence.

34. Restrictions on Trading and Investments

- (1) No institution shall—
 - (a) acquire or hold, directly or indirectly, any part of the share capital of; or
 - (b) have a beneficial interest in any financial, commercial, agricultural, industrial or other undertaking, where the value of the institution’s interest exceeds twenty five per centum (25%) in the aggregate of the institution’s core capital, except in an undertaking in fulfillment of a debt due to the institution.
- (2) An institution that contravenes paragraph (1) commits an offence.

35. Single Borrower Limit

- (1) No institution shall extend loans exceeding five per centum (5%) of its core capital to a single end-user borrower.
- (2) Every institution shall ensure that loans or credit facilities equivalent to the maximum limit are extended only to those borrowers who have the capacity or have an established track record of satisfactory repayment.
- (3) Every institution shall formulate well-defined credit policies and procedures covering the maximum lending limits and approval levels, rate to be charged, repayment period, loan tracking and any collateral, among others.
- (4) No institution shall grant a microfinance loan to any single end-user or his associate that exceed two per centum (2%) of its core capital.
- (5) Every institution shall ensure that the aggregate amount of microfinance loans is equivalent to or more than seventy per centum (70%) of the institution’s total loan portfolio.
- (6) Where an institution grants a credit facility of more than two per centum (2%) of its core capital, hereby referred to as a large exposure, such credit facility shall in aggregate not exceed thirty per centum (30%) of the institution’s total loan portfolio.
- (7) Paragraph (1) shall not apply to transactions between institutions licensed under the Act or branches of these institutions.
- (8) Where a credit facility is non-performing, the outstanding balance will be net of provisions for purposes of determining the single borrower exposure limit.
- (9) The term “person” includes that person and his or her associates. For this reason facilities for the person and the associates shall be aggregated and the five per centum (5%) limit of core capital rule shall apply to the aggregate amount.
- (10) Every institution shall submit to the Central Bank a return on single borrower limits on a quarterly basis to be received on the tenth day from the end of each quarter as prescribed in the Eighth Schedule.
- (11) An institution that contravenes this Regulation is liable to such administrative sanctions as the Central Bank may prescribe.

36. Insider Lending Limits

(1) No institution shall grant or permit to be outstanding any advance or credit facility to significant shareholders and Directors of the institution unless such advance, loan or credit facility—

- (a) is approved by the full board of directors of the institution, complying with documented internal policies and procedures. An institution must ensure that all members of the board are made aware of the facility before it is disbursed; and
- (b) is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution.

(2) Every institution shall notify the Central Bank of every approval given pursuant to paragraph (1), within fourteen (14) calendar days of such approval.

(3) No institution shall—

- (a) grant or permit to be outstanding a credit facility, financial guarantee, or
- (b) incur a liability to or in favour of, or on behalf of, any single insider or associate in excess of two per centum (2%) of the institution's core capital; and
- (c) grant or permit to be outstanding a credit facility, financial guarantee or a liability to, or in favour of, or on behalf of an insider in excess of an aggregate value of twenty per centum (20%) of the institution's core capital.

(4) No institution shall—

- (a) grant or permit to be outstanding a credit facility, or a financial guarantee or a liability to or in favour of, or on behalf of any company in which the institution holds directly, indirectly or otherwise has a beneficial interest in more than one to twenty per centum (1-20 %) of the core capital of the institution;
- (b) grant or permit to be outstanding a credit facility, or a one financial guarantee or a liability which are not fully secured to—
 - (i) officers of the institution and their associates;
 - (ii) any person or entity of whom or of which any of its officers has an interest as an agent, director, manager or significant shareholder;
 - (iii) any person or entity of whom or of which any of its officers is a guarantor; and
 - (iv) any associate of the institution:
Provided that facilities granted to employees or staff within schemes approved by the board and serviced by salary deductions through a check-off system are allowed.

(5) Every institution shall submit to the Central Bank a return on insider lending on a quarterly basis to be received on the tenth day from the end of each quarter as prescribed in the Eighth Schedule.

(6) An institution that contravenes this Regulation commits an offence and is liable to such administrative sanction as the Central Bank may prescribe.

37. Know Your Customer requirements

(1) Every institution shall ensure that its management—

- (a) obtains and maintains proper identification of customers wishing to open accounts or make transactions or enter into an engagement with the institution whether directly or indirectly through proxy; and

[Subsidiary]

- (b) maintains adequate and accurate records for a minimum of seven years regarding its customers, sources of funds and transactions.

(2) Every institution shall establish to its satisfaction that it is dealing with a person that actually exists and identify those persons who are empowered to undertake any business transactions or activity, whether on their own behalf or on behalf of others.

(3) Every institution when establishing a business relationship with any persons shall ensure that the nature of the business to be conducted is ascertained and well documented as to determine the terms and conditions as well as the normal activity levels.

(4) Every institution shall have full disclosure of beneficial owners or controlling persons behind nominee accounts and engagement.

(5) No institution shall carry out business with any anonymous persons in obvious fictitious names and any numbered accounts.

(6) An institution that contravenes this Regulation commits an offence.

PART VII – INTERNAL CONTROLS, AUDITING, REPORTING, PUBLICATION AND SUBMISSION OF FINANCIAL STATEMENTS AND DISCLOSURES**38. Internal Controls**

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

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

- (a) a comprehensive financial, operational and compliance data and information, as well as external market information about the institutions operations and activities, events and market conditions that are relevant for decision making. The information shall be accurate, reliable, timely, and accessible and maintained in a consistent format;
- (b) reliable information systems to cover all significant activities and operations of the institution including the use of data in an electronic form; and
- (c) effective channels of communication to ensure that staff fully understand and adhere to policies and procedures affecting their duties and responsibilities and that other relevant information is communicated to the appropriate personnel.

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

(4) An institution that contravenes this Regulation commits an offence.

(5) An institution that contravenes this Regulation is liable to such administrative sanctions as may be prescribed by the Central Bank.

39. Internal Audit

(1) Every institution shall—

- (a) appoint an internal auditor; and
- (b) have a written internal audit charter that specifies and enhances the standing of the internal audit purpose, authority and responsibility within the institution.

- (2) An institution that contravenes paragraph (1) commits an offence.
- (3) Every internal audit charter shall include—
- (a) the objectives and scope of the internal audit function;
 - (b) internal audit's role and responsibility for governance, risk management, consulting services, and fraud investigations, among others; and
 - (c) internal auditor's position within the institution, its powers, responsibilities and relations with other control functions.
- (4) Every institution shall review its audit charter at least once every year.
- (5) The audit charter shall be approved by the audit committee and subsequently ratified by the board as part of their supervisory role before the start of each financial year.
- (6) An institution that contravenes paragraph (4) commits an offence and is liable to such administrative sanctions as may be prescribed by the Central Bank.

40. Audit plan

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

(2) The annual audit plan shall include—

- (a) the scope;
- (b) objective;
- (c) timing;
- (d) frequency; and
- (e) resources,

of the planned internal audit work.

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

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

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

41. Application to appoint external auditors

(1) No institution shall appoint an external auditor without the approval of the Central Bank.

(2) All applications for approval of external auditors shall be submitted to the Central Bank by 31st August of each year and prior to the commencement of the interim audit if any, where this is to be conducted before 31st August.

(3) An institution that contravenes sub regulation (1) commits an offence.

42. Contents of application

(1) An application for the approval of the appointment of the external auditor shall contain the following information—

- (a) name of the registered external auditor;

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- (b) where the auditor is a firm, names, qualifications and experience of each partner;
- (c) physical and postal address of the local office and in case of an international external auditor, full details of the head office;
- (d) details of the partner in n charge of the external audit of the institution;
- (e) name, qualifications and experience of the officer to be engaged in the external audit of the institution;
- (f) details of the external auditor's experience in other similar institutions;
- (g) details of any existing relationship between the partner in-charge of the external audit and the institution;
- (h) confirmation that neither the external auditor, nor the partners or staff involved in the audit of an institution are holding past due loans in the institution;
- (i) a copy of the practicing certificate and/or licence of external auditor; and
- (j) any other information considered necessary in support of the application.

(2) Every external audit firm shall keep the Central Bank informed of any changes in partnerships, audit managers, disciplinary actions against the firm or its partners, within thirty days of the event.

(3) A person who contravenes paragraph (2) shall be subject to the prescribed administrative sanctions.

43. Evaluation of application

In assessing an application, the Central Bank shall consider and be satisfied that—

- (a) the external auditor is not disqualified from being appointed as an external auditor;
- (b) the external auditor or any of its partners have not been granted any type of loans or credit facilities in the institution, except in the normal course of business and at arms-length; and the loans or credit facility is performing and has been approved by the full board;
- (c) the external auditor or its partners do not represent directly or indirectly the interests of the shareholders or directors of the institution in any business ventures;
- (d) the external auditors do not have any business association with the shareholders or directors of the institution except in public quoted companies, where the shareholding is less than 5% of the shares;
- (e) the external auditor, its partners and employees have the capacity to conduct an audit that satisfies the International Standards on Auditing;
- (f) where the external auditor or its partners have been subject to any disciplinary action by any professional body, ensure that clearance has been obtained from that body; and
- (g) there has been no element of misconduct in the performance of the external auditor's duties in other firms whether in its auditing, accounting, secretarial, trustee, nominee services or otherwise.

44. Preparation and submission of financial statements

(1) Every institution shall prepare and submit to the Central Bank audited financial statements and other disclosures within three months after the end of each financial year in the manner set out in Part A of the Ninth Schedule to these Regulations.

[Subsidiary]

(2) Every institution shall, within three months of the end of every financial year, publish in a newspaper of nationwide circulation, between Mondays and Fridays excluding public holidays and weekends—

- (a) a copy of their audited balance sheet showing its assets and liabilities;
- (b) an audited profit and loss statement covering its activities and other disclosures; and
- (c) any other information as may be directed by the Central Bank in the format prescribed by the Central Bank.

(3) Every institution shall submit to the Central Bank for review and approval, all the audited financial statements and other disclosures to be published at least three weeks before publication.

(4) Upon approval by the Central Bank, an institution shall prominently exhibit a copy of their most recent audited annual financial statements with a note indicating that any person so interested with the financial statements may obtain a copy from a specified office or employee of the institution, throughout the year, in a conspicuous position at all their places of business with a permanent premise.

(5) Every institution shall—

- (a) prepare and submit to the Central Bank, un-audited quarterly financial statements and other disclosures on or before the twentieth day from the dates of their preparation, in the manner set out in Part B of the Ninth Schedule to these Regulations; and
- (b) cause a copy of the un-audited quarterly financial statements and any other disclosures to be conspicuously exhibited in the place of business with permanent premises.

(6) Every institution shall ensure that all un-audited quarterly financial statements and other disclosures to be displayed, are signed by the chief executive.

(7) Every institution shall prepare un-audited monthly financial statement and submit to the Central Bank within fifteen days from the date of the return, in the manner prescribed by the Central Bank.

(8) An institution that contravenes this Regulation commits an offence and is liable to such administrative sanctions as the Central Bank may prescribe.

PART VIII – RISK CLASSIFICATION AND PROVISION OF LOANS

45. Loan review function of institutions

(1) Every institution's loan review function shall ensure that—

- (a) the loan portfolio and lending function conforms to a sound written lending policy, which has been approved and adopted by the board;
- (b) management and the board are adequately informed regarding credit risk, among other risks and risk management control effectiveness;
- (c) problem accounts are identified properly and on a timely basis and internally classified in accordance with the classification criteria in these Regulations; and
- (d) appropriate and adequate level of provisions for potential loss are made and maintained at all times.

(2) An institution that contravenes paragraph (1) shall be liable to such administrative sanction as the Central Bank may prescribe.

[Subsidiary]

46. Review and classification of loans

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

(2) Every institution shall classify loans and advances in the manner set out in the Tenth Schedule to these Regulations.

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

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

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

(6) An institution that contravenes this Regulation is liable to such administrative sanction as may be prescribed by the Central Bank.

47. Classification of Renegotiated or Restructured Loans

(1) Every institution shall classify a renegotiated or restructured loan in the Substandard category unless—

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

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

- (a) all past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to '**Watch**' classification; or
- (b) all past due interest is repaid in full at the time of renegotiation in which case it may revert to '**Substandard**' classification; and
- (c) all past due principal and interest is repaid in full at the time of renegotiation and there has been consistent repayment of three installments in which case it may revert to '**Normal**' classification.

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

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

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

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

48. Suspension of interest

(1) Where a loan is classified as non-performing every institution shall suspend any interest on such loans and advances and—

- (a) the interest in suspense shall not be treated as income;
- (b) all interest in suspense shall be taken into account in the computation of provisions for non-performing accounts; and

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- (c) reverse any interest on non-performing loans or credit facilities accrued into income but uncollected and credit into the interest in suspense account until paid in cash by the borrower.

(2) Every institution shall ensure that a non-performing loan or credit facility is returned to accrual basis only when all outstanding dues and unpaid obligations have been paid up to date.

(3) Every Institution shall ensure that all interest on non-performing loan or credit facilities previously accrued into income but uncollected is reversed and credited into the interest in suspense account until paid in cash by the borrower.

(4) An institution that contravenes this Regulation is liable to such administrative sanction as may prescribed by the Central Bank.

49. Points to consider in determining loss

(1) In determining the amount of potential loss in specific loans or in the aggregate loan portfolio, every institution shall be guided by the following minimum provisioning percentages—

- (a) for loans classified “**Normal**”, one per centum (1%);
- (b) for loans classified “**Watch**” five per centum (5%);
- (c) for loans classified “**Substandard**” twenty five per centum (25%);
- (d) for loans classified “**Doubtful**”, seventy five per centum (75%); and
- (e) for loans classified “**Loss**”, one hundred per centum (100%).

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

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

(4) An Institution that contravenes this Regulation is liable to such administrative sanction as the Central Bank may prescribe.

50. Write-off of loans

(1) An institution shall write-off a loan or a portion of a loan from its balance sheet when—

- (a) the institution loses control of the contractual rights over the loan;
- (b) all or part of a loan is deemed uncollectible or there is no realistic prospect of recovery;
- (c) the borrower becomes bankrupt; or
- (d) efforts to collect debt are abandoned for any other reason.

(3) Every institution shall write off a loan or a portion of a loan classified as loss, within ninety days of their being classified as loss, if there are no recoveries within that period.

(4) An institution that contravenes this Regulation is liable to such administrative sanction as may be prescribed by the Central Bank.

51. Review of assets and reporting

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

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

(3) Every institution shall submit returns in the manner prescribed in the Eleventh Schedule to these Regulations.

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

(5) An institution that contravenes this Regulation is liable to such administrative sanction as may be prescribed by the Central Bank.

52. General penalty

A person who commits an offence under these Regulations for which no penalty is specifically provided is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

FIRST SCHEDULE

[Rule 3(2).]

FORM 1

APPLICATION FORM FOR A LICENCE TO CARRY OUT THE DEPOSIT-TAKING BUSINESS IN KENYA

1. Type of Business applied for (state whether community or nationwide deposit taking business) .
.....
2. Name of Institution
3. Situation of Registered Office
4. Physical Address of Head Office: L.R. No
- Street
- Building
5. Postal Address and Postal Code
- Telephone No P.I.N. No
6. Date of incorporation and certificate no
-
7. Names of places of business in Kenya and the number of years of each has been established and has conducted or carried out business
 - (a) In Kenya
 - (b) In other countries
8. Former name(s) by which the institution has been known
-
9. Details of core and total capital
 - (a) Nominal value
 - (b) Paid-up value

FIRST SCHEDULE, FORM 1—continued

10. Particulars of Shareholding

Present and former name	Nationality	Address	Shareholding		Ultimate beneficiaries
			No.	Amount	%

11. Particulars of Officers:

(a) Directors

Present & Former Name	Nationality	Address	Other Directorship	Date of Appointment

(b) Other Officers

Present & Former Name	Designation	Nationality	Age	Academic/Professional Qualifications & Year obtained	Details of Previous employment	Date of appointment

Note: The vetting of other officers will be carried out at a later date than the application period as the Central Bank will determine.

12. Names of Bankers and their Address

13. Does the institution hold, or has it ever held any authority from a supervisory body to carry out any business activity in Kenya or elsewhere

If so, give particulars. If any such authority has been revoked, give particulars

14. Has the institution been put under receivership in the past or made any compromise or arrangement with its creditors in the past or otherwise failed to satisfy creditors in full?

If so, give particulars

15. Is an inspector or other authorized officer of any government ministry, department or agency, professional association or other regulatory body investigating or has such an investigation ever previously taken place into the affairs of the institution?

If so, give particulars

16. Has the institution been refused entry in Kenya or elsewhere to any professional body or trade association concerned with banking or financial activities or decided not to apply for entry after making an approach?

If so, give particulars

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[Subsidiary]

FIRST SCHEDULE, FORM 1—continued

17. Is the institution currently engaged or does it expect to be involved in Kenya or elsewhere, in any litigation which may have a material effect on the resources of the Institution?

If so, give particulars

18. Is the institution engaged or does it expect to be engaged in any business relationship with any of its officers or significant shareholders

If so, give particulars

19. DECLARATION

We, the undersigned, being officers of the institution, declare that to the best of our knowledge and belief, the information contained herein and any attachments is complete and accurate.

(a) Director

(Name)

Signature Date

(b) Director

(Name)

Signature Date

Note: This application must be accompanied by all the relevant documents and requirements prescribed in the Act and these Regulations.

FORM 2(a)

Rule 3(2)(b.)

CRITERIA FOR DETERMINING PROFESSIONAL AND REPUTATIONAL SUITABILITY OF OFFICERS IN CONTROL OF INSTITUTIONS LICENSED UNDER THE ACT

NOTE

(a) Read the declaration on Section 6 below before completing this form.

(b) In case the space provided is inadequate, use additional paper.

1. THE INSTITUTION

(a) Name

(b) Type

2. PERSONAL INFORMATION

(a) Surname

Other Names

(b) Previous Names (if any) by which you have been known:

(c) Year and Place of birth:

(d) Nationality and how acquired:

(e) Personal Identification Number

(f) Identification Card number and date of issue

(g) Postal Address

(h) Previous Postal Addresses (if any)

(i) Physical Address

(j) Educational Qualifications

(k) Professional Qualifications and years obtained

FIRST SCHEDULE, FORM 2(a)—continued

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

3. EMPLOYMENT/BUSINESS RECORD

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

4. DESCRIPTION OF YOUR PAST AND CURRENT ACTIVITIES IN KENYA AND ABROAD

4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

Company's Name	Date of Incorporation	Amount of Shareholding	% of Shareholding	Past Shareholding		Remarks
				A	B	

A: Refers to date of closure or surrender of shares

B: Refers to reasons for closure or surrender

4.2 DIRECTORSHIP

Company's Name	Date of Incorporation	Executive or Non-Executive	Position Held in case of Executive	Past Directorship		Remarks
				C	D	

C: Refers to date of retirement

D: Refers to reasons for retirement or resignation

4.3 PROFESSIONAL BODIES

Name of body	Membership No.	Position held (if any)	Past Club Memberships		Remarks
			E	F	

E: Refers to date of retirement

F: Refers to reasons for retirement or resignation

4.4 SOCIAL CLUBS

Club Name	Membership No.	Position Held	Past Club Memberships		Remarks
			G	H	

G: Refers to date of retirement

H: Refers to reasons for retirement or resignation

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FIRST SCHEDULE, FORM 2(a)—continued

4.5 BORROWINGS

Name of borrower*	Name of lending institution	Type of Facility	Date of offer	Terms of offer	Security offered	Value of security	Current Outstanding balance	Remarks

*Borrower to indicate both individually and the private company where he holds more than 5% of the shareholding.

4.6 SOURCES OF FUNDS

- A. Please provide a sworn statement that the funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the institution are not from proceeds of crime.
- B. Please provide details of the actual source(s) of funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the institution.
 - (a)
 - (b)
 - (c)

5. QUESTIONNAIRE

- 5.1 Have you or any entity with which you are associated as director, shareholder or manager, ever held or applied for a licence or equivalent authorization to carry on any business activity in any country?

 If so, give particulars
 If any, such application was rejected or withdrawn after it was made or any authorization revoked, give particulars
- 5.2 Have you at any time been convicted of any criminal offence in any jurisdiction?

 If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction
- 5.3 Have you, or any entity with which you have been involved, been censured, disciplined, warned as to future conduct, or publicly criticized by any regulatory authority or any professional body in any country?

 If so, give particulars
- 5.4 Have you, or has any entity with which you are, or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency, professional association or other regulatory body?

 If so, give particulars
- 5.5 Have you, in any country, ever been dismissed from any office or employment been subject to disciplinary proceedings by your employer or barred from entry of any profession or occupation?

 If so give particulars
- 5.6 Have you failed to satisfy any debt adjudged due and payable by you on order of court, in any country, or have you made any compromise arrangement with your creditors, within the last 10 years?

FIRST SCHEDULE—continued

If so, give particulars

5.7 Have you ever been declared bankrupt by a court in any country or has a bankruptcy petition ever been served on you?

If so, give particulars

5.8 Have you ever been held liable by a court, in any country, for any fraud or other misconduct?

If so, give particulars

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

If so, give particulars

5.10 Are you presently, or do you, other than in a professional capacity, expect to be engaged in any litigation in any country?

If so, give particulars

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

(i)

(ii)

(iii)

5.12 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise for the position(s) held/to be held?

NOTE: The information given in response to this questionnaire shall be kept confidential by the supervisory authorities, except in cases provided for by law. The omission of material facts may represent the provision of misleading information.

6. DECLARATION

I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading in connection with an application for a licence to carry out the deposit-taking business in Kenya. I am also aware that omitting material information intentionally or unintentionally shall be construed to be an offence and may lead to rejection of my application.

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

I undertake to inform the supervisory authority of any changes material to the applications which arise while the application is under consideration.

Name:

Signed:

Dated at this Day of 20

WITNESSED BEFORE ME:

SIGNED (Witness)

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[Subsidiary]

FIRST SCHEDULE—*continued*

COMMISSIONER FOR OATHS/MAGISTRATE

Name

Signature

Address

.....

FORM 2(b)

CRITERIA FOR DETERMINING THE SUITABILITY OF SIGNIFICANT SHAREHOLDERS' INTENDING TO HOLD OR ACQUIRE A SIGNIFICANT STAKE IN AN INSTITUTION LICENSED UNDER THE ACT

NOTE

(a) Read the declaration on Section 6 below before completing this form.

(b) In case the space provided is inadequate, use additional paper.

1. THE INSTITUTION

(a) Name

(b) Type

2. PERSONAL INFORMATION

(a) Surname

(b) Other Names

(c) Previous Names (if any) by which you have been known:

.....

(d) Year and place of birth:

.....

(e) Nationality and how acquired:

(f) Personal Identification Number

(g) Identification Card Number and date of issue

(h) Passport Number and date of issue

(i) Postal Address

(j) Previous Postal Addresses (if any)

(k) Physical Address

(l) Education Qualifications

(m) Professional Qualifications (if any)

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

.....

3. EMPLOYMENT BUSINESS RECORD

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

FIRST SCHEDULE, FORM 2(b)—continued

4. DESCRIPTION OF YOUR PAST AND CURRENT ACTIVITIES IN KENYA AND ABROAD

4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

Company's Name	Date of Incorporation	Amount of Shareholding	% of Shareholding	Past Shareholding		Remarks
				A	B	

A: Refers to date of closure or surrender of shares

B: Refers to reasons for closure or surrender

4.2 DIRECTORSHIP

Company's Name	Date of appointment	Executive or Non-Executive	Position Held in Case of Executive	Past Directorship		Remarks
				C	D	

C: Refers to date of retirement

D: Refers to reasons for closure or surrender

4.3 PROFESSIONAL BODIES

Name of body	Membership No.	Position held (if any)	Past Club Memberships		Remarks
			E	F	

E: Refers to date of retirement

F: Refers to reasons for retirement or resignation

4.4 SOCIAL CLUBS

Club Name	Membership No.	Position Held	Past club memberships		Remarks
			G	H	

G: Refers to date of retirement

H: Refers to reasons for retirement or resignation

4.5 BORROWINGS

Name of borrower*	Name of lending institution	Type of Facility	Amount borrowed	Date of offer	Terms of offer	Security offered	Value of security	Current Outstanding balance	Remarks

4.6 SOURCES OF FUNDS

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

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FIRST SCHEDULE, FORM 2(b)—continued

B. Please provide details of the actual source(s) of funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the institution.

- (a)
- (b)
- (c)

Borrower to indicate both individually and the private company where he holds more than 5% of the shareholding.

5. QUESTIONNAIRE

5.1 Have you or any entity with which you are associated as director, shareholder or manager, ever held or applied for a licence or equivalent authorization to carry on any business activity in any country?

If so, give particulars

If any such application was rejected or withdrawn after it was made or any authorization revoked, give particulars

5.2 Have you at any time been convicted of any criminal offence in any jurisdiction?

If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction.....

5.3 Have you, or any entity with which you have been involved, been censured, disciplined, warned as to future conduct, or publicly criticized by an regulatory authority or any professional body in any country?

If so, give particulars

5.4 Have you, or has any entity with which you are, or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency, professional association or other regulatory body?

If so, give particulars

5.5 Have you, in any country, ever been dismissed from any office or employment, been subject to disciplinary proceedings by your employer or barred from entry of any profession or occupation?

If so, give particulars

5.6 Have you failed to satisfy any debt adjudged due and payable by you on order of court, in any country, or have you made any compromise arrangement with your creditors within the last 10 years?

If so, give particulars

5.7 Have you even been declared bankrupt by a court in any court in any country or has a bankruptcy petition ever been served on you?

If so, give particulars

5.8 Have you ever been held liable by a court, in any country, for any fraud or other misconduct?

If so, give particulars

FIRST SCHEDULE, FORM 2 (b)—continued

- 5.9 Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it?
If so, give particulars
- 5.10 Are you presently, or do you, other than a professional capacity, expect to be engaged in any litigation in any country?
If so, give particulars
- 5.11 Indicate the names, addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a reference on your personal and financial integrity and honesty. The referees must not be related to you, and should have known you for at least five years.
(i)
(ii)
(iii)
- 5.13 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise to own share capital of an institution?

NOTE: The information given in response to this questionnaire shall be kept confidential by the supervisory authorities, except in cases provided for by law. The omission of material facts may represent the provision of misleading information.

6. DECLARATION

I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading in connection with an application for a licence to carry out the deposit-taking business in Kenya or approval to own significant shares in an institution.

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

I undertake to inform the supervisory authority of any changes material to the applications which arise while the application is under consideration.

Name:

Signed:

Dated at: this day of 20

WITNESSED BEFORE ME:

SIGNED (Witness)

COMMISSIONER FOR OATHS/MAGISTRATE

Name

Signature:

Address:

NOTES ON THE COMPLETION OF THE APPLICATION FORMS

The explanatory notes are intended to give further guidance to the completion of the application forms. It is deemed that further guidance is necessary for certain items. These include:

- 1. First Schedule: "Application for a licence to carry out the deposit-taking business" Form

1.1 Item Number 1: Type of Business Applied For

State whether the license being applied for is to carry out the deposit-taking business in Kenya as either a Community Microfinance Institution or Nationwide Microfinance Institution

[Subsidiary]

FIRST SCHEDULE, FORM 2(b)—continued

1.2 Item Number 3: Physical Address

These details should be submitted to the Central Bank as soon as the permanent physical location is known, if it is unknown at the time of application.

1.3 Item Number 6: Names of Branches

This item should be completed by:

- (a) A legal person incorporated in Kenya operating under any law other than the Microfinance Act, and is seeking to be licensed to operate under the Act.
- (b) A foreign incorporated institution wishing to establish a subsidiary to be licensed under the Act.

1.4 Item Number 8: Particulars of Shareholding

In case of institutions incorporated outside Kenya:

- (a) The term 'shareholder' refers to the person(s) proposing to have share capital to the Kenya subsidiary for which the licence is being applied.
- (b) This item is also to be used for the provision of information on the proposed ownership capital for the Kenya subsidiary.

1.5 Item Number 9: Particulars of Officers

In the completion of this item:

- (a) The term 'officer' should be used as defined in Section 2 of the Act.
- (b) The officers referred to are those proposed or already engaged by the institution.
- (c) Where the institution is proposing to or has entered into a management agreement with another entity, details of the senior persons from the said entity heading or proposed to head the management team should be given.

1.6 Item No 9: Nationality

Nationality and how it was acquired

- (a) State your current nationality and indicate whether it was acquired through birth, marriage or naturalization.
- (b) Present occupation, employer, position held and address. This item will only apply in case of non-executive directors, significant shareholders and other officers who are yet to join the institution but have been proposed to take up position when the institution starts operations.

Item No. 10-16 to be completed as per attached forms which are self explanatory.

2. Second Schedule: Form 2(a) – "Fit and Proper" Forms for Officers

This should be completed by all persons proposed as officers of the institution, specifically the following officers: the chief executive officer and deputy chief executive officer if any or the equivalent by whatever title they are called by the institution or any other officer as may be determined by the Central Bank.

3. Second Schedule: Form 2(b) – "Fit and Proper" Form for Significant Shareholders.

This should be completed by all persons proposing to set up an institution or are about to acquire or intend to acquire a significant stake in the shares of an institution.

FORM 3a

(r. 5(4))

LICENCE No.

LICENCE TO CONDUCT OR CARRY OUT NATIONWIDE DEPOSIT-TAKING MICROFINANCE BUSINESS IN KENYA

THIS LICENCE is granted to- (Name of Institution) of (Address) and authorizes the said institution to conduct or carry out nationwide deposit-taking microfinance business in Kenya.

This license is issued subject to the provisions of the Microfinance Act and Regulations issued there under and to any conditions endorsed hereon or Central Bank directive.

Microfinance

[Subsidiary]

FIRST SCHEDULE, FORM 3a—continued

CONDITIONS:

.....
.....
.....

This licence covers the institution's head office and all places of business listed here below/shown on the attached schedule.

THIS LICENCE COVERS THE PERIOD FROM TO

The Central Bank may at any time revoke, amend or restrict this licence or vary any terms and/or conditions for its issuance.

Issued under the common seal of
THE CENTRAL BANK OF KENYA
CENTRAL BANK SEAL

Dated this day of 20

(.....)

GOVERNOR,
CENTRAL BANK OF KENYA

FORM 3b

(r. 5(4))

LICENCE No.

LICENCE TO CONDUCT OR CARRY OUT COMMUNITY DEPOSIT-TAKING
MICROFINANCE BUSINESS IN KENYA

THIS LICENCE is granted to - (Name of Institution) of
..... (Address) and authorizes the said institution to conduct or carry
out community deposit-taking microfinance business in Kenya.

This licence is issued subject to the provisions of the Microfinance Act and Regulations issued thereunder and to any conditions endorsed hereon or Central Bank directive.

CONDITIONS:

.....
.....
.....

This license covers the institution's head office and all places of business listed here below/shown on the attached schedule.

THIS LICENCE COVERS THE PERIOD FROM TO

The Central Bank may at any time revoke, amend or restrict this licence or vary any terms and/or conditions for its issuance.

Issued under the common seal of
THE CENTRAL BANK OF KENYA
CENTRAL BANK SEAL

Dated this day of 20

(.....)

GOVERNOR,
CENTRAL BANK OF KENYA

[Subsidiary]

FIRST SCHEDULE—continued

FORM 4

QUESTIONNAIRE ON INSPECTION OF PREMISES AND OTHER FACILITIES

	YES	NO	COMMENTS
<p>1. THE DEED/LEASE AGREEMENT</p> <p>(a) Title Deed</p> <p>(i) Is the institution registered as the owner of the premises?</p> <p>(ii) if Yes, obtain a copy of the title deed.</p> <p>(b) Lease Agreement</p> <p>(i) Is the institution leasing the premises?</p> <p>(ii) If Yes, obtain a copy of the lease agreement.</p> <p>(iii) Is the lease signed by both parties?</p> <p>(iv) Is the lease registered?</p> <p>(v) What is the duration of the lease?</p> <p>(vi) Is it long enough to allow for economical use of the permanent improvements?</p> <p>(vii) Is the landlord's approval for interior design/alteration obtained and other conditions satisfied?</p>			
<p>2. APPROVAL BY RELEVANT AUTHORITIES</p> <p>Have the following approvals been obtained where necessary—</p> <p>(a) Local Authority;</p> <p>(b) Security firm-regarding physical security of staff, premises and assets;</p> <p>(c) Approval by KPL&C for electrical wiring of the premises.</p>			
<p>3. BUSINESS HALL</p> <p>Does the business hall suit the type of business to be undertaken in the premises?</p>			
<p>4. STAFF OPERATING AREA</p> <p>(a) Is the space allowed for each individual employee adequate?</p> <p>(b) Are sufficient and suitable sanitary conveniences for employees provided and kept clean?</p>			
<p>5. VENTILATION</p> <p>Is ventilation adequate for security and circulation of fresh air in the premises?</p>			
<p>6. LIGHTING</p> <p>Is there sufficient and suitable lighting in every part of the premises?</p>			
<p>7. OUTER DOORS/WALL/WINDOWS</p> <p>(a) Are the outer doors of heavy duty metal or reinforced wood?</p>			

FIRST SCHEDULE, FORM 4—continued

	YES	NO	COMMENTS
(b) Are there a minimum of two locks of good quality? (c) Are windows and glass walls reinforced with metal grills or made of anti-burglar/bullet proof glass?			
8. STRONG ROOM (SAFE/VAULT) (a) Is there a strong room? (b) Is it conveniently situated i.e. does it boarder with the outside walls? (c) Is there adequate space to cater for the needs of the institution? (d) Are the duplicate keys stored off the premises? (e) Is there dual control for entry?			
9. FREE-STANDING SAFE (a) Is the safe fire proof? (b) Is access to the safe and the room where the safe is kept under the control of more than one person? (c) Is the safe in a window-less room and secured by a heavy duty lock door of fire resistant material?			
10. RECORD ROOM AND STATIONERY STORE Is it fire proof?			
11. CASH LOADING AREA (a) Is it protected from public view and access? (b) Is cash in transit protected by police/security firm? (c) Are there security guards at the premises at all times – day and night?			
12. CASHIER'S TILL Is it restricted to the individual cashiers during working hours?			
13. ALARM SYSTEM (a) Is there an alarm system installed in the premises? (b) If yes, is it connected to police/security firm? (c) Switches to be located in the – (i) Strong room (ii) Cashiers' cubicles (iii) Manager's office			
14. EMERGENCY PLAN (a) Is there an emergency plan? Is it documented? (b) Are there fire extinguishers at appropriate places? i.e.,- (i) Water type (ii) Non-water type			

Microfinance

[Subsidiary]

FIRST SCHEDULE, FORM 4—continued

	YES	NO	COMMENTS
<p>15. INSURANCE POLICY COVER</p> <p>(a) Is there adequate insurance policy cover?</p> <p>(b) Indicate insurance policies and the insurance companies including validity period of the insurance cover.</p>			
<p>16. AGENCY PREMISES REQUIREMENTS</p> <p>(a) Title Deed</p> <p>(i) Is the person operating the agency registered as the owner of the premises?</p> <p>(ii) If Yes, obtain a copy of the title deed.</p> <p>(b) Lease Agreement</p> <p>(i) Is the person operating the agency leasing the premises?</p> <p>(ii) If Yes, obtain a copy of the lease agreement.</p> <p>(iii) Is the lease signed by both parties?</p> <p>(iv) Is the lease registered?</p> <p>(v) What is the duration of the lease?</p> <p>(vi) Is it long enough to allow for economical use of the permanent improvements?</p> <p>(vii) Is the landlord's approval for interior design/alteration obtained and other conditions satisfied?</p> <p>(viii) Approval by relevant authorities such as Local Authority.</p> <p>(c) Agency Agreement</p> <p>(i) Is there an agency agreement between the agency operator and the institution?</p> <p>(ii) If yes, obtain a copy of the agency agreement.</p> <p>(iii) Is the agency agreement signed by both parties?</p> <p>(iv) Is the agency agreement registered?</p> <p>(v) What is the duration of the agency agreement?</p> <p>(vi) Is it long enough to allow for economical use of the permanent improvements?</p> <p>(vii) Is the landlord's approval for interior design/alteration obtained and other conditions satisfied?</p> <p>(viii) Is the space adequate and suitable for the business?</p> <p>(ix) Is there adequate point of sale facilities capable of serving the business being carried out?</p> <p>(x) Is there adequate insurance policy cover?</p> <p>(xi) Are the security and safety arrangement adequate?</p>			

Microfinance

[Subsidiary]

FIRST SCHEDULE, FORM 4—continued

	YES	NO	COMMENTS
(xii) What arrangements are put in place for cash handling?			
(xiii) Are the cashier's tills restricted to the individual cashiers during working hours?			

SECOND SCHEDULE

[Rule 3(2)(h), 5(2)(c).]

FEES

- The licence fees specified below shall be paid prior to the granting of a licence to an institution to carry on business in Kenya under the Act.
- The fee are as prescribed below—

	Type of License	Nationwide Kshs	Community Kshs
1.	On application for a license to carry on the deposit-taking microfinance business or to open a branch.	5,000	5,000
2.	On the granting of a license to an institution and each anniversary thereof to conduct either a nationwide or community-based deposit-taking microfinance business in Kenya.	150,000	100,000
3.	On application for a license to conduct business or open a branch as an institution.		
	(a) In respect of each branch of an institution within a city council or municipal council.	50,000	50,000
	(b) In respect of each branch of an institution within a town council.	20,000	20,000
	(c) In respect of each branch of an institution within a county council.	10,000	10,000
4.	On application for approval to conduct business or open an outlet as an institution.	Not applicable	Not applicable

THIRD SCHEDULE

[Rule 11(2).]

OPENING NEW PLACE OF BUSINESS

PART 1: GENERAL INFORMATION

- Name of institution
- Type and number of licence
- Total number and locations of branches and outlets and dates of establishment

Microfinance

[Subsidiary]

THIRD SCHEDULE—continued

- 4. Provide names of significant shareholders, nationality, address and their respective percentage shareholding
- 5. Paid up capital
- 6. Total deposits
- 7. Capital as % of deposits
- 8. Fortnightly position of liquidity ratio during the preceding twelve months
- 9. Provide financial statements for two years preceding the application to open a new place of business (If any)

PART II: PLACE OF BUSINESS

- 10. Type of the proposed place of business (branch, agency, mobile unit, marketing office, etc.)
- 11. Exact location of the proposed place of business

 - (a) Location: province, district, division and town
 - (b) Postal address and telephone numbers
 - (c) Physical address: - L.R. No, Building and Street
Town

- 12. Whether a suitable premise is available?

 - If not, what arrangements are proposed to be made

- 13. Is the new place of business:
 - (a) Self-owned? Yes/No* If yes, cost of purchase or construction
 - (b) Leased? Yes/No* If yes, provide lease agreement
 - (c) If agency type, provide agency agreement
- 14. Proposed date of commencing operations
- 15. Do you plan to change the status of the place of business?

 - If yes, state proposed type of status and when

- 16. A three year feasibility study of the proposed branch
- 17. Provide certificates that the location and premises of the proposed branch shall in no way violate the by-laws and town planning regulations of the respective authorities and government bodies and other organizations
- 18. The institution to provide all or any other supporting documents and requirements in accordance with the Act and these regulations or as it deems necessary.

Signed
Chief Executive Officer

Date:

Note: Delete whichever is not applicable



FOURTH SCHEDULE

[Rule 13(2), 14(2).]

CLOSURE OR RELOCATION OF AN EXISTING PLACE OF BUSINESS

PART 1: GENERAL INFORMATION

- 1. Name of institution
- 2. Type and Number of Licence
- 3. Total number and locations of branches and outlets and dates of establishment
- 4. Provide names of significant shareholders, nationality, address and their respective percentage shareholding
- 5. Type of current place of business to be closed or relocated (i.e. branch, agency, mobile unit, marketing office etc.)

PART II: RELOCATION

- 6. Name of the place of business to be relocated if already identified
.....
(a) Postal address and telephone numbers
- (b) Physical address: - L.R. NO, Building and Street
Province, District, Division and Town
- 7. State reasons necessitating relocation of place of business
- 8. Proposed new location of the place of business
a. Postal address and telephone numbers
- b. Physical address: - L.R. NO, Building and Street
.....
Province, District, Division and Town
- 9. Is the new place of business:—
(a) Self-owned? Yes/No* If yes, cost of purchase or.....
construction
- (b) Leased? Yes/No* If yes, provide lease agreement
- (c) If agency type, provide agency agreement
- 10. Proposed date of commencing operations
- 11. Do you plan to change the status of the proposed place of business
If yes, state the proposed type of status and when

PART III: CLOSURE

- 12. Location of current place of business proposed to be closed –
a. Postal address and telephone numbers
- b. Physical address:- L.R. NO, Building and Street
Province, District, Division and Town
- 13. Specify type of closure, whether permanently or temporarily
If temporary closure, specify the proposed dates for closure and opening
- 14. State reasons necessitating closure of place of business
- 15. Indicate profitability of the branch in the last three years
- 16. Provide the proposed action plan on the settlement of assets and liabilities on existing customers

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[Subsidiary]

FOURTH SCHEDULE—*continued*

- 17. Provide the proposed action plan on current branch employees
- 18. Are there any banking or microfinance facilities provided in the vicinity?
- If so, state by whom

Signed
 Chief Executive Officer

Date:

Note: Delete whichever is not applicable

FIFTH SCHEDULE

[Rule 20(1).]

FORM 1

CAPITAL TO RISK WEIGHTED ASSETS RETURN

Name of Institution	.....
Period	.....
	CAPITAL COMPONENTS	AMOUNT (KSHS' 000')
1.	CORE CAPITAL (TIER 1)	
1.1.1	Paid-up ordinary share capital/Assigned Capital	
1.1.2	Non-repayable share premium	
1.1.3	Retained earnings/Accumulated losses	
1.1.4	Net After tax profits, current year to-date (50% only)	
1.1.5	Capital Grants	
1.1.6	Non-cumulative irredeemable preference shares	
1.1.7	Other reserves	
1.1.8	Sub-Total (1.1.1 to 1.1.7)	
	LESS DEDUCTIONS	
1.1.9	Goodwill	
1.1.10	Intangible assets	
1.1.11	Total Deductions (1.1.9 to 1.1.11)	
1.1.12	CORE CAPITAL (1.1.8 Less 1.1.12)	
1.2	SUPPLEMENTARY CAPITAL (TIER 2)	
1.2.1	Revaluation reserves (25%)	
1.2.2	Cumulative irredeemable preference shares	
1.2.3	Convertible notes and similar capital investments	

FIFTH SCHEDULE, FORM 1—continued

	CAPITAL COMPONENTS	AMOUNT (KSHS' 000')		
1.2.4	Perpetual subordinated debt			
1.2.5	Limited life redeemable preference shares			
1.2.6	Term subordinated debt			
1.2.7	Statutory Loan Loss Reserve			
1.2.8	Total supplementary capital (1.2.1 to 1.2.7)			
1.2.9	Supplementary Capital/Core Capital (%)			
1.3	TOTAL CAPITAL (1.1.13 + 1.2.8)			
1.4	Total shareholder's funds (Per CBK/MF BSM)			
1.5	Difference (1.4 Less 1.3)*			
2.	ON – BALANCE SHEET ASSETS	Amount (Kshs. 000')	Weight	Weighted Asset Value (Kshs. 000')
2.1	Cash in local currency		0	
2.2	Balances with Central Bank		0	
2.1	Kenya Government Treasury Bills		0	
2.2	Kenya Government Treasury Bonds		0	
2.3	Lending fully secured by cash		0	
2.4	Advances guaranteed by the Government of Kenya and OECD Central Governments		0	
2.7	Cash in foreign currency		0	
2.8	Deposits and balances due from local institutions		0.2	
2.9	Deposits and balances due from foreign institutions		0.2	
2.10	Foreign Treasury Bills and Bonds		0.2	
2.11	Claims guaranteed by Multilateral Development Banks		0.2	
2.12	Loans and advances secured by residential property		0.5	
2.13	Other Loans and Advances (net of provisions)		1.0	
2.14	Other Investments		1.0	
2.15	Fixed Assets (Net of Depreciation)		1.0	
2.16	Other Assets		1.0	
2.17	TOTAL (2.1 to 2.16)			
2.18	Total Assets (Per CBK/MF BSM)			

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[Subsidiary]

FIFTH SCHEDULE, FORM 1—continued

	Counterparty/Security	Credit Risk Equivalent	Weight	Weighted Asset Value
3.	OFF-BALANCE SHEET ASSETS			
3.1	Transaction secured by cash			
3.2	Government of Kenya and OECD Central Governments			
3.3	Local financial institutions			
3.4	Foreign banks and Foreign Governments			
3.5	Performance Bonds, Bid, Bonds, Standby letters of credit, and other commitments with an original maturity exceeding one year			
3.6	3.6 Others			
3.7	3.7 TOTAL (3.1 to 3.6)			
4.	CAPITAL RATIO CALCULATIONS			
4.1	Core Capital as per 1.1.13 above			
4.2	Total Capital as per 1.3 above			
4.3	Total Risk Weighted asset value of on-balance sheet items as per 2.18 above			
4.4	Total Risk Weighted asset value of off-balance Sheet Items as per 3.7 above			
4.5	Total Risk weighted assets (4.3 + 4.4)			
4.6	Total deposits (as per BSM)			
4.7	Core capital to risk assets ratio (4.1/4.5)%			
4.8	Minimum core capital to risk assets requirement			
4.9	Excess (Deficiency) (4.7 less 4.8)			
4.10	Core capital to deposits ratio (4.1/4.6)%			
4.11	Minimum core capital to deposits requirement			
4.12	Excess (Deficiency) (5.0 less 5.1)			
4.13	Total capital to risk assets ratio (4.2/4.5)%			
4.14	Minimum total capital to risk assets requirement			
4.15	Excess/(Deficiency) (5.3 less 5.4)			

* A reconciliation for the difference to be attached on a separate sheet.

Name:

Designation:

Signature:

Date:

FIFTH SCHEDULE—*continued*

COMPLETION INSTRUCTIONS ON CAPITAL TO RISK WEIGHTED ASSETS RETURN

- 1. CAPITAL COMPONENTS**
- 1.1 CORE CAPITAL (TIER 1)**
- 1.1.1 Paid-up Ordinary Share Capital/Assigned Capital**
This is the nominal value of the ordinary shares issued and fully paid, or capital assigned to Kenyan branch (es).
- 1.1.2 Non-repayable Share Premium (discount)**
This is the difference between the nominal price and purchase price of shares, which is not refundable/recoverable.
- 1.1.3 Retained Earnings/Accumulated losses**
These are retained earnings or accumulated losses from the profits/losses of the prior years. They should however exclude reserves arising from revaluation of investment properties and cumulative unrealized gains and losses on financial instruments.
- 1.1.4 Current Year 50% Un-audited After Tax Profits**
This is 50% of the current year to date un-audited after tax profits. The institution must have made adequate provisions for loans and advances, depreciation, amortization and other expenses. In arriving at the applicable figure, any proposed or interim dividends have to be taken into account. This should however exclude reserves arising from revaluation of investment properties and cumulative unrealized gains and losses on financial instruments. In case of a loss, full amount should be included.
- 1.1.5 Capital Grants**
These are donations to be on lent to customers that are irredeemable or non-repayable.
- 1.1.6 Non-cumulative irredeemable preference shares.**
These are shares, which have a standing claim on the company every year, but the claim is not carried forward in event of not being paid and they are not redeemable.
- 1.1.7 Other reserves**
These are all other reserves, which have not been included above. Such reserves should be permanent, unencumbered, uncallable and thus able to absorb losses. Further, the reserves should exclude cumulative unrealized gains and losses on available-for-sale-instruments.
- 1.1.8 Sub-total**
Enter in this line the sub-total of all the items from 1.1.1 to 1.1.7
- DEDUCTIONS FROM CORE CAPITAL**
- 1.1.9 Investments in subsidiary institutions and equity instruments of other financial institutions.**
To prevent multiple use of the same capital resources in different financial institutions both in Kenya and abroad, the institutions should deduct any investment in subsidiaries conducting banking or microfinance business and equity instruments of other such institutions.
- 1.1.10 Goodwill**
This is the difference between the value of the business as a whole and the aggregate of the fair values of its separable net assets at the time of acquisition.
- 1.1.11 Other intangible assets**
These are assets without physical existence, e.g. patents, copyrights, formulae, trademarks, franchise etc. however, computer software should not be deducted.
- 1.1.12 Total deductions**
This is the total of all the items from 1.1.9 to 1.1.11
- 1.1.13 Core Capital**
Core Capital is the deduction of line 1.1.12 from line 1.1.8.
- 1.2 SUPPLEMENTARY CAPITAL (TIER 2)**

[Subsidiary]

FIFTH SCHEDULE—*continued*

- 1.2.1 Revaluation reserves
This is the revaluation reserves of fixed assets, land and buildings based on independent and professional appraisal as to the obtaining Central Bank's approval.
- 1.2.2 Cumulative irredeemable preference shares
These are irredeemable shares with standing claim on the company and the claim is carried forward in event of it not being paid in the current year.
- 1.2.3 Convertible notes and similar capital investments
Convertibles notes are instruments that evidence a company promise to pay a loan on maturity, which can be converted, into shares any time before maturity date. Other similar capital investments are convertible debentures, bonds, loans etc.
- 1.2.4 Perpetual subordinated debt
This is a debt equity or loan capital, which is not redeemable.
- 1.2.5 Limited life redeemable preference shares
These are preference shares with limited life of at least five years and are redeemable.
- 1.2.6 Term subordinated debt
This refers to loan capital, bonds, commercial paper or debt equity with original maturity period of five years and above.
- 1.2.7 Statutory Loan Loss Reserve
These are provisions that have been appropriated from retained earnings (revenue reserves). This will only apply if provisions computed under Risk classification of Assets and Provisioning Guideline is in excess of impairment losses computed under International Financial Reporting Standards.
However, loan reserve qualifying as supplementary capital should not exceed 1.25% of risk weighted assets total value.
- 1.2.8 Total supremacy capital
This is the sub-total of the items in line 1.2.1 to 1.2.7
- 1.2.9 Supplementary Capital/Core Capital (%)
This is the percentage of the supplementary capital to core capital. Total supplementary capital should not exceed core capital. Where supplementary capital exceeds core capital, then qualifying supplementary capital is limited to the amount of core capital.
- 1.3 Total Capital
Total capital is the sum of core capital and supplementary capital, i.e. Total of lines 1.1.13 and 1.2.8
- 1.4 Total Shareholders' funds
The figure reported in this line should agree with the total shareholders funds as reported in the monthly balance sheet.
- 1.5 Difference
Any difference between total capital and total shareholders' funds should be reported in this line and a reconciliation of the same be attached.
- 2. ON-BALANCE SHEET ASSETS**
- 2.1 Cash
Enter in this line cash at hand (domestic notes and coins).
- 2.2 Balances with Central Bank.
This includes Repo purchase with Central Bank, reserve requirement and any other balances held by Central Bank.
- 2.3 Kenya Government Treasury Bills
These are Treasury bills issued by the Government of Kenya.
- 2.4 Kenya Government Treasury bonds
These refer to the Treasury Bonds issued by the Government of Kenya.

FIFTH SCHEDULE—*continued*

- 2.5 Lending fully secured by cash
Enter here all other debts that are fully secured by cash and supported by signed lien documents.
- 2.6 Advances guaranteed by the Government of Kenya and OECD Central Governments
This refers to all loans and advances duly guaranteed by the Government of Kenya and OECD* Central Governments.
- 2.7 Cash in Foreign currencies
Enter in this line cash at hand (foreign notes and coins).
- 2.8 Deposits and balances due from Local Institutions
These are deposits and balances held with local banks, financial institutions, mortgage finance companies and building societies including overnight balances.
- 2.9 Deposits and balances due from foreign institutions
These are balances held with correspondent banks and financial institutions abroad (including other MFI's in the group).
- 2.10 Foreign Treasury Bills and Bonds
These are bills and bonds issued by foreign governments, banks and other multilateral institutions.
- 2.11 Claims guaranteed by Multi-Lateral Development Banks (MDB's)
These are loans, advances and capital markets instruments such as commercial paper that are guaranteed by the following MDB's:-
(i) The International Bank for Reconstruction and Development.
(ii) The Inter-American Development Bank.
(iii) The Asian Development Bank.
(iv) The African Development Bank.
(v) The European Investment Bank.
(vi) Other MDB's in which G-10 countries are shareholding members.
The G 10 member countries are Belgium, Netherlands, Canada, Sweden, France, Switzerland, Germany, United Kingdom, Italy, United States and Japan.
*OECD members are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom & United States.
- 2.12 Loans secured by Residential Property
These are facilities secured by a first legal charge over residential properties situated within cities and municipalities in the Republic of Kenya. Such facilities should only be those classified as normal under Risk Classification of Assets and provisioning Return and are performing in accordance with the original terms and conditions specified in the letter of offer. In addition, the security should be perfected in all respects and its current forced sale value should, cover in full, the outstanding debt with at least a 20% margin. The 50% weight will not be specifically applied to loans to companies engaged in speculative residential building or property development.
- 2.13 Other loans and advances
These refer to loans and advances that are not guaranteed by the Government of Kenya and not secured by cash. These also include commercial paper and corporate bonds and should be reported net of provisions. Provisions must be computed in accordance with Risk Classification of Assets and Provisioning Return. However, provisions appropriated from retained earning should not be netted off from loans and advances.
- 2.14 Other investment
These are investments in other companies other than financial institutions.

Microfinance

[Subsidiary]

FIFTH SCHEDULE—*continued*

- 2.15 Fixed assets
These are assets acquired for use in the operation of the business or for investment purposes, e.g. furniture, computers, freehold and leasehold land and buildings. They should be shown net of accumulated depreciation, amortized cost, or at fair value.
- 2.16 Amount due from group companies
This is the claim of the reporting institution from other group companies that are not financial institutions.
- 2.17 Other assets
These are other assets, which have not been dealt with above.
- 2.18 Total on-balance sheet assets
Enter in this line total on-balance sheet asset i.e. total of line 2.1 to 2.17. Total deductions from core capital should also be deducted from the assets for the purposes of computing the risk weighted asset values. All interest bearing assets should be reported inclusive of interest earned.
- 2.19 Total Assets (per CBK/MF BSM)
Total asset figure as reported in the CBK/MF BSM should be indicated in this line.
- 2.2.0 Difference
This is the difference between total on-balance sheet assets and total assets as reported in the CBK/MF BSM. The difference should be explained in the form of reconciliation.
- 3. OFF-BALANCE SHEET ITEMS**
- 3.1-3.6 Institutions should compute credit risk equivalents for different categories of off-balance sheet transactions. The resulting amounts should be assigned 100% risk weight. Under line 3.4 of the return, foreign banks include the Multi-lateral Development Banks specified under item 2.10 of the completion notes. Under line 3.5, institutions should include undelivered spot transactions.
- 3.7 Total weighted assets values
Enter in this line the total weighted assets values, i.e. 2.18 + 3.7
- 4.0 CAPITAL RATIO CALCULATIONS
Compute as per the formulae provided in the form.
- 4.6 Total Deposits
This refers to margins on letters of credit, local and foreign currency deposit liabilities plus accrued interest payable on demand, after fixed period or after notice.

GENERAL

All reported items should agree with or capable of being derived from the figures reported under CBK/MF BSM of the same period. This is a monthly return and should be submitted by the 10th day of the following month.

SIXTH SCHEDULE

[Rule 24(1).]

FORM 1

LIQUIDITY STATEMENT

- 1. NOTES AND COINS
 - (a) Local Notes and Coins
- 2. BALANCES WITH MICROFINANCE INSTITUTIONS
 - (a) Balances with Microfinance Institutions
 - Less:

SIXTH SCHEDULE, FORM 1—continued

(b) Time Deposits with MFI's	.....
(c) Matured Loans/Advances from MFI's	.....
3. BALANCES WITH DOMESTIC COMMERCIAL BANK	.....
(a) Balances with Banks	.....
Less:	.....
(b) Time Deposits with Banks	.....
(c) Overdrafts and Matured Loans/Advances	.....
4. BALANCES WITH FINANCIAL INSTITUTIONS	.....
(a) Balances with Financial Institutions	.....
Less:	.....
(b) Time Deposits with Financial Institutions	.....
(c) Balances due to Financial Institutions	.....
(d) Matured Loans/Advances from Financial Institutions	.....
5. BALANCES WITH MORTGAGE FINANCE COMPANIES	.....
(a) Balances with Mortgage Finance Companies	.....
Less:	.....
(b) Time Deposits with Mortgage Finance Companies	.....
(c) Balances Due to Mortgage Finance companies	.....
(d) Matured Loans/Advances from Mortgage Companies	.....
6. BALANCES WITH BUILDING SOCIETIES	.....
(a) Balances with Building Societies	.....
Less:	.....
(b) Time Deposits with Building Societies	.....
(c) Balances due to Building Societies	.....
(d) Matured Loans/Advances from Building Societies	.....
7. (a) TREASURY BILLS	.....
(b) TREASURY BONDS	.....
8. TOTAL ITEMS (1-7)	.....
9. DEPOSIT BALANCES	.....
(a) (i) Deposits from Govt. Bodies & Parastatals including Accrued Interest	.....
(ii) Deposits from all other Sources including Accrued Interest	.....
(iii) Total Deposits	.....
(b). Less:	.....
(i) Balances due to MFI's	.....
(ii) Balances due to Banks	.....
(iii) Balances due to Financial Institutions	.....
(iv) Balances due to Mortgage Finance Companies	.....
(v) Balances due to Building Societies	.....
(vi) Total Deductions	.....
(c) Net Deposit Liabilities	.....
10. OTHER LIABILITIES	.....
(a) Matured	.....
(b) Maturing within 91 days	.....
(c) Total Other Liabilities	.....

Microfinance

[Subsidiary]

SIXTH SCHEDULE, FORM 1—continued

- 11. LIQUIDITY RATIO
- (a) Net Liquid Assets (9)
- (b) Total Short Term Liabilities 10(i) + 11(c)
- (c) Ratio of (a)/ (b) $\{[(a)/ (b)] \times 100\%$

Notes

- 1. For overdrafts include all overdrafts and any debit balances on savings accounts

FORM 2

ANALYSIS OF BALANCES DUE TO/FROM FINANCIAL

INSTITUTION	AMOUNT DUE TO	AMOUNT DUE FROM	NET
MFI's			
Total			
BANKS			
Total			
FINANCIAL INSTITUTION			
Total			
MORTGAGE FINANCE COMPANIES			
Total			
BUILDING SOCIETIES			
Total			

Name of Institution

Reporting Date

NOTES ON COMPLETION

Forward the return within one week after reporting dates as at 15th and last day of each month to:

The Director
 Bank Supervision Department
 Central Bank of Kenya
 P.O. Box 60000-00200
 NAIROBI, KENYA

Microfinance

[Subsidiary]

SIXTH SCHEDULE—continued

FORM 3

MATURITY ANALYSIS OF ASSETS AND LIABILITIES

Name of Institution
 Period Ending

KSHS'000

A	1	2	3	4	5	6	7	8	9
Assets	Matured	Maturing in less than 1 month	1 month less than 3 months	3 months less than 6 months	6 months less than 1 year	1 year less than 3 years	3 years less than 5 years	Over 5 years	Total
1	Cash reserves								
2	Balances with Central Bank of Kenya								
3	Balances due from local institutions & societies								
4	Balances due from banks abroad								
5	Kenya government treasury Bills								
6	Kenya government treasury bonds								
7	Foreign government treasury bills & bonds								
8	Other investments								
9	Other foreign assets								
10	Local currency loans and advances (net)								
11	Fixed assets (net)								
12	Balances due from group companies								

SIXTH SCHEDULE—continued

A	Assets	1	2	3	4	5	6	7	8	9
		Matured	Maturing in less than 1 month	1 month less than 3 months	3 months less than 6 months	6 months less than 1 year	1 year less than 3 years	3 years less than 5 years	Over 5 years	Total
13	Other assets									
14	TOTAL ASSETS									
15	Off balance sheet assets									
B	LIABILITIES									
1	Balances due to Central Bank of Kenya									
2	Balances due to local institutions & bldg Societies									
3	Balances due to banks abroad									
4	Local currency deposits									
5	Local currency borrowings									
6	Foreign currency deposits									
7	Foreign currency borrowings									
8	Other foreign liabilities									
9	Balance due to group companies									
10	Other liabilities									
11	Capital and reserves									
12	TOTAL LIABILITIES									

[Subsidiary]

SIXTH SCHEDULE—continued

A	Assets	1	2	3	4	5	6	7	8	9
		Matured	Maturing in less than 1 month	1 month less than 3 months	3 months less than 6 months	6 months less than 1 year	1 year less than 3 years	3 years less than 5 years	Over 5 years	Total
13	Off-balance sheet liabilities									
C	NET POSITION ON-BALANCE SHEET ITEMS (A14-B12)									
D	NET POSITION OFF-BALANCE SHEET ITEMS (A15-B13)									

This return should be compiled on a quarterly basis. Assets and liabilities should be entered according to their remaining period to maturity.

AUTHORISATION

Name of Officer

Designation

Signature:

Date

SIXTH SCHEDULE—*continued***COMPLETION INSTRUCTIONS**

LIQUIDITY STATEMENT

1. Notes and Coins

(a) Local

Enter all notes and coins on the institution's premises (including mobile units) which are legal tender in Kenya.

2. Balances with Microfinance Institutions (MFI's)

(a) Balances with MFI's

Enter the total of all balances (call and time deposits) placed with the institution, excluding uncleared effects but including accrued interest.

(b) Time Deposits with MFI's

Enter the amount of time deposits including accrued interest included 2(a) above whose maturities exceed 91 days.

(c) Balances due to MFI's

Enter the total of all balances including accrued interest (overnight borrowings, and call placements) received from MFI's.

This balance should agree with the total analysed in the table attached to the liquidity return.

(d) Matured loans and advances from MFI's

Enter the total of matured loans and advances including guarantees, bills discounted promissory notes and performance bonds received from MFI's.

3. Balances with Domestic Commercial Bank

(a) Balances with banks

Enter the total of all balances (overnight, call and time) held at other domestic commercial banks excluding uncleared effects.

These balances should include accrued interest and should agree with the total analysed in the schedule attached to liquidity return.

(b) Time Deposits with Banks

Enter the amount of time deposits including accrued interest entered in 3(a) above whose maturities exceed 91 days.

(c) Balances Due to banks

Enter the total of balances due to commercial banks including accrued interest. This balance should agree with the total analysed in the table attached to the liquidity return.

(d) Matured loans and advances from domestic banks

Enter the total of all overdrafts and any other debit balances on matured loans and advances including guarantees and bonds issued by commercial banks.

4. Balances with Financial Institutions

(a) Balances with Financial Institutions

Enter the total of all balances (overnight, call and time) placed with the institution, excluding uncleared effects. This should include accrued interest; and should agree with the total analysed in the table attached.

(b) Time Deposits with Financial Institutions

Enter the amount of time deposits including accrued interest entered in 4(a) above whose maturities exceed 91 days.

(c) Balances due to Financial Institutions

Enter the total of balances received from financial institutions including accrued interest.

This balance should agree with the total analysed in the table attached and should exclude balances with institutions with maturities period exceeding 91 days.

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[Subsidiary]

SIXTH SCHEDULE—*continued*

- (d) **Matured Loans and Advances Received from Financial Institutions**
Enter the total of matured loans and advances including guarantees, bills discounted, promissory notes and performance bonds received from financial institutions.
- 5. Balances with Mortgage Finance Companies**
- (a) **Balances with Mortgage Finance Companies**
Enter the total of all balances (overnight, call and time deposits) placed with the institution, excluding uncleared effects but including accrued interest.
- (b) **Time Deposits with Mortgage Finance Companies**
Enter the amount of time deposits including accrued interest included in line 5(a) above whose maturities exceed 91 days.
- (c) **Balances due to Mortgage Finance Companies**
Enter the total of all balances including accrued interest (overnight borrowings, and call placements) received from mortgage finance companies.
This balance should agree with the total analysed in the table attached to the liquidity return.
- (d) **Matured loans and advances from Mortgage Finance Companies**
Enter the total of matured loans and advances including guarantees, bills discounted, promissory notes and performance bonds received from mortgage finance companies.
- 6. Balances with Building Societies**
- (a) **Balances with Building Societies**
Enter the total of all balances (call and time deposits) placed with building societies, including accrued interest. This balance should agree with the total analysed in the schedule attached to the return.
- (b) **Time Deposits with Building Societies**
Enter the amount of time deposits including accrued interest included in line 6(a) above whose maturities exceed 91 days.
- (c) **Balances Due to Building Societies**
Enter the total of all balances (call and time deposits, loans and advances) received from other building societies including accrued interest. This balance should agree with the total analysed in the table attached to the liquidity return.
- (d) **Matured Loans and Advances from Building Societies**
Enter the total of matured loans and advances received from building societies.
All deposits/placements with institutions/building societies under liquidation should not be reported as part of liquid assets.
- 7. (a) Kenya Government Treasury Bills**
Enter the amortized cost of all Kenya Government Treasury Bills investment by the reporting institution, net of encumbered Treasury Bills. Encumbered Treasury Bills are those pledged to secure any form of credit facility granted to the reporting institution.
- 8. Total Liquid Assets**
Enter the sum of items 1 to 8 above
- 9. Total Deposit Liabilities**
- (a) **Enter total deposits (Local and Foreign Currency) from all sources, including accrued interest, but excluding uncleared effects.**
- (b) **Less:**
- (i) **Balances Due to banks**
Enter the total of balances due to domestic and foreign commercial banks including accrued interest. This amount should agree with the sum of balances analysed in the attached table.
- (ii) **Balances Due to Microfinance Institutions (MFI's).**
Enter the total amount of balances due to (MFI's) including accrued interest. This amount should agree with the sum of balances in the attached table.

SIXTH SCHEDULE—*continued*

- (iii) Balances Due to Financial Institutions
Enter the total amount of balance due to domestic financial institutions including accrued interest. This amount should agree with the sum of balances in the attached table.
- (iv) Balances Due to Mortgage Finance Companies
Enter the total amount of balances due to domestic mortgage finance companies including accrued interest. This amount should agree with the sum in the attached table.
- (v) Balances Due to Building Societies
Enter the total amount of balances due to domestic building Societies including accrued interest. This amount should agree with the sum in the attached table.
- (vi) Total Deductions
Enter the total of items b(i) to b(iv)

(c) Net Deposit Liabilities

Enter the net amount of item 10(a) less sum of 10(b)(vi)

10. Other liabilities

- (a) Matured: Enter the sum of all matured liabilities (including crystallized off-balance sheet commitments) that have cash flow implications and are due for payment.

11. Liquidity-Ratio

- (a) Total of items (1-8)
(b) Sum of Group 10(c) + 11(c)
(c) Ratio of [(a)/(b)] x 100%

The liquidity statement should be completed as per the instructions contained in this guideline, and should be submitted within five (5) clear working days after reporting dates of 15th and the last day of each month.

SEVENTH SCHEDULE

[Rule 30(1)(a).]

GUIDANCE ON BOARD PERFORMANCE EVALUATION

Every institution shall be required to undertake an evaluation of the Board and members of the board performance, aimed at assessing and improving the performance of the Board and Board members as well as creating awareness about the board's responsibility and ensuring accountability of Board to the shareholders and community at large. The following are some sample questions that should be considered in a performance evaluation, which are no means definitive or exhaustive and individual institutions should tailor the questions to suit their own needs and circumstances. The responses to these questions and others should enable boards to assess how they are performing and to identify how the Board may improve the performance.

1. Board Evaluation

- (a) Has the Board properly defined the vision for the institution and is it thinking strategically about the institution's future?
- (b) How accurately is the strategic plan reflected at an operational level in the business plan? Does the Board consistently review the institution's performance against the business plan?
- (c) Is the composition of the Board and its committees appropriate, with the right mix of knowledge and skills to maximize performance in the light of future strategy?
- (d) How well does the board communicate with the management team, staff and others? Do the management and the board communicate openly?
- (e) How effectively does it use reporting mechanisms such as the AGM and the annual report to report to shareholders effectively?

[Subsidiary]

SEVENTH SCHEDULE—*continued*

- (f) Does the Board have a thorough understanding of the context in which the organization is carrying out its activities?
- (g) Is the Board as a whole taking up to date with latest developments in the regulatory environment and the market?
- (h) How effective are the board's committees? {Specific questions on the performance of each committee should be included such as, for example, their role, their composition and their interaction with the board},
- (i) Is the board functioning properly – are meeting held regularly and run efficiently, do discussions allow for different viewpoints to be expressed?
- (j) How well has the Board performed against any performance objectives that have been set?

2. Chairman and Directors' Evaluation

The Chairman and other Board members should consider the following issues and the individual concerned should also be asked to assess themselves. For each director: -

- (a) What has been the quality and the value of their contributions to the strategic planning process and to board meetings?
- (b) What have been the special attributes or skills they have brought to the Board?
- (c) How successfully have they brought their knowledge, experience, ethical and moral judgement to bear in the consideration of strategy?
- (d) How actively and successfully do they refresh their knowledge and skills in corporate governance, financial reporting, industry and market conditions?
- (e) How well prepared and informed are they for Board meetings? Is their attendance and participation during meetings and post meeting activities satisfactory?
- (f) Do they demonstrate understanding of the Boards obligations to shareholders, staff, and all key players in the sector?
- (g) Do they demonstrate understanding of the microfinance sector and the socio-economic issues facing the community and the business?
- (h) How effective and successful are their relationships with fellow board members, stakeholders and Management? Does their performance and behaviour engender mutual trust and respect within board?
- (i) How well do they communicate with fellow Board members, CEO and shareholders? Are they able to present their views convincingly yet diplomatically and do they listen and take on Board the views of others.

[Subsidiary]

EIGHTH SCHEDULE
[Rule 35(10).]

FORM 1

LOANS, ADVANCES AND OTHER FACILITIES TO ANY PERSON OR CONNECTED GROUP EXCEEDING 2% OF CORE CAPITAL

Name of Institution:
 Period ending:
 Core Capital (Kshs):

ACCOUNT	DIRECTOR/ OWNER		LOANS	OTHER FACILITIES	TOTAL O/S Bal	Interest in Suspense	Provisions held	Net O/S Bal.	Net O/S Bal. To Core Capital (%)	Classification category
	NAME	PIN NO								

AUTHORIZATION

Name of Officer
 Designation
 Signature Date

[Subsidiary]

EIGHTH SCHEDULE—continued

FORM 2

LOANS, ADVANCES AND OTHER FACILITIES TO STAFF MEMBERS, SHAREHOLDERS, DIRECTORS AND THEIR ASSOCIATES

Name of Institution:
 Period ending:
 Core Capital (Kshs):

1	2		3			4		5	
	Account		Outstanding Balance			Security		Net Outstanding Balance (Value)	Net Outstanding Balance to Core Capital (%)
Name	PIN NO.	Director/Owner Name	PIN NO.	On-Balance Sheet	Off-Balance Sheet	Total	Nature	Value	
1									
2									
3									
4									
5									
6									
Total									

(KSHS'000)

* Indicate total credit facilities extended to staff members. For staff members who are directors, their credit facilities should be reported individually.

EIGHTH SCHEDULE—continued

AUTHORISATION

Name of Officer
Designation

Signature
Date

[Subsidiary]

EIGHTH SCHEDULE—*continued*

COMPLETION INSTRUCTIONS

LOANS, ADVANCES AND OTHER FACILITIES TO ANY PERSON OR CONNECTED GROUP EXCEEDING 2% OF CORE CAPITAL

- (a) Connected group is defined as companies with common director(s)/shareholder(s).
- (b) List the accounts in each group to obtain a group total.
- (c) Other facilities include Guarantees, Letters of Credit, Acceptances, Bonds etc.
- (d) Core capital reported should be as computed under Return No. CBK/MFPR/06.

LOANS, ADVANCES AND OTHER FACILITIES TO STAFF MEMBERS, SHAREHOLDERS, DIRECTORS AND THEIR ASSOCIATES

- (a) Enter the total value of all borrowings by:
 - i. All staff members combined. In case of staff members who are directors, their credit facilities should be reported by individual name.
 - ii. Any shareholder who holds directly or indirectly or has a beneficial interest of more than 5% of the paid-up capital of the institution.
 - iii. The directors of the reporting institution.
 - iv. Any associate of any shareholder and/or director.
 - v. Any associate of the institution. An associate is defined in Section 2(2) of the Act.
- (b) Where two or more entities form part of a group, the total amount borrowed by the group should be indicated as follows:
 - i. Name of principal entity should be stated at the head of the list and;
 - ii. Other individual entities within the group should be listed in a descending order depending on the amount borrowed or outstanding balance.
- (c) Group all borrowings relating to a particular director or shareholder together quoting the name of the director or shareholder at the head of the list and quote in sequence the names of the borrowers.
- (d) Off-balance sheet items include guarantees, bonds etc.
- (e) Core capital reported should be as computed under the Capital to Risk Weighted Assets Ratio Return.

NINTH SCHEDULE

[Rule 44(1), 44(5)(a).]

PART A – ANNUAL AUDITED FINANCIAL STATEMENTS AND OTHER DISCLOSURES

FORM 1

ANNUAL AUDITED BALANCE SHEET

Name of Institution

Period Ending

I	AUDITED BALANCE SHEET	31 st Dec Current Year KShs. '000 (Audited)	31 st Dec Prior Year KShs. '000 (Audited)
Ref No.	ASSETS		
	Cash and Balances Due from Banks & Financial and Institutions		
1	Cash Balances (Both Local and Foreign)		

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[Subsidiary]

NINTH SCHEDULE, FORM 1—continued

I	AUDITED BALANCE SHEET	31 st Dec Current Year KShs. '000 (Audited)	31 st Dec Prior Year KShs. '000 (Audited)
Ref No.	ASSETS		
	Cash and Balances Due from Banks and Financial and Institutions		
1	Cash Balances (Both Local and Foreign)		
2	Balances Due from Banks and Financial and Institutions		
	Trade Investments		
3	Kenya Government Securities		
4	Investments Securities		
5	Other investments		
	Net Loan Portfolio		
6	Gross Loan Portfolio		
7	Impairment Loss Allowance		
	Accounts Receivables		
8	Tax Recoverable		
9	Deferred Tax Assets		
10	Retirement Benefit Assets		
	Net Fixed Assets		
11	Investment Properties		
12	Property and Equipment		
13	Prepaid Lease Rentals		
14	Intangible Assets		
15	Accumulated Depreciation & Amortisation		
16	Other Assets		
	Total Assets		
	LIABILITIES		
17	Demand Deposits		
18	Short Term Time Deposits		
19	Short Term Borrowings		
	Accounts Payables & Other Short Term Liabilities		
20	Tax Payable		
21	Dividends Payable		
22	Deferred Tax Liability		
23	Retirement Benefits Liability		
24	Long Term Time Deposits		
25	Long Term Borrowings		

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[Subsidiary]

NINTH SCHEDULE, FORM 1—continued

I	AUDITED BALANCE SHEET	31 st Dec Current Year KShs. '000 (Audited)	31 st Dec Prior Year KShs. '000 (Audited)
Ref No.	ASSETS		
26	Other Long Term Liabilities		
	Total Liabilities		
	EQUITY		
27	Paid-Up/Assigned Capital		
28	Donated Equity		
	Retained Earnings/Accumulated Losses		
29	Prior Year Retained Earnings		
30	Current Year Profits		
	Other Equity Accounts		
31	Revaluation Reserve		
32	Share Premium/(Discount)		
33	Proposed Dividends		
34	Adjustments to Equity		
	Total Equity		
	Total Liabilities And Equity		

FORM 2

ANNUAL AUDITED INCOME STATEMENT

Name of Institution

Period Ending

II.	INCOME STATEMENT	31 st Dec Current Year Kshs. '000 (Audited)	31 st Dec Prior Year Kshs '000 (Audited)
Ref No.			
1.	Financial Income		
2.	Financial Income from Loans Portfolio		
3.	Interest on Loan Portfolio		
4.	Fees and Commission on Loan Portfolio		
5.	Financial Income from Investments		
6.	Government Securities		
7.	Deposit and Balances with Banks and Financial Institutions		

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[Subsidiary]

NINTH SCHEDULE—continued

II.	INCOME STATEMENT	31 st Dec Current Year Kshs. '000 (Audited)	31 st Dec Prior Year Kshs '000 (Audited)
Ref No.			
8.	Other Investments		
9.	Other Operating Income		
10.	Financial Expense		
11.	Financial Expense on Funding Liabilities		
12.	Interest and Fee Expense on Deposits		
13.	Interest and Fee Expense on Borrowings		
14.	Other Financial Expense		
15.	Other Fees and Commissions Expense		
16.	Other Expense		
17.	Net Financial Income /(Loss)		
18.	Impairment Losses on Loans		
19.	Provision for Loan Impairment		
20.	Value of Loans Recovered		
21.	Operating Expenses		
22.	Personnel Expenses		
23.	Staff Costs		
24.	Director's Emoluments		
25.	Administrative Expenses		
26.	Rental Charges		
27.	Depreciation Charges		
28.	Amortization Charges		
29.	Other Administrative Expenses		
30.	Net Operating Income		
31.	Net Non-Operating Income/(Expense)		
32.	Non-Operating Income		
33.	Non-Operating Expense		
34.	Net Income (Before Taxes and Donations)		
35.	Taxes		
36.	Current Tax		
37.	Deferred Tax		
38.	Net Income (After Taxes and Before Donations)		

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[Subsidiary]

NINTH SCHEDULE, FORM 2—continued

II.	INCOME STATEMENT	31 st Dec Current Year Kshs. '000 (Audited)	31 st Dec Prior Year Kshs '000 (Audited)
Ref No.			
39.	Donations		
40.	Donations for Loan Capital		
41.	Donations for Operating Expense		
42.	Net income /(After Taxes and Donations)		

FORM 3

ANNUAL AUDITED (OTHER) DISCLOSURES

Name of Institution

Period Ending

III	OTHER DISCLOSURES	31 st Dec Current Year Kshs. '000 (Audited)	31 st Dec Prior Year Kshs. '000 (Audited)
Ref No.			
1.	NON-PERFORMING LOANS AND ADVANCES		
(a)	Gross Non-Performing Loans and Advances		
	Less:		
(b)	Interest in Suspense		
(c)	Total Non-Performing Loans and Advances (a-b)		
	Less:		
(d)	Impairment Loss Allowance		
(e)	Net Non-Performing Loans (c-d)		
2.	INSIDER LOANS AND ADVANCES		
(a)	Directors, Shareholders and Associates		
(b)	Employees		
(c)	Total Insider Loans, Advances and Other Facilities		
3.	OFF-BALANCE SHEET ITEMS		
(a)	Guarantees and Commitments		
(b)	Other Contingent Liabilities		
(c)	Total Contingent Liabilities		

NINTH SCHEDULE, FORM 3—continued

III	OTHER DISCLOSURES	31 st Dec Current Year Kshs. '000 (Audited)	31 st Dec Prior Year Kshs. '000 (Audited)
Ref No.			
4.	CAPITAL STRENGTH		
(a)	Core Capital		
(b)	Minimum Statutory Capital		
(c)	Excess/(Deficiency) (a-b)		
(d)	Supplementary Capital		
(e)	Total Capital (a + d)		
(f)	Total Risk Weighted Assets		
(g)	Core Capital/Total Deposit Liabilities		
(h)	Minimum Statutory Ratio		
(i)	Excess/(Deficiency)(g-h)		
(j)	Core Capital/Total Risk Weighted Assets		
(k)	Minimum Statutory Ratio		
(l)	Excess/(Deficiency)(j-k)		
(m)	Total Capital/Total Risk Weighted Assets		
(n)	Minimum Statutory Ratio		
(o)	Excess/(Deficiency)(m-n)		
5.	LIQUIDITY		
(a)	Liquidity Ratio		
(b)	Minimum Statutory Ratio		
(c)	Excess/(Deficiency) (a-b)		
	The financial statements are extracts from the books of the institution as audited by		
 and received unqualified/qualified opinion.		
	Signed:.....	Signed:	

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[Subsidiary]

NINTH SCHEDULE—continued

PART B – UN-AUDITED QUARTERLY FINANCIAL STATEMENTS AND OTHER DISCLOSURES

FORM 4

UN-AUDITED QUARTERLY BALANCE SHEET

Name of Institution:

Period Ending:

I	UN-AUDITED BALANCE SHEET	Prior Year same Quarter KShs. '000 (Un-Audited)	31 st Dec Prior Year Kshs. '000 (Audited)	1 st Quarter Current Year KShs. '000 (Un-Audited)	2 nd Quarter Current Year KShs. '000 (Un-Audited)	3 rd Quarter Current Year Kshs. '000 (Un-Audited)
Ref No.	ASSETS					
	Cash and Balances Due from Banks & Financial Institutions					
1.	Cash Balances (Both Local and Foreign)					
2.	Balances Due from Banks and Financial Institutions					
	Trade Investments					
3.	Kenya Government Securities					
4.	Investment Securities					
5.	Other Investments					
	Net Loan Portfolio					
6.	Gross Loan Portfolio					
7.	Impairment Loss Allowance					
	Accounts Receivables					
8.	Tax Recoverable					
9.	Deferred Tax Assets					
10.	Retirement Benefit Assets					
	Net Fixed Assets					
11.	Investment Properties					
12.	Property and Equipment					
13.	Prepaid Lease Rentals					
14.	Intangible Assets					

Microfinance

[Subsidiary]

NINTH SCHEDULE, FORM 4—continued

I	UN-AUDITED BALANCE SHEET	Prior Year same Quarter KShs. '000 (Un- Audited)	31 st Dec Prior Year Kshs. '000 (Audited)	1 st Quarter Current Year KShs. '000 (Un- Audited)	2 nd Quarter Current Year KShs. '000 (Un- Audited)	3 rd Quarter Current Year Kshs. '000 (Un- Audited)
Ref No.	ASSETS					
15.	Accumulated Depreciation & Amortisation					
16.	Other Assets					
	Total Assets					
	LIABILITIES					
17.	Demand Deposits					
18.	Short Term Time Deposits					
19.	Short Term Borrowings					
	Accounts Payables & Other Short Term Liabilities					
20.	Tax Payable					
21.	Dividends Payable					
22.	Deferred Tax Liability					
23.	Retirement Benefits Liability					
24.	Long Term Time Deposits					
25.	Long Term Borrowings					
26.	Other Long Term Liabilities					
	Total Liabilities					
	EQUITY					
27.	Paid-Up/Assigned Capital					
28.	Donated Equity					
	Retained Earnings					
29.	Prior Year Retained Earnings					
30.	Current Year Profits					
	Other Equity Accounts					
31.	Revaluation Reserve					

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[Subsidiary]

NINTH SCHEDULE, FORM 4—continued

I	UN-AUDITED BALANCE SHEET	Prior Year same Quarter KShs. '000 (Un-Audited)	31 st Dec Prior Year KShs. '000 (Audited)	1 st Quarter Current Year KShs. '000 (Un-Audited)	2 nd Quarter Current Year KShs. '000 (Un-Audited)	3 rd Quarter Current Year KShs. '000 (Un-Audited)
Ref No.	ASSETS					
32.	Share Premium/ (Discount)					
33.	Proposed Dividends					
34.	Adjustments to Equity					
	Total Equity					

FORM 5

UN-AUDITED QUARTERLY INCOME STATEMENT

Name of Institution

Period Ending

II	INCOME STATEMENT	Prior Year same Quarter KShs. '000 (Un-Audited)	31 st Dec Prior Year KShs. '000 (Un-Audited)	1 st Quarter Current Year KShs. '000 (Un-Audited)	2 nd Quarter Current Year KShs. '000 (Un-Audited)	3 rd Quarter Current Year KShs. '000 (Un-Audited)
Ref No.						
1.	Financial Income					
2.	Financial Income from Loans Portfolio					
3.	Interest on Loan Portfolio					
4.	Fees and Commission on Loan Portfolio					
5.	Financial Income from Investments					
6.	Government Securities					
7.	Deposit and Balances with Banks and Financial Inst.					
8.	Other Investments					
9.	Other Operating Income					
10.	Financial Expense					

Microfinance

[Subsidiary]

NINTH SCHEDULE, FORM 5—continued

II	INCOME STATEMENT	Prior Year same Quarter KShs. '000 (Un- Audited)	31 st Dec Prior Year KShs. '000 (Un- Audited)	1 st Quarter Current Year KShs. '000 (Un- Audited)	2 nd Quarter Current Year KShs. '000 (Un- Audited)	3 rd Quarter Current Year KShs. '000 (Un- Audited)
Ref No.						
11.	Financial Expense on Funding Liabilities					
12.	Interest and Fee Expense on Deposits					
13.	Interest and Fee Expense on Borrowings					
14.	Other Financial Expense					
15.	Other Fees and Commissions Expense					
16.	Other Expense					
17.	Net Financial Income/(loss)					
18.	Impairment Losses on Loans					
19.	Provision for Loan Impairment					
20.	Value of Loans Recovered					
21.	Operating Expenses					
22.	Personnel Expenses					
23.	Staff Costs					
24.	Director's Emoluments					
25.	Administrative Expenses					
26.	Rental Charges					
27.	Depreciation Charges					
28.	Amortization Charges					
29.	Other Administrative Expense					
30.	Net Operating Income					
31.	Net Non-Operating Income/(Expense)					
32.	Non-Operating Income					

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[Subsidiary]

NINTH SCHEDULE, FORM 5—continued

II	INCOME STATEMENT	Prior Year same Quarter KShs. '000 (Un-Audited)	31 st Dec Prior Year KShs. '000 (Un-Audited)	1 st Quarter Current Year KShs. '000 (Un-Audited)	2 nd Quarter Current Year KShs. '000 (Un-Audited)	3 rd Quarter Current Year KShs. '000 (Un-Audited)
Ref No.						
33	Non-Operating Expense					
34	Net Income (Before Taxes and Donations)					
35	Taxes					
36	Current Tax					
37	Deferred Tax					
38	Net Income (After Taxes and Before Donations)					
39	Donations					
40	Donations for Loan Capital					
41	Donations for Operating Expense					
42	Net Incomes/(After Taxes and Donations)					

FORM 6

UN-AUDITED QUARTERLY (OTHER) DISCLOSURES

Name of Institution

Period Ending

III	OTHER DISCLOSURES	Prior Year same Quarter KShs. '000 (Un-Audited)	31 st Dec Prior Year KShs. '000 (Un-Audited)	1 st Quarter Current Year KShs. '000 (Un-Audited)	2 nd Quarter Current Year KShs. '000 (Un-Audited)	3 rd Quarter Current Year KShs. '000 (Un-Audited)
Ref No.						
4.	NON-PERFORMING LOANS AND ADVANCES					
(f)	Gross Non-Performing Loans and Advances					
	Less:					

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[Subsidiary]

NINTH SCHEDULE, FORM 6—continued

III	OTHER DISCLOSURES	Prior Year same Quarter KShs. '000 (Un- Audited)	31 st Dec Prior Year KShs. '000 (Un- Audited)	1 st Quarter Current Year KShs. '000 (Un- Audited)	2 nd Quarter Current Year KShs. '000 (Un- Audited)	3 rd Quarter Current Year KShs. '000 (Un- Audited)
Ref No.						
(g)	Interest in Suspense					
(h)	Total Non-Performing Loans and Advances(a-b)					
	Less:					
(i)	Impairment Loss Allowance					
(j)	Net Non-Performing Loans (c-d)					
5.	INSIDER LOANS AND ADVANCES					
(d)	Directors, Shareholders and Associates					
(e)	Employees					
(f)	Total Insider Loans, Advances and Other Facilities					
6.	OFF-BALANCE SHEET ITEMS					
(d)	Guarantees and Commitments					
(e)	Other Contingent Liabilities					
(f)	Total Contingent Liabilities					
6.	CAPITAL STRENGTH					
(p)	Core Capital					
(q)	Minimum Statutory Capital					
®	Excess/(Deficiency)(a-b)					
(s)	Supplementary Capital					
(t)	Total Capital (a+d)					
(u)	Total Risk Weighted Assets					
(v)	Core Capital /Total Deposit Liabilities					
(w)	Minimum Statutory Ratio					
(x)	Excess/(Deficiency)(g-h)					

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[Subsidiary]

NINTH SCHEDULE, FORM 6—continued

III	OTHER DISCLOSURES	Prior Year same Quarter KShs. '000 (Un-Audited)	31 st Dec Prior Year KShs. '000 (Un-Audited)	1 st Quarter Current Year KShs. '000 (Un-Audited)	2nd Quarter Current Year KShs. '000 (Un-Audited)	3 rd Quarter Current Year KShs. '000 (Un-Audited)
Ref No.						
(y)	Core Capital/Total Risk Weighted Assets					
(z)	Minimum Statutory Ratio					
(aa)	Excess/(Deficiency)(j-k)					
(bb)	Total Capital/Total Risk Weighted Assets					
(cc)	Minimum Statutory Ratio					
(dd)	Excess/(Deficiency)(m-n)					
7.	LIQUIDITY					
(d)	Liquidity Ratio					
(e)	Minimum Statutory Ratio					
(f)	Excess/(Deficiency)(a-b)					
The financial statement are extracts from the books of the institution						
Signed:		Signed:				

NOTES FOR COMPLETION OF AUDITED AND UN-AUDITED QUARTERLY FINANCIAL STATEMENTS AND OTHER DISCLOSURES

GENERAL

- (i) These completion instructions are issued to ensure uniformity of reporting by all institutions.
- (ii) No asset or liability stated in the balance sheet should be offset by deduction of another liability or asset except inter-branch balances and items in transit or where a legal right of set-off exists.
- (iii) The accounts should be prepared in accordance with International Financial Reporting Standards.
- (iv) All figures should be shown in thousands of Kenya shillings.
- (v) All the rows should be published irrespective of whether the institution has a figure to report or not.
- (vi) Each return should be signed by at least two authorized signatories before submission to the Central Bank.

PART I. – BALANCE SHEET

A. ASSETS

1. Cash Balances

Notes and coins held in the tills and vaults.

2. Balances Due from Banks and Other Financial Institutions

These include:

- (i) Placements by the reporting institution with banks, microfinance and other institutions.

NINTH SCHEDULE—*continued*

- (ii) Placements with collapsed institutions should be disclosed among “among assets” net of provisions held, if any.
 - (iii) All loans and advances granted to other institutions and building societies.
 - (iv) All credit balances in current accounts held with banks and other institutions.
3. Kenya Government Securities
- These include:
- (i) Treasury Bills;
 - (ii) Treasury Bonds;
 - (iii) Kenya Government Stock;
 - (iv) Local Government Securities;
 - (v) Other Government Securities.
- These are debt securities issued by the Government of Kenya held for both investment and dealing purposes.
4. Investment Securities
- These include corporate bonds and commercial paper with no fixed or determined payment maturities.
5. Other Investments
- These include investments that have a fixed maturity date or items held to maturity by the institution.
6. Gross Loan Portfolio.
- These are loans and advances.
7. Impairment Loss Allowance
- The portion of the Gross Loan Portfolio that has been provisioned in anticipation of losses due to default. It represents the cumulative value of the impairment losses less the cumulative value of loans written off.
8. Tax Recoverable
- This is the tax that is recoverable as a result of overpayment of tax in the previous periods.
9. Deferred Tax Assets
- These are taxes recoverable in future periods in respect of:
- (a) Deductible temporary difference;
 - (b) The carry forward of unused tax losses;
 - (c) The carry forward of unused tax credits.
10. Retirement Benefit Assets
- These are staff retirement benefits assets computed as per IAS 19.
11. Investment Properties
- This is as defined in IAS 40 as a property (land or a building or part of a building or both) held (by the owner or by the lessee under a finance lease) to earn rentals or for capital appreciation or both, rather than for—
- (a) Use in the production or supply of goods or services or for administrative purposes; or
 - (b) Sale in the ordinary course of business.
12. Property and Equipment
- Comprise all the immovable and other fixed assets of the reporting institution. These are to be reported net of accumulated depreciation.
- They include:
- (i) Staff houses;
 - (ii) Furniture, fixtures and fittings;
 - (iii) Motor vehicles;
 - (iv) Office equipment including computer equipment;

[Subsidiary]

NINTH SCHEDULE—*continued*

- (v) Land and buildings (excludes leasehold land and investment property);
- (vi) Others not specified elsewhere including foreclosed assets.

13. Prepaid Lease Rentals

This relate to the cost of the leasehold land net of accumulated amortized amount.

14. Intangible Assets

Include all tangible assets such as goodwill, computer software, royalties, copyrights etc.

15. Accumulated Depreciation and Amortisation

Disclose the sum of all depreciation expenses for fixed assets and the amortization of the intangible assets expressed as a negative.

16. Other assets

These include assets not stated elsewhere.

B. LIABILITIES

17. Demand Deposits

These include all funds received from public bodies, parastatals, private enterprises, individuals and other non-profit making institutions, both resident and non-resident in Kenya that the MFI is liable to pay on demand.

18. Short Term Time Deposits

Deposits mobilized from the general public that the MFI is liable to repay on a fixed date within 12 months. These include compulsory deposit accounts or cash collateral accounts.

19. Short Term Borrowings

These to include short term borrowings due to microfinance institutions commercial banks, financial institutions, mortgage finance companies and building societies locally.

20. Tax Payable

This relates to tax liability computed but not yet paid.

21. Dividends Payable

These are dividends that have been declared but not yet paid.

22. Deferred Tax Liability

These are taxes payable in future periods in respect of taxable temporary differences.

23. Retirement Benefits Liability

These are the retirement benefits liability as accounted for under IAS 19.

24. Long Term Time Deposits

Deposits mobilized from the general public that the MFI is liable to repay on a fixed date greater than 12 months.

25. Long Term Borrowings

These include term borrowings from microfinance institutions, commercial banks and other financial institutions. Special loan facilities covering funds received through special arrangements between the Kenya government and other foreign governments or donor agencies, such as EIB Loans, for onward lending or distribution to specific sectors of the economy should be entered here. Shareholders' loans should also be classified as borrowed funds.

26. Other Long Term Liabilities

These include all other long term liabilities due in more than 12 months not specified elsewhere.

C. EQUITY

27. Paid up/Assigned Capital

This is the nominal value of ordinary and preference shares issued and fully paid by the shareholders or capital assigned to Kenyan Branch (es) by foreign parent companies.

28. Donated Equity

These are capital grants, which are not callable and donations received recognized as equity donations.

NINTH SCHEDULE—*continued*

29. Prior Year Retained Earnings

These are undistributed profits or losses carried forward over the years. Disclose the retained earnings carried from previous years here.

30. Current Year Profits

Disclose the current years after tax profits.

31. Revaluation Reserve

These are revaluation surpluses/losses arising from revaluation of fixed assets and financial instruments.

32. Share Premium/(Discount)

This is the difference between the nominal price and the purchase price of ordinary and preference shares, which is not refundable.

33. Proposed Dividends

These are dividends that have been proposed by the Board but have not been ratified at the annual general meeting.

34. Adjustments to Equity

These are any adjustments to account for subsidized funds and in-kind subsidies.

PART II – INCOME STATEMENT

1. Financial Income

The total value of all income earned from the provision of financial services, Total of Financial Income from Loan Portfolio (Line 2), Financial Income from Investments (Line 5) and Other Operating Income (Line 9).

2. Financial Income from Loan Portfolio

Income from interest, fees, commissions, and other fees earned on the loan portfolio. This includes not only interest paid in cash but also interest accrued but not yet paid. Total of interest earned on the loan portfolio (Line 3) and Fees and Commission on the loan portfolio (Line 4).

3. Interest on Loan Portfolio

Interest earned on the loan portfolio. If the MFI is earning interest on loans to employees or board members, this interest should be disclosed. If this interest is significant, the MFI should create two sub-accounts for line 3 – one for interest from clients and the other for interest from these related parties.

4. Fees and Commissions on Loan Portfolio

Penalties, commissions, and other fees earned on the loan portfolio. This may also include income under Islamic finance methods. If the MFI is earning fees and commissions on loans to employees or Board members, these should be disclosed. If these fees and commissions are significant, the MFI should create two sub accounts for the line 4 – one for fees and commissions from clients and the other for fees and commissions from related parties.

5. Financial Income from Investments

Revenue from interest, dividends and other payments generated by financial assets other than the loan portfolio, such as interest-bearing deposits, certificates of deposit, and treasury obligations. This may include net trading income (gains less losses) from securities and foreign currency trading and the recovery of any interest revenue that was previously written off.

6. Government Securities

This covers interest and discount earned on all Government Securities.

7. Deposits and Balances with Other Financial Institutions

This includes all interest earned on placements and lending to commercial banks, financial institutions, mortgage finance companies and building societies. Interest on placements with collapsed institutions, should be suspended and not recognized as income.

8. Other Investments

These include any other investments including corporate bond, commercial paper and bearer bonds.

[Subsidiary]NINTH SCHEDULE—*continued*

9. Other Operating Income

All other income from the provision of financial services, including transaction fees, premiums, membership fees, passbooks and smartcards. If the MFI provides loans to employees or Board members, the interest and fee revenue from those loans should be included here. This account also includes net foreign exchange gains.

10. Financial Expenses

The total value of all financial expenses incurred from operations. Total of Financial Expense on Funding Liabilities (Line 11) and Other Financial Expenses (Line 14).

11. Financial Expense on Funding Liabilities.

Total of Interest and Fee Expense on Deposits (Line 12) and Interest and Fee Expense on Borrowings (Line 13)

12. Interest and Fee Expense on Deposits

Interest and fees incurred on all deposits taken by the institution.

13. Interest and Fee Expense on Borrowings

Interest and fees incurred on all borrowings that fund the loan portfolio. This account does not include interest and fees on non-funding liabilities, such as mortgages or car loans. These items are included in line 14(Other Financial Expense).

14. Other Financial Expenses

Other financial expense related to financial services, including interest on non-funding liabilities, such as mortgages, and loans linked to fixed assets, such as vehicles. This account also includes net foreign exchange loss.

15. Other Fees and Commissions expense

This includes all charges and commissions relating to account operations (e.g. ledger fees).

16. Other expense

This is all other expenses specified elsewhere above. This expense should arise from normal business operations.

17. Net Financial Income

The net value of financial earnings from financial services. Financial Income (Line 1) less Financial Expenses (Line 10).

18. Impairment Losses on Loans

Also known as net loan loss provision expense. It is provision for Loan Impairment net of the Value of Loans Recovered. Provision for Loan Impairment (Line 19) less Value of Loans Recovered (Line 20).

19. Provision for Loan Impairment

This is the non-cash expense calculated as a percentage of the value of the loan portfolio that is at risk of default. This value is calculated in the portfolio report and is used to create or increase the Impairment Loss Allowance on the Balance Sheet.

20. Value of Loans Recovered

Total value of principal recovered on all loans previously written off. This includes principal on partially recovered loans and those recovered in full. Subsequent recoveries of loans previous written off decrease the amount of the Provision for Loan Impairment (Line 19), and the net amount is booked as Impairment Losses on Loans (Line 18).

21. Operating Expenses

The total value of all operating expenses, including (22) Personnel and (25) Administrative Expenses, incurred in providing financial services. Total of Personnel Expenses (Line 22) and Administrative Expenses (Line 25).

22. Personnel Expenses

Includes staff salaries, bonuses, and benefits, as well as employment taxes. It also includes the cost of employee recruitment and initial orientation, but not the cost of ongoing or specialized training for existing employees, which is an (Line 25) Administrative Expenses.

23. Staff Costs

These are staff salaries and other staff benefits excluding the executive directors.

NINTH SCHEDULE—*continued*

24. Directors' Emoluments

These are compensations, salaries and benefits to the executive directors and non-executive directors for running the institution for the period.

25. Administrative Expenses

Non-financial expenses excluding personnel directly related to the provision of financial services or other services that form an integral part of an MFI's financial services' relationship with its clients. (Total of Rental Charges (Line 26), Depreciation Charges (Line 27) and Amortization Charges (Line 28).

26. Rental Charges

These are rental charges.

27. Depreciation Charges

This is depreciation charge on property and equipment for the period.

28. Amortization Charges

Amortization charge on prepaid lease rentals, capital grants and intangible assets.

29. Other Administrative Expenses

All administrative expenses other than depreciation, amortization and rental expenses. Examples include utilities, supplies, advertising, transportation, communications and consulting fees. It may also include certain taxes related to administration, such as value-added tax. These expense categories may be listed as separate line items as appropriate.

30. Net Operating Income

The net earnings from the provision of financial services. Net Financial Income (Line 17) less Impairment Losses on Loans (Line 18) less Administrative Expenses (Line 25).

31. Net Non-Operating Income/ (Expenses)

The net earnings from products and services not directly related to core microfinance operations. Institutions should disclose large material amounts of non-operating revenue separately by creating accounts under (Line 32) Non-Operating Income or (Line 33) Expense. Non-operating Income (Line 32) less Non-Operating Expenses (Line 33).

32. Non-Operating Income

All Income not directly related to core microfinance operations, such as revenue from business developments services, training, consulting services, management information system sales, or sale of merchandise. It does not include Donations (Line 39). This account also includes any exceptional gains and revenues. Large or relevant non-operating revenue categories should be listed as separate line items as appropriate.

33. Non-Operating Expenses

All expenses not directly related to the core microfinance operation, such as the cost of providing business development services or training. This account also includes any exceptional losses and expenses. Large or relevant expense categories should be listed as separate line items as appropriate.

34. Net Income (Before Taxes and Donations)

All net earnings from the institution's operations before the inclusion of taxes and donations.

Total of Net Operating Income (Line 30) and Net Non-Operating Income (Expenses) (Line 31).

35. Taxes

Includes all taxes paid on Net Income or other measure of profit as defined by local tax authorities.

36. Current Tax

Enter tax charged for the current accounting period.

37. Deferred Tax

Enter the deferred tax charge.

38. Net Income (After Taxes and Before Donations)

All net earnings from the institution's operations, net of taxes and before the inclusion of donations. Net Income (Before Taxes and Donations) (Line 34) less Taxes (Line 35).

[Subsidiary]

NINTH SCHEDULE—*continued*

39. Donations

Value of all donations recognized as revenue during the period, whether restricted or not. (Total of Donations for Loan Capital) (Line 40) and Donations for Operating Expenses (Line 41).

40. Donations for Loan Capital

Value of all donations used to fund the loan portfolio. Many MFI's are accustomed to applying Donations for Loan Capital directly to the balance sheet. This Framework requires that they are first booked as Non-operating revenue to increase transparency.

41. Donations for Operating Expenses

Value of all donations used to pay for operations other than funding the loan portfolio. These operations include paying personnel and administrative expenses and purchasing fixed assets.

42. Net Income (After Taxes and Donations)

All net earnings from the institution's operations, net of taxes, and after the inclusion of donations. Total of Net Income (After Taxes and Before Donations) (Line 38) and Donations (Line 39).

PART III – OTHER DISCLOSURES

1. NON-PERFORMING LOANS AND ADVANCES

(a). Gross Non-performing loans

Enter the gross aggregate of substandard, doubtful and loss accounts inclusive of interest suspended.

(b) Interest in Suspense

Enter the aggregate of interest in suspense for substandard, doubtful and loss accounts.

(c) Total Non-performing Loans Net of Interest in Suspense

Enter the difference between (a) and (b) above.

(d). Impairment Loss Allowance

Enter the aggregate of loan loss provisions made for substandard, doubtful and loss accounts computed as per Microfinance: Deposit Taking Risk classification of Assets and Provisioning Regulation.

(e). Net Non-Performing Loans (c-d).

Enter the difference between items (c) and (d) above.

2. INSIDER LOANS, ADVANCES AND OTHER FACILITIES

(a) Directors, Shareholders and Associates

(i) On-balance sheet

(ii) Off-balance sheet

These are loans and advances including off-balance sheet items to Directors and Significant Shareholders and their associates as per section 2 of the Microfinance Act.

(b) Employees

Enter loans and advances to employees.

(c) Total Insider Loans, Advances and Other Facilities

Enter the aggregate of 2(a) and 2(b).

3. OFF-BALANCE SHEET ITEMS

(a) Guarantees and Commitments

Enter Guarantees, Commitments, etc. This should exclude off-balance sheet items to insiders.

(b) Other Contingent Items

Enter other items not covered under 3(a) above.

(c) Total Contingent Items

Enter aggregate of items 3(a) and 3(b) above.

NINTH SCHEDULE—*continued*

4. CAPITAL STRENGTH

The following risk-based capital items should be computed as required in the Capital Adequacy Regulations.

- (a) Core Capital
- (b) Minimum Statutory Capital
- (c) Excess/Deficiency (a-b)
- (d) Supplementary Capital
- (e) Total Capital (a+d)
- (f) Total Risk Weighted Assets
- (g) Core Capital/Total Deposit Liabilities
- (h) Minimum Statutory Ratio
- (i) Excess/Deficiency (g-h)
- (j) Core Capital/Total Risk Weighted Assets
- (k) Minimum Statutory Ratio
- (l) Excess/Deficiency (j-k)
- (m) Total Capital/Total Risk Weighted Assets
- (n) Minimum Statutory Ratio
- (o) Excess/Deficiency (m-n)

5. LIQUIDITY

The liquidity ratio should be computed as instructed in Deposit Taking Liquidity Management Regulations. Disclose the following:

- (a). Liquidity Ratio (Net Liquid Assets/Total Short-term Liabilities).
- (b). Minimum Statutory Ratio.
- (c). Excess/Deficiency (a-b).

TENTH SCHEDULE

[Rule 46(2).]

FORM 1

RISK CLASSIFICATION OF ASSETS

In the determination of the classification for loans and advances, performance will be the primary consideration. The performance will generally show the repayment capability of the borrower. All loans and advances should be classified by institutions according to the following criteria:-	
Days at Risk (Number of days past due)	Classification
(a) Current and up to date in payments of principal and interest	Normal
(b) 1 to 30 days in arrears or where one instalments for either principal or interest is due and unpaid	Watch
(c) 31 to 60 days in arrears or where two instalments for either the principal or interest are due and unpaid	Substandard
(d) 61 to 90 days in arrears or where three instalments of either principal or interest are due and unpaid	Doubtful
(e) More than 90 days in arrears or where four or more instalments of either principal or interest are due and remain unpaid	Loss

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[Subsidiary]

TENTH SCHEDULE—continued

FORM 2

RISK CLASSIFICATION OF ASSETS AND PROVISIONING

Name of Institution:
 Period Ending:

Portfolio Aging Report										
	Classification	No of loans/ACs	Outstanding loan Portfolio	Required Provision	Required Provision Amount (Kshs)	Security Held	Minimum provision %	Portfolio at Risk		
1.	Normal			1%						
2.	Watch			5%						
3.	Sub-standard			25%						
4.	Doubtful			75%						
5.	Loss			100%						
6.	Other Non-performing Assets*									
	Total									
	Rescheduled/Renegotiated loans									
7.	Normal			1%						
8.	Watch			5%						
9.	Sub-standard			25%						
10.	Doubtful			75%						
11.	Loss			100%						
	Grand Total									

TENTH SCHEDULE—continued

AUTHORIZED SIGNATORY: * Specify this in a separate attachment

Name of Officer

Designation

Signature

Date

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[Subsidiary]

TENTH SCHEDULE—*continued*

COMPLETION INSTRUCTIONS

General

This return should be completed strictly in accordance with the Regulation on Risk Classification of Assets and Provisioning.

1. Enter in column A the number of accounts under each classification.
2. Enter in column B the amount outstanding under each classification categories of Normal Risk; Watch; Sub-standard; Doubtful and Loss.
3. Enter in column C the minimum provisions requirement in percentages in each classification category.
4. Enter in column D provisions required in each classification category.
5. Enter in column E the amount of security held in each classification category.
6. Enter the difference between column D and E in column G.

ELEVENTH SCHEDULE

[Rule 51(3).]

ACTIVITY AND PORTFOLIO REPORT

Name of Institution:

Period Ending:

	Activity and Portfolio Information	Prior Month	Currency Month
	DEPOSITS		
1.	Number of Active Depositors		
2.	Number of Active Female Depositors		
3.	Number of Active Male Depositors		
4.	Number of New Depositors During the Period		
5.	Number of Deposit Accounts		
6.	Value of Total Deposits		
	LOANS AND ADVANCES		
7.	Number of Active Borrowers		
8.	Number of Active Female Borrowers		
9.	Number of Active Male Borrowers		
10.	Number of New Borrowers During the Period		
11.	Number of Active Loans		
12.	Number of Loans Disbursed During the Period		
13.	Value of Loans disbursed (Kshs '000) During the Period		
14.	Number of Loans Outstanding		
15.	Value of Outstanding Loan Portfolio (Kshs '000)		

ELEVENTH SCHEDULE—*continued*

	Activity and Portfolio Information	Prior Month	Currency Month
16.	Number of Loans Written Off		
17.	Value of Loans Written off		
18.	Number of Loans in Recovery or Recovered		
19.	Value of Loans in Recovery or Recovered		
	STAFFING		
20.	Total Number of All Personnel/Staff		
21.	Total Number of Loan Officers		

AUTHORISED SIGNATORY:

Name of Officer

Designation

Signature

Date

COMPLETION INSTRUCTIONS

ACTIVITY AND PORTFOLIO REPORT

1. Number of Active Depositors

The total number of individuals who currently have funds on deposit with an MFI whom the MFI is liable to repay. This number applies only to deposits that are held by an MFI, not to those deposits held in other institutions by the MFI's clients. The number should be based on individuals rather than the number of groups. It is possible that a single deposit account may represent multiple depositors.

2. Number of Active Female Depositors

The total number of female individuals who currently have funds on deposit with an MFI whom the MFI is liable to repay. This number applies only to deposits that are held by an MFI, not to those deposits held in other institutions by the MFI's clients. The number should be based on individuals rather than the number of groups. It is possible that a single deposit account may represent multiple depositors.

3. Number of Active Male Depositors

The total number of male individuals who currently have funds on deposit with an MFI whom the MFI is liable to repay. This number applies only to deposits that are held by an MFI, not to those deposits held in other institutions by the MFI's clients. The number should be based on individuals rather than the number of groups. It is possible that a single deposit account may represent multiple depositors.

4. Number of New Depositors During the Period

The number of depositors who did not have an active account at the beginning of the period but do have an active account at the end of the period.

5. Number of Deposit Accounts

The number of deposit accounts, both voluntary and compulsory, opened at the MFI whose balances the institution is liable to repay. The number should be based on the number of individual accounts rather than on the number of groups.

6. Value of Total Deposits

The value of balances in deposit accounts, both voluntary and compulsory, opened at the MFI whose balances the institution is liable to repay. The number should be based on the number of individual accounts rather than on the number of groups.

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ELEVENTH SCHEDULE—*continued*

7. Number of Active Borrowers

The number of individuals who currently have an outstanding loan balance with the MFI or are primarily responsible for repaying any portion of the Gross Loan Portfolio. Individuals who have multiple loans with an MFI should be counted as a single borrower.

8. Number of Active Female Borrowers

The number of female individuals who currently have an outstanding loan balance with the MFI or are primarily responsible for repaying any portion of the Gross Loan Portfolio. Individuals who have multiple loans with an MFI should be counted as a single borrower.

9. Number of Active Male Borrowers

The number of male individuals who currently have an outstanding loan balance with the MFI or are primarily responsible for repaying any portion of the Gross Loan Portfolio. Individuals who have multiple loans with an MFI should be counted as a single borrower.

10. Number of New Borrowers During the Period

The number of borrowers who did not have an active account at the beginning of the period but do have an active account at the end of the period.

11. Number of Active Loans

Number of performing loans classified under normal and watch categories.

12. Number of Loans Disbursed During the Period

The number of all loans disbursed during the period. For MFIs using a group lending methodology, the number of loans should refer to the number of individuals receiving loans as part of a group or as part of a group loan. If one person receives more than one loan in the period, count each loan.

13. Value of Loans disbursed (Kshs '000) During the Period

The value of all loans disbursed during the period.

14. Number of Loans Outstanding

The number of loans in the Gross Loan Portfolio. For MFIs using a group lending methodology, the number of loans should refer to the number of individuals receiving loans as part of a group or as part of a group loan.

15. Value of Outstanding Loan Portfolio (Kshs '000)

This is the Gross Loan Portfolio.

16. Number of Loans Written Off

The number of loans that have been recognized as uncollectible for accounting purposes. The process of recognizing an uncollectible loan is called a write-off or a charge-off. A write-off is an accounting procedure that removes the outstanding balance of the loan from the gross loan portfolio and from the loan-loss allowance. Thus the write-off does not affect the balance of the net loan portfolio, total assets, or any equity account, unless the loan-loss reserve was insufficient to cover the amount written off. Most MFIs have policies requiring a write-off of all loans past due more than a certain number of days. It should be noted that a write-off does not have any bearing on an MFI's efforts to collect the delinquent loan or the client's obligation to pay. It is not uncommon for an MFI to recover loans after they have been charged off.

17. Value of Loans Written off

The value of all loans written off during the period.

18. Number of Loans in Recovery or Recovered

The number of loans previously written off that has been collected. This number includes loans paid in full and loans on which partial collection has been made in the past year.

19. Value of Loans in Recovery or Recovered

Total value of principal recovered on all loans previously written off. This number includes partially recovered loans and those loans recovered in full. These recoveries are booked as part of Value of Loans Recovered.

ELEVENTH SCHEDULE—*continued*

20. Total Number of All Personnel/Staff

The number of individuals who are actively employed by the MFI. This number includes contract employees or advisors who dedicate a substantial portion of their time to the MFI, even if they are not on the MFI's employee roster. This number should be expressed as a full-time equivalent.

21. Total Number of Loan Officers

The number of personnel whose main activity is to manage a portion of the Gross Loan Portfolio directly. A loan officer is a staff member of record who is directly responsible for arranging and monitoring client loans. The term "loan officer" refers to field personnel or line officers who interact with the client, not to administrative staff or analysts who process loans without direct client contact. Loan officers include contract employees who may not be part of permanent staff but are contracted on a regular basis in the capacity of loan officers. This number should be expressed as a full-time equivalent.

**MICROFINANCE (DEPOSIT TAKING MICROFINANCE DEPOSIT PROTECTION
FUND) REGULATIONS, 2009**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. Contribution to the Fund.
4. Submission of monthly returns.
5. Waiver of contribution.
6. Revocation of protection.
7. Protected deposit.
8. Right to consolidate accounts.
9. Payments out of the Fund.
10. Limitation of claims.
11. Liability of insolvent institutions.
12. Liquidator's duty to the Board.
13. Notice of appointment and security.
14. Meeting of Creditors.
15. Power to waive proof of debt.
16. Power of the Board to decide all claims.
17. Pending of proceedings.
18. Winding up.

SCHEDULES

- FIRST SCHEDULE – DEPOSIT PROTECTION FUND BOARD
SECOND SCHEDULE – DEPOSIT PROTECTION FUND BOARD
THIRD SCHEDULE – CERTIFICATE OF DEPOSIT PROTECTION
-

[Subsidiary]

MICROFINANCE (DEPOSIT TAKING MICROFINANCE DEPOSIT PROTECTION FUND) REGULATIONS, 2009

[L.N. 5/2009.]

1. Citation

These Regulations may be cited as the Microfinance (Deposit Taking Microfinance Deposit Protection Fund) Regulations, 2009.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Board**” means the Deposit Protection Fund Board established under section 36 of the Banking Act (Cap. 488);

“**contributory institution**” means an institution licensed that has received a notice to contribute under regulation 3(2);

“**protected deposit**” means the total liability of the institution to the depositor limited to a maximum of one hundred thousand shillings.

3. Contribution to the Fund

(1) The Central Bank shall upon licensing an institution under the Act, notify the Board.

(2) The Board shall, after it has been notified by the Central Bank under paragraph (1), send a notice to contribute, specifying the premium payable by an institution and stating the period within which the premium shall be payable by the licensed institution.

(3) An institution shall, upon the commencement of its operations and receiving a notice to contribute under regulation 3(2), be a contributory institution to the Fund.

(4) The Board shall calculate the premium payable based on an institution's average deposit liabilities over a period of twelve months or such other shorter period preceding the levying of contributions.

(5) The contribution payable by a contributory institution shall be 0.15% of the average annual deposits or three hundred thousand shillings, whichever is higher:

Provided that the minimum premium payable shall be three hundred thousand shillings.

(6) The Board shall upon receiving a contribution from a contributory institution issue a certificate of deposit protection in Form C set out in the Third Schedule to the contributory institution.

4. Submission of monthly returns

Every institution licensed under the Act shall, on a monthly basis, prepare and submit to the Board—

- (a) certified statements of deposits for each month in Form A set out in the First Schedule;
- (b) deposit analysis by range, type and number of accounts in the prescribed format in the Second Schedule; and
- (c) any other returns as the Board may require from time to time.

5. Waiver of contribution

Where it appears to the Board that a licensed institution is carrying on substantially the same business as that previously carried on by one or more institutions that are, or were contributory institutions, it may waive contribution for the licensed institution:

Provided that nothing in these Regulations shall entitle any institution to a repayment of the contributions previously made to the Fund.

6. Revocation of protection

The Board may revoke a contributory institution's deposit protection cover where the contributory institution—

- (a) has failed to pay the assessed premium; or
- (b) conducts its affairs in a manner detrimental to its interests or the interest of its depositors.

7. Protected deposit

(1) The Minister may, on the recommendation of the Board, increase the maximum protected deposit amount specified under these Regulations by an Order in the *Gazette*.

(2) The Board shall, when determining the liability of a contributory institution to a depositor, not take in to account any liability in respect of a deposit if it is no longer protected or if it is made after the termination of protection of deposits of that institution.

(3) The Board shall, before terminating the protection of the deposits of an institution, publish a notice in the *Gazette* and in one newspaper of a nationwide circulation, stating its intention to terminate protection of deposits in an institution.

(4) Unless the Board otherwise directs, there shall be deducted the amount of any liability of a depositor to the contributory institution in respect of which a right of set-off existed immediately before the institution became insolvent, against any such deposit or in respect of which such a right would then have existed if the deposit in question had been payable on demand and the liability in question had fallen due.

8. Right to consolidate accounts

The Board shall, when determining the amount payable to a depositor, consolidate all the depositor's related accounts in a contributory institution for the purposes of payment.

9. Payments out of the Fund

(1) When a contributory institution whose deposits are protected becomes insolvent, the Board shall, as soon as is practicable pay out of the Fund by cash, cheque or bank transfer to a depositor, who has a protected deposit with the contributory institution, an amount equal to his protected deposit.

(2) The Board shall not consider any liability unless proof of the debt that gives rise to the liability has been given to the Board in such manner, as the Board shall determine.

(3) Where the records of a contributory institution are incorrect, misleading or uncertain, the Board may pay a percentage of the protected deposit that it considers appropriate in the circumstances.

10. Limitation of claims

Notwithstanding the provisions in any other written law a claim for payment of—

- (a) a protected deposit by a creditor of an institution shall not be brought after the expiry of two years from the date of publication of commencement of such payment by the Board; or

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- (b) a dividend by a creditor of an institution shall not be brought after the expiry of one year from the date of publication of commencement of such payment by the Board:

Provided that this Regulation shall not apply to a person who has, for reasons beyond his control and to the satisfaction of the Board, been unable to make his claim.

11. Liability of insolvent institutions

(1) Where a contributory institution is insolvent and the Board had made or is under an obligation to make an insolvency payment to a depositor, the institution shall become liable to the Board, for a contractual debt incurred immediately before the institution become insolvent for an amount equal to the Board's liability to depositors.

(2) An insolvent institution shall not make any payment to a depositor unless it has fully repaid the Board all the moneys that the Board had paid the depositor.

(3) An insolvent contributory institution shall reduce its liability to a depositor by an amount equal to the insolvency payment made or is to be made by the Board to the depositor.

12. Liquidator's duty to the Board

(1) The liquidator of an insolvent contributory institution shall pay to the Board the amount paid to a depositor as protected deposit under regulation 9, and thereafter pay to the depositor any excess amount.

(2) The Board may, by notice in writing served on a contributory institution or the liquidator of an insolvent contributory institution to furnish the Board with information and such books, papers or records as the Board may require to carry out its functions under the Act at the place specified in the notice.

(3) Where any books, papers or records have come into the possession of the official receiver or the liquidator as a result of the insolvency of a contributory institution, the official receiver or the liquidator shall permit any person duly authorized by the Board in writing to inspect such books, papers or records.

13. Notice of appointment and security

(1) Where the Board is appointed as a liquidator of an insolvent contributory institution, it shall, as soon as practicable, cause a notice of its appointment to be published in the *Gazette* and at least one daily newspaper of nation wide circulation.

(2) The Board shall not be required to give any security in respect of any matter in which it is a party due to its appointment as a liquidator.

14. Meeting of Creditors

Where the Board has been appointed as a liquidator of an institution, it shall not, unless the court otherwise directs, convene a meeting of the creditors and contributors under the provisions of section 236 of the Companies Act (Cap. 486).

15. Power to waive proof of debt

Where the Board has been appointed as a liquidator of an insolvent contributory institution, it may, if it deems fit, admit the claim of any depositor or class of depositors without submission of formal proof of debt and shall notify the depositor or depositors concerned accordingly.

16. Power of the Board to decide all claims

(1) The Board shall have discretion to receive and decide whether to admit or reject any claim made by or against an insolvent contributory institution, otherwise determination

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the issue of priorities or any other matter which may relate to or arise in the course of winding-up of an insolvent contributory institution.

(2) A party who is dissatisfied with the decision of the Board may apply for review to the High Court under the Companies Act (Cap. 486).

17. Pending of proceedings

(1) Where an institution being wound up, no suit or any other legal proceedings, in respect of which the High Court has jurisdiction under the Act that is pending in any court immediately before the commencement of the Act or the commencement of the winding-up of the institution, whichever is later, shall proceed except in the manner provided under the Act.

(2) Nothing in this paragraph shall apply to any proceeding pending on appeal before the High Court or the Court of Appeal.

18. Winding up

Where the Board is appointed as the liquidator of on insolvent institution under section 38(1) of the Act, the Board shall wind up the institution in accordance with the provisions of the Companies Act (Cap. 486).

FIRST SCHEDULE

[Rule 4(a).]

DEPOSIT PROTECTION FUND BOARD

FORM A

MONTHLY CERTIFIED STATEMENTS OF DEPOSITS

FORM/DPFB/MFI I

- 1. Name of Institution
- 2. Certificate of Deposit Protection Number
- 3. For the month ended
- 4. Return

	Category of Deposits	Amount (KSh. '000)
1.	Demand	
2.	Savings	
3.	Call	
4.	Fixed	
5.	Accrued interest	
6.	Other deposit liabilitie	
	TOTAL	

- (a) Authorized Signature
- Name of officer
- Designation
- (b) Authorized Signature
- Name of officer
- Designation.....

Microfinance

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SECOND SCHEDULE

[Rule 4(b).]

DEPOSIT PROTECTION FUND BOARD

FORM B

MONTHLY DEPOSIT ANALYSIS BY RANGE, TYPE AND NUMBER OF ACCOUNTS

FORM/DPFB/MFI/2

1. Name of Institution
2. Certificate of Deposit Protection Number
3. For the month ended
4. Returns:

Range (KSh.)	Type of Account	Number of Accounts	Amount (KSh. '000)
Less than 50,000	Demand		
	Savings		
	Call		
	Fixed		
	Accrued interest		
50,001 to 100,000	Demand		
	Savings		
	Call		
	Fixed		
	Accrued interest		
	Other deposit liabilities		
100,001 to 500,000	Demand		
	Savings		
	Call		
	Fixed		
	Accrued interest		
	Other deposit liabilities		
500,001 to 1,000,000	Demand		
	Savings		
	Call		
	Accrued interest		
	Other deposit liabilities		
Over 1,000,000	Demand		
	Savings		
	Call		

Microfinance

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SECOND SCHEDULE, FORM B—continued

Range (KSh.)	Type of Account	Number of Accounts	Amount (KSh. '000)
	Fixed		
	Accrued interest		
	Other deposit liabilities		
	TOTAL		

(a). Authorized Signature
 Name of officer
 Designation

(b). Authorized Signature
 Name of officer
 Designation

THIRD SCHEDULE

[Rule 3(6).]

FORM C

CERTIFICATE OF DEPOSIT PROTECTION

MF No.

This is to Certify that

being a licensed deposit taking microfinance institution within the meaning of the Microfinance Act, 2006, is accepted as a Contributory Institution for the purpose of section 39 of the Act.

This certificate shall become invalid upon withdrawal of the institution's licence under section 9 of the Act or upon termination of protection.

Dated the 9th December, 2008

.....
 CHAIRMAN
 Deposit Protection Fund Board.

**MICROFINANCE (DEPOSIT-TAKING MICROFINANCE INSTITUTIONS
ADMINISTRATIVE SANCTIONS AND PENALTIES) REGULATIONS, 2009**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Specific violation.
 4. Administrative sanctions and penalties.
 5. Capital restoration plan.
 6. Assessed penalties and manner of payment.
 7. Penalties on late renewal of licence.
-

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**MICROFINANCE (DEPOSIT-TAKING MICROFINANCE INSTITUTIONS
ADMINISTRATIVE SANCTIONS AND PENALTIES) REGULATIONS, 2009**

[L.N. 6/2009.]

1. Citation

These Regulations may be cited as the Microfinance (Deposit Taking Microfinance Institutions Administrative Sanctions and Penalties) Regulations, 2009.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**administrative sanction**” means a supervisory enforcement action by the Central Bank against an institution meant to contain regulatory forbearance and protect the interest of the depositors and creditors of an institution;

“**cease and desist order**” means an order issued by the Central Bank to an institution directing the institution to refrain from doing anything that is unsafe or that may prejudice depositor’s interest;

“**prompt corrective action**” means a framework or supervisory enforcement action applied to institutions that fail to maintain the minimum capital adequacy requirements or such other capital requirements as may be determined by the Central Bank.

3. Specific violation

The following shall constitute specific violations by an institutions, its officers or employees, which shall be subject to administrative sanctions and assessment of monetary penalties—

- (a) failure by an institution to—
 - (i) pay to the Deposit Protection Fund Board the specified contribution;
 - (ii) obtain prior written approval from the Central Bank to open, relocate or close a place of business;
 - (iii) classify and assign risk weights in the evaluation of capital adequacy measurements;
 - (iv) put in place risk management framework;
 - (v) maintain the prescribed insider lending limits;
 - (vi) maintain the prescribed inside lending limits.
- (b) failure by an institution or its officers to—
 - (i) maintain, at all times, the minimum capital requirements prescribed in the Act or such capital requirements as may be determined by the Central Bank from time to time;
 - (ii) meet and maintain the minimum holding of liquid assets prescribed for the institution’s deposit liabilities, matured and short term liabilities;
 - (iii) undertake performance evaluation of its Board;
 - (iv) implement an effective internal control system.
- (c) failure by an institution, its officers or employees to—
 - (i) submit, not later than three months after the end of each financial year, to the Central Bank its audited annual financial statements and a copy of the auditor’s report in the prescribed format and channel;

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- (ii) exhibit its latest audited manual financial statements, throughout each calendar year, in a conspicuous place in its every place of business in Kenya as required; or
 - (iii) publish its audited annual financial statements in at least one month newspaper of nationwide circulation within three months after the end of each financial year as prescribed under the Act or as directed from time to time by the Central Bank;
 - (iv) take remedial action within such reasonable period as may be specified by the Central Bank in a notice to that effect;
 - (v) produce any books, accounts, records, documents, correspondence, statements or other information as specified in the Act or Regulations; or
 - (vi) furnish, at such time and in such manner as the Central Bank may direct, such information in a timely, accurate and complete manner as the Central Bank may require to properly discharge its functions under the Act;
 - (vii) comply with directives issued by the Central Bank in accordance with the Act;
 - (viii) review, classify or make appropriate and adequate provisions and write offs of loans and assets as prescribed; and
 - (ix) maintain accurate records at all times and to provide accurate information or submit returns to the Central Bank as prescribed; or
 - (x) provide information as the Central Bank may, from time to time, require.
- (d) an institution allowing of outstanding unsecured advances, loans or credit facilities to any of the institution's employees or their associates;
- (e) an institution allowing outstanding advances, loans or credit facilities which are unsecured or not fully secured to any of its officers or their associates; or to any person of whom or of which any of its officer has an interest as an agent, principal, director, officer or shareholder, or to any person of whom or of which any of its officers is a guarantor;
- (f) an institution allowing outstanding advances, loans or credit facilities to any of the institution's significant shareholders or officers, which—
- (i) has not been approved by the full Board of directors of the institution upon being satisfied that it is viable;
 - (ii) has not been made in the normal course of business and on terms similar to those offered to ordinary customers of the institution;
 - (iii) has not been reported to the Central Bank within seven days thereof; and
- (g) contravening the terms and conditions of a licence, provisions of the Act and any orders or directives made under the Act.

4. Administrative sanctions and penalties

Where the Central Bank is satisfied that an institution, its officers or employees have contravened the terms and conditions of its licence, any provisions of the Act, any directive or order made under the Act, the Central Bank may—

- (a) issue written instructions directing an institution to undertake a specified remedial action;
- (b) issue directives regarding measures to be taken to improve the management, financial soundness or business methods of the institution;

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- (c) require the officers of the institution to execute an agreement relating to the implementation of the instructions and directives issued by the Central Bank;
- (d) require the institution to appoint a person who in the opinion of the Central Bank, is suitably qualified to advise and supervise the institution's affairs and conduct;
- (e) issue a cease and desist order requiring the institution to—
 - (i) stop any improper or unacceptable practice;
 - (ii) suspend any of its business activities;
 - (iii) limit the expansion of its deposit-taking business including lending and deposit mobilization; and
 - (iv) stop or suspend any declaration or distribution of dividends;
- (f) require the institution to inject new capital as may be specified by the Central Bank;
- (g) appoint a person, suitably qualified and competent to manage the affairs of the institution;
- (h) require the institution to suspend or remove any officer or employee from his or her duties;
- (i) require the institution to reconstitute its Board of directors within such period as may be specified by the Central Bank;
- (j) prohibit the institution from awarding any bonuses or increments in the salary, emoluments or other benefits to its directors, officers and employees;
- (k) require the institution to provide written explanations detailing the causes of such losses and the measures to be taken by the institution to rectify the position and avert future losses; and
- (l) impose any other administrative sanction as the Central Bank may deem appropriate in the circumstances.

5. Capital restoration plan

Where an institution has contravened the capital adequacy requirements, the Central Bank may—

- (a) order the institution to submit to the Central Bank within forty days a capital restoration plan containing such details as may be specified in the order;
- (b) appoint a person, suitably qualified and competent in the opinion of the Central Bank to advise and assist the institution in designing and fulfilling the capital restoration plan and regularly report to the Central Bank on the progress of the capital restoration plan;
- (c) order the institution to remove an officer of the institution who is responsible for the institution's non-compliance with the orders;
- (d) enter into an agreement with the Board of Directors of an institution requiring the institution to meet capital requirements within the specified period as shall be notified by the Central Bank:
 Provided that such period shall not exceed one hundred and eighty days from the date of notification;
- (e) where the institution is unable to meet the capital requirements notified by the Central Bank under paragraph (d), the Central Bank may exercise its powers under Part IV and V of the Act; and
- (f) order the institution to do any other thing that the Central Bank considers necessary to rectify the capital position of the institution.

6. Assessed penalties and manner of payment

(1) The Central Bank shall, after reviewing all available information and determining the existence of a violation or the contravention of the Act, shall notify the institution in writing advising it of the Central Bank's findings and decision to assess and levy penalties.

(2) A notification under paragraph (1) shall—

- (i) be in writing;
- (ii) advise the institution of the period within which the violation or contravention should be rectified; and
- (iii) give the institution not less than seven days notice to show cause why the penalty should not be levied:

Provided that the period shall not be more than thirty days.

(3) After the expiry of the timeframe specified in paragraph (2), or sooner where the Central Bank has been advised by the institution of the rectification of the violation or contravention, the Central bank shall—

- (a) assess the amount of penalty to be levied on the institution;
- (b) instruct the institution, in writing, as to the amount of monetary penalties assessed and the manner in which such monies shall be paid to the Central Bank; and
- (c) specify the period within which the penalty shall be paid to the Central Bank;

Provided that the period shall not be less than seven days and not more than twenty one days, unless a longer period is otherwise stated in the notification to that effect and maximum period shall not exceed forty two days from the date of the notification.

(4) Where the Central Bank is not satisfied, by the evidence provided by the institution or information obtained by the Central Bank, that the violation or contravention has been rectified, the Central Bank may impose additional penalties not exceeding ten thousand shillings for each day or part thereof for which the violation or contravention continues.

(5) Where the Central Bank is satisfied that the violation or contravention has been rectified, the daily penalty shall cease to accrue and it shall assess the aggregate penalty that the institution is to pay.

(6) The Central Bank may levy a penalty against an institution, its officers or employees for non-compliance with other directions or violations not covered herein.

(7) Where the Act confers the power on the Central Bank to impose a penalty on an institution, its officers or employees, the amount of the penalty or any part of the penalty which remains unpaid shall constitute a debt due from the institution to the Central Bank, and the Central Bank may, where such penalty is not paid in the manner or time prescribed—

- (a) sue the institution for the recovery of the penalty; or
- (b) revoke the licence of the institution.

7. Penalties on late renewal of licence

(1) Where an application for the renewal of a licence is lodged after three months of its expiry, the Central Bank may, on application, renew the licence on payment of an additional fifty per centum of the licence fee.

(2) If by 1st April of that calendar year, an institution has not applied for the renewal of its licence, the Central Bank shall impose appropriate administrative sanctions.

