LEGAL NOTICE NO. 5

THE MICROFINANCE ACT

(No. 19 of 2006)

IN EXERCISE of the powers conferred by section 48 (2) of the Microfinance Act, the Minister for Finance makes the following Regulations:

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

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

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

“Board” means the Deposit Protection Fund Board established under section 36 of the Banking Act;

“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. (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. 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. 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. 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. (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 into 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 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. 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. (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. 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

(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. (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 became 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 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. (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 institution, require the
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 authorised by the Board in
writing to inspect such books, papers or records.

13. (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. 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 contributories under the provisions of
section 236 of the Companies Act.

15. 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. (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 determine the issue of priorities or
any other matter which may relate to or arise in the course of the
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.

17. (1) Where an institution is 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. Where the Board is appointed as the liquidator of an 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.

FIRST SCHEDULE
(r. 4 (a))

DEPOSIT PROTECTION FUND BOARD

FORM A
MONTHLY CERTIFIED STATEMENTS OF DEPOSITS
FORM/DPFB/MFI/1

1. Name of Institution

2. Certificate of Deposit Protection Number

3. For the month ended

4. Return

<table>
<thead>
<tr>
<th>Category of Deposits</th>
<th>Amount (KSh.'000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Demand</td>
<td></td>
</tr>
<tr>
<td>2. Savings</td>
<td></td>
</tr>
<tr>
<td>3. Call</td>
<td></td>
</tr>
<tr>
<td>4. Fixed</td>
<td></td>
</tr>
<tr>
<td>5. Accrued interest</td>
<td></td>
</tr>
<tr>
<td>6. Other deposit liabilities</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>

a). Authorized Signature
Name of officer
Designation

b). Authorized Signature
Name of officer
Designation
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:

<table>
<thead>
<tr>
<th>Range (KSh.)</th>
<th>Type of Account</th>
<th>Number of Accounts</th>
<th>Amount (KSh. '000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 50,000</td>
<td>Demand</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Savings</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Call</td>
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<tr>
<td></td>
<td>Fixed</td>
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</tr>
<tr>
<td></td>
<td>Accrued interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other deposit liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>50,001 to 100,000</td>
<td>Demand</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Savings</td>
<td></td>
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<td></td>
<td>Call</td>
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<tr>
<td></td>
<td>Fixed</td>
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</tr>
<tr>
<td></td>
<td>Accrued interest</td>
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<td></td>
<td>Other deposit liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>100,001 to 500,000</td>
<td>Demand</td>
<td></td>
<td></td>
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<td></td>
<td>Savings</td>
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<td>Call</td>
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<td>Fixed</td>
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<td>Accrued interest</td>
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<td></td>
<td>Other deposit liabilities</td>
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<tr>
<td>500,001 to 1,000,000</td>
<td>Demand</td>
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<tr>
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<td>Savings</td>
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<td>Call</td>
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<td></td>
<td>Fixed</td>
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</tr>
<tr>
<td></td>
<td>Accrued interest</td>
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<td></td>
<td>Other deposit liabilities</td>
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</tr>
<tr>
<td>Over 1,000,000</td>
<td>Demand</td>
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<tr>
<td></td>
<td>Savings</td>
<td></td>
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<td></td>
<td>Accrued interest</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Other deposit liabilities</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

a). Authorized Signature.................................................................
   Name of officer.................................................................
   Designation...........................................................................

b). Authorized Signature.................................................................
   Name of officer.................................................................
   Designation...........................................................................
FORM C

THE MICROFINANCE ACT, 2006

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 purposes 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.

Dated the 9th December, 2008.

JOHN MICHUKI,
Acting Minister for Finance.

LEGAL NOTICE

THE MICROFINANCE ACT

(No. 19 of 2006)

IN EXERCISE of the powers conferred by section 48 (2) and (3) of the Microfinance Act, the Minister for Finance makes the following Regulations:—

THE MICROFINANCE (DEPOSIT-TAKING MICROFINANCE INSTITUTIONS ADMINISTRATIVE SANCTIONS AND PENALTIES) REGULATIONS, 2009

1. These Regulations may be cited as the Microfinance (Deposit-Taking Microfinance Institutions Administrative Sanctions and Penalties) Regulations, 2009.

2. 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