

CHAPTER 491

CENTRAL BANK OF KENYA ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. Central Bank of Kenya (Declaration of Currency) Regulations, 1998.....	37
2. Central Bank of Kenya Code of Conduct and Ethics, 2003.....	39
3. Central Bank of Kenya Procedures for the Administration of Part IV of the Act, 2003.....	45
4. Central Bank of Kenya (Foreign Exchange Business) Regulations, 2007.....	49
5. Central Bank of Kenya (Foreign Exchange Bureau) (Penalties) Regulations, 2009.....	57
6. Central Bank of Kenya (Currency Handling) Regulations, 2011.....	61
7. Money Remittance Regulations, 2013.....	73
8. Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019.....	99
9. Specified Banks and Financial Institutions under section 2.....	133
10. Specified Public Entity under section 2.....	135
11. Par Value of the Kenya Shilling determined under section 20.....	137
12. Denominations, Inscription, Form, Material and Other Characteristics of Notes and Coins Determined under section 22(2).....	139
13. Regulation of Interest Rates and Terms of Credit of Specified Banks and Specified Financial Institutions, 1990.....	141
14. Specification of Institution Under Section 38(6)(c).....	143
15. Instructions Under Section 41.....	145

CENTRAL BANK OF KENYA (DECLARATION OF CURRENCY) REGULATIONS, 1998

[L.N. 118/1998.]

1. These Regulations may be cited as the Central Bank of Kenya (Declaration of Currency) Regulations, 1998.
2. Any person leaving or entering Kenya may take out or bring into Kenya currency upto a maximum of five hundred thousand (KSh. 500,000) shillings or the equivalent of five thousand United States dollars (US\$ 5,000) in foreign currency.
3. Any person in possession of currency exceeding the limits specified in regulation 2 shall declare the amount to the Customs Officer at the point of entry or departure.
4. The declaration of currency shall be in Form CBK/C.D./1 set out in the Schedule.

SCHEDULE

FORM CBK/C.D./1

CURRENCY DECLARATION

No.

This Declaration is to be completed in Duplicate by persons entering or leaving Kenya with more than the equivalent of US\$ 5,000 or KSh. 500,000 in currency notes.

I, the undersigned hereby declare that I have the following foreign currency in my possession:

Description and type of Currency Notes	Amount of Currency Notes	
	In Figures	In Words

I am ordinarily resident in (Country)

Full Name

Passport No.

Address in Kenya

.....

.....

Signature Date

**CUSTOMS STAMP
DATE AND SIGNATURE**

Notes:

1. This form should be presented at the point of entry/exit to the Customs Officer who shall stamp both copies.
2. The Customs Officer reserves the right to physically verify the amounts.
3. It is an offence not to declare currency in your possession under the provisions of the Central Bank of Kenya Act.

CENTRAL BANK OF KENYA CODE OF CONDUCT AND ETHICS, 2003

ARRANGEMENT OF CODE

PREAMBLE

PART I – PRELIMINARY

Code

1. Citation.
2. Interpretation.
3. Application of Code.

PART II – REQUIREMENTS

4. Compliance with General Code.
5. Other rules of conduct.

PART III

APPENDIX – GENERAL CODE OF CONDUCT AND ETHICS

7. Part sets out general Code.
 8. Performance of duties, general.
 9. Professionalism.
 10. Rule of law.
 11. No improper enrichment.
 12. Conflict of interest.
 13. Collections and harambees.
 14. Acting for foreigners.
 15. Care of property.
 16. Political neutrality.
 17. Nepotism, etc.
 18. Giving of advice.
 19. Misleading the public, etc.
 20. Conduct of private affairs.
 21. Sexual harassment.
 22. Selection, etc., of public officers.
 23. Submitting of declarations, etc.
 24. Acting through others.
 25. Reporting improper orders.
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CENTRAL BANK OF KENYA CODE OF CONDUCT AND ETHICS, 2003

[L.N. 168/2003.]

PREAMBLE

This Code is intended to establish standards of ethical conduct and behaviour for officers and employees of the Central Bank of Kenya and of banks and financial institutions that are state corporations, so as to maintain integrity and impartiality in the provision of services to members of the public.

The Code does not in any way replace the rules and regulations of the respective banks and institutions governing the discipline and general conduct of officers and employees. The officers and employees to whom the Code applies must obey those rules and regulations and all other applicable laws.

PART I – PRELIMINARY**1. Citation**

This Code may be cited as the Central Bank of Kenya Code of Conduct and Ethics, 2003.

2. Interpretation

In this Code, unless the context otherwise requires—

“**Commission**” means the board of directors of the Central Bank of Kenya;

“**public officer**” means an officer or employee to whom this Code applies under paragraph 3 of this Code.

3. Application of Code

(1) This Code applies to officers and employees of—

- (a) the Central Bank of Kenya; and
- (b) banks and financial institutions licensed under the Banking Act (Cap. 488) that are state corporations.

(2) For the purposes of this paragraph, “**officers**”—

- (a) includes the members of the board, by whatever name called, carrying out or empowered to carry out functions relating to the overall direction and management of a bank or financial institution described in subparagraph (1) (b), other than members who are members of the public service for whom the Public Service Commission is the responsible Commission under the Act; and
- (b) does not include members of the board of directors of the Central Bank of Kenya.

PART II – REQUIREMENTS**4. Compliance with General Code**

(1) A public officer shall comply with all the requirements of the General Code of Conduct and Ethics set out in Part III of the Act.

(2) The General Code of Conduct and Ethics set out in Part III of the Act is set out in the Appendix to this Code and shall form part of this Code.

5. Other rules of conduct

Without prejudice to the generality of paragraph 4, a public officer shall—

- (a) be patriotic and loyal to Kenya and at all times conduct himself in a manner that promotes the image and interests of the country;
- (b) conduct himself with honesty and integrity and act with care and diligence;
- (c) use the resources of the nation conscientiously;

- (d) respect and observe the law of the land and co-operate with all lawful agencies in the maintenance of law and order;
- (e) treat all persons with respect and courtesy;
- (f) promote gender equality and respect for the rights and freedoms of others;
- (g) preserve and protect the environment and national heritage;
- (h) conduct himself in a manner that upholds the letter and spirit of the values and the integrity and good reputation of the banking industry;
- (i) while on duty overseas, conduct himself in a manner that promotes the good image of Kenya; and
- (j) comply with any other requirements of conduct prescribed by the Commission from time to time.

APPENDIX

[Paragraph 4(2).]

PART III – GENERAL CODE OF CONDUCT AND ETHICS

7. Part sets out general Code

This Part sets out a general Code of Conduct and Ethics for public officers.

8. Performance of duties, general

A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly.

9. Professionalism

A public officer shall—

- (a) carry out his duties in a way that maintains public confidence in the integrity of his office;
- (b) treat the public and his fellow public officers with courtesy and respect;
- (c) to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation;
- (d) if a member of a professional body, observe the ethical and professional requirements of that body;
- (e) observe official working hours and not be absent without proper authorization or reasonable cause;
- (f) maintain an appropriate standard of dress and personal hygiene; and
- (g) discharge any professional responsibilities in a professional manner.

10. Rule of law

(1) A public officer shall carry out his duties in accordance with the law.

(2) In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Part V of the Constitution.

11. No improper enrichment

(1) A public officer shall not use his office to improperly enrich himself or others.

(2) Without limiting the generality of subsection (1), a public officer shall not—

- (a) except as allowed under subsection (3) or (4), accept or request gifts or favours from a person who—
 - (i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;
 - (ii) carries on regulated activities with respect to which the public officer's organisation has a role; or

[Subsidiary]

- (iii) has a contractual or similar relationship with the public officer's organisation;
- (b) improperly use his office to acquire land or other property for himself or another person, whether or not the land or property is paid for; or
- (c) for the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties and that is not public.

(3) A public officer may accept a gift given to him in his official capacity but, unless the gift is a non-monetary gift that does not exceed the value prescribed by regulation, such a gift shall be deemed to be a gift to the public officer's organisation.

(4) Subsection (2)(a) does not prevent a public officer from accepting a gift from a relative or friend given on a special occasion recognised by custom.

(5) Subsection (2)(c) does not apply to the use of information for educational or literary purposes, research purposes or other similar purposes.

12. Conflict of interest

(1) A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.

(2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.

(3) A public officer whose personal interests conflict with his official duties shall—

- (a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and
- (b) refrain from participating in any deliberations with respect to the matter.

(4) Notwithstanding any directions to the contrary under subsection (3)(a), a public officer shall not award a contract, or influence the award of a contract, to—

- (a) himself;
- (b) a spouse or relative;
- (c) a business associate; or
- (d) a corporation, partnership or other body in which the officer has an interest.

(5) The regulations may govern when the personal interests of a public officer conflict with his official duties for the purposes of this section.

(6) In this section, “**personal interest**” includes the interest of a spouse, relative or business associate.

13. Collections and harambees

(1) A public officer shall not—

- (a) use his office or place of work as a venue for soliciting or collecting harambees; or
- (b) either as a collector or promoter of a public collection, obtain money or other property from a person by using his official position in any way to exert pressure.

(2) In this section, “**collection**”, “**collector**” and “**promoter**” have the same meanings as in section 2 of the Public Collections Act (Cap. 106).

14. Acting for foreigners

(1) No public officer shall, in a manner that may be detrimental to the security interests of Kenya, be an agent for, or further the interests of, a foreign government, organisation or individual.

(2) For the purposes of this section—

- (a) an individual is foreign if the individual is not a citizen of Kenya;
- (b) an organisation is foreign if it is established outside Kenya or if it is owned or controlled by foreign governments, organizations or individuals.

15. Care of property

(1) A public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated.

(2) A person who contravenes subsection (1) shall be personally liable for losses resulting from the contravention.

16. Political neutrality

(1) A public officer shall not, in or in connection with the performance of his duties as such—

- (a) act as an agent for, or so as to further the interest of, a political party; or
- (b) indicate support for or opposition to any political party or candidate in an election.

(2) A public officer shall not engage in political activity that may compromise or be seen to compromise the political neutrality of his office.

(3) This section does not apply to a member of the National Assembly or a councillor of a local authority.

17. Nepotism, etc

A public officer shall not practice nepotism or favouritism.

18. Giving of advice

A public officer who has a duty to give advice shall give honest and impartial advice without fear or favor.

19. Misleading the public, etc

A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.

20. Conduct of private affairs

(1) A public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office.

(2) A public officer shall not evade taxes.

(3) A public officer shall not neglect his financial obligations or neglect to settle them.

21. Sexual harassment

(1) A public officer shall not sexually harass a member of the public or a fellow public officer.

(2) In subsection (1), “**sexually harass**” includes doing any of the following, if the person doing it knows or ought to know that it is unwelcome—

- (a) making a request or exerting pressure for sexual activity or favours;
- (b) making intentional or careless physical contact that is sexual in nature; and
- (c) making gestures, noises, jokes or comments, including innuendoes, regarding another person's sexuality.

22. Selection, etc., of public officers

A public officer shall practice and promote the principle that public officers should be—

- (a) selected on the basis of integrity, competence and suitability; or
- (b) elected in fair elections.

[Subsidiary]

23. Submitting of declarations, etc

A public officer shall submit any declaration or clarification required under Part IV to be submitted or made by him.

24. Acting through others

(1) A public officer contravenes the Code of Conduct and Ethics if—

- (a) he causes anything to be done through another person that would, if the public officer did it, be a contravention of the Code of Conduct and Ethics; or
- (b) he allows or directs a person under his supervision or control to do anything that is a contravention of the Code of Conduct and Ethics.

(2) Subsection (1)(b) does not apply with respect to anything done without the public officer's knowledge or consent if the public officer took reasonable steps to prevent it.

25. Reporting improper orders

If a public officer considers that anything required of him is a contravention of the Code of Conduct and Ethics or is otherwise improper or unethical, he shall report the matter to an appropriate authority.

**CENTRAL BANK OF KENYA PROCEDURES FOR THE
ADMINISTRATION OF PART IV OF THE ACT, 2003**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Scope of procedures.
 4. Administration officer.
 5. To whom declarations submitted.
 6. Who may make requests for clarifications.
 7. Review of declarations, etc.
 8. Authorization of staff under s. 30(4)(a).
 9. Condition for certain disclosures to police, etc.
 10. Condition for disclosures to representatives.
 11. Administration officer to report non-compliance.
 12. Application where powers, etc., delegated.
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**CENTRAL BANK OF KENYA PROCEDURES FOR THE
ADMINISTRATION OF PART IV OF THE ACT, 2003**

[L.N. 169/2003.]

1. Citation

These procedures may be cited as the Central Bank of Kenya Procedures for the Administration of Part IV of the Act.

2. Interpretation

In these procedures, unless the context otherwise requires—

“**administration officer**” means the Secretary of the board of Directors of the Central bank of Kenya;

“**Commission**” means the Board of Directors of the Central Bank of Kenya.

3. Scope of procedures

These procedures are for the administration of Part IV of the Act with respect to the public officers for whom the Commission is the responsible Commission under the Act.

4. Administration officer

The administration officer shall be responsible for the administration of Part IV of the Act by the Commission.

5. To whom declarations submitted

Declarations to be submitted to the Commission under Part IV of the Act shall be submitted to the administration officer.

6. Who may make requests for clarifications

Requests for clarifications under section 28 of the Act shall be made, on behalf of the Commission, by the administration officer or by staff of the Commission authorized in writing by him for that purpose.

7. Review of declarations, etc

(1) The administration officer, or staff of the Commission authorized by him for the purpose, shall review each declaration to ascertain if, in the opinion of the administration officer or staff, any of the following conditions are satisfied—

- (a) on the face of the declaration, or in light of any other information the Commission may have, there is reason to suspect the declaration may be false or incomplete;
- (b) the assets of the person who submitted the declaration are disproportionate to his income; or
- (c) the income, assets or liabilities of the person who submitted the declaration raise concerns of impropriety or conflict of interest.

(2) If it is ascertained that any of the conditions in subparagraph (1) are satisfied, the person who submitted the declaration shall be given an opportunity to give an explanation.

(3) If, after considering any explanation the person who submitted the declaration may give, the administration officer is of the opinion that any of the conditions in subparagraph (1) are still satisfied, the administration officer shall bring the matter to the attention of the Commission.

(4) The Commission may, with respect to a matter brought to its attention under paragraph (3), take such action as it considers appropriate including, without limiting the generality of the foregoing, notifying the Kenya Anti-Corruption Commission and giving the Kenya Anti-Corruption Commission particulars of the condition that is satisfied and a copy of the declaration.

8. Authorization of staff under s. 30(4)(a)

(1) The Commission or the administration officer may authorize staff of the Commission for the purposes of section 30(4)(a) of the Act.

(2) An authorization under subparagraph (1) shall be in writing.

9. Condition for certain disclosures to police, etc

Except as provided under paragraph 7(4), information shall not be disclosed, under section 30(4)(b) of the Act, to the police or any other law enforcement agency unless a written request is provided.

10. Condition for disclosures to representatives

Information shall not be disclosed, under section 30(4)(d) of the Act, to a representative of the person who provided the information unless the representative provides copies of documents that establish the representative's authority to receive the information.

11. Administration officer to report non-compliance

The administration officer shall ensure that failures by public officers to comply with the requirements of Part IV of the Act are brought to the attention of the Commission.

12. Application where powers, etc., delegated

The following shall apply with respect to the application of these procedures by a person to whom the powers and functions of the Commission under Part IV of the Act have been delegated under section 4 of the Act—

- (a) a reference to "administration officer" shall be deemed to be a reference to the person to whom the powers and functions have been delegated;
 - (b) a reference to "staff of the Commission" shall be deemed to be a reference to staff under the authority of the person to whom the powers and functions have been delegated;
 - (c) the person to whom the powers and functions have been delegated is not required to bring matters to the attention of the Commission under paragraph 7(3) and may do anything that the Commission may do under paragraph 7(4);
 - (d) the person to whom the powers and functions have been delegated is not required to ensure that failures to comply with Part IV of the Act are brought to the attention of the Commission under paragraph 11 but may, instead, take such action as the person considers appropriate.
-

**CENTRAL BANK OF KENYA (FOREIGN
EXCHANGE BUSINESS) REGULATIONS, 2007**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Application for licence.
3. Minimum core capital.
4. Grant of licence.
5. Permission for certain enterprises.
6. Suspension or revocation of licence.
7. Payment of fees.
8. Revocation of L.N. 23/1996.

SCHEDULE — FORMS

**CENTRAL BANK OF KENYA (FOREIGN
EXCHANGE BUSINESS) REGULATIONS, 2007**

[L.N. 62/2007.]

1. Citation

These Rules may be cited as the Central Bank of Kenya (Foreign Exchange Business) Regulations, 2007.

2. Application for licence

(1) An application for the grant or renewal of a licence to transact foreign exchange business shall be in Form CBK/FXD/1 in the Schedule and shall be accompanied by the prescribed fee.

(2) An applicant for a foreign exchange bureau licence shall in addition to other licensing requirements pay a non-refundable application fee of ten thousand shillings.

(3) The application fee prescribed in subregulation (1) shall be payable only once by each applicant.

(4) The Bank may require the applicant to supply such additional information in support of the application as it may consider necessary.

(5) A licence under this Regulation shall be in Form CBK/FXD/2 in the Schedule and shall be valid for a period of one year from the date of issue.

3. Minimum core capital

(1) A company applying for a foreign exchange bureau licence shall not be issued with a licence unless it has a minimum core capital of thirty thousand United States Dollars or its equivalent in Kenya Shillings.

(2) The minimum core capital prescribed under subregulation (1) shall be maintained from the date of commencement of operations and at all times during the course of any business operations of a licensed foreign exchange bureau.

4. Grant of licence

(1) Within six months of receipt of an application, and subject to fulfillment of any other licensing criteria, the Central Bank of Kenya shall grant a foreign exchange licence to an applicant upon—

- (a) payment by the applicant of a licence fee of sixty-five thousand shillings or such other amount as may be determined by the Central Bank of Kenya from time to time; and
- (b) remittance by the applicant of a non-interest bearing deposit of thirty thousand United States Dollars to a Central Bank of Kenya Dollar Account to be advised.

(2) The annual licence fee referred to in subregulation (1) shall be payable on or before the 31st December of the calendar year preceding the validity of the licence.

(3) Every foreign exchange bureau licensed prior to the commencement of these Regulations and which paid a non-interest bearing deposit of five thousand United States Dollars shall be required to increase the deposit paid to ten thousand United States Dollars within one year of the commencement of these Regulations.

5. Permission for certain enterprises

(1) Any person who—

- (a) is licensed under the Tourist Industry Licensing Act (Cap. 381) to carry on any registered tourist enterprise; or
- (b) owns or operates a duty free shop; or
- (c) by the nature of his business, requires to transact regularly in foreign currency,

may, pursuant to the provisions of section 33A(3) of the Act on application, be permitted to receive foreign currency which shall be deposited with an authorised bank or sold to an authorised dealer.

(2) An application under subregulation (1) shall be in Form CBK/FXD/3 in the Schedule.

(3) The Bank may require the applicant to supply such additional information in support of the application as it may consider necessary.

(4) The Bank's permission under this Regulation shall be in CBK/FXD/4 in the Schedule.

6. Suspension or revocation of licence

(1) A foreign exchange bureau shall—

- (a) submit, not later than three months after the end of its financial year, to the Central Bank of Kenya, its annual audited accounts and a copy of the auditor's report in the prescribed form;
- (b) furnish, at such time and manner as the Central Bank of Kenya may direct and require, any information in an accurate and complete manner to discharge its functions under the Act; and
- (c) comply with such guidelines as may be issued by Central Bank of Kenya through circulars.

(2) The Central Bank may suspend or revoke the licence of a foreign exchange bureau which contravenes subregulation (1).

7. Payment of fees

(1) Any fees prescribed under these Regulations shall be payable to the Central Bank of Kenya.

(2) Any fees paid to the Bank under these Regulations shall be non-refundable.

8. Revocation of L.N. 23/1996

The Central Bank of Kenya (Foreign Exchange Business) Regulations, 1996 (L.N. 23/1996) are revoked.

Central Bank of Kenya

[Subsidiary]

SCHEDULE

FORMS

FORM CBK/FXD/1

(r. 2(1))

CENTRAL BANK OF KENYA ACT.

[Cap. 491.]

APPLICATION FOR GRANT OR RENEWAL OF LICENCE TO TRANSACT FOREIGN
EXCHANGE BUSINESS

(SPECIFIED BANK/FOREIGN EXCHANGE BUREAU)

Please use Block (Capital) Letters

1. Name of bank/bureau
2. Physical and postal address of head office:
 - (a) City/town
 - (b) L.R. No.
 - (c) Street
 - (d) Building
 - (e) P.O. Box No.
3. Date and country of incorporation
4. Certificate of incorporation No.
5. Number and date of issue of previous foreign exchange licence
6. Current banking licence/foreign exchange bureau licence number
7. Name of branch offices and the number of years each has been established and has conducted or carried on business as an authorised dealer:

*Branch**Years*

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

8. Particulars of Directors:

<i>Name</i>	<i>Designation</i>	<i>Nationality</i>

9. Particulars of chief foreign exchange operations officers in descending order of seniority:

<i>Name</i>	<i>Designation</i>	<i>Nationality</i>

10. Declaration (by Director/Secretary):

I, the undersigned, hereby declare:

- (a) THAT the particulars set out herein are true and correct to the best of my knowledge and belief;

SCHEDULE, FORM CBK/FXD/1—*continued*

- (b) THAT if licensed, I shall transact foreign exchange business in accordance with the provisions of the Central Bank of Kenya Act and of any regulations, guidelines or directives as may from time to time be issued by the Central Bank of Kenya.

Dated

Name Signature

Note:

- 1 Please attach copies of:
 - (a) certificate of incorporation;
 - (b) valid banking licence.
2. Please attach:
 - (a) certified passport size photographs of all the chief foreign exchange operations officers; and
 - (b) credentials and *curricula vitae* of all chief foreign exchange operations officers.
3. The Bank shall be required to present the chief foreign exchange operations officers for interview and registration by the Bank.
4. Replacement of any chief foreign exchange operations officer registered pursuant to paragraph 3 must be notified to the Bank and any prospective replacement presented to the Bank for interview and registration by the Bank before engagement.
5. All information provided in this form shall be treated as confidential.

FORM CBK/FXD/2

(r. 2(6))

CENTRAL BANK OF KENYA ACT.

[Cap. 491.]

LICENCE TO TRANSACT FOREIGN EXCHANGE BUSINESS

THIS LICENCE is granted to
 (name of specified bank/foreign
 exchange bureau) of (address)
 and authorises the said specified bank/foreign exchange bureau to transact foreign exchange
 business in Kenya.

THIS LICENCE is subject to the provisions of the Central Bank of Kenya Act and to the conditions
 endorsed hereon.

CONDITIONS

Date of issue

Date of expiry

Licence No.

.....
Governor,
Central Bank of Kenya

Central Bank of Kenya

[Subsidiary]

SCHEDULE—continued

FORM CBK/FXD/3

(r. 5(2))

CENTRAL BANK OF KENYA ACT.

[Cap. 491.]

APPLICATION FOR PERMISSION TO TRANSACT FOREIGN EXCHANGE BUSINESS

Please Use Block (Capital) Letters

1. Full name of applicant
2. Physical and postal address of head office:
 - (a) City/town
 - (b) L.R. Number
 - (c) Street
 - (d) Building
 - (e) P.O. Box number
 - (f) Telephone number(s)
 - (g) Fax number(s)
3. Full name and address of bankers
4. Date and country of incorporation/registration
5. Number of certificate of incorporation/registration
6. Particulars of senior officers in descending order of seniority:

<i>Name</i>	<i>Designation</i>	<i>Nationality</i>

7. Particulars of Directors:

<i>Name</i>	<i>Designation</i>	<i>Nationality</i>

8. Nature of foreign exchange transactions for which permission is being sought
9. Declaration (by Director/Secretary):
I, the undersigned hereby declare:
 - (a) THAT the particulars set out herein are true and correct to the best of my knowledge and belief;
 - (b) THAT if licensed, I shall transact foreign exchange business in accordance with the provisions of the Central Bank of Kenya Act and of any regulations, guidelines or directives as may from time to time be issued by the Central Bank of Kenya.

Dated

Name Signature

SCHEDULE, FORM CBK/FXD/3—*continued*

- (i) Please attach copies of:
- (a) certificate of incorporation/registration;
 - (b) memorandum and articles of association;
 - (c) valid trade licence.
- (ii) Please attach:
- (a) certified passport size photographs of each director;
 - (b) an original certificate of financial position from your bankers.

FORM CBK/FXD/4

(r. 5(4))

CENTRAL BANK OF KENYA ACT.

[Cap. 491.]

PERMISSION TO TRANSACT FOREIGN EXCHANGE BUSINESS

PERMISSION to transact foreign exchange business has been granted to:

Messrs.

.....

Address:

and is valid for the period to

CONDITIONS

Date of issue No.

.....

Governor,
Central Bank of Kenya

**CENTRAL BANK OF KENYA (FOREIGN EXCHANGE
BUREAU) (PENALTIES) REGULATIONS, 2009**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Specific violations.
 3. Other violations.
 4. Written notification.
 5. Instructions on payment of penalty.
 6. Payment penalty.
 7. Additional penalty.
 8. Debt due to the Bank.
-

CENTRAL BANK OF KENYA (FOREIGN EXCHANGE BUREAU) (PENALTIES) REGULATIONS, 2009

[L.N. 82/2009.]

1. Citation

These Regulations may be cited as the Central Bank of Kenya (Foreign Exchange Bureau) (Penalties) Regulations, 2009.

2. Specific violations

The following shall constitute violations by a foreign exchange bureau or a person of guidelines or directions of the Bank under the Act which shall be subject to assessment of monetary penalties—

- (a) failure by a foreign exchange bureau to—
 - (i) submit annual audited accounts and a copy of the auditor's report in the prescribed form to the Bank, within three months after the end of its financial year;
 - (ii) furnish, at such time and in such manner as the Bank may direct, any information in an accurate and complete manner as the Bank may require to properly discharge its functions under the Act;
 - (iii) comply with the Act, the Forex Bureau Guidelines or such other guidelines or directions as the Bank may issue from time to time;
 - (iv) submit accurate periodic reports and returns to the Bank;
 - (v) maintain a minimum balance of two thousand United States Dollars or such other amount as may be prescribed by the Bank with the authorized banks;
 - (vi) maintain the minimum capital requirements prescribed by the Bank;
 - (vii) maintain a proper information management system to facilitate information dissemination;
 - (viii) accurately record all transactions relating to the purchase and sale of foreign currency;
- (b) conducting business in a manner, which is in the opinion of the Bank unsafe or unsound;
- (c) conducting foreign exchange business through a proxy or nominee;
- (d) transferring shareholding or changing directorship in a foreign exchange bureau without obtaining the prior written approval of the Bank;
- (e) engaging a foreign exchange officer who has not been vetted, approved and registered by the Bank; or
- (f) maintaining foreign currency accounts with more than the prescribed number of authorized banks.

3. Other violations

The Bank may levy monetary penalties for the violation of or non-compliance with any other direction that is not provided for under regulation 2.

4. Written notification

(1) The Bank shall, after reviewing all available information and determining the contravention or violation of one or more of the provisions of regulations 2 or 3, notify the foreign exchange bureau or a person in writing informing it on its finding and its intention to assess monetary penalties.

(2) The Bank shall assess the gravity of the contravention or violation and may give the foreign exchange bureau or a person reasonable time to rectify the violation.

(3) The Bank shall give a foreign exchange bureau or a person seven days notice in writing requiring the foreign exchange bureau or a person of the correction of the violation, the Bank shall instruct the foreign exchange bureau or that person, in writing, of the penalties assessed and the manner in which such monies shall be paid to the Bank.

5. Instructions on payment of penalty

Following the notification and expiration of the timeframe in regulation 4(2), or sooner if advised by the foreign exchange bureau or a person of the correction of the violation, the Bank shall instruct the foreign exchange bureau or that person, in writing, of the penalties assessed and the manner in which such monies shall be paid to the Bank.

6. Payment penalty

(1) The penalties prescribed under these Regulations shall be paid to the Central Bank of Kenya by a foreign exchange bureau or a person as the case may be, within fourteen days from the date of service of the notice, unless otherwise stated by the Bank in writing.

(2) Where a foreign exchange bureau that is required to pay a penalty under these Regulations fails to pay a penalty within the time directed by the Bank, the Bank may recover the amounts due on the penalty from the non-interest bearing deposit held by the Bank on behalf of the foreign exchange bureau.

(3) Where the Bank recovers any amount due on a penalty from the non-interest bearing deposit held by the Bank, the foreign exchange bureau shall within thirty days of being notified by the Bank, raise the amount in the non-interest bearing deposit to the level required by the Bank.

(4) Where no payment is made or received under paragraph (3), the Bank may revoke the licence of the foreign exchange bureau.

(5) Where the penalties under paragraph (1) are payable by a person fails to pay, that person shall be disqualified from holding office in a foreign exchange bureau.

7. Additional penalty

(1) Where the Bank is not satisfied either by evidence provided by a foreign exchange bureau or a person, or by information obtained by the Bank, that the violation has been rectified as directed, the Bank may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such contravention continues.

(2) Once the Bank is satisfied that the violation has been rectified, the daily additional penalty of ten thousand shillings shall cease to accrue and the Bank shall assess the aggregate penalty.

8. Debt due to the Bank

(1) Where any provision of these Regulations imposes a penalty on any foreign exchange bureau or a person and, either the penalty or part of the penalty remains unpaid, the unpaid amount of the penalty shall constitute a civil debt due from a foreign exchange bureau or a person to the Bank.

(2) The Bank may—

- (a) in addition to the provisions of regulation 6(4), institute civil proceedings against a foreign exchange bureau or a person for the recovery of the penalty; or
- (b) direct that any part of the penalty which remains unpaid after a particular period notified to the foreign exchange bureau, shall constitute a debt payable by the foreign exchange bureau.

**CENTRAL BANK OF KENYA (CURRENCY
HANDLING) REGULATIONS, 2011**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. Use of currency notes and coins.
4. Licensing of cash in transit operators.
5. Exchange of defaced notes.
6. Exchange of cash defaced abroad.
7. Proof of validity of notes.
8. Keeping of records.
9. Insurance of cash in transit.
10. General Penalty.
11. L.N. 124/2010.

SCHEDULES

SECOND SCHEDULE —

TERMS AND CONDITIONS OF USE OF CASH
DEFACEMENT DEVICES

THIRD SCHEDULE —

FEES AND CHARGES

**CENTRAL BANK OF KENYA (CURRENCY
HANDLING) REGULATIONS, 2011**

[L.N. 19/2011.]

1. Citation

These Regulations may be cited as the Central Bank of Kenya (Currency Handling) Regulations, 2011.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“cash” means Kenya currency in form of either printed notes or minted coins of any denomination issued by the Bank for current use, and includes all notes and coins previously issued by the Bank;

“cash defacement devices” means a security device fitted in a cash in transit box, approved by the Bank and intended to indelibly stain notes to achieve instant recognition that they have been stolen and to render them worthless;

“cash in transit box” means a box fitted with cash defacement devices;

“cash in transit client” means any person using the services of a licensed cash in transit operator;

“cash in transit operator” means a person engaged in the business of transportation of cash; and

“dye-stained bank notes” means notes that have been dye-stained by cash defacement device, approved by the Bank, as a result of an accidental discharge or through a triggered explosion in circumstances of attempted or actual security breach.

3. Use of currency notes and coins

(1) Any person who wishes to use cash or images of cash in any publication or for any other purpose shall apply in writing to the Bank for approval.

(2) No person shall use cash or images of cash, current or historical, for publication or promotional or any other purposes other than as currency without the prior written approval of the Bank.

(3) A person making an application under paragraph (1) shall provide—

- (a) full name and address of the applicant;
- (b) nationality of the applicant;
- (c) information relating to the manner and purpose for which the images are intended to be used;
- (d) specimen of the works over which such use is intended;
- (e) a declaration that the intended use would not infringe on the Bank's copyright over the cash.

(4) An application for authority to make use of images of cash shall be considered by the Bank within fourteen days of receipt and the Bank shall notify the applicant of its decision in writing.

(5) The Bank's decision under paragraph (4) shall be final and the Bank shall not be obliged to render the reasons upon which any decision was reached.

(6) A person who contravenes paragraph (2) of this Regulation shall, in addition to any criminal sanctions imposed under any law, be liable to a penalty, payable to the Bank, of one hundred thousand shillings and to a daily surcharge of ten thousand shillings if the breach is not remedied within the time specified for that purpose by the Bank.

4. Licensing of cash in transit operators

(1) A cash in transit operator who wishes to operate a cash defacement device in the transit of cash, shall apply to the Bank in Form CH 1 set out in the First Schedule.

(2) Every cash in transit operator applying for a licence to use a cash defacement device, shall be required to comply with the terms and conditions of use of such device and to meet the minimum technical specifications and industrial standards for the proposed device set out in the Second Schedule.

(3) The compliance by an applicant with the terms, conditions, technical and other requirements of use of a cash defacement device shall be a mandatory requirement for licensing and the Bank shall not issue a licence until an applicant fully meets each requirement.

(4) The Bank shall, upon satisfaction that an applicant meets the requirements under paragraph (3), and upon receipt of the fee prescribed in the Third Schedule, register the applicant and grant him a licence to use a cash defacement device.

(5) A licence granted under paragraph (4) shall be renewable annually, upon fulfilment of the conditions of grant and payment to the Bank of the renewal fees prescribed in the Third Schedule.

(6) The Bank shall regularly inspect and monitor every person licensed to operate a cash defacement device.

(7) The Bank may, at any time during the tenure of a licence, suspend the licence for breach of any of the terms of licensing and if the breach is not remedied within thirty days, revoke the licence.

(8) Any person who operates a cash defacement device without a licence or after the licence is suspended or revoked by the Bank, shall be liable to a penalty, payable to the Bank, of one hundred thousand shillings and in addition to a daily penalty of twenty thousand shillings for each day the breach is not remedied within the specified time.

5. Exchange of defaced notes

(1) The Bank may exchange defaced notes where the notes—

- (a) have become unserviceable due to ordinary wear and tear;
- (b) have been mutilated, defaced or soiled accidentally; or
- (c) have been defaced by a licensed cash in transit operator through a cash defacement device accidentally or in circumstances of security threat or attack:

Provided that the operator shall prove that the explosion occurred within the permitted use of the device under these Regulations.

(2) Save for bank notes stained through use of a cash defacement device, any mutilated or defaced notes may be exchanged at the discretion of the Bank, upon presentation by the holder to the Bank, at the nearest branch or through institutions licensed by the Bank.

(3) Upon receipt of mutilated or defaced bank notes under paragraph (2), the Bank may, with regard to the information provided?

- (a) agree to exchange the bank note;
- (b) defer its decision to allow for verification of the information provided; or
- (c) decline the application.

(4) An application deferred under paragraph (3) shall be considered by the Bank and a decision made within sixty days from the date it was received and the Bank's decision shall be final.

(5) Notes stained through a cash defacement device shall be deemed to be proceeds of crime and shall be exchanged upon an application by a cash in transit operator to the Bank in Form CH 2 set out in the First Schedule.

[Subsidiary]

(6) A person, other than a cash in transit operator, who comes into possession of a dye-stained bank note shall not be eligible to apply for exchange but shall surrender such to the nearest police station, the Bank or any other financial institution and shall make a statement relating to the circumstances under which he came into possession of the dye-stained note:

Provided that, such person shall not be deemed to have been involved in the underlying security breach, unless proven otherwise in a court of law.

(7) Every person licensed to operate a cash defacement device shall, upon defacement of the cash through such device, either accidentally or through security related explosion, report the incident to the Bank within twenty four hours and shall thereafter lodge an application for replacement of the stained cash in Form CH 2 set out in the First Schedule.

(8) The exchange of defaced notes under paragraph (5) shall be subject to payment by the applicant of the replacement costs prescribed in the Third Schedule.

6. Exchange of cash defaced abroad

The Bank may consider applications for exchange of notes defaced outside Kenya under the criteria set out in regulation 5.

7. Proof of validity of notes

(1) The Bank shall, prior to considering an application for exchange of defaced notes, verify and prove that the notes were genuine before their defacement.

(2) No application for replacement of defaced notes shall be allowed if the Bank proves that the affected currency was counterfeit and the Bank shall, in addition to the penalty prescribed under paragraph (3), confiscate the counterfeit notes.

(3) A person who presents for replacement notes that have been found to be counterfeit commits an offence and shall, in addition to any punishment provided for in any other law, be liable to a penalty, payable to the Bank, of twice the total face value of the counterfeit notes or two hundred thousand shillings whichever is lower.

8. Keeping of records

(1) A person licensed under regulation 4 shall keep proper records and accounts of any cash, in notes or coins, in transit at any given time, and shall, whenever required, produce for inspection by the Bank the records and accounts.

(2) Upon defacement of notes in transit through explosion of cash defacement devices, the Bank shall consider the replacement of the defaced notes that tallies with the records held by the cash in transit operator at the time of explosion of the defacement device and the Bank shall not consider for replacement any notes defaced without records.

(3) Any person licensed to operate a cash defacement device who fails to keep proper records and accounts shall, upon determination by the Bank that proper records or accounts are not kept, be liable to a penalty not exceeding fifty thousand shillings and in addition to a daily surcharge of five thousand shillings if the breach is not remedied within the time specified for that purpose by the Bank.

9. Insurance of cash in transit

(1) A person licensed under these Regulations shall, in addition to any other insurance cover taken out to provide protection against transit perils, take out an additional insurance cover to meet the replacement cost of any notes defaced through use of a cash defacement device.

(2) The Bank shall be designated as the beneficiary of the additional mandatory cover taken out under paragraph (1), and shall duly advise the insurer on the replacement sum payable on the occurrence of every incident of security triggered defacement of cash in transit.

(3) The replacement costs payable under the Third Schedule shall be recoverable from the licensee or the insurer and where the licensee pays the full cost, the benefits of the insurance cover shall be passed on to the licensee.

10. General Penalty

A person who breaches any regulation and no penalty is specifically prescribed for the breach shall, in addition to any criminal sanction imposed under any other law, be liable to a penalty payable to the Bank of up to five hundred thousand shillings and to a daily surcharge of up to twenty thousand shillings if the breach is not remedied within the time specified for that purpose by the Bank.

11. L.N. 124/2010

The Central Bank of Kenya (Currency Handling) Regulations, 2010, are revoked.

FIRST SCHEDULE
FORM CH 1**(r. 4(1))****APPLICATION FOR LICENCE TO USE CASH DEFAACEMENT DEVICE**

1. Name of Company
2. Date and country of incorporation
3. Certificate of incorporation No.
4. Physical and Postal address of head office:
 - (a) City/Town
 - (b) L.R. No.
 - (c) Street
 - (d) Building
 - (e) Postal address Code
5. Association membership
6. Licence application for the period:
7. Details of branch network and number of years each has conducted business:

<i>Branch Name</i>	<i>No. of years in operation</i>

[Subsidiary]

FIRST SCHEDULE, FORM CH1—continued

8. Particulars of Directors:			
Name	Nationality	ID/Passport No.	Date of appointment

(Profession, Other directorships)

Significant shareholders, financial status)

Name	Nationality	ID/Passport No.	Date of appointment

9. Particulars of Senior officers both in the head office and Branches:

Name	Nationality	ID/Passport No.	Designation/Branch

10. Details of Devices to be used.

Device type (Dye or Smoke.):

Device Model

Source of Device (Manufacturer)

11. Declaration (By Chief Executive Officer):

I, the undersigned, hereby declare—

- (a) THAT the particulars set out herein are true and correct to the best of my knowledge and belief; and
- (b) THAT if licensed, I shall use cash defacement devices in accordance with the Central Bank of Kenya Act and any regulations, guidelines or directive as may from time to time be issued by the Central Bank of Kenya.

Name

Signature

Date

Note:

1. Please attach certified copies of—

- (i) certificate of incorporation;
- (ii) certification by Kenya Bureau of standards, Government Chemist and National Environmental Management agency or certification from other similar internationally recognized organization; and
- (iii) valid operating licence.

2. Replacement of any of the senior operating officers must be notified to the Central Bank and particulars of new officers submitted to the Central Bank immediately.

FIRST SCHEDULE—continued

FORM CH 2

(r. 5(5) & (7))

APPLICATION FOR REPLACEMENT OF BANKNOTES STAINED THROUGH CASH
DEFACEMENT DEVICE

1. IMPORTANT INFORMATION TO THE CLAIMANT

- (1) Part A – to be completed by the claimant.
- (2) Part B – to be completed by the claimant.
- (3) PART C – to be completed by the commercial Bank.
- (4) PART D – to be completed by the Central Bank

A. DETAILS OF THE CLAIMANT (BLOCK LETTERS)

1. Name of company
2. Physical address
3. Telephone No.
4. Postal address
5. Company Registration No.
6. Name of authorised official
7. ID or Passport Number

DETAILS OF BANKNOTE

DENOMINATION	KSH 50	KSH 100	KSH 200	KSH 500	KSH 1000
NUMBER OF PIECES					
VALUE					
SERIAL NUMBERS					

(If more space is required use a separate page and attach it to this claim form).

B. STATE HOW DYE-STAINED BANK NOTES WERE STAINED

.....

.....

Signature/Stamp of Claimant:

Date:

C. CONDITIONS OF EXCHANGE

Claimants must ensure that they have read all the conditions for exchange set out below and (if claiming through a licensed institution) that they have been handed an acknowledgement of receipt (Part C) for the claim.

1. A certified copy of the claimant's certified copy of Company Registration Certificate must accompany this claim form.
2. The sworn declaration in the prescribed form must be completed in respect of all claims.
3. The Bank is not legally bound to replace any dye-stained bank notes either in whole or in part. Any replacement is strictly at the discretion of the Bank.
4. The Bank may at its discretion call upon an applicant to furnish a bond of indemnity in respect of any amount refunded.
5. All dye stained bank notes including remains or fragments, no matter how small, shall accompany the application.
6. Bank shall not accept claims via the post, and shall accept claims made by means of personal delivery at the Bank, its branches or commercial bank. Should a claimant utilise the postal service for delivery of dye-stained bank notes, these notes will be forfeited to the Bank.

Central Bank of Kenya

[Subsidiary]

FIRST SCHEDULE, FORM CH 2—*continued*

7. The claimant accepts that it voluntarily cedes the bank notes in its possession to the Bank and that the Bank shall handle this claim according to the policies laid down for replacement of dye-stained bank notes or even the forfeiture thereof.

DECLARATION

I declare that the above is true and correct and that I have not withheld any information regarding this application. I have read all the conditions for exchange and I understand that any false disclosure can lead to prosecution.

I, do solemnly and sincerely declare that I am the lawful claimant of the abovementioned dye-stained bank notes and make this solemn declaration, conscientiously believing it to be true.

Signed:

The deponent has acknowledged that he or she knows and understands the contents of this declaration, which he or she has declared before me at this

..... day of 20

.....

Commissioner for Oaths

RECEIVING BANK

NAME OF BANK

Branch: Branch Code

Telephone:

Branch Contact Person:

Confirmation of circumstances in which the dye-stained bank notes are declared to have been so stained—

.....

.....

Name of claimant

Amount claimed:

.....

Signature of authorised Bank official

Date

Bank stamp Date

D. CENTRAL BANK OF KENYA

ACKNOWLEDGEMENT OF RECEIPT OF DYE-STAINED BANK NOTES CLAIM

I, acknowledge receipt of a dye-stained bank notes claim on a collection basis.

From (*name of claimant or commercial Bank*):

Name of Authorised official of claimant or Bank

Identity or Passport number:

Amount received:

At this day of 20

DETAILS OF NOTES

DENOMINATION	KSH 50	KSH 100	KSH 200	KSH 500	KSH 1000
NUMBER OF PIECES					
VALUE					

FIRST SCHEDULE, FORM CH 2—*continued*

N.B: Claimants must ensure that they have read all the conditions for exchange set out below and (if claiming through a licensed institution) that they have been handed an acknowledgement of receipt (Part C) for the claim.

Signature Date

SECOND SCHEDULE

[Regulation 4(2).]

CENTRAL BANK OF KENYA ACT

[Cap. 491.]

TERMS AND CONDITIONS OF USE OF CASH DEFAACEMENT DEVICES

1. Applicability

(1) These conditions apply to the use of cash defacement devices by licensed cash-in-transit operators.

(2) This document is provided for the information of cash in transit operators, the Bank and other cash in transit clients.

(3) Cash in transit operators shall strictly adhere to all obligations and other compliance matters imposed under these terms and conditions and any breach of such obligations shall be breach of the licensing obligations and for which penalties shall be levied.

2. Obligations of CIT Operators

In addition to other obligations set out in these Regulations, cash-in-transit operators undertake to?

- (a) abide by these Regulations and the terms and conditions of use of cash defacement devices;
- (b) train their staff and regularly update them on the technology and other aspects of cash defacement devices;
- (c) alert the police, the Bank and other stakeholders of an incident of robbery or attack leading to explosion of cash in transit boxes and staining of banknotes;
- (d) fully comply with manufacturer's specifications relating to cash in transit boxes, including load capacity, handling procedures and maintenance;
- (e) carry out public education and awareness of the cash in transit boxes, their role as security devices in the transportation of cash, the recognition of dye-stained notes and what recourse to take on finding such notes;
- (f) with the approval of the Bank, regularly update themselves with the technology and safety standards of the devices and upgrade accordingly with the necessary certifications; and
- (g) abide by any other requirement or obligation that the Bank may from time to time impose.

3. Specifications and standards of cash defacement devices

(1) Every cash defacement device proposed to be used by a cash in transit operator shall meet the following minimum requirements—

[Subsidiary]

- (a) safety: the device shall be certified as safe for use in the public domain by Kenya Bureau of Standards or alternatively, any other internationally recognized standards organization and any chemical or dye used to disfigure the notes shall not be harmful to the public and shall be certified by the Government Chemist, the National Environment Management Agency or other similar recognized organization at the cost of the applicant;
- (b) reliability: the functionality of the cash defacement device shall be tested and certified for reliability by the Kenya Bureau of Standards;
- (c) stability: the cash defacement device shall not, under normal operating circumstances, activate accidentally; and
- (d) industry standards: the device shall meet such industry standards and criteria, including electrical, mechanical and other capabilities specified by the Kenya Bureau of Standards from time to time.

(2) Approved cash defacement devices shall be used in accordance with the manufacturer's specifications including, but not limited to, those related to the packing of notes, the type of wrapping used, and the amount of notes to be contained within a single device.

(3) Approved cash defacement devices shall have the capacity to cause all, notes to be stained with coverage of at least not less than thirty per centum of the surface of each note.

(4) The device shall have the capability of?

- (a) staining the notes in such a manner that the Bank will be able to verify the denominations affected; and
- (b) establishing the legitimacy of the notes following a defacement by enabling notes that are dye-stained to be easily recognizable as having been the subject of crime unless proven to have been dyed as a result of an accidental trigger to the device.

(5) The dye used in all devices licensed within the country shall be of a uniform agreed colour and as specified by the Bank and shall be indelible.

(6) The Bank shall not give value for any notes stained by a cash defacement device whose design and use was not approved under the Regulations.

(7) The operation of any cash defacement device shall be demonstrated to the Bank, as a condition of consideration of the device for approval.

(8) The Bank shall approve the use of any cash defacement devices.

(9) The Bank shall approve the use of cash defacement devices, by cash in transit operators in the transportation of cash between?

- (a) the Central Bank and its branches or cash centres;
- (b) the Central Bank and a commercial bank;
- (c) a commercial bank and its branches or automated teller machine;
- (d) a commercial bank and its customer or a customer and the commercial bank;
- (e) customer and its branches; or
- (f) any other scenario approved by the Bank.

(10) A new device replacing a licensed cash defacement device shall be subjected to the same approval process.

4. Reporting of robberies or heists

(1) In the event of robbery where notes packed in a cash in transit box are stolen, the cash in transit operator shall immediately communicate with the police and the Bank and report the event within twenty four hours.

(2) The report of robbery shall provide all relevant information including details of the geographical area of attack, the motor vehicle used by the cash in transit operator, amount of money in transit and records of the cash in transit operator relating to the transaction.

(3) the Bank shall, upon receipt of the report of robbery issue a press release at the cost of the cash in transit operator giving full details of the robbery and alert the public not to use the notes and to call upon the public to surrender all stained notes recovered within the locality of the robbery to the police, the Central Bank or the nearest licensed financial institution.

5. Claims

(1) A financial institution receiving any dye-stained notes from any person shall not exchange the notes with clean notes.

(2) All dye-stained notes shall be surrendered within fourteen days from the date of receipt together with the supporting surrender form to the Bank.

(3) Commercial banks shall not mix dyed notes with fit or unfit notes and any dye-stained notes found in bulk cash deposited by commercial banks shall be treated as shortages, no value will be given and the applicable discrepancy charges will be levied.

6. Destruction of dye-stained notes

Dye-stained notes shall be kept in the Bank's vaults for a period not exceeding six months unless a longer period is necessary owing to pending court proceedings and the Bank shall thereafter destroy such notes in accordance with the existing procedures.

7. Public education

(1) Cash in transit operators using cash defacement devices and seeking approval of these devices shall be required to educate the public, on an ongoing basis, to inform them of the operations of the devices, nature of defaced cash that results from explosion of the devices, where to report any such notes and any other relevant information.

(2) All material, content and other tools of proposed public education prepared by a cash in transit operator shall be submitted to the Bank for vetting and approval.

(3) The Bank shall carry out independent public education on all aspects of the cash defacement devices but this shall be complimentary to and shall not absolve the licensed cash in transit operators from undertaking such public education.

(4) The Bank shall not be used in any way, whatsoever, to promote the sale and use of any devices or to indicate the Bank's endorsement of any brand of such devices.

8. Amendment of Terms and Conditions

The Bank, may amend, suspend or withdraw the whole or specific sections of these conditions, and shall duly give notice of any such amendment to all stakeholders within thirty days.

THIRD SCHEDULE

[Regulations 4(4) & (5), 5(8).]

FEES AND CHARGES

A. FEES

The following fees shall be payable by cash in transit operators?

- (a) Application fees KSh. 5,000
- (b) Initial licence fee KSh. 100,000
- (c) License renewal fees (annual) KSh. 100,000

[Subsidiary]

B. REPLACEMENT CHARGES FOR DYE-STAINED NOTES

1. The Bank shall levy the following charges in respect of all approved claims for exchange of dye-stained notes presented for replacement:

- (1) KSh. 10 per dye-stained note in respect of attempted robbery claims.
- (2) KSh. 20 per dye-stained note in respect of accidental discharge.
- (3) KSh. 10,000 per cash in transit box being administrative costs.
- (4) KSh. 20,000 per cash in transit box, in respect of all cases in which the user of the cash in transit boxes has failed to comply with the manufacturer's specifications, in terms of packaging of the volumes and notes.

2. The Bank shall reserve the right to decline a claim in its entirety if willful non-compliance with the manufacturer's specifications, is proven.

3. The above fees or charges shall be subject to review from time to time.

MONEY REMITTANCE REGULATIONS, 2013**PART I – PRELIMINARY**

1. Citation.
2. Interpretation.
3. Exemptions.

PART II – ESTABLISHMENT AND LICENSING

4. Licensing.
5. Application for a licence.
6. Evaluation of application.
7. Issuance of a licence.
8. Licence not transferable.
9. Validity of licence.
10. Core capital.
11. Appeal.
12. Renewal of licence.
13. Revocation of licence.

PART III – OWNERSHIP AND MANAGEMENT

14. Shareholders.
15. Approval of shareholders.
16. Key officers.
17. Approval of key officers.
18. Vetting.
19. Fit and proper test.
20. Prohibitions.
21. Disqualification of shareholders and officers.

PART IV – OPERATIONS OF MONEY REMITTANCE OPERATORS

22. Authorized activities.
23. Prohibited activities.
24. Split transactions.
25. Agents.
26. Place of business.
27. Inspection of premises.
28. Notification of business hours.
29. Temporary closure of business.
30. Bank accounts.
31. Training.
32. Foreign Exchange Payments.
33. Records.
34. Returns.
35. Fees.
36. Financial year.

PART V – ANTI-MONEY LAUNDERING

37. Anti-Money Laundering Measures.

PART VI – CUSTOMER PROTECTION

38. Disclosure.
39. Consumer redress.

[Subsidiary]

PART VII – INSPECTION AND AUDIT

- 40. Inspection.
- 41. External auditors.

PART VIII – MISCELLANEOUS

- 42. Administrative obligations.
- 43. Penalties.
- 44. Suspension and revocation.
- 45. Transitional clause.

SCHEDULES

FIRST SCHEDULE —	APPLICATION FOR A RENEWAL OF LICENCE TO TRANSACT MONEY REMITTANCE BUSINESS— FORM/CBK/MRB/1
SECOND SCHEDULE —	SHAREHOLDERS DIRECTORS AND SENIOR OFFICERS FIT AND PROPER OFFICERS FIT AND PROPER FORM— FORM/CBK/MRB/2
THIRD SCHEDULE —	APPLICATION TO OPEN HEAD OFFICE PREMISES OR AN OUTLET FORM/CBK/MRB/4
FOURTH SCHEDULE —	PRESCRIBED FEES

MONEY REMITTANCE REGULATIONS, 2013

[L.N. 66/2013.]

PART I – PRELIMINARY**1. Citation**

These Regulations may be cited as the Money Remittance Regulations, 2013.

2. Interpretation

In these Regulations unless the context otherwise requires—

“agent” means an entity contracted by a money remittance operator and approved by the Central Bank to provide the services of money remittance on behalf of the money remittance operator;

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

“key officer” means a director, chief executive officer or any other senior officer of a money remittance operator who has been vetted and approved by the Bank to hold a senior position in a money remittance business;

“licensing” means approval granted in accordance with these regulations to allow the holder of the licence to carry on money remittance business;

“money laundering” has the meaning assigned to it under the Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009);

“money remittance business” means a service for the transmission of money or any representation of monetary value without any payment accounts being created in the name of the payer or the payee, where—

- (a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service operator acting on behalf of the payee; or
- (b) funds are received on behalf of, and made available to the payee;

“money remittance operator” means a person licensed to undertake money remittance business;

“outlet” means a place of business of a money remittance operator that has been approved by the Bank; and

“spot transaction” means the purchase and sale of currencies or the purchase and sale of any other instruments approved by the Bank with immediate delivery against an agreed price.

3. Exemptions

(1) These regulations shall not apply to—

- (a) authorized banks;
- (b) authorized mortgage finance companies;
- (c) the Kenya Post Office Savings Bank;
- (d) the Postal Corporation of Kenya;
- (e) deposit taking microfinance institutions; and
- (f) any other entity approved by the Bank.

(2) Where the Kenya Post Office Savings Bank or Postal Corporation of Kenya intend to transact foreign exchange business, they shall be required to seek permission from the Bank under section 33A(3) of the Central Bank of Kenya Act (Cap. 491).

PART II – ESTABLISHMENT AND LICENSING

4. Licensing

A person shall not provide money remittance services unless such person—

- (a) is incorporated as a limited liability company under the Companies Act (Cap. 486);
- (b) has obtained the approval of Bank for the proposed business name before incorporation and has the words “money remittance” or “money transfer” as a brand name; and
- (c) is licensed to provide money remittance services under these regulations.

5. Application for a licence

An application for a licence to conduct money remittance business shall be made to the Bank in the form set out in the First Schedule accompanied by—

- (a) a non-refundable application fee of twenty thousand shillings payable to the Bank by—
 - (i) bankers cheque;
 - (ii) real time gross settlement (RTGS); or
 - (iii) any other payment method that may be approved by the Bank;
- (b) a certified copy of the applicant's certificate of incorporation;
- (c) a certified copy of the applicant's memorandum and articles of association;
- (d) a feasibility study by the applicant indicating the nature of the planned business, organization structure, internal control systems and monitoring procedures of the company and covering the following aspects—
 - (i) the name and location of the proposed business premises;
 - (ii) ownership structure;
 - (iii) governance and management structure;
 - (iv) market analysis;
 - (v) proposed products;
 - (vi) three year projected financial statements; and
 - (vii) business continuity plan;
- (e) bank statements of the applicant, shareholders and directors of the proposed money remittance operator for a period of six months prior to the date of application;
- (f) Form/CBK/MRB/2 as set out in the Second Schedule of these regulations in respect of the shareholders and key officers of the money remittance operator;
- (g) credit reports from a credit reference bureau for the shareholders and key officers of the money remittance operator;
- (h) an undertaking by the applicant to comply with the relevant laws and any directives issued by the Bank;
- (i) a declaration by the applicant that none of its directors or shareholders holds a similar position or role in another money remittance operator;
- (j) a declaration by the applicant that none of its directors or shareholders has ever—
 - (i) been declared bankrupt;
 - (ii) participated in the management of a collapsed institution; or
 - (iii) been convicted of a criminal offence involving fraud, money-laundering, tax evasion or any other act of dishonesty;

- (k) a policy manual detailing procedures that the applicant will put in place to comply with any anti-money laundering obligations;
- (l) where a money remittance operator intends to provide money remittance services through an international location, a list of all agent locations around the world that are duly authorized entities according to the laws on money remittance in those countries; and
- (m) such other information as may be required by the Bank from time to time.

6. Evaluation of application

(1) When evaluating an application for a licence to operate as a money remittance operator, the Bank shall take into account the following—

- (a) the applicant's statement of financial affairs;
- (b) the adequacy of the applicant's capital structure, earning prospects, business and financial plans;
- (c) the history, character and integrity of the applicant's shareholders and proposed directors;
- (d) the competence and integrity of the applicant's proposed management;
- (e) whether the public interest shall be served by the granting of the licence to the applicant; and
- (f) any other factors as may be determined by the Bank.

7. Issuance of a licence

(1) The Bank may issue a money remittance licence if the applicant meets the requirements set out in these regulations.

(2) Where the Bank is dissatisfied with the information submitted by the applicant for purposes of processing the application, the Bank may request for additional information before making a final determination.

(3) Where the Bank is satisfied that all the necessary requirements have been met, the Bank shall within ninety days of the applicant lodging the application, issue a letter of intent to the applicant advising the applicant to submit to the Bank—

- (a) a banker's cheque for one hundred thousand shillings or such other amount as may be prescribed by the Bank being licence fees; and
- (b) a security consisting of either a surety bond, an irrevocable letter of credit from a commercial bank licensed pursuant to the Banking Act (Cap. 488) or a deposit taking microfinance business licensed pursuant to the Microfinance Act (No. 19 of 2006), an insurance bond of not less than five million shillings or an amount equal to one percent the applicant's projected total volume of business for the first year of operation.

(4) Where a money remittance operator is licensed by the Bank—

- (a) there shall be no refund of the licence fee paid to the Bank in the event that the licence is cancelled or revoked or a money remittance operator ceases to carry on business at any time before the expiry of the licence;
- (b) there shall be no proration of the licence fee paid in the course of the year.

(5) The Bank may in conformity with the regulations add, vary or substitute any condition to the licence.

8. Licence not transferable

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

9. Validity of licence

The licence granted under regulation 7 shall expire on the thirty-first day of December in each year.

[Subsidiary]**10. Core capital**

Where a money remittance operator is licensed under these Regulations, it shall at all times maintain a minimum core capital of not less than twenty million shillings.

11. Appeal

Where the Bank finds that the applicant has not met any or all of the conditions, the Bank shall decline the application and inform the applicant accordingly and advise the unsuccessful applicant that an appeal to the Cabinet Secretary for review of the decision may be lodged within thirty days from the date thereof.

12. Renewal of licence

(1) An application for renewal of a licence to conduct money remittance services shall be submitted to the Bank in the form set out in the First Schedule of these regulations at least two months before the expiry of the licence.

(2) A licensee who fails to pay the prescribed fees for renewal of a licence shall pay double the license fee, if payment is made within ninety days after expiry of the licence.

(3) A licensee who fails to submit an application for renewal of license and to pay the license fee as prescribed under regulation 12(2) shall have the licence revoked.

(4) The Bank may renew a licence where—

- (a) it is satisfied that the licensee has been operating in conformity with these regulations;
- (b) the licensee has paid the prescribed licence renewal fee and all outstanding penalties imposed on the licensee under these regulations;
- (c) the licensee has obtained the security outlined under regulation 7(3)(b) equivalent to one per cent of the total business turnover for the preceding twelve months to the thirtieth day of September of each year subject to a minimum of five million shillings;
- (d) the licensee has fulfilled its tax obligations and submitted a current certified copy of a tax compliance certificate or its equivalent as issued by the Kenya Revenue Authority; and
- (e) the licensee, its shareholders and directors have not defaulted in repayment of any credit facilities granted to them by any institution as indicated in the credit reports or any other source as the Bank may from time to time determine.

(5) Where the licensee submits an application for renewal of a licence as provided under subregulation (1), the licence shall be deemed to continue in force until the application for renewal is determined.

13. Revocation of licence

A licence for money remittance business shall be revoked if the licensee fails to conduct the money remittance business within twelve months of the date of issue of the licence without the written consent of the Bank or at any other time as provided under regulation 44.

PART III — OWNERSHIP AND MANAGEMENT

14. Shareholders

A shareholder of a money remittance operator shall not own more than ten percent share capital of the money remittance business without prior written approval of the Bank.

15. Approval of shareholders

An application for the approval of shareholders shall be forwarded to the Bank accompanied by the following—

- (a) a duly completed fit and proper form, FORM/CBK/MRB/2, as set out in the Second Schedule of these regulations;
- (b) a certified copy of the identity card or passport;
- (c) curriculum vitae;
- (d) two passport size photographs;
- (e) a certificate of good conduct;
- (f) a credit report from a credit reference bureau;
- (g) a collective undertaking signed by each shareholder to the effect that the proposed capital is not from the proceeds of crime; and
- (h) any other document as may be required by the Bank from time to time.

16. Key officers

(1) A money remittance operator shall have the following key officers—

- (a) at least two directors; and
- (b) a chief executive officer and other senior officers responsible for all the operations of the money remittance business as may be determined by the Bank.

(2) The key officers referred to in subregulation (1)(b) must have—

- (a) attained at least an ordinary level certificate of education or its equivalent; and
- (b) adequate knowledge of money remittance operations and knowledge of applicable laws.

(3) The chief executive officer and all senior officers approved by the Bank shall be full time employees of a money remittance operator.

17. Approval of key officers

An application for the approval of the key officers referred to in regulation 16 shall be forwarded to the Bank accompanied by the following—

- (i) a duly completed fit and proper form, FORM/CBK/MRB/2, as set out in the Second Schedule of these regulations;
- (ii) a certified copy of the identity card or passport;
- (iii) a certified copy of the academic and school leaving certificates;
- (iv) curriculum vitae;
- (v) two passport size photographs;
- (vi) a certificate of good conduct;
- (vii) a credit report from a credit reference bureau; and
- (viii) any other document as may be required by the Bank from time to time.

18. Vetting

A person shall not become a shareholder or be appointed as a key officer, unless such a person is—

- (a) certified as fit and proper by the Bank; and
- (b) not disqualified from holding office under these Regulations.

19. Fit and proper test

(1) The following factors shall be considered in determining whether or not a person is fit and proper to own or control a money remittance business—

- (a) conviction of an offence of fraud or any other offence of which dishonesty is an element;
- (b) contravention of the provisions of any law designed to safeguard the integrity of the financial system or for the protection of members of the public against

[Subsidiary]

financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of financial services;

- (c) being a past director or senior officer of an institution licensed by the Bank that has been liquidated, placed under statutory management or whose licence has been revoked;
- (d) past engagement in any business practices that, in the opinion of the Bank, were fraudulent, prejudicial or otherwise improper whether lawful or not;
- (e) defaulting in repayment of any credit facility made to him by any institution;
- (f) evasion of taxes;
- (g) removal from an office of trust on account of misconduct, abuse of office, corruption or incompetence in the immediately preceding ten years;
- (h) legal disability; and
- (i) such other factors as may be determined by the Bank.

(2) The Bank shall undertake due diligence by seeking information from any person, financial institution or company which the Bank believes to be in a position to assist in determining the fitness and propriety of the proposed shareholders and key officers.

20. Prohibitions

A person shall not become a shareholder or an officer in more than one money remittance operator.

21. Disqualification of shareholders and officers

(1) The Bank may disqualify shareholders or officers of a money remittance operator who—

- (a) fail to adhere to these Regulations or any directives issued by the Bank; and
- (b) fail to meet vetting requirements on an on-going basis.

(2) A money remittance operator shall ensure that no person shall be an officer or an employee of the money remittance operator, or if already in employment, shall be disqualified and shall not thereafter be eligible to hold office or be in the employment of any money remittance operator if such person is—

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

PART IV – OPERATIONS OF MONEY REMITTANCE OPERATORS

22. Authorized activities

(1) A money remittance operator shall deal in inbound and outbound international money transfer transactions.

(2) The transactions referred to in sub-regulation (1) shall consist of the following activities—

- (a) foreign exchange transfers consisting of the acceptance of monies for the purpose of transmitting them to persons resident in Kenya or another country;
- (b) spot foreign currency transactions involving cash and other instruments approved by the Bank.

(3) A money remittance business shall not engage in any other business other than as authorized by the Bank.

(4) The following conditions shall apply in the transaction—

- (a) a payment transaction shall be executed in the currency agreed between the parties; and

- (b) where a currency conversion service is offered before initiation of a payment transaction or at the point of payment, the money remittance operator must disclose all charges as well as the exchange rate to be used for converting the payment transaction.

23. Prohibited activities

- (1) A money remittance operator is not authorized to—

- (a) act as an authorized dealer in gold;
- (b) engage in lending money;
- (c) engage in deposit taking;
- (d) maintain current accounts on behalf of customers;
- (e) establish letters of credit; or
- (f) act as a custodian of funds on behalf of customers.

- (2) Despite subregulation (1) a money remittance operator may carry out any other activity that the Bank may approve from time to time.

24. Split transactions

A money remittance operator shall not allow or process a transaction that is or appears to have been deliberately split into small amounts equivalent to ten thousand United States dollars or below to avoid the requirement of reporting to the Financial Reporting Centre as provided under the Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009).

25. Agents

- (1) A money remittance operator may conduct money remittance business through an agent subject to approval by the Bank and shall—

- (a) submit to the Bank a signed copy of the contract between the money remittance operator and the agent;
- (b) any other additional information as may be required by the Bank; and
- (c) conduct the business in compliance with both the applicable laws.

- (2) The contract between a money remittance operator and an agent shall contain the following—

- (a) a statement that the money remittance operator is wholly responsible for and liable for all actions or omissions of the agent;
- (b) measures to mitigate risks associated with agent business including limits, customer transactions, cash management, cash security, security of agent premises and insurance policies;
- (c) specific services to be rendered by the agent;
- (d) the rights, expectations, responsibilities and liabilities of both parties;
- (e) a statement that the Bank shall have free, unfettered and timely access to the internal systems, documents, reports, records, staff and premises of the agents in so far as money remittance business is concerned and shall exercise such powers as it may consider necessary;
- (f) appropriate policies and procedures to detect, prevent, report or otherwise deal with incidences of money laundering;
- (g) responsibilities of the agent to deliver supporting transaction documents;
- (h) a statement that all information or data that the agent collects in relation to agency money remittance services, whether from the customers, the money remittance operator or from other sources, is the property of the money remittance operator;
- (i) adequate oversight safeguards for the money remittance operator to address instances of non-compliance by the agent with the stipulated obligations;

[Subsidiary]

- (j) prohibition from charging the customer any fees other than the fees agreed upon between the money remittance operator and the customer at the initiation of the transaction;
- (k) business hours of the agent;
- (l) suitable limits on cash holding by the agent and also limits on individual customer payments and receipts;
- (m) confidentiality of customer and user information;
- (n) remuneration for the agent;
- (o) a transition clause on the rights and obligations of the money remittance operator and the agent upon termination or cessation of the agency contract; and
- (p) a requirement for the money remittance operator's prior approval to be obtained when an agent is seeking to transfer the agency business.

26. Place of business

(1) A money remittance operator shall obtain approval from the Bank before opening an outlet and shall designate one of the outlets as its head office.

(2) An application to open an outlet as provided in subregulation (1) shall be in the form set out in the Third Schedule and shall be accompanied by the prescribed fees and any other requirements as prescribed by the Bank.

(3) The Bank shall before granting any approval under these regulations in respect of opening an outlet, satisfy itself that—

- (a) the money remittance operator is financially sound;
- (b) the capital structure, earning prospects, business and financial plans of the money remittance operator are adequate;
- (c) the public interest will be served by the opening of a new place of business in that location;
- (d) the outlet will enhance the operations and performance of the money remittance operator;
- (e) the money remittance operator has integrated the systems to process information of all its outlets; and
- (f) the money remittance operator is fully compliant with the Act.

(4) The Bank may grant an approval to operate an outlet if an applicant fulfils the requirements in subregulation (2).

(5) The Bank may, in granting approval under subregulation (3), impose such other conditions as it may consider necessary.

(6) A money remittance operator shall not be allowed to sublet, lease or authorize any other person to undertake any other business or offer any other product or service in its business premises other than as approved by the Bank.

(7) The business premises of a money remittance operator shall be accessible to the general public and the Bank.

(8) A money remittance operator shall not relocate its business from the approved premises without the prior written approval of the Bank.

(9) A money remittance operator shall display prominently at each of its business premises—

- (a) the current licence to engage in money remittance;
- (b) the business hours;
- (c) details of the tariffs to be charged;
- (d) a notice informing the customers that they are entitled to be issued with a receipt for any money remittance transactions; and

- (e) a notice to the effect that the money remittance operator is not allowed to maintain current accounts on behalf of the clients.

27. Inspection of premises

The Bank may at its own discretion and from time to time carry out an inspection of premises prior to granting approval for the commencement of operations to determine the suitability of the premises for money remittance business and the adequacy of the management information system, administrative and operational processes and the internal control system.

28. Notification of business hours

A money remittance operator shall notify the Bank and its customers of—

- (a) the business hours for each of its outlets;
- (b) any intended changes in business hours, in any of their places of business, fifteen days in advance before the changes are effected.

29. Temporary closure of business

A money remittance operator facing operational challenges, disclosure of which shall be made to the Bank, will be required to seek prior written approval from the Bank to close or suspend the operations of the money remittance operator temporarily.

30. Bank accounts

(1) A licensee shall maintain an account entitled “customers’ account” in the name of the licensee at any commercial bank licensed pursuant to the Banking Act (Cap. 488) or microfinance business licensed pursuant to the Microfinance Act (No. 19 of 2006) in Kenya.

(2) All customer funds deposited with a money remittance operator for transmittal to a foreign country shall be deposited in the account referred to in subregulation (1).

(3) A money remittance operator may offset and deposit funds in the customer’s account, in order to effect the transfer of funds in accordance with the instructions of the clients.

(4) A money remittance operator shall maintain complete and accurate account records.

(5) A money remittance operator shall produce, upon request by the Bank, all documents pertaining to the account activity, including, but not limited to, bank statements, cheque books, deposit slips and reconciliations or other comparable account records.

31. Training

A money remittance operator shall ensure that its officers are adequately trained in the operations of the money remittance business and regulatory requirements.

32. Foreign exchange payments

(1) A money remittance operator shall be allowed to net off payments during settlement with counter parties.

(2) All foreign exchange inflows and outflows of money remittance operators shall be received through commercial banks, documented and advised to the Bank in the prescribed format.

33. Records

(1) A money remittance operator shall maintain a sound management information system that facilitates efficient collection and processing of statistical data and information required to provide audit trails for use by internal auditors, external auditors and the Bank.

(2) A money remittance operator is required to maintain accurate and meaningful originator and beneficiary information for a period of not less than seven years on funds remitted or received by requiring the sender or recipient to complete and sign an application form, which shall contain the following data and information—

[Subsidiary]

- (a) date of transaction;
- (b) name and signature of remitter;
- (c) name of beneficiary;
- (d) national identity card or passport number of customer and in the case of refugees an alien card, refugee card or UNCHR card or any other additional documents that the money remittance operator may consider necessary;
- (e) present address;
- (f) permanent address;
- (g) telephone number (if applicable);
- (h) nationality;
- (i) amount and currency to be remitted or received;
- (j) the principal activity of the customer conducting the transaction;
- (k) purpose of remittance; and
- (l) source of funds.

(3) A money remittance operator shall, for every transaction, issue an accurate receipt which shall contain the following information—

- (a) full names of the customer;
- (b) identity card or passport number of customer;
- (c) the type and amount of currency sent or received;
- (d) the transaction number;
- (e) the nature, time and date of the transaction;
- (f) name and address of the money remittance operator and name of the employee who served the customer;
- (g) a brief statement on source or purpose of the funds;
- (h) customer signature; and
- (i) commission charged if any.

(4) All transactions generated by the money remittance operator in the course of its business activities must be posted in its books of accounts.

(5) A money remittance operator shall maintain the following records—

- (a) a list of all transactions;
- (b) a daily summary of all monies received and sent;
- (c) a fixed assets register; and
- (d) any other records applicable to the money remittance operator or as may be specified by the Bank .

(6) A money remittance operator shall keep accurate and up to date records and ensure that the records are verified on a daily basis.

34. Returns

A money remittance operator shall submit the following returns to the Bank on-line or as directed in the prescribed format—

- (a) daily returns of money sent and received equivalent to or above ten thousand United States dollars including customers who transact repeat transactions in a day amounting to ten thousand United States dollars;
- (b) weekly returns of money remittance transactions not later than 3.00 p.m. on the first working day of the following week;
- (c) quarterly balance sheet and profit and loss account within thirty days after the end of every quarter;

- (d) audited balance sheet and profit and loss accounts within three months after the end of the financial year; and
- (e) any other return as may be prescribed by the Bank from time to time.

35. Fees

The prescribed fees payable by a money remittance operator in respect of various applications shall be as set out in the Fourth Schedule.

36. Financial year

The financial year for all money remittance operators shall be the period of twelve months ending on the thirty-first day of December in each year.

PART V – ANTI-MONEY LAUNDERING

37. Anti-money Laundering Measures

(1) A money remittance operator shall be required to comply with the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59B) and the relevant regulations.

(2) Subject to subregulation (1) a money remittance operator shall submit to the Bank an independent audit of its anti-money laundering policies.

PART VI – CUSTOMER PROTECTION

38. Disclosure

A money remittance operator shall disclose the following information in writing to their client—

- (a) the fees, charges or commissions, if any, and other conditions applicable to the money remittance services rendered;
- (b) that the money remittance operator is neither a deposit taking nor lending institution within the meaning of the Banking Act (Cap. 488), the Microfinance Act (No. 19 of 2006) or the SACCO Societies Act (No. 14 of 2008) and is not subject to any deposit protection; and
- (c) any customer care procedures for complaints together with the address, customer care contact number and other contact details for the money remittance operator.

39. Consumer redress

(1) A money remittance provider shall, within six months after commencing business establish a customer care system to address the complaints of clients.

(2) A money remittance provider shall provide easily understood information about the customer care system, including the customer care contact number, at its head office, outlets as well as the premises of agents.

(3) A complaint may be lodged orally or in writing, but in each case must be lodged within a period of thirty days from the date of occurrence.

(4) A money remittance provider shall acknowledge all complaints filed with them.

(5) At the time of making a complaint the complainant shall be advised of the expected actions and timing for investigating and resolving the complaint, provided that all complaints shall be resolved within sixty days of being lodged.

(6) A money remittance provider shall put in place processes to provide complainants with sufficient information and the means to inquire on the progress of complaints and such processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent inquiries by complainants.

(7) A complainant shall be advised of the outcome of the investigation of their complaint, and any resulting decision by the money remittance provider.

[Subsidiary]

(8) Where a complainant is not satisfied with a decision reached pursuant to a complaint, the money remittance provider shall give the complainant the option of pursuing an identified escalation process by which the decision may be examined by a suitably qualified person in the organization.

(9) The complaint handling process shall be provided free of charge but a money remittance provider may impose a reasonable charge for complaint handling processes where investigation of the complaint requires the retrieval of records more than three months old, and where the retrieval results in an incremental expense or significant inconvenience to the money remittance providers. Any such charges shall be identified and agreed to by the complainant.

(10) A money remittance provider shall make adequate provision to ensure that people with disabilities are able to access their complaint handling processes, including ensuring that such complainants can be easily represented by their authorised representatives in order to make a complaint. In cases where such complainants specifically request assistance in lodging complaints, money remittance providers shall be obliged to provide reasonable assistance.

PART VII – INSPECTION AND AUDIT

40. Inspection

(1) The Bank may inspect the books of accounts and other documents of a money remittance operator at any time in order to ensure compliance with these regulations and guidelines issued by the Bank.

(2) The Bank may require a money remittance operator to produce books of account or any other documents for purposes of inspection.

(3) The Bank may, by notice in writing, require a money remittance operator to provide information to it, in such manner and form as may be specified by the Bank for purposes of assessing compliance with these regulations.

(4) An authorized officer of the Bank may, at any time, enter any premises where a money remittance operator is carrying on business, or any premises where it is reasonably suspected that any business is being carried on in contravention of these regulations.

(5) After conducting an inspection, the Bank may—

- (a) require a money remittance operator to put in place remedial measures as it may consider necessary;
- (b) institute an audit;
- (c) call for an investigation;
- (d) impose a financial penalty; or
- (e) take any other action as it may consider necessary.

41. External Auditors

(1) A money remittance operator shall, at its own expense, appoint an external auditor who shall be a member of good standing of the institute of Certified Public Accountants of Kenya to carry out an audit of the transactions in its business.

(2) The Bank may require an auditor appointed under subregulation (1) to—

- (a) submit to the Bank such information as it may require in relation to the audit carried out by the auditor;
- (b) extend the scope of an audit of the business and affairs of the business and to submit a report to the Bank;
- (c) carry out any examination or establish any procedure in any particular case; and
- (d) submit a report to the Bank on any matter referred to in paragraph (a) or (b).

(3) The money remittance operator shall be responsible for the remuneration of the auditor for the services rendered.

PART VIII – MISCELLANEOUS

42. Administrative actions

The key officers of a money remittance operator shall—

- (a) ensure that the activities conducted by the money remittance operators are in full conformity with these regulations;
- (b) ensure the money remittance operator maintains, at all times, an effective system of internal controls; and
- (c) develop appropriate policies and procedures to guide all areas of its operations including accounting, human resources and information technology.

43. Penalties

(1) The Bank may levy monetary penalties—

- (a) for failure to comply with these regulations or non-compliance with any directives issued by the Bank not exceeding five hundred thousand shillings; or
- (b) on non-compliance with other directives not covered under the regulations.

(2) The following shall constitute specific violations by a money remittance operator or any other person of directives of the Bank which shall be subject to the assessment of monetary penalties—

- (a) failure by a money remittance operator to—
 - (i) submit annual audited accounts and a copy of the auditor's report in the prescribed form to the Bank, within three months after the end of its financial year;
 - (ii) furnish, at such time and in such manner as the Bank may direct, any information in an accurate and complete manner as the Bank may require to properly discharge its functions under the Act;
 - (iii) comply with the Regulations, guidelines or directions as the Bank may issue from time to time;
 - (iv) submit accurate periodic reports and returns to the Bank;
 - (v) maintain the minimum capital requirements prescribed by the Bank;
 - (vi) maintain a proper information management system to facilitate compilation and submission of information to the Bank;
 - (vii) accurately record all transactions relating to business of money remittance;
 - (viii) remit funds to customers;
 - (ix) obtain the prior written approval of the Bank to own or transfer shareholding of five percent share capital or to change directorship in a money remittance operator;
 - (x) produce books, accounts, records, documents, correspondence, statements, or other specified information without any reason;
 - (xi) comply with the requirement that prohibits tipping off a person suspected of money laundering that a disclosure has been made or otherwise prejudicing an investigation;
- (b) conducting money remittance business through a proxy or nominee;

[Subsidiary]

- (c) owning, transferring shareholding of ten percent share capital or changing directorship in a money remittance operator without obtaining the prior written approval of the Bank;
- (d) engaging a senior officer who has not been vetted, approved and registered by the Bank;
- (e) conducting business in a manner which in the view of the Bank is unsafe or unsound.

(3) The Bank may, after reviewing all available information and making a determination that a provision under subregulation (2) has been contravened—

- (a) notify the person or money remittance operator of its finding and its intention to assess monetary penalties;
- (b) grant the person or money remittance operator reasonable time to rectify the violation;
- (c) issue a person or a money remittance provider seven days notice in writing requiring the person or money remittance provider to show cause why a penalty should not be imposed.

(4) Following the notification and expiration of the timeframe in subregulation (3)(c) or sooner if advised by the money remittance operator or a person of the correction of the violation, the Bank shall instruct the money remittance operator or that person, in writing, of the penalties assessed and the manner in which such monies shall be paid to the Bank.

(5) A penalty prescribed under these regulations shall be paid to the Bank by a money remittance operator or a person as the case may be, within fourteen days from the date of service of the notice, unless otherwise stated by the Bank in writing.

(6) Where a money remittance operator is required to pay a penalty under these regulations and fails to pay a penalty within the specified time, the Bank may recover the amounts due from the security or proceeds of the security provided under regulations 7(3)(b) and 12(4)(c).

(7) Where the Bank recovers any amount due on a penalty from the security provided to the Bank, the money remittance operator shall within thirty days of being notified by the Bank, raise the security amount to the level required by the Bank.

(8) Where no payment is made or received under subregulation (5), or where the security is not raised as provided in subregulation (7), the Bank may revoke the licence of the money remittance operator.

(9) Where the penalties under subregulation (4) are payable by a person and the person fails to pay, that person shall be disqualified from holding office in a money remittance operator.

(10) Where the Bank is not satisfied either by evidence provided by a money remittance provider or a person, or by information obtained by the Bank, that the violation has been rectified as directed, the Bank may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such contravention continues.

(11) If the Bank is satisfied that the violation has been rectified, the daily additional penalty of ten thousand shillings shall cease to accrue and the Bank shall assess the aggregate penalty.

(12) Where any provision of these regulations imposes a penalty on any money remittance operator or a person and, either the penalty or part of the penalty remains unpaid, the unpaid amount of the penalty shall constitute a civil debt due from a money remittance provider or a person to the Bank.

(13) The Bank may—

- (a) in addition to the provisions of subregulation (12), institute civil proceedings against a money remittance operator or a person for the recovery of the penalty; or

- (b) direct that any part of the penalty which remains unpaid after a particular period notified to the money remittance operator, shall constitute a debt payable by the money remittance operator.

44. Suspension and revocation

(1) The Bank may suspend the licence of a money remittance operator for such period as it may specify but not exceeding ninety days if the money remittance operator fails to comply with the provisions of these regulations or any conditions attached to the licence.

(2) The Bank may revoke the licence of a money remittance operator in cases where—

- (a) without the written consent of the Bank the money remittance operator fails to conduct money remittance business within twelve months of the date of the issue of the licence;
- (b) the money remittance operator is found to have ceased to conduct the operations authorized by the licence;
- (c) a company is incapable of existing in law or of carrying on its operations or of meeting capital requirements or fulfilling any other provisions of these regulations;
- (d) the money remittance operator fails to pay the required licence fees by the stipulated date;
- (e) the beneficial owners of the money remittance operator, or the money remittance operator itself, is convicted by any court of competent jurisdiction, in Kenya or elsewhere, of an offence related to the use or laundering, in any manner, of illegal proceeds, or is an affiliate or subsidiary of a company that has been so convicted, and such conviction is not overturned on appeal;
- (f) the money remittance operator has supplied the Bank with false or misleading information as part of its application for a licence, or during the course of operation;
- (g) the money remittance operator is undercapitalized;
- (h) the money remittance operator fails to pay a penalty as directed by the Bank within fourteen days;
- (i) the money remittance operator fails to rectify violations within the specified time frame or persistently being non-compliant with these regulations;
- (j) the money remittance operator submits in writing a request for the revocation of its licence.

(3) Where the Bank intends to revoke or suspend the licence of a money remittance operator, the Bank shall immediately inform the money remittance operator of its decision in writing.

(4) Before revoking or suspending licence, the Bank shall give the money remittance operator not less than twenty one days notice in writing and may consider any representations made in writing by the money remittance operator within that period.

45. Transitional clause

(1) A person who at the commencement of these Regulations, is carrying out money remittance business shall within six months from commencement comply with the requirements of these Regulations or cease to carry out such business.

(2) A person who fails to comply with the requirements of sub-regulation (1) within the prescribed period, commits an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for term not exceeding three years, or to both as prescribed under section 33A(2) of the Central Bank of Kenya Act (Cap. 486).

Central Bank of Kenya

[Subsidiary]

(3) Where a money remittance operator is licensed under these Regulations, it shall at all times maintain a minimum core capital of not less than ten million shillings before the commencement of operations and increase the core capital to twenty million shillings by the thirty-first day of December, 2014.

(4) A foreign exchange bureau intending to engage in money remittance business shall—

- (a) make an application to the Bank for change of name;
- (b) meet all the licensing requirements under these Regulations; and
- (c) surrender the licence for foreign exchange bureau business.

FIRST SCHEDULE

[Regulation 5.]

APPLICATION FOR OR RENEWAL OF LICENCE
TO TRANSACT MONEY REMITTANCE BUSINESS

FORM/CBK/MRB/1

The application shall be addressed to the Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000-00200 Nairobi,

Application (Tick as appropriate):

<i>Grant of new Licence</i>	<input type="checkbox"/>	<i>Renewal of Licence</i>	<input type="checkbox"/>	<i>Year</i>	<input type="checkbox"/>
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Please use Block (Capitals) Letters

1. Name of Money Remittance Operator
2. Physical and postal address of head office/proposed new outlet:
 - (a) City/Town
 - (b) L.R. No.
 - (c) Street
 - (d) Building
 - (e) P.O Box No.
 - (f) Telephone Numbers
 - (g) E-mail Address
3. Date of incorporation
4. Certificate of incorporation No.
5. Number and date of issue of previous licence

FIRST SCHEDULE—continued

6. Details of existing outlets:

	<i>Name of Outlet</i>	<i>County</i>	<i>City/Town</i>	<i>Street</i>	<i>Building</i>	<i>Date Opened</i>
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

7. Particulars of shareholders:

	<i>Name</i>	<i>Nationality</i>	<i>Date of acquisition</i>	<i>Amount of shareholding</i>	<i>% of shareholding</i>
1.					
2.					
3.					
4.					
5.					
6.					
7.					

8. Particulars of directors:

	<i>Name</i>	<i>Nationality</i>	<i>Date of Appointment</i>	<i>Level of Education</i>
1.				
2.				
3.				
4.				
5.				
6.				
7.				

9. Particulars of the officers in the order of seniority:

	<i>Name</i>	<i>Designation</i>	<i>Nationality</i>	<i>Date of Appointment</i>
1.				
2.				
3.				

Central Bank of Kenya

[Subsidiary]

FIRST SCHEDULE—continued

4.				
5.				
6.				
7.				

10. Declaration (by Director/Secretary):

I, the undersigned, hereby declare—

- (a) THAT the particulars set out herein are true and correct to the best of my knowledge and belief;
- (b) THAT if licensed, I shall transact money remittance business in accordance with the provisions of the Central Bank of Kenya Act (CAP 491) and of any regulations, guidelines or directive as may from time to time be issued by the Central Bank of Kenya.

Name

Signature

Date

SECOND SCHEDULE

[Regulations 5(f) and 17(a).]

SHAREHOLDERS' DIRECTORS' AND SENIOR OFFICERS' FIT & PROPER FORM

Criteria for determining professional and moral suitability of persons in control of a money remittance business licensed under the Central Bank of Kenya Act (Cap. 491).

NB:

- (a) Read the declaration on section 6 below before completing this form.
- (b) In case the space provided is inadequate, use additional paper.

1. NAME OF MONEY REMITTANCE OPERATOR
2. PERSONAL INFORMATION
 - (a) Surname:
Other names:
 - (b) Proposed position:
 - (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) E-mail address:
 - (m) Telephone number:
 - (a) Office
 - (b) Mobile

SECOND SCHEDULE—continued

- (n) Educational qualifications:
- (o) Professional qualifications and years obtained:
- (p) Name(s) of your bankers during the last 5 years:

3. EMPLOYMENT/BUSINESS RECORD

<i>Period</i>	<i>Name of Employer/Business and address</i>	<i>Positions held and dates</i>	<i>Responsibilities</i>	<i>Reasons for leaving (where applicable)</i>

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

4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

<i>Company's Name</i>	<i>Date of incorporation</i>	<i>Amount of shareholding</i>	<i>% of shareholding</i>	<i>Past shareholding</i>		<i>Remarks</i>
				<i>A</i>	<i>B</i>	

A: Refers to date of sell, transfer, closure or surrender of shares

B: Refers to reasons for sell, transfer, closure or surrender

4.2 DIRECTORSHIP

<i>Company's Name</i>	<i>Date of appointment</i>	<i>Executive or Non-Executive</i>	<i>Position held in case of Executive</i>	<i>Past Directorships</i>		<i>Remarks</i>
				<i>C</i>	<i>D</i>	

[Subsidiary]

SECOND SCHEDULE—continued

C: Refers to date of retirement, resignation or dismissal

D: Refers to reasons for retirement, resignation or dismissal

4.3 PROFESSIONAL BODIES

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

E: Refers to date of retirement, resignation or dismissal

F: Refers to reasons for retirement, resignation or dismissal

4.4 SOCIAL CLUBS

Name of club	Membership No.	Position held (if any)	Past club membership		Remarks
			G	H	

G: Refers to date of retirement, resignation or dismissal

H: Refers to reasons for retirement, resignation or dismissal

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

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

SECOND SCHEDULE—*continued*

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 licence 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 ten years? 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.

.....

.....

[Subsidiary]

SECOND SCHEDULE—*continued*

5.11 Indicate the names, addresses, telephone numbers, emails, and positions of three persons 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 three years

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? The omission of material facts may represent the provision of misleading information.

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

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.

I am also aware that omitting material information intentionally or un-intentionally 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 Position Held

Dated at this day of

WITNESSED BEFORE ME:

Signed (Applicant)

Commissioner for Oaths/Magistrate

Name:

Signature:

Address:

THIRD SCHEDULE

[Regulation 26(2).]

CENTRAL BANK OF KENYA ACT

**APPLICATION TO OPEN HEAD OFFICE PREMISES OR AN OUTLET
FORM/CBK/MRB/4**

1. Name of the Money remittance operator
2. Names/locations of proposed/existing premises and dates of establishment
3. Proposed name of Head Office or outlet
4. (a) Name of the proposed location of Head-office or outlet
- (b) Postal address and telephone number(s)
- (c) Physical address: - L.R. NO. Building Street
- Town

5. (a) Officers of the proposed Head-office or outlet
- (b) Number and designation of non-management staff

6. Business hours

7. Is the new place of business:

(a) Self-owned? Yes/No*

If yes, cost of purchase or construction

(b) Leased?

Yes/No* If yes, terms of lease

8. Proposed date of commencing operations

9. Attach the following documents:

(a) A title deed or a signed lease agreement whichever is applicable, of the premises;

(b) Approvals by Relevant Authorities;

(c) An installation certificate and agreement from the security firm regarding physical security of premises;

(d) Adequate covers for the following policies from licensed insurance companies covering; Fire and other perils, Burglary and theft, Public liability, Fidelity, Workmen's compensation, Cash and valuables in transit, Cash and valuables in premises, Motor vehicles in premises, Other assets (e.g. computer), Employers' liability.

10. Declaration (by Director/Secretary):

I, the undersigned, hereby declare:

(a) THAT the particulars set out herein are true and correct to the best of my knowledge and belief;

(b) THAT if licensed, I shall transact money remittance business in accordance with the provisions of the Central Bank of Kenya Act and any regulations, guidelines or directive as may from time to time be issued by the Central Bank of Kenya.

[Subsidiary]

Name

Signature

Date

FOURTH SCHEDULE

[Rule 35.]

PRESCRIBED FEES

1. The following are the prescribed fees for the various licences as outlined in the table.

Type	Fees (KSh.)
1. Annual licence fee per outlet	100,000
2. Application fee for a new licence	20,000
3. Application fee for a new outlet	10,000
4. Application fee for an agent	1,000
5. Annual renewal fee for an agent	1,000

2. Any fee payable under paragraph (1) shall be paid by bankers cheque payable to the Bank or by any other means prescribed by the Bank.

3. The prescribed fees in paragraph (1) may be reviewed by the Bank from time to time.

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

ARRANGEMENT OF REGULATIONS

PART I — PRELIMINARY PROVISIONS

Regulation

1. Citation.
2. Interpretation.

PART II – MORTGAGE REFINANCE BUSINESS

3. Authorized activities.

PART III – LICENSING

4. Application for a licence.
5. Issuance of a licence.
6. Licence not transferable.
7. Suspension or revocation of licence.
8. Amalgamations and transfer of assets and liabilities.

PART IV – GOVERNANCE

9. Corporate governance.
10. Board and committees.
11. Membership of committees.
12. Responsibilities of the board.
13. Audit committee.
14. Credit committee.
15. Assets and liabilities committee.
16. Conduct of business.
17. Monitoring and evaluation.
18. Fit and proper obligations.
19. Chief executive officer.
20. Responsibilities of the chief executive officer.
21. Shareholding limit.
22. Shareholder rules.
23. Records.
24. Confidentiality.
25. Reckless and fraudulent activities.
26. Places of business.
27. Use of agents.

PART V – LOANS

28. Credit extensions.
29. Qualified collateral.

PART VI – RISK CLASSIFICATION AND PROVISIONING OF LOANS

30. Loan review function of a mortgage refinance company.
31. Review of assets and reporting.
32. Review and classification of loans.
33. Loan provisioning.
34. Classification of renegotiated or restructured loans.
35. Limit on interest recoverable from non-performing loans.
36. Write-off of loans.

[Subsidiary]

PART VII — CAPITAL REQUIREMENTS AND LIQUIDITY MANAGEMENT

- 37. Capital adequacy.
- 38. Liquidity management.
- 39. Liquidity risk management plan.
- 40. Risk management.
- 41. Market risk.
- 42. Group structure.
- 43. Prohibited activities.

PART IX — INTERNAL CONTROLS

- 44. Internal controls.
- 45. Internal audit.
- 46. Audit plan.

PART VIII — REPORTING REQUIREMENTS

- 47. Examinations.
- 48. Reporting requirements, on-site and off-site monitoring.
- 49. Financial year.
- 50. Appointment of external auditor.
- 51. Form of accounts.
- 52. Accounts to be exhibited.
- 53. Uniform underwriting standards.
- 54. Information sharing.
- 55. Powers of the Bank to issue directions.
- 56. Power to intervene in management.
- 57. Sanctions.
- 58. Voluntary liquidation.

SCHEDULES

FIRST SCHEDULE —	CAPITAL REQUIREMENTS FOR MORTGAGE REFINANCE COMPANIES
SECOND SCHEDULE —	CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY
THIRD SCHEDULE —	FORMS
FOURTH SCHEDULE —	FEES
FIFTH SCHEDULE —	CONDUCT OF BUSINESS AND AFFAIRS OF A BOARD AND BOARD COMMITTEES

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

[L.N. 134/2019.]

PART I – PRELIMINARY

1. Citation

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

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” means the Central Bank of Kenya Act (Cap. 488);

“**assets and liabilities committee**” means an assets and liabilities management committee of the board of a mortgage refinance company;

“**associate**” means —

- (a) in relation to a company or other body corporate —
 - (i) its holding company or its subsidiary;
 - (ii) a subsidiary of its holding company;
 - (iii) a holding company of its subsidiary;
 - (iv) its non-operating holding company as its subsidiary;
 - (v) a subsidiary of a non-operating holding company;
 - (vi) a significant shareholder to that company; and
 - (vii) any person who controls the company or body corporate whether alone or with his associates or with its associates;
- (b) in relation to an individual —
 - (i) any member of his family:

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

- (ii) any company or other body corporate controlled directly or indirectly by the individual whether alone or with his associates;

“**Bank**” means the Central Bank of Kenya;

“**board**” means the board of a mortgage refinance company;

“**capital**” means paid-up share capital;

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

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

“**capital markets**” means that part of the financial system concerned with raising funds for investment by dealing in shares, bonds, and other long-term investments;

“**chief executive officer**” means the chief executive officer of a mortgage refinance company;

“**control**” includes —

[Subsidiary]

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

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

“eligible mortgage” means a mortgage that meets the criteria under the eligibility standards as may be set by a mortgage refinance company and approved by the Central Bank;

“leverage” means the use of debt to finance operations;

“long term financing” means a loan with a maturity of more than one year;

“mortgage” means a loan to purchase a residential house;

“mortgage refinance company” means a non-deposit taking company established under the Companies Act, 2015 (No. 17 of 2015) and licensed by the Bank to conduct mortgage refinance business;

“multi-lateral development banks” include —

- (a) the International Bank for Reconstruction and Development;
- (b) the Inter-American Development Bank;
- (c) the Asian Development Bank;
- (d) the African Development Bank;
- (e) the European Investment Bank; and
- (f) Other multi-lateral development banks in which G10 countries (Belgium, Netherlands, Canada, Sweden, France, Switzerland, Germany, United Kingdom, Italy, United States and Japan) are shareholding members;

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

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

“significant shareholder” means a person, other than the government or a public entity who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a mortgage refinance company;

“senior officer” means a person who manages or controls an entity, and includes —

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

“subordinated debt” includes issued and paid-in unsecured subordinated debt instruments (debt equity, lines of credit, bonds, commercial paper or loan capital) having an original maturity of at least five years and —

- (a) principal should be repayable after at least five years;

- (b) during the last five years to maturity, a cumulative discount (amortization) factor of twenty per cent per annum will be applied to reflect the diminishing value of these instruments as a continuing source of strength;
- (c) the amount included for capital adequacy calculations is limited to fifty per cent of core capital;

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

“total capital” means the total sum of core capital and supplementary capital.

PART II – MORTGAGE REFINANCE BUSINESS

3. Authorized activities

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

- (a) refinancing or purchasing of eligible mortgage loans;
- (b) investment in debt securities issued by the Government of Kenya or any guaranteed debt;
- (c) providing fully secured long term financing to primary mortgage lenders for financing of eligible mortgages;
- (d) issuing bonds, notes and other financial instruments for purposes of meeting its objectives; and
- (e) other activities as may be determined by the Bank from time to time.

(2) Any person who contravenes the provisions of this regulation commits an offence and is liable, on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

PART III – LICENSING

4. Application for a licence

(1) A mortgage refinance company shall not apply for a licence to conduct mortgage refinance business, unless the company—

- (a) is a company incorporated under the Companies Act, 2015 (No. 17 of 2015);
- (b) meets the capital adequacy requirements set out in the First Schedule; and
- (c) ensure that its significant shareholders, directors and senior officers meet the fit and proper criteria set out in the Second Schedule.

(2) An application for a licence under sub-regulation (1) shall be made in the Form CBK MRC 1-1 set out in the Third Schedule and accompanied by —

- (a) a duly completed "fit and proper" form for proposed significant shareholders, directors, chief executive officer and other senior officers in form CBK MRC 1-2 set out in the Third Schedule;
- (b) names and addresses of the shareholders of the company in form CBK MRC 1-3 set out in the Third Schedule;
- (c) proof of payment of the application fee set out in the Fourth Schedule;
- (d) a certified copy of the certificate of incorporation of the mortgage refinance company from the Registrar of Companies; and
- (e) a certified copy of the Memorandum and Articles of Association of the mortgage refinance company.

(3) An applicant under this regulation shall submit the following additional information—

[Subsidiary]

- (a) a certified copy of the Memorandum and Articles of Association of any corporate body that proposes to have a significant shareholding in the mortgage refinance company;
- (b) a certified copy of the constitutive documents of an unincorporated person that proposes to have a significant shareholding in the mortgage refinance company;
- (c) a description of the accounting system and the information and communication technology to be used in the operations of the mortgage refinance company;
- (d) the organization chart, number of employees, positions and job descriptions of senior officers;
- (e) description of internal control procedures that the mortgage refinance company shall implement;
- (f) description of shareholders, board and senior officers and strategy for the successful operation of the applicant;
- (g) description of any intended products and services which the proposed mortgage refinance company intends to provide and how such products and services shall benefit the country;
- (h) the master servicing and refinancing agreement governing the lending operations between the mortgage refinance company and the participating primary mortgage lenders;
- (i) the shareholders or investment agreement (where applicable) governing the relationships between shareholders and ensuring that ownership is accessible for primary mortgage lenders meeting the requirements and standards specified by the Bank, in the agreement or in the mortgage refinance company's Memorandum and Articles of Association;
- (j) the investment policy, credit policy, asset liability management, liquidity management, financial management, code of ethics and business conduct;
- (k) a sworn declaration signed by every officer as specified in the application form;
- (l) a business plan of the intended business with financial projections of at least three years; and
- (m) the financial statements for the last three years, where applicable.

5. Issuance of a licence

(1) The Bank may, if satisfied that the applicant meets the requirements under these Regulations, grant a licence to the applicant, within ninety days of the application.

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

- (a) the financial condition and history of the applicant;
- (b) adequacy of the business strategy of the applicant;
- (c) the professional and moral suitability of the persons proposed to manage or control the proposed mortgage refinance company;
- (d) the adequacy of its capital structure and earning prospects; and
- (e) the public interest which shall be served by the granting of the licence.

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

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

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

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

6. Licence not transferable

A licence granted under these Regulations shall not be transferred, assigned or encumbered in any way.

7. Suspension or revocation of licence

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

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

(2) A suspension of a licence under this regulation shall not exceed a period of three months:

Provided that the Bank may, if it considers necessary extend the suspension for a period not exceeding three months.

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

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

(5) Where a licence has been revoked, the Bank may, by notice in writing —

- (a) require the licensee to transfer to its customer, records relating to customer property or the affairs of the customer held at any time for the customer, in such manner, as the Bank may specify in the notice; or
- (b) permit the licensee, subject to such conditions as the Bank may specify in the notice, to carry on business operations for the purpose of closing down the business connected with the revocation.

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

8. Amalgamations and transfer of assets and liabilities

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

PART IV – GOVERNANCE

9. Corporate governance

A licensee shall comply with the corporate governance requirements issued by the Bank:

Provided that where the licensee issues securities to the public, the applicable corporate governance requirements for issuers of securities to the public shall also apply.

10. Board and committees

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

(2) Every board shall constitute at least an audit committee, a credit committee, an assets and liabilities committee and such other committees as shall be necessary for the proper performance of its business.

[Subsidiary]**11. Membership of committees**

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

(2) The chief executive officer of a mortgage refinance company shall not be a member of the audit committee, while the chairperson of the board shall not be a member of the credit and audit committees, but may attend by invitation for consultation only.

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

12. Responsibilities of the board

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

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

- (a) providing oversight of senior management;
- (b) formulating a board charter that outlines, among other things —
 - (i) the demarcation of the functions, responsibilities and powers of the board, various board committees and matters reserved for final decision-making or pre-approval by the board;
 - (ii) the policies and practices of the board in respect of conflicts of interest and convening of board meetings;
 - (iii) declaration of interests that may give rise to a potential or perceived conflict or interfere with exercise of objective judgment;
 - (iv) the policy on directorships in other entities by board members;
- (c) constitute an organizational structure that facilitates effective decision making and good governance;
- (d) define the duties of management and appoint competent, qualified and experienced persons to administer the mortgage refinance company;
- (e) regularly review policies, processes and controls with senior management or internal control functions (including internal audit, risk management and compliance) to determine areas needing improvement and address significant risks and issues;
- (f) communicating the corporate values, professional standards or codes of conduct.

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

13. Audit committee

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

- (a) ensuring that financial and operational information is prepared in a timely and accurate manner;
- (b) improving the quality of financial record keeping and reporting;
- (c) strengthening the effectiveness of internal and external audit functions;
- (d) strengthening the internal control environment and risk management;
- (e) enhancing public confidence in the credibility and stability of the mortgage refinance company;

- (f) monitoring incidences of non-compliance with the Act or any other relevant legislations and advising the board on the best solutions; and
- (g) monitoring the ethical conduct of the mortgage refinance company and developing the code of conduct and ethical standards and requirements, including effectiveness of procedures for handling and reporting complaints.

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

(3) The external auditor may, upon request, 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 the external auditor deems necessary to be brought to the attention of directors or shareholders.

14. Credit committee

Every credit committee shall —

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

15. Assets committee

(1) Every mortgage refinance company shall establish a management committee to be known as the assets committee.

(2) The assets and liabilities committee shall drive the strategy for the mortgage refinance company regarding 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 assets and liabilities committee shall include —

- (a) reviewing and assessing the integrity of the internal and risk control systems;
- (b) ensuring that the risk policies and strategies are effectively managed;
- (c) setting out the nature, role, responsibility and authority of the risk management function of the mortgage refinance company;
- (d) providing an independent and objective oversight and review of the information raised by management at different levels;
- (e) monitoring the limits on loans to capital ratios;
- (f) monitoring the limits on maximum and minimum maturities for all categories of assets and liabilities as set by the board;

[Subsidiary]

- (g) monitoring limits on the sensitivity of the net interest margin on changes in market interest rates as set by the board;
- (h) monitoring the maximum percentage imbalance between rates and sensitive assets and liabilities as set by the board;
- (i) monitoring the limits on minimum spread acceptable between costs and yields of liabilities and assets as set by the board;
- (j) monitoring the limits on minimum liquidity provision to be maintained to sustain operations while longer term adjustments are set by the board;
- (k) monitoring the sources of funding;
- (l) monitoring the company's policies, procedures and holding portfolio to ensure that it achieves its goals; and
- (m) generally, to implement the funds management policy of the mortgage refinance company.

(4) To perform its duties effectively, the assets and liabilities committee may access or obtain such professional advice as it may consider necessary to perform its functions.

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

16. Conduct of business

The conduct of the business and affairs of a board shall be as set out in the Fifth Schedule.

17. Monitoring and evaluation

(1) The Board shall evaluate its performance and that of the management by developing and submitting to the Bank —

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

(2) A mortgage refinance company that contravenes sub-regulation (1) shall be liable to any of the sanctions provided for under in regulation 57.

18. Fit and proper obligations

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

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

(3) Where the Bank determines that a significant shareholder does not fulfil the fit and proper criteria, the shareholder shall —

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

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

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

19. Chief executive officer

(1) Every mortgage refinance company shall have a chief executive officer who shall be appointed by the board, with the approval of the Bank, on such terms and conditions of service as shall be provided in the instrument of appointment.

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

(3) A person shall not be appointed as a chief executive officer of a mortgage refinance company unless that 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) Where the chief executive officer resigns or is removed from office, the Board shall report to the Bank within seven days of such resignation or removal.

20. Responsibilities of the chief executive officer

The chief executive officer shall undertake the following key responsibilities —

- (a) implement the policies developed by the board;
- (b) identify and recommend to the board competent officers to manage the operations of the institution;
- (c) co-ordinate the operations of the various departments within the institution;
- (d) establish and maintain efficient and adequate internal control systems;
- (e) design and implement the necessary management information systems to facilitate efficient and effective communication within the institution; and
- (f) frequently apprise the board on the operations of the institution including —
 - (i) the actual performance compared with the past performance and the budget together with explanations of all the variances;
 - (ii) the capital structure and adequacy;
 - (iii) the performance of advances including problem loans, losses, recoveries and provisions;
 - (iv) the income and expenses;
 - (v) the sources of funding and distribution profile;
 - (vi) all insider transactions that benefit directly or indirectly any officer or shareholder of the institution;
 - (vii) any violation of laws and remedial activities undertaken to ensure compliance with the banking laws and Bank guidelines;
 - (viii) large exposures;
 - (ix) non-performing insider loans;
 - (x) reports on the activities of the committees of the board;
 - (xi) reports from the Bank, external and internal audit reports;
 - (xii) any other area relevant to the institution's operations;
- (g) ensure that the institution complies with all the relevant banking and other applicable laws in the execution of its operations; and
- (h) any other duties as may be assigned by the board from time to time.

21. Shareholding limit

(1) A shareholder of a mortgage refinance company shall not, whether directly or indirectly, hold more than twenty-five per centum of the shares of the mortgage refinance company unless it is a public entity or a multilateral development bank.

(2) The Bank may exempt any other person from the provisions of this regulation on such condition and requirements as may be specified by the Bank.

[Subsidiary]**22. Shareholder rules**

(1) The shareholders of a mortgage refinance company shall set binding rules relating to —

- (a) terms and conditions under which eligible mortgages may be refinanced;
- (b) eligibility of mortgages for refinancing;
- (c) fair and equitable access by all shareholders to services of a mortgage refinance company; and
- (d) the exceptional circumstances under which a certain category of primary mortgage lenders may access fully secured long term financing from a mortgage refinance company.

(2) In financing or refinancing a mortgage, a mortgage refinance company shall act equitably, fairly and consider the interests of all its shareholders.

23. Records

(1) A mortgage refinance company shall maintain accurate and complete accounting records and reports.

(2) The records and reports of a mortgage refinance company shall be retained for a period of seven years.

(3) An officer, employee or agent of a mortgage refinance company shall not make entries, or allow entries to be made, on any account, record or document of the mortgage refinance company that are false or mislead the true authorization limits or approval authority of such transactions.

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

24. Confidentiality

A director, chief executive officer, senior officer, employee or agent of a mortgage refinance company shall—

- (a) protect the confidentiality of customer information and transactions;
- (b) not divulge or use any secrets, copyright material, or any correspondence, accounts of the mortgage refinance company or its customers, during, upon or after termination of their engagement or employment, except in the proper course of duty or with the written consent of the company; and
- (c) not use information so obtained for financial gain.

25. Reckless and fraudulent activities

(1) A mortgage refinance company shall not —

- (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 that is detrimental to the interest of the company, its customers or the general public.

(2) In this regulation —

“reckless” means —

- (a) transacting the business beyond the limits set under the Act;
- (b) offering facilities contrary to any guidelines or regulations issued by the Central Bank;

- (c) failing to observe the mortgage refinance company's policies as approved by the board of directors; or
- (d) misuse of position or facilities of the mortgage refinance company for personal gain;

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

26. Places of business

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

(2) The Bank may provide in guidelines other forms and the manner in which a place of business may be opened, relocated or closed.

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

27. Use of agents

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

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

PART V – LOANS

28. Credit extensions

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

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

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

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

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

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

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

(6) A refinanced mortgage to a director, chief executive officer or senior officer of a primary mortgage lender shall be on terms similar to those offered to ordinary customers of the primary mortgage lender.

[Subsidiary]

29. Qualified collateral

- (1) A mortgage refinance company loan shall be fully secured by qualified collateral.
- (2) A loan shall be deemed to be fully secured if —
 - (a) in the case of eligible mortgage, the qualified collateral covers at least one hundred and twenty per centum of that loan amount;
 - (b) it is secured by cash or government securities of equal amount; and
 - (c) any other qualified collateral as may be approved by the Bank.
- (3) The qualified collateral shall be limited to the following assets —
 - (a) assignment of receivables;
 - (b) lien or assignment of a portfolio of first ranking charges or mortgages over owner-occupied properties which are fully insured and not in arrears;
 - (c) securities issued, insured or guaranteed by the Government of Kenya;
 - (d) cash deposits; or
 - (e) any other qualified collateral as may be determined by the Bank from time to time.
- (4) The mortgage refinance company shall —
 - (a) assess the book value of the qualified collateral securing the outstanding loans at least every six months;
 - (b) require primary mortgage lenders to provide additional qualified collateral to compensate for any diminution in the market value or book value of the pledged collateral securing their outstanding loans;
 - (c) require primary mortgage lenders to substitute qualified collateral if any security or residential mortgage securing an outstanding loan matures, redeemed, defaults, or becomes more than ninety days delinquent;
 - (d) require the primary mortgage lenders to provide such additional information as it may reasonably require; and
 - (e) carry out such site inspection as may be necessary or reasonable to verify the information provided by the primary mortgage lender.
- (5) The outstanding loans to a mortgage refinance company shall become due and payable if the primary mortgage lender is unable to provide sufficient qualified collateral to support its outstanding loans.

PART VI – RISK CLASSIFICATION AND PROVISIONING OF LOANS**30. Loan review function of a mortgage refinance company**

- (1) Every mortgage refinance company's loan review function shall ensure that —
 - (a) the loan portfolio and lending function conforms to a sound written lending policy, which has been approved and adopted by the board;
 - (b) management and the board are adequately informed regarding credit risk, among other risks and risk management control effectiveness;
 - (c) problem accounts are identified properly and on a timely basis and internally classified in accordance with the classification criteria in these Regulations; and
 - (d) appropriate and adequate level of provisions for potential loss are made and maintained at all times.
- (2) A mortgage refinance company that contravenes sub-regulation (1) shall be liable to any of the sanctions provided for under in regulation 57.

31. Review of assets and reporting

- (1) Every mortgage refinance company shall, at least once every year, review its assets and make necessary provisions as the need arises, if an actual loss of an asset occurs or

when the recoverable amount of the asset is less than its carrying value.

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

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

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

(5) A mortgage refinance company that contravenes this regulation is liable to any of the sanctions provided for under in regulation 57.

32. Review and classification of loans

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

(2) Every mortgage refinance company shall classify loans and advances in the manner provided for by guidelines issued by the Bank.

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

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

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

(5) A mortgage refinance company that contravenes this regulation is liable to any of the sanctions provided under regulation 57.

33. Loan provisioning

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

- (a) for loans classified "Normal", one *per centum*;
- (b) for loans classified "Watch", five *per centum*;
- (c) for loans classified "Substandard", twenty five *per centum*;
- (d) for loans classified "Doubtful", seventy five *per centum*; and
- (e) for loans classified "Loss", one hundred *per centum*.

(2) Where the impairment charges computed under International Financial Reporting Standards 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 International Financial Reporting Standards are higher than provisions required under these Regulations, the International Financial Reporting Standards impairment charges shall be considered adequate for the purposes of these Regulations.

(4) A mortgage refinance company that contravenes this regulation is liable to any of the sanctions provided for under in regulation 57.

34. Classification of renegotiated or restructured loans

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

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

[Subsidiary]

- (b) all past due interest is repaid in full at the time of renegotiation in which case it may revert to 'Watch' classification.

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

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

(3) A mortgage refinance company shall not 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 any of the sanctions provided for under regulation 57.

35. Limit on interest recoverable from non-performing loans

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

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

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

(3) If a debtor resumes payments on a non-performing loan and then the loan becomes non-performing again, the limitation under sub-regulation (2) (a) and (b) shall be determined with respect to the time the loan last became non-performing.

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

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

(6) A loan becomes non-performing when principal or interest is due and unpaid for ninety days or more; or interest payments for ninety days or more have been re-financed, or rolled-over into a new loan.

(7) In this regulation—

“debtor” includes a person who becomes indebted to a mortgage refinance company because of a guarantee made with respect to the repayment of an amount owed by another person; and

“loan” includes any advance, credit facility, financial guarantee or any other liability incurred on behalf of any person.

36. Write-off of loans

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

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

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

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

PART VII – CAPITAL REQUIREMENTS AND LIQUIDITY MANAGEMENT

37. Capital adequacy

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

(2) A mortgage refinance company shall maintain such leverage ratio as may be specified by the Bank by notice in the *Gazette*.

(3) No mortgage refinance company shall treat any subordinated debt as supplementary capital except with the prior written approval of the Bank.

(4) No mortgage refinance company shall raise any capital from the capital markets without the prior written approval of the Bank.

38. Liquidity management

(1) A mortgage refinance company shall—

- (a) adopt sound and prudent liquidity management and funding policies; and
- (b) maintain sufficient liquid assets for meeting its maturing obligations and liabilities.

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

- (a) notes and coins which are legal tender in Kenya;
- (b) balances held at the Bank;
- (c) balances at other banks in Kenya after deducting therefrom balances owed to those other banks;
- (d) balances at banks abroad withdrawable on demand or short notice and money at call abroad after deducting therefrom balances owed to banks abroad where the balances and money at call and short notice are denominated in convertible currencies;

Provided that for the purposes of this paragraph "bank abroad" means a bank outside Kenya or an office of any bank outside Kenya;

- (e) Kenya treasury bills and bonds of a maturity not exceeding ninety-one days which are freely marketable and re-discountable at the Bank; and
- (f) such other assets as the Bank may specify.

39. Liquidity risk management plan

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

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

- (a) management structures and information systems;
- (b) measuring and monitoring net funding requirements;
- (c) contingency planning schemes; and

[Subsidiary]

- (d) internal controls for liquidity management.

(3) A mortgage refinance company that fails to comply with this Regulation shall be liable to any of the sanctions provided for under regulation 57.

40. Risk Management

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

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

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

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

41. Market risk

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

42. Group structure

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

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

43. Prohibited activities

A mortgage refinance company shall not—

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

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

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

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

- (d) purchase non-performing loans or mortgages.

PART IX — INTERNAL CONTROLS

44. Internal controls

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

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

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

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

(4) A mortgage refinance company that contravenes this regulation is liable to any of the sanctions provided for under regulation 57.

45. Internal audit

(1) Every mortgage refinance company shall—

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

(2) Every internal audit charter shall include—

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

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

(4) 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.

(5) A mortgage refinance company that contravenes this regulation commits is liable to any of the sanctions provided for under regulation 57.

[Subsidiary]**46. 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 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 audit committee at least on a quarterly basis and permanent coordination shall be maintained with all functional officers.

PART IX —REPORTING REQUIREMENTS**47. Examinations**

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

48. Reporting requirements, on-site and off-site monitoring

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

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

(2) The reports under sub-regulation (1) shall be submitted no later than thirty days after the end of each reporting period in the case of paragraph (a) and (b) and three months in the case of paragraph (c).

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

(4) Any person who contravenes the provisions of this regulation commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

49. Financial year

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

50. Appointment of external auditor

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

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

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

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

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

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

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

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

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

shall immediately report the matter to the Bank.

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

51. Form of accounts

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

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

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

52. Accounts to be exhibited

(1) Every mortgage refinance company shall—

- (a) exhibit throughout the year in a conspicuous position in every office and branch in Kenya a copy of its last audited financial statements which shall be in conformity with the minimum financial disclosure requirements prescribed from time to time by the Bank together with the full and correct names of all persons who are officers of the mortgage refinance company in Kenya; and
- (b) within three months of the end of each financial year, cause a copy of the balance sheet and last audited income statements for that financial year to be published in a newspaper with wide circulation.

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

53. Uniform underwriting standards

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

[Subsidiary]**54. Information sharing**

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

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

55. Powers of the Bank to issue directions

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

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

the Bank may—

- (i) give advice and make recommendations to the mortgage refinance company with regard to the conduct of its business generally;
- (ii) issue directions regarding measures to be taken to improve the management or business methods of the mortgage refinance company or to secure or improve compliance with the requirements of the Act, the Regulations or guidelines issued or any other written law or regulations;
- (iii) in any case to which paragraph (b) applies, issue directions to the institution, officer or other person to cease such practice;
- (iv) appoint a person, suitably qualified and competent in the opinion of the Bank, to advise and assist the mortgage refinance company generally or for the purposes of implementing any directions under subparagraphs (ii) and (iii) and the advice of a person so appointed shall have the same force and effect as a direction made under subparagraphs (ii) and (iii) and shall be deemed to be a direction of the Bank.

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

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

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

- (a) the standards to be adhered to by a mortgage refinance company in the conduct of its business; and
- (b) guidelines to be adhered to by mortgage refinance companies in order to maintain a stable and efficient banking and financial system.

56. Power to intervene in management

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

- (a) if the mortgage refinance company fails to meet any financial obligation, when it falls due including an obligation to pay any creditor;
- (b) if a petition is filed, or a resolution proposed, for the winding up of the mortgage refinance company or if any receiver or receiver and manager or similar officer is appointed in respect of the mortgage refinance company or in respect of all or any part of its assets;
- (c) if the auditor of a mortgage refinance company makes a report to the Bank that a mortgage refinance company has violated the law in a serious manner or conducts its business in a detrimental way;
- (d) if the Bank discovers (whether on an inspection or otherwise) or becomes aware of any fact or circumstance which, in the opinion of the Central Bank, warrants the exercise of the relevant power in the interests of the mortgage refinance company or its creditors;
- (e) if the mortgage refinance company is significantly undercapitalized; or
- (f) if the mortgage refinance company fails—
 - (i) to submit a capital restoration plan or a plan to resolve all deficiencies as directed by the Bank; or
 - (ii) to add more capital, and it fails, neglects or refuses to comply, with an order to implement a plan of correction.

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

57. Sanctions

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

- (a) monetary penalty on a mortgage refinance company, its directors, officers or employees responsible for noncompliance in such amounts not exceeding the amounts provided for under section 57(2) of the Act;
- (b) prohibition from declaring or paying dividends;
- (c) suspension of lending and investment operations;
- (d) suspension of capital expenditure;
- (e) suspension of issuance of debt instruments;
- (f) suspension from office of the defaulting director, officer or employee;
- (g) disqualification from holding any position or office in any licensed or financial institution in Kenya;
- (h) undertake more frequent inspections of that mortgage refinance company;
- (i) order the mortgage refinance company to submit to the Bank, within forty-five days, a capital restoration plan to restore the mortgage refinance company to the capital adequacy or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Bank;
- (j) at the expense of the mortgage refinance company, appoint a person suitably qualified and competent, in the opinion of the Bank, to advise and assist the mortgage refinance company in designing and implementing a capital restoration plan or other corrective action plan under paragraph (i), and the person appointed shall regularly report to the Bank on the progress of the plan;

[Subsidiary]

- (k) impose restrictions on growth of assets of the mortgage refinance company;
- (l) revocation of the licence; and
- (m) any other action as the Bank may consider appropriate.

58. Voluntary liquidation

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

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

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

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

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

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

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

FIRST SCHEDULE

[Regs. 4(1)(b) & 36.]

CAPITAL REQUIREMENTS FOR MORTGAGE REFINANCE COMPANIES

1. A core capital of not less than One billion Shillings.
2. A core capital of not less than 10.5 *per centum* of total risk weighted assets plus risk weighted assets and off-balance sheet items.
3. A total capital of not less than 14.5 *per centum* of its total risk weighted assets plus risk weighted assets and off-balance sheet items.
4. The computation of risk weighted assets and off-balance sheet items shall be computed as may be determined by the Bank from time to time.

SECOND SCHEDULE

[Regs. 4(1)(c) & 18(1).]

PART A —CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY OF DIRECTORS AND SENIOR OFFICERS

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

- (a) possession of relevant qualification, knowledge, skills and experience;
- (b) ability to recommend sound practices based on previous business experience;
- (c) ability to provide objective advice;

- (d) ability to avoid conflicts of interest in activities and commitments with other organizations;

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

- (a) has been convicted of an offence of fraud or any other offence of which dishonesty is an element;
- (b) 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;
- (c) was a director or a senior officer of an institution that has been liquidated or is under liquidation or statutory management;
- (d) has taken part in any business practices that, in the opinion of the Bank, were fraudulent, prejudicial or otherwise improper (whether unlawful or not);
- (e) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment;
- (f) has defaulted in the repayment of a loan for three consecutive months advanced by a licenced financial institution; and
- (g) has been adjudged bankrupt.

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

PART B — CRITERIA FOR DETERMINING MORAL SUITABILITY OF SIGNIFICANT SHAREHOLDERS

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

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

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

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

THIRD SCHEDULE

[Reg. 4(1).]
FORMS

FORM CBK MRC 1-1:

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

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

[Subsidiary]

1. Name of Mortgage Refinance Company.

.....

2. Physical Address of Head Office: L.R. No.

Street: Building and Town/City

3. Postal Address and Postal Code

Telephone No: P.I.N.:

E-mail address

4. Date of Incorporation Certificate Reg. No.

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

.....

6. Particulars of shareholding:

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

7. Particulars of Officers:

A. Directors

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

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

B. Senior Officers

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

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

(a) bankers, branch and their address

(b) name of law firm and their address

(c) name of corporate secretary and their address

.....

9. Sources of funds for the proposed business

.....

.....

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

.....

If any such authority has been revoked, give particulars

.....

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

If so, give particulars

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

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

14. If YES, give particulars

DECLARATION

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

Director (Name)

Signature Date

Director (Name)

Signature Date

FORM CBK MRC 1-2

[Regs. 4 & 7.]

FIT AND PROPER FORM FOR DIRECTORS AND SENIOR OFFICERS

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

1. THE MORTGAGE REFINANCE COMPANY

Name

Type

Proposed position

2. PERSONAL INFORMATION

a) Surname

Other Names

[Subsidiary]

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

.....

Reasons for change of names

c) Year and Place of birth:

d) Nationality and how acquired

e) Personal Identification Number (PIN)

f) (i) Identification Card number and date of issue

ii) Passport number, place and date of issue

g) Postal Address:

h) Previous Postal Addresses (if any)

(i) Physical Address

(ii) Telephone numbers

Educational Qualifications

.....

	Qualifications	Year obtained	Examining Body	Grade Obtained
1.				
2.				

Professional Qualifications and years obtained

.....

	Qualifications	Year obtained	Examining body	Grade obtained
1.				
2.				

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

.....

.....

i) Responsibilities of Proposed position

3. EMPLOYMENT/ BUSINESS RECORD

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

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

4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

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

4.2 DIRECTORSHIPS

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

4.3 MEMBERSHIP TO PROFESSIONAL BODIES

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

5. BORROWINGS

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

.....

If yes, give details

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

.....

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

.....

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

.....

[Subsidiary]

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

.....

5.6 Have you ever been adjudged bankrupt?

If so, give particulars

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

If so, give particulars

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

If so, give particulars

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

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

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

.....

6. DECLARATION

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

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

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

NAME POSITION HELD

DATED AT THIS DAY OF

SIGNED

(Applicant)

(This declaration must be signed in the presence of the witness named below)

WITNESSED BEFORE ME:

COMMISSIONER FOR OATHS/MAGISTRATE

Name:

Signature:

Address:

Date and Stamp

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

FORM CBK MRC 1-3

[Reg. 4.]

FIT AND PROPER FORM FOR SIGNIFICANT SHAREHOLDERS

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

1. THE MORTGAGE REFINANCE COMPANY

Name

.....

Registration No.

.....

2. INFORMATION

a) Name of the corporate body

.....

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

.....

c) Year and date of incorporation

.....

d) Country of incorporation

e) Personal Identification Number

f) Contacts details

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

3. DESCRIPTION OF PAST AND PRESENT ACTIVITIES IN KENYA AND ABROAD**3.1 SOURCES OF FUNDS**

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

a)

b)

c)

3.2 Declaration on the sources of funds

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

4. DECLARATION

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

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

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

NAME:

Central Bank of Kenya

[Subsidiary]

DATED AT: THIS DAY OF 20

WITNESSED BEFORE ME:

SIGNED (Applicant) COMMISSIONER FOR OATHS/MAGISTRATE

Name:

Signature

Address:

Made on 20

FOURTH SCHEDULE

[Regs. 4(2)(c) & 5(4).]

FEES

	Item	Amount (Kshs.)
(a)	Application for a licence	5,000
(b)	On the granting of a licence and annually thereafter	100,000

FIFTH SCHEDULE

[Reg. 16.]

CONDUCT OF BUSINESS AND AFFAIRS OF A BOARD AND BOARD COMMITTEES

1. Meetings

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

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

2. Quorum

(1) The quorum for the conduct of business of a board shall be at least two-thirds of the members of the board.

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

3. Chairperson

(1) The members of a board shall elect a chairperson pursuant to the provisions of the company's articles of association.

(2) The members of board committee shall elect a chairperson from amongst themselves who shall be a non-executive director.

(3) The chairperson of the board or a board committee shall preside over every meeting of the board but in his absence the members present shall elect one of the members present to preside over that meeting and the business transacted thereat.

4. Reporting

Every committee of a board shall report to the board, at least once every three months.

5. Board to regulate its own procedure

Except as provided in this Schedule, the board may regulate its own procedure.

SPECIFIED BANKS AND FINANCIAL INSTITUTIONS UNDER SECTION 2

[L.N. 143/2003, L.N. 76/2007, L.N. 147/2009.]

FIRST SCHEDULE**BANKS**

African Banking Corporation Limited.
Akiba Bank Limited.
Bank of Baroda (K) Limited.
Bank of India.
Barclays Bank of Kenya Limited.
CFC Bank Limited.
Charterhouse Bank of Kenya Limited.
Chase Bank (Kenya) Limited.
Citibank N.A.
City Finance Bank Limited.
Commercial Bank of Africa Limited.
Consolidated Bank of Kenya Limited.
Co-operative Bank of Kenya Limited.
Credit Agricole Indosuez.
Credit Bank Limited.
Daima Bank Limited.
Delphis Bank Limited.
Development Bank of Kenya Limited.
Diamond Trust Bank of Kenya Limited.
Dubai Bank Limited.
Equatorial Commercial Bank Limited.
Family Bank Limited (which acquired the assets and liabilities of Family Finance Building Society)
Fidelity Commerical Bank Limited.
Fina Bank Limited.
First American Bank of Kenya Limited.
Giro Commercial Bank Limited.
Guardian Bank Limited.
Habib Bank A.G. Zurich.
Habib Bank Limited.
Industrial Development Bank Limited.
Imperial Bank Limited.
Investment & Mortgages Bank Limited.

Central Bank of Kenya

[Subsidiary]

Kenya Commercial Bank Limited.
K-Rep Bank Limited.
Middle East Bank Kenya Limited.
National Bank of Kenya Limited.
National Industrial Credit Bank Limited.
Paramount Universal Bank Limited.
Prime Bank Limited.
Southern Credit Banking Corporation Limited.
Stanbic Bank of Kenya Limited.
Standard Chartered Bank of Kenya Limited.
Transnational Bank Limited.
UBA Kenya Bank Limited.
Victoria Commercial Bank Limited.

SECOND SCHEDULE

[G.N. 1501/2004.]

FINANCIAL INSTITUTIONS

Prime Capital and Credit Limited.

Legal Notice No's. 84 and 243 of 1983 are revoked.

SPECIFIED PUBLIC ENTITY UNDER SECTION 2

[L.N. 138/1979, L.N. 75/2003, L.N. 174/2003, L.N. 194/2013, L.N. 67/2014.]

The Industrial Development Bank Limited.

The Deposit Protection Fund Board.

The United States Agency for International Development.

African Development Bank.

International Finance Corporation.

**PAR VALUE OF THE KENYA SHILLING
DETERMINED UNDER SECTION 20**

[L.N. 35/1973.]

The par value of the Kenya shilling determined in terms of gold, with effect from the 16th February, 1973, is as follows—

301.586 Kenya shillings equal one troy ounce of fine gold.

**DENOMINATIONS, INSCRIPTION, FORM, MATERIAL AND
OTHER CHARACTERISTICS OF NOTES AND
COINS DETERMINED UNDER SECTION 22(2)**

Details and descriptions are not set out here. For that information reference should be made in the case of notes to L.N. 106/1970, L.N. 306/1974, L.N. 258/1979, L.N. 165/1980, L.N. 242/1986, L.N. 334/1989, L.N. 505/1990, L.N. 144/1994, L.N. 17/1995, L.N. 362/1995, L.N. 59/1996, L.N. 300/1996, L.N. 88/1998, L.N. 58/2003, L.N. 210/2003, L.N. 13/2004 and L.N. 72/2019 in the case of coins to G.N. 148/1967 and L.N. 84/1969, L.N. 225/1973, L.N. 165/1980, L.N. 232/1985, L.N. 160/1994, Corr. No. 52/1994, L.N. 492/1994 L.N. 293/1995, L.N. 57/1996, L.N. 13/1999, L.N. 40/2005 and L.N. 235/2018 and in the case of commemorative coins to L.N. 259/1979 L.N. 311/1986, L.N. 543/1991, L.N. 209/2003 and L.N. 210/2003 and L.N. 40/2005, L.N. 235/2018, L.N. 72/2019.

**REGULATION OF INTEREST RATES AND TERMS OF CREDIT OF
SPECIFIED BANKS AND SPECIFIED FINANCIAL INSTITUTIONS, 1990**

[G.N. 1617/1990.]

- (a) The minimum rate of interest payable by specified banks and specified financial institutions on deposits or savings shall be 13.5 per cent per annum.
- (b) The maximum rate of interest which specified banks may charge for loans or advances granted for a term not exceeding three (3) years shall be 16.5 per cent per annum calculated on a reducing balance method, with monthly rests.
- (c) The maximum rate of interest which specified banks may charge for loans or advances granted for a term exceeding three(3) years shall be 19 per cent per annum calculated on a reducing balance method, with monthly rests:

Provided that interest rates on term loans granted for a period exceeding three (3) years outstanding in the books of specified banks on 31st March, 1990, shall continue at existing rates until 31st March, 1991, when interest rates may be re-negotiated between the parties subject to the maximum interest rate of 19 per cent per annum.

- (d) maximum rate of interest which specified financial institutions may charge for loans, advances or instalment facilities shall be 19 per cent per annum calculated on a reducing balance method, with monthly rests.

This notice shall be deemed to have come into effect on 1st April, 1990, and supersedes *Gazette* Notice No. 4939 of 1989 and *Gazette* No. 1458 of 1990.

SPECIFICATION OF INSTITUTION UNDER SECTION 38(6)(C)

[L.N. 136/2016.]

IN EXERCISE of the powers conferred by section 38 (6) (c) of the Central Bank of Kenya Act, the Cabinet Secretary for the National Treasury, on the recommendation of the Central Bank of Kenya, specifies "a microfinance bank licensed under the Microfinance Bank Act, 2006" to be an institution for purposes of section 38.

INSTRUCTIONS UNDER SECTION 41

[L.N. 160/1971, L.N. 50/1973.]

With effect from the 27th day of July, 1971, the minimum cash deposit in respect of hire-purchase agreements relating to the purchase of new private motor-cars, imported furniture, carpets and electrical household equipment shall be 40 per cent of the cash price as required under section 6(1) of the Hire Purchase Act, 1968 (Cap. 507).
