

THE CENTRAL BANK OF KENYA (AMENDMENT) ACT, 1995

No. 10 of 1995

Date of Assent: 20th December, 1995

Date of Commencement: 27th December, 1995

An Act of Parliament to amend the Central Bank of Kenya Act

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Central Bank of Kenya (Amendment) Act, 1995. Short title.

2. The Central Bank of Kenya Act is amended in section 2 by inserting the following new definitions in proper alphabetical sequence— Amendment of section 2 of Cap. 491.

“authorized bank” means a specified bank licensed by the Bank under section 33B;

“authorized bureau” means a foreign exchange bureau licensed by the Bank under section 33B;

“authorized dealer” means an authorized bank or an authorized bureau licensed under section 33B;

“bank” means a body corporate or other body of persons, carrying on, whether on their own behalf or as agent for another, banking business within the meaning of the Banking Act, whether in Kenya or elsewhere;

“currency” means the currency of Kenya or foreign currency;

“currency of Kenya” means bank notes and coins issued by the Bank under section 22(1) and any right to receive such bank notes or coins in respect of any credit or balance at a bank or financial institution located within or outside Kenya;

“financial institution” means a body corporate or other body of persons, carrying on, whether on their own behalf or as agent for another, financial business within the meaning of the Banking Act, whether in Kenya or elsewhere.

“foreign currency” means bank notes or coins which are or have at any time been legal tender in any territory outside Kenya and any right to receive such bank notes or coins in respect of any credit or balance at a bank either within or outside Kenya;

“foreign exchange bureau” means a company incorporated in Kenya whose liability is limited by shares, with the main object of buying and selling foreign currency;

“foreign exchange business”—

(a) in relation to a specified bank, means—

(i) buying, selling, borrowing or lending foreign currency or any other business involving transactions in foreign currency;

(ii) settling payments to or from Kenya or in Kenya between residents and non-residents;

(b) in relation to a foreign exchange bureau, means buying or selling foreign currency;

(c) in relation to any other person or body of persons specified by the Bank under section 33A, means such business transactions as the Bank may permit;

“non-resident” means a person or body of persons other than a resident;

“payment” means the transfer of currency for the purpose of discharging a liability, making a gift or donation or for creating a balance at a bank or financial institution which can be drawn upon;

“payment for current transaction” means a payment other than a payment for transferring capital and includes—

(a) a payment due in connection with trade;

(b) a payment due as interest on a loan or as net income from other investment;

(c) a payment for amortization of a loan or for depreciation of direct investment; or

(d) a remittance for family living expenses;

“resident” means—

(a) an individual who has been present in Kenya continuously for a period of at least one year or who has declared his intention to reside in Kenya

for a period of at least one year to Kenyan immigration authorities;

- (b) the Government of Kenya or any accredited official of its diplomatic missions residing outside Kenya;
- (c) a company or other body of persons whose principal place of business is located in Kenya and branches of such company or body located in Kenya;
- (d) branches of a company or other body of persons carrying on business in Kenya whose principal place of business is located outside Kenya,

but excludes any foreign diplomatic mission or any of its accredited officials or any organization established in or outside Kenya by international treaty or any of its accredited officials.

3. The Central Bank of Kenya Act is amended by deleting section 4 and inserting the following new section—

Amendment of section 4 of Cap. 491.

4. The principle objects of the Bank shall be—

Objects of the Bank.

- (a) to regulate the issue of notes and coins;
- (b) to assist in the development and maintenance of a sound monetary, credit and banking system in Kenya conducive to the orderly and balanced economic development of the country and the external stability of the currency of Kenya;
- (c) to licence and regulate foreign exchange business;
- (d) to serve as banker and financial adviser to the Government.

4. The Central Bank of Kenya Act is amended in section 28—

Amendment of section 28 of Cap. 491.

- (a) by deleting paragraph (a) and inserting the following new paragraph—
 - (a) authorized dealers;
- (b) by deleting paragraph (f) and inserting the following new paragraph—

(f) any other person or body of persons whom the Bank may, by notice in the Gazette, prescribe for the purposes of this section.

Repeal of section
30 of Cap. 491.

5. The Central Bank of Kenya Act is amended by repealing section 30.

Insertion of Part
VIA of Cap. 491.

6. The Central Bank of Kenya Act is amended by inserting following new Part immediately after Part VI—

PART VIA—REGULATIONS OF FOREIGN
EXCHANGE DEALINGS

Authorized
dealers.

33A. (1) Subject to sub-section (3), no person shall, in Kenya, transact foreign exchange business except an authorized dealer.

(2) A person who contravenes the provisions of sub-section (1) commits an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) Notwithstanding the provisions of sub-section (1), the Bank may permit such person or class of persons as it may specify, to transact foreign exchange business without a licence, subject to such conditions as it may impose.

Licensing of
authorized
dealers.

33B. (1) A person proposing to transact foreign exchange business shall, before commencing such business, apply to the Bank for a licence.

(2) An application under this section shall be made in the prescribed form and shall be forwarded to the Bank together with the prescribed fee.

(3) In considering an application for a licence, the Bank may require to be satisfied as to the financial condition and history of the applicant, the character of its management, the adequacy of its capital structure and the convenience and needs of the area to be served and the public interest which will be served by granting of the licence.

(4) The Bank may, subject to the payment of the prescribed fee and to such conditions as it may consider necessary, grant a licence to the applicant.

(5) Where a licence has been granted under this section, the Bank may add, vary, or substitute any conditions attached thereto.

(6) A licence issued under this section shall, unless earlier revoked, be valid for twelve months next following the date of issue:

Provided that where an application for its renewal is made under section 33C, the licence shall be deemed to continue in force until the application for renewal is determined.

Renewal of
licence.

33C. (1) A licence issued under section 33B may on expiry be renewed for a further period of twelve months:

Provided that where an authorized dealer fails to commence business in Kenya within six months of the grant of a licence, the authorized dealer shall, if still intending to transact foreign exchange business in Kenya, apply for a licence as though the first licence had never been granted.

(2) An application for the renewal of a licence shall—

- (a) be made in the prescribed form and forwarded to the Bank together with the prescribed fee;
- (b) be lodged with the Bank at least two months prior to the expiry of the licence.

(3) An application for renewal of a licence shall be considered in accordance with the provisions of section 33B.

Revocation or
suspension of
licence.

33D. (1) Subject to sub-section (2) the Bank may, by notice in writing to an authorized dealer, revoke or suspend a licence for such period as it may specify, if the authorized dealer—

- (a) ceases to carry on business in Kenya or goes into liquidation or is wound up, or is otherwise dissolved; or

(b) fails to comply with the provisions of this Act or any condition attached to a licence.

(2) Before revoking or suspending a licence under this section, the Bank shall give an authorized dealer not less than fourteen days notice in writing and shall consider any representations made to it in writing by the authorized dealer within that period.

Duties of
authorized
dealers.

33E. (1) Every authorized dealer shall—

- (a) maintain such books, accounts, records or other documents as the Bank may specify, and shall furnish the same to the Bank at such time and in such manner as the Bank may specify;
- (b) maintain such levels of foreign currency assets or liabilities as the Bank may specify;
- (c) comply with such requirements regarding the establishment, maintenance and operation of foreign currency accounts as the Bank may impose; and
- (d) comply with such measures to improve the management or its business methods as the Bank may impose.

Inspection
of dealers.

33F. (1) The Bank may, at any time and from time to time cause an inspection to be made by any person authorized by it in writing, of any authorized dealer and of its books, accounts and records.

(2) Subject to sub-section (4), when an inspection is made under sub-section (1), the authorized dealer concerned and every officer or employee thereof shall produce and made available to the person making the inspection, all books, accounts, records and other documents of the authorized dealer and such correspondence, statement and information relating to the authorized dealer, its business and the conduct thereof as the person making the inspection may require, within such period as he may specify in writing.

(3) Any failure to produce any books, accounts, records, documents, correspondence,

statement or information within the period specified in the relevant direction shall constitute an offence under this Part.

(4) Notwithstanding the provisions of subsection (2)—

- (a) any books, accounts, records and other documents required to be produced under this section shall not, in the course of the inspection, be removed from the premises of the authorized dealer or other premises at which they are produced;
- (b) the person making the inspection may make copies of any books, accounts and other documents required for the purposes of his report;
- (c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Part.

(5) A person who makes an inspection shall submit a report of his findings to the Bank indicating—

- (a) any breach or failure to observe the requirements of this Part and any orders or directions made thereunder;
- (b) any irregularity in the manner of conduct of the business of the authorized dealer inspected;
- (c) any apparent mismanagement of business or lack of management skills in that authorized dealer;
- (d) any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the person making the inspection, remedial action or further investigation.

Powers of
Bank to
advise and
direct
dealers.

33G. (1) If at any time or upon an inspection under section 33F, the Bank has reason to believe that the business of an authorized dealer is being conducted in a manner contrary to any of the requirements of this Part or any regulations made thereunder, or in a manner detrimental to or not in the best interests of the public, the Bank may—

- (a) give advise and make recommendations to the authorized dealer with regard to the conduct of business generally;
- (b) issue directions regarding measures to be taken to improve the management business methods of or the authorized dealer, or to secure compliance with the requirements of this Part or any other written law;
- (c) appoint a person suitably qualified and competent in the opinion of the Bank, to advise and assist the authorized dealer generally, or for the purposes of implementing any directions issued under paragraph (b), and the advice of a person so appointed shall have the same force and effect as a direction issued under paragraph (b) and shall be deemed to be a direction of the Bank under this section.

(2) No direction shall be issued under paragraph (b) or (c) of sub-section (1) unless the Bank has given the authorized dealer an opportunity to present its views.

(3) An authorized dealer shall, on receipt of any direction under this section, comply with the direction within such period as may specified in the direction, and if so required, produce evidence to the Bank that it has done so.

Regulation
of payments
between
residents
and non-residents.

33H. (1) Except with the permission of the Bank, every payment made—

- (a) in Kenya, to or for the credit of a person outside Kenya; or
 - (b) outside Kenya, to or for the credit of a person in Kenya; or
 - (c) in Kenya (other than a payment for a current transaction) between a resident and non-resident,
- shall be effected through an authorized Bank.

(2) A person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand

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shillings or to imprisonment for a term not exceeding three years, or to both.

Imposition of
restrictions
to meet treaty
obligations.

33I. The Bank may, in consultation with the Minister, impose restrictions on payment for the purposes of enabling the Government of Kenya meet its obligations under any international treaty.

Permissions
by the Bank.

33J. Any permission granted by the Bank under this Part may be—

- (a) either general or special;
- (b) revoked by the Bank at any time;
- (c) absolute or conditional;
- (d) limited so as to expire on a specified date unless renewed;
- (e) published in such manner as is in the opinion of the Bank appropriate.

Instructions
or directions.

33K. (1) Subject to section 33G, the Bank may issue such instructions or directions to authorized dealers as it may consider necessary.

(2) Any instruction or direction under this section may—

- (a) be either general or special;
- (b) be revoked or varied by subsequent instruction or direction;
- (c) be given to such persons and in such manner as is in the opinion of the Bank appropriate.

(3) A person who fails to comply with instruction or direction issued by the Bank under this section 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.

General
penalty.

33L. A person convicted of an offence under this Part for which no penalty is provided shall be liable to a fine not exceeding five hundred

thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Protection
from liability.

33M. Neither the Bank nor any officer or employee thereof nor any other person appointed by the Bank under the provisions of this Part shall be liable in respect of any act or omission done in good faith by such officer, employee or other person in the execution of the duties undertaken by him.

Regulations
under Part.

33N. The Bank may, in consultation with the Minister, make regulations generally for the purpose of giving effect to the provisions of this Part and for the better carrying out of the objects of the Bank under this Act.

Transitional
and saving.

Cap. 113.

33O. A person who, immediately before the commencement of this Part was authorized to transact foreign exchange business by virtue of the provisions of the Exchange Control Act (now repealed), shall, within ninety days of the commencement, apply for a licence in accordance with section 33B and shall, notwithstanding the provisions of that section, be deemed to be an authorized dealer for the purposes of this Part until such application is determined.