

THE BANKING ACT 1968**No. 56 of 1968***Date of Assent: 22nd November 1968**Date of Commencement: By Notice*

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An Act of Parliament to regulate the business of banking, and for matters incidental thereto and matters connected therewith

ENACTED by the Parliament of Kenya, as follows:—

PART I—PRELIMINARY

Short title
and
commencement.

1. This Act may be cited as the Banking Act 1968. and shall come into operation on such day as the Minister may by notice in the Gazette appoint; and the Minister may appoint different days in respect of different provisions of this Act.

Interpretation.

2. In this Act, except where the context otherwise requires -

“the appointed day” means such day as the Minister may, by notice in the Gazette, appoint to be the appointed day for the purposes of section 3 (1) of this Act;

“bank” means any company carrying on banking business in Kenya and includes the Co-operative Bank of Kenya Limited; all branches and offices in Kenya of a bank incorporated outside Kenya shall be deemed to be one bank for the purpose of this Act;

“banking business” means any business which includes the accepting of deposits of money from the public repayable on demand or after a fixed period or after notice, the employing of such deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting the deposits and the paying and collecting of cheques;

“the Central Bank” means the Central Bank of Kenya established by the Central Bank of Kenya Act;

Cap. 491.

“company” means—

(a) a company within the meaning of the Companies Act; or

Cap. 486.

(b) a foreign company within the meaning of Part X of the Companies Act which has complied with the requirements of that Part;

“convertible”, in relation to any exchange, means that the exchange is freely negotiable and transferable in international exchange markets at exchange rate margins consistent with the Articles of Agreement of the International Monetary Fund;

“financial institution” means a company, other than a bank, which in Kenya accepts deposits of money from the public repayable on demand or after a fixed period or after notice and employs such deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting the deposits, and any other company carrying on financial business which the Minister may by notice in the Gazette, declare to be a financial institution for the purposes of this Act;

“licence” means a licence granted under section 4 of this Act;

“licensed” means holding a licence;

“licensee” means the holder of a licence;

“the Minister” means the Minister for the time being responsible for finance;

“officer” in relation to a bank or financial institution means any person by whatever name he may be called who carries out or is empowered to carry out functions relating to the overall direction in Kenya of that Bank or financial institution or takes part in its general management in Kenya;

“public entity” means the Government, the Community, a local authority, or a public body declared by the Minister to be a public entity for the purposes of this Act;

“total deposit liabilities” means the total deposits in Kenya in any bank or financial institution which are repayable on demand or after a fixed period or after notice.

PART II—LICENSING OF BANKS AND FINANCIAL INSTITUTIONS

Restriction on carrying banking business.

3. (1) No person other than a licensed bank shall after the appointed day—

(a) transact banking business in Kenya;

(b) without the consent of the Minister, use the word “bank” or any of its derivatives or any other word indicating the transaction of banking business, or the equivalent of the foregoing in any other language, in the name, description or title under which such person transacts business in Kenya, or makes any representation that it transacted banking business, in any bill head, letter paper, notice, advertisement or in any other manner whatsoever.

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.

Licensing of banks and financial institutions.

4. The Minister may grant a licence to a bank or financial institution to carry on business as such, or may in his discretion refuse to grant a licence.

Licence application.

5. (1) Every bank proposing to transact banking business in Kenya and every financial institution proposing to transact business in Kenya, shall, before commencing any such business, apply in writing to the Minister for a licence.

(2) In considering an application for a licence, the Minister may require to be satisfied as to the financial condition and history of the bank or financial institution, the character of its management, the adequacy of its capital structure and earning prospects and the convenience and needs of the community to be served, and that the public interest will be served by the granting of the licence.

(3) A fee of five thousand shillings shall be payable upon the granting of a licence, and the licensee shall pay a fee of five thousand shillings on each anniversary of the granting of a licence for so long as the licence is in force.

6. The Minister may, by notice in writing to the licensee, revoke a licence if the licensee—

Revocation
of licence.

- (a) ceases to carry on business in Kenya or goes into liquidation or is wound up or otherwise dissolved; or
- (b) fails to comply with this Act, the Central Bank of Kenya Act or the Exchange Control Act, or any rules, regulations, orders or directions issued under any of those Acts:

Cap. 491.

Cap. 113.

Provided that—

(i) the Minister, before revoking a licence, shall give to the licensee not less than twenty eight days' notice in writing of his intention, and shall consider any representations made to him in writing by the licensee within that period before revoking the licence;

(ii) a bank or financial institution may, notwithstanding that its licence has been revoked under this subsection, continue to carry on for the purpose of winding up its affairs for such period as the Minister may determine so long as it does not accept new deposits or make fresh loans.

7. (1) Subject to this Act, a licence shall not be granted to a bank, and a bank may not carry on banking business, unless—

Minimum
capital
requirements.

- (a) in the case of a bank incorporated in Kenya, its paid-up capital is at least one hundred thousand Kenya pounds and its paid-up capital and unimpaired reserves are not less than five per cent of its total deposit liabilities;
- (b) in the case of a bank incorporated outside Kenya, its paid-up capital is not less than five hundred thousand Kenya pounds, and in addition the board of management or other controlling authority has given an undertaking satisfactory to the Minister to keep within Kenya at all times during the currency of its licence, out of its own funds, a capital assigned to its Kenya branches (in this Act referred to as assigned capital), amounting to not less than five per cent of its total deposit liabilities in Kenya with a minimum of one hundred thousand Kenya pounds.

(2) Subject to this Act, a licence shall not be granted to a financial institution, and a financial institution shall not carry on business, unless—

(a) in the case of a financial institution incorporated in Kenya, its paid-up capital is at least twenty-five thousand Kenya pounds;

(b) in the case of a financial institution incorporated outside Kenya, its paid-up capital is at least one hundred and twenty-five thousand Kenya pounds, and in addition the board of management or other controlling authority gives an undertaking satisfactory to the Minister to keep within Kenya at all times during the currency of its licence, out of its own funds assigned capital amounting to not less than five per cent of its total deposit liabilities in Kenya with a minimum of twenty-five thousand Kenya pounds.

Location of
places of
business.

8. (1) No licensed bank or licensed financial institution shall open in Kenya a new place of business, or change the location of an existing place of business, in Kenya (otherwise than to another place of business within the same town), without the approval of the Minister.

(2) Before granting approval under subsection (1) of this section, the Minister may require to be satisfied as to the history and financial condition of the bank or financial institution, the general character of its management, the adequacy of its capital structure and earning prospects and the convenience and needs of the community to be served, and that the public interest will be served by the opening or, as the case may be, change of location of the place of business.

(3) No licensed bank or licensed financial institution shall close any of its places of business in Kenya without first giving to the Minister six months' written notice of its intention to do so, or such shorter period of notice as the Minister may allow.

Merger.

9. (1) No bank or financial institution operating in Kenya shall be merged or consolidated with any other bank or financial institution in Kenya and no bank or financial institution incorporated in Kenya shall be merged or consolidated with any other bank or financial institution, without the approval of the Minister.

(2) To enable him to consider whether to give his approval under subsection (1) of this section, the Minister shall have power to call for such information as he may require.

PART III—PROHIBITED BUSINESS

10. (1) A licensed bank or licensed financial institution shall not in Kenya—

Advances,
credits and
guarantees.

- (a) grant to any person any advance or credit facility or give any financial guarantee or incur any other liability on behalf of any person, so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of that person at any time exceed five per cent of the total deposit liabilities of that bank or financial institution or more than one hundred per cent of its paid-up capital or assigned capital and unimpaired reserves, whichever is the greater:

Provided that this paragraph does not apply to transactions with a public entity, or to transactions between banks or between branches of a bank, or to the purchase of or advances made against clean or documentary bills of exchange or documents of title to goods entitling some person to payment outside Kenya for exports; or

- (b) grant any advance or credit facility against the security of its own shares; or
- (c) grant to or permit to be outstanding in respect of any of its officers or dependent members of his immediate family, unsecured advances or unsecured credit facilities which in the aggregate exceed the sum of five hundred Kenya pounds, whether such advances or facilities are granted to the officer individually or jointly with other persons; or
- (d) grant to or permit to be outstanding in respect of any one of its employees, other than an officer, unsecured advances or unsecured credit facilities which in the aggregate exceed one year's emoluments of such employee.

(2) In paragraphs (c) and (d) of subsection (1) of this section, "unsecured advances or unsecured credit facilities" means advances or credit facilities made without security, or,

in respect of any advance or credit facility made with security, any part thereof which at any time exceeds the market value of the assets constituting the security or, where the Central Bank is satisfied that there is no established market value, on the basis of a valuation approved by the Central Bank.

Restrictions
on trading
and investment
by licensed
banks.

11. A licensed bank shall not in Kenya—

- (a) engage on its account, alone or with others, in whole-sale or retail trade, including the import or export trade, except in the course of the satisfaction of debts due to it; and any trading interest carried on by a licensed bank at the commencement of this Act shall be disposed of by the bank within such time as the Central Bank may allow;
- (b) acquire, or hold any part of the share capital of, or otherwise have a direct interest in, any financial, commercial, agricultural, industrial or other undertaking where the value of the bank's interest would exceed in the aggregate twenty-five per cent of the sum of the paid-up capital and published reserves of that bank (or, in the case of a bank incorporated outside Kenya, the assigned capital and unimpaired reserves in Kenya of the bank):

Provided that—

- (i) a bank may take an interest in such an undertaking in satisfaction of a debt due to it, but if it does so it shall dispose of the interest within such time as the Central Bank may allow;
- (ii) a shareholding in any corporation established for the purpose of promoting development in Kenya and approved by the Minister shall not be included in the said percentage;
- (c) purchase or acquire any immovable property or any interest or right therein, except as may be reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff:

Provided that this paragraph does not prevent a bank—

- (i) letting part of any building which is used for the purpose of conducting its business;

- (ii) securing a debt on immovable property and, in the event of default in payment of the debt, holding such property for so long as in the opinion of the Central Bank is needed for its realization;
- (iii) acquiring land for the purpose of its own development.

12. (1) No licensed bank shall make loans or advances on the security of immovable property for the purpose of purchasing, improving or altering the property, so that the aggregate amount of such loans or advances exceeds fifteen per cent (or with the approval of the Central Bank, thirty per cent) of the amount of its total deposit liabilities.

Restrictions on licensed banks making loans on security of immovable property.

(2) For the purposes of subsection (1) of this section, a loan or advance secured solely by a mortgage, deed of trust or other instrument upon immovable property, or by notes or other obligations which are so secured, is a loan or advance secured by immovable property, and a loan or advance secured in part by mortgage, deed of trust, or other instrument upon immovable property, or by notes or other obligations which are so secured, and by any other form of security is a loan or advance secured by immovable property, to the extent only of the value of the immovable property security as determined by the Central Bank.

(3) Subsection (1) of this section does not prevent a licensed bank accepting as security for a loan or advance made in good faith without security or upon security since found to be inadequate a mortgage, deed of trust, or other instrument upon immovable property, or notes or other obligations which are so secured.

13. Any licensed bank or licensed financial institution which before the commencement of this Act entered into any transaction inconsistently with section 10 (1) of this Act, and any licensed bank which before the commencement of this Act entered into any transaction inconsistently with section 11 (so far as concerns paragraphs (a) and (b) thereof) or section 12 of this Act shall, within six months after such commencement, submit a statement of those transactions to the Central Bank and shall, within one year from such commencement or within such further time as the Central Bank may allow, liquidate the said transactions or come within the

Liquidation of prohibited transactions.

limitations prescribed and dispose of any property or right which may have been acquired thereby.

PART IV—DIVIDENDS AND ACCOUNTS

Dividends.

14. No licensed bank or licensed financial institution which is incorporated in Kenya shall pay any dividend on its shares until all its capitalized expenditure (including preliminary expenses, organization expenses, share-selling commission, brokerage, amount of losses incurred and items of expenditure not represented by tangible assets) has been written off.

Books and accounts to be kept in English.

15. All entries in any books and all accounts kept by a licensed bank or licensed financial institution shall be recorded and kept in the English language, using the system of numerals employed in Government accounts.

Balance sheet.

16. Every licensed bank and every licensed financial institution shall exhibit throughout the year in a conspicuous position in every office and branch in Kenya a copy of its last audited balance sheet together with the full and correct names of all persons who are officers of the bank or financial institution in Kenya, and shall cause a copy of such balance sheet to be published in a national newspaper.

Furnishing of information.

17. (1) Every licensed bank and every licensed financial institution shall, not later than six months after the end of its financial year, submit to the Central Bank an audited balance sheet showing its assets and liabilities in Kenya, and an audited profit and loss account covering its activities in Kenya, in the prescribed form.

(2) Every licensed bank or licensed financial institution which is incorporated outside Kenya, and every licensed bank or licensed financial institution which is incorporated in Kenya and maintains branches outside Kenya, shall submit to the Central Bank, at least once in every year beginning on the 1st January and not more than fifteen months after the submission of the last ones, an audited balance sheet and an audited profit and loss account of the bank or institution as a whole.

(3) The Central Bank may require a licensed bank or licensed financial institution to furnish to it, at such time and in such manner as it may direct, such information as the Central Bank may reasonably require for the proper discharge of its functions.

(4) The Central Bank may publish in whole or in part, at such times and in such manner as it thinks fit, any information furnished to it under subsection (3) of this section:

Provided that information so furnished shall not be published if it would disclose the financial affairs of any person, unless the consent in writing of that person has first been given.

(5) The Minister may require the Central Bank, a licensed bank or a licensed financial institution to furnish to him, at such time and in such manner as he may direct, such information as the Minister may reasonably require.

(6) Where the Central Bank, a licensed bank or a licensed financial institution is required to furnish information under subsection (3) or subsection (5) of this section, it shall furnish that information and any supplemental material that may be required as a result of that information within the period specified in the direction or within such reasonable period thereafter as may be agreed.

PART V—MINIMUM LIQUID ASSETS

18. (1) (a) Every licensed bank shall maintain such minimum holding of liquid assets as the Central Bank may from time to time determine.

(b) Every licensed financial institution shall maintain such minimum holding of liquid assets as the Central Bank may from time to time determine.

(2) The Central Bank shall determine the method of computing the amounts of liquid assets to be held by banks and financial institutions.

(3) For the purposes of this section, "liquid assets" means all or any of the following—

- (a) notes and coins which are legal tender in Kenya;
- (b) balances held at the Central 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, and money at call abroad after deducting therefrom balances owed to banks abroad, as may be determined by the Central Bank, where the balances and money at call and short notice are denominated in convertible currencies; and in this paragraph "bank

Minimum
holdings
of liquid
assets.

abroad” means a bank outside Kenya or an office outside Kenya of any bank;

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

(4) Any licensed bank or licensed financial institution which fails to comply, within such reasonable time as the Central Bank may fix, with any requirement of subsection (1) of this section shall be liable to pay, on being called upon to do so by the Central Bank, a penalty interest charge not exceeding one tenth of one per cent of the amount of the deficiency for every day on which the offence continues.

PART VI—INSPECTION OF BANKS AND FINANCIAL INSTITUTIONS

Inspection
of banks
and financial
institutions.

19. (1) The Central Bank or any person authorized by the Central Bank in writing may, and if so directed by the Minister shall cause an inspection to be made of any licensed bank or licensed financial institution and of its books and accounts, and where it does so it shall supply to such bank or financial institution a report of the inspection.

(2) Where an inspection is made under subsection (1) of this section, the bank or financial institution concerned shall produce to the officer or authorized person making the inspection all such books, accounts and other documents in his custody or power and to furnish the officer or authorized person with such statements or information relating to the affairs in Kenya of the bank or financial institution, as the officer or authorized person may require of him, within such reasonable time as the officer or authorized person may specify:

Provided that—

- (i) books, accounts and other documents may be required to be produced only at the premises of the bank or financial institution concerned; and
- (ii) all information obtained in the course of inspection shall be treated as confidential and used solely for the purposes of this Act and the Central Bank of Kenya Act.

20. (1) If it is found upon an inspection under section 19 of this Act that the affairs of the bank or financial institution concerned are being conducted in a manner detrimental to the interests of the depositors or to the interests of the bank or financial institution, the Central Bank may issue directions to the bank or financial institution requiring it to take such corrective action as the Central Bank considers to be necessary or to discontinue the harmful practices or procedures.

Central Bank may issue orders after inspection.

(2) No directions shall be issued under subsection (1) of this section unless the bank or financial institution has been given an opportunity to present its views.

(3) A bank or financial institution which receives directions under subsection (1) of this section shall, within the period as specified in the directions, comply with the directions and show to the Central Bank that it has done so.

(4) The Minister may, upon representations made to him or on his own initiative, modify or cancel any directions issued under subsection (1) of this section, and in so modifying or cancelling them he may impose such conditions as he thinks fit subject to which the modification or cancellation shall have effect.

PART VII—AUDIT

21. (1) Every licensed bank and every licensed financial institution shall appoint annually an auditor qualified under section 161 of the Companies Act and approved by the Central Bank, whose duty it shall be to audit and make a report upon the annual balance sheet and profit and loss account which are to be submitted to the Central Bank under section 17 (1) of this Act.

Appointment of auditor.

Cap. 486.

(2) The bank or financial institution shall send a copy of the auditor's report to the Central Bank.

22. If a licensed bank or licensed financial institution fails to appoint an approved auditor under section 21 (1) of this Act, or to fill any vacancy for such auditor which may arise, the Central Bank may appoint an auditor and fix the remuneration to be paid by the bank or financial institution to him.

Appointment of auditor by Central Bank.

PART VIII—MISCELLANEOUS

Restriction on
increase in
bank charges.

23. No licensed bank or licensed financial institution shall increase its rate of banking or other charges except with the prior agreement of the Minister.

Minister to
consult with
Central Bank

24. The Minister shall consult with the Central Bank in the exercise of his functions under this Act.

Bank
holidays.

25. Where the Minister considers that it is in the public interest that banks, or a particular bank, or a particular branch of a bank, should remain closed on a day which is not a public holiday, he may, by notice in the Gazette, declare that day to be a bank holiday for all banks, or for that particular bank, or for that particular branch, as the case may be, and every licensed bank, or that particular bank, or that particular branch, as the case may be, shall remain closed on that day.

Order by
High Court.

26. (1) The High Court, on application made *ex parte* by the Minister may, if it considers it to be in the interests of the depositors of a licensed bank or licensed financial institution, make an order—

(a) prohibiting the bank or financial institution from carrying on business; and

(b) staying the commencement or continuance of any actions or proceedings against the bank or financial institution in regard to any business for a specified period of time on such terms and conditions as it considers reasonable,

and may from time to time extend the specified period up to a total of six months from the beginning of the stay.

(2) So long as an order under subsection (1) of this section remains in force, the licence granted to the bank or financial institution under this Act shall be deemed to be suspended.

Disqualification
of officers.

27. (1) A person who is an officer of a licensed bank or licensed financial institution shall cease to hold office if he—

(a) becomes bankrupt or suspends payment or compounds with his creditors; or

(b) is convicted of an offence involving dishonesty or fraud; or

(c) is directly or indirectly concerned with the management of a bank or financial institution which has been compulsorily wound up.

(2) Any person who continues to act as an officer of a licensed bank or licensed financial institution after he has been disqualified by virtue of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

28. Where any licensed bank or licensed financial institution contravenes any of sections 8, 9, 16, 19, 20 and 21 of this Act—

Penalties for contraventions by banks and financial institutions.

- (a) it shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings; and
- (b) every officer of the bank or financial institution shall be guilty of the like offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment, unless he proves that, through no act or omission on his part, he was not aware that the contravention was taking place or was intended or about to take place, or that he took all reasonable steps to prevent it taking place.

29. (1) Any officer of a licensed bank or licensed financial institution who—

Penalties for default by officers

- (a) fails to take all reasonable steps to secure the compliance of the bank or financial institution with this Act; or
- (b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act or any other written law applicable to banks,

shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings or to both such fine and such imprisonment.

(2) It shall be a defence to a charge under subsection (1) of this section for an officer to show that he reasonably thought that another competent person had been charged with the responsibility or duty in respect of which the default arose.

30. The Minister may, by notice in the Gazette, exempt any corporation from all or any of the provisions of this Act.

Exemption.

Exceptions.

31. This Act does not apply in respect of—

Cap. 501.

(a) the Post Office Savings Bank established under the Post Office Savings Bank Act;

Cap. 323.

(b) the Agriculture Finance Corporation established under the Agriculture Credit Act;

Cap. 490.

(c) a society registered as a co-operative society under the Co-operative Societies Act, other than the Co-operative Bank of Kenya Limited; or

Cap. 489.

(d) a society registered as a building society under the Building Societies Act.

Regulations.

32. The Minister may make regulations generally for carrying out the purposes and provisions of this Act.

Repeal of section 42 of Cap. 491.

33. Section 42 of the Central Bank of Kenya Act is repealed.

Repeal of Cap. 488.

34. The Banking Act is repealed.

Transitional.

35. Notwithstanding section 3 of this Act, where immediately before the commencement of this Act a bank was licensed under the repealed Act and makes due application within one month after such commencement for a licence under this Act, the Minister is bound to grant a licence to that Bank, and the fee payable for the licence shall be reduced by such proportion of the fee paid under the repealed Act for the former licence as corresponds with the unexpired portion of the former licence.