

THE BANKING ACT**No. 9 of 1989***Date of Assent: 13th September, 1989**Date of Commencement: By Notice***ARRANGEMENT OF SECTIONS***Section***PART I—PRELIMINARY**

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An Act of Parliament to amend and consolidate the law regulating the business of banking in Kenya and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the Banking Act, 1989 and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint.

Short title and commencement.

2. (1) In this Act, unless the context otherwise requires—

Interpretation.

“assigned capital” has the meaning given to it in section 7 (4);

“bank” means a company which carries on, or proposes to carry on, banking business in Kenya and includes the Co-operative Bank of Kenya Limited but does not include the Central Bank;

“banking business” means—

- (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice;
- (b) the accepting from members of the public of money on current account and payment on and acceptance of cheques; and
- (c) the employing of money held on deposit or on current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money;

“Board” means the Deposit Protection Fund Board established by section 36;

“branch” means any premises, other than its head office, at which an institution transacts business in Kenya;

“capital” means paid-up share capital or, in the case of an institution incorporated outside Kenya, its assigned capital;

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

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“company” means--

Cap. 486.

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

Cap. 446.

(b) a state corporation within the meaning of the State Corporations Act;

(c) a corporate body owned or controlled, directly or indirectly, by the Government of a foreign sovereign state;

(d) a foreign company within the meaning of Part X of the Companies Act;

“convertible currency” means currency which is freely negotiable and transferable in international exchange markets at exchange rate margins consistent with the Articles of Agreement of the International Monetary Fund;

“current account” means an account maintained by a bank for and in the name of, or in a name designated by, a customer of the bank into which money is paid by or for the benefit of such customer and on which cheques and other bills of exchange may be drawn by, and transfers and other banking transactions made on the instructions of, the customer;

“financial business” means--

(a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice; and

(b) the employing of money held on deposit or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money;

“financial institution” means a company, other than a bank, which carries on, or proposes to carry on, financial business and includes any other company which the Minister may, by notice in the Gazette, declare to be a financial institution for the purposes of this Act;

“institution” means a bank or financial institution or a mortgage finance company;

“land” includes freehold and leasehold land in Kenya and all buildings and permanent improvements thereon;

“licence” means a licence granted under section 5;

“members of the public” means individuals, partnerships, corporate bodies and trustees or managers of trusts, pension and provident funds or other similar funds;

“mortgage finance company” means a company (other than a financial institution) which accepts, from members of the public, money on deposit repayable on demand or at the expiry of a fixed period or after notice and is established for the purpose of employing such money in accordance with section 15;

“officer”, in relation to an institution, means a director or any other person, by whatever name or title he may be called or described, who carries out or is empowered to carry out functions relating to the overall direction in Kenya of that institution or takes part in the general management thereof in Kenya;

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

“representative office” means an office established in Kenya under the provisions of Part IX;

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

“unimpaired reserves” means capital and revenue reserves not subject to any charge or other encumbrance or option or liable to reduction by payment of dividend or otherwise.

(2) For the purposes of this Act, “associate”—

(a) in relation to a company or other body corporate means—

- (i) its holding company or its subsidiary;
- (ii) a subsidiary of its holding company;
- (iii) a holding company of its subsidiary;
- (iv) any person who controls the company or body corporate whether alone or with his associates or with other associates of it;

(b) in relation to an individual means—

- (i) any member of his family;

- (ii) any company or other body corporate controlled directly or indirectly, by him whether alone or with his associates; and
- (iii) any associate of his associates:

and 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.

PART II—LICENSING OF INSTITUTIONS

Restrictions on carrying on banking business, etc.

3. (1) No person shall in Kenya—

- (a) transact any banking business or financial business or the business of a mortgage finance company unless it is an institution which holds a valid licence;
- (b) unless it is a bank and has obtained 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 it transacts business in Kenya or make any representation whatsoever that it transacts banking business;
- (c) unless it is a financial institution or mortgage finance company and has obtained the consent of the Minister, use the word “finance” or any of its derivatives or any other word indicating the transaction of financial business or the business of a mortgage finance company, or the equivalent of the foregoing in any other language, in the name, description or title under which it transacts business in Kenya or make any representation whatsoever that it transacts financial business.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

Application for licence.

4. (1) Every company proposing to transact banking business or financial business or the business of a mortgage finance company in Kenya shall, before commencing that

business, apply in writing, through the Central Bank, to the Minister for a licence.

(2) An institution which fails to commence business in Kenya by the first anniversary of the grant of a licence shall, if it still proposes to transact business in Kenya, apply under this section for a licence as though the first licence had never been granted.

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

5. (1) The Minister may, subject to the payment of the prescribed fee and to such conditions as he may consider necessary, grant a licence to an institution to carry on business.

Licensing of institutions.

(2) Where a licence has been granted under subsection (1), the Minister may add, vary, substitute or endorse thereon any conditions he deems appropriate.

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

Revocation of licence.

(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 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 or any condition of a licence:

Cap. 491.
Cap. 113.

Provided that—

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

(ii) the institution may, notwithstanding that its licence has been revoked under this subsection, continue to carry on its business 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, open new current accounts or make any loans or investments.

Minimum capital requirements.

7. (1) A licence shall not be granted to an institution unless the institution meets the minimum capital requirements specified in the First Schedule.

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

(3) Every order made under subsection (2) shall be laid before the National Assembly without unreasonable delay, and unless a resolution approving the order is passed by the Assembly within twenty days on which it next sits after the order is so laid, it shall thenceforth be void, but without prejudice to anything previously done thereunder or to the issuing of a new order.

(4) The board of management or other controlling authority of an institution incorporated outside Kenya, shall, in addition to meeting the minimum capital requirements specified in the First Schedule, give 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") of such minimum amount as may be prescribed.

Location of places of business.

8. (1) No institution shall open in Kenya a new place of business or change the location of an existing place of business in Kenya without the approval of the Minister.

(2) Before granting an approval under subsection (1), the Minister may require to be satisfied as to the history and financial condition of the institution, the general character of its management, the adequacy of its capital structure and earning prospects, the convenience and needs of the area 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 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.

9. No institution operating in Kenya shall be merged or consolidated with any other institution in Kenya and no institution incorporated in Kenya shall be merged or consolidated with any other institution without the approval of the Minister.

Mergers.

PART III—PROHIBITED BUSINESS

10. (1) An institution shall not in Kenya grant to any person or permit to be outstanding 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 one hundred per cent of its capital and unimpaired reserves.

Limit on advances, credits and guarantees.

(2) The provisions of this section shall 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.

(3) For the purposes of subsection (1), references to any person include that person and his associates; and—

- (a) the advances, credit facilities, financial guarantees and other liabilities of that person and his associates shall be aggregated for the calculation of their total value; and
- (b) the restriction imposed by subsection (1) shall apply to advances, credit facilities, financial guarantees and other liabilities to or in respect of that person and his associates.

11. (1) An institution shall not in Kenya—

- (a) grant or permit to be outstanding any advance or credit facility against the security of its own shares; or
- (b) grant or permit to be outstanding any advance or credit facility or give any financial guarantee or incur any other liability to, or in favour of, or on behalf of, any company (other than another institution) in which the institution holds, directly or indirectly.

Restrictions on advances, credits and guarantees.

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Mergers.

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(a) the advances, credit facilities, financial guarantees and other liabilities of that person and his associates shall be aggregated for the calculation of their total value; and

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Restrictions on advances, credits and guarantees.

an officer shall not be so liable if he shows that, through no act or omission on his part, he was not aware that the convention was taking place or was intended or about to take place, or that he took all reasonable steps to prevent it taking place.

12. An institution shall not in Kenya—

Restriction on trading and investments.

- (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; and any trading interest carried on by an institution at the commencement of this Act shall be disposed of by the institution within such time as the Central Bank may allow;
- (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 institution's interest would exceed in the aggregate twenty-five per cent of the capital and unimpaired reserves of that institution:

Provided that—

- (i) an institution 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 subject to the provisions of this paragraph;
- (c) purchase or acquire any land 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 an institution—

- (i) letting part of any building which is used for the purpose of conducting its business;
- (ii) securing a debt on land and, in the event of default in payment of the debt, holding the land 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.

Restrictions on ownership of share capital of an institution.

Cap. 446.

13. (1) No person other than—

(a) another institution;

(b) the Government of Kenya or the Government of a foreign sovereign state;

(c) a state corporation within the meaning of the State Corporations Act;

(d) a foreign company which is licensed to carry on the business of an institution in its country of incorporation,

shall hold, directly or indirectly, or otherwise have a beneficial interest in, more than twenty-five per cent of the share capital of any institution.

(2) No financial institution or mortgage finance company shall acquire or hold, directly or indirectly, any part of the share capital of, or otherwise have beneficial interest in, any bank.

Restrictions on advances for purchase of land.

14. (1) No institution, other than a mortgage finance company, shall make loans or advances for the purchase, improvement or alteration of land, so that the aggregate amount of those loans or advances exceeds twenty-five per cent of the amount of its total deposit liabilities.

(2) The Central Bank may authorize an institution to exceed the percentage specified in subsection (1) up to a maximum of forty per cent in the case of a bank and sixty per cent in the case of a financial institution.

(3) The provisions of this section shall not prevent an institution accepting a security over land for a loan or advance made in good faith for any other purpose.

Mortgage finance companies.

15. (1) A mortgage finance company shall make loans—

(a) for the purpose of the acquisition, construction, improvement, development, alteration or adaptation for a particular purpose of land in Kenya and for no other purpose; and

(b) the repayment of which, with interest and other charges, is secured by first mortgage or charge over land with or without additional security or personal or other guarantees.

(2) Not less than seventy-five per cent of all loans made by a mortgage finance company shall be made for the purpose of acquisition, construction, development, improvement or alteration, by the borrower, of residential property in Kenya.

(3) No mortgage finance company shall—

(a) advance money on the security of land which is subject to any prior mortgage or charge in favour of any person other than the company making the advance;

(b) make a loan of an amount in excess of such maximum amount as may be prescribed from time to time by the Minister or ninety per cent of the value of the land mortgaged or charged and any additional security or of the purchase price thereof in the case of acquisition without additional security, whichever of these is the least; and for the purpose of this paragraph "value" means the value determined by a qualified valuer selected by or in the employment of the company making the loan;

(c) take into account, in determining the amount of a loan to be made, the value of any additional security other than the security of a class specified by the Central Bank from time to time;

(d) make any loan repayable before the expiry of such minimum period as may be prescribed by the Central Bank from time to time;

(e) charge, on any loan, interest at or equivalent, with any and all fees, charges and additions, to a rate per centum per annum in excess of such maximum rate as may be prescribed by the Central Bank from time to time.

(4) A mortgage finance company shall not—

(a) pay, on deposits, interest at or equivalent, with all additions, including the value of any inducements to deposit, to a rate per centum per annum in excess of such maximum rate or below such minimum rate as may be prescribed by the Central Bank from time to time;

- (b) make loans or advances for any other purpose or make any investment other than short-term investment in liquid assets within the meaning of subsection (2) of section 19.

Restrictions on
deposit taking.

16. (1) Subject to this section, no person, other than an institution which holds a valid licence, shall invite or accept deposits in the course of carrying on a deposit-taking business.

(2) For the purposes of this section, "deposit" means a sum of money paid on terms—

(a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(b) which are not referable to the provision of property or services or the giving of security.

(3) For the purposes of subsection (2) (b), money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if—

(a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or

(c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property whether in a particular state of repair or otherwise.

(4) For the purposes of this section, "deposit" does not include—

(a) a sum paid by the Central Bank or by an institution or the persons mentioned in section 54; or

(b) a sum which is paid by a person to an associate of that person.

(5) For the purposes of this section, a business is a deposit-taking business if—

- (a) in the course of the business money received by way of deposit is lent to others; or
- (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(6) Notwithstanding that paragraph (a) or (b) of subsection (5) applies to a business, it is not a deposit-taking business for the purposes of this section if—

- (a) the person carrying it on does not hold himself out as accepting deposits on a day-to-day basis; and
- (b) any deposits which are accepted are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.

(7) For the purposes of subsection (5), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

(8) In determining, for the purposes of subsection (6) (b), whether deposits are accepted only on particular occasions regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(9) Any person who contravenes subsection (1) shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred thousand shillings or to both.

PART IV—RESERVES AND DIVIDENDS

17. The capital and unimpaired reserves of an institution shall, at all times, be not less than seven-and-a-half per cent of its total deposit liabilities.

Ratio between capital and deposits.

18. The Central Bank may prescribe the minimum ratios which shall be maintained by institutions as between their capital and unimpaired reserves on the one hand and their assets (including their total loans and advances) on the other and, for that purpose, may also determine the method of classifying and evaluating assets.

Ratio between capital and assets.

Minimum liquid assets.

19. (1) An institution shall maintain such minimum holding of liquid assets as the Central Bank may from time to time determine.

(2) For the purpose 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 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; and for the purposes of this paragraph "bank abroad" means a bank outside Kenya or an office outside Kenya of any bank;
- (e) Kenya treasury bills and bonds of a maturity not exceeding ninety-one days which are freely marketable and rediscountable at the Central Bank;
- (f) such other assets as the Central Bank may specify.

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

Restrictions on dividends.

20. (1) No institution incorporated in Kenya shall pay any dividend on its shares or make any other form of distribution to its shareholders until all its capitalized expenditure (including preliminary expenses, share-selling commission, brokerage, amount of losses incurred and items of expenditure not represented by tangible assets) has been written off and provision has been made for bad and doubtful debts in accordance with subsection (2).

(2) Every institution shall—

- (a) make provision for bad and doubtful debts before any profit or loss is declared; and

- (b) ensure that the provision for bad and doubtful debts made under paragraph (a) is adequate according to such guidelines as may be prescribed by the Central Bank.

PART V—ACCOUNTS AND AUDIT

21. (1) All entries in any books and all accounts kept by an institution shall be recorded and kept in the English language, using the system of numerals employed in Government accounts.

Form of accounts.

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

22. Every 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 (which shall be in conformity with the minimum financial disclosure requirements prescribed from time to time by the Central Bank and shall include a copy of the auditor's report) together with the full and correct names of all persons who are officers of the institution in Kenya, and shall, within six months of the end of each financial year, cause a copy of the balance sheet for that financial year to be published in a national newspaper.

Accounts to be exhibited.

23. (1) An 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 together with a copy of the auditor's report, in the prescribed form.

Submission of accounts to the Central Bank.

(2) An institution which is incorporated outside Kenya, and an institution which is incorporated in Kenya and maintains branches outside Kenya, shall submit to the Central Bank, with the balance sheet and accounts referred to in subsection (1), an audited balance sheet and an audited profit and loss account of the institution as a whole.

24. (1) Subject to subsection (7), every institution shall appoint annually an auditor qualified under section 161 of the Companies Act and approved by the Central Bank, whose

Appointment of auditors.

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 23 (1).

(2) If an institution fails to appoint an approved auditor under subsection (1), or to fill any vacancy for an auditor which may arise, the Central Bank may appoint an auditor and fix the remuneration to be paid by the institution to him.

(3) The Central Bank may require an auditor to undertake the following duties in addition to those provided under subsection (1)—

- (a) to submit such additional information in relation to his audit as the Central Bank may consider necessary;
- (b) to carry out any other special investigation; and
- (c) to submit a report on any of the matters referred to in paragraphs (a) and (b);

and the institution concerned shall remunerate the auditor in respect of the discharge by him of all or any of such additional duties.

(4) If the auditor of an institution, 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 this Act, the Central Bank of Kenya Act or the regulations, guidelines or other matters prescribed by the Central Bank;
- (b) a criminal offence involving fraud or other dishonesty has been committed by the institution or any of its officers or employees;
- (c) losses have been incurred which reduce the capital and unimpaired reserves of the institution by fifty per cent or more;
- (d) serious irregularities have occurred which may jeopardize the security of depositors or creditors of the institution; or
- (e) he is unable to confirm that the claims of depositors and creditors of the institution are capable of being met out of the assets of the institution,

he shall immediately report the matter to the Central Bank.

(5) The Central Bank may arrange trilateral meetings with an institution and its auditor from time to time, to discuss matters relevant to the Central Bank's supervisory responsibilities which have arisen in the course of the statutory audit of the institution including relevant aspects of the institution's business, its accounting and control system and its annual accounts.

(6) If an auditor of an institution fails to comply with the requirements of this Act, the Central Bank may remove him from office and appoint another person in his place.

(7) A person shall not be qualified for appointment as an auditor of an institution if he is—

- (a) a director, officer or employee of that institution; or
- (b) a person who is a partner of a director, officer or employee of that institution; or
- (c) a person who is an employer or employee of a director, officer or employee of that institution; or
- (d) a person who is a director, officer or employee of an associate of that institution; or
- (e) a person who, by himself, or his partner or his employee, regularly performs the duties of secretary or book-keeper for that institution; or
- (f) a firm or member of a firm of auditors of which any partner or employee falls within the above categories.

25. (1) An institution shall notify the Central Bank if it proposes to remove or change its auditor or if any person ceases to be its auditor.

Change of auditors to be notified to the Central Bank.

(2) An auditor of an institution shall forthwith give written notice to the Central Bank if he—

- (a) resigns from office;
- (b) does not seek to be re-appointed; or
- (c) includes in his report or draft report on the institution's accounts any qualification which did not appear in the accounts for the preceding financial year.

26. (1) No duty to which an auditor of an institution may be subject shall be regarded as contravened by reason of

Auditor's duty of confidence.

his communicating in good faith to the Central Bank, whether or not in response to a request made by it, any information or opinion on a matter to which this Part applies and which is relevant to any function of the Central Bank under this Act.

(2) This section applies to any matter of which an auditor becomes aware in his capacity as an auditor or in the discharge of his duties under this Part and which relates to the business or affairs of the institution or any associate of that institution.

PART VI.—INFORMATION AND REPORTING REQUIREMENTS

Collection of
information by
Central Bank.

27. The Central Bank shall collect such data and other information as may be necessary to enable it to maintain supervision and surveillance of the affairs of institutions and the protection of their depositors and, for this purpose, may require institutions to submit statistical and other returns on a periodic basis in addition to any other returns required by law.

Furnishing of
information.

28. The Central Bank may require any 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 under this Act.

Minister may
require further
information.

29. The Minister may require the Central Bank or an institution to furnish to him, at such time and in such manner as he may direct, such information as the Minister may require.

Time to furnish
information.

30. Where the Central Bank or an institution is required to furnish information under this Part, it shall furnish that information and any supplemental material that may be required as a result of that information within the period specified in this Part or the relevant direction or within such reasonable period thereafter as may be agreed.

Publication of
information.

31. (1) The Central Bank or the Minister may publish in whole or in part, at such times and in such manner as it or he thinks fit, any information furnished to it or him under this Act:

Provided that the 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.

(2) Except as provided in this Act, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties or responsibilities under this Act and, if he does so, he shall, for the purposes of section 49, be deemed to have contravened the provisions of this Act.

PART VII—INSPECTION AND CONTROL OF INSTITUTIONS

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

Inspection of institutions.

(2) When an inspection is made under subsection (1), the institution concerned and every officer and employee thereof shall produce and make available to the person making the inspection all the books, accounts, records and other documents of the institution and such correspondence, statements and information relating to the institution, its business and the conduct thereof as the person making the inspection may require and within seven days or such longer time as he may direct in writing; and any failure to produce any books, accounts, records, documents, correspondence, statements or information within the period specified in the relevant direction shall constitute a contravention of the provisions of this Act for the purposes of section 49:

Provided that—

- (a) the books, accounts and other documents required to be produced shall not, in the course of the inspection, be removed from the premises of the institution 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; and
- (c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act and of the Central Bank of Kenya Act.

(3) The person making the inspection shall submit his report to the Central Bank; and the report shall draw attention to any breach or non-observance of the requirements of this Act and any regulations made thereunder, any irregularity in the manner of conduct of the business of the institution inspected, any apparent mismanaging of the business or lack of management skills in that institution and 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
Central Bank to
advise and
direct.

33. (1) If, at any time, the Central Bank has reason to believe that the business of an institution is being conducted in a manner contrary to or not in compliance with the requirements of this Act or any regulations made thereunder or in a manner detrimental to or not in the best interests of its depositors or members of the public, the Central Bank may—

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

(2) No direction shall be issued under paragraph (b) or (c) of subsection (1) unless the institution has been given an opportunity to present its views.

(3) An institution which receives a direction under the provisions of this section shall comply with the direction within such period as may be specified in the direction and, if so required, shall produce evidence to the Central Bank that it has done so.

34. (1) This section applies, and the powers conferred by subsection (2) may be exercised, in the following circumstances—

Powers of
Central Bank to
intervene in
management.

- (a) if the institution fails to meet any financial obligation, when it falls due including an obligation to pay any depositor;
- (b) if a petition is filed, or a resolution proposed, for the winding up of the institution or if any receiver or receiver and manager or similar officer is appointed in respect of the institution or in respect of all or any part of its assets;
- (c) if the auditor of an institution makes a report to the Central Bank under the provisions of subsection (4) of section 24;
- (d) if the Central 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 institution or its depositors or other creditors.

(2) In any case to which this section applies, the Central Bank may with the approval of the Minister—

- (a) appoint any person (in this Act referred to as “a manager”) to assume the management, control and conduct of the affairs and business of an institution to exercise all the powers of the institution to the exclusion of its board of directors including the use of its corporate seal;
- (b) remove any officer or employee of an institution who, in the opinion of the Central Bank, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder or to any deterioration in the financial stability of the institution or has been guilty of conduct detrimental to the interests of depositors or other creditors of the institution;
- (c) appoint a competent person familiar with the business of institutions to its board of directors to hold office as a director who shall not be capable of being removed from office without the approval of the Central Bank; and

(d) by notice in the Gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the institution in favour of any officer or employee or any other person.

(3) The appointment of a manager shall be for such period, not exceeding six months, as the Central Bank shall specify in his appointment and may be extended by the High Court, upon the application of the Central Bank, if such extension appears to the Court to be justified.

(4) A manager shall, upon assuming the management, control and conduct of the affairs and business of an institution, discharge his duties with diligence and in accordance with sound banking and financial principles and, in particular, with due regard to the interests of the institution, its depositors and other creditors.

(5) The responsibilities of a manager shall include---

(a) tracing and preserving all the property and assets of the institution;

(b) recovering all debts and other sums of money due to and owing to the institution;

(c) evaluating the capital structure and management of the institution and recommending to the Central Bank any restructuring or reorganization which he considers necessary and which, subject to the provisions of any other written law, may be implemented by him on behalf of the institution;

(d) entering into contracts in the ordinary course of the business of the institution, including the raising of funds by borrowing on such terms as he may consider reasonable;

(e) obtaining from any officers or employees of the institution any documents, records, accounts, statements or information relating to its business.

(6) For the purposes of discharging his responsibilities, a manager shall have power to declare a moratorium on the payment by the institution of its depositors and other creditors and the declaration of a moratorium shall---

(a) be applied equally and without discrimination to all classes of creditors;

- (b) limit the maximum rate of interest which shall accrue on deposits and other debts payable by the institution during the period of the moratorium to the minimum rate determined by the Central Bank under the provisions of section 39 of the Central Bank of Kenya Act or such other rate as may be prescribed by the Central Bank for the purposes of this section provided that the provisions of this paragraph shall not be construed so to impose an obligation on the institution to pay interest or interest at a higher rate to any depositor or creditor than would otherwise have been the case;
- (c) suspend the running of time for the purposes of any law of limitation in respect of any claim by any depositor or creditor of the institution;
- (d) cease to apply upon the termination of the manager's appointment whereupon the rights and obligations of the institution, its depositors and creditors shall, save to the extent provided in paragraphs (b) and (c), be the same as if there had been no declaration under the provisions of this subsection.

Cap. 491.

(7) If any officer or employee of an institution removed under the provisions of subsection (2) (b) is aggrieved by the decision, he may apply to the High Court and the court may confirm, reverse or modify the decision and make such other order in the circumstances as it thinks just; and pending the determination of any application or appeal therefrom, the order of removal shall remain in effect.

(8) Neither the Central Bank nor any officer or employee thereof nor any manager nor any other person appointed, designated or approved by the Central 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, manager or other person in the execution of the duties undertaken by him.

35. (1) If an institution becomes insolvent, the Central Bank may appoint the Board established under section 36 to be a liquidator of the institution; and the appointment shall have the same effect as the appointment of a liquidator by the court under the provisions of Part VI of the Companies Act

Liquidation of institutions by Central Bank.

Cap. 486.

and references in that Act to “the relevant date” and “commencement of the winding up” shall be deemed to be references to the date on which the Board is appointed as liquidator.

(2) No liquidator of an institution shall be appointed under the provisions of the Companies Act if the Board has already been appointed as liquidator and no liquidator of an institution shall be appointed in any event without the approval of the High Court which shall not grant such approval unless the Central Bank shall certify that it does not intend to exercise its powers under this section or shall fail to exercise its powers within such period not exceeding three months as may be prescribed by the Court.

(3) In any case where a liquidator of an institution has been appointed, the Central Bank may, at any time, apply to the High Court for an order that the liquidator be removed and the Board appointed as liquidator in his place; and the provisions of the Companies Act shall, subject to the provisions of subsection (7), apply to a liquidation by the Board but only to the extent that they are not inconsistent with the provisions of this Act and any regulations made thereunder.

(4) An institution shall become insolvent for the purposes of this section if—

- (a) it is deemed to be unable to pay its debts within the meaning of section 220 of the Companies Act; or
- (b) a winding-up order is made against it, or a resolution for creditors' voluntary winding up is passed, under the Companies Act; or
- (c) it is unable to pay sums due and payable to its depositors; or
- (d) the Central Bank determines that the value of its assets is less than the amount of its liabilities.

(5) Where the Board has been appointed as liquidator, it shall have all the powers conferred upon a liquidator in a winding up by the court under the Companies Act and such other powers as may be prescribed in any regulations made under the provisions of subsection (7).

(6) In exercising its functions under the provisions of this section, the Board shall be subject to the supervision of

the High Court which may, upon the application of any interested party and if it deems fit, appoint a committee of inspection which shall have the same powers as a committee of inspection appointed under the provisions of Part VI of the Companies Act.

Cap. 486.

(7) The Minister may make regulations generally for carrying out the purposes and provisions of this section; and the regulations may be applied in conjunction with or to the exclusion of, any similar or equivalent provisions of the Companies Act and the regulations made thereunder and may include provision as to the manner and time in which depositors and other creditors of the institution, preferential or otherwise, shall submit proof of debt to the Board.

(8) Notwithstanding anything to the contrary contained in any law, no receiver or receiver and manager shall be appointed to an institution without the prior approval of the High Court which shall not grant such approval unless the Central Bank shall certify that it does not intend to exercise its powers under this section or shall fail to exercise its powers within such period not exceeding three months as may be prescribed by the Court.

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

PART VIII—THE DEPOSIT PROTECTION FUND

36. (1) There is hereby established a body corporate to be known as the Deposit Protection Fund Board.

Deposit
Protection
Fund Board.

(2) The Board shall have perpetual succession and a common seal, with power to acquire, own, possess and dispose of property, to contract and to sue and to be sued in its own name.

(3) The Board shall—

(a) hold, manage and apply in accordance with the provisions of this Part, the Deposit Protection Fund (hereinafter referred to as "the Fund"); and

(b) levy contributions for the Fund, in accordance with the following provisions of this Part, from institutions; and have such other functions as are conferred on the Board by these provisions.

(4) The Board shall consist of—

(a) the Governor of the Central Bank who shall be the chairman;

(b) the Permanent Secretary to the Treasury; and

(c) two members appointed by the Minister to represent the interests of institutions.

(5) Subject to the provisions of this Part, the Board shall determine its own procedure.

(6) The Central Bank shall make available to the Board such facilities and the services of such officers as are necessary for the proper and efficient exercise of the functions of the Board.

Deposit
Protection
Fund.

37. (1) The Minister may, from time to time in consultation with the Central Bank and by notice in the *Gazette*, fix the size of the Fund sufficient to protect the interests of depositors to be made up by contributions under section 38 and may authorize the Board to borrow from the Central Bank or any other person such amount as it may require for the purposes of discharging its functions under this Part.

(2) The Fund shall consist of—

(a) moneys in the Deposit Protection Fund established by section 17 of the Banking (Amendment) Act, 1985;

(b) moneys contributed to the Fund by institutions under section 38;

(c) income credited to the Fund under subsection (3);

(d) moneys borrowed for the purposes of the Fund under subsection (1).

(3) The moneys constituting the Fund shall be placed in an account with the Central Bank to be invested by the Board in Kenya treasury bills of maturity not exceeding ninety-one days from the date of issue, and any income from the investment shall be credited to the Fund.

(4) There shall be chargeable to the Fund the administration expenses of the Board, repayment of money borrowed by the Fund and payments made in respect of protected deposits.

38. (1) Every institution which is licensed to carry on business in Kenya shall be a contributor to the Fund and shall pay into the Fund such annual amount, and at such times, as the Board may determine.

Contribution to the Fund.

(2) The Board shall serve on every institution a notice specifying the amount and the period, which shall not be later than twenty-one days after the date of service of the notice, within which the amount shall be paid into the Fund by the institution.

(3) The amount of a contribution to the Fund under this section shall not be less than one hundred thousand shillings nor exceed 0.4 per cent of the average of the institution's total deposit liabilities during the period of twelve months prior to the date of the notice served under subsection (2); but the Minister may, after consultation with the Board, by order, amend the minimum and maximum amounts of contributions prescribed by this subsection.

(4) An institution which, for any reason, fails to pay its contribution to the Fund within the period specified in a notice issued under subsection (2) shall be liable to pay to the Fund a penalty interest charge not exceeding one-half per cent of the unpaid amount for every day outside the notice period on which the amount remains unpaid.

(5) If it appears to the Board that the affairs of an institution are being conducted in a manner detrimental to its own interests or to the interests of its depositors, the Board may increase the contributions of that institution beyond the maximum set out in subsection (4) or terminate the protection of the deposits of such institution.

39. (1) The amount being the aggregate credit balance of any accounts maintained by the customer to an institution, less any liability of the customer to the institution, shall be a protected deposit to the extent determined by the Minister from time to time by order published in the Gazette.

Protection of deposits.

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

(3) The Board may, before paying any claim lodged under subsection (2), require the claimant to furnish it with such documentary proof as may be proper to show that he is entitled to payment out of the Fund; and the Board may decline to make any payment under this section to a person who, in the opinion of the Board, had any responsibility for, or may have profited directly or indirectly from the circumstances leading up to the institution becoming insolvent.

(4) The Board may, at any time and from time to time, require the Central Bank to have an inspection carried out under section 32 to ascertain the type, number and value of the protected deposits of any institution and the information obtained pursuant to the inspection shall, subject to section 31, be made available by the Central Bank to the Board.

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

(6) An institution shall become insolvent for the purposes of this Part if—

- (a) a liquidator or interim liquidator is appointed under the provisions of the Companies Act or this Act; or
- (b) a winding-up order is made against it, or a resolution for creditors' voluntary winding up is passed, under the Companies Act.

(7) For the purposes of this section "customer" includes person entitled to a deposit as trustees or persons holding any deposit jointly.

40. Whenever an institution becomes insolvent, the Board shall be entitled to receive any notice or other document required to be sent to a creditor of the institution whose debt has been proved, and a duly authorized representative of the

Cap. 486.

Rights of the
Board on
insolvency.

Board shall be entitled to attend any meeting of creditors of the institution and to be a member of any committee of inspection appointed under the Companies Act or this Act and in the case of a winding up by the High Court, the Board shall be entitled to appear at the hearing of the petition and to make representations.

41. If the Board considers it desirable to reduce risk or avert threatened loss to the Fund, the Board may, on such terms and securities as it may prescribe, lend to, place a deposit with, issue a guarantee on behalf of, or purchase the assets of, an institution.

Powers of the Board to lend.

42. (1) The Board shall, within three months after the close of each financial year, submit to the Minister a report on the Board's operations throughout the year.

Annual reports, etc.

(2) The financial year of the Board shall be the same as the Central Bank's financial year.

PART IX—REPRESENTATIVE OFFICES OF FOREIGN INSTITUTIONS

43. (1) The Minister may, in writing and subject to such conditions as he may consider necessary, authorize a bank or a financial institution incorporated outside Kenya which does not propose to transact banking or financial business in Kenya but which proposes and applies in writing to the Minister to establish a representative office in Kenya, to open an office in a place in Kenya approved by the Minister.

Representative offices of foreign institutions.

(2) The Minister may require a representative office to furnish to him, at such time and in such manner as he may direct, such information as he may require.

(3) Where a representative office is required to furnish information under subsection (2), 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.

(4) The Minister may at any time, if it appears to him that a representative office is engaged in banking or financial

business or that the affairs of a representative office are being conducted contrary to any condition of an authority granted under subsection (1) or in a manner detrimental to banking or financial business in Kenya, issue directions to the representative office to take such corrective action as the Minister considers to be necessary within such period as may be specified in the directions; and, if the representative office fails to comply with such directions, the Minister may order that the affairs of a representative office in Kenya be wound up and the office closed within such time as he may direct.

PART X—MISCELLANEOUS PROVISIONS

Restrictions on increase in bank charges.

44. No institution shall increase its rate of banking or other charges except with the prior approval of the Minister.

Minister to consult with the Central Bank.

45. (1) The Minister shall consult with the Central Bank in the exercise of his functions under this Act.

(2) Where the approval of the Minister is required under any provision of this Act, the application for such approval shall be submitted through the Central Bank.

Bank holidays.

46. 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.

Orders by High Court.

47. (1) The High Court, on application made *ex parte* by the Minister or, where a manager or liquidator has been appointed by the Central Bank, may, if it considers it to be in the interests of the depositors of an institution, make an order—

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

(b) staying the commencement or continuance of any actions or proceedings against the 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 paragraph (a) of subsection (1) remains in force, the licence granted to the institution under this Act shall be deemed to be suspended.

48. (1) A person who is an officer of an institution shall cease to hold office and shall not thereafter be eligible to hold office in any institution if he—

Disqualification
of officers.

- (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 removed from office under the provisions of section 34.

(2) Any person who continues to act as an officer of an institution after he has been disqualified by virtue of this section shall be guilty of an offence.

49. Where any institution or other person contravenes any of the provisions of this Act—

Penalties for
offences.

- (a) if it is a body corporate, it shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings; and
- (b) every officer of that institution or person shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years or to both 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.

50. (1) Any officer of an institution who—

Penalties for
default by
officers.

- (a) fails to take all reasonable steps to secure the compliance of the 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 or financial institutions; or
- (c) fails to supply any information required under this Act,

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

(2) It shall be a defence to a charge under subsection (1) 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.

Misleading
advertisement
for deposits.

51. (1) Any institution or other person who issues any advertisement, brochure, circular or other document inviting any person to make a deposit which--

(a) falsely represents that he is authorized to accept deposits or is otherwise licensed under the provisions of this Act; or

(b) is issued contrary to any direction given by the Central Bank under the provisions of subsection (2),

shall be guilty of an offence.

(2) The Central Bank may, at any time direct any person to withdraw, amend or refrain from issuing any advertisement, brochure, circular or other document relating to deposits which, in its sole discretion, it considers to be misleading.

Civil obligations.
Cap. 491.

52. (1) For the avoidance of doubt, no contravention of the provisions of this Act or the Central Bank of Kenya Act shall affect or invalidate in any way any contractual obligation between an institution and any other person.

Cap. 488.

(2) The provisions of subsection (1) shall apply with retrospective effect to the Banking Act (now repealed) or the Central Bank of Kenya Act.

(3) This section shall not permit any institution to recover in any court of law interest and other charges which exceed the maximum permitted under the provisions of this Act or the Central Bank of Kenya Act.

Exemptions.

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

Act not to apply
to certain
institutions.

Cap. 493B.

54. This Act does not apply to--

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

(b) the Agricultural Finance Corporation established under the Agricultural Finance Corporation Act; Cap. 323.

(c) a society registered as a co-operative society under the Co-operative Societies Act, other than the Co-operative Bank of Kenya Limited. Cap. 490.

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

56. (1) The Banking Act is repealed. Repeal and savings. Cap. 488.

(2) Notwithstanding subsection (1), where upon the commencement of this Act any bank or financial institution is licensed to transact banking business or the business of a financial institution in Kenya, that licence shall have effect as if granted under section 5 of this Act.

57. The several written laws specified in the first column of the Second Schedule are amended, in relation to the provisions thereof specified in the second column, in the manner specified in the third column. Amendments of other laws.

FIRST SCHEDULE

(s. 7)

MINIMUM CAPITAL REQUIREMENTS

No licence shall be issued to an institution, unless—

- (a) in case of a bank incorporated in Kenya, its paid-up capital is at least fifteen million Kenya shillings and its paid-up capital and unimpaired reserves are not less than seven-and-a-half per cent of its total deposit liabilities;
- (b) in case of a bank incorporated outside Kenya, its paid-up capital is at least one hundred and fifty million Kenya shillings;
- (c) in case of a financial institution and mortgage finance company incorporated in Kenya, its paid-up capital is at least seven million five hundred thousand shillings and its paid-up capital and unimpaired reserves are not less than seven-and-a-half per cent of its total deposit liabilities; and
- (d) in case of a financial institution or mortgage finance company incorporated outside Kenya, its paid-up capital is at least seventy-five million shillings.

SECOND SCHEDULE

(s. 57)

AMENDMENTS OF OTHER WRITTEN LAWS

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
The Bills of Exchange Act (Cap. 27.)	s. 93(2)	In paragraph (a) (iii), delete "section, 25" and substitute "section 46".
The Income Tax Act (Cap. 470)	s. 2(1)	In the definition of "banker" insert "or mortgage finance company" immediately after "financial institution".
	Fourth Schedule	Delete "A bank or financial institution licensed under the Banking Act" and insert "A bank or financial institution or mortgage finance company licensed under the Banking Act".
The Investment Promotion Centre Act (Cap. 485)	s. 4(c)	Insert "or mortgage finance company" immediately after "financial institutions".
The Companies Act (Cap. 486)	s. 386(5)	Insert "or financial institution or mortgage finance company" immediately after "bank".
The Co-operative Societies Act (Cap. 490.)	s. 43(d)	Delete the word "registered" and insert "licensed".
The Central Bank of Kenya Act (Cap. 491)	s. 2	Delete the word "licensed" appearing in the definition of "specified bank". Delete the definition of "specified financial institutions" and insert the following— "specified financial institution" means a financial institution or mortgage finance company within the meaning of the Banking Act which is specified by the Bank for the purposes of this Act
The Insurance Act (No. 1 of 1985)	s. 2G	Delete the definition of "financial institution" and insert— "financial institution has the meaning assigned to it in the Banking Act and includes a mortgage finance company within the meaning of that Act.