

**THE BANKING (AMENDMENT) ACT, 1994****No. 13 of 1994***Date of Assent: 27th October, 1995**Date of Commencement: 27th October, 1995***An Act of Parliament to amend the Banking Act**

ENACTED by the Parliament of Kenya, as follows:—

**1.** This Act may be cited as the Banking (Amendment) Act, 1994.

Short title.

**2.** The principal Act is amended by repealing section 5 and inserting the following new section—

Replacement of section 5 of Cap. 488.

(5) (1) Subject to section 4, the Minister may, upon payment of the prescribed fee, grant a licence to an institution to carry on business.

Licensing of institutions.

(2) The Minister may endorse on a licence granted under this section such conditions as he considers necessary and may from time to time add, vary or substitute such conditions as he deems appropriate.

(3) Unless revoked under section 6, a licence shall be valid for a period of twelve months beginning on the day it is granted and shall then expire:

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

(4) An application for the renewal of a licence shall be made in writing through the Central Bank to the Minister, and may be made within three months of the expiry of the licence.

(5) An application for the renewal of a licence shall be considered in accordance with section 4.

(6) Subject to subsections (4) and (5) the Minister may, upon payment of the prescribed fee, renew an institution's licence to carry on business.

(7) Where an application for the renewal of a licence is not lodged within three months of its expiry, the Minister

may, on application, renew the licence on payment of an additional 50 per cent of the fee plus an interest of 2 per cent per month or part thereof, on the sum total of the licence fee and an additional 50 per cent.

Amendment  
of section 6  
of Cap. 488.

3. The principal Act is amended in section 6 by renumbering the existing provision as subsection (1) and inserting the following new subsections—

(2) Notwithstanding the revocation of a licence under this section, the Central Bank may, with the written approval of the Minister, exercise any of the powers conferred on it under Part VII if it is necessary for the protection of the interests of the depositors.

(3) The Minister shall cause the name of every institution whose licence is revoked under this section to be published forthwith in the Gazette.

Amendment  
of section 7  
of Cap. 488.

4. Section 7 of the principal Act is amended by deleting the word "Schedule" wherever it occurs and inserting the words "Second Schedule".

Amendment  
of section 8  
of Cap. 488.

5. Section 8 of the principal Act is amended—

(a) in subsection (1)—

- (i) by inserting immediately after the word "Kenya" in the first line the words "a branch or";
- (ii) in the second line, by inserting immediately after the words "location of" the words "a branch or";

(b) by deleting subsection (2) and inserting the following new subsection—

(2) Before granting an approval under subsection (1), the Minister may require to be satisfied as to—

- (a) the history and financial condition of the institution;
- (b) the character of its management;
- (c) the professional and moral suitability of its management;
- (d) the adequacy of its capital structure and earning prospects;

(e) the convenience and needs of the area to be served, and that the public interest will be served by the opening of a branch or a new place of business or, as the case may be, the change of location of the place of business.

6. The principal Act is amended by inserting the following new section immediately after section 8—

Insertion of section 8A.

Location of branches outside Kenya.

8A. (1) No institution shall open a branch outside Kenya unless it has applied in writing through the Central Bank for the prior approval of the Minister.

(2) No institution shall close any of its branches outside Kenya without first giving through the Central Bank to the Minister six months' written notice of its intention to do so or such shorter period of notice as the Minister may allow.

7. Section 10 of the principal Act is amended as follows—

Amendment of section 10 of Cap. 488.

(a) in subsection (1) by—

(i) deleting the words "one hundred" and inserting the word "twenty-five";

(ii) deleting the full stop at the end of the subsection and inserting a colon and the following proviso—

"Provided that the Central Bank may with the written approval of the Minister, authorize a mortgage finance company to permit the total value of the advances, credit facilities, financial guarantees or other liabilities in respect of any such person at any time to exceed 25 per centum of its capital and unimpaired reserves by such per centum as the Central Bank may in each particular case prescribe."

(b) by inserting the following new subsection immediately after subsection (3)—

(4) The provisions of subsection (1) shall not apply to any advance or credit facility granted, or any financial guarantee given, or any other liability incurred, by an institution on behalf of any person before the commencement of this section.

Insertion of  
section 20A.

**8.** The principal Act is amended in Part V by inserting the following new section immediately after section 20—

Financial  
Year.

20A. (1) The financial year of every institution shall be the period of twelve months ending on the 31st December in each year.

(2) Where the financial year of an institution is different from that prescribed in this section, the institution shall, within twelve months of the commencement of this section, change its financial year to comply with the provisions of this section.

Amendment  
of section 22  
of Cap. 488.

**9.** The principal Act is amended in section 22 by deleting the word “six” and inserting the word “three”.

Amendment  
of section 23  
of Cap. 488.

**10.** The principal Act is amended in section 23 by deleting the word “six” and inserting the word “three”.

Amendment  
of section 25  
of Cap. 488.

**11.** Section 25 of the principal Act is amended as follows—

(a) by deleting subsection (1) and inserting the following new subsection—

(1) No institution shall remove or change its auditor except with the prior written approval of the Central Bank.

(b) by inserting the following new subsection immediately after subsection (2)—

(3) An institution aggrieved by a decision of the Central Bank under subsection (1) may appeal to the Minister within 14 days.

(4) The decision of the Minister under subsection (3) shall be final.

Amendment  
of section 34  
of Cap. 488.

**12.** Section 34 of the principal Act is amended in subsection (3) by deleting the word “six” and inserting the word “twelve”.

Insertion of  
section 35A.

**13.** The principal Act is amended by inserting the following new section immediately after section 35—

Expenses  
under  
Part.

35A. Any expenses incurred by reason of the exercise of any of the powers conferred by this Part in respect of an institution shall be met by that institution.

14. Section 36 of the principal Act is amended by deleting paragraph (c) of subsection (4), and inserting the following—

Amendment  
of section 36  
of Cap. 488.

(c) five members appointed by the Minister in consultation with the Central Bank to represent the interests of institutions.

15. Section 38 of the principal Act is amended by inserting the following new subsections immediately after subsection (5)—

Amendment  
of section 38  
of Cap. 488.

(6) The Board shall, as soon as reasonably practicable after terminating the protection of the deposits of an institution under subsection (5), cause the name of that institution to be published in the Gazette.

(7) The Board shall cause a list of all institutions whose deposits are protected to be published in the Gazette annually.

16. Section 41 of the principal Act is repealed.

Repeal of  
section 41  
of Cap. 488.

17. The principal Act is amended by inserting the following new section immediately after section 52—

Insertion of  
section 52A.

Act to  
prevail in  
event of  
conflict.

52A. (1) Subject to subsection (2), where there is a conflict between the provisions of this Act and the provisions of any other written law applicable to an institution licensed under this Act, the provisions of this Act shall prevail.

(2) For the purposes of subsection (1), the expression "written law" does not include the Central Bank of Kenya Act.

Cap. 491.

18. The principal Act is amended by inserting the following new Schedule immediately before the existing Schedule—

Insertion  
of the  
First  
Schedule.

#### FIRST SCHEDULE

##### CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY OF PERSONS PROPOSED TO MANAGE OR CONTROL INSTITUTIONS

(a) In order to determine, for the purposes of this Act, the professional and moral suitability of persons proposed to manage or control an institution the Minister or the

Central Bank, as the case may be, shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

- (i) his general probity;
  - (ii) his competence and soundness of judgement for the fulfilment of the responsibilities of the office in question; and
  - (iii) the diligence with which the person concerned is likely to fulfil those responsibilities.
- (b) For the purposes of and without prejudice to the generality of the provisions of paragraph (a), the Minister or the Central Bank, as the case may be may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—
- (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
  - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services;
  - (iii) was a director of an institution that has been liquidated or is under liquidation or statutory management under Part VII of this Act;
  - (iv) has taken part in any business practices that in the opinion of the Minister or the Central Bank, as the case may be, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;
  - (v) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgement.
- (c) The Minister may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of that person under section 4.

19. The principal Act is amended by deleting the Schedule and inserting the following new Schedule—

Amendment  
of Schedule.

SECOND SCHEDULE

(s. 7)

MINIMUM CAPITAL REQUIREMENTS

No licence shall be issued to an institution, unless—

- (a) in the case of a bank incorporated in Kenya, its paid-up capital is at least seventy-five 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 the case of a bank incorporated outside Kenya, its paid-up capital is at least two hundred million Kenya shillings and has assigned capital amounting to not less than seven-and-a-half per cent of its total deposit liabilities in Kenya with a minimum of one hundred million shillings;
- (c) in the case of a financial institution incorporated in Kenya, its paid-up capital is at least thirty-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 the case of a financial institution incorporated outside Kenya, its paid-up capital is at least one hundred and fifty million shillings and has assigned capital amounting to not less than seven-and-a-half per cent of its total deposit liabilities in Kenya with a minimum of fifty million shillings.
- (e) in the case of a mortgage finance company incorporated in Kenya, its paid-up capital is at least two hundred million shillings and its paid-up capital and unimpaired reserves are not less than seven-and-a-half per cent of its total deposit liabilities.
- (f) in the case of a mortgage finance company incorporated outside Kenya its paid-up capital is at least five hundred million shillings and has assigned capital amounting to not less than seven-and-a-half per cent of its total deposit liabilities in Kenya with a minimum of one hundred and sixty-five million shillings.