

THE BANKING (AMENDMENT) ACT, 2001**No. 7 of 2001***Date of Assent: 31st December, 2001**Date of Commencement: 31st December, 2001***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, 2001. Short title.

2. Section 2 of the Banking Act, in this Act referred to as the "the principal Act", is amended in subsection (1) by inserting the following new definition in the proper alphabetical sequence - Amendment of section 2 of Cap. 488.

"Minister" means the Minister for the time being responsible for matters relating to finance.

3. Section 15 of the Banking Act is amended - Amendment of section 15 of Cap. 488.

(a) in subsection (1) by deleting the words "and for no other purpose" in paragraph (a);

(b) by deleting subsections (2), (3) and (4);

(c) by inserting the following new subsection (2)-

(2) Subject to this Act, a mortgage finance company may grant other types of credit facilities against securities other than land and may engage in other prudent investment activities.

Insertion of
section 31 in
Cap. 488.

4. Section 31 of the Banking Act is amended, by deleting subsection (3) and substituting therefor the following new subsection -

(3) Notwithstanding the provisions of this section -

(a) the Central Bank may disclose any information referred to in subsection (2) to any monetary authority or financial regulatory authority, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority;

(b) the Central Bank and institutions licensed under this Act may, in the ordinary course of business, in such manner and to such extent as the Minister may prescribe, exchange such information as is reasonably required for the proper discharge of their functions.

Amendment of
section 36 of
Cap. 488.

5. Section 36 of the principal Act is amended -

(a) by deleting subsection (2) and substituting therefor the following new subsection -

(2) The Board shall have perpetual succession and a common seal and shall in its corporate name or in the name of an institution under liquidation be capable of -

(a) suing and being sued, without sanction of the court or a Committee of Inspection;

(b) taking, purchasing or otherwise acquiring, holding, charging, leasing or disposing of moveable or immovable property;

(c) borrowing money;

(d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate or a liquidator.

(b) inserting the following new subsections immediately after subsection (6) -

(7) The affixing of the common seal of the Board shall be authenticated by the signatures of the chairman and of one other member of the Board authorised by the Board in that behalf and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and one member as aforesaid:

Provided that the Board shall, in the absence of the chairman or the authorised member in any particular matter, nominate one member to authenticate the seal of the Board

on behalf of either the chairman or such other member.

(8) The Board may, by a power of attorney, appoint any member thereof to execute or authenticate by a seal on behalf of any institution under liquidation, any documents on behalf of the institution.

Insertion of section 36A and 36B in Cap. 488.

6. The principal Act is amended by inserting the following new sections immediately after section 36 -

Objects and functions of the Board.

36A.(1) The principal object of the Board shall be to provide a deposit insurance scheme for customers of member institutions and liquidate and wind up the operations of any institution in respect of which the Board is appointed as a liquidator in accordance with this Act.

(2) Without prejudice to the generality of the foregoing, 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");

(b) levy contributions for the Fund from institutions in accordance with this Part;

(c) perform such other functions as are conferred on it by the Board, this Act or any other written law.

**Remuneration
of Board
Members.**

36B. The Board shall pay its members such remuneration, fees or allowances for expenses as it may determine after consultation with the Minister.

**Protection from
personal
liability.**

36C(1) Subject to subsection (2), no matter or thing done by a member of the Board or by any officer, employee or agent of the Board shall, if the matter or thing is done *bonafide* for executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any

power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

Amendment of
section 39 of
Cap. 488.

7. Section 39 of the Banking Act is amended in subsection (5) by adding the following proviso at the end thereof -

Provided that the Board shall be entitled to payment of its subrogated claims prior to further payment of any other depositor or creditor of the institution.

Amendment of
section 39A in
Cap. 488.

8. The Banking Act is amended by inserting the following new section immediately after section 39 -

Limitation of
claims.

39A(1) Notwithstanding the provisions on any other written law for the time being in force -

(a) a claim for payment of a protected deposit by a creditor of an institution shall not be brought after the expiry of two years from the date of publication of commencement of such payment by the Board.

(b) a claim for payment of a dividend by a creditor of an institution shall not be brought after the expiry of one year from the date of publication of

commencement of such payment
by the Board:

Provided that this paragraph shall not apply to a person who has, for reasons beyond his control and to the satisfaction of the Board, been unable to make his claim within the said period.

9. The Building Societies Act is amended in section 24 by inserting the following new subsection immediately after subsection (7) -

Amendment of
section 24 of
Cap. 489.

(8) Notwithstanding the provisions of subsections (1) to (7), a building society may, for the benefit of its members, extend loans, advances guarantees and other credit facilities not secured by land and at such terms and conditions as the society considers appropriate.

10. The Building Societies Act is amended by inserting the following new sections immediately after section 63(I) -

Insertion of
section 63J and
63K into Cap
489.

**Powers of
Central Bank to
intervene in
management,
liquidations,
etc.**

63J. Notwithstanding any other provision of this Act to the contrary, the provisions of sections 34, 34A, 35 and 35A of the Banking Act shall, *mutatis mutandis*, apply to a building society registered in accordance with this Act.

Contributions
to the Deposit
Protection
Fund.

63K. The provisions of Part VIII of the Banking Act shall *mutatis mutandis*, apply to a building society registered in accordance with this Act.

Repeal of Part
XI of Cap. 489.

11. The Building Societies Act is amended by repealing Part XI.