

SPECIAL ISSUE

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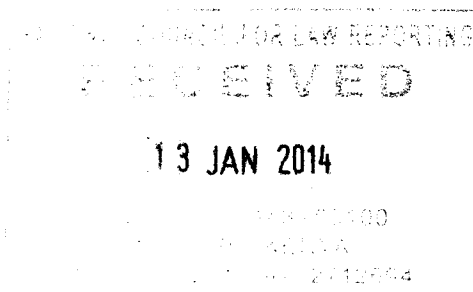
KENYA GAZETTE SUPPLEMENT

ACTS, 2013

NAIROBI, 2nd December, 2013

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2013

Microfinance (Amendment)

No. 41

THE MICROFINANCE (AMENDMENT) ACT, 2013**No. 41 of 2013***Date of Assent: 27th November, 2013**Date of Commencement: 11th December, 2013***An Act of Parliament to amend the Microfinance Act, 2006, and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Microfinance (Amendment) Act, 2013.

Short title.

2. Section 2 of the Microfinance Act, 2006 is amended—

Amendment of section 2 of No. 19 of 2006.

(a) in the definition of the word “agency”, by deleting paragraph (b) and substituting therefor the following new paragraph —

“(b) an entity contracted by an institution and approved by the Central Bank, or sub-contracted by such entity to provide services of the institution on behalf of the institution, in such manner as may be prescribed by the Central Bank”;

(b) by deleting—

(i) the definition of the term “institution” and substituting therefor the following new definition—

“institution” means a microfinance bank licensed under this Act;

(ii) the definition of the term “deposit-taking microfinance business” and substituting therefor the following new definition—

“deposit-taking microfinance business” means microfinance bank business;

(iii) the definition of the term “deposit-taking microfinance institution”, and substituting therefor the following new definition—

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“deposit-taking microfinance institution” means a microfinance bank”;

- (iv) the definition of the term “microfinance business”, and substituting therefor the following new definition—

“microfinance business” means “microfinance bank business”;

- (v) the definition of the term “non-deposit-taking microfinance business”, and substituting therefor the following new definition—

“non-deposit-taking microfinance business” means “non-microfinance bank business”.

- (c) by inserting the following new definitions in their proper alphabetical sequence—

“current account” means an account maintained by a microfinance bank for and in the name of, or in a name designated by, a customer of the microfinance 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;

“microfinance bank” means a company which is licensed to carry on microfinance bank business, and includes all branches, marketing units, outlets, offices and any other place of business that may be licensed by the Central Bank of Kenya;

“microfinance bank 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;
- (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 including the provision of short-term loans to small or micro enterprises or low income households and characterized by the use of collateral substitutes; and
- (d) such other business activity as the Central Bank may prescribe;

“non-microfinance bank business” means microfinance business, other than microfinance bank business as defined under this Act;

“significantly undercapitalized” in relation to an institution, means that the institution holds less than fifty percent of the capital requirements prescribed in section 11;

“undercapitalized institution” means an institution that does not fully comply with the capital requirements prescribed in section 11.

Amendment of
section 14 of No. 19
of 2006.

3. Section 14 of the Microfinance Act, 2006 be amended in subsection (1) by deleting paragraphs (a), (b) and (c).

Amendments to
section 29 of No. 19
of 2006.

4. Section 29 of the Microfinance Act, 2006 is amended by inserting new subsections immediately after subsection (6) as follows—

“(7) The Central Bank may require an external auditor to undertake the following duties in addition to those provided under subsection (2)—

- (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) above,

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

(8) If the external 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 core capital 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.

(9) 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.

(10) If an external 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".

5. Section 34 of the Microfinance Act, 2006 is amended—

Amendment to
section 34 No. 19 of
2006.

- (a) deleting subsection (3A) and replacing with the following—

“(3A) The Deposit Protection Fund Board, institutions licensed under this Act and institutions licensed under the Banking Act shall, in the ordinary course of business and in such manner and to such extent as the Cabinet Secretary may, in regulations, prescribe, exchange such information on performing and non performing loans as may, from time to time, be specified by the Central Bank in regulation”.

- (b) by inserting new subsections immediately after subsection (5) as follows—

“(6) Notwithstanding the provisions of this section, the Central Bank may disclose any information referred to in subsection (3) to the Deposit Protection Fund Board, any monetary authority or financial regulatory authority, fiscal or tax agency, fraud investigations agency within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting Deposit Protection Fund Board, monetary authority or financial regulatory authority, fiscal or tax agency, fraud investigations agency:

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement.

(7) No duty, to which the Central Bank, the Deposit Protection Fund Board, a credit reference bureau, an institution licensed under this Act or the Banking Act or their respective officers may be subject, shall be breached by reason of the disclosure, in good faith, of any information under subsection (3A), to or by, as the case be—

- (a) the Central Bank;
- (b) the Deposit Protection Fund Board;
- (c) an institution licensed under this Act or the Banking Act;
- (d) a credit reference bureau established under subsection (5);
- (e) any person carrying out an inspection under section 35; or
- (f) any person, authority, agency or entity referred to in subsection (6) or any other person or authority which may be authorized under any written law or otherwise to share information,

in the course of the performance of their duties and no action shall lie against the Central Bank, the Deposit Protection Fund Board, a credit this Act or reference bureau, an institution licensed under this Act or the Banking Act or any of its officers on account of such disclosure.”

6. The Microfinance Act, 2006 is amended by inserting a new section immediately after section 36 as follows—

Insertion of new section 36A No. 19 of 2006.

Powers upon audit or inspection report.

36A. Where an external auditor's report, under section 29(8) or an inspection report under this Part reveals that an institution conducts its business in a manner contrary to the provisions of this Act, regulations or guidelines issued thereunder or in any manner detrimental to or not in the best interests of its depositors or members of the public, or that an institution is undercapitalized, the Central Bank shall take any of the following actions—

- (a) restrict, suspend or prohibit the payment of dividends by the institution;
- (b) prohibit the conversion of any profits of the institution into capital;
- (c) direct the suspension or removal of any officer involved in such conduct from the service of the institution;
- (d) require the institution to reconstitute its board of directors;
- (e) withhold branch or other corporate approval with respect to such institution;
- (f) undertake more frequent inspection of that institution;
- (g) order the institution to submit to the Central Bank, within forty-five days, a capital restoration plan to restore the institution to capital adequacy as prescribed in section 11 or in the case of issues unrelated to capital such as violations of law, a plan to resolve all deficiencies to the satisfaction of the Central Bank;

- (h) prohibit the institution from awarding any bonuses, or increments in salary, emoluments and other benefits of all directors and officers of the institution;
- (i) at the expense of an institution, appoint a person suitably qualified and competent in the opinion of the Central Bank to advise and assist the institution in designing and implementing the capital restoration plan or other corrective action plan and the person appointed shall regularly report to the Central Bank on the progress of the plan;
- (j) impose restrictions on growth of assets or liabilities of the institution as it deems fit;
- (k) restrict the rate of interest on savings and time deposits payable by the institution to such rates as the Central Bank shall determine; or
- (l) order the institution to do any or take such other actions as the Central Bank may deem necessary to rectify a capital deficiency or other weaknesses.

7. Section 37 of the Microfinance Act, 2006 is amended—

Amendment of section 37 of No. 19 of 2006.

- (a) in subsection (1), by inserting new paragraphs immediately after paragraph (d) as follows—

- “(e) if the institution is significantly undercapitalized; or
- (f) if an institution fails to submit a capital restoration plan or a plan to resolve all deficiencies as directed under section 36B or to add more capital and the institution fails, refuses or neglects to comply with the order or to implement a plan of correction”.
- (b) in subsection (3), by deleting paragraph (c) and substituting therefor the following paragraph—
- “(c) 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 or guidelines 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) in subsection (4), by inserting a new paragraph after paragraph (c) as follows—
- “(d) enter into an agreement with the board of directors of an institution requiring the institution to rectify its deficiencies within three months:

Provided that in the case of reckless or fraudulent conduct, the Central Bank shall have discretion to enter into an agreement based on its judgment as to the efficacy of such an approach”.

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8. Section 45 of the Microfinance Act, 2006 is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 45 of No. 19 of 2006.

“(2) Where a company registered under the Companies Act as a microfinance bank fails to acquire a licence to operate under this Act within a period of one year from the date of such registration, the company shall forthwith cease the use of the words “microfinance bank” in its name.”

9. The Acts specified in the Schedule are amended in the manner specified in that Schedule.

Consequential amendments to other Acts.

SCHEDULE**CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

1. The Banking Act is amended—

Amendment of Cap. 488.

(a) in section 3, by deleting paragraph (a) of the proviso to subsection (1) and substituting therefor the following new paragraph—

“(a) the provisions of paragraphs (b) and (c) of this subsection shall not apply to investment banks licensed under section 11 (3) of the Capital Markets Act and microfinance banks licensed under section 6(1) of the Microfinance Act, 2006; and”;

(b) in section 54, by inserting the following new paragraph immediately after paragraph (c) in subsection (1)—

“(d) a microfinance bank licensed under the Microfinance Act, 2006.”

2. The Central Bank of Kenya Act is amended—

Amendment of Cap. 491.

(a) in subsection—

(i) deleting the definition of “authorized dealer” and substituting therefor the following new definition—

“authorized dealer” means an authorized bank, authorized bureau,

authorized mortgaged finance company, an authorised money remittance provider or an authorized microfinance bank licensed by the Bank under section 33 B;

- (ii) deleting the definition of “foreign exchange business” and substituting therefor the following new definition—

“foreign exchange business”—

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

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

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

- (b) in relation to a foreign exchange bureau, means the business of—

(i) buying or selling foreign currency; or

(ii) settling payments to or from Kenya as prescribed by the Bank;

- (c) in relation to an authorised money remittance provider, means the business of foreign exchange transfers consisting of the acceptance of monies for the purpose of transmitting them to persons resident in Kenya or another country as prescribed by the Bank;

- (d) in relation to a microfinance bank, the business of—

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

currency;

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

(e) in relation to a specified mortgage finance company, the business of—

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

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

(f) in relation to any other person or body of persons granted a permit by the Bank under section 63(3), means engagement in such limited foreign exchange transactions as the Bank may permit;

(iii) deleting the definition of “payment” and substituting therefor the following new definition—

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

(iv) inserting the following new definitions in their proper alphabetical sequence—

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

“microfinance bank” means an institution licensed under the Microfinance Act, 2006;

“specified microfinance bank” means a licensed microfinance bank within the

meaning of the Microfinance Act, 2006 which is specified by the Bank for the purposes of this Act;

- (b) in section 33H, by inserting the words “or an authorized microfinance bank” immediately after the words “authorized bank” in subsection (1);
- (c) in section 34, by deleting subsection (3) and substituting therefor the following new subsection—
 - “(3) For the purposes of this section, “institution” includes—
 - (a) a specified bank;
 - (b) a specified financial institution;
 - (c) a specified microfinance bank;
 - (d) any other person or body of persons which the Minister may, on the recommendation of the Bank, and by notice in the Gazette, prescribe”;
- (d) by deleting section 36 and substituting therefor the following new section—

Loans.

36. (1) The Bank may grant loans or advances for fixed periods not exceeding six months to specified banks and specified microfinance banks which pledge treasury bills or other Government securities specified by the Bank.

(2) Except as provided in this section, the Bank shall not extend credit directly or indirectly to specified banks or specified microfinance banks.

(3) The Bank may determine the general terms and conditions under which it extends credit to specified banks and specified microfinance banks, and in particular, the Bank shall determine and announce the rates of interest or return it shall charge for granting loans or advances to specified banks and

specified microfinance banks in accordance with this section, and may determine different rates of interest or return for different classes of transactions or maturities.

(4) The Bank shall publish the lowest rate of interest it charges on loans to banks and microfinance banks, and that rate shall be known as the central bank rate.

- (e) in section 43, by deleting subsection (1) and substituting therefor the following new subsection—

“(1) Every specified bank, specified financial institution and specified microfinance bank shall furnish to the Bank, at such time and in such manner as the Bank may prescribe, any information and data the Bank may reasonably require for the proper discharge of its functions under this Act”;

- (f) in section 47, by deleting paragraph (c) of subsection (1) and substituting therefor the following new paragraph—

“(c) accept money as deposit from commercial banks and microfinance banks on such terms as may be specified by the Bank”;

- (g) in the heading to Part VII, by inserting the words “and Microfinance Banks” immediately after the words “Specified Banks”.

3. The National Payment Systems Act, 2011 is amended—

Amendment of No.
39 of 2011.

- (a) in section 2—

- (i) by deleting the definition of the term “business day” and substituting therefor the following new definition—

“business day” means any day, other than a Sunday, a public holiday declared in accordance with the Public Holidays Act, a day declared to be a bank holiday under the Banking Act, or a day declared to be a bank holiday under the Microfinance Act, 2006,

on which the institutions and the Central Bank are open to the public for carrying on business functions;

(ii) in the definition of the term “institution”, by deleting the words “deposit-taking microfinance business” and substituting therefor the words “microfinance bank business”;

(b) in section 20, by deleting the operational part in subsection (2) and substituting therefor the following—

“In addition to any information that is required to be provided to the Central Bank under the Banking Act relating to banks or under the Microfinance Act, 2006 relating to microfinance banks, the management of every designated payment system, and every participant in the system, shall provide the Central Bank with such reports, returns and other information, at such times and in such form as the Central Bank may prescribe, regarding—”.

Amendment of
section 2 of No. 10
of 2012.

4. Section 2 of the Kenya Deposit Insurance Act, 2012 is amended by deleting the definition of the term “institution” and substituting therefor the following new definition—

“institution” means a bank, financial institution or mortgage finance company as defined in the Banking Act, or a microfinance bank as defined in the Microfinance Act, 2006, or any other deposit taking entity licensed by the Central Bank”.