

# **THE BANKING ACT**

**Commencement: 27th October, 1995**

No. 13 of 1994

No. 5 of 1998

No. 4 of 1999

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

## **PART I - PRELIMINARY**

**1.** This Act may be cited as the Banking Act.

**2.** (1) In this Act, unless the context otherwise requires "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;

"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;

"core capital" means permanent shareholders' equity in the form of issued and fully paid-up shares of common stock, or in the case of foreign incorporated banks, of the assigned capital, plus all disclosed reserves, less goodwill or any other intangible assets;

"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; "disclosed reserves" includes all reserves created or increased through share premiums, retained profits (after deducting all expenses, provisions, taxation and dividends) and general reserves if such disclosed reserves are permanent and unencumbered and thus able to absorb losses;

" 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;

"financial year" means the financial year prescribed in section 20A.

"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;

"supplementary capital" means general provisions which are held against future and presently unidentified losses that are freely available to meet losses which subsequently materialize, and revaluation reserves on banking premises which arise periodically from independent valuation of such premises, and any other form of capital as may be determined from time to time by the Central Bank;

"total capital" means the total sum of core capital and supplementary capital;

"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:
  - its holding company or its subsidiary; a subsidiary of its holding company; a holding company of its subsidiary; 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**

**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.

**4.** (1) Every institution intending to transact banking business, financial business or the business of a mortgage finance company in Kenya shall, before commencing that business, apply in writing, to the Minister through the Central Bank for a licence.

(2) The Central Bank shall examine every application made under subsection (1) and shall forward the application together with its recommendations thereon to the Minister.

(3) In addition to any other recommendations under sub-section (2), the Central Bank shall, where it is satisfied as to the professional and moral suitability of persons proposed to manage or control the institution, certify that such persons are fit and proper persons to manage or control the institution.

(4) For the purposes of this section, the criteria for assessing the professional or moral suitability of persons proposed to manage or control an institution shall be as prescribed in the First Schedule.

(5) In considering an application for a licence, the Minister may require to be satisfied as to-

- (a) the financial condition and history of the institution;
- (b) the character of its management;
- (c) the professional and moral suitability of the persons proposed to manage or control the institution;
- (d) the adequacy of its capital structure and earning prospects;
- (e) the convenience and needs of the area to be served; and
- (f) the public interest which will be served by the granting of the licence.

(6) The Minister may by notice in the Gazette, amend the First Schedule.

**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.

(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.

(2A) An institution which fails to commence business in Kenya within twelve months of the grant of a licence under this section shall, if it still proposes to transact business in Kenya, make fresh application under section 4.

(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.

**6. (1)** The Minister may, by notice in writing to the institution, revoke a licence if the institution-

- (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 any rules, regulations, orders or directions issued under those Acts or any condition of a licence:

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.

(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.

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

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

**8.** (1) No institution shall open in Kenya a branch or a new place of business or change the location of a branch or 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:

- (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.

(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.

**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.

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.

### **PART III - PROHIBITED BUSINESS**

10. (1) An institution shall not in Kenya grant to any person or permit to be outstanding any advance 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 twenty five per cent of its core capital;

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 core capital by such per centum as the Central Bank may in each particular case prescribe.

(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 imports.

(3) For the purposes of subsection (1), reference 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.

(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.

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

- (a) grantor 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, or otherwise has a beneficial interest in, more than twenty-five per cent of the share capital of that company; or
- (c) grant or permit to be outstanding any unsecured advances in respect of any of its employees or their associates; or
- (d) grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured
  - (i) to any of its officers or their associates; or
  - (ii) to any person of whom or of which any of its officers has an interest as an agent, director, manager or shareholder; or
  - (iii) to any person of whom or of which any of its officers is a guarantor; or
- (e) Grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the institution unless such advance, loan or credit facility-
  - (i) is approved by the full board of directors of the institution upon being satisfied that it is viable.
  - (ii) is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution.

and the institution shall notify the Central Bank of every approval given pursuant to subparagraph

- (i) of this paragraph, within seven days of such approval;
- (f) 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 associate or any of the persons mentioned in paragraphs (c),(d) and (e) in excess of twenty per cent of the core capital of the institution; or
- (g) grant or permit to be outstanding advances or credit facilities or give any financial guarantee or incur any other liabilities to or in favour of, or on behalf of, its associates and the persons mentioned in paragraphs (c), (d) and (e) amounting in the aggregate to more than one hundred per cent of the core capital of the institution; or
- (h) grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a



fraudulent or reckless manner or otherwise than in compliance with the provisions of this Act.

(2) The prohibitions contained in subsection (1) shall apply whether or not the advance, loan or credit facility in question is granted to any person alone or with others.

(3) Where an institution contravenes any of the provisions of this section-

- (a) all officers of the institution shall be liable jointly and severally to indemnify the institution against any loss arising in respect of the advance, loan or credit facility:

Provided that in the case of an advance, loan or credit facility to a person other than a director of the institution or a person participating in the general management of the institution, 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 contravention was taking place or was intended or about to take place, or he took all reasonable steps to prevent it taking place;

- (b) the Central Bank may, in the case of an advance, loan or credit facility to a director of the institution, direct the removal of such director from the board of directors of the institution and may direct the suspension of any other officer or employee of the institution who sanctioned the advance, loan or credit facility and the institution shall comply with every direction of the Central Bank under this paragraph forthwith.

(4) If any director removed, or officer or other employee of an institution suspended under subsection (3) is aggrieved by such decision, he may apply to the High Court for determination of the matter and the High 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, removal or suspension shall remain in effect.

(5) A director of an institution who defaults in the repayment of any advance or loan made to him by the institution for three consecutive months shall forth with be disqualified from holding office as such.

(6) An institution which-

- (a) fails to comply with any direction of the Central Bank under subsection (3) (b); or permits a director who is disqualified by virtue of subsection (5) to continue holding office as such, shall be guilty of an offence.

(7) Where an offence under subsection (6) continues, the institution shall, in addition to the penalty prescribed under section 49, be liable to such penalty as may be prescribed for each day or part thereof during which the offence continues.

**12.** An institution shall not in Kenya-

- (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 core capital 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 for housing or providing amenities for its staff, where the total amount of such investment does not exceed such proportion of its core capital as the Central Bank may prescribe.

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; or
- (iii) acquiring land for the purpose of its own development.

**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; or
- (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 with associates, 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.

(3) Where any share is held by a company or by a nominee on behalf of another person, the company or the nominee, as the case may be, shall disclose to the institution and to the Central Bank the full particulars of the individual who is the ultimate beneficial owner of the share.

**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 authorise 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.

**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; 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.

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.

**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 provisions 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 core capital of an institution shall at all times be not core capital and less than eight per cent of its total deposit liabilities.

**18.** The Central Bank may prescribe the minimum ratios which shall be maintained by institutions as between their core capital and total capital on one hand and their assets (including their total loans and advances) and off balance sheet items on the other and for that purpose, may also determine the method of classifying and evaluating 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 re-discountable 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 everyday on which the offence continues.

**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 expenditures 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.

**20A.** (1) The financial year of every institution shall be the period of twelve months ending on the 31<sup>st</sup> 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 provision of this section.

#### **PART IV – 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.

(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 book, 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 and last audited profit and loss statements (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 three months of the end of each financial year, cause a copy of the balance sheet and last audited profit and loss statements for that financial year to be published in a national newspaper.

**23.** (1) An institution shall, not later than three 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.

(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), and 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 duty 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 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 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.

(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) No institution shall remove or change its auditors except of auditors with the prior written approval of 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.

(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.

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

**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.

**28.** (1) 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.

(2) The information required to be furnished under subsection (1) may include information relating to any company which is an affiliate, an associate or a holding company of the institution required to furnish information under that sub-section.

**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.

**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.

**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 anytime 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.

(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.

**33.** (1) If, at any time, the Central Bank has reason to believe that -

- (a) the business of an institution is being conducted in a manner contrary to or not in compliance with the requirements of this Act or of any regulations made thereunder or in any manner detrimental to or not in the best interest of its depositors or members of the public, or
- (b) an institution, any of its officers or other person participating in the general management of the institution is engaged in any practice likely to occasion a contravention of any of the provisions of this Act or any regulations made thereunder, the Central Bank may-
  - (i) give advice and make recommendations to the institution with regard to the conduct of its business generally;
  - (ii) 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;
  - (iii) in any case to which paragraph (b) applies, issue directions to the institution, officer or other person to cease such practice;
  - (iv) 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 subparagraphs (ii) and (iii) and the advice of a person so appointed shall have the same force and

effect as a direction made under subparagraphs (ii) and (iii) and shall be deemed to be a direction of the Central Bank under this section.

(2) The Central Bank shall, before issuing a direction under subsection (1), serve upon the institution, officer or other person, a notice of such intent specifying the reasons therefor and requiring the institution, officer or other persons within such period as may be specified in the notice, to show cause why such direction should not be issued.

(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 that it has done so.

(4) The Central Bank may issue directions to institutions generally for the better carrying out of its functions under this Part and in particular, with respect to -

- (a) the standards to be adhered to by an institution in the conduct of its business in Kenya or in any country where a branch or subsidiary of the institution is located: and
- (b) guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

(5) A person who fails to comply with any direction under this section commits an offence and shall, in addition to the penalty prescribed under section 49, be liable to such additional penalty as may be prescribed for each day or part thereof during which the offence continues.

**33A.** Where an auditor's report, under section 24(4) or an inspection report under this Part reveals that an institution conducts its business in a manner contrary to the provisions of this Act or of any regulations made thereunder or in any manner detrimental to or not in the best interests of its depositors or members of the public, the Central Bank may

- (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 in accordance with the criteria set out in the First Schedule; or
- (e) withhold branch or other corporate approval with respect to such institution.

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

- (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 twelve months, as the Central Bank shall specify in his instrument of 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; and
- (e) obtaining from any officer 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

provided that the manager may offset the deposits or other liabilities owed by the institution to any depositor or other creditor against any loans or other debts owed by that depositor or creditor to the institution;

- (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; or
- (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.

(7) If any officer or employee of an institution removed under the provisions of subsection (2) 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 or 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 of omission done in good faith by such officer, employee, manager or other person in the execution of the duties undertaken by him.

**34A.** (1) An institution may, with the approval of the Minister, voluntarily liquidate itself if it is able to meet all its liabilities.

(2) An application for the Minister's approval for the purposes of subsection (1) shall be in the prescribed form and shall be forwarded to the Minister through the Central Bank.

(3) The Minister may, upon receipt of an application under subsection (2), approve the application if satisfied as to the solvency of the institution.

(4) Where the Minister approves an application by an institution under this section, such institution shall forthwith cease all its operations except such activities as are incidental to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

(5) Where an institution goes into liquidation under this section-

- (a) the liability of the shareholders of the institution for uncalled subscriptions to the capital stock of the institution shall continue until the end of the liquidation process; and
- (b) the institution shall first discharge its liability to its depositors and thereafter rank all other creditors in accordance with the provisions of the Companies Act.

**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 provision of Part VI of the Companies Act 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 a liquidator in his place; and the provisions of the Companies Act shall, subject to the provisions of subsection (11), 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, 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 (11).

(6) In addition to the powers conferred by subsection (5), when acting as a liquidator of an institution, the Board shall have the power to -

- (a) set off payment made to a protected depositor out of the fund against any dividend subsequently determined as payable to such depositor;
- (b) recover interest payable to the institution on loans, overdrafts and other credit facilities outstanding as at the date of liquidation;
- (c) offset deposits and any other liabilities to customers against any loans or debts owed to the institution as at the date of liquidation;
- (d) invest surplus funds in the liquidation account which are not immediately required for the purpose of financing day to day operations in short-term placements with reputable institutions approved by the Board or in such Government securities as the Board may determine.

(7) In the exercise of its powers as a liquidator, the Board may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the institution or any person who has custody of any funds or other assets of the institution being liquidated to -

- (a) give to the liquidator all reasonable assistance in connection with the liquidation;
- (b) appear before the liquidator for examination concerning matters relevant to the liquidation;
- (c) produce any books or documents that relate to the affairs of the institution being liquidated.

(8) A person who -

- (a) refuses or fails to comply with a requirement of the liquidator which is applicable to him, to the extent to which he is able to comply with it; or
- (b) obstructs or hinders a liquidator in the exercise of the powers conferred under this Act; or
- (c) furnishes information or makes a false statement which he knows to be false or misleading in any material particular; or
- (d) when appearing before a liquidator for examination pursuant to such requirement, makes a statement which he knows to be false or misleading in any material particular shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(9) Where an offence under subsection (8) is a continuing offence, the person shall, in addition to the penalty prescribed under that subsection be liable to a penalty of ten thousand shillings for each day or part thereof during which the offence continues.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

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

## **PART VIII - THE DEPOSIT PROTECTION FUND**

**36.** (1) There is hereby established a body corporate to be known as the 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) five members appointed by the Minister in consultation with the Central Bank to represent the interest of institutions.

(5) Subject to 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.

**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 authorise 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); and
- (e) money received as subventions, grants or donations to the Fund.

(3) The moneys constituting the Fund shall be placed in an account with the Central Bank to be invested by the Board in treasury bills, treasury bonds or other securities issued by the Government and any income from the investments 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.

(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 interest 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.

(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.

**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.

(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 persons 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 20 institution whose debt has been proved, and a duly authorized representative of the 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.

**40A.** (1) The liquidator may assign the assets or liabilities of an institution or of a customer under this Act, the Companies Act or under any other written law to third parties for the benefit of the creditors and depositors of the institution under liquidation.

(2) The right of assignment conferred by this section shall override all other rights and interests of parties under contracts of employment, leases, charges, mortgages or any other agreements the institution may have entered into before going into liquidation.

(3) Every public officer having the power or duty to accept and register or amend any entry in any register relating to an assignment of an asset or liability pursuant to subsection (1) shall, upon request made by the liquidator, customer or other person, do all such things as are by law necessary to complete the registration of the assignment.

**41.** (Repealed)

**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.

(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.

(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**

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

**45.** (1) The Minister shall consult with the Central Bank in the to consult with 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.

**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.

**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-

- (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-

- (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

- (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.

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.

**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.

**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.

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

**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, Income Tax Act, the Customs and Excise Act or the Value Added Tax Act.

**53.** (1) The Minister may, by notice in the Gazette, exempt an institution from the provisions of Section 13 or 14 subject to such conditions as the Minister considers necessary.

(2) An exemption granted under subsection (1) shall remain in force for such period specified in the notice as the Minister shall deem fit.

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

**55.** (1) The Minister may make regulations generally for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may, in regulations, prescribe penalties to be paid by institutions which fail or refuse to comply with any directions of the Central Bank under this Act, which shall not exceed one million shillings in the case of an institution, or one hundred thousand shillings in the case of a natural person, and may prescribe

additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

**56.** (1) The Banking Act (1989) is repealed.

(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.** [Spent].

**FIRST SCHEDULE (s.4)**  
**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 fulfillment 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.

**SECOND SCHEDULE (s.7)  
MINIMUM CAPITAL REQUIREMENTS**

1. Every institution shall, at all times, maintain-

- (a) a core capital of not less than eight per cent of total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank;
- (b) a core capital of not less than eight per cent of its total deposit liabilities;
- (c) a total capital of not less than twelve per cent of its total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by Central Bank;
- (d) a core capital of at least two hundred million Kenya shillings in the case of a bank or a mortgage finance company;
- (e) a core capital of at least one hundred and fifty million Kenya shillings in the case of a financial institution:

Provided that the provisions of paragraphs (d) and (e) shall, apply in accordance with the following table -

*Minimum Core Capital*

| <i>Act No.4/99 <u>Compliance Date</u></i> | <i>Banks and Mortgage<br/>Finance Companies<br/>(Kshs. Millions)</i> | <i>Financial<br/>Institutions<br/>(KshsMillions)</i> |
|---|--|--|
| 31st December, 1999                       | 200  | 150.00   |
| 31st December, 2000                       | 250  | 187.50   |
| 31st December, 2001                       | 300  | 225.00   |
| 31st December, 2002                       | 350  | 262.50   |
| 31st December, 2003                       | 400  | 300.00   |
| 31st December, 2004                       | 450  | 337.50   |
| 31st December, 2005                       | 500  | 375.00   |

**SUBSIDIARY LEGISLATION (s.3)**

**Regulations under section 32 of the Banking Act (now repealed)**

**L.N.116/1969 THE BANKING (LICENCES) (FORMS AND FEES) REGULATIONS**



1. These Regulations may be cited as the Banking (Licences) (Forms and Regulations)
2. An application for the grant of a licence by a bank or financial institution shall be submitted in duplicate in the appropriate form set out in the First Schedule and shall be accompanied by such statements as the bank or financial institution considers necessary in support of its application.
3. A licence granted to a bank or financial institution shall be in the appropriate form set out in the Second Schedule.
4. The licence fee shall be sent to the Minister accompanied by the licence fee payment voucher in duplicate in the appropriate form set out in the Third Schedule.
5. The fees specified in the Fourth Schedule shall be payable for the various matters set out therein.

**FIRST SCHEDULE**

**FORM A      APPLICATION FOR A LICENCE TO CONDUCT  
BANKING BUSINESS**

.....(Name of bank)  
of ..... (address)  
hereby applies for a licence to carry on a banking business.

**Particulars**

1. Country of incorporation .....
2. Situation of registered office .....
3. Situation of principal office in Kenya .....
4. List of places of business in Kenya .....
- .....
- .....
- .....
5.     Details of Capital
  - (a) nominal value .....
  - (b) paid-up value .....
6. The number of years that the bank has been established and has conducted or carried on banking business -
  - (a) in country of incorporation .....
  - (b) in Kenya .....
  - (c) in other countries .....
7. Names and addresses of directors .....

.....  
.....  
.....

8. Name and address of general manager or superintendent for Kenya.

.....  
.....  
.....

Date.....

.....  
(Signature of a director of the bank or the general manager or superintendent for Kenya)

Note- This application must be accompanied by balance sheets and profit and loss accounts for each of the five years preceding the date of this application.

**FORM B APPLICATION FOR A LICENCE TO CONDUCT BUSINESS OF A FINANCIAL INSTITUTION**

..... (Name of financial institution)  
of ..... (address)  
hereby applies for a licence to carry on a business of a financial institution.

Particulars

1. Country of incorporation .....
2. Situation of registered office .....
3. Situation of principal office in Kenya .....
4. List of places of business in Kenya -  
.....

5. Details of capital -  
  
(a) nominal value .....
- (b) paid-up value .....

6. The number of years that the financial institution has been established and has conducted or carried on business of a financial institution -  
  
(a) in country of incorporation .....
- (b) in Kenya .....
- (c) in other countries .....

7. Names and addresses of directors  
.....  
.....

8. Name and address of general manager or superintendent for Kenya.

.....  
.....

Date .....

.....  
(Signature of a director of the bank or the general manager or superintendent for Kenya)

Note- This application must be accompanied by balance sheets and profit and loss accounts for each of the five years preceding the date of this application.

**SECOND SCHEDULE**

**FORM C LICENCE TO CONDUCT A BANKING BUSINESS**

THIS LICENCE is granted to-

..... (name of bank)

of ..... (address) and authorizes the said bank to conduct or carry on banking business in Kenya.

This licence is issued subject to the provisions of the Banking Act and to the conditions endorsed hereon.

**CONDITIONS**

Dated this ..... day of .....

LICENCE No. ....

(.....)

*Permanent Secretary to the Treasury*

**FORM D LICENCE TO CONDUCT THE BUSINESS OF A FINANCIAL INSTITUTION**

THIS LICENCE is granted to-

.....Name of financial institution)

of .....(address) and authorizes the said financial institution to conduct or carry on business of a financial institution in Kenya.

This licence is issued subject to the provisions of the Banking Act and to the conditions endorsed hereon.

CONDITIONS

Dated this ..... day of .....  
LICENCE No. ....

(.....)  
*Permanent Secretary to the Treasury*

**THIRD SCHEDULE**

**FORM E LICENCE FEE PAYMENT VOUCHER (BANK)**

..... (Name of bank)  
of .....(address)  
hereby encloses the fee of ..... for  
\*the grant of a licence  
the annual renewal of Licence No.

Dated .....  
(Signed) .....

**FOR OFFICIAL USE**

*Receipt*

Received the fee of .....in respect  
of Licence No ..... for the twelve-month period  
..... until .....

Date .....

(.....)  
*Permanent Secretary to the Treasury*

Note:- This form must be forwarded to the Minister for Finance in duplicate.

*\*Delete whichever is inapplicable.*

**FORM F LICENCE FEE PAYMENT VOUCHER  
(FINANCIAL INSTITUTION)**

.....Name of financial institution)

of .....(address)  
 hereby encloses the fee of ..... for  
\*the grant of a licence  
 the annual renewal of  
 Licence No. ....  
 Dated ..... (Signed) .....

**FOR OFFICIAL USE**

*Receipt*

Received the fee of ..... in respect  
 of Licence No. .... for the twelve-month period

(.....)  
 Permanent Secretary to the Treasury

Note- This form must be forwarded to the Minister for Finance in duplicate.

*\*Delete whichever is inapplicable.*

**FOURTH SCHEDULE (r.5)  
 FEES**

| <i>Matter for which fee payable</i>   | Sh.cts. |
|---|---------|
| For inspecting statements or other documents                                      | 10.00   |
| For copies or extracts from statements or other documents,<br>other than licences |         |
| (i) if certified, per folio of 100 words or part thereof                          | 10.00   |
| (ii) if not certified, per folio of 100 words or part thereof                     | 5.00    |
| For copies of licences -  |         |
| (i) if certified  | 10.00   |
| (ii) if not certified   | 5.00    |

**Regulations under Section 55**

**L.N. 222/91 THE BANKING (DEPOSIT PROTECTION FUND)  
 REGULATIONS**

1. These Regulations may be cited as the Banking (Deposit Protection Fund) Regulations.

**2.** In these Regulations, unless the context otherwise requires -

"Board" means the Deposit Protection Fund Board established under section 36 of the Act;

"Contributory institution" means a bank, a mortgage finance company or financial institution which has received a notice to contribute under section 38 (2) of the Act;

"Fund" means the Deposit Protection Fund established by section 37 of the Act.

**3.** Meetings of the Board shall be convened by the Chairman not less than once in every three months, or whenever the business of the Fund so meetings requires.

**4.** (1) A quorum for any meeting of the Board shall be the Governor and two other members appointed under paragraphs (b) and (c) of subsection 4 of section 36 of the Act.

(2) The validity of any proceedings of the Board shall not be affected by any vacancy in the membership of the Board, or by any defect in the appointment of any member which is discovered subsequent to those proceedings.

(3) The decision of the Board shall be authenticated by signature of the Chairman of any other person authorized by the chairman for that purpose.

**5.** (1) Subject to the Act and these Regulations, the Board shall -

(a) keep proper accounts and proper records in relation to its accounts; and

(b) in every financial year, prepare a statement of accounts showing its state of affairs, income and expenditure.

(2) The accounts shall include contributions by institutions and investments by the Fund.

(3) A statement of accounts prepared in accordance with paragraph (1) shall be audited by auditors appointed by the Board.

(4) For the purposes of this regulations, no person shall be appointed as an auditor unless he is qualified under section 161 of the Companies Act and is approved by the Central Bank.

(5) The Board shall publish the report prepared under section 42 (1) of the Act within three months of its submission to the Minister.

**6.** Subject to the Act, the average of an institution's total deposit liabilities shall be the amount which the Board determines as representing its average deposit liabilities over a period of twelve months preceding the levying of contributions.

**7.** The Board may waive a contribution by a contributory institution if it appears to the Board that an institution which is licensed is carrying on substantially the same business as that previously carried on by one or more institutions which are, or were contributory institutions, but nothing in these Regulations shall entitle any institution to a repayment of the contributions previously made to the Fund.

**8.** (1) The Board may, upon application by a contributory institution, grant a loan or an advance, place a deposit with or issue a guarantee on behalf of the institution on such terms and conditions as the Board may prescribe, to be secured against treasury bills, treasury bonds or the other Government securities, a first charge over the institution's own immovable assets or other marketable securities freely transferable and acceptable to the Board.

(2) In considering requests for assistance, the Board shall satisfy itself *inter alia* that the financial problems facing the institution are of a temporary nature, the rescue assistance will reduce risk or avert threatened loss to the Fund, the adequacy of the assistance being sought and that the said problem are not attributable to reckless or fraudulent practices or insider lending and dealings by the institution.

**9.** (1) Whenever an institution shall become insolvent in accordance with section 39 (6) of the Act and at that time the institution is a contributory Fund institution whose deposits are protected, the Board shall, as soon as is practicable, pay out of the Fund by cash, cheque or bank transfer to a depositor who has a protected deposit with the institution an amount equal to his protected deposit.

(2) In the event of uncertainty of records, the Board may only pay such percentage of the protected deposit as it may deem appropriate in the circumstances.

(3) No account whatsoever shall be taken of any liability unless proof of the debt which gives rise to it has been given to the Board in such manner and at such times as the Board shall determine.

**10.** (1) Subject to the Act, and in relation to a contributory institution, any reference to a protected deposit is a reference to the total liability of the institution to the depositor limited to a maximum of one hundred thousand shillings:

Provided that the Minister may, by order, and with the approval of the Board, increase the sum specified under this regulation to a sum specified in the order.

(2) For the purposes of this regulation, a deposit shall include interest which has been credited to the deposit in question as may be determined by the Board from time to time.

(3) In determining the liability of an institution to a depositor no account shall be taken of any liability in respect of a deposit if it is no longer protected or it is made after termination of the protection of deposits of that institution under section 38 (5) of the Act.

(4) In all cases, before termination of protection of deposit, the Board shall publish a notice in the Gazette and in one national newspaper of its intention to terminate protection of deposits in an institution.

(5) Unless the Board otherwise directs, there shall be deducted the amount of any liability of a depositor to the institution in respect of which a right of set-off existed immediately before the institution became insolvent in accordance with section 39 (6) of the Act against any such deposit or in respect of which such a right would then have existed if the deposit in question had been payable on demand and the liability in question had fallen due.

**11.** (1) Subject to the Act and these regulations, where an institution is insolvent and the Board has made or is under a liability to make an insolvency payment to a depositor the institution shall become liable to the Board, as in respect of contractual debt incurred immediately before the institution become insolvent, for an amount equal to the Board's liability.

(2) In all cases, no payment shall be made by the insolvent institution to a depositor unless full satisfaction has been given to the Board in respect of all moneys paid by the Board to the depositor.

(3) The liability of the insolvent to a depositor shall be reduced by an amount equal to insolvency payment made or to be made by the Board to the depositor.

**12.** The duty of the liquidator of an insolvent institution shall be to pay to the Board instead of the depositor the amount referred to under Board regulation 9, and if the amount paid to the Board equals the insolvency payment made to the depositor by the Board, the liquidator shall thereafter pay to the depositor instead of the Board any excess amount.

**13.** The Board may, by notice in writing served on an institution or the liquidator of an insolvent institution, require him or such institution at such place as may be specified in the notice to furnish to the Board information and such books, papers or records as the Board may require to carry out its functions under the Act.

**14.** Where as a result of an institution having become insolvent any books, papers or records have come into the possession of the official receiver, or liquidator he shall permit any person duly authorized by the Board to inspect such books, papers or records.

## **THE BANKING (FEES) REGULATIONS**

**1.** These Regulation may be cited as the Banking (Fees) Regulations.

**2.** The fees specified in the Schedule shall be paid prior to the granting of a licence to an institution to carry on business under the Act.

## **SCHEDULE**

(r.2)



## **Fees**

Shs.

|    |     |   |         |
|----|-----|---|---------|
| 1. | (a) | On the granting of a licence to an institution and each anniversary thereof             | 400,000 |
|    | (b) | Additionally, in respect of each branch of an institution within a municipality         | 150,000 |
|    | (c) | Additionally, in respect of each branch of an institution within a town council area    | 100,000 |
|    | (d) | Additionally, in respect of each branch of an urban council area                        | 30,000  |
| 2. |     | On application for a licence to conduct business or open a branch as an institution     | 5,000   |
|    | (a) | On the application for an authority to establish a representative office                | 5,000   |
|    | (b) | On the granting of an authority to a representative office and each anniversary thereof | 20,000  |

## **THE BANKING (LIQUIDATION OF INSTITUTIONS) REGULATIONS**

1. These Regulations may be cited as the Banking (Liquidation of Institutions) Regulation:

2. (1) Where the Board is appointed as a liquidator of an institution it shall, as soon as practicable thereafter, cause notice of its appointment to be published in the Gazette and at least one daily newspaper of general circulation in Kenya.

(2) The Board shall not be required to give any security by reason of its appointment as liquidator and upon appointment shall be deemed to have given security for the purposes of the Companies (Winding-Up) Rules.

3. Where the Board has been appointed as liquidator of an institution, it shall not unless the court otherwise directs, be necessary for the liquidator to convene a meeting of creditors and contributories under the provisions of section 236 of the Companies Act.

4. (1) Where the Board has been appointed as liquidator of an institution, it may, if it deems fit, admit the claim of any depositor or class of depositors without submission of formal proof of debt and shall notify the depositor or depositors concerned accordingly.

(2) Any depositor who is dissatisfied with the decision of the Board may apply to the Court in the same manner as a dissatisfied creditor under the provisions of the Companies (Winding-Up) Rules.

5. The High Court shall, except as otherwise expressly provided in regulation 6, have exclusive jurisdiction to entertain and decide any claim made by or against an institution which is being wound-up or any question of priorities or any other question whatsoever, whether, of law or fact, which may relate to or arise in the course of the winding-up of an institution.

6. (1) Where an institution is being wound-up, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under the Act or these Regulations and which is pending in any other court immediately before the commencement of the Act or the commencement of the winding-up of the institution, whichever is later, shall be proceeded with except in the manner provided under these Regulations.

(2) The liquidator shall, within three months from the commencement of the winding-up or the commencement of the Act, whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under paragraph (2), the High Court may give the parties concerned an opportunity to show cause why the proceedings should not be transferred to the Court and it shall make such order as it deems fit transferring all or such of the pending proceedings as may be specified in the order to the Court and such proceedings shall *thereafter be* disposed of the Court.

(4) If any proceedings pending in a Court are not transferred to the High Court under paragraph (3), the proceedings shall be continued in the Court in which the proceedings were pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Court of Appeal or the High Court.

7. (1) In the winding-up of an institution, the liquidator shall determine whether, in his opinion, any loss has been caused to the institution since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of a person in the promotion or formation of the institution or of any officer or auditor of the institution.

(2) If the liquidator *determines that* a loss has been caused by an act or omission referred to in paragraph (1), he may apply to the High Court for an order that any officer or auditor of an institution or any person who has taken part in the promotion or formation of the institution shall be publicly examined and the Court shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the institution or as to his conduct and dealings in so far as they relate to the affairs of the institution.

(3) The liquidator shall take part in the examination and for that purpose may employ a legal representative of his own choice.

(4) Any creditor or contributor may also take part in the examination either personally or by an advocate.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this regulation may, at his own cost, employ an advocate who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges made against him, the High Court may allow such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined.

(9) References in this regulation to an officer or auditor of an institution shall include a former officer or auditor of that institution.

**8.** (1) This regulation shall apply to any examination under regulation 7 and also to any examination under section 263 or section 265 of the Companies Act which is conducted in the course of the winding-up of any institution whether such winding-up commenced before or after the commencement of the Act.

(2) No person shall be excused from examination by reason of the fact that any other proceedings, whether criminal or civil, are in progress or contemplated against him.

(3) The official record of the evidence taken on any such examination may thereafter be used in evidence against any person examined in any civil proceedings and shall be open to the inspection of any creditor or contributory at all reasonable times.

**9.** Where an application is made to the High Court under section 323 of the Companies Act against any person for repayment of restoration of any money or property of an institution and the applicant makes out a prima facie case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

(1) Provided that where such an order is made jointly against two or more person, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under section 323 of the Companies Act and the High Court has reason to believe that any property belongs to any promoter, officer, manager or liquidator of the institution, whether the property standings in the name of such person or any other person as an ostensible owner, then the High Court may, at any time, whether before or after making an order under paragraph (1) direct the attachment of such property so attached shall remain subject to attachment unless the ostensible owner and the provisions of the Civil

Procedure Act relating to attachment of property shall, as far as may be, apply to such attachment.

**10.** The Board may, at any time, resign as liquidator of an institution upon giving written notice to the Official Receiver whereupon the Official Receiver shall become the liquidator of the institution unless and until another liquidator is appointed by the Court in accordance with the provision of the Companies Act.

## **THE BANKING (PENALTIES) REGULATIONS**

**1.** These Regulations may be cited as the Banking (Penalties) Regulations.

**2.** (a) Any institution or other person who fails or refuses to comply with any directions given by the Central Bank under the Act shall be liable to a penalty not exceeding one million shillings in the case of an institution, or one hundred thousand shillings in the case of a natural person.

(b) The Minister may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

**3. (1)** The following shall constitute specific violations by an institution of the directions given by the Central Bank which shall be subject to assessment of monetary penalties under these Regulations:-

- (a) Loans, advances or other credit facilities granted by the institution to any person in excess of 25% of the institution's core capital;
- (b) Outstanding unsecured advances to any of the institution's employees or their associates;
- (c) Outstanding advances, loans or credit facilities which are unsecured or not fully secured -
  - (i) to any of its officers or their associates; or
  - (ii) to any person of whom or of which any of its officers has an interest as an agent, principal, director, manager or shareholder; or
  - (iii) to any person of whom or of which any of its officers is a guarantor.
- (d) Outstanding advance, loan or credit facility to any of its directors or other person participating in the general management of the institution which -
  - (i) has not been approved by the full board of directors of the institution upon being satisfied that it is viable;
  - (ii) has not been made in the normal course of business and on terms similar to those offered to ordinary customers of the institution; and
  - (iii) has not been reported to the Central Bank within seven days thereof as being approved under (i) above;

- (e) An aggregate of credit facilities to any one of the institution's shareholders, directors, officers or employees which is in excess of twenty percent of the institution's core capital;
- (f) The aggregate of loans, advances and other credit facilities to shareholders, directors, officers and employees is in excess of one hundred percent of the institution's core capital;
- (g) Failure of the institution to -
  - (i) exhibit its annual audited accounts, throughout each year, in a conspicuous place in every office and branch in Kenya; or
  - (ii) publish its annual audited accounts in a national newspaper within the number of months of the end of each financial year as prescribed under the minimum disclosure requirements prescribed from time to time by the Central Bank.
- (h) Failure of the institution to submit, not later than three months after the end of its financial year, to the Central Bank its annual audited accounts and a copy of the auditor's report in the prescribed form.
  - (i) Failure of the institution to furnish, at such time and in such manner as the Central Bank may direct, such information in accurate and complete manner as the Central Bank may require to properly discharge its functions under the Act.

(2) Monetary penalties on non-compliance with other directions not covered herein above may be levied by the Central Bank.

**4. (a)** The Central Bank, after reviewing all available information and determining the existence of the contravention or violations of one or more of the provisions referred to herein, shall notify the institution in writing advising it of its findings

**(b)** A notification under (a) above shall advise the institution of a reasonable time frame within which the violation shall be rectified.

**5.** Following the notification and expiration of the time frame designated in (4) above, or sooner if advised by the institution of the correction of the violation, the Director of Bank Supervision of the Central Bank shall instruct the institution, in writing, as to the amount of monetary penalties assessed and the manner in which such monies shall be paid to the Central Bank.

**6. (a)** Where the Central Bank is not satisfied, either by evidence provided by the institution or information obtained by the Central Bank, that the violation has been rectified as directed, the daily monetary penalty prescribed in Regulation 2(b) shall continue to accrue.

- (b) Once the Central Bank is fully satisfied that the violation has been rectified, the daily penalty shall cease to accrue and the institution shall be assessed the aggregate penalty.