

(Legislative Supplement No. 3)

LEGAL NOTICE NO. 5

THE BANKING ACT

(Cap. 488)

THE MICROFINANCE ACT

(No. 19 of 2006)

CREDIT REFERENCE BUREAU REGULATIONS, 2013

ARRANGEMENT OF REGULATIONS

Regulations

PART I—PRELIMINARY

1—Citation.

2—Interpretation.

PART II—ESTABLISHMENT AND LICENCING OF CREDIT
REFERENCE BUREAUS

3—Qualification and prohibition to operate without a licence.

4—Application for licence.

5—Evaluation of application.

6—Inspection of premises and systems.

7—Issuance of licence.

8—Bank Guarantee.

9—Refusal to issue a licence.

10—Validity of the licence.

11—Publication of list of Bureaus.

12—Revocation or suspension of licence.

13—Annual licence fee.

14—Non-Transferability of licences.

PART III—OPERATIONS OF CREDIT REFERENCE BUREAUS

15—Activities of the Bureaus.

16—Use of Agents.

17—Actions requiring prior approval of Central Bank.

18—Nature of information to be shared.

- 19—Protection from liability.
 - 20—Prohibited information.
 - 21—Form of consent.
 - 22—Conditions and form of disclosure to customers.
 - 23—Other sources of information.
 - 24—Use of public data by Bureau.
 - 25—Duty to provide accurate information.
 - 26—Restrictions on the use of customer information.
 - 27—Responsibilities of a Bureau.
 - 28—Key facts document on the right to obtain and dispute credit report.
 - 29—Subscriber’s obligation in respect of information obtained from Bureaus.
 - 30—Receipt of credit reports by third parties.
 - 31—Fees.
 - 32—Data management and quality control.
 - 33—Updating and maintaining information.
 - 34—Security and control measures.
 - 35—Customers’ rights of access and correction.
- PART IV — GOVERNANCE AND MANAGEMENT OF BUREAUS
- 36—Management and composition of a Bureau.
 - 37—Criteria for appointment of directors.
 - 38—Disqualification of officers.
 - 39—Suitability test.
- PART V — DISSOLUTION AND LIQUIDATION
- 40—Dissolution and winding up.
 - 41—Central Bank approval for voluntary liquidation.
 - 42—Notification to the Central Bank.
 - 43—Forwarding of data to Central Bank.
 - 44—Notification to institutions and Bureaus.
- PART VI — POWERS OF THE CENTRAL BANK
- 45—Powers of the Central Bank.
 - 46—Inspection of Bureaus.
 - 47—Ownership of information.
 - 48—Periodic returns.

PART VII—GENERAL PROVISIONS

- 49—Mandatory standards.
- 50—Responsibilities of institutions.
- 51—Notification of amount owing.
- 52—Mode of service.
- 53—Obtaining information under false pretences.
- 54—Compliance with guidelines, rules or directives.
- 55—Penalties.
- 56—Repeals.
- 57—Savings.

SCHEDULES

- FIRST SCHEDULE —Application Form for a Licence to carry out the Bureau Business.
- SECOND SCHEDULE —Personal Declaration Form for individuals proposed to become significant shareholders, directors or senior officers of a Bureau.
- THIRD SCHEDULE —Statutory Declaration.

THE BANKING ACT

(Cap. 488)

THE MICROFINANCE ACT

(No. 19 of 2006)

IN EXERCISE of the powers conferred by sections 31(3) and (4) and 55(1) of the Banking Act and sections 34(4) and (5) and 48(2) of the Microfinance Act, 2006, the Cabinet Secretary for The National Treasury makes the following Regulations –

THE CREDIT REFERENCE BUREAU REGULATIONS, 2013

PART I—PRELIMINARY

1. These Regulations may be cited as the Credit Reference Bureau Regulations, 2013. Citation and commencement.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Banking Act and the Microfinance Act, 2006; Cap. 488
No. 19 of 2006

“adverse action notice” means a notice issued by an institution to a customer conveying denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavourable change in the terms of coverage or amount of, any loan, existing or applied for, or any other action or determination adversely affecting the customer, based on customer information obtained from a Bureau;

“agent” means an entity contracted by a Bureau and approved by the Central Bank to provide the services on behalf of the Bureau, in such manner as may be prescribed by the Central Bank;

“amendment notice” means a written notice from an institution advising a Bureau of an amendment to credit information previously incorrectly reported to a Bureau by that institution; Cap 491.

“Bureau” means a credit reference bureau licensed under these Regulations to prepare or provide credit reports to credit information recipients based on data maintained by the Bureau and to carry out such other activities as are authorised under these Regulations;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Central Bank” means Central Bank of Kenya established under section 3 of the Central Bank of Kenya Act;

“credit information” means any positive or negative information bearing on an individual’s or entity’s credit worthiness, credit standing, credit capacity, to the history or profile of an individual or entity with regard to credit, assets, and any financial obligations;

“credit information provider” means a person other than a subscriber who furnishes credit information to a Bureau;

“credit report” means an electronic, written or other communication of any information by a credit reference bureau, relating to a person’s creditworthiness, credit standing, credit capacity, character or general reputation which is used or collected to serve as a factor in establishing that person’s eligibility for credit or other service or product provided by an institution or for such other purposes as may be permitted or required by law or contract;

“customer” means any consumer of services or products who has a formal engagement to receive services or products on agreed terms and conditions from an institution licensed under the Act or a third party and includes a person who seeks to open an account with an institution;

“customer information” means credit information, or any other positive or negative information provided by a customer or obtained from an institution, a third party, or public record information, which may be exchanged pursuant to these Regulations;

“database” means a set of customer information collected, managed and disseminated by a Bureau;

Cap 488.
No.19 of 2006.

“director” means a member of the board of directors of a Bureau;

“institution” for the purposes of these Regulations, means an institution within the meaning of section 2 of the Banking Act and section 2 of the Microfinance Act, 2006;

“loan” means direct, indirect and contingent obligations incurred by an individual or entity with third parties and includes any , credit, discount, advance, overdraft, export bills purchased, other bills receivable or purchased, import bills, customers’ liability on off-balance sheet items or any other credit facility extended to a customer of an institution;

“negative information” means any adverse customer information relating to a customer which includes-

- (a) non-performing loan or credit default or late payment on all types of facilities or claims;
- (b) dishonour of, other than for technical reasons, cheques meant for settlement of credits in favour of institutions;
- (c) accounts compulsorily closed other than for administrative reasons;
- (d) proven cases of frauds and forgeries;
- (e) proven cases of cheque kiting;
- (f) false declarations and statements;

- (g) receiverships, bankruptcies and liquidations;
- (h) tendering of false securities; and
- (i) misapplication of borrowed funds.

“non-performing loan” means—

Cap 488.

- (a) pursuant to the Banking Act and Prudential Guidelines, 2013—
 - (i) in respect of, loan accounts and other credit extensions having pre-established repayment programs, when principal or interest is due and unpaid for ninety days or more or interest payments for ninety days or more have been re-financed or rolled-over into a new loan;
 - (ii) in respect of, current accounts ,overdrafts, and other credit extensions not having pre-established repayment programs, when the balance exceeds the customers approved limit for more than ninety consecutive days , the customers borrowing line has expired for more than ninety days or interest is due and unpaid for more than ninety days; or
 - (iii) in respect of, off balance sheet items, when the off balance sheet item crystallize and the customer’s account is debited and the principal and interest is subsequently unpaid for ninety days or more.
- (b) pursuant to the Microfinance Act, 2006 and the Microfinance (Depositing Taking Microfinance Institutions) Regulations, 200 a credit facility that is not generating income and the principal or interest is due and unpaid for, more than thirty days and includes a loan or credit facility classified either as substandard, doubtful or loss;

No.19 of 2006.

L.N. No. 5 of 2008.

“notice of change” means a written notice sent by a Bureau to an institution concerning a significant change to customer information that had previously been obtained by the institution from the Bureau for a period not exceeding twelve months prior to the date of the notice of change;

“notice of resolution” means a written notice sent from an institution to a Bureau, advising the results of an investigation the institution has made into customer information previously reported to the Bureau by the institution where the customer has disputed the accuracy of information reported;

“officer” means any person who takes part in the general management of a Bureau and includes a director, the secretary to the board, the chief executive officer, deputy chief executive officer, chief financial officer, chief information technology officer, chief internal

auditor, or manager of a significant unit of the Bureau or a person with a similar level of seniority, position or responsibility;

“performing loan” means any loan which has not been classified as a non-performing loan under the Banking Act and the Microfinance Act;

Cap 488.
No.19 of 2006.

“place of business” means any premises including the head office, branch, agency or such other premises as may be approved by the Central Bank, at which a Bureau conducts its business;

“positive information” means any information on performing loan or other credit;

“significant shareholder” means a person other than the Government or a public entity, who holds directly or indirectly or otherwise has a beneficial interest in more than ten per cent of the share capital of a Bureau or if it is proposed that such a person shall hold or have such a beneficial interest;

“subscriber” means an institution licensed under the Banking Act or the Microfinance Act and which has subscribed to receive customer information from a Bureau.

PART II—ESTABLISHMENT AND LICENSING OF A BUREAU

3. (1) A person shall not establish or operate a bureau business in Kenya or otherwise hold himself out to the public as engaging in any Bureau business for the benefit of institutions licensed under the Act unless such person is—

Qualification and prohibition to operate without a licence.

- (a) established and incorporated as a limited liability company under the Companies Act; and
- (b) licensed under these Regulations; or
- (c) is an agent of a Bureau.

Cap 486.

(2) A person who contravenes the provisions of this regulation commits an offence and shall, on conviction, be liable to a fine of five hundred thousand shillings or to imprisonment for a term of two years or to both.

4. (1) A person seeking to obtain a licence to conduct Bureau business shall apply to the Central Bank for approval of the name.

Application for a licence.

(2) The approval under sub-regulation (1) shall lapse where the person does not obtain a licence within twelve months of such approval.

(3) An application for a licence to conduct Bureau business shall be made to the Central Bank in the form set out in the First Schedule.

(4) The applicant under sub-regulation (3), shall furnish the following information and provide supporting documents and any such other information that the Bureau considers necessary or as may be required by the Central Bank from time to time-

- (a) certified copies of the applicant's certificate of incorporation and its memorandum and articles of association;
- (b) feasibility study by the applicant, showing the nature of the planned business, organizational structure and internal control systems and monitoring procedures of the company, covering, the following aspects—
 - (i) market analysis;
 - (ii) ownership structure;
 - (iii) governance and management structure;
 - (iv) business plan;
 - (v) business continuity plan; and
 - (vi) operation manuals that ensure the accuracy of the information contained in its database as well as the timely updating of the information, through signing of contracts with information sources which must be known to and approved by the Central Bank and the manuals must include query module manual of the applicant, data loading module manual, source quality control manual, maintenance module manual, security module manual, operating manual, user manual, data privacy manual and manual for procedures for handling complaints;
- (c) sworn declarations of proposed directors, officers and significant shareholders in the forms set out in the Second Schedule;
- (d) management processes, including—
 - (i) development schedule of the software required for operation;
 - (ii) characteristics of products and services to be provided to subscribers;
 - (iii) service provision policies and procedures manuals; and
 - (iv) proposed security and control measures aimed at preventing misuse or improper management of information;
- (e) overview of operations including the description of systems and the design of the data collection including the unique identification system for individuals and enterprises that is adequate to ease the collection of data and handling of the database;

- (f) a description of the applicant's premises and their suitability for customer service and the description of the security measures to be adopted;
- (g) the proposed fees and cost structure of products and services;
- (h) audited financial statements for the last three years where applicable;
- (i) a prototype of the final product that demonstrates the principal features and functions of the system; and
- (j) a banker's cheque of ten thousand shillings payable to the Central Bank, being a non-refundable application processing fee.

5. (1) On receipt of an application for a Bureau licence, the Central Bank shall within fourteen days from the date of receipt of the application assess the accuracy of the information submitted and shall acknowledge receipt of the application and notify the applicant of any missing information which ought to have been submitted by the applicant.

Evaluation of application.

(2) When evaluating an application for a licence to operate a Bureau business in Kenya, the Central Bank shall take into consideration all relevant matters including the following-

- (a) the background, reputation, integrity, experience and capacity of the proposed significant shareholders, directors and senior officers of the applicant as evidenced by amongst others, the curriculum vitae and professional records of the proposed persons;
- (b) the business plan of the applicant, including plans to undertake national coverage, the roll out plan and a mechanism to integrate, gather, input, update and validate data;
- (c) the design of data collection for customer information and flexibility in structuring the information in accordance with the Act and these Regulations or other guidelines that may be issued by the Central Bank;
- (d) the adequacy of the applicant's capital structure in relation to the business;
- (e) availability of human, financial and operational resources necessary for effective and efficient conduct of Bureau business;
- (f) the existence of adequate infrastructure for the collection of information and delivery of credit reports;

- (g) ability of the applicant to keep customer information confidential; and
- (h) ability of the applicant to conduct proper and sufficient due diligence and identity verification on any person requesting for credit information.

6. (1) An applicant shall submit to the Central Bank an independent security audit report prepared by a registered audit firm giving expert opinion on the suitability of the premises, adequacy of the management information systems, and any other aspects that maybe considered relevant with respect to Bureau operations.

Inspection of premises and systems.

(2) The Central Bank shall carry out on-site inspection of the applicant's premises to determine the adequacy of the applicant's safety and security system and to confirm-

- (a) suitability of the premises for Bureau operations;
- (b) adequacy of the management information system, administrative and operational processes and the internal control systems;
- (c) security of information; and
- (d) separation of the proposed Bureau business from other business carried out by the applicant or its associates.

7. (1) Where the Central Bank is satisfied that the applicant meets the requirements; it shall issue a letter of intent to the applicant, which shall act as an interim approval of the application.

Issuance of licence

(2) Where an applicant is issued with a letter of intent, the Central Bank shall notify the applicant to submit to the Central Bank-

- (a) a bankers cheque for one hundred thousand shillings payable to the Central Bank being licence fee;
- (b) a statutory declaration in the form set out in the Third Schedule sworn under oath by the chief executive officer of the applicant confirming that the applicant will adhere to the provisions of these Regulations and in particular, the applicant will not disclose to any person any information obtained pursuant to the applicant's obligations under these Regulations except as provided therein.

(3) Where the Central Bank is satisfied that the requirements of sub-regulation (2) have been fully complied with, the Central Bank shall issue a licence to the applicant permitting it to carry out Bureau business.

(4) Where the Central Bank is dissatisfied with the information submitted by the applicant, the Central Bank may request for additional information before making a final determination.

(5) The Central Bank may endorse a licence granted under this regulation with such conditions as the Central Bank considers necessary and may from time to time add, vary or substitute such conditions as the Central Bank considers appropriate.

(6) The Central Bank shall determine an application for a licence within ninety days from the date of receipt of information required under these Regulations or as may be requested by the Central Bank:

Provided that a licence shall not be granted if the applicant has not fully set up its physical structure including management information system.

(7) Where the Central Bank declines to grant a licence, it shall state the grounds of refusal and where applicable may advise the applicant of the necessary action which the applicant needs to take before resubmitting a fresh application for a licence.

8. (1) Where a Bureau is licensed under these Regulations, it shall within thirty days of being granted the licence, submit to the Central Bank an irrevocable bank guarantee of one million shillings in the form provided by the Central Bank.

Bank guarantee

(2) Where a Bureau is required to pay a penalty under these Regulations and fails to do so within the time specified by the Central Bank, the Central Bank may recover the amount due on the penalty from the bank guarantee issued under sub-regulation (1).

(3) Where a penalty has been recovered from the bank guarantee in accordance with sub-regulation (2), the Bureau shall within thirty days of being notified, furnish the Central Bank with a new irrevocable bank guarantee of one million shillings, in a form provided by to the Central Bank.

(4) Where a Bureau fails to comply with sub-regulation (1) and (3), its licence shall be revoked.

9. (1) The Central Bank may, where the requirements of issuance of a licence as provided in these Regulations are not met, decline to grant a licence to an applicant.

Refusal to issue a licence.

(2) A person aggrieved by the decision of Central Bank not to grant a licence under sub-regulation (1) may, within twenty one days from the date of the Central Bank decision, appeal to the Cabinet Secretary for review of the decision.

(3) The Cabinet Secretary shall, while considering an appeal under sub-regulation (2), consider the material in the administrative record developed by the Central Bank and may invite the Central Bank or the applicant or both the Central Bank and the applicant to make any presentations with respect to the appeal

(4) The Cabinet Secretary may reverse the decision of the Central Bank if it establishes that—

- (a) the Central Bank failed to follow the laid down procedure; (e)
- (b) the Central Bank's decision was contrary to law;
- (c) there was no factual basis for the Central Bank's decision; or
- (d) based on a review of the record, the Central Bank committed a manifest error in its assessment of facts, or abused its discretion.

(5) The Central Bank shall be bound by the decision of the Cabinet Secretary.

10. A licence issued under these Regulations shall remain valid unless it is revoked. Validity of the licence.

11. The Central Bank shall, within thirty days from the date a licence has been issued to a Bureau, by notice in the Kenya Gazette, notify members of the public of the name of the Bureau and the date the licence was issued. Notification of licenced Bureaus.

12. (1) The Central Bank may suspend or revoke a licence issued to a Bureau if the Bureau— Revocation or suspension of licence.

- (a) does not commence business within twelve months from the date the licence was issued;
- (b) has ceased or suspended operations for a period of three months;
- (c) obtained the licence on the premise on wrong, false, misleading information or concealment of material information which, if known at the time of evaluation of the application for the licence, the Bureau would not have been granted a licence;
- (d) applies to the Central Bank for the revocation or suspension of the licence where good cause has been shown;
- (e) has ceased to meet the licensing and operational requirements prescribed in these Regulations;
- (f) has failed to comply with any condition of the licence;
- (g) has violated the provisions of any applicable law or these Regulations or is insolvent or unable to effectively conduct its operations or through its activities the public trust has

- been compromised;
- (h) has failed to comply with any material obligation imposed on it by or under these Regulations;
- (i) has engaged in activities either restricted or not permitted under these Regulations;
- (j) is unable or has consistently failed to protect the confidentiality of data or information it collects;
- (k) has, without the consent of the Central Bank, amalgamated with another entity or sold or otherwise transferred its business, assets or liabilities to another entity;
- (l) a winding-up order has been made against it or a resolution for voluntary winding up has been passed;
- (m) has been engaged in using the information collected, for any purpose which is not permitted by these Regulations; or
- (n) fails to pay the annual licence fee within ninety days after the anniversary date.

(2) The Central Bank shall not revoke or suspend the licence of a Bureau unless the Bureau has been given an opportunity to make representations to the Central Bank on why the licence should not be revoked or suspended and the Central Bank shall take into consideration the representations made by the Bureau in its decision on the matter.

(3) The Central Bank may, in lieu of revoking or suspending the licence, require the Bureau to take such measures to regularise the breach or violation within such time as the Central Bank may specify and may in addition impose such monetary penalty or other sanctions as it may consider necessary.

(4) The Central Bank shall, upon revoking or suspending a licence under sub regulation (1), within seven days inform the licensee of the revocation or suspension.

(5) The Central Bank shall, upon revocation of the licence of a Bureau, take over control of the business of the licensee to safeguard the information in its possession and facilitate winding up of its Bureau business.

(6) The Bureau shall hand over the entire database in a readable format as the Central Bank may specify and shall thereafter erase to the satisfaction of the Central Bank, all data in its database.

(7) Where the licence is revoked, the holder of the licence shall, within seven days from the date of service of the notice of

revocation, surrender the licence to Central Bank and shall forthwith cease to carry out Bureau business or any other activity authorised under these Regulations.

(8) A person who fails to comply with sub-regulation (7) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(9) The Central Bank shall, by notice in the Gazette, notify all institutions, other Bureaus and the public whenever a Bureau's licence has been suspended or revoked and further dealings with the Bureau for purposes of these Regulations shall cease.

13. (1) In this regulation, "anniversary date" means the end of a calendar year running from 1st January to 31st December of each year.

Annual licence fee.

(2) A Bureau shall be required to pay to the Central Bank an annual licence fee of one hundred thousand shillings.

(3) The annual licence fee prescribed in sub-regulation (1) shall be paid before the anniversary date.

(4) A Bureau that fails to pay the annual licence fee before the anniversary date shall pay double the licence fee, if payment is made within ninety days after the anniversary date.

(5) Where a Bureau fails to pay the fee within ninety days after the anniversary date as prescribed in sub-regulation (3), its licence shall be revoked.

(6) Where a Bureau is granted a licence by the Central Bank—

- (a) there shall be no refund of any licence fee paid to the Central Bank in the event the licence is cancelled or revoked or a Bureau ceases to carry on business at any time before the end of the year;
- (b) there shall be no proration of the licence fee paid in the course of the year for the commencement of Bureau business:

Provided that for Bureaus which were in existence at the date of commencement of these Regulations, the annual licence fees already paid shall be prorated up to 31st December 2013 and the Bureaus shall only pay the balance of the annual licence fees for the period commencing from 1st January 2014 to 31st December 2014.

14. (1) A person shall not transfer a licence granted to him by the Central Bank to another person.

Non-transferability of licences.

(2) A person who contravenes sub-regulation (1) commits an offence and shall be liable upon conviction to a penalty of five hundred thousand shillings.

PART III- OPERATIONS OF BUREAUS

15.(1) A Bureau licensed under these Regulations shall engage in the following activities-

Activities of the Bureau.

- (a) obtain and receive customer information;
- (b) store, manage, evaluate, update and disseminate the customer information to subscribers in accordance with these Regulations; and
- (c) compile and maintain database and generate reports from customer information database;

(2) A Bureau licensed under these Regulations may engage in the following additional activities—

- (a) credit scoring;
- (b) sell to institutions specialized literature and other information material related to its activities;
- (c) carry out market and statistical research relating to matters set out under these Regulations; and
- (d) carry out any other activity as may be approved by the Central Bank from time to time in accordance with the Act.

(3) A Bureau shall not engage in activities other than those specified in these Regulations or as approved by the Central Bank in accordance with the Act.

(4) Where a Bureau fails to comply with sub-regulation (3) it shall be liable to pay a penalty of five hundred thousand shillings and in the case of continued failure, it shall be liable to an additional penalty of ten thousand shillings for each day on which such failure continues.

16. (1) A Bureau may contract an agent for the following purposes—

Use of agents.

- (a) delivery of credit reports to requesting persons as may be authorised under these Regulations;
- (b) public sensitization of customers, institutions, and other credit information providers;
- (c) receiving and channelling complaints;
- (d) other purposes as may be approved by the Central Bank upon application by a Bureau.

(2) A Bureau shall not contract an agent unless the proposed agent has been approved by the Central Bank.

(3) A person is not qualified to be appointed as an agent if that person-

- (a) is a minor or is of unsound mind;
- (b) has been convicted of an offence involving theft, fraud, forgery, causing financial loss or perjury;
- (c) has not been vetted in such manner as may be prescribed;
- (d) has been removed from an office on account of misconduct, abuse of office, corruption or incompetence in the preceding ten years; or
- (e) for such other reasons as may be prescribed in the Guidelines.

(4) A Bureau shall ensure that no agent has unlimited access to the credit information in the database of the Bureau and shall only permit access in respect of a customer whose credit information has been requested or is the subject of a lawful transaction under these Regulations.

(5) A Bureau shall carry out a suitability assessment on the capability of an agent and shall satisfy itself as to the—

- (a) existence of adequate infrastructure for the collection of information and delivery of credit reports;
- (b) ability of the agent to keep customer information confidential; and
- (c) ability to conduct proper and sufficient due diligence and identity verification on any person requesting for credit information. (d)
- (6) An agent shall be contracted on a non-exclusive basis.

he Central Bank may prescribe guidelines for the contracting and operations of agents.

17. (1) A Bureau shall seek and obtain prior written approval of the Central Bank for the following activities -

- (a) appointment of directors and officers of the Bureau;
- (b) acquisition of ten per cent or more of the shares of the Bureau by any person except as may be provided otherwise under these Regulations;

Actions requiring prior approval of Central Bank.

- (c) opening, relocation or closure of a place of business in or outside Kenya and shall notify the Central Bank three months prior to permanently closing its place of business. Temporary closures shall be notified to the Central Bank within seven days prior to the date of closure or on such short notice as the circumstances of the case may render necessary;
- (d) appointment of agents;
- (e) changes in the memorandum and articles of association;
- (f) passing of a shareholders resolution to voluntarily wind up the Bureau;
- (g) introduction of new products or services;
- (h) fees payable by customers; and
 - (i) arrangement or agreement—
 - (i) for the sale, transfer or disposal of the shares or business of the Bureau; or a merger, amalgamation, acquisition, take over or assignment; or
 - (ii) affecting the voting power, management or other matters which may result in a change in the control or management of the Bureau.

18. (1) Customer information which shall be exchanged pursuant to these Regulations is any customer information concerning a customer's non-performing loan and any other negative information and may include details specified in sub-regulation (4).

Nature of information to be shared.

(2) An institution licensed under the Banking Act shall in addition to exchanging the information required under sub-regulation (1), exchange positive information of their customers with Bureaus.

Cap. 488.

(3) An institution other than banks may in addition to exchanging the information required under sub-regulation (1), exchange positive information with Bureaus with prior written consent of the customers concerned.

(4) The nature of customer information to be shared pursuant to sub regulation (1),(2) and (3) include-

- (a) the customer's identity, including-
 - (i) in the case of a natural person his name, date of birth, national identity card number, personal identification number, passport number, driving licence number, past and current addresses and other contact details and related matters;

- (ii) in the case of a customer who is not a natural person, the entity's name, registration number, personal identification number, names of directors, shareholders holding more than ten per cent of its shares or partners, trustees or officials, past and current addresses and other contact details and related matters;
- (b) the customer's credit status including the nature and amounts of loans or advances and other credit facilities granted, amounts outstanding thereof, credit application and related matters;
- (c) the nature and details of security or securities taken or proposed to be taken by an institution as security for the loans, advances and other credit facilities;
- (d) details of payment of credit facilities or default in payment by the customer, debt restructuring and actions taken by the institution to recover unpaid amounts including realization of securities, legal proceedings and related matters.

(5) Customer information shall be furnished using a standard format established by agreement of the institutions furnishing information and licenced Bureaus, or otherwise issued by the Central Bank.

19. (1) A suit, prosecution or other legal proceedings shall not lie against the Central Bank, Bureau, an institution or chairperson, director, member, auditor, adviser, officer or other employee or agent of such Bureau or institution or any other person authorised under these Regulations to submit, receive, use or share credit information, for any loss or damage caused or is likely to be caused by anything which is done or intended to be done in good faith in pursuance of these Regulations or guidelines issued hereunder.

Protection from liability.

(2) Nothing contained in sub-regulation (1) shall affect the right of any person to make a claim against a Bureau, an institution or chairperson, director, member, auditor, adviser, officer or other employee or agent of such Bureau or institution, as the case may be, in respect of loss or damage caused to him on account of any such disclosure made by anyone of them and which is unauthorised or fraudulent or contrary to provisions of these Regulations, guidelines or any other law to which these Regulations relate.

20. (1) A Bureau shall not include in its database or a credit report personal information of a customer relating to race, belief, colour, ethnic origin, religion, political affiliation, sexual orientation, physical and mental handicaps, state of health or medical information.

Prohibited information.

(2) Despite sub regulation(1), any information relating to Sharia compliant products shall not be considered to contravene this Regulation.

21. (1) Where the consent of a customer is required under these Regulations for the submission or sharing of credit information, such consent may be obtained by the customer signing any document giving express consent or authorisation for the sharing of credit information.

Form of consent

(2) The documents under sub-regulation (1) may include, account opening documents, loan application forms, loan agreements or any other agreement document between an institution and a customer or a customer and a third party credit information provider or by any other documentary means as may be convenient or agreeable to the parties.

(3) A customer may give consent through oral, print or electronic means, subject to the satisfaction of the Bureau or institution as to the authenticity of the electronic consent.

22. (1) A Bureau or agent shall before making a disclosure require a customer to identify himself.

Conditions and form of disclosure to customers.

(2) A disclosure by a Bureau or agent may be made in writing, in person, during normal business hours, and on reasonable notice, by telephone, e-mail or by other electronic means, if available to the Bureau or agent, as the requesting person may choose.

(3) The customer may be permitted to be accompanied by one other person of his choice, who shall furnish reasonable identification before he is allowed on the instructions of the customer to have access to the customer information.

(4) A Bureau or agent shall require the customer to furnish a written or oral authority granting permission to the Bureau or agent to discuss the customer's information whenever a third party is present and where the third party is authorised to act on behalf of the customer in respect of the customer's information.

(5) A Bureau shall provide trained personnel to explain to the customer any information furnished to him where such explanation is needed by the customer.

23. (1) A Bureau may, with the approval of the Central Bank, collect, receive, collate, compile and disseminate information relating to a customer of an institution which is obtained from a third party or is ordinarily available to the public, including information from the following public sources—

Other sources of information

- (a) companies registry;
- (b) registrar of business entities;
- (c) business and trade licensing authorities;
- (d) land registries;

- (e) tax authorities;
- (f) county government entities;
- (g) court registries in respect of information on judgments on debts, insolvency or bankruptcy proceedings or winding up orders;
- (h) registrar of names;
- (i) registrar of persons;
- (j) other relevant public bodies.

(2) A government agency, public entities and other credit information providers may enter into contracts with Bureaus for the provision of information and such contract shall specify—

- (a) the conditions for the provision of information;
- (b) the obligation to furnish accurate and updated information;
- (c) the obligation to promptly correct any information submitted to the Bureau which has been established to be inaccurate, overtaken by events, false, misleading or erroneous in any form;
- (d) details on data to be provided;
- (e) the manner and acceptable form through which the information may be submitted to the Bureaus.

(3) A third party credit information provider shall not furnish any credit information of a customer to a Bureau or its agent except with the prior written consent of the customer.

(4) The Central Bank may, if it considers it necessary, prohibit a Bureau from receiving credit information or disseminating credit information from any third party credit information provider or a public source.

24. (1) A Bureau may consult public and non-public sources of information and include such public information in any report issued under these Regulations provided that before including such information—

- (a) the Bureau shall follow reasonable procedures to obtain confirmation of the accuracy and authenticity of the information from a source that has independent and direct knowledge of the information; and
- (b) the Bureau shall, where such information relates to any court proceeding of a civil or criminal nature or any public record, verify the accuracy and authenticity of the

Use of public data
by Bureaus.

information not more than twenty-one days before the date on which the information is included in any report.

(2) A Bureau shall periodically report to the Central Bank the source and details of the public data included in its reports together with the process of verification carried out to authenticate the veracity and truthfulness of such data.

(3) Where a Bureau has included in any report information from public domain data, and the Central Bank is satisfied that a Bureau did not take all reasonable measures to verify the veracity, authenticity, truthfulness or accuracy of the data, the Central Bank shall direct the Bureau to delete the information from its database and may in addition impose a penalty not exceeding five hundred thousand shillings for each violation.

25. (1) A credit information provider furnishing negative information to a Bureau regarding credit extended to a customer or arising from a product or service rendered to a customer shall, in writing or through electronic means, issue to the customer a notice of intention to submit the negative information within thirty days before submitting of the negative information to a Bureau or within such shorter period as the contract between the credit information provider and the customer may provide.

Duty to provide accurate information.

(2) A credit information provider shall not furnish any information relating to a customer to any Bureau if the credit information provider knows or has reasonable cause to believe that the information is inaccurate.

(3) A credit information provider shall not furnish information relating to a customer to any Bureau if the credit information provider has been notified by the customer, at the address specified by the credit information provider for such notices, that the specific information is inaccurate.

(4) Despite sub-regulation (3), the credit information provider may submit the credit information to a Bureau once it has addressed the customer's concern on the inaccuracy of the credit information either by re-affirming the accuracy of the information to the customer or rectifying the inaccuracy.

(5) A notice issued under sub-regulation (2) shall explain the basis of the inaccuracy of the information and shall be in writing and where the notice is oral, the credit information provider shall reduce it into writing.

(6) Where the credit information provider has been notified of any inaccuracy in the credit information and where there is reasonable cause to believe that the information may not be accurate, the credit information provider shall inform all the Bureaus to which the information has already been submitted of this fact within five days of

the notification and shall within fourteen days carry out investigations and inform the Bureaus of the outcome of the investigation.

- (7) A credit information provider has a duty to-
- (a) correct any inaccurate or erroneous information when the fact of inaccurate or erroneous information comes to their knowledge or attention; and
 - (b) inform the Bureaus within five days from the date of learning of the inaccurate or erroneous information.

(8) A credit information provider who has furnished credit information to a Bureau shall, within thirty days from the date the information was furnished to a Bureau, notify the customer that his credit information has been forwarded to the Bureau.

(9) A credit information provider which intentionally, recklessly or negligently submits inaccurate information to a Bureau or which does not adequately address customers' complaints on the inaccuracy of information submitted or to be submitted to a Bureau shall be barred by the Central Bank or the concerned Bureau from submitting information to the Bureau or any other Bureau as the case may be.

26. (1) A Bureau shall protect the confidentiality of customer information received in terms of these Regulations and shall only report or release such customer information-

Restrictions on the use of customer information.

- (a) to the customer concerned;
- (b) to the Central Bank;
- (c) to a requesting subscriber;
- (d) to a third party as authorized by the customer concerned; or
- (e) as required by law.

(2) Except as is otherwise provided for under sub-regulation (1), a director, member, officer or other employee or agent employed in the business of a Bureau or a subscriber shall not disclose any information to any person and this obligation shall continue to apply even after termination of tenure, employment or relationship with the Bureau or subscriber.

(3) A director, member, officer or other employee or agent of a Bureau or subscriber who unlawfully or without the authority of the Bureau discloses any credit information to an unauthorised person commits an offence and shall be liable, upon conviction, to imprisonment for a term of two years or to a fine of five hundred thousand shillings, or to both.

(4) The Central Bank may, instead of criminal prosecution under sub-regulation (3), impose such sanctions against the Bureau, subscriber, director, member, officer, other employee or agent as the Central Bank may deem fit including terminating the tenure or services of the director, member, officer, other employee or agent of the Bureau.

27. (1) A Bureau shall—

Responsibilities
of a Bureau.

- (a) utilize the information collected solely for the purposes set out in these Regulations;
- (b) ensure that customer information in its database is protected against any loss and shall have in place sufficient and tested back up and disaster recovery sites.
- (c) take all such steps as are reasonably necessary to ensure that the customer information maintained by it is duly protected against any unauthorized access, use, modification or unauthorized disclosure;
- (d) ensure that the customer information maintained by it is not mortgaged or charged for any purpose;
- (e) ensure customer information is obtained from reliable and credible sources which take responsibility for the accuracy, completeness and timeliness of the information that is provided to a Bureau;
- (f) observe, through its shareholders, directors, officers, employees or agents, a perpetual duty of confidentiality with regard to the information divulged to them in terms of these Regulations;
- (g) accept without charge the filing of customer credit information from the customer concerned for the purpose of correcting or challenging information otherwise held by that Bureau concerning that customer;
- (h) take reasonable steps to verify the accuracy of any customer credit information reported to it;
- (i) retain any customer credit information reported to it for the prescribed period, irrespective of whether that information reflects positively or negatively on the consumer;
- (j) maintain its records of customer credit information in a manner that satisfies the prescribed standards as provided for under these Regulations;
- (k) promptly expunge from its records any prescribed customer credit information that, in terms of the Regulations, is not permitted to be entered in its records or is required to be removed from its records;

- (l) issue a report to any person who requires it for a prescribed purpose or a purpose contemplated in these Regulations, upon payment of the Bureau's fee except where the Regulation provides that no fee be charged;
 - (m) not knowingly, recklessly or negligently provide a report to any person containing inaccurate information; and
 - (n) maintain a complaints resolution mechanism to handle queries or complaints.
- (2) A Bureau shall only release customer information to a subscriber-
- (a) that requires customer information to—
 - (i) evaluate a customer's application for credit or other customer-initiated business transaction;
 - (ii) for the recovery of any sum due to the institution;
 - (iii) for customer account management, fraud detection and prevention, credit rating, employment evaluation, tracing owners of unclaimed assets, development of a scoring system, assessment of a debtor's books of business; and
 - (iv) for other purposes that may be approved by the Central Bank;
 - (b) that has certified to the Bureau that it will use the customer information for the purpose of making a lawful or permitted decision and for no other purpose; and
 - (c) that has agreed to properly dispose of customer information so that it cannot reasonably be read or reconstructed.
- (3) A Bureau which fails or refuses to comply with any provision of this Regulation shall be liable to a penalty of five hundred thousand shillings.

28. (1) A Bureau shall prepare a summary of the rights of customers.

(2) The summary of the rights prepared under sub-regulation (1) shall include a description of –

- (a) the right of a customer to obtain a copy of a credit report from each Bureau;
- (b) the frequency and circumstances under which a customer is entitled to receive a credit report with or without charge;

Key facts document on the right to obtain and dispute credit report.

- (c) the right of a customer to dispute information in the file of the customer;
 - (d) the right of a customer to obtain a credit score from a Bureau, and a description of how the credit score was arrived at;
 - (e) the method by which a customer can contact, and obtain a credit report from, a Bureau without charge; and
 - (f) the right of a customer to refer a dispute to an alternative dispute resolution mechanism or a court of law where he feels that his dispute has not been resolved to his satisfaction.
- (2) A Bureau may publish any other information which may be useful to customers.
- (3) A Bureau shall –
- (a) publicize the availability of the summary of rights;
 - (b) conspicuously post on its website and its business premises the summary of rights; and
 - (c) make such summary of rights available to customers, on request or as the Bureau may find necessary to bring to the attention of as many customers as possible.

29.(1) A subscriber of information from a Bureau shall not use such information for any purpose other than for reaching decisions on transactions concerning a customer and on matters concerning an employee or a potential employee of the subscriber or for any other purpose as may be authorised under these Regulations.

Subscriber's obligations in respect of information obtained from Bureaus.

(2) A subscriber shall not release such information to any third party except as may be required under any law or to a subscriber's appointed agent for the purpose of assisting the subscriber in the recovery of any of its debts.

(3) A subscriber shall ensure that it does not make an enquiry requesting for a credit report from a Bureau unless such enquiry is made for a specified purpose and in respect of a person who is—

- (a) a customer or has applied for credit facilities from such subscriber; or
- (b) an employee or an applicant for employment by the subscriber.

(4) A subscriber shall ensure that all necessary precautions are taken to ensure that all information provided to it by a Bureau is—

- (a) properly and accurately recorded and maintained;
- (b) protected against loss; and
- (c) protected against unauthorised access, use, modification or disclosure.

(5) A subscriber shall take measures, including the following, to safeguard the security of information provided to it by a Bureau or by it to a Bureau through—

- (a) establishment of controls and procedures to be applied when access is sought to obtain a credit report to ensure that there are no unauthorised requests for such reports;
- (b) keeping audit trails of information supplied by it to a bureau or received from a Bureau;
- (c) review, on a regular basis, password and other controls over all personnel authorized to access the database of information provided to it by a Bureau so as to prevent unauthorised access or use.

(6) A subscriber shall ensure that no information is requested from a Bureau or if received by the subscriber from a Bureau is used by or on behalf of the subscriber for marketing, data mining or similar purposes.

(7) Any subscriber which fails or refuses to comply with any provision of this Regulation shall be liable to penalty of five hundred thousand shillings.

30. (1) A customer may, in writing, authorise or give consent to a third party to obtain directly from a Bureau, a credit report in respect of that customer for purposes of—

Receipt of credit reports by third parties.

- (a) assessment of credit facility;
- (b) employment;
- (c) underwriting insurance;
- (d) determination of the customer's eligibility for a licence or benefit granted by the Government;
- (e) assessment of the credit or prepayment risks associated with an existing credit obligation; or
- (f) legitimate need for information, in connection with business transaction initiated by the customer or other lawful transaction or matter concerning the customer;

(2) A Bureau shall verify the authenticity of the written consent of the customer and may use such verification means as the Bureau may find appropriate and reliable.

31. A Bureau may, with the approval of the Central Bank charge fees for the services it provides.

Fees.

32. (1) A Bureau shall-

Data management
and quality
control

- (a) implement quality control procedures in order to ensure the maximum possible accuracy of its database and the continuity of its services;
- (b) take all such steps as are reasonably necessary to ensure that customer information maintained by it is current, authentic, legitimate, reliable, accurate, truthful and that it reflects the existing situation of the subject at any given time and if the information is found to be inaccurate or no longer valid, the Bureau shall promptly take the corrective measures necessary to remedy the deficiencies;
- (c) ensure that its services are reasonably available and accessible;
- (d) develop mechanisms for easy request for and accessibility of credit reports in physical or electronic form or any other convenient and cost effective way and may include fax, telephone, mail, e-mail, internet or in person;
- (e) establish controls and procedures to be applied when subscribers seek access to credit reports;
- (f) maintain logs of all accesses, amendments and audit trails to information database including previous enquiry records and logs of all incidents involving proven or suspected breach of security;
- (g) review, on a regular basis, password controls of all Bureau personnel and subscribers;
- (h) develop operational guidelines and procedures to be applied in relation to improper use of access authorities by Bureau personnel, authorised agents or subscribers or persons authorised by them; and
 - (i) develop operational guidelines to ensure adequate protection to minimise the risk of unauthorized entry into the database or interception of communications made to and from the database.

(2) A Bureau which fails or refuses to comply with any provision of this Regulation shall be liable to penalty of five hundred thousand shillings.

33. (1) A Bureau shall retain customer information on non-performing loans—

Updating and
maintaining
information.

- (a) until the expiry of five years from the date of final

settlement of the amount in default including settlement of the amounts payable pursuant to a scheme of arrangement with the institution; or

- (b) upon the expiry of seven years from the date of the person's discharge from bankruptcy, as notified to the Bureau by such person and evidenced by the relevant certificate of discharge issued by the High Court or by a written notice from the Official Receiver stating that the Official Receiver has no objection to a certificate of discharge being issued to the person, irrespective of any write-off by the institution of the amount in default in full or in part at any time.

(2) Any other information not covered under sub-regulation (1) may be retained for a period not exceeding five years from the date of submission of the information or receipt of the information by a Bureau.

(3) Information kept in accordance with sub-regulation (1) may not be used solely to affect the customer's chances of obtaining credit but as one of the factors to inform the decision making process.

(4) A Bureau shall implement procedures that ensure that the information registered in its database is regularly updated.

(5) An institution that furnishes customer information to a Bureau shall, on a monthly basis or within such earlier time as an update is necessary, ensure that the customer information furnished is constantly updated.

(6) A Bureau shall update its database as and when information is provided by the institutions responsible for the timely updating of the information submitted to the Bureau and the information shall be updated on an on-going basis, or as often as necessary, in accordance with the nature of the information.

(7) A Bureau or institution which violates any provision of this Regulation, shall be liable to a penalty of five hundred thousand shillings in addition to any other penalty that the Central Bank may impose.

34. (1) A Bureau shall take the necessary security and control measures in order to avoid unauthorized access to, improper use or mismanagement of information.

Security and
control measures

(2) For the purposes of sub-regulation (1), improper use or mismanagement of information means any act or omission not authorized by these Regulations.

(3) A Bureau shall record and make available to the customer the name and date each subscriber obtains access to customer information about the customer.

(4) A Bureau shall—

- (a) develop written policies and procedures to be followed by its officers, employees, agents and contractors, or any other person providing services to it;
- (b) impose access authentication controls such as the use of passwords, digital signatures or other mechanisms as may be necessary for security controls;
- (c) provide information and training to its employees to ensure compliance with the policies, procedures and controls;
- (d) systematically review the effectiveness of the policies, procedures and controls and promptly remedy any deficiencies; and
- (e) maintain an access log.

35. (1) A customer has a right to know what information the institution has submitted to the Bureau regarding that customer.

Customers' rights of access and correction.

(2) A customer shall be entitled to access credit reports relating to the customer that are kept in a database administered by a Bureau.

(3) A customer shall be entitled to a free copy of his credit report from a Bureau, or its agents, in the following instances;

- (a) at least once per year;
- (b) within thirty days of receiving an adverse action notice issued under regulation 50 (iii); and
- (c) once per six months after making a request to a Bureau to have inaccurate information corrected in the database.

(4) Where a customer requests a Bureau for a credit report pursuant to sub-regulation (2), the Bureau shall, within five working days of receiving a request in writing and such particulars as the Bureau may reasonably require to enable it identify the customer, provide to the customer a copy of all customer information relating to the customer held by the Bureau.

(5) Where the customer believes that the information contained in the database is inaccurate, erroneous or out-dated, the customer may notify the Bureau in writing of the information disputed.

(6) Within five working days of being informed that the information in a customer's credit report is disputed, the Bureau shall –

- (a) attach a note to the credit information report, warning that

the disputed information is under investigation, which notice shall remain on the file until resolution of the dispute; and

- (b) give the institution or credit information provider that supplied the information a notice of dispute requesting confirmation from the institution or credit information provider as to the accuracy of the information.

(7) The Bureau shall, within fourteen days, conduct investigation, based on the relevant information provided by the customer, and may contact any person who has furnished information.

(8) Where an institution or credit information provider receives a notice of dispute from the Bureau it shall, within fourteen days of receiving the notice, complete all necessary investigations into the disputed information and give the Bureau a notice of resolution, advising whether the disputed information is to be deleted, corrected, or remain unchanged.

(9) Where the investigation reveals an error, the Bureau shall remedy the error and inform all persons who may be affected by the information including the customer.

(10) If the Bureau does not complete its investigation within twenty one days, it shall delete the disputed information as requested by the customer.

(11) If the Bureau later completes its investigation, it may re-insert or revise the disputed information based on the results of such investigation and shall inform the customer of the action taken.

(12) Upon receipt of a notice of resolution or an amendment notice from an institution the Bureau shall, within five working days of such receipt, send a notice of change to any subscriber that has in the previous twelve months obtained a credit information report from the Bureau containing the incorrect information.

(13) Where the customer disagree with the resolution of the disputed information, the customer may request the Bureau to attach a statement of not more than one hundred words to the customer's credit report, setting out the customer's claim that the information is not accurate and the Bureau shall take reasonable steps to comply with the customer's request.

(14) A Bureau may charge the customer for the cost of its services in conducting an investigation of disputed customer information where the information disputed by the customer turns out to be false.

PART IV-GOVERNANCE AND MANAGEMENT OF
BUREAUS

36. (1) The management of a Bureau shall vest on a Board consisting of not less than five directors.

Management and composition of a Bureau.

(2) A person is qualified for appointment as a director, if that person is-

- (a) approved by the Central Bank for that purpose; and
- (b) is not disqualified from holding office as such under these Regulations.

(3) The directors appointed under sub-regulation (1) ,shall elect a non-executive chairperson from amongst their members.

(4) The functions of the board shall be to—

- (a) establish the operations and information technology systems of the Bureau;
- (b) ensure that the activities conducted by a Bureau conform with these Regulations and guidelines;
- (c) facilitate the appointment of a Chief Executive Officer and Chief Information Technology Officer;
- (d) ensure that the Bureau maintains, at all times, an effective system of internal controls;
- (e) ensure that the Bureau maintains a customer complaints and inquiry service section to attend to customers who may be affected by the information contained in the database and who allege that the information is illegal, inaccurate, erroneous or outdated; and
- (f) ensure that the Bureau has adequate staff to undertake the functions of the Bureau and to meet its customers' demands.

(5) The Board shall hold its meetings atleast on a quarterly basis.

(6) A quorum for a meeting of the Board shall be three members.

37. (1) A person is qualified to hold office as a director if that person—

Qualification for appointment as director.

- (a) is approved by the Central Bank for that purpose; and

- (b) is not disqualified from holding office as such under this Act.

(2) In determining the suitability of a person to become a director of a Bureau, the Central Bank may consider-

- (a) his possession of adequate professional credentials or experience or both for the position for which he is proposed;
- (b) his ability to recommend sound practices gleaned from other situations;
- (c) his ability to provide dispassionate advice;
- (d) his ability to avoid conflicts of interest in his activities and commitments with other organizations;
- (e) his ability to safeguard confidential information;
- (f) his ability to absent himself from decisions when he is incapable of providing objective advice; and
- (g) any other material information which in the opinion of the Central Bank has a bearing on the suitability of the person.

(3) A person is not qualified to hold office as a director if that person—

- (a) has been convicted of an offence under this Act;
- (b) has been convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding fifty thousand shillings;
- (c) has been convicted of an offence involving dishonesty or fraud, or an offence under the Anti-Corruption and Economic Crimes Act, 2003;
- (d) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
- (e) 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, capital markets, pensions or retirement benefits, or other financial services;
- (f) has been a director of, or directly concerned in the management of, any institution which is being or has been

wound up or placed under statutory management by a court;

- (g) has defaulted in the repayment of any advance or loan made to him or her by any institution licensed under the Act;
- (h) is a minor or is of unsound mind; or
- (i) is an auditor of the Bureau licensed under these Regulations or associated companies.

38. (1) A Bureau shall ensure that a person shall not be an officer or an employee of a Bureau, or, if already in office or employment, shall be disqualified and shall not be eligible to hold office or be in the employment of any Bureau for a period of ten years, if such person is-

Disqualification of officers and employees.

- (a) an undischarged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (b) convicted of an offence involving fraud or dishonesty; or
- (c) removed from office under the provisions of these Regulations.

(2) Where a Bureau allows a disqualified person to continue acting as an officer or being in employment, or is otherwise in breach of this regulation, it shall be liable to a penalty of five hundred thousand shillings and the disqualified person acting as an officer or employee shall be liable to pay a fine of one hundred thousand shillings.

39. (1) The Central Bank shall, where it is satisfied as to the professional and moral suitability of a significant shareholder, director or senior officer of the Bureau, certify the person as fit and proper to be a significant shareholder, director or senior officer.

Suitability test.

(2) While determining, for the purposes of this Regulation, the professional and moral suitability of a significant shareholder, director or senior officer of a Bureau the Central Bank shall consider the following qualities, in so far as they are reasonably determinable, of the person concerned-

- (a) his integrity;
 - (b) his competence and soundness of judgment for the fulfilment of the responsibilities of the office in question; and
 - (c) the diligence with which the person concerned is likely to fulfil those responsibilities.
- (3) For the purposes of these Regulations and without

prejudice to the generality of the provisions of sub-regulation (2), the Central Bank may have regard to the previous conduct and activities of the person concerned in the Bureau business, and in particular, to any evidence that such person-

- (a) has been convicted of an offence of fraud or any other offence of which dishonesty is an element;
- (b) 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;
- (c) was an officer or director of an institution that has been liquidated or is under liquidation or statutory management under the relevant law;
- (d) has taken part in any business practices that in the opinion of the Central Bank were fraudulent, prejudicial or otherwise improper, whether unlawful or not unlawful or which otherwise discredited his methods of conducting business; or
- (e) 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 judgment.

(4) The Central Bank may request any person to furnish additional information, as may be necessary, in determining the professional or moral suitability of that person as prescribed in these Regulations or as deemed necessary.

PART V - DISSOLUTION AND LIQUIDATION

40. A Bureau licensed under these Regulations may be compulsorily or voluntarily liquidated in accordance with the provisions of the laws relating to dissolution and winding up of companies in Kenya.

Dissolution and winding up of a Bureau.

41. (1) Where shareholders of a Bureau pass a resolution to voluntarily wind up the Bureau, the Bureau shall apply to the Central Bank for approval to voluntarily wind up the Bureau.

Central Bank approval for voluntary liquidation.

(2) A Bureau's application to the Central Bank for approval under sub-regulation (1) shall be accompanied by the following documents—

- (a) a copy of the minutes of the meeting of shareholders which passed the resolution for voluntary dissolution of the company;
- (iii) financial statements as of the date of the resolution,

with a report from a credible external auditor;

- (iv) a sworn statement from the Chief Executive Officer confirming that there are no workers', corporate or tax obligations pending the resolution and that the company is able to meet the obligations of all its creditors; and
- (v) names and curriculum vitae of the person proposed for appointment as liquidator.

(3) Where the Central Bank is fully satisfied with the merits of the application, the Central Bank may grant approval for a voluntary liquidation on such terms and conditions as it may deem appropriate.

(4) Where the Central Bank is not satisfied with the application it may give such directions as it may deem appropriate.

42. Where a petition has been lodged for the winding up of a Bureau, the Bureau shall, within seven days of such petition, notify the Central Bank of the petition and shall cease from conducting Bureau business immediately a winding up order is made.

Notification to the Central Bank

43. (1) Where a notice has been given to the Central Bank under Regulation 42 or where the Central Bank has given its approval for the voluntary dissolution of a Bureau under regulation 42, the Bureau shall within seven days from the date of the notice forward to the Central Bank in such manner as the Central Bank may direct, all records, documents, data and other information in its possession in relation to the Bureau business.

Forwarding of data to the Central Bank.

(2) Upon satisfaction by the Central Bank that all the records, documents, data or other information in relation to the Bureau business have been submitted to it, the Central Bank shall direct the Bureau to erase all records, documents, data and other information in its database or in its possession and the Central Bank shall in such manner as it may deem fit, verify that the erasure has been fully carried out.

(3) The Central Bank may take such measures and give such directions as are necessary to protect the information in possession of the Bureau or take over the information in possession of a Bureau which is being wound up or liquidated.

44. Where a Bureau is wound up under regulation 40, the Central Bank shall, by notice in the Gazette, notify all institutions and other Bureau of such winding up.

Notification to institutions and Bureaus

PART VI - POWER OF THE CENTRAL BANK

45. (1) The Central Bank shall have the powers to regulate and supervise all Bureaus licensed under these Regulations.

Powers of the Central Bank.

(2) The Central Bank shall have the power to—

- (a) issue, suspend or revoke a licence to conduct credit reference bureau business;
 - (b) supervise the activities of a Bureau;
 - (c) maintain proper standards of conduct and acceptable credit information reporting practices;
 - (d) protect the integrity of the credit reference system against abuse and misuse;
 - (e) require a Bureau to correct or remedy any violation under these Regulations or directions, guidelines or rules issued by the Central Bank;
 - (f) take measures to protect the interests of a customer, subscriber or Bureau;
 - (g) impose penalties or sanctions for violation of these Regulations or directions, guidelines or rules issued by the Central Bank;
 - (h) review the adequacy of a credit reference bureau's operations, including periodic inspection of credit reference bureaus, to ensure compliance with these regulations, established standards and applicable law;
 - (i) perform such other functions or exercise such other powers as may be necessary for the proper supervision and regulation of Bureaus and Bureau business; and
 - (j) access the premises, systems, documents and any other information of a Bureau or its agents.
- (3) The Central Bank may issue directions, guidelines or rules generally for the better carrying out of its supervisory functions under these Regulations;

46.(1) The Central Bank may, at any time, cause an inspection to be made by any person authorized by it of any Bureau, agent and its operating management information system, premises, data, books, accounts, records, document or other activity.

Inspection of
Bureaus.

(2) When an inspection is made under sub-regulation (1), the Bureau or agent concerned and every officer or employee of the Bureau shall produce and make available to the person carrying out the inspection any information, data, record, document or material that may be required by the person for purposes of the inspection.

(3) The person carrying out the inspection may make a copy of any document, data, record or material in possession of the Bureau and shall prepare and submit to the Central Bank a report pursuant to the inspection highlighting his findings including any violation of the law,

these Regulations, directives, guidelines or rules issued by the Central Bank, any mismanagement of the Bureau or information or users of credit information obtained from the Bureau.

(4) Any person who refuses or neglects to provide any record or data as the Central Bank may request pursuant to this Regulation or obstructs or prevents the Central Bank from supervising a Bureau or an agent commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

47. (1) The information held by the Bureau shall remain the property of the Central Bank and where a Bureau winds up, the information shall revert to the Central Bank.

Ownership of information in possession of a Bureau.

(2) Despite any agreements to the contrary, the Central Bank as licensor of Bureaus shall be the owner of all information and data held by Bureaus and any information or data vesting in any work authored by any person licensed under these Regulations, where such work incorporates any information obtained under the licence or pursuant to the provisions of these Regulations despite that the information or data has been processed by that person in any way.

(3) The Central Bank shall retain the right of access to data even after revocation or expiry of the licence.

48. (1) The Bureau shall furnish the Central Bank with periodic reports of their business operations, including systems report, in such form as the Central Bank may from time to time require.

Periodic returns.

(2) A Bureau which fails or refuses to comply with this Regulation or which furnishes the Central Bank with an incomplete, inadequate, inaccurate or late returns shall be liable to a penalty of five hundred thousand shillings.

PART VII -GENERAL PROVISIONS

49. (1) A person collecting, storing, submitting or processing any data or information obtained under the provisions of these Regulations shall comply with the following mandatory requirements—

Mandatory standards for data collection, storage, processing and use.

- (a) the information or data shall at all times be kept up to date and accurate;
- (b) the information or data shall be used only for the specified purpose for which it was obtained or submitted and which purpose shall be consistent with the provisions of these Regulations;
- (c) the information or data shall be adequate and relevant in relation to the purpose for which it was obtained or submitted.

(2) A person shall not use the information obtained under these Regulations for any purpose which is not consistent with the provisions of these regulations.

(3) A person who contravenes sub-regulation (2) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand shillings, or to both.

(4) Without prejudice to sub-regulation (3), the Central Bank may, impose such sanctions as it may consider fit and just including imposing a penalty of five hundred thousand shillings against any person who contravenes sub-regulation (2).

50. (1) An institution shall -

Responsibilities
of institutions.

- (a) notify the customer within one month before a loan becomes non-performing that the institution shall submit to a Bureau the information on the loan immediately it becomes non-performing:

Provided that for loans whose repayment interval or period is less than one month, the notice shall be served two weeks before the loan becomes non-performing;

- (b) notify each customer, within thirty days of the first listing, that his name has been submitted to all licensed Bureaus;
- (c) issue an adverse action notice to a customer against whom a decision has been taken or determination made, in whole or in part, that is adverse to the interests of the customer based on information obtained from a Bureau;

(2) The adverse action notice issued under sub-regulation (1) (c), shall be provided at the time the adverse decision or determination is communicated to the customer and shall notify the customer-

- (a) that customer information played a role in the decision;
- (b) the name, address and telephone number of the Bureau that provided the customer information;
- (c) the customer's right to a free copy of the information provided by the Bureau, and
- (d) the customer's right to dispute such information with the Bureau and, if erroneous or outdated, have it corrected.

(2) An institution shall be considered to have notified the customer if they send the notification issued pursuant to sub-regulation (1) to the customer's last known address or contact details by any of

the print and electronic communication modes provided for under these Regulations and the evidence of the notification shall be retained by the institution for the record.

(3) An institution shall be responsible for providing accurate information to Bureaus.

(4) An institution shall be responsible and under an obligation to submit and update all customer information to the Bureau in accordance with these Regulations.

(5) Where an institution has provided customer information to the Bureau and subsequently becomes aware that the information was inaccurate at the time it was provided, the institution will within five working days from the day the institution becomes aware of the inaccuracy, give the Bureau an amendment notice instructing it to delete the inaccurate information and replace it with the correct information.

(6) An institution shall ensure that the customer information furnished pursuant to this regulation is provided to all licensed Bureaus or to a centralised point or location from which the information can be accessed by all Bureaus.

(7) An institution shall establish and maintain functional units or dedicate competent staff to receive and resolve complaints or disputes arising from credit information sharing activities.

(8) An institution shall resolve complaints within fourteen days from the date of receipt of a complaint.

(9) An institution which fails to comply with this Regulation may be liable to such penalty not exceeding one million shillings or such administrative sanction as the Central Bank may consider appropriate.

51. (1) A notice issued by an institution to a customer under regulation 50 (1) (a) shall contain the particulars of the loan including the principal amount, the interest rate and the amount outstanding to date and any other information that the institution may desire to bring to the attention of the customer.

Notification of the amount owing.

(2) Where a customer notifies the institution which has served a notice under sub-regulation (1) that the amount allegedly owing is disputed, the institution shall investigate the matter and inform the customer accordingly of its decision within fourteen days from the date the customer contacted the institution on the disputed loan.

52. (1) An institution shall serve a notice under regulation 49 on a customer by any of the following modes—

Mode of service.

- (a) registered mail or certificate of posting;

- (b) e-mail;
- (c) short message service through the customer's registered telephone number; or
- (d) physical delivery of the letter evidenced by acknowledgement of receipt by the customer or his nominee, where the physical address of the customer is known.

(2) A record shall be kept of all notices served by any means permissible under this Regulation.

53. A person who knowingly or wilfully obtains information from a Bureau under false pretence commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two years or to a fine of two hundred thousand shillings, or to both.

Obtaining information under false pretences.

54. (1) For purposes of performing the activities and obligations under these Regulations, a Bureau, its agents, subscribers and other persons or entities subject to these Regulations shall comply with any guidelines, rules or directives issued by the Central Bank.

Compliance with guidelines, rules or directives.

(2) A Bureau or a person who fails or refuses to comply with these Regulations or any guidelines, rules or directives issued by the Central Bank shall be liable to a fine of five hundred thousand shillings in the case of a Bureau or, one hundred thousand shillings in the case of a natural person.

(3) For the purposes of sub-regulation (1), the Central Bank may, at any time, request any information it may require in order to evaluate any matter arising from these Regulations or from the operations of the Bureau, its agents, subscribers and other persons or entities subject to these Regulations.

55. (1) Where a Bureau-

Penalties.

- (a) is in breach of, or fails to adopt or implement the data management and quality control measures outlined in regulation 49;
- (b) is in breach of or fails to update and maintain information as required in regulation 33;
- (c) is in breach of or fails to observe or adhere to the security and control measures outlined in regulation 34; or
- (d) wrongfully alters, modifies or deletes records from its database;
- (e) fails to adopt security and control measures that are necessary to prevent the unauthorized access to, or wrongful use and management of information;
- (f) delays in providing information and documents to the Central Bank;

- (g) fails to comply with an order or directive of the Central Bank on data and information management; or
- (h) discloses customer information to a person who is not authorised by these Regulations or by a customer to receive such information;

it shall be liable to pay a fine of five hundred thousand shillings and in the case of continued failure, it shall be liable for an additional penalty of ten thousand shillings for each day on which such failure continues.

(2) Where an institution contravenes any of the provisions of these Regulations, the Central Bank may pursue any or all of the remedial actions provided for under the Act.

(3) In addition to the remedial measures under sub-regulation (2), the Central Bank may impose the following sanctions-

- (a) prohibition from obtaining credit reports from Bureaus;
- (b) termination of employment services of an officer or employee of the institution;
- (c) prohibition from establishing new branches, subsidiaries, agents or introduction of new products;
- (d) prohibition from engaging in new activities or from expanding existing activities;
- (e) suspension of lending, investment, and credit granting operations;
- (f) prohibition from accepting further deposits or other lines of credit;
- (g) prohibition from declaring or paying bonuses, salary incentives, severance packages, management fees or other discretionary compensation to directors, officers or employees.
- (h) limit the range of activities and the locations in which such activities can be conducted;
- (i) prohibition from declaring or paying dividends; or
- (j) prohibition or suspension from any other activity that Central Bank perceives to be contributing to violation of these Regulations.

(4) Where a credit information provider violates or breaches any provision of these Regulations, the Central Bank may take any of the following actions—

- (a) direct the Bureau to which a credit information provider has submitted credit information to terminate any subsisting information sharing agreement with the credit information;
- (b) direct the Bureau in possession of credit information provided by a credit information provider to delete from the database any inaccurate, erroneous or misleading information submitted by the credit information provider and to notify all subscribers who have received the inaccurate, erroneous or misleading information;
- (c) direct the Bureau to compensate or take remedial measures in respect of any loss or damage suffered by a customer as a result of the use of any inaccurate, erroneous or misleading credit information supplied by a credit information provider.

(2) Before imposing a penalty on any Bureau or an institution under these Regulations, the Central Bank shall give not less than seven days notice, in writing, requiring the Bureau or institution to show cause as to why the penalty prescribed should not be imposed.

(3) Where a monetary penalty is prescribed under these Regulations, such penalty shall-

- (a) be paid to the Central Bank;
- (b) be paid within ten days, unless otherwise stated;
- (c) in the first instance, be paid by the Bureau;
- (d) where the Bureau fails to make payment, in the second instance, be paid immediately by the bank issuing the bank guarantee upon being called upon to do so by the Central Bank;
- (e) where an institution fails to pay the penalty, the Central Bank may take such other action or make such decision as is permitted under the Act or these Regulation.

(4) Where no payment is made or received under sub-regulation (6), the licence of the Bureau shall be revoked.

(5) Where any provision of these Regulations imposes a penalty on any Bureau, the amount of the penalty shall constitute a debt due from the Bureau to the Central Bank, and the Central Bank may—

- (a) in addition to the provisions of this Regulation, sue the Bureau for the recovery of the penalty;
- (b) direct that any part of the penalty which remains unpaid

after a particular period notified to the Bureau and the officers concerned, shall constitute a debt payable by the Bureau and the particular officers of the Bureau specified in the notification; and, the Central Bank shall be entitled to recover from that Bureau and officers jointly and severally.

56. The Banking (Credit Reference Bureau) Regulations, 2008, are repealed.

Repeal of⁹
L.N. No. 97 of
2008.

57. (1) A Bureau which was licensed under the Banking (Credit Reference Bureau) Regulations, 2008 repealed by this Regulations shall continue to operate as if they were licensed under these Regulations and shall be required comply with these Regulations.

Savings.

(2) Any database established by a Bureau, credit report issued by a Bureau, contract signed by a Bureau or other matter done by a Bureau under the authority of the Banking (Credit Reference Bureau) Regulations, 2008 (now repealed) shall remain valid and shall be deemed to have been done under these Regulations.

L.N. 97 of 2008.

(3) Anything which was lawfully commenced, done or executed under the authority of the Banking (Credit Reference Bureau) Regulations, 2008 (now repealed), by the Central Bank, Deposit Protection Fund Board, an institution, a subscriber or a customer shall continue to be valid and shall be continued with under these Regulations as if it was originally commenced, done or executed under these Regulations.

FIRST SCHEDULE**(r. 4 (3))****APPLICATION FORM FOR A LICENCE TO CARRY OUT BUREAU BUSINESS**

1.

Name: _____

2. Former name(s) (if any) by which the applicant has been known:

3. Head/main office:

(a)Address: _____

(b)Telephone No: _____

(c)Telefax No: _____

(d)Form of corporation (e.g. publicly listed/privately held, etc.);

(e)Date and place of incorporation;

(f) Description of the applicant's business or functions;

(g) The applicant's authorised and paid-up capital, including relevant details of shares issued or to be issued (e.g. types, number and issue price) and evidence on the same;

4. Branches (including physical location): _____

Subsidiaries & affiliates:

Name and type of business	Amount of shares held	% of shares held in total

5. Management:

(1) Board of Directors:

Name	Designation	Present term	No .of years as board member

(2) Board committees:

Name and purpose of committee(s)	Names of members:

(3) Officers:

Name	Position:	No. of years as officer

6. Ownership profile:

	Name	Country of citizenship	Residence	Paid up capital	%
1.					
2.					
3.					

Other shareholders owing less than 5% (Number _____)

TOTAL _____

7. (i) Organisation profile—

- (a) organisation chart- Attach one indicating major departments or divisions with names, positions and titles of officers heading each department or division.
- (b) attach an organisation chart showing the applicant and its relationships with its subsidiaries, associates and other members of the group.
- (c) functions- Attach a list of functions or responsibilities for each department or division listed in the organization chart indicating the number of personnel or staff for each.
- (d) qualifications of significant shareholders, directors and officers.
- (e) annex personal declaration form of each significant shareholder and officer and an information sheet for each significant corporate shareholder.
- (f) powers and purposes – Attach the latest copies of the Memorandum and Articles of Association if not previously submitted to the Central Bank.

(ii) Legal and regulatory compliance

Describe and demonstrate, with supporting documents or information, how the applicant will—

- (a) comply with the requirements of the Banking Act and CBK's Prudential Guidelines;
- (b) have adequate means of supervising its officers, employees and participants; and
- (c) have adequate means to deal with any conflicts of interest that may arise.

Note:

Relevant supporting documents or information to be provided could include the applicant's—

- (a) information on key officers and employees (including names, addresses, relevant experience, qualifications, etc.);
- (b) risk management systems, including procedures relating to internal audit, internal controls, security, and the granting of credit;
- (c) business continuity plan and system capacity planning procedures; and
- (d) human resources, including information on the staffing levels of key functions.

8. Shareholding in any other financial institution—

	Name of Financial Institution	Shares owned- Number	% of capital	Institution	Amount
1.					
2.					
3.					

9. Name(s) and address(es) of the applicant's bankers within the last 10 years. (please also indicate the applicant's principal bankers) -----

10. Name and address of the applicant's external auditors -----

11. Fit and Proper Criteria—

If the answer to any of the following questions is in the affirmative, please attach annexes and supporting documents, where appropriate, giving all relevant particulars. (Please answer yes or no).

(1) Has the applicant or any of its individual significant shareholders, corporate significant shareholders, any director or senior officer of the applicant—

- (a) been licensed or registered under any law in Kenya or elsewhere which requires licensing or registration in relation to any regulated financial business?

-
- (b) been refused the right or restricted in its/his right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law in any jurisdiction?
 - (c) been issued a prohibition order under any law or has been prohibited from operating in other jurisdiction by any financial services regulatory authority?
 - (d) been censured, disciplined, suspended or refused membership or registration by the Central Bank or any other regulatory authority, in Kenya or elsewhere?
 - (e) been the subject of any complaint made reasonably and in good faith relating to activities regulated by any financial services regulatory authority or howsoever under any law in any jurisdiction?
 - (f) been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction?
 - (g) been convicted of any offence, or is being subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction?
 - (h) had any judgment (including a finding of fraud, misrepresentation, or dishonesty) entered against it/him in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction?
 - (i) had any civil penalty enforcement action taken against it/him by the Central Bank or any other regulatory authority under any law in any jurisdiction?
 - (j) contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, in Kenya or elsewhere?
 - (k) been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by any regulatory authority, an operator of a market or clearing facility, professional body or government agency, in Kenya or elsewhere?
 - (l) been refused a fidelity or surety bond, in Kenya or elsewhere?
 - (m) been a director, partner or concerned in the management of a business that has been censured, disciplined, suspended or refused membership or registration by any regulatory authority, professional body or government agency, in Kenya or elsewhere?

- (n) been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, he was a director, senior officer, partner or concerned in the management of the business, in Kenya or elsewhere?
 - (o) been dismissed or asked to resign, from office, employment, a position of trust, or a fiduciary appointment or similar position, in Kenya or elsewhere?
 - (p) been subject to disciplinary proceedings by his current or former employer(s), in Kenya or elsewhere?
 - (q) been disqualified from acting as a director or disqualified from acting in any managerial capacity, in Kenya or elsewhere?
 - (r) been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, in Kenya or elsewhere?
 - (s) carried on business under any name other than the name or names shown in this application?
 - (t) been engaged in the management of any corporation other than those disclosed to the Central Bank?
 - (u) been engaged, or does it or he expect to be engaged, in any business relationship with any of the (prospective) officers of the applicant?
- (2) Has the applicant, any of its individual significant shareholders, or any director or chief executive officer of the applicant—
- (a) been unable to fulfil any of its/his financial obligations, in Kenya or elsewhere?
 - (b) entered into a compromise or scheme of arrangement with its/his creditors, being a compromise or scheme of arrangement that is still in operation, in Kenya or elsewhere?
 - (c) been subject to a judgment debt which is unsatisfied, either in whole or in part, in Kenya or elsewhere?
 - (d) been in the course of being wound-up or otherwise dissolved, in Kenya or elsewhere?
 - (e) been a corporation that has a receiver or statutory manager or such other person having the powers and duties of a receiver, manager appointed in relation to, or in respect of any property of, the corporation, in Kenya or elsewhere?

(f) had a dispute between it or him and the Kenya Revenue Authority or any equivalent tax authority in any other jurisdiction?

12. Are there any additional information considered relevant or material which may assist the Central Bank in reaching a decision on the application?

DECLARATION

We certify that all the information contained in and accompanying this form is accurate and complete to the best of our knowledge, information and belief and that there are no other facts relevant to this application of which the Central Bank should be aware. We undertake to inform the Central Bank of any material changes to the application which may arise while the Central Bank is considering the application. We further undertake that, in the event that the institution is granted a licence under these Regulations we will notify the Central Bank of any material changes to or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in any event not later than twenty days after the date that the changes come to our attention.

Sworn at Nairobi this _____ day of _____ 20_____

1. _____

Name Position held

Signed Date

2. _____

Name Position held

Signed Date

Deponent understands the contents of this affidavit before me,

COMMISSIONER FOR OATHS

N.B.
1. All sections of this form must be filled
2. If any space provided is inadequate, the required information may be supplied as an attachment labelled accordingly and reference shall be made to the relevant section of the form by placing the words "REFER TO ANNEX"
3. Information provided in this form is confidential and cannot be made available without the consent of the Governor of the Central Bank.

SECOND SCHEDULE**PERSONAL DECLARATION FORM FOR INDIVIDUALS PROPOSED TO BECOME SIGNIFICANT SHAREHOLDERS, DIRECTORS OR SENIOR OFFICERS OF A BUREAU**

Explanatory Notes

1. Please read the explanatory notes and questions carefully before completing the application form.
2. All questions must be answered. If a question is not applicable, please mark "N.A." in the space provided. Should there be insufficient space for your answers, please attach annex(es) which should be identified as such and signed by the signatories to this application.
3. Where there is an asterisk (*), please delete whichever is inapplicable.
4. Please tick (✓) in the relevant boxes where appropriate.
5. If there are any changes in the information furnished in the application prior to the completion of the review of this application, the Central Bank of Kenya should be notified immediately.
6. The term "senior officer" is as defined under the Banking Act.

I. NAME OF APPOINTEE

(Full name of appointee, including any alias and other names used currently or in the past. Please underline surname.)

2. Application for appointment as —

- Chairman
 Chief Executive Officer
 Director
 Significant Shareholder
 Senior Officer (state position) _____

3. Please provide the full name of the Credit Reference Bureau.

II. PERSONAL PARTICULARS

1. Set out below the personal particulars of the appointee:
 - (a) residential Address (if foreign address is provided, please update the Central Bank with a local address when available):
 - (b) telephone and facsimile number(s) (Home: Office: Facsimile: Mobile);
 - (c) date of birth (dd/mm/yy):
 - (d) place of Birth:

- (e) sex: Male Female
- (f) nationality:
- (g) identity Card Number:
- (h) passport Number:
- (k) permanent resident status in other countries (if applicable):

III. EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

1. Set out in the following format information on the appointee's highest academic and professional qualifications attained and any material trainings attended.

Name and location of school/college/university/institution	Period (mm/yy)	Certificate/diploma/degree awarded/professional qualifications/training awards

IV. EMPLOYMENT HISTORY

1. Set out in the following format information on the appointee's employment history (including periods of part-time employment or unemployment), business and other activities during the past 10 years. If appointee is currently employed with a company other than the Bureau stated in this application, please state his/her last day of employment with current employer.

Name and address of employer (if self-employed, please indicate)	Nature of business of employer	Designation and Department	Brief description of duties	Period (mm/yy)

V. DIRECTORSHIPS AND SUBSTANTIAL SHAREHOLDINGS

1. Set out in the following format information on the appointee's directorships in any corporation.

Name of company and place of incorporation	Nature of business	Directorship (executive/non-executive)	Date of appointment (mm/yy)	Percentage shareholding incorporation (if any)

2. Will there be any changes in the appointee's directorships following his/her appointment with the Bureau? If yes, please elaborate.

3. Set out in the following format information on the appointee's significant shareholding (5% or more of the issued share capital) in any corporation.

Name of company and place of incorporation	Nature of business	Date of acquisition(mm/yy)	Percentage shareholding incorporation

4. Are there any potential areas of conflict(s) of interest arising from the appointee's proposed duties with the Bureau and his/her directorship(s) and/or shareholding(s) as stated above? If yes, please elaborate.

5. Does the appointee, or any corporation in which the appointee is in a position of control, have a beneficial interest, whether direct or indirect, in at least 5% of the issued shares of any corporation quoted on a securities exchange, whether in Kenya or elsewhere? If yes, please elaborate and provide a list of such corporations.

VI. OUTSTANDING BORROWINGS

Name of Borrower	Name of Lending Institution	Type of Facility	Amount Borrowed KES	Terms of Facility	Security Offered	Value of Security KES	Current Outstanding Balance, KES	Current Status

VII. REFEREES

Indicate the names, postal and e-mail addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a reference on your personal and financial integrity and honesty. The referees must not be related to you, and should have known you for at least five years.

Name of Referee	Postal Address	E-mail address	Tel no. (s)	Designation (where applicable)	Relationship with applicant

VIII. FIT AND PROPER CRITERIA

If the answer to any of the following questions is in the affirmative, please attach annexes and supporting documents, where appropriate, giving all relevant particulars. (Please answer yes or no).

1. Have you i.e. the individual significant shareholder, corporate significant shareholder, director or senior officer-

-
- (a) been licensed or registered under any law in Kenya or elsewhere which requires licensing or registration in relation to any regulated financial business?
 - (b) been refused the right or restricted to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law in any jurisdiction?
 - (c) been issued a prohibition order under any law or have you been prohibited from operating in other jurisdiction by any financial services regulatory authority?
 - (d) been censured, disciplined, suspended or refused membership or registration by the Central Bank or any other regulatory authority, in Kenya or elsewhere?
 - (e) been the subject of any complaint made reasonably and in good faith relating to activities regulated by any regulatory authority or under any law in any jurisdiction?
 - (f) been the subject of any proceedings of a disciplinary or criminal nature or have you been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction?
 - (g) been convicted of any offence, or are you subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction?
 - (h) had any judgment (including a finding of fraud, misrepresentation, or dishonesty) entered against you in any civil proceedings or are you a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction?
 - (i) had any civil penalty enforcement action taken against you by the Central Bank or any other regulatory authority under any law in any jurisdiction?
 - (j) contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, in Kenya or elsewhere?
 - (k) been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by any regulatory authority, an operator of a market or clearing facility, professional body or government agency, in Kenya or elsewhere?
 - (l) been refused a fidelity or surety bond, in Kenya or elsewhere?
 - (m) been a director, partner or concerned in the management of a business that has been censured, disciplined, suspended or refused membership or registration by any regulatory authority, professional body or government agency, in Kenya or elsewhere?
 - (n) been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, you were a director, partner or concerned in the management of the business, in Kenya or elsewhere?
 - (o) been dismissed or asked to resign, from office, employment, a position of trust, or a fiduciary appointment or similar position, in Kenya or elsewhere?

- (p) been subject to disciplinary proceedings by your current or former employer(s), in Kenya or elsewhere?
 - (q) been disqualified from acting as a director or disqualified from acting in any managerial capacity, in Kenya or elsewhere?
 - (r) been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to you, in Kenya or elsewhere?
 - (s) carried on business under any name other than the name or names shown in this application;
 - (t) been engaged in the management of any corporation other than those disclosed to the Central Bank?
2. Have you i.e individual significant shareholder, corporate significant shareholder, director or senior officer;
- (a) been unable to fulfil any of your financial obligations, in Kenya or elsewhere?
 - (b) entered into a compromise or scheme of arrangement with your creditors, being a compromise or scheme of arrangement that is still in operation, in Kenya or elsewhere;
 - (c) been subject to a judgment debt which is unsatisfied, either in whole or in part, in Kenya or elsewhere?
 - (d) been in the course of being wound-up or otherwise dissolved, in Kenya or elsewhere?
 - (e) been a corporation that has a receiver or statutory manager or such other person having the powers and duties of a receiver, manager appointed in relation to, or in respect of any property of, the corporation, in Kenya or elsewhere?
3. What proportion of the voting power at any general meeting of the Bureau (or another body corporate of which it is a subsidiary) are you or any related party entitled to exercise or control the exercise of?
4. Documentary requirements-
- (a) certified statement of assets and liabilities;
 - (b) latest tax compliance certificate or certified true copy of income tax returns;
 - (c) two letters of character references from individuals other than relatives who have personally known the undersigned for at least ten years;
 - (d) two letters (where possible), duly certified from financial institutions with whom the undersigned has had dealings for the last two years on the performance of past and present accounts such as unauthorised overdraft on deposit accounts, past due or delinquent accounts;
 - (e) certified copies of educational and professional certificates, PIN, National Identity Card and two passport size photographs; and
 - (f) a credit report from a Credit Reference Bureau.

IX. OTHER INFORMATION

Are there any additional information considered relevant or material which may assist the Central Bank in reaching a decision on the application?

X. DECLARATION

I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading in connection with an application for a credit reference bureau license. I am also aware that provision of false information in this regard may result in rejection of this application by the Central Bank.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the supervisory authority should be aware.

I undertake to inform the supervisory authority of any changes material to the application which arise while the application is under consideration.

NAME:

DATED AT:.....THIS.....DAY OF..... 20.....

SIGNED (Applicant)

WITNESSED BEFORE ME:

Name

Signature:

Address:

COMMISSIONER FOR OATHS/MAGISTRATE

- N.B.
1. All sections of this form must be filled
 2. If any space provided is inadequate, the required information may be supplied as an attachment labelled accordingly and reference shall be made to the relevant section of the form by placing the words "REFER TO ANNEX"
 3. Information provided in this form is confidential and cannot be made available without the consent of the Governor of the Central Bank.

THIRD SCHEDULE**REPUBLIC OF KENYA****IN THE MATTER OF OATHS AND STATUTORY DECLARATIONS ACT
(Cap.15)****STATUTORY DECLARATION**

I, _____ of _____
(insert address) in the Republic of _____ do hereby make oath and solemnly state as follows:

1. THAT I am the deponent herein hence competent to swear this affidavit.
2. THAT I am the Chief Executive Officer of _____ (insert name of Bureau) hereinafter referred to as the Applicant.
3. THAT I am holder of _____ (insert National Registration Card/identification documentation details.)
4. THAT I make this affidavit and hereby undertake that the applicant shall adhere to the provisions of these Regulations and in particular that the applicant will not disclose to any person any information obtained pursuant to the applicant's obligations under these Regulations except as provided herein.
5. THAT the facts herein deponed to are true to the best of my knowledge, information and belief.

Sworn by _____ at Nairobi this _____ day of _____ 20____)

) _____
) DEPONENT
)

Before Me)

)
)

Commissioner for Oaths)

Dated the 23rd December, 2013.

HENRY K. ROTICH,
Cabinet Secretary for the National Treasury.