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THE MICROFINANCE ACT, 2006

No. 19 of 2006

Date of Assent: 30th December, 2006
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SCHEDULE

An Act of Parliament to make provision for the licensing, regulation and supervision of microfinance business and for connected purposes

ENACTED by the Parliament of Kenya, as follows–

PART I – PRELIMINARY

1. This Act may be cited as the Microfinance Act, 2006 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint. Short title and commencement.

2. In this Act, unless the context otherwise requires– Interpretation.

"agency"

"associate"–

(a) in relation to a natural person, means any person–

(i) related to that person by marriage, affinity or consanguinity; or

(ii) who is a partner or an employee of that person; and

(b) in relation to a company or other body corporate, means–

(i) its holding company or its subsidiary;

(ii) a subsidiary of its holding company;

(iii) a holding company of its subsidiary; or

(iv) any person who controls that company or

body corporate, whether alone or with his associates or with other associates of the company or body corporate;

"bank" or "financial institution" have the meanings respectively assigned to them in the Banking Act;

Cap.488.

"branch"

"Central Bank" means the Central Bank of Kenya established by the Central Bank of Kenya Act;

Cap.491.

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

"deposit" means a sum of money received or paid on terms under which it shall be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, but does not include a sum of money which is paid as

(a) an advance or part payment under a contract for the sale, hire or other provision of property or service, where the sum is repayable only if the property or service is not sold, hired or otherwise provided; or

(b) security for performing a contract;

"Deposit Protection Fund Board" means the Deposit Protection Fund Board established under the Banking Act;

Cap.488.

"deposit-taking business" means deposit-taking microfinance business;

"deposit-taking microfinance business" means–

(a) a microfinance business in which the person conducting the business holds himself out as accepting deposits on a day-to-day basis; and

(b) any other activity of the business which is financed, wholly or to a material extent, by lending or extending credit for the account and at the risk of the person accepting the deposit, including the provision of short-term loans to small or micro enterprises or low income households and characterized by the use of collateral substitutes;

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

"director" means a member of the board of directors referred to in section 20;

"Fund" means the Deposit Protection Fund established under the Banking Act; Cap.488.

"institution" means a deposit-taking microfinance institution licensed under this Act;

"International Accounting Standards" means international accounting standards set by the International Accounting Standards Council of the United Kingdom;

"microfinance business" means the business of–

(a) receiving money, by way of deposits or interest on deposits, which is lent to others or used to finance the business; or

(b) providing loans or other facilities to micro or small enterprises and low income households;

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

"officer" means a director or any other person, of whatever title, who carries out or is empowered to carry out functions relating to the overall direction, in Kenya, of a deposit-taking microfinance institution or takes part in the general management thereof;

"non-deposit taking microfinance business" means microfinance business, other than deposit-taking microfinance business;

"place of business" means a branch, office, agency or mobile unit of an institution open to the public.

Application.

3.(1) Subject to subsection (3), this Act shall apply to

(a) every deposit-taking microfinance business;

(b) specified non-deposit taking microfinance business, in the manner prescribed under subsection (2)(b).

(2) For the purposes of subsection (1)(b), the Minister may make regulations–

(a) specifying the non-deposit taking microfinance business to which that subsection applies; and

(b) prescribing measures for the conduct of the specified business.

(3) Except as provided in section 4(1), this Act shall not apply to–

(a) a bank, a financial institution or a mortgage finance company licensed under the Banking Act; Cap.488.

(b) a building society registered under the Building Societies Act; Cap.489.

(c) the Kenya Post Office Savings Bank established under the Kenya Post Office Savings Bank Act. Cap.493B.

PART II – LICENSING PROVISIONS

Qualifications for carrying out deposit-taking microfinance business.

4.(1) No person shall carry out any deposit-taking microfinance business, hereinafter referred to as "deposit-taking business", unless such person is–

(a) a company registered under the Companies Act whose main objective is to carry out such business; or Cap.486

(b) a wholly-owned subsidiary of a bank or a financial institution whose main objective is to carry out such business; and

(c) licensed under this Act.

(2) (3) (4) ~~(2)~~ A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Application for licence.

5.(1) An application for a licence to carry out deposit-taking business shall be made to the Central Bank, in the prescribed form.

(2) An application under subsection (1) shall be accompanied by–

(a) copy of the memorandum and articles of association or other instrument under which the company is incorporated;

(b) a verified official notification of the company's registered place of business;

(c) the prospective place of operation, indicating that of the head office and branches, if any;

(d) evidence that the company meets the minimum capital requirements prescribed in the Schedule;

(e) the prescribed fee; and

(f) a report of a feasibility study undertaken by the company covering the following–

(i) objectives of the business;

(ii) domestic economic situation;

(iii) financial sector environment;

(iv) legal framework;

(v) risk analysis;

(vi) economic and financial analysis;

(vii) organizational structure;

(viii) proposed management, detailing the professional qualifications, skills and relevant experience in deposit-taking business of the proposed managers;

(ix) equity and ownership of the business;

(x) such other requirement as the Central Bank may prescribe.

Issuance or renewal of licence.

6.(1) The Central Bank shall consider every application made under section 5 and may, if satisfied that the applicant meets the requirements of this Act, grant a licence to the applicant upon payment of the prescribed fee.

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

(3) A licence issued under this Act shall, unless earlier revoked, be valid up to the 31st of December of the year in which it is issued and may, on expiry, be renewed on application:

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

(4) An application for the renewal of a licence shall be made to the Central Bank, in the prescribed form and shall be–

(a) made within three months of the expiry of the licence:

Provided that a late application may be

made upon payment of such penalty as may be prescribed;

(b) accompanied by the particulars specified in section 5(2); and

(c) be considered in the same manner as an application under section 5.

(5) Subject to subsection (4) the Central Bank may renew an institution's licence upon payment of the prescribed fee.

Categories of deposit-taking business.

7. For the purposes of this Act, the Minister may prescribe categories of deposit-taking business based on geographical, administrative or such other criteria as the Minister may deem necessary.

Central Bank's power of inspection.

8. The Central Bank may, under a warrant issued by the High Court, enter any premises and examine the books, accounts or records of any person whom the Central Bank, on reasonable grounds, believes to be carrying out deposit-taking business contrary to the provisions of this Act.

Revocation of licence.

9.(1) The Central Bank may, by notice to the licensee, revoke a licence where–

(a) the licensee ceases to carry on deposit-taking business;

(b) the institution is wound up, liquidated or otherwise dissolved,

(c) the Central Bank is reasonably satisfied that the business of the institution is being conducted in a manner detrimental to the interests of its depositors or customers;

(d) the institution has been amalgamated with another company or has been sold or its assets or liabilities have been transferred to another company without the approval of the Minister;

(e) the licensee has contravened any of the conditions in the licence; or

(f) the licensee has contravened any of the provisions of this Act or any regulations made thereunder.

(2) The Central Bank shall cause the names of institutions whose licences have been revoked to be published in the Gazette within seven days of the revocation.

Restriction of a licence.

10.(1) Where it appears to the Central Bank that there are reasonable grounds for the revocation of a licence, but that the circumstances are such as not to justify a revocation, the Central Bank may restrict the licence in accordance with subsection (2).

(2) A licence may be restricted by imposing–

(a) a limit on the duration of the licence for a period, not exceeding one year; or

(b) such additional conditions for the protection of depositors as the Central Bank may deem necessary.

PART III – PROVISIONS RELATING TO GOVERNANCE

Minimum capital requirements.

11.(1) An institution shall maintain the minimum capital requirements set out in the Schedule.

(2) The Minister may, by Order in the Gazette, amend the Schedule.

Minimum liquid assets.

12.(1) An institution shall maintain such minimum holding of liquid assets as may be prescribed by the Central Bank.

(2) For the purposes of this section, "liquid assets" means–

(a) notes and coins which are legal tender in Kenya;

(b) balances held at banks after deducting therefrom any balance owed to those banks;

(c) treasury bills and bonds which are freely marketable and re-discountable at the Central Bank; or

(d) such other assets as the Central Bank may specify.

(3) An institution which does not comply with the requirements of subsection (1), within such period as the Central Bank may prescribe, shall be liable to pay, on being called upon to do so by the Central Bank, a penalty interest charge not exceeding one percent of the amount of the deficiency, for every day during which the offence continues.

Place of business.

13.(1) No person carrying out deposit-taking business shall–

(a) open a place of business outside Kenya; or

(b) open or close a place of business in Kenya without the prior approval of the Central Bank.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

14.(1) An institution shall not engage in the following activities

Prohibited activities.

(a) issuing of third party cheques;

(b) opening current accounts;

(c) foreign trade operations;

(d) trust operations;

(e) investing in enterprise capital;

(f) wholesale or retail trade;

(g) underwriting or placement of securities; or

(h) purchasing or otherwise acquiring any land except as may be reasonably necessary for the purpose of expanding the deposit-taking business;

(i) such other activity as the Central Bank may prescribe.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand

shillings, or to imprisonment for a term not exceeding three years, or to both.

Declaration of dividends.

15.(1) No institution shall pay dividends on its shares or make any other form of distribution to its shareholders until all its capitalized expenditure has been written off and provision has been made for bad and doubtful debts in accordance with subsection (2).

(2) Every institution shall–

(a) make provision for bad and doubtful debts before any profit or loss is declared; and

(b) ensure that such provision is adequate in accordance with such guidelines as may be prescribed by the Central Bank.

(3) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Application for loan or credit facility.

16.(1) Any person may apply to an institution for a loan or credit facility.

(2) A person who applies for a loan or credit facility under subsection (1) shall provide evidence of his ability to repay the loan or credit facility.

Limit on loans and credit facilities.

17.(1) No institution shall grant a loan or credit facility to an end-user single borrower where the loan or credit facility, in the aggregate, exceeds such limit of its core capital as the Central Bank may prescribe.

(2) No institution shall grant a loan or credit facility

against the security of the shares of its deposit-taking business.

(3) Any person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Insider lending.

18.(1) No institution shall grant a loan or credit facility to an associate, officer or other member of staff of the institution, in excess of such limits as the Central Bank may prescribe.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Limit on shares.

19.(1) Subject to subsections (2) and (3), no person shall hold more than twenty-five percent of the shares of an institution.

(2) A person who holds more than twenty-five per cent of the shares of a deposit-taking business existing at the commencement of this Act, which makes an application for a licence pursuant to section 49, shall–

(a) comply with the requirements of subsection (1) within four years of the business being licensed; and

(b) present a plan of action for the reduction of the shareholding at the time the application for the initial licence of the business is made.

(3) The provisions of subsections (1) and (2) shall not apply in the case of

(a) a wholly-owned subsidiary of a bank or a financial institution;

(b) any other company which the Minister may, on the recommendation of the Central Bank, specify.

(4) No person shall transfer, or cause to be transferred, more than ten percent of the shares of an institution except with the prior approval of the Central Bank.

(5) A person who contravenes any of the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Management of institutions.

20.(1) Every institution shall be managed by a board of directors consisting of not less than five directors.

(2) A person shall be qualified for appointment as a director if such person—

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

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

(3) The board of directors shall elect a non-executive chairman from amongst their number.

(4) The board of directors may, in writing, delegate, any of the powers to the board to any director or to any other officer of the institution.

Disqualifications of directors.

21. A person shall not be qualified to hold office as a director if such person–

(a) is a minor or is under a legal disability;

(b) has been convicted of an offence involving theft, fraud, forgery, causing financial loss or perjury;

(c) has been removed from an office of trust on account of misconduct, abuse of office, corruption or incompetence in the immediately preceding ten years;

(d) is an auditor of a company licensed to conduct deposit-taking business.

Disqualifications of officers.

22.(1) A person shall not be an officer of an institution, or, if already in office, shall be disqualified and shall not thereafter be eligible to hold office in any institution for a period of ten years, if such person is–

(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 this Act.

(2) Any person who continues to act as an officer

after being disqualified under this section commits an offence.

Financial year.

23. The financial year of an institution shall be the period of twelve months ending on the 31st December in each year.

Form of accounts.

24.(1) All entries in any books of accounts and all accounts kept by an institution shall be recorded in the English language and in the system of numerals employed in government accounts.

(2) An institution shall keep accounts and records which–

(a) show a true and fair state of affairs;

(b) explain all transactions and financial positions to enable the Central Bank determine whether the institution has complied with the provisions of this Act.

Accounts to be denominated in shillings.

25. The accounts and other financial records of an institution shall be denominated in Kenya shillings and shall comply with the requirements of–

Cap.486.

(a) the Companies Act;

(b) International Accounting Standards; and

(c) such other requirements as the Central Bank may prescribe.

Submission of accounts to the Central Bank.

26.(1) An institution shall, not later than three months after the end of each financial year, submit to the Central Bank–

(a) an audited balance sheet, showing its assets and liabilities;

(b) an audited profit and loss account; and

(c) a copy of the auditor's report.

(2) Any person who contravenes the provisions of this section commits an offence.

Disclosures in financial statements.

27. The financial statements of an institution shall disclose–

(a) the persons, if any, who hold more than twenty-five percent of the total shares of the institution;

(b) any advance or credit facility exceeding such limit of its core capital as may be prescribed by the Central Bank; and

(c) any lending to insiders.

Appointment of internal auditor.

28.(1) Every institution shall appoint an internal auditor who shall report to the board of directors on the financial matters of the institution.

(2) No person shall be appointed as an internal auditor under this section unless the person holds such professional qualifications in accounting and has such experience in deposit-taking microfinance business, as may be prescribed.

Appointment of external auditors.

29.(1) An institution shall, in each year, appoint an external auditor who shall be a person qualified under section 30 and approved for appointment as such by the Central Bank.

(2) The external auditor shall audit the accounts of the institution and shall make a report on the annual balance sheet and profit and loss account to be submitted to the Central Bank.

(3) An institution shall not remove or change its external auditor except with the prior approval of the Central Bank.

(4) An external auditor shall make a report to the board of directors identifying key concerns with respect to the financial condition of the business.

(5) An external auditor shall, not less than four months after the end of each financial year, submit an audit report to the Central Bank, on the financial condition of the business.

(6) An external auditor's reports submitted under subsection(5) shall contain information on the–

(a) solvency of the business;

(b) any violation of prudential standards or a condition imposed on the licence; and

(c) any other contravention of this Act.

Qualifications of an external auditor.

30. A person shall be qualified for appointment as an external auditor of an institution if that person–

Cap.486.

(a) is qualified as an auditor under the Companies Act; and,

(b) is not–

(i) an officer or employee of the institution;

(ii) a partner of an officer or employee of the institution;

(iii) an employer or employee of an officer or employee of the institution;

(iv) officer or employee of an associate of the institution;

(v) a partner or an employer of a person who regularly performs the duties of secretary or book-keeper for the institution; or

(vi) a firm or member of a firm of auditors of which any partner or employee falls within the categories enumerated in this section.

Exhibition and publication of audited accounts.

31.(1) An institution shall exhibit, throughout the year, in a conspicuous position in every office and branch, a copy of its last audited financial statements and shall, within four months of the end of each financial year, cause a copy of the balance sheet and profit and loss account for that year to be published in a national newspaper, in such form as the Central Bank may prescribe.

(2) An institution that does not comply with the provisions of this section shall be liable to pay to the Central Bank such penalty, not being less than one hundred thousand shillings, as may be prescribed.

Rectification of audited accounts.

32. Where the Central Bank is satisfied that the audited accounts of an institution do not comply with the requirements of this Act or that the audited accounts contain information that may be misleading or are not published in the specified form, the Central Bank may require the institution to–

(a) amend the audited accounts to comply with the Act;

(b) correct the misleading information;

(c) re-publish the amended audited accounts;

(d) submit to the Central Bank further documents or information relating to any document or information.

Collection and furnishing of information by the Central Bank.

33.(1) The Central Bank shall collect such data and other information as may be necessary to enable it maintain supervision and surveillance of the affairs of an institution and the protection of depositors and, for that purpose, the Central Bank may require an institution to submit statistical and other returns on a periodic basis in addition to any other returns required by law.

(2) The Central Bank may require any institution to furnish it with such information as it may reasonably require for the proper discharge of its functions under this Act.

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

(4) The Minister may require the Central Bank or an institution to furnish to the Minister, at such time and in such manner the Minister may direct, such information as the Minister may require for the proper discharge of his functions under this Act.

Publication of information.

34.(1) Subject to subsection (2), the Minister may publish in the Gazette, in whole or in part, any information furnished to him or to the Central Bank under this Act.

(2) No information shall be published under subsection (1) if it would disclose the financial affairs of any person, except with the prior consent, in writing, of that person.

(3) Except as provided in this Act, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties under this Act.

(3A) Inst 67) A 8/2009

(3A). The Deposit Protection Fund Board and institutions licensed under this Act shall, in the ordinary course of business and in such manner and to such extent as the Minister may, in regulations, prescribe, exchange such information on non performing loans as may, from time to time, be specified by the Central Bank in regulations. A 8/2009

Inst 67) A 8/2009

(5) Without prejudice to the provisions of subsection (4), regulations under that subsection may provide for the establishment and operation of credit reference bureaus for the purpose of collecting prescribed credit information on clients of institutions and disseminating the information amongst institutions for use in the ordinary course of business, subject to such conditions as may be prescribed.

PART IV – SUPERVISION BY CENTRAL BANK

Inspection of institutions.

35.(1) The Central Bank may, at any time, and shall, if so directed by the Minister, cause an inspection of an institution, and its affiliates to be made by any person authorized by the Central Bank in writing.

Ins 67) A 10/2010

(2) When an inspection is made, the institution concerned and every officer or employee thereof shall produce and make available to the person making the inspection, all the books, accounts, records and other documents of the deposit-taking business and such correspondence, statements and information relating to the business as the person making the inspection may require, within such period as he may direct in writing.

(3) A person who fails to produce any books, accounts, records, documents, correspondence, statements or other information required under subsection (2), within the period specified in the relevant direction, commits an offence.

(4) The person making the inspection shall make and submit a report to the Central Bank, and the report shall state, in detail, whether or not there is–

(a) any breach or contravention of this Act and any regulations made thereunder;

(b) any irregularity in the manner of conduct of the inspected institution;

(c) any mismanagement of the institution; and

(d) any other matter relating to the institution not consistent with sound business practice.

Periodic returns.

36.(1) The Central Bank may require an institution to furnish it with periodic reports of its business operations in such form as the Central Bank may prescribe.

(2) The periodic reports referred to in subsection (1) shall include information on–

(a) compliance by the institution with the prescribed capital requirements;

(b) the composition and quality of assets and liabilities;

(c) the quality of its earning assets;

(d) the adequacy and performance of its management;

(e) any other matter which, in the opinion of the Central Bank, is relevant to the discharge of its supervisory role under this Act.

Power of Central Bank to intervene in management.

37.(1) The Central Bank may, in accordance with this section, intervene in the affairs of an institution where–

(a) the institution has contravened the provisions of this Act or the conditions upon which its licence was granted;

(b) the business of the institution is being conducted in a manner detrimental to the interests of its depositors or creditors;

(c) the institution has failed to maintain the prescribed minimum core capital;

(d) the institution has insufficient assets to cover its liabilities.

(2) The Central Bank shall, before intervening in the affairs of an institution under subsection (1), issue the institution with a notice specifying the defaults noted in the conduct of the business and require the institution to take remedial action within such reasonable period as may be specified in the notice in order to comply with this Act.

(3) Where an institution does not comply with the notice issued under subsection (2), the Central Bank may–

(a) direct the institution to take such steps as the Central Bank may consider necessary to rectify the default;

(b) prohibit the receipt of any fresh deposits or limit lending operations;

(c) remove or suspend any person responsible for the default in question from the management of the institution;

(d) prohibit any declaration of dividends;

(e) impose on any member of the management responsible for the default such penalty as may be prescribed; or

(f) close the institution and revoke its licence.

Inst by A 10\2010

(g)

(h)(4) Where the Central Bank intervenes in the management of an institution, it may–

(a) appoint a person to manage the affairs of the institution and to exercise all the powers of the institution to the exclusion of the board of directors, including the use of the corporate seal of the institution;

(b) appoint a competent person familiar with deposit-taking business to its board of directors, to hold office as a director for a period not exceeding twelve months, who shall

not be removed from office except with the prior approval of the Central Bank; and

(c) by notice in the Gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by an institution in favour of any officer or employee or any other person.

(5) A person appointed to manage an institution under this section shall hold office for a period not exceeding six months but the High Court may, on the application of the Central Bank, extend such period as it may deem necessary.

PART V – PROTECTION OF DEPOSITS

Liquidation of an institution by the Central Bank.

38.(1) Where an institution becomes insolvent, the Central Bank may appoint the Deposit Protection Fund Board to be a liquidator of the institution and the appointment shall have the same effect as the appointment of a liquidator by the High Court under the provisions of the Companies Act.

Cap 486.

(2) Any reference in the Companies Act to the "relevant date" and "commencement of the winding up" shall be deemed to be a reference to the date on which the Deposit Protection Fund Board is appointed as liquidator.

(3) An institution shall be deemed to be insolvent where–

(a) it is unable to pay its debts within the meaning of the Companies Act;

(b) a winding-up order is made against the institution or a resolution of creditors' to

voluntarily wind up the business is passed under the Companies Act;

(c) the institution is unable to pay sums due and payable to its depositors; or

(d) the Central Bank determines that the value of the assets of an institution is less than the amount of its liabilities.

(4) In exercising its functions under this section, the Deposit Protection Fund Board shall be subject to the supervision of the High Court which may, upon the application of an interested party, or where the High Court deems it fit, appoint a committee of inspection which shall have the same powers as a committee of inspection appointed under the Companies Act.

(5) No person shall be appointed a receiver or manager of an institution without the prior approval of the High Court.

(6) The High Court shall not grant an approval under subsection (5) unless the Central Bank certifies that it does not intend to exercise its powers under this section.

(7) Where a receiver or a manager of an institution has been appointed and a manager or liquidator is appointed under the provisions of this Part, the powers of the receiver or manager may only be exercised to the extent authorized by the Central Bank or the High Court.

Contributions to the Deposit Protection. Fund.

39.(1) All institutions shall contribute to the Deposit Protection Fund.

(2) An institution shall pay into the Deposit Protection Fund, such annual amount and at such times as the Deposit Protection Fund Board may prescribe.

(3) Notwithstanding subsection (2), where it appears to the Deposit Protection Fund Board that the affairs of an institution are being conducted in a manner detrimental to the interests of the deposit-taking business or of the depositors of the institution, the Deposit Protection Fund Board may increase the contributions of that institution beyond the prescribed maximum.

(4) An institution that does not contribute to the Deposit Protection Fund within the period prescribed under subsection (2) shall be liable to pay to the Fund a penalty interest charge, not exceeding one-half percent of the unpaid amount, for every day during which the amount remains unpaid.

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

Protection of deposits.

40.(1) The Deposit Protection Fund Board shall, by Order in the Gazette, determine the amount of the balance to be maintained by a customer of an institution, as a protected deposit.

(2) A customer of an institution may, upon the institution becoming insolvent, lodge a claim with the Deposit Protection Fund Board, in such form as the Deposit Protection Fund Board may approve, for payment to the customer out of the Fund of any protected deposit which the customer would, but for the insolvency, have been paid had the customer demanded payment from the insolvent institution.

(3) The Deposit Protection Fund Board may, before paying any claim lodged under subsection (2), require the claimant to furnish such documentary proof as may be proper to show that the customer is entitled to payment out of the Fund.

(4) The Deposit Protection Fund Board may decline to make any payment under this section to a person who in its opinion, had any responsibility for or may have profited directly or indirectly from the circumstances leading to the institution becoming insolvent.

(5) The Deposit Protection Fund Board may require the Central Bank to carry out an inspection to ascertain the type, number and value of the protected deposits of any institution and the information obtained pursuant to the inspection shall, be made available to the Deposit Protection Fund Board.

(6) Upon payment of a protected deposit, the Deposit Protection Fund Board shall be entitled to receive from an institution or its liquidator, an amount equal to the insolvency payment paid by the Fund on account of its subrogation to the claims of any customer or depositor.

Rights of Board on insolvency.

41. Whenever an institution is closed or becomes insolvent, the Deposit Protection Fund Board shall be entitled to receive any notice or other document required to be sent to a creditor of the institution, and a duly authorized representative of the Deposit Protection Fund Board shall be entitled to attend any meeting of creditors of the institution.

Right of assignment.

Cap.486.

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

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

PART VI – MISCELLANEOUS PROVISIONS

Declaration of holidays.

43. Where the Minister considers that it is in the public interest that all institutions, or a particular institution should remain closed on a day which is not a public holiday, the Minister may, by notice in the Gazette, declare that day to be a holiday for all institutions or for the particular institution, and all institutions or the particular institution shall remain closed on that day.

Orders by the High Court.

44.(1) The High Court may, on application made *ex-parte* by the Central Bank or a manager or liquidator appointed by the Central Bank, if it considers it to be in the interests of the depositors of an institution, make an order–

(a) prohibiting the institution from carrying on business; or

(b) staying the commencement or continuance of any action or any proceedings against the institution for a specified period of time on such terms and conditions as the High Court considers reasonable and may extend the specified period up to a total of six months from the beginning of the stay.

(2) Where an order is made under subsection (1)(a), a licence granted under this Act shall be deemed to be suspended.

Restriction on use of the words "deposit-taking microfinance business."

45.(1) No person shall use the word "deposit-taking microfinance business" or any of its derivatives or any other words indicating the transaction of deposit-taking business or the equivalent, in the name, description or title under which it transacts business in Kenya or make any representation that the person transacts deposit-taking business unless such person is licensed under this Act.

(2) Any person who contravenes the provisions of this section commits an offence.

Default by officers or employees.

46.(1) Any officer or employee of an institution who fails to–

(a) take all reasonable steps to secure the compliance of the institution with this Act;

(b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act; or

(c) supply any information required under this Act to the Minister or to the Central Bank,

commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

General penalty.

47. A person who commits an offence under this Act for which no penalty is stipulated shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Regulations.

48.(1) The Central Bank may, with the approval of the Minister, make regulations for prescribing anything which under this Act may be prescribed by the Central Bank.

(2) Subject to this Act, the Minister may, on the recommendation of the Central Bank, make regulations generally for the better carrying out of the provisions of this

(2A) The Central Bank may issue directions and guidelines to institutions generally for the better carrying out of their functions, and in particular, with respect to –

(a) the standards to be adhered to in the conduct of their business in Kenya or in countries where their branches or subsidiaries are located;

(b) guidelines to be adhered to by institutions in order to maintain a stable and efficient deposit taking microfinance system.

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or each day
or part thereof during which such failure or refusal continues.

Transitional provision.

49.(1) Subject to section 19, a person who, at the commencement of this Act, is carrying out deposit-taking microfinance business shall, within twelve months from the date of commencement, or within such longer period as the Minister may, by notice in the Gazette prescribe, comply with the requirements of this Act or cease to carry out such business.

(2) A person who fails to comply with the requirements of this section within the prescribed period commits an offence under section 4 and shall be liable, on conviction, to the penalty prescribed in that section.

Amendment of section 36A of Cap.488.

50. Section 36A of the Banking Act is amended–

(a) by adding the words "or any other written law"

immediately after the word "Act" appearing at the end of subsection (1);

(b) by inserting the following new subsection immediately after subsection (1)–

(1A) Where, under the provisions of any other written law, the Board is–

(a) required to provide a deposit scheme for customers of any institution; or

(b) appointed as a liquidator in respect of any insolvent institution,

the institution shall, subject to the provisions of that other written law, be deemed to be an institution for the purposes of this Part and the relevant provisions of this Part shall, with the necessary modifications, apply to that institution.

(c) in subsection (2), by adding the words "or the provisions of any other written law" at the end of paragraph (b).

Amendment of section 37 of Cap. 488.

51. Section 37 of the Banking Act is amended–

(a) in subsection (1), by inserting the words "or under the provisions of any other written law" immediately after the expression "section 38";

(b) in subsection (2), by adding the words" or under the provisions of any other written law" at the end of paragraph (b).

SCHEDULE

(s. 11)

MINIMUM CAPITAL REQUIREMENTS

Every institution shall, at all times, maintain minimum capital ratios indicated below or such other ratios as may be determined by the Central Bank–

(a) a core capital of not less than ten per cent of total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank;

(b) a core capital of not less than eight per cent of its total deposit liabilities;

(c) a total capital of not less than twelve per cent of its total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank;

(d) (i) a core capital of at least sixty million Kenya shillings; or

(ii) in the case of a deposit-taking business of a category prescribed for the purposes of this subparagraph under section 7, a core capital of at least twenty million Kenya shillings.