

**14TH EAST AFRICAN CENTRAL BANKING COURSE
1ST TO 19TH JULY 2002**

**SUMMARY OF THE PRESENTATION ON CHANGES
IN BANKING LEGISLATION IN RESPONSE TO
EVOLUTION OF BANKING SYSTEMS IN EAST
AFRICA: A COMPARATIVE VIEW**

DELIVERED BY:

**MR. NYANDUGA MUKIRYA
BANK OF TANZANIA**

**SUMMARISED BY:
BY DAISY MELLY
CENTRAL BANK OF KENYA**

CHANGES IN BANKING LEGISLATION IN RESPONSE TO EVOLUTION OF BANKING SYSTEMS IN EAST AFRICA: A COMPARATIVE VIEW

INTRODUCTION:

In the period beginning mid 1980s, the three East African countries were addressing their banking law changes individually.

The re-establishment of the East African Cooperation in the recent past has re-invigorated the need for the harmonisation of the banking laws in the region with a view to achieving convergence in bank regulation, supervision and cross border transaction areas.

In many instances laws are amended or replaced by new ones so that they correspond with new and changing environment within which the business of banking is operated. The new laws are also to vest adequate powers to bank supervisors and regulators over banks and financial institutions.

BANKING LEGISLATION IN TANZANIA:

The basic law, which regulates banking business in Tanzania, is the Banking and Financial Institutions Act, 1991. Prior to the enactment of the Banking Act, banking in Tanzania was regulated under the Banking Ordinance, Cap. 430 Legislation, which had been enacted in 1960 by the colonial government. This statute fell out in the advent of the Arusha Declaration in 1967 under the Ujamaa Policy but remained on the list of statutes until it was repealed by the Banking Act in 1991.

BANKING LEGISLATION IN UGANDA:

Banking business in Uganda is regulated by the Financial Institutions Statute (FIS) 1993. This law was enacted in 1993 following the financial sector reform program which begun in 1991 with the support of the World Bank Financial Section Adjustment Credit. The enactment of the FIS was meant to lay down a sound legal framework for regulation of banking business in a new environment. This was meant to correct the legislative deficiencies, which the banking sector experienced under the Banking Act, 1969. Under the new statute FIS (1993), the Bank of Uganda was conferred with much greater authority over banks and financial institutions whereby it was vested with legal powers to enforce prudent regulation and supervision over them.

BANKING LEGISLATION IN KENYA:

In Kenya, banking business is regulated by the Banking Act, Cap. 488. This Act was enacted in 1989 and it repealed and replaced the Banking Act, 1969. Prior to this, banking in Kenya was regulated under the Banking Ordinance. This was a colonial piece of legislation, which was inherited by the government at independence. The act gave the Minister for Finance responsibility of licensing banks and non-bank financial institutions and to the Central Bank of Kenya the responsibility of inspecting all financial institutions. This Act however, had a lot of legislative deficiencies. The Banking (Amendment) Act, 1985 attempted to rectify these deficiencies. Licensing was henceforth to be routed through the Central Bank of Kenya with the Minister's approval. Bank failures also led to the establishment of the Deposit Protection Fund (DPF) in 1986.

COMPARATIVE VIEW OF THE EAST AFRICAN BANKING LEGISLATION:

- The changes that took place in the economies of the three East African countries necessitated for the banking laws to be re-enacted to be in line with the economic, banking and financial sector reforms which were introduced in these countries during the period beginning early 1980s.
- The provision on licensing under the Banking Acts of Tanzania and Uganda vest in the central banks powers to issue licences to banks, financial institutions and building societies. In Kenya, licensing of banks, financial institutions and mortgage finance companies is vested in the Minister.
- The Tanzanian Banking Act provides for appeals to be made to the Minister where an applicant is aggrieved by the decision of the Central Bank to reject an application for a licence.
- The Central Banks of Tanzania and Uganda have more autonomy in dealing with license applications than their Kenyan counterparts.
- The Central Banks in Tanzania and Uganda are the sole authority vested with powers of initiating bank examinations. Under the Kenya Act, however, both the Central Bank and the Minister may initiate bank examinations.
- The minimum capital requirements vary in the three different countries.

- (a) In Tanzania, the prescribed amount is Tshs.1bn for banks and Tshs.500mn for financial institutions.
- (b) In Uganda, the minimal capital requirements for banks are Ushs.500mn for local persons and Ushs.1bn for foreigners. Credit institutions require Ushs.300mn for local persons and Ushs.500mn for foreigners.
- (c) In Kenya the minimum capital requirements for banks is Kshs.15mn if incorporated in Kenya and Kshs.150mn if incorporated outside Kenya. Financial institutions required Kshs.7.5mn in Kenya and Kshs.75mn outside Kenya.
- The Tanzania and Kenyan Acts give power to the Minister to review the minimum capital for banks and financial institutions. Under the Ugandan Banking Act, the Central Bank is empowered to review the required minimum capital by statutory instrument.
 - Banking laws in all the three countries require financial institutions to submit annual audited reports. The Tanzanian law requires that apart from submission of the annual reports, financial institutions should also submit quarterly reports duly certified by their approved auditors.
 - The introduction of the Deposit Protection Schemes under the laws by all three countries was a very important aspect. The Kenyan and Tanzanian schemes are independent of the central banks in that their Deposit Protection or Insurance Funds have been created as body corporates with their independent board of directors, in both instances, the Governor is the Chairman. In the case of Uganda, the Scheme is managed and controlled by the central bank.
 - Banking regulations and supervision today recognise the need for the law governing supervision to be supplemented by rules and regulations. The three banking laws have enabling provisions, which allow rules and regulations to be made to assist in the carrying out of the functions and purposes of the provisions of the Acts.
 - Whereas the Tanzanian and Ugandan Acts place responsibility of making rules and regulations to the Central Banks, the Kenyan Act vests such powers in the Minister.

CONCLUSION:

- The evolution of the banking laws in the three East African countries was necessitated by the need for the laws to be able to regulate the changes and developments in the banking industry.
- During the period between 1985 and 1990, the three East African countries embraced the policy of economic and financial sector reforms advocated by the World Bank and the IMF. The new laws therefore, were in line with international banking, principles and practices of assuming tighter and stricter supervision and regulations of the financial sector.
- The East African co-operation has necessitated for the re-look, into the banking legislation in the region. The three countries have already agreed to harmonise their banking laws.