

MICROFINANCE (DEPOSIT-TAKING MICROFINANCE INSTITUTIONS ADMINISTRATIVE SANCTIONS AND PENALTIES) REGULATIONS, 2009

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1. Citation

These Regulations may be cited as the Microfinance (Deposit Taking Microfinance Institutions Administrative Sanctions and Penalties) Regulations, 2009.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“administrative sanction” means a supervisory enforcement action by the Central Bank against an institution meant to contain regulatory forbearance and protect the interest of the depositors and creditors of an institution;

“cease and desist order” means an order issued by the Central Bank to an institution directing the institution to refrain from doing anything that is unsafe or that may prejudice depositor's interest;

“prompt corrective action” means a framework or supervisory enforcement action applied to institutions that fail to maintain the minimum capital adequacy requirements or such other capital requirements as may be determined by the Central Bank.

3. Specific violation

The following shall constitute specific violations by an institutions, its officers or employees, which shall be subject to administrative sanctions and assessment of monetary penalties—

(a) failure by an institution to—

- (i) pay to the Deposit Protection Fund Board the specified contribution;
- (ii) obtain prior written approval from the Central Bank to open, relocate or close a place of business;
- (iii) classify and assign risk weights in the evaluation of capital adequacy measurements;
- (iv) put in place risk management framework;
- (v) maintain the prescribed insider lending limits;
- (vi) maintain the prescribed inside lending limits;

(b) failure by an institution or its officers to—

- (i) maintain, at all times, the minimum capital requirements prescribed in the Act or such capital requirements as may be determined by the Central Bank from time to time;
- (ii) meet and maintain the minimum holding of liquid assets prescribed for the institution's deposit liabilities, matured and short term liabilities;
- (iii) undertake performance evaluation of its Board;
- (iv) implement an effective internal control system;

(c) failure by an institution, its officers or employees to—

- (i) submit, not later than three months after the end of each financial year, to the Central Bank its audited annual financial statements and a copy of the auditor's report in the prescribed format and channel;
- (ii) exhibit its latest audited annual financial statements, throughout each calendar year, in a conspicuous place in its every place of business in Kenya as required; or
- (iii) publish its audited annual financial statements in at least one month newspaper of nationwide circulation within three months after the end of each financial year as prescribed under the Act or as directed from time to time by the Central Bank;
- (iv) take remedial action within such reasonable period as may be specified by the Central Bank in a notice to that effect;
- (v) produce any books, accounts, records, documents, correspondence, statements or other information as specified in the Act or Regulations; or
- (vi) furnish, at such time and in such manner as the Central Bank may direct, such information in a timely, accurate and complete manner as the Central Bank may require to properly discharge its functions under the Act;
- (vii) comply with directives issued by the Central Bank in accordance with the Act;
- (viii) review, classify or make appropriate and adequate provisions and write offs of loans and assets as prescribed; and
- (ix) maintain accurate records at all times and to provide accurate information or submit returns to the Central Bank as prescribed; or
- (x) provide information as the Central Bank may, from time to time, require;

(d) an institution allowing of outstanding unsecured advances, loans or credit facilities to any of the institution's employees or their associates;

(e) an institution allowing outstanding advances, loans or credit facilities which are unsecured or not fully secured to any of its officers or their associates; or to any person of whom or of which any of its officer has an interest as an agent, principal, director, officer or shareholder, or to any person of whom or of which any of its officers is a guarantor;

- (f) an institution allowing outstanding advances, loans or credit facilities to any of the institution's significant shareholders or officers, which—
 - (i) has not been approved by the full Board of directors of the institution upon being satisfied that it is viable;
 - (ii) has not been made in the normal course of business and on terms similar to those offered to ordinary customers of the institution;
 - (iii) has not been reported to the Central Bank within seven days thereof; and
- (g) contravening the terms and conditions of a licence, provisions of the Act and any orders or directives made under the Act.

4. Administrative sanctions and penalties

Where the Central Bank is satisfied that an institution, its officers or employees have contravened the terms and conditions of its licence, any provisions of the Act, any directive or order made under the Act, the Central Bank may—

- (a) issue written instructions directing an institution to undertake a specified remedial action;
- (b) issue directives regarding measures to be taken to improve the management, financial soundness or business methods of the institution;
- (c) require the officers of the institution to execute an agreement relating to the implementation of the instructions and directives issued by the Central Bank;
- (d) require the institution to appoint a person who in the opinion of the Central Bank, is suitably qualified to advise and supervise the institution's affairs and conduct;
- (e) issue a cease and desist order requiring the institution to—
 - (i) stop any improper or unacceptable practice;
 - (ii) suspend any of its business activities;
 - (iii) limit the expansion of its deposit-taking business including lending and deposit mobilization; and
 - (iv) stop or suspend any declaration or distribution of dividends;
- (f) require the institution to inject new capital as may be specified by the Central Bank;
- (g) appoint a person, suitably qualified and competent to manage the affairs of the institution;
- (h) require the institution to suspend or remove any officer or employee from his or her duties;
- (i) require the institution to reconstitute its Board of directors within such period as may be specified by the Central Bank;
- (j) prohibit the institution from awarding any bonuses or increments in the salary, emoluments or other benefits to its directors, officers and employees;
- (k) require the institution to provide written explanations detailing the causes of such losses and the measures to be taken by the institution to rectify the position and avert future losses; and
- (l) impose any other administrative sanction as the Central Bank may deem appropriate in the circumstances.

5. Capital restoration plan

Where an institution has contravened the capital adequacy requirements, the Central Bank may—

- (a) order the institution to submit to the Central Bank within forty days a capital restoration plan containing such details as may be specified in the order;
- (b) appoint a person, suitably qualified and competent in the opinion of the Central Bank to advise and

assist the institution in designing and fulfilling the capital restoration plan and regularly report to the Central Bank on the progress of the capital restoration plan;

- (c) order the institution to remove an officer of the institution who is responsible for the institution's non-compliance with the orders;
- (d) enter into an agreement with the Board of Directors of an institution requiring the institution to meet capital requirements within the specified period as shall be notified by the Central Bank:

Provided that such period shall not exceed one hundred and eighty days from the date of notification;

- (e) where the institution is unable to meet the capital requirements notified by the Central Bank under paragraph (d), the Central Bank may exercise its powers under Part IV and V of the Act; and
- (f) order the institution to do any other thing that the Central Bank considers necessary to rectify the capital position of the institution.

6. Assessed penalties and manner of payment

- (1) The Central Bank shall, after reviewing all available information and determining the existence of a violation or the contravention of the Act, shall notify the institution in writing advising it of the Central Bank's findings and decision to assess and levy penalties.
- (2) A notification under paragraph (1) shall—
 - (i) be in writing;
 - (ii) advise the institution of the period within which the violation or contravention should be rectified; and
 - (iii) give the institution not less than seven days notice to show cause why the penalty should not be levied:

Provided that the period shall not be more than thirty days.

- (3) After the expiry of the timeframe specified in paragraph (2), or sooner where the Central Bank has been advised by the institution of the rectification of the violation or contravention, the Central bank shall—
 - (a) assess the amount of penalty to be levied on the institution;
 - (b) instruct the institution, in writing, as to the amount of monetary penalties assessed and the manner in which such monies shall be paid to the Central Bank; and
 - (c) specify the period within which the penalty shall be paid to the Central Bank:

Provided that the period shall not be less than seven days and not more than twenty one days, unless a longer period is otherwise stated in the notification to that effect and maximum period shall not exceed forty two days from the date of the notification.

- (4) Where the Central Bank is not satisfied, by the evidence provided by the institution or information obtained by the Central Bank, that the violation or contravention has been rectified, the Central Bank may impose additional penalties not exceeding ten thousand shillings for each day or part thereof for which the violation or contravention continues.
- (5) Where the Central Bank is satisfied that the violation or contravention has been rectified, the daily penalty shall cease to accrue and it shall assess the aggregate penalty that the institution is to pay.
- (6) The Central Bank may levy a penalty against an institution, its officers or employees for non-compliance with other directions or violations not covered herein.
- (7) Where the Act confers the power on the Central Bank to impose a penalty on an institution, its officers or employees, the amount of the penalty or any part of the penalty which remains unpaid shall constitute a debt due from the institution to the Central Bank, and the Central Bank may, where such penalty is not paid in the manner or time prescribed—
 - (a) sue the institution for the recovery of the penalty; or
 - (b) revoke the licence of the institution.

7. Penalties on late renewal of licence

- (1) Where an application for the renewal of a licence is lodged after three months of its expiry, the Central Bank may, on application, renew the licence on payment of an additional fifty per centum of the licence fee.
- (2) If by 1st April of that calendar year, an institution has not applied for the renewal of its licence, the Central Bank shall impose appropriate administrative sanctions.