# CENTRAL BANK OF KENYA
# PRUDENTIAL GUIDELINES FOR INSTITUTIONS LICENSED UNDER THE BANKING ACT

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## PART I PRELIMINARY

1.1 **Title -** Guideline on licensing of new institutions.

1.2 **Authorisation -** This Guideline is issued under Section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3 **Application -** This Guideline applies to all investors wishing to be licensed to conduct banking, mortgage or financial business in Kenya.

1.4 **Definitions**

1.4.1 **Shell bank-** A company which exists only on paper with no physical presence and does not apparently trade or operate.

1.4.2 **Significant shareholder-** A person, other than the Government or a public entity, who holds, directly or indirectly or otherwise has a beneficial interest in more than five per cent of the share capital of an institution or if it is proposed that such a person shall so hold or have such a beneficial interest.

Other terms used in this regulation are as defined in the Banking Act.

## PART II STATEMENT OF POLICY

2.1 **Purpose -** The purpose of this Guideline is to provide information and guidance to those seeking to secure a licence to conduct business of a bank, financial institution or mortgage finance company in Kenya in compliance with Sections 3, 4 and 5 of the Banking Act.

2.2 **Scope -** This Guideline provides a clear guide on the conditions one must fulfil to be granted a license to conduct banking, financial or mortgage business in Kenya.

2.3 **Responsibility** – It is the responsibility of the promoters proposing to conduct the business of an institution in Kenya to secure compliance with this Guideline.

## PART III: APPLICATION PROCEDURES

3.1 **Approval of Proposed Name**

Every investor seeking to conduct the business of an institution will first be required to submit the proposed name to Central Bank of Kenya for approval.

3.2 **Incorporation**

Once the name intended for use has been approved, the promoters will ascertain with the Registrar of Companies that the name selected is available and should proceed to incorporate the company.

3.3 **Forwarding of Application**

The applicants will complete "An Application for a Licence to Conduct the Business of an Institution" form together with the "Fit and Proper" forms for proposed directors, "Fit and Proper" forms and schedule for significant shareholders. The forms for completion have been prepared as part of this Guideline and hard copies may be obtained from the Bank Supervision Department, Central Bank of Kenya or may be accessed on *www.centralbank.go.ke*.

3.4 All applications duly completed including the additional information specified in Part IV below should then be submitted to the Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000-00200, Nairobi, with the appropriate application fee (a bankers cheque payable to Permanent Secretary, Ministry of Finance) as specified under the Fourth Schedule of the Banking Fee Regulations at least ninety (90) days prior to the proposed date of commencing operations.

## PART IV INFORMATION REQUIRED

4.1 Every applicant will be required to submit the following additional information.

4.1.1 A copy of the certificate of incorporation of the institution from the Registrar of Companies.

4.1.2 Memorandum and Articles of Association of the institution and that of a corporate body that proposes to have a significant shareholding in the institution.

4.1.3 The latest audited balance sheet and profit and loss account for each of the three years preceding the date of the application if the applicant has been operating in any activity under any name and laws or in cases where any of the shareholders is a corporate body. Where the stakeholders are individual natural persons, personal statement of affairs for the past three years should be submitted.

4.2 In case of an institution incorporated outside Kenya, an undertaking by the board of management or any other controlling authority to maintain minimum assigned capital as per the Banking Act and that such capital shall be in Kenya shillings.

4.3 A declaration signed by every officer as specified in the application form.

4.4 A feasibility study of the future operations and development of the business for a minimum period of three years from the date of the application including:

4.4.1 Proposed organisation structure for the institution;

4.4.2 Detailed curriculum vitae of every director and any officer who is likely to take part in policy making;

4.4.3 Schedule of all the preliminary expenses including organisation costs, share-selling and brokerage costs, commission, etc.

4.4.4 Projections of balance sheets and profit & loss accounts, to be supported by the following:

(a) deposit mobilisation and interest payable stating separately the proposed major sources of deposits;

(b) advances to be made and interest receivable, stating intended sectoral lending;

(c) investments to be made and earnings stating policy and categories of business to be financed;

(d) operating expenses including rents, salaries, employee benefits, directors' remuneration;
(e) liquid and cash reserve assets;
(f) capital structure;
(g) provision for bad and doubtful debts;
(h) fixed assets, including business premises;
(i) other income, including commissions, discounts, etc.,
(j) net operating profit/loss.

4.4.5 Interest rate sensitivity analysis of the projections submitted or other similar analysis of the extent to which the forecasts will change when interest rate vary (the assumptions underlying the projections and the sensitivity analysis should be stated).

4.4.6 Statistical and other data which may have been collected in respect of the area in which the applicant intends to serve including population of the area, schemes of agriculture, business, industrial development etc. and existing banking facilities.

4.5 Evidence of availability of capital - copies of bank statements, FDR's, Treasury Bills etc may be submitted.

4.6 A bank cheque for shs.5,000 payable to Permanent Secretary, Ministry of Finance, to cover application fees.

## PART V APPROVAL AND LICENSING

### 5.1 Processing of Application

Upon receipt of the application forms together with the attachments, Central Bank of Kenya will appraise the application and make appropriate recommendations to the Minister for Finance. The promoters of the proposed institution may, if the need arises, be invited for an interview while their request for a licence to conduct banking business is being assessed. Similarly, the proposed directors and chief executive shall be invited for an interview prior to granting approval for their appointment to the board.

In case of an institution incorporated outside Kenya:

5.1.1 A letter of no objection from the home supervisory authority recommending them to establish a branch in Kenya should be obtained. The letter should be forwarded directly to the Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000-00200, Nairobi.

5.1.2 There shall be an understanding that the home country supervisor will exchange supervisory information with the Central Bank of Kenya.

5.1.3 Confirmation from the home country supervisor that the promoters of the foreign incorporated bank do not operate a shell bank should be obtained.

A positive recommendation may be given only after the application fully satisfies all the conditions including viability as well as shareholders and directors passing the "Fit & Proper" test.

### 5.2 Minister's Approval

After the Minister's approval has been granted, Central Bank of Kenya will advise the promoters and agree on the date when an on-site inspection of the premises will be conducted.

### 5.3 Inspection of Premises and Policy Manuals

The Central Bank of Kenya will visit the institution and carry out an on-site inspection on the following areas:

5.3.1 Confirm existence of comprehensive risk management policies and operating manuals. These manuals will cover the under-listed areas, as a minimum:

a) Lending and Credit administration policies
b) Human Resource and Manpower Development
c) Investments
d) Deposits and Marketing
e) Capital
f) Liquidity
g) Management Information Systems
h) Planning and Budgeting
i) Accounting and Operating Procedures manuals
j) Anti Money Laundering

5.3.2 Determine adequacy of premises, insurances, alarm systems etc. as required by CBK Prudential Guidelines on Minimum Security Standards.

## PART VI COMMENCEMENT OF OPERATIONS

### 6.1 Specification of Institution

Every institution is required to be specified by the Central Bank of Kenya under Section 2 of the Central Bank of Kenya Act, Cap 489.

### 6.2 Granting of Approval

After Central Bank of Kenya is satisfied that all the necessary conditions have been met, a letter to allow commencement of operations will be issued, with a copy to the Treasury. A license of an institution shall be considered to have lapsed if the institution fails to commence operations within one year of the Minister's approval. The promoters shall be required to submit a fresh application if they still wish to open at a future date.

6.3 **Payment of Licence Fees**

The promoters will pay the required fees to the Treasury, as specified under the Fifth Schedule of the Banking Act, and obtain a licence from Treasury.

6.4 **On-Site Inspection**

Central Bank of Kenya will conduct an on-site inspection within the first six to twelve months after commencement of operations. This will enable CBK to advise appropriately and ensure that the institution is on the right track from the start.

## 7 PART VII: EFFECTIVE DATE

7.1 **Effective date**: 1st January, 2006

7.2 **Supersedence:** This guideline supersedes the Regulation No. CBK/RG/04 issued in September 2000.

**ENQUIRIES**

Enquiries on any aspect of this guideline should be referred to:

The Director,
Bank Supervision Department,
Central Bank of Kenya,
P.O. Box 60000 - 00200
NAIROBI.
TEL.2860000 e-mail: *fin@centralbank.go.ke*

FORM CBK IF 1-1

## APPLICATION FOR A LICENCE TO CONDUCT THE BUSINESS OF AN INSTITUTION

1. Type of Business applied for ... .....

2. Name of Institution. …….....…….

3. Physical Address of Head Office: L.R. No…….....……

   Street ..... Building.....

4. Postal Address and Postal Code.....…….....….

   Telephone No..... P.I.N. .No…...……...……

5. Date and Country of Incorporation.....…….....….....

6. Names of branch offices and the number of years each has been established and has conducted or carried on business
   ……..…….....….

7. Former name(s) by which the institution has been known
   .....…….....
   .....

8. Particulars of shareholding

| Present & Former Name | Designation | Nationality | Age | Academic/ Professional Qualifications & Year obtained | Details of Previous Employment | Date of Appointment |
|---|---|---|---|---|---|---|
| | | | | | | |

9. Particulars of Officers:

a) Directors

| Present & Former Name | Nationality | Address | Other Directorship | Date of Appointment |
|---|---|---|---|---|
| | | | | |

b) Chief Operating Officers

| Present & Former Name | Designation | Nationality | Age | Academic/ Professional Qualifications & Year obtained | Details of Previous Employment | Date of Appointment |
|---|---|---|---|---|---|---|
| | | | | | | |

10. Names of Bankers and their Address

.....

11. Does the institution hold, or has it ever held any authority from a supervisory body to carry on any business activity in Kenya or elsewhere?

.....

If so, give particulars. If any such authority has been revoked, give particulars
……
……

12. Has the institution been put under receivership in the past or made any compromise or arrangement with its creditors in the past or otherwise failed to satisfy creditors in full? ..... If so, give particulars
……
……

13. Is an inspector or other authorised officer of any government ministry, department or agency, professional association or other regulatory body investigating or has such an investigation ever previously taken place into the affairs of the institution?
……
……

14. Has the institution been refused entry in Kenya or elsewhere to any professional body or trade association concerned with banking or financial activities or decided not to apply for entry after making an approach? ……If so, give particulars.....
.....
.....

15. Is the institution engaged or does it expect to be engaged in Kenya or elsewhere in any litigation which may have a material effect on the resources of the Institution?..... if so, give particulars .....
.....

16. Is the institution engaged or does it expect to be engaged in any business relationship with any of its officers or shareholders? ..... If so, give particulars…….....
.....

17. **DECLARATION**

We, the undersigned, being officers of the institution, declare that to the best of our knowledge and belief, the information contained herein is complete and accurate.

Director (Name) ……

Signature …….. Date .....

Director (Name)……

Signature ..... Date .....

## NOTES ON THE COMPLETION OF THE APPLICATION FORMS

The explanatory notes are intended to give further guidance to the completion of the application forms. It is deemed that further guidance is necessary for certain items. These include:

1. **"Application for a license to conduct the business of an institution" Form**

1.1 Item Number 1: Type of Business Applied For

State whether the licence being applied for is to transact the business of:

a bank, mortgage finance company and financial institution

1.2 Item Number 3: Physical Address

These details should be submitted to the Central Bank as soon as the permanent physical location is known.

1.3 Item Number 6: Names of Branches

This item should be completed by:

a) A person licensed in Kenya operating under Act (s) other than the Banking Act, and is seeking to be licensed to operate under the Banking Act.
b) A foreign incorporated banking institution wishing to be licensed under the Banking Act.

1.4 Item Number 8: Particulars of Shareholding

In case of institutions incorporated outside Kenya:

a) The term 'shareholder' refers to the foreign institution(s) proposing to assign capital to the Kenya branches for which the licence is being applied.
b) This item is also to be used for the provision of information on the proposed assigned capital for the Kenya branches.

1.5 Item Number 9: Particulars of Officers

In the completion of this item:

a) The term 'officer' should be used as defined in Section 2 of the Banking Act.
b) The officers referred to are those proposed or already engaged by the institution.
c) Where the institution is proposing to or has entered into a management agreement with another entity, details of the senior persons from the said entity heading or proposed to head the management team should be given.

1.6 Item No. 9: Nationality

Nationality and how it was acquired

a) State your current nationality and indicate whether it was acquired through birth, marriage or naturalisation.
b) Present occupation and position held/Present employer and address

This item will only apply in case of non-executive directors, shareholders and executives who are yet to join the institution but have been proposed to take up executive positions when the institution starts operations.

Item No. 10-16 Complete as per attached form which is self explanatory.

2. Second Schedule "Fit and Proper" Form

This should be completed by all persons proposed as Chief Executive and directors of the proposed institution.

3. **"Fit and Proper" Form and Schedule for Significant Shareholders**

This should be completed by all persons proposing to set up an institution or are about to acquire or intend to acquire a significant stake in an institution.

## CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY OF PERSONS IN CONTROL OF INSTITUTIONS LICENSED UNDER THE BANKING ACT

**NB:** (a) Read the declaration on Section 6 below before completing this form.

(b) In case the space provided is inadequate, use additional paper.

1. THE INSTITUTION

Name .....

Type .....

2. PERSONAL INFORMATION

a) Surname .....
Other Names .....

b) Previous Names (if any) by which you have been known:
.....
.....

c. Year and Place of birth:
.....

d) Nationality and how acquired:
.....

e) Personal Identification Number
.....

f) Identification Card number and date of issue
.....

g) Postal Address: .....

h) Previous Postal Addresses (if any) .....

i) Physical Address .....

j) Educational Qualifications .....

k) Professional Qualifications and years obtained
.....

l) Name(s) of your bankers during the last 5 years .....
.....

## 3. EMPLOYMENT/ BUSINESS RECORD

| Period | Name of Employer/Business and Address | Position Held & Dates | Responsibilities | Reasons for Leaving (where applicable) |
|---|---|---|---|---|
| | | | | |

## 4. DESCRIPTION OF YOUR PAST AND CURRENT ACTIVITIES IN KENYA AND ABROAD

### 4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

| Company's Name | Date of Incorporation | Amount of Shareholding | % of Shareholding | Past Shareholding | | Remarks |
|---|---|---|---|---|---|---|
| | | | | A | B | |
| | | | | | | |
| A: Refers to date of closure or surrender of shares<br>B: Refers to reasons for closure or surrender | | | | | | |

### 4.2 DIRECTORSHIP

| Company's Name | Date of Incorporation | Executive or Non-executive | Position Held in case of executive | Past Directorship | | Remarks |
|---|---|---|---|---|---|---|
| | | | | C | D | |
| | | | | | | |
| C: Refers to date of retirement<br>D: Refers to reasons for retirement | | | | | | |

4.3 PROFESSIONAL BODIES

| Name of body | Membership No. | Position held (if any) | Past club memberships | | Remarks |
|---|---|---|---|---|---|
| | | | E | F | |
| E: Refers to date of retirement<br>F: Refers to reasons for retirement or resignation | | | | | |

4.4 SOCIAL CLUBS

| Company's Name | Date of Incorporation | Amount of Shareholding | % of Shareholding | Past Shareholding | | Remarks |
|---|---|---|---|---|---|---|
| | | | | A | B | |
| A: Refers to date of closure or surrender of shares<br>B: Refers to reasons for closure or surrender | | | | | | |

4.5 BORROWINGS

| Company's Name | Date of Incorporation | Executive or Non-executive | Position Held in case of executive | Past Directorship | | Remarks |
|---|---|---|---|---|---|---|
| | | | | C | D | |
| C: Refers to date of retirement<br>D: Refers to reasons for retirement | | | | | | |

* Borrower to indicate individual/personal as well as the private Company shareholdings in excess of 5%.

4.6 SOURCES OF FUNDS

Please provide details of the actual source(s) of funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the institution.

a)…….....….....……..…..

b)…….....…….....……...

c)…….....……....

5. QUESTIONNAIRE

5.1 Have you or any entity with which you are associated as director, shareholder or manager, ever held or applied for a licence or equivalent authorization to carry on any business activity in any country? If so, give particulars. If any such application was rejected or withdrawn after it was made or any authorization revoked, give particulars.

…….....……....

…….....……....

5.2 Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction …….....

…….....……...

5.3 Have you, or any entity with which you have been involved, been censured, disciplined, warned as to future conduct, or publicly criticized by any regulatory authority or any professional body in any country? If so give particulars…….....

…….....…….....…....

5.4 Have you, or has any entity with which you are, or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency, professional association or other regulatory body? If so, give particulars.

.....

…….....…….....

5.5 Have you, in any country, ever been dismissed from any office or employment, been subject to disciplinary proceedings by your employer or barred from entry of any profession or occupation? If so give particulars…….....

…….....…….....

5.6 Have you failed to satisfy debt adjudged due and payable by you on order of court, in any country, or have you made any compromise arrangement with your creditors within the last 10 years? If so, give particulars.

…….....…….....….

…….....…….....

5.7 Have you ever been declared bankrupt by a court in any country or has a bankruptcy petition ever been served on you? If so, give particulars.

…….....…….....

…….....…….....

5.8 Have you ever been held liable by a court, in any country, for any fraud or other misconduct? If so, give particulars
…….....…….....

5.9 Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it? If so, give
particulars…….....…….....
…….....…….....

5.10 Are you presently, or do you, other than in a professional capacity, expect to be engaged in any litigation in any country? If so, give
particulars…….....…….....
…….....….....…….....

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

5.12 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise for the position(s) held/to he held? The omission of material facts may represent the provision of misleading information.
…….....….....……..
…….....…….....

**N.B.** The information given in response to this questionnaire shall be kept confidential by the supervisory authorities, except in cases provided for by law.

## 6. 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 banking license. I am also aware that omitting material information intentionally or un intentionally shall be construed to be an offence and may lead to rejection of my application.

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 applications which arise while the application is under consideration.

*NAME* .....……..... *POSITION HELD* .....…….....

*DATED*.....……..... *AT*.....……..... *THIS DAY OF*.....…….....

**WITNESSED BEFORE ME:**

**SIGNED**.....……..... **(Applicant)**

**COMMISSIONER FOR OATHS/MAGISTRATE**

**Name:** .....

**Signature** .....

**Address**: .....…….....

## SHAREHOLDERS' FORM & S C H E D U L E

## CRITERIA FOR DETERMINING THE SUITABILITY OF PERSONS INTENDING TO HOLD OR ACQUIRE A SIGNIFICANT STAKE IN AN INSTITUTION LICENSED UNDER THE BANKING ACT

NB: (a) Read the declaration on Section 6 below before completing this form.

(b) In case the space provided is inadequate, use additional paper.

1. **THE INSTITUTION**

Name .....

Type .....

2. **PERSONAL INFORMATION**

a) Surname .....

b) Other Names .....

c) Previous Names (if any) by which you have been known:

.....

d) Year and place of birth

.....

e) Nationality and how acquired:

.....

f) Personal Identification Number

.....

g) Identification Card number and date of issue .....

h) Passport Number and Date of issue

.....

i) Postal Address: .....

h) Previous Postal Addresses (if any) .....

.....

k) Physical Address

.....

l) Educational Qualifications.....

m) Professional Qualifications (if any) .....

.....

n) Name(s) of your bankers during the last 5 years .....

.....

o) **EMPLOYMENT/ BUSINESS RECORD**

| Period | Name of Employer/Business and Address | Position Held & Dates | Responsibilities | Reasons for Leaving (where applicable) |
|---|---|---|---|---|
| | | | | |

## 4. DESCRIPTION OF YOUR PAST AND CURRENT ACTIVITIES IN KENYA AND ABROAD

### 4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

| Company's Name | Date of Incorporation | Amount of Shareholding | % of Shareholding | Past Shareholding | | Remarks |
|---|---|---|---|---|---|---|
| | | | | A | B | |
| A: Refers to date of closure or surrender of shares<br>B: Refers to reasons for closure or surrender | | | | | | |

## 4.2 DIRECTORSHIP

| Company's Name | Date of appointment | Executive or Non-executive | Position Held in case executive | Past Directorships | | Remarks |
|---|---|---|---|---|---|---|
| | | | | C | D | |
| C: Refers to date retirement<br>D: Refers to reasons for retirement | | | | | | |

## 4.3 PROFESSIONAL BODIES

| Name of body | Membership No. | Position held (if any) | Past club memberships | | Remarks |
|---|---|---|---|---|---|
| | | | E | F | |
| E: Refers to date of retirement<br>F: Refers to reasons for retirement or resignation | | | | | |

## 4.4 SOCIAL CLUBS

| Club Name | Membership No. | Position held | Past club memberships | | Remarks |
|---|---|---|---|---|---|
| | | | E | F | |
| E: Refers to date of retirement<br>F: Refers to reasons for retirement or resignation | | | | | |

## 4.5 BORROWINGS

| Name of borrrower* | Name of lending institution | Type of facility | Amount borrowed | Date of offer | Terms of offer | Security offered | Value of security | Current outstanding balance | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

## 4.6 SOURCES OF FUNDS

Please provide details of the actual source(s) of funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the institution.

a)…….....…….....……..

b)…….....…….....……..

c)…….....……..

Borrower to indicate both individually and the private company where he holds more than 5 % of the shareholding.

## 5. QUESTIONNAIRE

5.1 Have you or any entity with which you are associated as director, shareholder or manager, ever held or applied for a licence or equivalent authorization to carry on any business activity in any country? If so, give particulars. If any such application was rejected or withdrawn after it was made or any authorization revoked, give particulars……

…….....…….....

5.2 Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction

…….....…….....

5.3 Have you, or any entity with which you have been involved, been censured, disciplined, warned as to future conduct, or publicly criticized by any regulatory authority or any professional body in any country? If so, give particular

…….....…….....

…….....…….....

5.4 Have you, or has any entity with which you are, or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency, professional association or other regulatory body? If so, give particulars

.....

…….....…….....

5.5 Have you, in any country, ever been dismissed from any office or employment, been subject to disciplinary proceedings by your employer or barred from entry of any profession or occupation? If

so, give particulars. …….....….....
.....…….....

5.6 Have you failed to satisfy debt adjudged due and payable by you on order of court, in any country, or have you made any compromise arrangement with your creditors within the last 10 years? If so, give particulars.
.....
. …….....…….....

5.7 Have you ever been declared bankrupt by a court in any country or has a bankruptcy petition ever been served on you? If so, give particulars.
…….....…….....
…….....…….....

5.8 Have you ever been held liable by a court, in any country, for any fraud or other misconduct? If so, give particulars.....
…….....…….....

5.9 Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it? If so, give particulars.....
…….....…….....

5.10 Are you presently, or do you, other than in a professional capacity, expect to be engaged in any litigation in any country? If so, give particulars.....
…….....…….....….....

5.11 Indicate the names, 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.
……
…….....…….....

5.12 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise to own share capital of an institution? The omission of material facts may represent the provision of misleading information.
…….....…….....
…….....…….....

**N.B.** The information given in response to this questionnaire shall be kept confidential by the supervisory authorities, except in cases provided for by law.

## 6. 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 banking license or approval to own significant shares in an institution.

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 applications which arise while the application is under consideration.

*NAME:* …….....

*DATED AT:*…… *THIS*……..…*DAY OF*……...…… *19*…….....…

**WITNESSED BEFORE ME:**
**SIGNED** ……..... **(Applicant)**

**COMMISSIONER FOR OATHS/MAGISTRATE**

**Name** …….....

**Signature:** …….....

**Address:** …….....

**FORM CBK/IF 1-4**

## APPLICATION FOR AUTHORITY TO ESTABLISH A REPRESENTATIVE OFFICE OF A FOREIGN BANK OR FINANCIAL INSTITUTION

### A. DETAILS OF PARENT INSTITUTION

1. Name of the institution
   .....
2. Type of business .....
3. Full address .....
4. Date and country of incorporation .....
   i. Branch offices .....
   .....
   ii. Former name(s) by which the institution has been known
   .....
   iii. Has the institution been denied authority by any supervisory body or Government to carry on any business activity in Kenya or elsewhere? If so, give particulars
   .....
   .....

   iv. Is an inspector or other authorised officer of any Government Ministry, Department or Agency, Professional Association or other regulatory body investigating or has such an investigation ever previously taken place into the affairs of the institution? If so, give particulars
   .....
   .....
   .....

   v. Has the institution been refused entry in Kenya or elsewhere to any professional body or trade association concerned with banking or financial activities or decided not to apply for entry after making an approach? .....If so, give particulars
   .....
   .....

5. Has the institution been put under receivership or made any compromise or arrangement with its creditors in the past or otherwise failed to satisfy creditors in full?..... If so, give particulars.....
   ..... .

### B. DETAILS OF REPRESENTATIVE OFFICE IN KENYA

11. Physical address of the office LR No.: .....
    Building ..... Street .....
    Town.....

12. Postal address: .....
.....
Telephone Nos: .....

13. a) Names, designations and qualifications of the senior officers to operate the Kenya office .....
.....
b) Number and designation of other staff .....

14. Type of services to be offered by the Kenya Office
.....
.....

15. Do you plan to change the status of the proposed place of business? If yes, state purpose of proposed type of status and when .....
.....

16. Proposed date of commencing operations.....

17. Name of Managing Director/Chief Executive
.....
.....

Signature:..... Date.....

## CONTENTS

## PART I: PRELIMINARY

1.1. **Title** – Guideline on Corporate Governance

1.2 **Authorisation** - This Guideline is issued under Section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3 **Application -** All institutions licensed under the Banking Act (Cap. 488).

1.4 **Definitions** - Terms used in this Guideline are as defined in the Banking Act (Cap. 488). Other terms used in this guideline shall be taken to have the meaning assigned to them hereunder:

1.4.1 **'Compliance Function'** Means a function reporting independently to the Board or committee of the Board, that identifies, assesses, advises, monitors and reports on the institution's compliance risk, which is the risk of legal or regulatory sanctions, financial loss, or loss to reputation an institution may suffer as a result of its failure to comply with all applicable laws, guidelines, codes of conduct and standards of good practice.

1.4.2 **'Non-Executive Director'** means an individual not involved in the day-to-day management and not a full time salaried employee of a banking institution or of its subsidiaries. An individual in the full time employment of the bank holding company or its subsidiaries, other than the institution concerned, would also be considered to be a non-executive director of the institution concerned, unless such individual, by his conduct or executive authority, could be construed to be directing the day to day management of the institution and its subsidiaries.

1.4.3 "**Independent Non-Executive Director"** means a director who:

i) has not been employed by the institution in an executive capacity within the last five years.

ii) is not associated to an adviser or consultant to the institution or a member of the institution's senior management or a significant customer or supplier of the institution or with a not-for-profit entity that receives significant contributions from the institution; or within the last five years, has not had any business relationship with the institution (other than service as a director) for which the institution has been required to make disclosure;

iii) has no personal service contract(s) with the institution, or a member of the institution's senior management;

iv) is not a member of the family of any person described above; or

v) has not had any of the relationships described above with any affiliate of the institution.

## PART II: STATEMENT OF POLICY

2.1 **Purpose** - This Guideline is intended to provide the minimum standards required from directors, chief executive officers and management of an institution so as to promote proper standards of conduct and sound banking practices, as well as ensure that they exercise their duties and responsibilities with clarity, assurance and effectiveness. This Guideline should not restrict or replace the proper judgment of the management and employees in conducting day-to-day business. Each institution is therefore required to formulate its own special policies (taking into account the institution's special needs and circumstances) on the duties, responsibilities and conduct of its directors, chief executive officers and management.

2.2. **Scope** - This Guideline applies to the duties, responsibilities and code of conduct for shareholders, directors, chief executive officers and management of an institution.

2.3. **Responsibility** - The Board of Directors of each institution shall be responsible for formulating policies, procedures and guidelines, which ensure that:

(a) all directors, chief executive officers and management are made fully aware of their duties, responsibilities and code of conduct .

(b) all management decisions are made in accordance with prudent banking practices.

The shareholders of each institution shall be responsible for the appointment of a competent and dedicated board of directors.

## PART III: SPECIFIC REQUIREMENTS

### 3.1. SHAREHOLDERS

a. Shareholders of banking institutions shall jointly and severally protect, preserve and actively exercise the supreme authority of the institution in general meetings. They have a duty, jointly and severally, to exercise that supreme authority:

i. To the extent that the duty is vested in general meetings, ensure that only credible persons of good standing in society who can add value to the institution's banking business are elected or appointed to the board of directors;

ii. To ensure that, in general meetings and related forums, the board is constantly held accountable and responsible for the efficient and effective governance of the banking institution;

iii. To utilise powers vested in general meetings to change the composition of a board of directors that does not perform to expectation or in accordance with the mandate of the institution.

b. Shareholders are expected to ensure that the institution applies to Central Bank of Kenya approval in the following circumstances, with respect to shareholding of financial institutions:

- Transfer of existing shareholding in excess of 5% of an institution's share capital;

- Acquisition of more than 5% of the share capital of an institution where there is fresh capital injection, or from existing shareholders.

It is similarly the institutions responsibility to ensure that the above approvals relating to significant shareholders are obtained from the Central Bank of Kenya, before allotment of shares. The applications relating to significant shareholders should include forms containing details of significant shareholders as specified in the form CBK/IF1-3 annexed to Guideline No. CBK/PG/01 on Licensing of New Institutions.

c. No shareholder with more than five percentage (5%) shareholding in a banking institution shall be an executive director or form part of the management of the institution or institution's holding company.

## 3.2 DIRECTORS

No director shall take up his/her position prior to being cleared by the Central Bank. The Institution shall submit to the Central Bank duly complete form CBK/IF 1-2 annexed to Guideline No. CBK/PG/01 on Licensing of New Institutions.

### 3.2.1 DUTIES AND RESPONSIBILITIES

The major duties and responsibilities to be performed by directors of institutions include:

#### 3.2.1.1 Regulating the manner in which the business is conducted.

The Board must ensure that the banking institution has adequate systems to identify, measure, monitor and manage key risks facing the banking institution and adopt and follow sound policies and objectives which have been fully deliberated. The directors must provide clear objectives and policies within which senior executive officers are to operate. These should cover all aspects of operations, including strategic planning, credit administration and control, asset and liability management encompassing the management of liquidity risk, interest rate risk and market risk, accounting and internal control systems, service quality, automation plan, prevention of money laundering, profit planning and budgeting, adequacy of capital, and human resource development. Clear lines and limits of authority for all levels of staff should be established. The seriousness of infringing on the authorised limits should be emphasized to staff at all levels.

#### 3.2.1.2 Corporate planning

A vital part of the responsibilities of directors is to formulate the future direction of the institution of which planning, organising, and controlling, are three fundamental functions. Sound planning is of vital importance, and as such projections/targets must be periodically reviewed and amended as circumstances dictate.

3.2.1.3 **Establish and ensure the effective functioning of Board and Management Committees in key areas**

3.2.1.4 **Set-up an effective internal audit department**, staffed with qualified personnel to perform internal audit functions, covering the traditional function of financial audit as well as the function of management audit.

3.2.1.5 **Set-up an independent Compliance Function** and approve the bank's compliance policy including a charter of other formal documents. It shall be the duty of the board to ensure that the Central Bank of Kenya is informed, should the Head of Compliance leave that position and the reasons thereof. At least once a year, the board or committee of the board shall review the bank's compliance policy and its ongoing implementation to assess the extent to which the bank is managing its compliance risk effectively.

3.2.1.6 **Maintain adequate capital base**

The Board of Directors has the responsibility of ensuring that, the institution maintains adequate level of capital at all times with respect to the requirements of the Banking Act and the business operations. It is therefore the duty of directors to inform the shareholders of capital adequacy and advice on the appropriate manner of recapitalising the institution's operations.

3.2.1.7 **Observe Laws and guidelines**

Directors should ensure cognizance is taken by management and themselves of all applicable laws and guidelines, and systems to effectively monitor and control their compliance. This will likely include provisions for training of personnel in these matters and, when violations do occur, make corrections immediately. It is a duty inherent with the office of directors (or management) to know the laws and guidelines, and to ensure that compliance of all laws and guidelines receives the highest priority, and violations are not knowingly committed by themselves or by anyone in their employment. In particular, every director should be conversant with the provisions of the Banking Act, Central Bank of Kenya Act and any guideline issued thereunder or other relevant laws and guidelines. Directors should also review the institutions Central Bank of Kenya's inspection reports and audit reports and also ensure implementation of any recommendations made.

3.2.1.8 **Appoint, dismiss and define the duties of management**

It is the duty of the Board of Directors to define the duties of management and appoint those persons who are competent, qualified and experienced to administer the institution's affairs effectively and soundly. It is also the responsibility of the Board to dispense with the services of staff considered undesirable.

3.2.1.9 **Be informed about business condition of the institution**

Since the directors are jointly and severally responsible for the effective supervision of the affairs of the institution, they should be informed on a regular basis of the business condition of the institution. For the purpose of deliberating on this information and providing guidance to the management, the Board should meet regularly, preferably at least once in a quarter.

In addition, the Board and each director should exercise independent judgment in evaluating the performance of the management. This could be enhanced by the provision of independent reviews of the operations by third parties such as external auditors, internal auditors, audit committees or regulator and other experts reporting directly to the Board.

3.2.1.10 **Attend Board meetings regularly**

Every director has a duty to attend board meetings regularly and to effectively participate in the conduct of the business of the Board. An institution should have a policy that requires a member to resign if he fails to attend Board meetings regularly.

Every member of the board shall attend at least 75% of the board meetings of a financial institution in any financial year. This is to ensure that every board member discharges his or her duties and responsibilities effectively. Attendances shall be disclosed in the annual report. At its Annual General Meeting, each financial institution is required to review the suitability of a non-executive director who has failed to comply with the 75% attendance rule, without valid reason.

3.2.1.11 **Maintain Positive Image**

It is the duty of the directors to ensure that the institution maintains a positive image within the industry and the economy as a whole. To this extent, therefore, the institution is expected to provide adequate services and facilities both efficiently and competitively in line with safe and sound banking practices.

3.2.2 **Other Requirements**

3.2.2.1 **Board Composition –** The Companies Act (Cap 486) of the Laws of Kenya provides for the appointment of a minimum of two directors for every company incorporated under the Act. However, due to the special nature of deposit-taking institutions which gives them an added responsibility of safeguarding the interests of the depositors, the Central Bank of Kenya requires all institutions licensed under the Banking Act, to have at least five directors, at least three-fifths of whom should be Non-Executive Directors, in order to achieve the necessary balance.

Independent Non-Executive Directors must comprise the majority of the Non-Executive Directors serving on any board. This is to ensure that the non-executive directors, who should form the majority, would render the necessary independence to the board from the executive arm of the banking institutions, and help mitigate any possible conflict of interest between the policy-making process and the day-to-day management of the institution.

In an increasingly complex banking environment, the presence of suitably qualified independent directors can contribute effectively towards achieving the main tasks of the board. Further, independent directors should provide the necessary checks and balances on the board of the institution so as to ensure that the interests of minority shareholders and general public are given due consideration in the decision-making process. Independent directors should not be brought in as a mere formality as this would be tantamount to deceiving the minority shareholders and the public.

3.2.2.2 **Local Committees -** Branches of foreign banks should also have at least five members in their local committees whose responsibilities shall be as those of the Board of Directors as specified in this guideline.

3.2.2.3 **Multiple Directorships** - No person shall be permitted to hold the position of a director in more than two institutions licensed under the Banking Act unless the said institutions are subsidiaries or holding companies. This rule shall not apply to government bodies represented in institutions' boards by virtue of their position as government bodies.

3.2.2.4 **Appointment of the Chairman of the Board of Directors** - The Chairman of the Board of Directors shall always be a Non-Executive Director.

3.2.2.5 **Remuneration and Termination Benefits**

The remuneration of directors and the chief executive shall be commensurate with the nature, size of operations of the institution and the remuneration offered for similar positions in the market. Non-executive directors should not receive any salary.

As a matter of principle, the chief executive of a group should draw all his salary, including benefits, from one source, usually the parent company. Where the chief executive of a institution is entitled to receive director's fees from that institution's subsidiaries, such fees should be nominal.

3.2.2.6 **The Board and Director Evaluation**

The Board through its nomination committee or similar board committee shall regularly review its required mix of skills and experience and other qualities in order to assess the effectiveness of the board. Such review shall be by means of peer and self-evaluation of the board as a whole, its committees and the contribution of each and every director, including the Chairman.

The evaluation shall be conducted annually and the fact that it has been done should be disclosed in the annual report. The Chief Executive officer shall submit a report, including the peer and self evaluations to the Central Bank of Kenya annually on the board and directors' evaluations and effectiveness. Board evaluation shall be based on the guidance provided in Part VI of this guideline. The report shall be submitted by 31st March of the following year.

3.2.2.7 **Resignation / Removal of Directors**

It will be the responsibility of the Board of Directors to report to the Central Bank of Kenya, the resignation and/ or removal of any of its members within seven days;

3.2.2.8 **Board Committees**

(a) Board committees assist the board and its directors in discharging the duties and responsibilities, however the board remains accountable.

(b) There should be a formal procedure for certain functions of the board to be delegated, describing the extent of such delegation, to enable the board to properly discharge its duties and responsibilities and to effectively execute its decision making process.

(c) Board committees with formally determined terms of reference, life span, role and function constitute an important element of the process and should be established with clearly agreed upon reporting procedures and written scope of authority.

(d) As a general principle there should be transparency and full disclosure from the board committee to the board, except where the committee has been mandated otherwise by the board.

(e) Non-executive directors must play an important role in board committees.

(f) All board committees shall be chaired by an independent non-executive director. The exception should be a board committee fulfilling an executive function.

(g) Board committees should be free to take independent professional advice as and when necessary, and to invite Senior Management to provide technical advice when needed.

### 3.2.2.9 Board Audit Committee

The board is required to establish an Audit Committee to review the financial condition of the banking institution, its internal controls, performance and findings of the internal auditors, and to recommend appropriate remedial action regularly, preferably at least once in three months. The Audit Committee should consist of not less than three members, at least two of whom should be independent non-executive directors of the banking institution. The members should be conversant with financial and accounting matters.

The Audit Committee members should elect a Chairman among them who is an independent non-executive director. The Chairman should not be the chairperson of the Board. The Board chairperson shall not be a member of the Audit Committee at all, but could be invited to attend meetings as necessary by the chairperson of that committee. The Chief Executive Officer should not be a member of the Audit Committee, but may attend by invitation for consultation only. Membership of the Audit Committee should be disclosed in the annual report. Alternate directors are not allowed to be appointed as members of the Audit Committee.

The primary responsibilities of the Audit Committee shall include, but not limited to the following:-

(a) Ensure that the accounts are prepared in a timely and accurate manner to facilitate prompt publication of annual accounts;

(b) Review internal controls, including the scope of the internal audit programme, the internal audit findings, and recommend action to be taken by management;

(c) Review internal audit reports and their overall effectiveness, the scope and depth of audit coverage, reports on internal control and any recommendations, and confirm that appropriate action has been taken;

(d) Review coordination between the internal audit function and external auditors;

(e) Nominate external auditors for appointment by shareholders;

(f) Review and monitor the external auditors' independence and objectivity, taking into consideration relevant professional and regulatory requirements;

(g) Review with the external auditors, the scope of their audit plan, system of internal audit reports, assistance given by management and its staff to the auditors and any findings and actions to be taken;

(h) Review management reports and reports from external auditors concerning deviations and weaknesses in accounting and operational controls;

(i) Review the institution's audit plan, with specific reference to the procedures for identifying regulatory risks and controlling their impact on the institution, including reviewing correspondence from regulatory authorities and management's responses;

(j) Consider any matter of significance raised at the risk management committee meetings;

(k) Monitor the ethical conduct of the institution and consider the development of ethical standards and requirements, including effectiveness of procedures for handling and reporting complaints;

(l) Review any related party transactions that may arise within the banking institution.

The external and internal auditors of a banking institution should have free access to the Audit Committee. The auditors should be allowed to attend and be heard at any meeting of the Audit Committee. Upon the request of the auditors, the Chairman of the Audit Committee should convene a meeting to consider any matter that auditors believe should be brought to the attention of directors or shareholders.

3.2.2.10 **Board Credit Committee**

The primary responsibilities of the Board Credit Committee shall be to:-

(a) Review and oversee the overall lending policy of the banking institution;

(b) Deliberate and consider loan applications beyond the discretionary limits of the Credit Risk Management Committee;

(c) Review lendings by the Credit Risk Management Committee;

(d) Ensure that there are effective procedures and resources to identify and manage irregular problem credits, minimize credit loss and maximize recoveries;

(e) Direct, monitor, review and consider all issues that may materially impact on the present and future quality of the institution's credit risk management; and

(f) Delegate and review lending limits to the sanctioning arms of the institution;

(g) Assist the board with discharging its responsibility to review the quality of the banking institution's loan portfolio, and ensuring adequate provisions for bad and doubtful debts in compliance with prudential guideline no. CBK/PG/04 on Risk Classification of Assets and Provisioning;

(h) Conduct loan reviews independent of any person or committee responsible for sanctioning credit; and

(i) Ensure that the credit policy and risk lending limits are reviewed at least on an annual basis and as and when the environment so dictates;

3.2.2.11 **Asset and Liability Committee (ALCO)**

ALCO shall derive the most appropriate strategy for the banking institutions in terms of the mix of assets and liabilities given its expectations of the future and the potential consequences of interest-rate movements, liquidity constraints, and foreign exchange exposure and capital adequacy.

The committee shall ensure that all strategies conform to the banking institution's risk appetite and levels of exposure as determined by the Risk Management Committee.

3.2.2.12 **Risk Management Committee**

The responsibility to ensure quality, integrity and reliability of the banking institution's risk management shall be delegated to the Risk Management Committee. The Committee shall assist the board of directors in the discharge of its duties relating to the corporate accountability and associated risks in terms of management, assurance and reporting.

The committee shall review and assess the integrity of the risk control systems and ensure that the risk policies and strategies are effectively managed.

The committee shall set out the nature, role, responsibility and authority of the risk management function with the banking institution and outline the scope of risk management work.

The committee shall monitor external developments relating to the practice of corporate accountability and the reporting of specifically associated risk, including emerging and prospective impact. The committee shall provide independent and objective oversight and review of the information presented by management on corporate accountability and specifically associated risk, also taking account of risk concerns raised by management in the Audit Committee, Asset and Liability Committee meetings on financial, business and strategic risk.

The committee, in carrying out its task under these terms of reference, may obtain such outside or other independent professional advice as it considers necessary to carry out its duties. The Executive Committee will ensure that the committee will have access to professional advice both inside and outside of the banking institution in order for it to perform its duties. The committee shall have access to any information it needs to fulfil its responsibilities.

3.2.2.13 **Executive Committee**

The Executive Committee is the link between the board and management and is responsible for implementation of operational plans, annual budgeting and periodic reviews of group operations, strategic plans, ALCO strategies, credit proposals review, identification and management of key risks and opportunities. The committee shall review and approve guidelines for employees' remuneration.

The Executive Committee is constituted to assist the chief executive officer to manage the banking institution. The board of directors take cognizance of authorities delegated to the chief executive officer by means of resolutions from time to time. The Executive Committee assists the chief executive officer guide and control the overall direction of the business of the banking institution and acts as a medium of communication and co-ordination between business units and the board.

The Executive Committee shall also ensure that the Risk Management Committee has access to any information it requires to fulfil its responsibilities.

## 3.3. CHIEF EXECUTIVE OFFICERS

### 3.3.1 Major duties and responsibilities of Chief Executive Officers

The sound operations of the institution will depend critically on the guidance given to management by the Chief Executive. He/she shall be wholly responsible to the Board for the day to day running of the institution. There are major responsibilities the Chief Executive is expected to undertake. These are to:

(a) Ensure that the policies spelt out by the board in the institution's overall corporate strategy of the institution are implemented;

(b) Identify and recommend to the board competent officers to manage the operations of the institution. In the fulfilment of this duty, the Chief Executive should ensure that the institution's personnel policy is adhered to;

(c) Co-ordinate the operations of the various departments within the institution;

(d) Establish and maintain efficient and adequate internal control systems;

(e) Design and implement the necessary management information systems in order to facilitate efficient and effective communication within the institution;

(f) Ensure that the board is frequently and adequately appraised about the operations of the institution through presentation of relevant board papers, which must cover, but not limited to, the following areas:

- Actual performance compared with the past performance and the budget together with explanations of all the variances.
- Capital structure and adequacy.
- Advances performance in particular problem loans, losses, recoveries and provisions.
- Income and expenses.
- Deposits: sources and distribution profile.
- All insider transactions that benefit directly or indirectly any officer or shareholder of the institution.
- Report on violation of laws and remedial activities undertaken to ensure compliance with the banking laws and CBK guidelines.
- Large exposures
- Non-performing insider loans
- CBK, external, internal and audit committee reports
- Any other areas relevant to the institution's operations.

(g) Ensure that the institution complies with all the relevant banking and other applicable laws in the execution of its operations.

### 3.3.2 Approval by the Central Bank of Kenya

No chief executive officer shall take up his position prior to being cleared by the Central Bank. The institution shall submit to the Central Bank of Kenya duly completed fit and proper form (as prescribed in Guideline No. CBK/PG/01 on Licensing of New Institutions) for the chief executive officer. Where a director who is cleared by the Central Bank is subsequently appointed as chief executive officer, specific approval of the appointment shall be obtained prior to taking up the position. The information therein will be used by the Central Bank of Kenya to evaluate the suitability of the chief executive officer. The Central Bank of Kenya may use its powers, under section 32 of the Banking Act to verify the accuracy of the information on the fit and proper forms.

It should be noted that any approval granted by the Central Bank of Kenya is on the understanding that the Central Bank can disqualify any chief executive officer if adverse

information is later revealed or if he/she acts in any manner contrary to or not in compliance with the requirements of the Banking Act or any guideline made there under, or in any manner detrimental to or not in the best interest of the depositors and members of the public.

### 3.3.3 Resignation / Removal of Chief Executive Officer

It will be the responsibility of the Board of Directors to report to the Central Bank of Kenya, the resignation and/ or removal of the chief executive officer of its institution within seven days.

## 3.4 MANAGEMENT

### 3.4.1 Major duties and responsibilities of Management

The primary responsibility of the management is to operate and administer the institution on a day-to-day basis paying attention to the following:

(a) The implementation and adherence to the policies, practices and standards as laid down by the Board of Directors;

(b) The systems that have been established to facilitate efficient operations and communications;

(c) The planning process that has been developed to facilitate achievement of targets and objectives;

(d) All staff matters, particularly human resource development and training;

(e) Adherence to the established code of conduct and with all the relevant banking laws and CBK guidelines; and

(f) Maintain adequate records to comply with all the reporting requirements.

### 3.4.2 Chief Finance Officers and Internal Auditors

The Chief Finance Officers (or persons by any other title who are responsible for Finance Department of every institution), as well as the persons responsible for the internal audit function, shall be members of the Institute of Certified Public Accountants of Kenya (ICPAK).

### 3.4.3 Company Secretary

The Company Secretary of every institution shall be a member of the Institute of Certified Public Secretaries of Kenya (ICPSK) established under the CPS Act.

## 3.5 CODE OF CONDUCT

### 3.5.1 APPLICABILITY

This code of conduct contained in this guideline is applicable to directors, chief executive officers and management of institutions licensed under the Banking Act (Cap. 488). The Board of Directors should ensure that all officers adhere to the prescribed code of conduct.

### 3.5.2 PRESCRIBED CODE OF CONDUCT

#### 3.5.2.1 Conflict of Interest

Directors, chief executive officers and management should not engage directly or indirectly in any business activity that competes or conflicts with the institution's interest. These activities include, although not necessarily limited to, the following:

a) **Outside Financial Interest**

Where directors, chief executive officers and management have a financial interest in a customer, whether a sole proprietor, shareholder, creditor or debtor, such an interest must be disclosed immediately to the management. Thereafter, the affected director, chief executive officer and management should not be directly involved in the institution's dealings with the customer so long as the interest continues to exist.

The above restriction does not apply in cases where employees have holdings of public quoted securities unless the management views the interests to be material, and that the financial interest is considered likely to impair the objectivity of the member of staff concerned. The holding of five per cent or more of the voting shares of a publicly quoted company would be regarded as material.

b) **Other Business Interests**

It is considered a conflict of interest if an executive director, chief executive officer or management conducts business other than the institution's business during office hours.

Where the acquisition of any business interest or participation in any business activity outside the institution and office hours demands excessive time and attention from the member of staff, thereby depriving the institution of the employee's best efforts on the job, a conflict of interest is deemed to exist.

c) **Other Employment**

Before making any commitment, employees are to discuss possible part-time employment or other business activities outside the financial institution's working hours with their manager or departmental head. A written approval of the manager or departmental head should be obtained before an employee embarks on part-time employment or other business activities. Approval should be granted only where the interest of the institution will not be jeopardised.

d) **Corporate Directorship**

Employees must not solicit corporate directorships. An employee should not serve as a director of another corporation without approval of the Board of Directors (or Chief Executive, in case of foreign banks). Employees who hold directorships without such approval must seek approval immediately, if they wish to remain as directors of other corporations.

However, employees may act as directors of non-profit public service corporations, such as religious, educational, cultural, social, welfare, and philanthropic or charitable institutions, subject to policy guidelines of the institution.

e) **Trusteeships**

Directors, chief executive officers and management must not solicit appointments as executors, administrators or trustees of customers' estates. If such an appointment is made and the employee is a beneficiary of the estate, his signing authority for the estate's bank account(s) must be approved by the Board of Directors, who will not unreasonably withhold approval.

3.5.2.2 **Misuse of Position**

a) Directors, chief executive officers and management must not use the institution's name or facilities for personal advantage in political, investment or retail purchasing transactions, or in similar types of activities. Directors, chief executive officers and management, and their relatives must also not use their connection with the institution to borrow from or become indebted to customers or prospective customers. The use of position to obtain preferential treatment, such as purchasing goods, shares and other securities, is prohibited.

b) Directors, chief executive officers and management must not solicit or otherwise accept inducements either directly or indirectly whether in cash or in kind in order to provide any favours to a customer in the provision of loans, acceptance of deposits or any other conduct of the business of the institution to which they are entrusted either jointly or individually.

c) Further, directors, chief executive officers and management must not use the institution's facilities and influence for speculating in commodities, gold, silver, foreign exchange or securities, whether acting personally or on behalf of friends or relatives. Such misuse of position may be ground for dismissal and/or prosecution. Directors, chief executive officers and management should also not engage in "back-scratching" exercises with employees and directors of other institutions to provide mutually beneficial transactions in return for similar facilities, designed to circumvent these ethical guidelines.

3.5.2.3 **Misuse of Information**

a) Directors, chief executive officers and management should not deal in the securities of any company listed or pending listing on a stock exchange at any

time when in possession of information, obtained by virtue of employment or connection with the institution, which is not generally available to shareholders of that company and the public, and which, if it were so available, would likely bring a material change in the market price of the shares or other securities of the company concerned. "Insider dealing" as this is called, is a crime.

b) Directors, chief executive officers and management who possess insider information are also prohibited from influencing any other person to deal in the securities concerned or communicating such information to any other person, including other members of staff who do not require such information in discharging their duty.

3.5.2.4 **Integrity of Records and Transactions**

a) Accounting records and reports must be complete and accurate. Directors, chief executive officers and management should never make entries or allow entries to be made for any account, record or document of the institution that are false and would obscure the true nature of the transaction, as well as to mislead the true authorisation limits or approval authority of such transactions. Members of staff and directors of institutions should note carefully the provisions of Sections 48 and 50 of the Banking Act.

b) All records and computer files or programmes of the institution, including personnel files, financial statements and customer information must be accessed and used only for management purposes for which they were originally intended.

3.5.2.5 **Confidentiality**

a) Confidentiality of relations and dealings between the institution and its customers is paramount in maintaining the institution's reputation. Thus directors, chief executive officers and management must take precaution to protect the confidentiality of customer information and transactions. No member of staff or director should during, or upon and after termination of employment with the institution (except in the proper course of his duty and or with the institution's written consent) divulge or make use of any secrets, copyright material, or any correspondence, accounts of the institution or its customers. No employee or director shall in any way use information so obtained for financial gain.

b) Business and financial information about any customer may be used or made available to third parties only with prior written consent of the customer or in accordance with the arrangements for the proper interchange of information between institutions about credit risks, or when disclosure is required by law.

3.5.2.6 **Fair and Equitable Treatment**

All business dealing on behalf of the institution with the current potential customers, with other members of staff and with those who may have cause to rely upon the institution, should be conducted fairly and equitably. Staff and directors must not be influenced by friendship or association, either in meeting a customer's requirement, or in recommending that they be met. Such decisions must be made on a strictly arms-length business basis. All

preferential transactions with insiders or related interests should be avoided. If transacted, such dealings should be in full compliance with the law, judged on normal business criteria basis and fully documented and duly authorised by the Board of Directors or any other independent party.

3.5.2.7 **Insider Loans**

Directors, chief executive officers and management should not use their positions to further their personal interests. An institution shall not in Kenya therefore:

a) Grant or permit to be outstanding any unsecured advances in respect of any of its employees or their associates.

b) Grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured to any of its officers, significant shareholders or their associates.

c) Grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the institution unless it is:

- approved by the full board of directors of the institution upon being satisfied that it is viable.

- is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution. The institution shall notify the Central Bank of Kenya of every such approval within seven days of the granting of the approval.

d) Grant or permit to be outstanding any advance, loan or credit facility or give any financial guarantee or incur any other liability to, or in favour of, or on behalf of, any associate or any of the persons mentioned in paragraphs 3.5.2.7 (a),(b) and (c) in excess of twenty per cent of the core capital of the institution; or

e) Grant or permit to be outstanding advances or credit facilities or give any financial guarantee or incur any other liabilities to or in favour of, or on behalf of, its associates and the persons mentioned in paragraphs 3.5.2.7 (a),(b) and (c) amounting in the aggregate to more than one hundred per cent of the core capital of the institution; or

f) Grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance of the Banking Act and Central Bank of Kenya guidelines.

## PART IV: REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

### 4.1 Remedial measures

4.1.1 When an officer is assessed and found to be unfit and not proper to work for an institution, the affected institution shall be required to dispense with the services of

such an officer forthwith and to inform the Central Bank of Kenya of such a decision as soon as possible. An institution that contravenes any of the provisions of this guideline may be subject to corrective measures and administrative sanctions set out below.

4.1.2 When an institution contravenes any of the provisions of the Banking Act or is not in compliance with these guidelines then:

a) All officers of the institution shall be liable jointly and severally to indemnify the institution against any loss arising in respect of the contravention of Section 11 of the Banking Act.

b) In the case of violation of guidelines on an advance, loan or a credit facility to a person other than a director of the institution or a person participating in the general management of the institution, an officer shall not be so liable, provided he or she shows that, through no act or omission on his or her part, he or she was not aware that the contravention was taking place, or he or she took all reasonable steps to prevent it taking place.

c) The Central Bank of Kenya may in the case of violation of guidelines on an advance, loan or credit facility to a director of the institution, direct the removal of such director from the Board of Directors of the institution. The Central Bank of Kenya may direct the suspension of any other officer or employee of the institution who sanctioned the advance, loan or credit facility. The institution shall comply with every direction of the Central Bank of Kenya under this paragraph forthwith.

d) Any director of an institution who defaults in the repayment of any advance or loan made to him by the institution for three consecutive months shall forthwith be disqualified from holding office as such.

4.1.3 An institution which-

a) Fails to comply with any direction of the Central Bank of Kenya under subsection 4.1.2 (c) or

b) Permits a director who is disqualified by virtue of subsections 4.1.2 (c) and (d) to continue holding office shall be guilty of an offence punishable as specified in Section 49 and 50 of the Banking Act, and in addition may be assessed for penalties as specified in Legal Notice No. 77 of June, 1999.

## PART V: EFFECTIVE DATE

5.1 **Effective Date** - The effective date of this Guideline shall be 1st January 2006.

5.2 **Supersedence** – This Guideline supersedes and replaces Prudential Regulations nos. CBK/RG/07 on the Code of Conduct for Directors, Managers and Other Employees and CBK/RG/08 on the Duties and Responsibilities of Directors, Chief Executives and Management issued in September 2000.

## ENQUIRIES

Enquiries on any aspect of this guideline should be referred to:

The Director,
Bank Supervision Department
Central Bank of Kenya
P. O. Box 60000 - 00200
**NAIROBI**
TEL.2860000 e-mail: *fin@centralbank.go.ke*

## PART VI: GUIDANCE ON BOARD OF DIRECTORS' PERFORMANCE EVALUATION

The following are some of the questions that should be considered in a performance evaluation. They are, however, by no means definitive or exhaustive, and individual institutions should not tailor the questions to suit their own needs and circumstances.

The responses to these questions and others should enable boards to assess how they are performing and to identify how certain elements of their performance areas might be improved.

**Board Evaluation**

- How well has the board performed against any performance objectives that have been set?
- What has been the board's contribution to the testing and development of strategy?
- What has been the board's contribution to ensuring robust and effective risk management?
- Is the composition of the board and its committees appropriate, with the right mix of knowledge and skills to maximize performance in the light of future strategy? Are inside and outside the board relationship working effectively?
- How has the board responded to any problems or crises that have emerged and could or should these have been foreseen?
- Are the matters specifically reserved for the board the right ones?
- How well does the board communicate with the management team, company employees and others? How effectively does it use mechanisms such as the AGM and the annual report?
- Is the board as a whole up to date with latest developments in the regulatory environment and the market?
- How effective are the board's committees? {Specific questions on the performance of each committee should be included such as, for example, their role, their composition and their interaction with the board}

The processes that help underpin the board's effectiveness should also be evaluated e.g;

- Is appropriate, timely information of the right length and quality provided to the board and its management responsive to requests for clarification or amplification? Does the board provide helpful feedback to management on its requirements?
- Are sufficient board and committee meetings of appropriate length held to enable proper consideration of issues? Is time used effectively?
- Are board procedures conducive to effective performance and flexible enough to deal with all eventualities?

**Chairman and Directors' Evaluation**

In addition, there are some specific issues relating to the chairman, which should be included as part of an evaluation of the board's performance e.g.:

- Is the Chairman demonstrating effective leadership of the board?
- Are relationships and communication with shareholders well managed?
- Are relationships and communications with the board constructive?
- Are the processes for setting the agenda working? Do they enable board members to raise issues and concerns?
- Is the Company Secretary being used appropriately and to maximum value?

The Chairman and other board members should consider the following issues and the individual concerned should also be asked to assess themselves. For each director:

- How well prepared and informed are they for board meetings and is their attendance satisfactory?
- Do they demonstrate a willingness to devote time and effort to understand the company and its business and a readiness to participate in events outside the boardroom such as site visits?
- What has been the quality and value of their contributions at board meetings?
- What has been their contribution to development of strategy and to risk management?
- How successfully have they brought their knowledge and experience to bear in the consideration of strategy?
- How effectively have they probed to test information and assumption? Where necessary, how resolute are they in maintaining their own views and resisting pressure from others?
- How effectively and proactively have they followed up their areas of concern?
- How effective and successful are their relationships with fellow board members, the Company Secretary and Senior Management? Does their performance and behaviour engender mutual trust and respect within board?
- How actively and successfully do they refresh their knowledge and skills and are they up to date with;
    - The latest developments in areas such as corporate governance framework and financial reporting?
    - The industry and market conditions?
- How well do they communicate with fellow board members, Senior Management and others, for example shareholders? Are they able to present their views convincingly yet diplomatically and do they listen and take on board the views of others.

## CONTENTS



## PART I PRELIMINARY

1.1 **Title** – Guideline on Capital Adequacy

1.2 **Authorization** – This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

Section 18 of the Banking Act empowers the Central Bank of Kenya to prescribe the minimum ratios that shall be maintained by institutions as between their core capital and total capital on one hand and their risk weighted assets and off-balance sheet items on the other, and for that purpose, may also determine the method of classifying and evaluating assets.

1.3. **Application** - Banks, non-bank financial institutions and mortgage finance companies licensed to conduct business in Kenya under the Banking Act.

1.4. **Definitions** - Terms used within this guideline are as defined in the Banking Act and as further defined below, or as reasonably implied by contextual usage:

1.4.1 **"Core Capital" (Tier 1)** - Is as defined in Section 2(1) of the Banking Act namely permanent shareholders equity (issued and fully paid-up ordinary shares and perpetual non-cumulative preference shares), disclosed reserves such as share premium, retained earnings and 50% un-audited after tax profits less investments in subsidiaries conducting banking business, investment in equity instruments of other institutions, intangible assets (excluding computer software) and goodwill. (The current year to date 50% un-audited after tax profits will qualify as part of core capital, if and only if, the institution has made adequate provisions for loans and advances, proposed dividends and other appropriations have been deducted).

1.4.2 **"Supplementary Capital" (Tier 2)** – Is as defined in Section 2(1) of the Banking Act and includes 25% of asset revaluation reserves which have received prior Central Bank's approval, subordinated debt, hybrid (debt equity) capital instruments or any other capital instrument approved by Central Bank. Supplementary capital must not exceed core capital.

1.4.3 **"Subordinated Debt"** includes unsecured subordinated debt instruments (debt equity, lines of credit, bonds, commercial paper or loan capital) having an original maturity of at least five years. It also includes limited life redeemable preference shares. During the last 5 years to maturity, a cumulative discount (amortization) factor of 20% per annum will be applied to reflect the diminishing value of these instruments as a continuing source of strength. Since subordinated debt is not normally available to participate in losses, the amount included for capital adequacy calculations is limited to 50% of core capital.

1.4.4 **"Total Assets"** The total net assets reported should agree to equivalent figures in CBK BS (M).

1.4.5 **"Total Capital"** - means core capital plus supplementary capital.

1.4.6 Core and supplementary capital should exclude cumulative unrealised gains and losses on financial instruments.

## PART II STATEMENT OF POLICY

2.1. **Purpose -** This Guideline is intended to ensure that each institution maintains a level of capital which (i) is adequate to protect its depositors and creditors, (ii) is commensurate with the risk associated with activities and profile of the institution, and (iii) promotes public confidence in the institution.

**2.2. Responsibility -** The board of directors of each institution shall be responsible for establishing and maintaining, at all times, an adequate level of capital. The capital standards herein are the minimum acceptable for institutions that are fundamentally sound, well-managed, and which have no material financial or operational weaknesses. Higher capital ratios may be required for individual institutions based on circumstances listed under Part III, section 2 below.

## PART III SPECIFIC REQUIREMENTS

### 3.1 Minimum Capital Requirements

#### 3.1.1 Minimum Ratios

Unless a higher minimum ratio has been set by Central Bank of Kenya for an individual institution based on criteria set under Part III, section 2 below, every institution shall, at all times, maintain:

(a) A core capital of not less than eight per cent of total risk weighted assets plus risk weighted off -balance sheet items;
(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 weighted assets plus risk weighted off- balance sheet items.

The above ratios are subject to review and may be changed from time to time.

#### 3.1.2 Minimum Core Capital

Minimum core capital for banks, mortgage finance companies and financial institutions is as stated below:

- Banks and Mortgage Finance Companies - Kshs. 250 m.
- Non-Bank Financial Institutions - Kshs. 200 m.

Institutions' minimum core capital levels will be monitored on a continuous basis by the Central Bank of Kenya. These levels will apply to all institutions and may be reviewed from time to time.

### 3.2 Criteria for Higher Minimum Capital Ratios

The Central Bank may require higher minimum capital ratios for an individual institution based on, but not limited to any one or more of the following criteria:

a) The institution has incurred or is expected to incur losses resulting in a capital deficiency;
b) The institution has significant exposure to risk, whether credit, concentrations of credit, market, interest rate, liquidity, operational, or from other non-traditional activities;
c) The institution has a high or particularly severe volume of poor quality assets;
d) The institution is growing rapidly either internally or through acquisitions;

e) The institution is adversely affected by the activities or condition of its holding company, associates or subsidiaries; or

f) The institution has deficiencies in ownership or management (i.e. shareholding structure; composition or qualifications of directors or senior officers; risk management policies and procedures).

## 3.3 Risk Weights

Risk based approach to capital adequacy measurement applies to both on and off - balance sheet items. The focus of this framework is credit risk, namely the potential risk of counter party default. Apart from the credit risk, there are other significant risks which institutions should guard against. In particular, these include interest rate risk, market risk, operational risk, concentration risk and even underlying collateral risk. Institutions must assess and provide for these risks in the evaluation of their respective capital adequacy levels.

### 3.3.1 On-Balance Sheet Items

This framework uses only four weights, i.e. 0%, 20%, 50% and 100%. Credit exposures are risk weighted and classified into the four categories according to their relative risk.

**a) Zero % Weight**

The on-balance sheet assets which have been assigned a 0% weight include: cash (both domestic and foreign); loans and advances secured by cash; balances with the Central Bank of Kenya (including repo purchase transactions); claims on the Kenya Government by way of Government securities; and loans duly guaranteed by the Government of Kenya. Such Government guarantees should have been approved by the appropriate authorities in accordance with applicable laws and Government procedures; loans duly guaranteed by OECD* Central Governments.

**b) 20% Weight**

The 20% weight will be assigned to deposits and balances due from commercial banks, financial institutions mortgage finance and building societies in Kenya. They should also include securities issued by foreign governments and banks and balances due from foreign banks (including banks in the group); claims (loans and advances) guaranteed by the following Multi-Lateral Development Banks (MDBs):-

(i) The International Bank for Reconstruction and Development

(ii) The Inter-American Development Bank

(iii) The Asian Development Bank

(iv) The African Development Bank

(v) The European Investment Bank

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* OECD members are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom & United States.

(vi) Other MDBs in which G10 countries (Belgium, Netherlands, Canada, Sweden, France, Switzerland, Germany, United Kingdom, Italy, United States and Japan) are shareholding members.

**c) 50% Weight**

Loans fully secured by a first legal charge over residential properties located within cities and municipalities in the Republic of Kenya that are either occupied by the borrower or rented will attract risk weight of 50%. The 50% weight will not be applied to loans granted to companies engaged in speculative residential building or property development. The underlying security held must be perfected in all respects and its forced sale value (FSV) should cover in full the outstanding debt with at least 20% margin. Any portion of the loan in excess of 80% of the FSV of the residential property should attract a risk weight of 100%. The account should neither be in arrears nor exhibit any weakness. Re-scheduled facilities shall carry a risk weight of 100%.

**d) 100% Weight**

The on-balance sheet items assigned the 100% weight are all other claims on the public and private sector which are not covered under the other categories, including deposits in institutions under statutory management, balances from other foreign entities other than banks, premises and other fixed assets, loans and advances, bills discounted and all other assets of the institution.

### 3.3.2 Off-Balance Sheet Items

#### 3.3.2.1 Off- balance sheet exposures

Off balance sheet items shall be converted to credit risk equivalents by multiplying the nominal principal amounts by a credit conversion factor. The resulting amounts will then be weighted depending on the nature of counterparty. For example, if the counterparty is a local bank, then the resulting amount shall be multiplied by a risk weight of 20%. The credit conversion factors listed below shall apply for various categories of off-balance sheet items, except for interest rate and exchange rate related items.

**a) Zero % conversion factor**

Short-term commitments with an original maturity of up to one year and cancellable unconditionally at any time e.g. bills for collection and any other contingent liability fully secured by cash.

**b) 20% conversion factor**

Short-term self-liquidating trade related contingencies arising from the movement of goods e.g. documentary credit collateralized by underlying shipments, and guarantees by Multi-lateral Development Banks specified in 3.3.1(b).

**c) 50% conversion factor**

Transactions related to contingent items and other commitments with an original maturity exceeding one year e.g. performance bonds, bid bonds and standby letters of credit relating to a particular transaction.

**d) 100% conversion factor**

These are off- balance sheet items, which are substitutes for loans, e.g. letters of guarantee, bank acceptances and standby letters of credit serving as financial guarantees for loans and securities.

#### 3.3.2.1 Foreign exchange and interest rate related contingencies

Foreign exchange and interest rate related contracts need special treatment, as the banks are not exposed to credit risk for the full face value of their contracts but only to the cost of replacing the cash flow if the counterparty defaults. While computing the credit risk of these contracts, financial institutions shall use the original exposure method. Institutions will apply one of the two sets of the conversion factors to the original principal amounts of each instrument according to the nature of the instrument and its maturity. The resulting amounts will then be weighted against the risk weight associated with the counterparty.

The conversion factors for interest rate and exchange rate contracts are to be based on residual maturity period as shown in the table below:

| Residual maturity | Interest rate contracts | Exchange rate contracts |
|---|---|---|
| One year or less | 0.5% | 2.0% |
| Over one year to two years | 1.0% | 5.0% |
| For each additional year | 1.0% | 3.0% |

### 3.4 Reports to Central Bank

Each institution shall submit to Central Bank of Kenya the return on Capital to Risk Weighted Assets, Form CBK/PR3, at the end of every month, to be received by the 10th day of the following month. The Central Bank may require such other information as is necessary to evaluate compliance with this guideline and may call for adjustments to capital where necessary.

## PART IV REMEDIAL MEASURES

4.1. **Remedial measures -** Central Bank may pursue any or all remedial actions as provided under Sections 33, 34 and 55 of the Banking Act.

4.2. **Administrative sanctions** - In addition to the use of corrective actions noted in 1 above, the Central Bank may pursue any or all of the following administrative sanctions against an institution, its board of directors, or its officers:

a) Prohibition from declaring or paying dividends;
b) Prohibition from establishing new branches;
c) Prohibition from engaging in new activities or from expanding existing activities;
d) Suspension of lending, investment, and credit extension operations;
e) Prohibition from acquiring, through purchase or lease, additional fixed assets;
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 or officers.

## PART V EFFECTIVE DATE

**5.1** **Efective date** - The effective date of this Guideline shall be 1st January 2006.

**5.2** **Supersedence** - This guideline replaces Regulation on Capital Adequacy (CBK/RG/01) issued on 1st October 2000.

**ENQUIRIES -** Any enquiries on this Guideline should be forwarded to:

Director,
Bank Supervision Department
Central Bank of Kenya
P. O. Box 60000 - 00200
NAIROBI
TEL..2860000 e-mail: *fin@centralbank.go.ke*

# CAPITAL TO RISK WEIGHTED ASSETS

CBK/PR3

**Institution: .....**

**Period: .....**

**AMOUNT (SHS' 000')**

**1. CAPITAL COMPONENTS**

| **1.1 CORE CAPITAL (Tier 1)** | |
|---|---|
| 1.1.1 Paid-up ordinary share capital/Assigned Capital | |
| 1.1.2 Non-repayable share premium | |
| 1.1.3 Retained earnings/Accumulated losses | |
| 1.1.4 Net After tax profits, current year to-date (50% only) | |
| 1.1.5 Non-cumulative irredeemable preference shares | |
| 1.1.6 Other reserves | |
| 1.1.7 Sub-Total (1.1.1 to 1.1.6) | |

**LESS DEDUCTIONS**

| | |
|---|---|
| 1.1.8 Investments in subsidiary institutions and equity instruments of other institutions | |
| 1.1.9 Goodwill | |
| 1.1.10 Intangible assets | |
| 1.1.11 Total Deductions (1..1.8 to 1.1.10) | |
| 1.1.12 CORE CAPITAL (1.1.7 Less 1.1.11) | |

**1.2 SUPPLEMENTARY CAPITAL (TIER 2)**

| | |
|---|---|
| 1.2.1 Revaluation reserves (25%) | |
| 1.2.2 Cumulative irredeemable preference shares | |
| 1.2.3 Convertible notes and similar capital investments | |
| 1.2.4 Perpetual subordinated debt | |
| 1.2.5 Limited life redeemable preference shares | |
| 1.2.6 Term subordinated debt | |
| 1.2.7 Statutory Loan Loss Reserve | |
| **1.2.8 Total supplementary capital (1.2.1 to 1.2.7)** | |
| **1.2.9 Supplementary Capital/Core Capital (% )** | |
| **1.3 TOTAL CAPITAL (1.1.12 + 1.2.8)** | |
| **1.4 Total shareholder's funds (Per CBK BSM)** | |
| **1.5 Difference (1.4 Less 1.3)*** | |

**2. ON - BALANCE SHEET ASSETS**

| | AMOUNT (Shs. `000') | WEIGHT | WEIGHTED ASSET VALUE (Shs.`000') |
|---|---|---|---|
| 2.1 Cash (including foreign notes and coins) | | 0 | |
| 2.2 Balances with Central Bank of Kenya | | 0 | |
| 2.3 Kenya Government Treasury Bills | | 0 | |
| 2.4 Kenya GovernmentTreasury Bonds | | 0 | |
| 2.5 Lending fully secured by cash | | 0 | |

| | | | |
|---|---|---|---|
| 2.6 Advances guaranteed by the Government of Kenya and OECD Central Governments | | 0 | |
| 2.7 Deposits and balances due from local institutions | | 0.2 | |
| 2.8 Deposits and balances due from foreign institutions. | | 0.2 | |
| 2.9 Foreign Treasury Bills and bonds | | 0.2 | |
| 2.10 Claims guaranteed by Multi-Lateral Development Banks | | 0.2 | |
| 2.11 Loans and advances secured by residential property | | 0.5 | |
| 2.12 Other Loans and advances (net of provisions) | | 1.0 | |
| 2.13 Other investments | | 1.0 | |
| 2.14 Fixed Assets (net of Depreciation) | | 1.0 | |
| 2.15 Amounts due from group companies. | | 1.0 | |
| 2.16 Other assets | | 1.0 | |
| **2.17 TOTAL (2.1 to 2.16)** | | | |
| **2.18 Total Assets (Per CBK BSM)** | | | |
| **2.19 Difference (2.17 Less 2.18)*** | | | |

**3. OFF-BALANCE SHEET ASSETS**

| Counterparty/ Security | CREDIT RISK EQUIVALENT | WEIGHT | WEIGHTED ASSETS VALUES |
|---|---|---|---|
| 3.1 Transaction secured by cash. | | 0 | |
| 3.2 Government of Kenya and OECD Central Governments | | 0.0 | |
| 3.3 Local financial institutions | | 0.2 | |
| 3.4 Foreign banks and foreign governments | | 0.2 | |
| 3.5. Others | | 1 | |
| **3.6 TOTAL (3.1 to 3.5)** | | | |

**4. CAPITAL RATIO CALCULATIONS**

| | |
|---|---|
| 4.1 Core Capital as per 1.1.12 above | |
| 4.2 Total Capital as per 1.3 above | |
| 4.3 Total Risk Weighted Asset Value of on-balance sheet items as per 2.17 above | |
| 4.4 Total Risk Weighted asset value of off-balance Sheet Items as per 3.6 Above | |
| 4.5 Total Risk weighted assets (4.3 + 4.4) | |
| 4.6 Total deposits | |
| 4.7 Core capital to risk assets ratio (4.1/4.5)% | |
| 4.8 Minimum core capital to risk assets requirement | **8%** |
| 4.9 Excess (Deficiency) (4.7 less 4.8) | |
| 5.0 Core capital to deposits ratio (4.1/4.6)% | |
| 5.1 Minimum core capital to deposits requirement | **8%** |
| 5.2 Excess/(Deficiency) (5.0 less 5.1) | |
| 5.3 Total capital to risk assets ratio (4.2/4.5)% | |
| 5.4 Minimum total capital to risk assets requirement | **12%** |
| 5.5 Excess/(Deficiency) (5.3 less 5.4) | |

** A reconciliation for the difference to be attached on a separate sheet.*

**Name: .....**

**Designation: .....**

**Signature: .....** **Date: .....**

# COMPLETION INSTRUCTIONS

## RETURN CBK/PR3: CAPITAL TO RISK WEIGHTED ASSETS

### 1. CAPITAL COMPONENTS

### 1.1 CORE CAPITAL (TIER 1)

1.1.1 **Paid-up ordinary share capital/Assigned Capital**
This is the nominal value of the ordinary shares issued and fully paid, or capital assigned to Kenyan branch (es).

1.1.2 **Non-repayable share premium/(discount)**
This is the difference between the nominal price and purchase price of shares, which is not refundable/ recoverable.

1.1.3 **Retained Earnings/ Accumulated losses**
These are retained earnings or accumulated losses from the profits/losses of the prior years. They should however exclude reserves arising from revaluation of investment properties and cumulative unrealised gains and losses on financial instruments.

1.1.4 **Current year 50% un-audited after tax profits**
This is 50% of the current year to date un-audited after tax profits. The institution must have made adequate provisions for loans and advances, depreciation, armortization and other expenses. In arriving at the applicable figure, any proposed or interim dividends have to be taken into account. This should however exclude reserves arising from revaluation of investment properties and cumulative unrealised gains and losses on financial instruments. In case of a loss, full amount should be included.

1.1.5 **Non-cumulative irredeemable preference shares**
These are shares, which have a standing claim on the company every year, but the claim is not carried forward in event of not being paid and they are not redeemable.

1.1.6 **Other reserves**
These are all other reserves, which have not been included above. Such reserves should be permanent, unencumbered, uncallable and thus able to absorb losses. Further, the reserves should exclude cumulative unrealised gains and losses on available-for- sale-instruments.

1.1.7 **Sub-total**
Enter in this line the sub-total of all the items from 1.1.1 to 1.1.6.

### DEDUCTIONS FROM CORE CAPITAL

1.1.8 **Investments in subsidiary institutions and equity instruments of other banking institutions**
To prevent multiple use of the same capital resources in different banking institutions both in Kenya and abroad, the institutions should deduct any investment in subsidiaries conducting banking business and equity instruments of other banking institutions.

1.1.9 **Goodwill**

This is the difference between the value of the business as a whole and the aggregate of the fair values of its separable net assets at the time of acquisition.

1.1.10 **Other intangible assets**

These are assets without physical existence, e.g. patents, copyrights, formulae, trademarks, franchise etc. However, computer software should not be deducted.

1.1.11 **Total deductions**

This is the total of all the items from 1.1.8 to 1.1.10.

1.1.12 **Core Capital**

Core Capital is the deduction of line 1.1.11 from line 1.1.7.

**1.2 SUPPLEMENTARY CAPITAL (TIER 2)**

1.2.1 **Revaluation reserves**

This is the revaluation reserves of fixed assets, land and buildings based on independent and professional appraisal as to the market value of such assets. Only 25% of revaluation should be included after obtaining Central Bank of Kenya's approval.

1.2.2 **Cumulative irredeemable preference shares**

These are irredeemable shares with standing claim on the company and the claim is carried forward in event of it not being paid in the current year.

1.2.3 **Convertible notes and similar capital investments**

Convertible notes are instruments that evidence a company promise to pay a loan on maturity, which can be converted, into shares any time before maturity date. Other similar capital investments are convertible debentures, bonds, loans etc.

1.2.4 **Perpetual subordinated debt**

This is a debt equity or loan capital, which is not redeemable.

1.2.5 **Limited life redeemable preference shares**

These are preference shares with limited life of at least five years and are redeemable.

1.2.6 **Term subordinated debt**

This refers to loan capital, bonds, commercial paper or debt equity with original maturity period of five years and above.

1.2.7 **Statutory Loan Loss Reserve**

These are provisions that have been appropriated from retained earnings (revenue reserves). This will only apply if provisions computed under Risk classification of Assets and Provisioning Guideline is in excess of impairment losses computed under International Financial Reporting Standards. However, loan loss reserve qualifying as supplementary capital should not exceed 1.25% of risk weighted assets total value.

1.2.8 **Total supplementary capital**

This is the sub-total of the items in line 1.2.1 to 1.2.7.

1.2.9 **Supplementary Capital/Core Capital (%)**

This is the percentage of the supplementary capital to core capital. Total supplementary capital should not exceed core capital. Where supplementary capital exceeds core capital, then qualifying supplementary capital is limited to the amount of core capital.

1.3 **Total Capital**

Total capital is the sum of core capital and supplementary capital, i.e. Total of lines 1.1.12 and 1.2.9.

1.4 **Total Shareholders' funds**

The figure reported in this line should agree with the total shareholders funds as reported in the BS (M).

1.5 **Difference**

Any difference between total capital and total shareholders' funds should be reported in this line and a reconciliation of the same be attached.

*2* **ON-BALANCE SHEET ASSETS**

2.1 **Cash (including foreign notes and coins)**

Enter in this line cash at hand (both domestic and foreign).

2.2 **Balances with Central Bank**

This includes Repos purchase with Central Bank of Kenya, reserve requirement and balances held in clearing accounts

2.3 **Kenya Government Treasury Bills**

These are Treasury bills issued by the Government of Kenya.

2.4 **Kenya Government Treasury bonds**

These refer to the Treasury Bonds issued by the Government of Kenya.

2.5 **Lending fully secured by cash**

Enter here all other debts that are fully secured by cash and supported by signed lien documents.

2.6 **Advances guaranteed by the Government of Kenya and OECD Central Governments**

This refers to all loans and advances duly guaranteed by the Government of Kenya and OECD* Central Governments.

2.7 **Deposits and balances due from Local Institutions**

These are deposits and balances held with local banks, financial institutions, mortgage finance companies and building societies including overnight balances.

2.8 **Deposits and balances due from foreign institutions**

These are balances held with correspondent banks, other banks and financial institutions abroad (including banks in the group)

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* OECD members are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom & United States.

2.9 **Foreign Treasury Bills and Bonds**

These are bills and bonds issued by foreign governments, banks and other multilateral institutions.

2.10 **Claims guaranteed by Multi-Lateral Development Banks (MDB's)**

These are loans, advances and capital market instruments such as commercial paper that are guaranteed by the following MDB's: -

- The International Bank for Reconstruction and Development.
- The Inter-American Development Bank.
- The Asian Development Bank.
- The African Development Bank.
- The European Investment Bank.
- Other MDB's in which G-10 countries are shareholding members. The G 10 member countries are Belgium, Netherlands, Canada, Sweden, France, Switzerland, Germany, United Kingdom, Italy, United States and Japan.

2.11 **Loans secured by Residential Property**

These are facilities secured by a first legal charge over residential properties situated within cities and municipalities in the Republic of Kenya. Such facilities should only be those classified as normal under CBK Guideline No. CBK/PG/04 and are performing in accordance with the original terms and conditions specified in the letter of offer. In addition the security should be perfected in all respects and its current forced sale value should, cover in full, the outstanding debt with at least a 20% margin. The 50% weight will not be specifically applied to loans to companies engaged in speculative residential building or property development.

2.12 **Other loans and advances**

These refer to loans and advances that are not guaranteed by the Government of Kenya and not secured by cash. These also include commercial paper and corporate bonds and should be reported net of provisions. Provisions must be computed in accordance with provisioning guideline CBK/PR4-1. However, provisions appropriated from retained earning should not be netted off from loans and advances.

2.13 **Other investments**

These are investments in other companies other than financial institutions.

2.14 **Fixed assets**

These are assets acquired for use in the operation of the business or for investment purposes, e.g. furniture, computers, freehold and leasehold land and buildings. They should be shown net of accumulated depreciation, amortized cost, or at fair value.

2.15 **Amount due from group companies**

This is the claim of the reporting institution from other group companies that are not financial institutions.

2.16 **Other assets**

These are other assets, which have not been dealt with above.

2.17 **Total on-balance sheet assets**

Enter in this line total on-balance sheet asset i.e total of line 2.1 to 2.16. Total deductions from core capital should also be deducted from the assets for the purposes of computing the risk weighted asset values. All interest bearing assets should be reported inclusive of interest earned.

2.18 **Total Assets (per CBK BSM)**

Total asset figure as reported in the CBK/BS(M) should be indicated in this line.

2.19 **Difference**

This is the difference between total on-balance sheet assets and total assets as reported in the CBK BS (M). The difference should be explained in the form of reconciliation.

*3.* **OFF-BALANCE SHEET ITEMS**

3.1-3.5 Institutions should compute credit risk equivalents for different categories of off-balance sheet transactions. The resulting amounts should be weighted against the risk weight of the counterparty as indicated in the return. Under line 3.4 of the return, foreign banks include the Multi-lateral Development Banks specified under item 2.10 of the completion notes. Under line 3.5, institutions should include undelivered spot transactions.

3.6 **Total weighted assets values**

Enter in this line the total weighted assets values, i.e. 3.1 to 3.5

4.0 **CAPITAL RATIO CALCULATIONS**

Compute as per the formulae provided in the form.

4.6 **Total Deposits**

This refers to margins on letters of credit, local and foreign currency deposit liabilities plus accrued interest repayable on demand, after fixed period or after notice.

**GENERAL**

All reported items should agree with or capable of being derived from the figures reported under CBK BS (M) of the same period. This is a monthly return and should be submitted by the 10th day of the following month.

**ENQUIRIES**

Enquiries or clarification should be channelled to:

The Director
Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000 - 00200
**NAIROBI**
TEL.2860000 e-mail: *fin@centralbank.go.ke*

## CONTENTS

## PART I: PRELIMINARY

1.1 **Title**

Guideline on Risk Classification of Assets and Provisioning

1.2 **Authorisation**

The Guideline is issued under Section 33(1) of the Banking Act, which empowers the Central Bank to advise and direct business of institutions for the general carrying out of the purposes and provisions of the Banking Act (Cap.488). Central Bank of Kenya is authorised under Section 20 of the Banking Act to prescribe guidelines and ensure institutions maintain adequate provisions for bad and doubtful debts prior to declaring profits or dividends.

1.3. **Application**

All institutions licensed under the Banking Act.

1.4. **Definitions**

1.4.1 **"loans" and "loans and advances"** - may be used interchangeably to include any loan, discount, advance, overdraft, export bills purchased, other bills receivable or purchased, import bills, customer's liability on off-balance sheet items or any other credit facilities extended to the customer of an institution;

1.4.2 **"non-performing loan"** - means that a loan is no longer generating income or when it comes to the institution's knowledge that a credit facility will no longer generate income. For purposes of this regulation, loans are "non-performing" when:

- principal or interest is due and unpaid for 90 days or more; or
- interest payments for 90 days or more have been re-financed, or rolled-over into a new loan.

Current accounts (overdrafts) and other credit extensions not having pre-established repayment programs are considered "non-performing" when any of the following conditions exist:

- balance exceeds the customers approved limit for more than 90 consecutive days;
- the customers borrowing line has expired for more than 90 days;
- interest is due and unpaid for more than 90 days;
- the account has been inactive for more than 90 days, or credits are insufficient to cover the outstanding interest during the period.

This includes all loans classified under the substandard, doubtful and loss categories.

The balance outstanding as at the time when the account is identified as non-performing (not just the amount of delinquent payments) is used in calculating the aggregate amount of "non-performing" loan.

1.4.3 **"off balance sheet items"** means all items not shown on the balance sheet but which constitute credit risk. Such risks include guarantees, acceptances, performance bonds, letters of credit, and other off balance sheet items deemed to constitute credit risk by the Central Bank of Kenya.

1.4.4 **"Other Provisions"** - means a balance sheet valuation account established through charges to "provision expense" in the income statement in order to reflect erosion in the value of any other assets being held by the institution.

1.4.5 **"past due" or "overdue"** - means any loan for which

- principal or interest is due and unpaid for more than 30 days; or
- interest payments equal to more than 30 days interest have been refinanced, or rolled-over.

Current accounts (overdrafts) and other credit extensions are considered "past due" when any of the conditions below exist:

- balance exceeds the customers approved limit for more than 30 consecutive days;
- the customers borrowing line has expired for more than 30 days;
- interest is due and unpaid for more than 30 days; or
- the account has been inactive or credits are inadequate to meet the outstanding interest for more than 30 days.

The balance outstanding (not just the amount of delinquent payments) is used in calculating the aggregate amount of "past due" loans.

1.4.6 **"Provisions for loan losses" or "allowance for loan losses"** - means a balance sheet valuation account established through charges to "provision expense" in the income statement and against which uncollectable loans portions thereof, are written-off.

1.4.7 **"renegotiated loan"** may be used interchangeably with **"restructured loan"** to mean any loan that has been rescheduled or refinanced in accordance with an agreement setting forth a new repayment plan on a periodic basis occasioned by weaknesses in the borrower's financial condition and/or inability to repay the loan as originally agreed;

1.4.8 **'' Well secured"** means that a credit facility has sufficient collateral to cover both principal and interest. Such security is perfected in all respects and has no prior encumbrances that could impair its value or otherwise prevent obtaining clear title.

1.4.9 **Grouping of accounts.** In completing returns under this guideline, all accounts are to be grouped together with their associated companies. Associates are defined in Section 2 of the Banking Act (as amended through the Finance Act 2005).

Clause 43 of the Finance Act 2005 amended Section 2 of the Banking Act as follows:-

(a) in subsection (2), by adding the following new subparagraph at the end of paragraph (a)- "(v) any company in which an individual is a director",

(b) by inserting the following new subsection immediately after subsection (2)-

(3) For purposes of subsection (2), the term "control" includes-

a) the ability to influence, whether directly or indirectly, the composition of the board of directors of a company or any other body corporate; or

(b) holding, directly or indirectly, whether personally or through a holding company or companies or subsidiaries thereof, or in any otherway, an aggregate of twenty per centum or more of the voting power of a company or body corporate, whether alone or with associates or with other associates of the company or body corporate.

## PART II: STATEMENT OF POLICY

### 2.1 Purpose

This guideline is intended to ensure that all assets are regularly evaluated using an objective internal grading system which is consistent with this guideline; and that timely and appropriate provisions and write offs are made to the provisions account in order to accurately reflect the true condition and operating results of institutions. It is also intended to encourage institutions to develop effective workout plans for problematic assets in accordance with this guideline.

### 2.2 Scope

This guideline applies to all assets held or reflected in an institution's books, including off balance sheet items.

### 2.3 Responsibility

The Board of Directors of each institution shall be responsible for establishing an asset review system, which is consistent with this guideline, which accurately identifies risk, assures the adequacy of the provisions for non-performing assets, and properly reflects such results in the financial statements of the institution.

In the exercise of its prerogatives as the highest policy making body of the institution, the Board of Directors of every institution shall prescribe in writing:

a) A credit policy specifying the criteria and procedures in the evaluation, processing, approval, documentation, and disbursement of credits. Such policy should include the procedures for loan administration and recovery, the recording of transactions and maintenance of appropriate credit and document files. The levels of discretion given to approving executive officers or committees must be defined in such credit policy or in a separate resolution of the board of directors.

b) A system of reviewing the entire asset portfolio including contingent accounts or off balance sheet items and adequate provisioning for losses at periodic quarterly intervals. Such a review system should be made part of the credit policy mentioned.

c) A system of review of each extension or renewal of credit, identifying, and classifying troubled credits as weaknesses become evident without waiting for the scheduled periodic review. Such review system should likewise be made part of the credit policy mentioned.

## PART III: SPECIFIC REQUIREMENTS FOR LOANS AND ADVANCES

### 3.1 Loan Review

**(a) Objectives.**

Each institution's loan review function shall ensure that:

- the loan portfolio and lending function conforms to a sound and written lending policy which has been adopted and approved by the board of directors;
- executive management and the board of directors are adequately informed regarding portfolio risk;
- problem accounts are timely and properly identified and internally classified as necessary, in accordance with the classification criteria as given in this guideline as a minimum;
- appropriate and adequate level of provisions for potential loss are made and maintained at all times;

**(b) Frequency and reporting**

The management of each institution shall ensure that a review of its' loan portfolio is made at least on a quarterly basis. Such reports shall provide sufficient information that will enable the board to deliberate and direct management to take timely and necessary remedial action within a specified time frame.

### 3.2 Classification of Loans

**(a) Criteria for classification**

In the determination of the classification for loans and advances, performance will be the primary consideration. The performance will generally show the repayment capability of the borrower. All loans shall be classified into the five categories using the criteria provided in this Guideline.

- **Normal**
- **Watch**
- **Sub-standard**
- **Doubtful**
- **Loss**

**(b) Adverse Classification**

A significant departure from the primary source of repayment may warrant adverse classification even when a loan is current or is supported by an underlying collateral value. Reclassification may also be warranted if a delinquency has been technically cured by modification of terms, refinancing, or additional advances.
In cases where different classification grades may be assigned based on subjective criteria, the more severe classification should generally apply. Moreover, nothing contained in the classification definitions below shall preclude assigning a more severe grade when an analysis of a borrower's financial condition, ability, and willingness to repay justifies a more severe classification.

**(c) Central Bank's Classification**

Upon completion of an on-site examination, the Central Bank of Kenya will provide a list of reclassified accounts, some of which will be downgraded from categories earlier classified by the institution. No account from this list will be upgraded by the institution without sufficient justification.

It is recommended that before the quarterly and year-end accounts are finalized and published, institutions take into account the provisions recommended in the latest Central Bank inspection report. Where necessary, tripartite meetings may be held between the institution, Central Bank of Kenya and the external auditors.

## 3.3 Classification Categories

**(a) Normal.**

These are well-documented facilities granted to financially sound customers where no weaknesses exist. All such loans must be performing in accordance with the contractual terms and are expected to continue doing so. Loans in this category are normally fully protected by the current sound net worth and paying capacity of the borrower.

**Performance**

(i) Term loans:
Up to date repayments;

(ii) Overdrafts:
Operates within limit and receiving sufficient credits each month to cover interest.

(iii) Bills Discounted
Bill not yet due

**(b) Watch**

Loans in this category may be currently protected and may not be past due but exhibit potential weaknesses which may, if not corrected, weaken the asset or inadequately protect the institution's position at some future date. Examples of such weaknesses include, but are not limited to:

inability to properly supervise the debt due to an inadequate loan agreement; deteriorating condition or control of collateral; deteriorating economic conditions or adverse trends in the borrower's financial position which may, if not checked, jeopardize repayment capacity, risk potential is greater than when the loan was originally granted. This category should not be used as a compromise between Normal and Substandard.

**Performance**

(i) Term Loans

These are loans, which display one or all of the following characteristics:

- principal or interest is due and unpaid for 30 to 90 days
- Interest payments are outstanding for 30 to 90 days or have been refinanced, or rolled-over.
- For loans paid in instalments: -

| **Mode of payment** | **Instalments in Arrears** |
|---|---|
| Monthly | Less than 3 months |
| Quarterly | 1 (not paid within 3 months) |
| Semi-annually | 1 (not paid within 3 months) |
| Annually | 1(not paid within 3 months) |

(ii) Current accounts (overdrafts)

Current accounts (overdrafts) and other credit extensions are considered "Watch" when any of the conditions below exist:

- overdraft exceeds the customers approved limit for more than 30 to 90 consecutive days.
- the customers credit line has expired and has not been renewed[1] for more than 30 to 90 days from the date of expiry.
- interest is due and unpaid for more than 30 to 90 days
- the account has been inactive for more than 30 to 90 days or credits are inadequate to meet all the outstanding interest during the period.
- the customer's credit line has been extended[2] administratively in line with the institution's documented policy for more than 90 days from the date of expiry, on condition that, during the period of extension, it is performing as per contract terms.

(iii) Bills Discounted
Overdue for more than 30 to 90 days.

**(c) Substandard**

Loans in this category are not adequately protected by the current sound net worth and paying capacity of the borrower. In essence, the primary sources of repayment are not sufficient to service

1 For purposes of this section, **renewal** involves full review of the facility, resulting in issuance of a new letter of offer..

2 For purposes of this section, **extension** means temporary accomodation allowed administratively pending renewal.

the debt and the institution must look to secondary sources such as collateral, sale of fixed assets, refinancing, or additional capital injections for repayment.

Any loan, which is past due for more than 90 days but less than 180 days shall be classified as Substandard, at a minimum.

**Performance**

(i) Term loan

- Principal or interest is due and unpaid for more than 90 days to 180 days
- Interest payments for more than 90 days to 180 days have been re-financed, or rolled-over into a new loan.
- For loans paid in instalments: -

| **Mode of payment** | **Instalments in Arrears** |
|---|---|
| Monthly | Over 3 months to 6 months |
| Quarterly | 2 (not paid within 3 months) |
| Semi-annually | 1 (not paid within 6 months) |
| Annually | 1(not paid within 6 months) |

(ii) Current accounts (overdrafts)

Current accounts (overdrafts) and other credit extensions are considered "Sub Standard" when any of the following conditions exist:

- debt exceeds the customers approved limit for more than 90 days to 180 consecutive days.
- the customers credit line has expired for more than 90 days to 180 days.
- interest is due and unpaid for more than 90 days to 180 days
- the account has been inactive for more than 90 days to 180 days and credits are insufficient to cover all the outstanding interest during the period.

(iii) Bills Discounted

A bill discounted is considered substandard when the bill is overdue and unpaid for over 90 days to 180 days. A loan or advance that is past due for more than 360 days shall be classified as doubtful if it is secured by a realisable security that is in the process of collection.

**(d) Doubtful**

Loans in this category have all the weaknesses inherent in a substandard loan plus the added characteristic that the loan is not well secured. These weaknesses make collection in full, on the basis of currently existing facts, conditions, and value, highly questionable and improbable. The possibility of loss is high, but because of important and reasonably specific pending mitigating factors, the actual amount of loss cannot be fully determined. If pending events do not occur within 360 days and repayment must again be deferred pending further developments, a loss classification is warranted upon realisation of securities held. A loan that is past due for more than 360 days may however retain a "doubtful" classification if it is backed by realisable security.

**Performance**

Any loan which is past due more than 180 days shall be classified as Doubtful at a minimum:

(i) Term loan

- Principal or interest is due and unpaid for over 180 days.
- For loans paid in instalments: -

| Mode of payment | Instalments in Arrears |
|---|---|
| Monthly | Over 6 months but less than 12 months |
| Quarterly | 3 (not paid within 3 months) |
| Semi-annually | 2 (not paid within 3 months) |
| Annually | 1(not paid within 9 months) |

(ii) Current accounts (overdrafts)

Current accounts (overdrafts) and other credit extensions are considered "Doubtful" when any of the following conditions exist:

- Debt exceeds the customers approved limit for more than 180 days.
- The customers credit line has expired for more than 180 days.
- The account has been inactive for more than 180 days or credits are inadequate to meet all the outstanding interest during the period.
- Interest is unpaid and due for more than 180 days.

(iii) Bills Discounted

A bill discounted is considered doubtful when the bill is overdue for more than 180 days but not more than 360 days.

**(e) Loss**

Loans, which are considered uncollectible or of such little value that their continuance recognition as bankable assets is not warranted shall be classified Loss. Losses shall be taken in the period in which they are identified.

Loans paid in instalments with the characteristics in the table below shall be classified as loss: -

| Mode of payment | Instalments in Arrears |
|---|---|
| Monthly | 12 or more |
| Quarterly | 4 or more |
| Semi-annually | 2 (not paid within 5 months) |
| Annually | 1(not paid within 11 months) |

Any loan, which is under doubtful category where the security has either been sold or discounted to zero value, shall be classified as loss unless the debt is in the process of collection e.g. in due course or through legal action or any other means expected to result in repayment of the debt or in its restoration to current status.

**(f) Classification of Multiple facilities**

If an institution has granted multiple facilities to a single borrower, and any one of them is non-performing, then the institution shall evaluate every other loan to that borrower and place such loans on non-performing status. Provisions will be made against that facility to fairly state the bank's financial position. Apportionment of joint collateral should be prorated for purposes of provisioning based on current exposure, unless the institution has formulated an alternative acceptable allocation mechanism of the collateral value to the individual non performing facility.

## 3.4 Classification of Renegotiated Loans

3.4.1 A renegotiated loan in the Substandard category will normally continue to be classified **Substandard** unless:

(i) all past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to '**Normal**' classification or

(ii) all past due interest is repaid in full at the time of renegotiation in which case it may revert to '**Watch**' classification or

(iii) a sustained record of performance under a realistic repayment program has been maintained. A sustained record of performance means that all principal and interest payments are made according to the modified repayment schedule.

A renegotiated loan which meets condition (ii) above may be reclassified as **Normal** if a sustained record of performance is maintained for six (6) months from the date of renegotiation.

A renegotiated loan in the **Substandard** category, which meets condition (iii) above may be classified as '**Watch**' if the sustained record is maintained for at least six (6) months from the renogotiated date. It may however qualify for '**Normal**' classification if the sustained record is maintained for at least twelve (12) months from the renegotiated date. If, after a formal restructuring a loan deteriorates, it must revert to a non-performing classification status and be classified accordingly.

3.4.2 A renegotiated loan in the **Doubtful** category will normally continue to be classified **Doubtful** unless:

(i) all past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to '**Watch**' classification or

(ii) all past due interest is repaid in full at the time of renegotiation in which case it may revert to '**Substandard**' classification.

(iii) a sustained record of performance under a realistic repayment program has been maintained. A sustained record of performance means that all principal and interest payments are made according to the modified repayment schedule.

A renegotiated loan which meets condition (i) above may be reclassified **Normal** if a sustained record of performance is maintained for a period of six (6) months from the date of renegotiation.

A renegotiated loan which meets condition (ii) above may be reclassified **Watch** if a sustained record of performance is maintained for a least six (6) months and **Normal** if a sustained record of performance is maintained for at least twelve (12) months.

A renegotiated loan in the '**Doubtful**' category, which meets condition (iii) above can be classified as '**Substandard**' if the sustained record of performance is maintained for at least six (6) months from the renogotiated date. It may however qualify for '**Watch**' classification if the sustained record of performance is maintained for at least twelve (12) months from the renegotiated date, and '**Normal**' if the sustained record of performance is maintained for at least eighteen (18) months. If after a formal restructuring, a loan deteriorates it must revert to a non-performing classification status and be classified accordingly.

### 3.5 Re-classification of other Non-Performing Loans and Advances

3.5.1 A facility in the **Substandard** category will normally continue to be classified Substandard unless:

(i) all past due principal and interest is repaid in full, in which case it may be upgraded to '**Normal**' classification or

(ii) all past due interest is paid in full in which case it may be upgraded to '**Watch**' classification or

3.5.2 A facility in the Doubtful category will normally continue to be classified Doubtful unless:

(i) all past due principal and interest is repaid in full, in which case it may revert to '**Watch**' classification

(ii) all past due interest is repaid in full and a sustained repayment is maintained for period of six months in which case it may upgraded to '**Substandard**' classification.

A facility loan which meets condition (i) above may be reclassified **Normal** if a sustained record of performance is maintained for a period of six (6) months. A facility which meets condition (ii) above may be reclassified **Watch** if a sustained record of performance is maintained for at least six (6) months and **Normal** if a sustained record of performance is maintained for at least twelve (12) months.

No provisions for non performing loans may be written back unless the accounts have been upgraded strictly on the basis of the criteria under 3.5.

### 3.6 Provisioning Requirements

**(a) Suspension of Interest**

All interest on non-performing loans and advances will be suspended in accordance with the criteria set out in this guideline and should not be treated as income. Interest in suspense shall be taken into account in the computation of provisions for non-performing accounts.

**(b) Provisions for loan losses account.**

If impairment charges computed under International Accounting Standard (IAS) 39 are lower than provisions required under this guideline, the excess provisions shall be treated in accordance with IAS 30. Under IAS 30 any amounts set aside for impairment losses on loans and advances in addition to those losses recognized under IAS 39 represent appropriations of retained earnings and not expenses in determining profit and loss. Similarly any credits resulting from the reduction of such amounts results in an increase in retained earnings and are not included in the determination of profits or loss.

Where the impairment charges computed under IAS 39 are higher than provisions required under this guideline, the impairment charges will be considered adequate for purposes of this guideline.

**(c) Minimum provisioning allocations.**

In determining the amount of potential loss in specific loans or in the aggregate loan portfolio, all relevant factors shall be considered including, but not limited to: historical loan loss experience, current economic conditions, delinquency trends, the effectiveness of the institution's lending policies and collection procedures, and the timeliness and accuracy of its loan review function.

The following minimum percentage amounts for provisioning are to be maintained according to assigned classifications. Where reliable information suggests that losses are likely to be more than these minimum amounts, larger provisions shall be made.

| | | |
|---|---|---|
| i) | For loans classified "**Normal**" | 1% |
| ii) | For loans classified **"Watch"** | 3% |
| iii) | For loans classified **"Substandard"** | 20% |
| iv) | For loans classified "**Doubtful**" | 100% |
| v) | For loans classified "**Loss**" | 100% |

In the case of the first two categories the above percentages shall be applied against the gross balance of a loan regardless of whether the loan is analysed individually or as part of a pool of loans. For non-performing categories the percentages will be applied to the net balances after deduction of realisable value of security and interest in suspense.

## 3.7 Treatment of Collateral

**(a) General**

Classification ratings of loans do not depend on the amount or quality of collateral pledged. Collateral is regarded as a secondary source of repayment, and therefore is only used in assessing the amount of loan loss provision required for non-performing loans. This is especially true where the validity, value and ability to realize collateral is subject to significant doubt.

**(b) Perfection of Securities**

Where securities are obtained, they should be perfected in all respects, namely:

- Duly charged and registered.
- Adequately insured.
- Valued by a registered valuer.
- Perfected in all other areas specified in the letter of offer.

**(c) Valuation of Securities**

For the purpose of determining the value of security in accounts, security should be valued on a reasonable and regular basis. This should be clearly stated in the institutions credit policy. Examiners may discount the value of securities depending on the prevailing circumstances of each case. If the Central Bank of Kenya deems it necessary, it may require the institution to have a valuation carried out by another valuer registered by the Institution of Surveyors of Kenya, at the institution's expense.

Guarantees that are not supported by tangible assets shall not have any value while debentures will be considered at 50% of the realisable market value based on the latest valuation or the book values as per the latest audited accounts. Examiners may discount the value of securities further depending on the circumstances of each case.

**(d) Discounting of Securities**

For the non-performing loans, the discounted value of collaterals shall be deducted from the loan balance before making provisions. The period allowable for deductions of discounted value of collaterals shall be for a maximum of five years from the period the loan becomes non performing. Institutions will be expected to progressively discount the forced sale value of securities over the five-year period at a discount rate of 20% p.a. However, for the purpose of reporting to Central Bank, institutions will be required to discount their securities at a rate of 5% every quarter. For purposes of discounting, the security value will be based on the forced sale value when the loan becomes non-performing and any future increases in value shuld not affect the discount amount. For all forms of collaterals, the discounted value of securities may be deducted if transferability of title is certain and an active market exists. An "active market" means that a bona fide sale (willing buyer/willing seller) can be achieved within a reasonable period. The effective date for starting discounting of securities shall be 1st January 2006 for all accounts considered non-performing as at that date. For other accounts that become non-performing after this date, the date on which they become non-performing shall be the effective date for discounting of securities.

3.8 **Examiner's review**

The board of directors shall maintain adequate records supporting its evaluation of potential loan losses and the entries made to ensure adequacy of the provision for loan losses. Such records shall be available for examiners to assess management's loss estimation procedures, the reliability of the information on which estimates are based, and the adequacy of the provision for loan losses. If the provision for loan losses is determined to be inadequate, adjusting entries will be required.

3.9 **Write-Off of Loan/Advances**

An institution should write off a loan or a portion of a loan from its balance sheet when the institution loses control of hte contractual rights over the loan or when all or part of a loan is deemed uncollectible or there is no realistic prospect of recovery. This normally evident at a stage where-

a) The institution loses control of the contractual rights that comprise the loan or part of the loan as determined by a court of law.

b) All forms of securities or collateral have been called, realized, but proceeds failed to cover the entire facility outstanding.

c) The institution is not able to collect or there is no longer reasonable assurance that the institution will collect all amounts due according to the contractual terms of the loan/ advances agreement.

d) The borrower becomes bankrupt

e) Where efforts to collect debt are abandoned for any other reason.

Write off of facilities classified as loss should be done within 90 days of their being classified as loss if there are no recoveries within this period.

All credit policies should adequately detail the write-off procedures in order to minimise potential abuse. The ultimate authority for approval of write-offs rests with the board of directors and the memorandum accounts should be periodically audited. Any recoveries made from accounts earlier written off should be credited to the provisions account in the Income Statement.

## PART IV: OTHER ASSETS

Apart from the loans and advances portfolio, institutions may have other assets such as deposits with institutions under statutory management and liquidation, investments in associates, subsidiaries and joint ventures and sundry debtors which may be subject to loss or diminution in value. Institutions should regularly review the other assets and make necessary provisions as need arises.

Provisions should be made where an actual loss of an asset occurs or when the recoverable amount of the asset is less than it's carrying value. Provisions so made should not be lumped together with provisions for loans and advances on the CBK BS (M) but should be included under other provisions.

## PART V: REPORTING REQUIREMENTS

The institution shall submit to the Central Bank of Kenya at quarterly intervals CBK/PR4-1 to CBK/PR4-5. The intervals for reporting may change from time to time as the Central Bank may require. The returns should be submitted by end of the following month after the end of the quarter.

## PART VI: REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

### 6.1 Remedial measures

If an institution fails to comply with this guideline, the Central Bank may pursue any or all corrective actions as provided under Sections 33 and 34 of the Banking Act.

### 6.2 Administrative sanctions

In addition to the use of Remedial measures noted in 6.1 above, the Central Bank may pursue any or all of the following administrative sanctions against an institution, its board of directors, or its officers:

1) Prohibition from engaging in any further foreign exchange activities;

2) Prohibition from declaring or paying dividends;

3) Prohibition from establishing new branches or facilities;

4) Prohibition from engaging in new activities or from expanding existing activities;

5) Suspension of access to Central Bank credit facilities;

6) Suspension of lending, investment, and credit granting operations;

7) Prohibition from acquiring, through purchase or lease, additional fixed assets;

8) Prohibition from accepting further deposits or other lines of credit;

9) Prohibition from declaring or paying bonuses, salary incentives, severance packages, management fees or other discretionary compensation to directors or officers.

## PART VII: EFFECTIVE DATE

7.1 **Effective date**: The effective date of this guideline shall be 1st January, 2006

7.2 **Supersedence**

This guideline supersedes and replaces Prudential Regulation No. CBK/RG/10 on Risk Classification for Loans and Advances and Provisioning for Bad and Doubtful Loans and Advances issued by the Central Bank of Kenya in September, 2000.

**Enquires**

Enquiries on any aspect of these Guidelines should be referred to:

**Director,**
**Bank Supervision Department**
**Central Bank of Kenya**
**P.0. Box 60000**
**Nairobi**
**TEL.2860000** **e-mail:** ***fin@centralbank.go.ke***

**RISK CLASSIFICATION OF ASSETS AND PROVISIONING** CBK/PR4-1

**Name of Institution: .....**

**Period Ending: .....**

| | | LOCAL CURRENCY ASSETS | | | | FOREIGN CURRENCY ASSETS | | | | GRAND TOTAL | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G | H | I(A+E) | J(B+F) | K(C+G) | L(D+H) |
| No. | Classification | No.of A/cs | % of Total | Amount O/s | % of Total | No.of A/cs | % of Total | Amount O/s | % of Total | No.of A/cs | % of Total A/cs | Amount O/s | % of Total O/s |
| 1 | Normal | | | | | | | | | | | | |
| 2 | Watch | | | | | | | | | | | | |
| 3 | Substandard | | | | | | | | | | | | |
| 4 | Doubtful | | | | | | | | | | | | |
| 5 | Loss | | | | | | | | | | | | |
| 6 | Total | | | | | | | | | | | | |
| 7 | Other non-performing assets* | | | | | | | | | | | | |
| | **Provisioning** | | | | | | | | | | | | |
| 8 | Provisions held for normal accounts | | | | | | | | | | | | |
| 9 | Provisions required for normal (1% of 1) | | | | | | | | | | | | |
| 10 | Excess/(shortfall) in provs. held for normal a/cs(8-9) | | | | | | | | | | | | |
| 11 | Provs.held for watch a/cs | | | | | | | | | | | | |
| 12 | Provisions required for watch (3% of 2) | | | | | | | | | | | | |
| 13 | Excess/(shortfall) in provs. held for watch a/cs(11-12) | | | | | | | | | | | | |
| 14 | Discounted value of securities for sub-std a/cs | | | | | | | | | | | | |
| 15 | Interest in suspense for sub-std a/cs | | | | | | | | | | | | |
| 16 | Net substandard a/cs (3 - 14-15) | | | | | | | | | | | | |
| 17 | Provs. held for sub-std a/cs | | | | | | | | | | | | |
| 18 | Provs. required for sub-std a/cs ( 20% of 16) | | | | | | | | | | | | |
| 19 | Excess/(shortfall) in provs. held for sub-std a/cs(17-18) | | | | | | | | | | | | |
| 20 | Discounted value of securities for doubtful a/cs | | | | | | | | | | | | |
| 21 | Interest in suspense for doubtful a/cs | | | | | | | | | | | | |
| 22 | Net doubtful a/cs (4 - 20-21) | | | | | | | | | | | | |
| 23 | Provs. held for doubtful a/cs | | | | | | | | | | | | |
| 24 | Provisions required for doubtful a/cs ( 100% of 22) | | | | | | | | | | | | |
| 25 | Excess/(shortfall) in provs. held for doubtful a/cs(23-24) | | | | | | | | | | | | |
| 26 | Interest in Susp. for loss a/cs | | | | | | | | | | | | |
| 27 | Net Loss accounts (5-26) | | | | | | | | | | | | |
| 28 | Provisions held for loss a/cs | | | | | | | | | | | | |
| 29 | Provisions required for loss a/cs(100% of 27) | | | | | | | | | | | | |
| 30 | Excess/(shortfall) in provs.held for loss a/cs(28-29) | | | | | | | | | | | | |
| 31 | Total provisions held(8+11+17+23+28) | | | | | | | | | | | | |
| 32 | Total provisions required (9+12+18+24+29) | | | | | | | | | | | | |
| 33 | Total Excess/(Shortfall) in Provisions(31-32) | | | | | | | | | | | | |
| 34 | Provisions for other non-performing assets(100%) | | | | | | | | | | | | |

**AUTHORIZED SIGNATORY:**

**Name of Officer:.....**

**Designation .....**

**Signature..... Date.....…**

* Specify this in a separate attachment

## RISK CLASSIFICATION OF ASSETS AND PROVISIONING-SCHEDULE OF OTHER NON PERFORMING ASSETS

Name of Institution……

Period Ending……

| Type of Asset | Amount Outstanding(Carrying Value)-Kshs. M | Realizable Amount-Kshs. M | Impairment Loss/Provisions-Kshs. M |
|---|---|---|---|
| | | | |
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| | | | |
| TOTAL | | | |

**LOANS AND ADVANCES PERFORMANCE REPORT** CBK/PR4-2

**Name of Institution: .....**
**Period Ending: .....**

## A. LOANS

| | | LOCAL CURRENCY | | | FOREIGN CURRENCY | | | GRAND TOTAL | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G | H | I | J |
| NO. | PERIOD OF PAST DUE | No. of A/cs | Amount Shs'000' | % of Total | No. of A/cs | Amount Shs'000' | % of Total | No of Accounts | % of Total | Amount Shs'000' | % of Total |
| 1 | 30 to 90 days | | | | | | | | | | |
| 2 | More than 90 to 180 days. | | | | | | | | | | |
| 3 | More than 180 days | | | | | | | | | | |
| 4 | More than 180 days with no security value | | | | | | | | | | |
| 5 | **Total past due** | | | | | | | | | | |
| | | | | | | | | | | | |
| 6 | **UP-TO-DATE PERFORMING FACILITIES** | | | | | | | | | | |
| 7 | **TOTAL (5+6)** | | | | | | | | | | |

## B. DISCOUNTED BILLS

| | | LOCAL CURRENCY | | | FOREIGN CURRENCY | | | GRAND TOTAL | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G | H | I | J |
| NO. | PERIOD OF PAST DUE | No. of A/cs | Amount Shs'000' | % of Total | No. of A/cs | Amount Shs'000' | % of Total | No of Accounts | % of Total | Amount Shs'000' | % of Total |
| 1 | 30 to 90 days | | | | | | | | | | |
| 2 | More than 90 to 180 days. | | | | | | | | | | |
| 3 | More than 180 days | | | | | | | | | | |
| 4 | More than 180 days with no security value | | | | | | | | | | |
| 5 | **Total past due** | | | | | | | | | | |
| | | | | | | | | | | | |
| 6 | **UP-TO-DATE PERFORMING FACILITIES** | | | | | | | | | | |
| 7 | **TOTAL (5+6)** | | | | | | | | | | |

## C. OVERDRAFTS

| | | LOCAL CURRENCY | | | FOREIGN CURRENCY | | | GRAND TOTAL | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G | H | I | J |
| NO. | PERIOD OF PAST DUE | No. of A/cs | Amount Shs'000' | % of Total | No. of A/cs | Amount Shs'000' | % of Total | No of Accounts | % of Total | Amount Shs'000' | % of Total |
| 1 | Accounts in excess of approved limit for 30 to 90 consecutive days. Borrowing line has expired for 30 to 90 days.Interest is due and unpaid for 30 to 90 days. A/c inactive for 30 to 90 days | | | | | | | | | | |

## LOANS AND ADVANCES PERFORMANCE REPORT

CBK/PR4-2

Name of Institution: .....

Period Ending: .....

### C. OVERDRAFTS

| | | LOCAL CURRENCY | | | FOREIGN CURRENCY | | | GRAND TOTAL | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G | H | I | J |
| NO. | PERIOD OF PAST D | No. of A/cs | Amount Shs'000' | % of Total | No. of A/cs | Amount Shs'000' | % of Total | No of Accounts | % of Total | Amount Shs'000' | % of Total |
| 2 | Exceeds approved limit for more than 90 to 180 consecutive days. Borrowing line has expired for more than 90 to 180 days. Interest is due and unpaid for more than 90 to 180 days. A/c inactive for more than 90 to 180 days. Deposits insufficient to cover interest | | | | | | | | | | |
| 3 | Exceeds approved limit for over 180 days . Borrowing line expired for over 180 days. Account inactive for over 180 days . | | | | | | | | | | |
| 4 | Account with permanent hard-core with no transactions The security value is zero. | | | | | | | | | | |
| 5 | Total past due | | | | | | | | | | |
| | | | | | | | | | | | |
| 6 | ACCOUNTS OPERATING WITHIN LIMIT | | | | | | | | | | |
| 7 | TOTAL (5+6) | | | | | | | | | | |

### D. SUMMARY

| | | LOCAL CURRENCY | | | FOREIGN CURRENCY | | | GRAND TOTAL | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | G | H | I | J |
| NO. | PERIOD OF PAST D | No. of A/cs | Amount Shs'000' | % of Total | No. of A/cs | Amount Shs'000' | % of Total | No of Accounts | % of Total | Amount Shs'000' | % of Total |
| 1 | Total past due (A5+B5+C5) | | | | | | | | | | |
| 2 | Total up-to-date performing facilities (A6+B6+C6) | | | | | | | | | | |
| 3 | TOTAL LOANS AND ADVANCES | | | | | | | | | | |

AUTHORIZED SIGNATORY:

Name of Officer:.....

Designation .....

Signature.....Date.....

# ADVANCES, BILL DISCOUNTS AND OTHER FACILITIES TO ANY PERSON OR CONNECTED GROUP EXCEEDING 25% OF CORE CAPITAL

CBK/PR4-3

Name of Institution: …….....……

Period ending: …….....……..

Core Capital (shs): .....…….....……

(SHS '000)

| ACCOUNT | | DIRECTOR/OWNER | | LOANS AND OVERDRAFTS | BILLS DISCOUNTED | OTHER FACILITIES | TOTAL OUTSTANDING BALANCE | INTEREST IN SUSPENSE | SPECIFIC PROVISIONS HELD | NET OUTSTANDING BALANCE | NET OUTSTANDING BALANCE TO CORE CAPITAL (% ) | CLASSIFICATION CATEGORY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| NAME | PIN NO. | NAME | PIN NO. | | | | | | | | | |
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**AUTHORIZATION**

Name of Officer.....

Designation.....

Signature..... Date.....

# ADVANCES, BILL DISCOUNTS AND OTHER FACILITIES TO STAFF MEMBERS, SHAREHOLDERS, DIRECTORS AND THEIR ASSOCIATES

CBK/PR 4-4

Name of Institution: .....

Period ending: .....

Core Capital (shs): ..... (SHS '000)

| | Account | | Director/Owner | | Outstanding Balance | | | Security | | Interest | Specific | Net O/S | Classification |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Name | PIN. No. | Name | PIN No. | On-Balance Sheet | Off-balance Sheet | Total | Nature | Value | In Suspense | Provisions Held | Balance to Core Cap.(%) | Category |
| 1 | Staff Members* | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | |
| 4 | | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | | |
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| . | | | | | | | | | | | | | |
| N | Total | | | | | | | | | | | | |

*Indicate total credit facilities extended to staff members. For staff members who are directors, their credit facilities should be reported individually.

AUTHORIZATION

Name of Officer .....

Designation.....

Signature..... Date.....

## LARGER EXPOSURES: 50 LARGEST BORROWERS

CBK/PR4-5

NAME OF INSTITUTION: .....

STATEMENT FOR PERIOD ENDING: .....

FIGURES IN KSHS. "000"

| | 1 | | 2 | | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | COMPANY/GROUP | | DIRECTOR/OWNER | | CREDIT FACILITIES | DATE | LIMIT | OUTSTANDING BALANCE | | | |
| | NAME | PIN NO. | NAME | PIN NO. | | | | On-Balance Sheet | Off-Balance Sheet | TOTAL | GROUP TOTALS |
| 1 | | | | | | | | | | - | |
| 2 | | | | | | | | | | - | |
| 3 | | | | | | | | | | - | |
| 4 | | | | | | | | | | - | |
| 5 | | | | | | | | | | - | |
| 6 | | | | | | | | | | - | |
| 7 | | | | | | | | | | - | |
| 8 | | | | | | | | | | - | |
| 9 | | | | | | | | | | - | |
| 10 | | | | | | | | | | - | |
| - | | | | | | | | | | - | |
| - | | | | | | | | | | - | |
| - | | | | | | | | | | - | |
| - | | | | | | | | | | - | |
| - | | | | | | | | | | - | |
| 49 | | | | | | | | | | - | |
| 50 | | | | | | | | | | - | |
| 51 | TOTAL OF TOP 50 | | | | | | | | | - | |
| 52 | TOTAL LOANS & ADVANCES | | | | | | | | | | |
| 53 | TOP 50 AS % TOTAL | | | | | | | 0% | 0% | 0% | 0% |

## LARGER EXPOSURES: 50 LARGEST BORROWERS

CBK/PR4-5

NAME OF INSTITUTION: .....

STATEMENT FOR PERIOD ENDING: .....

FIGURES IN KSHS. "000"

| | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | CLASSIFICATION CATEGORY | SECURITY | | | | | INTEREST IN SUSPENSE | SPECIFIC PROVISIONS HELD | ADDITIONAL PROVISIONS REQUIRED (6-12-16-17) |
| | | Type | Value | Amount Charged | Date of Valuation | Valuer | | | |
| 1 | | | | | | | | | |
| 2 | | | | | | | | | |
| 3 | | | | | | | | | |
| 4 | | | | | | | | | |
| 5 | | | | | | | | | |
| 6 | | | | | | | | | |
| 7 | | | | | | | | | |
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| 9 | | | | | | | | | |
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| - | | | | | | | | | |
| - | | | | | | | | | |
| - | | | | | | | | | |
| - | | | | | | | | | |
| 49 | | | | | | | | | |
| 50 | | | | | | | | | |
| 51 | TOTAL OF TOP 50 | | | | | | | | |
| 52 | TOTAL LOANS & ADVANCES | | | | | | | | |
| 53 | TOP 50 AS % TOTAL | | | | | | | | |

**AUTHORIZATION**

Name of Officer .....

Designation .....

Signature .....Date.....

## COMPLETION INSTRUCTIONS

## FORM CBK/PR4-1: RISK CLASSIFICATION OF ASSETS AND PROVISIONING

### *General*

- This return should be completed strictly in accordance with the Prudential Guideline on Risk Classification of Assets and Provisioning.
- The reporting institution should report loans and advances in local and foreign currency separately and the total amounts as provided for in the return.
- The gross amounts for loans and advances should agree with or should be capable of being derived from the figures reported in other returns.

1. Enter in lines 1 to 5 the number of accounts, percentages, number of customers and the amounts in each of the categories of Normal Risk; Watch; Sub-standard; Doubtful and Loss: as per the provisioning guideline provided.
2. Enter in line 6 the gross loans and advances. (Sum of line 1 to 5).
3. Enter in line 7 the gross amounts of other non-performing assets.
4. Enter in line 8 specific provisions held for normal accounts.
5. Enter in line 9 the amounts of specific provisions required for normal accounts. The provisions required are 1% of the value of loans and advances in normal category.
6. Enter in line 10 the difference between provisions held and provisions required for normal accounts (difference between line 8 and 9)
7. Enter in line 11 specific provisions held for watch accounts.
8. Enter in line 12 the amounts of specific provisions required for normal accounts. The provisions required are 3% of the value of loans and advances in watch category.
9. Enter in line 13 the difference between provisions held and provisions required for watch accounts (difference between line 11 and 12)
10. Enter in line 14 the discounted value of securities in substandard categories. The value of securities reported should be for those securities which are transferable and for which active market exists. In arriving at this aggregated figure, the value of securities for individual accounts should be limited to the loan outstanding.
11. Enter in line 15 interest in suspense for substandard accounts.
12. Enter in line 16 the net amount of substandard accounts.
13. Enter in line 17 the specific provisions held for substandard accounts.

14. Enter in line 18 the specific provisions required for substandard accounts. The provisions required are 20% of the value of loans and advances in substandard accounts after deducting interest in suspense and discounted value of securities.

15. Enter in line 19 the difference between provisions held and provisions required for substandard accounts (difference between line 17 and 18).

16. Enter the discounted value of securities for doubtful accounts. The value of securities reported should be for those securities which are transferable, and for which active market exists. In arriving at this aggregated figure, the value of securities for individual accounts should be limited to the loan outstanding.

17. Enter in line 21 interest in suspense held for doubtful accounts.

18. Enter in line 22 the net amount of doubtful accounts.

19. Enter in line 23 the specific provisions held for doubtful accounts.

20. Enter in line 24 the specific provisions required for doubtful accounts. The provisions required are 100% of the value of loans and advances in doubtful accounts after deducting interest in suspense and discounted value of securities.

21. Enter in line 25 the difference between provisions held and provisions required for doubtful accounts (difference between line 19 and 20).

22. Enter in line 26 interest in suspense for loss for accounts.

23. Enter in line 27 values of loss accounts net of interest in suspense.

24. Enter in line 28 specific provisions held for loss accounts.

25. Enter in line 29 the specific provisions required for loss accounts. The provisions required are 100% of the value of loans and advances in loss accounts after deducting interest in suspense.

26. Enter in line 30 the difference between provisions held and provisions required for loss accounts (difference between line 28 and 29).

27. Enter in line 31 the gross specific provisions held for normal, watch, substandard, doubtful and loss accounts.

28. Enter in line 32 gross provisions required for all categories as per the guideline.

29. Enter in line 33 the difference between gross provisions held and gross provisions required for all categories of the accounts (difference between line 31 and32).

30. Enter in line 34 provisions held for all other non performing accounts. The provisions held should be 100% of the value of other non performing assets.

## FORM CBK/PR 4-2: LOANS AND ADVANCES PERFORMANCE REPORT

Enter the number of accounts and amounts past due in the relevant spaces. The total figure in line D3 should agree with the total in line 6 of Form CBK/PR 4-1.

## FORM CBK/PR 4-3: ADVANCES, BILLS DISCOUNTED AND OTHER FACILITIES TO ANY PERSON OR CONNECTED GROUP EXCEEDING 25% OF CORE CAPITAL

(a) Connected group is defined as companies with common director(s)/shareholder(s).

(b) List the accounts in each group to obtain a group total.

(c) Other facilities include Guarantees, Letters of Credit, Acceptances, Bonds etc.

(d) Core capital reported should be as computed under Guideline No. CBK/PG/03 and reported on PR 3.

## FORM CBK/PR 4-4: ADVANCES, BILLS DISCOUNTED AND OTHER FACILITIES TO STAFF MEMBERS, SHAREHOLDERS, DIRECTORS AND THEIR ASSOCIATES

(a) Enter the total value of all borrowings by:

i. All staff members combined. In case of staff members who are directors, their credit facilities should be reported by individual name.

ii. Any shareholder who holds directly or indirectly or has a beneficial interest of more than 5% of the paid-up capital of the institution.

iii. The directors of the reporting institution.

iv. Any associate of any shareholder and/or director.

v. Any associate of the institution. An Associate is defined in Section 2(2) of the Banking Act.

(b) Where two or more entities form part of a group, the total amount borrowed by the group should be indicated as follows:

i. Name of principal entity should be stated at the head of the list and

ii. Other individual entities within the group should be listed in a descending order depending on the amount borrowed or outstanding balance.

(c) Group all borrowings relating to a particular director or shareholder together quoting the name of the director or shareholder at the head of the list and quote in sequence the names of the borrowers.

(d) Off-balance sheet items include guarantees, letters of credit, acceptances, bonds etc.

(e) Core capital reported should be as computed under Guideline No. CBK/PG/03 and reported on PR 3.

## FORM CBK/PR 4-5: FIFTY LARGEST BORROWERS

1. Column 1: Enter the name of the entity and the Pin Number i.e. Company or individual. In the case of a company, list the directors. For the purpose of this return, lending to a group shall be aggregated and each company's/individual's facilities listed together with the respective directors. Consequently, where two or more entities form part of a group, the total amount borrowed by the group should be treated as a single borrowing for purposes of this return.

2. Column 2: Enter the the name and Personal Identification Number of the directors of the borrowing entity.

3. Column 3: State the nature of lending viz.: loan, overdrafts, bills discounted etc.

4. Column 4: Indicate the date when the facility was granted or renewed.

5. Column 5: Enter the authorized limit.

6. Column 6: Enter the outstanding balance of the on-balance items.

7. Column 7: Enter the outstanding balances in respect of guarantees, letters of credit, acceptances, bonds etc.

8. Column 10: Enter the type of security.

9. Column 11: Enter the discounted value of security.

10. Column 12: Enter the amount charged.

11. Column 13: Enter the date when the security was last valued.

12. Column 14: Enter the name of the firm, which valued the security.

13. Column 15: For the non-performing advances, enter the total interest in suspense.

14. Column 16: For the non-performing advances enter the specific provisions held.

15. Column 17: Additional provisions required for advances classified under substandard, doubtful and loss categories to be calculated as on-balance sheet outstanding balance less discounted realisable value of security, interest in suspense and provisions held. Where the resultant sum is negative, additional provisions to be indicated as NIL.

## CONTENTS

## PART I: PRELIMINARY

1.1 **Title:** Guideline on Liquidity Management

1.2 **Authorization:** This Guideline is issued under Section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3 **Application:** This Guideline shall apply to all institutions licensed under the Banking Act (Cap 488) to conduct business in Kenya.

1.4 **Definitions:**

1.4.1 **Short Term Liabilities:** These are liabilities that have matured and those that are due to mature within 91 days and have cash flow implications.

1.4.2 **Deposits:** For purposes of this Guideline, deposits are as defined under Section 2 of the Banking Act

Other terms used in this Guideline are as defined in the Banking Act.

## PART II: STATEMENT OF POLICY

2.1 **Purpose:**

The purpose of this Guideline is to:

- Ensure each institution meets the minimum liquidity requirements.
- Provide guidance on compilation of liquidity returns.
- Ensure accuracy and uniformity in the computation of the liquidity ratio in the banking sector.
- Ensure timely submission of liquidity and maturity analysis of assets and liabilities returns to the Central Bank of Kenya.
- Guide institutions in the formulation of liquidity management strategies, policies, procedures, management information systems, internal controls and contingency plans for unexpected distress situations.

2.2 **Scope:** This Guideline applies to an institution's compliance with statutory liquidity requirements and management of liquidity.

2.3 **Responsibility:** It is the responsibility of the board of directors of each institution to develop and document liquidity management strategy and relevant policies. The strategy and policies should be communicated to executive and senior management and all other appropriate staff members for execution.

It should be borne in mind that although the statutory prescribed minimum liquidity requirement is 20% of deposit liabilities, matured and short term liabilities, liquidity requirements vary from institution to institution depending on cash flow requirements. Each institution shall therefore identify its unique liquidity requirements over specific time periods and plan for appropriate funding.

## PART III: BACKGROUND

The objective of liquidity management is to ensure that an institution is able to meet, in full, all its obligations/commitments as they fall due. An institution is required to hold adequate liquid assets to fund maturing claims for prudent business management. It is therefore important for management to not only measure liquidity on an on-going basis, but also to examine ways of how to fund liquidity requirements during distress situations.

## PART IV: SPECIFIC REQUIREMENTS

4.1 **Statutory Requirements:** Under section 19 of the Banking Act, an institution shall maintain such minimum holding of liquid assets as the Central Bank may from time to time determine. Currently an institution is required to maintain a statutory minimum of twenty per cent (20%) of all its deposit liabilities, matured and short term liabilities in liquid assets.

4.2 **Liquidity Management:** In addition to complying with the minimum statutory requirements under section 19 of the Banking Act, management of an institution should put in place mechanisms that will flag out potential funding problems in order to explore ways and means of raising additional funds of the right type and amount. Liquidity Management should, as a minimum, address the following:

### 4.2.1 Liquidity Management Strategy

This is a brief statement of an institution's longer term approach to liquidity, including management of its liquidity and maturity mismatch positions. This should be consistent with the institution's business lines and size of balance sheet.

### 4.2.2 Management Structure and Information Systems

An institution should have an adequate information system for measuring, monitoring, controlling and reporting liquidity requirements. This system should be integrated in the overall management information systems of the institution.

To supplement the management information system, an institution should have an appropriate management reporting structure to effectively execute the liquidity strategy, with the use of appropriate policies and procedures.

### 4.2.3 Measuring and Monitoring Net Funding Requirements:

An institution should have a process of assessing cash inflows against its outflows to identify the potential for any shortfall. This should incorporate funding requirements for off-balance sheet items. Assumptions made in making cash flow projections should be clear and documented. They should be subject to frequent reviews to determine the validity of underlying factors. Less frequent, but more in-depth reviews should be carried

out to re-examine and refine institution's liquidity policies and practices in the light of its experience and developments in its business and economic environments.

### 4.2.4 Contingency Planning

Contingency plans to handle liquidity crises should be put in place. The strategy should include procedures for making up liquidity shortfalls in emergency situations. Each institution should develop a back-up liquidity strategy for circumstances in which its normal approach to funding operations is disrupted.

### 4.2.5 Foreign Currency Liquidity Management

Each institution should have a measurement, monitoring and control system for its liquidity positions in major currencies traded; both in terms of aggregate foreign currency needs and for each currency individually.

### 4.2.6 Internal Controls for Liquidity Management

An institution should have an adequate system of internal controls over its liquidity management process. There should be regular, independent reviews and evaluations of the effectiveness of the system.

The internal control system for liquidity should be integrated with the overall system of internal control and it should promote effective and efficient operations, reliable financial and regulatory reporting, and compliance with applicable laws, regulatory requirements and institution's own policies.

## PART V: RETURNS AND COMPLETION INSTRUCTIONS

An institution shall provide data on its liquidity in the prescribed format (Form CBK/PR5-2 {Liquidity statement}) and in accordance with the completion instructions attached, after each ten (10) working days period. The data should be submitted within five (5) working days after the reporting date.

In addition to the liquidity ratio data, an institution shall provide data on maturity analysis of its assets and liabilities in the prescribed format (Form CBK/PR5-1 {Maturity Analysis of Assets and Liabilities}) on a quarterly basis and in accordance with the completion instructions attached. This data should be received by CBK on or before the last working day of the month following the end of quarter.

Maturity analysis of off-balance sheet items that have cash flow implications should also be analyzed in this return. The maturity time band will depend on the management judgment of when the commitments will be likely to be called or drawn down.

## PART VI: REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

### 6.1 Remedial Measures

6.1.1 If an institution fails to comply with the provisions of section 19 of the Banking Act, the Central Bank of Kenya shall take action as per Banking Circular No. 14 of 2000 and Legal Notice No. 77 of 10th June, 1999.

6.1.2 If an institution is unable to fund its liquidity mismatch, it shall forthwith, in writing, report its inability to the Central Bank of Kenya, Bank Supervision Department, stating reasons for such failure and/or inability, and measures being taken to rectify the situation.

6.1.3 Institutions submitting late and/or inaccurate returns shall be penalized and officers held accountable and liable in accordance with the provisions of the Banking Act and CBK Prudential Guidelines.

### 6.2 Administrative Sanctions

The conditions to be given shall generally cover management and control of liquidity exposures, and conduct of the concerned institution's business, but may specifically include the following:

6.2.1 Imposition of penalties under relevant sections of the Banking Act.

6.2.2 Suspension of lending activities and undertaking any new business.

6.2.3 Suspension from taking new deposits to retire maturing ones.

6.2.4 Recommending suspension from clearing house.

6.2.5 Prohibition of acquisition of additional non-core assets.

6.2.6 Prohibition from declaring dividends or paying bonuses, salary incentives, and other discretionary compensation to directors and/or officers of the institution.

6.2.7 Prohibition or suspension from any other activity (ies) that Central Bank perceives to be contributing to liquidity strain in the affected institution.

## PART VII

1. **Effective Date:** This Guideline takes effect from 1st January, 2006

2. **Supersedence**: This Guideline supersedes Prudential Regulation no. CBK/RG/05 on Liquidity Requirements issued in September 2000

**ENQUIRIES**

Any enquiries should be addressed to the

Director,
Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000 - 00200
**NAIROBI**
TEL. 2860000 e-mail: *fin@centralbank.go.ke*

# MATURITY ANALYSIS OF ASSETS AND LIABILITIES

CBK/PR5-1

**Name of Institution.....**

**Period Ending.....**

**SHS'000**

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|---|
| **A. ASSETS** | Matured | Maturing in Less than 1 month | 1 month less than 3 months | 3 months less than 6 months | 6 months less than 1 year | 1 year less than 3 years | 3 years less than 5 years | Over 5 years | **Total** |
| 1. Cash reserves | | | | | | | | | |
| 2. Balances with Central Bank of Kenya | | | | | | | | | |
| 3. Balances due from local institutions & Bldg Societies | | | | | | | | | |
| 4. Balances due from banks abroad | | | | | | | | | |
| 5. Kenya govenment Treasury Bills | | | | | | | | | |
| 6. Kenya Government Treasury Bonds | | | | | | | | | |
| 7. Foreign Government Treasury Bills and Bonds | | | | | | | | | |
| 8. Other investments | | | | | | | | | |
| 9. Other foreign assets | | | | | | | | | |
| 10. Local currency loans and advances (net) | | | | | | | | | |
| 11.Foreign currency loans and advances (net) | | | | | | | | | |
| 12.Fixed Assets(net) | | | | | | | | | |
| 13.Balances due from group companies | | | | | | | | | |
| 14.Other assets | | | | | | | | | |
| **15. TOTAL ASSETS** | | | | | | | | | |
| 16. Off-balance sheet assets | | | | | | | | | |
| **B. LIABILITIES** | | | | | | | | | |
| 1. Balances due to Central Bank of Kenya | | | | | | | | | |
| 2. Balances due to local institutions & Bldg Societies | | | | | | | | | |
| 3. Balances due to banks abroad | | | | | | | | | |
| 4. Local currency deposits | | | | | | | | | |
| 5. Local currency borrowings | | | | | | | | | |
| 6. Foreign currency deposits | | | | | | | | | |
| 7. Foreign currency borrowings | | | | | | | | | |
| 8. Other foreign liabilities | | | | | | | | | |
| 9. Balance due to group companies | | | | | | | | | |
| 10. Other Liabilities | | | | | | | | | |
| 11. Capital and Reserves | | | | | | | | | |
| **12. TOTAL LIABILITIES** | | | | | | | | | |
| 13. Off-balance sheet liabilities | | | | | | | | | |
| **C. NET POSITION ON-BALANCE SHEET ITEMS (A15-B12)** | | | | | | | | | |
| **D. NET POSITION OFF-BALANCE SHEET ITEMS (A16-B13)** | | | | | | | | | |

**AUTHORIZATION**

**Name of Officer.....**

**Designation.....**

**Signature: ---------- Date: .....**

**CONFIDENTIAL** CBK/PR 5-2

**LIQUIDITY STATEMENT**

Name of Institution _____

Reporting Date: _____

**NOTES ON COMPLETION**

1. Forward the return within one week after reporting dates as at 10th, 20th and last day of each month.

   To : The Director, Financial Institutions Supervision Department
   Central Bank of Kenya, P. O. Box 60000-00200, NAIROBI.

**DECLARATION**

We declare that this return has been prepared from the books of the institution and that to the best of our knowledge and belief is correct.

Signed: _____ _____

CHIEF EXECUTIVE CHIEF ACCOUNTING OFFICER

**Name of Institution……**
**Reporting Date:……..……**

| | | | SHS'000 |
|---|---|---|---|
| 1. | **NOTES AND COINS** | | |
| | (a) Local | _____ | |
| | (b) Foreign | _____ | _____ |
| 2. | **BALANCES WITH CENTRAL BANK OF KENYA** | | |
| | (a) Balances with Central Bank | _____ | |
| | (b) Less: Borrowings from Central Bank | _____ | _____ |
| 3. | **BALANCES WITH DOMESTIC COMMERCIAL BANK** | | |
| | (a) Balances with banks | _____ | |
| | Less : | | |
| | (b) Time deposits with banks | _____ | |
| | (c) Balances due to banks | _____ | |
| | (d) Overdrafts and matured loans/ advances | _____ | _____ |
| 4. | **BALANCES WITH BANKS ABROAD** | | |
| | (a) Balances with banks abroad | _____ | |
| | Less | | |
| | (b) Time Deposits with banl abroad | _____ | |
| | (c) Balances due to banks abroad | _____ | |
| | (d) Overdrafts and matured loans/advances from banks abroad | _____ | _____ |
| 5. | **BALANCES WITH FINANCIAL INSTITUTIONS** | | |
| | (a) Balances with financial institutions | _____ | |
| | Less : | | |
| | (b) Time deposits with financial institutions | _____ | |
| | (c) Balances due to financial institutions | _____ | |
| | (d) Matured loans/ advances from financial institutions | _____ | _____ |
| 6. | **BALANCES WITH MORTGAGE FINANCE COMPANIES** | | |
| | (a) Balances with mortgage finance companies | _____ | |
| | Less : | | |
| | (b) Time deposits with mortgage finance companies | _____ | |
| | (c) Balances due to mortgage finance companies | _____ | |
| | (d) Matured loans/ advances from mortgage companies | _____ | _____ |

7. **BALANCES WITH BUILDING SOCIETIES**

(a) Balances with building societies _____

Less :

(b) Time deposits with building societies _____
(c) Balances due to building societies _____
(d) Matured loans/ advances from building societies _____ _____

8. **TREASURY BILLS** _____

9. **TREASURY BONDS** _____

10 **FOREIGN TREASURY BILLS & BONDS** _____

11 **NET LIQUID ASSETS (1 - 10)** _____

12 **DEPOSIT BALANCES**

(a) (i) Deposits from parastatals including accrued interest _____
(ii) Deposits from all other sources including accrued interest _____
(iii) Total deposits _____

b) Less :

(i) Balances due to banks _____
(ii) Balances due to financial institutions _____
(iii) Balances due to mortgage finance companies _____
(iv) Balances due to building societies _____ _____
(v) Total deductions _____ _____
c) Net Deposit Liabilities _____

13 **OTHER LIABILITIES**

(a) Matured _____
(b) Maturing within 91 days _____
c) Total Other Liabilities _____

14 **LIQUIDITY RATIO**

(a) Net Liquid Assets (1 - 10) _____
(b) Total Short term Liabilities 12 (c)+13 ( c ) _____
(c) Ratio of (a)/(b) _____

**Notes**

1 - For overdrafts include all overdrafts and any debit balances on current accounts.

**ANALYSIS OF BALANCES DUE TO/FROM OTHER BANKING INSTITUTIONS**

**I. DOMESTIC INSTITUTIONS**

| INSTITUTION | AMOUNT DUE TO | AMOUNT DUE FROM | NET |
|---|---|---|---|
| BANKS | | | |
| TOTAL | | | |
| FINANCIAL INSTITUTIONS | AMOUNT DUE TO | AMOUNT DUE FROM | |
| | | | |
| TOTAL | | | |
| MORTGAGE FINANCE COMPANIES | AMOUNT DUE TO | AMOUNT DUE FROM | |
| | | | |
| TOTAL | | | |
| BUILDING SOCIETIES | AMOUNT DUE TO | AMOUNT DUE FROM | |
| | | | |
| TOTAL | | | |

**ANALYSIS OF BALANCES DUE TO/FROM OTHER BANKING INSTITUTIONS**

**II. FOREIGN INSTITUTIONS**

| INSTITUTION | AMOUNT DUE TO | AMOUNT DUE FROM | NET |
|---|---|---|---|
| BANKS | | | |
| TOTAL | | | |
| FINANCIAL INSTITUTIONS | AMOUNT DUE TO | AMOUNT DUE FROM | |
| | | | |
| TOTAL | | | |
| MORTGAGE FINANCE COMPANIES | AMOUNT DUE TO | AMOUNT DUE FROM | |
| | | | |
| TOTAL | | | |
| BUILDING SOCIETIES | AMOUNT DUE TO | AMOUNT DUE FROM | |
| | | | |
| TOTAL | | | |

## INSTRUCTIONS FOR COMPLETION OF THE FORM ON MATURITY ANALYSIS OF ASSETS AND LIABILITIES – FORM CBK/PR5-1

### GENERAL

Assets and liabilities should be entered according to the remaining period to maturity.

### A. ASSETS

1. **Cash Reserves**
   Enter notes and coins (both local and foreign) held in the tills and vaults.

2. **Balances with Central Bank**.
   Enter all credit balances with Central Bank including the mandatory cash reserve, repos purchase and credit balance in any other current accounts maintained with Central Bank. They should be reported gross of accrued interest.

3. **Balances due from Local Institutions and Building Societies**
   Enter balances and placements with domestic institutions and building societies according to their remaining period to maturity. They should be reported gross of accrued interest.

4. **Balances due from banks abroad**
   Enter balances and placements with foreign institutions according to their remaining maturity. They should include accrued interest.

5. **Kenya Government Treasury Bills**
   These should be reported at amortized cost and should be entered according to their respective remaining period to maturity.

6. **Kenya Government Treasury Bonds**
   These should be reported at amortized cost if held to maturity or at fair value if held for trading purposes and should be entered according to their respective remaining period to maturity or when payment is expected.

7. **Foreign Government Treasury Bills and Bonds**
   These are securities issued by other sovereign governments, other than the Government of Kenya. These should be reported at amortized cost if held to maturity or at fair value if held for trading purposes and should be entered according to their respective remaining period to maturity or when payment is expected.

8. **Other investments**
   Enter equity and other local currency investments according to their respective maturity dates. Equity investments should be entered in column 8.

9. **Other foreign assets**
   Enter other foreign assets including foreign equity investments and bonds according to their respective period remaining to maturity or when they can be repaid.

**10. Local currency loans and advances**

Enter net outstanding local currency loans, bills discounted and other loans. Loans should be entered according to their respective period remaining to maturity. Overdrafts should be spread out and entered in the appropriate time bands according to their respective expiry dates. Enter bills discounted in the appropriate time bands according their respective due dates. Non-performing loans, overdrafts and bills discounted should be entered in appropriate time bands when repayment can be realistically expected. Ordinarily this should exceed one year unless the recovery process has started and the exact date of repayment is known. All past due bills should be treated as non-performing.

**11. Foreign currency loans and advances**

Enter net outstanding foreign currency loans, bills discounted and any other foreign currency facility. Loans should be entered according to their respective period remaining to maturity. Enter bills discounted in the appropriate time bands according their respective due dates. Non-performing loans and bills discounted should be entered in appropriate time bands when repayment can be realistically expected. Ordinarily this should exceed one year unless the recovery process has started and the exact date of repayment is known. All past due bills should be treated as non-performing.

**12. Fixed assets**

Enter the net figure under item 12. These should include prepaid operating lease rentals.

**13. Balances due from group companies**

Enter balances due from group companies in appropriate time bands according to when payment is expected.

**14. Other assets**

Enter components of other assets under the appropriate time bands when receipts are realistically expected.

**15. Total assets**

Enter the sum of items 1 to 14 for each time band.

**16. Off-Balance Sheet Assets**

Enter off-balance sheet assets that have cash flow implications. Maturity bands will depend on management judgement of when the committments are likely to be drawn.

**B. LIABILITIES**

**1. Balances due to Central Bank of Kenya**

Enter balances due to Central Bank including repo sales in appropriate time bands according to the remaining period to maturity or when repayment is expected. They should be reported gross of interest accrued.

**2. Balances due to local institutions and Building Societies**

Enter balances and deposits due to domestic institutions and building societies according to their remaining period to maturity and should be reported gross of interest accrued.

**3. Balances due to banks abroad.**

Enter balances and deposits due to banks abroad according to their remaining period to maturity.

**4. Local currency deposits**

Enter outstanding balances of local currency deposits including accrued interest in accordance with their respective remaining period to maturity. Demand account deposits should be entered under column 1. Call and seven days deposits should be entered under column 2, but if notice of withdrawal has been given, then enter the amount to be withdrawn under column 1. Savings accounts deposits should be entered under column 2.

**5. Local currency borrowings**

Enter outstanding balances of local currency borrowings including accrued interest in accordance with their respective remaining period to maturity taking into account rollover commitments.

**6. Foreign currency deposits**

Enter outstanding balances of foreign currency deposits including accrued interest in accordance with their respective remaining period to maturity. Demand account deposits should be entered under column 1. Call and seven days deposits should be entered under column 2, but if notice of withdrawal has been given, then enter the amount to be withdrawn under column 1. Savings accounts deposits should be entered under column 2.

**7. Foreign currency borrowings**

Enter outstanding balances of foreign currency borrowings including accrued interest in accordance with their respective remaining period to maturity taking into account rollover commitments.

**8. Other foreign liabilities**

Enter other foreign liabilities not specified elsewhere according to their respective period remaining to maturity or when repayment is expected.

**9. Balances due to group companies**

Enter balances due to group companies in appropriate time bands according to when repayment is expected.

**10. Other liabilities**

Enter components of other liabilities under the appropriate time bands when receipts are realistically expected.

**11. Capital and Reserves**

Enter appropriately recognizing that most of the components should ordinarily be entered in column 8.

**12. Total liabilities**

Enter the sum of items 1 to 11 for each time band.

**13. Off-Balance Sheet Liabilities**

Enter off-balance sheet liabilities that have cash flow implications Maturity bands will depend on management judgement of when the committment are likely to be called up.

## COMPLETION INSTRUCTIONS FOR LIQUIDITY RETURN FORM CBK/PR5-2

1. **Notes and coins**

a) Local

Enter all notes and coins on the institution's premises (including mobile units) which are legal tender in Kenya.

b) Foreign

Enter the Kenyan shillings equivalent of all convertible foreign currencies held by the institution. CBK mean rates as on the reporting dates should be applied in converting foreign currencies into Kenya shillings.

2. **Balances with Central Bank of Kenya**

a) Balances with Central Bank

Enter all credit balances with the Central Bank, including the mandatory cash reserve and credit balance in any other accounts maintained with the Central Bank including balances held in Repo accounts in respect of purchases from CBK.

b) Borrowing from Central Bank

Enter all borrowings from the Central Bank; including accrued interest charged. Exclude balances due to CBK in respect of Repo sales to CBK.

All Central Bank balances should be reported as per institutions' ledger. Reconciliation between CBK statement balances and institution ledger will be submitted upon request by Central Bank of Kenya.

3. **Balances with Domestic Commercial Bank**

a) Balances with banks

Enter the total of all balances (credit current accounts balances, overnight, call and time) held at other domestic commercial banks excluding uncleared effects.

These balances should include accrued interest and should agree with the total analysed in the schedule attached to liquidity return.

b) Time Deposits with Banks

Enter the amount of time deposits including accrued interest entered in 3(a) above whose maturities exceed 91 days.

c) Balances Due to banks

Enter the total of balances due to commercial banks including accrued interest. This balance should agree with the total analysed in the table attached to the liquidity return.

d) Overdrafts and matured loans and advances from domestic banks

Enter the total of all overdrafts and any other debit balances on current accounts, matured loans and advances including letters of credit, guarantees and bonds given by commercial banks.

4. **Balances with banks abroad**

a) Balances with Banks Abroad

Enter balances with banks abroad, including balances with correspondent banks and both related and unrelated foreign branches of the reporting institution. This should include accrued interest but should exclude uncleared effects. They should also agree with the total analysed in the attached table.

b) Due to Banks Abroad

Enter the total of debit balances on current and/or correspondent accounts due to banks abroad including matured installments of loans and advances and accrued interest. These should agree with the balance analysed in the attached table.

5. **Balances with Financial Institutions**

a) Balances with Financial Institutions

Enter the total of all balances (overnight, call and time) placed with the institution, excluding uncleared effects. This should include accrued interest; and should agree with the total analysed in the table attached.

b) Time Deposits with Financial Institutions

Enter the amount of time deposits including accrued interest entered in 5(a) above whose maturities exceed 91 days.

c) Balances due to Financial Institutions

Enter the total of balances received from financial institutions including accrued interest. This balance should agree with the total analysed in the table attached and should exclude balances with institutions with maturities period exceeding 91 days.

d) Matured Loans and Advances Received from Financial Institutions

Enter the total of matured loans and advances including guarantees, bills discounted, promissory notes and performance bonds received from financial institutions.

6. **Balances with Mortgage Finance Companies**

a) Balances with Mortgage Finance Companies

Enter the total of all balances (overnight, call and time deposits) placed with the institution, excluding uncleared effects but including accrued interest.

b) Time Deposits with Mortgage Finance Companies

Enter the amount of time deposits including accrued interest included in line 6(a) above whose maturities exceed 91 days.

c) Balances due to Mortgage Finance Companies

Enter the total of all balances including accrued interest (overnight borrowings, and call placements) received from mortgage finance companies.

This balance should agree with the total analysed in the table attached to the liquidity return.

d) Matured loans and advances from Mortgage Finance Companies

Enter the total of matured loans and advances including guarantees, bills discounted, promissory notes and performance bonds received from mortgage finance companies.

7. **Balances with Building Societies**

a) Balances with Building Societies

Enter the total of all balances (call and time deposits) placed with building societies, including accrued interest. This balance should agree with the total analysed in the schedule attached to the return.

b) Time Deposits with Building Societies

Enter the amount of time deposits including accrued interest included in line 7(a) above whose maturities exceed 91 days.

c) Balances Due to Building Societies

Enter the total of all balances (call and time deposits, loans and advances) received from other building societies including accrued interest. This balance should agree with the total analysed in the table attached to the liquidity return.

d) Matured Loans and Advances from Building Societies

Enter the total of matured loans and advances received from building societies.

All deposits/placements with institutions/building societies under liquidation should not be reported as part of liquid assets.

8. **Kenya Government Treasury Bills**

Enter the amortized cost of all Kenya Government Treasury Bills investments by the reporting institution, net of encumbered Treasury Bills. Encumbered Treasury Bills are those pledged to secure any form of credit facility granted to the reporting institution. Treasury Bills held under repurchase agreements are encumbered and should not therefore be reported as part of liquid assets. Under the Repo agreement such treasury bills are to be held until maturity after which they are repurchased. Repo bills cannot therefore be negotiated/discounted during the tenure of the agreement.

9. **Kenya Government Treasury Bonds/ Bearer Bonds**

Enter the amortized cost or fair value of all treasury bonds/bearer bonds including government contractor bonds traded in the Nairobi Stock Exchange acquired by the reporting institution directly from the government and its issuing agents and those discounted from third parties.

Treasury bills and bonds pledged as security for the Intra-Day Liquidity Facility (ILF) shall be considered as part of liquid assets in the computation of liquidity ratio. However, in the event of failure to settle by the reporting institution, the ILF shall convert to an overnight facility (Lombard). The underlying pledged securities shall therefore become encumbered and cease to qualify for inclusion in liquidity computation.

10. **Foreign Government Treasury Bills and Bonds**

Enter the amortized cost or fair value of Treasury bills and bonds issued by other sovereign governments. These may only be included if they are:

- Freely marketable or readily discountable,
- The country of origin should not have any foreign exchange restrictions or controls.

11. **Total Liquid Assets**
Enter the sum of items 1 to 10 above

12. **Total Deposit Liabilities**

a) Enter total deposits (Local and Foreign Currency) from all sources, including accrued interest, but excluding uncleared effects.

b) **Less**:

i) Balances Due to banks
Enter the total of balances due to domestic and foreign commercial banks including accrued interest. This amount should agree with the sum of balances analysed in the attached table.

ii) Balances Due to Financial Institutions.
Enter the total amount of balances due to both domestic and foreign financial institutions including accrued interest. This amount should agree with the sum of balances in the attached table.

iii) Balances Due to Mortgage Finance Companies.
Enter the total amount of balances due to both domestic and foreign mortgage finance companies including accrued interest. This amount should agree with the sum in the attached table.

iv) Balances Due to Building Societies
Enter the total amount of balances due to domestic and foreign building Societies including accrued interest. This amount should agree with the sum in the attached table.

v) Total Deductions
Enter the total of items b (i) to b (IV)

c) Net Deposit Liabilities:
Enter the net amount of item 12(a) (iii) less sum of 12 (b) (v)

13. **Other liabilities:**

**a)** **Matured:** Enter the sum of all matured liabilities (Including crystallized off-balance sheet commitments) that have cash flow implications and are due for payment

**b)** **Maturing Liabilities:** Enter the sum of all other liabilities maturing within three months from the reporting date.

14. **Liquidity Ratio**

a) Total of items (1 - 10)
b) Sum of Group 12 (c) + 13 (c)
c) Ratio of [(a)/ (b)] x 100%

15. The liquidity return (PR 5-2) should be completed as per the instructions contained in this guideline, and should be submitted within five (5) clear working days after reporting dates of 10th, 20th and the last day of each month:

**ENQUIRIES**
Any enquiries should be addressed to the

Director,
Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000 - 00200
**NAIROBI**
TEL. 2860000 e-mail: *fin@centralbank.go.ke*

## CONTENTS

## PART I PRELIMINARY

1.1. **Title** - Guideline on Foreign Exchange Exposure Limits

1.2. **Authorisation** - This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3. **Purpose -** This Guideline is intended to ensure that the potential risk of loss arising from foreign exchange rate fluctuations to a bank's capital base is within prudential limits.

1.4. **Definitions**

a) "Foreign currency" means a currency other than legal tender of Kenya.

b) "Value date" of a transaction means the date on which it is to be executed.

c) "Spot value" means the transaction to which it is referred is to be executed two working days from the date it is contracted or agreed.

d) "Spot transaction" or "spot purchase" or "spot buy" or "spot sale" means a transaction having a spot value.

e) "Same day value" means the transaction to which it is referred is to be executed on the very day it is contracted or agreed.

f) "Same day transaction" or "same day purchase" or "same day buy" or "same day-sale" means a transaction having same day value.

g) "Forward transaction" or "forward purchase" or "forward buy" or "forward sale" means a transaction that is to be executed after more than two working days from the date the transaction is contracted or agreed.

h) "Long position" or "long open position" or "overbought position" of a financial institution in a foreign currency means the holding by the financial institution of that foreign currency for its own account in excess of all its contractual spot, same day value and forward transaction commitments in that foreign currency.

i) "Short position" or "short open position" or "oversold position" of a financial institution in a foreign currency means the holding by the financial institution of that foreign currency for its own account is less than all its contractual spot, same day value and forward transaction commitments in that foreign currency.

j) "Net open position" of a financial institution in a foreign currency means the net sum of all its assets and liabilities inclusive of all its spot, same day value and forward transactions and its off balance sheet items in that foreign currency.

k) "Foreign exchange business" means any facility offered, business undertaken or transaction executed with any person involving a foreign currency inclusive of any account facility, credit extension, lending, issuance of guarantee, counter-guarantee, purchase or sale by means of cash, cheque, draft, transfer or any other instrument denominated in a foreign currency.

## PART II IMPLEMENTATION AND SPECIFIC REQUIREMENTS

### 2.1. Limit on 'overall' foreign exchange risk exposure

The overall foreign exchange risk exposure as measured using spot mid-rates and shorthand method shall not exceed 20% of the institution's core capital.

### 2.2 Limit on "Single" currency foreign exchange risk exposure

The foreign exchange risk exposure in any single currency, irrespective of short or long position, will be determined by the individual institution provided it remains within the overall exposure limit of 20% of its core capital.

### 2.3. Limit on "intra-day" foreign exchange risk exposure.

Intra-day foreign exchange risk exposures, both in single currencies and overall, shall be maintained within prudent limits as established by a bank's board of directors in a written policy covering foreign exchange risk exposure.

### 2.4. Calculation of foreign exchange risk exposure

Each bank shall calculate its single currency and overall foreign exchange risk exposure daily using the methodology required by CBK.

### 2.5. Correction of excess foreign exchange risk exposures

Each bank shall take every reasonable action to immediately correct any and all foreign exchange risk exposures which exceed the limits set forth in this regulation and in its board-adopted policy. Failure to correct any non-complying risk exposure by the closure of business on the following day may result in administrative sanctions as set forth in this regulation.

### 2.6. Maintenance of supporting documentation

Each bank shall maintain records which are sufficient to determine at all times its single currency and overall foreign exchange risk exposures. Each bank shall also maintain a daily record showing close-of-business foreign exchange risk exposures (both single currencies and overall) and a reconciliation of opening-to-closing positions.

## PART III CALCULATION OF FOREIGN EXCHANGE RISK EXPOSURE

### 3.1. Calculation of Exposure on Net Open Position in a Single Currency

The measurement of an institution's exposure in a single currency involves determining if the financial institution has a long or short open position in that particular currency, and how large this position is. The open position in a currency is the sum of the net spot position and the net forward position. These are explained below as follows:

(a) **Net Spot Position**

The spot position is simply the position which appears directly on the balance sheet. The net spot position is the difference between foreign currency assets and liabilities in a particular currency. This must also include all accrued income and accrued expenses.

(b) **Net Forward Position**

The net forward position represents all amounts to be received less all amounts to be paid in the future in a particular currency as a result of foreign exchange transactions which have already taken place. These transactions which are recorded as off-balance sheet items would include:

(i) Spot transactions which are not yet settled

(ii) Forward foreign exchange transactions

(iii) Documentary credits, guarantees and similar commitments denominated in foreign currencies which are certain to be called upon and are likely to be irrevocable. In case of guarantees, this will arise after notice has been received by the bank.

(iv) Currency futures and Swaps

All amounts to be received less all amounts to be paid in the future as a result of transactions in currency futures, and also the principal on currency swaps, must be measured and included in the net forward position.

### 3.2. Calculations of Overall Foreign Exchange Risk Exposure

This involves measurement of risks inherent in a banking institution's mix of long and short positions in different currencies. Banking institutions will adopt the "shorthand method" for calculating the overall foreign exchange risk exposure or overall open position as follows:

a) Calculate the net open position in each currency (as above).
b) Arrive at the sum of all net short positions.
c) Arrive at the sum of all net long positions.

Overall foreign exchange risk exposure or overall open position is the higher of (b) and (c).

## PART IV REPORTING INSTRUCTIONS

### 4.1. General Instructions

Institutions will submit on a weekly basis, daily returns to the Central Bank as in the attached format (CBK/PR/6). Thus, five forms will be submitted on each Monday showing exposures for each business day in the preceding week. The amounts reported will be the foreign currency amounts recorded in the reporting banking institution's books as at the close of business at the end of each day, adjusted where necessary for transactions not posted as at the reporting date.

Structural positions, i.e. foreign currency capital assets and liabilities such as investments in subsidiaries, premises, loan capital, etc, that are of a fixed long-term nature, may be recorded by way of foot-notes to the return rather than in the body of the return.

Specified foreign currency details will be given in the return for those currencies with a total long or a total short position. Other unspecified currencies may be combined and reported in the row - "Others" of the return.

Amounts reported for each foreign currency, including forward transactions, will be translated into Kenya shillings (Kshs) at the mid point of the indicative spot TT buying and selling exchange rates. The exchange rates to be used will be CBK Mean rates issued daily by the Central Bank of Kenya. The exchange rates used will be recorded in the row designated "Exchange Rate", on the return.

Forward foreign exchange rates are different from the spot rates and take into account the respective levels of interest rates. Nevertheless, the exposures will be measured by using the above-mentioned spot indicative exchange rates and not the forward rates.

### 4.2 Completion and Submission of Daily Return

Notes on completion and submission of the daily return are annexed to this regulation.

## PART V CORRECTIVE MEASURES

### 5.1. Remedial Measures

If a bank fails to comply with this guideline in a manner that results, or threatens to result, in an unsafe or unsound condition, CBK may pursue any or all corrective actions as provided under section 33 and 34 of the Banking Act. However, before the sanctions are administered, the bank will be given opportunity to defend itself.

### 5.2. Administrative sanctions

In addition to the use of corrective actions noted in (1) above, the Central Bank of Kenya may prohibit the non-compliant institution from engaging in any further foreign exchange activities or impose any sanctions deemed necessary.

### 5.3. Penalties for Violation of Guidelines

Monetary penalties will be levied for violations of this guideline, as provided for in the Banking Act vide Legal Notice No.77 of 1999 under the Banking (Penalties) Regulations, 1999.

## PART VI EFFECTIVE DATE

6.1 **Effective Date** - The effective date of this guideline shall be 1st January 2006.

6.2 **Supersedence -** This Guideline supersedes and replaces Prudential Regulation No. CBK/RG/02 issued by CBK in September 2000.

**ENQUIRIES**: Any enquiries on this guideline should be forwarded to:
The Director
Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000 - 00200
**NAIROBI**
TEL.2860000 e-mail: *fin@centralbank.go.ke*

# REVISED FOREIGN EXCHANGE EXPOSURE

CBK/PR6

INSTITUTION: .....

REPORTING DATE: .....

Shs. '000'

| | | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|---|---|---|---|---|---|---|---|---|---|
| | **CURRENCY TYPE** | **USD** | **GBP** | **EURO** | **JPY** | **CHF** | **ZAR** | **OTHERS** | **TOTALS** |
| | **EXCHANGE RATE** | | | | | | | | |
| **1.** | **FOREIGN CURRENCY ASSETS** | | | | | | | | |
| **1.1** | **Balance Sheet Items** | | | | | | | | |
| 1.1.1 | Cash and Balances with Banks Abroad | | | | | | | | |
| 1.1.2 | Loans & Advances | | | | | | | | |
| 1.1.3 | Investment in Govt. Securities | | | | | | | | |
| 1.1.4 | Other Foreign Assets | | | | | | | | |
| **2.** | **Off-Balance Sheet Items** | | | | | | | | |
| 2.1 | Undelivered Spot Purchases | | | | | | | | |
| 2.2 | Forward Purchases | | | | | | | | |
| 2.3 | Other Off-balance Items | | | | | | | | |
| **3.** | **Total Foreign Assets (1.1.1 to 2.3)** | | | | | | | | |
| **4.** | **FOREIGN CURRENCY LIABILITIES** | | | | | | | | |
| **4.1** | **Balance Sheet Items** | | | | | | | | |
| 4.1.1 | Balances due to Banks abroad | | | | | | | | |
| 4.1.2 | Deposits | | | | | | | | |
| 4.1.3 | Loans & Advances | | | | | | | | |
| 4.1.4 | Other Foreign Liabilities | | | | | | | | |
| **5.** | **Off-balance Sheet Items** | | | | | | | | |
| 5.1 | Undelivered Spot sales | | | | | | | | |
| 5.2 | Forward Sales | | | | | | | | |
| 5.3 | Other Off-balance Sheet Items | | | | | | | | |
| **6.** | **Total Foreign Liabilities (4.1.1 to 5.3)** | | | | | | | | |
| **7.** | **NET OPEN POSITION (3 less 6)** | | | | | | | | |
| 7.1 | Long Position (where 3 less 6 is positive) | | | | | | | | |
| 7.2 | Short Position (where 3 less 6 is negative) | | | | | | | | |
| **8.** | **SINGLE CURRENCY EXPOSURE** | | | | | | | | |
| 8.1 | Net open position as a %age of core capital | | | | | | | | |
| **9.** | **OVERALL FOREX EXPOSURE** | | | | | | | | |
| 9.1 | Exposure (higher Total of 7.1 or 7.2 above) | | | | | | | | |
| 9.2 | Core Capital ( as per PR8 report) | | | | | | | | |
| 9.3 | Exposure (9.1/9.2)% | | | | | | | | |
| 9.4 | Allowable Exposure (%) | | | | | | | | |
| 9.5 | Over/(Under) Exposure (9.3 less 9.4) | | | | | | | | |

*** (To be completed and sumbitted on a daily basis to Central Bank of Kenya)**

**AUTHORIZATION**

NAME: .....

DESIGNATION: .....

SIGNATURE: ..... SIGNED .....

## COMPLETION INSTRUCTIONS: FOREIGN EXCHANGE EXPOSURE FORM CBK/PR6

1. **Foreign Currency Assets**
This refers to foreign currency assets recorded in the reporting banking institution's books.

1.1 **Balance Sheet Items:**

1.1.1 **Cash and Balances with Banks**
These are foreign currency notes and coins, balances with Central Bank and balances with the institution's own branches and correspondent banks.

1.1.2 **Loans and Advances**
These are bills discounted, loans and advances denominated in foreign currency. Loans and advances should be reported net of provisions.

1.1.3 **Investment in Foreign Government Securities**
This constitutes investment in foreign treasury bills and bonds issued by either foreign governments or other corporate entities. These should be reported either or fair value or amortised cost depending on the classification.

1.1.4 **Other Foreign Assets**
These are all other asset balances denominated in foreign currency not covered above.

1.1.5 **Inter-company/Group balances**
This is defined as inter-company/group balances denominated in foreign currency

2. **Off-Balance Sheet Items**
These are foreign currency items such as forward contracts which entail an identifiable foreign currency commitment. Gross amounts of outstanding purchase contracts must be reported.

2.1 **Undelivered Spot Purchases**
Foreign exchange deals are generally settled two business days after they are made. During these two days the amount of the bought currency to be received are recorded as off-balance sheet amounts. Undelivered spot transactions refer to all outstanding spot contracts written but not delivered.

2.2 **Forward Purchases**
A forward purchase is defined as one contracted for receipt beyond two business days from the reporting date. Forward purchases refer to the gross amounts of outstanding forwards, other than those to be delivered "within spot".

2.3 **Other Off-Balance Sheet Items**
This refers to items that involve foreign currency exposures not covered in the above categories. If material, details should be given by way of footnotes.

3. **Total Foreign Assets**
This is the sum of lines 1.1.1 to 2.3

4. **Foreign Currency Liabilities**

This refers to foreign currency liabilities recorded in the reporting banking institution's books.

4.1 **Balance Sheet Items**

4.1.1 **Balances due to banks**

These are balances due to Central Bank, correspondent banks abroad and the institutions own branches.

4.1.2 **Foreign Deposits**

These are deposits denominated in foreign currency. They should include interest accrued.

4.1.3 **Foreign Loans and Advances**

These are loans, advances and bills discounted denominated in foreign currency.

4.1.4 **Other Foreign Liabilities**

These are all other foreign liabilities denominated in foreign currency not covered above.

4.1.5 **Inter-company/Group balances**

This is defined as inter-company/group balances denominated in foreign currency.

5. **Off-Balance Sheet Items**

These are foreign currency items such as forward contracts, which entail an identifiable foreign currency commitment. Gross amounts of outstanding sale contracts must be reported.

5.1 **Undelivered Spot Sales**

Foreign exchange deals are generally settled two business days after they are made. During these two days the amount of sold currency to be delivered are recorded as off-balance sheet amounts. Undelivered spot transactions refer to all outstanding spot contracts written but not delivered.

5.2 **Forward Sales**

A forward sale is defined as one contracted for delivery beyond two business days from the reporting date. Forward sales refer to the gross amounts of outstanding forwards, other than those to be delivered "within spot".

5.3 **Other Off-Balance Sheet Items**

This refers to items that involve foreign currency exposures which are not covered above. If material, details should be given by way of footnotes.

6. **Total Foreign Liabilities**

This is the sum of 4.1.1 to 5.3

7. **Net Open Positions**

This is calculated by subtracting Total Foreign Currency Liabilities (line 6) from Total Foreign Currency Assets (line 3) for each currency. A positive result indicates an over bought position (+) and should be indicated in Row 7.1 while a negative position (-) indicates an oversold position and should be indicated in Row 7.2. Whether the position is negative or positive, it is

still an exposure. Therefore do not use negative or positive signs on rows 7.1 or 7.2. The "Others" entry for currencies not individually specified should be divided to show the total for those currencies with net long positions and the total for those with net short positions separately.

8. **Single currency Risk Exposure**

8.1 **Net Open Position as a percentage of core capital**
This is calculated by dividing the long or short position for each currency (line 7.1 or 7.2) with the core capital and multiplying by 100.

9. **Overall Foreign Exchange Risk Exposure**

9.1 **Exposure (Overall)**
This is the higher of (a) the sum of all net long positions in line 7.1 (b) the sum of all net short positions recorded in line 7.2.

9.2 **Core Capital**
Core capital is as defined in the Banking Act and as reported in the latest submitted PR 8.

9.3 **Exposure as percentage of Core Capital**
This arrived at by dividing line 9.1 by 9.2 and multiplying by 100.

9.4 **Allowable Exposure**
The allowable limit is 20% of core capital of the institution. The limit is on the overall foreign exchange risk exposure for all currencies combined. Any changes in the percentage will be communicated by the Central Bank.

9.5 **Over Exposure/Under Exposure**
This is arrived at by subtracting line 9.4 from line 9.3. Over-exposure means actual exposure is greater than the allowable exposure and institution should address this matter. Under exposure means actual exposure is less than the allowable exposure and the institution need not address the matter.

9.6 **Submission of Daily Returns**
The daily returns in the format given in Form CBK/PR/6 duly signed by the reporting bank's authorised officials covering five days of the week must be submitted to the Bank Supervision Department of the Central Bank of Kenya to reach it on the Monday following the end of the week to which they relate.

## CONTENTS

## PART I PRELIMINARY

1.1 **Title** – Guideline on Prohibited Business

1.2 **Authorisation** - This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3 **Application** - All institutions licensed under the Banking Act (Cap. 488).

1.4 **Definition** - Terms used within this guideline are as defined in the Banking Act, or as defined below, or as reasonably implied by contextual usage.

1.4.1 **"Insider" -** means any officer, director, employee or shareholder, or their associates. However, for public quoted companies holders of 5% or more of shares are considered as insiders.

1.4.2 **"Reckless" means –**

a) Transacting business beyond the limits set under the Banking Act or Central Bank of Kenya Act;

b) Offering facilities contrary to any guidelines or regulations issued by the Central Bank;

c) Failing to observe the institution's own policies as approved by the Board of Directors; or

d) Misuse of position or facilities of the institution for personal gain.

1.4.3 **"Fraudulent"** – means intentional deception, false and material representation, concealment or non-disclosure of a material fact or misleading conduct, device or contrivance that results in loss and injury to the institution with an intended gain to the officer of the institution or to a customer of the institution.

1.4.4 **"Large exposure"** - for the purpose of this regulation means all credit facilities granted to a person and his associates above 10% of an institution's core capital.

## PART II STATEMENT OF POLICY

2.1 **Purpose** - This guideline is intended to prevent prohibited business practices as specified in Part III of the Banking Act and as restricted elsewhere in the Act.

2.2 **Scope** - This guideline applies to all transactions conducted by an institution and reflected on the balance sheet or reflected as off-balance sheet items.

Notwithstanding the limits set forth in this guideline and the provisions of the Banking Act, institutions shall comply with sound banking practices and written policies, which have been adopted and approved by the institutions' board of directors.

2.3 **Responsibility** - The board of directors of each institution shall be responsible for establishing appropriate policies and procedures which ensure that (a) all business transactions made are fully compliant with the limitations set forth in Part III of the Banking Act and in this guideline, and (b) all business decisions made are administered in accordance with prudent banking practices.

## PART III SPECIFIC REQUIREMENTS

### 3.1 Single Borrower Limits (Banking Act Section 10)

3.1.1 An institution shall not grant to any person or permit to be outstanding any advance, credit facility or give any financial guarantee or incur any other liability on behalf of any person, so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of that person at any time exceeds 25% of its core capital.

a) The Central Bank of Kenya with the written approval of the Minister may authorize a mortgage finance company to give advances, credits, guarantees or incur liabilities whose values exceed 25% of core capital.

b) The limit shall not apply to transactions with a public entity, transactions between banks or branches of a bank, or to the purchase of or advances made against clean or documentary bills of exchange or documents of title of goods entitling some person to payments outside Kenya for imports.

3.1.2 The term "person" includes that person and his associates. For this reason, facilities for the person and the associates shall be aggregated and the 25% of core capital rule shall apply to the aggregate amount.

3.1.3 Where a credit facility is non-performing, the outstanding balance should be net of provisions for purposes of determining the single borrower exposure.

### 3.2 Restrictions on Facilities to Insiders (Banking Act Section 11)

#### 3.2.1 General Restrictions

Sub-Sections 11(1)(a), (b), (c) and (d) of the Banking Act prohibit an institution from granting or permitting to be outstanding:

a) Any advance or credit facility against the security of its own shares.

b) Any advance or credit facility or give any financial guarantee or incur any other liability to or in favour of, or on behalf of any company (other than another institution) in which the institution holds, directly or indirectly, or otherwise has a beneficial interest in, more than 25% of the share capital of that company.

c) Any unsecured advances in respect of any of its employees or their associates. However, facilities granted to staff members within schemes approved by the board, and are serviced by salary through a check-off system are allowed.

d) Any advances, loan or credit facilities, which are unsecured, or advances, loans or credit facilities, which are not fully secured to:

i) Any of its officers or their associates.
ii) Any person of whom or of which any of its officers has an interest as an agent, director, manager or shareholder.
iii) Any person of whom or of which any of its officers is a guarantor.

e) For purposes of this section, where facilities to insiders are secured by guarantees, these guarantees must be supported by tangible or other securities with proven market value that are duly charged and registered in favour the institution.

### 3.2.2 Restrictions on Granting Facilities to Insiders on Preferential Terms

a) Sub-section 11(1)(e) of the Banking Act prohibits institutions from granting or from permitting to be outstanding any advance or credit facility to any of its directors or other person participating in the general management of the institution unless such advance, loan or credit facility:

i) Is approved by the full board of directors of the institution upon being satisfied that it is viable. An institution must ensure that all members of the Board are made aware of the facility before it is disbursed.

ii) Is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution and the institution shall notify the Central Bank of every approval given pursuant to subparagraph (a) of this paragraph, within seven days of such approval, using form IF 12-4 annexed to Guideline No. CBK/PG/12.

b) Executive Directors and Chief Executives are allowed loan facilities for one residential house and one car at concessionary rates under the Staff Loans Schemes. Any other loans have to be made at commercial rates of interest and terms applicable to other customers.

c) Review of overdraft and re-scheduling of existing credit facilities should be treated as new facilities in compliance with (a) and (b) above.

d) Loans and other facilties to staff members should be within schemes approved by the Board.

### 3.2.3 Restrictions on Aggregate Credit Limits to Insiders

Sub-Sections 11(1)(f) and (g) of the Banking Act prohibit an institution from granting or permitting to be outstanding:

a) Any advance or credit facility or financial guarantee or incur any other liability to, or in favour of, or on behalf of, any one insider in excess of 20% of core capital of the institution;

b) Any advance or credit facility or financial guarantee or any other liability to, or in favour of, or on behalf of all insiders amounting in aggregate to more than 100% of core capital of the institution.

### 3.2.4 Prohibition on Reckless and Fraudulent Activities

a) Sub-section 11(1)(h) of the Banking Act prohibits an institution from granting or from permitting to be outstanding any advance or credit facility or give a guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance with the provisions of the Banking Act.

b) The above prohibitions (contained under section 11 of the Banking Act) are applicable whether or not the advance, loan or credit facility in question is granted to any person alone or with others.

## 3.3 Restriction on Large Exposures

The aggregate credit facilities to all large exposures at any one time shall not exceed 5 times (500%) of the institution's core capital.

## 3.4. Restrictions on Trading and Investments (Banking Act Section 12)

**3.4.1** The bulk of funds held by an institution constitute depositors' funds. For this reason, it would be imprudent for an institution that has been licensed to carry on banking, financial or mortgage finance business to venture into trading, or investments that may be risky thereby jeopardizing depositors' funds. The Banking Act therefore prohibits an institution from:

a) Engaging alone or with others in wholesale or retail trade except in the course of satisfaction of a debt due to it.

b) Acquiring or holding, directly or indirectly any part of the share capital of, or otherwise have a beneficial interest in any financial, commercial, agricultural, industrial or other undertaking, where the value of the institution's interest would exceed in the aggregate 25% of the institution's core capital. This provision is not applicable where (i) such an undertaking is in satisfaction of a debt due. Such interests have to be disposed of within such time as the Central Bank may allow (ii) the shareholding is in a corporation established for the purpose of promoting development in Kenya and such shareholding has been approved by the Minister.

c) Purchasing or acquiring or holding any land or any interest or right therein except as reasonably necessary for the purpose of conducting its business or holding or providing amenities for staff not exceeding prescribed limits. These conditions are subject to limits prescribed by the Central Bank of Kenya from time to time. Currently the prescribed limit for land and buildings is restricted to 20% of an institution's core capital. Acquiring and developing land should therefore be strictly within the specified limit. An institution that had purchased

or acquired land or interest or right therein prior to July 2005 have upto 31 December 2010 to reduce this holding to the prescribed limits. The institution is however, not prevented from:

i) Letting part of any building, which it uses for conducting its business.

ii) Securing a debt on land and, in the event of default in payment of the debt, holding the land for so long as in the opinion of the Central Bank is needed for its realisation or

iii) Acquiring land for the purpose of its own development.

### 3.5. Restrictions on Ownership of Share Capital of an Institution (Banking Act Section 13)

**3.5.1** To diversify ownership of an institution for the purpose of prudent management; direct or indirect share-holding of an institution has been restricted to a maximum of 25% to any one person other than:

a) another institution

b) the government of Kenya, or the Government of a foreign sovereign state.

c) a state corporation within the meaning of the State Corporations Act, or

d) a foreign company, which is licensed to carry on the business of an institution in its country of incorporation.

**3.5.2** No financial institution or mortgage finance company shall acquire or hold, directly or indirectly any part of the share capital of, or otherwise have beneficial interest in any bank.

**3.5.3** An institution is required to disclose to the Central Bank natural persons behind nominee companies and/or any other company.

### 3.6 Restrictions on making advances for Purchase of Land (Banking Act Section 14)

**3.6.1** An institution is restricted from making advances or loans for the purchase, improvement or alteration of land so that the aggregate is in excess of 25% of the amount of its total deposit liabilities unless it is a mortgage finance company.

**3.6.2** The Central Bank may however, authorize an institution to exceed the limit up to a maximum of 40% in the case of a bank and 60% in the case of a financial institution.

**3.6.3** These provisions, shall however, not prevent an institution from accepting security over land for a loan or an advance made in good faith for any other purpose.

### 3.7 Periodic Returns to Central Bank of Kenya

An institution shall at all times maintain adequate records and shall comply with the regular reporting requirements. An institution must ensure that all returns submitted to CBK are accurate. Inaccurate returns submitted to CBK shall attract penalties.

## PART IV: REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

### 4.1 Remedial measures

When an institution contravenes any of the provisions of this guideline or is not in compliance with these guidelines then:

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

b) In the case of an advance, loan or a facility to a person other than a director of the institution or a person participating in the general management of the institution, an officer shall not be so liable. Provided he or she shows that, through no act or omission on his or her part, he or she was not aware that the contravention was taking place, or he or she took all reasonable steps to prevent it taking place.

c) The Central Bank may in the case of an advance, loan or credit facility to a director of the institution, direct the removal of such director from the Board of Directors of the institution.

   The Bank may direct the suspension of any other officer or employee of the institution who sanctioned the advance, loan or credit facility. The institution shall comply with every direction of the Central Bank under this paragraph forthwith.

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

An institution which-

a) Fails to comply with any direction of the Central Bank under subsection 4.1 (c) or

b) Permits a director who is disqualified by virtue of subsection 4.1 (d) to continue holding office as such shall be guilty of an offence punishable as specified in (4.2) below

c) Where an offence under subsection (b) persists, the institution shall in addition to the penalty prescribed under sections 49 and 50 of the Banking Act, be liable to such penalty as may be prescribed for each day or part thereof during which the offence continues. These are specified in the Legal Notice No. 77 of June, 1999.

### 4.2 Administrative sanctions

In addition to the remedial measures available to it as given above in Part IV (1), the Central Bank of Kenya may impose any or all of the following administrative sanctions with regard to an institution that fails to comply with these guideline and against an institution, its board of directors, or its officers:

i) Prohibition from engaging in any further foreign exchange activities

ii) Prohibition from declaring or paying dividends

iii) Prohibition from establishing new branches

iv) Prohibition from engaging in new activities or from expanding existing activities

v) Suspension of access to Central Bank credit facilities

vi) Suspension of lending, investment, and credit granting operations

vii) Prohibition from acquiring, through purchase or lease, additional fixed assets.

viii) Prohibition from accepting further deposits or other lines of credit.

ix) Prohibition from declaring or paying bonuses, salary incentives, severance packages, management fees or other discretionary compensation to directors or officers.

## PART V: EFFECTIVE DATE

**5.1** **Effective date** - The effective date of this Guideline is 01 January, 2006

**5.2** **Supersedence** - This Guideline supersedes Prudential Regulation No. CBK/RG/06 on Prohibited Business issued in September 2000.

**ENQUIRIES**:
Enquiries on any aspect of these regulations should be referred to:

The Director
Bank Supervision Department
Central Bank of Kenya
P. O. Box 60000- 00200
**NAIROBI**
TEL.2860000 e-mail: *fin@centralbank.go.ke*

## CONTENTS

## PART I PRELIMINARY

1.1 **Title -** Guideline on Proceeds of Crime and Money Laundering (Prevention)

1.2 **Application** - All institutions licensed under the Banking Act (Cap.488).

1.3 **Authorisation** - This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue Guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.4 **Definition** – **"Money laundering"** means the act of a person who:

(i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;

(ii) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Kenya proceeds of any unlawful activity; or

(iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, deposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity where -

a) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity, or

b) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity.

**"person"** means any natural or legal entity.

**"proceeds of crime"** means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and irrespective of whether committed before or after the passing of the Proceeds of Crime and Money Laundering (Prevention) Act and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence.

Other terms used within this Guideline are as defined in the Banking Act and in these guidelines.

1.5 **Stages of Money Laundering**

Despite the variety of methods employed, the laundering process is accomplished in three stages. These stages, described below, may comprise numerous transactions by the launderers that could alert an institution of the criminal activity.

(a) Placement – the physical disposal of the initial proceeds derived from illegal activity.

(b) Layering – separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity.

(c) Integration – the provision of apparent legitimacy to criminally derived wealth. If the layering process has succeeded, an integration scheme places the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.

The three basic steps may occur as separate and distinct phases. Alternatively, they may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organisations.

## PART II STATEMENT OF POLICY

2.1 **Purpose -** The purpose of this guideline is to provide guidance regarding the prevention, detection and the control of possible money laundering activities and terrorism financing.

2.2 **Scope -** This guideline shall apply to all institutions licensed to transact business under the Banking Act. It highlights methods of prudent customer identification, record keeping, identification of suspicious activities and the need to report such activities to the appropriate authority for further investigation.

2.3 **Responsibility** - It is the responsibility of the board of directors and management of an institution to establish appropriate policies and procedures and to train staff to ensure adequate identification of customers, their source of funds and the use of the said funds**.** Such policies should also ensure the effective prevention, detection and control of possible money laundering activities and terrorism financing.

## PART III BACKGROUND

3.1 The Financial Action Task Force (FATF) is an inter-governmental body which sets standards and develops and promotes policies to combat money laundering and terrorist financing. It currently has 33 members, 31 countries and governments and 2 international organisations, and more than 20 observers, 5 FATF-style regional bodies (FSRB) and more than 15 other international organisations or bodies. Kenya is a member of one of the FSRB – Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

3.2 The Financial Action Task Force has issued 40 and 9 Special Recommendations that are now recognised as standards for combating money laundering and financing of terrorism.

3.3 Kenya has signed the twelve major international protocols related to anti-money laundering, corruption, trans-national crime and combating terrorism. Among them is the United Nations Security Council Resolution 1373 on combating terrorism and 1267 Sanction Committee that designates and issues lists of individuals or entities suspected to be linked to terrorism. The list can be accessed at the UN website:

(*http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm)*. Institutions should always have in place internal control measures which ensure the detection of such persons and make declaration of the same to Central Bank of Kenya on a quarterly basis.

3.4 Failure to comply with the recommendations made by the said international organisations jeopardizes a country's safe and sound financial system and may also result in the country being blacklisted.

## PART IV SPECIFIC REQUIREMENTS

4.1 **Specific Measures**: The Board of directors of an institution operating in Kenya is expected to ensure that management:-

a) Obtain and maintain proper identification of customers wishing to open accounts or make transactions whether directly or through proxy;

b) Obtain and maintain adequate records for a minimum of seven years, regarding the sources of funds and details of transactions in order to (i) enable the identification of unusual or suspicious transactions, and (ii) reconstruct individual transactions.

c) Train staff on a regular basis in the prevention, detection and control of money laundering and the identification of suspicious transactions.

d) Submit to the Central Bank of Kenya a report of any suspicious transactions or activities that may indicate money laundering or other attempts to conceal the true identity of customers or ownership of assets.

e) Establish adequate internal control measures which will assist in the prevention and detection of money laundering activities.

The Central Bank of Kenya also prohibits the institutions from opening and the maintaining of anonymous accounts or accounts in obvious fictitious names. In addition, any numbered accounts should go through the same identification and verification process.

### 4.2 When Identity Must Be Verified

An institution must identity its customer in the following circumstances:

(a) When establishing initial business relations
(b) When undertaking occasional or one-off transactions
(c) When there is cause to be suspicious
(d) When there is doubt about veracity or adequacy of previously obtained customer identification information

### 4.3. Customer Identification and Verification Procedures

In all circumstances, any business entity operating within the financial sector requires basic information on its customers. The nature and extent of this information will vary according to the type of business. It shall also depend on whether the business is being introduced by a financial intermediary, and the type of customer.

An institution should establish to its satisfaction that it is dealing with a person that actually exists, and identify those persons who are empowered to undertake the transactions, whether on their own behalf or on behalf of others. When a business relationship is being established, the nature of business that the customer expects to conduct with the institution concerned should be ascertained, so as to determine what might be expected as the customer's normal activity levels. In order to judge whether a transaction is or is not suspicious, an institution needs to have a clear understanding of the pattern of its customer's business as its relationship

with the customer develops. Suspicious transactions may arise at any stage, and frequently occur within an established business relationship rather than at the outset.

In addition, institutions should have full disclosure of beneficial owners or controlling persons behind nominee accounts.

### 4.3.1 Face-To-Face Customers

4.3.1.1 **For personal accounts or transactions:**

a) A financial institution shall take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, such as a birth certificate, passport, national identity card, a drivers licence or other official means of identification as may be set forth in other regulation

b) Address of current residence verified by a referee or a utility bill i.e. electricity or water bill;

c) Verified employment and/or source(s) of income; and

d) Where applicable, written confirmation from customer's prior bank attesting to customer's identity and history of account relationship (bank referee).

e) For accounts with more than one party and where one of the parties has identified the others, written confirmation must be obtained to the effect that the first party has known the other(s) personally for at least 12 months.

4.3.1.2 **For minors' accounts**

a) Nationality and date of birth evidenced by birth certificate of the minor, national passport, driving license or national identity document or certified copy thereof; of legal parent or guardian;

b) Verified address of current residence of minor and also of legal parent or guardian. The verification should be done by a referee or via the production of utility bills i.e. electricity and water bills.

c) Declaration of source of funds or income.

4.3.1.3 **For accounts or transactions corporates, partnerships, sole traders**

a) Certified copy of Certificate of Registration, Certificate of Incorporation, and Partnership Deed, Memorandum and Articles of Association or other similar documentation evidencing legal status;

b) Certified copy of Board Resolution stating authority to open accounts, transact business, and borrow funds, and designating persons having signatory authority thereof;

c) Verified identity and address of the chairman of the board of directors, the managing director, or the general partner and at least one limited partner for partnerships, or the principal owner for sole traders, etc.;

d) Audited financial statements (last full year at minimum although, last three years preferred) for corporation; for partnerships, sole traders, un-audited statements may be substituted upon prior written approval of a senior management official of bank; formation statement and PIN registration. An exemption may be considered for new sole proprietorship business and partnerships in the production of audited accounts or un-audited accounts as there may be practical difficulties in obtaining financial statements from them.

e) Where applicable, written confirmation from customer's prior bank if any attesting to customer's identity and history of account relationship.

4.3.1.4 **Un-incorporated Businesses/Partnerships**

Where the applicant is an un-incorporated business or a partnership whose partners/controllers are not known to the institution, the identity of at least two partners/controllers and/or signatories to the mandate should be verified initially, in line with the requirements for personal customers. When signatories to the mandate change, care should be taken to ensure that the identity of at least two of the current signatories has been verified. For established businesses, a copy of the latest financial report and accounts (audited where applicable) should be obtained.

A visit to the place of business might also be made to confirm the true nature of the business activities.

The nature of the partnership or business should be ascertained to ensure that it has a legitimate purpose. In cases where a formal partnership arrangement exists, a mandate from the partnership authorising the opening of an account and conferring authority on those who will operate it should be obtained.

**4.3.1.5 Trustees of Occupational Pension Schemes**

For the Trustees of Occupational Pension Schemes, satisfactory verification of identity can be based on the inspection of formal documents concerning the Trust which confirm the names of the current Trustees and their addresses for correspondence. Verification can also be based on extracts from Public Registers, or references from Professional Advisors or Investment Managers. Individual verification of each Trustee would not normally be required.

## 4.4 Non Face-To-Face Verification

### 4.4.1 Postal and Telephone Banking

4.4.1.1 The rapid growth in postal and telephone banking has added a new dimension to verification of identity. Any mechanism which avoids face-to-face contact between institutions and customers inevitably poses challenges for customer identification and can provide additional opportunities for criminals to gain access to the banking system.

4.4.1.2 The procedures adopted should confirm the identity as robust as those for face-to-face verification and that reasonable steps are taken to avoid single or multiple fictitious applications or substitution (impersonation) fraud for the purpose of money laundering.

4.4.1.3 As with face-to-face verification, the procedures to check identity must serve two purposes:

- They must ensure that a person bearing the name of the applicant exists and lives at the address provided; and
- That the applicant is that person.

4.4.1.4 There are a number of checks and measures which, when undertaken successfully, will give the institution a reasonable degree of assurance as to the authenticity of the applicant where there is no face-to-face contact. Some of the more widely used checks are listed below in paragraphs 4.4.1.6 and 4.4.1.7. The list of checks is not definitive and it is for each institution to decide upon which checks to employ. Institutions should assess the money laundering risk posed by the postal and telephone products they offer and devise their verification of identity procedures with due regard to that risk.

4.4.1.5 For all accounts and products offering third party transfer and money transmission facilities, evidence of personal identity and address verification should be undertaken through a combination of checks, examples of which are set out below in paragraph 4.4.1.6 and 4.4.1.7. For non transferable investment products of accounts, where the money invested can only be returned to the original investor, the procedures set out in the paragraphs below can be followed, although further verification checks will need to be undertaken if the customer migrates to another account or product that provides money transmission facilities and therefore constitutes a higher money laundering risk.

4.4.1.6 Some of the best means of verifying address are:

- Requesting sight of a recent utility bill, local authority tax bill, institution statement (to guard against forged or counterfeit documents, care should be taken to check that the documents offered are originals); or
- Checking a local telephone directory (for businesses).

4.4.1.7 In addition, satisfactory evidence of personal identity can be obtained by a number of means, some of which are set out below:

- Use of a computerised system, for internal or external application database checks, to check for any inconsistencies in the information provided – particularly those containing known fictitious application/ fraud information (accommodation, addresses, aliases, etc.);
- Telephone contact with the applicant on an independently verified home or business number;
- With the customer's consent, employer's personnel department confirms employment by verbal confirmation on a listed number; or

- Salary details appearing on recent bank or building society statements.

If two address checks and one personal identity check have been completed satisfactorily, then recording details (i.e. bank/building society, sort code, account name and number) or the original cheque, direct debit or electronic payment can satisfy the second personal identity check.

The Central Bank of Kenya has indicated that it would generally expect that institutions will undertake two or more checks in respect of both personal identity and address identification. Where banks' employees intend to undertake less than two checks in respect of either personal identity or address verification, they should agree the details policy and procedures with their superiors.

4.4.1.8 Staff undertaking telephone contact should be provided with sufficient training to enable them to identify potentially suspicious responses and to guard inadvertent disclosure of confidential information.

4.4.1.9 **Non Kenyan Residents.** For prospective non Kenyan resident customers who wish to open accounts without face-to-face contact, it will not be practical to seek sight of a passport or national identity card. There are a number of alternative measures that can be taken:

- Any branches, subsidiaries, head offices or correspondent banks in the prospective customer's home country may be used to confirm identity or as an agent to check personal verification and address details;

- Where the institution has no group presence or correspondent relationship in the country of residence, a copy of the passport authenticated by an attorney, notary or consulate could be obtained; or

- An account opening reference can be sought from a reputable credit or financial institution in the applicant's home country. Verification details should be requested covering true name or names used, current permanent address, date of birth and verification of signature.

### 4.4.2 Internet and Cyber Banking

Banking on the Internet adds a new dimension to banking risks, unlicensed deposit taking and tax evasion and opens up new mechanisms for fraud and money laundering because its use is unregulated.

Any bank offering Internet banking should implement procedures to identify and authenticate the customer and should ensure that there is sufficient communication to confirm address and personal identity in accordance with the details set out in paragraphs 4.4.1.1 to 4.4.1.9 above. Care should be taken to ensure that the same supporting documentation is obtained from Internet customers as for other postal/telephone banking customers.

Institutions should consider regular monitoring of accounts opened on the Internet. Unusual transactions should be investigated and reported if found to be suspicious.

## 4.5 Legitimacy of Funds and Transactions

The following types of information will be considered the minimum acceptable for determining the legitimacy of funds and transactions:

4.5.1 For large, frequent or unusual cash deposits or withdrawals - written statement from the customer confirming that the nature of his/her business activities normally and reasonably generate substantial amounts of cash;

4.5.2 For large, frequent or unusual currency exchanges - written statement from the customer confirming the reason and need for acquired currencies;

4.5.3 For multiple or nominee accounts, or similar or related transactions - written statement from the customer confirming the reason and need for multiple or nominee accounts, or similar or related transactions;

4.5.4 For large, frequent or unusual transfers or payments of funds - appropriate documentation as to the identity of the recipient (or sender) of the transferred or paid funds, and the reason underlying the transfer or payment;

4.5.5 For large or unusual investments or requests for advice or services - written statement from the customer confirming that the investments or advice or services being requested are bona fide and consistent with the goals and objectives of the customer's reasonable and normal business activities;

4.5.6 For large or unusual foreign transactions - written confirmation from the customer indicating the nature, reason and appropriate details of the foreign transactions sufficient to determine the legitimacy of such transactions.

4.5.7 Institutions should set up policies setting limits on the maximum cash transaction amounts non-customers can undertake with them.

## 4.6 Reporting Suspicious Activities or Transactions

If an institution becomes aware of suspicious activities or transactions which indicate possible money laundering activities, the institution shall ensure that it is reported to the Central Bank of Kenya immediately. The report shall provide sufficient details, as per the attached form **CBK/IF 8**, regarding the activities or transactions so that regulatory authorities can properly investigate and, if warranted, take appropriate action. See Appendix 1 attached to this guideline for a sample list of suspicious activities.

## 4.7 Confidentiality of Information

Banking institutions which obtain or become aware of information which is suspicious or indicates possible money laundering activities shall not disclose such information except to report it to the Central Bank as required.

## PART V: REMEDIAL MEASURES

Central Bank may pursue any or all remedial actions provided under sections 33, 34 and 55 of the Banking Act.

## PART VI: EFFECTIVE DATE

**6.1** **Effective Date** - The effective date of these guidelines shall be 1st January, 2006.

6.**2** **Supersedence -** This guideline supersedes the Regulation No. CBK/RG/12 issued in September, 2000.

**ENQUIRIES**

Enquiries on any aspect of this guideline should be referred to:

Director,
Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000 00200
**NAIROBI**
TEL. 2860000 e-mail: *fin@centralbank.go.ke*

## FORM NO. CBK/IF 8

**Suspicious Activities or Transactions Report (SATR)**
Submit to: Director, Financial Institutions Supervision, Central Bank of Kenya Always complete entire report, attach additional pages if necessary to explain situation fully,

1. Tick appropriate box a. Initial Report ☐ b. Correct Report ☐

   c. Supplemental Report ☐

**Part I Information About Institution Submitting This Report**

2. Name of Institution

3. Address of Head Office

4. Address of Branch(es) where activity/transaction occurred

5. Account number(s) affected, if any:

**Part II Information about Person or Entity Engaging In Suspicious Activities or Transactions**

6. Surname (or Name of Entity)

7. First Name

8. Middle/Name

9. Address

10. Date of Incorporation (DDMMYY): ...../...../.....

11. Nat. Identity No.

12. Occupation or Business:

13. Identity verified by:a. Passport ..... b. National ID card .....
    c. Other..... d. Incorporation Number .....
    e. Date & Place Issued .....

14. Relationship to this Financial Institution (tick all that apply)
    a. Accountant
    b. Agent
    c. Appraiser
    d. Attorney
    e. Borrower
    f. Broker
    g. Depositor

h. Director
i. Employee
j. Officer
k. Shareholder
l. Other .....

15. Is suspect affiliated with this institution? a. Yes b. No If no, specify
c. Resigned d. Suspended e. Terminated

16. Date of Resignation, Suspension, Termination (DDMMYY) ...../...../.....

17. Admission/Confession: a. Yes b. No.

**PART III Information About Suspicious Activity or Transaction**

18. Date of suspicious activity or transaction (DDMMYY) ...../...../.....

19. Amount involved Kshs.....

20. General description of suspicion transaction:
a. Cash deposit(s)
b. Cash exchange (s)
c. Cash payment(s)
d. Cash withdrawal(s)
e. Deposit from abroad
f. Transfer to abroad
g. Transfer to domestic bank
h. Transfer from domestic bank

21. Has suspicious activity or transaction had material impact on or otherwise adversely affected the financial soundness of this institution? a. Yes b. No. If yes, describe impact

22. Has financial institution's insurer been notified a. Yes b. No. If yes, when & how?

23. Has any law enforcement authority already been notified in any manner? If so, indicate following: a. Authority..... b. Specific person notified: .....
c. How notified ..... d. Details provided .....

**PART IV Information About Compliance Officer**

24. Name: .....

25. Position/Title in this institution
.....

26. Signature ..... Date.....

**Suspicious Activities**

The following types of activities or transactions may indicate possible money laundering activities (*list is not exhaustive*):

1 Account activity (e.g. large, frequent or unusual deposits, withdrawals, payments or exchanges of cash, foreign currency or negotiable instruments) which is not consistent with or reasonably related to the customer's normal business activities or financial standing;

2 Use of multiple or nominee accounts, or similar or related transactions which are not consistent with the customer's normal business activities, financial standing, or indicated reasons thereof;

3 Consolidation of multiple smaller accounts at several institutions within same locality prior to request for onward transmission of funds elsewhere;

4 Reluctance to provide reasonable information and documentation when opening an account or in connection with a requested transaction, investment or advice or service, or the providing of information which is unreasonably difficult or expensive to verify;

5 Transactions or account activity, including transfers of funds abroad or use of foreign travel and trade-related instruments, where the use or involvement of funds is not consistent with the customer's normal business activities, financial standing, or indicated reasons thereof, or where the destination country is a known or suspected tax haven or drug trafficking country;

6 Requests by a customer to provide/arrange/participate in credit facilities where the source of the customer's contribution is unclear, not consistent with normal business activities or financial standing, or involves real property;

7 Matching of cash deposits/withdrawals with payments or transfers out/in;

8 Deposits of large third-party cheques endorsed in favour of customer;

9 Large or unusual activity in dormant/inactive accounts;

10 Deposit of cash by means of numbered credit slips so that the total of each deposit is unremarkable but the total of all the credits is large;

11 Customers who open numerous accounts and pay in amounts of cash to each of them in circumstances in which the total of credit would be a large amount;

12 Company accounts whose transactions, both deposits and withdrawals are dominated by cash rather than the forms of transactions normally associated with commercial operations (e.g. cheques, letters of credit, bills of exchange, etc);

13 Customers who wish to maintain a number of trustee or clients' accounts which do not appear consistent with type of business, and transactions which involve nominee names;

14 Customers who seek to exchange large quantities or low denomination notes for those of higher denomination;

15 Request to borrow against assets held by the bank or a third party, where the origin of the assets is not known or is inconsistent with the customer's standing.

# GUIDELINE ON APPOINTMENT, DUTIES AND RESPONSIBILITIES OF EXTERNAL AUDITORS CBK/RG/09

## CONTENTS

## PART 1: PRELIMINARY

**1.1 Title** – Guideline on Appointment, Duties and Responsibilities of a Registered Public Accounting Firm.

**1.2 Authorisation** - This guideline is issued under Section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

**1.3 Application** – All institutions licensed under the Banking Act (Cap.488).

**1.4 Definition** – The term 'Auditor' means a registered public accounting firm or a partner of a registered public accounting firm.

Other terms used within this Guideline are as defined in the Banking Act.

## PART II: STATEMENT OF POLICY

**2.1 Introduction -** The registered public accounting firm's opinion lends credibility to the institution's financial statements and thereby assists in promoting confidence in the financial system. It is in recognition of this important role that the Banking Act, stipulates that the registered public accounting firm being appointed by the institution be approved by the Central Bank annually.

**2.2 Purpose** - The need for Central Bank's approval of the registered public accounting firm arises out of the desire to ensure that the registered public accounting firm appointed by the institutions has achieved acceptable standards of both competence and independence to enhance the supervisory role of the Central Bank. This guideline is therefore intended to assist the registered public accounting firm to discharge its functions more effectively. Every institution shall advise its registered accounting public firm to use this guideline in conjunction with Sections 24, 25 and 26 of the Banking Act.

**2.3 Scope** - This guideline applies to the appointment, duties and responsibilities of a registered public accounting firm.

**2.4 Responsibility** – It is the responsibility of the board of directors to ensure that the institution's shareholders appoint a registered public accounting firm annually in accordance with this guideline and other applicable laws.

**2.5 Audit Partner Rotation** - A registered public accounting firm shall ensure that the lead audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has not performed audit services for the institution in each of the five (5) previous financial years of that institution.

## PART III: SPECIFIC REQUIREMENTS

### 3.1 Approval of Appointment

#### 3.1.1 Approval Procedures

It is important to note that the nomination and subsequent appointment of a registered public accounting firm by an institution does not take effect unless written approval has been obtained from Central Bank of Kenya as required under Section 24(1) of the Banking Act. Institutions will have to apply to Central Bank for approval prior to commencement of any audit work being undertaken by the registered public accounting firm.

All applications for approval of external auditors should be received by the Central Bank by 30th August of each year and prior to the commencement of the interim audit where this is to be conducted before 30th August.

#### 3.1.2 Information Required for Application

a) The application for the approval of the registered public accounting firm should contain the following information:

   i) Name of the registered firm.

   ii) Names, qualifications and experience of each partner.

   iii) Physical and postal address of the local office. In case of an international firm, full details of the head office.

   iv) Details of the partner in charge of the institution.

   v) Name, qualifications and experience of the manager to be engaged in the audit of the institution.

   vi) Details of the registered public accounting firm's experience in other institutions.

   vii) Details of any existing business relationship between the partner in-charge of the audit and the institution.

   viii) Confirmation that neither the firm, nor the partners or staff involved in the audit of financial institutions, are holding past due loans in the institution.

   ix) Copy of the practicing certificates of each of the partners in the firm.

   ix) Any other information considered necessary in support of the application.

b) The firm should keep the Central Bank informed of any changes in partnerships, audit managers, disciplinary actions against the firm or its partners, etc. within 30 days of the event.

### 3.1.3 Evaluation

a) In assessing the application, the Central Bank will have to be satisfied that:

i. The registered public accounting firm is not disqualified in terms of Section 24 (7) of the Banking Act.

ii. The firm or any of its partners do not operate an account or has not been granted any type of facilities in the institution, except in the normal course of business and at an arms-length. The facility has been approved by the full board.

iii. The firm or its partners do not represent directly or indirectly the interests of the shareholders or directors of the institution in any business ventures.

iv. The partners of the firm do not have any business association with the shareholders or directors of the institution except in public quoted companies.

v. The firm, its partners and employees have the capacity to conduct an audit that satisfies international financial reporting standards and international auditing standards.

vi. Where the firm or its partners have been subject to any disciplinary action by any professional body, clearance has been obtained from that body.

vii. The audit fees from an institution shall not exceed 10% of the total gross income of the firm.

viii. There has been no element of misconduct in the performance of the registered public accounting firm's duties in other firms whether in its auditing, accounting, secretarial, trustee nominee services or otherwise.

ix. The firm maintains adequate quality control measures.

b) The Central Bank may require verifying any information submitted by the registered public accounting firm for the purpose of the approval.

## 3.2 Duties and Responsibilities

### 3.2.1 Principal Responsibilities

Traditionally, the principal role of the registered public accounting firm is to express an opinion as to whether:

a) All the necessary information and explanations for the audit have been obtained.

b) Proper books of accounts have been kept and maintained by the institution.

c) The accounts dealt with in the report are in agreement with the books of accounts and are in conformity with the International Financial Reporting Standards.

d) The financial statements derived from the books of accounts give a "true and fair view" of the institution.

### 3.2.2 Reports to Audit Committees

Each registered public accounting firm that performs for any institution any audit shall timely report to the audit committee of the institution:-

a) All critical accounting policies and practices used or to be used;

b) All alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the institution, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

c) Other material written communications between the registered public accounting firm and the management of the institution, such as any management letter or schedule of unadjusted differences.

### 3.2.3 Additional Responsibilities

In order to enhance the supervisory role of the Central Bank, the registered public accounting firm may also be required under Section 24(3) to:

a) Submit such additional information in relation to its audit as the Central Bank may consider necessary, from time to time.

b) Carry out any other special investigation.

c) Submit a report on any of the matters referred to in (a) and (b). The institution concerned shall remunerate the registered public accounting firm in respect of the discharge of all or any of such additional duties.

### 3.2.4 Information to be submitted to the Central Bank

a) Section 24(4) of the Banking Act stipulates that the registered public accounting firm shall immediately report to the Central Bank if:

i. There has been a serious breach of or non-compliance with the provisions of the Banking Act, the Central Bank of Kenya Act or guidelines or other matters prescribed by the Central Bank;

ii. Any criminal offence involving fraud or dishonesty has been committed by the institution or by any of its officers or employees;

iii. Losses have been incurred which reduce the core capital of the institution by fifty per cent (50%) or more;

iv. Serious irregularities have occurred which may jeopardize the security of depositors or creditors of the institution; or

v. It is unable to confirm that the claims of the depositors and creditors of the institution are capable of being met out of the assets of the institution.

b) To submit to Central Bank a copy of the Interim Audit Management report.

c) The registered public accounting firm in addition is required to submit directly to Central Bank no later than three (3) months after the financial year end:

i. Certified copies of the BSM-A, PR4-1A, PR21 and PR3-A returns confirming that they are in agreement with the institution's audited books of accounts.

ii. A copy of the final audit management letter.

iii. A confirmation that adequate provisions for loans and advances have been made. The registered public accounting firm must base their calculation for the required provisions for loans and advances debts as a minimum, on the Guideline CBK/PG/04 on "Risk Classification of Assets and Provisioning", and relevant Prudential Returns and Completion Instructions.

iv. Information that indicates a material breach of the institution's own policies, Articles of Association and Memorandum of Association.

## PART IV: CORRECTIVE MEASURES AND ADMINISTRATIVE SANCTIONS

### 4.1 Remedial measures

#### 4.1.1 Incoming Registered public accounting firm

A registered public accounting firm shall not be approved to audit an institution if:

a) The firm or its partners or associates are involved in the matters specified in Section 24 (7) of the Banking Act.

b) The firm or its partners have been granted any type of facility by the institution outside the normal course of business and not at an arms length by that institution.

d) The firm or its partners represents directly or indirectly the interest of the shareholders or directors of the institution in any business venture.

e) The firm or its partners are involved directly or indirectly with the institution in other non-audit services including :-

i. Book-keeping or other services related to the accounting records or financial statements of the audit client;

ii. Financial information systems design and implementation;

iii. Appraisal or valuation services, fairness opinions or contribution-in-kind reports;

iv. Actuarial services;

v. Internal audit outsourcing services;

vi. Management functions or human resources (including head hunting services);

vii. Broker or dealer, investment adviser, or investment banking services;

viii. Legal services and expert services unrelated to the audit; and

ix. Any other service that the Central Bank may specify is impermissible.

f) The partners have any business interest in association with the shareholders or directors of the institution.

### 4.1.2 Disqualification of a registered public accounting firm

a) An approved registered public accounting firm shall be disqualified from auditing an institution if the firm or its partners:

i. Refuse or fail to satisfactorily undertake additional duties as required by the Central Bank under Section 24 (3) of the Banking Act.

ii. Fail to report the matters specified in Section 24 (4) of the Banking Act.

iii. Become involved in matters specified in Section 24 (7) of the Banking Act.

iv. Do not give a written notice to the Central Bank of the matters specified in Section 25 (2) of the Banking Act.

v. Fail to comply with the guidelines and regulations issued by the Central Bank from time to time.

vi. Fail to furnish to the Central Bank details on changes of partnership, audit managers, disciplinary actions against the firm or partners or any other pertinent information.

vii. Fails to meet the approval criteria set by Central Bank.

b) If a registered public accounting firm of an institution fails to comply with the requirements of this Guideline, the Central Bank may disqualify the firm from auditing an institution.

c) Any other information that casts doubt on the integrity and conduct of the firm or any of its partners may also be used for purposes of disqualification.

### 4.1.3 Change of a registered public accounting firm

No institution shall remove or change its registered public accounting firm except with the prior written approval of the Central Bank. In considering the proposed change, Central Bank shall obtain a written representation from the outgoing firm. Any institution aggrieved by a decision of the Central Bank to disallow the change of a registered public accounting firm, may under Section 25(3) of the Banking Act appeal to the Minister for Finance within 14 days. The decision of the Minister for Finance shall be final.

## PART V EFFECTIVE DATE

5.1 **Effective date** - The effective date of this guideline shall be 1st January 2006

5.2 **Supercedence** – This guideline supercedes and replaces Prudential Regulation No CBK/RG/9 on appointment, duties and responsibilities of external auditors issued in October 2000.

**Enquiries**

Enquiries on any aspect of these guidelines should be referred to:-

The Director
Bank Supervision Department
Central Bank of Kenya
P. O. Box 60000 - 00200
**NAIROBI**
TEL. 2860000 e-mail: *fin@centralbank.go.ke*

# GUIDELINE ON PUBLICATION OF FINANCIAL STATEMENTS AND OTHER DISCLOSURES CBK/PG/10

**CONTENTS**

## PART I: PRELIMINARY

**1.1** **Title**- Guideline on Publication of Financial Statements and other disclosures.

**1.2** **Authorisation**- - This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

**1.3** **Application**- all institutions, including banks, non-bank financial institutions and mortgage finance companies licensed under the Banking Act to conduct banking, financial institution or mortgage finance business in Kenya.

## PART II: STATEMENT OF POLICY

**2.1** **Purpose**- This regulation is intended to enhance market discipline in the banking and financial sector in general. As custodian of public funds, banking institutions have the responsibility to safeguard their integrity and credibility in order to maintain public confidence.

It is under these considerations that institutions are required to periodically publish their financial statements in order to avail timely information to all stakeholders. This would also encourage institutions to enhance prudent management of their affairs and exercise self- regulation.

**2.2** **Responsibility**-The board of directors of each institution shall be responsible for the adherence and compliance with the provisions of this regulation.

## PART III: SPECIFIC REQUIREMENTS

**3.1** **Audited Financial Statements and Other Disclosures** -All institutions licensed and operating in Kenya shall be required, within three months of the end of every financial year, to publish in a national newspaper, between Mondays and Fridays excluding public holidays, a copy of their audited balance sheet showing its assets and liabilities, an audited profit and loss account covering its activities and any other information prescribed by Central Bank of Kenya. The financial statements and other disclosures so published must fully conform to the format prescribed by the Central Bank of Kenya from time to time.

All the audited financial statements and other disclosures to be published should first be submitted to the Central Bank of Kenya for clearance at least two weeks before publication. The financial statements must be signed by the Chief Executive Officer and at least one director of the institution. The reports forwarded to the Central Bank of Kenya for clearance must provide detailed reconciliations for any differences between them and the CBK (BSM), PR4-1, PR21, PR3 and any other return relating to the financial year end cut-off date which had earlier been forwarded.

External Auditors shall also continue submitting within three months of the end of every financial year audited financial statements in the Central Bank's prescribed format i.e. CBK-BSM(A), PR4-1A, PR21A, PR3A and any other return to the Central Bank of Kenya. The returns should be certified by the external auditors of the institution. The Management Letter of the institution should also be submitted not later than 31st March of every year.

**3.2 Un-audited Financial Statements and Other Disclosures** - Every institution shall cause a copy of un-audited financial statements to be published in a daily national newspaper, between Mondays and Fridays excluding public holidays, in the format prescribed by the Central Bank of Kenya from time to time. In order to facilitate comparisons, the prescribed formats shall be similar to those used to publish audited financial statements.

The un-audited financial statements shall be published at quarterly intervals in accordance with the following programme:

| Period ending | Publication Deadline |
|---|---|
| 31st March | **31st May** |
| 30th June | **31st August** |
| 30th September | **30th November** |

The publication for the period ending 31st December should follow the process described under Audited Financial Statements.

All financial statements and other disclosures to be published should first be submitted to the Central Bank of Kenya for clearance at least two weeks before publication. The financial statements must be signed by the Chief Executive Officer and at least one director of the institution. The reports forwarded to the Central Bank of Kenya for clearance must provide detailed reconciliations for any differences between the disclosures and the CBK-BS(M), PR4-1, PR21, PR3 and other prudential returns relating to the same cut-off date which had earlier been forwarded.

## PART IV: CORRECTIVE MEASURES

**4.1 Remedial measures** - if an institution fails to comply with this guideline, the Central Bank may pursue any or all corrective actions as provided under Sections 33, 34 and 55 of the Banking Act.

**4.2 Administrative sanctions** - in addition to the use of corrective actions noted in paragraph 1 above, the Central Bank may pursue any or all of the following administrative sanctions against an institution, its board of directors, or its officers:

4.2.1 Prohibition from declaring or paying dividends;

4.2.2 Prohibition from establishing new branches;

4.3.3 Prohibition from engaging in new activities or from expanding existing activities;

4.3.4 Prohibition from declaring or paying bonuses, salary incentives, or other discretionary compensation to directors or officers.

## PART V: EFFECTIVE DATE

**5.1 Effective date** - The effective date of this guideline shall be 1st January 2006

**5.2 Supersedence** – This guideline supersedes and replaces Prudential Regulations No. CBK/RG/14 of 30th June, 2002.

**Enquires**

Any enquiries on this Guideline should be forwarded to:

**Director**
**Bank Supervision Department**
**Central Bank of Kenya**
**P. O. Box 60000 - 00200**
**NAIROBI**
**TEL...2860000 e-mail: fin@centralbank.go.ke**

**NAME OF INSTITUTION.....**

**AUDITED FINANCIAL STATEMENTS AND OTHER DISCLOSURES CBK/PR 10-1(A)**

| **I BALANCE SHEET** | **31st Dec Previous Year Shs.'000' (Audited)** | **31st Dec This Year Shs.'000' (Audited)** |
|---|---|---|
| **A. ASSETS** | | |
| 1. Cash (both local and foreign) | | |
| 2. Balances due from Central Bank Of Kenya | | |
| 3.Kenya Government securities | | |
| 4.Foreign Currency Treasury bills and bonds. | | |
| 5. Deposits and balances due from local banking institutions | | |
| 6. Deposits and balances due from banking Institutions abroad | | |
| 7. Kenya Government and other securities held for dealing purposes | | |
| 8.Tax recoverable | | |
| 9. Loans and advances to customers (net) | | |
| 10. Investment securities | | |
| 11. Balances due from group companies | | |
| 12. Investments in associates | | |
| 13. Investments in subsidiary companies | | |
| 14. Investments in joint ventures | | |
| 15. Investment properties | | |
| 16. Property and equipment | | |
| 17. Prepaid lease rentals | | |
| 18. Intangible assets | | |
| 19. Deferred tax asset | | |
| 20. Retirement benefit asset | | |
| 21. Other assets | | |
| **22.TOTAL ASSETS** | | |
| **B. LIABILITIES** | | |
| 23. Balances due to Central Bank of Kenya | | |
| 24. Customer deposits | | |
| 25. Deposits and balances due to local banking institutions | | |
| 26. Deposits and balances due to banking institutions abroad | | |
| 27. Other money market deposits | | |
| 28. Borrowed funds | | |
| 29. Balances due to group companies | | |
| 30. Tax payable | | |
| 31. Dividends payable | | |
| 32. Deferred tax liability | | |
| 33. Retirement benefit liability | | |
| 34. Other liabilities | | |
| **35. TOTAL LIABILITIES** | | |
| **C. SHAREHOLDERS' FUNDS** | | |
| 36. Paid up/Assigned capital | | |
| 37. Share premium/(discount) | | |
| 38. Revaluation reserve | | |
| 39. Retained earnings/Accumulated losses | | |
| 40. Statutory Loan Loss Reserve | | |
| 41. Proposed dividends | | |
| 42. Capital grants | | |
| **43. TOTAL SHAREHOLDERS' FUNDS** | | |
| **44.TOTAL LIABILITIES AND SHAREHOLDERS' FUNDS** | | |

## AUDITED FINANCIAL STATEMENTS AND OTHER DISCLOSURES CBK/PR 10-2A

| II | PROFIT AND LOSS ACCOUNT | 31st Dec Previous Year Shs. '000' (Audited) | 31st Dec Current Year Shs.'000' (Audited) |
|---|---|---|---|
| 1 | **INTEREST INCOME** | | |
| | 1.1 Loans and advances | | |
| | 1.2 Government securities. | | |
| | 1.3 Deposits and placements with banking institutions | | |
| | 1.4 Other Interest Income | | |
| | **1.5 Total Interest income** | | |
| 2 | **INTEREST EXPENSES** | | |
| | 2.1 Customer deposits | | |
| | 2.2 Deposits and placements from banking institutions | | |
| | 2.3 Other Interest Expenses | | |
| | **2.4 Total interest Expenses** | | |
| 3 | **NET INTEREST INCOME/(LOSS)** | | |
| 4 | **OTHER OPERATING INCOME** | | |
| | 4.1 Fees and commissions on loans and advances | | |
| | 4.2 Other Fees and Commissions | | |
| | 4.3 Foreign exchange trading income(Loss) | | |
| | 4.4 Dividend Income | | |
| | 4.5 Other income. | | |
| | **4.6 Total Other Operating Income** | | |
| 5 | **TOTAL OPERATING INCOME** | | |
| 6 | **OPERATING EXPENSES** | | |
| | 6.1 Loan Loss Provision | | |
| | 6.2 Staff costs | | |
| | 6.3 Directors' emoluments | | |
| | 6.4 Rental Charges | | |
| | 6.5 Depreciation charge on property and equipment | | |
| | 6.6 Armortisation charges | | |
| | 6.7 Other operating expenses | | |
| | **6.8 Total Operating Expenses** | | |
| 7 | Profit/(loss) before tax and exceptional items | | |
| 8 | Exceptional items | | |
| 9 | **Profit/(loss) after exceptional items** | | |
| 10 | Current tax | | |
| 11 | Deferred tax | | |
| 12 | **Profit / (loss) after tax and exceptional items** | | |

AUDITED FINANCIAL STATEMENTS AND OTHER DISCLOSURES CBK/PR 10-3A

| III. OTHER DISCLOSURES | 31st Dec. Previous year Shs.'000' (Audited) | 31st Dec. Current year Shs.'000' (Audited) |
|---|---|---|
| **1) NON-PERFORMING LOANS AND ADVANCES** | | |
| **a) Gross non-performing loans and advances** | | |
| Less: | | |
| b) Interest in suspense | | |
| **c) Total Non-Performing Loans and Advances(a-b)** | | |
| Less: | | |
| d) Loan loss Provisions | | |
| e) Net Non-Performing Loans (c-d) | | |
| f) Discounted Value of Securities | | |
| **g) Net NPLs Exposure (e-f)** | | |
| **2) Insider Loans and Advances** | | |
| a) Directors, shareholders and associates | | |
| b) Employees | | |
| **c) Total Insider Loans, Advances and Other Facilities** | | |
| **3) Off-Balance Sheet Items** | | |
| a) Letters of credit, guarantees, acceptances | | |
| b) Other contingent liabilities | | |
| **c) Total Contingent Liabilities** | | |
| **4) Capital Strength** | | |
| a) Core capital | | |
| b) Minimum Statutory Capital | | |
| c)Excess/(Deficiency) | | |
| d) Supplementary capital | | |
| e) Total capital (a+d) | | |
| f) Total risk weighted assets | | |
| g) Core capital/total deposit liabilities | | |
| h)Minimum Statutory Ratio | | |
| I)Excess/(Deficiency) | | |
| j) Core capital/total risk weighted assets | | |
| k)Minimum Statutory Ratio | | |
| l)Excess/(Deficiency) (j-k) | | |
| m) Total capital/total risk weighted assets | | |
| n)Minimum Statutory Ratio | | |
| o)Excess/(Deficiency)(m-n) | | |
| **5 ) Liquidity** | | |
| a) Liquidity Ratio | | |
| b)Minimum Statutory Ratio | | |
| c)Excess/(Deficiency) (a-b) | | |

The financial statements are extracts from the books of the institution as audited by ..... and received unqualified /qualified opinion.

**Signed: ——————————** **Signed……..**

**CHIEF EXECUTIVE OFFICER** **CHAIRMAN**

**NAME OF INSTITUTION.....**

**QUARTERLY FINANCIAL STATEMENTS AND OTHER DISCLOSURES CBK/PR 10-1**

| **I BALANCE SHEET** | Previous Year Same Quarter Shs.'000' (Un-audited) | 31st Dec. Previous Year Shs.'000 (Audited) | 1st Quarter Current Year Shs.'000 (Un-audited) | 2nd Quarter Current Year Shs.'000 (Un-audited) | 3rd Quarter Current Year Shs.'000 (Un-audited) |
|---|---|---|---|---|---|
| **A. ASSETS** | | | | | |
| 1. Cash (both local and foreign) | | | | | |
| 2. Balances due from Central Bank Of Kenya | | | | | |
| 3.Kenya Government securities | | | | | |
| 4.Foreign Currency Treasury bills and bonds. | | | | | |
| 5. Deposits and balances due from local banking institutions | | | | | |
| 6. Deposits and balances due from banking Institutions abroad | | | | | |
| 7. Government and other securities held for dealing purposes | | | | | |
| 8.Tax recoverable | | | | | |
| 9. Loans and advances to customers (net) | | | | | |
| 10. Investment securities | | | | | |
| 11. Balances due from group companies | | | | | |
| 12. Investments in associates | | | | | |
| 13. Investments in subsidiary companies | | | | | |
| 14. Investments in joint ventures | | | | | |
| 15. Investment properties | | | | | |
| 16. Property and equipment | | | | | |
| 17. Prepaid lease rentals | | | | | |
| 18. Intangible assets | | | | | |
| 19. Deferred tax asset | | | | | |
| 20. Retirement benefit asset | | | | | |
| 21. Other assets | | | | | |
| **22.TOTAL ASSETS** | | | | | |
| **B. LIABILITIES** | | | | | |
| 23. Balances due to Central Bank of Kenya | | | | | |
| 24. Customer deposits | | | | | |
| 25. Deposits and balances due to local banking institutions | | | | | |
| 26. Deposits and balances due to foreign banking institutions | | | | | |
| 27. Other money market deposits | | | | | |
| 28. Borrowed funds | | | | | |
| 29. Balances due to group companies | | | | | |
| 30. Tax payable | | | | | |
| 31. Dividends payable | | | | | |
| 32. Deferred tax liability | | | | | |
| 33. Retirement benefit liability | | | | | |
| 34. Other liabilities | | | | | |
| **35. TOTAL LIABILITIES** | | | | | |
| **C. SHAREHOLDERS' FUNDS** | | | | | |
| 36. Paid up/Assigned capital | | | | | |
| 37. Share premium/(discount) | | | | | |
| 38. Revaluation reserves | | | | | |
| 39. Retained earnings/Accumulated losses | | | | | |
| 40. Statutory Loan Loss Reserve | | | | | |
| 41. Proposed dividends | | | | | |
| 42. Capital grants | | | | | |
| **43. TOTAL SHAREHOLDERS' FUNDS** | | | | | |
| **44. TOTAL LIABILITIES AND SHAREHOLDERS' FUNDS** | | | | | |

QUARTERLY FINANCIAL STATEMENTS AND OTHER DISCLOSURES CBK/PR10-2

| II | PROFIT AND LOSS ACCOUNT | Previous Year Same Quarter Shs.'000' (Un-audited) | 31st Dec. Previous Year Shs. '000' (Audited) | Ist Quarter Current Year Shs.'000' (Un-audited) | 2nd Quarter Current Year Shs.'000' (Un-audited) | 3rd Quarter Current Year Shs.'000' (Un-audited) |
|---|---|---|---|---|---|---|
| 1 | **INTEREST INCOME** | | | | | |
| | 1.1 Loans and advances | | | | | |
| | 1.2 Government securities. | | | | | |
| | 1.3 Deposits and placements with banking institutions | | | | | |
| | 1.4 Other Interest Income | | | | | |
| | **1.5 Total Interest income** | | | | | |
| 2 | **INTEREST EXPENSES** | | | | | |
| | 2.1 Customer deposits | | | | | |
| | 2.2 Deposits and placements from banking institutions | | | | | |
| | 2.3 Other Interest Expenses | | | | | |
| | **2.4 Total interest Expenses** | | | | | |
| 3 | **NET INTEREST INCOME/(LOSS)** | | | | | |
| 4 | **NON- OPERATING INCOME** | | | | | |
| | 4.1 Fees and commissions on loans and advances | | | | | |
| | 4.2 Other fees and commissions. | | | | | |
| | 4.3 Foreign exchange trading income(Loss) | | | | | |
| | 4.4 Dividend Income | | | | | |
| | 4.5 Other income. | | | | | |
| | **4.6 Total Non-Interest Income** | | | | | |
| 5 | **TOTAL OPERATING INCOME** | | | | | |
| 6 | **OTHER OPERATING EXPENSES** | | | | | |
| | 6.1 Loan loss provision | | | | | |
| | 6.2 Staff costs | | | | | |
| | 6.3 Directors' emoluments | | | | | |
| | 6.4 Rentals charges | | | | | |
| | 6.5 Depreciation charge on property and equipment | | | | | |
| | 6.6 Armortisation charges | | | | | |
| | 6.7 Other operating expenses | | | | | |
| | **6.8 Total Other Operating Expenses** | | | | | |
| 7 | Profit/(loss) before tax and exceptional items | | | | | |
| 8 | Exceptional items | | | | | |
| 9 | **Profit/(loss) after exceptional items** | | | | | |
| 10 | Current tax | | | | | |
| 11 | Deferred tax | | | | | |
| 12 | **Profit / (loss) after tax and exceptional items** | | | | | |

QUARTERLY FINANCIAL STATEMENTS AND OTHER DISCLOSURES CBK/PR 10-3

| III. OTHER DISCLOSURES | Same Quarter Previous year Shs.'000' (Un-audited) | 31st Dec. Previous year Shs.'000' (Audited) | 1st Quarter Current year Shs.'000' (Un-audited) | 2nd Quarter Current year Shs.'000' (Un-audited) | 3rd Quarter Current year Shs.'000' (Un-audited) |
|---|---|---|---|---|---|
| **1) NON-PERFORMING LOANS AND ADVANCES** | | | | | |
| **a) Gross non-performing loans and advances** | | | | | |
| Less: | | | | | |
| b) Interest in suspense | | | | | |
| **c) Total Non-Performing Loans and Advances(a-b)** | | | | | |
| Less: | | | | | |
| d) Loan loss Provisions | | | | | |
| e) Net Non-Performing Loans (c-d) | | | | | |
| f) Discounted Value of Securities | | | | | |
| **g) Net NPLs Exposure (e-f)** | | | | | |
| **2) Insider Loans and Advances** | | | | | |
| a) Directors, shareholders and associates | | | | | |
| b) Employees | | | | | |
| **c) Total Insider Loans, Advances and Other Facilities** | | | | | |
| **3) Off-Balance Sheet Items** | | | | | |
| a) Letters of credit, guarantees, acceptances | | | | | |
| b) Other contingent liabilities | | | | | |
| **c) Total Contingent Liabilities** | | | | | |
| **4) Capital Strength** | | | | | |
| a) Core capital | | | | | |
| b) Minimum Statutory Capital | | | | | |
| c) Excess/ (Deficiency) | | | | | |
| d) Supplementary capital | | | | | |
| e) Total capital (a+d) | | | | | |
| f) Total risk weighted assets | | | | | |
| g) Core capital/total deposit liabilities | | | | | |
| h) Minimum Statutory Ratio | | | | | |
| I) Excess/ (Deficiency) | | | | | |
| j) Core capital/total risk weighted assets | | | | | |
| k) Minimum Statutory Ratio | | | | | |
| l) Excess/ (Deficiency) (j-k) | | | | | |
| m) Total capital/total risk weighted assets | | | | | |
| n) Minimum Statutory Ratio | | | | | |
| o) Excess/ (Deficiency) (m-n) | | | | | |
| **5 ) Liquidity** | | | | | |
| a) Liquidity Ratio | | | | | |
| b) Minimum Statutory Ratio | | | | | |
| c) Excess/ (Deficiency) (a-d) | | | | | |

The financial statements are extracts from the books of the institution.

**Signed: ----------** **Signed.....**

**CHIEF EXECUTIVE OFFICER** **CHAIRMAN**

# NOTES FOR COMPLETION OF FINANCIAL STATEMENTS AND OTHER DISCLOSUSRES: CBK/PG10

## GENERAL

- These completion instructions are issued to ensure uniformity of reporting by all institutions.
- No asset or liability stated in the balance sheet should be offset by deduction of another liability or asset except inter-branch balances and items in transit or where a legal right of set-off exists.
- The accounts should be prepared in accordance with International Financial Reporting Standards.
- All figures should be shown in thousands of Kenya shillings.
- All the rows should be published irrespective of whether the institution has a figure to report or not.

## I. BALANCE SHEET

### A. ASSETS

**1. Cash balances**

Notes and coins (both local and foreign) held in the tills and vaults.

**2. Balances with Central Bank of Kenya**

These include:

- Balances held with the Central Bank of Kenya, including cash held for cash ratio purposes; and
- Repo purchases from the Central Bank of Kenya, which constitute amounts lent to CBK against government securities.

**3. Kenya Government Securities**

These include:

- Treasury bills
- Treasury bonds
- Kenya Government stock
- Local Government securities
- Other Government Securities

  These are debt securities issued by the government of Kenya and are held for investment purposes and therefore exclude those held for dealing purposes.

**4. Foreign Currency Treasury Bills and Bonds**

These include government and corporate treasury bills and bonds denominated in foreign currency.

**5. Deposits and balances due from local banking institutions**

These include:

- Placements by the reporting institution with other institutions including inter-bank placements. Placements with collapsed institutions should be disclosed among "other assets" net of provisions held, if any.
- All loans and advances granted to other institutions and building societies.
- All credit balances in current accounts held with other institutions.

**6. Deposits and balances due from foreign banking institutions**

These include:

- Placements by the reporting institution with other institutions including inter-bank placements overseas. Placements with collapsed institutions should be disclosed among "other assets" net of provisions held, if any.
- All loans and advances granted to other overseas institutions and building societies.
- All credit balances in current accounts held with other institutions.
- Banking institutions include building societies.

**7. Kenya Government & Other securities held for Dealing Purposes**

These include Government and other marketable securities held for dealing purposes, with the intention of reselling them in the short-term e.g. Treasury Bonds bought at Nairobi Stock Exchange, Corporate bond and commercial paper which can be sold in active market.

**8. Tax Recoverable**

This is tax that is recoverable as a result of overpayment of tax in the previous periods.

**9. Loans and Advances to Customers (Net)**

These are term loans, overdrafts, bills discounted and hire purchase. The balance to be reported net of provisions and interest in suspense. These also include commercial paper and corporate bonds, with fixed or determined payment and maturities.

**10. Investment Securities**

These are equity investments in both quoted and unquoted companies.

**11. Balances due from banking institutions in the group**

These are amounts due from group companies conducting banking business.

**12. Investments in Associates**

These are equity investments by the reporting institution in other companies where it has significant influence and which is neither a subsidiary nor a joint venture of the institution.

**13. Investments in Subsidiary Companies**

These include equity investments by the reporting institution in its subsidiaries.

**14. Investments in Joint Ventures**

These are investments by the reporting institution in joint ventures.

**15. Investment Properties**

This is as defined in IAS 40 as a property (land or a building or part of a building or both) held (by the owner or by the lessee under a finance lease) to earn rentals or for capital appreciation or both, rather than for: -

(a) Use in the production or supply of goods or services or for administrative purposes; or

(b) Sale in the ordinary course of business.

**16. Properties and Equipment**

Comprise all the immovable and other fixed assets of the reporting institution. These are to be reported net of accumulated depreciation.

They include:

- Staff houses
- Furniture, fixtures and fittings
- Motor vehicles
- Office equipment including computer equipment
- Land and buildings (excludes leasehold land and investment property)
- Others not specified elsewhere including foreclosed assets.

**17. Prepaid lease rentals**

This relate to the cost of the leasehold land net of accumulated armortised amount.

**18. Intangible assets**

Include all intangible assets such as goodwill, computer software, royalties, copyrights etc.

**19. Deferred Tax Asset**

These are taxes recoverable in future periods in respect of:

- Deductible temporary difference
- The carry forward of unused tax losses
- The carry forward of unused tax credits

**20. Retirement Benefit Asset**

These are staff retirement benefit assets computed as per IAS 19.

**21. Other assets**

These include assets not stated elsewhere including amounts due from other group companies other than banks.

**22. Assets Total**

This is the total of items 1 to 21 above.

## B. LIABILITIES

### 23. Balances due to Central Bank of Kenya

These include:

- Overnight loans and advances from Central Bank; and
- Reverse REPO sales to the Central Bank against government securities.

### 24. Customer Deposits

These include all funds received from public bodies, parastatals, private enterprises, individuals and other non-profit making institutions, both resident and non-resident in Kenya. To include current account balances, fixed/call deposits, and savings account balances, margins on letters of credit or any other deposit by whatever name both in local and foreign currencies whether matured or not.

### 25. Deposits and balances due to local banking institutions

These to include deposits due to commercial banks, financial institutions, mortgage finance companies and building societies locally. All inter-bank borrowings should be reported here.

### 26. Deposits and balances due to foreign banking institutions

These to include deposits due to commercial banks, financial institutions, mortgage finance companies and building societies overseas. All inter-bank borrowings should be reported here.

### 27. Other Money Market Deposits

These to include deposits/financial instruments from the money market.

### 28. Borrowed Funds

These include term borrowings from the Central Bank of Kenya, commercial banks both in Kenya and overseas, companies, donor agencies and other lending agencies both in Kenya and overseas. Special loan facilities covering funds received through special arrangements between the Kenya government and other foreign governments or donor agencies, such as EIB Loans, for onward lending or distribution to specified sectors of the economy should be entered here. Shareholders' loans whose original maturities are below 5 years should be classified as borrowed funds.

### 29. Balances due to banking institutions in the group.

These include amounts owed by banking institutions in the group.

### 30. Tax Payable

This relates to tax liability computed but not yet paid.

### 31. Dividends Payable

These are dividends that have been declared but not yet paid.

### 32. Deferred Tax Liability

These are taxes payable in future periods in respect of taxable temporary differences.

### 33. Retirement Benefit Liability

These are the retirement benefits liability as accounted for under IAS 19.

**34. Other Liabilities**

These include all other liabilities not specified elsewhere e.g.

- Items in transit.
- Amount due to other group companies other than banks.

**35. Total Liabilities**

This is the total of items 23 to 34 above.

## C. SHAREHOLDERS' EQUITY

**36. Paid up/Assigned Capital**

This is the nominal value of ordinary and preference shares issued and fully paid by the shareholders or capital assigned to Kenyan Branch (es) by foreign parent companies.

**37. Share premium/(discount)**

This is the difference between the nominal price and the purchase price of ordinary and preference shares, which is not refundable.

**38. Revaluation Reserve**

These are revaluation surpluses/losses arising from revaluation of fixed assets and financial instruments

**39. Retained Earnings/ Accumulated Losses**

These are undistributed profits or losses carried forward over the years. They should also include unrealised gains/losses.

**40. Statutory Loan Loss Reserve**

These are provisions that have been appropriated from retained earnings (revenue reserves). This will only apply if provisions computed under Risk classification of Assets and Provisioning Guideline are in excess of impairment losses computed under International Financial Reporting Standards.

**41. Proposed Dividends**

These are dividends that have been proposed by the Board but have not been ratified at the annual general meeting.

**42. Capital Grants**

These are grants, which are not callable.

**43. Total Shareholders' Funds**

This is the sum of items 36 to 42 above.

## II PROFIT AND LOSS ACCOUNT

## 1. INTEREST INCOME

**1.1 Loans & advances**

This covers interest income and discounts on loans and advances including bills and notes discounted/purchased and interest on commercial paper and corporate bonds. Interest income should not include interest on non-performing loans and this should exclude fees, commissions and penalties on loans and advances.

1.2 **Government securities**

This covers interest and discount earned on all Government securities.

1.3 **Deposits and placements with banking institutions**

This includes all interest earned on placements and overnight lendings to commercial banks, financial institutions, mortgage finance companies and building societies. Also include interest earned on current accounts held by financial institutions, mortgage finance companies and building societies with commercial banks. Interest on placements with collapsed institutions, should be suspended and not recognised as income.

1.4 **Other interest income**

This represents other interest income not captured above including interest income on repos. Interest income doubtful of recovery should not be recognized.

1.5 **Total Interest Income**

Total for items Nos.1.1-1.4 above.

2. **INTEREST EXPENSES**

2.1 **Customer deposits**

Consists of interest expenses on all categories of deposits, both local and foreign, excluding interest on borrowed funds.

2.2 **Deposits and placements from banking institutions**

Includes interest on borrowed funds plus interest on money market borrowings, both from domestic and overseas markets.

2.3 **Other interest expenses**

Consists of all other interest expenses on borrowings other than those specified in 2.1 and 2.2 above.

2.4 **Total Interest Expense**s

Total for item Nos. 2.1-2.3 above.

3. **NET INTEREST INCOME/(LOSS)**

Deduct item No.2.4 from item 1.5 above

4. **OTHER OPERATING INCOME**

4.1 **Fees and commission income on advances**

This includes all charges and commissions relating to lending e.g. appraisal fees, commitment fees, deposit mobilization fees and penalty interest.

4.2 **Other Fees and commission income**

This includes all charges and commissions relating to account operations (e.g. ledger fees), fees received from managing other institutions/group companies, commissions earned (e.g. charges on standing orders, safe-deposit facilities and ATMs) etc.

4.3 **Foreign exchange trading income/(loss)**

Consists of the profit (loss) arising from the purchase and sale of foreign currency. Also include gains/loss arising from the revaluation or conversion of foreign currency balances.

4.4 **Dividend income**

This income is earned from shareholding in other firms.

4.5 **Other income**

This is all other income not specified elsewhere above. This income should arise from normal banking business operations.

4.6 **Total Other Operating Income**

This is the total of items Nos. 4.1-4.5 above.

## 5. TOTAL OPERATING INCOME

Aggregate item 3 and 4.6

## 6. OPERATING EXPENSES

6.1 **Loan loss provision**

Enter the loan loss charge for the current period. Recoveries from a loan, which had been written off, should be reported under other income.

6.2 **Staff costs**

These are staff salaries and other staff benefits excluding the executive directors.

6.3 **Directors' emoluments**

These are compensations, salaries and benefits to the executive directors and non-executive directors for running the institution for the period.

6.4 **Rental charges**

These are rental charges

6.5. **Depreciation charge on property and equipment**

This is depreciation charge on property and equipment for the period.

6.6 **Amortization charges**.

Amortization charge on prepaid lease rentals, capital grants and intangible assets.

6.7 **Other operating expenses**

Includes all other expenses arising from normal banking business operations that have not been specified elsewhere. When finalising the annual report and financial statements, any significant item (i.e. more than 10% of the value of items in this category) should be disclosed separately

6.8 **Total Operating Expenses**

This is the sum of items 6.1-6.7

7. **PROFIT/ (LOSS) BEFORE TAX AND EXCEPTIONAL ITEMS**

Enter the difference between item 5 and 6.8 above.

8. **EXCEPTIONAL ITEMS**

Income or expenses that arise from events or transactions that are clearly distinct from ordinary banking activities of the institution and therefore are not expected to recur frequently or regularly.

9. **PROFIT/ (LOSS) AFTER EXCEPTIONAL ITEMS**

Enter sum of item on line 8 and item on line 7 above.

10. **Current tax**

Enter tax charge for the period.

11. **Deferred tax**

Enter the deferred tax charge.

12. **PROFIT/(LOSS) AFTER TAX AND EXCEPTIONAL ITEMS**

Enter the sum of items on lines 9, 10 and 11 above.

III **OTHER DISCLOSURES**

1. **NON-PERFORMING LOANS AND ADVANCES**

a) **Gross non- performing loans**

Enter the gross aggregate of substandard, doubtful and loss accounts inclusive of interest suspended.

b) **Interest in suspense**.

Enter the aggregate of interest in suspense for substandard, doubtful and loss accounts.

c) **Total non-performing loans net of interest in suspense**.

Enter the difference between (a) and (b) above.

d) **Loan loss provisions**

Enter the aggregate of loan loss provisions made for substandard, doubtful and loss accounts computed as per Prudential Guideline No. CBK PG/04 on Risk classification of Assets and Provisioning

e) **Net Non-Performing Loans (c-d)**

Enter the difference between items (c) and (d) above.

f) **Discounted Value of Securities**

Enter the discounted value of securities held against sub standard and doubtful accounts. However, for an individual debt, if the discounted value of security is more than the debt amount net of interest in suspense and the provisions, then enter the net amount of the debt. The value of securities should be compiled as per the CBK guideline CBK/ PG/04-1.

g) **Net NPLs Exposure (e-f)**

Enter the difference between (e ) and (f) above.

## 2. INSIDER LOANS, ADVANCES AND OTHER FACILITIES

(a) **Directors, Shareholders and Associates**

- On-balance sheet
- Off-balance sheet

These are loans and advances including off- balance sheet items to Directors and Significant Shareholders and their associates as per section 2 of the Banking Act.

(b) **Employees**

Enter loans and advances to employees.

(c) **Total Insider Loans**

Enter the aggregate of 2(a) and 2(b).

## 3. OFF- BALANCE SHEET ITEMS

**a) Letters of Credit, Guarantees and Commitments**

Enter Letters of Credit, Guarantees, Commitments etc. This should exclude off-balance sheet items to insiders.

**b) Other Contingent Items**

Enter other items not covered under 3(a) above.

**c) Total Contingent Items**

Enter aggregate of items on lines 3(a) and 3(b) above.

## CAPITAL STRENGTH

The following risk-based capital items should be computed as instructed in prudential regulation CBK/PG/03.

a) Core Capital

b) Supplementary Capital

c) Total Capital

d) Total Risk Weighted Assets

e) Core capital/total deposit liabilities

f) Core capital/total risk weighted assets

g) Total capital/total risk weighted assets

## 5. LIQUIDITY

The liquidity ratio should be computed as instructed in Prudential Guideline CBK/PG/05

(a) Net Liquid Assets/Total short-term liabilities.

(b) Minimum Statutory Ratio

(c) Excess/Deficiency (a-b)

## CONTENTS

## PART I PRELIMINARY

1.1 **Title –** Guideline on Opening of New Place of Business, Closing Existing Place of Business or Changing Location of Place of Business.

1.2. **Authorization** - This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3. **Application** - All institutions licensed under the Banking Act (Cap 488).

1.4 **Definitions** – Terms used in this regulation are as defined in the Banking Act.

## PART II STATEMENT OF POLICY

2.1. **Purpose -** This guideline has been issued to assist institutions applying to open new places of business, close the existing places of business or change location of business in or outside Kenya.

2.2. **Scope -** This guideline provides clear regulatory requirement that should be fulfilled prior to an institution being granted an approval to open, close or change location of an existing place of business.

2.3. **Responsibility -** It is the responsibility of the board of directors of institutions to ensure that the institution complies with this guideline.

## PART III APPLICATION PROCEDURES

3.1. Every institution should apply to the Minister through the Central Bank of Kenya, P.O. Box 60000, Nairobi, using the appropriate forms entitled "Application by an institution to open or close or change location of a place of business".

3.2. The relevant application forms can be obtained from Bank Supervision Department, Central Bank of Kenya.

3.3. All applications duly completed together with the necessary attachments specified in Part IV of this regulation should be submitted to: The Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000, Nairobi.

## PART IV INFORMATION REQUIRED

4.1. **Opening of a new Place of Business:**

Institutions will be required to submit the following information, in support of their applications for opening new place of business or relocating a place of business:

4.1.1 Summary report showing performance of the institution for the last two years.

4.1.2 Organisation structure for the proposed place of business.

4.1.3 Feasibility study of the future operations and development of the new place of business for a minimum of three years from the date of this application including projections of:

a) deposit mobilisation and interest payable stating separately the proposed major sources of deposits;

b) advances to be made and interest receivable, stating intended sectoral lending;

c) investments to be made and earnings, stating policy and categories of business to be financed;

d) operating expenses including rents, salaries, employee benefits, directors' remuneration;

e) liquid and cash reserve assets;

f) capital structure;

g) provisions for loans and advances;

h) fixed assets, including business premises;

i) other income, including commissions, discounts, etc;

j) net operating profit/loss.

4.1.4 Interest rate sensitivity analysis of the projections submitted or other similar analyses of the extent to which the forecasts will change when interest rates vary (the assumptions underlying the projections and the sensitivity analysis should be stated).

4.1.5 Statistical and other data which may have been collected in respect of the area in which the applicant intends to serve including population of the area, schemes of agriculture, business, industrial development, etc. and existing banking facilities.

4.1.6 A schedule of all the preliminary expenses.

4.1.7 A bank cheque for the fees payable to the Permanent Secretary, Ministry of Finance, to cover application fees as specified in the Banking (fees) Regulation (Currently fees payable is shs.5,000/=).

4.2 **Opening of a new place of business outside Kenya**:

4.2.1 Amount required from Kenya immediately and projections for the next three years.

4.2.2 Articles and Memorandum of Association, if any, where a Kenyan institution has taken-up shares in a foreign banking entity.

4.2.3 Copy of management agreement, if any.

4.2.4 A schedule of expected income and expenditure and Projected Balance Sheet for the next three years.

Prior to granting an approval to open a place of business, a letter of no objection shall be obtained from the host regulator.

4.3 **Other Requirements**

4.3.1 The license of a branch, which fails to commence operations within one year of the Minister's approval, shall be considered to have lapsed. The institution shall thereafter be required to submit a fresh request if they so wish to open the branch in future.

4.3.2 In considering an application for a new place of business, the Central Bank shall require that the institution meets the requirements of the Banking Act and Prudential Guidelines. Where an institution does not meet the requirements, the Central Bank may at its own discretion, recommend an approval if otherwise satisfied, that it will be in the public interest to do so.

## PART V COMMENCEMENT OF OPERATIONS

5.1. **Inspection of Premises**

On being granted the approval and prior to commencement of operations, the institution should apply in writing to: Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000, Nairobi for the inspection of the business premises at least two weeks (2) before the proposed date of commencing operations.

5.2 Before submitting the application for inspection, ensure that the premises are prepared and ready for commencement of operations, in line with the form CBK/IF 11-3 attached to this guideline.

5.3. Central Bank will conduct an inspection and if satisfied, grant approval for commencement of operations.

## PART VI CLOSURE OF PLACE OF BUSINESS

6.1 In deciding on the approval to authorise the closure of a place of business, the Central Bank seeks to be satisfied that:

6.1.1 The public interest that was being served in the area the institution currently operates from will not be jeopardised by the closure.

6.1.2 Alternative financial services that were being provided by the institution at current place of business are available otherwise in the locality.

6.1.3 The previous projections supplied by the institution which initially indicated the current location as being lucrative shall be taken into account while appraising the request.

Once the approval has been granted by the Minister for Finance to close a particular place of business, the institution shall give six months notice to the public of its intention to close. Thereafter, it shall inform Central Bank the actual date that the place of business was closed.

In the case of a foreign branch, the Central Bank of Kenya should be notified six months prior to the intended closure of the foreign branch.

## PART VII CORRECTIVE MEASURES

7.1. **Remedial measures** - If an institution fails to comply with this guideline, the Central Bank may pursue any or all corrective actions as provided under Sections 33, 34 and 55 of the Banking Act.

7.2. **Penalty** – The Central Bank may close a place of business and impose a penalty on an institution in case it comes to the knowledge of the Central Bank that an institution is operating an unauthorised place of business.

## PART VIII EFFECTIVE DATE

8.1. **Effective Date:** 1 January 2006

8.2 **Supersedence:** This Guideline supersedes Prudential Regulation No. CBK/RG/13 issued in September 2000.

**Enquires**

Enquiries on any aspect of this regulation should be referred to:

The Director, Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000
**NAIROBI**

## PART IX: APPLICATION FORMS

### CBK/IF 11-1 APPLICATION BY AN INSTITUTION TO OPEN A NEW PLACE OF BUSINESS

1. Name of the Institution …….....…
2. Names/locations of existing branches and dates of establishment .....…….....…
3. Type of proposed place of business (i.e. branch, sub-branch, agency or mobile unit etc) …….....
4. a) Name of the proposed location of business …….....…
   b) Postal address and telephone number(s) …… …….....
   c) Physical address:- L.R.NO. ..... Building .....…….. Street .....….....
   Town …….....
5. a) Chief Operating officers of the Proposed New Place of Business
   b) Number and designation of non-management staff …….....…….....…
   6. Business hours …….....….

7. Is the new place of business:-
   a) Self-owned? ……Yes/No* …….. If yes, cost of purchase or construction ……
   b) Leased? …… Yes/No* …… If yes, terms of lease ……
8. Proposed date of commencing operations …….....

9. Do you plan to change the status of the proposed place of business? ……..... Yes/No* …… If yes, state proposed type of status and when ……

10. In case of a subsidiary and the location of the new place of business will be outside Kenya;

a) Provide names of the joint shareholders, nationality, address and their respective percentage shareholding …….....
b) Proposed Capital Structure
   i) Authorised capital ……....…….....
   ii) Paid-up/assigned capital …….....…….....…

11. Name of Managing Director/Chief Executive …….....….....…..

    Signature …….....…… Date …….....….....…..

***Delete whichever is not applicable**

| | | | YES | NO | COMMENTS |
|---|---|---|---|---|---|
| | | | | | |
| 1 | | **TITLE DEED/LEASE AGREEMENT** | | | |
| | | | | | |
| | (a) | **Title Deed** | | | |
| | | Is the institution registered as owners of | | | |
| | | the premises? Obtain a copy of the title | | | |
| | | deed. | | | |
| | | | | | |
| | (b) | **Lease Agreement** | | | |
| | | Obtain a copy of the lease agreement. | | | |
| | | Is the lease signed by both parties? | | | |
| | | | | | |
| | | Is the lease registered? | | | |
| | | | | | |
| | | What is the duration of the lease and is | | | |
| | | it long enough to allow for economical | | | |
| | | use of the permanent improvements? | | | |
| | | | | | |
| | | Is the landloard's approval for interior | | | |
| | | design/alteration obtained and other | | | |
| | | conditions satisfied? | | | |
| | | | | | |
| 1.2 | | **APPROVAL BY RELEVANT AUTHORITIES** | | | |
| | | | | | |
| | | Have the following approvals been | | | |
| | | obtained where necessary:- | | | |
| | | | | | |
| | o | Local Authority | | | |
| | | | | | |
| | o | Security firm - regarding physical | | | |
| | | security of staff, premises and assets. | | | |
| | | | | | |
| | o | Approval by K.P. & L Co. for electrical | | | |
| | | wiring of the premises. | | | |
| | | | | | |
| 1.3 | | **BANKING HALL** | | | |
| | | | | | |
| | | Does the Banking Hall suit the type of | | | |
| | | business to be undertaken in the | | | |
| | | premises? | | | |
| | | | | | |
| 1.4 | | **STAFF OPERATING AREA** | | | |
| | | | | | |
| | | Is space allowed for each individual | | | |
| | | employee equal to or more than 350 | | | |
| | | cubic feet? | | | |
| | | | | | |
| | | Are sufficient and suitable sanitary | | | |
| | | conveniences for employees provided | | | |
| | | and kept clean? | | | |

| | | | YES | NO | COMMENTS |
|---|---|---|---|---|---|
| 1.5 | | **VENTILATION** | | | |
| | | | | | |
| | | Is ventilation adequate for security and | | | |
| | | circulation of fresh air in the premises? | | | |
| | | | | | |
| 1.6 | | **LIGHTING** | | | |
| | | | | | |
| | | Is there sufficient and suitable lighting in | | | |
| | | every part of the premises? | | | |
| 1.7 | | **DISPLAYS** | | | |
| | | | | | |
| | | Are the following displayed? | | | |
| | | | | | |
| | o | Approved business hours | | | |
| | o | Audited accounts | | | |
| | o | Current Banking licence | | | |
| | o | Banking Tariffs | | | |
| | o | Names of senior officers | | | |
| | o | Certificate of contribution from DPF | | | |
| | | | | | |
| 2.1 | | **OUTER DOORS/WALL/WINDOWS** | | | |
| | | | | | |
| | | Are the outer doors of heavy duty metal or | | | |
| | | reinforced wood? | | | |
| | | | | | |
| | | Are there a minimum of two locks of | | | |
| | | good quality? | | | |
| | | | | | |
| | | Are there arrangement for an observer holder or | | | |
| | | panel chain to be used after normal business hours? | | | |
| | | | | | |
| | | Are windows and glass walls reinforced with | | | |
| | | metal grills or made of anti-burglar/bullet | | | |
| | | proof glass? | | | |
| | | | | | |
| 2.2 | | **STRONGROOM (SAFE/VAULT)** | | | |
| | | | | | |
| | | Is there a strongroom? | | | |
| | | | | | |
| | | Is its conveniently situated i.e. does it boarder with | | | |
| | | the outside walls? | | | |
| | | | | | |
| | | Is there adequate space to cater for the need of the | | | |
| | | institution? | | | |
| | | | | | |
| | | Are the duplicate keys stored off the premises? | | | |
| | | | | | |
| | | Is there dual control for entry. | | | |

| | | | YES | NO | COMMENTS |
|---|---|---|---|---|---|
| 2.3 | | **FREE - STANDING SAFE** | | | |
| | | | | | |
| | | Is the safe fire proof? | | | |
| | | Is the access to the safe and the room where the safe | | | |
| | | is, kept under the control of more than one person? | | | |
| | | | | | |
| | | Is the safe in a window less room and secured by a | | | |
| | | heavy duty lock door of fire resistant material? | | | |
| | | | | | |
| 2.4 | | **RECORD ROOM AND STATIONERY STORE** | | | |
| | | | | | |
| | | Is it fire proof? | | | |
| | | | | | |
| 2.5 | | **CASH LOADING AREA** | | | |
| | | | | | |
| | | Is it protected from Public view and access? | | | |
| | | | | | |
| | | Is cash in transit protected by police/security firm? | | | |
| | | | | | |
| | | Are there security guards at the premises at all times | | | |
| | | - day and night? | | | |
| | | | | | |
| 2.6 | | **CASHIERS' TILL** | | | |
| | | | | | |
| | | Is it restricted to the individual cashiers during | | | |
| | | working hours? | | | |
| | | | | | |
| 2.7 | | **ALARM SYSTEM** | | | |
| | | | | | |
| | | Is there an alarm system installed in the premises? if | | | |
| | | yes, | | | |
| | | Is it connected to police/security firm? Switches to | | | |
| | | be located in the:- | | | |
| | | | | | |
| | | o Strongroom | | | |
| | | o Cashiers' cubicles | | | |
| | | o Manager's office | | | |
| | | | | | |
| 2.8 | | **EMERGENCY PLAN** | | | |
| | | | | | |
| | | Is there an emergency plan? Is it documented? | | | |
| | | Are there fire extinguishers at appropriated places? | | | |
| | | i.e. | | | |
| | | o Water type | | | |
| | | o Non-water type | | | |
| | | o Smoke/heat detectors | | | |

| | | | YES | NO | COMMENTS |
|---|---|---|---|---|---|
| 2.9 | | **COMPUTERS** | | | |
| | | | | | |
| | | Is the computer room located in a secure area? | | | |
| | | | | | |
| | | o Passwords | | | |
| | | o Access to the computer room restriction. | | | |
| | | o Back-ups made and | | | |
| | | o Stored outside the premises | | | |
| | | | | | |
| 2.10 | | **SAFE DEPOSIT LOCKERS** | | | |
| | | | | | |
| | | Is the lockers area in a separate place and not in the | | | |
| | | strong room? | | | |
| | | | | | |
| | | Is there sufficient and suitable verification space? | | | |
| | | | | | |
| 3 | | **INSURANCES** | | | |
| | | | | | |
| | (i) | Obtain certificates for the following insurances:- | | | |
| | | | | | |
| | | a) Fire and other perils | | | |
| | | b) Burglary and theft | | | |
| | | c) Public liability | | | |
| | | d) Fidelity | | | |
| | | g) Cash and valuable in premises | | | |
| | | h) Motor vehicles in premises | | | |
| | | i) Other assets - obtain a list of other assets and | | | |
| | | their values. | | | |
| | | j) Employers' liability | | | |
| | | | | | |
| | (ii) | For each of the above, carry out verification as | | | |
| | | follows:- | | | |
| | | | | | |
| | | Is the issuing insurance firm licensed with the | | | |
| | | commissioner of insurance? | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | (iii) | Is the insurance company connected in any way | | | |
| | | with the institution's:- | | | |
| | | | | | |
| | | o Directors | | | |
| | | o Management and | | | |
| | | o Shareholders with more than 5% of the | | | |
| | | institution's shares? | | | |
| | | | | | |
| | | Are there other insurances that are required to be | | | |
| | | taken under the lease agreement? i.e. glass windows. | | | |
| | | | | | |
| | | If yes, have the covers been taken. | | | |

| | | | YES | NO | COMMENTS |
|---|---|---|---|---|---|
| 4 | | **DOCUMENTATION** | | | |
| | | | | | |
| | (i) | Are there detailed and comprehensive policy | | | |
| | | manuals, approved by the board of directors, | | | |
| | | covering at least the following? | | | |
| | | | | | |
| | | a) Staffing | | | |
| | | b) Training | | | |
| | | c) Fixed Assets | | | |
| | | d) Deposits | | | |
| | | e) Lending | | | |
| | | f) Loan classification | | | |
| | | g) Bad debt provision/write-offs | | | |
| | | h) Investments | | | |
| | | i) Management information systems | | | |
| | | j) Budgeting and variance analysis | | | |
| | | | | | |
| | | Additionally, each institution should maintain both | | | |
| | | operations and accounting manuals. | | | |
| | | | | | |
| | (ii) | Are the policy documents availed to all staff | | | |
| | | members and are they updated regularly on any | | | |
| | | changes? | | | |
| | | | | | |

## NOTES ON THE COMPLETION OF THE APPLICATION FORM TO OPEN NEW PLACE OF BUSINESS

These notes are intended to give further guidance to the completion of the application form. Items on the form where guidance is deemed necessary are:-

1. **Item Number 4(b) and (c) Postal and Physical Address.**

   These details should be submitted to the Central Bank of Kenya as soon as they are known.

2. **Item Number 5: Particulars of Officers**

   The term 'officers' refers to:

   (a) the officer in charge of the place of business;

   (b) the assistant officer in charge of the place of business; all the section heads.

Information requested under item 5(b) on non-management staff is total number in each grade (i.e. cleaners, clerks, typists, etc).

## CBK/IF 11-2 APPLICATION BY AN INSTITUTION TO CLOSE OR RELOCATE AN EXISTING PLACE OF BUSINESS

**PART I**

1. Name of the Institution …….....
2. Names/locations of existing branches and dates of establishment …….
   ….…….
3. Type of current place of business to be closed or relocated (i.e. branch, sub-branch, agency or mobile unit etc)
   …….....…….....
   …….....
   …….....

**PART II**

**In case of relocation :**

4. a) Name of the proposed location of business if already identified
   …….....….....…
   b) Postal address and telephone number(s) …….....…
   c) Physical address:-

L.R. NO. …….....…… Building …….....
Street……..... Town …….....……

d) State reasons for relocation …….....……..…
…….....……

5. Is the new place of business:-
c) Self-owned? ……Yes/No* ….. If yes, cost of purchase or construction ……..
d) Leased? …… Yes/No …… If yes, terms of lease

6. Proposed date of commencing operations …….....…….....…...

7. Do you plan to change the status of the proposed place of business? ……. yes/No* ……. If yes, state proposed type of status and when …….....…… .....

8. In case of a subsidiary and the location of the new place of business will be outside Kenya; Provide names of the joint shareholders, nationality, address and their respective percentage shareholding
……
…….....…….....…

**PART III**

9. **In case of closure:**
a) Location of current place of business proposed to be closed
…….....
b) Indicate profitability of the branch in the last three years
…….....….....……
…….....…
c) Proposed action plan on existing customers of the branch
…….....
…….....….....
d) Proposed action plan on current branch employees
…….....…….....…
…….....…
e) Are there any banking facilities provided in the vicinity? If so state by whom
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10. Name of Managing Director/Chief Executive …….....…

…….....….....….....

Signature …….....…. Date …….....…….....

***Delete whichever not applicable**

# GUIDELINE ON MERGERS, AMALGAMATIONS, TRANSFERS OF ASSETS AND LIABILITIES CBK/PG/12

## CONTENTS

## PART I: PRELIMINARY

1.1. **Title -** Guideline on mergers, amalgamations, and transfer of assets and liabilities.

1.2. **Authorisation** - This guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3. **Application -** All institutions licensed under the Banking Act (Cap.488).

1.4. **Definitions** - Terms used within this guideline are as defined in the Banking Act, as further defined below, or as reasonably implied by contextual usage.

1.4.1 **Amalgamating or merging institutions** - the institutions contemplating effecting an amalgamation or merger;

1.4.2 **Receiving institution** - the institution to which assets and liabilities are transferred through a transaction effected under this section;

1.4.3 **Resulting institution** - the institution resulting from a merger or an amalgamation effected under this section;

1.4.4 T**ransferor institution** - the institution which transfers its assets and liabilities to a receiving institution.

1.4.5 **Acquisition** – The purchase by one institution of another, for cash, an exchange of shares, or a combination of both. The process is also referred to as a **takeover**.

1.4.6 **Amalgamation** – The union/ fusion of two institutions licensed under the Banking Act (Cap. 488).

1.4.7 **Merger** – The fusion of two or more institutions licensed under the Banking Act (Cap. 488).

1.4.8 **Transfer of assets and liabilities** – The transfer of all the assets and liabilities of the transferor institution to the receiving institution.

1.4.9 **Partial transfer of assets and liabilities -** The transfer of limited assets and liabilities as specified in the merger / amalgamation agreement, of the transferor institution to the receiving institution.

## PART II: STATEMENT OF POLICY

2.1. **Purpose -** This guideline has been prepared pursuant to section 9 and section 13(4) of the Banking Act to assist institutions intending to merge or amalgamate and/or transfer assets and liabilities, and facilite transfer of significant shareholding.

2.2. **Scope** – This guideline shall be applicable to all institutions licensed to conduct business in Kenya under the Banking Act (Cap.488). It specifies application procedures and the minimum conditions that must be fulfilled by merging or amalgamating institutions and forms to accompany applications for transfer of singnificant shareholding.

2.3. **Responsibility** – It shall be the responsibility of the shareholders and directors to ensure that the provisions of these guidelines are adhered to by the institutions intending to merge, amalgamate and/or transfer of assets and liabilities.

## PART III: SPECIFIC REQUIREMENTS

### 3.1. Application Procedures

3.1.1 All institutions intending to merge/amalgamate or transfer assets and liabilities should write to the Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000, 00200 Nairobi, and attach all the requirements as specified in Section 3.1.3 below.

3.1.2 Merging or amalgamating institutions should first seek approval from the Minister for Finance through the Central Bank of Kenya for the name under which they intend to use in case of change of name. They should then ascertain with the Registrar of Companies that the name selected is available and is appropriately reserved for their use.

3.1.3 Merging or amalgamating institutions should submit a due diligence report signed by directors of the institutions involved. The report should at a minimum contain the following:

a) An extract of minutes of the general meeting of the shareholders of each of the institutions involved passing the resolutions to merge or amalgamate and terms and conditions of the relevant agreement. Also attach a copy of resolution of the board of directors of all the participating companies approving the proposed merger or amalgamation.

b) Latest audited accounts for all the institutions involved in the merger/amalgamation. A copy of consolidated accounts of the institutions duly certified by an independent firm of auditors as at the date of application for approval. The certified accounts should meet CBK minimum disclosure requirements.

c) memorandum and Articles of Association of merging/ amalgamating institutions.

d) A statement of the nature and objectives of the merger/ amalgamation.

e) A copy of the proposed agreement for the merger/amalgamation.

f) Financial projections for the first three years of operation after merger/ amalgamation together with respective assumptions.

g) Proposed Details of the method of valuation and the valuer.

h) Proposed organisation structure of the resulting institution.

i) Proposed details of senior management (A) - as per form CBK/IF 12-1

j) Proposed shareholding structure (B) - as per form CBK/IF 12-2

k) Proposed board of directors (C) - as per form CBK/IF 12-3

l) Particulars of Directors Loans* (D) - as per form CBK/IF 12-4

m) Proposed branch network (E) - as per form CBK/IF 12-5

n) Proposed staff rationalisation programme. This should take into account the following:

i) The management structure of the resulting institution will need to be agreed upon, properly structured and where necessary job descriptions amended.

ii) The provisions of the trade union agreement will need to be complied with. This may require advance negotiations with the union.

iii) In respect of non-unionised staff the accumulated leave and other benefits will need to be computed and possibly transferred to the resulting institution.

iv) An appraisal of the staff requirements will need to be done. Recruitment of additional staff in specialised areas will need to be considered.

v) Staff pension scheme/provident fund schemes will need to be in compliance with the relevant laws and guidelines.

vi) Any expatriate staff on work permit will require the transfer of their work permits to the new entity.

vii) Contracts of employment will need to be transferred to the new entity or fresh ones drawn out.

viii) Salary scales, benefits and remuneration structure will need to be carefully reviewed and harmonised to avoid any inconsistencies.

ix) Staff training programmes will need to be reviewed and consolidated.

x) New personnel policies will need to be agreed upon.

*o)* Anticipated tax implications of the merger.

p) Operational contingencies and marketing plan.

q) Business strategy to be adopted.

r) ICT strategy and system software to be adopted.

s) Legal due diligence covering all areas of any legal concerns that may face the resulting institution. This should include current litigations and anticipated litigation.

## 3.2. Approval Procedures

The Central Bank of Kenya shall not recommend for approval to the Minister for the merger/amalgamation or transfer unless satisfied that:

3.2.1 The merger/amalgamation shall be in public interest.

3.2.2 The business the applicant proposes to conduct is that of an institution under the Banking Act.

3.2.3 The merger/amalgamation will be viable.

3.2.4 Every person proposed as a director or an officer in the new organisation complies with "Fit and Proper" criteria in accordance with the First Schedule of the Banking Act.

3.2.5 In case of a transfer of assets and liabilities referred to, such transfer is to another institution or person approved by the Central Bank of Kenya for the purpose of the transfer.

3.2.6 The resulting institution, or in the case of such transfer of assets and liabilities, the bank or person taking over such assets and liabilities, shall have the same rights and be subject to the same obligations as those applicable prior to the merger/amalgamation or transfer.

3.2.7 All agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by, or in favour of any of merged/amalgamated institutions and in force immediately prior to the merger/amalgamation or transfer shall remain in force and effect and shall be construed for all purposes as if they had been entered into, made, drawn up or executed with or in favour of the resulting institution.

3.2.8 The resulting institution shall be in compliance with the Banking Act, Central Bank of Kenya Act, and any guidelines issued thereunder and/or other applicable statutory requirements.

# PART IV POST MERGER/AMALGAMATION REQUIREMENTS

## 4.1. Permits, licenses and other approvals

4.1.1 Banking licence in the name of the new entity will be required.

4.1.2 Likewise, all other licences, permits and approvals will need to be obtained in the name of the new entity.

4.1.3 Membership of various trade associations and other similar bodies will have to be in the name of the new entity.

4.1.4 For rented premises, the landlord's consent may be necessary.

## 4.2. Banking and Finance Facilities

4.2.1 All facilities enjoyed by the merging/amalgamating companies, including correspondent banking facilities will need to be transferred to the new entity.

4.2.2 Any hire purchase or finance leases will need to be assigned or transferred.

## 4.3. Maintenance of Records

4.3.1 It is essential to ensure that the right accounting systems and procedures are in place. Expert advise may be required to ensure proper consolidation of the different accounts and systems used.

4.3.2 Books of the entity being absorbed will need to be closed.

4.3.3 Closure and/or transfer of all bank accounts, income tax file, PAYE file, and others.

4.3.4 Review/consolidation of policy and procedures manual.

## 4.4. Miscellaneous Requirements

The following requirements in so far as they are applicable, will need to be attended to:

4.4.1 Consolidation of insurance.

4.4.2 Transfer of lease agreements in respect of all rented premises, including premises occupied by staff.

4.4.3 Transfer of all electricity, water and telephone accounts.

4.4.4 Transfer of credit facilities from various suppliers to the new entity.

# PART V: EFFECTIVE DATE

**Effective date**: The effective date of this guideline shall be 1st January, 2006.

# ENQUIRIES

Enquiries on any aspect of this guideline should be referred to:
Director,
Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000 - 00200
**NAIROBI**
TEL. 2860000 e-mail: *fin@centralbank.go.ke*

# PARTICULARS OF CHIEF EXECUTIVE AND SENIOR MANAGEMENT

CBK/IF 12-1

NAME OF INSTITUTIONS……..

Reporting Date.....

| NAME* | ID/PASSPORT NO.** | DATE OF BIRTH | NATIONALITY | DATE OF EMPLOYMENT AT THE BANK | POSITION HELD | ACADEMIC QUALIFICATIONS | PROFESSIONAL QUALIFICATIONS |
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* All names to be in full.

** Put ID Nos. for Kenyans and Passport Nos. for Non-Kenyans.

Name.....Designation.....Signature.....Date.....

# PARTICULARS OF SHAREHOLDERS

**NAME OF INSTITUTION** .....

| SHAREHOLDERS' NAMES | NUMBER OF SHARES | VALUE SHS' "000" | % OF SHARE HOLDING | NAMES OF SHAREHOLDERS OF CORPORATE PERSONS IN COLUMN " A" | % OF SHAREHOLDING BY PERSONS IN COLUMN " E" |
|---|---|---|---|---|---|
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| **TOTAL** | | | | | |
| **TOTAL PAID UP CAPITAL AS PER CBK BSM** | | | | | |

**TAKE NOTE OF THE FOLLOWING:**

Under ultimate beneficiary, state names of actual individual human persons behind the shareholding

Indicate separately shareholders with 10% or more of total shareholding or all if they number ten or less

With foreign banks incorporated outside Kenya, details of ultimate beneficiary need not be specified

In case of nominees, names of ultimate beneficiaries should be revealed

**Name**.....**Designation**.....**Signature**.....

# PARTICULARS OF DIRECTORS*

NAME OF INSTITUTION ……..

| DIRECTOR'S NAME | ID/PASSPORT NO.** | DATE OF BIRTH | NATIONALITY | EXECUTIVE OR NON-EXECUTIVE | DATE OF APPOINTMENT | PROFESSION*** | OTHER DIRECTORSHIPS |
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* Foreign incorporated institutions should give particulars of the local management committee.
** Put ID No. for Kenyans and passport No. for Non-Kenyans.
*** Indicate profession e.g. Banker, Lawyer, businessman etc.

Name.....Designation.....Signature.....Date.....

# PARTICULARS OF DIRECTORS LOANS*

NAME OF INSTITUTION ..... Reporting Date.....

| DIRECTOR'S NAME | ACCOUNT NAME | TYPE OF FACILITY | DATE APPROVED | AMOUNT APPROVED | OUTSTANDING BALANCE | SECURITY | | INTEREST RATE |
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* To include all loans in the director's names and those granted to directors through corporate entities.
Foreign incorporated institutions should give particulars of loans granted to members of the local management committee.

Name.....Designation.....Signature.....Date.....

# PARTICULARS OF BRANCHES, SUB-BRANCHES AND OTHER OUTLETS

FORM IF 12-5

NAME OF INSTITUTION…….....

Reporting Date.....

| NAME OF BRANCH | PROVINCE | DISTRICT | TOWN | STATUS (Branch,Sub-Branch, Agency, etc) | STREET | PLOT NUMBER | STATUS OF LOCATION (Municipality, Town Council, Urban Council, etc) | LICENCE FEE PAYABLE SHS |
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| | TOTAL FEE PAYABLE | | | | | | | |

NB: The head office should be listed first

Name.....Designation.....Signature.....Date.....…

## CONTENTS

## PART I: PRELIMINARY

**1.1. Title:** Guideline on Enforcement of Banking Laws and Regulations

1.2 **Authorisation -** This Guideline is issued under section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system.

1.3. **Purpose -** This Guideline is intended to provide information and guidance to the banking industry on the approach the Central Bank will take in issuing prompt supervisory directives and corrective orders to institutions.

Supervisory enforcement actions, contained herein has attempted to set forth the banking practices, conditions, and violations of law giving rise to the particular problems or weaknesses identified, ordinarily through on-site examinations. Supervisory enforcement actions are also to be used to provide an outline of specific corrective/remedial measures, including appropriate time frames and goals for achievement of compliance. Specific courses of enforcement action which may be considered for use by the Central Bank of Kenya will be communicated to each individual institution as and when the need arises.

1.4. **Definition** - Terms used in this Guideline are as defined in the Banking Act.

## PART II: IMPLEMENTATION AND SPECIFIC REQUIREMENTS

The following actions will be taken if, ordinarily, the management of institutions subject to such actions has demonstrated a disregard for safe and sound banking practices and/or the lack of willingness or ability to correct weaknesses or problems on their own. It should be noted that the enforcement actions contained herein are not exhaustive and CBK is at liberty to prescribe any remedial action that it considers appropriate in light of the lapses/violations being addressed.

2.1 **Board Resolutions**

The Central Bank may require an institution to pass Board Resolutions which are acceptable commitments or responses from institutions that exhibit supervisory concerns, where such actions clearly evidence a board's commitment to effect prompt correction of weaknesses or violations. Such resolutions should indicate the time frame within which compliance will be attained.

2.2. **Commitment Letter**

This is a letter from the Central Bank to an institution's board of directors outlining specific corrective actions to be undertaken by the bank management which should be accepted and signed by the bank's directors indicating their commitment to comply with the specific recommendations. The concerns raised will have been identified whether through on-site inspection or off-site surveillance. The signed original letter should be returned to the Supervision Department within 30 days and a copy be retained with the institution's official records.

2.3 **Memorandum of Understanding**

This is a written agreement initiated by the Central Bank of Kenya setting forth specific corrective/remedial actions to be undertaken by an institution's board of directors. Failure to comply within a specified time frame by the board of directors could result in subsequent action of a legal nature. The weaknesses in need of correction will also have been identified either through on-site or off-site supervision.

## 2.4 Issuance of Directives

The following corrective actions are authorized by Section 33(1) of The Banking Act if the Central Bank of Kenya has reason to believe that:

a) the business of an institution is being conducted in a manner contrary to or not in compliance with the requirements of the Act or of any guideline made thereunder or in any manner detrimental to or not in the best interest of its depositors or members of the public; or

b) an institution, any of its officers or other person participating in the general management of the institution is engaged in any practice likely to occasion a contravention of any of the provisions of the Act or any regulations made thereunder, the Central Bank of Kenya may:

i) **give advice** and make recommendations to the institution with regard to the conduct of its business generally;

ii) **issue directions** regarding measures to be taken to improve the management or business methods or to secure or improve compliance with the Act, regulations or other written law or regulations;

iii) **issue directions**, in the case of Section 33 (1)(b), to an institution, officer or other person **to cease such practice**;

iv) **appoint a person** to advise and assist the institution generally or for the purposes of implementing any directions under (i) and (ii) above and such person's advice shall have the same force and effect as a direction and shall be deemed to be a direction of the Central Bank of Kenya.

However, prior to the above action, notice of intention shall be served on the institution or the officer as the case may be, to show cause why such a direction should not be issued.

## 2.5. Removal of Officers and Denial of Corporate Approvals

The following corrective actions are authorized by Section 33A of The Banking Act and may be issued where an auditor's report, under Section 24 (4) or an inspection report under Part VII of the Banking Act reveals that an institution conducts its business in a manner contrary to the provisions of the Act or any regulations made thereunder or in any manner detrimental to or not in the best interests of its depositors or members of the public:

a) restrict, suspend or prohibit the payment of dividends;

b) prohibit the conversion of any profits into capital;

c) direct the suspension or removal of any officer involved in such conduct;

d) require the institution to reconstitute its board of directors;

e) withhold branch or other corporate approvals.

## 2.6. CBK Intervention in the management of an institution

Corrective actions are authorized by Section 34 of The Banking Act, with the approval of the Minister, if:

a) the institution fails to meet any financial obligation, when it falls due, including an obligation to pay any depositor;

b) a petition is filed, or a resolution proposed, for the winding up of the institution or if any receiver or receiver and manager or similar officer is appointed;

c) the auditor makes a report to Central Bank of Kenya under the provisions of subsection (4) of section 24; or

d) the Central Bank of Kenya discovers or becomes aware of any fact or circumstance which warrants the exercise of the relevant power in the interests of the institution or its depositors or other creditors.

The following corrective actions may be taken:

i) **appoint a person (statutory manager)** to assume the management, control and conduct of the affairs and business of an institution to the exclusion of its board of directors;

ii) **remove any officer or employee** who has caused or contributed to any contravention of the Act or any regulations made thereunder or to any deterioration in the financial stability of the institution or has been guilty of conduct detrimental to the interests of depositors or other creditors;

iii) **appoint a competent person** to its board of directors to hold office as a director who shall not be capable of being removed from office without the approval of Central Bank of Kenya; and

iv) **revoke or cancel any existing power of attorney**, mandate, appointment or other authority by the institution in favour of any officer or employee or any other person.

## 2.7. Removal of Directors and Officers and Levying of Penalties

Where an institution contravenes any of the provisions of Section 11 of the Banking Act (restrictions on advances, credits and guarantees), the Minister for Finance may impose any of the following conditions/ actions:

a) Joint and several liability of officers to indemnify the institution against any loss arising in respect of an advance, loan or credit facility in contravention of this section;

b) Direct the removal of a director and/or direct the suspension of any officer or employee who sanctioned the advance, loan or credit facility.

c) Levy penalties as provided for by legal notice No. 77/99 pursuant to section 55(2) of the Banking Act.

d) Non-compliance may also result in enforcement action being taken pursuant to the provisions of the Banking Act.

2.8. **Revocation of Banking Licence**

Pursuant to the provisions of Section 6 of the Banking Act, the Minister for Finance may, by not less than 28 days' notice in writing to the institution, revoke the licence of an institution if the institution:

a) Ceases to carry on business in Kenya or goes into liquidation or is wound up or is otherwise dissolved; or

b) Fails to comply with the Banking Act, the Central Bank of Kenya Act, or other rules, regulations, orders of directions issued under those Acts or any condition of its licence.

As a practical matter, the revocation of an institution's licence should be immediately followed by closure and the initiation of liquidation proceedings.

2.9. **Termination of Deposit Protection**

Pursuant to the provisions of Section 38(5) of the Banking Act, where it appears to the Board of the Deposit Protection Fund that the affairs of an institution are being conducted in a manner detrimental to its own interest or to the interests of its depositors, the Board may:

a) Increase the contributions (to the DPFB) of that institution; or

b) Terminate the protection of its deposits.

2.10 **Legal Notice No. 77/99**

This guideline should be read together with legal notice No. 77/99 dated 10.06.1999.

**PART III EFFECTIVE DATE**

3.1. **Effective Date** - The effective date of this guideline shall be 1st January 2006.

3.2. **Supersedence -** This Guideline supersedes and replaces Prudential Regulation No. CBK/RG/03 issued in September 2000.

**ENQUIRIES**

Enquiries on any aspect of the guideline should be referred to:

The Director
Bank Supervision Department
Central Bank of Kenya
P.O. Box 60000 - 00200
**NAIROBI**
TEL.2860000 e-mail: *fin@centralbank.go.ke*

**LEGAL NOTICE NO.77/99**

IN EXERCISE of the powers conferred by section 55(2) of the Banking Act the Minister for Finance makes the following Regulations:

**THE BANKING (PENALTIES) REGULATIONS, 1999**

1. These Regulations may be cited as the Banking (Penalties) Regulations 1999 and shall apply to all banks and other institutions licensed under the Act to conduct business in Kenya.

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

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

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

   (a) Loans, advances or other credit facilities granted by the institution to any person in excess of 25% of the institution's core capital;

   (b) Outstanding unsecured advances to any of the institution's employees or their associates;

   (c) Outstanding advances, loans or credit facilities which are unsecured or not fully secured:

      (i) to any of its officers or their associates; or

      (ii) to any person of whom or of which any of its officers has an interest as an agent, principal, director, manager or shareholder; or

      (iii) to any person of whom or of which any of its officers is a guarantor.

   (d). Outstanding advance, loan or credit facility to any of its directors or other person participating in the general management of the institution which:

      (i) has not been approved by the full board of directors of the institution upon being satisfied that it is viable;

      (ii) has not been made in the normal course of business and on terms similar to those offered to ordinary customers of the institution; and

      (iii) has not been reported to the Central Bank within seven days thereof as being approved under (i) above.

   (e) An aggregate of credit facilities to any one of the institution's shareholders, directors, officers or employees which is in excess of twenty percent of the institution's core capital;

(f) The aggregate of loans, advances and other credit facilities to shareholders, directors, officers and employees in excess of one hundred percent of the institution's core capital.

(g) Failure of the institution to:

(i) exhibit its annual audited accounts, throughout each year, in a conspicuous place in every office and branch in Kenya; or

(ii) publish its annual audited accounts in a national newspaper within the number of months of the end of each financial year as prescribed under the minimum disclosure requirements prescribed from time to time by the Central Bank.

(h) Failure of the institution to submit, not later than three months after the end of its financial year, to the Central Bank its annual audited accounts and a copy of the auditor's report in the prescribed form.

(i) Failure of the institution to furnish, at such time and in such manner as the Central Bank may direct, such information in accurate and complete manner as the Central Bank may require to properly discharge its functions under the Act.

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

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

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

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

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

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

**Made on the 10th June, 1999**

.....

**Y.F.O. MASAKHALIA,**
**Minister for Finance**

# CENTRAL BANK OF KENYA PRUDENTIAL GUIDELINES FOR INSTITUTIONS LICENSED UNDER THE BANKING ACT