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THE CENTRAL BANK OF KENYA (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Central Bank of Kenya Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Central Bank of Kenya (Amendment) Act, 2021.

Amendment of section 2 of Cap 490.

2. Section 2 of the Central Bank of Kenya Act (hereinafter referred to as the principal Act) is amended by inserting the following new definitions in the proper alphabetical sequence —

"digital channel" means the internet, mobile devices, computer devices, applications and any other digital systems as maybe prescribed by The Bank;

"digital credit" means a credit facility or arrangement where money is lent or borrowed through a digital channel;

"digital credit business" means the business of providing credit facilities or loan services through a digital channel;

"digital credit provider" means a person licensed by The Bank to carry on digital credit business;

"specified digital credit provider" means a licensed digital credit provider within the meaning of section 33R;

Amendment of section 4A of Cap. 490.

3. Section 4A of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (d) —

(da) license and supervise digital credit providers not regulated under any other written law;

Insertion of new Part in Cap. 490.

4. The principal Act is amended by inserting the following new Part immediately after Part VI B—

PART VI C -REGULATION OF DIGITAL LENDERS

Regulation of digital lenders.

33R. Without prejudice to the generality of section 4A (da), The Bank shall have power to—

(a) license digital credit providers;

(b) determine capital adequacy requirements for digital credit providers;

(c) determine the minimum liquidity requirements for digital credit providers;

(d) approve digital channels and business models through which digital credit business may be conducted;

(e) supervise digital credit providers;

(f) suspend or revoke a license; and

(g) direct or require such changes as The Bank may consider necessary.

Licensing.

33S. (1) A person shall not carry on any digital credit business unless that person has been licensed by The Bank under this Act or is permitted to do so under any other written law.

(2) An application for a license under subsection (1) shall be made to The Bank in such form and shall be accompanied by such information and fee as may be prescribed.

(3) A person who contravenes the provisions of this section commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Amendment of section 43 of Cap. 490.

5. Section 43 of the principal Act is amended in subsection (1) by inserting the following words "specified digital credit providers" immediately after the words "specified mortgage refinance companies."

Amendment of section 57 of Cap. 490.

6. Section 57 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

(3) Without prejudice to the generality of subsection (1), The Bank may make Regulations as are necessary or expedient to give full effect to the provisions of this Act including —

(a) the registration requirements for digital credit businesses;

(b) management requirements for digital credit providers;

(c) permissible and prohibited activities;

(d) anti-money laundering and measures for countering financing terrorism;

(e) credit information sharing;

(f) data protection;

(g) consumer protection;

(h) reporting requirements for digital credit providers;

(i) offences and penalties;

(j) such other measures necessary for regulation of digital lending

Insertion of new section in Cap. 490.

7. The principal Act is amended by inserting the following new section immediately after section 58—

Transitional clause.

59. (1) Any Regulations required to be made under this Act, to give effect to the provisions on digital lending, shall be made within three months of the coming into force of this Act.

(2) Any person who, before the coming into force of this Act, was in the business of providing credit facilities or loan services through a digital channel and is not regulated under any other law, shall register with The Bank within six months of coming into force of this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Central Bank of Kenya Act to provide for licensing of digital credit service providers, who are not regulated under any other law.

The current position is that there is no legal framework governing digital borrowing platforms. As such, the Central Bank of Kenya will have an obligation of ensuring that there is a fair and non-discriminatory marketplace for access to credit.

Statement of how the Bill concerns County governments

The Bill does not concern county governments in terms or Article 110 (a) of the Constitution.

Statement of delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provision limiting any fundamental rights or freedoms.

Statement that the Bill is a money Bill, within the meaning of Article 114 of the Constitution.

The enactment of this Bill may occasion additional expenditure of public funds.

Dated 31st March, 2021.

GLADYS WANGA,
Chairperson, Departmental
Committee on Finance and National Planning.

Section 4A of the Central Bank of Kenya Act Cap 490 of 2014 which it is proposed to amend—

4A. Other objects of the Bank

(1) Without prejudice to the generality of section 4 the Bank shall—

(a) formulate and implement foreign exchange policy;

(b) hold and manage its foreign exchange reserves;

(c) license and supervise authorised dealers;

(d) formulate and implement such policies as best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems;

(e) act as banker and advisor to, and as fiscal agent of the Government; and

(f) issue currency notes and coins.

(2) In subsection (1) (d)—

"clearing" means the process of transmitting, reconciling and confirming payments prior to settlement, including the netting of payments and the establishment of net positions for settlement;

"payment system" means a system of instruments, procedures and rules for the transfer of funds among system participants;

"settlement" means an act that discharges financial obligations between two or more parties.

Section 43 of the central Bank Act Cap 490, which it is proposed to amend-

43. Information to be furnished by specified banks, etc

(1) Every specified bank, specified financial institution and specified microfinance bank, specified mortgage refinance companies shall furnish to the Bank, at such time and in such manner as the Bank may prescribe, any information and data the Bank may reasonably require for the proper discharge of its functions under this Act.

(2) The Bank may publish in whole or in part, at such times and in such manner as it may decide, any information or data furnished under this section:

Provided that no such information shall be published which would disclose the financial affairs of any person or undertaking unless the prior consent in writing of such person or undertaking has first been obtained by the Bank.

Section 57 of the Central Bank Act Cap 490 which it is proposed to amend—

57. Regulations by the Bank

(1) The Bank may make regulations, issue guidelines, circulars and directives for the purpose of giving effect to the provisions of this Act and generally for the better carrying out of the objects of the Bank under this Act.

(2) Without prejudice to the generality of subsection (1), the Bank may, in regulations, prescribe penalties to be paid by authorised dealers who fail or refuse to comply with any guidelines or directions of the Central Bank under this Act, which penalties shall not exceed five hundred thousand shillings in the case of an authorised dealer, or two hundred thousand shillings in the case of a natural person and may prescribe additional penalties, not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.