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THE KENYA DEPOSIT INSURANCE ACT

SUBSIDIARY LEGISLATION

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THE KENYA DEPOSIT INSURANCE REGULATIONS

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THE KENYA DEPOSIT INSURANCE REGULATIONS

[Legal Notice 166 of 2015]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Kenya Deposit Insurance Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"assumption by another person" means the action of receiving the assets or liabilities that were transferred from a problem institution;

"beneficiary" means a natural or legal person in whose name property is held in a trust by another, or for whose benefit property is held in a trust;

"derived protection" means the insurance cover that passes through a trustee, as a custodian, to each and every beneficiary of the funds held in trust accounts in institutions licensed by the Central Bank and are members of the Corporation;

"exclusion and transfer process" means the process that commences when the shareholders of an institution under receivership fail to provide the necessary resources to restore its financial condition or carry on the necessary management changes, and consists of—

- (a) exclusion and transfer of part or total deposits and liabilities to another solvent and well-managed institution;
- (b) exclusion and transfer of part or total assets to the institution receiving the liabilities; and
- (c) liquidation of the residual assets and liabilities;

"flat rate contribution" means monies paid to the Fund by member institutions equivalent to a fixed rate of the average of the institution's total deposit liabilities;

"Lesser Cost Rule" means the adoption of the lower of—

- (a) the cost to the Corporation of payment of insured deposits in liquidation of an institution; or
- (b) the cost to the Corporation, in undertaking the exclusion and transfer process:

"risk-adjusted contribution" means monies paid to the Fund by member institutions equivalent to a variable rate according to the risk profile of each institution;

"sale or other disposal" includes the exclusion of assets and liabilities of a problem institution;

"single customer view" means a summary of identity and details of the customer including personal details, address, contacts and an account-summary of all business relationships with an institution;

"special purpose vehicle" means a legal entity created by transferring assets from the institution under the exclusion and transfer process. The special purpose vehicle facilitates the process of transferring assets by issuing a bond that will be transferred to the institution that receives the deposits and other liabilities;

"systemic risk" means the possibility of a failure of one or more institutions that may cause severe disruptions in the financial system;

"Target Fund" means a reserve considered adequate to cover the potential losses of the Corporation under normal circumstances and is calculated as a percentage of the total industry deposits or total insured deposits;

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"transaction document" means any deposit slip, deposit transaction receipt or statement of account issued by an institution to its depositors;

"transition period" means the twelve month period after the commencement date;

"trust" means the legal relationship created when trust property is held in the name of or under the control of a trustee for the benefit of the beneficiary or for a special purpose and includes the instrument setting up such trust;

"trustee" is a person who holds property, authority and responsibility, under express or implied agreement, for the benefit of a trust or beneficiaries;

"trust property" includes monies, assets or any other property held separate from a trustee's own estate, but over which the trustee has the duty and power to account for, manage, employ or dispose of, in accordance with the terms of the instrument setting up the trust or the special duties imposed upon the trustee by any applicable law; and

"uninsured deposit" means that part of deposits that exceeds the maximum coverage level and the excluded deposits referred to under section 31 of the Act.

PART III – THE KENYA DEPOSIT INSURANCE CORPORATION

3. Location and Places of Business of the Corporation

The Corporation may open offices in any part of the country and appoint agents or correspondents as may be approved by the Board.

4. Appointment of Directors

(1) The Cabinet Secretary shall appoint the members of the Board set out under section 7(1) of the Act at least three months before the expiry of the term of the incumbent members to ensure continuity.

(2) The Cabinet Secretary shall recommend to the President, at least two months before the expiry of the term, a person to be the chairperson amongst members appointed under Section 7(1) of the Act.

5. Services provided by the Central Bank

The provision of services by the Central Bank to the Corporation may be renewed by mutual agreement.

6. Public awareness

The Board shall formulate a communication strategy to promote public awareness on deposit insurance.

7. Display of Membership certificate

Every institution shall display at its head office and branches in of the customer service area a legible copy of the certificate of membership issued by the Corporation.

PART II – REGULATORY FRAMEWORK OF THE DEPOSIT INSURANCE

8. Contributions by Institutions

(1) If the Corporation does not have available information on deposit liabilities for the purpose of determining the contribution of an institution, the deposit liabilities for that institution shall be estimated using the latest available data and the contribution for the corresponding period shall be adjusted once the actual information is available.

(2) In addition to the contributions under section 27(3) of the Act, institutions shall contribute a percentage of their total deposit liabilities during the previous twelve months based on the risk-adjusted contribution methodology formulated by the Corporation in consultation with the Cabinet Secretary.

(3) Within reasonable time after the commencement date, the Corporation shall develop a risk-adjusted contribution methodology for the calculation of the risk-adjusted contribution specifying at least the following—

- (a) categories of risk and the criteria for assigning an institution into a category;
- (b) the contribution rate that shall apply to each risk category; and
- (c) the formula for risk-adjusted contributions.

(4) The Corporation shall not subject institutions to the risk adjusted contribution until the Corporation sets the risk-adjusted contribution methodology.

9. Insured Deposits

(1) The Corporation shall insure the following deposits domiciled in Kenya—

- (a) current account deposits;
- (b) savings account deposits;
- (c) call deposits;
- (d) fixed term deposits; and
- (e) foreign currency deposits.

(2) The insured deposits shall be held in—

- (a) commercial banks, financial institutions and mortgage finance companies as defined in the Banking Act (Cap. 488);
- (b) microfinance banks as defined under the Microfinance Act (Cap. 493C); and
- (c) any other entity licensed to carry on deposit taking business by the Central Bank (Cap. 491).

(3) For the purposes of these Regulations, a deposit shall include interest which has been earned on that deposit as may be determined by the Corporation.

(4) The Corporation shall determine, from time to time, the maximum amount payable as provided in the Act.

10. Trust Accounts

(1) Insured deposits in trust accounts under the Act shall include co-mingled or pooled balances in such custodial accounts holding funds underlying mobile money transfer services:

Provided that such funds shall be placed with an institution which is licensed by the Central Bank and is a member of the Corporation.

(2) A trustee of a trust account shall obtain protection or insurance for the beneficiary of the account.

(3) The derived protection for any deposit held in a trust account is limited to protection against the failure of an institution where such funds have been placed and does not extend insurance cover in circumstances where an agent or custodian of the customer or beneficiary fails to deposit funds on behalf of the customer or beneficiary in an institution.

(4) The derived protection or insurance cover shall be limited to the beneficiaries of the trust account and shall not extend insurance cover to the trustees in their personal capacity.

(5) An institution opening a trust account shall—

- (a) designate the account in such a manner as to indicate the nature of the trust;
- (b) obtain and keep a certified copy of an irrevocable trust deed or agreement which governs the relationship of the trustee and the beneficiary;
- (c) satisfy itself that the trust deed or agreement defines the rights and obligations of the parties and reflects the agency or fiduciary duties of the trustee for purposes of opening and operating the trust account; and
- (d) ensure that the trust account is operated in accordance with the trust deed.

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(6) If an institution holding a trust account becomes insolvent or goes into receivership, the Corporation may promptly pay out the insured deposits underlying mobile phone access devices to the relevant trustees in order to avoid systemic risk.

(7) Institutions and trustees shall ensure compliance with other relevant laws and regulations governing the operations and maintenance of trust accounts.

11. Extent of cover

(1) Unless the Corporation otherwise directs, there shall be deducted the amount of any liability of a depositor to the contributory institution in respect of which a right of set-off existed immediately before the institution became insolvent, against any such deposit or in respect of which such a right would then have existed if the deposit in question had been payable on demand and the liability in question had fallen due.

(2) When the Corporation is appointed as a receiver of an institution, the Central Bank shall provide the Corporation with details of the depositors that have payable liabilities.

12. Lodging and payment of claims

(1) The Corporation shall pay out insured deposits within thirty days of its appointment as a liquidator.

(2) The Corporation may require a depositor to lodge a claim to facilitate payment.

PART IV – THE CORPORATION AS A RECEIVER

13. Notification of non-viability and suspension of activities

(1) Upon the appointment of the Corporation as the receiver of an institution, the institution's activities shall remain suspended.

(2) For the avoidance of doubt, the suspension referred to in subsection (1) means that the institution shall stop—

- (a) receiving and paying deposits;
- (b) granting loans; and
- (c) conducting any other business activities, except the collection of loans and other activities authorized by the Corporation in writing.

(3) The Central Bank shall declare the suspension of business activities by an institution and shall notify the Corporation and the institution of such declaration.

(4) The Corporation shall notify the depositors of the institution of the suspension of business activities by publishing notices in at least two newspapers with a national circulation.

(5) The suspension of activities under this Regulation shall remain in force until the receivership process ceases.

14. Extraordinary circumstances

Where in the opinion of the Central Bank and the National Treasury, the suspension of an institution may pose systemic risk, the receivership process may be conducted without suspension of its business activities.

15. Exclusion and transfer process

(1) Upon the appointment of the Corporation as a Receiver, the Corporation may—

- (a) issue a notice to the directors of an institution to provide the necessary payment as specified by the Corporation within a stated period of time; and
- (b) if the directors fail to carry out the actions prescribed under paragraph (a) of this subsection, the Corporation shall commence the exclusion and transfer process.

(2) The exclusion and transfer process shall include—

- (a) exclusion and transfer of part or total deposits and some liabilities to any other solvent and well-managed institution that the Central Bank considers eligible;

- (b) exclusion and transfer of part or total assets to the institution receiving the deposits and other liabilities; and
- (c) the liquidation of the residual assets and liabilities by the Corporation upon its appointment as liquidator by the Central Bank.

(3) The Fund may contribute resources to the exclusion and transfer process under the Lesser Cost Rule.

(4) The Corporation shall recommend to the Central Bank to place an institution under liquidation where the exclusion and transfer process is not completed within sixty days of receivership.

PART V – LIQUIDATOR FUNCTION OF THE CORPORATION

16. Liquidation process

The liquidation process shall be carried out in accordance with the Act and any other relevant law.

17. Notice of appointment

Where the Corporation is appointed as a liquidator of an institution it shall within three weeks of such appointment cause a notice of its appointment to be published in the Kenya *Gazette* and at least two daily newspapers of wide circulation in Kenya.

18. Corporation not required to give security

The Corporation shall not be required to give any security by reason of its appointment as liquidator and upon appointment shall be deemed to have given security for the purposes of the Companies (Winding-Up) Rules.

19. Meeting of creditors

Where the Corporation has been appointed as liquidator of an institution, it shall not unless the court otherwise directs, be necessary for the liquidator to convene a meeting of creditors and contributories under the provisions of the Companies Act (Cap. 486).

20. Power to waive proof of debt

Where the Corporation has been appointed as liquidator of an institution, it may, if it considers it necessary, admit the claim of any depositor or class of depositors without submission of formal proof of debt and shall notify the depositor or depositors concerned accordingly.

21. Partial or advance payments

The Corporation may make partial or advance payments to any depositors or class of depositors as it may consider appropriate.

22. Application to Court

Any depositor who is dissatisfied with the decision of the Corporation may apply to the High Court to be heard under the provisions of the Companies (Winding-Up) Rules.

23. Public examination of officer and others

(1) In the winding-up of an institution, the liquidator shall determine whether, in his opinion, any loss has been caused to the institution since its formation by any act or omission of a person in the promotion or formation of the institution or of any officer or auditor of the institution.

(2) If the liquidator determines that a loss has been caused by an act or omission referred to in paragraph (1), he may apply to the High Court for an order that any officer or auditor of an institution or any person who has taken part in the promotion or formation of the institution shall be publicly examined and the Court shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and

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shall be publicly examined as to the promotion or formation or the conduct of the business of the institution or as to his conduct and dealings in so far as they relate to the affairs of the institution.

(3) The liquidator shall take part in the examination under paragraph (2) and may for that purpose employ a legal representative of his own choice.

(4) Any creditor or contributor may also take part in the examination either personally or by an advocate.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person examined under this section may, at his own cost, employ an advocate who shall put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if such person is, in the opinion of the High Court, exculpated from any charges made against him, the High Court may allow such costs in its discretion as it may deem fit.

(8) References in this section to an officer or auditor of an institution shall include a former officer or auditor of that institution.

24. Special provisions affecting examination

(1) This regulation shall apply to any examination under these Regulations and also to any examination envisaged in the Companies Act (Cap. 486) which is conducted in the course of the winding-up of any institution whether such winding-up commenced before or after the commencement of the Act.

(2) No person shall be excused from examination by reason of the fact that any other proceedings, whether criminal or civil, are in progress or contemplated against him.

(3) The official record of the evidence taken on any such examination may thereafter be used in evidence against any person examined in any civil proceedings and shall be open to the inspection of any creditor or contributory at all reasonable times.

25. Special provisions for assessing damages

(1) Where an application is made to the High Court under the Companies Act (Cap. 486) against any person for repayment or restoration of any money or property of an institution and the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part;

Provided that where such an order is made jointly against two or more persons, such persons shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under the Companies Act (Cap. 486) and the High Court has reason to believe that any property belongs to any promoter, officer, manager or liquidator of the institution, whether the property standings in the name of such person or any other person as an apparent owner, then the High Court may, at any time, whether before or after making an order under paragraph (a) direct the attachment of such property so attached shall remain subject to attachment unless the apparent owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Civil Procedure Code relating to attachment of property shall, as far as may be, apply to such attachment.

(3) The Corporation may, at any time, resign as liquidator of an institution upon giving written notice to the Official Receiver whereupon the Official Receiver shall become the liquidator of the institution unless and until another liquidator is appointed by the Court in accordance with the provisions of the Companies Act (Cap. 486).

PART VI – EXAMINATION OF INSTITUTIONS

26. Enforcement by the Corporation

(1) When the membership of an institution is terminated, the institution's depositors before the termination date shall continue to be insured by the Corporation for the remaining period in respect of which the institution had made a contribution.

(2) When the membership of an institution is terminated, the Corporation shall publish a notice of the termination in the *Gazette* and at least one national newspaper with wide circulation.

27. Prompt corrective action

(1) The Central Bank may take any prompt corrective action as may be advised by the Corporation.

(2) Where the Central Bank has undertaken prompt corrective action pursuant to the Act it shall notify the Corporation within seven days.

(3) The Corporation may take prompt corrective action on an institution, pursuant to the Act; and, if the institution fails to successfully enforce the same, the Corporation shall notify the Central Bank to appoint it to assume control as a receiver under the Act.

28. Information requirements and reporting by institutions

(1) Every institution shall furnish the Corporation on a monthly basis with information in respect of the following—

- (a) total deposit liabilities at the end of the month from the Balance Sheet detailing—
 - (i) current accounts deposits;
 - (ii) savings accounts deposits;
 - (iii) call deposits;
 - (iv) fixed term deposits; and
 - (v) foreign currency deposits;
- (b) the total number of depositors;
- (c) the total insured deposits;
- (d) the total insured deposits;
- (e) the number of depositors fully covered;
- (f) the total deposits with corresponding loans and debts immediately due and payable;
- (g) the trustees that have deposits in the institution and information required under the Act; and
- (h) any other information as may be required by the Corporation.

(2) The information under this Regulation, as at the end of each month, shall be provided to the Corporation by the 15th day of the subsequent month.

29. Other relevant information

(1) Each Institution shall maintain all pertinent information on a depositor in a single customer view for purposes of ease of tracing and identification. Such single customer view should, amongst others, contain the following—

- (a) full names of depositor supported by requisite identification documents;
- (b) contact details of depositor including postal address, physical address and telephone number;
- (c) all deposit accounts opened by the depositor and the types of accounts and account numbers;
- (d) types of loan or advances extended to the depositor;

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- (e) types of loan or advances guaranteed by the depositor; and
- (f) related group accounts.

(2) The Corporation may, from time to time, direct institutions to furnish any other information and in such format as is necessary to fulfill its functions.

(3) The Corporation shall formulate a reporting framework to be adopted by institutions that allows for the effective and efficient analysis of financial information provided by institutions.

30. Miscellaneous

The Corporation shall enter into a Memorandum of Miscellaneous Agreement and any other reciprocal arrangement with the Central Bank and any monetary Authority, financial regulatory authority, fiscal or tax agency, or fraud investigations agency, locally and outside Kenya, to facilitate the carrying out of its functions.

THE AMOUNT PAYABLE AS PROTECTED DEPOSIT

[Legal Notice 159 of 2020]

IN EXERCISE of the powers conferred by section 28 of the Kenya Deposit Insurance Act (Cap. 487C) the Kenya Deposit Insurance Corporation determines that the maximum amount payable to a customer in respect of the aggregate credit balance of any deposit accounts maintained by the customer with the banks and microfinance banks shall not exceed five hundred thousand shillings.
