

THE CENTRAL BANK OF KENYA (AMENDMENT) ACT, 1996**No. 9 of 1996***Date of Assent: 14th April, 1997**Date of Commencement: 18th April, 1997***An Act of Parliament to amend the Central Bank of Kenya Act**

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Central Bank of Kenya (Amendment) Act, 1996.

Short title.

2. The Central Bank of Kenya Act (in this Act referred to as “the principal Act”) is amended by repealing section 4 and replacing it with the following new sections—

Repeal and replacement of section 4 of Cap. 491.

Principal object of the Bank.

4. (1) The principal object of the Bank shall be to formulate and implement monetary policy directed to achieving and maintaining stability in the general level of prices.

(2) The Bank shall foster the liquidity, solvency and proper functioning of a stable market-based financial system.

Other objects of the Bank.

4A. 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) promote the smooth operation of payments, clearing and settlement systems;
- (e) act as banker and adviser to, and as fiscal agent of the Government; and
- (f) issue currency notes and coins.

Monetary policy statements.

4B. (1) The Bank shall at intervals of not more than six months, submit to the Minister a monetary policy statement for the next twelve months which shall—

- (a) specify the policies and the means by which the Bank intends to achieve the policy targets;

- (b) state the reasons for adopting such policies and means;
- (c) contain a review and assessment of the progress of the implementation by the Bank of monetary policy during the period to which the preceding policy statement relates.

(2) The Minister shall lay every statement submitted under subsection (1) before the appropriate committee of the National Assembly not later than the end of the subsequent session of Parliament after the statement is so submitted.

(3) The Bank shall—

(a) cause—

(i) every monetary policy statement submitted under subsection (1); and

(ii) its monthly balance sheet to be published in the Gazette; and

(b) disseminate key financial data and information on monetary policy to the public.

(4) In subsection (2), the expression “appropriate committee” means the committee of the National Assembly appointed to investigate and inquire into matters relating to monetary policy.

Consultations
on monetary
policy.

4C. (1) There shall be regular consultations on monetary policy between the Minister and the Bank.

(2) Where in exceptional circumstances and after consultation with the Bank, the Minister is of the opinion that the monetary policy adopted by the Bank is inconsistent with the principal object of the Bank, the Minister may, upon resolution by Cabinet, direct the Bank in writing to adopt such monetary policy as the Minister may specify for a period of six months or for such shorter period as the Minister may specify, and the Bank shall, upon receipt of a directive under this section, adopt and implement the monetary policy so directed notwithstanding any other provision of this Act.

(3) The Minister shall cause every directive issued under subsection (2) to be published in the Gazette.

3. The Principal Act is amended in section 8—

Amendment of section 8 of Cap. 491.

(i) by deleting subsection (1) and inserting the following new subsection—

(1) The authorized capital of the Bank shall be five billion shillings which may be increased by such amount as shall be determined by the Board in consultation with the Minister.

(ii) by deleting subsection (3) and inserting the following new subsection—

(3) The Bank may, having regard to the amount by which the value of the assets of the Bank exceeds its liabilities, increase its paid up capital by such amount, payable out of the General Reserve Fund, as the Board shall direct.

4. The principal Act is amended in section 9 by deleting subsections (1) and (2) and inserting the following new subsections—

Amendment of section 9 of Cap. 491.

(1) The Bank shall establish and maintain a fund designated as the General Reserve Fund, to which shall be transferred at the end of each financial year at least ten per centum or any other amount as the Board, in consultation with the Minister, may determine, of the net annual profits of the Bank after allowing for the expenses of operation and after provision has been made for bad and doubtful debts, depreciation in assets, contributions to staff benefit funds, and such other contingencies and accounting provisions as the Bank deems appropriate.

(2) Subject to subsection (1) and section 51, the net annual profits of the Bank, calculated in accordance with this section, shall be paid into the Consolidated Fund.

5. The principal Act is amended by repealing section 11 and inserting the following new section—

Repeal and replacement of section 11 of Cap. 491.

The Board of Directors.

11. (1) The Board shall consist of—

(a) a Governor, who shall be the chairman;

(b) a Deputy Governor who shall be the deputy chairman;

(c) the Permanent Secretary to the Treasury who shall be a non-voting member;

(d) five other non-executive directors.

(2) The Governor, Deputy Governor and the directors appointed under paragraph (d) of subsection (1) shall be appointed by the President and shall hold office for terms of four years each but shall be eligible for re-appointment:

Provided that no Governor, Deputy Governor or director shall hold office for more than two terms.

(3) The members of the Board shall be appointed at different times so that the respective expiry dates of the members' terms of office shall fall at different times.

(4) A member of the Board may resign his office by writing under his hand addressed to the President which resignation shall take effect one month from the date of receipt of the letter of resignation by the President.

(5) If the Governor, Deputy Governor or a director dies or resigns or otherwise vacates office before the expiry of his term of office, the President shall appoint another person in his place.

(6) Where the Governor, the Deputy Governor or a director is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for that member of the Board to act with the full powers of the member until such time as the President determines that his incapacity has ceased.

(7) A person shall be eligible to be appointed a Director if he—

(a) is a citizen of Kenya; and

(b) is knowledgeable or experienced in monetary, financial, banking and economic matters or other disciplines relevant to the functions of the Bank.

6. The principal Act is amended in section 12—

Amendment of
section 12 of Cap.
491.

(i) by deleting subsections (1) and (2) and inserting the following new subsections—

(1) The Governor, as Chairman of the Bank, shall convene meetings of the Board not less than once in every two months, or whenever the business of the Bank so requires, or whenever he is so requested in writing by at least three directors.

(2) A quorum for any meeting of the Board shall be the Governor or the Deputy Governor and three directors.

(ii) by deleting subsection (5) and inserting the following new subsection—

(5) A Director who is interested in any matter involving the Bank, or in the exercise or proposed exercise by the Bank of a power, shall declare that interest at every meeting of the Board at which that matter or the exercise or proposed exercise of the power, is considered by the Board, and the director shall not be entitled to attend and vote, or be counted in a quorum present, at a meeting at which the matter or the exercise or proposed exercise of the power in which the Director has interest is considered.

(iii) by deleting subsection (6).

7. The principal Act is amended by inserting the following new section immediately after section 12—

Insertion of section
12A to Cap. 491.

Delegation
by the
Board.

12A. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board, or to any member thereof, or to any officer, employee or agent of the Bank the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or any other written law.

8. Section 14 of the principal Act is amended—

Amendment of
section 14 of Cap. 491.
Cap. 265.

(i) in subsection (1), by inserting the words “or a member of a local authority established under the Local Government Act” at the end of paragraph (a);

(ii) by deleting subsection (2) and inserting the following new subsection—

(2) The President shall terminate the appointment of a Governor, Deputy Governor or a director who—

- (a) becomes subject to any of the disqualifications described in subsection (1);
- (b) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (c) is convicted of an offence involving dishonesty or fraud or moral turpitude;
- (d) is adjudged or otherwise declared to be of unsound mind;
- (e) is absent, without the leave of the Board from three consecutive meetings of the Board;
- (f) becomes, for any reason, incapable or incompetent of properly performing the functions of his office:

Provided that the appointment of the Governor, shall not be terminated under this paragraph until the question of his removal from office has been referred to a tribunal appointed under subsection (3) and the tribunal has recommended to the President that the Governor ought to be removed for incapability or incompetence as aforesaid.

(iii) by deleting subsection (3) and inserting the following new subsection—

(3) If the President considers that the question of terminating the appointment of the Governor under subsection (2) (f) ought to be investigated, then—

(a) the President shall appoint a tribunal which shall consist of a chairman and two other members selected by the President from among persons—

- (i) who hold or have held office as judges of the High Court or the Court of Appeal;
or

(ii) who are qualified to be appointed as judges of the High Court under section 61 (3) of the Constitution;

(b) the tribunal shall inquire into the matter and report on the facts to the President and recommend to him whether the Governor ought to be removed.

(4) Where the question of removing the Governor has been referred to the tribunal under this section, the President may suspend the Governor from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Governor should not be removed.

9. The principal Act is amended by inserting the following proviso at the end of subsection (2) of section 15—

Amendment of section 15 of Cap. 491.

Provided that in the case of the Governor, the provisions of section 14 shall apply.

10. The principal Act is amended by repealing section 20 and inserting the following new section—

Repeal and replacement of section 20 of Cap. 491.

20. The external value of the Kenya shilling shall be determined by the market.

External value of the shilling.

11. The principal Act is amended in section 22 by deleting subsection (2) and inserting the following new subsection—

Amendment of section 22 of Cap. 491.

(2) The denominations, inscriptions, forms, material and other characteristics of the notes and coins issued by the Bank shall be determined by the Bank in consultation with the Minister, and shall be notified in the Gazette and in other media of public information likely to bring them to the attention of the public.

12. (1) The principal Act is amended in section 25 by deleting subsection (1) and inserting the following new subsection—

Amendment of section 25 of Cap. 491.

(1) The Bank in consultation with the Minister may, by regulations published in the Gazette prohibit the issue by any person other than the Bank of any bill of exchange, promissory note or similar instrument for the payment of money to the bearer on demand, and any such regulations

may make different provision for different cases or classes of case and may impose penalties for any offence under the regulations of a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

Repeal of section 33N of Cap. 491.

13. The principal Act is amended by repealing section 33N.

Repeal of section 35 of Cap. 491.

14. The principal Act is amended by repealing section 35.

Repeal and replacement of section 36 of Cap. 491.

15. The principal Act is amended by repealing section 36 and inserting the following new section—

Loans.

36. (1) The Bank may grant loans or advances for fixed periods not exceeding six months to specified banks which pledge treasury bills or other Government securities specified by the Bank.

(2) Except as provided in this section the Bank shall not extend credit directly or indirectly to specified banks.

(3) The Bank may determine the general terms and conditions under which it extends credit to specified banks, and in particular, the Bank shall determine and announce the rates of interest it shall charge for granting loans or advances to specified banks in accordance with this section and may determine different rates for different classes of transactions or maturities.

Repeal of section 37 of Cap. 491.

16. The principal Act is amended by repealing section 37.

Repeal of sections 39, 40 and 41 of Cap. 491.

17. The principal Act is amended by repealing sections 39, 40 and 41.

Repeal and replacement of section 46 of Cap. 491.

18. The principal Act is amended by repealing section 46 and inserting the following new section—

Direct advances to Government.

46. (1) Subject to the provisions of this section, the Bank may make direct advances to the Government for the purpose of offsetting fluctuations between receipts from the budgeted revenue and payments of the Government.

(2) Each advance made to the Government under this section shall—

- (a) be secured with negotiable securities issued by the Government which mature not later than twelve months;
- (b) bear interest at market rate; and
- (c) be made solely for the purpose of providing temporary accommodation to the Government.

(3) The total amount outstanding at any time of advances made under this section shall not exceed five per centum of the gross recurrent revenue of the Government as shown in the Appropriation Accounts for the latest year for which those Accounts have been audited by the Controller and Auditor-General:

Provided that this subsection shall not apply in respect of advances made by the Bank to the Government prior to the commencement of this section.

(4) Any advance made by the Bank to the Government which is outstanding at the commencement of this section shall be deemed to be a loan granted by the Bank to the Government on such terms and conditions as may be determined by the Bank in consultation with the Minister.

(5) Any advance deemed to be a loan under subsection (4) shall be secured with such Government securities as the Bank may specify.

(6) For the purposes of subsection (3), the recurrent revenue of the Government shall include revenue from taxes, customs, excise and other duties, fees, rents, profits and income from any investment or undertaking, but shall not include proceeds from grants, or loans or disposal of assets for purposes of privatisation or any form of borrowing whether short-term or long-term.

19. The principal Act is amended by repealing section 47 and inserting the following new section—

Open market
operations.

47. (1) For purposes of regulating the money supply, the Bank may with the approval of the Board, purchase, hold or sell negotiable securities of any maturity issued by the Government or any other negotiable securities specified by the Bank.

Repeal and
replacement of
section 47 of Cap.
491.

(2) The total amount of securities held by the Bank at any time under subsection (1) of this section shall be excluded in the computation of the limit prescribed in subsection (3) of section 46.

Repeal of section 48 of Cap. 491.

20. The principal Act is amended by repealing section 48.

Repeal and replacement of section 49 of Cap. 491.

21. The principal Act is amended by repealing section 49 and inserting the following new section—

Prohibition of lending to public entities.

49. Except as provided in accordance with sections 36, 46 and 47, the Bank shall not extend any credit directly or indirectly to any public entity.

Repeal and replacement of section 51 of Cap. 491.

22. The principal Act is amended by repealing section 51 and inserting the following new section—

Revaluation profits or losses.

51. (1) Profits or losses which are attributable to any revaluation of the Bank's net assets or liabilities in gold, foreign exchange or foreign securities, made as a result of any change in the value of any currency unit, shall be taken into account in the computation of the annual profits and losses of the Bank:

Provided that the accounts of the Bank shall distinguish the profits or losses arising from normal operations of the Bank and those resulting from profits or loss from exchange fluctuations.

(2) The balance outstanding in the Revaluation Account existing immediately before the commencement of this section shall be repaid from the net annual profits of the Bank by instalments of such amount as the Board, in consultation with the Minister, may determine.

Insertion of section 57 of Cap. 491.

23. The principal Act is amended by inserting the following new section immediately after section 56—

Regulations by the Bank.

57. The Bank may make regulations 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.