

The Business Laws (Amendment) Act, 2024 No. 20 of 2024; Its Implications for Financial Institutions

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INTRODUCTION

The Business Laws (Amendment) Act 2024 was assented to on 11th December, 2024 and commenced on 27th December, 2024. The Act amended various laws related to financial institutions. Below are the key amendments that have significant implications for financial institutions;

A. MINIMUM CAPITAL REQUIREMENTS FOR BANKS AND MORTGAGE FINANCE COMPANIES

The Act has introduced a progressive raise of the minimum core capital requirements for banks & mortgage finance companies to **tenfold from Kshs. 1 billion to Kshs. 10 billion by December 31, 2029**. This progressive increase will take effect as follows:

- i. December 31, 2024 1.0 billion
- ii. December 31, 2025 3.0 billion
- iii. December 31, 2026 5.0 billion
- iv. December 31, 2027 6.0 billion
- v. December 31, 2028 8.0 billion
- vi. December 31, 2029 10.0 billion

The likely impact is that the banks and mortgage finance companies may now be compelled to re-strategize and shift their business models and explore Mergers & Acquisitions to comply with the minimum capital requirement.

The increase in core capital is intended to reduce the likelihood of bank failures during economic downturns and mitigate banks' and depositors' risks during recession as banks with more capital can absorb losses without jeopardizing depositors' funds or requiring government bailouts.

B. CREDIT GUARANTEES

The Act has slipped in a new module of conducting credit guarantee businesses wherein all players in this sector are mandatorily required to be registered by the Central Bank of Kenya. Notably, the Act defines credit guarantee business to include the business of providing a guarantee to a lender for absorption of all or a portion of a lender's risk on a credit facility.

Notwithstanding this forthright requirement on licensing, the Act has laid down exemptions to certain providers who include *inter alia*;

- i. A foreign credit guarantee provider who is owned by a foreign government or by foreign financial institutions, which have entered into agreements with the Government of Kenya; and
- ii. A foreign credit guarantee provider who partners with local financial institutions to provide credit guarantee services.

The legal impact of this provision is that any credit guarantee provider who carries on guarantee business without a license risk being convicted of an offence under the Banking Act punishable by a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

C. NEW PENALTIES FOR NON-COMPLIANCE

Failure or refusal to comply with any provision of the Banking Act, Prudential Guidelines or any direction issued by the CBK will now attract a penalty not exceeding **Kshs. 20 million** for an institution or credit reference bureau, or **three times the gross amount of the monetary gain made, or loss avoided by the failure or refusal to comply whichever is higher**; and **Kshs 3 million** in the case of a corporate entity and **Kshs. 1 million** in the case of a natural person.

The CBK may, in regulations, prescribe additional penalties not exceeding **Kshs. 100,000** in each case for each day or part thereof during which such failure or refusal continues.

D. REGULATION OF NON-DEPOSIT-TAKING CREDIT PROVIDERS

Under the CBK control, there is now a shift from regulating digital lenders as a distinct category, instead, they are now integrated under a broader framework for **non-deposit taking credit providers**.

Non-deposit taking credit businesses now include:

- i. Loans or credit facilities (digital or otherwise) with or without interest.
- ii. Asset financing (direct or through third-party financiers).
- iii. Buy Now Pay Later (BNPL) arrangements.
- iv. Credit guarantees and "pay-as-you-go" models.
- v. Peer-to-peer lending through collective investment schemes.

The amendments have broadened CBK's powers to register, license, supervise and regulate non-deposit taking credit providers not regulated under any other law, approve channels for conducting credit business, prescribe pricing frameworks to curb exploitative lending and monitor and enforce compliance through oversight, supervision, and inspection.

The amendments will encourage the growth of non-deposit taking institutions, foster competition and increase access to credit

E. REGULATION OF NON-DEPOSIT-TAKING MICROFINANCE BUSINESSES

The amendments to the Microfinance Act introduce licensing for non-deposit-taking microfinance businesses (NDTMBs) by the CBK. Initially, the Act only regulated deposit-taking microfinance banks, leaving NDTMBs unregulated.

NDTMBs are now defined as non-microfinance bank business which involves the provision of physical credit. NDTMBs can lend money based on physical assets (such as land, vehicles, etc) as security but are **prohibited from accepting cash as security**.

The Act now applies to all NDTMBs, except for those explicitly exempted by the Cabinet Secretary contrary to the previous provision that only applied to "**specified**" NDTMBs. However, exemptions cannot be granted to NDTMBs with an annual revenue **exceeding Ksh. 500,000**.

The Act also introduces new licensing requirements for NDTMBs. **NDTMBs must be registered as a company under the Companies Act**, and be **licensed under the Microfinance Act to operate legally**. Operating an NDTMB without the required license is an offence.

The Act also introduces consumer protection measures. Borrowers must receive clear, accurate information about loan procedures, terms, and repayment conditions. NDTMBs must disclose all financial costs (interest, fees, etc.) before issuing a loan. NDTMBs are prohibited from harassing, abusing, or oppressing borrowers during debt recovery, using threats, violence, or illegal means to collect debts, using obscene or profane language towards borrowers or guarantors. Debt collection must adhere to Article 31 of the Constitution (Right to Privacy) and the Data Protection Act. NDTMBs cannot charge interest, fees, penalties, or expenses unless such charges are clearly agreed upon in writing with the borrower.

Existing NDTMBs must apply for a license within six months of the Act coming into effect.

Operating without a license after the 6-month grace period is an offence, punishable by up to **5 years imprisonment or a fine of Ksh. 2 million or both**.

CONCLUSION

The Business Laws (Amendment) Act, 2024 has presented a raft of reforms to the benefit of the consumers. The increase of the minimum core capital requirement for Banks and mortgage finance companies is a welcome reform to secure depositors' funds and to cushion the institutions during slump. Additionally, the regulation of non-deposit taking microfinance businesses was long overdue.

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