

THE FINANCIAL MARKETS CONDUCT BILL, 2018

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FIRST SCHEDULE—Conduct of the affairs of the Financial Markets Conduct Authority Board

SECOND SCHEDULE—Repeals and amendments

Part 1—Amendments of the Banking Act

Part 2—Amendments of the Consumer Protection Act

AN ACT of Parliament to promote a fair, non-discriminatory marketplace for access to credit, to provide for the establishment of uniform practices and standards in relation to the conduct of providers of financial products and financial services, including regulating the cost of credit, establishment of the Financial Markets Conduct Authority, the Financial Sector Ombudsman and the Financial Sector Tribunal, supervision of conduct of providers in relation to retail financial customers, promotion and maintenance of a fair and efficient financial sector in Kenya, and for connected purposes.

ENACTED by the Parliament of Kenya as follows-

PART I- PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Financial Markets Conduct Act, 2018.

(2) This Act shall come into force on such date as the Cabinet Secretary may, by notice in the Gazette, appoint and the Cabinet Secretary may appoint different dates for coming into force of different provisions of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“account period”, in relation to a regulated credit contract, means a period of six months or such other shorter period as may be prescribed in the regulations;

“administrative penalty” means an amount payable under section 113;

“administrative penalty order” means an order issued under section 114;

“amount of credit”, in relation to a regulated credit contract, means the amount or sum of the amounts advanced, or the amount or sum of the amounts of the debt deferred, under the contract. excluding—

(a) any interest payable under the contract;

(b) any fee or charge that is or may be payable under the contract or under a lease, mortgage, guarantee or any other arrangement associated with the credit contract; or

(c) an amount as may be specified in the regulations for the purposes of this section;

“Authority” means the Financial Markets Conduct Authority established under section 11;

“Board” means—

- (a) the Board of Directors of the Authority appointed under section 15;
- (b) the Board of Directors of the Ombudsman appointed under section 123; and
- (c) The Board of Directors of the Conduct Compensation Fund Board appointed under section 147;

“Board member” means—

- (a) a member of the Board of the Authority appointed under section 15(1);
- (b) a member of the Board of the Ombudsman appointed under section 123(1);
- (c) a member of the Conduct Compensation Fund Board appointed under section 147(1);

“borrower” has the meaning assigned to it under section 7(1);

“business document” means a document issued to a person in connection with carrying on a business;

“business premises” means premises, including a building or a part of a building, used for carrying on a business;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Central Bank of Kenya” means the Central Bank of Kenya established by the Central Bank of Kenya Act;

“Chairperson” means the—

- (a) Chairperson of the Board appointed under section 15(1)(a);
- (b) Chairperson of the Board of the Ombudsman appointed under section 123(1)(a);
- (c) Chairperson of the Conduct Compensation Fund Board appointed under section 147(1)(a);

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 22;

“Chief Ombudsman” means the Ombudsman appointed under section 129;

“Conduct Compensation Fund” means the fund established under section 142;

“Conduct Compensation Fund Board” means the Conduct Board established under section 142;

“conduct rule” means a rule made under section 51;

“control function” means the—

- (a) risk management function;
- (b) compliance function; and
- (c) internal audit function;

“credit” has the meaning assigned to it under section 7(1);

“credit card” means—

- (a) a card of any kind commonly known as a credit card;
- (b) a card of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit; or
- (c) anything else that maybe used as a card referred to under paragraph (a) or (b);

and includes a thing that can be used as a credit card and also in other ways like a debit card, or to access other accounts;

“credit contract” means a contract under which credit is or may be provided;

“credit information” in relation to a person, means information relevant to an assessment of the creditworthiness of that person, and includes information referred to under sections 61, 62, 63, 74, and 77;

“credit limit”, in relation to a regulated credit contract, means the maximum amount that may be outstanding under the contract at any time, as specified in, or calculated in accordance with the contract;

“credit reference bureau” means a person that provides, as a business or part of a business, a credit report in relation to a retail financial customer;

“credit report”, in relation to a person, means an assessment of the creditworthiness of that person;

“credit service” has the meaning assigned to it under section 8;

“dealing” in a financial product has the meaning assigned to it under section 6(3);

“decision-maker” —

- (a) in relation to a reviewable decision by the Authority means the Authority;
- (b) in relation to a reviewable decision on a claim for compensation from the Compensation Board, the Compensation Fund Board; and
- (c) in relation to a decision by any other person identified in the regulations as the decision maker, that person;

“directive” means a directive issued under section 106 or 107;

“disqualified person” means a person who—

- (a) is or has, at any time been adjudged bankrupt or has entered into a composition scheme or arrangement with his or her creditors;
- (b) has been convicted or found guilty of an offence, either in Kenya or in a foreign country being an offence—
 - (i) involving dishonesty, fraud or moral turpitude; or
 - (ii) the maximum for which is or includes a term of imprisonment for more than six months or more;
- (c) is prohibited by or under a written law from being a director of, or taking part in the management of, a provider or a company, either in Kenya or in a foreign country;
- (d) has been involved in the management or administration of a provider that has been deregistered, wound up or placed under statutory management for any failure on the part of its management or administration;

(e) is a member of Parliament or of a County Assembly;
or

(f) has a direct material financial interest in a provider,
except as a retail financial customer;

“enforceable undertaking” means an undertaking described under
section 110;

“FCC Fund” means the fund established under section 142;

“financial conduct licence” means—

(a) a licence granted under section 37; and

(b) a licence referred to under section 38(a);

“financial crime” includes—

(a) an offence against this Act or a sectoral law; and

(b) a conduct that amounts to—

(i) corruption or an economic crime as
defined under the Anti-Corruption and
Economic Crimes Act; or

(ii) an offence against the Prevention of
Terrorism Act, or the Proceeds of Crime
and Anti-Money Laundering Act;

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“financial product” has the meaning assigned to it under section 5;

“financial product advice” has the meaning assigned to it under
section 6(2);

“financial product provider” means a person that, as a business or as
part of a business, provides a financial product;

“financial sector” means the sector comprised of providers;

“financial service” has the meaning assigned to it under section 6(1);

“financial service provider” means a person that, as a business or as
part of a business, provides a financial service;

“governing body”, in relation to a provider, means a person or body of
persons, whether elected or not, that—

(a) manages or controls the provider;

- (b) controls or formulates the policy and strategy of the provider;
- (c) directs the affairs of the provider; or
- (d) has the—
 - (i) authority to exercise the powers of the provider and perform its functions; or
 - (ii) power to control the exercise of those powers or the performance of those functions;

“guarantor”, in relation to a credit contract, means—

- (a) a person who undertakes, by way of guarantee or other form of security, an obligation of another person to pay an amount due to the lender under the contract; or
- (b) a person declared by the regulations to be a guarantor in relation to a credit contract;

“inspection” means an inspection carried out under section 95;

“investigation” means an investigation under section 96;

“investigator” means an investigator appointed under section 97;

“key person” in relation to a provider, means—

- (a) a member of the governing body of the provider;
- (b) the chief executive officer or any other person in charge of the provider;
- (c) a person other than a member of the governing body of the provider who makes or participates in making decisions that—
 - (i) affect the whole or a substantial part of the business of the provider; or
 - (ii) may affect significantly the financial standing of the provider;
- (d) a person other than a member of the governing body of a provider who oversees the enforcement of the policies of, or the implementation of strategies of the provider;
- (e) the head of a control function of the provider; or

(f) the head of a function of the provider that a sectoral law requires to be performed;

“lender” has the meaning assigned to it under section 7(1);

“levy” means the levy imposed under section 168;

“Levy Account” means the account established under section 173;

“levy payer” means a person liable to pay a levy;

“licensee” means a person that holds a financial sector licence;

“Managing Director” means the Managing Director appointed under section 147;

“Ombudsman” means the Financial Sector Ombudsman established by section 120;

“Ombudsman Fund” means the fund established by section 139;

“other financial regulator” refers to the Central Bank of Kenya, the Capital Markets Authority, the Kenya Depository Insurance Corporation, Insurance Regulatory Authority and the Micro and Small Enterprises Authority;

“outstanding balance”, in relation to a credit contract at a particular time, means the total of the amounts payable by the borrower under the contract at that time, whether by way of repayment of principal, interest, fees or charges, excluding amounts as maybe specified in the regulations;

“prohibited information”, in relation to a person, means information relating to race, belief, colour, ethnic origin, religion, political affiliation, sexual orientation, physical or mental handicaps or state of health of that person;

“provider” means—

(a) a financial product provider;

(b) a financial service provider; or

(c) a provider of a kind as may be specified in the regulations,

but does not include the Central Bank of Kenya;

“recurring credit contract” means a regulated credit contract where a lender agrees to advance amounts at specified intervals, on the occurrence of a specified event or on demand;

“regulated credit contract” means a credit contract where the borrower is a retail financial customer;

“retail financial customer”, in relation to a financial product or a financial service, means, a person who is the final user of the financial product or financial service, being a person to whom one of the following applies—

- (a) the person is a natural person;
- (b) the financial product or service is provided in connection with the conduct by the person of a micro enterprise or a small enterprise as defined under the Micro and Small Enterprises Act; or
- (c) the person is in a class of persons as may be declared by regulations to be a retail financial customer in relation to the financial product or financial service;

No, 55 of 2012

“reviewable decision” means—

- (a) a decision of the Authority under this Act in relation to a specific person;
- (b) a decision on a claim for compensation under section 155;
- (c) a decision of a kind as maybe prescribed by regulations for the purposes of this paragraph;

and includes—

- (i) an omission to take such a decision within a prescribed period; and
- (ii) an omission to take such a decision within a reasonable period, if this Act requires the decision to be taken but does not prescribe the period;

but does not include—

- (i) a decision in relation to making a conduct rule;
- (ii) a decision under Part V;

- (iii) an assessment of levy issued to a specific person; or
- (iv) a decision as may be prescribed by regulations made under this Act;

“sectoral law” means—

- Cap. 488* (a) the Banking Act;
- Cap. 485A* (b) the Capital Markets Act;
- Cap. 491.* (c) the Central Bank of Kenya Act;
- Cap. 487* (d) the Insurance Act;
- No. 19 of 2006* (e) the Microfinance Act;
- No. 3 of 1995* (f) the Retirement Benefits Act;
- Cap. 490B* (g) the Sacco Societies Act; and
- (h) any other law as maybe specified in the regulations;

Cap.485A “securities” has the meaning assigned to it under section 2 of the Capital Markets Act, but does not include those identified under paragraph (h) of that Act;

“significant owner” of a provider means a person who is a significant owner of the provider as described under section 9;

“Tribunal” means the Financial Services Tribunal established under section 158;

“unfair business practice” means conduct declared by a conduct rule to be an unfair business practice.

Declaration of a retail financial customer

3. The regulations may declare a specified person to be or not to be a retail financial customer in relation to a specified financial product or a financial service.

Writing requirements.

4. Unless the contrary intention appears—

- (a) any application, nomination, licence, approval, consent, permission, designation, delegation, directive or notice required by or provided under this Act shall be in writing; and
- (b) any information required to be provided under this Act shall be provided in writing.

Financial
Products

5. (1) Subject to this section, a financial product is a facility or an arrangement through which, or through the acquisition of which, a person —

- (a) makes a financial investment;
- (b) manages financial risk; or
- (c) makes a non-cash payment.

(2) For the purposes of this section, a person makes non-cash payments if that person makes payments, or causes payments to be made, otherwise than by the physical delivery of Kenyan currency in the form of notes or coins.

Financial
services

6. (1) Subject to this section, a person provides a financial service if that person—

- (a) provides, in relation to a financial product—
 - (i) financial product advice;
 - (ii) dealing in a financial product;
 - (iii) making a market for a financial product;
 - (iv) administering or managing a financial product;
- (b) provides credit under a regulated credit contract to which Part VI applies;
- (c) provides a credit service;
- (d) engages in a conduct of a kind as may be prescribed in regulations;
- (e) administers or manages a financial service referred to under paragraph (a); or
- (f) a service as may be identified by regulations to be a financial service.

(2) For the purposes of this section, a “financial product advice” means a recommendation or a statement of opinion, or a report of either of those things, that—

- (a) is intended to influence a person or persons to make a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
- (b) could reasonably be regarded as being intended to have such an influence;

but does not include—

- (i) the mere provision of factual information including pricing;
- (ii) an advice given by a legal practitioner in a professional capacity about matters of law, legal interpretation or the application of the law to any facts; or
- (iii) anything in a document of a kind prescribed by regulations made for this paragraph.

(3) For the purposes of this section, “dealing” in a financial product means—

- (a) facilitating, managing or administering the issue of a financial product;
- (b) varying a financial product;
- (c) disposing of a financial product; or
- (d) arranging for a person to do any of the things under paragraphs (a) to (c);

but does not include—

- (i) dealing by a person in a financial product on his or her own account; or
- (ii) conduct of a kind as may be prescribed by the regulations.

Credit related definitions

7. (1) For the purposes of this Act, credit is provided if, under a contract hereinafter referred to as a “credit contract”—

- (a) a person, the “lender,” agrees to advance an amount of money to, or at the direction of or for the benefit of another person and the terms of the contract require the amount to be repaid by the person to whom it is advanced or by another person, the person obliged to pay being the “borrower”; or
- (b) payment of a debt owed by one person, the “borrower” to another, the “lender,” is deferred.

Credit services

8. For the purposes of this Act, a “credit service” is provided if, as or as part of a business, a person directly or indirectly,—

- (a) suggests or recommends to a retail financial customer to apply for credit from a particular lender;
- (b) assists a retail financial customer to apply for credit from a particular lender;
- (c) suggests or recommends to a borrower or a lender under a regulated credit contract that the borrower applies for, or the lender agrees to an increase in the credit limit under the contract;
- (d) assists a borrower who is a retail financial customer to apply for an increase to the credit limit under a regulated credit contract or otherwise vary a regulated credit contract;
- (e) suggests or recommends to a borrower under a regulated credit contract that the borrower remain in the credit contract;
- (f) provides credit reports;
- (g) provides a debt counselling service to a person who is a retail financial customer.

Significant
owners

9. (1) For the purposes of this Act, a person is a significant owner of a provider if that person, directly or indirectly, alone or together with one or more associated persons, has the ability to control or influence materially the business or strategy of the provider.

(2) Without prejudice to subsection (1), a person shall be considered to be a significant owner if the—

- (a) person, directly or indirectly, alone or together with one or more associated persons—
 - (i) has the power to appoint at least the prescribed proportion of the members of the governing body of the provider; or
 - (ii) holds a qualifying stake in the provider; or
- (b) consent of that person is required for the appointment of at least the prescribed proportion of the members of the governing body of the provider.

(3) Despite subsection (1), the Cabinet Secretary, the Authority and any other financial regulators shall not, in their capacity, be a significant owner of a provider.

(4) For the purposes of this section, a person holds a qualifying stake in a provider that is a company, if—

- (a) the person, directly or indirectly, alone or together with one or more associated persons—
 - (i) holds at least the prescribed proportion of the issued shares of the provider;
 - (ii) has the ability to exercise or control the exercise of at least the prescribed proportion for the voting rights attached to the securities of the provider;
 - (iii) has the ability to dispose of or direct the disposal of at least the prescribed proportion of the provider’s securities; or
- (b) holds rights in relation to the provider that, if exercised, would result in an outcome described under paragraph (a).

(5) For the purposes of this section, a person holds a qualifying stake in an provider that is a trust if that person, directly or indirectly, alone or together with one or more associated persons—

- (a) has the ability to exercise or control the exercise of at least the prescribed proportion of the votes of the trustees;
- (b) has the power to appoint at least the prescribed proportion of the trustees; or
- (c) has the power to appoint or change any beneficiaries of the trust.

(6) “Prescribed proportion” means—

- (a) 25%; or
- (b) a lower percentage if a sectoral law applicable to the provider prescribes a lower percentage.

Fit and proper
person
requirements

10. (1) The Authority shall, in determining whether a person is fit and proper for the purposes of this Act to hold a particular position, consider—

- (a) the probity, competence and soundness of judgment of that person in fulfilling the responsibilities of that position;
- (b) the diligence with which the person is fulfilling or can be expected to fulfil those responsibilities;
- (c) whether the person has committed any offence, including any financial crime, irregularities or misappropriated funds in connection with the provision of financial products or services;
- (d) whether the person has contravened a written law intended to protect members of the public from loss arising out of dishonesty, incompetence or malpractice in connection with financial products or financial services;
- (e) whether the person was a director or senior officer of a body that provided financial products or financial services that has been liquidated in insolvency, or subject to statutory management, however described;
- (f) has engaged in conduct that, in the Authority's opinion, is fraudulent, prejudicial or otherwise improper.

(2) Subsection (1) shall not limit the provisions that any another law or a conduct rule, may make on fit and proper person requirements.

PART II-ESTABLISHMENT OF THE FINANCIAL MARKETS CONDUCT AUTHORITY

Establishment
of the
Authority.

11. (1) There is established an authority to be known as the Financial Markets Conduct Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts;

(e) doing such other acts necessary for the proper performance of the functions of the Authority under this Act which may lawfully be done by a body corporate.

(3) Except as otherwise provided in this Act, the Authority shall operate independently in the performance of its functions.

(4) A person shall not give a direction to the Authority in relation to a particular case.

Objectives of
the Authority

12. The objectives of the Authority shall be to—

(a) protect retail financial customers—

(i) from misleading, deceptive, unfair and fraudulent conduct;

(ii) by promoting fair, equitable and sustainable access to financial products and financial services;

(iii) by ensuring that retail financial customers can make informed choices through the provision of useful information about financial products and services; and

(iv) by promoting financial literacy and the ability of retail financial customers and potential retail financial customers to make sound financial decisions;

(b) protect retail financial customers with respect to credit—

(i) by regulating the cost of credit;

(ii) from inappropriate lending practices; and

(iii) by regulating the accuracy, availability and protection of financial information through credit sharing mechanisms;

(c) promote competition in, public confidence in, and encourage the development of, the financial sector; and

(d) support the economic policy of the Government, including the Government's objectives for growth and employment.

Functions of the
Authority.

13. (1) The functions of the Authority shall be to—

- (a) regulate and supervise, in accordance with this Act, the conduct of providers in providing financial products and services to retail financial customers;
- (b) regulate and supervise, in accordance with this Act, the conduct of credit providers and credit service providers;
- (c) promote financial inclusion, that is, that all retail financial customers have timely and fair access to appropriate, fair and affordable financial products and financial services;
- (d) collaborate with the Competition Authority of Kenya in promoting, to the extent consistent with achieving the objective of the Authority, sustainable competition in the provision of financial products and financial services to retail financial customers;
- (e) promote awareness of the need for, undertake and assist in providing financial education;
- (f) advise the Cabinet Secretary on policies with respect to the financial sector including in relation to national development plans;
- (g) monitor the operation of this Act and its effectiveness in achieving the Authority's objectives, and report to the Cabinet Secretary on those matters;
- (h) cooperate with, and provide appropriate assistance to, State organs, other financial regulators, and foreign regulatory authorities and law enforcement agencies; and
- (i) perform any other function necessary to achieve the objectives of the Authority under this Act.

(2) The Authority shall, in performing its functions under subsection (1), adopt an outcomes focused, risk-based and proportionate approach that embodies international best practice as described by international regulatory organisations and standards-setting agencies.

Co-operation
and
collaboration

14. (1) The Authority and any other financial regulators shall co-operate and collaborate when performing their functions, and shall for this purpose—

- (a) generally assist and support each other in pursuit of their objectives;
- (b) to the extent permitted by law, inform each other about, and share information about matters of common interest;
- (c) strive to adopt consistent regulatory strategies, including addressing regulatory and supervisory challenges;
- (d) co-ordinate, to the extent appropriate, actions they take, including in relation to—
 - (i) licensing;
 - (ii) inspections and investigations;
 - (iii) action to enforce laws;
 - (iv) information sharing; and
 - (v) reporting by providers, including statutory reporting and data collection measures; and
- (e) minimize the duplication of effort and expense, including by establishing and using, where appropriate, common or shared databases and other facilities.

(2) The Authority and any other State organ that has a regulatory or supervisory function in relation to providers shall co-operate and collaborate when performing their functions, including by consulting each other in relation to the performance of their functions.

(3) The Authority may request a State organ to provide information about any action that the State organ has taken or proposes to take in relation to a provider specified in the request as long as the request does not contravene the law.

(4) The Authority may enter into memorandum of understanding or any other arrangement with —

- (a) with other financial regulators and State agencies; and

- (b) financial sector regulatory authorities in other countries in relation to co-operation between them;

to assist each other in performing their functions.

(5) The validity of an action taken by the Authority is not affected by a failure to comply with this section or a memorandum of understanding.

(6) The Authority shall publish each memorandum of understanding and each amendment to a memorandum of understanding entered into between the Authority and any other body.

Board of the
Authority

15. (1) The management of the Authority shall vest in a board of directors which shall consist of—

- (a) a non-executive chairperson appointed by the President;
- (b) the Cabinet Secretary;
- (c) the Governor of the Central Bank of Kenya;
- (d) five other persons with relevant experience appointed by the Cabinet Secretary;
- (e) the Chief Executive Officer who shall be an *ex-officio* member with no right to vote.

(2) The Chairperson and members appointed under paragraph (1) shall be selected from persons who—

- (a) are not public officers or employees, officers or significant owners of any provider that holds a financial conduct licence;
- (b) holds at least a bachelor's degree in law, finance, economics, commerce, actuarial science or other relevant discipline;
- (c) have at least ten years' experience in senior management of a public or private provider within the financial sector;
- (d) has not served as an employee of the Authority in the preceding five years; and

(e) meets the requirements of Chapter Six of the Constitution of Kenya.

(3) The President and the Cabinet Secretary shall, in appointing the Chairperson and the Board members under paragraph (1)(e), have regard to the principles of gender equity and regional balance and the need to have a mix of skills relevant to the financial sector.

Powers of the Board

16. (1) The Board shall have all the powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Board shall have the powers to—

- (a) generally oversee the management and administration of the Authority;
- (b) formulate and approve the strategies and plans for the Authority including—
 - (i) the strategic priorities of the Authority;
 - (ii) regulatory and supervisory strategies; and
 - (iii) operational strategies and plans;
- (c) control, supervise and administer the assets of the Authority as will promote the achievement of the objectives of the Authority;
- (d) manage and administer the funds of the such a manner and for such purposes as shall promote the best interests of the Authority;
- (e) prepare annual budget of the Authority for the purposes of funding the administrative activities of the Authority;
- (f) receive grants, donations and any other moneys on behalf of the Authority and make legitimate disbursements therefrom;
- (g) open such bank accounts for the funds of the Authority as may be necessary; and
- (h) perform any other function necessary to achieve the objectives of the Authority.

Term of office

17. (1) The Chairperson and members appointed under section 15(1)(e) shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

(2) The appointment of board members shall be done in such a manner as to ensure that the terms of the members appointed do not lapse at the same time and that there is continuity of service.

Resignation, removal and vacancy in office

18. The Chairperson or any member of the Board appointed under section 15(1)(e) shall cease to hold office if-

- (a) the member delivers to the President, in case of the Chairperson or to the Cabinet Secretary, in case of a member, a written notice of resignation;
- (b) at the advice of the Authority, the President in the case of chairperson, or the Cabinet Secretary, in the case of a member, removes him or her from office on the grounds that he or she is incapacitated by mental or physical illness or is otherwise unable or unfit to discharge the functions of that office;
- (c) the member violates the provisions of the Public Officers Ethics Act;
- (d) the member is declared bankrupt;
- (e) the member is convicted of a criminal offence that amounts to felony under the laws of Kenya;
- (f) the member is convicted of an offence
- (g) the member is absent from three consecutive meetings of the Board without written approval of the chairperson; or
- (h) the member dies.

Procedure of meetings of the Board.

19. (1) The procedures for the conduct of business and affairs of the Board shall be as set out in the First Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

Delegation by
the Board.

20. (1) The Board may, by resolution either generally or in any particular case, delegate to a committee of the Board, or to any member, officer, employee or agent of the Authority, the exercise of any powers or the performance of any functions or duties of the Board under this Act or any other written law.

(2) The Board may co-opt any person with appropriate knowledge and skills to assist the Authority in the performance of its functions under this Act.

Remuneration
of the Board.

21. The Chairperson and the directors shall be paid such remuneration or allowances as the Authority may, in consultations with the Cabinet Secretary, determine.

Chief Executive
Officer

22. (1) There shall be a Chief Executive Officer of the Authority who shall be competitively recruited and appointed by the Cabinet Secretary on the recommendation of the Board.

(2) The Chief Executive Officer shall serve on such terms and conditions of employment as the Board, in consultation with the Cabinet Secretary may determine.

(3) A person qualifies to be appointed as the Chief Executive Officer if that person—

(a) holds a masters degree from a university recognized in Kenya and a member of a professional body;

(b) has knowledge, competence and at least ten years' experience at a senior management level in any of the following—

(i) finance;

(ii) law;

(iii) accounting;

(iv) economics;

(v) banking;

(vi) actuarial science;

(vii) insurance;

(viii) cooperative practice; or

(ix) such other field that is relevant to the functions of the Authority; and

(c) meets the requirements of Chapter Six of the Constitution of Kenya.

(4) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day management of the Authority.

(5) The Chief Executive Officer shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.

Staff of the Authority

23. (1) The Authority may appoint such staff as the Authority considers fit to perform its functions under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions of service as the Board may, in consultation with the Cabinet Secretary determine.

Protection from personal liability.

24. No matter or anything done by any member of the Board or by any office, employee, agent or servant of the Authority shall, if the act or omission was done in good faith for the purpose of performing the functions of the Authority under this Act, render that person liable for any action, claim or demand.

Liability of the Authority to pay damages.

25. Despite section 24, the Authority shall be liable to pay compensation or damages to any person or injury to that person, that person's property or any of that person's interest where such injury, loss or damage is occasioned by the Authority, its agents or officers in the course of carrying out lawful functions of the Authority.

Confidentiality

26. (1) Except as provided for in this Act or any other law, a person shall not disclose any information that comes into his or her possession as a result of the performance of his or her duties under this Act.

(2) A person who contravenes subsection (1) is liable upon conviction, to a fine not exceeding five million Kenya Shillings or to an imprisonment for a term of two years.

Common seal

27. (1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subsection (2), the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially and officially noticed unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART III- FINANCIAL PROVISIONS

Funds of the Authority.

28. The funds of the Authority shall consist of—

- (a) such monies or assets which may accrue to or vest in the Authority in the course of exercise of its powers or the performance of its functions under this Act;
- (b) any monies which may become payable to the Authority pursuant to this Act or any other written law;
- (c) monies as may be appropriated by the Parliament for the purposes of the Authority; and
- (d) all monies from any other source provided, donated or lent to the Authority.

Investment of funds

29. (1) The Authority may invest any of its funds in securities which the National Treasury may, from time to time approve.

(2) The Authority may place or deposit with such bank as it may determine, any moneys not immediately required for the purposes of the Authority.

Financial year

30. The financial year of the Authority shall be the period of twelve months commencing on the first of July and ending on thirtieth of June in each year.

Annual estimates

31. (1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Authority for that financial year.

(2) The annual estimates shall make provisions for all the estimated expenditure of the Authority for the financial year concerned, and in particular, shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the Board and staff of the Authority;
- (b) rental expenses for the premises of the Authority;
- (c) payment of pensions, gratuities and other charges in respect of retirement benefits to the staff of the Authority which are payable out of the funds of the Authority;
- (d) proper maintenance, repair and replacement of the equipment and other movable property of the Authority; and
- (e) any other expenditure necessary for the performance of the functions of the Authority.

(3) The Board shall approve the annual estimates before the commencement of the financial year to which they relate and shall submit the same to the Cabinet Secretary for approval.

Accounts and audit

32. (1) The Board shall cause to be kept all proper books and other records of accounts of income, expenditure, assets and liabilities of the Authority.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Authority in respect of that financial year together with-

- (a) a statement of income and expenditure of the Authority during the year;
- (b) a statement of assets and liabilities of the Authority on the last day of that year; and

(c) a funds flow statement during that year.

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(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

Annual Report

33. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary, an annual report for the immediate preceding year.

(2) The Cabinet Secretary shall lay the annual report before the National Assembly as soon as is practicable.

(3) The Authority shall publish a copy of the annual report on their website.

PART IV-FINANCIAL CONDUCT LICENCES

Requirements
for financial
conduct licences

34. (1) A person shall not provide, as a business or part of a business, a financial product or a financial service to a retail financial customer unless that person has a financial conduct licence.

(2) A person provides, as a business or part of a business, a financial product or a financial service to a retail financial customer in Kenya if, the person engages in conduct that is—

- (i) intended to induce people in Kenya to use the financial product or financial services the person provides; or
- (ii) is likely to have that effect;

whether or not the conduct is intended, or likely, to have that effect anywhere else.

(3) A person is not required to hold a financial conduct licence—

- (a) to offer or issue securities; and
- (b) in circumstances as may be specified in the regulations.

(4) A person who contravenes a provision of this section commits an offence and is liable on conviction—

- (a) for a first offence to a fine not exceeding Kshs. 5,000,000 or imprisonment for 2 years; and
- (b) for a second or subsequent offence to a fine not exceeding Kshs. 10,000,000 or imprisonment for 5 years.

Temporary
exemption from
sectoral laws

35. (1) This section applies to a person who, at the commencement of this Part, holds a licence under a sectoral law that authorises it to provide a financial product or a financial service.

(2) Subject to this Act, the period of exemption shall be twenty four months from the commencement of this Part or any other period as may be specified in the regulations.

(3) Despite an exemption under subsection (2),—

- (a) the person is considered to hold a financial conduct licence on the same terms and subject to the same conditions, in respect of the product or service;
- (b) the person is taken to satisfy—
 - (i) the requirements of this Act, the regulations and the conduct rules regarding capitalisation;
 - (ii) the fit and proper persons requirements under this Act, the regulations and the conduct rules; and
 - (iii) any other requirements of this Act, the regulations and the conduct rules as may be specified in the regulations; and
- (c) a variation of the terms or conditions of the licence under the sectoral law has effect to vary the terms or conditions of the financial conduct licence referred to under paragraph (a) in the same way.

Phase on for
licensing
requirements

36. (1) Section 34(1) shall come into force, so far as it relates to the provision of credit, six months after the date of commencement of this Part.

(2) The Authority—

- (a) shall, within four months after the commencement of this Part, with the approval of the Cabinet Secretary, adopt a phase-in plan specifying, for particular classes of, or for all financial products, financial services and providers, the dates on which section 34(1) shall come into force;

(b) may amend the plan adopted under paragraph (a);
and

(c) shall publish notice of the plan in the *Gazette*.

(3) The phase in plan or any amendment adopted under subsection (2) shall not specify a date that is—

(a) earlier than six months after the date on which notice of the plan is published in the *Gazette*; or

(b) later than—

(i) three years after that date; or

(ii) a later date if the Cabinet Secretary, by notice in the *Gazette*, specifies that later date.

(4) Subject to subsection (1), section 34(1) shall come into force for providers providing a specified class of financial products or services on—

(a) the date specified in the phase-in plan for that class; or

(b) if the phase in plan does not specify a date for the class, the date determined in accordance with subsection (3)(b).

Criteria and
grant of licence

37. (1) A financial service provider shall apply to the Authority for a financial conduct license.

(2) An application made under subsection (1) shall be in the prescribed form and shall be accompanied by the prescribed application fee and any other additional information as the Authority may require.

(3) The Authority shall, in considering an application under section (1) shall take into account—

(a) the objectives of the Authority;

(b) the financial and other resources applicable to the applicant;

(c) fit and proper person requirements applicable to the applicant and to any key person or significant owner of the applicant;

- (d) the governance and risk management arrangements of the applicant;
- (e) whether the applicant, or a key person of the applicant has engaged in an unfair business practice or in a conduct that contravenes the Consumer Protection Act or the objectives of the Act;
- (f) whether the applicant made a false statement or misleading information in relation to the application; and
- (g) the interests of retail financial customers.

(4) The Authority may—

- (a) grant a license to the applicant subject to such conditions as the Authority may consider necessary; or
- (b) decline to grant the license.

(5) Where the Authority declines to grant a license under subsection 4(b), the Authority shall—

- (a) notify the applicant of its decision within sixty days of lodging the application or such other period as the Authority may determine, setting out the reasons for the decline; and
- (b) grant the applicant an opportunity to be heard.

(6) A license granted under this Act shall remain in force until withdrawn or suspended by the Authority.

No duplication
of licensing
requirements

38. Where an applicant for a financial conduct licence—

- (a) holds a licence, however described, under a sectoral law; and

- (b) the license covers the provision by the applicant of financial products and services which is the subject of the application;

that person is considered to satisfy the—

- (i) the requirements of this Act, the regulations and the conduct rules regarding capitalisation; and
- (ii) the other requirements of this Act, the regulations and the conduct rules specified in regulations made for the purposes of this paragraph.

Scope of financial conduct licenses.

39. (1) A financial conduct licence granted under this Act may be limited to—

- (a) specified financial products or specified financial services; or
- (b) the provision of financial products or financial services to persons in a specified class or in specified circumstances.

Notification to the Authority

40. (1) A licenced provider shall promptly notify the Authority if the provider—

- (a) has contravened or is contravening this Act or a sectoral law; or
- (b) has become aware that information given regarding the application for the financial conduct licence was false or misleading.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of one hundred thousand Kenya Shillings.

(3) Subsection (1) also applies in relation to events and circumstances that occur while the financial conduct licence is suspended.

Non-transferability of the licence

41. A financial conduct licence issued under this act shall not be transferable to any other person.

Variation of the conduct licence

42. (1) The Authority may, by notice to the holder of a financial conduct licence, vary the licence if such variation will assist the Authority to achieve its objectives.

(2) A variation under subsection (1) may include—

- (a) removing or varying a condition of the licence;
- (b) adding a condition; or
- (c) changing the categories of financial products, financial services or retail financial customers to which the licence relate.

(3) A variation of conduct licence shall take effect on the date of the notice under subsection (1) or a later date if it is specified in the notice.

(4) This section applies in addition to section 35(2)(c).

Suspension of
financial
conduct licence

43. (1) The Authority may, by notice to the holder of a financial conduct licence, suspend the licence for a period specified in the notice if—

- (a) the holder of the licence applies for suspension;
- (b) the holder of the licence has contravened any condition of the licence or has not complied with the condition in material respect;
- (c) the holder of the financial conduct licence, or one of its key persons of the licensee, has—
 - (i) contravened this Act or a sectoral law in a material respect;
 - (ii) engaged in conduct that contravenes the Consumer Protection Act or a warranty implied into an agreement by that Act;
 - (iii) contravened in a material respect a law of a foreign country that corresponds to this Act or the Consumer Protection Act;
- (d) in the case of a licence referred to under section 35, the licence under the sectoral law is suspended or terminated, however described;
- (e) information provided during the application of the conduct licence was false or misleading, including by omission in a material respect;
- (f) the suspension is necessary to prevent—

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- (i) a serious contravention of this Act;
- (ii) retail customers suffering material prejudice; or

(g) if—

- (i) fees or charges in respect of the financial conduct licence or another financial sector licence held by the licensee; or
- (ii) a levy or an administrative penalty payable by the licensee,

including interest thereof is unpaid or remains unpaid for at least thirty days.

(2) The Authority may refuse to suspend a financial conduct licence under subsection (1)(a) if the suspension would—

- (i) not be in the best interests of retail financial customers; or
- (ii) frustrate the achievement of objectives set out in this Act applicable to the licence.

(3) A suspension of a financial conduct licence takes effect on the date of the notice under subsection (1) or, if a later date is specified in the notice, the later date.

(4) The suspension of a financial conduct licence shall not affect an obligation of the holder of the licence that the holder has under this Act.

(5) The Authority may, at any time revoke a suspension.

Revocation of
financial
conduct licence

44. (1) The Authority may, by notice to the holder of a financial conduct licence, revoke a licence—

- (a) if the holder of the licence applies for revocation;
- (b) on any grounds on which the Authority may suspend a licence under section 43(1); or
- (c) if the holder of the licence has ceased to conduct the licensed activities.

(2) The Authority may refuse to revoke a financial conduct licence under subsection (1)(a) if the revocation would—

(a) not be in the best interests of retail financial customers; or

(b) frustrate the achievements of the objectives set out in this Act applicable to the licence.

(3) A revocation of a financial conduct licence under subsection (1) shall take effect on the date of the notice or if a later date is specified in the notice, the later date.

Continuation of licensed activity despite suspension or revocation

45. (1) The Authority may, by notice to a person whose financial conduct licence has been suspended or revoked under this Act, and on conditions specified in the notice, allow the licensee to carry out the licensed activity to the extent, and for a period specified in the notice.

(2) The conditions specified under subsection (1) shall ensure that the retail financial customers of the licensee are treated fairly in relation to suspension or termination of the licensed activity.

Procedure for varying, suspending or revoking a conduct licence.

46. (1) The Authority shall, before the Authority varies, suspends or revokes a financial conduct licence—

(a) give the licensee notice of the proposed action and a statement of the reasons for the variation, suspension or revocation; and

(b) invite the licensee to make submissions on the matter within thirty days of the decision or such other period as the Authority may determine.

(2) Subsection (1) shall not apply if the licensee applied for the variation, suspension or revocation.

(3) The Authority shall, in deciding whether to vary, suspend or revoke a licence,-

(a) consider all submissions made by the licensee under subsection (1); and

(b) notify the licensee of its decision whether to vary, suspend or revoke the licence as soon as practicable.

(4) The Authority may, if the delay involved in complying, or complying fully, with subsection (1) in respect of a proposed action is likely to —

(a) prejudice retail financial customers;

- (b) prejudicially affect financial sector stability; or
- (c) defeat the object of the action,

take the action without having complied, or complied fully, with the provisions of subsection (1).

(5) The Authority shall, if the Authority takes action without having complied, or complied fully with subsection (1) for the reason set out in subsection (4), give the licensee a statement of the reasons why that subsection was not complied with.

Consultations with the relevant authorities before suspension or revocation of a conduct licence.

47. The Authority shall not suspend or revoke a financial conduct licence held by a person who holds a licence under a sectoral law unless the Authority has—

- (a) consulted the authority responsible for licensing the holder of that licence under the relevant sectoral law; and
- (b) taken into account any comments made by that authority in determining the action to take.

Disclosure of financial conduct licence

48. (1) A provider shall—

- (a) comply with the applicable requirements of a conduct rule in relation to the identification of financial conduct licences in business documentation, including advertisements and other promotional material; and
- (b) make its financial conduct licence or a copy of the licence available at no cost to any person on reasonable request.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

Publication of instruments of variations, suspensions or revocations

49. The Authority shall publish—

- (a) all financial conduct licences granted under this Act; and
- (b) any instrument varying, suspending or revoking a financial conduct licence.

Non- limitations of other provisions

50. This Part shall not limit any other provision of this Act that specifies matters to be considered in relation to the grant of a financial conduct licence,

or the circumstances in which a financial conduct licence may be granted, varied, suspended or revoked.

PART V-CONDUCT RULES

Conduct rules

51. (1) The Cabinet Secretary may, in consultation with the Authority, make rules hereinafter referred to as the “conduct rules” for the conduct of providers in relation to the provision of financial products or financial services to retail financial customers.

(2) A conduct rule made under subsection (1) shall—

- (a) ensure that a provider treats retail financial customers fairly; and
- (b) reduce the risk that the providers engage in conduct that is or contributes to financial crime.

(3) Without prejudice to the generality of subsection (1), a conduct rule may make provisions relating to—

- (a) measures to combat abusive practices related to financial products or services to retail financial customers;
- (b) requirements for the fair treatment of retail financial customers, including—
 - (i) the promotion, marketing and distribution of, and advice in relation to, those products and services; and
 - (ii) the resolution of complaints and disputes concerning those products and services, including redress;
- (c) the provision of information to retail financial customers;
- (d) fit and proper person requirements in relation to a provider, a key person of the provider, a significant owner of the providers, a representative of the provider and any contractor engaged by a provider;
- (e) governance in relation to—
 - (i) the composition, membership and operation of governing bodies;

- (ii) identifying and managing conflicts of interest
- (f) the terms and conditions of office, including remuneration and incentives for members of the governing bodies;
- (g) the terms and conditions of engagement of key persons, representatives and contractors;
- (h) financial management including—
 - (i) accounting, actuarial and auditing requirements;
 - (ii) risk management and internal control requirements;
 - (iii) financial statements, updates on financial position and public reporting and disclosures;
- (i) control functions;
- (j) reporting to the Authority;
- (k) outsourcing;
- (l) requirements for the safekeeping of assets, including requirements relating to the approval and supervision of nominees and custodians; and
- (m) requirements for providers to provide reasons for taking specified decisions in relation to retail financial customers, including decisions to terminate or refuse to provide a financial product or a financial service.

(4) A conduct rule may empower the Authority to make determinations for the purposes of that rule.

(5) A conduct rule may make different provisions for different—

- (a) categories of providers or key persons;
- (b) categories of retail financial customers;
- (c) categories of financial products or financial services;
- (d) ways of marketing financial products or financial services; and

(e) any other circumstances.

(6) The Cabinet Secretary shall, in making conduct rules under subsection (1), take into account the principle that the requirements imposed by the rules shall be proportionate to the nature and extent of the risks the requirements are intended to address.

(7) Failure to comply with subsection (6) shall not affect the validity of the conduct rules.

Declaration of
unfair business
practices

52. (1) A conduct rule may declare a specific conduct in connection with a financial product or a financial service to be an unfair business practice if the conduct—

- (a) is or is likely to be materially inconsistent with the fair treatment of retail financial customers;
- (b) is deceptive or misleading or is likely to deceive or mislead retail financial customers; or
- (c) unfairly prejudices, or is likely to prejudice unfairly, retail financial customers or a category of retail financial customers.

(2) A provider who engages in conduct declared to be an unfair business practice commits an offence and is liable on conviction—

- (a) for a first offence, to a fine of five million shillings;
- (b) for the second and subsequent offence, to a fine of ten million shillings.

PART VI- CREDIT

Application of
this Part

53. (1) This Part, except sections 56 and 57, Part VIII and Part XI, applies in relation to the provision of credit, or a credit contract, if the borrower is a retail financial customer.

(2) This Part shall not apply to the provision of credit where, at the time the credit contract is entered into, the borrower is an associate, as defined in section 2 of the Banking Act, of the lender.

(3) This Part shall not apply to a lender at a particular time if, at that time, the number of the credit contracts under which the lender provides credit is less than—

- (a) fifty contracts; or
- (b) if the regulations prescribe a different number of contracts, the number of contracts.

(4) This Part shall not apply to the provision of credit by a person if that is merely incidental to the sale or provision of goods by the person.

(5) Subject to subsections (6) and (7), this Part shall not apply in relation to a credit contract entered into before the commencement of this Part.

(6) If—

(a) a credit contract entered into before the commencement of this Part is varied; and

(b) this Part would have applied to the credit contract if this Part had been in force when the contract was entered into;

this Part applies in respect of the variation and applies to the credit contract as varied.

(7) If—

(a) a guarantee in relation to a credit contract given before the commencement of this Part is varied; and

(b) this Part would have applied to the guarantee if it had been in force when the guarantee was given;

this Part applies in respect of the variation and applies to the guarantee as varied.

Lenders may decline to offer credit

54. Nothing in this Part compels a lender to enter into a credit contract with a retail financial customer.

Contracting out prohibited

55. Except as expressly provided in this Part, this Part shall apply despite any provision of contract to the contrary.

Regulations and proportionality requirements

56. (1) The Cabinet Secretary may, in consultation with the Authority, make regulations prescribing standards and imposing requirements with respect to the provision of credit under this Part.

(2) Without prejudice to the generality of subsection (1), the regulations may make different provision in relation to credit contracts according to—

(a) the amount of credit involved;

(b) the duration of the credit contract;

(c) the purpose for which the credit is provided;

- (d) whether the borrower's obligations under the credit contract are secured, and the method of security;
- (e) whether the borrower's obligations under the credit contract are guaranteed; and
- (f) the arrangements for repayment; and
- (g) different circumstances.

(3) Without limiting what regulations for the purposes of section 59, 60, 61, 75 and 78 on reckless lending, the regulations may specify—

- (a) how to determine likelihood of repayment for the purposes of those sections for different categories of credit contract;
- (b) how to determine for the purposes of those sections what level of likelihood of repayment is acceptable;
- (c) the inquiries to be made for the purposes of making those determination; and
- (d) how information relevant to making the determinations shall be verified.

Regulations to be proportionate

57. (1) The Cabinet Secretary shall, when formulating regulations under section 56 take into account the principle that the requirements imposed by the regulations on lenders and borrowers shall be proportionate to the nature and extent of the conduct risks the requirements are intended to address.

(2) Failure to comply with subsection (1) shall not affect the validity of regulations made for the purposes of this Part.

Soliciting application for credit and applications for increase of credit limit

58. (1) A person shall not solicit an application for the provision of credit from a retail financial customer, or for an increase in the amount of credit under, or the credit limit under a credit contract if the contact is made—

- (a) in the course of, or because of an unsolicited contact with the customer;
- (b) a way other than a way specified by the regulations for the purposes of this paragraph; and
- (c) outside the hours as may be specified by the regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) for a first offence to a fine of 5,000,000 shillings; and

(b) for a second and subsequent offence to a fine of 10,000,000 shillings.

(3) Subsection (1) shall apply if the credit to be applied for, or that is provided, would be or is provided under a regulated credit contract.

(4) A lender shall not enter into a regulated credit contract unless—

(a) the borrower had made a written application to the lender for the credit; and

(b) the application complies with the requirements of the regulations.

(5) A person who contravenes subsection (4) commits an offence and is liable on conviction—

(a) for a first offence to a fine of 5,000,000 shillings; and

(b) for the second or subsequent offence to a fine of 10,000,000 shillings.

(6) Subsection (2) shall not apply in circumstances as may be specified in the Regulations.

Pre-contract
information to
be provided

59. (1) A lender shall not receive an application for credit from a person who is a retail financial customer unless the lender gave the person, in a way and within the period as may be prescribed by the regulations—

(a) a pre-contract statement; and

(b) a quotation;

in respect of the proposed contract.

(2) A pre-contract statement under subsection (1) (a) shall—

(a) specify the interest rates that are or may be charged under the proposed contract;

(b) specify the insurance required by the proposed contract, and specifically identify any fees and charges imposed under the proposed credit contract in relation to insurance;

- (c) specify any fee, charge or cost that may be imposed under the proposed contract and the circumstances in which they may be imposed;
- (d) if specified are to be repaid at specified intervals, specify the—
 - (i) date by which the amount of credit and all interest, fees or charges will be paid;
 - (ii) total amount that will be repaid if those amounts are repaid at those intervals; and
- (e) comply with the requirements of regulations.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction—

- (a) for a first offence to a fine of 10,000,000 shillings; and
- (b) for the second or subsequent offence to a fine of 20,000,000 shillings.

Lender to
provide reasons
for declining
credit

60. (1) A lender shall, if a retail financial customer applies for the provision of credit from a lender who holds a financial markets conduct license and the lender—

- (a) declines the application; or
- (b) indicates that the lender will consider the application for the provision of credit but on different terms to those applied for;

on request by the retail financial customer, give the retail financial customer a statement of the reasons for doing so, and the material facts on which the lender's decision was based.

(2) A lender shall, if a lender exercises a right under a regulated credit contract that is a recurring credit contract to decline to make further advances, on request by the borrower, give the borrower a statement of the reasons for doing so.

(3) A lender shall, if the reasons under subsection (1) or (2) includes an adverse credit report, provide a copy of the report with the statement.

(4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of 2,500,000 shillings.

Preventing reckless lending.

61. (1) A person shall not enter into a regulated credit contract as a lender unless the person has determined, in accordance with this section and the regulations, that the likelihood that the borrower will be able to comply with the borrower's financial obligations under the contract without substantial hardship is acceptable.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction—

(a) for a first offence to a fine of 10,000,000 shillings or to an imprisonment of 2 years or both; and

(b) for a second and subsequent offence, to a fine of 20,000,000 or imprisonment of five years or to both.

(3) It is a defence to a prosecution for an offence against subsection (1) that the lender took all the steps required by the regulations and all other reasonable steps, and made all inquiries that were reasonable for it to make and comply with that subsection.

Variation of regulated credit contract without borrowers consent

62. (1) A lender under a regulated credit contract shall not exercise a right it has under the contract to vary a provision of the contract without the consent of the borrower unless the lender has determined, in accordance with the regulations, that the probability that the borrower will be able to comply, without substantial hardship, with the borrower's financial obligations under the contract as varied is acceptable.

(2) A person who contravenes subsection (1), commits an offence and is liable on conviction—

(a) for a first offence to a fine of 10,000,000 shillings or imprisonment for 2 years or both; and

(b) for a second or a subsequent offence to a fine of 20,000,000 shillings or to an imprisonment for five years.

(3) Subsection (1) shall not apply if the variation reduces the borrower's obligations.

(4) Subsection (1) shall not apply if the lender took all the steps required by the regulations and all other reasonable steps, and made all inquiries that were reasonable for the lender to make, to comply with that subsection.

Increasing credit to be advanced and

63. (1) A lender shall not —

credit limits
under a credit
contract.

- (a) increase or have a provision in the contract that purports to increase the credit limit under a contract without the consent of the borrower; or
- (b) vary or agree to vary the contract to increase the amount of credit to be provided to the borrower, or the credit limit, unless the lender has determined, in accordance with the regulations that the probability that the borrower will be able to comply with the borrower's financial obligations under the contract as varied without substantial hardship is acceptable.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction—

- (a) for the first offence to a fine of 10,000,000 or imprisonment for 2 years; and
- (b) for the second and subsequent offence, to a fine of 20,000,000 shillings or to imprisonment of five years or both.

(3) Subsection (2) shall not apply if the lender took all the steps required by the regulations and all other reasonable steps, and made all inquiries that were reasonable for it to make, to comply with that subsection.

(4) This section applies in addition to section 62.

PART VII-REGULATED CREDIT CONTRACTS

Regulated credit
contracts

64. (1) A lender shall ensure that each regulated credit contract—

- (a) is in writing;
- (b) is in the prescribed form, including the layout and font size;
- (c) includes any provisions as may be specified in the regulations; and
- (d) is consistent with the pre-contract statement and quotation last given to the borrower under section 59 before the contract was entered into.

(2) A lender shall give the borrower a copy of the document, free of charge, as soon as practicable after the contract comes into effect.

(3) A person who contravenes this section commits an offence and is liable on conviction—

- (e) for the first offence to a fine of 5,000,000; and
- (f) for the second and subsequent offence, to a fine of 10,000,000 shillings.

(4) Subsection (1) shall not prevent a variation of a regulated credit contract in accordance with this Part.

Statement of
accounts

65. (1) A lender under a regulated credit contract shall give the borrower, a statement of account relating to the contract for each account period.

(2) A statement of account under subsection (1) shall—

- (a) specify the account period to which the statement relates;
- (b) record all amounts advanced to, incurred by or charged to, the borrower in relation to the contract during the account period;
- (c) state the amount required to complete the contract as at the end of the account period, and how it is made up; and
- (d) contain any other information as may be required by regulations.

(3) If the contract provides that—

- (a) the borrower may, at any time, access by electronic means all the information specified under subsection (2); and
- (b) the lender agrees that at all times, that information so accessible will be complete and up to date;

the lender need not give the borrower statements of account.

(4) This section shall not prevent a lender giving a borrower statements of account more frequently.

(5) A person who contravenes this section (1) commits an offence and is liable on conviction to a fine of 2,000,000 shillings.

Statements for
regulated credit
contracts

66. (1) A lender under a regulated credit contract shall, within ten days after a request by the borrower, give the borrower a statement of—

- (a) the amount of the outstanding balance under the contract as at the date of the request;

- (b) the amount of interest, fees and charges included in the outstanding amount;
- (c) the amount of any fees or charges to be imposed if the borrower were to terminate the contract at the date of the statement; and
- (d) any other information as maybe required by regulations.

(2) A request made under subsection (1) may or may not be in writing.

(3) A lender shall not charge any fee for a statement under this section unless the borrower has been given a statement under this section in relation to the contract within the previous six months.

(4) The Authority shall prescribe the amount of fees to be charged for a statement anticipated under subsection (3).

(5) A person who contravenes this section commits an offence and is liable on conviction to a fine of 2,000,000 shillings.

Right to early payment of a credit contract

67. (1) A borrower under a regulated credit contract may at any time, after giving the lender reasonable notice, complete the contract by paying to the lender, or as the lender directs in writing, the amount outstanding under the contract as at the date of payment.

(2) The regulations may prescribe —

- (a) the period of notice under subsection (1); and
- (b) the method of calculating the amount outstanding

(3) A notice under subsection (1) may not be in writing.

(4) A payment of the amount outstanding made under subsection (1) shall discharge the contract.

Reasons for reducing or not increasing credit limit and other actions

68. (1) The lender shall, if the lender under a regulated credit contract—

- (a) reduces the credit limit under the contract;
- (b) declines an application by the borrower to increase the credit limit under the contract;
- (c) declines to provide the borrower with a replacement credit card for use in connection with the contract; or
- (d) takes any other action as may be prescribed by regulations;

on request by the borrower, give the borrower a statement of the reasons for taking the action, and the material facts on which the lender's decision was based.

(2) The lender shall, if the reasons under subsection (1) include an adverse credit report, provide a copy of the report with the statement.

(3) Subsection (1)(a) shall not apply if the borrower requested the reduction

(4) A person who contravenes this section commits an offence and is liable on conviction to a fine of 2,000,000 shillings.

Notice of actions by the borrower

69. (1) A lender under a regulated credit contract shall not take an action that may adversely affect the borrower unless the lender has given the borrower a notice of the proposed action in the prescribed manner.

(2) A notice given under subsection (1) shall contain information, and be in a form as may be specified in the regulations.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine of 2,000,000 shillings.

Authorising advances under recurring credit contracts.

70. (1) A lender under a regulated credit contract that is a recurring credit contract shall ensure that amounts are not advanced under the contract unless the borrower authorised the particular advance in the way specified in the contract.

(2) The regulations may specify requirements in respect of the ways in which advances may be authorised.

(3) The borrower shall, where—

(a) the lender under a regulated credit contract that is a recurring credit advances an amount; and

(b) the advance was not authorised in the way specified in the contract;

not liable to —

(i) repay the advance except to the extent and in the circumstances, if any, as may be determined in accordance with the regulations; and

(ii) pay any amount by way of interest, fees or charges referable to the advance.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of 2,000,000 shillings.

Permissible
credit insurance

71. (1) A regulated credit contract may require the borrower to effect and maintain, or be covered by insurance where the —

- (a) sum insured in respect of the borrower at a specified time does not exceed the amount of credit owing by the borrower under the contract at that time; or
- (b) credit is provided for the lease or purchase of goods or immovable property, in respect of the specified risks in relation to the goods or property, to not more than the full insurable value of the goods or property.

(2) The regulations may prescribe requirements in relation to insurance referred to under subsection (1) or (2), including specified times.

(3) A regulated credit contract that—

- (a) requires the borrower to effect and maintain, or be covered by any insurance other than that referred to under this section; or
- (b) provides for the borrower to bear the costs of any insurance other than that referred to under this section,

shall be of no effect.

Prohibited fees
and charges

72. (1) A lender under a regulated credit contract shall not—

- (a) have a provision in a credit contract that provides for an interest to become payable before the end of the period by reference to which the interest is calculated;
- (b) charge or recover, or attempt to charge or recover any amount referred to under paragraph (a) before the time at which the amount becomes due and payable.

(2) A person who contravenes this section commits an offence and is liable on conviction—

- (a) for the first offence to a fine of 5,000,000 or to an imprisonment of two years; and
- (b) for the second and subsequent offence, to a fine of 10,000,000 shillings or to an imprisonment of five years.

PART VIII-GUARANTEES

Application of
this Part

73. This Part shall apply to a guarantor of obligations of a borrower under a credit contract whether regulated or not, if—

- (a) the guarantor is a natural person;
- (b) the guarantee is provided as part of the conduct by the guarantor of a micro enterprise, or a small enterprise as defined in the Micro and Small Enterprises Act, 2012; or
- (c) the guarantor is in a class of persons declared by regulation to be a retail financial customer in relation to the provision of the credit.

Information to
be provided in
relation to
guarantees

74. (1) A lender shall, before a retail financial customer makes an offer in relation to a credit contract or proposed credit contract to provide a guarantee in relation to the borrower's obligations under the contract, give that customer a pre-contract statement, in the prescribed form, and containing the information, as may be specified by the regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of 5,000,000 shillings.

Restrictions on
guarantees

75. (1) A lender shall not accept an offer from a guarantor to provide a guarantee in relation to the borrower's obligations under a credit contract or proposed credit contract unless—

- (a) the lender gave that person a pre-contract statement before the offer was made within a specified time and in the prescribed form containing information as maybe specified in the regulations;
- (b) the offer is in writing; and
- (c) the offer complies with any other requirements as may be specified in the regulations.

(2) Subsection (1) shall apply to all customers whether a retail financial customer or any another person.

(3) A person who contravenes this section commits an offence and is liable on conviction—

- (a) for the first offence to a fine of 10,000,000 or to an imprisonment of two years; and

- (b) for the second and subsequent offence, to a fine of 20,000,000 shillings or to an imprisonment of five years.

Preventing reckless lending in accepting guarantees

76. (1) A lender under a credit contract or a proposed credit contract shall not accept from a guarantor a guarantee of the borrowers obligation under the contract unless the lender has determined, in accordance with the regulations that—

- (a) the probability that the person will be able to comply without substantial hardship with the guarantor's financial obligations under the guarantee is acceptable; and
- (b) it complies with any circumstances as may be prescribed in the regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction—

- (a) for the first offence to a fine of 10,000,000 or to an imprisonment of two years; and
- (b) for the second and subsequent offence, to a fine of 20,000,000 shillings or to an imprisonment of five years.

(3) Subsection (1) shall not apply if the lender took all the steps required by the regulations and all other reasonable steps, and made all inquiries that were reasonable to comply with that subsection.

Requirements for guarantees

77. (1) A lender shall ensure that each guarantee in its favour in relation to a credit contract given by a guarantor—

- (a) is in writing; and
- (b) is in the prescribed form including the layout and font size; and
- (c) includes any other provision as may be specified in the regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of 52,000,000 shillings.

(3) Subsection (1) shall not prevent a variation of a guarantee in accordance with this Part.

Guarantees where a credit

78. A guarantor's obligations under a guarantee shall cease to apply if a credit contract to which a guarantee given by a guarantor is varied.

contract is varied

Variation of guarantees

79. (1) A lender under a credit contract shall not vary or agree to vary a guarantee of the borrower's obligations under the contract so as to increase the maximum amount that may be payable under the guarantee by a guarantor unless the lender has determined, in accordance with the regulations, that—

- (a) the probability that the person will be able to comply without substantial hardship with the guarantor's financial obligations under the guarantee is acceptable; and
- (b) it complies with any circumstances as may be prescribed in the regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction—

- (c) for the first offence to a fine of 10,000,000 or to an imprisonment of two years; and
- (d) for the second and subsequent offence, to a fine of 20,000,000 shillings or to an imprisonment of five years.

(3) Subsection (1) shall not apply if the lender took all the steps required by the regulations and all other reasonable steps, and made all inquiries that were reasonable to comply with that subsection.

Guarantor's right to statements of account

80. (1) The lender shall, if—

- (a) the lender under a credit contract gives the borrower a statement of accounts in accordance with section 65 or a statement in accordance with section 66; and
- (b) a guarantee given in relation to a credit by a guarantor is in force,

give, at the same time a copy of the statement, free of charge to the guarantor.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of 2,000,000 shillings.

Notification of payment of credit contract

81. (1) The lender shall, where—

- (a) the borrower under a credit contract completes the contract in accordance with section 67; and
- (b) a guarantee given by a guarantor is in force in relation to the credit contract;

as soon as practicable but not later than the time prescribed by the regulations, give the guarantor a notice that the credit contract has been discharged.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of 2,000,000 shillings.

PART IX- UNLAWFUL CREDIT CONTRACTS

Application of
this Part

82. (1) This section applies to a regulated credit contract where, at the time the contract was entered into—

- (a) the lender had not complied with the obligations in sections 61,62 and 63; or
- (b) the lender did not hold a financial conduct licence authorising it to provide the credit.

(2) This section applies to a guarantee in relation to a regulated credit contract where, at the time the guarantee was entered into—

- (a) the lender had not complied with the obligations in section 76 or 79; or
- (b) the lender did not hold a financial conduct licence authorising the provider to provide the credit under the regulated credit contract.

(3) This section applies to a regulated credit contract or a guarantee in relation to a regulated credit contract if an order under section 89 so provides.

(4) A lender shall not be entitled to any payment under the regulated credit contract or the guarantee in excess of the amount of credit.

Unlawful credit
contracts.

83. (1) This section applies to a regulated credit contract or a guarantee in relation to a regulated credit contract if, at the time it was entered into, it included a provision that—

- (a) is of no effect under this Act;
- (b) purports to authorise the lender to do something that would be a contravention of law;

- (c) purports to exempt the lender for a liability in relation to the regulated credit contract or the guarantee, unless the regulations permit the exemption;
- (d) purports to authorise the lender or its representatives to act on behalf of the borrower in relation to the regulated credit contract, or the guarantor in relation to the guarantee or the regulated credit contract, unless the regulations permit it to do so;
- (e) purports to authorise the lender or its representatives to enter any premises to take possession of goods or immovable property to which the regulated credit contract or the guarantee relates;
- (f) is or is to the effect of a provision specified in the regulations.

(2) The Ombudsman may, on an application by a borrower —

- (a) determine that this section applies in relation to the contract or the guarantee; or
- (b) make any determination the Ombudsman considers just to adjust the rights and liabilities of the parties to the contract or guarantee.

(3) A determination under subsection (2) shall bind the provider.

Prohibition of acquisition of specified goods

84. A credit provider shall not require, in the credit contract, the borrower to acquire specified goods or specified services, including insurance, from a specified third party as a condition of the—

- (a) provision of credit; or
- (b) continued provision of credit.

PART X- ADVERTISING

Controls on advertising

85. (1) A person who does not hold a financial conduct licence shall not publish an advertisement for—

- (a) the provision of credit; or
- (b) for the sale of or lease of property where the advertisement suggests that the vendor shall or may facilitate the provision of credit to a buyer or lessee of the property.

(2) A person commits an offence if that person—

(a) publishes an advertisement—

(i) for the provision of credit; or

(ii) for the sale or lease of property where the advertisement suggests that the vendor will or may facilitate the provision of credit to a buyer or lessee of the property;

(b) it is reasonable to conclude that the advertisement was published to induce retail financial customers to apply for the provision of credit;

(c) does not meet the requirements of subsection (3).

(3) An advertisement —

(a) shall be approved in writing by the lender before it is published;

(b) at all times during the period that the advertisement is published, the lender shall hold a financial conduct licence;

(c) state that the credit will not be provided except on written application to the lender and subject to the terms of a regulated credit contract; and

(d) complies with any other requirement as may be prescribed by the regulations, including the form and content;

(4) A person who contravenes subsections (1) and (2) commits an offence and is liable on conviction —

(a) for a first offence, to a fine of 5,000,000 shillings; and

(b) for the second and subsequent offence, to a fine of 10,000,000 shillings.

(5) A person is not in contravention of subsection (1) or (2) if that person—

(a) publishes the advertisement in the ordinary course of a media business; and

(b) did not know, and has no reason to suspect that the publication would amount to a contravention of the sections.

(6) For the purposes of this section, “media business” refers to is the business of—

- (a) publishing or distributing newspapers or magazines;
- (b) providing radio or television broadcasting services; or
- (c) providing electronic services, including services provided through the internet, that are similar to the businesses under in paragraph (a) or (b).

Misleading or
deceptive
advertisements

86. (1) A lender shall ensure that an advertisement that the lender publishes or authorises under section 85—

- (a) does not include any false, misleading or deceptive representation; and
- (b) is not misleading or deceptive by omission.

(2) Without prejudice to the generality of section (1) a false, misleading or deceptive representations include—

- (a) a representation that the provision of the credit has an approval, benefits or qualities that it does not have;
- (b) a representation that the lender has an approval, status, affiliation or connection that it does not have;
- (c) a representation that the regulated credit contract, this Act or another law confers a right on the borrower that it does not confer;
- (d) if the regulated credit contract, this Act or any another law confers a right on the borrower, a representation that suggests that that is not the case; or
- (e) a representation as to the interest rate, or the charges payable under the regulated credit contract, that is not accurate or complete.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine of 5,000,000 shillings.

PART XI- INTEREST RATES

Maximum rates
of interest

87. (1) A lender shall not charge or recover, or attempt to charge or recover from the borrower or a guarantor any amount on account of interest under the contract that exceeds the maximum rates as may be prescribed by the Authority from time to time.

(2) A person who contravenes subsections (1) commits an offence and is liable on conviction —

- (f) for a first offence, to a fine of 5,000,000 shillings; and
- (g) for the second and subsequent offence, to a fine of 10,000,000 shillings.

(3) A lender shall not have a provision in a credit contract —

- (a) that permits the lender to charge any interest, fee, charge or cost, however described; and
- (b) the nature and amount or method of calculation of the interest, fee, charge or cost was not clearly disclosed in the pre-contract statement and the quotation provided to the borrower under section 59;

(4) A lender shall ensure that a credit contract shall not contain a provision—

- (a) for the interest rate applicable to the contract to vary during the term of the contract;
- (b) for the variation otherwise than by a fixed relationship to a reference rate specified in the contract; and
- (c) the reference rate differs from the reference rate provided for similar credit contracts currently being issued by the lender.

(5) Despite any rule of the common law, the total amount of amounts of interest, fees, charge or cost, however described, that accrue under a credit contract during the period that the borrower is in default under the contract shall not exceed the outstanding balance under the contract as at the time that the default occurs.

Regulations on credit information, bureaus and credit reports.

88. (1) The Cabinet Secretary may, in consultation with the Authority, make regulations with respect to—

- (a) credit information;
- (b) credit reference bureaus; and
- (c) credit reports.

(2) Without the generality of subsection (1), the regulations may make provision for—

- (a) the collection, storage, processing, use and disclosure of credit information;
- (b) information security arrangements for holding credit information;
- (c) the content of credit reports, including verification of the contents of credit reports;
- (d) rights of purposes to access, challenge and correct credit information held about them, including the resolution of disputes a; and
- (e) standards and requirements to be imposed on credit reference bureaus.

(3) A person shall not breach a duty if that person discloses credit information as maybe permitted by or under this Act, the regulations or any other law.

Credit Reference Regulations, 2013

89. (1) At the commencement of this Part, the Credit Reference Bureau Regulations, 2013 shall apply as if they were made under this Act until such regulations are made under this Act.

(2) Subsection (1) shall not prevent the amendment or repeal of those Regulations.

Prohibition of using restricted information.

90. (1) A person shall not provide, as a business or part of a business, a credit report in relation to a retail financial customer if—

- (a) the report includes prohibited information about the retail financial customer; or
- (b) a conclusion or recommendation in the report about the retail financial customer's creditworthiness is based wholly or partly on prohibited information.

(2) A person who contravenes this section commits an offence and liable on conviction to a fine of 5,000,000 shillings.

Information to be in plain language

91. (1) A lender shall ensure that any information or document containing information that is required by this Part to be provided to a borrower or a guarantor—

- (a) is in the prescribed form, if any ;
- (b) subject to the regulations, is in plain language; and
- (c) complies with any other requirements as may be specified in the regulations.

(2) A person who contravenes this section commits an offence and is liable on conviction to a fine of 2,000,000 shillings.

Misleading or deceptive representations

92. (1) A lender shall ensure that any information that it is required by this Part to provide to a borrower or a guarantor—

- (a) is in writing;
- (b) does not include any false, misleading or deceptive representation; or
- (c) is misleading or deceptive by omission.

(2) Without prejudice to subsection (1) or any other provision of this Act, a false, misleading or deceptive representations include—

- (a) a representation that the provision of the credit has an approval, benefits or qualities that it does not have;
- (b) a representation that the lender has an approval, status, affiliation or connection that it does not have;
- (c) a representation that the regulated contract, this Act or any other law confers a right on the borrower that it does not confer;
- (d) if the regulated contract, this Act or another law confers a right on the borrower, a representation that suggests that this is not the case; or
- (e) a representation as to the interest rate or the charges payable under the regulated credit contract, that is not accurate or complete.

Borrower to opt
for messages
from a lender

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine of 5,000,000 shillings.

93. (1) A lender shall not, unless otherwise permitted by the regulations or any other law, communicate with a borrower who is a retail financial customer as part of marketing activity unless the borrower's application for the provision of credit has expressly agreed.

(2) A communication under subsection (1) may be in any form including electronic form.

(3) A person who contravenes subsections (1) and (2) commits an offence and is liable on conviction —

(a) for a first offence, to a fine of 5,000,000 shillings or to an imprisonment of two years; and

(b) for the second and subsequent offence, to a fine of 10,000,000 shillings or imprisonment for five years.

PART XII- INFORMATION GATHERING, INSPECTIONS AND INVESTIGATION

Information
gathering

94. (1) The Authority may, by notice to any person, request the person to provide specified information or a specified document in the possession of, or under the control of the person that is relevant in assisting the Authority to perform its functions.

(2) The Authority may, by notice to a provider, require the provider to provide specified information or a specified document in the possession of, or under the control of, the provider that is relevant to the Authority's assessment of compliance with, or risk of contraventions by a licensed provider of—

(a) a non-bank financial sector law;

(b) a directive; or

(c) an enforceable undertaking accepted by the Authority.

(3) A notice under subsection (1) and (2) may require the information or document to be verified as specified in the notice, including by an auditor approved by the Authority.

(4) A provider who is given a notice under this section and fails to comply with the requirements of that notice commits an offence and is liable on conviction to a fine of 5,000,000 shillings.

Power of the Authority to inspect and require production of documents.

95. (1) The Authority may, at any time during normal business hours, enter the business premises of a provider that holds a financial conduct licence and conduct an inspection.

(2) An investigation under subsection (1) is to—

- (a) check compliance by the provider with this Act or an enforceable undertaking accepted by the Authority;
- (b) determine the extent of the risk posed by the provider of contraventions of this Act;
- (c) assist the Authority in supervising the provider; and
- (d) determine any other matter as the Authority consider necessary for the attainment of its objectives under the Act.

(3) An inspection shall be conducted with strict regard to decency and good order.

(4) An officer of the Authority has, when conducting an inspection on premises, the right of access to any part of the premises and to any business document on the premises, and may—

- (a) examine, make extracts from and copy any business document in the premises;
- (b) question any person on the premises to find out information relevant to the inspection;
- (c) give the provider or a person on the premises a directive to produce to the Authority, at a time and place and in a manner specified in the directive, a specified business document that is relevant to the inspection and is in the possession or under the control of the provider;
- (d) examine and make extracts from, and copy any document produced under paragraph (c);
- (e) if as a result of the inspection, the Authority suspects on reasonable grounds that a contravention of this Act has occurred or is likely to occur—
 - (i) give a directive to the person apparently in charge of the premises not to remove from the premises, or conceal, destroy or otherwise interfere with, a specified business document; or

(ii) take possession of, and remove from the premises, a business document for the purpose of preventing another person from removing, concealing, destroying or otherwise interfering with the document.

(5) The Authority shall, if the Authority takes any document from the premises under subsection (4), issue a receipt to the person apparently in charge of the premises, for any document taken.

(6) The Authority shall ensure that any business document removed under subsection (4) is returned to the provider when retention of the document is no longer necessary to achieve the object of this Act.

(7) The provider from whose premises a document is removed or the authorised representative of that provider, may, during normal business hours and under the supervision of the Authority, examine, copy and make extracts from the document.

Investigations.

96. The Authority may instruct an investigator to conduct an investigation in respect of any person if—

- (a) the Authority suspects that the person has contravened, may be contravening or is about to contravene, this Act;
- (b) is a licensee and the Authority suspect that the licensee may have engaged in embezzlement, fraud, misfeasance or other misconduct in connection with its regulated activity; or
- (c) it is necessary to do so to assist a foreign regulatory Authority to investigate a contravention of a law of a foreign country.

Appointment of an investigator

97. (1) The Authority may appoint a person as an investigator or any person to assist the investigator in carrying out an investigation under this Act.

(2) The Authority shall give an investigator appointed under subsection (1), a certificate of appointment, which the investigator shall keep at all times when an investigator exercises any power or performs a duty under this Act.

(3) An investigator shall produce the certificate of appointment at the request of any person in respect of whom a power is being exercised.

Powers of an
investigator

(4) An investigator shall return to the Authority the certificate of appointment within seven days after ceasing to be an investigator.

(5) A person who contravenes this section commits an offence and is liable on conviction to a fine of 50,000 shillings.

(6) It shall be a defence to a prosecution for an offence against subsection (4) that the certificate was lost through no fault of the defendant.

98. (1) An investigator may, for the purposes of conducting an investigation,—

- (a) through a notice, require any person who the investigator reasonably believes may be able to provide information relevant to the investigation to appear before the investigator, at a time and place specified in the notice, to be questioned by an investigator;
- (b) through a notice, require any person who the investigator reasonably believes may be able to produce a document or item relevant to the investigation, to produce the document or item —
 - (i) to an investigator, at a time and place specified in the notice; and
 - (ii) be questioned by an investigator about the document or item produced;
- (c) question a person under oath or affirmation and administer such oath or affirmation;
- (d) examine, copy or make extracts from any document or thing produced to an investigator as required under this subsection;
- (e) take possession of, and retain any document or item produced to an investigator as required under this subsection; or
- (f) give a directive to a person present while the investigator is exercising powers under this section, to facilitate the exercise of such powers.

(2) An investigator who takes a document or item under paragraph (1)(f) shall—

- (a) give the person producing it a receipt;

(b) return the document taken under paragraph (1) (f) to the person who produced it when—

(i) retention of the document or item is no longer necessary to achieve the object of the investigation; or

(ii) all proceedings arising out of the investigation have been concluded.

(4) A person who is entitled to possession of a document or item taken under paragraph (1)(f), or its authorised representative, may, during normal office hours and under the supervision of the Authority, examine, copy and make extracts from the document, or inspect the item.

(5) A person being questioned under this section may be represented by a legal practitioner.

Power of entry
and search

99. (1) An investigator may, for the purposes of conducting an investigation—

(a) enter any premises at any time—

(i) with the prior consent of the person apparently in control of the premises;

(ii) if the entry is authorised by a warrant; or

(iii) if an investigator believes, on reasonable grounds, that the delay caused by applying for and obtaining the warrant will defeat the purpose of the search, and believes on reasonable grounds that a warrant would be issued; and

(b) search the premises for anything that may afford evidence of a contravention of this Act.

(2) An entry or search of premises under this Part shall be done during the day unless it is authorised by a warrant and the warrant expressly authorises entry at night.

(3) An investigator may be accompanied and assisted by a police officer or a person appointed under section 95 during the entry and search of any premises.

(4) A investigator shall, while on the premises to conduct an investigation, have the right of access to any part of the premises and to any document or item on the premises, and may—

- (a) open or cause to be opened any strongroom, safe, cabinet or any other container in which the investigator reasonably suspects there is a document or item that may afford evidence of the contravention concerned or be relevant to the request;
- (b) examine, make extracts from and copy any document in the premises;
- (c) question any person on the premises to find out information relevant to the investigation;
- (d) require a person on the premises to produce to the investigator any document or item that is relevant to the investigation and is in the possession or under the control of the person;
- (e) require a person on the premises to operate any computer or similar system on or available through the premises to—
 - (i) search for information in or available through that system; and
 - (ii) produce a record of that information in any media that the investigator reasonably requires;
- (f) if it is not practicable or appropriate to make a requirement under paragraph (e), operate any computer or similar system on or available through the premises; and
- (g) take possession of, and take from the premises, a document or item that may afford evidence of the contravention concerned or be relevant to the request.

(5) An investigator, and any person assisting an investigator, may use reasonable force to exercise any power under this section.

(6) An investigator shall—

- (a) give the person apparently in charge of the premises a receipt for any document or item taken by the investigator under this section;
- (b) return the document taken by the investigator when—
 - (i) retention of the document or item is no longer necessary to achieve the object of the investigation; or
 - (ii) all proceedings arising out of the investigations have been disposed of.

(7) A person from whose premises a document or item was taken as mentioned in paragraph (4)(g), or its authorised representative, may, during normal office hours and under the supervision of the Authority, examine, copy and make extracts from the document or item.

Warrants

100. (1) An investigator may apply to the Court for a warrant under this Part authorising entry into and search of specified premises if the Court is satisfied that—

- (a) the investigator is conducting or is about to conduct an investigation;
- (b) the occupier of the premises has refused an investigator entry to the premises; or
- (c) there is a reasonable suspicion that a document or an item relevant to the investigation is at the premises.

(2) An investigator who enters the premises under a warrant shall—

- (a) if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place in the premises; and
- (b) on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant.

Interference
with inspections
and
investigations

101. (1) A person shall not intentionally or negligently interfere with or hinder the conduct of an inspection or an investigation.

(2) Subject to section 102, a person who is given a notice or a directive under this Part shall comply with the requirements of the notice and shall answer all questions fully and truthfully, to the best of that person's knowledge.

(3) A person shall not—

- (a) without lawful excuse, refuse or fail to comply with any reasonable request by an investigator in connection with the conduct of an investigation; and
- (b) give an investigator any information that is false or misleading, including by omission, and is relevant to an investigation, if the person knows that the information was false or misleading, including by omission, and relevant to an investigation.

(5) A person who—

- (a) destroys or renders illegible any document; and
- (b) the person knew that the document is or was likely to be relevant to an investigation;

commits an offence and is liable on conviction to a fine of 20,000,000 shillings, unless an investigator or the Authority had authorised the person's action before it occurred.

Self -
incrimination

102. (1) A person who is questioned, or required to produce a document or information, by the Authority or an investigator under this Part may object to answering the question on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

(2) For the purposes of subsection (1), an answer tends to incriminate a person if it would tend to show, and the contents of a document or information tend to incriminate a person if they tend to show, that the person has committed an offence, a contravention of this Act or an offence or contravention under the law of a foreign country.

(3) Despite receiving an objection under subsection (1), the Authority or an investigator may require the question to be answered or the document or information to be produced.

(4) An answer given, a document or information produced under subsection (3), shall not be admissible in evidence against the person in any proceedings for an offence, except proceedings in respect of a contravention of this Act based on the false or misleading nature of the answer.

(5) The Authority or an investigator shall, before the Authority or an investigator questions a person under this Part, if the Authority or the investigator suspects that the person has contravened this Act, inform the person of the right to object under this section.

(6) This section shall not limit any right of a person.

Legal privilege

103. (1) A person shall not be compelled to answer a question or comply with a requirement under this Part to produce a document or information, to the extent that the person is entitled to claim legal professional privilege in relation to the answer, contents of the document or the information.

(2) If the person under subsection (1) is a legal practitioner, that person is entitled and required to claim that privilege on behalf of a client of the person.

(3) This section does not limit any right of a person.

PART XIII- ENFORCEMENT

Guidance notes
and
interpretation
rulings.

104. (1) The Authority may publish –

- (a) guidance notes on the application of this Act; and
- (b) a statement regarding interpretation or application of this Act for the purposes of promoting clarity, consistency and certainty.

(2) Guidance notes published under subsection (1) (a) shall be for information purposes and shall not be binding.

(3) The Authority may amend or revoke an interpretation ruling if it is necessary to do so because of a judicial decision or a change in law.

Directives to
licensed
providers

105. (1) The Authority may issue a directive to a provider that holds a financial conduct licence requiring the provider to take action specified in the directive if the provider or a key person of the provider—

- (a) has contravened or is likely to contravene this Act; or
- (b) is involved or is likely to be involved in a financial crime.

(2) A directive under subsection (1) may be issued to—

- (a) stop the provider from contravening this Act, or reducing the risk of such contraventions;

- (b) stop the provider from being involved in financial crime, and reducing the risk that it may be so involved; or
- (c) to remedy the effects of a contravention of this Act by the provider or key person or the involvement of the provider or key person in financial crime.

(3) The Authority may issue a directive under subsection(1) requiring the provider to—

- (a) cease providing a specific financial product or a financial service;
- (b) modify a financial product or financial service it provides, or the terms on which the service is provided;
- (c) remove a person from a specified position or function in or in relation to the provider;
- (d) not to pay a specified bonus or performance payment;
- (e) cease to engage in a specified conduct that is inconsistent with its obligations in relation to fairness to retail financial customers;
- (f) remedy the effects of a contravention of this Act.

(6) A directive issued under subsection (1) shall specify a reasonable period for compliance.

(7) The Authority may, at any time, by notice to the person to whom the directive was issued, revoke the directive.

(8) A person who fails to comply with a directive under this section commits an offence and is liable on conviction—

- (a) for the first offence, to a fine of 5,000,000 shillings or to imprisonment for 2 years; and
- (b) for the second or subsequent offence to a fine of 10,000,000 or imprisonment for 5 years.

Directives to
significant
holders

106. (1) The Authority may issue a directive to a licenced provider and its significant owner requiring them to—

- (a) prepare and submit to the Authority a plan satisfactory to the Authority under which the significant owner

shall, within a specified period, cease to be a significant owner of the provider; and

(b) implement the plan required under subsection (1).

(2) The Authority may issue a directive under subsection (1) if the significant owner—

(a) has contravened or is likely to contravene this Act;
or

(b) is involved or is likely to be involved in financial crime.

Directives to
remove key
persons

107. The Authority shall issue a directive requiring a licensed provider to remove a person from a specified position or function if that person—

(a) has contravened this Act;

(b) no longer complies with fit and proper requirements; or

(c) has been involved in financial crime.

Consultation
requirements

108. (1) The Authority shall, before issuing a directive under this Act,—

(a) give the provider or a person to whom it is proposed to issue the directive, a draft of the proposed directive and a statement of the reasons thereof; and

(b) invite the provider or the person to make submissions on the matter within a specified period.

(2) The Authority shall, where a directive requires the removal of a person from a specified position or function—

(a) give the person a draft of the proposed directive and a statement of the reasons thereof; and

(b) invite that person to make submissions on the matter within a specified period.

(3) The Authority shall take into account all the submissions received under subsection (2) (b) in deciding whether to issue a directive.

(4) The Authority may, if a delay in complying or complying fully, with subsection (1) or (2) is likely to prejudice a retail financial customers or defeat the object of the directive, issue the directive without having complied, or complied fully, with the subsections.

(5) The Authority shall, if the Authority issues a directive without complying with subsection (1) or (2), at the same time, give a statement of the reasons why the subsections were not complied with to the person to whom the directive was issued.

(6) A person to who receives a statement under subsection (5) may make submissions to the Authority within thirty days after being given the statement.

(7) The Authority shall consider the submissions made under subsection (6), and notify the person, as soon as practicable, whether the Authority proposes to revoke the directive.

Tribunal may
adjust contracts

109. (1) The Tribunal may—

- (a) where the Authority gives a provider a directive under this Act; and
- (b) the provider is a party to a contract that is affected by the directive;

on application by another party to a contract, make an order relating to the effect of the directive on the contract.

(2) An order made under subsection (1) may require the provider to—

- (a) perform specified obligations under the contract; or
- (b) compensate the applicant, as specified in the order; or
- (c) any other order as the Tribunal may consider just and necessary in the circumstances

PROVIDED that the order shall not contravene the directive.

Enforceable
undertakings.

110. (1) A person may give an undertaking to the Authority in respect of its conduct in relation to a matter regulated by this Act.

(2) An undertaking given under subsection (1)—

- (a) may include an undertaking to provide specified redress to retail financial customers; and
- (b) shall, upon acceptance by the Authority, become enforceable this Act.

(3) A person who gives an enforceable undertaking under subsection (1) may, with the consent of the Authority, vary or withdraw the undertaking, at any time.

(4) The Authority shall publish all the enforceable undertakings that the Authority accepts, and each variation or withdrawal of the undertaking.

(5) The Authority may, if a provider that gave an enforceable undertaking breaches the undertaking, suspend or withdraw its conduct licence.

(6) The Authority may apply to the Tribunal if a person has contravened an enforceable undertaking.

(7) The Tribunal may, if it is satisfied with an application under subsection (6), may make,—

- (a) an order directing the person to comply with the undertaking;
- (b) if the undertaking relates to a contravention of the Act, an order directing the person to perform a specified act, or refrain from performing a specified act in order to—
 - (i) remedy the effects of the contravention; or
 - (ii) ensure that the person does not repeat the contravention; or
- (c) any other incidental order which the Tribunal considers necessary and just to grant.

(8) The Authority may file in court, a certified copy of an order issued under subsection (7) if—

- (a) the order has not been complied with; and
- (b) either—
 - (i) no proceedings in a court appealing against the making of the order have been commenced by the end of the period for lodging such appeals; or
 - (ii) if such proceedings have been commenced, they have been concluded.

(9) An order, on being filed, shall have the effect of a civil judgement, and may be enforced as if lawfully given in that court.

High Court may
order
compliance.

111. (1) The High Court may, on an application by the Authority, make—

- (a) an order that a person do, or desist from doing a specified thing to ensure compliance with this Act; and
- (b) any other incidental order as the Court may consider just and necessary in the circumstances.

(2) The Court may make an order under subsection (1) if—

- (a) it appears to the Court that a the person is engaging, or proposes to engage, in conduct contravening this Act;
- (b) the person has previously engaged in such conduct; or
- (c) if there is danger of substantial or irreparable damage, prejudice or harm if the person engages in conduct contravening this Act.

(3) The Court may—

- (a) make an order under this section even if another remedy is available; and
- (b) not require the Authority to give an undertaking as to damages in connection with the application for an order under this section.

Debarment

112. (1) The Authority may, where a natural person has—

- (a) contravened this Act in a material respect;
- (b) contravened in a material respect, an enforceable undertaking accepted by the Authority;
- (c) attempted, or conspired with, aided, abetted, induced, incited or procured another person to contravene this Act in a material respect; or
- (d) contravened in a material respect, law of a foreign country that corresponds to this Act;

make a debarment order prohibiting the person, for the period specified in the order, from doing anything specified in that order.

(2) A debarment order issued under subsection (1) may debar a person from—

- (a) providing, or being involved in the provision of specified financial products or financial services to retail financial customers generally, or in the circumstances specified in the order;
- (b) acting as a key person of a provider; or
- (c) providing specified services to a provider, whether under outsourcing arrangements or otherwise.

(3) A person who contravenes subsection (1) and (2) commits an offence and is liable on conviction for—

- (a) the first offence, to a fine of 5,000,000 shillings or to imprisonment of 2 years; and
- (b) the second on subsequent offence, to a fine of 10,000,000 or imprisonment for five years.

(4) Where—

- (a) a person is subject to a debarment order under this section; and
- (b) the debarred person enters into an arrangement with another person where that person engages in a conduct that directly or indirectly contravenes the debarment order; and
- (c) the person is acting on behalf of, or in accordance with the directions, instructions or wishes of the debarred person,

both the debarred person and the person acting on his or her directions or instructions, commits an offence under this section.

(5) A provider who holds a financial conduct license shall, if that provider becomes aware that a debarment order has been made in respect of a person employed or engaged by the provider, take all reasonable steps to ensure that the debarment order is complied with.

(6) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine of 10,000,000 shillings.

(7) The Authority may, on its own motion or by an application of a debarred person—

- (a) reduce the period of a debarment order; or
- (b) revoke a debarment order.

(8) The Authority shall publish —

- (a) a debarment order issued under subsection (1);
and
- (b) any order issued under subsection (7).

Administrative
penalties

113. (1) The Authority may, if the Authority is satisfied that a person has engaged in conduct that contravenes this Act, by order, impose an administrative penalty not exceeding Kshs. 10,000,000 on that person.

(2) The Authority shall, when determining an appropriate administrative penalty for a particular conduct, have regard to—

- (a) the need to deter such conduct;
- (b) the degree to which the person has co-operated with the Authority in relation to the contravention;
- (c) any submissions by, or on behalf of the person;
- (d) the nature, duration, seriousness and extent of the contravention;
- (e) any loss or damage suffered by any person as a result of the conduct;
- (f) the extent of any financial or commercial benefit to the person, or to an associated person of the person, arising from the conduct;
- (g) whether the person has previously contravened this Act;
- (h) the effect of the proposed penalty on retail financial customers of the person; and
- (i) the extent to which the conduct was deliberate or reckless.

(3) An administrative penalty imposed under subsection (1) may include an amount to reimburse the Authority for reasonable costs incurred by the Authority in connection with the contravention.

(4) The Authority may not impose an administrative penalty on a person if a prosecution of that person for an offence arising out of the same set of facts has been commenced.

Payment and interest

114. The Cabinet Secretary in consultation with the Authority may make Regulations setting out—

- (a) how an amount payable under an administrative penalty order is due and payable; and
- (b) the interest payable for any outstanding penalty until payment in full.

Enforcement

115. (1) The authority may, where—

- (a) the amount payable under an administrative penalty order has not been paid as required by this Act; and
- (b) either—
 - (i) no application for review of the order under this Act, or for judicial review of the order has been lodged by the end of the period for making such applications; or
 - (ii) if such an application has been made, the proceedings have been disposed of,

file in court, a certified copy of the administrative penalty order .

(2) An order filed under subsection (1) shall have the effect of a civil judgement for the unpaid amount of the administrative penalty, and may be enforced as if lawfully ordered by that court.

Application of amounts paid as administrative penalties

116. The Authority shall apply the administrative penalties paid under this Act—

- (a) to reimburse the Authority its costs and expenses reasonably and properly incurred in investigating the contravention, making the order and enforcing it; and
- (b) the balance into the Conduct Compensation Fund as required under section 153.

Administrative penalties to be taken into account in sentencing.

117. A court shall, when determining a sentence to impose on a person convicted of an offence under this Act, take into account any administrative penalty order made in respect of the same facts.

Remission of administrative penalties

118. The Authority may, on application by the person whom an administrative penalty has been imposed, remit all or some of an administrative penalty, and all or some of the interest payable on an administrative penalty.

Prohibition of indemnity for administrative penalties.

119. (1) Except as may be prescribed by the regulations, a person shall not undertake to indemnify or compensate another person, directly or indirectly, wholly or partly, in respect of a payment made or liability incurred by the other person in connection with an administrative penalty order imposed on that person.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to pay an amount equal to twice the maximum amount payable under the indemnity.

PART XIV- FINANCIAL SECTOR OMBUDSMAN

Establishment of the Financial Sector Ombudsman

120. (1) There is established a body to be known as the Financial Sector Ombudsman.

(2) The Ombudsman shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts;
- (e) employing or engaging other persons to assist in performing its functions and exercising its powers under the Act; and
- (f) doing or performing other things or acts necessary for the proper performance of the functions of the Authority under this Act which may lawfully be done by a body corporate.

(3) Except as otherwise provided in this Act, the Ombudsman shall be operationally independent in the performance of its functions and shall not be subject to the direction or control of any person or authority.

Exemption from
the State
Corporations
Act, Cap. 446

121. The provisions of the State Corporations Act shall not apply to the Ombudsman.

Functions and
powers of the
Ombudsman

122. The Ombudsman shall—

- (a) resolve, in accordance with this Act, complaints by retail financial customers financial product providers and financial service providers in relation to the provision of financial products and financial services to the retail financial customers; and
- (b) any other function as may be conferred to the Ombudsman under any written law.

The
Ombudsman's
Board

123. (1) There is established a Board of the Ombudsman, which shall consist of—

- (a) a chairperson, who shall be appointed by the President;
- (b) the Chief Ombudsman; and
- (c) two other members, appointed by the Cabinet Secretary.

(2) The President and the Cabinet Secretary shall, in appointing the Chairperson and the members of the Ombudsman Board under subsection (1)(c), have regard to the principles of gender equity and regional balance and the need to have a mix of skills relevant to the financial sector.

(3) The Chairperson and members of the Ombudsman Board appointed under subsection (1)(c) shall be selected from persons who—

- (a) are not public officers;
- (b) are not employees, officers or significant owners of any provider that holds a financial conduct licence;
- (c) have at least ten years' experience in management of a public or private provider within the financial sector;

Powers and functions of the Ombudsman Board.

(d) have not served as an employee of the Ombudsman in the preceding five years; and

(e) satisfies the requirements of Chapter Six of the Constitution.

124. (1) The Ombudsman Board shall have all the powers necessary for the proper performance of its functions under this Act, and in particular the power to—

(a) control, supervise and administer the assets of the Ombudsman as will promote the achievement of the objectives of the Authority under section 12;

(b) manage the funds of the Ombudsman, including its reserves in such a manner and for such purposes as shall promote the best interests of the Ombudsman;

(c) receive grants, gifts and donations any other moneys on behalf of the Authority and make legitimate disbursements therefrom;

(d) open such bank accounts for the funds of the Ombudsman as may be necessary;

(e) with the consent the Cabinet Secretary, borrow money, mortgage or charge any of its assets;

(f) engage staff, on terms and conditions as it may consider necessary for performance of its functions, including establishing retirement benefits funds and medical funds for and making contributions to the funds thereof;

(g) prepare annual budget of the Ombudsman for the purposes of funding the administrative activities of the Ombudsman;

(h) co-operate with its counterparts in other jurisdictions;

(i) participating in relevant international regulatory, supervisory and standard setting bodies; and

perform and other function and exercise any powers necessary to achieve the objectives of the Authority as set out under section 12.

Term of office

125. (1) The Chairperson and members appointed under section 123(1) (c) shall serve for a term of three years and shall be eligible for reappointment for one further term of three years.

(2) The appointment of the members of the Ombudsman Board shall be done in such a manner as to ensure that the terms of the members appointed do not lapse at the same time and that there is continuity.

Resignation,
removal and
vacancy in
office.

126. The Chairperson or a member of the Ombudsman Board appointed under section 123 (1) (c) shall cease to hold office if—

- (a) the member delivers to the President, in the case of chairperson, or to the Cabinet Secretary, in the case of a member, a written notice of resignation;
- (b) has been absent from three consecutive meetings of the Board without permission from the Cabinet Secretary in the case of the Chairperson and from the case of the member;
- (c) is incapacitated by physical or mental illness or other cause from fulfilling the responsibilities of a Board member;
- (d) conducts himself or herself in a manner not befitting the chairperson or that member;
- (e) the member is declared bankrupt;
- (f) the member is convicted of an offence that amounts to a felony under the laws of Kenya; or
- (g) if the member becomes a disqualified person under this Act.

Delegation by
the Ombudsman
the Board

127. (1) The Ombudsman Board may, by resolution either generally or in any particular case, delegate to a committee of the Board, or to any member, officer, employee or agent of the Ombudsman, the exercise of any powers or the performance of any functions or duties of the Board under this Act or any other written law.

(2) The Ombudsman Board may co-opt any person with appropriate knowledge and skills to assist the Ombudsman in the performance of its functions under this Act.

Common seal of
the Ombudsman

128. (1) The common seal of the Ombudsman shall be kept in such custody as the Ombudsman Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Ombudsman shall be authenticated by the signature of the Chairperson and the Chief Ombudsman and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the chairperson and the Chief Ombudsman.

Chief
Ombudsman

(3) Notwithstanding the provisions of subsection (2), the Board shall, in the absence of either the Chairperson or the Chief Ombudsman in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Ombudsman.

129. (1) There shall be a Chief Ombudsman who shall be competitively recruited and appointed by the Cabinet Secretary on the recommendation of the Ombudsman Board.

(2) The Chief Ombudsman shall serve on such terms and conditions of employment as the Board, in consultation with the Cabinet Secretary may determine.

(3) A person qualifies to be appointed as the Chief Ombudsman if that person—

(a) holds a masters degree from a university recognized in Kenya and a member of a professional body;

(b) has knowledge, competence and at least ten years' experience at a senior management level in any of the following—

(i) finance;

(ii) law;

(iii) accounting;

(iv) economics;

(v) banking;

(vi) actuarial science;

(vii) insurance;

(viii) cooperative practice; or

(ix) such other field that is relevant to the functions of the Authority; and

(c) meets the requirements of Chapter Six of the Constitution of Kenya.

(4) The Chief Ombudsman shall, subject to the directions of the Board, be responsible for the day to day management of the Ombudsman.

(5) The Chief Ombudsman shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.

Staff of the
Ombudsman

130. (1) The Ombudsman may appoint such staff as the Ombudsman considers fit to perform its functions under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions of service as the Ombudsman Board may, in consultation with the Cabinet Secretary determine.

Protection from
personal
liability

131. No matter or anything done by any member of the Ombudsman Board or by any office, employee, agent or servant of the Ombudsman shall, if the act or omission was done in good faith for the purpose of performing the functions of the Ombudsman under this Act, render that person liable for any action, claim or demand.

Confidentiality

132. (1) Except as provided for in this Act or any other law, a person shall not disclose any information that comes into his or her possession as a result of the performance of duties of the Ombudsman under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable upon conviction, to a fine not exceeding five million Kenya Shillings or to an imprisonment for a term of two years.

Annual and
other reports

133. (1) The Ombudsman Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary, an annual report for the immediate preceding year.

(2) The Cabinet Secretary shall lay the annual report before the National Assembly as soon as is practicable.

(3) The Ombudsman Board shall publish a copy of the annual report on its website.

Complaints
about financial
products and
financial
services.

134. (1) A retail financial customer may make a complaint to the Ombudsman that a provider—

(a) has, in providing a financial product or a financial service to the retail financial customer contravened a law;

(b) is in breach of the contract for the provision of a financial product or a financial service; or

(c) has treated the retail customer unfairly in relation to the provision of the financial product or financial service.

(2) The Ombudsman shall —

- (a) provide assistance to a complainant to formulate the complaint properly; and
- (b) not deal with a complaint against a provider unless the retail financial customer had made the complaint to the provider and, after three months, the complaint has not been satisfactorily resolved.

Mediation to determine a complaint

135. (1) The Ombudsman shall, on receiving a complaint made under section 134, attempt to mediate the complaint.

(2) The Ombudsman shall, if the Ombudsman considers that it will not be efficient or effective to mediate a complaint, make a determination resolving the complaint.

(3) The Ombudsman may, in making a determination under subsection (2), determine that the provider—

- (a) pays the retail financial customer a specified amount;
- (b) forgive or vary a debt;
- (c) release a security;
- (d) repay, waive or vary a fee or other amount paid, or owing to, the provider, including varying the interest rate on a regulated credit contract; or
- (e) perform its obligations under the contract for the provision of the financial product or service.

(4) A determination made under this section shall bind the provider.

A provider to co-operate with the Ombudsman

136. (1) A provider shall co-operate, in good faith, with the Ombudsman in the exercise of the Ombudsman's powers and the performance of its functions in relation to a complaint on a financial product or a financial service provided by the provider, including complying with the directions of the Ombudsman in relation to the complaint.

(2) The Ombudsman may give a provider a notice requiring the provider to produce a specified document or provide a specified information to the Ombudsman in connection with a complaint.

(3) A provider that fails or refuses to comply with a notice under subsection (2) commits an offence and is liable on conviction to a fine not exceeding 500,000 shillings.

Ombudsman
Rules

137. The Board may make rules with respect to mediation and determination of complaints under this Act.

Estimates of
income and
expenditure of
the Ombudsman

138. (1) The Ombudsman shall, in each financial year, prepare—

- (a) an estimate of its operating expenditure;
- (b) an estimate of income, including from fees and charges; and
- (c) projected estimates of its operating expenditure for the next two financial years.

(2) The Ombudsman shall submit the estimates prepared under subsection (1), to the Cabinet Secretary for approval

The
Ombudsman
Fund

139. (1) There is established a fund to be known as the Ombudsman Fund, which shall vest in the Ombudsman.

(2) The Ombudsman shall administer and control the Fund.

(3) The Fund shall consist of—

- (a) moneys appropriated by Parliament;
- (b) fees and charges imposed under this Act in relation with the Ombudsman;
- (c) amounts payable to the Ombudsman out of the Levy Account;
- (d) reserves, for a financial year which shall not be more than the estimated operating expenditure of the Ombudsman for that financial year; and
- (e) any other money paid to or received by the Ombudsman.

(4) There shall be paid out of the Ombudsman Fund, all sum sums of money required to defray the expenditure incurred by the Ombudsman in the performance of its functions.

Investment of
the Ombudsman
Fund

140. The Ombudsman may—

- (a) place on deposit with a bank as it may determine; or

- (b) otherwise invest, in accordance with Government Policy on investment and a policy approved by the Ombudsman Board,

any amount standing to the credit of the of the Fund not immediately required for the purposes of the Ombudsman.

Ombudsman financial records and reports.

141. (1) The Ombudsman shall cause to be kept all proper books and other records of accounts of income, expenditure, assets and liabilities of the Ombudsman.

(2) Within a period of three months after the end of each financial year, the Ombudsman shall submit to the Auditor-General the accounts of the Ombudsman in respect of that financial year together with-

- (d) a statement of income and expenditure of the Ombudsman during the year;
- (e) a statement of assets and liabilities of the Ombudsman on the last day of that year; and
- (f) a funds flow statement during that year.

Act No. 34 of 2015

(3) The accounts of the Ombudsman shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

PART XV- COMPENSATION

Establishment of the Conduct Compensation Fund Board

142. (1) There is established a board to be known as the Conduct Compensation Fund Board.

(2) The Conduct Compensation Fund Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) having and managing its own funds including borrowing and lending money;
- (d) entering into contracts;

- (e) employing or engaging the services of persons to assist it in performing its functions and exercising its powers; and
- (f) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(3) Except as otherwise provided in this Act, the Conduct Compensation Fund Board shall be operationally independent in the performance of its functions and shall not be subject to the direction or control of any person or authority.

Exemption from the State Corporations Act.

143. The provisions of the State Corporations Act shall not apply to the Conduct Compensation Fund Board.

Compensation for contravention of this Act

144. A person who suffers loss out of a contravention of this Act by another person may recover the amount of the loss by action in court against that person or any other person who knowingly involved in the contravention.

Functions of the Conduct Compensation Fund Board

145. The Conduct Compensation Fund Board shall—

- (a) hold and manage the Conduct Compensation Fund;
- (b) determine and make compensation payments; and
- (c) do any other function as may be conferred to it under any other written law.

Powers of the Conduct Compensation Fund Board.

146. The Conduct Compensation Fund Board shall have all the powers necessary for the proper performance of its functions under this Act, and in particular the power to—

- (a) control, supervise and administer the assets of the Conduct Compensation Fund;
- (b) manage the funds of the Conduct Compensation Fund Board, including reserves;
- (c) receive grants, gifts and donations on behalf of the Compensation Fund Board and make legitimate disbursements therefrom;
- (d) open such bank accounts for the funds of the Compensation Fund Board as may be necessary;

- (e) with the consent of the Cabinet Secretary, borrow money, mortgage or charge any of its assets; and
- (f) engage staff on terms and conditions as it may consider necessary for the performance of its functions, including establishing retirement benefits fund and medical fund for the staff and making contributions to the fund.

Board of the
Conduct
Compensation
Fund Board.

147. (1) The Board of the Conduct Compensation Fund Board shall consist of—

- (a) a Chairperson appointed by the President;
- (b) the Managing Director; and
- (c) two other members appointed by the Cabinet Secretary.

(2) In appointing the Chairperson and the Board members under subsection (1)(c), the President and the Cabinet Secretary shall have regard to the principles of gender equity and regional balance and the need to have a mix of skills relevant to the financial sector.

(3) The Chairperson and Board members appointed under subsection (1)(c) shall be selected from persons who—

- (a) are not public officers or employees, officers or significant owners of any provider that holds a financial conduct licence;
- (b) have at least ten years' experience in management of a public or private provider within the financial sector; and
- (c) satisfy the requirements of Chapter Six of the Constitution of Kenya.

Term of office

148. The chairperson and a member of the Board appointed under subsection (1) (a) or (c) shall hold office for a period of three years and shall be eligible for reappointment for one further term of three years.

Resignation,
removal and
vacancy in
office

149. The Chairperson and any member appointed under section 123 (1) (c) shall cease to hold office if—

- (a) the member delivers to the President, in the case of chairperson, or to the Cabinet Secretary, in the case of a member, a written notice of resignation;

- (b) has been absent from three consecutive meetings of the Board without permission from the Cabinet Secretary in the case of the Chairperson and from the case of the member;
- (c) is incapacitated by physical or mental illness or other cause from fulfilling the responsibilities of a Board member;
- (d) conducts himself or herself in a manner not befitting the chairperson or that member;
- (e) the member is declared bankrupt;
- (f) the member is convicted of an offence that amounts to a felony under the laws of Kenya; or
- (g) if the member becomes a disqualified person under this Act.

Estimates of the expenditure of the Conduct Compensation Fund Board and the Conduct Compensation Fund

150. (1) The Conduct Compensation Fund Board shall, in each financial year, prepare—

- (a) an estimate of its operating expenditure and the estimates of operating expenditure of the Conduct Compensation Fund;
- (b) an estimate of its income, including from fees and charges and the income of the income of the Conduct Compensation Fund; and
- (c) projected estimates of its operating expenditure and that of the Conduct Compensation Fund for the next two financial years.

(2) The Conduct Compensation Fund Board shall submit the estimates prepared under subsection (1), to the Cabinet Secretary for approval.

Financial records and reports of the Conduct Compensation Fund Board

151. (1) The Conduct Compensation Fund Board shall cause to be kept all proper books and other records of accounts of income, expenditure, assets and liabilities of the Compensation Fund Board.

(2) Within a period of three months after the end of each financial year, the Conduct Compensation Fund Board shall submit to the Auditor-General the accounts of the Conduct Compensation Fund Board in respect of that financial year together with—

- (a) a statement of income and expenditure of the Conduct Compensation Board during the year;

(b) a statement of assets and liabilities of the Conduct Compensation Fund Board on the last day of that year; and

(c) a funds flow statement during that year.

Act No. 34 of 2015.

(3) The accounts of the Conduct Compensation Fund Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

Conduct Compensation Fund

152. (1) There is established a fund, which vests in the Conduct Compensation Fund Board, to be known as the Conduct Compensation Fund.

(2) The Conduct Compensation Fund shall be administered and controlled by the Conduct Compensation Fund Board.

Operation of the Conduct Compensation Fund.

153. (1) There shall be paid into the Conduct Compensation Fund—

- (a) amounts appropriated by Parliament;
- (b) amounts payable to the Conduct Compensation Fund Board out of the Levy Account in respect of this Act;
- (c) administrative penalties imposed in respect of contraventions of this Act; and
- (d) any amount paid to or to be received by the Conduct Compensation Fund Board for payment into the Fund.

(2) There shall be paid out of the Conduct Compensation Fund—

- (a) all such amounts as are required to be paid out of the Fund under section 155; and
- (b) any amounts required to defray the expenditure incurred by the Conduct Compensation Fund Board in the exercise, discharge and performance of its objectives, functions, powers and duties under this Act.

Investment of the funds of the Conduct Compensation Fund

154. The Conduct Compensation Fund Board may—

- (a) place on deposit with such bank as it may determine; or
- (b) otherwise in accordance with Government Policy on investment and a policy approved by the Conduct Compensation Fund Board;

any amount standing to the credit of the Conduct Compensation Fund not immediately required for its purposes.

Retail financial customers may claim compensation from Conduct Compensation Fund

155 (1) The Board may, where—

- (a) a retail financial customer suffers loss because a licensed service provider—
 - (i) contravened this Act in relation to the provision of the financial product or a financial service to the retail financial customer; or
 - (ii) breached the contract for the provision of the financial product or a financial service; or
- (b) a provider has failed to comply with a determination of the Ombudsman, an order or judgment of the Tribunal or a court to compensate a retail financial customer for loss suffered by the retail financial customer;

on application by a retail financial customer, pay, to the retail financial customer from the Conduct Compensation Fund, as amount as calculated in accordance with the regulations.

(2) The regulations made for the purposes of subsection (1) shall make provision with respect to claims for compensation from the Conduct Compensation Fund, including—

- (a) the procedure for lodging claims;
- (b) the investigation and verification of claims;
- (c) the circumstances in which, and to the extent to which claims are to be paid; and
- (d) the determination of claims including maximum amounts payable on claims or classes of claims.

Conduct Compensation Board may recover from a licensed person.

156. If the Conduct Compensation Fund Board makes a compensation payment to a person under this Act arising from a contravention of a law, or a breach of contract by a provider, the amount of the payment, together with the costs incurred by the Board in connection with the payment, shall be a debt due by the provider to the Board and may be recovered by action in court.

Annual and
other reports

157. (1) The Conduct Compensation Fund Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary, an annual report for the immediate preceding year.

(2) The Cabinet Secretary shall lay the annual report before the National Assembly as soon as is practicable.

(3) The Conduct Compensation Board shall publish a copy of the annual report on its website.

PART XVI—FINANCIAL SERVICES TRIBUNAL

Establishment
of the Tribunal

158. (1) There is established a tribunal to be known as the Financial Services Tribunal which shall consist of the following persons appointed by the Judicial Service Commission—

(a) the chairperson with ten years' experience in adjudicating financial services and regulatory disputes; and

(b) six other members with five years' experience in relation to the business of licensed service providers; or

(c) at least ten year's knowledge and experience in finance, actuarial science, economics or banking.

(2) The chairperson and the members of the Tribunal appointed under subsection (1) shall –

(a) be of good character; and

(b) meets the requirements of Chapter Six of the Constitution of Kenya.

(3) The chairperson and members of the Tribunal shall be appointed for three years renewable for one further term of three years.

(4) The members of the Tribunal shall be appointed at different times so that the terms of office expire at different times.

(5) The Chairperson and any member of the Tribunal may be removed from office if the chairperson or member-

- (a) becomes incapable through ill-health of effectively performing the duties of his or her office;
- (b) accepts any position of employment the holding of which would make the member ineligible to be appointed as a member;
- (c) declared bankrupt;
- (d) convicted of a criminal offence;
- (e) fails to attend three consecutive meetings of the Tribunal;
- (f) resigns; or
- (g) dies.

(6) The Chairperson and the members of the Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission may, from time to time, determine.

Secretary to the Tribunal

159. The Judicial Service Commission shall appoint the Secretary to the Tribunal.

Staff of the Tribunal

160. (1) The Judicial Service Commission may appoint such staff as it considers necessary to the Tribunal.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Judicial Service Commission may, from time to time, determine.

Protection from personal liability

161. No matter or thing done by any of the member of the Tribunal shall, if the act or omission was done in good faith for the purpose of exercising the powers of the Tribunal under this Act, render the person liable for any action, claim or demand.

Rules of the Tribunal

162. (1) The Chief Justice shall lay down the rules and procedures of the Tribunal in accordance with fundamental dispute resolution principles and international best practices.

(2) Without prejudice to the generality of subsection (1), the rules may make provisions relating to-

- (a) the way in which applications for review are to be made;

- (b) the procedure to be adopted by the Tribunal;
- (c) records to be kept;
- (d) giving notice to the parties;
- (e) fees to be charged;
- (f) costs.

(3) The provisions of the Civil Procedure Act shall apply to the claims submitted before the Tribunal, where this Act, its regulations and the rules and procedure are silent on the concerned matter.

PART XVII- REVIEW OF DECISIONS

Right to be informed

163. (1) A person who makes a reviewable decision shall notify the person affected by the decision of the right of that person to—

- (a) request reasons for the decision; and
- (b) have the decision reviewed by the Tribunal under this Part.

(2) A person who is affected by a reviewable decision and has not been given reasons for the decision may, within thirty days after being notified of the decision, request a statement of the reasons for the decision from the person who made the decision.

(3) A person who makes a decision shall, within thirty days after receiving a request under subsection (2), give the person a statement of the reasons for the decision, which shall include a statement of the material facts on which the decision was based.

Application for review of a decision

164. (1) A person aggrieved by a reviewable decision may apply to the Tribunal for a review of the decision.

(2) An application under subsection (1) shall be made—

- (a) if the applicant requested reasons under section 163 within 30 days after the statement of reasons was given to the person; or
- (b) within sixty days after the person has been notified of the decision.

Operation of decision not affected

165. An application for a review of a decision and the proceedings on the application shall not suspend the operation of the decision unless the Tribunal makes such order.

Tribunal orders

166. The Tribunal may, in proceedings on an application for review under this Act—

- (a) set the decision aside;
- (b) set the decision aside and remit the matter to the decision-maker for further consideration;
- (c) dismiss the application; or
- (d) make any other order as the Tribunal may consider just and necessary to do so.

Appeals to the High Court

167. (1) A party who is aggrieved by a decision of the Tribunal on or involving a question of law may, within 30 days of that decision, appeal the decision to the High Court.

(2) For the purposes of this section, “question of law” does not include a question whether there is sufficient evidence to justify a finding.

PART VXIII– LEVIES, FEES AND CHARGES

Financial sector levy

168. (1) The Cabinet Secretary shall, for each financial year, in consultation with the Authority, by regulations, impose a levy in accordance with this Act on providers identified in the regulation.

(2) The amount of fees payable by a provider under subsection (1) shall be calculated in accordance with the regulations imposing the levy.

Information required for the assessment of levy

169. (1) The Authority may determine the information a provider shall give to the Authority to assist the Authority in calculating the provider’s liability for levy for a financial year.

(2) A determination under subsection (1) may specify the way in which and time by which information is to be provided.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of 5,000,000 shillings.

Assessment of levy

170. (1) The Authority shall issue to a person who is required to pay levy under this Act with an assessment of levy payable by in that year.

(2) A provider shall pay the levy assessed under subsection (1) within thirty days after the assessment.

Penalty levy

171. (1) The Authority shall, if a provider fails to pay the whole amount of levy when it is due, impose a penalty levy for each month during which the amount remains unpaid.

(2) The penalty levy under subsection (2) shall be calculated as follows—

- (a) if the amount unpaid at the beginning of the month is or is less than Kshs. 1,000,000—Kshs. 500;
- (b) if the amount unpaid at the beginning of the month is more than Kshs. 1,000,000 but less than Kshs. 5,000,000—Kshs. 1,000; and
- (c) if the amount unpaid at the beginning of the month is or is more than Kshs. 5,000,000—Kshs. 5,000.

Refund of
overpaid levy

172. (1) The Authority shall refund any overpaid levy.

(2) The Authority, the Ombudsman and the Conduct Compensation Fund Board shall, in accordance with arrangements agreed between them, make adjusting payments to take account of amounts refunded under subsection (1).

Levy account

173. (1) The Authority shall establish an account in its name with a bank regulated by the Central Bank of Kenya.

(2) The account established under subsection (1) shall be an interest bearing account and specially designated as the Levy Account.

(3) The Levy Account shall consist of—

- (a) amounts received by the Authority as levy;
- (b) amounts received by the Authority from the investment of money standing to the credit of the Levy Account.

(4) The Authority shall apply the money in the Levy Account to —

- (a) make investments authorised under this Act;
- (b) make payments to the Authority, the Ombudsman and the Conduct Compensation Fund Board;
- (c) repay amounts of levy that have been waived; and
- (d) repay amounts that have been paid into the account in error.

Requirements
for levy

174. (1) The total amount of levy imposed for a financial year shall not exceed the amount that will fund the total of the estimates of the operating expenditures approved under sections 31, 138 and 150 for the year, adjusted—

- (a) to take into account the estimates of income approved under those sections for the year;
- (b) take into account the reserves available for operating expenditure for the year;
- (c) if the operating expenditure actually incurred by the Authority, the Ombudsman or the Conduct Compensation Fund Board in respect of the previous financial year are less than, or more than, the relevant estimate of operating expenditure so approved for that year—to ensure that the saving, or over-expenditure, is credited to, or borne by, all levy payers; and
- (d) if the amounts actually received by the Authority, the Ombudsman and the Conduct Compensation Fund as levy and penalty levy in respect of levy in respect of the previous financial year are less than, or more than, the relevant estimate of income so approved for that year—to ensure that the over-collection or under collection is credited to, or borne by, all levy payers.

(2) The Cabinet Secretary shall not make regulations for section 168 for a financial year unless the Authority has published—

- (a) a draft of the regulations;
- (b) the estimates and projected estimates of its income and expenditure approved by the Cabinet Secretary under sections 31, 138 and 150 for the financial year and the next 2 financial years;
- (c) a statement of the amounts actually received by the Authority, the Ombudsman and the Conduct Compensation Fund as levy and penalty levy in respect of levy in respect of the previous financial year;
- (d) a statement of the reserves of each of the Authority, the Ombudsman and the Conduct Compensation Fund at the start of the relevant financial year and an estimate of those as at the start of each of the next 2 financial years; and
- (e) a notice inviting submissions on the draft regulations and stating—

- (i) where and how submissions are to be made; and
- (ii) the period within which submissions are to be made.

(3) The submission period shall be at least one month.

(4) The Cabinet Secretary shall take into account, in deciding whether to make the regulations, all submissions made within the submission period.

Fees and charges.

175. (1) The Cabinet Secretary may, in consultation with the Authority, by regulations, prescribe fees and charges payable in respect of services rendered by the Authority and the Ombudsman in the performance of their functions under this Act.

(2) A person shall pay fees in respect of services provided to that person at the time when the service is provided, or at a later time as may be agreed to by the person to whom the amount is payable.

(3) A retail financial customer shall not pay fees or charges to make a complaint to the Ombudsman.

(4) A person to whom an amount is payable as a fee or charge may, on application by a person liable to pay the fee or charge, waive whole or part of the fee or charge.

Levy, fees or charges excluded from consolidated Fund
Exemption from income tax

176. Any levy, fees or charges received by the Authority under this Act shall be excluded from the Consolidated Fund.

177. The income of the Financial Conduct Compensation Fund, the Ombudsman Fund and the Conduct Compensation Fund shall be exempted from income tax.

PART VIX- MISCELLANEOUS PROVISIONS

Exemptions

178. (1) The Authority may—

- (a) make an order exempting a person, or a class of persons, from the requirements of a specified provision of this Act in circumstances set out in the order; and
- (b) at any time, vary or revoke such an order.

(2) The Authority shall not make an exemption order under subsection (1)—

- (a) if the Authority considers that the exemption—
 - (i) shall be contrary to the public interest;
or
 - (ii) is contrary to or may otherwise prejudice the achievement of the objects of this Act;
- (b) in the case of an exemption from the requirements of section 34, unless the Authority is satisfied that the costs of administering and enforcing the requirement for a financial conduct licence, including the costs of compliance, substantially outweigh the risk of loss to retail financial customers arising from the exemption.

(3) The Authority shall publish an exemption order made under this section.

Notifications to
the Authority

179. (1) The Authority may determine the procedures and requirements for notifying the Authority on any matters required by or under this Act.

(2) The Authority shall publish the determinations under subsection (1).

Reporting to the
Authority

180. (1) An auditor of a provider that holds a financial conduct licence shall, without delay, submit a detailed report to the Authority and the governing body of the provider about any matter relating to the business of the provider if the auditor—

- (a) becomes aware of any matter in the course of performing the functions and duties of the auditor;
and
- (b) considers that the matter—
 - (i) is contravening or may contravene this Act in a material aspect; or
 - (ii) in the case of an auditor, that it may result in an audit not being completed or may result in a qualified or adverse opinion on the accounts.

(2) Where an auditor complies, in good faith, with subsection (1) shall not a contravention of a law, a breach of a contract or a breach of a code of professional conduct.

(3) A person may report to the Authority—

- (a) financial difficulties or suspected financial difficulties of a provider;
- (b) a contravention or suspected contravention of this Act by the provider; or
- (c) the involvement or suspected involvement in financial crime by a provider.

(4) A person who makes a report under this section shall not be—

- (a) criminally liable for making the report; or
- (b) liable to pay compensation or damages to any person in relation to a loss caused by the report,

unless the person made the report in bad faith.

Prohibition of
victimization

181. (1) A person shall not subject another person to any prejudice in employment, or penalise another person in any way, on the ground that the other person made a report under section 180, even if the report was not required by law.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction—

- (a) for the first offence, to a fine of 5,000,000 shillings or to imprisonment for two years; and
- (b) for a second and subsequent offence, to a fine of 10,000,000 or to imprisonment for five years.

(3) A provider—

- (a) who subjects, or threatens to subject a retail financial customer to a detriment; and
- (b) did so on the ground that the retail financial customer has taken or proposes to take a step to protect his or her rights in relation to this Act or on any other ground;

commits an offence and is liable on conviction—

- (i) for the first offence, to a fine of 5,000,000 shillings or to imprisonment for two years; and
- (ii) for a second and subsequent offence, to a fine of 10,000,000 or to imprisonment for five years.

(4) Where—

- (a) a provider contravenes subsection (2) against a person; and
- (b) that person suffers loss or damage because of the contravention,

that person may recover the amount of the loss or damage by action against the provider.

Prohibited disclosures

182. Sections 180 and 181 shall apply in addition to, and do not limit any law that provides protection for persons who properly report contraventions of the law.

Hindering or preventing compliance

183. (1) A person who knowingly —

- (a) hinders or prevents compliance with a direction, order or requirement of the Authority given under this Act; or
- (b) without lawful excuse obstructs or hinders—
 - (i) the Authority;
 - (ii) a Board member, employee or agent of the Authority;
 - (iii) an inspector; or
 - (iv) an investigator

in the performance of their functions under this Act, commits an offence and is liable on conviction to a fine of 5,000,000 or to imprisonment for one year.

False or misleading information

184. A person who—

- (a) provides to the Authority, in connection with an operation of this Act, information that is false or misleading, including by omission, commits; and
- (b) knew or ought to reasonably have known or believed that the information was misleading,

commits an offence and is liable on conviction to a fine not exceeding 10,000,000 shillings.

Accounts and records

185. Where—

- (a) a person is required under this Act to keep accounts or records; and
- (b) the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate; and
- (c) that person —
 - (i) knew that, or was reckless whether the accounts or records correctly recorded and explained the matters, transactions, acts or operations to which they relate;
 - (ii) intended to deceive or mislead a financial sector regulator or an investigator; or
 - (iii) intended to hinder or obstruct a financial sector regulator, or an investigator in performing his or her duties under this Act;

that person commits an offence and is liable on conviction to a fine of 10,000,000 or to an imprisonment for five years.

False assertion of connection with the Authority

186. (1) A person shall not apply to a company, body, business or undertaking, a name or description that signifies or implies some connection between the company, body, business or undertaking and the Authority, without the consent of the Authority to do so.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of 5,000,000 shillings.

Liability in relation to body corporates

187. (1) If a provider commits an offence against this Act, each member of the governing body of the provider is guilty of the same offence.

(2) It is a defence to a prosecution for an offence against subsection (1) that the defendant took all reasonably practicable steps to prevent the occurrence of the offence.

(3) If a key person of a provider engages in a conduct relating to the provision of financial products or financial services that amounts to a contravention of this Act, the provider shall be considered to also to have engaged in the conduct.

(4) It is a defence to a prosecution for an offence against subsection (3) that the provider took all reasonably practicable steps to prevent the conduct.

Pecuniary penalties for bodies corporate

188. Where a body corporate is convicted of an offence under this Act, the court may, if the contrary intention does not appear in the Act, and the court thinks fit, impose a pecuniary penalty not exceeding five times the amount of the maximum pecuniary penalty that could be imposed by the court on a natural person convicted of the same offence.

Extension of period for compliance

189. (1) The Authority may extend any period for compliance with, or a period prescribed by a provision of this Act, other than a provision that the Authority is to comply with.

(2) The Authority may extend a period under subsection (1)—

- (a) on application by a person required to comply with the provision or on its own initiative;
- (b) more than once; and
- (c) either before or after the time for compliance has passed or the prescribed period has ended.

Certificates, records and entries in books of account admissible in evidence.

190. (1) A certificate, in a form determined and authenticated the Authority, that, at a specified date—

- (a) a person held or did not hold a financial conduct licence under this Act;
- (b) a specified financial conduct licence was or was not subject to specified conditions; or
- (c) a specified financial conduct licence was, at a specified time, suspended, cancelled or revoked;

shall be admissible as evidence of the facts and matters stated in that certificate and, unless the contrary is established, conclusive.

(2) In any proceedings under or in relation to this Act, a business document of or held by a provider is admissible as evidence of the matters, transactions and accounts recorded in that document.

Notices to licensees

191. A notice under or relating to this Act to a person who holds or held a financial conduct licence under this Act may be served on, or given to —

- (a) the person; or
- (b) if the person cannot be found after a reasonable inquiry, some other person apparently involved in the

management or control of a place where the person carries or carried on the licensed activities.

Publication requirements

192. A requirement in this Act for information or a document to be published shall include a requirement for the information or document to be published on the website of the body required to publish it.

Regulations

193. (1) The Cabinet Secretary may, after consultation with the Authority, make regulations generally for the better carrying out the purposes and objectives of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may make provisions for different—

- (a) categories of providers or key persons;
- (b) categories of retail financial customers;
- (c) categories of retail financial products or financial services;
- (d) different ways of marketing financial products or financial services; and
- (e) any other matter required in order to achieve the objectives of this Act.

(3) The Cabinet Secretary and Authority shall, when formulating regulations under this Act, take into account the principle that the requirements imposed by the regulations on providers shall be proportionate to the nature and extent of the risks the requirements are intended to address.

Repeals and amendments

194. Repeals and subsequent amendments shall be as set out in the third Schedule.

FIRST SCHEDULE CONDUCT OF BUSINESS OF THE BOARD

sec 19

Vacation of office

1. The chairperson or a member, other than an *ex-officio* member may –

- (a) at any time resign by a notice in writing in case of the chairperson, to the President and in case of a member, to the Cabinet Secretary;

(b) on the recommendation of the Board, be removed from office in case of the Chairperson, by the President, or by the Cabinet Secretary in case of a member, if the chairperson or member-

- (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
- (ii) is convicted of a criminal offence that amounts to felony under the laws of Kenya;
- (iii) is incapacitated by prolonged illness for a period exceeding six months; or
- (iv) is otherwise unable or unfit to discharge his or her functions.

Meetings

2. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Despite subparagraph (1), the chairperson may convene a special meeting of the Board at any time for transaction of the business of the Board upon requisition in writing by at least three members of the Board.

(3) Unless three quarters of the total members otherwise agree, every member shall be given at least fourteen days written notice of the meeting.

(4) The quorum for the conduct of the business of the Board shall be five members.

(5) The chairperson shall preside at every meeting of the Board and in the absence of the chairperson, the members present shall elect one of their number to preside and the member elected shall have all the powers of the chairperson with respect to that meeting and the business transacted in thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting, and in case of a tie, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), proceedings of the Board shall not be invalidated by reason of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure of any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.

Disclosure of interest

3. (1) A member of the Board who has an interest in any contract, or any other matter, present at a meeting shall, at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or matter, or be counted in the quorum of the meeting during the consideration of that matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member who benefits from non-disclosure under subparagraph (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

Instruments and decisions of the Board.

4. Any contract, all instruments or decisions made by the Board shall be made under the hand of the Chairperson or any person authorized as such.

SECOND SCHEDULE—REPEALS AND AMENDMENTS

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Banking Act (Cap. 488)	s. 8(2)(a)	Delete “history and”.
	s. 8A(3)(a)	Delete “history and”.
	s. 11(1)(h)	Delete and substitute therefor— <ul style="list-style-type: none"> (h) conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance with the provisions of this Act;
	s. 31	Delete subsection (3)(b). Delete subsections (4) and (5).
s. 33(1)	Delete and substitute therefor— <ul style="list-style-type: none"> (1) If, at any time, the Central Bank has reason to believe that— <ul style="list-style-type: none"> (a) the business of an institution is being conducted in a manner contrary to or not in compliance with the requirements of this Act or of any regulations made thereunder or in any manner detrimental to or not in the best interests 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 this Act or any regulations made thereunder, <p style="margin-left: 40px;">the Central Bank may—</p>	

*Written Provision
law*

Amendment

- (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 of the institution or to~~ secure or improve compliance with the requirements of this Act, any regulations made thereunder ~~or any other written law or regulations~~;
- (iii) in any case to which paragraph (b) applies, issue directions to the institution, officer or other person to cease such practice;
- (iv) appoint a person, suitably qualified and competent in the opinion of the Central Bank, to advise and assist the institution generally or for the purposes of implementing any directions under subparagraphs (ii) and (iii) and the advice of a person so appointed shall have the same force and effect as a direction made under subparagraphs (ii) and (iii) and shall be deemed to be a direction of the Central Bank under this section.

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
	s. 33(4)(a)	Delete.
	s. 33A	Omit “, or in any manner detrimental to or not in the best interests of its depositors or members of the public”.
	s. 44	Delete
	s. 44A	Delete.
	s. 52A(2)	Insert after “the Value Added Tax Act (Cap. 476)” the words “the Financial Conduct Act, 2018”.
Guideline on Incidental Business Activities, 2013		Repeal
Consumer Protection Act, 2012 (Act No. 46 of 2012)	s. 2(1)	Delete the following definitions— <ul style="list-style-type: none"> (a) advance; (b) annual percentage rate; (c) brokerage fee; (d) consumer report; (e) cost of borrowing; (f) credit card; (g) credit information; (h) credit repair; (i) credit repairer; (j) default charge; (k) file; (l) fixed credit; (m) loan broker;

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
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- (n) lender;
- (o) loan brokering;
- (p) open credit; and
- (q) supplier credit agreement.

Delete the definition of “credit agreement” and substitute—

“ ‘credit agreement’ has the meaning ascribed to ‘credit contract’ in the Financial Conduct Act, 2018;”.

Delete the definition of “services” and substitute—

“ ‘services’ means anything other than goods, including any service, right, entitlement or benefit, but does not include the provision of credit;”.

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| s. 39 | Delete “for loan brokering, credit repair or”. |
| s. 40(1) | Delete paragraphs (a) and (b) |
| s. 41(2) | Delete “loan brokering, credit repair or”. |
| Part VII | Delete |
| s. 70 | Consider |
| s. 83 | Delete |