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LEGAL NOTICE NO. 46

**THE CENTRAL BANK OF KENYA ACT***(Cap. 491)*

IN EXERCISE of the powers conferred by section 57(1), (3) and (4) of the Central Bank of Kenya Act, the Central Bank of Kenya makes the following Regulations—

**THE CENTRAL BANK OF KENYA (DIGITAL CREDIT PROVIDERS) REGULATIONS, 2022**

**PART I— PRELIMINARY**

1. These Regulations may be cited as the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022. Citation.
2. These Regulations shall not apply to— Application.
  - (a) an institution licensed under the Banking Act, Cap. 488.
  - (b) an institution licensed under the Microfinance Act, 2006; No. 19 of 2006.
  - (c) a Sacco society licensed under the Sacco Societies Act, 2008; No. 14 of 2008
  - (d) the Kenya Post Office Savings Bank supervised under the Kenya Post Office Savings Bank Act; Cap. 493B
  - (e) credit arrangements involving the provision of credit by a person that is merely incidental to the sale of goods or provision of services by the person whose primary business is the provision of the goods or services;
  - (f) an entity whose digital credit business is regulated under any other written law;
  - (g) any other entity approved by the Bank.
3. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Central Bank of Kenya Act;

“Bank” means the Central Bank of Kenya;

“charges” includes all the payments that a customer makes, is required to make, or agrees to make to a digital credit provider in consideration of the loan by the digital credit provider to the customer, and all interest, fees, expenses and costs associated with the provision of the loan;

“credit information” means any positive or negative information relating to an individual’s or entity’s credit worthiness, credit standing, credit capacity, or history or profile with regard to credit, assets, and any financial obligations;

“customer” means a person who obtains digital credit from a digital credit provider;

“deposit” means a sum of money received or paid on terms under which it shall be repaid, with or without interest or a premium, and either on demand, or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

“non-performing loan” means a loan in which the principal or interest is due and unpaid after the due date as per the contract between the digital credit provider and the customer;

“senior officer” means a manager or officer responsible for a significant unit of a digital credit provider;

“significant shareholder” means a person other than the Government or a public entity, who holds directly or indirectly or otherwise has a beneficial interest in ten percent or more of the share capital of a digital credit provider.

#### PART II— LICENSING OF DIGITAL CREDIT PROVIDERS

4. (1) A person shall not establish or carry out digital credit business in Kenya or otherwise hold himself out as carrying out digital credit business in Kenya ~~unless that person is licensed by the Bank in accordance with these Regulations, or is a person whose digital credit business is regulated under any other written law.~~ <sup>Licensing</sup>

(2) A person who wishes to carry out digital credit business in Kenya shall apply to the Bank for a licence in Form CBK DCP 1 set out in the First Schedule.

(3) An application under paragraph (2) shall be accompanied by—

- (a) certified copy of the certificate of incorporation of the applicant;
- (b) a certified copy of the Memorandum and Articles of Association of the applicant;
- (c) notification of the applicant’s registered address;
- (d) a certified copy of the Memorandum and Articles of Association of any corporate body that has a significant shareholding in the applicant;
- (e) a certified copy of the constitutive documents of an unincorporated body that has a significant shareholding in the applicant;
- (f) a description of the information and communication technology system to be used in the applicant’s operations and an independent assurance on the systems;
- (g) a description of delivery channels or platforms to be deployed by the applicant;
- (h) a description of, and terms and conditions of credit products and services which the applicant intends to provide;

- (i) an agreement with a telecommunication or other service provider for provision of the channel or platform for the provision of digital credit;
  - (j) the applicant's Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) policies and procedures;
  - (k) the applicant's data protection policies and procedures;
  - (l) the applicant's consumer redress, mechanisms policies and procedures;
  - (m) a description and evidence of sources of funds to be invested in the applicant;
  - (n) a non-refundable application fee set out in the Second Schedule;
  - (o) the names and addresses of the shareholders in Form CBK DCP 1 set out in First Schedule;
  - (p) duly filled fit and proper forms for the directors, chief executive officer and senior officers and significant shareholders in Form CBK DCP 2 and Form CBK DCP 3, **respectively**;
  - (q) the applicant's credit policy, code of ethics and market conduct;
  - (r) the applicant's pricing model and parameters;
  - (s) the applicant's corporate governance policy;
  - (t) certificate of good conduct, tax compliance certificate and credit reference bureau report for each of the digital credit provider's individual significant shareholders, directors, chief executive officer and senior officers;
  - (u) a sworn declaration signed by every officer as specified in the application form; and
  - (v) any other information as may be required by the Bank.
- (4) An applicant shall—
- (a) be a company incorporated under the Companies Act; and
  - (b) ensure that its significant shareholders, directors, chief executive officer and senior officers meet the fit and proper criteria set out in the Third Schedule.
- (5) A person who contravenes paragraph (1) shall be liable to the penalty prescribed in section 33S(10) of the Act.

5. (1) The Bank shall, if satisfied that the applicant meets the requirements of these Regulations, grant a licence to the applicant, within sixty days of submission of a complete application

Issuance of a licence.

(2) In assessing the application, the Bank shall consider the following—

- (a) the history of the applicant;
- (b) the professional and moral suitability of the persons proposed to manage or control the digital credit provider;
- (c) the sources and evidence of funds to be invested by or in the digital credit provider; and
- (d) the public interest.

(3) The Bank may grant a licence to an applicant who meets the requirements of these Regulations subject to such conditions as the Bank may consider necessary which may be varied from time to time.

(4) The Bank shall publish the name of every licensed digital credit provider in the Gazette and in the Bank's website within thirty days of grant of licence.

(5) A licence granted under these Regulations shall remain valid unless earlier suspended or revoked by the Bank in accordance with these Regulations.

(6) A digital credit provider shall on or before the thirty-first day of December every year pay annual fees set out in the Second Schedule in such manner as the Bank may specify.

(7) A digital credit provider shall on or before the thirty-first day of December every year submit a return to the Bank certifying its compliance with the Act and these Regulations in such manner as the Bank may specify.

(8) The Bank shall before the thirty-first day of March in each year, publish the names and addresses of all licensed digital credit providers in the Gazette and the Bank's website.

6. The licence granted under regulation 5 shall not be transferred, assigned or encumbered in any way without prior written approval of the Bank.

Licence not transferable.

7. (1) A digital credit provider shall notify the Bank of any intended changes in its significant shareholding, board or management structure, or the appointment of a new director, chief executive officer or a senior officer at least thirty days before the effective date of such changes or appointments.

Fit and proper obligations.

(2) No person shall be a significant shareholder, director, chief executive officer or a senior officer of a digital credit provider unless the Bank has certified the person as fit and proper in accordance with the criteria set out in the Third Schedule.

(3) The Bank may, from time to time, where it considers it necessary, carry out an assessment of the professional and moral suitability of director, a chief executive officer, significant shareholder or a senior officer of a digital credit provider.

(4) The Bank may direct a significant shareholder who is considered by the Bank as not fulfilling the fit and proper criteria to dispose of all of their shares in a digital credit provider within such period as the Bank may specify.

(5) The Bank may disqualify any person from holding the position of director, chief executive officer or senior officer or holding any other office in a digital credit provider if that person is determined not to meet the fit and proper criteria.

8. (1) A digital credit provider shall engage in the following activities—

Activities of a digital credit provider.

- (a) provision of credit; and
- (b) any other activity as may be approved by the Bank from time to time.

(2) A digital credit provider shall not invite or collect deposits in any form, including the taking of cash collateral as security for loans, in the course of carrying out digital credit business.

(3) A digital credit provider who contravenes the provisions of paragraph (2) shall be liable to assessment of penalties and other administrative sanctions as provided for in these Regulations, including revocation of the digital credit provider's licence.

9. (1) The Bank may suspend or revoke a licence of a digital credit provider, if the licensee—

Suspension or revocation of licence.

- (a) does not meet or has contravened any of the licensing conditions;
- (b) fails to pay annual fees or a monetary penalty that is imposed by the Bank;
- (c) is found to have given false information during the licence application;
- (d) ceases to carry on the business of a digital credit provider;
- (e) goes into liquidation or an order is issued for its winding up;
- (f) violates anti-money laundering laws or combating the financing of terrorism laws;
- (g) has contravened any of the provisions of the Act or any regulations made thereunder relating to digital lending; or
- (h) otherwise conducts its business in a manner detrimental to the interests of its customers or members of the public.

(2) The Bank shall before suspending or revoking a licence inform the licensee in writing of the intended suspension or revocation and give the licensee an opportunity to be heard.

(3) The Bank shall specify the reasons for and the period of suspension of a digital credit provider's licence, and shall at the expiry of that period, lift the suspension or revoke the licence as the Bank considers appropriate.

(4) The Bank shall cause the names of digital credit providers whose licences have been suspended or revoked to be published in the *Gazette* within thirty days of the suspension or revocation.

(5) Where a licence has been revoked, the Bank may, by notice in writing—

- (a) require the digital credit provider to transfer to each customer the records relating to the affairs of the customer held at any time, in such manner, as the Bank may specify in the notice; or
- (b) permit the digital credit provider, subject to such conditions as the Bank may specify in the notice, to carry on business operations for the purpose of closing down the business connected with the revocation.

10. (1) A digital credit provider shall not enter into an amalgamation or an arrangement to transfer all or any part of its assets and liabilities to another entity without the prior written approval of the Bank.

Amalgamations and transfer of assets and liabilities

(2) Notwithstanding paragraph (1), a digital credit provider shall not require the prior approval of the Bank to undertake transactions in the ordinary course of business, including asset disposals in the ordinary course of business.

(3) A digital credit provider shall notify the Bank at ~~least thirty~~ days before entering into any agreement or arrangement with a third party for purposes of investing in the digital credit provider or financing the activities of the digital credit provider.

(4) The Bank may direct a digital credit provider to submit such additional information and documents as it may consider necessary for purposes of considering any transaction, agreement or arrangement under this Regulation.

### PART III— GOVERNANCE

11. A digital credit provider shall practice sound corporate governance principles based on ethics and integrity, good reputation and legitimacy, sound risk management and compliance with the law.

Corporate governance

12. (1) A digital credit provider shall have at least one registered physical office in accordance with the requirements of the Companies Act, 2015.

Place of business  
No 17 of 2015

(2) A digital credit provider shall not open, relocate or close a branch or place of business without prior written notification to the Bank, at least thirty days before the opening, relocation or closure.

(3) A digital credit provider shall prominently display a copy of its licence in all its places of business.

13. (1) A digital credit provider shall put in place appropriate policies, procedures and systems to ensure the confidentiality of customer information and transactions.

Confidentiality

(2) A digital credit provider shall not share customer information with any other person except with the customer's consent, or as may be required or permitted under any written law.

(3) The directors, officers, employees and agents of a digital credit provider shall protect the confidentiality of customer information and transactions.

(4) A director, officer, employee or agent of a digital credit provider shall not during, or upon and after termination of engagement or employment with the digital credit provider, except in the proper course of his duty and with the digital credit provider's written consent, divulge or make use of any secrets, copyright material, or any correspondence, accounts of the digital credit provider or its customers.

#### PART IV— CREDIT INFORMATION

14. (1) Notwithstanding any other provision in these Regulations, a digital credit provider shall disclose both positive and negative credit information of its customers to licensed credit reference bureaus, where such information is reasonably required for the discharge of the functions of the digital credit provider or the licensed credit reference bureaus.

Exchange of credit information.

(2) A digital credit provider may obtain credit information of its customers from a licensed credit reference bureau, where such information is reasonably required for the discharge of the functions of the digital credit provider or the licensed credit reference bureau.

(3) A digital credit provider shall not submit negative credit information of a customer or any other person to a credit reference bureau where the outstanding amount relating to the credit information does not exceed one thousand shillings.

(4) A digital credit provider submitting credit information to a bureau shall ensure that such information is timely, complete and accurate.

(5) A digital credit provider who intends to furnish negative information to a bureau with respect to a customer shall, in writing or through electronic means, notify the customer of the intention to submit the negative information at least thirty days before submitting the negative information to the bureau or within such shorter period as the contract between the digital credit provider and the customer may provide:

Provided that a shorter pre-listing notice shall not be less than seven days.

(6) A digital credit provider who has furnished credit information to a bureau shall, within thirty days from the date the information was furnished to a bureau, notify the customer that the customer's credit information has been forwarded to the bureau.

(7) No suit, prosecution or other legal proceedings shall lie against the Bank, credit reference bureau, a digital credit provider or chairperson, director, member, auditor, adviser, officer or other employee or agent of the Bank, credit reference bureau or digital credit provider for any loss or damage caused or is likely to be caused by anything which is done or intended to be done in good faith in pursuance of these Regulations, guidelines or directives issued

hereunder, or under the Banking (Credit Reference Bureau) Regulations, 2020.

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15. (1) A digital credit provider shall not use credit information obtained from a bureau for any purpose other than for reaching decisions on transactions concerning a customer, and on matters concerning an employee or a potential employee of the digital credit provider or for any other purpose as may be authorized under these Regulations or any other written law.

Restrictions on use of credit information.

(2) A digital credit provider shall not release information obtained from a credit reference bureau to any third party except as may be required under these Regulations or any other relevant written law, or to a digital credit provider's appointed agent for the purpose of assisting the digital credit provider in the recovery of any of the digital credit provider's debts.

(3) A digital credit provider shall take measures to safeguard the security of information provided to it by a credit reference bureau, or by it to a credit reference bureau.

#### PART VI — DIGITAL CREDIT BUSINESS

16. (1) A digital credit provider may extend loans to its customers subject to its credit policy and any other requirements issued by the Bank, and clearly state the terms and conditions.

Provision of credit.

(2) A digital credit provider may in its credit policy set parameters for determining borrower credit limits.

17. (1) A digital credit provider shall not introduce a new digital credit product to the market or vary the features of an existing product without the Bank's prior written approval.

Product approval

(2) A digital credit provider shall notify its customers of any variations in product features at least thirty days before the variations take effect.

18. A digital credit provider shall not advance credit to a customer before it has taken reasonable steps to assess the customer's ability to repay the credit facility.

Credit appraisal

19. (1) A digital credit provider shall be limited in what it may recover from a customer with respect to a non-performing loan to the maximum amount under paragraph (2).

Limit on interest recoverable from non-performing loans

(2) The maximum amount referred to in paragraph (1) is the sum of the following—

- (a) the principal owing when the loan becomes non-performing;
- (b) interest in accordance with the contract between the customer and the digital credit provider, not exceeding the principal owing when the loan becomes non-performing; and
- (c) reasonable expenses incurred in the recovery of any amounts owed by the customer.



(3) If a loan becomes non-performing and then the customer resumes payments on the loan and then the loan becomes non-performing again, the limitation under paragraph 2(a) and (b) shall be determined with respect to the time the loan last became non-performing.

(4) This Regulation shall not apply to limit any interest under a court order accruing after the order is made.

20. A digital credit provider, its officers, employees or agents shall not, in the course of debt collection, engage in any of the following conduct against a customer or any other person— Credit collection

- (a) use of threat, violence or other means to harm the person, or his reputation or property if they do not settle their loans;
- (b) use of obscene or profane language sent to the customer or the customer's references or contacts for purposes of shaming them;
- (c) access the customer's phone book or contacts list and other phone records for purposes of sending them messages in the event of untimely payment or non-payment;
- (d) post the customer's personal or sensitive information online or on any other forum or medium for purposes of shaming them;
- (e) make unauthorized or unsolicited calls or messages to a customer's phone contacts and other contacts;
- (f) improper or unconscionable debt collection tactic, method or conduct; or
- (g) any other conduct whose consequence is to harass, oppress, or abuse any person in connection with the collection of a debt.

#### PART VII— CONSUMER PROTECTION

21. (1) A digital credit provider shall generate and issue a receipt or any other acknowledgement of transactions carried out by or with a customer, through electronic means or any other acceptable medium. Transaction receipts

(2) A digital credit provider shall upon request by the customer generate and issue the customer with a comprehensive statement of transactions carried out by or with the customer.

22. (1) A digital credit provider shall establish a complaints redress mechanism, including a dedicated channel for communicating customer complaints, and ensure proper communication of this mechanism to its customers. Customer complaints resolution.

(2) A customer complaint shall be resolved promptly, and where immediate resolution is not possible, within thirty days of a customer reporting a complaint to a digital credit provider.

(3) A digital credit provider shall keep a record of all complaints lodged by customers and the outcome of their resolution.

(4) A digital credit provider who fails to comply with this Regulation shall be liable to assessment of penalties and other administrative sanctions as provided for in these Regulations.

23. A digital credit provider shall put in place systems and processes for purposes of minimizing disruptions and ensuring business continuity.

Business continuity

24. A digital credit provider shall use systems that are secure and reliable, and which ensure information confidentiality, integrity and availability.

Information systems

25. A digital credit provider shall—

Customer information

- (a) prepare and maintain key information document that informs the customer of the fundamental benefits, risks and terms of the product or service, in a summarized form;
- (b) ensure that any information given to a customer on among other things benefits, prices, risks and the terms and conditions; whether in writing, electronically or orally is fair, clear and transparent;
- (c) ensure that information on its products and services is updated and current and easily available at its branches, websites and any other communication channels which it uses;
- (d) ensure that it discloses at its branches, websites, advertisements, promotional materials and any other communication channels which it uses that it is regulated by the Bank;
- (e) disclose its identity in the correspondence, documents and other written instruments that the digital credit provider issues in the course of its business generally or while dealing or contracting with a consumer; and
- (f) educate its customers on its services and products, and in particular, make its customers aware of the need to keep their personal details and information such as Personal Identification Number (PIN) secure.

26. (1) A digital credit provider shall only access and collect such customer information as is reasonably required for a customer's credit appraisal, approval, disbursement and collection.

Access and collection of customer information.

(2) A digital credit provider shall provide the customer with an opportunity, feature or function for opting out of marketing messages by the digital credit provider.

27. (1) A digital credit provider shall provide to the customer the terms and conditions constituting the loan agreement between a digital credit provider and a customer before granting the loan.

Terms and conditions

(2) The terms and conditions referred to in paragraph (1) shall contain the following information—

- (a) the loan amount;
- (b) the loan charges and the circumstances under which they may be imposed;
- (c) interest rate to be charged and whether on a reducing balance or not;
- (d) all other charges applicable to the loan;
- (e) the date on which the amount of credit and all interest, charges, fees or any other liabilities are due and payable, and how they may be calculated;
- (f) total cost of credit which shall include the principal amount, interest, fees, charges and any other liabilities;
- (g) the annual percentage rate of interest; and
- (h) customer complaint handling channels and procedures.

(3) The terms and conditions shall be presented to the customer in a clear, simple and easily accessible format and language.

(4) A digital credit provider shall upon request provide the customer with a copy of the terms and conditions constituting the loan agreement.

(5) A digital credit provider shall not change its terms and conditions or have a provision in the agreement with the customer that varies any provision of the terms and conditions without at least thirty days prior notification to the customer.

28. (1) A digital credit provider shall ensure that any advertisement that it publishes or authorizes to be published does not include any false, misleading or deceptive representation, or is otherwise misleading or deceptive.

False advertisements

(2) Without prejudice to the generality of paragraph (1) a false, misleading or deceptive representation includes—

- (a) a representation that the credit facility has benefits or qualities that it does not in fact have;
- (b) a representation that the digital credit provider has an approval, status, affiliation or connection that it does not in fact have;
- (c) an inaccurate or incomplete representation as to the interest rate, costs or charges payable under a digital credit facility.

29. (1) A digital credit provider shall not change its pricing model or parameters without the prior written approval of the Bank.

Variation of credit terms.

(2) A digital credit provider shall not increase charges or credit limits or have a provision in the agreement with the customer that varies the credit terms under regulation 27(1)(a) to (e) unless the digital credit provider has given at least thirty-days prior notice of the intended changes to the customer and the customer has accepted the changes.

(3) The notification under paragraph (2) shall clearly disclose to the customer the changes in the credit terms and shall incorporate the disclosure requirements under regulation 27.

PART VIII— ANTI-MONEY LAUNDERING AND COMBATING  
THE FINANCING OF TERRORISM

30. A digital credit provider shall provide to the Bank the evidence and sources of funds invested or proposed to be invested in the digital credit business and demonstrate that the funds are not proceeds of crime.

Sources of funds.

31. A digital credit provider shall take reasonable measures to satisfy itself as to the identity of its customers while performing transactions with them.

Customer identity.

32. (1) A digital credit provider shall comply with the Proceeds of Crime and Anti-Money Laundering Act, 2009, and the Prevention of Terrorism Act, 2012 and the relevant Regulations and Guidelines issued thereunder;

Compliance with laws on anti-money laundering and combating the financing of terrorism

(2) A digital credit provider who fails to comply with the Proceeds of Crime and Anti-Money Laundering Act, 2009, and the Prevention of Terrorism Act, 2012 ~~and the relevant Regulations and Guidelines~~ issued thereunder shall be liable to assessment of penalties and other sanctions as provided for under these Regulations.

No. 9 of 2009  
No. 20 of 2012

PART IX— REPORTING REQUIREMENTS AND OVERSIGHT BY  
THE CENTRAL BANK

33. (1) A digital credit provider shall be subject to the Bank's on-site and off-site inspection, audit and monitoring and shall make such periodic reports and returns as may be specified by the Bank.

Reporting requirements, on-site and off-site monitoring

(2) The Bank may require a digital credit provider to furnish it, at such time and in such manner as it may direct, with such information as the Bank may reasonably require for the proper discharge of its functions under these Regulations.

(3) A digital credit provider shall make its premises, systems, books and records readily available to the Bank, or its officers or any person appointed by the Bank for inspection, audit and other supervisory purposes.

(4) A digital credit provider who fails to comply with this Regulation shall be liable to assessment of penalties and other administrative sanctions as provided for in these Regulations.

34. The Bank may disclose any information received in the course of the performance of its duties or responsibilities under the Act or these Regulations to any financial regulatory authority, fiscal or tax agency or fraud investigations agency within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Bank or the requesting financial regulatory authority, fiscal or tax agency or fraud investigations agency:

Disclosure of information.

Provided that the sharing of information with institutions and entities outside Kenya shall only apply where there is a reciprocal arrangement.

35. (1) If, at any time, the Bank has reason to believe that—

Powers of the Bank to advise and direct.

- (a) the business of a digital credit provider is being conducted in a manner contrary to the requirements of the Act, these Regulations or guidelines issued by the Bank or in any manner detrimental to or not in the best interests of its customers or members of the public; or
- (b) a digital credit provider or any of its officers is engaged in any practice likely to occasion a contravention of any of the provisions of the Act, these Regulations or guidelines issued, the Bank may—
  - (i) give advice and make recommendations to the digital credit provider 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 digital credit provider or to secure or **improve compliance with the requirements of the Act, the Regulations or guidelines issued or any other written law or regulations;** or
  - (iii) in any case to which paragraph (b) applies, issue directions to the digital credit provider, officer or other person to cease and desist from such practice.

(2) The Bank may, before issuing any directions under paragraph (1), serve upon the digital credit provider, officer or other person, a notice of such intent specifying the reasons therefore and requiring the digital credit provider, officer or other persons, within such period as may be specified in the notice, to show cause why such direction should not be issued.

(3) A digital credit provider which receives any directions under the provisions of this regulation shall comply with the directions within such period as may be specified in the direction and, if so required, produce evidence of compliance.

(4) The Bank may issue directions to digital credit providers generally for the better carrying out of its functions and in particular, with respect to—

- (a) the standards to be adhered to by a digital credit provider in the conduct of its business; and
- (b) guidelines to be adhered to by digital credit providers in order to maintain a stable and efficient financial system.

#### PART X— ENFORCEMENT

36. (1) Every digital credit provider or any other relevant person shall comply with the provisions of the Act, these Regulations, or any

Duty to comply.

other Regulation or Guideline issued under the Act relating to digital credit business.

(2) In addition to the requirements of the Act, these Regulations and any other regulations made under the Act, every digital credit provider or any other relevant person shall comply with every directive or order given by the Bank, and every condition imposed by the Bank.

(3) Non-compliance with the requirements of paragraphs (1) and (2) shall constitute non-compliance with directions of the Bank and may attract enforcement action under these Regulations.

37. (1) The Bank may impose any or all of the following administrative sanctions with regard to a digital credit provider that fails to comply with the Act, these Regulations or its directives—

Enforcement and administrative sanctions

- (a) monetary penalty on a digital credit provider in such amounts not exceeding five hundred thousand shillings;
- (b) additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which the violation or non-compliance continues.
- (c) suspension from office of the non-compliant digital credit provider's director or officer;
- (d) disqualify a significant shareholder, director or officer from holding any position or office in any licensed or financial institution in Kenya;
- (e) undertake more frequent inspections of that digital credit provider;
- (f) order the digital credit provider to submit to the Bank, within forty-five days, a plan to resolve all deficiencies to the satisfaction of the Bank;
- (g) suspension or revocation of the licence; and
- (h) any other action as the Bank may consider appropriate.

38. The enforcement and administrative sanctions prescribed in regulation 37, and any other administrative action pursuant to these Regulations may be imposed on a digital credit provider or any other relevant person in any of the following instances—

When administrative action may be taken

- (a) violation of or non-compliance with any of the provisions of the Act relating to digital credit business;
- (b) violation of or non-compliance with any other Regulation or Guideline issued under the Act;
- (c) failure, refusal or neglect to comply with any of the provisions of these Regulations;
- (d) failure, refusal or neglect to comply with any guidelines or direction given by the Bank under the Act, these Regulations or any other Regulation, order, or directive issued under the Act; and

- (e) failure, refusal or neglect to comply with any direction or order given, or any condition imposed by the Bank under any other Regulation issued under the Act.

39. (1) In assessing and determining the administrative sanction to apply in respect of a particular violation or non-compliance, the Bank may consider the following factor—

Factors to consider in determining an administrative sanction

- (a) whether the person to be sanctioned or penalized is a natural person or corporate body;
- (b) the nature of the legal or regulatory requirement, direction, order or condition which has been violated or not complied with;
- (c) the nature and severity of the violation;
- (d) the impact of the violation on the digital credit provider, its customer or other person;
- (e) the benefits that could be or may have been derived from the violation;
- (f) the amount of financial loss or other losses suffered or likely to be suffered by the digital credit provider, customer or other person;
- (g) the circumstances under which the violation occurred;
- (h) the financial condition of the digital credit provider or any other person at fault including in terms of size, assets, capital, loan portfolio, annual turnover and any other relevant financial condition;
- (i) the frequency of violation of the same law, other laws, direction, order or condition;
- (j) general level of compliance with the law by the digital credit provider or any other person as demonstrated over a period of time;
- (k) the public interest affected by the violation;
- (l) the identity, rank, job description of the officer of the digital credit provider, or any other person involved;
- (m) whether the violation has been rectified or remedied or can easily be rectified or remedied; and
- (n) such other relevant factor as the Bank may consider.

(2) The provisions of paragraph (1) may be used as a guide in determining the appropriate administrative sanction, but shall not obligate the Bank to impose a less severe administrative sanction or penalty than what is reasonable.

40. The determination of administrative sanctions shall be carried out on a case-by-case basis and different sanctions may be imposed for different violations or against different digital credit providers or any other person:

Determination of sanctions on case-by-case basis.

Provided that any difference in the treatment of digital credit providers or any other person shall be justified by the Bank.

41. (1) If the Bank determines that a digital credit provider or any other person has violated any provision of the Act, these Regulations, or any other regulations or guidelines issued under the Act, or has failed to comply with any direction given, or condition imposed by the Bank, the Bank shall notify the digital credit provider or the person of the violation and invite the digital credit provider or the person to show cause why an administrative sanction should not be assessed and imposed.

Notice to Show Cause

(2) A Notice to Show Cause under paragraph (1) shall—

- (a) describe in general terms the facts or circumstances that constitute the violation or non-compliance;
- (b) state the legal or regulatory requirement which was violated or the direction, order or condition which was not complied with;
- (c) describe the person or entity which may have been involved in the violation if such information is within the knowledge of the Bank;
- (d) notify the digital credit provider or any other person of the intention of the Bank to assess and impose an administrative sanction;
- (e) specify the proposed administrative sanction;
- (f) state the period within which the Notice to Show Cause shall be responded to; which period shall not be less than fourteen days; and
- (g) contain any other relevant information which the Bank may find necessary.

42. Upon receipt of any representations from the digital credit provider or any other person within the specified period, the Bank shall consider the representations made, the principles or factors prescribed in these Regulations and any other available information in determining—

Consideration of representations received

- (a) whether an administrative sanction should be imposed against a digital credit provider or any other person;
- (b) the appropriate administrative sanction to be imposed;
- (c) in the case of a monetary penalty, the amount of monetary penalty to be levied, and whether the penalty should be paid by the digital credit provider or any other person; and
- (d) any other relevant matter.

43. (1) Where the Bank has not received any representation from the digital credit provider or any other person within the specified period or where the representation is received after the specified period, the Bank may proceed to determine and impose the appropriate administrative sanction.

Representation not made or is made out of time



(2) The Bank may upon request by a digital credit provider or any other relevant person extend the time within which the notice to show cause may be responded to.

44. Upon assessment and determination of an administrative sanction, the Bank shall notify the digital credit provider, or any other relevant person of the administrative sanction and shall state—

Notification on determination of administrative sanction.

- (a) the violations for which the determination has been made;
- (b) the nature of the administrative sanction imposed;
- (c) the effective date of the administrative sanction, where applicable;
- (d) the amount of monetary penalty that has been assessed, in the case of a monetary penalty;
- (e) in case of a monetary penalty, the timeframe within which it should be paid to the Bank, and consequences of non-payment;
- (f) any additional sanction or penalty that may apply if the violation continues or if the monetary penalty is not paid within the specified period; and
- (g) any other relevant information.

45. The imposition of one administrative sanction against a digital credit provider or any other relevant person shall not bar the Bank from imposing any other or additional sanctions as is provided for under the Act, these Regulations or any other written law.

Sanction not to affect other forms of sanctions.

46. The Bank may in a Notice to Show Cause or in any other communication require a digital credit provider or any other relevant person—

Rectification of the violation.

- (a) to desist from any act or omission in order to end any continued violation of the Act, these Regulations, or any other regulations or guidelines issued under the Act, or any direction, order or condition imposed by the Bank; or
- (b) to take any action to rectify or remedy any violation which has occurred.

47. Where the Bank requires a digital credit provider or any other relevant person to take a specific action to rectify or remedy a violation, the Bank shall specify the period within which the remedial action should be taken:

Period within which rectification is to be made.

Provided that a digital credit provider or any other relevant person may on their own motion, rectify or remedy any violation.

#### PART XI—REVIEW

48. (1) A digital credit provider or any other relevant person aggrieved by the decision of the Bank under these Regulations, may within fourteen days from the date of notification of the Bank's decision request the Bank to review the decision.

Review.

(2) The request for review under this Regulation shall not suspend the effective date of the Bank's decision, including the commencement of an administrative sanction or requirement for a digital credit provider or any other relevant person to pay a monetary penalty unless the digital credit provider or any other relevant person requests the Bank for such suspension pending the determination of the request for review and the Bank has suspended the commencement of its decision.

(3) Any request for the suspension of the commencement of an administrative sanction shall be made before the effective date of the administrative sanction.

49. A request for review under regulation 48 may be based on any of the following grounds—

- (a) the violation did not take place;
- (b) new facts have emerged which were hitherto not there but have a direct bearing on the findings on the violation; and
- (c) the aggrieved party was not given an opportunity to show cause why the administrative sanction should not be imposed.

50. The Bank may request the applicant to submit such additional information as the Bank may require to enable it determine the request for review.

51. (1) The Bank may within thirty days from the date of receipt of the request for review or any requested additional information, whichever is later, consider and determine the request for review.

(2) The Bank shall if so requested by the digital credit provider or any other relevant person, invite the digital credit provider or any other relevant person for a meeting to hear representations on the request for review.

52. The Bank shall in writing inform the digital credit provider or any other relevant person of its decision and state the grounds for its decision.

## PART XII— OTHER PROVISIONS

53. A digital credit provider or any other relevant person who has violated several provisions of the Act, these Regulations, any other Regulation or Guideline issued under the Act or any direction, order or condition referred to in these Regulations may be penalized for each and every violation.

54. Where the Bank assesses monetary penalties for non-compliance, the monetary penalties prescribed in these Regulations apply to each and every violation and assessment of the penalty may be carried out for each and every single violation.

55. Any unpaid monetary penalty shall constitute a civil debt and may be recovered by the Bank through any lawful process.

Grounds for review.

Request for additional information

Determination of the request for review.

Communication of decision.

Aggregation of monetary penalties.

Application of monetary penalty to each violation

Civil debt

57. (1) A digital credit provider may, with the approval of the Bank, voluntarily liquidate itself if it is able to meet all its liabilities. Voluntary liquidation

(2) An application for the Bank's approval for the purposes of paragraph (1) shall be in such form as may be prescribed.

(3) The Bank may, upon receipt of an application under paragraph (2), approve the application if satisfied as to the solvency of the digital credit provider.

(4) Where the Bank approves an application by a digital credit provider under this Regulation, such digital credit provider shall forthwith cease all its operations except such activities as are incidental to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

(5) The Bank shall upon approval of a voluntary liquidation, follow up with the digital credit provider to ensure smooth execution of the liquidation process.

59. (1) A person who, at the commencement of these Regulations, was conducting digital credit business which is not regulated under any other written law shall apply to the Bank for a licence within six months of publication of these Regulations. Transition

(2) An applicant under paragraph (1) may continue to conduct digital credit business pending determination of the application subject to the Act, these Regulations and any conditions issued by the Bank.



(Attach all necessary supportive documentation; please indicate N/A where requested details are not applicable)

Names of the proposed digital credit provider's:

- a. Bankers, branch and their address .....
- b. Name of law firm and their address .....
- c. Name of Corporation Secretary and their address .....

9. Sources of funds for the proposed business .....

10. Does the digital credit provider hold, or has it ever held any authority from a supervisory body to carry on any business activity in Kenya or elsewhere?

If any such authority has been revoked, give particulars

11. Has the digital credit provider been put under receivership in the past or made any compromise or arrangement with its creditors in the past or otherwise failed to satisfy creditors in full?

..... If so, give particulars .....

12. Has the digital credit provider been the subject of investigation by a government agency during the last three years? .....

If YES, give particulars .....

**DECLARATION**

We, the undersigned, being directors of the digital credit provider, declare that to the best of our knowledge and belief, the information contained herein is complete and accurate. We also certify that the capital to be invested in the digital credit provider is not from proceeds of crime.

Director (Name) .....

Signature..... Date .....

Director (Name) .....

Signature ..... Date .....

FORM CBK DCP 2

(r. 4(3)(p))

FIT AND PROPER FORM FOR DIRECTORS, CHIEF EXECUTIVE OFFICER AND  
SENIOR OFFICERS

NB: This form should be duly completed, accompanied by the complete set of documents required under Part III and submitted to the Bank.

## 1. DIGITAL CREDIT PROVIDER

Name .....

Type .....

Proposed position .....

## 2. PERSONAL INFORMATION

(a) Surname ..... Other Names .....

(b) Previous Names (if any) by which you have been known:  
.....  
.....

Reasons for change of names .....

(c) Year and Place of birth: .....

(d) Nationality and how acquired .....

(e) Personal Identification Number (PIN) .....

(f) (i) Identification Card number and date of issue .....

(ii) Passport number, place and date of issue .....

(g) Postal Address: .....

(h) Physical Address: .....

(i) Telephone numbers: .....

*Educational Qualifications*

	<i>Qualifications</i>	<i>Year Obtained</i>	<i>Examining Body</i>	<i>Grade Obtained</i>
1.				
2.				
3.				

*Professional Qualifications and years obtained*

	<i>Qualifications</i>	<i>Year Obtained</i>	<i>Examining Body</i>	<i>Grade Obtained</i>
1.				
2.				
3.				

(i) Name(s) of your bankers during the last 5 years:  
.....  
.....  
.....(j) Responsibilities of Proposed position  
.....  
.....  
.....

## 3. EMPLOYMENT/ BUSINESS RECORD

<i>Period</i>	<i>Name of Employer/ Business</i>	<i>Position Held &amp; Dates</i>	<i>Responsibilities</i>	<i>Reasons for Leaving (where applicable)</i>

## 4. DESCRIPTION OF PAST AND PRESENT ACTIVITIES IN KENYA AND ABROAD

## 4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

<i>Company's Name</i>	<i>Certificate of registration No.</i>	<i>Number of Shares held</i>	<i>% of Shareholding</i>	<i>Name and address of Beneficial Owner of shares</i>

## 4.2 DIRECTORSHIPS

<i>Company's Name</i>	<i>Certificate of registration No.</i>	<i>Executive or Non-executive</i>	<i>Position held</i>	<i>Date of appointment</i>	<i>Reasons for leaving</i>

## 4.3 MEMBERSHIP TO PROFESSIONAL BODIES

<i>Name of the institution</i>	<i>Membership No.</i>	<i>Position held</i>	<i>Current status of membership</i>	<i>Reasons for leaving</i>

## 5. BORROWINGS

5.1 Have you ever defaulted in your financial obligations in the last five years?

.....  
 .....  
 .....

If yes, give details.....

5.2 Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction .....

5.3 Have you ever been disqualified, under any legislation or regulation from acting as a director or serving in a managerial capacity? .....

5.4 Have you, in any country, ever been dismissed from any office or employment, or been asked to resign or resigned from employment or position of trust or fiduciary appointment? If so give particulars .....

5.5 Have you ever been diagnosed as being mentally unfit or of unsound mind? .....

5.6 Have you ever been adjudged bankrupt? .....  
If so, give particulars .....

5.7 Have you ever been convicted of fraud or theft by a court of law in any country? If so, give particulars .....

5.8 Has any entity with which you were associated as a director, shareholder or manager in any country, been in financial distress, made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within three years after you ceased to be associated with it? If so, give particulars .....

5.9 Indicate the names, postal and e-mail addresses, telephone numbers and positions of at least three individuals of good standing who would be able to provide a reference on your personal and professional integrity. The referees must not be related to you, and should have known you for at least five years.

	Name of Referee	Postal Address	E-mail address	Tel no. (s)	Position (where applicable)	Relationship with applicant
1.						
2.						
3.						

5.10 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise for the position(s) held/to be held? The omission of material facts may represent the provision of misleading information .....

**6. DECLARATION**

I am aware that it is an offence to knowingly provide any information, which is false or misleading. I am also aware that omitting material information intentionally shall be construed to be an offence.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Bank should be aware.

I undertake to inform the Bank of any material changes to the information provided herein:



NAME..... POSITION HELD .....

DATED..... AT ..... THIS DAY OF.....

SIGNED.....

**(Applicant)**

(This declaration must be signed in the presence of the witness named below)

**WITNESSED BEFORE ME:**

**COMMISSIONER FOR OATHS/MAGISTRATE**

Name:.....

Signature: .....

Address: .....

Date and Stamp: .....

N.B. The information given in response to this questionnaire shall be kept confidential by the supervisory authorities, except in cases provided for by law.

.....

FORM CBK DCP 3

(r. 4(3)(p))

FIT AND PROPER FORM FOR SIGNIFICANT SHAREHOLDERS

NB: This form should be duly completed, accompanied by the complete set of documents provided under Part III.

1. DIGITAL CREDIT PROVIDER

Name.....

Registration No. ....

2. INFORMATION

(a) Name of the corporate body/individual .....

(b) Previous names (if any) by which you have been known .....

(c) Date of incorporation/birth .....

(d) Country of incorporation/birth .....

(e) Registration No./Identification No /Passport No. ....

(f) Personal Identification No./Tax Registration No. ....

(g) Contacts details .....

(h) Name(s) of your bankers over the last 5 years .....

3. DESCRIPTION OF PAST AND PRESENT ACTIVITIES IN KENYA AND ABROAD

3.1 SOURCES OF FUNDS

1. Please provide details of the actual source(s) of funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the digital credit provider.

- (a) .....
(b) .....
(c) .....

2. Declaration on the sources of funds

Please provide a sworn statement that the funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the digital credit provider are not from proceeds of crime.

4. DECLARATION

I am aware that it is an offence to knowingly provide any information, which is false or misleading. I am also aware that omitting material information intentionally shall be construed to be an offence.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Bank should be aware.

I undertake to inform the Bank of any material changes to the information provided herein

NAME: .....

DATED AT:..... THIS..... DAY OF..... 20.....

WITNESSED BEFORE ME:

SIGNED ..... (Applicant)

COMMISSIONER FOR OATHS/MAGISTRATE

Name: .....

Signature: .....

Address: .....

Made on ..... 20.....

## SECOND SCHEDULE

(r. 4(3)(n), 5(6))

FEES	KSh.
(a) Application for a licence	5,000
(b) On the granting of a licence, and annually thereafter	20,000

## THIRD SCHEDULE

(r. 4(4)(b), 7(2))

## PART A

## CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY OF DIRECTORS AND SENIOR OFFICERS

- (a) For the purposes of determining the professional and moral suitability of persons, proposed to be directors and senior officers of a digital credit provider, the Bank shall have regard to the following qualities, in so far as they are reasonably determinable—
- (i) possession of relevant qualification, knowledge, skills and experience;
  - (ii) ability to recommend and implement sound practices based on previous business experience;
  - (iii) ability to provide objective advice;
  - (iv) ability to avoid conflicts of interest in activities and commitments with other organizations.
- (b) Without prejudice to the generality of the provisions of paragraph (a), the Bank, may have regard to the present and previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person —
- (i) has been convicted of an offence of fraud or any other offence of which dishonesty is an element;
  - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of or malpractices;
  - (iii) was a director or a senior officer of an institution that has been liquidated or is under liquidation or statutory management;
  - (iv) has taken part in any business practices that, in the opinion of the Bank, were fraudulent, prejudicial or otherwise improper (whether unlawful or not);
  - (v) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment;
  - (vi) has defaulted in the repayment of a loan for three consecutive months advanced by a licensed financial institution; and
  - (vii) has been adjudged bankrupt.
- (c) The Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person.

## PART B

## CRITERIA FOR DETERMINING MORAL SUITABILITY OF SIGNIFICANT SHAREHOLDERS

- (a) For the purposes of determining the moral suitability of significant shareholders of a digital credit provider the Bank shall have regard to the previous conduct and activities of the significant shareholder concerned in business or financial matters and, in particular, to any evidence that such person—

- (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
  - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or malpractices by persons engaged in the provision of banking, insurance, investment or other financial services.
- (b) Where the significant shareholder is a corporate entity, its directors and senior officers shall satisfy the criterion specified in paragraph (a) above.
- (c) The Bank may request any person or corporate entity to furnish such information as may be necessary in determining the moral suitability of significant shareholders.

Made on the 14th March, 2022.

PATRICK NJOROGE.  
*Governor, Central Bank of Kenya.*

**EXPLANATORY MEMORANDUM TO  
THE CENTRAL BANK OF KENYA (DIGITAL CREDIT PROVIDERS)  
REGULATIONS, 2022**

(L.N. No. 46 of 2022)

**PART I**

**Name of the Statutory Instrument:** Central Bank of Kenya (Digital Credit Providers) Regulations, 2022

**Name of the Parent Act:** Central Bank of Kenya Act

**Enacted Pursuant to:** Sections 57(1), 57(3) and 57(4) of the Central Bank of Kenya Act

**Name of the Ministry/Department:** Central Bank of Kenya

**Gazetted on:** March 18, 2022

**Tabled on:**

**PART II**

**1. The purpose of the Statutory Instrument**

- 1.1. The purpose of the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022, is to give effect to Sections 57(1), 57(3) and 57(4) of the Central Bank of Kenya Act.
- 1.2. To provide a framework for licensing and supervising digital credit providers (DCPs) not regulated under any other law by introducing a raft of amendments to the Central Bank of Kenya Act.

## 2. Legislative Context

- 2.1. The Regulations are made in line with Sections 57(1), 57(3) and 57(4) of the Central Bank of Kenya Act, and the Statutory Instruments Act. Section 57(1), as read together with Section 57(3) and Section 57(4) of the Central Bank of Kenya Act, empower the Central Bank of Kenya (CBK) to develop regulations for the establishment and operation of DCPs.
- 2.2. The Regulations provide a clear framework for licensing, digital credit business, the sharing of credit information of customers with credit reference bureaus (CRBs), data protection, consumer protection, anti-money laundering and measures for combatting the financing of terrorism, dispute resolution mechanisms, reporting requirements for DCPs, supervision by CBK, penalties for violating the Regulations and reporting requirements.

## 3. Policy Background

- 3.1. The Central Bank of Kenya (Amendment) Act No 10 of 2021 was assented to by His Excellency President Uhuru Kenyatta and published on December 7, 2021. The Act, which became effective on December 23, 2021, has effectively amended the Central Bank of Kenya Act and empowered CBK to regulate DCPs. It has also mandated DCPs to exchange credit information with CRBs, among other provisions.
- 3.2. The Act requires CBK to develop appropriate regulations for DCPs within three (3) months of its coming into force. In this regard, CBK has developed the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022.
- 3.3. The Regulations provide for *inter alia* the licensing, governance, and credit operations of DCPs. They further provide for consumer protection, credit information sharing, and elaborate on the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) obligations of DCPs.
- 3.4. The Regulations seek to address the exponential increase in customer protection concerns about the predatory practices of the unregulated DCPs, and in particular, their high cost of loans, unethical debt collection practices, inadequate disclosure and transparency, breach of data privacy and the abuse of personal information. In addition, the Regulations seek to provide a level playing field in the market by ensuring that DCPs adhere to prudent market conduct.



#### 4. Consultation Outcome

- 4.1. CBK published the draft Regulations in two newspapers of national circulation (Daily Nation and Standard newspapers) and on CBK's website for public comments on December 23, 2021. Comments from about 80 respondents, including the World Bank, the Credit Information Sharing Association of Kenya (CIS Kenya), unlicensed DCPs, lenders, fintechs, advisory firms and individuals were submitted.
- 4.2. CBK collected, collated and comprehensively considered the views of the stakeholders and the general public. Material comments and contributions were incorporated into the draft Regulations, to all extents possible, in so far as they were relevant or material. Many of the stakeholders' comments called for amendments and clarification/explanations to the Regulations. Some comments fell within the realm of operational issues which will be considered during the implementation of the Regulations.
- 4.3. The revised draft Regulations were forwarded to the Attorney General on February 17, 2022, for legislative drafting.
- 4.4. On March 14, 2022, CBK submitted the Regulations to the Government Printers through the Attorney General's Office, for publication in the Kenya Gazette. After publication, the Regulations are to be submitted to the National Assembly through the National Treasury for Parliamentary scrutiny and approval, in accordance with the Statutory Instruments Act.

A summary of the stakeholder statistics engagements is as tabulated:

<b>Level of Engagement</b>	<b>Date</b>	<b>Number of Participants</b>
Publication of draft regulations in two newspapers of national circulation (Daily Nation and Standard newspapers) and CBK's Website inviting comments from stakeholders and the general public.	December 23, 2021	All members of the public
Receipt of stakeholder and public comments following 21 days of public consultation.	January 21, 2022	80
Consideration of comments received by CBK.	February 10, 2022	8
Submission of revised draft Regulations to the Attorney General's Office for legislative drafting.	February 17, 2022	10

<b>Level of Engagement</b>	<b>Date</b>	<b>Number of Participants</b>
Submission of Regulations to the Government Printer, through the Attorney General's Office, for publication in the Kenya Gazette.	March 14, 2022	10
Submission of the Regulations to the National Assembly through the National Treasury for Parliamentary scrutiny and approval.	March 21, 2022	5
Operationalization of the Regulations	March 18, 2022	DCPs and the General Public

## 5. Impact

### 5.1. The Impact on Fundamental Rights and Freedom

The Regulations seek to promote responsible digital lending practices and address the emerging consumer protection concerns noted in the Kenyan digital credit market. These include predatory lending practices, inadequate disclosure and transparency, over-borrowing, unfair treatment of customers and exorbitant interest rates/fees, among others. The Regulations also seek to address infringement of consumer's rights arising from data protection concerns. This is because digital channels, which are relied on for digital lending, collect and use customers' personal data, including sensitive personal data, for marketing and credit scoring purposes. This mostly occurs without the knowledge and consent of the customer, thus breaching the consumer's right to privacy and the right to information.

The Regulations will ensure that consumers have accurate and unbiased information regarding the product offerings by DCPs, which in turn will empower borrowers to make informed decisions and reduces manipulation and mistreatment of consumers by the DCPs. The Regulations will also limit the use of confidential credit information to only authorized purposes. The Regulations also make it mandatory that, where the law does not permit mandatory sharing of credit information of a person, express consent of the person must be sought and obtained before his credit information is obtained and shared. The Regulations do not, therefore, limit or infringe upon any right or fundamental freedom under the Bill of Rights.

## **5.2 The impact on the Private Sector**

The regulation and supervision of the digital credit market is critically important for its future development and its credibility as a development tool. Currently, the Kenyan digital credit market is fragmented with unequal regulatory supervision resulting in an uneven playing field. The regulations aim to level the playing field (fair competition) amongst all participants and reduce predatory lending practices in the Kenyan digital credit market so as to foster healthy competition. This will ensure that consumers are better protected and have a wider range of choices.

The Regulations will foster the financial integrity of digital credit markets. The Regulations prohibit the carrying out of digital credit business without a licence issued under the Act. They have set out the licensing process, as well as documents and information required from DCPs in support of licensing applications. The Regulations also contain provisions on CBK's supervisory and enforcement powers, including reporting requirements and CBK's powers to levy administrative penalties against DCPs for violating the law. The Regulations further require DCPs to comply with the Proceeds of Crime and Anti-Money Laundering Act, 2009 in conducting their business. The requirements include obligations on a DCP to provide evidence of sources of funds invested in its business, and to satisfy itself regarding a customer's identity when transacting to ensure the financial integrity is not compromised.

The Regulations further authorize DCPs to share credit information with CRBs. The Regulations will enable DCPs to obtain and assess the full credit information of loan applicants. Credit reports and credit scores prepared by CRBs will enable lenders to make accurate credit assessments of loan applicants hence they will be able to accurately assess the credit risk of loan applicants.

## **5.3 The impact on the Public**

Consumer protection concerns in the Kenyan digital credit market are on the rise, driven by public concern over high-interest rates, coercive collection practices, and irresponsible lending leading to customer over-indebtedness. To address these concerns, attitudes and practices need to be changed by both the lender and borrower. This will take time. The enactment of the Central Bank of Kenya (Amendment) Act, 2021 and the proposed Central Bank of Kenya (Digital Credit Providers) Regulations, 2022 are important first steps in addressing such problems in the digital credit market. By setting new standards of information disclosure and reigning in deceptive practices, the Regulations have the potential to fundamentally alter relations between consumers and financial institutions for the better.

The Regulations seek to address consumer protection concerns by creating an effective regulatory framework for CBK to regulate the operations of DCPs.

It will oblige the DCPs to implement a comprehensive redress procedure for their customers to address inappropriate collection and lending practices. The Regulations also require DCPs to ensure that customers are sufficiently educated about digital loans and their associated costs and risks. They will require DCPs to comply with a specified format for presenting the loan terms consistently and clearly, that is comprehensible even to (potential) consumers with limited financial literacy.

The Regulations necessitate DCPs to treat customer information with the utmost confidentiality and provide prohibitions against adopting unethical credit collection practices. In this regard, the Regulations bar DCPs from accessing contacts and other personal data that does not affect the lending decision, which in most cases is used to blackmail, debt shame or threaten customers thereby ensuring the dignity of the customer is assured and maintained.

The Regulations require DCPs to ensure minimum transparency and disclosure standards, regardless of whether they use USSD, SIM toolkits, apps, or other mediums for their operations. This will be done by ensuring they disclose the relevant loan terms and conditions including the total cost of credit, benefits and risks associated with the credit facility to their customers. This makes it easier for customers to make informed decisions. Such disclosure should be submitted in simple and comprehensible language to be easily understood by all consumers.

The Regulations will set the threshold of negative credit information at Ksh.1,000 that is reportable to CRBs and will ensure that the many micro-loan borrowers and low-income earners whose default amounts are below Ksh.1,000 will not be listed with CRBs. This will preserve their ability to access more credit to boost their financial situation.

With enhanced consumer protection, it is expected that there will be high demand for digital products offered responsibly to members of the public by DCPs. Increased access to credit will boost the economic power of consumers and this will have a direct impact on the alleviation of poverty initiatives, engagement in income-generating activities, and improvement of livelihoods for many Kenyans.

## **6. Monitoring and review**

- 6.1.** The Central Bank of Kenya will be responsible for the monitoring and review of the framework for licensing and supervision of DCPs. The Regulations may be amended from time to time in future to ensure that they are continually aligned to the dynamic nature of the digital credit business.

## **7. Contact**

- 7.1.** The contact person at the Central Bank shall be the Governor.