

# Legal Alert

## The Business Laws (Amendment) Act 2024

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On December 11, 2024, the President of Kenya assented to the Business Laws (Amendment) Act, 2024, introducing significant changes to various legislative frameworks, including the Microfinance Act, Cap.493C (the **Microfinance Act**), the Banking Act Cap. 488 (the **Banking Act**) and the Central Bank of Kenya Act Cap. 491 (the **CBK Act**).

The Business Laws (Amendment) Act, 2024 came into force on December 27, 2024.

In this alert, we outline the key amendments to the Microfinance Act, Banking Act and CBK Act and some of the key implications of such amendments.

### Key Amendments to the Microfinance Act

#### 1. Changes to the meaning of “non-deposit taking micro-finance business”

- The definition of “non-deposit taking microfinance business” has been updated to mean a “non-microfinance bank business which involves the provision of physical credit”.
- “Physical credit” is defined as a credit facility or arrangement where money is lent or borrowed on the basis of the lender’s acceptance of a movable or immovable security but does not include the lender’s acceptance of a cash collateral.

#### 2. Applicability

- Section 3 has been amended to provide that the Microfinance Act shall apply to a non-deposit taking microfinance business unless exempted under regulations made by the Cabinet Secretary responsible for finance matters. However, such an exemption shall not apply to non-deposit taking microfinance businesses with an annual revenue exceeding KES 500,000.
- The Cabinet Secretary is to make regulations prescribing the conduct of non-deposit taking microfinance businesses.

### 3. Licensing Requirements

Section 4A has been introduced which provides that non-deposit taking microfinance businesses must be registered companies with a primary objective of conducting such business and must be licensed under the Microfinance Act. Failure to comply with this requirement will result in fines or imprisonment.

### 4. Consumer Protection

- A new section 53 requires non-deposit taking microfinance businesses to operate transparently by providing borrowers with clear information on lending procedures, associated financial costs, and their rights and obligations, while ensuring confidentiality of borrower information.
- The new section prohibits harassment, abuse, threats, violence, or the use of obscene language during debt collection or recovery processes.
- Additionally, non-deposit taking microfinance businesses may not collect any interest, fees, charges, penalties, or levies unless these are explicitly agreed upon in a formal agreement with the borrower.

### 5. Transitional Provisions

- Existing non-deposit taking microfinance businesses must apply for a license within 6 months of the commencement of the Business Laws (Amendment) Act 2024 and can continue operations pending determination of their applications.
- A license issued to a non-deposit taking microfinance business prior to the commencement of Business Laws (Amendment) Act 2024 shall continue in force until the expiry of such license.

### 6. Implications

- *Persons carrying on non-deposit taking microfinance businesses must now be registered companies (if registered otherwise), with a primary objective of conducting such business and must be licensed under the Microfinance Act, unless exempted under regulations made by the Cabinet Secretary responsible for finance matters. However, such an exemption is not available to non-deposit taking microfinance businesses with an annual revenue above KES 500,000.*
- *Non-deposit taking microfinance businesses should also adjust their operational procedures, including debt collection, to align with the new consumer protection standards set out in the Microfinance Act.*

## Key amendments to the Banking Act

### 1. Monetary Penalties

- Section 55 has been amended to empower the Central Bank of Kenya (CBK) to prescribe penalties for non-compliance with the Banking Act, Prudential Guidelines, or any directions issued under the Banking Act.
- Institutions or credit reference bureaus (CRBs) may face penalties of up to KES 20 million or three times the gross monetary gain made, or loss avoided through non-compliance, whichever is higher.
- Corporate entities and natural persons may be subject to penalties of up to KES 3 million and 1 million, respectively.
- In addition, the CBK may prescribe additional penalties of up to KES 100,000 daily in each case of continued non-compliance.

### 2. Minimum Core Capital Requirements

The Second Schedule has been amended to prescribe KES 10 billion as the minimum core capital requirement for banks and mortgage finance companies, which shall be achieved progressively as follows:

- **KES 1 billion** by December 31, 2024;
- **KES 3 billion** by December 31, 2025;
- **KES 5 billion** by December 31, 2026;
- **KES 6 billion** by December 31, 2027;
- **KES 8 billion** by December 31, 2028; and
- **KES 10 billion** by December 31, 2029.

**Note:** The amendments have taken into account the Departmental Committee on Finance and National Planning observed that the three-year timeline proposed in the Bill is insufficient for banks to restructure and meet the KES 10 billion core capital requirement. The Committee recommended a phased approach, allowing a maximum of eight years to achieve the target.

### 3. Implications

- *The amendments strengthen CBK’s oversight by introducing substantial fines for non-compliance with the Banking Act and related guidelines. These penalties, including daily fines for continued breaches, could impose significant financial and reputational costs on affected institutions and individuals.*
- *The progressive increase in core capital requirements to KES 10 billion will enable compel banks and mortgage finance companies to restructure and raise additional capital to meet the requirements. This may lead to mergers within the industry, capital injections, or strategic adjustments to maintain compliance and competitiveness.*

## Key amendments to the Central Bank of Kenya Act

### 1. Substitution of Digital Lenders with Non- Deposit Taking Credit Providers

Section 2 of the CBK Act is amended by deleting the definitions “Digital Channel, Digital Credit, Digital Credit Business and Digital Credit Providers” and introducing the following new definitions:

<b>Buy Now Pay Later:</b>	An arrangement whereby the consumer purchases goods or assets, whether or not secured on the goods or assets, and pays later in instalments with or without interest.
<b>Credit Provider:</b>	Includes a “non-deposit taking provider.”
<b>Non-Deposit Taking Credit Business:</b>	<p>Means:</p> <p>(a) granting of loans or credit facilities to members of the public or a section of it, with or without interest, and either secured or unsecured on the goods or assets purchased;</p> <p>(b) asset financing whether directly or through a third-party financier;</p> <p>(c) buy now pay later arrangements as determined by the CBK but does not include hire purchase agreements governed by the Hire-Purchase Act;</p> <p>(d) credit guarantees;</p> <p>(e) peer to peer lending under collective investment schemes regulated under the Capital Markets Act. Peer to Peer lending means a form of crowdfunding that uses online platforms to raise;</p> <p>(f) unsecured loans which are paid back with interest; and</p> <p>(g) any other activity as the CBK may determine to be non-deposit taking credit business for purposes of this Act.</p>
<b>Non-Deposit-Taking Credit Provider:</b>	A person licensed by the CBK to carry on non - deposit taking credit business using own funds and assets but does not include the national government or county government.

## 2. Powers of the CBK in relation to non-deposit taking credit providers

Section 33R of the CBK Act is amended to grant the CBK authority to regulate non deposit taking credit providers by:

- registering, licensing and regulating non-deposit-taking credit providers which are not regulated under any other written law;
- approving channels through which non-deposit taking credit business may be conducted;
- determining parameters for pricing of credit;
- supervising non-deposit taking credit providers in such manner as the Central Bank of Kenya may prescribe;
- prescribing an enforceable Code of Conduct binding all non-deposit taking credit; and
- suspending or revoking a licence.

## 3. Additional circumstances under which CBK may suspend or revoke licences

Section 33S of the CBK is amended by introducing additional circumstances under which the CBK may suspend, or revoke licences as follows:

- the licensee failing to conclusively address a customer's complaint within the time and in the manner prescribed by the CBK under the CBK Act or as the CBK may direct;
- the licensee failing to comply with a directive of the CBK; or
- the licensee imposing unreasonable or unjustifiable charges on a loan.

## 4. Introduction of credit guarantee business under the regulation of the CBK

### (a) Key Definitions

- A new part VID is introduced to the CBK Act to provide for the registration, licensing and regulation of credit guarantee businesses.
- A **credit guarantee business** is defined as 'the business of providing a guarantee to a lender through absorption of all or a portion of the lender's risk on a credit facility made to a borrower in case of default'.
- A **credit guarantee company** is defined as 'a company limited by shares incorporated or registered under the Companies Act and licensed by the Central Bank to carry on credit guarantee.'

**Note:** *Only companies limited by shares will be recognised for registration to conduct credit guarantee business.*

### (b) Registration

- A person who seeks to carry out credit guarantee business must apply to the CBK, pay the prescribed fees and upon successful application, be issued with a certificate of registration.
- A person who carries on a credit guarantee business without being registered, may face a fine of up to KES 1 million or imprisonment for up to 3 years upon conviction. Body corporates may be subject to a fine of up to KES 10 million.

### (c) Licensing

- Once registered, the person or the corporate entity will be required to apply to the CBK for a licence and pay the prescribed fees. Notably, the following are exempted from applying for a licence:

1. A credit guarantee provider owned by a foreign government, and that has entered into an agreement with the Government for the purpose of supporting access to financial services in Kenya;
  2. A credit guarantee provider owned or supported by international financial institutions and that has entered into an agreement with the Government to provide credit guarantee services to targeted groups, sectors, or regions for a specified period; or
  3. A credit guarantee company registered outside Kenya and that has entered into a partnership with a financial institution in Kenya to provide credit guarantee services.
- Licensed credit guarantee companies will be required to pay an annual licensing fee.
  - A transitional period of five years is prescribed to initiate the registration and licensing of credit guarantee companies.
  - Operating a credit guarantee business without a license constitutes an offense, punishable by a fine of up to KES 1 million for individuals and up to KES 10 million for corporate entities.

#### **(d) Powers of the CBK in relation to credit guarantee companies**

The CBK has the following powers in relation to credit guarantee companies:

- to issue, suspend or revoke licenses;
- to determine capital adequacy requirements for credit guarantee companies;
- to prescribe minimum liquidity requirements for credit guarantee companies;
- to set out permissible and prohibited activities;
- to supervise credit guarantee companies;
- to impose administrative or monetary sanctions; and
- to prescribe regulations for conduct of the credit guarantee business.

#### **5. Implications**

- *These amendments to the CBK Act broaden the scope of lenders regulated by the CBK by introducing an expanded definition of “non-deposit taking credit providers,” addressing the previous limitations in the definitions of “digital credit” and “digital credit providers.” The inclusion of credit guarantee businesses under CBK’s regulation promotes financial inclusion, though it may result in higher compliance costs.*
- *The overall impact could lead to market consolidation, as smaller players struggle to meet the new requirements, while fostering sustainable credit practices and contributing to a more stable financial sector.*
- *It is also not clear whether persons carrying on Non-Deposit Taking Credit Business under the CBK Act would be deemed to be carrying on non-deposit taking micro-finance business under the Microfinance Act. Perhaps the distinction will be properly addressed in the amended regulations under each of the relevant statutes.*

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