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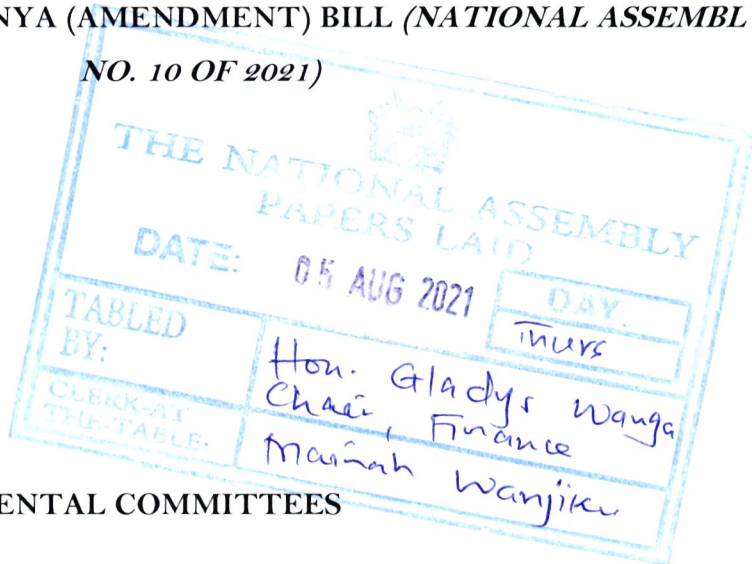


REPUBLIC OF KENYA THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021 DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON-

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2021)



CLERKS CHAMBERS DIRECTORATE OF DEPARTMENTAL COMMITTEES PARLIAMENT BUILDINGS NAIROBI

AUGUST 2021

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021) which was published on 6th April 2021.

The Bill went through the First Reading on 11th May 2021 and was thereafter committed to the Departmental Committee on Finance and National Planning for review and report to the House pursuant to Standing Order 127.

The Bill has seven (7) clauses and seeks to amend the Central Bank of Kenya Act to provide for licensing of digital credit service providers who are not regulated under any other law. Currently, there is no legal framework governing digital borrowing platforms. As such, the Central Bank of Kenya will be obligated to ensure that there is a fair and non-discriminatory marketplace for access to credit.

Following placement of adverts in the print media on 21st May 2021 requesting for comments on the Bill from the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received eleven (11) written memoranda from stakeholders. The Committee discussed the Bill with stakeholders on Monday, 12th and Tuesday, 13th July 2021 at Emara Ole Sereni Hotel in Nairobi where ten (10) stakeholders attended the meeting.

The stakeholders were in support of regulation of the digital lending industry (DLI). Most stakeholders proposed that the timeline within which digital lenders should comply with the law after enactment should be increased from six to nine months. Some stakeholders proposed that CBK should only register digital lenders as opposed to licensing them as provided in the Bill. Most stakeholders were opposed to the proposal to grant CBK powers to subject digital lenders to prudential type of regulation and to set the capital requirements because digital lenders are not deposit taking institutions and therefore do not pose any risk to depositor's funds as would other traditional banking and microfinance institutions. The stakeholders' comments on the Bill are contained in Part III of the Report. All the stakeholders' comments were considered in determining the Committee's proposed amendments.

While considering the Bill, the Committee noted that there is need for the three regulators namely; Central Bank of Kenya, Communication Authority of Kenya and Office of the Data Protection Commissioner to work closely to ensure that borrowers' data is protected. Further, the Committee observed that timelines within which CBK is supposed to issue a license after a request is lodged by a digital lender had not been provided for in the Bill. Details of the Committee's proposed amendments are contained in Part VI of the Report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Central Bank of Kenya (Amendment) Bill, 2021. The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all the stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who played a significant role towards scrutiny of the Bill and production of this report.

It is my pleasure to report that the Committee has considered the Central Bank of Kenya (Amendment) Bill (*National Assembly Bill No. 10 of 2021*) and have the honour to report back to the House with recommendation that the Bill be approved with amendments.

Hon. Gladys Wanga, CBS, MP

Chairperson, Departmental Committee on Finance and National Planning

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows:

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
- iii. **To study and review all the legislation referred to it;***
- iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);*
- vii. To examine treaties, agreements and conventions;*
- viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- x. To examine any questions raised by Members on a matter within its mandate.*

1.2 COMMITTEE'S SUBJECTS

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
 - i. National Treasury and Planning
 - ii. State Department for Devolution
 - iii. Commission on Revenue Allocation
 - iv. Office of the Controller of Budget
 - v. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was re-constituted by the House in July, 2020 and comprises of the following Members:-

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County
ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Jimmy O. Angwenyi, MGH, MP
Kitutu Chache North Constituency
Jubilee Party

Hon. Christopher Omulele, CBS, MP
Luanda Constituency
ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu East Constituency
Independent Member

Hon. Daniel Nanok, MP
Turkana West Constituency
Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
Siaya County
ODM Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP
Molo Constituency
Jubilee Party

Hon. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joshua Kandie, MP
Baringo Central Constituency
MCC Party

Hon. Stanley Muthama, MP
Lamu West Constituency
MCC Party

Hon. Edith Nyenze, MP
Kitui West Constituency
WDM-K

Hon. Catherine Waruguru, MP
Laikipia County
Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency
Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP
Wajir South Constituency
Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency
Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency
Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following officers:-

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Ms. Laureen O. Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Christine Maeri
Audio Officer

Mr. Vitalis Augo
Office Assistant

PART TWO

2 OVERVIEW OF THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (*NATIONAL ASSEMBLY BILL NO. 10 OF 2021*)

2.1 INTRODUCTION

6. Digital credit in Kenya has become a tool for granting formal credit for households and small businesses to manage their day-to-day expenses as well as manage weekly transactions. This has improved financial inclusion for Kenyans. Even with the growing number of digital credit providers it has become necessary for regulation of this industry due to the growing number of concerns have been raised regarding rising household debt levels and defaults and the issue of private data misuse.
7. The penetration of mobile money in Kenya has also led to the widespread use of digital credit as a result new financial technology companies *popularly referred to as fintechs* entering the market. The growth in digital credit access has also seen traditional brick-and-mortar banks launch specific products that are targeted to be offered on digital applications.
8. Due to the myriad challenges posed by the unregulated digital credit products, it has become necessary to develop a sound regulatory framework that will ensure that the service providers are licensed by the Central Bank of Kenya through the introduction of the Central Bank of Kenya (Amendment) Bill, 2021.
9. The principle object of the Bill is to amend the Central Bank of Kenya Act to provide for licensing of digital credit service providers who are not regulated under any other law.
10. Currently, there is no legal framework governing digital borrowing platforms. As such, the Central Bank of Kenya will have an obligation of ensuring that there is a fair and non-discriminatory marketplace for access to credit.

2.2 ANALYSIS OF THE BILL

The Bill proposes the following amendments:-

11. **Clause 1** of the Bill provides for the short title.
12. **Clause 2** of the Bill provides for definition of the terms used in the Bill including “*digital channel*”, “*digital credit*”, “*digital credit business*”, “*digital credit provider*” and “*specified digital credit provider*”.
13. **Clause 3** of the Bill gives CBK powers to license and supervise digital credit providers that are not regulated under any other written law.
14. **Clause 4** of the Bill provides for the powers of Central Bank of Kenya to make regulations on among other issues such as licensing of digital credit providers, supervision of digital credit providers and suspension and revocation of licences.
15. **Clause 5** of the Bill provides that every digital credit provider Central Bank of Kenya shall furnish to the Bank, at such time and in such manner as the Bank may prescribe, any information and data

the Bank may reasonably require for the proper discharge of its functions under the CBK Act. This provision is part of function on information and data gathering for proper supervision of digital lenders.

16. **Clause 6** of the Bill provides for the making of Regulations to operationalize the Act particularly on matters relating to the registration requirements for digital credit businesses, management requirements for digital credit providers, credit information sharing, and reporting requirements for digital credit providers.
17. **Clause 7** is a transitional clause whereby Regulations required to operationalizing the Act shall be made within three months and that those business that are currently providing credit facilities or loan services through a digital channel and are not regulated under any other law will be required to register with Central Bank of Kenya within six months of coming into force of this Act.

PART THREE

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

18. Following the call for memoranda from the public through the placement of adverts in the print media on 21st May 2021 and vide a letter REF: NA/DDC/F&NP/2021/26 dated 6th July 2021 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:-

- i. Office of the Data Protection Commissioner
- ii. Communications Authority of Kenya
- iii. Institute of Certified Public Accountants of Kenya (ICPAK)
- iv. Digital Lenders Association of Kenya (DLAK)
- v. The Kueq Limited
- vi. Safaricom PLC
- vii. PricewaterhouseCoopers Limited
- viii. Lawyers Hub
- ix. ECM Consulting Group LLP
- x. Anjarwalla and Khanna LLP
- xi. Alternative Circle Limited/Okolea/ CM Advocates LLP
- xii. Central Bank of Kenya (CBK)

The stakeholders submitted as follows:-

3.1 OFFICE OF THE DATA PROTECTION COMMISSIONER

The Data Commissioner, Mrs. Immaculate Kassait appeared before the Committee on Monday, 12th July 2021 and submitted as follows, **THAT—**

19. Clause 2 of the Bill be amended by defining the word “*the bank*” under definition of the term “*digital channel*” and definition of the term “*digital credit provider*”. This is because use of the word “*the bank*” under definition of the term “*digital channel*” creates confusion. It is not clear whether it’s referring to CBK.

Committee’s Observation

The proposal was rejected because the Central Bank of Kenya Act defines “The Bank” as Central Bank of Kenya.

20. Clause 3(d) (a) insinuates double regulation as it is not clear which law the digital money lender should abide by. The Bill should be the overarching and the only law on licensing and conduct of digital lending where other laws exist, they should be harmonized to avoid double regulation and confusion to users of the Bill.

Committee’s Observation

The Committee observed that the clause seeks to make it clear that some of the functions, amongst other functions of the Central Bank of Kenya, is to regulate unregulated digital credit service providers that is amongst other functions as provided by the CBK Act. The

clause is intended to bring the unregulated digital credit facilities under the ambit of the CBK.

21. The matters listed under clause 33R and sub-clauses 6(3) (a) to (j) are substantive in nature and cannot be provided for under regulations. A framework should be provided under the text of the Bill and the specific matters may be provided for under regulations. This is to avoid future amendment of the law vide regulations.

Committee's Observation

The Committee noted some aspects needed to be reviewed so that there is clarity on the aspects that the CBK can make regulations to regulate service providers while at the same not stifling innovation.

22. Sub-clause 6(3) (f) should be deleted. Provision should be made that development of regulations under sub-clause 6(3) (f) relating to credit information sharing shall be developed in consultation with the Data Commissioner. The Office of the Data Commissioner has the mandate under the Act to make regulations and sector guidelines. This provision therefore creates a duplication and conflict with the Data Protection Act, 2019.

Committee's Observation

The Committee rejected the proposal for the deletion of Sub-clause 6(3) (f) but instead enhanced the provision to ensure CBK makes regulation relating to data privacy in consultation with the Data Commissioner.

23. The Bill does not cross reference the Data Protection Act, 2019. As such an amendment should be made to require compliance with the Data Protection Act, 2019 prior to licensing especially since money lending institutions handle a lot of sensitive data of the data subjects and other third parties. This is to protect the rights of a data subject and others.
24. The ease of doing business and technological innovation should be safeguarded while balancing the right to privacy under Article 31 of the Constitution as read together with the Data Protection Act. The Bill should be amended to balance the ease of doing business, technological innovation and the right to privacy. This is to ensure that businesses thrive and personal data is protected at the same time.

Committee's Observation

On paragraph 23 and 24 above, the Committee noted that the issue of data protection is very important in digital lending and therefore adopted their proposal. The Committee proposed an amendment to among other requirements for licensing, the digital credit providers will also be required to provide a certificate of compliance with the Data Protection Act. The proposal was therefore adopted.

3.2 COMMUNICATIONS AUTHORITY OF KENYA

The Ag. Director General of the Communications Authority of Kenya appeared before the Committee Monday, 12th July 2021 and made her presentation on the Bills. She proposed **THAT** —

25. sub-clause 3(da) be amended by deleting the words “*any other written law*” for clarity as the same could be interpreted to the detriment of the proposed amendment. There exists various laws and frameworks under which businesses are regulated and operated. A digital credit business can be regulated by various agencies and still be required to comply with the proposed amendments. The section should therefore be amended for clarity.

Committee’s Observation

The proposal was rejected by the Committee because some digital lenders are already regulated under other laws like the Insurance Act, Cap. 487 and the Capital Markets Act, Cap. 485A.

26. Regulation of digital lending should be amended to reflect regulation of digital credit service providers. The prescribed period within which to make regulations should be removed. This is for clarity and consistency in text and spirit and to allow adequate time to develop regulations.

Committee’s Observation

The Committee agreed to allow digital credit providers more time to register with the CBK.

3.3 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

The Institute of Certified Accountants of Kenya appeared before the Committee meeting on Monday, 12th July 2021. The Institute was represented by the Chief Executive Officer, CPA Edwin Makori alongside other officers and submitted as follows, **THAT**—

27. The Bill attempts to introduce direct regulation of the digital financial sector in Kenya and also expand the CBK regulatory jurisdiction over non-digital financial products and services. This therefore gives the CBK power to regulate and supervise the conduct of providers of digital financial products and services; digital credit service providers; providers of financial products and the conduct of financial services.
28. The financial sector has experienced evolution and emergence of different players that have been regulated under the existing frameworks such as the Capital Markets Act, Chapter 485A of the laws of Kenya and the Insurance Act, Chapter 487 of the laws of Kenya. The Bill therefore intends to make the Central Bank of Kenya a super regulator which mirrors the new industry-wide prudential regulator.
29. The evolution and growth of innovation particularly fintech products and services in the market has brought valid regulatory concerns that need to be addressed. However, caution must be taken to establish clear and targeted regulatory interventions that will address the consumer protection and public interest needs whilst maintaining a conducive environment for innovation and market growth.
30. The unregulated financial sector requires some legislative supervision to ensure they operate within the ambit of clearly defined structures and guidelines. According to FSD, digital loans

accounted for 54% of the market yearly loans making consumer protection integral in regulation. In the study, it was found that several borrowers did not adequately understand the costs of borrowing which other than the interest, include; service fees, rollover fees and excise duty. The monthly interest rates charged by these platforms are extremely high since when annualized they come to a rate of over 150% which is well over what commercial banks currently offer. This is exploitative to the consumers who may not otherwise be able to access more formal lines of credit from commercial banks or other financial institutions.

31. The reform is therefore timely to the extent that it establishes a framework through which the unregulated FSD will be brought under regulation. The legal framework to be established to govern digital financial services in Kenya requires a multifaceted approach that brings on board the different players in the sector, each with specific regulatory role assigned to execute. This will avoid overlap of regulations and laws with other regulated financial services.
32. This means that other regulators must be brought on board to take care of the three interrelated aspects of digital financial services: communication, banking, and lending. They include Communications Authority of Kenya, Credit Reference Bureau, Data Protection Act, Competition Authority of Kenya, and Central Bank of Kenya.
33. The regulation of digital financial services and fintech firms is not a completely new phenomenon. Drawn from practice in other jurisdictions, it is high time Kenya adopted the best practices that would not only regulate digital financial services provision but also enhance innovation in the sector to address the versatile market needs.
34. Clause 3 should be amended to read as follows, “*License, regulate and supervise digital credit providers and digital credit channels*”. This is to provide clarity on the implementation of the digital lending regulation. It will also bring into the realms of regulation the digital lending channels.

Committee’s Observation

The Committee agreed to the proposal.

35. The Bill should be amended by inserting the following new paragraphs immediately after 33R on suspension or revocation of licenses: “*The Bank shall suspend or revoke a license on the following grounds: (a) The licensee does not meet the qualifications prescribed by CBK for digital lending; (b) The licensee gave false or incomplete information during the registration process; and (c) The licensee has violated the provisions of the CBK Act on digital lending Regulation*”. This is in line with the best practice as adopted by the United States in prescribing conditions under which license revocation and suspension can be executed.

Committee’s Observation

The Committee agreed to the proposal

36. The Bill should be amended by inserting the following new paragraphs immediately after (f); “*The Central Bank may revoke or suspend any license issued under this Act by sending a notice to the licensee. Any such notice shall include: (a) A statement of the time and nature of the hearing; (b) A statement of the legal authority and jurisdiction under which hearing is to be held; (c) A reference to the particular sections of the general statutes, regulations, rules or orders involved; (d) A short and plain statement of the matters asserted; (e) A statement indicating that the licensee may file a written request for a hearing on the matters asserted within fourteen days of the receipt of the notice*”. For clarity and fairness in the application of revocation or suspension of a license.

Committee’s Observation

The Committee agreed to the proposal

37. The Bill should be amended by inserting the following new provision, “*The bank shall have power to set the interest rate charged by the digital lenders*”. This removes the general assumption that CBK has the power to control digital lending rates.

Committee’s Observation

The Committee agreed to granting of powers to CBK to determine pricing parameters. This will ensure that CBK does not necessarily set the lending rate but rather provide parameters within which digital credit providers shall set their cost of credit.

38. Clause 33S (3) should be amended by to read as follows: “*A person who contravenes the provisions of this section commits an offence and shall be liable upon conviction to imprisonment of a term not exceeding five years or a fine not exceeding ten million or to both*”. This will enhance compliance to the provisions in the law and discourage the would-be violators.

Committee’s Observation

The proposal was rejected because the penalty imposed (jail term of five years and fine of ten million) is too high. The Committee retained the penalty as proposed in the Bill.

39. The Bill should be amended in Clause 6 by inserting the following new sub-clause immediately after (i): “*Dispute resolution and appeal mechanisms*”. This is to provide grounds and elaborate procedures for appeal of the Bank’s decisions and a dispute resolution mechanism.

Committee’s Observation

The Committee adopted their proposal and made provision for dispute resolution mechanism.

40. The Bill should be amended in Clause 7 to read as follows: “*Any person who, before coming into force of this Act was in the business of providing credit facilities or loan services through a digital channel and is not regulated under any other law, shall register with the Bank within three months of coming into force of this Act*”. This is to reduce the risks associated with a longer time lag before registration for regulation with the Bank

Committee's Observation

The Committee rejected the proposal because digital lenders will require adequate time to comply with the law.

3.4 DIGITAL LENDERS ASSOCIATION OF KENYA (DLAK)

The Digital Lenders Associations (DLAK) appeared before the Committee on Monday, 12th July 2021. DLAK was represented by the Chairman, Mr. Kevin Mutiso and other members of the association and submitted as follows, **THAT—**

41. The Association agrees that constructive regulation is necessary for the Digital Lending Industry (DLI) but any future framework should be drawn upon global best practice.
42. The provisions concerning the non-applicability to digital lenders on the prudential requirement. This is because DLIs are not deposit-taking institutions and therefore the prudential requirement are not necessary. This is to provide clarity on Bill application.

Committee's Observation

The Committee agreed to the proposal.

43. The Bill should provide for a registration process instead of a license. This is because the registration process is a common practice for the digital lenders regulations implemented in specific jurisdictions like Spain, Poland and Australia. This is supported by the conclusions of the recent comparative study on the regulation of digital lending prepared by PWC. They proposed that the register should be managed by CBK. This approach will have less impact on the taxpayer than a licensing regime.

Committee's Observation

The Committee rejected the proposal by DLAK that CBK should only register and not be involved in licensing. Licensing of digital lenders is necessary in ensuring that they are properly regulated.

44. There is need for full disclosure to all customers on the terms and conditions of all loans including information on the pricing of loans prior to making the application and before they make conclusion of the loan agreement. The Bill does not propose any pricing caps on the digital products.

Committee's Observation

The Committee agreed that it is necessary that the terms and conditions be fully disclosed for purposes of consumer protection. The Committee also proposed an amendment for CBK to make Regulations to determine parameters for pricing of digital credit

45. The regulation should be non-prudential and there should be no capital adequacy requirements. DLIs do not take deposits and lend off their investments, profits and capital and as such, they do not pose a prudential risk and thus, capital adequacy requirements or prudential regulations are not a reasonable framework for the industry. Consumer protection type of regulations that concentrate on lending and debt collection practices would be more ideal to the sector as DLIs do not pose a systemic risk to the market as they do not take deposits like banks or SACCOs.

Committee's Observation

The Committee agreed to the above proposal by DLAK as the digital credit business are not deposit taking and therefore it is not necessary for CBK to regulate on capital adequacy and minimum liquidity requirements. Digital lenders pose no risk to public funds. The Committee therefore deleted the provisions relating to these aspects.

46. The current laws on anti-money laundering and measures for countering financing terrorism regulate DLIs too. It is therefore not necessary to issue a specific regulation on that matter. Additionally, the provision allows CBK to interfere with the mandate of the Financial Reporting Centre. The same applies to the Data Protection Act which already applies to all entities providing services in Kenya regardless of their activity.

Committee's Observation

The Committee observed that there was need for CBK to make regulations to counter anti-money laundering and terrorism financing. However, CBK will make the regulations in consultation with relevant agencies. With regards to data privacy, CBK will make regulations making due regard to the role of the Data Commissioner as provided for in the Data Protection Act.

47. The Bill should be amended to provide that DLIs will be entitled to receive reports from Credit Reference Bureaus (CRBs) and to submit the reports with credit information to CRBs too. This is because DLIs were locked out of the credit reporting ecosystem. Many Kenyans lost the credit history reports that would enable them to obtain credit at lower risk-adjusted rates.

Committee's Observation

The Committee agreed to the above proposal so that the digital lenders are allowed to disclose any positive or negative information of its customers to the licensed credit reference bureaus. The information so provided must be, only that which is necessary for the discharge of the functions of the digital lenders and the licensed credit reference bureaus.

48. Given the heavy workload and list of priorities CBK is facing and the need for thoughtful implementation of the law subject to an open process, they proposed: Extending the CBK rule making period to between 6 and 9 months; and extending the licensing application period to 12 months from the enactment of the new regulations for DLIs. This will prevent chaotic and hurried implementation which will also prevent regulation from restricting capital access as Kenya seeks to emerge out of the COVID-19 Pandemic.

Committee's Observation

The Committee agreed to increase the timelines for the licensing application period for the DLIs to comply with the Regulations to be published by CBK.

3.5 THE KUEQ LIMITED

The Co- Founder of Kueq Limited, Mr. Aristarichus Weru appeared before the Committee on Monday, 12th July 2021 and submitted as follows, **THAT—**

49. Sub-clauses (dc) and (dd) capture many entities, products and services that are already offered by traditional banks. The traditional financial products and services have not been articulated in the principal object or other objects of the CBK Act.

Committee's Observation

The Committee noted that the Sub-clauses (dc) and (dd) being referred to were contained in the Central Bank Amendment Bill (*National Assembly Bill No. 21 of 2020*) which having being re-published to now become the Central Bank Amendment Bill (National Assembly Bill No. 10 of 2021) did not have the aforementioned clauses.

The Committee however, observed that the products offered by the traditional brick and mortar banking institutions are already regulated. The intention of the Bill is to regulate those that are not under the purview of any regulator.

50. Given that the financial sector is regulated by various laws and bodies, different laws can be amended to accommodate digital financial products and services which will be a very tedious process given the many laws. Alternatively, the process of enacting a new law, 'Digital Financial Services and Products Act' can be initiated in order to address the amendments.

Committee's Observation

The Committee observed that regulation of the digital credit services sits proper within the mandate of CBK as far as financial services are concerned. As such, it may not be necessary at this point and time to come up with a new law and given the urgency to regulate digital lending ecosystem so as to protect both consumers and the lenders.

3.6 SAFARICOM PLC

Safaricom PLC submitted a written memorandum vide their letter Ref: LSS/M-PESA/Legislation, They submitted as follows, **THAT—**

51. The words '*digital financial product*', '*digital financial service*', '*financial product*' and '*financial service*' are broadly defined and encompass products that are currently already regulated by other sectoral laws and regulators. They should therefore be aligned with the specific statutes i.e. Capital Markets Authority Act, Consumer Protection Act, Insurance Act e.t.c.

Committee's Observation

The Committee observed that the terms '*digital financial product*', '*digital financial service*', '*financial product*' and '*financial service*' are not contained in the current Bill. The terms were being referred to by the Central Bank Amendment Bill (National Assembly Bill No. 21 of 2020) and since it was re-published into Central Bank Amendment Bill (National Assembly Bill No. 10 of 2021) the terms were left out so that it was succinctly clear that the intention of the amendment is to cover the unregulated products.

52. There needs to be inserted definitions for '*digital credit providers*' and '*digital credit service providers*' so as to provide clarity on the persons to whom the Bill applies. The Bill as drafted will cover all forms of credit service provision including credit services that are already regulated by CBK under the Banking Act.

Committee's Observation

The terms were already covered by the Central Bank Amendment Bill (National Assembly Bill No. 10 of 2021) hence no need to insert. Therefore the proposal was rejected by the Committee

53. The Bill should include provisions clearly stating whether its provisions apply to digital credit products already regulated under other provisions of laws such as the Banking Act and attendant Prudential Guidelines as well as the Sacco Societies Act as well as the Sacco Societies (Deposit-Taking Sacco Business) Regulations. This is because there needs to be a distinction between banking and non-banking digital credit products, digital credit product providers and digital credit services in order to create certainty in application of the law.

Committee's Observation

The intention of the Bill is clear and is contained the memoranda for objects and reasons is to cover the unregulated digital credit products. Therefore there is no need for inclusion of any provision as the Bill seeks to exempt products that are regulated under other written laws.

3.7 PRICEWATERHOUSECOOPERS LIMITED

PWC Ltd appeared before the Committee on Monday, 12th July 2021 to make a presentation on behalf of Digital Lenders Association of Kenya. The presentation was made by Mr. Christopher Ndegwa who proposed **THAT—**

54. The Bill should be amended in the definition of the word "*digital credit*" to read as follows; "*digital credit means an unsecured credit facility or arrangement where money is borrowed through a digital channel*".

Committee's Observation

The Committee noted that it is important to capture both lending and borrowing in the definition. Their proposal was therefore rejected.

55. The definition of the word "*digital credit business*" should be amended to read as follows; "*digital credit business means the business of providing digital credit*".

Committee's Observation

The proposal was rejected because the intention of the Bill is to allow CBK to license and supervise all digital credit business offered digitally. The proposal will weaken the regulatory aspects of CBK and therefore inclusion the phrase through a digital channel will clarify that CBK will supervise all credit facilities offered through a digital platform.

56. The Bill should be amended in the definition of the word "*digital credit provider*" to read as follows; "*digital credit provider means an entity licensed by the Bank to carry on digital credit business*".

Committee's Observation

The Committee observed that term person refers to both an individual and a company. Their amendment is therefore not necessary.

57. The Bill should be amended by deleting definition of the word "*specified digital credit provider*".

Committee's Observation

The proposal to delete the definition of the term *specified digital credit provider* was rejected since the amendment is intended to clarify that the scope which is to regulate unregulated digital credit providers. The amendment is necessary since the CBK Act already makes provision for the definition of the terms "specified bank"; "specified financial institution"; "specified microfinance bank"; and "specified mortgage refinance company. The definition is therefore intended for clarity.

58. The Bill should be amended in Clause 4 which is a provision relating to Section 33R of the Principal Act and provides for the powers for CBK to regulate the digital lenders, 4 by inserting the following new paragraph immediately after paragraph (g); "*(h) license digital credit providers*".

Committee's Observation

The amendment is already covered by the Bill. The proposal is therefore not necessary.

59. The Bill should be amended in the proposed section 33R to read as follows:- "*(1) A person shall not, in the territory of Kenya carry on digital credit business unless the person has been licensed by The Bank under this Act as a digital credit provider; and (2) A person who contravenes the provisions of sub-section (1) commits an offence and shall, on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both*".

Committee's Observation

The Committee rejected the proposal above as there are other digital credit providers that are regulated by other laws. For instance, Mshwari is covered by other laws and yet falls under the definition of the term digital credit provider. In addition, there are other credit products offered by the traditional banks through the digital platform and are already regulated.

The Committee further objected to the proposal to reduce the penalty relating to contravening the provisions of the proposed Section 33S.

60. The Bill should be amended in the proposed section 33S to read as follows; "*(1) A person, before commencing digital credit business, shall apply to the Bank for a license; (2) An application under this section shall be made in the prescribed form and shall be forwarded to the Bank together with the prescribed fee; (3) An application under sub-section (2) shall be accompanied by: (a) A verified official notification of the company's registered place of business; (b) The prospective place of operation indicating the address of the head office and branches if any; (c) A copy of the valid service agreement between the applicant and the intended telecommunications service providers; and (d) The prescribed fee*".

Committee's Observation

The Committee agreed with the proposal and further made amendments to capture the intentions of the above proposal. The Committee made provisions relating to the requirements for the licensing process as contained in the *Schedule* for the proposed Committee Stage Amendments.

61. The Bill should be amended by inserting the following new section 33T; "*(1) The Bank shall, where an applicant complies with the license requirements set out in (2), issue a license within three months; (2) A*

license issued under this section shall not expire, unless earlier revoked, provided that payment of the annual licensing fee has been made in accordance with section 33U; (3) the Bank shall publish a list of all licensed digital credit providers on the website indicated by the Bank and in any such publication of wide circulation to consumers; and (4) The register of licensed digital credit providers includes at least: (a) the number of entry in the license register; (b) applicant's full name; (c) registered office and address; and (d) registered number in the register of digital credit providers".

Committee's Observation

The Committee agreed with the proposal to include timeline within which CBK must revert back to a licensee and further proposed an amendment to provide for the licensing requirements as well as circumstance under which a license can be revoked. The Committee further proposed an amendment to provide that the license issued by the CBK shall remain valid unless earlier revoked and the licensed digital credit providers will only pay a prescribed annual licensing fee. The Committee also agreed with the proposal to publish details of licensed digital credit providers in the Kenya Gazette and The Bank's Website.

62. Insert the following new section 33U; *"(1) The holder of a license issued under section 33T shall pay the annual license fee within such time period as shall be prescribed by the Bank"*.

Committee's Observation

The Committee agreed to the proposal.

63. The Bill should be amended by inserting the following new section 33V; *"(1) The Bank may, by notice in writing, revoke or suspend the license of a digital credit provider, provided that the suspension may be made for a maximum period of thirty business days, if the licensed digital credit provider: (a) becomes insolvent; or (b) fails to comply with the provisions of this Act concerning the digital credit providers; or (c) ceased to conduct the digital credit business covered by the license, and in particular does not conduct, due to circumstances dependent on the digital credit provider, for at least twelve consecutive months; (2) The Bank shall, before suspending a license under sub-section (1), give a digital credit provider not less than thirty days' notice, to make any representations to the Bank or remediate the breaches specified by the Bank; (3) A licensee whose license is suspended under sub-clause (2) may apply to the Bank within fourteen days to have the decision suspending its license reviewed. The Bank ought to issue a decision within thirty days from receiving the application to review the suspension decision; (4) The Bank shall before the revocation of the license submit a written warning to the digital credit provider that if the violation of the provisions in (1) (b) are repeated within the same calendar year, the procedure of revoking the license will be initiated; (5) The license revocation after the procedure initiated in (4) may be preceded by a suspension in accordance with sub-section (2); and (6) Where the Bank's order to revoke a license is issued, the procedure set out in sub-section (3) applies accordingly"*.

Committee's Observation

The Committee agreed to the proposals as it will provide for provision for revocation of license.

64. The Bill should be amended by inserting the following new section 33X; *"Every digital credit provider shall furnish to the Bank, at such time and such manner as the Bank may prescribe, any information and data the Bank may reasonably require for proper discharge of its functions under this Act"*.

Committee's Observation

The Committee agreed to the proposal as it will provide that the digital credit providers must provide information necessary for effective supervision.

65. The Bill should be amended by inserting the following new section 33Y; *“(1) The Minister shall appoint a Financial Ombudsman whose role shall be to protect the consumers of services provided by digital credit providers; and (2) The Minister shall develop the Regulations outlining the administrative functions and procedures of the Financial Ombudsman”.*

Committee's Observation

The Committee rejected the proposal to appoint a Financial Ombudsman as the CBK will play this role and The Bank has been given powers to make regulations for dispute resolution mechanisms.

66. The Bill should be amended by inserting the following new section 33Z; *“Once a digital credit provider has obtained a license under this Act, it is entitled to submit to the Credit Reference Bureaus reports with credit information concerning their clients, in accordance with the regulation of Credit Reference Bureau Regulation, 2020”.*

Committee's Observation

The Committee agreed to the proposal to allow licensed digital credit providers to disclose any positive or negative information of its customers to the licensed credit reference bureaus as long as the information is relevant in the discharge of the functions of the digital lenders and the licensed credit reference bureaus.

67. The Bill should be amended in sub-section 43(1) of the principal Act by inserting the words *“digital credit providers”* immediately after the words *“specified mortgage refinance companies”*.

Committee's Observation

The proposal was rejected because it is necessary to clarify that the provision will cover the specified digital credit providers. Section 43 of the Principal Act relates to information to be furnished to The Bank. The provision therefore is necessary so as to mandate specified digital credit providers to furnish CBK with information necessary for supervision. Just as it is clear that the provision also covers specified financial institution, specified microfinance bank and specified mortgage refinance companies, the inclusion of the term specified is therefore meant for clarity.

68. The Bill should be amended in Clause 6 as follows: by inserting the following new sub-section immediately after sub-section (2); *“(3) Without prejudice to the generality of sub-section (1), the Bank shall make regulations as are necessary or expedite to give full effect to the provisions of this Act including: (a) prohibited practices; (b) reporting requirements; and (c) offenses and penalties for the digital credit providers who fail to comply with the Regulations issued under this Act, which penalties shall not exceed five hundred thousand shillings and may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues”.*

Committee's Observation

The Committee observed that the above proposal seeks to delete the proposal in paragraph (a) which in effect means that the bank will not make regulations relating to registration. The Committee agreed to replace the word registration with the licensing which makes it

easier for CBK to make specific requirements for licensing. The Committee also observed that the above proposal was seeking a deletion of paragraph (b) which is a provision relating to the management requirements for digital credit providers. The Committee agreed with the proposal as it this will be addressed through other laws. Allowing CBK to make regulations on management requirements for digital credit providers will create unnecessary hurdles for the businesses to thrive.

69. The Bill should be amended in Clause 7 by inserting the following new section immediately after section 58; *“59(1) Any person who before the coming into force of this Act, was in the digital credit business as defined under section 2 of this Act, shall apply for the license of digital credit provided within six months of coming into force of the Regulation; and (2) Any person who before the coming into force of this Act, is considered to be a digital credit provider under this Act may conduct its current activities until obtaining a license in accordance with this Act”*.

Committee’s Observation

The Committee agreed with the proposal to increase the licensing period for the digital credit providers to have sufficient time to comply with the licensing requirements.

3.8 LAWYERS HUB

The Lawyers Hub memorandum was presented by Ms. Jennifer Solovea who appeared before the Committee on Monday, 12th July 2021. She submitted **THAT—**

70. The definition for digital credit is not clear on whether the Bill seeks to regulate both deposit taking and non-deposit taking entities leveraging online platforms to provide access to credit. The definition also fails to clarify if the amendments apply to all fintech platform financing entities including; fintech balance sheet lending, crowdfunding platforms. They proposed that digital should be redefined clarifying the scope of the proposed legislation to avoid misinterpretation and additional licensing processes for financial institutions.

Committee’s Observation

Deposit taking platforms are already regulated by CBK. Their proposal was therefore rejected.

71. The Bill gives CBK powers to set minimum liquidity requirements for digital credit platforms under section 33R(c). The provision cannot apply to non-deposit platforms as they do not engage in maturity transformation.

Committee’s Observation

The Committee observed that their concerns were valid and therefore adopted their proposal.

72. They recommended extending the transitional period for compliance under the Bill to allow for credit facilities to comply with any additional registration and licensing requirement under related laws.

Committee’s Observation

The Committee agreed with the proposal to increase the licensing period for the digital credit providers to have sufficient time to comply with the licensing requirements.

73. The Bill does not outline how other laws that regulate access to credit will be affected by the proposed legislation. These include processes under laws such as the Capital Markets Act, Banking Act, the National Payments System Act, the Microfinance Act and Credit Reference Bureau Regulations, 2020. They recommended that these laws should be harmonized under the transitional provisions of the Bill to ensure that they align with data protection, consumer protection, registration and licensing requirements.

Committee's Observation

The Bill seeks to regulate only those products that are not regulated by any other written law. As such the proposal to outline how credit products provided under other existing laws may not be necessary. The concerns on harmonization with the data protection, consumer protection, registration and licensing requirements were adopted.

74. Given the broad scope of the proposed amendments, the Lawyers Hub recommended publication of the regulations centered on consumer rights and interests as provided for under the transitional provisions of the Bill to allow for sufficient public participation for holistic legislation.

Committee's Observation

The concerns on protection of consumer rights and interests were adopted. CBK will be mandated in consultation with relevant to make regulations to address that.

3.9 ECM CONSULTING GROUP LLP

In a meeting with the Committee held on Monday, 12th July 2021, Mr. Enoch Monari submitted as follows, **THAT** —

75. A regulatory system should be implemented be in such a way that it will not cause a significant increase in the operating costs of a company. The need to make the process of licensing simplified is also necessary. They proposed that the new regulation should provide for the specific requirements for licensing including the required documents that must be presented together with the license application.

Committee's Observation

The Committee was in agreement with the need to promote innovation in the industry and the need to create a conducive business environment.

76. The time within which a license should be issued should be prescribed in regulation e.g. 90 days for certainty and continuity of the digital lending business.

Committee Observation

The Committee noted that it is important to have a timeline within which the license is issued and adopted the 90 days proposed by ECM.

77. The CBK shall manage the register of licensed digital lenders which shall be public. Digital lenders shall be required to update the information in the register and notify CBK in case of any changes to

the data disclosed in the register. The license shall be issued only if the digital lender will fulfill the requirements indicated in the regulation. The license should be granted indefinitely.

Committee's Observation

The Committee adopted the proposal to make the register of licensed digital credit providers by ensuring that it is published in the Kenya Gazette and The Bank's website. The Committee also adopted the proposal on the specific requirements for issuance of license.

78. All customers should be provided with clear, transparent and articulated information on the pricing of loans before they apply for the loan by providing the conclusion of the loan agreement in the unified form with the key financial information concerning the loan. This is implemented in all EU countries and Uganda. To increase consumer protection, they proposed that the position of a financial ombudsman who shall be appointed by the relevant minister responsible for examining customer complaints.

Committee's Observation

The Committee agreed to the proposal to give powers to The Bank to determine parameters for pricing of digital credit. The Committee agreed to support the proposal to provide for regulations on consumer protection.

79. Digital lenders should not be subject to prudential type of regulations and capital adequacy requirements because they do not take deposits from the public.

Committee's Observation

The Committee observed that their concerns were valid and deleted this provision.

80. There are anti-money laundering laws and measures for countering financing of terrorism and it is therefore not necessary to include the same in this Bill. The Data Protect Act is also in place and therefore issues on data protection should not be in this Bill.

Committee's Observations

The Committee observed that there is no harm in having this provisions in the Bill for emphasis. The Committee proposed an amendment to require The Bank to make regulations on anti-money laundering laws and countering financing of terrorism i consultation with relevant agencies. In addition to this, CBK will also consult the Data Commissioner and the Communications Authority in making of regulations on data privacy.

81. The Bill should be amended to provide that digital lenders will be entitled to receive reports from CRBs and submit reports with credit information to CRBs. This is to restore digital lenders' access to credit information reports to the terms applicable to other market players as the principal object of the Bill is to regulate the digital lenders' industry.

Committee's Observation

The Committee noted their concerns and adopted their proposal.

82. The Bill should be amended to provide that the compliance period shall be 9 months from the date of issuing the regulations.

Committee's Observation

The Committee noted that the period of nine months is too long. The period of six months was therefore retained and the counting will start after publication of Regulations.

3.10 ANJARWALLA AND KHANNA LLP

In their memorandum, Ref: SS/ALM/GEN dated 28th May 2021, Ms. Sonal Sejpal submitted as follows:

83. The Bill proposes to expand the role of CBK to license and regulate the digital credit marketplace in Kenya. They noted that in 2020, two different Bills (the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 21 of 2020) and the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 47 of 2020)) were introduced in the National Assembly with a similar objective of regulating digital lenders.
84. Under clause 4, they noted that regulation of digital lenders is a welcome move given that such regulation promotes a fair and non-discriminatory marketplace for access to credit. However, digital lenders facing increased compliance costs from onerous licensing requirements will be forced to shift these costs to the borrowers. This will in turn increase the cost of credit especially for the financially excluded market segment.
85. The requirement for DLIs to be subject to capital adequacy and minimum liquidity requirement should be reserved to deposit taking entities. Similar application of rules binding deposit taking entities to DLIs will not only increase compliance costs for digital credit providers but it may also threaten the viability of these entities' entire business model.

Committee's Observation

The Committee noted their concerns and deleted the requirement for capital adequacy and minimum liquidity.

86. The requirement to seek CBK's approval for "*digital channels and business models*" will have a negative effect in innovation in the fintech ecosystem which will ultimately diminish financial inclusion for those in need.

Committee's Observation

The Committee agreed to delete the provision giving CBK powers to approve business models as this will create unnecessary hurdles. DLIs must be allowed space to innovate and giving CBK powers to approve Business models was rejected. The other aspect of approval of digital channels was retained as it is in the Bill.

87. The Bill gives CBK the power to generally "*supervise*" digital credit providers. This power is wide, undefined and therefore because of its uncertainty could be viewed as potentially prejudicial to digital lenders. This may also have a knock-on effect to direct foreign investment into Kenya as investors want a degree of certainty before entering a new market or expanding in a market that they are already in.

Committee's Observation

The Committee noted the concerns and agreed to propose amendment on the specific requirements for licensing and the timelines within which CBK must communicate the status of any license application. The Bank will also comply with certain requirements before a license is revoked or suspended. Also DLIs will only pay annual renewal prescribed fee as long as the license is still valid. This requirement makes it easier for DLIs to comply.

88. They proposed that clause 7 be amended to allow for a one year transition period from the coming into force of the regulations rather than the Act. The Bill provides that CBK is required to publish regulations that give effect to the Bill's provisions within three months of the Bill coming into force. However, the Bill also states that digital lenders have six months from the coming into force of the Bill to register with CBK. This effectively means that digital credit providers may only have three months from the date of the Regulations being published to familiarize themselves with the specific provisions of the Regulations.
89. Given that most of the digital credit providers are small to medium size entities, three months will be a short time to comply with potentially onerous requirements such as capital adequacy. It is improbable that CBK will be able to vet applications and license all the digital lenders in Kenya in such a short period of time.

Committee's Observation

The Committee agreed to increase the licensing period to allow the DLIs adequate time to comply.

3.11 ALTERNATIVE CIRCLE LIMITED/OKOLEA/ CM ADVOCATES LLP

In their memorandum, Ref: ACTS/National Assembly dated 27th March 2021, they submitted as follows on behalf of the Digital Lenders Association of Kenya:

90. They proposed that the digital credit providers should not be subjected to prudential requirements as is the traditional banks. They proposed that provisions concerning the non-applicability to digital lenders of these provisions should be clearly stated. This will make the amendment more transparent and it will allow for determination of which regulations apply only to digital lenders. Prudential requirements on capital adequacy and minimum liquidity applies to the traditional banks and such exemption of digital lenders industry will show that they are very different entities.

Committee's Observation

The Committee agreed to exempt digital credit providers from the requirements of capital adequacy and minimum liquidity. This is because the businesses are not deposit-taking and therefore pose no risk to depositor's funds.

91. Digital lenders should be registered by CBK and not licensed as this is a common practice for digital lenders' regulations implemented in significant jurisdictions in the EU. Provision for a renewable license will result in overregulation. CBK will manage the register while digital lenders will be obliged to update the data contained in the register by notifying CBK immediately in the event of any changes to the data disclosed in the register. The registration shall only be done if the digital lender will fulfill the requirements indicated in the regulations. The digital lender should be removed if: the requirements to obtain the registration are not met; or at the digital lender's request.

Committee's Observation

The proposal was rejected. Licensing is necessary to ensure supervision. CBK will develop the licensing requirements based on the parameters proposed by the Committee. The Committee has proposed that instead of annual licensing, an annual fee be prescribed as long as the license is valid.

92. They proposed that all customers should be provided with clear, transparent and articulated information on the pricing of loans before they apply for the loan by providing the conclusion of the loan agreement in the unified form with the key financial information concerning the loan. This is implemented in all EU countries and Uganda. To increase consumer protection, they proposed that the position of a financial ombudsman should be established within CBK structures which shall be responsible for examining customer complaints.

Committee's Observation

The proposal was adopted. CBK was given powers to determine the pricing of digital credit products while at the same time the providers will be mandated to make full disclosure on terms and conditions applicable to the digital credit and must be accepted by the borrower before activation of a mobile loan account. Prior to licensing, the providers will be required to provide a statement/ certificate on the compliance with the Data Protection Act and the Consumer Protection Act.

93. Digital lenders should not be subject to prudential type of regulations and capital adequacy requirements because they do not take deposits from the public.

Committee's Observation

The Committee observed that their concerns were valid and deleted this provision.

94. There are anti-money laundering laws and measures for countering financing of terrorism and it is therefore not necessary to include the same in this Bill. The Data Protection Act is also in place and therefore issues on data protection should not be in this Bill.

Committee's Observations

The Committee observed that there is no harm in having this provisions in the Bill for emphasis.

95. The Bill should be amended to provide that digital lenders will be entitled to receive reports from CRBs and submit reports with credit information to CRBs. This is to restore digital lenders' access to credit information reports to the terms applicable to other market players as the principal object of the Bill is to regulate the digital lenders' industry.

Committee's Observation

The Committee noted their concerns and adopted the proposal.

96. Amend the Bill to provide that the compliance period shall be 9 months from the date of issuing the regulations.

Committee's Observation

The Committee noted that the period of nine months is too long. The period of six months was therefore retained and the counting will start after publication of Regulations.

97. DLAK should be given delegated authority as a Self-Regulatory Authority (SRO) because it has made great strides in fostering unity and collaboration amongst the digital lenders and has published a code of conduct which its members are required to comply with.

Committee's Observation

DLAK is not a body corporate recognized by the government and as such, it cannot be appointed as a Self-Regulatory Authority.

3.12 CENTRAL BANK OF KENYA (CBK)

98. In a meeting with the Committee held on Tuesday, 13th July 2021, the Governor, Dr. Patrick Njoroge submitted that digital lending in Kenya has grown exponentially in Kenya over the last few years because of high mobile penetration; adoption of mobile phone based financial services; and ease of use and convenience. He noted that usage of unregulated digital had grown from 0.6% (200,000) of Kenya's adult population in 2016 to 8.3% (approximately 2 million people) in 2019.
99. He noted that the Bill seeks to address the issue of unregulated digital lending activities and is a step in the right direction. The Bill seeks to empower CBK to regulate and supervise the conduct of digital lenders. Further, the Bill provides definition for the term digital credit.

PART FOUR

4 COMMITTEE OBSERVATIONS

In considering the Bill, the Committee observed the following, **THAT**—

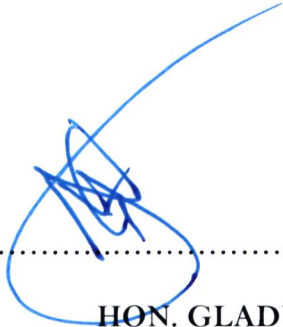
100. Access to digital credit has grown in leaps and bounds and therefore the need to provide a legal framework to regulate the industry by ensuring that the consumer rights are protected and data privacy is safeguarded.
101. The Bill therefore seek to give Central Bank of Kenya powers to regulate digital lenders who are not regulated in any other law e.g. the Capital Markets Authority Act, the Banking Act and the Insurance Act. The CBK Act mandates The Bank to maintain a stable and sound market-based financial system. Given that the digital credit fall within the financial ecosystem, there is need therefore for CBK to be given such powers to regulate in terms of licensing the providers and regulation of the general conduct of business.
102. There is need for the Central Bank of Kenya, Communication Authority of Kenya and Office of the Data Protection Commissioner to collaborate in order to ensure that the data privacy is enhanced.
103. The Bill gives powers to CBK to make regulations on capital adequacy and minimum liquidity requirements. Given that the specified digital credit providers are not deposit-taking, there is therefore no need to subject them to these prudential requirements as though they operate like the traditional brick and mortar banking institutions.
104. The Bill does not provide timelines within which CBK should license an entity after lodging their request for licensing as digital lenders.

PART FIVE

5 COMMITTEE RECOMMENDATION

105. The Committee having considered the Central Bank of Kenya (Amendment) Bill (*National Assembly Bill No. 10 of 2021*) recommends that the House passes the Bill with amendments as proposed by the Committee.

SIGNED..... DATE.....



5th August 2021

HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ANNEXTURES

1. Adoption Schedule
2. Minutes of the 48th, 49th, 50th and 51st sittings
3. Newspaper Advertisement – Submission for Memoranda for Public Participation

REPUBLIC OF KENYA



**NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE**

ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (N.A. BILL NO. 10 OF 2021)

DATE:

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRPERSON	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, CBS, MP	
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	Virtual.
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON EDITH NYENZE, MP	
15. HON. CATHERINE WARUGURU, MP	Virtual
16. HON. JAMES GICHUHI MWANGI, MP	
17. HON. PROF. MOHAMUD SHEIKH MOHAMED, MP	Virtual
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

MINUTES OF THE 65TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS ON THURSDAY, 5TH AUGUST, 2021 AT 10:30 A.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Andrew A. Okuome, MP | | |
| 5. Hon. David M. Mboni, MP | | |
| 6. Hon. Edith Nyenze, MP | | |
| 7. Hon. James Gichuhi Mwangi, MP | | |
| 8. Hon. Joshua C. Kandie, MP | | |
| 9. Hon. Francis K. Kimani, MP | | |
| 10. Hon. Catherine Waruguru, MP | | |
| 11. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, CBS, MP
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. (Dr.) Christine Ombaka, MP
5. Hon. Joseph M. Oyula, MP
6. Hon. Stanley M. Muthama, MP
7. Hon. Peter Lochakapong, MP
8. Hon. Qalicha Gufu Wario, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Brigitta Mati | - | Legal Counsel II |
| 3. Mr. John Njoro | - | Serjeant-At-Arms |
| 4. Ms. Christine Maeri | - | Audio Officer |
| 5. Ms. Hannah Mwangi | - | Intern |

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Adoption of Reports on the following Bills:**
 - i. **Report on the Pensions (Amendment) Bill (*National Assembly Bill No. 26 of 2020*)**
 - ii. **Report on the Public Procurement and Asset Disposal (Amendment) Bill (*National Assembly Bill No. 34 of 2020*)**
 - iii. **Report on the Public Finance Management (Amendment) Bill (*National Assembly Bill No. 39 of 2020*)**
 - iv. **Report on the Kenya Deposit Insurance (Amendment) Bill, 2020(*National Assembly Bill No. 43 of 2020*)**
 - v. **Report on the Central Bank of Kenya (Amendment) Bill (*National Assembly Bill No. 47 of 2020*)**

- vi. **Report on the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)**
- vii. **Report on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 Of 2021)**
- viii. **Report on the Trustees (Perpetual Succession) (Amendment) Bill (National Assembly Bill No. 23 of 2021)**
- ix. **Report on the Perpetuities and Accumulations (Amendment) Bill, 2021 (National Assembly Bill No.24 of 2021)**

- 5. Any Other Business
- 6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/298: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:10 a.m and a prayer was said.

MIN.NO.NA/F&NP/2021/299: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2021/300: ADOPTION OF REPORTS ON BILL

The Chair invited Members to consider the following Reports which were subsequently adopted as follows: -

1. Report on the Pensions (Amendment) Bill (National Assembly Bill No. 26 of 2020)
Proposed by- Hon. Jimmy O. Angwenyi
Seconded by -Hon. James G. Mwangi
2. Report on the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020)
Proposed by- Hon. Isaac W. Ndirangu
Seconded by -Hon. David M. Mboni
3. Report on the Public Finance Management (Amendment) Bill (National Assembly Bill No. 39 of 2020)
Proposed by- Hon. Edith Nyenze
Seconded by -Hon. Jimmy Angwenyi
4. Report on the Kenya Deposit Insurance (Amendment) Bill, 2020(National Assembly Bill No. 43 of 2020)
Proposed by- Hon. Jimmy O. Angwenyi
Seconded by -Hon. James G. Angwenyi
5. Report on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020)
Proposed by- Hon David M. Mboni
Seconded by -Hon Jimmy O. A
6. Report on the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)

Proposed by- Hon. James Gichuhi, M.P
Seconded by – Hon. David Mboni, M.P

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON TUESDAY, 13TH JULY 2021 AT 2:00 P.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wangwa, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

1. Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Ms. Christine Maeri | - | Audio Officer |

AGENDA

1. Prayers
2. Communication from the Chairperson
3. **Clause by clause consideration of the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021)**
4. Any Other Business
5. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/232

COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.15 p.m. and a prayer was said. The Chairperson then welcomed the meeting to deliberate the day's agenda.

MIN.NO.NA/F&NP/2021/233:
Agenda deferred

CONFIRMATION OF MINUTES

MIN.NO.NA/F&NP/2021/234:

CLAUSE BY CLAUSE CONSIDERATION OF
THE CENTRAL BANK OF KENYA
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 47 OF 2020) AND THE
CENTRAL BANK OF KENYA
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 10 OF 2021)

The meeting deliberated and agreed as follows:

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2021)

Clause 2: Agreed to

Clause 3: Agreed to

Clause 4

- i. Amend by providing for the pricing of interest charged on loans
- ii. 33R (a): Insert a timeline of sixty (60) days
- iii. 33R (b) and (c): delete because they may lock out small businesses that want to venture into digital lending business.
- iv. Amend clause 4 by providing a framework for suspension and revocation of a license.
- v. Amend clause 4 by providing that there should be a register of digital lenders which shall be published on the CBK website and the Kenya Gazette.

Clause 5: Agreed to

Clause 6

- i. 3(b): Delete
- ii. Amend by inserting dispute resolution and appeal mechanisms
- iii. 3(e): Delete and insert the following new paragraph; "*credit information sharing with credit reference bureaus, banks, mortgage finance companies, microfinance banks and sacco's and in accordance with the credit information sharing framework prescribed in the Banking Act and Regulations made thereunder*".
- iv. Delete sub-section 2 and substitute therefor; "*Any person who, before the coming into force of this Act, was in the business of providing credit facilities or loan services through a digital channel and is not regulated under any other law, shall apply to the Bank for a license within six months of publication of regulations*".

Clause 7: Agreed to

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2020)

Clause 2: Agreed to

Clause 3

- i. 43A: Agreed to
- ii. 43B(3): Delete
- iii. Amend by inserting the following paragraph; "*proof of a license from the ICT regulator, where necessary*".

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON TUESDAY, 13TH JULY 2021 AT 9:30 A.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wangwa, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Ms. Christine Maeri | - | Audio Officer |

CENTRAL BANK OF KENYA

- | | | |
|------------------------|---|----------|
| 1. Dr. Patrick Njoroge | - | Governor |
| 2. Mr. Kennedy Abuga | | |
| 3. Mr. Matu Mugo | | |
| 4. Mr. Wallace Kantai | | |
| 5. Mr. Gerald Nyaoma | | |
| 6. Mr. Dickson Ndegwa | | |

OTHER STAKEHOLDERS

- | | | |
|-------------------------|---|--------------------------------------|
| 1. Ms. Rosemary Koech | - | Safaricom PLC |
| 2. Ms. Acha Ouma | - | Oxygene Media |
| 3. Mr. Frankline Sunday | - | Standard Media Group |
| 4. Ms. Brenda Kombo | - | KTN |
| 5. Mr. Kevin Mutiso | - | Digital Lenders Association of Kenya |
| 6. Mr. Vincent Odhiambo | - | Metropol TV |

- i. Warnings to the public through speeches, press conferences, public notices, dedicated page on CBK website on fraud safety and warned banks against dealing with fraudulent and unlicensed financial schemes;
 - ii. Carrying out of surveys like the National FinAccess Household Surveys conducted by CBK, KNBS and FSD done in 2016 and 2019 and the CBK Innovation Survey done in 2020;
 - iii. Withdrawal of approval as third party sources of information to CRBs
 - iv. Regulation: CBK hosted Global Alliance for Financial Inclusion Forum on Regulation of Digital Credit and drafted Digital Credit Policy and Regulations; and
 - v. Engagement: Afro-Asia Fintech Festival 2019 and 2020, related Africa Hackathons (Fintech) Competitions in 2019 and 2020 and subsequent engagements with Fintechs.
6. Central Bank of Kenya (Amendment) Bill, 2020:
- i. The scope is limited to mobile phones, excludes other digital channels;
 - ii. Too broad and applies to all entities including licensed institutions like banks, microfinance banks and sacco's; and
 - iii. Recommended that it is shelved and Central Bank of Kenya (Amendment) Bill, 2021 progressed.
7. Central Bank of Kenya (Amendment) Bill, 2021:
- i. Seeks to empower CBK to regulate and supervise the conduct of digital lenders; and
 - ii. Seeks to address the issue of unregulated digital lending activities.

MEMBERS' DELIBERATIONS

1. Regarding the setting of the minimum liquidity rate and capital requirements for digital lenders, the meeting was informed that regulation on minimum liquidity and capital will be right sized for digital lenders.
2. Regarding the capping of interest rates for digital lenders, CBK will come up with regulations that will ensure that consumers are protected.
3. With regards to delays in issuance of licenses to digital lenders, the Governor stated that CBK does not sit on licensing requests. Requests take long to be approved because applicants fail to submit all the required information.
4. Regarding the renewal of licenses annually, the meeting was informed that licenses will be paid for annually but digital lenders will not be required to reapply for the licenses.
5. Regarding concerns that regulation of digital lenders will stifle innovation, the Governor informed the meeting that innovators should not be allowed to run amok and that the innovations should be consistent with the principles that are already set out. CBK does not intend to overregulate the industry. All they want is to protect consumers.
6. Regarding the over indebtedness of borrowers, the Governor noted that it is a very important issue that needs to be looked into. Information should be provided to the citizenry on their financial options.
7. Regarding listing of customers on the CRBs, CBK noted that that digital lenders should continue using CRBs in a balanced way. The data should be well protected.
8. On whether these laws will stop pyramid schemes, the Governor stated that the law will not stop pyramid schemes. CBK will however ensure that people are given the right information on investment.
9. Regarding collaboration with the Office of the Data Commissioner and Communications Authority, the Governor stated that this is very welcome as it will enhance consumer protection.

10. On the provision of dispute resolution in the legislation, the meeting was informed that this is not necessary because disputes rarely arise. The law should be clear to prevent disputes.
11. Regarding the extension of the period of compliance with the law, the Governor stated that 6 months after enactment of the law is sufficient. CBK will start working with digital lenders immediately so that the licensing is timely.
12. The Committee requested CBK to submit documentation on legal frameworks on digital lending for countries that they had benchmarked with.

Details of the amendments proposed by CBK on the two Bills are contained in Part III of the Reports on the consideration of the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 10 of 2021).

MIN.NO.NA/F&NP/2021/230:

CLAUSE BY CLAUSE CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2020) AND THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2020)

The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)

The meeting deliberated and resolved that the Bill be deleted in its entirety because the leap from five hundred million shillings to twenty billion shillings is too high.

The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020)

Clause 2(a): Delete because it is not clear what services are being brokered.

Clause 2(b) (6)(a): amend by deleting the words “*defined period*” and replacing with the words “*period as defined in the contract document*”

Clause 2(b) (6)(b): amend by deleting the word “*persons*” and replacing with the word “*Kenyans*”.

Clause 3: Delete

MIN.NO.NA/F&NP/2021/231:

ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.02 p.m. The next meeting will be held at 2.00 p.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....

DATE.....

5th August 2021

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON MONDAY, 12TH JULY 2021 AT 2:30 P.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wangari, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Ms. Christine Maeri | - | Audio Officer |

CM ADVOCATES LLP

1. Mr. Morris Muriu
2. Ms. Diana Gichuru

LAWYERS HUB

1. Ms. Jennifer Solovea
2. Ms. Selina Onyando

ECM CONSULTING

1. CPA Enoch Monari
2. Mr. Samba Omwoyo

DIGITAL LENDERS ASSOCIATION OF KENYA/PWC

1. Mr. Christopher Ndegwa (PWC)
2. Mr. Lampart Kerio

transformation. They were also opposed to the setting of timelines within which digital lenders should be licensed after enactment of the law.

MEMBERS' DELIBERATIONS

- i. On the timeline for compliance of the law, they stated that it should be revised from 6 months to 9 months.
- ii. On what can be done to ensure continuity of business for digital lenders as they await licensing, they proposed that provision should be given for the restricted license which will enable them to continue doing business.
- iii. The Committee requested them to provide specific amendments to the Bills for the Committee's consideration.

3. ECM Consulting/Nyanchoga and Associates

In their submission, they proposed amendments to the two Bills. They however noted that it would have been better to introduce a new law as opposed to amending the Central Bank of Kenya Act.

MEMBERS' DELIBERATIONS

On why they were proposing introduction of a new law instead of amending the CBK Act, they stated that this will ensure that the digital lending space is broadly covered in law.

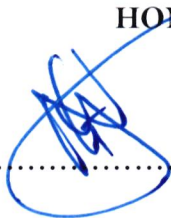
Details of the amendments proposed by stakeholders on the two Bills are contained in Part III of the Reports on the consideration of the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 10 of 2021).

**MIN.NO.NA/F&NP/2021/226: ADJOURNMENT/DATE OF NEXT
MEETING**

There being no other business to deliberate on, the meeting was adjourned at 5.17 p.m. The next meeting will be held on Tuesday, 13th July 2021 at 9.00 a.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....DATE.....



5th August 2021

MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON MONDAY, 12TH JULY 2021 AT 9:00 A.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Ms. Christine Maeri | - | Audio Officer |

OFFICE OF THE DATA PROTECTION COMMISSION

1. Mrs. Immaculate Kassait
2. Mr. Augustus Munywoki
3. Ms. Anne Njenga
4. Ms. Rose Marero
5. Mr. Christopher Wambua

COMMUNICATIONS AUTHORITY OF KENYA

1. Ms. Mercy Wanjau
2. Mr. Lukas Musembi
3. Mr. Matano Ndarro
4. Ms. Priscah Mutogua
5. Mr. Edward Rinkanya

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

1. CPA Edwin Makori
2. Mr. Elias Wakhisi
3. Mr. Hillary Onami
4. Mr. Evance Juma
5. Ms. Nancy Moraa

DIGITAL LENDERS ASSOCIATION OF KENYA/PWC

1. Mr. Kevin Mutiso
2. Mr. Hezron Gikanga
3. Mr. Ivan Mbowa
4. Ms. Njeri Wagacha
5. Mr. Christopher Ndegwa (PWC)

THE KUEQ LIMITED

Mr. Aristarichus Kuria Weru

SAFARICOM PLC

Ms. Rosemary Koech

OXYGENE MEDIA

Ms. Acha Ouma

AGENDA

1. Prayers
2. Communication from the Chairperson
3. **Stakeholder engagement on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021)**
4. Any Other Business
5. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/218

COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.20 a.m. and a prayer was said. The programme for the retreat was then adopted having been proposed by Hon. James Mwangi, MP and seconded by Hon. Joseph Oyula, MP. The Chairperson then invited the Legal Counsel to brief the Committee on the two Bills.

MIN.NO.NA/F&NP/2021/219:

CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/220:

BRIEFING ON THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2020) AND THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2021)

Ms. Jennifer Ndeto briefed the Committee on the CBK (Amendment) Bill, 2020 and the CBK (Amendment) Bill, 2021. The meeting noted that:

1. Both Bills provide for regulation of digital lenders however, the CBK (Amendment) Bill, 2021 provides for regulation of digital lenders who are not regulated by any other

institution while the CBK (Amendment) Bill, 2020 provides for regulation of all digital lenders;

2. The CBK (Amendment) Bill, 2020 focuses on licensing while the CBK (Amendment) Bill, 2021 focuses on regulation; and
3. The Committee will make a decision on how the two Bills will be considered during clause by clause consideration of the Bills and after listening to stakeholders.

MIN.NO.NA/F&NP/2021/221:

**STAKEHOLDER ENGAGEMENT ON THE
CENTRAL BANK OF KENYA
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 47 OF 2020) AND THE
CENTRAL BANK OF KENYA
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 10 OF 2021)**

The stakeholders were invited into the meeting. The Chairperson called for introduction of those present before inviting stakeholders to make submissions on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021).

Stakeholders made their submissions to the two Bills as follows:

1. Office of the Data Protection Commissioner

The Data Commissioner submitted that it is important to provide for data protection in the legislation as this is very important to consumers.

MEMBERS' DELIBERATIONS

On how the office can ensure that data is protected and there is ease of doing business, the Ms. Kassait informed the meeting that the New Clause 43B(2) that they were proposing to be inserted in the Bill will take care of data protection issues. The digital money lenders will be required to declare that they will protect their clients' data during registration. Before being registered as digital money lenders, companies will be required to provide certificates of registration as data processors from ODPC.

2. Communications Authority of Kenya

The acting Director General, Ms. Mercy Wanjau submitted proposed amendments to the two Bills including an amendment to provide for the licensing of digital lenders by the ICT regulator.

MEMBERS' DELIBERATIONS

- i. On why CA was opposed to having a timeline within which digital lenders should comply with the law after enactment, Ms. Wanjau explained to the meeting that this was because of the experience gained from migration to digital broadcasting. She stated that a mechanism that is flexible should be provided e.g. a clause be inserted to provide that the Cabinet Secretary can open up the period should it be necessary. This will ensure that there is no need to amend the law soon after enactment.
- ii. On CA's role in regulation of digital lenders, the meeting was informed that CBK is the primary regulator of digital lenders. CA provides a framework for digital lending. CA and CBK have an MOU on the regulation of digital lenders. Additionally, CA has Consumer Protection Regulations and Quality of Service Regulations.
- iii. The Committee requested CA to avail the MOU, the Consumer Protection Regulations and the Quality of Service Regulations to the Committee.

3. Institute of Certified Public Accountants of Kenya

In their submission, ICPAK noted that there is need to cap the interest rate charged by digital lenders to their consumers. The CEO, CPA Makori submitted that some digital lenders were charging interest rates as high as 30% per month to their consumers which is exploitative.

MEMBERS' DELIBERATIONS

- i. On the rate at which interest charged on loans offered by digital lenders should be capped, CPA Makori undertook to submit their proposal to the Committee.
- ii. On how a safe environment can be provided in the digital lending space, CPA Makori informed the meeting that technology is evolving from time to time and it is therefore important to involve all players when coming up with regulation for the industry.

4. Digital Lenders Association of Kenya/PricewaterhouseCoopers Limited

DLAK submitted that CBK should only register digital lenders and not license them. DLAK should serve as a delegated self-regulator for digital lenders. Additionally, there should be no timelines within which digital lenders should be licensed after enactment of the law.

MEMBERS' DELIBERATIONS

- i. On the high interest rates charged on loans by digital lenders, the meeting was informed that the loan period for loans given by digital lenders is one month. That therefore means that the rates apply once on the loan and a late fee charged for those who fail to pay the loan in time. The rate only applies to a respective month and not each month of the year. They stated that the highest interest rate charged by their members is 15%.
- ii. Regarding the capping of interest rate for digital lenders, the meeting was informed that that companies may not be able to break even if this is done.
- iii. Regarding the introduction of multiple languages on data sharing information, they stated that it is a good suggestion.
- iv. On the introduction of the Financial Ombudsman, they submitted that this is important as it will reduce any backlog of cases when disputes arise. It will provide dedicated specialists who understand the workings of the industry for speedy resolution of disputes.
- v. On the importance of CRB listings to the digital lenders, the meeting was informed that there is no collateral in the digital lending space and the listing on CRBs is a sort of guarantee for the lenders.
- vi. The Committee requested DLAK to avail data on their members including the interest rates and other charges paid on loans.

5. The Kueq Limited

They proposed that a new law; "*Digital Financial Services & Products Act*" should be introduced instead of amending the Central Bank of Kenya Act.

MEMBERS' DELIBERATION

Regarding the capping of interest rates for digital service lenders, they were of the opinion that the interest rate should be capped at 18%.

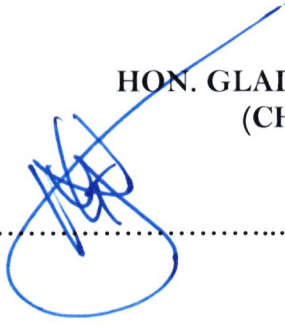
Details of the amendments proposed by stakeholders on the two Bills are contained in Part III of the Reports on the consideration of the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 10 of 2021).

**MIN.NO.NA/F&NP/2021/222: ADJOURNMENT/DATE OF NEXT
MEETING**

There being no other business to deliberate on, the meeting was adjourned at 1.32 p.m. The next meeting will be held at 2.30 p.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....DATE.....



5th August 2021



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT (FIFTH SESSION)

In the Matter of Article 118 (1)(b) of the Constitution
and
In the Matter of Consideration by the National Assembly of the Finance Bill, 2021
(National Assembly Bill No.18 of 2021)

INVITATION FOR PUBLIC PARTICIPATION
(SUBMISSION OF MEMORANDA)

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Finance Bill (National Assembly Bill No. 18 of 2021).

The Finance Bill (National Assembly Bill No. 18 of 2021) was published on 5th May 2021 and read a First Time on 11th May 2021. It proposes amendments to the following statutes:

The Income Tax Act (Cap. 470): The Bill amends section 2 of the Act by defining the terms "Coopra", "infrastructure bond", and "Permanent Establishment".

The Bill also amends Section 3 of the Act to expand the scope of services subject to the Digital Service Tax (DST). Further, it amends Section 12E of the Act to exempt resident persons from DST and align the due date of payment of the DST with that of other taxes such as VAT and Excise Duty.

The Bill further amends Section 15 of the Act by removing limitation of carrying forward of losses, which is currently pegged at 10 years. It also amends Section 16 of the Act by repealing the current provision of thin capitalization rules based on debt-to-equity ratios and substituting it with interest restriction based on the interest/earnings ratio, the measure of earnings being earnings before interest, taxes, depreciation and amortization.

The Bill further amends the Act by inserting a new Section 183 which requires that in the case of multinational enterprise groups, the ultimate parent entity should submit to the Commissioner a return on its activities in Kenya which are above a prescribed threshold and also activities of the group in other countries it has a presence.

The Bill also amends Section 31 of the Act to allow contributions made to National Health Insurance Fund (NHIF) to qualify for tax relief.

The Bill amends Section 39B of the Act to provide for set-off rebate for an employer who engages at least ten graduates from a technical and vocational education and training institution.

It further amends Section 41 of the Act by deleting the words "an individual or individuals" and substituting therefor the words "a person or persons".

Amendment to Paragraph 1 of the Second Schedule to the Act replaces the reducing balance method for investment allowance with the straight-line method.

The Bill also amends the Ninth Schedule to the Act to remove contradiction between the Second Schedule to the Income Tax Act and paragraph 4 (3) of the Ninth Schedule to the Act in the application of investment allowance in the exploration and prospecting operations in petroleum and mining sectors.

The Value Added Tax Act, 2013: The Bill amends Section 2 of the Act by substituting a new definition to the term "supply of imported services".

The Bill amends Section 5 of the Act to expand the scope of charging DST. It also amends Section 10 of the Act to provide for charging of VAT on imported services whether a person is registered or not.

The Bill further amends Section 17 of the Act to subject the claim for input tax to the provisions of the Act and Regulations. It also amends Section 19 of the Act to provide for charging of VAT on imported services whether a person is registered or not.

The Bill amends the First Schedule to the Act to align tariff numbers in the First Schedule of the Act to the tariff numbers as per EAC CET 2017. It also exempts some medical drugs and equipment and purchase of motor vehicles for use in geothermal and oil exploration from Value Added Tax and deletes paragraph 13A of the Second Schedule in order to provide clarity on the VAT treatment on bread.

The Excise Duty Act, 2019: The Bill amends the Act by defining the terms "compound" and "possession". It also amends Section 14 of the Act to provide for a rebate of the excise duty paid on internet data services by a person who purchases the data in bulk for resale.

The Bill further amends the First Schedule to restrict application of excise duty to locally manufactured sugar confectionery and white chocolate and remove excise duty on imported glass bottles.

The Bill also seeks to charge excise duty on motorcycles other than motorcycle ambulances and locally assembled motorcycles at 115% and imposes excise duty on jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117 at a rate of 10%.

The Tax Procedures Act, 2015: The Bill amends Section 3 of the Act to have Miscellaneous Fees and Levies Act recognized as a Tax Law under the Act. It also inserts a new section after Section 6A to facilitate implementation of provisions of the Multilateral Convention for Mutual Administrative Assistance in Tax Matters which Kenya ratified.

Section 23 of the Act is amended to increase the period for keeping records relating to amendment of assessments from 5 years to 7 years.

The Bill deletes section 42A (4A) of the Act which empowers the Commissioner to exempt a supplier from the requirement for withholding VAT where the person has demonstrated that they are going to be in a continuous credit position for a period of not less than 24 months.

The Bill inserts a new Section 96A to enable the Commissioner to seek intervention from a relevant authority such as Communication Authority of Kenya and Betting Control and Licensing Board in cases where a person who provides services over the internet or electronic network including through digital marketplace has not fulfilled his tax obligations.

The Miscellaneous Fees and Levies Act, 2016: The Bill amends the Second Schedule to the Act in order to empower the Cabinet Secretary to exempt from import declaration fee or railway development levy in public interest or to promote investment of not less than five billion shillings.

Capital Markets Act (Cap. 485A): The Bill proposes to amend the Act to specify the period within which the Capital Markets Tribunal shall hear and determine an appeal against administrative action of the Authority.

The Insurance Act (Cap. 497): The Bill amends the Act by redefining the term "broker". It also repeals sub-section 3 of section 20 so as to provide a transitional mechanism for approval of any reinsurance treaty immediately after the enactment of the Insurance Act. The Bill also provides for regulation of foreign reinsurance brokers.

The Kenya Revenue Authority Act (No. 2 of 1995): The Bill amends the Act to increase the maximum reward payable to informers who provide information that leads to identification and recovery of unassessed taxes, from one hundred thousand to five hundred thousand.

The Retirement Benefits Act (No. 2 of 1997): The Bill amends the Act to provide for provision of post-retirement medical covers. Further, it provides for registration and regulation of corporate trustees that provide services to pension schemes and empower the Authority to extend the timeline for the submission of audited accounts during extraordinary times.

The Central Depositories Act (No. 2 of 2000): The Bill amends the Act to enhance regulation of investors in the capital markets and for opening of an omnibus account by a person investing on behalf of others in the securities market. Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3) of the National Assembly, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bill.

Copy of the Bill is available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday, 2nd June 2021 at 5.00 p.m.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
21st May, 2021



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT (FIFTH SESSION)

In the matter of Article 118(1)(b) of the Constitution and National Assembly Standing Order 127(3)
and
In the matter of consideration by the National Assembly of the Central Bank of Kenya
(Amendment) Bill (National Assembly Bill No. 10 of 2021)

INVITATION FOR PUBLIC PARTICIPATION
(SUBMISSION OF MEMORANDA)

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". Standing Order (S.O.) 127(3) provides that "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021) re-introduced by the Chairperson, Departmental Committee on Finance & National Planning, Hon. Gladys Wanga, M.P. seeks to amend the Central Bank of Kenya Act to provide for licensing of digital credit service providers, who are not regulated under any other law.

This legislation arises from the need to ensure fair and non-discriminatory marketplace for access to credit through a legal framework to regulate digital borrowing platforms.

The Bill was read a First Time on Tuesday, 11th May 2021 and committed to the Departmental Committee on Finance and National Planning for consideration in accordance with the provisions of Standing Order 127(3).

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3) of the National Assembly, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bill.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday, 28th May 2021 at 5.00 p.m.

Copy of the Bill is available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
21st May 2021



NAIROBI CITY
COUNTY

OFFICE OF THE GOVERNOR
COUNTY SECRETARY AND HEAD OF COUNTY
PUBLIC SERVICE

PUBLIC NOTICE ON INSPECTION AND OBJECTIONS ON
NAIROBI CITY COUNTY NEW DRAFT VALUATION ROLL

In accordance with Valuation for Rating Act Cap 260 Section 9 (3) Laws of Kenya, the Nairobi City County Draft Valuation Roll was laid before the Nairobi City County Assembly on 20th May, 2021 and is now available for inspection at Main City Hall Ground Floor as from 9.00 am to 4.00 p.m. from 21st May, 2021 to 18th June, 2021.

Subsequently and in accordance with the provisions of Valuation for Rating Act Cap 266 section 10 (1) any person (including the local authority or any person generally or specially authorized in that behalf by the local authority) who is aggrieved either:-

- by the inclusion of any rateable property in, or by the omission of any rateable property from any draft valuation roll.
- by any value ascribed in any draft valuation roll to any rateable property, or by any other statement made or omitted to be made in the same with respect to any rateable property.

may, upon payment of a non-refundable fee of Kenya Shillings five hundred only and on the prescribed form, lodge an objection with the County Secretary at any time before the expiration of twenty-eight days from the date of publication of this notice.

The objections must reach the office of the County Secretary on or before 18th June, 2021.

To encourage adherence to Covid-19 protocols, inspection and objection of the Draft Valuation Roll may also be done online via <https://valuation.nairobi.go.ke>. Inspections may also be done via USSD Code *235# and enquiries via draftvaluation@nairobi.go.ke

Dated the 21st May, 2021
Dr. Jairus Musumba, Ph.D.
Ag. County Secretary

Customer care:
0725-624489

@NBS_Counties047

Nairobi City County Government

www.nairobi.go.ke