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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FOURTH SESSION - 2025
PUBLIC PETITIONS COMMITTEE

REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 55 OF 2023 BY MR. BENARD MOKAYA
MAGEMBE, REGARDING ENACTMENT OF LEGISLATION TO REGULATE THE CREDIT
PROFESSION

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 SEP 2025	
DAY: <u>Wednesday</u>	
TABLED BY:	<u>Hon. Michael Kariuki, MP Chairperson</u>
CLERK-AT THE-TABLE:	<u>A. Shikoko</u>

SEPTEMBER, 2025

Directorate of Audit, Appropriations and General Purpose Committees
Clerk's Chambers
Main Parliament Buildings
NAIROBI

NATIONAL ASSEMBLY
RECEIVED
23 SEP 2025
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Public Petitions Committee regarding Public Petition no. 55 of 2023 by Mr. Benard Mokaya Magembe, Chairperson, Council of the Institute of Credit Management Kenya regarding the enactment of legislation to regulate the credit profession. The Petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by the Deputy Speaker, Hon. Gladys J. Boss, MGH, M.P., on behalf of Mr. Bernard Mokaya Magembe, the Chairperson of the Council of the Institute of Credit Management Kenya.

The Petitioners prayed that the National Assembly, through the Public Petitions Committee, recommend legislation to regulate the credit profession, providing a qualified and well-regulated credit profession that, in the long term, will ensure the stability and sustainability of lending institutions, among other attendant provisions.

In consideration of the Petition, the Committee collected the views from the Kenya Bankers Association, the Central Bank of Kenya, and the Kenya Law Reform Commission.

The Committee observed that the existence of the Institute of Credit Management of Kenya (ICM-K), which is registered under the Societies Act, Cap 108, ensured the promotion of professionalism and standards in credit management. Further, there are provisions for the requisite training for certification, registration, and licensing of practitioners, and the enactment of the proposed Bill would also have significant fiscal implications, which is contrary to the Government's ongoing policy of rationalizing public expenditure. Therefore, the Committee rejected the enactment of legislation to regulate the credit profession,

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support offered during the consideration of the Petition. The Chairperson expresses gratitude to the Members of the Committee and the Secretariat for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to table the report on the consideration of Public Petition No. 55 of 2023 by Mr. Benard Mokaya Magembe, regarding the enactment of legislation to regulate the credit profession on the table of the House.

Signed: _____



Date: _____

23/09/25

HON. MUCHANGI KAREMBA, CBS, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

PART ONE

1. PREFACE

1.1 Establishment and Mandate of the Committee

The Public Petitions Committee was established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises the following Members—

Chairperson

Hon. Muchangi Karemba, CBS, M.P.
Runyenjes Constituency
United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. Beatrice Kadeveresia Elachi, M.P.
Dagoreti North Constituency
Orange Democratic Movement (ODM)

Hon Suzanne Ndunge Kiamba, MP
Makueni Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Ntwiga Patrick Munene, M.P.
Chuka Igambang'ombe Constituency
United Democratic Alliance (UDA)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Peter Irungu Kihungi, M.P.
Kangema Constituency
United Democratic Alliance (UDA)

Hon. John Bwire Okano, M.P.
Taveta Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

1.3 Committee Secretariat

The Public Petitions Committee was facilitated by members of the secretariat:

**Mr. Leonard Machira
Principal Clerk Assistant II**

**Ms. Anne Shibuko
First Clerk Assistant**

**Mr. Willis Obiero
Clerk Assistant III**

**Ms. Patricia Gichane
Legal Counsel II**

**Ms. Roselyne Njuki
Principal Serjeant-at-Arms**

**Mr. Calvin Karungo
Media Relations Officer III**

**Ms. Miriam Modo
First Clerk Assistant**

**Mr. Benard Kipchumba
Clerk Assistant III**

**Ms. Nancy Ouma
Research Officer III**

**Mr. Paul Shana
Serjeant-at-Arms**

**Mr. Peter Mutethia
Audio Officer**

PART TWO

2. BACKGROUND TO THE PETITION

2.1 Introduction

1. Public Petition No. 55 of 2023 by Mr. Benard Mokaya Magembe, Chairperson, Council of the Institute of Credit Management Kenya, regarding the enactment of legislation to regulate the credit profession. The Petition was presented on Thursday, 5th October, 2023, to the House pursuant to Standing Order No. 225 (2) (a) by the Deputy Speaker, Hon. Gladys J. Boss, MGH, MP, on behalf of the petitioner.
2. The petitioner averred that, according to the 2022 Kenya Financial Sector Deepening Report on Inclusive Finance, levels of financial inclusion, as measured by the access dimension, stood at 83.7 per cent, attributed to various developments in the financial services sector and general expansion of the economy.
3. The petitioner further noted that according to the World Bank, the domestic credit to the private sector of Gross Domestic Product (GDP) stood at 32 per cent in 2020, while gross loans listed as per the Credit Officer Survey Report by the Central Bank of Kenya (CBK) totaled Ksh3.677 trillion as at December 2022, among other reports.
4. He stated that these were indicators of a robust credit market in the country. However, the Petitioner was concerned that, despite the growth of the sector, consumer lending raises significant consumer protection risks and concerns, which can be mitigated by having certified credit professionals.
5. The Petitioner noted that other professions in Kenya, including accountants, lawyers, fiscal analysts, engineers and doctors, among others, are regulated through a statute for the effective discharge of their mandate. Yet, the credit profession is not regulated.
6. The Petitioner was convinced that the enactment of the proposed legislation, which has numerous benefits, would be instrumental in sensitizing and cushioning consumers from several risks, including breach of transparency, unconscionable conduct and loss of assets, among others.

2.2 Petitioners Prayers

7. The Petitioners prayed that the National Assembly, through the Public Petitions Committee, recommend legislation to regulate the credit profession, providing a qualified and well-regulated credit profession that, in the long term, will ensure the stability and sustainability of lending institutions, among other attendant provisions.

PART THREE

3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 Petitioner

Mr. Benard Mokaya, the petitioner, appeared before the Committee on Thursday, 26th September, 2024 and submitted as follows—

8. He stated that a credit professional works in credit management across five key areas: assessing creditworthiness, managing credit risk, ensuring timely collections, acting as a credit risk manager, and working as a credit analyst.
9. He submitted that while banks have credit committees, those performing the work should be regulated and qualified to prevent substandard practices.
10. The petitioner noted that there was a need for appropriate legislation to regulate the growing number of non-regulated financial institutions involved in debt collection.
11. He further argued that the proposed legislation will provide for a qualified and well-regulated credit profession, thus ensuring the stability and sustainability of lending institutions.
12. The petitioner also observed that various professionals in Kenya, including accountants, lawyers, financial analysts, engineers, doctors, nurses, auctioneers, and human resource practitioners, among others, are regulated through statute. Their respective legislation provides for the requisite training for certification, registration, and licensing of practitioners, as well as the regulation of their practice, among other provisions for the effective administration of their roles.
13. He also stated that credit professionals lack a governing statute that regulates the credit profession, thereby failing to ensure high professional standards among practitioners in the credit sector. This has exposed consumers to several risks, including breaches of transparency, unconscionable conduct, and loss of assets.
14. He further submitted that the enactment of legislation regulating the credit profession will sensitize members of the public on who a credit professional is, the contribution of the credit profession to the safety, sustainability and stability of the credit market and the services that a credit professional offers to the general public regarding helping the public make an informed decision before using a credit facility.
15. In addition, the enactment of legislation regulating the credit profession will further benefit the credit market by—
 - i. Providing accountable, reliable and certified credit professionals;

- ii. Providing a pool of professionals knowledgeable in handling the credit portfolio and investment;
 - iii. Providing authoritative leadership in credit and debt management for sound, stable and sustainable businesses and economy;
 - iv. Reducing and eventually eradicating fraud in the credit market for the sustainability of the financial system and institutions; and
 - v. Alleviating the pain caused by unprofessional debt collectors in the handling of debt.
16. He also argued that the enactment of legislation regulating the credit profession will also benefit the credit profession by—
- i. Establishing a recognized legislated position of credit professionals in matters of credit and debt management;
 - ii. Promoting credibility among employers for registered members.
 - iii. Providing continuous and well-structured professional development;
 - iv. Legally strengthening the profession in the delivery of credit professional services; and
 - v. Establishing regulations to govern the conduct of the professionals as per the proposed law, once enacted.
17. He further submitted that while accounting exams include financial analysis, credit management exams cover additional areas such as credit risk management and financial statement analysis. ICM exams, managed by KASNEB, ensure that individuals meet the necessary credit qualifications, enabling them to become well-trained members of the profession.
18. He informed the Committee that the CCP (Certified Credit Professional) syllabus had been updated. It was structured into different levels, including foundation, intermediate, credit risk management, principles of accounting, financial statement analysis, and corporate credit analysis.
19. Further, a significant number of individuals, including students pursuing the CCP exams modelled after the CPA, are being trained in various skills and competencies necessary for sound decision-making. As of the time of the petition, the number of credit professionals stood at 3,950, and this number continues to grow.
20. He concluded that regulating the credit profession would not hinder banks from hiring individuals with diverse skills. Instead, the proposed regulation aimed to protect consumer rights and provide guidance to both the banking sector and individuals seeking credit. It would also help prevent unethical practices by certain institutions, such as publicly shaming lenders who default on their loans.

3.2 Kenya Bankers Association

The Acting Chief Executive Officer of Kenya Bankers Association, Mr. Raimond Molenje, appeared before the Committee on Tuesday, 10th September 2024, and submitted as follows—

21. He stated that the Kenya Bankers Association opposed the enactment of the Bill in their entirety based on the following:
22. On the scope of the proposed Credit Professionals Bill, He argued that the credit function in banks was broad. He added that every staff member in a bank was, in one way or another, involved in a credit-related function or deliverable, from sales agents and account opening to customer service, lawyers, operations, credit, and digital teams, up to and including the Chief Executive Officer and the Board.
23. Therefore, all bank staff are involved in credit administration, and the petitioners have not provided a criterion to determine a credit staff/professional.
1. He submitted that the existing regulatory bodies provide adequate and necessary oversight within the banking sector. Any gap must be addressed through an amendment to the existing legal framework, and the creation of more parastatals and state agencies should be avoided, as the public seeks a lean government.
2. On Conflict in uniformity of credit standards, he submitted that the banking business is all about credit provision, and it is a competitive area that requires regulation for the benefit of customers. The banks, microfinance banks, Saccos, credit-only providers, digital credit providers, retail stores, and shylocks all provide credit.
3. He further observed that there was no clarity on how the Credit Professionals law would establish uniform credit standards for all financial institutions and businesses that are already regulated. The diverse credit providers in the market cater for the different needs of society, and implementing a one-size-fits-all approach to credit standards will limit access to credit.
4. He further submitted that the proposed credit Professional law would limit internal bank staff cross-functional movements and promotions, such as moving an operations staff to a credit role, which would hinder the need for these certifications.
5. He informed the Committee that the Bill would create barriers to entry and promote unnecessary bureaucracy in professional bodies, limiting the banking sector's flexibility and dynamism. The focus should remain on practical

experience and adaptable skills rather than prescriptive academic and professional qualifications.

6. He submitted that credit service providers work in industries other than banking. It is unclear why the proposed Bill seeks to regulate credit professionals in the banking industry alone. In contrast, credit services are offered across various sectors, including telecommunications, hospitality, medicine, and law, among others. Therefore, the proposed Bill would create discrimination among credit service providers.
7. He concluded that the proposed Bill would have significant negative consequences for the banking sector, stifling innovation, increasing costs, and limiting both career progression and cross-sector employment.
8. The Chief Executive Officer concluded that the petitioner failed to demonstrate the existing gaps to be addressed by the proposed Bill. Furthermore, the Bill would duplicate the existing regulations. The Kenya Bankers Association, therefore, rejected the proposed Bill in its entirety.

3.3. Central Bank of Kenya

The Governor, Central Bank of Kenya (CBK), Dr. Kamau Thugge, CBS, provided a written submission, vide a letter dated 20th May 2025, as follows—

9. The Governor noted that the petition proposes the enactment of legislation to provide qualified and well-regulated credit professionals, ensuring the stability and sustainability of lending institutions.
10. He stated that the Institute of Credit Management of Kenya (ICM-K) is registered under the Societies Act, Cap 108, with established governance structures, and its primary objectives are to promote credit professionalism for the benefit of all members and enhance the standards of credit management in the country.
11. The Committee was also informed that the membership of the ICM-K is categorized into full and associate Membership and is acquired through a qualification examination administered by the Kenya Accountants and Secretaries National Examination Board (KASNEB).
12. The CBK concluded that with ICM-K and KASNEB in place, the value addition of the proposed legislation to regulate the Credit Profession was not apparent; therefore, CBK did not support the petition.

3.3 Kenya Law Reform Commission

The Kenya Law Reform Commission provided a written submission, vide a letter dated 20th May 2025 as follows—

13. The Chief Executive Officer stated that professionals occupy a position of great importance in society because they deliver esoteric services to individuals, organizations and the government. The professional space has evolved over the years, as more occupations seek to establish a professional identity in addition to the traditionally established professions. In seeking to admit other occupations into the category of professions and establishing mechanisms for professional regulation, one must begin by understanding the definition and characteristics of a profession.
14. Citing Prof. Horton B. (1958) criterion of a profession, he stated that a profession must:
- (a) Satisfy an indispensable social need and be based upon well-established and socially accepted scientific principles;
 - (b) Demand adequate pre-professional and cultural training;
 - (c) demand possession of a body of specialized and systemic knowledge;
 - (d) Give evidence of needed skills which the public does not possess;
 - (e) have developed a scientific technique which is the result of tested experience;
 - (f) require the exercise of discretion and judgement in the manner of performance of duty;
 - (g) have group consciousness designed to extend scientific knowledge in technical language;
 - (h) have sufficient self-impelling power to retain its members throughout life, and must be used as a mere stepping stone to other occupations; and
 - (i) recognize its obligations to society by insisting that its members live up to an established code of ethics."
15. He also stated that Hughes E. (1968) equally argues that the essence of the idea of professionalism is that professionals profess to know better than their clients on what ails them or their affairs.
16. He stated that Garoup N (2014) similarly considers a profession as an occupation with the following characteristics: specialized skills, which are partially or fully acquired by intellectual training, the service calls for a high degree of integrity, and it involves direct or fiduciary relations with clients.
17. He submitted that a profession can be defined as a disciplined group of individuals, who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognized body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others.
18. On the need to regulate professionals, He stated that the Regulation of professionals in any given industry is crucial for various reasons, including the need to set uniform standards for the services of that profession, ensuring that

consumers are protected, promoting accountability, and fostering continuous competencies and skills through ongoing learning.

19. He also argued that the regulation of professional groups has often been justified as being in the public interest, with some scholars seeing professional associations and other similar groups as one of the four institutional bases of social order (along with the community, the market, and the state).
20. Under a typical statutory regulatory scheme, He informed the Committee that legislation establishes a regulatory authority comprising a majority of members who are either re-elected by or appointed from the profession regulated by that authority. In Australia, these authorities are called '*registration boards*', in the United Kingdom, they are known as '*Councils*' and in various provinces of Canada, '*professional colleges*'.
21. He also informed the Committee that the regulatory authorities have powers conferred by statute to determine qualification and other requirements for registration and to maintain a publicly accessible register of qualified persons. Under this regime, it is an offence for an unregistered person to use those professional titles reserved for the profession.
22. Further, the relevant statute also sets up a disciplinary system that, in most cases, empowers the regulatory authority to investigate complaints of professional misconduct and to impose sanctions on a practitioner, including deregistration if necessary. The effect of the regulatory scheme is to create an enforceable barrier to entry to the regulated profession and to regulate the standards of practice and conduct of registered practitioners.
23. Regarding the regulation of the credit profession in Kenya, he stated that credit is a form of agreement between two parties in which the creditor or lender gives money, goods, services, or securities in return for a promised future payment by the debtor or borrower. The lender earns a profit by getting interest on the borrowed amount from the borrower.
24. He further submitted that in Kenya, there has been a rise in the number of credit professionals who offer credit at exorbitant interest rates.
25. He observed that due to ineffective regulation of the credit industry, there have been numerous complaints from borrowers, including unfairly high interest rates, hidden and unreasonable methods of computing interest, oppressive penalties, irregular enforcement of security interest over assets of the borrowers, harassment and breach of privacy, humiliation and stressful relationships between borrowers and lenders.
26. He informed the Committee that the Consumer Protection Act contains provisions addressing unfair lending practices, including the rescission of

agreements resulting from such practices, default charges, and penalties charged by credit providers.

27. Further, the Act also sets out various rights of Consumers, including the right to prepayment, so that lenders cannot prohibit prepayment of loans, and the right to receive statements on the loans.
28. He also submitted that The Business Laws (Amendment Act) 2024 amended, among others, the Central Bank of Kenya Act, Cap 491, Laws of Kenya and the Microfinance Act, Cap 493C, Laws of Kenya, to extend the regulatory oversight of the Central Bank of Kenya to credit providers that were previously not subject to oversight by CBK.
29. He further informed the Committee that previously, non-deposit-taking credit providers were not under the regulatory oversight of the CBK. The Business Laws (Amendment) Act 2024 replaced the definition of digital credit providers under the CBK Act with non-deposit-taking credit providers. This means that credit providers that were previously unregulated now fall under the regulatory oversight of the CBK, regardless of the medium through which they offer their credit services.
30. In addition, despite the fragmented efforts to regulate certain aspects of the credit industry, there remains a need for a robust and comprehensive legal framework to address pertinent issues, particularly those related to professionalism in the industry.
31. Regulation of the credit profession involves controlling access to the credit practice through registration and certification, or licensure. The aim is to ensure that credit professionals provide services in a competent, ethical and safe manner. This will guarantee quality credit services at affordable interest rates.
32. The Chief Executive Officer concluded that the appropriate model of credit profession regulation is self-regulation. This means regulating the profession independently. The credit profession may be regulated by a professional body vested with statutory powers under legislation. These self-regulatory powers and functions include the registration, certification, or licensure of members of the credit profession.

PART FOUR

4. COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner, Kenya Bankers Association, Central Bank of Kenya, and Kenya Law Reform Commission, the Committee observed that—

33. The existence of the Institute of Credit Management of Kenya (ICM-K), which is registered under the Societies Act, Cap 108, ensured the promotion of professionalism and standards in credit management. Further, qualification examination administered by KASNEB was a requirement of membership in the ICM-K; therefore, there are provisions for the requisite training for certification, registration, and licensing of practitioners.
34. The establishment of a new statutory regulatory body for credit would have significant fiscal implications, including additional administrative costs, which is contrary to the Government's ongoing policy of rationalizing public expenditure.
35. The Committee noted numerous complaints regarding unethical lending practices, including harassment, exploitation, breach of privacy, and excessive interest rates. These concerns reflect a systemic gap that could be abundantly addressed through the Data Protection Act, Cap 411C, which has ensured protection of the privacy and data of data subjects, as well as the Central Bank of Kenya Act, Cap. 491 has a provision of regulating credit providers, including non-deposit-taking credit providers.
36. Credit functions are provided by various entities, including banks, microfinance banks, SACCOS, credit-only providers, digital credit providers, and retail stores, which are already regulated and provide diverse credit needs. Therefore, the proposed Bill will hinder diversity and consistent growth in the credit industry.
37. There were divergent views among stakeholders on the need for regulating the credit profession through legislation. Those opposed to the proposed Bill cited overregulation, potential job market barriers, and duplication of roles, arguing that existing frameworks and institutions, including the Institute of Credit Management (ICM-K) and KASNEB, already address professional development needs. Conversely, views in support of statutory regulation highlighted the need for a comprehensive legal framework to standardize and professionalize the credit practice sector.

PART FIVE


5. COMMITTEE RECOMMENDATION

38. Pursuant to the provisions of Standing Order 227, the Committee responds as follows-

On the prayer that the Committee enact legislation to regulate the credit profession, the Committee notes that the existence of the Institute of Credit Management of Kenya (ICM-K) ensures the promotion of professionalism and standards in credit management. Further, there are provisions for the requisite training for certification, registration, and licensing of practitioners. The enactment of the proposed Bill would also have significant fiscal implications. **Therefore, the Committee rejects the enactment of legislation to regulate the credit profession.**

Signed:  Date: 23/09/25

THE HON. KAREMBA MUCHANGI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 SEP 2025 DAY: 	
TABLED BY:	Hon. Muchangi Karemba M.P. Chairperson
CLERK-AT THE-TABLE:	A. Shibuko

ANNEXURES

- Annex 1: The Adoption List
- Annex 2: Public Petition No. 55 of 2023 regarding Enactment of legislation to regulate the credit profession
- Annex 3: Minutes of the 49th Sitting of the Public Petitions Committee held on 10th September 2024
- Annex 4: Minutes of the 55th Sitting of The Public Petitions Committee held on 26th September 2024
- Annex 5: Correspondence by the Central Bank of Kenya dated 20th May 2025
- Annex 6: Correspondence by the Kenya Law Reform Commission dated 20th May 2025

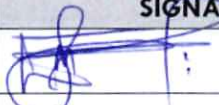

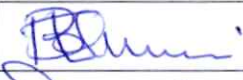

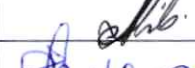
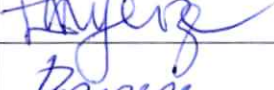
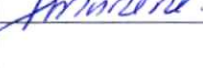
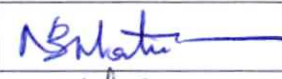




PUBLIC PETITIONS COMMITTEE

ADOPTION LIST

- (i) Consideration and adoption of the Report on Public Petition No. 55 of 2023 by Mr. Bernard Mokaya Magembe, regarding enactment of legislation to regulate Bank Credit Management Professionals.

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 16/9/2025

	HON. MEMBER	SIGNATURE
1.	Hon. Muchangi Karemba, CBS, M.P. (Chairperson)	
2.	Hon. Janet Jepkemboi Sitienei, CBS, M.P. (Vice Chairperson)	
3.	Hon. Patrick Makau King'ola, M.P.	
4.	Hon. Beatrice Kadeveresia Elachi, CBS, M.P.	
5.	Hon. Joshua Chepyegon Kandic, M.P.	
6.	Hon. Maisori Marwa Kitayama, M.P.	
7.	Hon. Edith Vethi Nyenze, M.P.	
8.	Hon. Patrick Ntwiga Munene, M.P.	
9.	Hon. Bidu Mohamed Tubi, M.P.	
10.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	
11.	Hon. Peter Mbogho Shake, M.P.	
12.	Hon. Suzanne Ndunge Kiamba, M.P.	
13.	Hon. John Bwire Okano, M.P.	
14.	Hon. Sloya Clement Logova, M.P.	
15.	Hon. Peter Irungu Kihungi, M.P.	



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 28TH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON TUESDAY, SEPTEMBER 16, 2025, IN MASHUA CONFERENCE ROOM,
SERENA BEACH RESORT AT 10.00 AM

PRESENT

1. Hon. Eric Muchangi Karemba, M.P. Chairperson
2. Hon. Janet Jepkemboi Sitienei, CBS, M.P. Vice-Chairperson
3. Hon. Beatrice Kadeveresia Elachi, CBS, M.P.
4. Hon. Joshua Chepyegon Kandie, M.P.
5. Hon. John Bwire Okano, M.P.
6. Hon. Edith Vethi Nyenze, M.P.
7. Hon. Patrick Ntwiga Munene, M.P.
8. Hon. (Eng.) Bernard Nebart Muriuki, M.P.
9. Hon. Peter Mbogho Shake, M.P.
10. Hon. Maisori Marwa Kitayama, M.P.
11. Hon. Suzanne Ndunge Kiamba, M.P.
12. Hon. Peter Irungu Kihungi, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Bidu Mohamed Tubi, M.P.
3. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

1. Mr. Leonard Machira Principal Clerk Assistant II
2. Ms. Miriam Modo Clerk Assistant I
3. Ms. Anne Shibuko Clerk Assistant I
4. Mr. Bernard Toroitich Clerk Assistant III
5. Ms. Patricia Gichane Legal Counsel II
6. Ms. Nancy Akinyi Research Officer III
7. Ms. Roselyn Njuki Senior Serjeant at arms
8. Mr. Peter Mutethia Audio Officer

MIN./PPC/2025/152:

PRELIMINARIES

The Chairperson called the meeting to order at 10:00 am. with a Prayer. A round of self-introductions was then conducted before proceeding with the business of the day.

MIN./PPC/2025/153:

ADOPTION OF AGENDA

The Committee then adopted the agenda as listed hereunder on the proposal of Hon. Peter Irungu Kihungi, M.P, and seconded by Hon. (Eng.) Bernard Nebart Muriuki, M.P.

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of P/No. 55 of 2023 regarding Enactment of Legislation to regulate the Credit Profession**
6. Any Other Business
7. Adjournment

MIN./PPC/2025/154:
SITTINGS

CONFIRMATION OF MINUTES OF PREVIOUS

The Agenda was deferred.

MIN./PPC/2025/155:

CONSIDERATION OF P/NO. 55 OF 2023
REGARDING ENACTMENT OF LEGISLATION TO
REGULATE THE CREDIT PROFESSION

The Committee considered the draft report and noted as follows—

- (i) Numerous complaints exist regarding **unethical lending practices** (harassment, excessive interest rates, privacy breaches) but are addressed under existing laws such as the Data Protection Act and CBK Act.
- (ii) The petitioner's concerns were valid to the extent that shylocs are to be unregulated, exposing consumers to improper credit practices.
- (iii) Credit roles span multiple institutions (banks, microfinance, digital credit providers), and legislation could hinder sector diversity and growth.
- (iv) There were divergent stakeholder views, with opponents citing overregulation and job market barriers; and supporters emphasize need for standardization and professionalism

- (v) The report ought to include clarifying paragraph explaining rejection reasoning, emphasizing coverage by existing bodies (ICMK, CBK, etc.)
- (vi) Under observations, there was need to indicate that the petitioner was not clear on the gap that the professionals cited.
- (vii) The argument that credit-related functions in the banking sector involved all bank staff every employee handles credit is not sufficient. **Rework para 35 to have it as an opening paragraph to the conclusion.**
- (viii) The argument that credit functions are provided by banks, microfinance banks, saccos, credit-only providers, digital credit providers, retail stores among others which are already regulated and already provide diverse credit needs, is a valid argument.

Committee Observations

The Committee observed as follows—

- (i) The existence of the Institute of Credit Management of Kenya (ICM-K), which is registered under the Societies Act, Cap 108 ensured promotion of professionalism and standards in credit management. Further, qualification examination administered by KASNEB was a requirement of membership in the ICM-K; therefore, there are provisions for the requisite training for certification, registration, and licensing of practitioners
- (ii) The Committee noted numerous complaints regarding unethical lending practices, including harassment, exploitation, breach of privacy, and excessive interest rates. These concerns reflect a systemic gap that could be abundantly addressed through the Data Protection Act, Cap 411C has ensured protection of privacy and data of data subjects as well as Central Bank of Kenya Act Cap. 491 has a provision of regulating credit providers, including non-deposit-taking credit providers.
- (iii) Credit-related functions in the banking sector involved all bank staff from sales agents and account opening to customer service, lawyers, operations, credit, and digital teams. Therefore the proposed Bill will limit internal bank staff cross-functional movements and promotions.
- (iv) Credit functions are provided by banks, microfinance banks, saccos, credit-only providers, digital credit providers, retail stores among others which are already regulated and already provide diverse credit needs. Therefore, the proposed Bill will hinder diversity and consistent growth in the credit industry.
- (v) There were divergent views among stakeholders on the need for regulating the credit profession through legislation. Those opposed to the proposed Bill cited overregulation, potential job market barriers, and duplication of roles, arguing that existing frameworks and institutions, including the Institute of Credit Management (ICM-K) and KASNEB, already address professional development needs. Conversely, views in support of statutory regulation highlighted the need for a comprehensive legal framework to standardize and professionalize the credit practice sector.

Committee Recommendation

On the prayer that the Committee enacts legislation to regulate the credit profession, **the Committee notes that the existence of the Institute of Credit Management of Kenya (ICM-K) ensures the promotion of professionalism and standards in credit management. Further, there are provisions for the requisite training for certification, registration, and licensing of practitioners. The enactment of the proposed Bill would also have significant fiscal implications. Therefore, the Committee rejects the enactment of the proposed Bill**

Adoption of the Report

The Committee adopted the report having been proposed by Hon. Susan Kiamba, M.P and seconded by Hon. Beatrice Elachi, M.P

MIN./PPC/2025/156: ADJOURNMENT AND DATE OF NEXT MEETING


The Chairperson adjourned the meeting at 01:00 p.m. The date of the next meeting will be held on Tuesday, 16th September 2025 at 02.00 p.m.



**HON. MUCHANGI KAREMBA, CBS, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE**

23/09/2025

Date:

 THE NATIONAL ASSEMBLY PAPERS LAID		
DATE: 23 SEP 2025 <table border="1" style="display: inline-table;"><tr><td>DAY.</td></tr></table>		DAY.
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- (v) The report ought to include a clarifying paragraph explaining rejection reasoning, emphasizing coverage by existing bodies (ICMK, CBK, etc.)
- (vi) Under observations, there was need to indicate that the petitioner was not clear on the gap that the professionals cited.
- (vii) The argument that credit-related functions in the banking sector involved all bank staff every employee handles credit is not sufficient.
- (viii) The argument that credit functions are provided by banks, microfinance banks, saccos, credit-only providers, digital credit providers, retail stores among others which are already regulated and already provide diverse credit needs, is a valid argument.

Committee Observations

The Committee observed as follows—

- (i) The existence of the Institute of Credit Management of Kenya (ICM-K), which is registered under the Societies Act, Cap 108 ensured promotion of professionalism and standards in credit management. Further, qualification examination administered by KASNEB was a requirement of membership in the ICM-K; therefore, there are provisions for the requisite training for certification, registration, and licensing of practitioners
- (ii) The Committee noted numerous complaints regarding unethical lending practices, including harassment, exploitation, breach of privacy, and excessive interest rates. These concerns reflect a systemic gap that could be abundantly addressed through the Data Protection Act, Cap 41 IC has ensured protection of privacy and data of data subjects as well as Central Bank of Kenya Act Cap. 491 has a provision of regulating credit providers, including non-deposit-taking credit providers.
- (iii) Credit-related functions in the banking sector involved all bank staff from sales agents and account opening to customer service, lawyers, operations, credit, and digital teams. Therefore the proposed Bill will limit internal bank staff cross-functional movements and promotions.
- (iv) Credit functions are provided by banks, microfinance banks, saccos, credit-only providers, digital credit providers, retail stores among others which are already regulated and already provide diverse credit needs. Therefore, the proposed Bill will hinder diversity and consistent growth in the credit industry.
- (v) There were divergent views among stakeholders on the need for regulating the credit profession through legislation. Those opposed to the proposed Bill cited overregulation, potential job market barriers, and duplication of roles, arguing that existing frameworks and institutions, including the Institute of Credit Management (ICM-K) and KASNEB, already address professional development needs. Conversely, views in support of statutory regulation highlighted the need for a comprehensive legal framework to standardize and professionalize the credit practice sector.

Committee Recommendation

On the prayer that the Committee enacts legislation to regulate the credit profession, **the Committee notes that the existence of the Institute of Credit Management of Kenya (ICM-K) ensures the promotion of professionalism and standards in credit management. Further, there are provisions for the requisite training for certification, registration, and licensing of practitioners. The enactment of the proposed Bill would also have significant fiscal implications. Therefore, the Committee rejects the enactment of the proposed Bill**

Adoption of the Report

The Committee adopted the report having been proposed by Hon. Susan Kiamba, M.P and seconded by Hon. Beatrice Elachi, M.P

MIN./PPC/2025/156:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:00 p.m. The date of the next meeting will be held on Tuesday, 16th September 2025 at 02.00 p.m.

HON. MUCHANGI KAREMBA, CBS, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date:



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 55th SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, SEPTEMBER 26, 2024, IN CONFERENCE ROOM 12, NEW WING, MAIN PARLIAMENT BUILDINGS AT 11.00. A.M

PRESENT

- | | |
|---|----------|
| 1. Hon. Ernest Ogesi Kivai, M.P. | Chairing |
| 2. Hon. John Walter Owino, M.P. | |
| 3. Hon. Joshua Chepyegon Kandie, M.P | |
| 4. Hon. Edith Vethi Nyenze, M.P. | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | |
| 6. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | |

APOLOGIES

- | | |
|--|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | Vice Chairperson |
| 3. Hon. Patrick Makau King'ola, M.P. | |
| 4. Hon. Maisori Marwa Kitayama, MP | |
| 5. Hon. Peter Mbogho Shake, M.P. | |
| 6. Hon. Caleb Mutiso Mule, M.P. | |
| 7. Hon. Suzanne Ndunge Kiamba, M.P. | |
| 8. Hon. Sloya Clement Logova, M.P. | |
| 9. Hon. John Bwire Okano, M.P. | |

IN ATTENDANCE

SECRETARIAT

- | | |
|-------------------------|-----------------------------|
| 1. Ms. Miriam Modo | Clerk Assistant I |
| 2. Ms. Penninah Simiren | Legal Counsel II |
| 3. Mr. Isaac Nabiswa | Legal Counsel II |
| 4. Mr. Willis Obiero | Clerk Assistant III |
| 5. Mr. Martin Sigei | Research Officer III |
| 6. Ms. Nancy Akinyi | Research Officer III |
| 7. Mr. Peter Mutethia | Audio Officer |
| 8. Mr. Calvin Karungo | Media Relations Officer III |
| 9. Mr. Paul Shana | Sergeant at Arms |

PETITIONERS (Institute of Credit Management Kenya, ICM)

- | | | |
|------------------------|---|-----------------|
| 1. Mr. Benard Mokaya | - | Lead Petitioner |
| 2. Ms. Beryl Ouya | | |
| 3. Mr. Michael Kabiro | | |
| 4. CPA Eliakim Diang'a | | |
| 5. CPA, CPP Chambi | | |

7. Joseph Mwangi
8. Gladys Omenge
9. CCP Zipoora Gikonyo

MIN./PPETC/2024/342: PRELIMINARIES

The Chairperson called the meeting to order at 11:00 am. and proceedings began with prayers by Hon. Eng. Nebart Muriuki, M.P.

MIN./PPETC/2024/343: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of P/No.55 of 2023 regarding Enactment of Legislation to Regulate the Credit Professionals

- Meeting with the Petitioner (Mr. Benard Mokaya)

6. Meeting with NLC regarding—

- P/No. 45 of 2023 on Delayed Adjudication and Settlement of residents of Kidomaya/Miungoni Village in Vanga Ward in Lunga Lunga Constituency;
- P/No. 33 of 2023 regarding Compensation of person affected by Mombasa-Mariakani Road Dualling Project;
- P/ No. 59/2023 on Settlement of Ontulili Mount Kenya Forest Squatters;
- P/No. 10 of 2023 on Resettlement of residents of Muthanga Farm;
- P/No. 69 of 2023 on Resettlement of Squatters in Koibem Village, Chepkumia Location, Nandi County;
- P/No. 6 of 2024 on Illegal acquisition of parcels of land registered as Kapkakaran farm LR. No. 5423/2 and LR. No. 6053 in Nandi Hills Sub-County, Nandi County;
- P/No. 68 of 2023 on Irregular and Double Allocation of Parcels of Land in Chepchoina, (Phase I, II & III) Settlement Schemes in Trans Nzoia County; and
- P/No. 8 of 2024 regarding ownership dispute of land parcel L.R. No. 209-11970 -Dandora/Mowlem, Area, Kangundo Road, Nairobi in Embakasi West Constituency.

7. Any Other Business

8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Bidu Mohamed Tubi, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/344: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda was deferred.

MIN./PPETC/2024/345: CONSIDERATION OF P/NO.55 OF 2023 REGARDING ENACTMENT OF LEGISLATION TO REGULATE THE CREDIT PROFESSIONALS

Mr. Benard Mokaya appeared before the Committee and submitted as follows—

1. According to the 2022 Kenya Financial Sector Deepening Report on inclusive finance, levels of financial inclusion as measured by the access dimension stood at 83.7%. This can be attributed to various developments in the financial services sector and general expansion of the economy.
2. According to the World Bank, the domestic credit to private sector of GDP stood at 32% in 2020 while gross loans listing as per Credit Officer Survey Report issued by Central Bank of Kenya totaled Ksh.3.677 trillion as at December 2022. Similarly, according to the Sacco Societies Regulatory Authority, gross loans issued by SACCOs in 2021 stood at Ksh.608.75 billion. These are indicators of a robust credit market in the country.
3. Despite the growth of the credit sector, consumer lending raises significant consumer protection risks and concerns which could be mitigated by having certified credit professionals.
4. The enactment of legislation regulating credit professionals will provide a qualified and well-regulated credit profession thus ensuring the stability and sustainability of lending institutions.
5. Various professionals in Kenya, including accountants, lawyers, financial analysts, engineers, doctors, nurses, auctioneers, human resource practitioners, among others, are regulated through statute. Their respective legislation provides for requisite training for certification, registration and licensing of practitioners and the regulation of their practice among other provisions for effective administration of their roles.
6. It is unfortunate that to date credit professionals do not have a guiding statute that regulates the credit profession to ensure high professional standards among practitioners in the credit sector. This has exposed consumers to a number of risks including breach of transparency, unconscionable conduct and loss of assets.
7. The enactment of legislation regulating the credit profession will sensitize members of the public on who a credit professional is, the contribution of the credit profession to the safety, sustainability and stability of the credit market and the services that a credit professional offers to the general public in regard to helping the public make an informed decision before using a credit facility.
8. The enactment of legislation regulating the credit profession will further benefit the credit market by—
 - i. Providing accountable, reliable and certified credit professionals;
 - ii. Providing a pool of professionals knowledgeable in handling of the credit portfolio and investment;
 - iii. Providing authoritative leadership in the area of credit and debt management for sound, stable and sustainable businesses and economy;
 - iv. Reducing and eventually eradicating fraud in the credit market for sustainability of the financial system and institutions; and

9. The enactment of legislation regulating the credit profession will also benefit the credit profession by—
- i. Establishing a recognized legislated position of credit professionals in matters credit and debt management;
 - ii. Promoting credibility among the employers for registered members;
 - iii. Providing continuous and well-structured professional development;
 - iv. Legally strengthening the profession in delivery of credit professional services; and
 - v. Establishing regulations to govern conduct of the professionals as per the proposed law once enacted.

Prayers

10. The Petitioners prayed that the Committee recommends the enactment of the legislation to regulate the credit profession and specifically provide for the following provisions—
- (i) The establishment and membership of the Institute of Certified Credit Professionals;
 - (ii) The functions and management of the Institute;
 - (iii) The registration of credit professionals and issuance of annual practicing certificates; and
 - (iv) Disciplinary provisions that include establishment of a disciplinary committee, inquiry and appeal mechanisms.

Committee Concerns

1. **Location of ICM's Office:** The Petitioners stated that the Institute of Credit Management (ICM) had a functional office located at KASNEB Towers.
2. **Definition of a Credit Professional:** The Petitioners described a credit professional as an individual working in credit management across five key areas: assessing creditworthiness, managing credit risk, ensuring timely collections, acting as credit risk managers, and working as credit analysts. While banks have credit committees, the Petitioners argued that those performing the work should be regulated and qualified to prevent substandard practices.
3. **Gaps Necessitating Legislation:** The Petitioners highlighted that there is an increasing need for debt collection, institutional stability, and regulation of the growing number of non-regulated financial institutions. This justifies the need for appropriate legislation.
4. **Exams by ICM:** The Petitioners explained that the ICM exams, managed by KASNEB, ensured that individuals met the necessary credit qualifications, allowing members to be well-trained. They noted that while accounting exams include financial analysis, credit management exams cover additional areas such as credit risk management and financial statement analysis. The CCP (Certified Credit Professional) syllabus has been updated and is

risk management, principles of account, financial statement analysis, and corporate credit analysis.

5. **Data on Credit Professionals:** The Petitioners shared that a significant number of individuals, including students pursuing the CCP exams modelled after the CPA, are being trained in various skills and competencies necessary for sound decision-making. As of the time of the petition, the number of credit professionals stood at 3,950, and this number continues to grow. Credit committees are often chaired by credit professionals or managers.
6. **Regulating the Profession and its Impact on Banking:** The Petitioners emphasized that regulating the credit profession would not hinder banks from hiring individuals with diverse skills. Instead, the proposed regulation aims to protect consumer rights and provide guidance to both the banking sector and individuals seeking credit. It would also help prevent unethical practices by certain institutions, such as publicly shaming lenders who default.

Committee Resolutions

After deliberations, the Committee resolved to engage relevant stakeholders with a view of collecting information necessary to process the Petition.

MIN./PPETC/2024/347:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:30 p.m. The next meeting will be held on Tuesday, 1st October 2024 at 11:00 a.m.

Sign: 

(CHAIRPERSON).

Date: 19-11-2024



REPUBLIC OF KENYA

0048 D/SNA
5/10/2023

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 55 of 2023)

REGARDING ENACTMENT OF LEGISLATION TO REGULATE THE CREDIT
PROFESSIONALS

- 1. Honourable Members,** Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any petition, other than those presented by a Member.
- 2.** In this regard, **Honourable Members,** I wish to report to the House that my office has received a petition from one *Mr. Benard Mokaya Magembe, the Chairperson of the Council of the Institute of Credit Management Kenya* calling for enactment of legislation to regulate the credit profession.
- 3.** The Petitioner avers that, according to the 2022 Kenya Financial Sector Deepening Report on Inclusive Finance, levels of financial inclusion, as measured by the access dimensions, stood at 83.7% attributed to various developments in the financial services sector and general expansion of the economy.
- 4. Honourable Members,** the Petitioner further notes that, according to the World Bank, the domestic credit to private sector of GDP stood at 32% in 2020 while gross loans listing as per the Credit Officer Survey Report by the Central Bank of Kenya totaled Kshs. 3.677 Trillion as at December, 2022 among other reports. These, according to the Petitioner, are indicators of a robust credit market in the country.

REGARDING ENACTMENT OF LEGISLATION TO REGULATE THE CREDIT PROFESSION

5. **Honourable Members**, the Petitioner is concerned that, despite the growth of the sector, consumer lending raises significant consumer protection risks and concerns which can be mitigated by having certified credit professionals.
6. The Petitioner alleges that other professions in Kenya including *Accountants, Lawyers, Fiscal Analysts, Engineers and Doctors* among others are regulated through a statute for effective discharge of their mandates, yet the credit profession is not regulated.
7. **Honourable Members**, the Petitioner is convinced that enactment of the proposed legislation, which has numerous benefits, would be instrumental in sensitizing and cushioning consumers from a number of risks including breach of transparency, unconscionable conduct and loss of assets, among others.
8. The Petitioner therefore prays that, the National Assembly enacts legislation to regulate credit profession to provide qualified and well-regulated credit profession that in the long-term will ensure stability and sustainability of lending institutions among other attendant provisions.
9. **Honourable Members**, having determined that the matters raised by the petitioner are well within the authority of this House, and further that, the matters raised in this Petition are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to the provisions of Standing Order 208A.
10. The Committee is required to consider the petition and report its findings to the House and to the petitioner in accordance with Standing Order 227(2).

I thank you.



HON. GLADYS J. BOSS, MGH, MP
DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY

Date:

5/10/2023

12th May, 2023

The Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI
Email: ena@parliament.go.ke

DL & P
28
15/05/23
Mt. Mwangi
Assembly
22/5/23

REC'D
2023

RE: PETITION TO THE NATIONAL ASSEMBLY PURSUANT TO ARTICLES 119(1) OF THE CONSTITUTION AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS CONCERNING THE ENACTMENT OF LEGISLATION TO REGULATE THE CREDIT PROFESSION

We, the undersigned, citizens of the Republic of Kenya and members of Council of the Institute of Credit Management Kenya, for and on behalf of the Institute of Credit Management Kenya:

DRAW the attention of the National Assembly to the following—

1. THAT Article 119(1) of the Constitution provides that every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.
2. THAT according to the 2022 Kenya Financial Sector Deepening Report on inclusive finance, levels of financial inclusion as measured by the access dimension stood at 83.7%. This can be attributed to various developments in the financial services sector and general expansion of the economy.
3. THAT according to the World Bank, the domestic credit to private sector of GDP stood at 32% in 2020 while gross loans listing as per Credit Officer Survey Report issued by Central Bank of Kenya totaled Ksh.3.677 trillion as at December 2022. Similarly, according to the Sacco Societies Regulatory Authority, gross loans issued by SACCOs in 2021 stood at Ksh.608.75 Billion. These are indicators of a robust credit market in the country.
4. THAT despite the growth of the credit sector, consumer lending raises significant consumer protection risks and concerns which could be mitigated by having certified credit professionals.
5. THAT the enactment of legislation regulating credit professionals will provide a qualified and well-regulated credit profession thus ensuring the stability and sustainability of lending institutions.
6. THAT various professionals in Kenya, including accountants, lawyers, financial analysts, engineers, doctors, nurses, auctioneers, human resource practitioners, among others, are regulated through statute. Their respective legislation provides for requisite training for

NATIONAL ASSEMBLY
PETITIONS DESK

NATIONAL ASSEMBLY
RECEIVED
CLERK'S OFFICE

certification, registration and licensing of practitioners and the regulation of their practice among other provisions for effective administration of their roles.

7. THAT it is unfortunate that to date credit professionals do not have a guiding statute that regulates the credit profession to ensure high professional standards among practitioners in the credit sector. This has exposed consumers to a number of risks including breach of transparency, unconscionable conduct and loss of assets.
8. THAT the enactment of legislation regulating the credit profession will sensitize members of the public on who a credit professional is, the contribution of the credit profession to the safety, sustainability and stability of the credit market and the services that a credit professional offers to the general public in regard to helping the public make an informed decision before using a credit facility.
9. THAT the enactment of legislation regulating the credit profession will further benefit the credit market by—
 - a) providing accountable, reliable and certified credit professionals;
 - b) providing a pool of professionals knowledgeable in handling of the credit portfolio and investment;
 - c) providing authoritative leadership in the area of credit and debt management for sound, stable and sustainable businesses and economy;
 - d) reducing and eventually eradicating fraud in the credit market for sustainability of the financial system and institutions; and
 - e) alleviating the pain caused by unprofessional debt collectors in the handling of debt.
10. THAT the enactment of legislation regulating the credit profession will also benefit the credit profession by—
 - a) establishing a recognized legislated position of credit professionals in matters credit and debt management;
 - b) promoting credibility among the employers for registered members;
 - c) providing continuous and well-structured professional development;
 - d) legally strengthening the profession in delivery of credit professional services; and
 - e) establishing regulations to govern conduct of the professionals as per the proposed law once enacted.
11. THAT we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response as only Parliament has the constitutional authority to enact legislation.
12. THAT none of the issues raised in this Petition are pending in any court of law, constitutional or any other legal body.

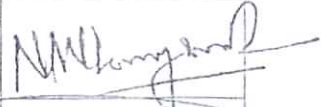
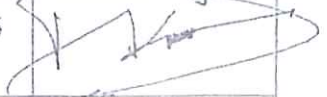

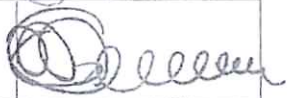


WHEREFORE your humble petitioners PRAY that the National Assembly—

13. Considers and approves the enactment of legislation to regulate the credit profession and specifically provide for the following, among other relevant provisions,—
- a) the establishment and membership of the Institute of Certified Credit Professionals;
 - b) the functions and management of the Institute;
 - c) the registration of credit professionals and issuance of annual practising certificates;
and
 - d) disciplinary provisions that include establishment of a disciplinary committee, inquiry and appeal mechanisms.

AND YOUR PETITIONERS WILL EVER PRAY

Dated this FRIDAY 12th day of MAY 2023

Presented by the following members of the Council of the Institute of Credit Management (Kenya)—

NO.	NAME	DESIGNATION	CONTACT	SIGNATURE
1.	CCP. Mokaya Magembe Bernard	Chairman	0721454658	
2.	CCP.FA. Kithinji Daniel	Council Member	0722827245	
3.	CCP. Kimotho Wanjohi Joseph	Council Member	0712650610	
4.	CCP. Kabiru Gichane Michael	Council Member	0722203307	
5.	CCP. Makau Dennis Benson	Treasurer	0722772524	
6.	CCP. Muiruri Mbugua Joseph	Secretary	0722635902	

Miriam



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

PUBLIC PETITIONS COMMITTEE

LEGAL BRIEF:

PUBLIC PETITION (*NO. 55 OF 2023*),

BRIEF ON PETITION NO. 55 OF 2023 REGARDING THE ENACTMENT OF
PROPOSED CREDIT PROFESSIONALS BILL

June 2024

BRIEF ON PETITION NO. 55 OF 2023 REGARDING THE ENACTMENT OF LEGISLATION TO REGULATE CREDIT PROFESSIONALS

1. In the Petition, Mr. Bernard Mokaya Magembe, the petitioner and the chairperson Council of the Institute of Credit Management-Kenya, draws the attention of the House to his prayer for the enactment of the Credit Professionals Bill.
2. In the Bill the petitioner seeks to regulate credit professionals to ensure consumer protection from credit risks and concerns that can be mitigated through the certification of credit professionals.
3. In order to regulate the profession, the petitioner proposes legal provisions on the establishment of the Institute of Certified Credit Professionals, provisions on its functions and management. The legislative proposal also provides for the registration of credit professionals and their annual licensing. It provides for disciplinary measures such as the establishment of a disciplinary committee including an inquiry and appeal mechanism.
4. The petitioner submits that the proposed legislation will enhance quality of services in the market through reducing and eradicating fraud in the credit market and alleviating the pain caused by unprofessional debt collectors.
5. He further submits that the proposed law will benefit the profession by providing continuous professional development, promoting credibility among the employers of registered credit professionals and establishing regulations to govern the conduct of professionals.
6. The petitioner seeks the intervention of the House to enact the Credit Professionals Bill to ensure stability and sustainability of lending institutions.

ANALYSIS

7. A credit profession is defined in the proposed law as a person with expertise in credit control, credit analysis, credit consulting, debt collection, credit risk management, debt counselling and related functions.

a. The Constitution

8. Article 95(3) of the Constitution provides for the role of the National Assembly to enact legislation. Article 95 (2) of the Constitution mandates the National Assembly to deliberate and resolve the issues of concern to the people.

KASNEB (established in the Accountants Act Cap 531) provides certification courses for credit professionals.

16. Credit professionals are thus seeking a distinct law to regulate their members similar to that of investment and financial analysts.
17. The petitioner's proposed Bill will define credit professional practice, it will provide for the establishment of the institute of Certified Credit Professionals, the annual licensing and registration of the credit professional, disciplinary measures and continuous professional development requirements.
18. The Committee should seek the views of the petitioners and stakeholders to understand the need for a regime to regulate the practice of credit professionals.

CONCLUSION

19. In light of the foregoing legal provisions, in considering the Petition, the Committee should seek to interrogate the views of —
 - a) the Petitioner -Institute of Credit Management-Kenya (ICMK);
 - b) The Kenya Bankers Association;
 - c) The Association of Kenya Insurers;
 - d) the Attorney General; and
 - e) the Kenya Law Reform Commission.

GICHANE PATRICIA
LEGAL COUNSEL

b. The National Assembly Standing Orders

9. Standing order 219 provides that a public petition may seek the House to consider any matter within its authority including the enacting, amending or repealing any legislation. If the Committee considers and approves the Petition, the approved content will be reduced to a legislative proposal sponsored by the Committee for consideration by the House.
10. Standing Order 114 A (1) (b) provides for the exemption from prepublication scrutiny of a proposal sponsored by the public petitions committee.

c. Similar laws to regulate specific professions

11. Other similar laws to regulate professions include Advocates Act cap 16, the Occupational Therapists Act Cap 236A ,the Accountants Act Cap 531 and the Investment and Financial Analysts Act Cap 542.
12. The **Accountants Act Cap 531**, establishes the Institute of Certified Public Accountants of Kenya (ICPAK) that is mandated to regulate the practice of accountants and promote professional standards and competence.
13. The Act also establishes the Examination Board (KASNEB) tasked to prepare syllabuses for professionals' and technicians' examinations in accountancy and company secretarial practice and related disciplines. The Board conducts examinations and issue certificates to candidates who have satisfied examination requirements.
14. The **Investment and Financial Analysts Act Cap 542** similarly establishes the Institute of Certified Investment and Financial Analysts to promote standards of professional competence and ethical practice. Section 16 of the Act provides for qualification for registration which includes passing a final examination on certified investment and financial analysis. However, the Act provides for an exception for this requirement for experienced financial analysts that the Council may exempt. The Act refers to the Examination Board (KASNEB) established under the Accountants Act Cap 531.
15. It is notable that credit professionals like investment and financial analysts are individuals from various backgrounds including accounting, finance or economics. Presently

12th May, 2023

The Clerk of the National Assembly

Parliament Buildings

P.O. Box 41842 – 00100

NAIROBI

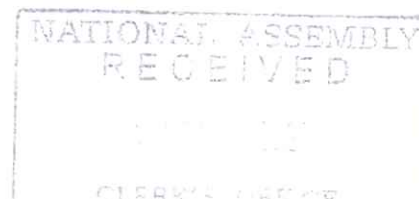
Email: cna@parliament.go.ke

RE: PETITION TO THE NATIONAL ASSEMBLY PURSUANT TO ARTICLES 119(1) OF THE CONSTITUTION AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS CONCERNING THE ENACTMENT OF LEGISLATION TO REGULATE THE CREDIT PROFESSION

We, **the undersigned**, citizens of the Republic of Kenya and members of Council of the Institute of Credit Management Kenya, for and on behalf of the Institute of Credit Management Kenya:

DRAW the attention of the National Assembly to the following—

1. **THAT** Article 119(1) of the Constitution provides that every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.
2. **THAT** according to the 2022 Kenya Financial Sector Deepening Report on inclusive finance, levels of financial inclusion as measured by the access dimension stood at 83.7%. This can be attributed to various developments in the financial services sector and general expansion of the economy.
3. **THAT** according to the World Bank, the domestic credit to private sector of GDP stood at 32% in 2020 while gross loans listing as per Credit Officer Survey Report issued by Central Bank of Kenya totaled Ksh.3.677 trillion as at December 2022. Similarly, according to the Sacco Societies Regulatory Authority, gross loans issued by SACCOs in 2021 stood at Ksh.608.75 Billion. These are indicators of a robust credit market in the country.
4. **THAT** despite the growth of the credit sector, consumer lending raises significant consumer protection risks and concerns which could be mitigated by having certified credit professionals.
5. **THAT** the enactment of legislation regulating credit professionals will provide a qualified and well-regulated credit profession thus ensuring the stability and sustainability of lending institutions.
6. **THAT** various professionals in Kenya, including accountants, lawyers, financial analysts, engineers, doctors, nurses, auctioneers, human resource practitioners, among others, are regulated through statute. Their respective legislation provides for requisite training for

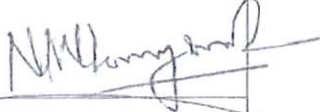

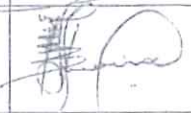
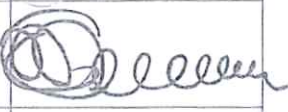




certification, registration and licensing of practitioners and the regulation of their practice among other provisions for effective administration of their roles.

7. **THAT** it is unfortunate that to date credit professionals do not have a guiding statute that regulates the credit profession to ensure high professional standards among practitioners in the credit sector. This has exposed consumers to a number of risks including breach of transparency, unconscionable conduct and loss of assets.
8. **THAT** the enactment of legislation regulating the credit profession will sensitize members of the public on who a credit professional is, the contribution of the credit profession to the safety, sustainability and stability of the credit market and the services that a credit professional offers to the general public in regard to helping the public make an informed decision before using a credit facility.
9. **THAT** the enactment of legislation regulating the credit profession will further benefit the credit market by—
 - a) providing accountable, reliable and certified credit professionals;
 - b) providing a pool of professionals knowledgeable in handling of the credit portfolio and investment;
 - c) providing authoritative leadership in the area of credit and debt management for sound, stable and sustainable businesses and economy;
 - d) reducing and eventually eradicating fraud in the credit market for sustainability of the financial system and institutions; and
 - e) alleviating the pain caused by unprofessional debt collectors in the handling of debt.
10. **THAT** the enactment of legislation regulating the credit profession will also benefit the credit profession by—
 - a) establishing a recognized legislated position of credit professionals in matters credit and debt management;
 - b) promoting credibility among the employers for registered members;
 - c) providing continuous and well-structured professional development;
 - d) legally strengthening the profession in delivery of credit professional services; and
 - e) establishing regulations to govern conduct of the professionals as per the proposed law once enacted.
11. **THAT** we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response as only Parliament has the constitutional authority to enact legislation.
12. **THAT** none of the issues raised in this Petition are pending in any court of law, constitutional or any other legal body.

Dated this Friday 12th day of May 2023

Presented by the following members of the Council of the Institute of Credit Management (Kenya)—

NO.	NAME	DESIGNATION	CONTACT	SIGNATURE
1.	CCP. Mokaya Magembe Bernard	Chairman	0721454658	
2.	CCP.FA. Kithinji Daniel	Council Member	0722827245	
3.	CCP. Kimotho Wanjohi Joseph	Council Member	0712650610	
4.	CCP. Kabiru Gichane Michael	Council Member	0722203307	
5.	CCP. Makau Dennis Benson	Treasurer	0722772524	
6.	CCP. Muiruri Mbugua Joseph	Secretary	0722635902	

CERTIFIED CREDIT PROFESSIONALS BILL, 2023

CERTIFIED CREDIT PROFESSIONALS BILL, 2023

PART I—PRELIMINARY

- 1 - Short title
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- 4 - Functions
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- 13 - Council and committees
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- 38 - Enforcement and Investigative powers.
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PART VII FINANCIAL PROVISIONS

- 41 - Funds of the Institute.
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PART V - SCHEDULES

Schedules 1-7

A Bill for

AN ACT of Parliament to provide for the establishment, powers and functions of the Institute of Certified Credit Professionals of Kenya, to provide for the examination and the registration of certified credit professionals, and for the regulation and development of the credit profession and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I - PRELIMINARY

1. This Act may be cited as the Certified Credit Professionals Act, 2023.

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

“Credit Practice” means the work of a Credit professional.

“A Credit Professional” means a person with expertise in credit control, credit analysis, credit consulting, debt collection, credit risk management, debt counselling and related functions, achieved through formal education and practical experience, and

(a) demonstrates and maintains competence; and

(b) complies with a code of ethics; and

(c) is held to a high professional standard; and

(d) is a member of the Institute.

(e) is subject to enforcement of the rules and regulations of the Institute.

“Credit technician” means a person with the knowledge of credit practice who has completed a diploma in credit examination administered by the Examinations Board and registered as such by the Institute”.

“Accreditation” means the confirmation, through certification, that a training institution meets and continues to meet the standards of quality set by the Examinations Board in relation to institutional, administration and governance, trainers physical and technological resources, financial stability, student’s affairs and services and institutional integrity

“Appeals committee” means committee established under the provisions of the Sixth Schedule;

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

“Cancellation of registration” means expulsion of a member from membership of the Institute;

“Candidate” means a person registered to take an examination conducted by the Examinations Board;

“Chief Executive Officer” means the person appointed and employed as such in accordance with sections 15 for the Institute, or the person who is for the time being exercising the functions and powers of a chief executive;

“Certificate” means a document issued by the Examinations Board and designated as such showing the results obtained in a specific part by a particular candidate in an examination;

“Council” means the Council of the Institute established under section 9;

“Disciplinary Committee” means the committee established under section 32;

“Examination” means an examination conducted under this Act by the Examinations Board;

“Examinations Board” means the Kenya accountants and Secretaries National Examinations Board (KASNEB)

“Essential services” means services as described in the Labour Relations Act, 2007;

“Firm” means a sole proprietorship or partnership established by members granted license(s);

“Gazette” means the Kenya Gazette;

“Institute” means the Institute of Certified credit professionals of Kenya established under section 3 of this Act;

“Practicing certificate” means an annual practicing certificate issued Pursuant to section 22;

“Member” means a person registered as a member of the Institute in accordance with section 15;

“Public interest entity” means—

(a) Entities holding funds in a fiduciary capacity as determined by Council;

(b) Any entity subject to the supervision, control or rules of—

(i) the Capital Market Authority Kenya; or

(ii) the Central Bank of Kenya; or

(iii) the Insurance Regulatory Authority; or

(iv) the Nairobi Securities Exchange; or

(v) the Sacco Societies Regulatory Authority; or

(vi) the Retirement Benefits Authority; and

their successor bodies.

(c) Any entity in respect of which any two of—

(i) the annual revenue;

(ii) the number of employees;

(iii) the total assets;

(iv) the total liabilities, not including shareholder equity, as at the end of the most recent accounting year of that entity; exceed the amount or number that the Cabinet Secretary may respectively prescribe from time to time in regulations under this Act;

(d) any entity receiving and or holding funds in trust or managing public resources;

(e) Public Benefit Organizations as defined by the Public Benefits Organization Act any entity that provides essential services to the public as published in the gazette notice by the Cabinet Secretary;

(f) any entity that holds public funds and or any entity that receives public funds.

“register” means the registers kept pursuant to section 21;

“registration” means the entry of the name and relevant particulars of a person on his admission as a member of the Institute;

“Registration and Quality Assurance Committee” means the Committee established under section 16;

“restoration of registration” means readmission of a full member who has been previously expelled;

“suspension of registration” means suspension of the membership of a member for a certain period;

PART II - ESTABLISHMENT OF THE INSTITUTE OF CERTIFIED CREDIT PROFESSIONALS OF KENYA

Establishment, Membership and Functions of the Institute

- 3(1) There is established an Institute to be known as the Institute of Certified Credit Professionals of Kenya
- (2) The Institute shall be a body corporate with perpetual Succession having a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.
- (3) May acquire, hold, develop and dispose of moveable or immoveable property and investment in other enterprises.
- (4) May borrow, lend or otherwise raise money in such usual manner by way of executing securities and guarantees, as it may from time to time determine.
- (5) May enter into legally binding contracts.
- (6) May do or perform all such other acts necessary for the proper performance of its Functions

Functions of the Institute

4. The functions of the Institute shall be to—

- a) develop and regulate the credit practice and management in Kenya;
- b) Promote standards of professional competence and ethical practice amongst members of the Institute
- c) Promote research into the subjects of credit practice and related matters, and the publication of books, periodicals, journals and articles in connection therewith
- d) Advise the cabinet secretary, on national and county governments on matters relating to Credit Practice and or; in the public interest;
- e) To advise the Examinations Board on standards on Credit Practice examinations
- f) Levy such fees and subscriptions as the Council may so determine;
- g) Issue of licenses in the various credit practitioner's disciplines
- h) Prescribe standards in Credit Practice and related matters which shall be of mandatory national application in Kenya.
- i) Promote global recognition of the Credit profession and the Institute
- j) To establish and assist in establishing and supporting associations, funds, trusts, and

schemes intended to benefit credit professionals.

k) do anything incidental or conducive to the performance of any of the preceding functions

Membership of the Institute

5 (1) The membership of the Institute shall be divided into the following classes, namely—

- a) Fellows, comprising those full members pursuant to an invitation by Council and upon fulfilling a criteria prescribed by Council shall be designated and titled “Fellow of the Institute of certified credit professionals of Kenya” (designatory letters FCCP);
- b) Honorary members comprising of those members admitted pursuant to this section.
- c) Full members (comprising those members registered under section 17 but who are not Fellows) each of whom shall be titled “Member of the Institute of the Certified Credit Professionals of Kenya” (designatory letters CCP(Kenya)).
- d) Associate members comprising persons who are qualified in terms of section 19 (1)(a), but who do not meet all the requirements prescribed under subsection (1) of that section.
- e) Such other classes of members with such designations, titles, and conditions of membership as the Council may by notice prescribe.

(2) Associate members and other classes of members established under subsections (d-e) above shall not be entitled to vie or vote for Council members but shall enjoy such rights and be subject to such conditions of membership as the Council shall prescribe.

Honorary members

6. The Council may grant a letter of conferment to any person of irreproachable professional conduct, who, not being a member of the Institute has rendered special service to the credit profession and public service in Kenya and conferring upon him the title and designation of Honorary Member of the Institute of Certified credit professionals of Kenya” Such persons shall remain honorary members at the pleasure of Council.

Institute seal

7. (1) The seal of the Institute shall be such device as may be determined by the Institute and shall be kept in the custody of the Chief Executive officer.

(2) The seal shall not be affixed to any document except by the order of the council.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may be entered into or executed without seal on behalf of the Council by the Chairman or any other person generally or specifically authorized by the Council in that behalf.

(4) Any instrument purporting to be executed under the seal of the Institute shall be received in evidence and shall, unless the contrary is proved, be deemed to be an instrument so executed.

Staff of the Institute

8. The Council may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of the functions of the Institute and the Council under this Act, upon such terms and conditions of service as the Council may determine.

Experts and consultants

9. The Council may, on the advice of the Chief Executive Officer, engage on behalf of the Institute, the services of experts and consultants in respect of any of the functions of the Institute in connection with which they are considered to have special competence.

Delegation by the Council

10. The Council may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council or the Institute under this Act or under any other written law.

Remuneration of the Council members

11. The members of the Council shall be paid such, fees, allowances and disbursements for expenses as may be determined by the Council.

Protection from personal liability

12. No matter or thing done by a member of the Council or by any officer, member of staff, or agent of the Council shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Council under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim.

B—Council of the Institute

The Council and Committees of the Institute

13. (1) The Institute shall be governed by a Council.

(2) All acts and things done in the name of, or on behalf of, the Institute, by Council or with the authority of the Council shall be deemed to have been done by the Institute.

- (3) The Council may, subject to the provisions of this Act, issue by-laws, regulations and guidelines to govern all matters affecting the operations of the Institute and the credit practice profession.
- (4) The Council may establish such committees as are necessary for the performance of the functions of the Institute and may, subject to the provisions of this Act, delegate powers conferred on it to such Committees.
- (5) The Council may perform any other functions incidental or conducive to the performance of any of the preceding functions.
- (6) The provisions of the First Schedule shall apply to the Council.

Membership of the Council

14.(1) The Council shall consist of nine members as follows—

- (a) the Chairperson elected by the members in accordance with the provisions of the First Schedule;
- (b) the vice Chairperson elected by the members
- (c) three other members, who shall be full members of the Institute, elected in the manner provided in the First Schedule.
- (d) one member nominated by the Ministry responsible for matters relating to finance;
- (e) one member nominated by the Association of Kenya Credit Providers
- (f) one member to represent the Examinations Board;
- (g) one member to be nominated by the Consumers Federation of Kenya.

(2) In nominating persons to the Council, the nominating authority shall have regard to—

- (a) the need to appoint a person who has requisite skills, knowledge and experience in the credit profession.
- (b) Chapter 6 of the Constitution and any other provisions of the Constitution.
- (c) Article 81 of the Constitution.

Chief Executive Officer of the Institute

15. (1) There shall be a Chief Executive Officer of the Institute who shall be appointed by Council.

(2) The Chief Executive Officer shall;

- (a) be the secretary to the Council.
 - (b) be the accounting officer of the Institute.
 - (c) be responsible for the direction of the affairs and the exercise, discharge and performance of the objectives, functions and duties and the general administration of the Institute.
- (3) The Chief Executive Officer shall hold office for a term of four (4) years in accordance with the terms specified in the instrument of appointment to that office and shall be eligible for reappointment once, for a further term of four (4) years.
- (4) In addition to the functions which he is required to exercise and perform by or under this Act, the Chief Executive Officer of the Institute shall exercise and perform such other functions as the Council may, from time to time, determine.

Registration Committee

16. (1) There is established a Registration Committee (hereinafter known as the Registration Committee) consisting of Seven members to be appointed by the council as follows—
- (a) a chairperson appointed from the Institute;
 - (b) one person to represent the ministry responsible for finance
 - (c) one person nominated by the Examinations Board;
 - (d) one person nominated to represent financial institutions
 - (e) two persons nominated by the Council to represent the Institute; and
 - (f) one person, not being a member of the Institute, nominated by the Council to represent credit consumers
- (2) The functions and powers of the Registration Committee shall be to—
- (a) receive, consider and decide on applications for admission and for registration as a member of the Institute;—
 - (b) receive, consider and decide on applications for grant of licenses in accordance with the provisions of this Act;
 - (c) prescribe regulations and rules regarding membership for consideration, approval and issuance by the Council;
 - (d) prescribe and monitor compliance with regulations to govern quality assurance programmes, including actions necessary to deal with non-compliance with or deviation from published standards, by-laws regulations and guidelines on members, and persons engaged in Credit Practice work;

- (e) prescribe the fee guidelines for practicing Credit professionals through regulations
- (f) prescribe guidelines on internship and engagement of students by employers
- (g) where appropriate and based on the results of a quality assurance review, refer to the Investigative Committee that a member's conduct be referred to the Disciplinary Committee;
- (h) advise the Council on all matters pertaining to quality assurance; and
- (i) perform any other functions incidental to the fulfillment of its objectives under this Act.

- (3) In the performance of its functions under this section, the Registration Committee may undertake such investigations as it deems appropriate, and may requisition and make copies of evidence, examine records and documents prepared by or likely to be availed to, the member under review.
- (4) The Disciplinary Committee shall consider as evidence the results of the investigation undertaken by the Registration Committee in an inquiry referred to under subsection (3) of this section.
- (5) The Council shall provide the Registration Committee with such facilities and resources as are necessary to enable it competently discharge its functions.
- (6) In the exercise of its functions under this Act, the Registration Committee shall regulate its own procedure and shall not work under the direction of any person or persons.
- (7) The Chief Executive of the Institute shall serve as the Secretary to the Registration Committee, and may take part in the deliberations on any matter arising at the meeting, but shall not be entitled to vote on any such matter.
- (8) The provisions of the Third Schedule shall have effect with respect to the Registration Committee.

C—Institute admission, registration and practicing certificates

Application for membership

- 17. (1) There shall be such classes of membership as provided under Section 5 or as the Council may determine in accordance with the rules of the Institute.
- (2) Each class of membership shall have such rights, privileges and obligations as

may be prescribed in the rules of the Institute.

- (3) A person may apply to the Institute for registration as a member in accordance with the provisions of the rules of the Institute.

Application for admission and registration

18. (1) A person wishing to be admitted to the Institute as a member and to be registered as such shall apply to the Registration Committee.
- (2) An application under this Section shall be in the form prescribed by the Council from time to time and shall be accompanied by such fees, certificates, and other documents as the Council shall from time to time prescribe.
- (3) Where an application is made by a person in accordance with this section, the Registration Committee shall approve the application if it is satisfied that the person—
 - (a) is qualified to be registered under section 19.
 - (b) is not disqualified from being registered, and, if not satisfied, shall refuse the application.
- (4) A person aggrieved by a determination of the Registration Committee under this section may appeal to an arbitrator appointed by the Council against such determination by lodging a written notice with the Chief Executive of the Institute within twenty-one days of his being notified of the determination.
- (5) A person aggrieved by the decision of an arbitrator under subsection (4) may appeal to the High Court.
- (6) A person who, in an application to be registered, willfully makes a false or misleading statement commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a period not exceeding eighteen months or to both.

Qualifications for admission and registration

19. (1) Subject to this section, a person is qualified to be registered under Section 18 if he—
 - (a) Is a holder of Certified Credit Professional (CCP) final examination certificate issued by the Examinations Board; OR

- (b) holds any other qualification approved under subsection (2) by the Council in consultation with the Examinations Board; and
 - (c) has completed such period of structured practical experience as may from time to time be prescribed by the Council; OR
 - (d) has been granted by the Council a letter of conferment for irreproachable professional conduct where he has rendered exemplary service to the credit profession and public service in Kenya and conferred upon him the title and designation of Honorary Member of the Institute of Certified Credit Professional of Kenya” (designatory letters HICCPK), and Such persons shall remain Honorary members at the pleasure of Council
- (2) The Council may in consultation with the Examinations Board from time, by notice in the Gazette, approve qualifications which it considers sufficient to allow a person to be registered, and may, in like manner, withdraw any such approval.
- (3) Notwithstanding subsection (1), the Registration Committee may require a person making an application for registration for full membership to satisfy in such manner as it may direct, that the person has—
- (a) adequate experience in credit practice including structured practical experience;
 - (b) adequate knowledge of local law and practice
 - (c) acceptable professional conduct and general character which, in the opinion of the Committee, make such person a fit and proper person to be registered; and unless the person so satisfies the Registration Committee, he shall not be treated as being qualified to be registered.

Disqualifications from admission and registration

20. (1) Subject to this section, a person is disqualified from being registered—
- (a) if such person has been convicted by a court of competent jurisdiction in Kenya or elsewhere of an offence involving fraud or dishonesty;
 - (b) if such person is an undischarged bankrupt;
 - (c) if such person has been legally certified as being of unsound mind and that certification remains in force; or
 - (d) during any period when the Disciplinary Committee has determined under section 30(1)(j) that such person shall not be registered, or during period when the Disciplinary Committee has determined under section 30(1) (j) that such person shall not be registered, or during any such period as varied by the High Court under section 38(1) of this Act.

- (2) A person shall not be treated as disqualified under subsection (1) (a) of this section if the Registration Committee, having regard to—
- (a) the period which has elapsed since the conviction concerned; or
 - (b) the circumstances of the offence, determines that it would be unreasonable to so treat him.
- (3) A person shall not be treated as disqualified under subsection (1) (b) of this section if the Registration Committee is satisfied that the bankruptcy of the person concerned arose as a result of unavoidable losses or misfortunes.
- (4) A person shall not be treated as being disqualified under subsection (1) (d) of this section if the High Court allows an appeal under section 35 (1) of this Act.

Register

21. (1) The Chief Executive Officer shall cause to be kept, a register of members, in which shall be recorded—
- (a) the names and relevant details of all persons registered under Section 18;
 - (b) that a member certificate has ceased to be in force under this Act;
 - (c) particulars of the suspension of the registration of any person;
 - (d) particulars of the cancellation of the registration of any person;
 - (e) the fact that the registration of any person is restored under this Act;
 - (f) details of any additional certification or authorization granted by the Institute or under other written law;
 - (g) details of firms engaged in the public practice of Credit, including their proprietors, with specification of the scope of their work; and
 - (h) such other matters as the Council may determine; and, for the purposes of this Act, “relevant details” shall include the business or professional address of the member or his employer and any other information that the Council may from time to time deem appropriate for inclusion in the register.
- (2) The Chief Executive Officer shall cause to be made such alterations in the register as are necessary to ensure that the matter recorded therein are accurate and up to date.

- (3) The register may, at all reasonable hours, be inspected, and copies of relevant parts or entry in the register taken—
- (a) without payment by—
 - (i) any member, duly authorised public servant, or officer of a relevant regulatory body acting in the course of his duty; or
 - (iii) any person authorized by the Secretary to the Council; or
 - (b) on payment of such fee as may be prescribed, by any other person.
 - (c) The personal contact details shall not be made available to the public unless issued as prescribed by the Council or the member.
- (4) The register shall be received in proceedings before any court or tribunal as evidence of the matters recorded therein with which are required by or under this Act to be so recorded.
- (5) A document purporting to be certified by the Secretary to the Council—
- (a) to be a true copy of an entry in the register;
 - (b) stating that a person is not, or was not on a date specified in the document, registered; or
 - (c) stating that a person is not, or was not on a date specified in the document, the holder of an certificate shall be received in proceedings before a court or tribunal as prima facie evidence of any such matters contained in the entry or of that fact, as the case may be.
- (6) Proceedings on an inquiry under this Act before the disciplinary Committee shall be deemed to be proceedings before a tribunal for the purpose of this section.

Application for a practicing certificate and Renewal

- 22 (1) No person shall practice Credit Practice in Kenya unless he or she possesses a valid practicing certificate under this Act.
- (2) A practicing certificate shall be issued on an annual basis and shall be valid from the date of issue to the 31st day of December of the calendar year of which it is issued and may be renewed on application by the Credit Professional if the applicant satisfies the following;
- a. is a member of the institute in good standing and practices Credit Practice in the course of his or her employment
 - b. makes the application not later than 15th December in the year preceding the year of renewal (or such later day as the Council may approve either generally or in

respect of any application) in such form as the Council may specify;

- c. pays the registration fee fixed by the Council; and
 - d. the applicant has satisfied the Council that he has complied with the requirements for the time being prescribed by the Council for continuing professional development.
- (3) A person deemed to practice Credit Practice whether by himself or herself or in partnership with another person or using a firm name or a company shall be required to obtain a practicing license in addition to (a) above.
- (4) A practicing license shall be issued on an annual basis and shall be valid from the date of issue to the 31st day of December of the calendar year of which it is issued and may be renewed on application by the credit Professional
- (5) The council shall issue rules and regulations in relation to the issuance of the practicing certificate and practicing license.

Details of the firm and or sole practitioners

23. Where a Fellow or a full member intends to carry out credit practice services as a firm whether as a sole practitioners or in a partnership, he shall furnish the Registration Committee with such details of the firm as it may require.

Cancellation of registration

24. (1) Subject to the other provisions of this section, the Registration Committee shall cancel the registration of a member—
- (a) if determination that the registration of the member cancelled is made under section 35(1)(i) and (j) of this Act; or
 - (b) if any circumstance arises which, if the member were then a person applying for registration, would disqualify him under section 17 from being registered.
- (2) The Registration Committee shall not cancel the registration of a member under subsection 17 (1) (b) unless it has afforded to the member an opportunity to show cause why his registration should not be cancelled.
- (3) Subsections (2) and (3) of section 17 shall apply in relation to the cancellation of the registration of a member of the Institute under subsection (1) (b) of this section as they apply for the purpose of determining whether or not a person is disqualified from being registered.

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- (4) The Registration Committee may cancel the registration of a member of the Institute who fails to comply with the requirements of subsection 1(c).
 - (5) When the registration of a member of the Institute is cancelled under section 24(1) (a) the Registration Committee shall restore the registration if, on an appeal made under section 35, the High Court allows the appeal.
 - (6) The Registration Committee shall upon request restore the registration of a person whose registration is cancelled under Section 24(4), if satisfied that all outstanding fees, subscriptions and other monies due to the Institute by the person concerned have been paid.
 - (7) The registration of a member shall be restored by recording in the register particulars of the restoration.
 - (8) The registration of a member shall be cancelled by recording in the register particulars of the cancellation.
 - (9) A person aggrieved by a determination of the Registration Committee under this section may appeal to an arbitrator appointed by the Council against such determination by lodging a written notice with the secretary to the Council within twenty-one days of his being notified of the determination.
 - (10) A person aggrieved by the decision of an arbitrator under subsection (9) may appeal to the High Court.

Resignation from membership

25. (1) Any member may resign from membership of the Institute by writing under his hand delivered to the Secretary of the Registration Committee, provided that any such member shall be obliged to make payment of all outstanding subscriptions, fees and other monies due to the Institute as at the date of such resignation.
- (2) Any member who is the subject of public criminal investigation or prosecution by the competent Kenyan authorities or whose conduct has been referred for inquiry under Section 33 or who is otherwise the subject of investigation or disciplinary proceedings under this Act shall not be entitled to resign from membership until all such investigative and disciplinary processes, including any appeal, have been completed.
- (4) Any member who tenders his resignation with intent to avoid investigation and

prosecution under this Act shall be guilty of professional misconduct and shall be subject to investigation and disciplinary proceedings in relation to that act along with any other professional misconduct or other alleged offence and such resignation shall be null and void and he shall remain in membership until all such investigative and disciplinary processes, including any appeal, have been completed.

Restoration to the Register

26. A person may be restored to the register upon fulfilling the conditions as determined by the rules of the Institute or upon fulfillment of the terms of a decision suspending or cancelling his membership.

Practicing as a Credit Professional

27. (1) No person shall hold themselves out as a credit professional or designation likely to create the impression that he or she is a Certified Credit Professional unless he or she is registered as a member of the Institute.

(2) No person shall engage in Credit practice unless he or she is a member of the Institute and a holder of a practicing certificate in force as issued under this Act.

(3) The Institute and the Examinations Board shall establish guidelines for students who wish to engage in credit practice while taking the examinations.

(4) Any person who contravenes subsection (1), (2) commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a period not exceeding three years or to both.

(5) Any person who engages a person other than a certified credit professional to do the work of a credit professional as defined in section 2 of this Act commits an offence and is liable on conviction to a fine not exceeding shillings five Million or to imprisonment for a term not exceed one year or both.

D—Professional misconduct and disciplinary provisions

Acts of professional misconduct

28. (1) A member of the Institute shall be guilty of professional misconduct if he—

(a) allows any person to act in his name as a certified Credit Professional while practicing Credit unless such person is a member of the Institute and a holder of a practicing certificate and or practicing license and is in partnership with him or employed by him as

such;

- (b) enters, for the purpose of or in the course of practicing Credit into partnership with a person who does not hold a practicing license, or secures any professional business through the services of such a person or by means not open to a certified Credit Professional;
- (c) pays or allows or agrees to pay, directly or indirectly, to any person (other than a person who holds a practicing license, is a retired partner or the legal representative of such a partner), any share, commission or brokerage out of the fees for, or profits of his professional services;
- (d) accepts or agrees to accept any part of the fees of, or profits for, the professional work of an advocate, auctioneer, broker or other agent who is not the holder of a practicing license;
- (e) solicits clients or professional work or advertises professional attainments or services by use of means which contravene the guidelines published by the Council;
- (f) discloses information acquired in the course of professional engagement to any person other than a client, other than with the consent of the client, or in compliance with written law or a court order;
- (g) develops or participates in developing a financial reporting system in any medium, electronic or otherwise whose aim is to falsify financial statements;
- (h) fails to observe and comply with applicable standards, codes, guidelines or other pronouncements issued and published by the Council under this Act;
- (l) charges, in respect of any professional fees which are not in accordance with the guidelines issued by the council;
- (o) is guilty of gross negligence or of a series of instances of lesser negligence in the conduct of his professional duties;
- (p) expresses an opinion on any matter with which he is concerned in a professional capacity without obtaining sufficient information on which to base the opinion;
- (q) fails to keep the funds of a client in a separate banking account or uses any such funds for purposes for which they are not intended;
- (r) includes any particular in any statement, return or forms to be submitted to the Institute item knowing it to be false; or
- (s) is found to engage in any other fraudulent acts; or
- (t) fails to do any other act which may from time to time be prescribed by the Council.
- (u) carries on the business of a certified Credit Professional, without having obtained a

practicing certificate and or practicing license

(v) fails to comply with the Institutes rules, by laws and code of ethics

(w)generally, doing any act which is likely to bring the profession into disgrace, disrepute, or contempt.

(2) Subsection (1) (f) shall not apply in respect of information disclosed to the Institute in fulfillment of the requirements of quality assurance provided for under section 12, and in fulfillment of the requirements of the investigations committee.

Investigations Committee

29. (1) There shall be an Investigations Committee composed of 5 persons as the Council may so appoint one of whom shall be designated as its chairman.

(2) The Investigations Committee shall be appointed for a term not exceeding 2 years but shall be eligible for reappointment for a further term not exceeding 2 years.

(3) The vice chairman shall act in place of the Investigations Committee Chairman if the Investigation Committee Chairman is precluded by illness, absence from the country or any other cause from performing his functions as such.

(4) A person who is a member of the Council shall be disqualified for membership of the Investigation committee and, accordingly, if a member of the Investigation committee becomes a member of the Council or is so appointed his membership to the Investigation committee shall thereupon cease.

(5) Where the Investigations Committee informs the Disciplinary Committee that in its opinion there is a prima facie case against a Certified Credit Professional or a firm of Certified Credit Professional(s), the Disciplinary Committee shall commence proceedings.

(6) No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the performance or exercise or purported performance or exercise of any function or power under this Part.

(7) The provisions of the Fifth Schedule shall apply.

Disciplinary Committee

30 (1) There shall be a committee of the Council to be known as the Disciplinary Committee.

(2) The Disciplinary Committee shall consist of Seven members who shall be appointed in accordance with subsection (3).

(3) The members of the Disciplinary Committee shall be appointed by the Council from amongst persons nominated in the following manner—

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- a) Four members nominated by the Council from amongst the members of the Institute, of whom one shall be designated as the chairman;
 - a) One nominated by the Council from another profession other than Credit Profession;
 - b) One member nominated by the Attorney General;
 - c) One nominated by an organisation that promotes corporate governance.
- (4) In making appointments under this section the Council shall have regard to the knowledge and interest of the persons so appointed in matters pertaining to Credit Practice.
- (5) The quorum of a meeting of the Disciplinary Committee shall be Four.
- (6) Subject to subsection (7), a member of the Disciplinary Committee shall hold office for three years and shall be eligible for reappointment for one further term.
- (7) Where any member of the Disciplinary Committee resigns his office or is for any reason unable to perform the functions of his office, the Council shall require the respective nominating body specified in subsection (3) to nominate a replacement for such member, for appointment in accordance with that subsection.
- (8) The Council shall provide the Disciplinary Committee with such facilities and resources as are necessary to enable it competently discharge its functions.
- (9) The Disciplinary Committee may, subject to the provisions of this Act, regulate its own procedure.

Commencement of disciplinary proceedings

31. (1) Subject to the provisions of this Act, the Disciplinary Committee may upon receipt of a written notice from the investigative committee commence disciplinary proceedings against a member suspected of professional misconduct pursuant to section 30 (1).

Disregard of summons

- 32 (1) A person to whom a summon or order is issued under section 35 and to whom such summons or order is served, who—
- (a) refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons;
 - (b) refuses, without sufficient cause, to answer fully and satisfactorily, questions put to him or her by or with the concurrence of the Committee; or
 - (c) refuses or omits, without sufficient cause, to produce any document in his or her possession or under his or her control, commits an offence and is liable to a fine not exceeding Kenya Shillings One Million, or to imprisonment for a term not exceeding Six months months or both.

(2) A person giving evidence before an inquiry under this Part shall, in respect of evidence given by him or her or documents produced by him or her, be entitled to all the privileges to which he or she would be entitled as a witness before the High Court.

(3) The provisions of the fourth Schedule shall apply to an inquiry by the Disciplinary Committee pursuant to subsection (1).

Report to the Council and recommendations

33. (1) On completion of disciplinary proceedings under section 29 into the alleged professional misconduct of a member of the Institute the Disciplinary Committee shall submit to the Council a report of which shall include one or more of the following recommendations, namely—

- (a) that no further action be taken against the member;
- (b) that the member be reprimanded;
- (c) that the member be reprimanded with publication of the reprimand in the Kenya Gazette or in any other suitable media which may include the newspapers, electronic media and the internet;
- (d) that the member pays such costs to the Institute, as may be determined;
- (e) that the member undertakes training at his own cost, of such nature and duration and at such institutions as may be determined;
- (f) that the member pays to the Institute a fine not exceeding two million Kenya shillings;
- (g) that the member discharges his professional obligations under any contractual arrangement subject of the alleged misconduct;
- (h) that any license held by the member be suspended for a certain period; or
- (i) that his membership of the institute be suspended for a certain period, that his registration be suspended in like manner and that this be recorded in the register;
- (j) that the member be expelled from membership of the Institute for a certain minimum period (or for life), that his registration be cancelled and that he be not registered for such period (including life) as may be specified and that this be recorded in the register.

(2) Where the Disciplinary Committee, in a report makes a recommendation under subsection (1), the Council shall inform the member concerned of the action to be taken against him and effect the recommendation of the Disciplinary Committee.

(3) A member aggrieved by a determination of the Disciplinary Committee under subsection (1) may, on payment of such fee as may from time to time be set by the Council, appeal in writing to the Appeals Committee within thirty days of the communication to him of such determination, providing the grounds upon which the appeal is lodged.

Gazettement of suspended members

34. (1) Where the Chief Executive officer is directed by the Council, he or she shall cause to be published by notice in the Gazette, the name of any member whose name has been removed or who has been suspended under this Part.

(2) A notice published in accordance with subsection (1) shall be *prima facie* evidence that the name of a member specified in the notice has been removed or the member so specified has been suspended from practice for the period specified in such notice

Appeals

35. (1) A person aggrieved by a determination of the Disciplinary Committee under section 29 may, following completion of the processes set forth in section 33 (1) to (3), appeal to the High Court against such determination within fourteen days of being notified of the determination.

(2) An appeal against the decision of the Appeals Committee against a decision under this Act may be made only where—

(a) notice of appeal setting out the grounds of appeal has been served on the Institute within 14 days after the decision of the Disciplinary Committee is communicated to him or her; and

(b) the appeal is lodged with the Appeals Committee within 14 days after the notice referred to in paragraph (a) is served on the Institute.

(3) A determination under this Act shall have effect notwithstanding that an appeal is made against the determination, unless the Disciplinary Committee expressly suspended the operation of its decision pending the outcome of such appeal or the aggrieved person has obtained from the Appeals Committee an order staying the operation of the decision of the Disciplinary committee.

(4) Where the Chief Executive is directed by the council he or she shall cause to be published by notice in the Gazette, the name of any member whose name has been removed or who has been suspended under the provisions of this part.

(5) On an appeal the High Court may affirm, with or without variation, the period for which

the person concerned is not to be registered, or the period for which his Credit Practicing license is suspended, confirm the determination of the Disciplinary Committee and Appeals committee or allow the appeal.

(6) A determination under this Act shall have effect notwithstanding that an appeal is made against the determination, but in the event that the High Court allows the appeal—

(a) sections of this Act shall have effect in relation to the cancellation of the registration of the member; and

(b) the suspension of the audit license of the member of the Institute shall cease to have effect

Appeal Rules

36. (1) The Chief Justice may make rules governing appeal under section 35 and providing for the fees to be paid, the scale of costs of any appeal and the procedure to be followed therein.

(2) Until rules are made under subsection (1) of this section, and subject to any such rules, the provisions of the Civil Procedure Code (Cap. 21) shall apply as if the determination appealed against was a decree of a subordinate court exercising original jurisdiction.

Application of the rules to certified Credit Professional

37. For the avoidance of doubt it is declared that the provisions of this Part shall apply to any person registered as a certified Credit Professional under the provisions of this Act for actions undertaken by such person while practicing under a written authority granted prior to the commencement of this Act.

E—Enforcement

Enforcement of investigative powers

38. The Institute may in order to enforce compliance with the provisions of this Act have enforcement and investigative powers.

Requirement to produce documents

39 (1) For the purposes of obtaining full information, whether on a data storage devise or otherwise, the Institute or an authorized officer of the Institute may require any person to—

(a) Produce for examination, at such time and place as they may so require, any records and documents that are in the members custody or under the members control

(b) Furnish such information as may be required by the Institute;

- (c) Attend, at such time and place as may be required by the Institute for the purpose of giving evidence in respect of any matter as may have been obtained under the provisions of clause (a) and (b) above.

Power to make copies

40. (1) The Institute or an authorized officer carrying out the examination—

- (i) may make copies of such records and documents for purposes of any report relating to the examination; and
- (ii) all information obtained in the course of the examination shall be treated as confidential and shall be used solely for the purposes of the Act.

(2) A person who, without reasonable excuse, fails to comply with any requirement made under subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand, or to imprisonment for a term not exceeding three years, or to both.

(3) This section shall have effect notwithstanding—

- (a) any law relating to privilege or the public interest with respect to the giving of information or the production of any accounts, documents, or records (including in electronic format); or
- (b) any contractual duty of confidentiality.

F—Miscellaneous Provisions

Monies payable to the Institute

41. (1) There shall be payable to the Institute such moneys as deemed appropriate by Parliament, and such grants as may be recommended by the Cabinet Secretary and approved by parliament for purposes of the Institute.

(2) The Cabinet Secretary may give directions as to the amount in which, and the times at which, moneys referred to in subsection (1), are to be paid to the Institute.

(3) All the funds of the Institute and any balance at the end of the financial year shall be retained for the purpose for which the Institute is established. Any funds not immediately required for its purposes may be invested as the Council may direct.

Accounts and audit

42. (1) The Institute shall keep proper accounts and records in relation to the accounts and shall each prepare in respect of each accounting year a statement of accounts.

(2) The statement of accounts of the Institute shall, subject to the overriding provisions of the Public Audit Act 2015, or as may be re-enacted, be audited by auditors appointed by the Institute, as the case may be.

(3) After the end of the financial year or other period to which the accounts examined and audited under subsection (2) relate, the Institute shall present the accounts to the general meeting of members.

Offences

43. (1) A person who—

- (a) assumes or uses the title or designatory letters referred to in Section 4(1)(a) and who is not a Fellow of the Institute; or
- (b) assumes or uses the title or designatory letters referred to in section 4 (1)(c) and who is not a full member of the Institute;
- (c) assumes or uses the title “Honorary Fellow of the Institute of Institute of certified Credit Professionals of Kenya” and who is not such Honorary Fellow; or
- (d) otherwise falsely assumes or uses any title or designatory letters prescribed by the Council, commits an offence.

(2) A corporate body (whether incorporated in Kenya or elsewhere) which falsely uses any of the titles or designatory letters referred to in section 4(1)(a) or (b) commits an offence.

(3) Where a firm uses any of the titles or designatory letters referred to in section 4(1)(a) or (c) while not every partner in the firm is entitled to use such titles or designatory letters, each of the partners of the firm commits an offence.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding one million shillings or one year imprisonment or both.

(5) Any person shall commit an offence under this Act—

- (i) while not being a credit practitioner he purports to offer or offers credit practise services including giving credit opinion;
- (ii) while being a member of the institute or not develops or participates in developing a credit reporting system in any medium, electronic or otherwise whose aim is to falsify statements

- (iii) while being a member of the Institute or not withholds any information that can be used during preparation of statements or report during an investigation.
- (6) Any person in contravention with the provisions of section 42(5) of this Act, is liable on conviction to imprisonment of not less than 3 years or a fine not exceeding one million or both.

Conduct of prosecutions

44. The Director of Public Prosecution, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), shall appoint public prosecutors or an Advocate of the High Court of Kenya to be a public prosecutor for purposes of offences under this Act.

Vacancy in membership

45. The Council may exercise and perform its functions notwithstanding any vacancy in membership among the members and the validity of any proceedings of the Council shall not be affected by any such vacancy or any defect in the appointment of a member.

Appointment of interim managers

46. (1) Where a member in private practice suffers incapacitation, the Council may appoint a person, in this section referred to as an interim manager, to conduct the professional affairs of that member for a duration not exceeding two years in accordance with the provisions of the Seventh Schedule.
- (2) The interim manager appointed under subsection (1) shall be the holder of a credit practise Certificate issued in accordance with the provisions of this Act.
- (3) The provisions of the Seventh Schedule shall have effect with respect to an interim manager appointed under this section.

Regulations

47. The Cabinet Secretary may make regulations prescribing anything which is required to be prescribed under the provisions of this Act

TRANSITIONAL PROVISIONS

Transitional provisions

48(1) The Governing Council of the Institute of credit management registered under the Societies Act existing before the enactment of this Act shall assume the responsibilities imposed on the Council and Registration Committee by this Act as an Interim Council and Interim Registration Committee until the first elections are held under this Act.

- (2) The chairperson elected at the last annual general meeting of the former Institute shall continue to act as chairperson of the Institute until the first elections held under this Act.
- (3) The Interim Council shall facilitate the registration of members of the Institute and the convening of the first annual general meeting at which Council members shall be elected.
- (4) The first annual general meeting of the Institute shall be convened by the Interim Council within a period of twelve months of the commencement of this Act.
- (5) Any Certified credit professional carrying out any business contrary to this Act shall ensure that the business is compliant with the Act within twelve months of the commencement of this Act.
- (6) **“former institute”** means the institute of credit management existing before the enactment of this Act.

FIRST SCHEDULE

THE COUNCIL

A. THE CHAIRMAN

1. (1) To be elected as Chairman one must—

- a) have been a member of the Institute in good standing for a continuous period of not less than five years;
- b) Must have served in any of the Institute's committees for a period of not less than 2 years.
- c) is a person who meets the provisions of chapter 6 of the constitution,
- d) is not disqualified under the provisions of the Second Schedule;
- e) has not been found wanting by any other competent authority recognized by law; and

(2) The Chairman shall be elected by the voting membership of the Institute in an annual general meeting.

(3) Subject to the provisions of this Act concerning resignation, disqualification and termination, the Chairman shall hold office for two years term, renewable once.

(4) A person who holds the office of Chairman may resign the office by writing under his hand delivered to the Council.

2. (1) During a vacancy in the office of Chairman the vice Chairman shall assume the office of the Chairman until the next Annual General Meeting

(2) The appointment of a person to act as Chairman ceases to have effect—

- (a) if made during a vacancy in the office of Chairman, when the vacancy ends by the election of a Chairman;
- (b) if the person appointed resigns the office by writing under his hand delivered to the Council.

B. VICE—CHAIRMAN OF THE COUNCIL

4. (1) There shall be a Vice- Chairman of the Council who shall be elected by the members of the Institute—

(2) The Vice- Chairman shall hold office for the period of two years immediately following his election to the office or, if he ceases to hold office as a member of the Council before then, until he so ceases to hold office.

(3) Subject to paragraph 2 of the First Schedule of this Act, the Vice-Chairman may exercise and perform the functions of the Chairman if the Chairman is unable to exercise and perform those functions.

C. MEMBERS OF THE COUNCIL

1. (1) Each of the four members of the Council referred to in section 13 of this Act shall be elected at an annual general meeting of the Institute.

(2) A member of the Council—

- (a) elected pursuant to subparagraph (1);
- (b) appointed pursuant to section 13 of this Act; or
- (c) co-opted pursuant to subparagraph (4),

shall, subject to the provisions of paragraph 4 relating to the vice-chairman, hold office for the prescribed period, unless he earlier ceases to hold office.

(3) The prescribed period shall be the period commencing on the date of election, appointment or co-option of a member to the Council to the commencement of the day on which the fourth annual general meeting thereafter is to be held.

(4) Elected Council members shall serve for a term of three years and subject to a re-election for one further term.

(5) Nominated council members shall serve for a term of three years renewable once.

(6) A third of the members elected under the provisions of section 13 shall serve for a full term of three years

(7) No person shall serve in any capacity on the Council if—

- (a) being a member of the Institute, has been found guilty of an act of professional misconduct under section 28 of the Act, which in the opinion of the Council renders him unfit to hold the office; or
- (b) has been convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine; or
- (c) has been convicted of an offence involving corruption, dishonesty or abuse of office; or
- (d) has been adjudged bankrupt or has entered onto a composition of scheme of arrangement with his creditors.

(8) Subject to subparagraph (6), where a member of the Council (including a member co-opted pursuant to this subparagraph) ceases to hold office before the expiration of the prescribed period, the Council may co-opt a person to hold that office.

(9) Subparagraph (5) does not apply to the members of the Council appointed pursuant to section 13 of this Act.

2. The office of a member of the Council shall become vacant if such member--

- (a) resigns the office by writing under his hand delivered-
 - (i) in the case of the members appointed pursuant to section 13; or
 - (ii) in the case of any other member, to the Council.
- (b) has the appointment revoked by the Cabinet Secretary in the case of the members appointed pursuant to section 13
- (c) ceases to hold the office in the case of the members appointed pursuant to section 13
- (d) is adjudged bankrupt or enters into a composition or scheme or arrangement with his creditors; or,
- (e) is absent without the permission of the Council from three or more consecutive ordinary meetings of the Council; or
- (f) is convicted of an offence and sentence to imprisonment for a term of six months or more without the option of a fine; or,
- (g) is convicted of an offence involving corruption, dishonesty or abuse of office; or
- (h) being a member of the Institute is found guilty of an act of professional misconduct under section 28 of the Act, which in the opinion of the Council renders him unsuitable to continue to hold office; or
- (i) becomes for any reason, including infirmity of body or mind, incompetent or incapable of performing the functions of his office.

3. Subject to paragraph 1(4) of this Schedule, where a member of the Council ceases to hold office, another member shall be elected to fill the vacancy at the annual general meeting of the Institute next following, or shall be appointed as provided under section 13 of this Act, as the case may be.

MEETINGS OF THE INSTITUTE

1. Subject to paragraph 4 of this schedule, an annual general meeting of the Institute shall be held not later than six months after the end of each financial year.

2. A special general meeting of the Institute--

- (a) may be held at any time; and
- (b) be held on a written request made to the Council and signed by not less than one hundred members of the Institute.

3 (1) A general meeting of the Institute shall be convened by the Council by giving to every member of the Institute a written notice--

- (a) stating the place and time of the meeting; and
- (b) indicating the business which it is proposed to transact at the meeting, which shall include, among other matters, the presentation of the following--
 - (i) a report by the Council covering the past financial year;

- (ii) financial statements for the past financial year and the auditor's report thereon;
- (iii) election of the Chairman, as necessary in terms of paragraph 1, and of Council members; and
- (iv) the appointment of the auditor.

(2) Notice of a general meeting shall be given not less than twenty one days before the date on which it is to be held to each member of the Institute using the last known address or any other medium considered appropriate by the Institute.

(3) The validity of any proceedings of the Institute shall not be affected by any failure to comply with the requirement of subparagraph (2) of this paragraph unless it is proved that the failure to comply in relation to any member was deliberate.

4. (1) The Chairman shall preside at all general meetings of the Institute at which he is present.

(2) At a general meeting of the Institute at which the Chairman is not present, the Vice-Chairman shall preside.

(3) At a general meeting of the Institute at which neither the Chairman nor the Vice-Chairman are present, the members of the Institute present shall elect one of the members to preside.

5 (1) Subject to this paragraph, the quorum at a general meeting of the Institute shall be a third of the registered and paid-up members.

(2) Where a general meeting of the Institute is convened—

(a) otherwise than pursuant to paragraph 4 (b) of this Schedule, and a quorum is not present at the scheduled time of the meeting or within thirty minutes thereafter, the meeting shall stand adjourned until the same day on the following week, at the same time and place (unless that day is a public holiday, in which case the meeting shall stand adjourned to the first working day thereafter and if a quorum is not present at such adjourned meeting, the meeting shall proceed as though there were a quorum and all business conducted at such adjourned meeting shall be deemed to be validly transacted;

(b) pursuant to paragraph 4 (b) of this Schedule, and a quorum is not present when the meeting proceeds to business the meeting shall be dissolved.

6. (1) No business shall be transacted at an annual general meeting of the Institute unless—

(a) the business is indicated in the notice of the meeting as business which it is proposed to transact; or

(b) in the case of business not so indicated, the meeting decides to transact the business and the person presiding at the meeting agrees to the transaction of the business;

(2) No business shall be transacted at a special general meeting of the Institute other than the business indicated in the notice of the meeting as business which it is proposed to transact.

(3) Minutes of the proceedings at general meetings of the Institute shall be kept in such a manner as the Chairman or in his absence the person at a particular meeting, directs.

7. The person presiding at a general meeting of the Institute may adjourn the meeting from time to time and from place to place, with the consent of the simple majority.

8. The person presiding at a general meeting of the Institute may in his discretion limit the number of persons permitted to speak in favour of or against any motion and the time any such person may so speak.

9. (1) Questions arising at a meeting shall be determined by a majority of the members of the Institute voting on the question.

(2) Voting on any question shall be by a show of hands or such other procedure as may be prescribed in by-laws or regulations published under the provisions of this Act.

(3) Where a ballot is held, voting may be either done personally or by written proxy.

(4) An instrument appointing a proxy shall be in writing and shall be deposited with the Secretary to the Council not less than forty-eight hours before the meeting of the Institute at which it is to be used.

(5) A proxy to be used in any ballot at any meeting may be used at the meeting or, if the meeting is adjourned, in any ballot when the meeting is resumed after the adjournment but the holding of a proxy shall not be counted towards the quorum at any stage of any meeting.

(6) The person presiding at a meeting of the Institute has a deliberative vote, and, in the event of any equality of votes, also has a casting vote.

(7) A declaration by the person presiding at a meeting of the Institute that a resolution has or has not been carried and an entry to that effect in the minutes of the meeting shall suffice in evidence of that fact.

PROCEEDINGS

10. The quorum at meeting of the Council and the arrangements relating to meetings of the Council shall be such as the Council may determine.

11. The person presiding at a meeting of the Council has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

12. Minutes of the proceedings of the Council shall be kept in such manner as the Council directs, and, on the written request of the Cabinet Secretary, shall be made available to him or any person nominated by him.

SECOND SCHEDULE

THE REGISTRATION AND QUALITY ASSURANCE COMMITTEE

1. (1) A member of the Registration Committee shall hold office for a period of three years unless he earlier ceases to hold office.

(2) A member of the Registration Committee may resign the office by writing under his hand to the Council which shall seek the nomination of a replacement for appointment by the Council.

(3) A member of the Registration Committee who ceases to hold office at the end of the prescribed term is eligible for re-appointment for one further term.

2. (1) The procedure to be followed on a quality assurance review shall subject to this Schedule, be at the discretion of the Registration Committee.

(2) The Registration Committee shall notify the member of an impending quality assurance review at least twenty one days prior to commencement of the review.

3. (1) Where the result of a quality assurance review are considered unsatisfactory the Registration Committee may require the member or members concerned to undertake necessary corrective actions to comply with professional standards and may prescribe requirements to be observed in this respect.

(2) The requirements of the Registration Committee shall be implemented by the member or members investigated within such time as may be determined.

(4) The Registration Committee shall provide the Council with a report on all the quality assurance reviews the Committee undertakes and where necessary or appropriate, the Council shall take such action as may be recommended therein.

5. (1) The Registration Committee shall not without the consent of the member or members under review, disclose to any person other than the Council, any information received in the course of an investigation, unless such disclosure is required by a court of law.

(2) Any member of the Registration Committee or quality assurance review team who discloses any information acquired in the course of a quality assurance review contrary to the provisions of this Act or applies such information to gain advantage whether financial or otherwise commits an offence and shall be liable to a fine not exceeding fifty thousand shillings on conviction.

6. The quorum for meetings of the Registration Committee shall be Four.

7. The decision of the Registration Committee shall be that of the majority of the members present and voting;

8. The proceedings of the Registration Committee shall not be invalidated by any vacancy in its membership.

9. A record of the proceedings of the Registration Committee shall be kept in such manner as the Committee directs, and may on a written request be availed to the Council or a party authorized by the Council or the High Court to receive them.

THIRD SCHEDULE

INVESTIGATIONS COMMITTEE

(1) The following provisions shall apply as regards the proceedings of an Investigation Committee—

- (a) any person to whom this paragraph applies, and whom the relevant Investigation Committee reasonably believes to have in his possession or under his control any record or other document which appears to that Committee as containing or being likely to contain information relevant to the proceedings of the Committee, shall subject to subsection (5)—
 - (i) produce to the Committee or afford to the Committee access to, any record or other document specified by the Committee which is of a class or description so specified and which is in his possession or under his control being in either case a record or other document which is or appears to the Committee to be relevant to the proceedings, within such time and at such place as the Committee may reasonably require;
 - (ii) if so required by the Committee, give to it or him such explanation or further particulars in respect of anything produced or to which access is given in compliance a requirement under subparagraph (i) as the Committee shall specify;
 - (iii) give to the Committee all assistance in connection with its proceedings which he is reasonably able to give;
- (b) where any information or matter relevant to the proceedings of an Investigation Committee is recorded otherwise than in legible form, any power to require the production of any record or other document conferred under paragraph (a), shall include the power to require the production of a reproduction of any such information or matter or of the relevant part of it in legible form;
- (c) an Investigation Committee may inspect, examine or make copies of or take any abstract of or extract from a record or document which may be required to be produced under paragraph (a) or (b);
- (d) where—
 - (i) a copy of any record or document is supplied by any person for the purposes of this section;
 - (ii) a copy of any record or document is made in the exercise of any power conferred under this section and a photocopying machine or other facility of a person is used to make such copy, the Institute shall reimburse the person concerned the reasonable photocopying or other expenses incurred in making such copy;
- (e) a person exercising any power under this section by virtue of a delegation under section 9 shall, if so required by a person affected by such exercise, produce for inspection by such person the relevant instrument referred to in section 9 or a copy thereof.

(2) Subsection (1)(a) applies—

- (a) to the certified Credit Professional or firm of certified Credit Professionals (practicing) to whom the Investigation Committee's proceedings relate and—
 - (i) where the proceedings relate to a certified Credit Professional, also to that certified credit Professionals employer and former employer (if any) and to any employee or former employee of such certified Credit Professional
 - (ii) where the proceedings relate to a firm of certified credit Professionals (practicing) also to any employee or former employee of such firm and
- (b) to any certified Credit Professional, firm of certified Credit Professionals (practicing) or corporate practice other than those specified in paragraph (a), and any employee or former

employee of such certified Credit Professional, firm or corporate practice who is a certified Credit Professional.

(3) A person who complies with a requirement of an Investigation Committee which is made by virtue of subsection (1) shall not incur any liability to any other person by reason only of the compliance.

(4) A person is not excused from complying with a requirement of an Investigation Committee under subsection (1) on the ground that to do so might tend to incriminate him but, where that person claims, before he answers a question put to him under subsection (1)(a)(ii), that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings.

(5) Nothing in this section shall be taken to compel the production by a person of a record or document containing a privileged communication by or to a legal practitioner in that capacity.

39. Delegation of powers of Investigation Committee

(1) An Investigation Committee may, by instrument in writing signed by its chairman, delegate to any person holding such qualifications as the Council may from time to time prescribe all or any of the powers conferred on it by section 29

(2) A refusal by a person to comply with any requirement made under section 29 by a person to whom the relevant power is delegated under subsection (1) shall be treated as a refusal to comply with a requirement made under that section by the Investigation Committee.

40. Payment of fees to members of Investigations Committee

The Institute may pay fees at such rates as the Council may from time to time fix and such expenses as the Council may deem fit to members of an Investigation Committee, and to persons to whom the powers of the Investigation Committee have been delegated under section 29, for the performance by them of their duties or for any work done by them, and such fees and expenses shall form part of the expenses of and incidental to an investigation under this Part.

41. Secrecy

(1) Subject to subsection (2), and except in the performance, or assisting in the performance, of a function under this Part, any member of the Investigations Committee or the Council, any person to whom any of the powers of the Investigation Committee is delegated to or any person holding any other position who assists any of such persons in the performance of a function under this Part—

(a) shall at all times after his appointment as a member of the Investigation Committee or the Council, a person to whom any of the powers of the Investigations Committee is delegated under section 29 or to such other position, as the case may be, or during or after the performance of or assisting in the performance of such function, preserve and aid in preserving secrecy with regard to any matter coming to his knowledge in the performance or in assisting in the performance of any such function;

(b) shall not at any time communicate any such matter to any other person; and

(c) shall not at any such time suffer or permit any other person to have any access to any record, document or other thing which is in his possession or under his control by virtue of his being or having been so appointed or his having performed or having assisted any other person in the performance of such a function.

(3) any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million or six months imprisonment or both

FOURTH SCHEDULE

DISCIPLINARY COMMITTEE

PROCEEDINGS ON INQUIRY

1. (1) The Council shall cause a statement to be prepared setting out the allegations of professional misconduct to be investigated by the Disciplinary Committee.

(2) The Secretary to the Council shall transmit to each member of the Disciplinary Committee and to the person whose conduct is the subject of investigation a copy of the statement prepared pursuant to subparagraph (1) of this paragraph.

3. (1) The Secretary to the Council shall give notice of the first date, time and place fixed for the inquiry to the person whose conduct is the subject of investigation.

(2) Every such notice shall, at least fourteen days, before the first date fixed for the inquiry, be delivered to the person whose conduct is the subject of investigation by hand or be sent to him through the post by registered letter addressed to his address last known to the Council.

(3) Where a person whose conduct is the subject of investigation fails to appear either personally or by his advocate or other authorised representative at the time and place fixed in the notice served on him, the inquiry shall be adjourned. In the event of such non-attendance at a subsequent hearing of which notice has been given in accordance with sub-paragraph (2), the inquiry may proceed in absence of the person or his advocate.

3. (1) A person whose conduct is the subject of investigation may appear at the inquiry either personally or by his advocate.

(2) The Institute may appear at the inquiry by an advocate.

4. (1) For the purpose of the conduct of the inquiry the Disciplinary Committee has power—

(a) to administer oaths

(b) to summon persons to attend and give evidence;

(c) to order the production of relevant documents, including court judgements; and

(d) to recover in whole or in part the cost of the inquiry from any or all the parties involved in the proceedings as the Committee deems fit.

(2) An oath may be administered by any member of the Disciplinary Committee or by the Secretary to the Council.

(3) Notices, orders and summons of the Disciplinary Committee shall be issued under the hand of the Secretary to the Council.

5. (1) Subject to the rules of natural justice and fairness, the provisions of the Constitution of Kenya and to the provisions of this Schedule relating to inquiries—

- (a) the procedure to be followed is within the discretion of the Disciplinary Committee; and
- (b) the Disciplinary Committee is not bound by the rules of evidence.

(2) Unless the Disciplinary Committee otherwise determines, the proceedings on the inquiry shall be held in camera.

(3) The Secretary to the Council shall keep or cause to be kept, a record of the proceedings on the inquiry.

(4) The Secretary to the Council or his nominee may attend meetings of the Disciplinary Committee and may with the consent of the person presiding at a meeting take part in the deliberations on any matter arising at the meeting but he shall not be entitled to vote on any such matter.

6. (1) The decision of the Disciplinary Committee on the inquiry is that of the majority of the members present and voting for the purpose of making decision.

(2) For the purposes of making the decision on the inquiry every member of the Disciplinary Committee has one vote, and, in the event of an equality of votes, the Chairman of the Disciplinary Committee also has a casting vote.

7. The validity of proceedings of the inquiry is not affected by any vacancy among the members of the Disciplinary Committee or any defect in the appointment of a member.

8. (1) A person served with summons to appear as a witness at the inquiry who, without reasonable excuse fails to attend as required by the summons, is guilty of an offence.

(2) A person appearing as a witness at the inquiry who, without reasonable excuse—

- (a) refuses or fails to be sworn or to make a solemn declaration in relation to the evidence he will give; or
- (b) refuses or fails to answer a question that he is required to answer by the Chairman of the Disciplinary Committee; or
- (c) refuses or fails to produce a document that he was required to produce by a summons under this Act, served on him,

commits an offence.

(3) A person convicted of an offence under this subparagraph is liable on conviction to a fine not exceeding twenty thousand shillings.

9. (1) A member of the Disciplinary Committee has in the performance of his duty as a member, the same protection and immunity as a judge.

(2) A person appearing before the Disciplinary Committee as the inquiry on behalf of the person whose conduct is the subject of investigation has the same protection and immunity as an advocate has in appearing for a party in proceedings in the High Court.

(3) A person summoned to attend or appear before the Disciplinary Committee as a witness at the inquiry has the same protection, and is, in addition to the penalties provided in this Schedule, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the High Court.

10. Proceedings on the inquiry shall be judicial proceedings for the purposes of Chapter XI of the Penal Code (Cap. 63).

FIFTH SCHEDULE

APPEALS COMMITTEE

1. The Cabinet Secretary shall, appoint an Appeals Committee, which shall hear and determine appeals made from the decisions of the Disciplinary Committee.

2. There shall be an Appeals Committee which shall consist of five members as follows:

- a. A senior or retired judge nominated by the Chief Justice
- b. Two former members of Council nominated by Council
- c. One member nominated by Council representing users of financial statements or public interest;
- d. One member nominated by the Law Society of Kenya of not less than 7 years standing.

3. The Appeals Committee shall, in consultation with the Institute, determine its own procedure for the hearing of appeals made in terms of subsection (1).

4. The Appeals Committee shall, in consultation with the Institute, formulate and issue such rules as it considers appropriate to deal with all matters related to the hearing of appeals.

5. Subject to subsection (2) any person aggrieved by a decision of the Disciplinary Committee made under section 35 (1) may appeal therefrom to the Appeals Committee.

6. An appeal to the Appeals Committee against a decision made under section 43 (3) may be made only where –

- (a) notice of such appeal, setting out the grounds of appeal, has been served on the Institute within 14 days after the decision of the Disciplinary Committee is communicated to him or her; and
- (b) the appeal is lodged with the Appeals Committee within 14 days after the notice referred to in paragraph (a) is served on the Institute.

7. The decision of the Disciplinary Committee to –

- (a) suspend or remove the name of any member from the register;
- (b) to withdraw or suspend his or her certificate of registration; or
- (c) to withdraw a certified credit Professional practising certificate,

shall be effective immediately, notwithstanding any appeal which may be pending unless either the Disciplinary Committee expressly suspended the operation of its decision pending the outcome of such appeal or the aggrieved person has obtained from the Appeals Committee an order staying the operation of the decision of the Disciplinary Committee.

8. (1) A member aggrieved by a decision of the Appeals Committee may, within 14 days of the date of the decision, appeal to the Cabinet Secretary.

(2) A person aggrieved by a decision of the Appeals Committee refusing to remove the name of a member from the register, or to suspend such member may, within 14 days of the date of the decision, appeal to the Cabinet Secretary against such decision.

(3) A person aggrieved by a decision of the Cabinet Secretary made under subsections (1) and (2) may, within 30 days of the date of the decision, appeal to the High Court.

(4) The High Court may, on hearing an appeal in terms of subsection (1)–

(a) confirm, vary or set aside any decision of the Cabinet Secretary; or

SIXTH SCHEDULE

APPOINTMENT OF INTERIM MANAGER

1. A member in practice shall be deemed to be incapacitated when an event occurs or the circumstances of that member, including his mental and physical health are such that, in the judgment of the Council and the person (if any) nominated by that member as an interim manager, supported by all other reasonably and readily available advice and information, the member is unlikely to be capable of running the practice in accordance with the provisions of this Act or of discharging the duties expected of him as a certified Credit Professional within such period as the Council shall consider appropriate to safeguard the interests of clients and other stakeholders.

2. Every member who holds a credit practitioner's licence shall at such intervals as the Council may direct nominate another qualified member holding an credit practitioner's licence, to be known as the interim manager, to manage and control the affairs of his practice in the event of incapacity or inability of the member to run the affairs of the practice.

3. Where a member in practice fails to nominate an interim manager as required under this Schedule, the Council may exercise its powers as conferred in section 66 of the Act and in that event, shall agree with the nominee the conditions of his appointment and confirm his duties and powers, as specified in sub-paragraph (4).

4. (1) For the purpose of nominating the interim manager, a member in practice or the Council as the case may be shall specify in the instrument of nomination—

- (a) the general nature of obligations to be assumed by the interim manager, and specifically the role of the interim manager in the disposal of the practice and his relationship with any person who may be appointed as estate executor or administrator;
- (b) the powers of the interim manager covering matters such as staff deployment or other operations of the practice.
- (c) the remuneration of the interim manager,
- (d) the period of service (not exceeding two years) of the interim manager,
- (e) the powers conferred on the interim manager to sign reports, correspondence, agreements or other documentation in the name of the practice;
- (f) the premises from which the operations will continue to take place if different from the practice's registered office.

(2) An interim manager shall take appropriate steps to safeguard the welfare of clients of the practice at the time of assuming office and should desist from conduct that seeks to gain from his appointment, otherwise than in the form of remuneration agreed.

(3) An interim manager shall be responsible for his own actions. The interim manager shall exercise due care, obtain adequate professional indemnity insurance during the term of his engagement and meet other conditions as may be prescribed.

(4) Where appropriate, the interim manager may have his name included in the letter head of the practice but may not alter the name of the practice unless this is expressly provided for in the nomination agreement.

Where the nominating member has at the time of nomination of an interim manager authorized the sale of his practice, the interim manager shall enter into negotiations with interested parties and shall ensure that the instructions of the nominating member are executed to his best interest (or, in the case of a deceased member, the best interest of his estate).

(5) Full details of every agreement involving the appointment of an interim manager shall be submitted to the Council within twenty one days of its commencement. An interim manager shall within seven days of assuming office notify the Council of that fact.

(6) Where the Council appoints an interim manager, full details of the appointment shall be recorded by the Council and the acceptance thereof documented.

(7) The interim manager shall at intervals of six months, submit a report to the person that appointed him, where the appointing member is incapacitated or deceased, the interim manager shall submit such report to the Council. The report shall contain all such details as may be prescribed by the Council and any other matter covered within the nomination agreement.

(8) Any aggrieved party shall tender a complaint to council for deliberations.

SEVENTH SCHEDULE

THE STANDARDS BOARD

1. (1) A member of the Standards Board shall hold office for a term of three years each and shall be eligible for reappointment once.

(2) A member of the Standards Board may resign his office by writing under his hand to the Council or, in the case of a nominee member, to the Cabinet Secretary or the organization or firm.

(3) The Cabinet Secretary may revoke the appointment of his nominee and shall appoint a replacement in consultation with the Council in terms of Section 13 (1).

(4) Organizations and firms may revoke the appointment of their nominee and shall consult with the Council concerning a replacement in terms of Section 13 (1).

(5) A member of the Standards Board who resigns his office, or whose appointment is revoked, before the end of his first or subsequent three year term shall remain eligible for reappointment.

2. (1) The chairman of the Institute in consultation with the Council shall appoint a Chairman and Vice Chairman from amongst the Board members.

(2) The Chairman and Vice-chairman shall hold office until they cease to hold office as members of the Standards Board or until they resign under paragraph 1 (2) or can be removed from office by two thirds majority of the Council.

3. The Vice-Chairman may exercise any of the functions of the Chairman in his absence.

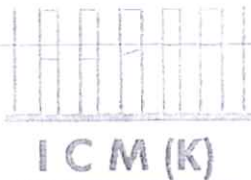
4. The quorum for meetings of the Standards Board shall be six members.

5. The decision of the Standards Board shall be by a majority of members present and voting.

6. The proceedings of the Standards Board shall not be invalidated by any vacancy in its membership.

7. The Standards Board shall submit work programmes and reports to the Council in accordance with an agreed schedule.

8. The Chief Executive Officer or his nominee shall be the secretary to the Standards Board.



Kasneb Towers 1
Lower Floor,
Hospital Road, Upper Hill
P. O. Box 54340, 00200
Nairobi, Kenya

Call: 0728 621516
Email: info@icmkenya.co.ke
website: www.icmkenya.co.ke

INSTITUTE OF CERTIFIED CREDIT MANAGEMENT-KENYA (ICM-K)

A MEMORANDUM ON THE PROPOSED CERTIFIED CREDIT PROFESSIONALS LEGISLATION

1.0 Introduction

The Institute of Credit Management Kenya – ICM (K) is a non-profit entity promoting professionalism in the field of credit management in Kenya. The Institute was founded on 18th June 2001 as Institute of Credit Management-Kenya (ICM-K) and registered under societies Act Cap 108 of the Laws of Kenya.

The overall purpose of the Institute of Credit Management is to:

- (i) establish and uphold high professional standards in Credit Management in the country;
- (ii) bolster the paramount importance of the credit function with its vital role in improving marketing, profitability, cash flow and debt management processes; and
- (iii) facilitate collaboration between credit professionals in Kenya and relevant partners whose work influences credit practice locally and globally.

The Institute of Credit Management Kenya – ICM (K) seeks to contribute towards sustainable economic development in the country which is one of the principles under the Kenya Vision 2030, through proper and prudent management of credit in all sectors of the economy. Further, a well-regulated credit market is fundamental to the realization of Agendas 1 and 8 of the United Nations Sustainable Development Goals on ending poverty and economic growth respectively.

The United Nations Sustainable Development Goals recognise that access to affordable, effective, and safe financial services including credit, savings, insurance, payments, among others can play a transformative role by fostering equitable growth and furthering vital development goals such as poverty reduction, job creation, gender equality, and food security.

2.0 CURRENT SITUATION

2.1 Credit Market Development in Kenya

According to the 2022 Kenya Financial Sector Deepening Report on inclusive finance, levels of financial inclusion as measured by the access dimension stood at 83.7%. This can be attributed to various developments in the financial services sector and general expansion of the economy. According to the World Bank, the domestic credit to private sector of GDP stood at 32% in 2020 while gross loans listing as per Credit Officer Survey Report issued by Central Bank of Kenya totaled Ksh.3.677 trillion as at December 2022. Similarly, according to the Sacco Societies Regulatory Authority, gross loans issued by SACCOs in 2021 stood at Ksh.608.75 Billion. These are indicators of a robust credit market in the country.

Despite this growth of the sector, consumer lending raises significant consumer protection risks and concerns which could be mitigated by having certified credit professionals. Thus for stability and sustainability of the lending institutions, a qualified and well-regulated credit profession is fundamental. The proposed Certified Credit Professionals Bill 2023 therefore seeks to establish a framework that will guide, among other things, the registration and regulation of credit professionals in Kenya like other similar professions.

2.2 Legislation and Regulation

The Institute proposes that parliament enacts a guiding Act of Parliament to regulate credit professionals in Kenya.

The scope of the proposed law will, among others, cover:

- 1) the establishment and membership of the Institute of Certified Credit Professionals (ICCP-K);
- 2) the functions and management of the Institute;
- 3) practising certificates and registration of Credit Professionals; and
- 4) disciplinary provisions that includes establishment of a disciplinary committee, inquiry and appeal mechanisms as it outlines what constitutes professional misconduct.

Situational Analysis

A number of professionals in Kenya including accountants, lawyers, financial analysts, engineers, doctors, nurses, auctioneers, and HR practitioners are regulated through statute. Their respective legislation provides for requisite training for certification, registration and licensing of practitioners and regulation of their practice among other provisions for effective administration of their mandates. However, credit professionals do not have a guiding statute that can give the institute a legal backing in the performance of its function of ensuring high professional standards among practitioners in the credit sector.

This has exposed consumers to a number of risks including breach of transparency, unconscionable conduct and loss of assets. The enactment of legislation will therefore help the institute establish optimal regulatory regimes that will ensure that only competent professionals can practice in the credit sector.

The proposed law only seeks to regulate credit professionals and not any other market player.

2.3 The Need for legislative Framework for Credit Professionals

2.3.1 Implication of the Proposed Law to General Public

The Proposed law will raise awareness among the members of the public on:

- a) who a credit professional is;
- b) the contribution of the profession to the safety, sustainability and stability of the credit market;
- c) the services that a credit professional offers to the general public in regard to helping a member of public make an informed decision before using a credit facility.

Through the proposed law, the public will benefit from the assurance that the credit professional they are dealing with is bound and accountable to a set of strong enforceable code of conduct and professional ethics given that they can first confirm whether the said professional is a member of the Institute. Further, consumers have an avenue for seeking redress in the event that they are aggrieved by actions of a practitioner.

2.3.2 Implication of the Bill to Credit Market and Market Players

The proposed law does not seek to regulate the entire credit market nor all its players. The proposed law provides the following benefits to the credit market and its players:

- a) accountable, reliable and certified credit professionals;
- b) pool of professionals knowledgeable in handling of the credit portfolio and investments in accounts receivables;
- c) authoritative leadership in areas of credit and debt management for sound, stable and sustainable businesses and economy;
- d) reduction and eventual eradication of fraud in the credit market for sustainability of the financial system and institutions; and
- e) alleviation of the pain caused by unprofessional debt collectors in handling of institutions' debt customers.

2.3.3 Implication of the Bill to the Credit Profession

The proposed bill seeks to benefit the profession as follows:

- a) establish a recognized legislated position of credit professionals in matters credit and debt management;
- b) promote credibility among the employers for registered members;
- c) continuous and well-structured professional development;
- d) legally strengthen the profession in delivery of credit professional services; and
- e) establishment of regulations to govern conduct of the professionals as per the proposed law once enacted.

Conclusion

The Institute of Credit Management Kenya (ICM-K) is committed to the development of credit profession in Kenya by promoting high ethical code of professional conduct, professional discipline and development of sustainable credit markets. Through this proposed law, the Institute seeks to have enactment of an enabling legislation to anchor the credit professional by Act of parliament like other professional bodies in Kenya.



KENYA BANKERS

Below is sample list of professions and skills in banking business

1. Executive Office	2. Investment and Trading	3. Asset Finance	4. Business Banking
5. Compliance	6. Corporate Banking	7. Credit	8. Customer Experience
9. Digital	10. Financial controllers	11. Human Resources	12. ICT
13. Audit	14. Legal	15. Operations	16. Retail Banking
17. Risk	18. Treasurers	19. Marketing	20. Data Protection
21. Bancassurance	22. Card Operations	23. Information Systems	24. Controls
25. Transactional Banking	26. Procurement	27. Facilities	28. Sales
29. Forensics	30. Cyber Security	31. Custody	32. Employee Relations
33. Forex	34. Branch Business	35. Data Science	36. AML
37. Research	38. Religious Banking	39. Medical	40. Drivers
41. Teller	42. Delivery	43. Hospitality	



KENYA BANKERS

ASSOCIATION

Best Practices

All developed and developing jurisdictions recognize banking as a business as opposed to a profession, and do not have statutory professional bodies to regulate professionals working in banks.

The conduct of banking business is subject to consumer protection laws, which provide clear penalties for offenders.

In the United States, United Kingdom, Australia, Singapore and India, the focus is on organizational **responsibility and professional accountability**, and not sector professional bodies as proposed. This prevents unnecessary duplication of professional and regulatory mandates, allowing banks to adapt to the evolving needs of the financial industry.

These proposed Bills would have significant negative consequences for the banking sector, stifling innovation, increasing costs, and limiting both career progression and cross-sector employment.

The Bills fail to in demonstrating the existing gaps in the banking sector that will be addressed. The Bills are redundant, introduce duplicate in existing regulations and self-serving. The Kenya Bankers Association therefore rejects the two Bills in their entirety to realize economic empowerment, create employment opportunities and wealth for individuals, households, businesses and the country.

We reiterate the question: **What gap(s) or problem(s) are the two bills addressing that are not addressed by current laws and regulations.** As an industry, an economy and country we find none and have not been persuaded by the petitioners in their draft Bills and rationale.

Dated this 10th Day of September 2024

A handwritten signature in blue ink, appearing to read 'R. Molenje', enclosed in a circular stamp.

Raimond Molenje
Ag. CHIEF EXECUTIVE OFFICER
KENYA BANKERS ASSOCIATION



KENYA BANKERS

6. Cross-functional and Cross-sector Employment:

If every industry adopts similar legislation (*manufacturing, insurance, hotels, transport, horticulture, medical, construction, retail*) it will limit employment opportunities within particular sectors and hinder cross-sector employment, creating barriers to job mobility and flexibility thereby increasing the rate of unemployment in the country.

Bank staff have diverse academic degrees and certifications providing the necessary skills required in the banking business and not professions. The proposal also requires certification of Board members for banks (Board Credit Committees) thus limit shareholders' ability to appoint directors with diverse skill sets to support banks businesses.

7. Professional Exclusion and High Costs:

The proposed Bills may lead to further exclusion of individuals from the profession due to certification fees, training costs, and legal risks, such as customer claims against uncertified credit officers. Compliance costs will rise, with potential implications for job mobility and organizational strategy. The cost implications will be a burden to bankers in an already distressed economy and the financial burden of maintaining the new professional bodies will likely fall on banks, potentially through a percentage of loan sanctions, increasing the cost of borrowing.

8. Career and Innovation Barriers:

Professional bodies limit career growth and create narrow career pathways. By focusing on specific certifications and qualifications, the proposals risk stifling innovation and limiting the practical application of skills, especially in dynamic sectors like banking where bankers rely more on skillset to achieve business objectives vis a vis professional certification. There is a risk of over-standardization, which could suppress innovation in a sector that thrives on evolving skills and experience rather than rigid academic and professional qualifications

9. Discrimination of Banking Industry Credit Service Providers

Credit Service Providers work in other industries besides banking. It is not clear why the proposed Bill seeks to regulate credit professionals in the banking industry alone, yet credit services are offered across sectors, including telecommunications, hospitality, medicine, legal among other professionals.



KENYA BANKERS

The diverse credit providers in the market cater for the different society needs and implementing a one-size-fits-all approach to credit standards will deny credit to the underserved.

4. Compliance Burden:

The Banking industry comprise of staff from different professions already regulated by their specific primary professional bodies including Law Society of Kenya (LSK), Institute of Human Resource Management (IHRM) and the Institute of Certified Public Accountant of Kenya (ICPAK), which is a cost to professionals and businesses already in meeting CPD training requirements, maintain practicing certificates and pay for the annual subscription fees required.

Remember you must maintain these professional certifications and CPDs even while seeking entry level roles or while out of employment looking for job opportunities. Including private consultancies. **The introduction of additional certification requirements will intensify this burden for individuals seeking employment or in employment and additional cost to employers.** Banks staff will stop working and be in full time pursuit of CPD trainings for the following years certifications when 1 staff is in 4 different professional institutes some in expensive addresses like South Coast and North Coast.

5. Barriers to Entry:

Staff recruitment from other sectors of the economy to banking will stop once the Bill is assented to by the President. The Bill introduces academic and professional certifications hence individuals without these certifications will be unqualified to join banking.

This will limit employment opportunities for the public to banking when the banking industry is the leader in being the best industry to work in and the best paying industry. Additionally, the Credit Professional law, will limit internal bank staff cross-functional movements and promotions, such as moving an operations staff to a credit role, will be hindered by the need for these certifications.

The Bills create barriers to entry and promote unnecessary bureaucracy in professional bodies, limiting the banking sector's flexibility and dynamism. The focus should remain on practical experience and adaptable skills rather than prescriptive academic and professional qualifications.



KENYA BANKERS

with sales agents, account opening, customer service, lawyers, operations, credit, digital teams up to and including the Chief Executive Officer and the Board.

All bank staff are involved in credit administration and the petitioners have not provided a criterion to determine who a credit staff/ professional is.

2. Presence of Existing Regulatory Bodies within the Banking Sector

The Central Bank of Kenya primarily regulate the Banking Industry, under the Banking Act and Prudential Guidelines governing banks and individual bankers providing round the clock regulations of banking business in Kenya including Consumer Protection. Additionally, there are several regulators that undertake consumer protection including Competition Authority, Financial Reporting Centre, Office of the Data Protection, among others.

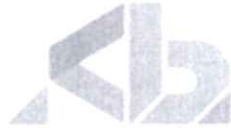
Introducing further certification requirements for bankers renders Kenya uncompetitive for business and banking being a business. Banks would have the option of fully automating operations to limit the unnecessary compliance and expenses for certification and CPDs and outsource human capital from other jurisdictions through the shared services framework.

Banks as businesses cannot be compelled to have credit staff based in-country. All the operational credit and analysis thereof will be automated or undertaken by staff outside Kenya. By enacting these two BILLS we will be exporting employment outside Kenya and aggravate Kenya's unemployment challenge which as KBA we exist to bridge directly as an industry and indirectly by financing individuals and businesses.

Over-regulation stifles innovation and competition within the industry and the economy. Existing regulatory bodies provide adequate and necessary oversight. Any gap must be addressed through an amendment to the existing legal framework and avoid the creation of more parastatals and state agencies when the public is seeking for lean government in their lives.

3. Conflict in Uniformity of Credit Standards

Banking business is all about credit provision and it is a competitive area that has to be regulated as such for the benefit of customers. We have banks, microfinance banks, sacco, credit only providers, digital credit providers only, retail stores, shy locks all providing credit. How will the Credit Professionals law establish uniform credit standards for all these financial institutions and businesses that are already regulated.



KENYA BANKERS

ASSOCIATION

"banking business" means— (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice; (b) the accepting from members of the public of money on current account and payment on and acceptance of cheques; (c) the employing of money held on deposit or on current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money; and (d) such other business activity as the Central Bank may prescribe.

3. **What problem(s) are the two bills addressing that are not addressed by current laws and regulations.** I find none, as an industry, an economy and country we seek to be persuaded by the petitioners of the Bills.

Consequently, Kenya Bankers Association opposes the enactment of the two Bills in their entirety based on the following:

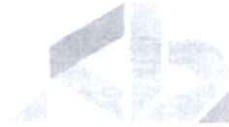
1. Scope

Banking is not a profession; it is a business/ industry and sector as clearly defined in section 2 of the Banking Act Cap 488 Laws of Kenya.

The banking industry comprise of staff from different professions (over 50 different professions) including *cyber security, engineers, ICT, lawyers, human resource, accountants, procurement, economists, compliance, insurance, audit, credit, customer service, data science, sales, marketing, religious, surveyors, logistics among others* most of which are already regulated by their primary professional bodies such as the Law Society of Kenya (LSK), Institute of Human Resource Management (IHRM), Public Relations Society of Kenya (PRSK), Institute of Certified Public Accountants of Kenya (ICPAK), among others.

How will the proposed Bills cater to the 50 diverse professionals in the banking sector given their varied and distinct skill sets and backgrounds. With the significant differences in expertise, developing training programs and CPD structures that accommodate all these professionals will create duplicity and disharmony amongst the professional bodies.

On the proposed Credit Professionals Bill, the credit function in banks is broad and every staff in a bank is in one way or another involved in a credit related function or deliverable. Starting



KENYA BANKERS

The Honourable
Clerk of the National Assembly
Main Parliament Building
Public Petitions Committee
P. O. Box 41842-00100
NAIROBI

10th September 2024

Dear Mr. Samuel Njoroge, CBS

KENYA BANKERS ASSOCIATION SUBMISSIONS ON THE PETITIONS ON THE INSTITUTE OF BANKERS PROFESSIONAL BILL, AND THE CREDIT PROFESSIONALS BILL

We acknowledge your letter dated 27th August 2024 inviting the Association to provide the industry feedback on the petitions seeking to introduce the two bills.

The Kenya Bankers Association brings together all commercial banks in Kenya to realize economic empowerment, create employment opportunities and wealth for individuals, households, businesses and the country.

The proposed Bills: Credit Professionals Bill and Institute of Bankers Professional Bill will hinder and limit economic growth, employment opportunities and wealth creations for individuals, households, and businesses.

The Bills as proposed are non-existent in any developed or developing country. They are bad for the economy, destructive to careers and create exclusive clubs limiting entry at all levels.

1. What is a profession?

Oxford Dictionary: " a profession is any type of work that needs special training or a particular skill, often one that is respected because it involves a high level of education: teaching profession; lawyers; doctors... jobs that need special training and skill, such as being a doctor or lawyer, but not work in business or industry."

2. What is banking?

Section 2 of Banking Act Cap 488 Laws of Kenya "bank" means a company which carries on, or proposes to carry on, banking business in Kenya but does not include the Central Bank;

03 JUN 2025
Governor
PROCEDURAL, RESEARCH AND JOURNALS
P. O. Box 41842, NAIROBI

BANKI
KUU YA
KENYA



CENTRAL
BANK OF
KENYA

Haile Selassie Avenue
P.O. Box 60000 - 00200 Nairobi, Kenya
Telephone: +254 20 286 1003

*Head of PT
Please process
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May 20, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Building
P.O. Box 41842 - 00100
NAIROBI

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Please deal.
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Dear *Mr. Njoroge*

REQUEST FOR SUBMISSION ON A PUBLIC PETITION REGARDING ENACTMENT OF LEGISLATION TO REGULATE CREDIT PROFESSIONALS

Thank you for the letter, dated April 25, 2025, requesting Central Bank of Kenya (CBK) for submissions on a public petition regarding enactment of legislation to regulate Credit Professionals.

CBK has reviewed the Petition and submits as follows:

- i) The Petition proposes enactment of legislation to provide qualified and well-regulated credit professionals to ensure stability and sustainability of the lending institutions.
- ii) Currently, there exists the Institute of Credit Management of Kenya (ICM-K), registered under the Societies Act, Cap 108, with established governance structures, and whose primary objective is to promote credit professionalism for the benefit of all members and uplift the standards of credit management in the country.
- iii) The membership of the ICM-K is categorized into full and associate Membership and is acquired through a qualification examination administered by the Kenya Accountants and Secretaries National Examination Board (KASNEB).

Accordingly, with ICM-K and KASNEB in place, the value addition of the proposed enactment of legislation to regulate the Credit Profession is not apparent to CBK and therefore, CBK does not support the Petition.

Sincerely,

[Signature]
Dr. Kamau Thugge, CBS

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21 MAY 2025
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

NATIONAL ASSEMBLY
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26 MAY 2025
DEPUTY CLERK'S OFFICE
P.O. Box 41842-00100, NAIROBI

14 MAY 2025
PROCEDURAL, RESEARCH AND JOURNALS
P. O. Box 41842, NAIROBI



REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

DLPS
8
14/05/25

Ref: AG/LDD/94/1/37

9th May, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

③ Kadhi
TNA
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Sib

⑤ Head, PRS
To Inform the
Committee and
process. 14/5/25

RE: REQUEST FOR WRITTEN SUBMISSIONS ON VARIOUS PUBLIC PETITIONS
SUBMITTED TO THE NATIONAL ASSEMBLY

This has reference to above captioned subject-matter and your letter under Ref. No. KNA/DLPS/PPETC/CORR/2025/19 dated the 25th April, 2025, requesting this Office to provide written submissions in respect to the prayers sought by petitioners on various petitions to the National Assembly in order to facilitate consideration of the petitions by the National Assembly.

We have considered Public Petition No. 55 of 2023 regarding enactment of a legislation to regulate the Credit Professionals and note that the petition does not raise any legal or constitutional issues.

Subsequently, it is important to highlight that the policy on the subject matter lies within the mandate of the National Treasury and Economic Planning. To this end, we have shared Public Petition No. 55 of 2023 regarding enactment of a legislation to regulate the Credit Professionals with the National Treasury and Economic Planning for policy guidance.

We trust that this is in order.

Hon. Shadrack J. Mose, CBS
SOLICITOR-GENERAL

NATIONAL ASSEMBLY
RECEIVED
13 MAY 2025
DEPUTY CLERK
J.W.N
P. O. Box 41842 -00100, NAIROBI

SHERIA HOUSE, HARAMBIE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELASSIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

Handwritten notes:
②
Home Board
Amplified
②

Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

Our Ref : NT/LEGAL/499 "TY" I(103)
Your Ref : KNA/DLPS/PPETC/CORR/2025/019

Date: 20 May 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Main Parliament Buildings
P.O Box 41842-00100
NAIROBI.

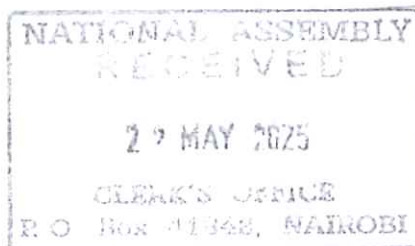
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① DLPS
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30/05/25
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Dear *clerk*

RE: REQUEST FOR WRITTEN SUBMISSIONS ON VARIOUS PUBLIC PETITIONS SUBMITTED TO THE NATIONAL ASSEMBLY
PUBLIC PETITION NO. 55 OF 2023 – LEGISLATION TO REGULATE THE CREDIT PROFESSIONALS

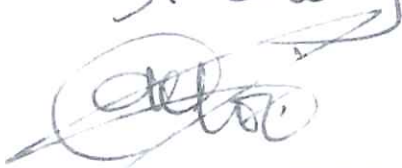
Reference is made to the above subject matter. We also refer to correspondence on this subject matter from your Office and the Office of the Hon. Attorney-General on various dates (copies attached for ease of reference).

We note that the referenced Petition was not transmitted together with the request for written submissions, vide your letter dated 25th April 2025, REF: KNA/DLPS/PPETC/CORR/2025/019.



The purpose of this letter therefore, is to request your office to avail the said Petition, to enable the National Treasury to provide the appropriate Policy Direction.

We look forward to your prompt response.

Yours *Sincerely*


DR. CHRIS K. KIPTOO, CBS
PRINCIPAL SECRETARY/THE NATIONAL TREASURY

PRINCIPAL SECRETARY
THE NATIONAL TREASURY
579 13 MAY 2025
RECEIVED
P.O. Box 30007 - 00100, NAIROBI



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

14/5/2025

Ref: AG/LDD/94/1/37

9th May, 2025

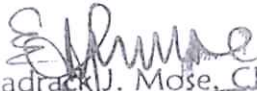
Dr. Chris K. Kiptoo, PhD., C.B.S
Principal Secretary
The National Treasury
Treasury Building
Harambee Avenue
P.O. Box 30007
NAIROBI

HEAD, LEGAL UNIT
THE NATIONAL TREASURY
RECEIVED
579 14 MAY 2025
P.O. Box 30007 - 00100, NAIROBI
legal@treasury.go.ke

RE: REQUEST FOR WRITTEN SUBMISSIONS ON VARIOUS PUBLIC PETITIONS
SUBMITTED TO THE NATIONAL ASSEMBLY

We refer to the above captioned subject-matter and the letter from the National Assembly under Ref. No. KNA/DLPS/PPETC/CORR/2025/19 dated the 25th April, 2025, requesting this Office to provide written submissions in respect to the prayers sought by petitioners on various petitions to the National Assembly in order to facilitate consideration of the petitions by the National Assembly, (a copy of the letter is enclosed for ease of reference).

We note that the policy informing the subject matter of Public Petition No. 55 of 2023 regarding enactment of a legislation to regulate the Credit Professionals (a copy of the petition is enclosed for ease of reference) lies with your Ministry. In view of this position, we hereby seek your policy guidance in respect of the petition to enable us advise the Parliamentary Committee on the subject matter, noting the urgency.


Hon. Shadrack J. Mose, CBS
SOLICITOR-GENERAL

Encl.

SHERA HOUSE, HARAMBEE AVENUE
P.O. Box 49112-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355/07119445355/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100

Nairobi, Kenya

Main Parliament Buildings

When replying, please quote the reference

KNA/DLPS/PPETC/CORR/2025/019

Telephone: +254202848000 ext. 3300

Email: ona@parliament.go.ke

www.parliament.go.ke/the-national-assembly

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
SOLICITOR GENERAL'S OFFICE

29 APR 2025 2

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Tel: +254 20 284 8000 ext. 3300

29 April, 2025

Hon. Shadrack J. Mose

Solicitor General

Office of the Attorney General

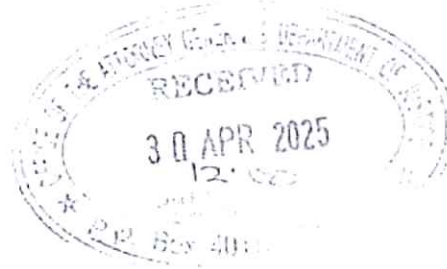
Meria House, Harambee Avenue

P.O. Box 40112-00100

Tel: 020-2227461/0732 529995/0700 072929

NAIROBI

Email: communications@ag.go.ke



Dear Sir,

RE: REQUEST FOR WRITTEN SUBMISSIONS ON VARIOUS PUBLIC PETITIONS SUBMITTED TO THE NATIONAL ASSEMBLY

The above-captioned matter refers.

The Public Petitions Committee is established under Standing Order 208A and is mandated to, inter alia, consider all public petitions tabled in the House and make such recommendations as may be appropriate with respect to the prayers sought in the petitions.

Pursuant to the provisions of Standing Order 225, the following petitions were presented to the House and the Honourable Speaker committed them to the Public Petitions Committee as per the provisions of Standing Order 227 (Copies attached);

1. P/No. 55 of 2023 regarding Enactment of Legislation to Regulate the Credit Professionals;
2. P/No 58 of 2023 regarding Amendment to the Estate Duty Act to entrench taxation equality;
3. P/No. 65 of 2023 regarding Enactment of proposed Geophysical Professionals Bill;
4. P/No. 74 of 2023 regarding Enactment of the Bankers Professional Bill, 2023;
5. P/No. 75 of 2023 Enactment of the Kenya Robotics and Artificial Intelligence Society Bill, 2023;
6. P/No.1 of 2024 regarding Enactment of Legislation on development of Irrigation Infrastructure;
7. P/No. 8/2024 regarding Amendment of the Penal Code to provide for the offense of sextortion; and
8. P/No. 13/2024 regarding Decriminalization of Attempted Suicide.

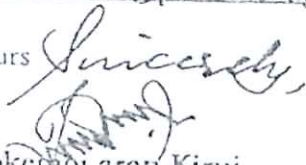
(Signature)

The purpose of this letter is to request you to provide written submissions in respect to the prayers sought by the Petitioners to facilitate consideration of the said petitions.

You may send your submissions through the Office of the Clerk of the National Assembly on or before Friday, 16th May, 2025 or via email address: cna@parliament.go.ke.

Our Liaison Officers for the meeting are Mr. Ahmed Kadhi, Principal Clerk Assistant, who may be contacted on Tel. No. 0721358769 or Email: ahmad.kadhi@parliament.go.ke and Ms. Miriam Mudo, First Clerk Assistant, who may be contacted on Tel. No. 0729715313 or Email: miriam.mudo@parliament.go.ke.

Yours



Kipkenoi arap Kirui

FOR CLERK OF THE NATIONAL ASSEMBLY

//Encls://

Copy to: -

Hon. Dorcas Oduor
The Attorney-General
Office of the Attorney General
Sheria House, Harambee Avenue
P.O. Box 40112-00100
Tel: 020-2227461/0732 529995/0700 072929
NAIROBI



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Telephone: Nairobi, +254-20-2241186/2241201
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www.info@klrc.go.ke

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Ref. No. KLRC/2025 VOL.IV(48)

NATIONAL ASSEMBLY
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KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

DLPS
Please deal
30/05/25

20th May 2025

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
NAIROBI

Whead-PPJ
Please process
Araptuic
3/6

③ *Kaahi*
Please TMA
to s/b

ATT: Mr. Jeremiah W. Ndombi, MBS

Dear *Jeremiah,*

RE: REQUEST FOR WRITTEN SUBMISSIONS ON VARIOUS PUBLIC PETITIONS
SUBMITTED TO THE NATIONAL ASSEMBLY

Your letter Ref. KNA/DLPS/PPETC/CORR/2025/018 dated 25 April, 2025 refers

The Kenya Law Reform Commission has analysed the petitions and prepared the attached consolidated submissions.

We thank you for your continued support and cooperation.

Yours *Sincerely*

PETER M. MUSYIMI, HSC
AG. SECRETARY/CEO

NATIONAL ASSEMBLY
RECEIVED
23 MAY 2025
CLERK'S OFFICE
P.O. Box 41842, NAIROBI



KENYA LAW REFORM COMMISSION'S MEMORANDUM ON PUBLIC PETITIONS TO
THE NATIONAL ASSEMBLY

MAY 2025

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A. INTRODUCTION

The Kenya Law Reform Commission (KLRC) is established under the Kenya Law Reform Commission Act, 2013 with a mandate to keep under review all the laws of Kenya to ensure that they conform to the letter and spirit of the Constitution. In this regard, KLRC advises the Government, including Parliament, on the reform and harmonisation of laws, promotion of access to justice and the development of a sound legal and regulatory framework for national development.

The Kenya Law Reform Commission (KLRC) acknowledges receipt of a letter from the National Assembly dated 25 April 2024 (ref: KNA/DLPS/ PPETC/CORR/2025/018) seeking submissions on the following issues:

- (a) Proliferation of LGBTQ rights in the country;
- (b) Amendment of the Penal Code to provide for the offence of sextortion;
- (c) Enactment of the Kenya Robotic and Artificial Intelligence Society Bill, 2023;
- (d) Decriminalisation of Attempted Suicide;
- (e) Enactment of legislation of development of irrigation infrastructure;
- (f) Enactment of the Bankers Professional Bill, 2023;
- (g) Enactment of Legislation for Regulation of Credit Professionals;
- (h) Enactment of Proposed Geophysical Professionals Bill; and
- (i) Proliferation of Lesbians, Gays, Bisexuals, Transgender and Queer (LGBTQ) in the Country.

KLRC prepares this memorandum in response to the request, and in line with its mandate under section 6(c) of its Act, to provide advice technical assistance and information to the government with regard to the reform or amendment of a branch of the law. The memorandum is divided into three parts:

Part I of the memorandum addresses petitions related to enactment of amendment Acts to address the offences of sextortion and attempted suicide.

Part II of the memorandum covers the proposed enactment of laws to regulate banking, credit and geophysical professionals and the Kenya Robotic and Artificial Intelligence Society.

Part III of the memorandum responds to petitions seeking the enactment of legislation of development on irrigation infrastructure and review of the proliferation of Lesbians, Gays, Bisexuals, Transgender and Queer (LGBTQ) in the country.

PART I-CRIMINAL LAW

1. THE OFFENSE OF SEXTORTION

(a) Defining Sextortion

Sextortion is a blended word derived from the words “sex” and “extortion”. The International Association of Women Judges defines sextortion as ‘the abuse of power to obtain a sexual benefit or advantage.’¹ It has been said that for sexual extortion, there has to be abuse of authority in the exchange of sex for a service.² Sextortion has also been said to cover instances where someone makes demands with the threat of publishing another person’s sexually embarrassing photos or videos. Sextortion is more about psychological than physical coercion.

¹ International Bar Association, ‘Pressure builds worldwide for legal protection against sextortion’, <<https://www.ibanet.org/Pressure-builds-worldwide-for-legal-protection-against-sextortion>> (Accessed 12/05/2025).

²Center for Gender and Development, ‘Confronting Sextortion’ <<https://ccgdcentre.org/2023/05/30/confronting-sextortion/>> (Accessed 12/05/2025)

(b) Prevalence of Sextortion in Kenya

It has been reported that sextortion affects vulnerable girls and women who seek various services such as national identity cards, supplies of sanitary pads, education, trainings and job placements.³ It has also been reported that sex for fish is very rampant along the coastlines and shores where female fishmongers give in to sexual demands of fishermen so that they can attain the first pick from the boats.⁴ It has further been reported that women and girls are pressured into sex in exchange for water, especially in the slums.⁵ Traders are also not spared with cases of female traders are sexually exploited by brokers and market officials, also having been reported.⁶ One of the hawkers within Nairobi is reported to have informed Members of the County Assembly that she had personally experienced the vice and that “my colleagues have also been told to sleep with these officers to be allowed to hawk without interference”.⁷

A report by the Kenya ICT Action Network on the challenges faced by women in Kenya on the internet lists non-consensual distribution of intimate images and sexual harassment as some of the most prominent violations of their rights across digital platforms.⁸ The report further notes that professional and prominent women, including women human rights defenders, women in politics, journalists, women with disabilities and women from marginalised groups, are frequent targets of online gender-based violence. Female politicians in Kenya have been particularly vulnerable to image-based disinformation campaigns that manipulate media to sexualize them.⁹ This makes them fodder for

³ Ibid.

⁴ Ibid.

⁵ Simavi, 'Sextortion: The Silent Pandemic.' <<https://simavi.nl/en/news-and-stories/sextortion-the-silent-pandemic>> (Accessed 12/05/2025)

⁶ Daily Nation, 'Sex for Business Protection: Women Traders Recount Nairobi's Living Hell' <<https://nation.africa/kenya/news/gender/-sex-for-business-protection-women-traders-recount-nairobi-s-living-hell-4488864>> (Accessed 12/05/2025)

⁷ Daily Nation, 'Sex-for-Hawking Space Scandal Rocks City Hall' <<https://epaper.nation.africa/read/release/11079>> (Accessed 14/05/2025)

⁸ ICJ Kenya, 'Protect Women from Rising Online Gender Based Violence'. <<https://icj-kenya.org/news/protect-women-from-rising-online-gender-based-violence/>> (Accessed 12/05/2025)

⁹ Ibid

extortion, with certain elements demanding money in order not to release intimate pictures on the internet. While this is common against women, men have also been victims of this form of sextortion. These cases set out the need for urgent legislative intervention to include the offence of sextortion in the Statute Book.

(c) Legal Framework on Sextortion in Kenya

Sextortion has been difficult to prosecute since, as stated in the petition, the existing legislation does not define it or recognize it as a form of sexual offence. The closest offence to sextortion in the Statute Book is sexual harassment created under section 23 of the Sexual Offences Act, Cap. 63A. However, the offence of sexual harassment is limited to instances of employment, education and services offered by public officials. This leaves victims of other types of predators vulnerable.

Section 37 of the Computer Misuse and Cybercrimes Act, Cap. 79 C criminalizes the publishing or distribution of intimate or obscene images of other people without consent. However, the section does not speak to the extortion and blackmail that may be employed with the threat of publishing such images. While the actual publishing is an offence, victims may not wish to have such images published in the first place, hence give in to the extortionists' demands. This is what constitutes sextortion. It is therefore necessary to specifically criminalize sextortion in all its forms.

(d) Conclusion

In view of the foregoing, it is important to amend the law to create an offence that covers all forms of sextortion. KLRC considers the Sexual Offences Act the most appropriate law to amend in order to provide for the offence of sextortion. In addition, KLRC recommends that the proposed new provision should follow section 23 of the Sexual Offences Act which covers sexual harassment and numbered section 23A.

In relation to the proposal to provide support to victims of sextortion. KLRC is of the view that it is not necessary to make any further changes to the law to facilitate support for the victims as the Victim Protection Act, Cap. 79A comprehensively addresses this issue. This statute was enacted to give effect to Article 50(9) of the Constitution and to provide for protection of victims of crime and abuse of power including protection of the dignity of victims through the provision of better information, support services, reparations and compensation from the offender.

2. DECRIMINALISATION OF ATTEMPTED SUICIDE

(a) Introduction

The World Health Organization Policy Brief on the Health Aspects of Decriminalization of Suicide and Suicide Attempts names Kenya as one of only twenty-three countries in the world which still criminalize suicide attempts.

The Brief goes ahead to state that the criminalization of suicide perpetuates an environment that fosters blame and stigmatization towards people who attempt suicide and at the same time fail to recognize the role of social, economic and cultural factors that play a role in suicide and suicide attempts. The Brief further states that the criminalization deters people from seeking timely help and accessing interventions due to the fear of legal repercussions and stigma.

(b) Analysis

The Mental Health Act, Cap. 248 defines a person with mental illness as a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes a person with suicidal ideation or behaviour (*emphasis ours*).

Under the Act, therefore, a person who has attempted suicide would be seen more as a patient needing help than a criminal who should be punished. This was so stated in the

case of *Republic v SWN (Criminal Case 20 of 2019) [2022] KEHC 3312 (KLR) (7 July 2022)* (Sentence) where the High Court held that:

“As the facts patently announce, here is a young woman in need of treatment, care and protection. She is certainly not a deranged criminal in need of retribution and confinement”.

In the above case, the accused person was found to have fatally stabbed her son killing him immediately. She then turned the knife on herself three times in an attempt to kill herself. One of the issues before the court was its role in sentencing an accused person who was mentally ill.

(c) Conclusion

In view of the foregoing, attempting suicide should be decriminalised in Kenya through the repeal of section 226 of the Penal Code and the proposed amendment is timely.

B. PART II-REGULATION OF PROFESSIONALS

1. INTRODUCTION

The KLRC was requested to analyse several legislative proposals seeking to regulate various professions. Before analysing each legislative proposal, this introductory part will address the following questions—

- (a) What is a profession?
- (b) What is the justification for the regulation of professionals?
- (c) What are the various approaches to regulation of professionals?

- (a) What is a profession?

Professionals occupy a position of great importance in the society because they deliver esoteric services to individuals, organizations and the government. The professional space has over the years accelerated as more occupations seek professional identity in addition to the traditionally established professions. In seeking to admit other occupations into the category of professions and setting mechanisms of professional regulation, one must begin by understanding definition and traits of a profession.

Prof. Horton B. (1958) set forth a criterion of a profession which can serve as a yard stick of what constitutes a profession. According to Horton, a profession must—

- (a) "satisfy an indispensable social need and be based upon well established and socially accepted scientific principles;
- (b) demand adequate pre-professional and cultural training;
- (c) demand possession of a body of specialized and systemic knowledge;
- (d) give evidence of needed skills which the public does not possess;
- (e) have developed a scientific technique which is the result of tested experience;
- (f) require the exercise of discretion and judgement in the manner of performance of duty;
- (g) have group consciousness designed to extend scientific knowledge in technical language;
- (h) have sufficient self-impelling power to retain its members throughout life and must be used as a mere stepping stone to other occupations; and
- (i) recognize its obligations to society by insisting that its members live up to an established code of ethics."

Hughes E. (1968) equally argues that the essence of the idea of professionalism is that professionals profess to know better than their clients on what ails them or their affairs.

Garoupa N (2014) similarly considers a profession as an occupation with the following characteristics: specialised skills, that skill is partially or fully acquired by intellectual training, the service calls for a high degree of integrity, and it involves direct or fiduciary relations with clients.

In essence, a profession can be defined as a disciplined group of individuals, who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognized body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others.

(b) The need to regulate professionals

Regulation of professionals in any given industry is crucial for various reasons including, the need to set uniform standards for the services of that particular profession in order to ensure that consumers of the services are protected; promote accountability and continuous competencies and skills through continuous learning.

The regulation of professional groups has often been justified as being in the public interest with some scholars seeing professional associations and other similar groups as one of the four institutional bases of social order (along with the community, the market, and the state).

(c) Approaches to regulation of professionals

Recent years have witnessed an increase in interest in professional regulation with various models of regulation of professionals emerging. In this memorandum, KLRC will restrict itself to two forms of professional regulation; statutory regulation and self- regulation

(i) Statutory regulation of professionals

Under a typical statutory regulatory scheme, legislation establishes a regulatory authority that is made up of a majority of members either reelected by or appointed from the profession regulated by that authority.

In Australia, these authorities are called 'registration boards', in the United Kingdom they are known as 'Councils' and in various provinces of Canada, 'professional colleges.

These regulatory authorities have powers conferred by statute, to determine qualification and other requirements for registration and to maintain a publicly accessible register of qualified persons. Under this regime, it is an offence for an unregistered person to use those professional titles reserved for the profession.

The relevant statute sets also up a disciplinary system that, in most cases, empowers the regulatory authority to investigate complaints of professional misconduct and to impose sanctions on a practitioner, including deregistration if necessary. The effect of the regulatory scheme is to create an enforceable barrier to entry to the regulated profession and to regulate the standards of practice and conduct of registered practitioners.

(ii) 'Self-regulation' or peer review model

The term 'self-regulation' is used to describe the disciplining of one's own conduct by oneself. Self-regulation as an approach to professional regulation is widely used in professions, sports¹⁰, the press, advertising and financial services. This model of regulation varies from the 'command and control' model of regulation exhibited by the former model to regulation by the market. It enshrines the principle that a practitioner's peers are in the best position to judge what constitutes professional and unprofessional conduct and enables professional bodies or associations to govern their members in a manner that ensures that they are not subject to undue influence from the State or other external pressures.

¹⁰International Olympic Committee (IOC), Federation Internationale de Football Association (FIFA), World Athletics (formerly IAAF), the International Bar Association (IBA), World Medical Association, are examples of self-regulating bodies.

Self-regulation, may not require legislation to be effective as the professionals have the liberty to develop desirable instruments to guide their governance frameworks and code of conduct; however, where legislation is desired, it may be seen as a contract between professionals and the state to regulate a field of activity and a group of practitioners for the benefit of society.

2. REGULATION OF ROBOTICS AND ARTIFICIAL INTELLIGENCE IN KENYA

The proposed Robotics and Artificial Intelligence Society is envisioned as a professional body meant to assist in the regulation, promotion and facilitation of the activities of robotics and artificial intelligence practices in Kenya.

Many countries have leveraged the power of robotics and artificial intelligence to achieve various feats. For instance, in education, AI has the power to transform and influence training. In agriculture, robotics and AI has the ability to provide farmers with real-time observations from their farmlands which can be used to quickly identify crop or pest diseases, increase yields, thereby increasing food productivity. In security, the efficient personnel deployment and vision systems that aid in tracking criminals and the analysis of crime data helps security personnel in solving many cases. In banking and finance, AI has been used to revolutionize the use of mobile money services.

In health, great advances have been made with regards to AI and its applications in the sector. AI's deep learning medical tools assist medical professionals by studying a patient's unstructured data to give a better insight into a patient's real-time needs.

In this regard, there is need to develop a framework that will enable the development of standards and certain codes of conduct for owners and owners of robot agents.

The enactment of the Robotics and Artificial Intelligence Society Bill is intended to establish the Society as a professional body whose mandate, just like other professional bodies, will majorly be to promote standards of professional competence and practice

among members of the Society; promote research into the subject of robotics and artificial intelligence; promote international recognition of the Society; and advise the Cabinet Secretary on matters relating to standards and policies in the area of robotics and artificial intelligence in all sectors of the Kenyan economy.

This is a great step in ensuring regulation of the profession. However, there is also need to enact a comprehensive piece of legislation which would provide a legal and institutional framework for the development of the robotics and artificial intelligence in Kenya (such as a Kenya Robotics and Artificial Intelligence Act). This law would provide for among others, the development and implementation of policies on use of robotics and artificial intelligence; research and development in the robotics and artificial intelligence; education and training in the field of robotics and artificial intelligence and the regulation of concerns relating to safety, security and civil rights as well as the whole spectrum of robotics and artificial intelligence in Kenya.

With this general framework in place, the establishment of the Society would augment the efforts espoused in that framework to ensure a robust robotics and artificial intelligence profession in Kenya.

3. REGULATION OF BANKING PROFESSIONALS IN KENYA

The banking industry is the cornerstone of a country's economy. In Kenya, the industry is regulated by the Central Bank of Kenya (CBK) through the Banking Act, Cap. 488, the Central Bank of Kenya Act, Cap. 491 and the attendant Regulations.

To ensure effective service delivery, the banking industry must adapt to evolving needs of the society by addressing the key issues in the industry. Over the years, the government has demonstrated its commitment towards strengthening the banking sector.

However, Kenya, just like other developing countries, is yet to establish a regulatory body for professional bankers. This analysis aims to assess whether there is a need to

regulate professional bankers in Kenya and the key considerations in establishing a professional body.

Having carefully analysed the petition KLRC is of the considered opinion the proposed development of the Bankers Professional Bill is justified to ensure that the banking industry is properly regulated.

The proposed bill would give the Kenya Bankers Association the necessary legal impetus. The legal framework should however, clearly establish the necessary governance structure and qualifications for membership.

Although the Banking Act, Cap. 488 creates an offence against a banking officer who engages in fraudulent and reckless activities, the proposed professional body will ensure that disciplinary action is taken against the responsible officer. This will promote accountability and ensure that the public has confidence in the industry. A professional body will similarly help in setting the ethical standards of professionals in the sector.

4. REGULATION OF CREDIT PROFESSIONALS IN KENYA

Credit is a form of agreement between two parties in which the creditor or lender, gives money, goods, services, or securities in return for a promised future payment by the debtor or borrower. The lender earns a profit by getting interest on the borrowed amount from the creditor. In Kenya, there has been a rise in the number of credit professionals who offer credit at exorbitant interest rates.

Due to ineffective regulation of the credit industry, there have been numerous complaints from borrowers including;

- a) Unfairly high interest rates;
- b) Hidden and unreasonable methods of computing interest and oppressive penalties;
- c) Use of irregular enforcement of security interest over assets of the borrowers;
- d) Harassment; and

e) Breach of privacy, humiliation and stressful relationship between the borrowers and the lenders.

There are some provisions in the Consumer Protection Act which provide for unfair lending practices, rescission of agreements where there is unfair practice, default charges and penalties chargeable by providers of credit. The Act also sets out various rights of consumers including the right to prepayment so that lenders cannot prohibit prepayment of loans and the right to statements on the loans.

The Business Laws (Amendment Act) 2024 amended among others, the Central Bank of Kenya Act, Cap 491, Laws of Kenya and the Microfinance Act, Cap 493C, Laws of Kenya to extend the regulatory oversight of the Central Bank of Kenya to credit providers that were previously not subject to CBK's oversight.

Previously, non-deposit taking credit providers were not under the regulatory oversight of the CBK. The Business Laws (Amendment) Act 2024 replaced the definition of digital credit providers under the CBK Act with non-deposit taking credit providers. This means that credit providers that were previously unregulated now fall under the regulatory oversight of the CBK regardless of the medium through which they offer their credit services.

Despite the fragmented efforts to regulate some elements of the credit industry, there is still need for a robust and comprehensive legal framework to address pertinent issues especially professionalism in the industry.

Regulation of the credit profession involves controlling the access to the credit practice by means of registration and certification or licensure. The aim is to ensure that credit professionals provide services in a competent, ethical and safe manner. This will guarantee quality credit services at affordable interest rates.

The appropriate model of credit profession regulation is self-regulation. This means the regulation of the profession by itself. The credit profession may be regulated by a professional body vested with statutory powers under legislation. These self-regulatory powers and functions include registration and certification or licensure of the credit profession's members.

5. REGULATION OF GEOPHYSICS PROFESSIONALS IN KENYA

Geophysics is a specialized field of Earth science that applies principles of physics, mathematics, and engineering to study the Earth's subsurface. Geophysical professionals, commonly referred to as geophysicists, use advanced techniques to detect and measure physical properties such as seismic waves, gravitational and magnetic fields, and electrical conductivity. Their work is critical in areas such as oil and gas exploration, groundwater mapping, mineral prospecting, infrastructure development, environmental protection, and natural disaster forecasting.

Despite the significance of geophysics in Kenya's socioeconomic development, there is currently no law governing or regulating geophysicists as a distinct professional group. The Kenya Society of Geophysical Professionals has consistently advocated for the formal recognition and regulation of the profession through an appropriate legal framework.

This response sets out the case for the establishment of a Geophysical Professional Bill, which would lead to the creation of a statutory body to regulate the profession.

Geophysics qualifies as a profession by all measures. Geophysicists are experts trained to interpret the Earth's physical characteristics. Their work underpins major national interests, including natural resource development, environmental sustainability, and disaster resilience. Their skills have a direct impact on public safety, economic growth, and environmental conservation.

The regulation of geophysical professionals is not merely a matter of professional pride; it is a public interest imperative. The lack of a legal framework exposes the public and the environment to significant risks due to:

- (a) Unqualified practitioners conducting critical surveys that can compromise public safety (e.g., building on unstable ground);
- (b) Misrepresentation of geophysical data, which can mislead major infrastructure, mining, and water projects,
- (c) Environmental harm, especially where electromagnetic and seismic surveys are poorly conducted, and
- (d) Lack of accountability, leading to reputational and financial losses for both the public and private sectors

State regulation through an Act of Parliament would:

- (a) Establish minimum academic and ethical standards for practice;
- (b) Create a register of licensed professionals;
- (c) Promote continued professional development;
- (d) Enable the enforcement of a code of ethics;
- (e) Provide disciplinary procedures to sanction professional misconduct,
- (f) Enhance public confidence in the profession and in geophysical outputs used for planning and development.

In many jurisdictions, geophysicists are regulated alongside geologists and surveyors, professions already governed under Kenya's Geologists Registration Act (Cap. 535) and Survey Act, respectively. Kenya now lags behind in recognizing geophysicists as distinct professionals, yet their role continues to expand across critical sectors.

Geophysical professionals perform work that directly affects public safety, natural resource management, environmental protection, and infrastructure development. To preserve the integrity of this vital profession and protect national interest, there is a compelling case for enacting a Geophysical Professionals Act Regulation through statute

will elevate the profession, ensure quality, uphold ethics, and protect both the public and the environment from substandard or unethical practice.

The proposed Geophysical Professionals Bill should:

- (a) Establish a statutory body to license and regulate the practice of geophysics in Kenya;
- (b) Define the scope of professional geophysical practice;
- (c) Set educational and ethical standards;
- (d) Protect the public, the environment, and national economic interests; and
- (e) Promote research, innovation, and international alignment.

C. PART III-GENERAL

1. LEGISLATION FOR THE DEVELOPMENT OF IRRIGATION INFRASTRUCTURE

Kenya's agriculture sector remains the backbone of the national economy. It contributes approximately 22.4% to the Gross Domestic Product (GDP), employs over 40% of the total population and more than 70% of Kenya's rural population. The sector is particularly vulnerable to the effects of climate change, erratic rainfall and land degradation, which continue to undermine food security, economic resilience and social stability.

The Petition raises a legitimate concern over the limited development of irrigation infrastructure in Kenya, noting that—

- Only about 4% of Kenya's arable land is under irrigation;
- Two-thirds of Kenya's land mass is classified as arid or semi-arid (ASAL), yet these areas are home to communities that would benefit greatly from irrigated agriculture;
- The existing policy and legal framework do not provide mechanisms for equitable, constituency-level implementation of irrigation projects.

The Petition rightly identifies a gap in equitable infrastructure development and the need for mechanisms to support grassroots implementation and community ownership as

further elucidated in the Kenya Kwanza manifesto. However, the legal strategy proposed that is by amending the Road Maintenance Levy Fund Act to support irrigation infrastructure, raises significant issues of legal coherence, functional clarity and constitutional consistency that must be addressed through a broader policy and institutional lens.

(a) Analysis

Overview of the Petitioner's Proposals

The Petitioner proposes that—

- Parliament amends the Road Maintenance Levy Fund Act, 1993, to expand its mandate into a broader Infrastructure Development and Maintenance Fund;
- A portion of this expanded fund be dedicated to the development of irrigation infrastructure in all 290 constituencies;
- Funds be administered by the National Irrigation Authority (NIA), in collaboration with other relevant public agencies.

Constitutional and Institutional Issues Arising

This proposal, while innovative, raises four critical issues:

- **Functional Integrity and Sectoral Clarity** - The proposal conflates two distinct functions—roads and irrigation—which fall under separate mandates in the Fourth Schedule of the Constitution. Road maintenance is a concurrent function where at the national level, the function is administered by road authorities such as KeNHA, KeRRA, KURA and the Kenya Roads Board (KRB) while the county roads are administered by the county governments. Irrigation on the other hand irrigation is primarily a county function under agriculture, except where national interests or transboundary issues are involved.
- **Earmarked Funds and Purpose-Specific Legislation** - The Road Maintenance Levy Fund (RMLF) is a ring-fenced fund created under statute for a specific

and limited purpose: to finance the maintenance of public roads. Expanding its use for unrelated purposes such as irrigation risks violating the principle of purpose-specific financing, undermining sectoral planning and resource predictability.

- Institutional Coordination and Overlap - Assigning the role of implementing constituency-level irrigation projects to the NIA, a national agency, without involving county governments, introduces institutional overlap, undermines the devolved system of governance and contradicts established planning and accountability frameworks under the County Governments Act, 2012 and the Intergovernmental Relations Act, 2012.
- Governance, Accountability, and Legal Risks - Repurposing a fund established by law for a completely different sector may expose the Government to legal challenges and reduce public confidence in the consistency and predictability of fiscal legislation. It may also lead to audit queries and institutional confusion.

(b) Considerations and Proposed Approach

Policy Must Precede Legislation

One of the cardinal principles of legislative development is that policy must inform law. Article 10 of the Constitution obliges all public institutions to observe the principles of good governance, transparency and accountability. Laws enacted in the absence of a clear and coherent policy basis tend to suffer from poor implementation, stakeholder resistance and legal contradictions.

The current National Irrigation Policy (2017) provides a foundation for addressing the larger issue that the petition did not clear bring out and that is that there is a lack of

sufficient, reliable and sustainable form of financing for irrigation for agriculture. In addition, our review of the policy indicates that it may does not fully incorporate—

- The realities of devolution and the increasing role of counties in local irrigation planning;
- The Government’s current development blueprint—the Bottom-Up Economic Transformation Agenda (BETA);
- Climate change adaptation and resilience as a national imperative; and
- New financing models such as blended finance, development partnerships and conditional grants.

Before any legislation is amended or introduced in order to therefore provide for the broader issue, we propose that there is a need for the policy framework to be updated, validated through public and stakeholder participation and formally adopted by Cabinet.

Risks of Expanding the Road Maintenance Levy Fund

KLRC advises against amending the Road Maintenance Levy Fund Act to introduce an unrelated function. The rationale is as follows:

- Violation of Sector-Specific Planning – The RMLF was created to address the challenge of deteriorating road infrastructure by providing a consistent and predictable source of maintenance funds. Diverting its proceeds to other sectors undermines this purpose, may delay road maintenance projects and complicates long-term sector planning.
- Erosion of Legislative Integrity - Amending a statute for an unrelated purpose undermines the logic and coherence of the legislative framework and may lead to legal uncertainty, stakeholder resistance, and institutional disputes over mandates.

- **Undermining Devolution** - By proposing to bypass county governments in the financing and execution of local irrigation projects, the proposal contradicts Article 6(2) and the Fourth Schedule of the Constitution, which assigns irrigation and agriculture to county governments. It risks centralising functions that ought to be implemented locally, with full public participation and contextual understanding. The other risk is the introduction of multiple implementing bodies at the county government level, if the object of the proposal is that Members of Parliament would be responsible for the projects initiated under the amended legal regime.
- **Precedent for Further Misalignment** - Allowing this amendment could set a problematic precedent where other earmarked funds (e.g., for health, housing, or education) are similarly targeted for unrelated sectors, thereby destabilising Kenya's carefully constructed fiscal architecture.

(c) Proposed Alternative Framework for Achieving the Petition's Objective

KLRC fully acknowledges the valid policy concern raised by the Petition—Kenya urgently needs a more inclusive, equitable and sustainable approach to irrigation infrastructure development. However, the strategy to achieve this must be institutionally sound, constitutionally aligned and fiscally sustainable. We therefore propose the following approach, rationalised on our consideration of the merits of the proposal.

Step 1: Review and Update the National Irrigation Policy (2017)

The Ministry of Water, Sanitation and Irrigation, in collaboration with the county governments, NIA and key national bodies, including KLRC and development partners, should lead a review of the national irrigation policy to—

- Clarify the roles of national and county governments;
- Outline mechanisms for intergovernmental collaboration and financing;
- Promote pro-poor, community-led, and climate-resilient irrigation models;

- Establish equitable criteria for national investment in county-based irrigation projects;
- Integrate national development goals under BETA and Vision 2030.

Step 2: Develop a Dedicated Legislative Financing Framework

Following the revised policy, Parliament may consider legislation to:

- Establish a National Irrigation Infrastructure Development Fund under the Public Finance Management Act, 2012, structured as a conditional grant to counties;
- Amend the Irrigation Act, 2019, to include provisions on collaborative planning, equitable targeting and a public participatory process for selecting irrigation projects;
- Provide for transparent criteria, performance monitoring and public reporting mechanisms to promote integrity and accountability.

A. Step 3: Institutional Collaboration through Intergovernmental Frameworks

Rather than bypassing counties or implementing the policy proposals through Members of Parliament, the revised approach should:

- Leverage Article 189 of the Constitution and the Intergovernmental Relations Act to foster coordinated service delivery;
- Use platforms such as the Intergovernmental Budget and Economic Council (IBEC) and the Summit to agree on priorities, standards and financing modalities;
- Engage community-level stakeholders to ensure that irrigation initiatives respond to local needs and conditions.

(d) Conclusions and Recommendations

In conclusion, KLRC affirms the substantive concerns raised by the Petition regarding the inadequacy of irrigation infrastructure in Kenya. However, we dutifully submit that the proposed legislative pathway—through amendment of the Road Maintenance Levy Fund Act—is legally unsound, constitutionally problematic and institutionally risky.

We therefore make the following recommendations:

- Parliament should not adopt the proposed amendment to the Road Maintenance Levy Fund Act, 1993 as a legislative mechanism for financing irrigation projects;
- Parliament to direct for a comprehensive review of the National Irrigation Policy (2017) to align it with the Constitution, BETA priorities and intergovernmental frameworks;
- The responsible Ministry, KLRC and other relevant national and county government organs to thereafter develop appropriate legislation that is anchored in the revised policy, to establish a dedicated and transparent irrigation infrastructure financing mechanism;

The process to achieve the above should be facilitative and inclusive embodied by participatory law and policy reform process that engages all relevant sector players.

As always, we remain committed to upholding the principles of democratic governance and the rule of law in Kenya by supporting every effort to improve our laws in response to the social, economic and political needs of the country.

2. REVIEW OF THE PROLIFERATION OF LGBTQ RIGHTS IN THE COUNTRY

(a) The Concept of LGBTQ

The term LGBTQ is an alphabetism for lesbian, gay, bisexual, transgender, queer or questioning. LGBTQ can be interpreted in at least two ways:

- 1) *Broad interpretation:* LGBTQ is often used as an umbrella term to refer to people whose sexual orientation and gender do not conform to the cultural expectations of their society.
- 2) *Narrow interpretation:* LGBTQ is also used to refer specifically to lesbian, gay, bisexual or transgender people. Additional terms can be included to explicitly

communicate their inclusion, such as queer, questioning, intersex, asexual and two spirit.

(b) Pronouncements by the Courts on the position of LGBTQ in Kenyan laws

The courts have had occasion to pronounce themselves on LGBTQ matters as analysed below.

EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae) [2019] KEHC 11288 (KLR)

The petitioners initiated legal proceedings challenging *Sections 162(a), 162(c) and 165 of the Penal Code, Cap. 63*. These sections prohibit what are termed "unnatural offences" and acts of "gross indecency," which have historically been interpreted and applied to criminalize consensual same-sex sexual activity. The Petitioners contended that these provisions were unconstitutional on several grounds.

Primarily, the petitioner argued that the sections were void for vagueness, lacking clear definitions of the prohibited conduct. Furthermore, the Petitioners asserted that the provisions violated the rights to non-discrimination, human dignity and privacy as guaranteed by the Constitution.

The case was consolidated with another similar petition, Petition 234 of 2016, as both raised common issues regarding the impact of these Penal Code sections on individuals who do not conform to societal expectations of gender identity, expression or sexual orientation.

The respondents submitted that the petitioners were attempting to use the judicial process to legitimize acts that were deemed indecent and to create rights not explicitly recognized in the Constitution. It was further argued that the criminalization of

homosexuality fell within the bounds of the law and that individual liberty could be legitimately curtailed when it conflicted with the common good and public policy.

The respondent also highlighted that during the drafting of the 2010 Constitution, the issue of same-sex relationships was considered, but there was no consensus or desire to legalize them. As a result, Article 45(2) of the Constitution specifically recognizes heterosexual marriage. It was argued that permitting consensual, private same-sex relations would implicitly lead to same-sex couples cohabiting, which would contradict the spirit and intent of the Constitution as drafted.

The High Court held; -

On the issue of vagueness, the Court acknowledged that while the Penal Code sections in question did not explicitly define terms like "unnatural offences" or "against the order of nature," these phrases had been defined in legal dictionaries and prior judicial pronouncements.

Therefore, the Court concluded that the lack of explicit definitions within the statute itself did not render the provisions unconstitutionally vague. The Court also accepted the principle that fundamental rights and freedoms, while guaranteed, are not absolute and may be limited to prevent prejudice to the rights and freedoms of others.

The Court placed significant weight on the intent of the legislature and the perceived social values of Kenya. It was stated that the court had a responsibility to uphold positive African cultural values and contribute to the moral well-being of society. The Court's interpretation of *Article 45(2) of the Constitution*, which recognizes heterosexual marriage, was also crucial.

The Court reasoned that if there had been a desire by the Kenyan people to protect and recognize same-sex relationships, this would have been reflected in the drafting of the 2010 Constitution. Consequently, allowing consensual, private same-sex relations would

contradict this perceived intent. The High Court in this case dismissed the case, upholding the constitutionality of the challenged provisions of the Penal Code.

NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR)

Facts

The case originated from the decision of the Non-Governmental Organizations Co-ordination Board (NGO Board) to reject the registration of a proposed organization aimed at addressing the violence and human rights abuses suffered by the Lesbian, Gay, Bisexual, Transgender, Queer or Questioning (LGBTQ) persons in Kenya.

In a letter dated 25th March, 2015, the NGO Board refused to reserve any of the names proposed by Mr. Eric Gitari for this organization. The Board's Executive Director justified this refusal by citing *Sections 162, 163 and 165 of the Penal Code*, which criminalize certain sexual acts, implying that the proposed organization's focus was illegal.

Aggrieved by this decision, Mr. Gitari initiated legal action by filing High Court Petition No. 440 of 2013. He contended that the NGO Board's actions violated several articles of the Constitution, including *Article 20 (2), Article 27(4), Article 28 and Article 36*, as well as provisions of the NGO Coordination Act.

His core argument was that the refusal to register the organization, based on its focus on LGBTIQ rights and its proposed name, infringed upon the constitutional rights to freedom of association and non-discrimination.

Issues

The central issues of the case include:

- 1) Whether LGBTQ individuals possess the right to form associations in accordance with the law in Kenya;

- 2) If the answer to the first issue is affirmative, whether the NGO Board's decision to refuse the registration of the proposed NGO solely based on the choice of name and the perceived nature of the organization constituted a violation of the fundamental rights to freedom of association and non-discrimination as guaranteed by the Constitution; and
- 3) Whether the First Respondent, Eric Gitari, was required to exhaust internal dispute resolution mechanisms available under the NGO Coordination Act before filing his case in the High Court.

The High Court, in a decision by a three-judge bench, ruled in favour of Mr. Gitari. The court found that the limitation placed on the freedom of association for LGBTQ individuals by the NGO Board was not justifiable under *Article 24 of the Constitution*. The court held that while *Sections 162, 163, and 165 of the Penal Code* criminalize specific homosexual acts, they do not criminalize sexual orientation itself. Therefore, relying on these sections to restrict the registration of the organization was deemed unreasonable.

Regarding *Article 27* on non-discrimination, the High Court noted that the Board's objection extended beyond just the name to include the stated objects and purpose of the proposed NGO. The court held that interpreting *Article 27* in a manner that excludes individuals based on their sexual orientation would contradict fundamental constitutional principles such as human dignity, inclusiveness, equality, human rights, and non-discrimination.

The court concluded that the Board's attempt to reject the organization's formation on the grounds of furthering an "illegality" simply because it disapproved of the organization's objectives amounted to an infringement of the freedom of association.

In the end the Judges noted-

“In conclusion, therefore, having considered the arguments on both sides, the precedents cited, the Constitution and the law, we are not satisfied that the Petitioners’ attack on the constitutional validity of sections 162 and 165 of the Penal Code is sustainable. We find that the impugned sections are not unconstitutional. Accordingly, the consolidated Petitions have no merit. We hereby decline the reliefs sought and dismiss the consolidated Petitions”

Dissatisfied with the High Court's decision, the NGO Board lodged an appeal at the Court of Appeal. The appellate court, by a majority decision, dismissed the appeal and affirmed the High Court's ruling. The majority concluded that by refusing to register the NGO, Mr. Gitari was effectively "convicted" before contravening any law, and they characterized such an action as "retrogressive."

The two dissenting judges, however, held a different view. They argued that the freedom of association is subject to limitations as specified in the Constitution and that *Article 27(4)* specifically prohibits discrimination based on gender, but not sexual orientation. These dissenting judges maintained that since current laws in Kenya do not permit homosexual practices, the rejection of the proposed NGO registration was lawful.

Determination of the Supreme Court

The Court (majority decision) found that Mr. Gitari's intention was to register an organization to advocate for the rights of LGBTQ individuals, and this objective was not directly linked to the specific offenses described in *Sections 162, 163, and 165 of the Penal Code*.

As such, the Supreme Court agreed with the reasoning of both the High Court and the Court of Appeal, affirming that LGBTQ people, like all other individuals, have a fundamental right to freedom of association, which includes the right to form any kind of association.

The Supreme court when addressing the final issue, whether the Board's decision was discriminatory and contravened *Article 27*, the Supreme Court definitively ruled that the Board's refusal to register the organization focused on LGBTQ rights was indeed discriminatory.

The Court held that the word "Sex" as used in *Article 27 of the Constitution* encompasses sexual orientation. The Supreme Court upheld the High Court's position that any interpretation of the Constitution that excludes individuals based on their sexual orientation is inherently discriminatory. Based on these determinations, the Supreme Court dismissed the appeal, upholding the decisions of the lower courts and reinforcing the constitutional rights of LGBTQ individuals to freedom of association and protection from discrimination.

In a dissenting opinion, Ibrahim and Ouko SCJJ noted that –

“...But a more pragmatic approach towards opening up the door for registration of the group would be to introduce legislative reforms, including amendment to the Penal Code and repeal of sections 162, 163 and 165 to decriminalise acts contemplated by those provisions based on the will and desire of the people of Kenya. That was the course adopted by many countries around the world. Social attitudes and concerns were constantly evolving. Lawmakers, as representatives of the people created, modified and repealed laws to achieve particular behavioural outcomes, often in an effort to respond to perceived changes in the society. The decision to repeal or amend those laws to accommodate LGBTQI community in Kenya was one that could only be made by the people from whom all sovereign power flowed or by their elected representatives and only after the involvement of the people.

Though the language of article 27 of the Constitution was plain, the basic rule of constitutional interpretation was that the Constitution had to be given a holistic interpretation. Holistic interpretation had been described as interpreting the

Constitution in context. It was contextual analysis of a constitutional provision, reading it alongside and against other provisions, to maintain a rational explication of what the Constitution had to be taken to mean in the light of its history, of the issues in dispute, and of the prevailing circumstances. There was a clear distinction between 'sex' and 'sexual orientation'. Sexual orientation referred to each person's capacity for emotional, affectional and sexual attraction to, and intimate sexual relations with individuals of a different gender or the same gender or more than one gender

The word sex was used three times in the Constitution; in the article 27, in article 42(2) on the right to marry a person of the opposite sex and article 53(1)(f)(ii) on the detention in custody of a child, in conditions that took account of the child's sex. In the context of those articles, sex was used in reference to a person's sexual anatomy based on one's sex chromosomes- (male/female). The discrimination that was expressly prohibited by article 27 was on account of sex and not sexual orientation."

(c) Law Reform issues emanating from the Supreme Court's Judgement and proposed legislative reforms

As identified in the judgement in *NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR)*, the main contention was unbundling the definition of sex and whether to include sexual orientation in the definition of sex in Article 27(4).

The said provision states –

"27(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth."

According to the Supreme Court majority decision the use of the word “sex” under article 27(4) of the Constitution did not connote the act of sex *per se* but referred to the sexual orientation of any gender, whether heterosexual, lesbian, gay, intersex or otherwise. Further, the word “including” under the same article was not exhaustive, but only illustrative and would also comprise freedom from discrimination based on a person’s sexual orientation. Therefore, an interpretation of non-discrimination which excluded people based on their sexual orientation would conflict with the principles of human dignity, inclusiveness, equality, human rights and non-discrimination.

In the opinion of the dissenting Judges, there was nothing whatsoever in article 27(4) of the Constitution or on a reading of the Constitution as a whole which suggested that the framers of the Constitution were addressing their minds in any way whatever to problems of discrimination on grounds of sexual orientation. Had that been the intention, nothing could have been easier than to state so as had been done in some of the constitutions, statutes and international instruments. The intention was to prohibit discrimination based on the consideration whether a person was male or female. They further averred that in other jurisdictions, where the right against discrimination was meant to include sexual orientation, it had been expressly stated as such in either the statutes or the national constitutions of those countries.

From the reading of the decisions in the superior courts, it is clear that they are not all agreed on the import of the provisions of the Constitution and the Penal Code on same sex relations and LGBTQ in general. As noted by the Supreme Court Judges, lawmakers, as representatives of the people have the power to create, modify and repeal laws to achieve particular behavioural outcomes, often in an effort to respond to perceived changes in the society. The decision to repeal or amend those laws to accommodate the LGBTQ community in Kenya is one that could only be made by the people from whom all sovereign power flowed or by their elected representatives and only after the involvement of the people.

One such instance is through the Family Protection Bill sponsored by Hon. Kaluma which seeks to provide for the protection of the family in furtherance of Article 45 of the Constitution, to prohibit homosexuality and same sex marriage, to prohibit unnatural sexual acts and related activities and to proscribe activities that seek to advance, advocate, promote or fund homosexuality and unnatural sexual acts.

The Bill specifically unbundles the term sex by seeking to define it as the biological state of being male or female as physically observed and assigned at birth, or as medically determined and assigned by the time the person reaches puberty. The proposed definition proposes to specifically exclude sexual orientation and gender identity. This would cure the confusion on whether "sex" as set out in the Constitution includes "sexual orientation" without explicitly stating so.

The Bill also seeks to prohibit sexual acts and other activities among persons of the same sex, same sex marriage, unnatural sexual activities and procuring of prohibited sexual activities by false pretences, detention with the intent to commit prohibited sexual activity among others. It also makes it an offence to establish premises for prohibited sexual activity, and prohibits grossly indecent acts. It prohibits sex reassignment prescriptions or procedures and the promotion or funding of prohibited activities and proposes to penalize any breach including fines, jail terms, deregistration of associations and cancellation of licences issued to businesses that promote or host prohibited activities within their premises.

Enactment of this legislation or any other legislation in this respect would create more clarity and therefore guide the courts in the interpretation of Article 27(4) as read with Article 43 of the Constitution.

D. CONCLUSION

In conclusion, KLRC is committed to ensuring that legislations are drafted and/or amended to the highest possible standards to promote their effectiveness as well as ensure their clarity and intelligibility to their intended users



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

PUBLIC PETITIONS COMMITTEE

LEGAL BRIEF:

PUBLIC PETITION (NO. 55 OF 2023),

**BRIEF ON PETITION NO. 55 OF 2023 REGARDING THE ENACTMENT OF
PROPOSED CREDIT PROFESSIONALS BILL**

June 2024

**BRIEF ON PETITION NO. 55 OF 2023 REGARDING THE ENACTMENT OF
LEGISLATION TO REGULATE CREDIT PROFESSIONALS**

1. In the Petition, Mr. Bernard Mokaya Magembe, the petitioner and the chairperson Council of the Institute of Credit Management-Kenya, draws the attention of the House to his prayer for the enactment of the Credit Professionals Bill.
2. In the Bill the petitioner seeks to regulate credit professionals to ensure consumer protection from credit risks and concerns that can be mitigated through the certification of credit professionals.
3. In order to regulate the profession, the petitioner proposes legal provisions on the establishment of the Institute of Certified Credit Professionals, provisions on its functions and management. The legislative proposal also provides for the registration of credit professionals and their annual licensing. It provides for disciplinary measures such as the establishment of a disciplinary committee including an inquiry and appeal mechanism.
4. The petitioner submits that the proposed legislation will enhance quality of services in the market through reducing and eradicating fraud in the credit market and alleviating the pain caused by unprofessional debt collectors.
5. He further submits that the proposed law will benefit the profession by providing continuous professional development, promoting credibility among the employers of registered credit professionals and establishing regulations to govern the conduct of professionals.
6. The petitioner seeks the intervention of the House to enact the Credit Professionals Bill to ensure stability and sustainability of lending institutions.

ANALYSIS

7. A credit profession is defined in the proposed law as a person with expertise in credit control, credit analysis, credit consulting, debt collection, credit risk management, debt counselling and related functions.

a. The Constitution

8. Article 95(3) of the Constitution provides for the role of the National Assembly to enact legislation. Article 95 (2) of the Constitution mandates the National Assembly to deliberate and resolve the issues of concern to the people.

b. The National Assembly Standing Orders

9. Standing order 219 provides that a public petition may seek the House to consider any matter within its authority including the enacting, amending or repealing any legislation. If the Committee considers and approves the Petition, the approved content will be reduced to a legislative proposal sponsored by the Committee for consideration by the House.
10. Standing Order 114 A (1) (b) provides for the exemption from prepublication scrutiny of a proposal sponsored by the public petitions committee.

c. Similar laws to regulate specific professions

11. Other similar laws to regulate professions include Advocates Act cap 16, the Occupational Therapists Act Cap 236A ,the Accountants Act Cap 531 and the Investment and Financial Analysts Act Cap 542.
12. The **Accountants Act Cap 531**, establishes the Institute of Certified Public Accountants of Kenya (ICPAK) that is mandated to regulate the practice of accountants and promote professional standards and competence.
13. The Act also establishes the Examination Board (KASNEB) tasked to prepare syllabuses for professionals' and technicians' examinations in accountancy and company secretarial practice and related disciplines. The Board conducts examinations and issue certificates to candidates who have satisfied examination requirements.
14. The **Investment and Financial Analysts Act Cap 542** similarly establishes the Institute of Certified Investment and Financial Analysts to promote standards of professional competence and ethical practice. Section 16 of the Act provides for qualification for registration which includes passing a final examination on certified investment and financial analysis. However, the Act provides for an exception for this requirement for experienced financial analysts that the Council may exempt. The Act refers to the Examination Board (KASNEB) established under the Accountants Act Cap 531.
15. It is noted that credit professionals like investment and financial analysts are individuals from diverse backgrounds including accounting, finance or economics. Presently

KASNEB (established in the Accountants Act Cap 531) provides certification courses for credit professionals.

16. Credit professionals are thus seeking a distinct law to regulate their members similar to that of investment and financial analysts.
17. The petitioner's proposed Bill will define credit professional practice, it will provide for the establishment of the institute of Certified Credit Professionals, the annual licensing and registration of the credit professional, disciplinary measures and continuous professional development requirements.
18. The Committee should seek the views of the petitioners and stakeholders to understand the need for a regime to regulate the practice of credit professionals.

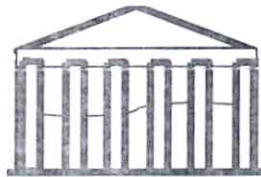
CONCLUSION

19. In light of the foregoing legal provisions, in considering the Petition, the Committee should seek to interrogate the views of —
 - a) the Petitioner -Institute of Credit Management-Kenya (ICMK);
 - b) The Kenya Bankers Association;
 - c) The Association of Kenya Insurers;
 - d) the Attorney General; and
 - e) the Kenya Law Reform Commission.

GICHANE PATRICIA
LEGAL COUNSEL

**SUBMISSION TO THE SENATE BUDGET AND FINANCE
COMMITTEE ON THE PETITION FOR ENACTMENT OF
LEGISLATION TO REGULATE CREDIT PROFESSIONAL IN
KENYA**

Submitted on Thursday 22nd Day of June 2023



I C M (K)

Institute of Credit Management (Kenya)

Kasneb Towers 1, Hospital Road, Upper Hill, P.O. BOX 54310-00200 Nairobi, Kenya

Institute of Credit Management (Kenya)

Contact Person (s):

CCP Joseph Muiruri – Secretary

Institute of Credit Management kenya

Mobile +254 722 635 902

Email [-info@icmkenya.co.ke](mailto:info@icmkenya.co.ke)

FA.CCP.CPA.Daniel Kithinji

Working Group Chairman

Council Member

Institute of Credit Management kenya

Email: dkithinji@gmail.com

Tel: 0722827245

June 22nd, 2023

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2. Abbreviations & Definition of Terms

CCP- Certified Credit Professionals

CBK- Central Bank of Kenya

ICM (K) - Institute of Credit Management-Kenya

Kasneb- Kenya Accountants and Secretaries Examination Board

KNBS- Kenya National Bureau of Statistics

SASRA- Sacco Societies Regulatory Authority

3. Executive Summary.

Credit professionals in Kenya remain unregulated. In spite of enviable levels of financial inclusion which stands slightly over 83% as per KNBS report of 2021 and Kenya having robust credit markets according to the World Bank, that states the domestic credit to private sector of GDP stood at 32% in 2020 while gross loans listing as per Credit Officer Survey Report issued by Central Bank of Kenya totalled Ksh.3.677 trillion as at December 2022. Similarly, according to the Sacco Societies Regulatory Authority, gross loans issued by SACCOs in December 2021 stood at Ksh.608.75 Billion. These are indicators of a robust credit market in the country.

The role of trained, qualified, and regulated credit professionals and institutional stability are closely linked, since credit professionals play a significant role in ensuring the stability and soundness of financial institutions. Kenya has robust laws and regulations addressed towards financial players and institutions under Acts of parliament and self-regulating bodies like banking business which is regulated under Banking Act and Central Bank Act, financial services which are regulated under Capital Markets Authorities Act, Insurance services under Insurance Act and regulated Sacco's under SACCO societies Act among others.

In spite of associated regulations that premise themselves on the above-mentioned Acts prescribing some minimum standards of qualifications and membership bodies of office holders in internal audit, risk, actuary, and chief finance officers, the regulations have not covered the professionals like credit/loans officers, credit/loans analysts, credit/loans managers who handle/manage the biggest "earning asset" i.e. credit portfolio or accounts receivables. It's our view as petitioners that the Senate considers the regulation of these credit professionals as regards to their training, qualification, competencies, membership to a professional body, continuous professional development, and ethical conduct for professional management of credit and debt.

Kenya as a country has a relatively high number of skilled labour force in the East African region and it is a home of a number of professionals including accountants, lawyers, financial analysts, engineers, doctors, pharmacists, auctioneers, and HR practitioners who are regulated through statutes. Their respective legislation provides for requisite training for certification, registration and licensing of practitioners and regulation of their practice and professional conduct among other provisions for effective administration of their mandates. However, credit professionals do not have a guiding statute that can give the institute a legal backing in the performance of its function of ensuring high professional standards among practitioners in the credit sector. This has exposed consumers to a number of risks including breach of transparency, unconscionable conduct and loss of assets. The enactment of the proposed legislation will therefore help the institute establish optimal regulatory regimes that will ensure that only competent professionals can practice in the credit sector. The proposed law **only seeks** to regulate credit professionals and not market players who are regulated as institutions.

Through the proposed law, the public will benefit from the assurance that the credit professional they are dealing with is bound and accountable to a set of strong enforceable code of conduct and professional ethics given that they can first confirm whether the said professional is a member of the Institute. Further, consumers will have an avenue for seeking redress in the event that they are aggrieved by actions of a practitioner in the credit profession.

The role of credit professionals can have a significant impact on institutional stability. Credit professionals are responsible for assessing the creditworthiness of individuals, businesses, and institutions and determining the risk associated with lending them money or extending credit. Their primary goal is to minimize the risk of default and financial losses for the institution. Overall, the role of a regulated credit professionals is crucial in maintaining institutional stability, confidence to public, trustworthy consumer awareness on proper utilization of borrowed funds and investors' confidence. Through their expertise in risk assessment, portfolio management, compliance, credit policy development, and relationship management, credit professionals help institutions minimize credit risk, avoid defaults, and navigate challenging economic conditions. Their efforts contribute to the stability and soundness of the institution's operations.

4. About Institute of Credit Management (Kenya)

The Institute of Credit Management Kenya is a non-profit entity promoting professionalism in the field of credit management in Kenya. The Institute was founded on 18th June 2001 as Institute of Credit Management-Kenya (ICM-K) and registered under societies Act Cap 108 of the Laws of Kenya.

The overall purpose of the Institute of Credit Management is to:

- i. establish and uphold high professional standards in Credit Management in the country; and
- ii. facilitate collaboration between credit professionals in Kenya and relevant partners whose work influences credit practice locally and globally.
- iii. Foster proper and prudent management of credit in all sectors of the economy.

The Institute of Certified Credit Professionals of Kenya seeks to contribute towards sustainable economic development in the country which is one of the principles under the Kenya Vision 2030, through proper and prudent management of credit in all sectors of the economy. Further, a well-regulated credit market is fundamental to the realization of Agendas 1 and 8 of the United Nations Sustainable Development Goals on ending poverty and economic growth respectively.

5. The Petitioner (s)

These submissions have been prepared by the five (5) petitioners on their own-behalf and that of the members of the institute of Credit management (Kenya) who are citizens of the republic of Kenya and professionals of repute in good standing with the Institute of Credit Management (Kenya). The petitioners are representatives of the bonafide members of ICM-K. The petitioners are trained, qualified and accredited credit and debt management professionals having studied, sat, and passed the Certified Credit Professionals (CCP) examinations offered by Kenya Accountants and Secretaries Examination Board (Kasneb).

The petitioners have depth of experience having held leadership roles in credit department in various sectors of Kenyan and regional economies. The petitioners key competencies in trade, consumer & export credit body of knowledge, credit screening, credit analysis and investigations, credit risk assessment, credit models, credit techniques, credit relations management, marketing of credit products, credit control and monitoring, credit performance metrics and evaluation, credit analytics, debt management, debt collection, debt recovery, credit compliance and regulatory regimes, credit counselling and debt counselling among other key desirable competencies of a professional credit management specialist

6. Introduction

6.1 Credit Market Development in Kenya

According to the 2022 Kenya Financial Sector Deepening Report on inclusive finance, levels of financial inclusion as measured by the access dimension stood at 83.7%. This can be attributed to various developments in the financial services sector and general expansion of the economy. According to the World Bank, the domestic credit to private sector of GDP stood at 32% in 2020 while gross loans listing as per Credit Officer Survey Report issued by Central Bank of Kenya totalled Ksh. 3.677 trillion as at December 2022. Similarly, according to the Sacco Societies Regulatory Authority, gross loans issued by Sacco's in 2021 stood at Ksh. 608.75Billion. These are indicators of a robust credit market in the country.

Despite this growth of the sector, consumer lending raises significant consumer protection risks and concerns which could be mitigated by having certified credit professionals. Thus for stability and sustainability of the lending institutions, a qualified and well-regulated credit profession is fundamental. The proposed Certified Credit Professionals Bill 2023 therefore seeks to establish a framework that will guide, among other things, the registration and regulation of credit professionals in Kenya like other similar professions.

Non-regulated institutions in Kenya have emerged as important providers of financial services, particularly for underserved communities. However, the absence of regulatory oversight has led to various challenges, including public exploitation through exorbitant interest rates, debt shaming, and unfair collection practices. As a result, there is a pressing need to regulate these institutions and the officers/staff handling credit to protect the rights and interests of vulnerable borrowers.

6.2 Overview of Regulation of Professionals in Kenya

Kenya as a country has a relatively high number of skilled labour force in the East African region and it is a home of a number of professionals including accountants, lawyers, financial analysts, engineers, doctors, nurses, auctioneers, and HR practitioners who are regulated through statutes. Their respective legislation provides for requisite training for certification, registration and licensing of practitioners and regulation of their practice and professional conduct among other provisions for effective administration of their mandates. However, credit professionals do not have a guiding statute that can give the institute a legal backing in the performance of its function of ensuring high professional standards among practitioners in the credit sector. This has exposed consumers to a number of risks including breach of transparency, unconscionable conduct and loss of assets. The enactment of the proposed legislation will therefore help the institute establish optimal regulatory regimes that will ensure that only competent professionals can practice in the credit sector. The proposed law **only seeks** to regulate credit professionals and not any other market players who are regulated as institutions.

6.3 The Need for legislative Framework for Credit Professionals

6.3.1 Implication of the Proposed Law to the General Public

The Proposed law will raise awareness among the members of the public on:

- I. Who a credit professional is;
- II. The contribution of the profession to the safety, sustainability and stability of the credit market;
- III. The services that a credit professional offers to the general public in regard to helping a member of public make an informed decision before using a credit facility.

Through the proposed law, the public will benefit from the assurance that the credit professional they are dealing with is bound and accountable to a set of strong enforceable code of conduct and professional ethics given that they can first confirm whether the said professional is a member of the Institute. Further, consumers will have an avenue for seeking redress in the event that they are aggrieved by actions of a practitioner in the credit profession.

6.3.2 Implication of the Bill to Credit Market and Market Players

The proposed law does not seek to regulate the entire credit market nor all its players. The proposed law provides the following benefits to the credit market and its players:

- I. Provision of a pool of accountable, reliable, and certified credit professionals to work for various players in the market;
- II. Institutional stability and profitability arising from the service of credit professionals knowledgeable in handling of the credit portfolio and investments in accounts receivable;
- III. Authoritative leadership in areas of credit and debt management for sound, stable and sustainable businesses, and economy;

- IV. Reduction and eventual eradication of fraud in the credit market for sustainability of the financial system and institutions; and
- V. Alleviation of the pain caused by unprofessional debt collectors in handling of institutions' debt customers.
- VI. Public trust and confidence on the institutions due to professionalism exhibited by credit professionals handling credit customers and defaulters.

6.3.3 Implication of the Bill to the Credit Profession

The proposed bill seeks to benefit the profession as follows:

- I. Establish a recognized legislated position of credit professionals in matters credit and debt management;
- II. Promote credibility among the employers for registered members;
- III. Ensure continuous and well-structured professional development;
- IV. Legally strengthen the profession in delivery of credit professional services; and
- V. Establish regulations to govern conduct of the professionals as per the proposed law once enacted.

7. Statement of the Problem

The role of trained, qualified, and regulated credit professionals and institutional stability are closely linked, since credit professionals play a significant role in ensuring the stability and soundness of financial institutions. Kenya has robust laws and regulations addressed towards financial players and institutions under Acts of parliament and self-regulating bodies like banking business which is regulated under Banking Act and Central Bank Act, financial services which are regulated under Capital Markets Authorities Act, Insurance services under Insurance Act and regulated Sacco's under SACCO societies Act among others.

In spite of associated regulations that premise themselves on the above-mentioned Acts prescribing some minimum standards of qualifications and membership bodies of office holders in internal audit, risk, actuary, and chief finance officers, the regulations have not covered the professionals like credit/loans officers, credit/loans analysts, credit/loans managers who handle/manage the biggest "earning asset" i.e. credit portfolio or accounts receivables. It's our view as petitioners that the Senate considers the regulation of these credit professionals as regards to their training, qualification, competencies, membership to a professional body, continuous professional development, and ethical conduct for professional management of credit and debt.

Credit professionals in Kenya remain unregulated in spite of commendable levels of financial inclusion which stands slightly over 83% as per KNBS and Kenya having robust credit markets according to the World Bank, that states the domestic credit to private sector of GDP stood at 32% in 2020 while gross loans listing as per Credit Officer Survey Report issued by Central Bank of Kenya totalled Ksh.3.677 trillion as at December 2022. Similarly, according to the Sacco Societies Regulatory Authority, gross loans issued by Sacco's in 2021 stood at Ksh.608.75 Billion. These are indicators of a robust credit market in the country.

The role of trained, qualified and regulated credit professionals is indeed crucial for maintaining institutional stability and ensuring the soundness of financial institutions. Credit professionals, such as credit analysts and credit risk managers, have the responsibility of assessing the creditworthiness of borrowers and managing the overall credit risk within an institution. By carefully evaluating the financial health and repayment capacity of borrowers, credit professionals should help to mitigate the risk of defaults and non-performing loans. This, in turn, contributes to the stability of the institution and the broader financial system. Additionally, credit professionals should monitor and manage the overall credit portfolio, implement risk management strategies and ensure compliance with regulatory guidelines. Their expertise and diligence are instrumental in maintaining the integrity and stability of financial institutions.

The role of credit professionals can have a significant impact on institutional stability. Credit professionals are responsible for assessing the creditworthiness of individuals, businesses, and institutions and determining the risk associated with lending them money or extending credit. Their primary goal is to minimize the risk of default and financial losses for the institution. Overall, the role of a regulated credit professionals is crucial in maintaining institutional stability, confidence to public, trustworthy consumer awareness on proper

utilization of borrowed funds and investors' confidence. Through their expertise in risk assessment, portfolio management, compliance, credit policy development, and relationship management, credit professionals help institutions minimize credit risk, avoid defaults, and navigate challenging economic conditions. Their efforts contribute to the stability and soundness of the institution's operations.

8. Who is a Credit Professional?

A credit professional is an individual who works in the field of credit management and is responsible for assessing creditworthiness, managing credit risks, and ensuring the timely collection of debts within an organization. These professionals play a critical role in evaluating the financial health and reliability of individuals, businesses, or organizations seeking credit, as well as monitoring and managing existing credit relationships.

A credit professional typically possesses a strong understanding of financial analysis, risk assessment, and industry-specific credit practices. They utilize their expertise to make informed decisions about extending credit, setting credit limits, establishing payment terms, and implementing strategies to mitigate credit risks. Credit professionals may hold various job titles, such as credit analysts, credit controllers, credit managers, collections specialists, or credit risk managers. Their specific responsibilities can vary depending on the organization and industry they work in. However, the primary goal of a credit professional is to ensure the organization's credit operations are efficient, minimize credit losses, maintain positive cash flow, and foster healthy customer relationships.

In summary, a credit professional is an individual who specializes in credit management, assessing creditworthiness, and managing credit risks within an organization. They should possess financial analysis skills, industry knowledge, and expertise in credit practices to make informed decisions regarding credit extensions and debt collection and they should be affiliated to a professional body established by the law.

9. The Credit Profession

The credit profession encompasses various roles and responsibilities related to managing credit and assessing creditworthiness. Professionals in the credit management field play a crucial role in analysing and managing credit risks, ensuring timely payment of debts, and maintaining healthy financial relationships with customers/obligors. Below are few examples of roles within the credit management profession and depending with the industry and organization, there may be variations and additional specialized roles. The common thread among credit professionals is their focus on managing credit risks, ensuring timely payment, and maintaining healthy financial relationships. Examples of common roles within the credit profession include:

Credit Analyst: Credit analysts assess the creditworthiness of individuals, businesses, or organizations applying for credit facilities. They analyse financial statements, credit reports,

payment histories, and other relevant data to evaluate the risk of extending credit to a particular obligor. Credit analysts use this information to make recommendations on credit limits, terms, and risk mitigation strategies.

Credit Controller: Credit controllers are responsible for managing the credit and collections process within an organization. They oversee credit policies, monitor customer accounts, and ensure timely payment of invoices. Credit controllers follow up on overdue accounts, negotiate payment arrangements, and may initiate collection actions if necessary. Their goal is to minimize credit risk and maintain positive cash flow.

Credit Manager: Credit managers oversee the overall credit function within an organization. They develop and implement credit policies, set credit limits, and establish guidelines for credit approvals. Credit managers monitor the creditworthiness of customers, assess credit risk, and make decisions on credit extensions. They also collaborate with other departments, such as sales and finance, to balance risk and business objectives.

Collections Specialist: Collections specialists focus on recovering overdue debts from customers. They contact customers to arrange payment, negotiate payment plans, and resolve any disputes or issues related to outstanding debts. Collections specialists may use various communication channels and techniques to ensure timely debt recovery while maintaining healthy customer relationships.

Credit Risk Manager: Credit risk managers are responsible for identifying, assessing, and mitigating credit risks within an organization. They develop risk management strategies, monitor credit portfolios, and analyse market trends and economic factors that could impact credit risk. Credit risk managers work closely with credit analysts and other stakeholders to establish risk appetite and implement risk mitigation measures.

Underwriter: Underwriters evaluate credit applications and determine the terms and conditions of credit extensions. They assess the creditworthiness of applicants, analyse financial information, and evaluate collateral or security offered for the credit. Underwriters make decisions on approving or declining credit applications based on risk assessments and internal policies.

10. Complementarity between Credit Professionals and Other Professions

10.1 Accountants

Credit risk analysts and accountants complement each other by collaborating closely to ensure accurate and reliable financial data, assess creditworthiness, comply with regulations, provide financial insights, and develop risk mitigation strategies. Their collaboration helps organizations make sound credit decisions while effectively managing financial risks. The collaboration between credit risk analysts and accountants is essential for ensuring a comprehensive and well-informed approach to credit risk management within organizations. The collaboration between credit risk analyst and accountants ensures a comprehensive and well-informed approach to credit risk management within organizations.

By working together, credit professionals and accountants combine their expertise in financial analysis, data validation, risk assessment, financial reporting, and risk mitigation to effectively manage credit risks. This collaboration helps organizations make informed decisions regarding lending, credit limits, risk ratings, and risk mitigation strategies. This collaboration ensures that credit risk is assessed accurately, potential risks are identified, and appropriate measures are taken to mitigate those risks. Ultimately, this collaborative approach helps organizations minimize potential financial losses and maintain a healthy credit portfolio. The following are ways Credit professionals and Accountants complement each other:

Risk Assessment: Credit risk analysts specialize in evaluating the creditworthiness and financial stability of individuals, businesses, or other entities seeking credit. They use various tools and techniques to analyse credit applications, financial statements, credit scores, and market conditions to determine the likelihood of default or credit losses. Accountants contribute to this process by verifying the accuracy and reliability of financial statements and providing insights into financial ratios, trends, and other factors that may impact credit risk assessments.

Compliance and Regulation: Both credit risk analysts and accountants need to be knowledgeable about applicable laws, regulations, and accounting standards. Accountants ensure that financial statements and reports comply with accounting principles and relevant regulations. Credit risk analysts incorporate this information into their risk assessments to ensure compliance with legal and regulatory requirements. By collaborating, credit risk analysts and accountants can help identify and mitigate potential risks related to compliance issues.

Financial Reporting: Accountants are responsible for preparing financial reports that accurately reflect an organization's financial position. Credit risk analysts rely on these reports to understand the financial health and performance of potential borrowers or clients. By collaborating closely, accountants can provide relevant financial information, including financial ratios, liquidity measures, and profitability indicators, which can enhance credit risk analysts' ability to make informed credit decisions.

Risk Mitigation Strategies: Credit risk analysts assess the likelihood of default and credit losses, whereas accountants focus on identifying and mitigating financial risks. By working together, credit risk analysts can gain insights from accountants regarding potential risks highlighted in financial statements, such as high debt levels, liquidity issues, or irregularities in financial reporting. This collaboration enables credit risk analysts to develop risk mitigation strategies and make informed decisions about credit approvals, loan terms, and credit limits.

Credit Limits: Credit Risk Analysts identify potential risks and develop strategies to mitigate them. They assess the creditworthiness of borrowers, set credit limits, establish risk ratings, and recommend risk mitigation measures. Accountants contribute to this process by providing financial insights and historical data, which help identify potential risks and assess the impact of credit decisions on the organization's financial health. This collaboration enables effective risk management and reduces the potential for financial losses.

Financial Analysis: Credit Risk Analysts assess the creditworthiness of borrowers by analysing their financial statements, credit history, and other relevant data. Accountants play a crucial role in preparing and maintaining accurate financial statements, providing the necessary data for credit risk analysis. The accountants ensure the accuracy and reliability of financial information, which forms the basis for credit risk assessments.

Data Sharing: Credit risk analysts and accountants rely on accurate and up-to-date financial data to perform their roles effectively. Accountants maintain financial records and prepare financial statements, providing the necessary data for credit risk analysts to assess the financial health of clients or borrowers. The accountants' work ensures that credit risk analysts have access to reliable financial information for their risk evaluations.

Data Validation: Credit Risk Analysts rely on accurate and up-to-date financial data to evaluate the creditworthiness of individuals or companies. Accountants are responsible for maintaining financial records and ensuring that the data presented is accurate and complete. They validate the financial information, including income, expenses, and other relevant financial metrics, which enables credit risk analysts to make informed decisions.

10.2 Auctioneers

While credit risk management primarily involves assessing the creditworthiness of customers, analyzing financial data, and implementing risk mitigation strategies, the involvement of auctioneers in the asset recovery process indirectly supports credit risk management efforts. By working together, credit controllers and auctioneers can maximize debt recovery, minimize credit losses, and contribute to the overall financial stability of the organization. Credit controllers and auctioneers complement each other by collaborating on debt recovery efforts, asset valuation, auction services, compliance with regulations, and leveraging specialized skills. Their collaboration can enhance the effectiveness of debt collection processes and improve the chances of recovering outstanding debts through the

sale of assets. Credit controllers and auctioneers complement each other in the following ways:

Debt Recovery: Credit controllers are responsible for managing the collection of outstanding debts from customers or clients. They handle the invoicing process, monitor payment terms, and follow up on overdue accounts. Auctioneers, on the other hand, specialize in selling assets or goods through public auctions. In cases where credit control efforts fail to recover outstanding debts, auctioneers can assist by auctioning off assets or goods to generate funds that can be used to satisfy the debts.

Asset Valuation: Auctioneers are skilled at assessing the value of assets and determining their market worth. This expertise is valuable to credit controllers when dealing with delinquent customers who have assets that can be seized or sold to recover outstanding debts. By working closely with auctioneers, credit controllers can obtain accurate valuations of assets, such as real estate, vehicles, machinery, or inventory, which helps in evaluating the feasibility of debt recovery through asset seizure, foreclosure or auction.

Auction Services: Auctioneers provide professional auction services, including marketing, organizing, and conducting auctions. In situations where credit controllers have identified assets for potential sale, they can collaborate with auctioneers to manage the auction process effectively. The auctioneers' expertise ensures that the assets are properly advertised, attract potential buyers, and are sold at fair market prices, maximizing the recovery of funds for the credit controllers.

Expertise in Auction Regulations: Auctioneers are well-versed in the legal and regulatory aspects of conducting auctions. They understand the requirements and procedures associated with asset sales through auctions. This knowledge is valuable to credit controllers, as it ensures that the debt recovery process adheres to relevant laws and regulations. By working together, credit controllers can benefit from the auctioneers' expertise, ensuring that the sale of assets is conducted in a legally compliant and transparent manner.

Specialized Skills: Credit controllers possess strong financial management and debt recovery skills. They excel in building relationships with customers, negotiating payment plans, and resolving disputes. Auctioneers, on the other hand, have specialized knowledge in asset valuation, marketing, and conducting successful auctions. By combining their skills and expertise, credit controllers and auctioneers can maximize debt recovery efforts, especially when assets need to be sold through auctions.

10.3 Lawyers

The collaboration between credit risk analyst and Lawyers ensures a comprehensive and well-informed approach to credit risk management within organizations. While credit controllers and lawyers may collaborate in certain areas, such as debt collection and legal compliance, the focus of credit controllers is primarily on managing the credit control

function within an organization, including assessing creditworthiness, monitoring credit limits, and ensuring timely payments. Both roles contribute to credit risk management within organizations, but it would be more accurate to say that their collaboration enhances the effectiveness of debt collection and legal compliance efforts, rather than credit risk management as a whole. Credit risk management involves a broader range of activities, such as credit analysis, risk assessment, and portfolio management, which may not directly involve lawyers.

The collaboration between credit controllers and lawyers primarily supports the organization's debt collection processes and legal compliance efforts, rather than providing a comprehensive approach to credit risk management. The collaboration between credit risk analysts and lawyers is crucial for ensuring a comprehensive and well-informed approach to credit risk management within organizations. By working together, they combine their expertise in financial analysis, legal compliance, contract review, risk mitigation, dispute resolution, and regulatory updates to effectively manage credit risks.

The involvement of lawyers ensures that credit risk management practices align with legal requirements and regulations. They provide guidance on legal compliance, review loan agreements and credit contracts, identify potential legal risks, and help structure transactions to protect the interests of the lending institution. Lawyers also play a vital role in resolving legal issues that may arise, such as defaults or disputes, providing advice on legal proceedings and settlement discussions. Furthermore, lawyers keep credit risk analysts updated on changes in laws and regulations that impact credit risk management. This collaboration helps organizations stay abreast of legal developments and adapt their credit policies and procedures accordingly.

Overall, the collaboration between credit risk analysts and lawyers helps organizations navigate the legal complexities of credit risk management. It ensures that credit risk assessments are legally compliant, contracts are sound, risks are appropriately mitigated, and legal recourse is available in case of default or disputes. This comprehensive approach helps organizations minimize legal risks, protect their interests, and maintain a healthy credit portfolio. Credit professionals and Lawyers complement each other in the following ways:

Legal Compliance: Lawyers have in-depth knowledge of laws, regulations, and compliance requirements related to lending and credit transactions. Credit Risk Analysts need to ensure that their credit risk assessments and lending practices are in compliance with applicable laws and regulations. Lawyers provide guidance to credit risk analysts on legal requirements and help them develop credit policies and procedures that align with legal standards. Lawyers have a deep understanding of laws and regulations related to debt collection, credit management, and financial transactions. Credit Controllers need to ensure that their debt collection practices, and credit management procedures are in compliance with applicable laws and regulations. Lawyers provide guidance to Credit Controllers on legal requirements and help them develop collection strategies that align with legal standards.

Contract Review: Credit Risk Analysts often deal with loan agreements, credit contracts, and other legal documents related to credit transactions. Lawyers play a crucial role in reviewing these documents to ensure that they are legally sound and protect the interests of the lending institution. They identify any potential legal risks, loopholes, or unfavorable terms in the contracts, enabling credit risk analysts to make informed credit decisions and negotiate better credit terms.

Risk Mitigation: Lawyers assist credit risk analysts in developing risk mitigation strategies and structuring credit transactions to minimize legal risks. They provide advice on collateral requirements, guarantees, and other legal mechanisms that can help protect the lender's interests in case of default. Lawyers also help establish appropriate legal frameworks for loan recovery and enforcement actions, ensuring that the lender has legal recourse in case of borrower default.

Regulatory Changes and Compliance Updates: Laws and regulations governing credit transactions can change over time. Lawyers keep credit risk analysts informed about any regulatory changes that may impact their credit risk management practices. They help interpret new regulations, assess their implications, and ensure that the organization adapts its credit policies and procedures accordingly.

Debt Recovery: When it comes to collecting outstanding debts, Credit Controllers work closely with Lawyers to navigate the legal aspects of debt recovery. Lawyers can assist in drafting and reviewing legal notices, demand letters, and other legal documents required for debt collection. They provide guidance on the legal process, timelines, and available options for enforcing debt collection, such as initiating legal proceedings or negotiating settlements.

Dispute Resolution: In cases where disputes arise during the debt collection process, Lawyers can provide valuable assistance to Credit Controllers. They help assess the legal merits of the dispute, provide advice on negotiation strategies, and represent the organization in settlement discussions or legal proceedings. Lawyers ensure that the debt collection process adheres to legal requirements and work towards resolving disputes in a fair and legally sound manner.

Legal Remedies: Credit Controllers collaborate with Lawyers to explore legal remedies available for debt recovery. Lawyers provide insights into legal mechanisms for enforcing debt collection, such as garnishments, liens, or other legal actions. They help Credit Controllers assess the feasibility and potential success of legal remedies, allowing for more informed decisions on the most effective course of action.

Legal Documentation: Lawyers play a critical role in ensuring the accuracy and legality of legal documentation related to debt collection. They review and draft legal agreements, settlement agreements, and other relevant documents to protect the organization's interests and ensure compliance with applicable laws. Credit Controllers work with Lawyers to ensure

that all necessary legal documentation is in order, reducing the risk of legal disputes or challenges.

By collaborating with Lawyers, Credit Controllers can ensure that their debt collection practices are legally compliant, effectively recover outstanding debts, and resolve disputes in a fair and legally sound manner. The legal expertise provided by Lawyers complements the financial management skills of Credit Controllers, creating a comprehensive approach to debt collection and credit management within organizations. By collaborating with lawyers, credit risk analysts can ensure that their credit risk management practices are legally compliant, mitigate legal risks, and protect the interests of the lending institution. The legal expertise provided by lawyers complements the financial analysis skills of credit risk analysts, creating a comprehensive approach to managing credit risks within organizations.

10.4 Third Party Collectors

A Third-Party Collector, also known as a debt collection agency or debt collector, is a specialized entity or organization that is contracted by creditors or lenders to recover overdue debts on their behalf. These collectors operate separately from the original creditor and are typically engaged when the debtor has failed to make payments or has become delinquent on their obligations. Third-Party Collectors may be independent agencies or firms that specialize in debt collection, or they may be departments within larger organizations that offer debt recovery services. Their primary role is to pursue debtors and collect outstanding amounts owed to the creditors.

Third-Party Collectors employ various strategies and techniques to recover debts, such as sending collection letters, making phone calls, negotiating payment plans, and, in some cases, pursuing legal action. They often have specialized resources, software systems, and expertise in debt collection practices. It's important to note that Third-Party Collectors must comply with laws and regulations governing debt collection practices, such as Consumer Protection Act, Debt Summary Act, Prudential regulations by CBK, SASRA, Banking Act and Sacco Societies Act. These regulations protect consumers from abusive or deceptive collection practices and set guidelines for the conduct of debt collectors.

Creditors engage Third-Party Collectors to improve their debt recovery rates, reduce internal resource allocation to collection efforts, and potentially improve cash flow. By partnering with these collectors, creditors can focus on their core operations while outsourcing the task of debt collection to specialized agencies or firms. Overall, Third-Party Collectors play a significant role in the debt collection process, acting as intermediaries between creditors and debtors to recover outstanding debts on behalf of the original creditors.

While the collaboration between Credit Controllers and Third-Party Collectors contributes to effective debt collection efforts, it is important to note that credit risk management encompasses a broader set of activities beyond debt collection. Credit risk management involves assessing the creditworthiness of borrowers, setting credit limits, monitoring

payment behaviors, and overall portfolio management. The collaboration between Credit Controllers and Third-Party Collectors primarily focuses on debt collection, which is just one aspect of credit risk management. While effective debt collection is an important component, credit risk management also involves credit analysis, risk assessment, credit policy development, and ongoing monitoring of credit exposures.

Therefore, while the collaboration between Credit Controllers and Third-Party Collectors is valuable for optimizing debt collection, it may not necessarily ensure a comprehensive and well-informed approach to credit risk management on its own. Credit risk management requires a holistic and integrated approach that considers various aspects of credit risk, including credit assessment, monitoring, risk mitigation, and portfolio management. The collaboration between Credit Controllers and Third-Party Collectors enhances the debt collection process and contributes to effective credit risk management. However, it should be seen as a part of the overall credit risk management framework within organizations, which involves various other functions and considerations beyond debt collection. Credit Controllers and Third-Party Collectors complement each other in the following ways:

Expertise and Resources: Third-Party Collectors specialize in debt collection and have extensive experience in dealing with delinquent accounts. They have dedicated resources, systems, and processes in place to handle debt collection efficiently. Credit Controllers can benefit from the expertise and resources of Third-Party Collectors, especially when dealing with complex or difficult-to-collect debts.

Outsourcing Collection Efforts: Credit Controllers may outsource certain collection efforts to Third-Party Collectors when they are unable to dedicate sufficient time and resources to debt recovery. By partnering with Third-Party Collectors, Credit Controllers can focus on other core responsibilities, such as credit analysis and relationship management, while the collectors handle the debt collection process. This does not necessarily mean lenders should originate credit assets only to transfer them to collection agencies.

Legal Compliance: Third-Party Collectors are well-versed in debt collection laws and regulations. They ensure that their collection practices adhere to legal requirements, which helps Credit Controllers minimize the risk of non-compliance. Working with Third-Party Collectors helps Credit Controllers mitigate legal risks and ensures that debt collection efforts are conducted in a legally compliant manner.

Enhanced Recovery Efforts: Third-Party Collectors often have access to advanced tools and technologies for locating debtors, conducting skip tracing, and initiating effective collection strategies. They employ various methods, such as phone calls, letters, and negotiation techniques, to maximize recovery efforts. By collaborating with Third-Party Collectors, Credit Controllers can improve the chances of successful debt recovery and minimize the impact on their own internal resources.

Portfolio Management: Third-Party Collectors can provide valuable insights and recommendations to Credit Controllers regarding the management of the organization's debt portfolio. They can analyze the portfolio, identify trends and patterns, and suggest strategies

for reducing delinquency rates and improving overall collection performance. This collaboration helps Credit Controllers make informed decisions about credit policies, risk assessment, and credit limits. It's important to note that while Third-Party Collectors can support Credit Controllers in debt collection, the ultimate responsibility for credit risk management remains with the Credit Controllers themselves. They need to ensure that appropriate oversight and monitoring are in place to maintain control over the collection process and protect the organization's reputation.

In conclusion, the collaboration between Credit Controllers and Third-Party Collectors allows for efficient and effective debt collection efforts. Credit Controllers benefit from the specialized expertise, resources, legal compliance, and enhanced recovery strategies provided by Third-Party Collectors. This collaboration helps organizations improve their debt collection performance and overall credit risk management.

10.5 Valuers

Credit controllers and valuers complement each other by collaborating on risk assessment, collateral evaluation, credit decision-making, risk mitigation strategies, and portfolio management. Their collaboration helps in making informed credit decisions, ensuring proper collateral valuation, and managing credit risk effectively. The collaboration between credit controllers and valuers ensures a comprehensive and well-informed approach to credit risk management within organizations by combining their expertise in creditworthiness assessment, collateral evaluation, risk mitigation, compliance, and financial reporting. Credit controllers and valuers complement each other in the following ways:

Accurate Credit Decisions: Credit controllers rely on the information provided by valuers to assess the value of assets offered as collateral by customers. This collaboration ensures that credit controllers have accurate and reliable information about the collateral's value, enabling them to make informed decisions about credit approvals, credit limits, and risk exposure. By considering the value of the collateral, credit controllers can accurately assess the overall creditworthiness of the customer and determine appropriate credit terms.

Enhanced Risk Assessment: Collaboration between credit controllers and valuers improves the overall risk assessment process. Credit controllers evaluate the creditworthiness of customers based on financial analysis, payment history, and credit scores. Valuers assess the value of assets used as collateral. By working together, they can evaluate the overall risk exposure of the organization, taking into account both the creditworthiness of customers and the value of collateral. This collaboration helps in identifying potential risks, such as inadequate collateral coverage or customers with weak financial positions, leading to more accurate risk assessment and mitigation strategies.

Mitigating Credit Risks: Credit controllers and valuers collaborate to mitigate credit risks effectively. Credit controllers assess the creditworthiness of customers to identify potential default risks, while valuers evaluate the value of collateral to determine the potential recovery

in case of default. By sharing information and insights, credit controllers and valuers can develop appropriate risk mitigation strategies. For example, if a customer's creditworthiness is weak but the collateral has a high value, the credit controller may decide to extend credit with tighter terms to minimize the risk. This collaboration ensures a more robust approach to managing credit risks within the organization.

Compliance and Regulatory Adherence: Credit controllers and valuers must adhere to relevant laws, regulations, and industry standards. Credit controllers ensure compliance with lending regulations and credit policies, while valuers follow valuation standards and regulatory requirements. By collaborating closely, they can ensure that credit decisions and collateral assessments are conducted in accordance with applicable regulations, minimizing legal and compliance risks. This collaboration ensures that credit risk management practices align with legal and regulatory frameworks.

Comprehensive Financial Reporting: Credit controllers and valuers contribute to comprehensive financial reporting within an organization. Credit controllers report on the status of accounts receivable, credit performance, and collection efforts. Valuers provide reports on asset valuations and market trends. By collaborating, they can share their insights, which contribute to a more accurate understanding of financial risks and asset values. This information is crucial for effective financial reporting, strategic decision-making, and overall credit risk management.

In conclusion, the collaboration between credit controllers and valuers ensures a comprehensive and well-informed approach to credit risk management within organizations. By leveraging their expertise in creditworthiness assessment, collateral evaluation, risk mitigation, compliance, and financial reporting, they enhance the accuracy of credit decisions, improve risk assessment, mitigate credit risks, ensure regulatory compliance, and contribute to comprehensive financial reporting. This collaboration leads to a more effective and informed approach to credit risk management, ultimately benefiting the organization's financial health and stability.

11. The gaps the proposed law seeks to address

The gaps arising out of lack of regulation of credit professionals can further be categorized on the basis of how they affect;

1. Institutional Stability
2. Debt Collection
3. Non-regulated financial Institutions
4. Regulated Financial Institutions
5. The Training of a “Credit Professional” compared to “Other professionals”

11.1 Institutional Stability

Institutional stability refers to the ability of institutions within a society or organization to remain intact, functional, and resilient over time. It implies a state of consistency, reliability, and predictability in the operations and functioning of institutions, such as governments, political systems, legal frameworks, regulatory bodies, and other organizational structures. The role of credit professionals can have a significant impact on institutional stability. Credit professionals are responsible for assessing the creditworthiness of individuals, businesses, and institutions and determining the risk associated with lending them money or extending credit. Their primary goal is to minimize the risk of default and financial losses for the institution.

Overall, the role of a regulated credit professionals is crucial in maintaining institutional stability, confidence to public, trustworthy consumer awareness on proper utilization of borrowed funds and investors’ confidence. Through their expertise in risk assessment, portfolio management, compliance, credit policy development, and relationship management, credit professionals help institutions minimize credit risk, avoid defaults, and navigate challenging economic conditions. Their efforts contribute to the stability and soundness of the institution's operations. Institutional stability is crucial for the proper functioning of societies and organizations as it provides a framework for maintaining social order, upholding the rule of law, protecting individual rights, and promoting economic development. Institutional stability from a banking and financial system perspective refers to the strength and resilience of the institutions that make up the financial system, such as banks, regulatory bodies, and central banks, to withstand shocks and maintain the smooth functioning of the financial system.

11.1.1 Issues Related to Code of Conduct of Credit Professionals and Market players that Correlate with Institutional Stability

- Investor Confidence
- Public Confidence and Certainty
- Corporate image and brand reputation
- Agency Problem: Employees, and suppliers
- Capital depreciation (reduction)
- Profitability and Sustainability
- Overall Financial system stability
- Governance and Risk Management

Members of Public Perspective & Institutional Stability

Unprofessional credit management practices by any public or private institution can contribute to economic instability, reduced access to credit, lead to financial losses for the public- savings and deposits, erode trust and confidence in the financial system, and prompt regulatory and policy changes. From the perspective of the general public, these consequences can have significant implications on their financial well-being, access to financial services, and overall trust in the stability of financial institutions. Unprofessional credit management practices can have various effects on institutional stability from the perspective of the general public. *Below are just some of the highlights of the impact:*

High levels of Indebtedness and economic stability: There has been increasing evidence of over-indebtedness among borrowers in Kenya which can derail the benefits, that otherwise should come with accessibility to finance for personal development purposes. Over indebtedness can result in devastating outcomes at both macro and individual level. At the macro level, over indebtedness has been associated with reduction in aggregate demand and reduced overall economic growth. (Gathergood, 2012). Unprofessional credit management practices can contribute to economic instability. If financial institutions engage in irresponsible lending or fail to adequately assess borrowers' creditworthiness, it can lead to a higher number of loan defaults and bankruptcies. This, in turn, can result in economic downturns, job losses, and reduced consumer spending, affecting the overall economic well-being of the public.

According to Khalid Adam & Radha Upadhyaya (2022)¹, over indebtedness is higher when borrowing is unplanned. Overall debt literacy is moderately high among youth digital credit borrowers but specific aspects of debt literacy such as ability to calculate interest payments and sound utilization of borrowed funds is very low. Delinquency on digital loans differ across employment status, attitudes towards digital credit, income, education levels and number of outstanding loans. Youth borrowers are 'attracted' to digital loans because of ease of access, privacy, and convenience.

According to CBK governor Dr. Patrick Njoroge (2022), when appearing before members of parliament- Departmental committee for finance and national planning on Banking Act amendment bill of 2021, he warned that household debt (household credit in most cases is purely for consumption purposes but not for venturing into income generating activities) has risen to unsustainable levels, compounded by the economic effects of the Covid-19 pandemic. Dr Njoroge (2022)², he said Kenya is witnessing a crisis in household debt largely fuelled by unregulated digital lending platforms. He also said "We are concerned that there is

¹ See: *Committee on Fiscal Studies (CFS), - POLICY BRIEF NO. 8 OF 2022 Digital Credit Over-Indebtedness, Debt Literacy and Attitudes: Financial experiences of youth digital credit users in Kenya*
<http://erepository.uonbi.ac.ke/bitstream/handle/11295/162781/Adam%20.pdf?sequence=1>

² See: *Highly indebted: CBK says there is need to inform the public on the available options to resolve it*
<https://youtu.be/fs99zMM54ul?t=19>

a ballooning of debt in the private sector- We are not talking corporates, we are talking households- common “Mwananchi wa kawaida”, and that this situation is it’s quite problematic because the sources of income have been truncated.”

Adverse health-related Issues affecting members of public: At the individual level, over-indebtedness has been observed to trigger adverse health-related outcomes including reduction in food consumption, declining overall wellbeing, and increasing in emotional afflictions (Gathergood, 2012). A recent case of suicide demonstrates the negative aspects of digital lending apps³. Policymakers have suggested that digital lending has led to reduced social cohesion, family breakdowns, and lower self-esteem⁴. Demand-side literature has concentrated on the difficulties that digital credit borrowers experience when it comes to debt stress (FSD Kenya, 2020)⁵. However, research on understanding the level and causes of debt stresses still remain high a gap a regulated credit professional can fill up, by engaging the members of public on advocacy individually or in collaboration and partnership with other state mandated agencies, “prudence in utilization of borrowed fund”. This initiate is key because financial education and literacy are important in improving peoples’ ability to use financial services and make effective decisions with regards to present and future welfare.

According to Lysons (2008), financial literacy education positively impacts consumer financial attitude. Financial literacy studies have shown that borrowers of digital loans have had difficulty in understanding the terms and borrow from multiple sources. Houston (2012) suggests that people with a higher stock of right knowledge⁶ human capital (financial literacy) stand a better chance of making effective borrowing choices. Also, research has identified a wide range of factors influencing the likelihood of consumer over indebtedness (for a further review, see Kamleitner and Kirchler, 2007). Among others, these factors include low financial literacy (e.g., Lusardi, 2008), and positive attitudes towards credit (e.g., Wang et al., 2011).

Poor Credit risk assessment practices leading to reckless lending: Unprofessional credit management practices result into reckless lending. If financial institutions engage in irresponsible lending or have weak credit risk assessment processes, they end up basing lending decision on skewed basis, hence high default rate.

For example, the primary problem is digital lenders do not measure the capacity of someone to repay, but their willingness to repay, and these are drastically different concepts⁷. Willingness refers to the genuine disposition of a person to pay back their loan/obligation. Capacity, on the other hand, refers to the person’s ability to generate enough money in the future to pay back the loan/obligation without having to forgo essential expenses. When a

³ See <https://citizentv.co.ke/news/man-kills-self-inkakamega-after-constant-nagging-by-a-local-digitallender-348164/>

⁴ See: <https://www.bloomberquint.com/onweb/kenya-lawmakers-to-investigate-social-menace-of-loan-apps>

⁵ See: https://fsdkenya.org/wpcontent/uploads/2020/07/Focus-Note-Digital-Creditin-Kenya_Updated.pdf

⁶ See: **Hosea 4: 6 NKJV-**

⁷ See: Center for Financial inclusion <https://www.centerforfinancialinclusion.org/digital-lending-in-kenya-willingness-vs-capacity-to-repay>

member of public can't pay, it leads to contagion effect which in turn hinders economic growth and limits job creation (Khalid Adam & Radha Upadhyaya, 2022)⁸.

Predatory lending to increased financial vulnerabilities: Predatory lending⁹ can be defined as a practice where a lender uses aggressive sale tactics to lure a borrower into a loan that is characterized by inconsiderate and abusive terms. This could take the form of above-market interest rates and general terms that bestow all power on the lender, leaving the borrower completely exposed. Unprofessional credit management practices can expose the public to greater financial vulnerabilities. If financial institutions engage in predatory lending¹⁰, encourage excessive borrowing, or fail to adequately educate borrowers about the risks involved, individuals may find themselves burdened with unsustainable debt levels. This can lead to financial distress, loan defaults, asset seizures, and even personal bankruptcy. The public's financial well-being is compromised when they are trapped in cycles of debt and struggle to meet their financial obligations.

According to Joy Kiiru (2020), much of the access to credit is fuelled by a proliferation of lenders using mobile phone technology to give quick small loans with terms that are otherwise unfair to the wellbeing of the borrower. This amounts to predatory lending, a lending practice with unfair or abusive loan terms on a borrower. It also amounts to a coercive practice that convinces a borrower to take a loan that they can do without.

Loss of trust and confidence: Unprofessional credit management practices erode public trust and confidence in financial institutions. For example, charging of exorbitant interest rates leads to loss of trust on financial institutions, (*Margaret Njeri Muiruri v Bank of Baroda (Kenya) Limited [2014] eKLR*)¹¹. When the public becomes aware of instances where institutions have engaged in irresponsible lending, predatory practices, or inadequate risk management, it undermines their faith in the integrity and stability of the financial system. This loss of trust can have far-reaching consequences, including reduced public participation in financial services, withdrawals of deposits, and a reluctance to engage in investment activities.

⁸ See: Digital Credit Over-Indebtedness, Debt Literacy and Attitudes by Khalid Adam and Radha Upadhyaya: http://erepository.uonbi.ac.ke/bitstream/handle/11295/162781/Adam%20_.pdf?sequence=1&isAllowed=y

⁹ See: Dr. Joy Kiiru:- Taming Predatory Lending for a Resilient Financial System and Economic Growth: <http://erepository.uonbi.ac.ke/bitstream/handle/11295/154882/Kiiru%20Taming%20Predatory%20Lending%20for%20a%20Resilient%20Financial%20System%20and%20Economic%20GrowthTaming%20Predatory%20Lending%20for%20a%20Resilient%20Financial%20System%20and%20Economic%20Growth.pdf?sequence=1&isAllowed=y>

¹⁰ See: Strathmore University: Predatory lending orchestrated by the proliferation of Fintech companies in Kenya and its corollary to financial stability in the Kenyan banking sector: <https://su-plus.strathmore.edu/items/aa95f343-639e-43cc-87f6-caa5163d08d4>

¹¹ See: LEGAL ACTION ON UNFAIR INTEREST RATES: KENYA <http://kenyalaw.org/caselaw/cases/view/102367>

Loss of savings and investments: Like in the case of Dubai Bank¹², Chase Bank¹³ and Imperial Bank¹⁴. The public may suffer financial losses if they have savings or investments in institutions with unprofessional credit management practices. For example, if an individual has deposited funds in a bank that experiences significant credit losses or faces insolvency due to poor credit management, there is a risk of losing their savings. Similarly, if individuals hold investments in securities issued by such institutions, the value of those investments may decline or become worthless, negatively impacting their financial well-being.

Regulatory and policy implications: Unprofessional credit management practices can lead to regulatory and policy interventions. In response to public outcry or systemic risks associated with unprofessional practices, regulators and policymakers may impose stricter regulations and oversight on financial institutions, like in the case of *Spire bank*¹⁵. This can include the implementation of consumer protection measures, enhanced disclosure requirements, or the establishment of new regulatory frameworks. While these actions aim to protect the public's interests, they can also impose additional costs and burdens on both financial institutions and the public.

Investor Perspective & Institutional Stability

Overall, poor credit risk management undermines investor trust, increases default risk, raises borrowing costs, and can lead to legal and regulatory challenges. Investors rely on institutions to effectively manage credit risks to protect their investments and generate returns. Failure to do so can have severe implications for institutional stability from an investor's perspective. Investor confidence refers to the level of trust, optimism, and belief that investors have in the overall stability, growth potential, and profitability of financial markets, specific assets, or an economy as a whole. It reflects the willingness of investors to take risks and allocate their capital in various investment opportunities.

Investor confidence plays a crucial role in driving financial markets and economic activity. When investor confidence is high, investors are more likely to buy stocks, bonds, or other assets, leading to increased demand and potentially driving up prices. This positive sentiment can stimulate economic growth, attract foreign investment, and encourage businesses to expand and invest. On the other hand, when investor confidence is low, investors tend to be more cautious and may sell off their investments, leading to decreased demand and potentially causing prices to decline. This negative sentiment can contribute to market volatility, economic slowdowns, and reduced business investment. Unprofessional credit management practices can have detrimental effects on institutional stability from an investor's perspective, in the following ways:

¹² See: Dubai bank [DUBAI BANK KENYA LTD \(IN RECEIVERSHIP\)](#)

¹³ See: Chase bank [Press Release - Liquidation of Chase Bank Limited \(In Receivership\)](#)

¹⁴ See: Imperial bank [1. On October 13, 2015, the Central Bank of Kenya \(CBK\) appointed the Kenya Deposit Insurance Corporation \(KDIC\) as receiver fo](#)

¹⁵ Spire bank [Acquisition of Certain Assets and Liabilities of Spire Bank Limited by Equity Bank \(Kenya\) Limited | CBK](#)

Increased credit losses: For example, Daima bank, according to Mullei (2013) was placed underneath statutory management for failing to fulfil the minimum core capitalization threshold - among additionally as poor management of loan portfolio. Unprofessional credit management practices can lead to higher levels of non-performing loans and credit losses for the institution. If the institution fails to accurately assess the creditworthiness of borrowers, properly analyse their ability to repay loans, or monitor the credit portfolio effectively, it may experience a higher incidence of defaults and delinquencies. This can result in significant losses for investors who have exposure to the institution's loan portfolio or invested in related securities.

Weakened financial position: Republic of Kenya has full-fledged banking issues since 1986 culminating in major bank failures (37 failing banks as at 2013) following the crises of; 1986 - 1989, 2005/2009 and 2013 (Oduor, 2018). The crises were chiefly attributed to NPLs non-performing loans (Oduor, 2018). This has seriously damaged public confidence within the deposit system. Poor credit management practices can erode an institution's financial position over time. Inadequate credit risk assessment, loose underwriting standards, or a lack of appropriate risk monitoring can lead to an accumulation of risky assets on the institution's balance sheet. This can weaken its overall financial health, reduce profitability, and negatively impact key financial metrics. Investors rely on the institution's financial stability and strength to ensure the safety and growth of their investments.

Erosion of investor confidence: Unprofessional credit management practices erode investor confidence in the institution's ability to safeguard their investments. Investors expect institutions to have robust credit risk management frameworks in place to mitigate risks effectively. For example, According Melvin Oduor (2018)¹⁶, Chase bank become unable to fulfil its monetary obligation on April 2016 and became positioned under receivership of CBK. The insider loans stood at 13.62 billion Kenya shillings in comparison to the 5.72 billion Kenya shillings it reported. The main problem at chase bank financial institution was governance problem. The bank made large amount of mortgage to its administrators. If an institution exhibits unprofessional practices, such as favouritism, lack of transparency, or inadequate risk controls, investors may question the institution's overall governance, integrity, and commitment to protecting their interests. This loss of confidence can lead to reduced investor participation and withdrawals of investments.

Decreased access to funding: Institutions with unprofessional credit management practices may find it more challenging to access funding from investors or lenders. Investors and lenders will be hesitant to provide capital to an institution that has a reputation for poor credit management. This can limit the institution's ability to raise necessary funds for operations, expansion, or investment opportunities. Restricted access to funding can hinder the institution's stability, growth, and competitiveness.

¹⁶ See: FACTORS AFFECTING THE FAILURE OF BANKS IN KENYA IN KENYA: A CASE STUDY OF CHASE BANK.

<https://core.ac.uk/download/pdf/220096742.pdf> viewed 12/06/2023

Regulatory and legal consequences: Unprofessional credit management practices can expose the institution to regulatory scrutiny and legal consequences. Regulatory bodies often require institutions to adhere to specific credit risk management standards to protect investors and maintain stability in the financial system. If an institution fails to meet these standards due to unprofessional practices, it may face regulatory sanctions, fines, or legal actions. Such consequences can have a severe impact on investor perception of the institution's stability and reliability.

In summary, unprofessional credit management practices can result to increased credit losses, weakened financial position, erosion of investor confidence, restricted access to funding, and regulatory/legal consequences. Investors rely on institutions to maintain professional and diligent credit management practices to safeguard their investments and ensure institutional stability. Failure to do so can significantly impact the institution's stability from an investor's perspective.

Profitability and Sustainability:

The major cause of serious credit facilities management problems continues to be directly related to lax credit standards for borrowers and counterparties, poor portfolio risk management, or a lack of attention to changes in economic or other circumstances that can lead to a deterioration in the credit standing of an organizations' counterparties. Effective credit risk management is critical to minimize losses, protect customer trust, and ensure compliance with relevant regulations (CBK Risk Management Guidelines)¹⁷. The lending institution should measure objective and subjective risk characteristics in the underwriting process to understand the borrower's probability of default and reliability of alternative repayment sources to estimate potential loss, (Kwasira & Ngahu et el, 2015)¹⁸

According to Kwasira & Ngahu (2015), Financial Institutions are in the business of mobilizing and lending financial resources to borrowers and allocation of savings to real investment. In the process of providing financial services, they assume various kinds of financial risks, one of these financial risks is credit. Credit risk negates the profitability of financial institutions as they entirely depend on loan lending to increase its portfolios. This is because, when borrowers default in servicing their loans or in meeting their loan servicing obligations of the loans awarded to them, the lending institution will not get returns through interest charged on those loans. This is shown from the records of banks that borrowers do not effectively service their loans as and when they falls due in good time while others default completely

¹⁷ See: Risk Management Guidelines By Central Bank Of Kenya:- <https://www.centralbank.go.ke/wp-content/uploads/2016/08/Risk-Management-Guidelines-January-20131.Pdf>

¹⁸ See: International Journal of Economics, Commerce and Management, United Kingdom: Influence of Credit Risk Management on Loan Performance in Commercial Banks in Nakuru Town, Kenya: <https://ijecm.co.uk/wp-content/uploads/2015/10/31054.Pdf>

Credit risks are not only argued to affect financial performance of loans, but they also have far reaching implications. This is because, other potential borrowers may fail to access credit facilities since part of the funds that could have been extended as loans by commercial banks are still tied up due to default of clients from repaying. Ineffective credit risk management too affects the entire economy of a country which explains why the CBK sets guidelines to enable financial institutions to mitigate risk of default by having credit reference bureaus. The credit professionals are quite appraised of the operations of credit bureaus in management of adverse selection and moral hazard, thus leading to more stable financial institutions.

The dismal performance on collection of receivables and continuing build-up of nonperforming loans burden clearly demonstrates that the banks' credit management system have not been effective in mitigating credit risks. Further, the deterioration in commercial credit quality accompanied by high provisions for loan losses, malpractices of bank directors and credit concentration, suggests that commercial banks need to pursue asset-liability structures and the need for more intensive loan servicing and strong internal credit risk control (Central Bank Annual Supervision Report, 2009).

11.1.2 Role of Regulated Credit professional in assuring Institutional Stability:

Institutions with qualified credit professionals can potentially be better equipped to manage credit risk because the professionals have a clear understanding of credit risk and the interaction with other risks in the organization, (Basel Committee on Banking Supervision, 2000)¹⁹. Credit risk refers to the potential loss that an institution may face if a borrower fails to repay their debt obligations. Effective credit risk management involves assessing the creditworthiness of borrowers, setting appropriate credit limits, monitoring credit exposure, and implementing strategies to mitigate potential losses. Qualified credit professionals possess specialized knowledge and expertise in credit analysis, risk assessment, and risk management. They are trained to evaluate the financial health of borrowers, analyse their repayment capacity, and make informed decisions regarding credit approvals or denials. These professionals understand various risk factors and indicators that can affect creditworthiness, such as financial statements, market conditions, industry trends, and macroeconomic factors. (Kasneb CCP Syllabus, 2021)²⁰

According to the prudential regulations by SASRA²¹, CBK²² and Bank of International settlement, it is the responsibility of the board of directors through technical advice and guidance of a credit professional to develop a credit risk strategy or plan that establishes the objectives guiding the company's credit-granting activities and adopt the necessary policies and procedures for conducting such activities. Credit professionals are responsible for sound management of credit risk in the organization. For most institutions, the credit advanced to

¹⁹ See: Basel September 2000. Principles for the Management of Credit Risk: <https://www.bis.org/publ/bcbs75.pdf>

²⁰ See: Kasneb- Certified Credit Professionals Syllabus: <https://kasneb.or.ke/wp-content/uploads/2021/12/CCP-SYLLABUS-SYLLABUS-FINAL-SEPTEMBER-2021.pdf>

²¹ See: Guidelines on Risk Management Practices for Regulated Sacco's: https://www.sasra.go.ke/download/sasra_risk-management-guidelines/

²² See: Prudential Regulations by Central Bank of Kenya:- <https://www.centralbank.go.ke/wp-content/uploads/2016/08/PRUDENTIAL-GUIDELINES.pdf>

customers forms the largest and most obvious source of credit risk; however, other sources of credit risk exist throughout the other activities. For example, for a bank, the banking book and in the trading book, and both on and off the balance sheet items could also be credit risk.

According to the Bank of International Settlements (BIS), having a well-trained, qualified, and regulated credit professional improves on the quality of board credit committee work, technical credit committee and sound credit administration in a company. The credit professional has a role of ensuring credit risk strategy and policies are effectively communicated throughout the organisation and that all relevant personnel clearly understand the organization's approach to granting and managing credit and should be held accountable for complying with established policies and procedures.

According to Rating Credit Risk Comptroller's Handbook (2017)²³, the best and most important control over credit risk ratings is a well-trained and properly motivated staff. Personnel who rate credits should be proficient in the Saccos or company's or bank's rating system and in credit analysis techniques. These skills should be part of the bank's performance management system for credit professionals. Credit staff should be evaluated on, among other things, the accuracy and timeliness of their risk ratings. By having skilled credit professionals, institutions can enhance their ability to identify and evaluate credit risks accurately.

They can employ robust credit underwriting practices, including comprehensive analysis of borrowers' financial information, collateral assessments, and consideration of the borrower's track record. Qualified professionals are also skilled in structuring credit agreements and negotiating terms that align with the institution's risk appetite. Moreover, credit professionals play a vital role in ongoing credit risk monitoring. They regularly review borrowers' financial performance, track market developments, and assess the impact of potential risk factors. With their expertise, they can identify early warning signs of deteriorating creditworthiness and take proactive measures to mitigate the risks, such as implementing loan modifications, initiating collateral liquidation, or restructuring debt agreements.

While qualified credit professionals contribute significantly to credit risk management, it is important to note that effective risk management is a comprehensive process that involves multiple layers of controls and oversight within an institution. It encompasses sound policies, risk measurement tools, risk appetite frameworks, and collaboration among various departments, including credit, risk management, and senior management.

²³ See: Rating Credit Risk Comptroller's Handbook (2017), <https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/rating-credit-risk/pub-ch-rating-credit-risk.pdf>

Institutions with qualified credit professionals are generally better positioned to manage credit risk. Their expertise in credit analysis, risk assessment, and risk management can help institutions make informed decisions, reduce potential losses, and enhance overall credit portfolio performance. However, it is important to recognize that credit risk management is a multifaceted discipline that requires a holistic approach, involving both qualified professionals and comprehensive risk management frameworks.

11.2 Debt Collection

There is abundant evidence²⁴ of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors most of whom are not trained credit professionals. Abusive debt collection practices contribute to the number of personal bankruptcies, marital instability²⁵, the loss of jobs, and to invasions of individual privacy.

There is a connection between unqualified or unregulated credit professionals and unethical debt collection practices, although it is important to note that not all unqualified or unregulated credit professionals engage in such practices. However, the lack of regulation and oversight in the credit industry can create an environment where unethical practices are more likely to occur.

When credit professionals are unqualified or lack proper training, they may not have a complete understanding of applicable laws, regulations, and ethical standards. This lack of knowledge can lead to inadvertent violations or misconduct in their debt collection activities. Unqualified professionals may also lack the necessary skills to effectively communicate with debtors, which can escalate tensions and increase the likelihood of unethical behaviour.

In absence of regulation means that there are no clear guidelines or standards that credit professionals must adhere to. This lack of oversight can encourage unscrupulous individuals or organizations to engage in unethical debt collection practices, such as harassment, threats, or misleading tactics, to collect debts. These practices can include making excessive or inappropriate collection calls, misrepresenting the amount owed, using abusive language, or disclosing sensitive information to unauthorized parties.

It is worth noting that many countries²⁶ have laws and regulations in place to protect consumers from such unethical practices, for example the United States of America Fair Debt Collection Practices Act (FDCPA) (15 USC 1692 et seq.), which became effective in March 1978, was designed to eliminate abusive, deceptive, and unfair debt collection practices. It also protects reputable debt collectors from unfair competition and encourages consistent state action to protect consumers from abuses in debt collection. These regulations often outline permissible debt collection practices, set limits on communication frequency, and

²⁴ See: Video on [DEBT OF SHAME | Unorthodox debt recovery tactics used by some digital lenders](#)

²⁵ See Video on [Digital credit customer recounts harassment by lender](#)

²⁶ See: Fair Debt Collection Practices Act (FDCPA) (15 USC 1692 et seq)

provide mechanisms for consumers to report violations. However, in the absence of effective regulation and oversight, unqualified or unregulated credit professionals may be more likely to engage in unethical behaviour, like is rampant in Kenya.

To mitigate the risks associated with unqualified or unregulated credit professionals, it is essential to have robust regulations and licensing requirements in place for professionals engaging in the art and science of debt collection. These regulations should include qualifications, training, and ongoing education requirements for credit professionals. Additionally, enforcement mechanisms and penalties for violations should be in place to deter unethical practices and protect consumers from abusive debt collection practices. Thus its our petition to the senate to consider the enactment of a legislation regulating the credit professionals as this would weed out such unethical behaviours.

Consumers can also protect themselves by being aware of their rights and understanding the laws and regulations governing debt collection in their jurisdiction. They should know that they have the right to be treated fairly and respectfully by debt collectors, and they can report any violations to the appropriate authorities or seek legal assistance if necessary.

11.2.1 Issues Related to Code of Conduct of Credit Professionals handling Debt Collection

- Customer awareness when in financial distress- what are the rights/remedies of the defaulter vs lender?
- Untrained professionals handling debt collection and debt management,
- Debt shaming practices.
- Unfair collection practices- failure to follow due legal process and procedures in recovery of debts.²⁷
- Unreasonable repayment terms²⁸.
- Unreasonable debt collection charges- e.g breach of the “Donde Rules- Indumplum rule” in debt recovery.²⁹
- High levels of defaulted amounts.
- Collateral management- Change of terms of insuring, management and utilization of collateral during the life cycle of the facility.
- Harassment and abusive language.
- False or Misleading representations

²⁷ See: [Family awarded Sh1.2bn against HF in botched home auction - Business Daily](#)

²⁸ See: [Digital lenders now under CBK in new law](#)

²⁹ See: [Family awarded Sh1.2bn against HF in botched home auction - Business Daily](#)

11.2.2 How the Regulation will address Issues Identified

- Developing a professional code of conduct - to which professionals will subscribe to
- The purpose of regulating credit professionals is to eliminate abusive debt collection practices by untrained and unqualified/uncertified debt collectors, by ensuring that debt collectors' training, qualification and certification is well structured and regulated.
- The regulation of credit professionals will eliminate quacks masquerading as debt collectors and credit management professionals.
- The regulations will ensure there is restraint from using abusive debt collection practices that disadvantage consumers through licensing and professional code of conduct.

11.2.3 Role of Regulated Credit professional in assuring Ethical Debt Collection Practices

The training of a credit professional requires that he or she or when acting as a collection agency makes specific disclosures and prohibits the professional from engaging in many kinds of abusive or deceptive behaviour.

Regulated credit professionals play a crucial role in assuring ethical debt collection practices. When credit professionals are subject to regulations and oversight, it helps establish standards and guidelines that promote fair and responsible debt collection.

Adequately trained, certified and regulated credit professionals contribute to ethical debt collection in following ways:

Compliance with laws and regulations: Adequately trained, certified and regulated credit professionals are required to comply with relevant laws and regulations governing debt collection practices. These proposed legislation on credit professionals' regulations typically outline permissible level of formal training that exposes the collectors to collection methods, communication protocols, and debtor protections. By adhering to these rules, regulated professionals ensure that their debt collection activities are conducted within legal boundaries.

Knowledge and expertise³⁰: Adequately trained, certified and regulated credit professionals undergo training, education, and certification processes that equip them with the necessary knowledge and skills to navigate the complexities of debt collection. They are familiar with consumer protection laws, ethical guidelines, and industry best practices. This expertise helps them engage with debtors in a professional and respectful manner, promoting fair treatment and avoiding unethical practices.

³⁰ See: The Nature of Debt Collector Training and Management: A Case Study of South Africa-
<https://journals.co.za/doi/pdf/10.10520/EJC-95882e1bb>

Accountability and oversight³¹: Adequately trained, certified and regulated credit professionals are subject to oversight by regulatory bodies or professional associations. Thus, it's our pray senate considers the enactment of legislation for regulation of credit professionals that will create a regulatory body for these professionals. The regulatory body will monitor their activities, review complaints, and investigate any potential violations. This accountability encourages credit professionals to maintain high ethical standards and discourages the use of unethical practices. Regulatory bodies may impose penalties, suspend licenses, or take legal action against professionals who engage in misconduct.

Consumer protection: Adequately trained, certified and regulated credit professionals are often required to adhere to specific consumer protection measures. These may include limitations on communication frequency, requirements for providing accurate debt information, and protocols for handling disputes and complaints. By following these protections, regulated professionals ensure that debtors are treated fairly, respectfully, and are aware of their rights.

Dispute resolution mechanisms: Adequately trained, certified and regulated credit professionals often participate in formal dispute resolution mechanisms. These mechanisms provide debtors with avenues to address any concerns or disputes they may have. This can include mediation, arbitration, or complaint procedures offered by regulatory bodies or industry associations. These processes aim to resolve conflicts in a fair and impartial manner, promoting ethical practices and avoiding the need for aggressive collection tactics.

Overall, adequately trained, certified and regulated credit professionals play a vital role in promoting ethical debt collection practices. Through their adherence to regulations, knowledge and expertise, accountability, consumer protections, and participation in dispute resolution mechanisms, they contribute to a fair and respectful debt collection process that protects the rights and interests of both debtors and creditors.

³¹ See: ASSESSING THE REQUIREMENTS AND BENEFITS OF DEBT COLLECTOR TRAINING IN SOUTH AFRICA-
https://www.researchgate.net/publication/342215534_ASSESSING_THE_REQUIREMENTS_AND_BENEFITS_OF_DEBT_COLLECTOR_TRAINING_IN_SOUTH_AFRICA

11.3 Regulated Financial Institutions

A regulated financial Institution refers to an institution whose operations fall under the oversight of a regulatory body established by an Act of parliament for example banks under the Central Bank of Kenya, Saccos under Sacco Societies Regulatory Authority (SASRA), insurance firms under Insurance Regulatory Authority (IRA) just to mention but a few. Even though the financial lending institutions have been regulated well (under CBK and SASRA), the regulations have not covered the professionals (persons) who handle/manage the institutions' credit business. Credit/loans officers, credit/loans analysts, credit/loans managers require regulation as regards competencies and ethical conduct for professional management of credit.

According to CBK Bank Supervision Report 2022³², as at December 31, 2022, the Kenyan banking sector comprised of the Central Bank of Kenya (CBK), as the regulatory authority, 38 Commercial Banks, 1 Mortgage Finance Company, 1 Mortgage Refinance Company, 10 Representative Offices of foreign banks, 14 Microfinance Banks (MFBs), 3 Credit Reference Bureaus (CRBs), 19 Money Remittance Providers (MRPs), 8 non-operating bank holding companies, 10 Digital Credit Providers (DCPs) and 72 foreign exchange (forex) bureaus. The number of bank branches increased from 1,459 in 2021, to 1,475 in 2022.

In the period ended December 2021, there were 176 DT-SACCOs which had their licenses successfully renewed for continued operation in Kenya for the period commencing January 2022 to December 2022. Consequently, the Authority authorized a total of 185-NWDT-SACCOs to operate in the country during the course of the year 2021, and these NWDT-SACCOs had their authorization successfully renewed to continue operating in Kenya for the period commencing January 2022 to December 2022.³³

11.3.1 Issues Related to Code and Conduct of Credit Professionals within regulated Financial Institutions (e.g., Banks, NBFIs, DT & NDT- Sacco's)

11.3.1.1 Credit Risk Management Issues (problems) in Banks and Regulated MFIs evidenced by growth of NPLs on an increasing trend:

- **KYC at on boarding of borrowers/obligors.**

Mutangili, 2011 in a study; *The relationship between credit risk management practices and the level of non-performing loans for commercial banks in Kenya* whose population consisted of 44 commercial banks in Kenya, established that there is a negative relationship between the level of non-performing loans and credit risk

³² See CBK Bank Supervision Report 2022-

https://www.centralbank.go.ke/uploads/banking_sector_annual_reports/284521465_2022%20Annual%20Report.pdf

³³ See: SASRA Annual Supervisory Report 2021: - [file:///D:/DOWNLOAS_ALL/SSR-2021%20-%20JULY-2022%20-%20FINAL%20REPORT%20\(4\).pdf](file:///D:/DOWNLOAS_ALL/SSR-2021%20-%20JULY-2022%20-%20FINAL%20REPORT%20(4).pdf)

management practices in banks with a correlation coefficient of 0.918, implying that the level of non-performing loans is inversely affected by credit risk management practices³⁴. Training of credit officers by commercial banks has been adopted as one of the most effective ways of mitigating Nonperforming loans and their provisions as staff are trained on risk appraisal techniques. The study recommended that there is need for commercial banks to adopt various credit risk management's practices in order to reduce their level of non-performing loans. It further recommended for sustainable and reliable credit database for immediate and quicker use when needed by banks.

Worldwide the Bank for International Settlement (BIS) provides guidelines to commercial banks on the effective operation of banking institutions. Its subcommittee, the Basle committee on banking supervision, encourages banking supervisors globally to promote sound practices for managing risk. The committee recognizes that the major cause of banking problems continues to be directly related to lax credit standards for borrowers and counter parties, poor portfolio risk management, or lack of attention to changes in economic or other circumstances that can lead to deterioration in the credit standing of a bank's counter parties (Saunders, 2008).

- **Inadequate analysis of credit risk.**

As per Linet Thisika M (2017)³⁵, who researched on the effect of credit risk management on loan performance in Kenyan commercial banks aiming to examine the relationships between loan appraisal and non-performing loans, the relationship between credit appraisal and non-performing loans was found to be positive, strong and statistically significant. Loan performance was the dependent variable while loan appraisal was the independent variable and her findings pointed the existence of a statistically significant relationship between credit appraisal and non-performing loans. According to Basel committee (1999) on the management of credit risk, the following was observed: Many credit problems reveal basic weaknesses in the credit granting and monitoring processes.

While shortcomings in underwriting and management of market-related credit exposures represent important sources of losses at banks, many credit problems would have been avoided or mitigated by a strong internal credit process. They noted too that many banks find carrying out a thorough credit assessment (or basic due diligence) a substantial challenge. For traditional bank lending, competitive pressures

³⁴See- *The relationship between credit risk management practices and the level of non-performing loans for commercial banks in Kenya*

http://erepository.uonbi.ac.ke/bitstream/handle/11295/12766/Mutangili_The%20relationship%20between%20credit%20risk%20management%20practices%20and%20the%20level%20of%20non-performing%20loans.pdf?sequence=3

³⁵ See- Effect of credit risk management on loan performance in Kenyan commercial banks <https://ijecm.co.uk/wp-content/uploads/2017/09/5931.pdf>

and the growth of loan syndication techniques create time constraints that interfere with basic due diligence. Globalization of credit markets increases the need for financial information based on sound accounting standards and timely macroeconomic and flow of funds data. When this information is not available or reliable, banks may dispense with financial and economic analysis and support credit decisions with simple indicators of credit quality, especially if they perceive a need to gain a competitive foothold in a rapidly growing foreign market.

Mathara (2007)³⁶ in a study of the response of National Bank of Kenya Ltd. to challenges of non-performing loans concludes that the reliance of the bank on qualitative credit analysis methods that entails such factors as character of the borrower, reputation of the borrower and the historical financial capability of the borrower as opposed to the use of quantitative techniques that emphasized on the borrowers projected cash flows and analysis of audited financial books of accounts have contributed to immensely to the non-performing loan portfolio.

- **Due diligence in collateral management and security perfection.**

Kithinji (2010) established that risk control in commercial banks is meant to control approved decisions that are not well examined and result in cases of default in loan repayments and non-performing loans, a considerable extension of credit, and directed lending. To minimize the negative effects, policies have focused on banks' officers assessing and reviewing all loans applications that are brought to the banks before lending is approved. This activity takes care of the commercial banks and by extension tended to highly concentrate on collateral as the main security for loans which at times makes the banks assume other forms of mitigating risk.

Borrowers typically know their collateral, industriousness, and moral integrity better than do lenders. On the other hand, entrepreneurs possess inside information about their own projects for which they seek financing (Leland and Pyle, 1977). Moral hazard hampers the transfer of information between market participants, which is an important factor for projects of good quality to be financed.

Titus (2010) concludes that there is a need for commercial bank to adopt non-performing loans management practices. Such practices include; ensuring sufficient collaterals, limiting lending to various kinds of businesses, loan securitization, ensuring clear assessment framework of lending facilities and use of procedures in solving on problematic loans among others. According to Laurin and Majnoni (2003), some relationship managers ignore the review on fundamental information,

³⁶ See- Response of National Bank of Kenya Ltd. to challenges of non-performing loans

http://erepository.uonbi.ac.ke/bitstream/handle/11295/21570/Mathara_The%20response%20of%20National%20Bank%20of%20Kenya%20limited%20to%20the%20challenge%20of%20non-performing%20loans.pdf?sequence=3

admittance conditions and collateral revaluation of customers, which impair the authenticity and reliability of pre-loan investigation information.

- **Monitoring of credit assets to manage migration risk**

As the Basel Committee on Bank Supervision (BCBS) postulates,³⁷ “borrowers and facilities must have their ratings refreshed at least on an annual basis; certain credits, especially higher risk borrowers or problem exposures, must be subject to more frequent review. In addition, banks must initiate a new rating if material information on the borrower or facility comes to light”. BCBS, furthermore, indicates that monitoring shifts in new rating patterns can be a useful input in anticipating future default signals, when scrutinising obligors’ historical track records. Such monitoring can be founded upon the notion that phases of increased default risk are seen to follow earlier phases of highly frequent new ratings. Nevertheless, a bank’s feasibility to continuously monitor a risky borrower and to efficiently assess the level of creditworthiness remains a critical issue.

- **Predatory lending (Reckless and fraudulent)**

According to Karanja and Senaji (2022)³⁸, credit risk in lending has a long history that dates back to the 2008-2009 global financial crisis, often known as the great recession. The fundamental cause of the financial crisis was deregulation in the financial industry. The housing market bubble was fuelled by an excess of mortgage-backed securities (MBS) that packaged high-risk loans together. Unprecedented levels of defaulted loans came from reckless lending; when the losses were totalled up, several financial institutions failed, demanding a government bailout (Mukhtarov, Yuksel, & Mammadov, 2018)³⁹.

- **Poor debt collection practices due to lack of competencies in collection of debts (lack of proper training and regulation of the debt collectors)**

In terms of National Credit Act of South Africa⁴⁰, a credit provider may not enter into a credit agreement with a consumer without first taking reasonable steps to assess the consumer’s debt repayment history, existing financial means, prospects and obligations, his understanding of the risks and costs of the proposed credit, and his rights and obligations under a proposed credit agreement. The credit agreement will be reckless if the credit provider fails to conduct this assessment, irrespective of the outcome of the assessment. In addition, the level of education of credit officers and years of lending experience among staff were also found to affect lending

³⁷ See: Basel Committee on Bank Supervision (BCBS) <https://www.bis.org/publ/bcbs75.pdf>

³⁸ <https://www.researchgate.net/profile/Thomas-Senaji-2> - Karanja and Senaji (2022) - (Dr. John Gakuu Karanja, PhD Kenya Institute for Public Policy Research and Analysis Prof. Thomas A. Senaji, PhD DVC, Academic Affairs, The East African University, Kenya)

³⁹ <https://unec.edu.az/application/uploads/2019/09/Muxtarov-Sehriyar-1.pdf>

⁴⁰ <https://www.banking.org.za/consumer-information/consumer-information-legislation/national-credit-act/>

performance in commercial banks. A reference is made by Karanja and Senaji that, according to Richard, Chijoriga, and Kaijage (2010), the credit risk management staff's quality in terms of experience and education is a critical success factor in credit management. This is because employees guarantee that the necessary depth of knowledge and judgment is always available. As a result, personal judgment and intuition play a significant part in credit risk management.

Furthermore, Muhamad & Basah (2016) found that education background influenced credit risk management awareness, implying that knowledge of the staff is an important component of credit risk management. Furthermore, the quality of the loan authorization process is determined by the staff who handle the loan application and is a crucial determinant of the credit management system's effectiveness, (Muhamad, N. & Basah, M. (2016).

Table .1 Trend of Non- performing Loans in Saccos

NON-PERFORMING LOANS - SACCOS (in million shillings)											
Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Gross Loans	125,784	157,231	188,597	228,524	258,183	297,604	331,212	374,280	418,550	474,770	608,750
NPLs	12,185	11,540	8,902	13,097	13,214	15,574	21,000	23,570	25,790	39,860	54,730
Percentage	10%	7%	5%	6%	5%	5%	6%	6%	6%	8%	9%

Source: Asset Quality Statistics -SASRA -Annual Supervision Report (2011-2-21)- SASRA Reports: www.sasra.go.ke/sacco-supervision-reports/

Figure .1 A Chart of Trend for Non-performing Loans in DT-Sacco Sector for Period 2011 to 2021



Figure .2 A Graph DT- SACCO Non-performing Loans to Gross Loan Ratio (PAR) for Period 2011 to 2021

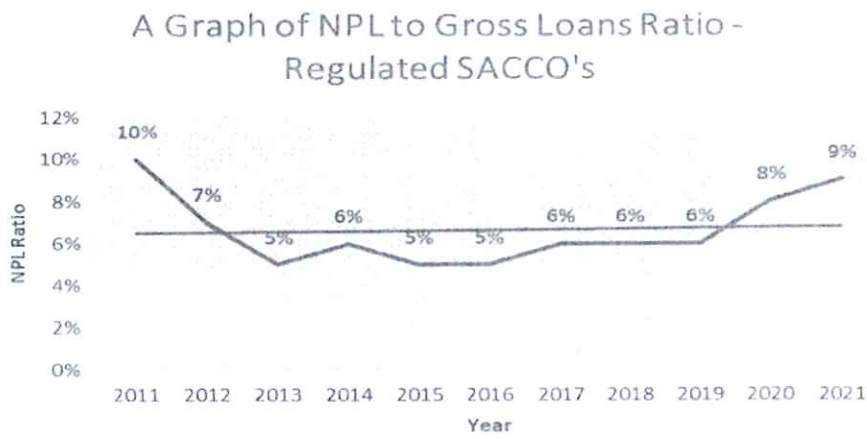


Table .2 Trend of Non- performing Loans in Banking Sector over last 10yrs
NPLS TRENDS FROM 2012 (SH"Milion")

	Dec-12	Dec-13	Dec-14	Dec-15	Dec-16	Dec-17	Dec-18	Dec-19	Dec-20	Dec-21
Gross loans and Advances	1,330,365	1,578,768	1,940,781	2,165,329	2,293,190	2,413,851	2,488,117	2,690,910	3,006,104	3,255,000
Gross Non-Performing Loans	61,917	81,857	108,300	147,331	214,374	264,617	316,712	336,588	436,067	460,000
Specific Provisions	27,185	32,247	41,833	50,789	74,858	101,193	115,599	134,296	198,067	214,400
NPLs to Gross Loans Ratio	5%	5%	6%	7%	9%	11%	13%	13%	15%	14%

Source : CBK BSD Annual Reports <https://www.centralbank.go.ke/reports/bank-supervision-and-banking-sector-reports/>

11.3.1.2 Noncompliance with regulatory requirements (capital adequacy, prohibited business practices, single obligor limit and advances on real estate).

Impact:

- High (Increasing) default rates affect the going concern of the institutions making it difficult to effectively carry out the financial intermediation function. This affects economic growth.
- Bank failures leading to customer deposits' losses (the amount claimable from KDIC is limited to Ksh. 500,000)⁴¹.
- Diminished profits dissuading investors. This results from increased costs of handling bad credit assets (loans and advances) like legal fees, debt collection commissions, auction charges etc.
- Negative effect on the economy since provision of credit fails to serve the intended purpose of spurring economic growth. Most overburdened borrowers end up not developing and even lose what they had before borrowing
- Reckless and fraudulent lending kills the spirit and culture of saving, a key aspect in the economy.

11.3.1.3 Credit Risk Management Issues (problems) in Regulated Sacco's evidenced by growth of NPLs on an increasing trend

Noncompliance with regulatory requirements (capital adequacy, prohibited business practices, single obligor limit and advances on real estate). This emanates from the employment of credit staff who are not particularly certified to manage credit hence lacking knowledge on the regulatory requirements. Though on the job training tends to solve this, the staff are not regulated in terms of their professional conduct by a professional body.

Impact

- SACCO failures leading to members' deposits' losses (Section 59 (1) of Sacco Societies Act No. 14 of 2008 provides a maximum of Ksh. 100,000 as the compensation per member in case of a Sacco failure)
- Diminished profits dissuading investors. This results from increased costs of handling bad credit assets (loans and advances) like legal fees, debt collection commissions, auction charges etc. Killing of the savings culture as the public loses confidence in the institutions.
- Negative effect on the economy since provision of credit fails to serve the intended purpose of spurring economic growth.

⁴¹ <https://kdic.go.ke/deposit-insurance>

11.4 Non-Regulated Financial Institutions

These are institutions not covered under CBK, MFI Act, SASRA, CMA et.c. These institutions do not have a direct regulatory body. Examples of Non-Regulated Institutions of Include:

- Credit Only Micro-Finance Institutions (e.g Watu & Mogo)
- Digital Lenders
- Non-regulated Cooperatives
- Table Banking
- Village Savings and Loans Associations (VLSA)
- FSA (Financial Savings Associations- Pioneer FSA)

Non-regulated institutions in Kenya have emerged as important providers of financial services, particularly for underserved communities. However, the absence of regulatory oversight has led to various challenges, including public exploitation through exorbitant interest rates, debt shaming, and unfair collection practices. As a result, there is a pressing need to regulate these institutions to protect the rights and interests of vulnerable borrowers.

11.4.1 Issues Related to Code and Conduct of Credit Professionals in Non-regulated financial Institutions

Issues of concern the regulation Seeks to mitigate include;

- a) **Exploitative Interest Rates:** Unregulated microfinance and digital lenders in Kenya often charge exorbitant interest rates, exploiting vulnerable borrowers. These high rates can lead to debt traps and financial instability.
- b) **Predatory Lending Practices:** Unregulated lenders may engage in predatory practices, such as lending to borrowers who do not have the means to repay or encouraging frequent borrowing. This perpetuates a cycle of debt and financial dependency.
- c) **Over indebtedness:** Lack of regulation allows borrowers to accumulate multiple loans without proper assessment of their repayment capacity. This can lead to over indebtedness, where borrowers struggle to meet their financial obligations and face severe financial distress.
- d) **Harassment and Abusive Collection Methods:** Unregulated lenders may employ aggressive and unethical collection practices, subjecting borrowers to harassment, constant calls, and even threats. This can cause immense stress and negatively impact the mental and emotional well-being of borrowers.
- e) **Lack of Transparency:** Unregulated lenders often lack transparency in their terms and conditions, making it difficult for borrowers to fully understand the costs and

obligations associated with their loans. This can lead to misunderstandings and exploitation.

- f) **Limited Consumer Protection:** In the absence of regulation, borrowers have limited avenues for complaint resolution and little protection against fraudulent or unfair practices. This leaves them vulnerable to exploitation and without proper recourse in case of disputes.
- g) **Negative Impact on Credit History:** Unregulated lenders may not report positive repayment behavior to credit reference bureaus but often report defaults or late payments. This can damage borrowers' credit history and limit their access to formal financial services in the future.
- h) **Increased Poverty Levels:** Unregulated lending practices can contribute to increased poverty levels as borrowers struggle to repay loans and meet their basic needs. It can exacerbate income inequality and hinder socio-economic development.
- i) **Undermining Financial Inclusion Efforts:** Unregulated lenders may not prioritize financial inclusion goals or provide services to underserved populations. This hampers efforts to expand access to formal financial services and promote inclusive economic growth.
- j) **Systemic Risks:** The lack of regulation and oversight in the microfinance and digital lending sector can pose systemic risks to the overall financial stability of Kenya. It can lead to the accumulation of non-performing loans and potentially trigger financial crises or disruptions.

11.4.2 How the Regulation of Credit professionals will address Issues Identified above:

The case for having a regulation on their conduct

- a) **Consumer Protection:** Regulation ensures that MFIs adhere to fair and ethical practices, protecting borrowers from predatory lending and abusive collection methods. It establishes guidelines on interest rates, loan terms, transparency, and disclosure requirements, preventing exploitation and promoting responsible lending.
- b) **Financial Stability:** Regulating MFIs contributes to the overall stability of the financial system. It helps prevent excessive risk-taking, ensures proper risk management practices, and reduces the likelihood of systemic risks arising from the microfinance sector. This stability benefits both borrowers and the broader economy.
- c) **Risk Mitigation:** Regulatory oversight helps identify and mitigate risks associated with MFIs. Adequate regulation can address issues like over indebtedness, non-performing loans, and poor lending practices, reducing the risk of financial distress for borrowers and preventing potential economic shocks.
- d) **Enhancing Financial Inclusion:** Regulation can foster an enabling environment for financial inclusion. By setting clear guidelines and standards, it encourages MFIs to serve underserved populations and promotes the development of innovative and accessible financial products tailored to the needs of low-income individuals and small businesses.

- e) **Building Trust and Confidence:** Regulation establishes a framework of rules and accountability, instilling trust and confidence in the microfinance sector. When borrowers have faith in the fairness and transparency of MFIs, they are more likely to engage with formal financial institutions, fostering a healthier financial ecosystem.
- f) **Data Reporting and Monitoring:** Regulatory oversight enables the collection of accurate data on MFIs' operations, loan portfolios, and borrower profiles. This data is crucial for effective policymaking, assessing market trends, identifying potential risks, and designing targeted interventions to support the growth and sustainability of the microfinance sector.
- g) **Professionalization and Capacity Building:** Regulation promotes professionalism and capacity building within MFIs. It establishes minimum standards for governance, operational practices, and staff training, ensuring that MFIs are well-equipped to deliver quality financial services. This enhances their efficiency, effectiveness, and long-term viability.
- h) **Collaboration and Coordination:** Regulatory oversight facilitates collaboration and coordination among MFIs, regulators, and other stakeholders. It allows for knowledge sharing, best practices dissemination, and collective efforts to address common challenges, leading to a more robust and resilient microfinance sector.
- i) **Investor Confidence:** Regulation attracts domestic and international investors by providing assurance of a regulated and well-governed microfinance sector. Investor confidence leads to increased funding opportunities, enabling MFIs to expand their operations, enhance product offerings, and better serve their target clientele.
- j) **International Standards and Best Practices:** Regulation aligns the microfinance sector in Kenya with international standards and best practices. This fosters harmonization, facilitates cross-border operations, and positions Kenyan MFIs to benefit from global networks and partnerships.

11.5 The Training of Credit Professional and Code of Conduct

Training of credit professionals ensures that they possess the necessary knowledge, skills, and ethical understanding to deliver quality services. It enhances their productivity by equipping them with the tools to handle complex credit scenarios, make informed decisions, and effectively communicate with debtors. By investing in training, organizations can cultivate a highly skilled and productive credit workforce, leading to improved outcomes and customer satisfaction

According to Richard, Chijoriga, and Kaijage (2010)⁴², the credit risk management staff's quality in terms of experience and education is a critical success factor in credit management. This is because employees guarantee that the necessary depth of knowledge and judgment is

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http://repository.businessinsightz.org/bitstream/handle/20.500.12018/1557/Credit_risk_management_system_of_a_commercial_bank_in_Tanzania_%281%29%5B1%5D.pdf?sequence=1&isAllowed=y

always available. As a result, personal judgment and intuition play a significant part in credit risk management. Furthermore, Muhamad & Basah (2016)⁴³ found that education background influenced credit risk management awareness, implying that knowledge of the staff is an important component of credit risk management. Furthermore, the quality of the loan authorization process is determined by the staff who handle the loan application and is a crucial determinant of the credit management system's effectiveness, (Muhamad, N. & Basah, M. (2016). The study on relationship education background towards credit risk management knowledge and awareness among micro business in Malaysia. *International Journal of Business and Social Science*, Vol. 7, (5))

Those handling credit management in financial institutions should have adequate professional training and be certified by a national or equivalent examinations body. This is the practice in developed economies such as the USA⁴⁴, UK⁴⁵, Canada⁴⁶ and South Africa⁴⁷, to mention but a few. The competencies have been spelt in the Certified Credit Professionals (CCP) qualification curriculum as examined by Kasneb⁴⁸. Formal accredited training curriculum for credit professionals like one offered by Kasneb and approved by Kenya National Qualifications Authority as KNQA No.7 equips credit professionals with the necessary knowledge and skills to perform their roles effectively. They gain a deeper understanding of credit and debt-related concepts, regulations, and industry best practices. This knowledge allows them to make informed decisions, assess debtor situations accurately, and provide appropriate solutions. With a solid foundation of knowledge and skills, credit professionals can deliver high-quality services and effectively navigate complex credit scenarios.

Formal accredited training curriculum like one offered by Kasneb and approved by Kenya National Qualifications Authority ensure that credit professionals are well-versed in the laws and regulations governing their work. They understand the legal requirements and ethical obligations related to credit, debt collection, and consumer protection. This knowledge enables them to conduct their activities in compliance with the relevant regulations, reducing the risk of legal violations and associated penalties. Compliance with regulations helps maintain the quality and integrity of the credit professional's work. Formal accredited training curriculum for credit professionals like one offered by Kasneb and approved by Kenya National Qualifications Authority as KNQA No.7 equips credit professionals ensures there is improved Communication and Negotiation Skills. Credit professionals learn effective communication techniques, active listening, empathy, and conflict resolution strategies.

⁴³ https://ijbssnet.com/journals/Vol_7_No_5_May_2016/13.pdf

⁴⁴ See: National Association of Credit Management <https://nacm.org/> - USA

⁴⁵ See: Chartered Institute Of Credit Management, <https://www.cicm.com/> - UK

⁴⁶ See: Credit Institute of Canada (CIC) <https://creditinstitute.org/> - Canada

⁴⁷ See: Institute of Credit Management NPC <https://www.icmorg.co.za/> - South Africa

⁴⁸ See: Certified Credit Professionals (CCP) <https://www.kasneb.or.ke/certified-credit-professionals-ccp/> - KE

These skills enable them to establish rapport with debtors, effectively convey information, address concerns, and negotiate repayment plans. Strong communication and negotiation skills contribute to positive debtor interactions, increased cooperation, and more productive outcomes.

Formal training equips credit professionals with problem-solving and decision-making techniques. They learn to analyze debtor situations, identify viable options, and make informed decisions regarding debt resolution. Through case studies, role-playing exercises, and real-life scenarios, professionals develop critical thinking skills and the ability to evaluate multiple factors while making decisions. This enhances their productivity by enabling them to handle complex credit situations efficiently and effectively. Adherence to Quality Standards: Training programs often emphasize adherence to quality standards and best practices in the credit industry. Credit professionals learn about quality management principles, customer satisfaction, and continuous improvement. They understand the importance of maintaining accuracy, consistency, and professionalism in their work. By adhering to quality standards, credit professionals enhance the overall quality of their services, leading to improved outcomes for both debtors and creditors.

Continuous Professional Development: Training is not a one-time event; it should be an ongoing process. Credit professionals who engage in continuous professional development stay updated on industry trends, regulatory changes, and emerging practices. They acquire new knowledge and skills, which helps them adapt to evolving credit landscapes and enhance their productivity. Continuous learning also fosters a sense of professionalism, motivation, and a commitment to delivering high-quality results.

11.5.1 Role of Trained and Qualified Regulated Credit professional

- a) To ensure that people handling credit are professionally trained and have the requisite competencies, from the originators of credit assets to collectors of the resources given out as credit.
- b) To ensure continuous professional development the credit professionals
- c) Enhance prudent management of credit assets in the institutions reducing risks of default thus promoting profitability and the going concern of the institutions.
- d) Regulate third party debt collections agencies to ensure that they operate as per the prevailing laws and the proposed code of professional conduct.
- e) Disciplinary process for professional misconduct in the credit provision practice.

11.6 Summary of the Gaps/Mischiefs

The petitioners petition seeks to cure several mischiefs and gaps that affect the; (a) Members of public; (b) The Market and (c) credit professionals. The mischief or gaps Include;

Table .1

Gaps and Mischiefs Identified		
Public	Market	Professional
<ul style="list-style-type: none"> • Harassment and abusive collection methods • Undermining financial inclusion • Systematic risks • Public education on wise borrowing and utilization of loans is lacking due to low utilization of services of reputable and competent credit professionals and professional regulating body for credit professionals • Lack of transparency on interest rates structures and all terms of the credit- this goes against the consumer protection act requirements of disclosures • High default rates by borrowers due to non-disclosures by the lending institutions • Contagion tendencies by members of public- leading to default of revolving fund like Hustler fund, Uwezo, Youth fund • Citizens are culprit of exploitative interest rates from predatory lenders due to lack of adequate knowledge -that can only be offered by trained credit professionals • Over indebtedness leading to mental health issues • Tainted credit history due to abuse of listing regulations 	<ul style="list-style-type: none"> • Systematic risks- mainly those triggered by credit risk events • Investors' Confidence and of public confidence • Brand reputation and good corporate image • Institutional stability • Sound credit risk management • Profitability and sustainability • Exploitative interest rates and Predatory lending <ul style="list-style-type: none"> • Lack of compliance with consumer protection act 	<ul style="list-style-type: none"> • Lack of training and capacity building of credit officers • Weeding-out unprofessional practitioners • Credibility of the credit professionals as thought leaders in matters credit and debt management • Unethical conduct in debt collection • Undermining financial inclusion <ul style="list-style-type: none"> • International reputation of credit professional and image of the country

12. Conclusion

Given the robust credit markets in Kenya and the strategic role Kenya economy plays in the EAC and the region, having a regulated credit professional is Key to Continued institutional stability. It is therefore the view of the Institute of Credit management (Kenya) that having regulated credit professionals has a significant impact on institutional stability. This is premised on the fact that Credit professionals are responsible for assessing and managing the creditworthiness of individuals, businesses, and other entities. The primary role of trained and qualified credit professionals is to minimize credit risk and ensure that the institution's lending practices are sound and sustainable. It's our conclusion that enacting a legislation to regulate the credit professionals adds value to institutional stability in Kenya's economy in the following ways:

- **Risk Assessment:** Trained and qualified Credit professionals play a crucial role in assessing the creditworthiness of borrowers. They evaluate various factors such as financial statements, credit history, and industry trends to determine the level of risk associated with lending to a particular borrower. By effectively assessing and managing risk, credit professionals help maintain the stability of the institution's loan portfolio. This reduces the likelihood of defaults and loan losses, which can have a significant impact on the institution's financial stability.
- **Risk Mitigation:** In addition to assessing risk, Trained and qualified credit professionals also work on mitigating it. They establish credit policies and procedures, including setting appropriate credit limits, collateral requirements, and interest rates. By implementing effective risk mitigation strategies, credit professionals can minimize the institution's exposure to potential losses. This proactive approach helps in maintaining institutional stability by ensuring that the institution's lending activities are conducted within acceptable risk levels.
- **Portfolio Management:** Trained and qualified Credit professionals are responsible for monitoring and managing the institution's loan portfolio. They regularly review the performance of existing loans, identify potential issues, and take appropriate actions to mitigate risks. By actively managing the loan portfolio, credit professionals can identify and address problem areas in a timely manner, thus minimizing the impact on institutional stability.
- **Compliance and Regulatory Requirements:** Trained and qualified Credit professionals ensure that the institution's lending practices comply with relevant regulations and guidelines. They stay updated on industry-specific regulations, such as those related to consumer lending, commercial lending, or mortgage lending. By adhering to these regulations, credit professionals help protect the institution from legal and reputational risks. Compliance with regulatory requirements is essential for maintaining institutional stability and preserving the institution's reputation in the market.
- **Relationship Management:** Trained and qualified Credit professionals often interact directly with borrowers, helping to establish and maintain positive relationships. Effective communication and relationship management are important for understanding the financial needs and challenges of borrowers. By building trust and rapport, credit professionals can better assess borrowers' creditworthiness and work collaboratively to find mutually beneficial solutions. This can contribute to a stable and long-term relationship between the institution and its borrowers, reducing the likelihood of defaults and improving overall institutional stability.

In summary, the role of credit professionals is closely tied to institutional stability. Their expertise in risk assessment, risk mitigation, portfolio management, compliance, and relationship management contribute to maintaining a stable lending environment, minimizing credit losses, and ensuring the institution's long-term viability.

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