

**SPECIAL ISSUE**

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**KENYA GAZETTE SUPPLEMENT**

**ACTS, 2013**

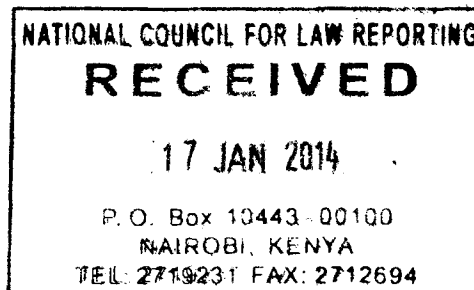
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**NAIROBI, 2nd December, 2013**

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**THE KENYA DEPOSIT INSURANCE (AMENDMENT) ACT,  
2013****No. 39 of 2013***Date of Assent: 27th November, 2013**Date of Commencement: 11th December, 2013***An Act of Parliament to amend the Kenya Deposit Insurance Act,  
and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya Deposit Insurance (Amendment) Act, 2013.

2. Section 2 of the Kenya Deposit Insurance Act, 2012, in this Act referred to as “the principal Act”, is amended by inserting the following new definitions in their proper alphabetical sequence—

“exclusion and transfer process” means the process that commences when the Corporation is appointed receiver and or assumes control of a problem institution and shall consist of—

- (a) exclusion and transfer of part or total deposits and liabilities from a problem institution to another solvent and well-managed institution;
- (b) exclusion and transfer of part or total assets to the institution receiving the liabilities; and
- (c) liquidation of the residual assets and liabilities.

“lesser cost rule” means the adoption of the lower of—

- (a) the cost to the Corporation of payment of insured deposits in liquidation of an institution, and
- (b) the cost to the Corporation in undertaking the exclusion and transfer process;

“problem institution” means any institution that places the interest of its depositors or the banking sector at risk;

“systemic risk” means the possibility of a failure of one or more institutions which may cause severe disruptions in the financial system.

**Short title.**

**Amendment to  
section 2 No. 10 of  
2012.**

**2013***The Kenya Deposit Insurance (Amendment)***No. 39**

Amendment to  
section 6 of No. 10  
of 2012

**3.** Section 6 of the principal Act is amended—

- (a) in paragraph (b) by inserting the following proviso immediately after subparagraph (iii)—

“Provided that the powers of the Corporation under this paragraph shall be exercised only to avert systemic risk and with the approval of the Cabinet Secretary”.

- (b) in paragraph (g) by inserting the words “or deposit insurers within or outside Kenya” immediately after the word “regulators”.

Amendment to  
section 7 of No. 10  
of 2012

**4.** Section 7 of the principal Act is amended —

- (a) in subsection (1)—

- (i) by inserting the following proviso immediately after paragraph (a) —

“Provided that the chairperson appointed under this paragraph shall not be from the member institutions of the Corporation”;

- (ii) by inserting the following new paragraph immediately after paragraph (b)—

“(bb) the Attorney General or his representative”;

- (iii) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) six members, not being public officers and three of whom shall be from institutions, appointed by the Cabinet Secretary in consultation with the Corporation”.

- (b) by inserting the following new subsection immediately after subsection (2)—

“(3) A person shall be qualified to be appointed under subsection (1)(d) if the person holds a university degree from a university recognized in Kenya and has not less than ten years’ experience in—

- (a) banking;
- (b) finance;
- (c) insurance;
- (d) commerce;
- (e) law;
- (f) accounting;
- (g) economics,

or any other related discipline.

**5. Section 16 of the principal Act is amended—**

(a) in subsection (1)—

- (i) by deleting paragraph (a);
- (ii) in paragraph (c) by inserting the words “or the Corporation” at the end thereof;

(b) by deleting subsection (2) and replacing with the following new subsection—

“(2) Parliament may, in exigent circumstances, appropriate such funds as may be required by the Corporation for purposes of this Part”.

(c) by inserting a new subsection immediately after subsection (3) as follows—

“(4) If at any time the amount available in the Corporation is insufficient to meet the requirements of the Corporation, the Corporation shall transfer from the Fund, on such terms and for such period as may be determined by the Board, such amount as may be sufficient to meet the requirements of the Corporation”.

**6. Section 20 of the principal Act is amended—**

- (a) by deleting the word “Corporation” appearing in subsection (4) and substituting therefor the word “Fund”;
- (ii) by deleting subsection (5).

**7. The principal Act is amended by inserting the following new section immediately after section 20—**

**20A.** The Board may, from time to time, fix the size of the Fund sufficient to protect the interests of depositors to be made up by contributions under section 20(3).

**8. Section 21 of the principal Act is amended—**

- (a) in subsection (1), by inserting the words “or any other person” immediately after the words “Central Bank”;

Amendment to section 16 of No. 10 of 2012.

Amendment to section 20 of No. 10 of 2012

Insertion of new section 20A in No. 10 of 2012.

Amendment to section 21 of No. 10 of 2012.

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No. 39

- (b) by deleting subsection (2) and substituting therefor the following new subsection -

“(2) The total amount outstanding at any one time on account of any advances made under subsection (1) shall not exceed twenty-five percent of the Fund”;

- (c) by deleting the words “Central Bank in consultation with the Cabinet Secretary”, at the end of subsection (3) and substituting therefor the words “the lender and the Corporation”;

- (d) by deleting the marginal note and substituting therefor the words “Borrowing by the Corporation.”

Amendment to section 22 of No. 10 of 2012.

9. Section 22 of the principal Act, is amended by deleting paragraph (b) and replacing it with the following—

“(b) any other securities and in such currencies as may be prescribed in a Gazette by the Cabinet Secretary from time to time”.

Amendment to section 27 of No. 10 of 2012.

10. Section 27 of the principal Act is amended by—

- (a) inserting the following proviso at the end of subsection (1)—

“Provided the Corporation shall consider the risk profile of an institution in the determination of the contribution.

- (b) inserting the following proviso at the end of subsection (3)—

“Provided that for institutions that have been members for less than twelve months, the amount of deposits shall be prorated for the number of months that the institutions have been in operation.”

- (c) inserting the following new subsection immediately after subsection (4)—

“(4A) In the event the Fund does not have sufficient monies to meet the tasks specified in paragraph (a) of section 23 of this Act, the Corporation shall appropriate from future contributions to set off unpaid insured deposits, and may resort to other sources of funding allowed under the Act”.

Deletion and replacement of Section 33 of No. 10 of 2012.

11. Section 33 of the principal Act is amended—

- (a) by deleting subsection (6) and substituting therefor the following new subsection—

“(6) Where the Corporation is obliged to commence payments under subsection (1) in respect of any insured deposits, the Corporation shall, unless there are extraneous circumstances hindering the Corporation, within thirty days after being appointed liquidator make payment to the depositor based on the records of the institution and the opinion of the Corporation as regards entitlement of the amount claimed”.

- (b) by inserting the following new subsection immediately after subsection (7)—

“(8) The Corporation may make such advance, interim or emergency partial payments under this Part as may be prescribed”.

12. Section 35 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendments to  
section 35 of No. 10  
of 2012

“(3) The Corporation shall be entitled to payment of its subrogated claims under subsection (2) prior to further payment to any other depositor or creditor of the institution”.

13. Section 50 of the principal Act is amended—

Amendment to  
section 50 of No. 10  
of 2012.

- (a) in subsection (1), by renumbering paragraph (c) as paragraph (b);  
(b) by inserting the following new subsections immediately after subsection (6)—

“(7) In undertaking its functions under this Part, the Corporation may—

- (a) in circumstances that do not pose systemic risk, draw from the Fund to facilitate a bank resolution process under the lesser cost rule.  
(b) in circumstances that pose systemic risk and in order to minimize moral hazard and resolution costs while preserving banking services in case of an institution’s failure adopt various resolution mechanisms as may be prescribed with the assistance of the Central Bank and the Government.

(8) The transfer of assets and liabilities of an institution by the Corporation under this Part shall be irrevocable and shall not require the consent of debtors, creditors or any security holders.

(9) In undertaking the exclusion and transfer process the Corporation shall rank liabilities as follows—

- (a) claims by the Corporation;
- (b) insured deposits;
- (c) staff wages;
- (d) uninsured deposits;
- (e) statutory obligations;
- (f) any other creditors.

(10) The Central Bank shall in circumstances that pose systemic risk provide technical assistance to restore the financial and economic condition of an institution”.

Amendment to  
section 53 of No. 10  
of 2012.

14. Section 53 of the principal Act is amended by-

- (a) deleting the marginal note and substituting therefor the words “Term of Receivership”.
- (b) deleting subsection (2) and substituting therefor the following new subsection-

“(2) In the course of receivership, the Corporation may recommend to the Central Bank that the institution be liquidated in which case the Central Bank shall appoint the Corporation as the liquidator”;

- (c) deleting subsection (3).

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15. Section 57 of the principal Act is amended in subsection (1) by inserting the words “including uninsured deposits” immediately after the words “in priority to all other debts” appearing at the end of the opening statement.

Amendment to  
section 57 of No. 10  
of 2012

16. Section 63 of the principal Act is amended—

Amendment to  
section 63 of No. 10  
of 2012.

(a) in the opening statement by deleting the words “approves or concurs” and substituting therefor the words “ or approves”;

(b) by deleting paragraph (b).