



Legal Alert | January 26, 2022

The Central Bank of Kenya (Amendment) Act, 2021

Introduction

The Central Bank of Kenya (Amendment) Act (the “Amendment Act”) was assented into law on December 07, 2021. Its effective date was December 23, 2021. Its principal objective is to regulate and bring the provision of credit or loan facilities through digital channels under the supervision of Central Bank of Kenya (CBK).

Rationale

With the recent technological advances, there has been a significant growth in digital lending in Kenya with an annual digital lending market estimated in the range of Kenya Shillings Thirty-Nine to One Hundred and Ninety-Five Billion as per the 2019 Report by FSD Kenya on Digital Credit in Kenya. This growth is driven by its accessibility to the unbanked population and its convenience in comparison to banks. With the growth in the industry, concerns were raised by the public as to the costs, abuse of personal information and unethical debt collection practices by digital credit providers, who remained unregulated. This necessitated the legislation around digital lending.

Salient features of the Act

Registration of Digital Credit Providers

To facilitate the transition to the regulatory ambit, CBK requested all existing digital credit providers to submit their business details by January 21, 2022 (now past).

Licensing Requirements

The Act requires digital credit business to have a valid licence. Any person who operates without a valid licence shall be liable to imprisonment for a term not exceeding three (3) years or to a fine not exceeding Kenya Shillings Five Million (KES 5,000,000) or both.

The application for licensing may only be made by a company incorporated under the Companies Act, 2015. The CBK must approve or reject an application within sixty (60) days from the date of receipt.

The Act designates all digital credit providers as Data Controllers and Processors. Digital lenders must therefore obtain a Certificate of Registration from the Data Commissioner, prior to registration. This is to curb the abuse of personal information, which they receive in the course of business. In an aim to further protect the consumers of digital lending services, the Act requires that a licence application is accompanied with a statement as to compliance with the Consumer Protection Act.

Information Sharing and Reporting Obligations

Digital lenders are now required to disclose to the licenced credit reference bureaus (CRBs) positive or negative information about their customers as reasonably required for the discharge of their functions. This will assist in building the credit history of the customers. However, pursuant to Legal Notice No. 225 of November 5, 2021, there is an existing suspension on the listing of negative information of borrowers for a period of twelve (12) months from October 01, 2021. The suspension affects loans of below Kenya Shillings Five Million (KES 5,000,000).

Additional Powers of the CBK

In addition to issuing, suspending and revoking licences, the CBK shall have the power to approve lenders’ digital channels and determine their parameters for pricing of digital credit.

The Draft Regulations

In line with the Amendment Act, CBK has released the draft Central Bank of Kenya (Digital Credit Providers) Regulations, 2021 (the “draft Regulations”) for public participation. Comments on the draft Regulations are to be shared with the CBK by January 21, 2022. The draft Regulations can be accessed [here](#).

The Act requires digital lenders to apply for a licence within six (6) months from the date of publication of the Regulations.

Conclusion

The previous attempts to regulate digital lending were unsuccessful despite the risks faced by the consumers, particularly in light of the Data Protection Act and the Consumer Protection Act. The coming into effect of the Amendment Act marks a positive step and is welcome. The requirement for licensing and compliance with the Data Protection Act, will also provide accountability for digital credit providers.

Noting that the CBK has the power to determine the parameters for pricing of digital credit, it remains to be seen how the Amendment Act will affect the cost and access to credit through digital lending in Kenya. This is taking into consideration that commercial banks, two years after the repeal of the interest cap, are still aligning with CBK on loan pricing formulas and cite the failure to align with the CBK, as the reason for decreased lending to customers who are considered risky.

We will keep track of the Regulations and apprise you.

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