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CORPORATE & COMMERCIAL ALERT

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KENYA

Digital credit providers: New licensing requirements

Parliament adopted the Central Bank of Kenya (Amendment) Bill, 2021 (the Amendment Bill) which was gazetted on 16 April 2021. The principal objective of the Bill is to provide licensing requirements for digital credit service providers, who are not regulated under any written law in Kenya.



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Digital credit providers: New licensing requirements

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Parliament adopted the Central Bank of Kenya (Amendment) Bill, 2021 (the Amendment Bill) which was gazetted on 16 April 2021. The principal objective of the Bill is to provide licensing requirements for digital credit service providers, who are not regulated under any written law in Kenya.

The Amendment Bill defines digital credit to mean a credit facility or arrangement, where money is lent or borrowed through a digital channel. It further defines digital credit business to mean the business of providing credit facilities, or loan services through a digital channel. A digital channel will include the internet, mobile devices, computer devices, applications, and any other digital systems prescribed by the Central Bank of Kenya (the CBK).

Once the Amendment Bill is passed the CBK will have the power to:

- a) license digital credit providers;
- b) determine capital adequacy requirements;
- c) determine minimum liquidity requirements;
- d) approve digital channels and business models;
- e) supervise digital credit providers; and
- f) suspend or revoke licenses.

In addition, the CBK will be empowered to make regulations on consumer protection, data protection, permissible and prohibited activities, offences and penalties, anti-money laundering and reporting requirements.

All digital credit providers will be required to be registered with the CBK within six months of the Bill coming into force. Failure to which, a fine of Ksh. five (5) million and/or imprisonment for a term of three years shall be imposed, upon conviction.

The proposed amendments have come amidst complaints of unethical practices engaged in by digital lenders. This unregulated service has occasioned steep lending rates, predatory lending practices, and an illegal coalition of customer's private data and borrower shaming for those who default on repayment. There have also been reports on digital lenders carrying out money laundering practices. This has led the Competition Authority of Kenya to conduct an audit on digital lenders specifically on predatory pricing. In addition, organisations such as Paradigm Initiative, have launched platforms that enable citizens to report violations of digital rights. The Amendment Bill therefore forms part of a multi-level response to unethical practices.

KENYA

Digital credit providers: New licensing requirements...continued

The Amendment Bill will provide oversight that will create a more stable, responsible and level marketplace for digital lenders and borrowers.

The Amendment Bill will provide oversight that will create a more stable, responsible and level marketplace for digital lenders and borrowers. The Digital Lenders Association of Kenya have, however, cautioned against overly onerous, and prescriptive regulation that would undermine financial inclusion. In contrast, the CBK FinTech Cooperation Agreement with the Monetary Authority of Singapore, indicate that international best practices and favourable regulatory lessons will be adopted with respect to Fintech regulations.

The guardrails in the digital lending market are being raised, after years of unregulated operation. Existing digital credit providers and those who intend to enter the market, need to be aware of the proposed changes and prepare to comply with them. However please note that the Amendment Bill must go through the legislative process in Kenya, which involves a first, second and third reading in parliament, followed by presidential assent and enactment.

We are keeping a keen eye on the Amendment Bill and shall regularly provide alerts in the event of any developments.

*Njeri Wagacha and
Rizichi Kashero-Ondego*

2020 CONSISTENT LEADERS IN M&A LEGAL DEALMAKERS

2020

1st by M&A Deal Flow.
1st by BEE Deal Flow.
1st by BEE Deal Value.
2nd by General Corporate Finance Deal Flow.
2nd by General Corporate Finance Deal Value.
3rd by M&A Deal Value.
Catalyst Private Equity Deal of the Year.

2019

M&A Legal DealMakers of the Decade by Deal Flow: 2010-2019.
1st by BEE M&A Deal Flow.
1st by General Corporate Finance Deal Flow.
2nd by M&A Deal Value.
2nd by M&A Deal Flow.

2018

1st by M&A Deal Flow.
1st by M&A Deal Value.
2nd by General Corporate Finance Deal Flow.
1st by BEE M&A Deal Value.
2nd by BEE M&A Deal Flow.
Lead legal advisers on the Private Equity Deal of the Year.

DealMakers

2017

2nd by M&A Deal Value.
1st by General Corporate Finance Deal Flow for the 6th time in 7 years.
1st by General Corporate Finance Deal Value.
2nd by M&A Deal Flow and Deal Value (Africa, excluding South Africa).
2nd by BEE Deal Flow and Deal Value.

 <p>TOP RANKED Chambers Global 2021</p> <p>Cliffe Dekker Hofmeyr</p> <p>BAND 2 Capital Markets: Equity</p>	 <p>TOP RANKED Chambers Global 2021</p> <p>Cliffe Dekker Hofmeyr</p> <p>BAND 1 Corporate/M&A</p>	 <p>TIER 1 CORPORATE & COMMERCIAL, M&A</p> <p>2020-2021</p>	 <p>2020</p> <p>FINANCIAL AND CORPORATE</p> <p>TOP TIER FIRM</p>	 <p>2020 1st by M&A Deal Flow. 2020 1st by BEE Deal Flow. 2020 1st by BEE Deal Value. 2020 2nd by General Corporate Finance Deal Flow. 2020 2nd by General Corporate Finance Deal Value. 2020 3rd by M&A Deal Value. 2020 Catalyst Private Equity Deal of the Year.</p>	 <p>PRIVATE EQUITY AFRICA <i>Awards</i> ★ ★ ★ ★ 2020 WINNER</p> <p>CDH wins Single Deal Local Legal Advisor of the Year award for the OMPE & Footgear deal in the 9th annual Private Equity Africa awards</p>
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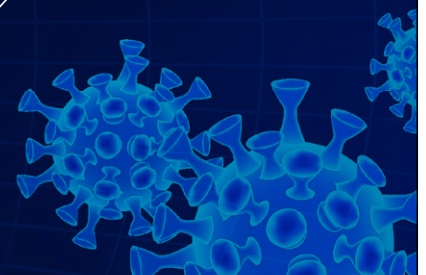
2021 RESULTS

- CDH's Corporate, Commercial and M&A practice** is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2021.
- Ian Hayes** is ranked in the Hall of Fame in Corporate & Commercial and M&A in THE LEGAL 500 EMEA 2021.
- David Pinnock** is ranked as a Leading Individual in Corporate, Commercial and M&A in THE LEGAL 500 EMEA 2021.
- Willem Jacobs** is ranked as a Leading Individual in Corporate, Commercial and M&A in THE LEGAL 500 EMEA 2021.
- Justine Krige** is ranked as a Next Generation Partner in Corporate, Commercial and M&A in THE LEGAL 500 EMEA 2021.
- Johan Latsky** is recommended in Corporate, Commercial and M&A in THE LEGAL 500 EMEA 2021.
- Peter Hesseling** is recommended in Corporate, Commercial and M&A in THE LEGAL 500 EMEA 2021.
- Rachel Kelly** is recommended in Corporate, Commercial and M&A in THE LEGAL 500 EMEA 2021.
- Vivien Chaplin** is recommended in Corporate, Commercial and M&A in THE LEGAL 500 EMEA 2021.
- Roux van der Merwe** is recommended in Corporate, Commercial and M&A in THE LEGAL 500 EMEA 2021.
- CDH's Investment Funds practice** is ranked in Tier 3 in THE LEGAL 500 EMEA 2021.
- John Gillmer** is recommended in Investment Funds in THE LEGAL 500 EMEA 2021.
- Mark Linington** is recommended in Investment Funds in THE LEGAL 500 EMEA 2021.
- Wayne Murray** is ranked as a Rising Star in Investment Funds in THE LEGAL 500 EMEA 2021.



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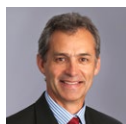


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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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