

CORPORATE & COMMERCIAL ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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Unpacking the Central Bank of Kenya's Digital Credit Providers Regulations of 2022

On March 18 2022, the Central Bank of Kenya (CBK) published and operationalised the CBK Digital Credit Providers Regulations, 2022 (the Regulations). The Regulations accompany the recent enactment of the CBK (Amendment) Act, 2021 (the Act), which came into force on 23 December 2021. The principal objective of the Act is to provide licensing requirements for digital lenders in Kenya. The Regulations therefore provide the procedures and processes to follow in applying for these licences and complying with the provisions of the Act.

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We have set out the key features of the Regulations below. Importantly, the Regulations were largely adopted in their draft form, which we have discussed in an earlier alert. For more information on the implications of the Act and the Regulations (then referred to as the 'Draft Regulations'), please see our previous [alert](#) and [podcast](#) on this topic.

APPLICATION REQUIREMENTS AND PROCESS

In order to apply for a licence, digital lenders are advised that they will need to complete an application form as prescribed in the Regulations and, among other things, provide the CBK with:

- a description of the ICT system to be used in the digital lender's operations and an independent assurance on the systems;

- a description of the delivery channels or platforms to be used, as well as a description of the terms and conditions of the credit products and services to be provided;
- an anti-money laundering and combating the financing of terrorism policy and procedure;
- a data protection policy and procedure;
- a consumer redress mechanisms policy and procedure; and
- a description and evidence of the sources of funds to be invested in the digital lender, to name a few.

Notably, the Regulations depart from the position in the draft regulations which proposed to make registration as a data controller or processor under the Data Protection Act, 2019 (DPA) a prerequisite to this application

for a digital lending licence. As we previously explained, this requirement was foreseeably difficult, because at the time, the DPA regulations that were to govern the registration of a data controller or processor were yet to be published. As at the date of this alert, the DPA regulations have been enacted; although, the Regulations no longer require this as a precondition to a digital lenders licence. Instead, digital lenders are only required to provide the CBK with a data protection policy and procedure. Digital lenders are therefore advised that they do not need to register with the Office of the Data Commissioner prior to obtaining a licence with the CBK.

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Once an application is submitted, the Regulations provide that the CBK will consider the history of the digital lender; the professional and moral suitability of the persons proposed to manage or control the digital lender; the source and evidence of funds to be invested by or in the digital lender; as well as the public interest element in licensing the applicant digital lender. This requirement to consider the public interest creates a new and interesting aspect of the licensing process. It will be interesting to observe how the public interest is considered during the application process and how much value is ascribed to matters of public interest. This approach does however align itself with the CBK's position set forth in their [press release](#), which stated that the Regulations were enacted to "address the concerns raised by the public".

Furthermore, the Regulations provide that upon considering the factors outlined above, the CBK will within 60 days, either grant the licence, grant the licence subject to conditions, or reject the application. Thereafter, the CBK will within 30 days publish the names of the digital lender on the CBK website.

NOTIFICATION REQUIREMENTS

The Regulations provide that a digital lender must notify the CBK of its significant shareholders, director, chief executive officer (CEO) or senior officer, to obtain certification that these persons are fit and proper to perform the intended function. Digital lenders are advised that they will need to fill in the prescribed forms in relation to each of these persons and submit them to the CBK for approval.

The Regulations further grant the CBK the power to assess the suitability of these individuals from time to time, where it considers it

necessary. Therefore, digital lenders should ensure that the fit and proper requirements set forth in the Act are met at all times. Any changes in the significant shareholding, board or management structure or any appointment of a new director or senior officer will warrant notification to the CBK, at least 30 days prior to the effective date of the intended change or appointment.

TIMELINES, FEES AND RETURNS

According to the press release, all digital lenders must be registered with the CBK by 17 September 2022, failure to which they must cease operations.

Furthermore, the Regulations have confirmed that the fee for a licence is five thousand shillings (Kshs 5,000 approximately USD 45), whilst the annual fee is twenty thousand shillings (Kshs 20,000 approximately USD 175).

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In relation to returns, the Regulations require digital lenders to submit an annual return to the CBK certifying that it has complied with the provisions of the Act and the Regulations. Failure to which, the CBK is entitled to impose a number of administrative sanctions, including a monetary penalty not exceeding five hundred thousand shillings (Kshs 500,000 approximately USD 4,500) on the digital lender, its directors, officers or employee's responsible for the non-compliance. Other sanctions include suspension or disqualification from office of the non-compliant director, officer, or employee, as well as more frequent CBK inspections into the digital lender's operation, to name a few. The Regulations further provide that the CBK will determine the administrative sanctions on a case-by-case basis, meaning that different sanctions may be imposed for different violations and against different digital lenders.

CONCLUSION

The Regulations seek to address concerns raised by the public over the last few years in response to the significant growth of digital lending in Kenya. The Act was established to provide oversight and provide for consumer protection, credit information sharing and outline the obligations of digital lenders in Kenya. The enactment of the Regulations now give force to the Act and have made the provisions of the Act operational and enforceable.

Existing digital lenders, and those who intend to enter the market are advised to begin the application process to ensure that they meet the 17 September 2022 deadline.

**NJERI WAGACHA AND
TYLER HAWI AYAH**

2022 RESULTS

CHAMBERS GLOBAL 2021 - 2022

ranked our Corporate & Commercial practice in Band 1: corporate M&A and in Band 2 capital markets: Debt and capital markets: equity.

Ian Hayes ranked by **CHAMBERS GLOBAL 2022** in Band 1: corporate M&A.

David Pinnock ranked by **CHAMBERS GLOBAL 2022** in Band 1: corporate M&A: private equity.

Johan Latsky ranked by **CHAMBERS GLOBAL 2022** as a Senior Statesperson for capital markets: equity.

Jackie King ranked by **CHAMBERS GLOBAL 2022** in Band 2: capital markets: debt.

Peter Hesseling ranked by **CHAMBERS GLOBAL 2022** in Band 2: corporate M&A.

Willem Jacobs ranked by **CHAMBERS GLOBAL 2022** in Band 2: corporate/M&A and in Band 3: corporate/M&A: Private equity.

Sammy Ndolo ranked by **CHAMBERS GLOBAL 2022** in Band 4: corporate/M&A, Kenya.

David Thompson ranked by **CHAMBERS GLOBAL 2022** in Band 4: corporate/M&A.

Gasant Orrie ranked by **CHAMBERS GLOBAL 2022** in Band 5: corporate/M&A.



Cliffe Dekker Hofmeyr

OUR TEAM

For more information about our Corporate & Commercial practice and services in South Africa and Kenya, please contact:



Willem Jacobs
Practice Head
Director
Corporate & Commercial
T +27 (0)11 562 1555
M +27 (0)83 326 8971
E willem.jacobs@cdhlegal.com



David Thompson
Deputy Practice Head
Director
Corporate & Commercial
T +27 (0)21 481 6335
M +27 (0)82 882 5655
E david.thompson@cdhlegal.com



Sammy Ndolo
Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com

Roelof Bonnet
Director
T +27 (0)11 562 1226
M +27 (0)83 325 2185
E roelof.bonnet@cdhlegal.com

Tessa Brewis
Director
T +27 (0)21 481 6324
M +27 (0)83 717 9360
E tessa.brewis@cdhlegal.com

Etta Chang
Director
T +27 (0)11 562 1432
M +27 (0)72 879 1281
E etta.chang@cdhlegal.com

Vivien Chaplin
Director
T +27 (0)11 562 1556
M +27 (0)82 411 1305
E vivien.chaplin@cdhlegal.com

Clem Daniel
Director
T +27 (0)11 562 1073
M +27 (0)82 418 5924
E clem.daniel@cdhlegal.com

Jenni Darling
Director
T +27 (0)11 562 1878
M +27 (0)82 826 9055
E jenni.darling@cdhlegal.com

André de Lange
Sector head
Director
Agriculture, Aquaculture
& Fishing Sector
T +27 (0)21 405 6165
M +27 (0)82 781 5858
E andre.delange@cdhlegal.com

John Gillmer
Joint Sector head
Director
Private Equity
T +27 (0)21 405 6004
M +27 (0)82 330 4902
E john.gillmer@cdhlegal.com

Johan Green
Director
T +27 (0)21 405 6200
M +27 (0)73 304 6663
E johan.green@cdhlegal.com

Ian Hayes
Director
T +27 (0)11 562 1593
M +27 (0)83 326 4826
E ian.hayes@cdhlegal.com

Peter Hesseling
Director
T +27 (0)21 405 6009
M +27 (0)82 883 3131
E peter.hesseling@cdhlegal.com

Quintin Honey
Director
T +27 (0)11 562 1166
M +27 (0)83 652 0151
E quintin.honey@cdhlegal.com

Brian Jennings
Director
T +27 (0)11 562 1866
M +27 (0)82 787 9497
E brian.jennings@cdhlegal.com

Rachel Kelly
Director
T +27 (0)11 562 1165
M +27 (0)82 788 0367
E rachel.kelly@cdhlegal.com

Yaniv Kleitman
Director
T +27 (0)11 562 1219
M +27 (0)72 279 1260
E yaniv.kleitman@cdhlegal.com

Justine Krige
Director
T +27 (0)21 481 6379
M +27 (0)82 479 8552
E justine.krige@cdhlegal.com

Johan Latsky
Executive Consultant
T +27 (0)11 562 1149
M +27 (0)82 554 1003
E johan.latsky@cdhlegal.com

Nkcubeko Mbambisa
Director
T +27 (0)21 481 6352
M +27 (0)82 058 4268
E nkcubeko.mbambisa@cdhlegal.com

Nonhla Mchunu
Director
T +27 (0)11 562 1228
M +27 (0)82 314 4297
E nonhla.mchunu@cdhlegal.com

William Midgley
Director
T +27 (0)11 562 1390
M +27 (0)82 904 1772
E william.midgley@cdhlegal.com

Tessmerica Moodley
Director
T +27 (0)21 481 6397
M +27 (0)73 401 2488
E tessmerica.moodley@cdhlegal.com

Anita Moolman
Director
T +27 (0)11 562 1376
M +27 (0)72 252 1079
E anita.moolman@cdhlegal.com

Francis Newham
Executive Consultant
T +27 (0)21 481 6326
M +27 (0)82 458 7728
E francis.newham@cdhlegal.com

OUR TEAM

For more information about our Corporate & Commercial practice and services in South Africa and Kenya, please contact:

Gasant Orrie

Cape Managing Partner
Director
T +27 (0)21 405 6044
M +27 (0)83 282 4550
E gasant.orrie@cdhlegal.com

Verushca Pillay

Director
T +27 (0)11 562 1800
M +27 (0)82 579 5678
E verushca.pillay@cdhlegal.com

David Pinnock

Joint Sector head
Director
Private Equity
T +27 (0)11 562 1400
M +27 (0)83 675 2110
E david.pinnock@cdhlegal.com

Allan Reid

Joint Sector Head
Director
Mining & Minerals
T +27 (0)11 562 1222
M +27 (0)82 854 9687
E allan.reid@cdhlegal.com

Megan Rodgers

Sector Head
Director
Oil & Gas
T +27 (0)21 481 6429
M +27 (0)79 877 8870
E megan.rodgers@cdhlegal.com

Ludwig Smith

Director
T +27 (0)11 562 1500
M +27 (0)79 877 2891
E ludwig.smith@cdhlegal.com

Tamarin Tosen

Director
T +27 (0)11 562 1310
M +27 (0)72 026 3806
E tamarin.tosen@cdhlegal.com

Roxanna Valayathum

Director
T +27 (0)11 562 1122
M +27 (0)72 464 0515
E roxanna.valayathum@cdhlegal.com

Roux van der Merwe

Director
T +27 (0)11 562 1199
M +27 (0)82 559 6406
E roux.vandermerwe@cdhlegal.com

Andrew van Niekerk

Head of Projects & Infrastructure
Director
T +27 (0)21 481 6491
M +27 (0)76 371 3462
E andrew.vanniekerk@cdhlegal.com

Charl Williams

Director
T +27 (0)21 405 6037
M +27 (0)82 829 4175
E charl.williams@cdhlegal.com

Njeri Wagacha

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com

Emma Hewitt

Practice Development Director
T +27 (0)11 562 1635
E emma.hewitt@cdhlegal.com

BBBEE STATUS: LEVEL ONE 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.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196.
Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111
E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001.
PO Box 695, Cape Town, 8000, South Africa.
Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388
E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D,
Riverside Drive, Nairobi, Kenya.
P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 |
+254 710 560 114
E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central,
Stellenbosch, 7600.
T +27 (0)21 481 6400
E cdh Stellenbosch@cdhlegal.com

