Approved for tabling
SNA
21/11/19

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- THIRD SESSION (2019)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE CENTRAL BANK OF KENYA (MORTGAGE REFINANCE COMPANIES) REGULATIONS, 2019

(*Legal Notice No. 134 of 2019*)

NOVEMBER 2019

The Directorate of Committee Services
The National Assembly
Parliament Buildings
NAIROBI

TABLE OF CONTENTS

ABBREVIATIONS

CBK	Central Bank Kenya
LN	Legal Notice
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

On 2nd August, 2019, the Governor of Central Bank of Kenya (CBK) published the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 (*Legal Notice No 134 of 2019*) in exercise of the power conferred by section 57(1) of the Central Bank of Kenya Act, *Cap 491*. The Regulations were received by the Clerk of the National Assembly on 11th September, 2019 and tabled before the House on 11thSeptember, 2019, being **within** the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulationsare intended to operationalise the mortgage refinance legal regime introduced to the CBK Act (*Cap 491)* through the Finance Act, 2018 which amended the CBK Act to provide for the legal framework for licensing and regulation of the mortgage refinance business by the Central Bank.

The Committee examined the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Central Bank of Kenya Act *(Cap 491)* and the Statutory Instruments Act (*No 23 of 2013*).

Following the scrutiny, the Committee observed that the Regulations generally complied with all the relevant considerations contained in section 13 of the Statutory Instruments Act **except forRegulation 26 (2) and 42 which are contrary to contrary to section 13 (m) of the Statutory Instruments Act as they inappropriately delegate legislative powers to the Central Bank of Kenya to issue guidelines.**Guidelines are statutory instruments within the meaning of section 2 of the Statutory Instruments Act and if made by the CBK, must be submitted to the National Assembly for approval.

Regulation 26 (2)inappropriately delegates legislative powers to the Central Bank of Kenya to provide in guidelinesother forms and the manner in which a place of business may be opened, relocated or closed.

Regulation 42inappropriately delegates legislative powers to the Central Bank of Kenya to issue guidelines on group structures of mortgage refinance companies.

In conclusion, I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to section 15 (1) of the Statutory Instruments Act, 2013 and Standing Order 210 (4) (b), it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 (Legal Notice No.134 of 2019)**

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to ***Standing Order No. 210*** and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:

    a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
    b) infringes on fundamental rights and freedoms of the public;
    c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
    d) contains imposition of taxation;
    e) directly or indirectly bars the jurisdiction of the court;
    f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
    g) it involves expenditure from the consolidated fund or other public revenues;
    h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
    i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
    j) appears to have had unjustifiable delay in its publication or laying before Parliament;
    k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
    l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
    m) inappropriately delegates legislative powers;
    n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
    o) appears for any reason to infringe on the rule of law;
    p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
    q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative
Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. WaihenyaNdirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency
Jubilee Party

Hon. Robert Mbui, MP
Kathiani Constituency,
Wiper Democratic Movement -Kenya

Hon. Daniel Maanzo, MP
Makueni Constituency
Wiper Democratic Movement -Kenya

Hon. MuriukiNjagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. Timothy Wanyonyi, MP
Westlands Constituency
Orange Democratic Movement

Hon. RonaldTonui, MP
Bomet Central Constituency
Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency
Orange Democratic Movement

Hon. Martha Wangari, MP
Gilgil Constituency
Jubilee Party

Hon. Gideon Mulyungi, MP
Mwingi Constituency
Wiper Democratic Movement – Kenya

Hon. William KassaitKamket, MP
Tiaty Constituency
KANU

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency
Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency
Democratic Party

Hon. Jennifer Shamalla, MP
Nominated
Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency
Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency
Jubilee Party

Hon. Sammy Seroney, MP
Nominated
Wiper Democratic Movement – Kenya

Hon.Tindi Mwale, MP
Butere Constituency
Amani National Congress

Hon. Alfred W. Sambu, MP
Webuye East
Amani National Congress

Hon. Abdi KoropuTepo, MP
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. JosphatMotonu
Fiscal Analyst I

Ms. Anne NjeriKigoro
Research Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. AnthonyWamae
Serjeant at Arms

Mr. Charles Ayari
Superitendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE CENTRAL BANK OF KENYA (MORTGAGE REFINANCE COMPANIES) REGULATIONS, 2019

2.1 Introduction

5. The Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 were made by the Governor of Central Bank of Kenya pursuant to section 57(1) of the Central Bank of Kenya Act, *Cap 491*.

6. The Regulations were published in the Kenya Gazette vide *Legal Notice No 134 of 2019* on 2nd August, 2019. They were received by the Clerk of the National Assembly on 11th September, 2019 and tabled before the House on 11thSeptember, 2019,

2.2 Purpose of the Regulations

7. The Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 are intended to operationalise the mortgage refinance legal regime introduced to the CBK Act through the Finance Act, 2018. The Finance Act amended the CBK Act to provide for the legal framework for licensing and regulation of the mortgage refinance business by the Central Bank.

2.3 Enabling Provision of the Central Bank of Kenya Act, *Cap 491*

8. **Section 57 (1)** of the Central Bank of Kenya Act (*Cap 491)* provides that the Bank may make regulations, issue guidelines, circulars and directives for the purpose of giving effect to the provisions of the Act and generally for the better carrying out of the objects of the Bank under the Act.

2.4 Overview of the Regulations

9. **Part I** contains the preliminary provisions including the citation and interpretation provisions.

10. **Part II(Mortgage Refinance Business):**Regulation 3provides for and lists authorized activities in the mortgage refinance business and the penalties for any person who contravenes this provision.

11. **Part III (Licensing)**provides for licensing guidelines and requirements in the mortgage refinance business as follows –

    (i) Regulation 4 provides for the conditions to be met by a mortgage refinance company before application for a licence. The regulation also makes provision for the process of application for a licence in the prescribed form, requisite information and the accompanying documents.

    (ii) Regulation 5 provides for the factors to be considered by Central Bank in granting a licence. CBK is to grant a licence within 90 days of application.

    (iii) Regulation 6 prohibits the transfer, assignment or encumbrance of a licence.

    (iv) Regulation 7 provides for the suspension or revocation of licence.

    (v) Regulation 8 guides amalgamations and transfer of assets and liabilities of a mortgage refinance company.

12. **Part IV(Governance)**provides for the governance of mortgage refinance companies as follows –

   (i) Regulation 6 requires mortgage refinance companies to comply with corporate governance requirements issued by the Central Bank (*CBK Prudential Guidelines on Corporate Governance*);

   (ii) Regulations 10 to 20 provide for the management of mortgage refinance companies including management boards, the chief executive officer, and committees of the company (Audit Committee, Credit Committee and Assets Committee);

   (iii) Regulation 21 provides for a 25 *per centum* shareholding limit, save for the case of a publicentity or a multilateral development bank;

   (iv) Regulation 22 provides the setting of shareholder rules by shareholders of the company while Regulation 23 provide for maintenance of records;

   (v) Regulation 25 prohibitsmortgage refinance companies from engaging in reckless and fraudulent activities; and

   (vi) Regulations 26 and 27 provide guidelines on places of business and the use of agents by mortgage refinance companies respectively.

13. **Part V(Loans)**provides the guidelines and conditions for the extension of loans/credit by mortgage refinance companies to primary mortgage lenders.

14. **Part VI(Risk Classification and Provisioning of Loans)**makes provisions for risk classification and provisioning of loans by mortgage refinance companies.

15. **Part VII(Capital Requirements and Liquidity of Management)**makes provision for capital requirements and liquidity management of mortgage refinance companies.

16. **Part IX(Internal Controls)**requires the development and maintenance of internal control systems and activities by mortgage refinance companies. Regulations 45 and 46 provide guidelines on internal audit and audit plan respectively.

17. **Part VIII(Reporting Requirements)**provides for reporting and monitoring requirements, information sharing and forms of accounts to be maintained as follows –

   (i) Regulation 55 speaks to the powers of the Central Bank to issue directions to a mortgage refinance company that is being conducted in a manner contrary to the law.

   (ii) Regulation 56 speaks to CBK's power to intervene in management of a mortgage refinance company.

   (iii) Regulation 57 provides for sanctions imposed by CBK.

   (iv) Regulation 58 provides guidelines for voluntary liquidation.

18. The Regulations also provide five **Schedules** as follows –

   (i) First Schedule: Capital Requirements for Mortgage Refinance Companies
   (ii) Second Schedule: Criteria for Determining Professional and Moral Suitability

(iii) Third Schedule: Forms
(iv) Fourth Schedule: Fees
(v) Fifth Schedule: Conduct of Business and Affairs of a Board and Board Committees

2.5 Scrutiny of the Instrument

19. With the Regulations having been published on 2nd August, 2019, received by the Clerk of the National Assembly on 11th September, 2019 and tabled before the House on 11th September, 2019 and subsequently transmitted to the Committee for consideration. The Committee scheduled the business on 19th November, 2019.

20. The Committee examined the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Central Bank of Kenya Act *(Cap 491)* and the Statutory Instruments Act (*No. 23 of 2013*).

3.0 COMMITTEE OBSERVATIONS

21. The Committee observed **THAT** –

(i) **Statutory Timelines– section 11 of the SI Act**: The Regulations were submitted to the National Assembly within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act having been published on 2ndAugust, 2019, received by the Clerk of the National Assembly on 11th September, 2019 and tabled before the House on the same date.

(ii) **Consultation / Public participation:** Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210 require the regulation–making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.

The regulation making authority submitted vide its Explanatory Memorandum that the Central Bank of Kenya published a draft of the Regulations on its website in February 2019 and invited comments from interested parties including stakeholders and the general public.

TheCBK submitted that it collected, collated, considered and incorporated in the draft regulations the views of the public and key stakeholders such as commercial banks, microfinance banks, SACCOs and the National Treasury. The Regulations were then submitted to the Attorney General for final drafting and publication.

(iii) **Regulatory Impact Statement:**Sections 6, 7, and 8 of the Act requires the regulation-making authority to carry out a Regulatory Impact Assessment and submit to Parliament a Regulatory Impact Statement if the proposed regulation has significant cost or impact to the community or a section of the community.

The regulation making authority did not conduct a regulatory impact assessment or submit a regulatory impact statement.

(iv) **Contrary to section 13 (m)** of the Statutory Instruments Act, the Regulationsinappropriately delegates legislative powers as demonstrated below –

a) **Regulation 26 (2)**gives the CBK power to provide in guidelines other forms and the manner in which a place of business may be opened, relocated or closed; and

b) **Regulation 42**gives CBK power to issue guidelines on group structures of mortgage refinance companies.

(v) There is a **minor drafting error** where Part IX precedes Part VIII.

4.0 COMMITTEE RECOMMENDATION

22. Having examined the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Central Bank of Kenya Act *(Cap 491)* and the Statutory Instruments Act (*No. 23 of 2013*),the Committeerecommends that, pursuant to Standing Order 210 (4) (b),the House **annuls Regulation 26 (2) and Regulation 42 as they contravene section 13 (m) of the Statutory Instruments Act, 2013 by inappropriately delegating legislative powers to the Central Bank of Kenya to issue guidelines.**

Signed...Kiarungare............ **Date**...21. 11. 019...

for **HON. GLADYS BOSS SHOLLEI, CBS, MP**
(CHAIRPERSON)

ANNEXURES

1. **Adoption List**
2. **Legal Notice No. 134 of 2019and Explanatory Memorandum**
3. **Committee Minutes**

COMMITTEE ON DELEGATED LEGISLATION

ADOPTION SCHEDULE

Report on the Consideration of Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019

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

DATE: 21/11/2019

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei CBS MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Robert Mbui, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Muriuki Njagagua, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Timothy Wanyonyi, MP	
10.	Hon. William Kamoti Mwamkale, MP	
11.	Hon. Patrick Kariuki Mariru, MP	
12.	Hon. Ronald Kiprotich Tonui, MP	
13.	Hon. William Kassait Kamket, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. George Gitonga Murugara, MP	
16.	Hon. Jennifer Shamalla, MP	
17.	Hon. Muturi Kigano, MP	
18.	Hon. (Dr.) Wilberforce Oundo, MP	
19.	Hon. Sammy Seroney, MP	
20.	Hon. Tindi Mwale, MP	
21.	Hon. Gideon Mulyungi, MP	
22.	Hon. Abdi Tepo, MP	
23.	Hon. Alfred Sambu, MP	

MINUTES OF THE 66TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 19TH NOVEMBER, 2019 AT 11.30 A.M. IN THE SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Fatuma Gedi, MP - Vice Chairperson (Chairing)**
2. The Hon. George Murugara, MP
3. The Hon. Patrick Mariru, MP
4. The Hon. Timothy Wanyonyi, MP
5. The Hon. Waihenya Ndirangu, MP
6. The Hon. Robert Mbui, MP
7. The Hon. Ronald Tonui, MP
8. The Hon. Muturi Kigano, MP
9. The Hon. Gideon Mulyungi, MP
10. The Hon. Kamoti Mwamkale, MP
11. The Hon. Munene Wambugu, MP
12. The Hon. Jennifer Shamalla, MP
13. The Hon. Sammy Seroney, MP
14. The Hon. Abdi Koropu Tepo, MP
15. The Hon. Kassait Kamket, MP

ABSENT WITH APOLOGY

1. **The Hon. Gladys Boss Shollei CBS MP - Chairperson**
2. The Hon. (Dr.) Wilberforce Oundo, MP
3. The Hon. Daniel Maanzo, MP
4. The Hon. Martha Wangari, MP
5. The Hon. Muriuki Njagagua, MP
6. The Hon. Alice Wahome, MP
7. The Hon. Tindi Mwale, MP

ABSENT

The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Mr. Jimale Mohamed - Second Clerk Assistant
2. Mr. Dima Dima - Principal Legal Counsel
3. Mr. Anthony Wamae - Serjeant at Arms
4. Mr. Charles Ayari - Superintendent of Electronics (Audio)
5. Ms. Millicent Ondeche - Legal intern

MIN.NO. /NA/CDL/2019/386 PRAYER AND PRELIMINARIES

Pursuant to Standing Order 188, the Members present unanimously elected Hon. George Murugara, MP, to chair the meeting. He thereafter called the meeting to order at 11.35 a.m. followed by the Prayer.

MIN.NO. /NA/CDL/2019/387 ADOPTION OF THE AGENDA

The Committee adopted the Agenda for the meeting without amendments.

MIN.NO. /NA/CDL/2019/388 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 65th sitting held on 14th November, 2019 were read and confirmed as true a record of the proceedings having been proposed by Hon. Sammy Seroney, MP and seconded by Hon. Ronald Tonui, MP.

MIN.NO. /NA/CDL/2019/389 MATTERS ARISING

The Vice Chairperson disputed allegations of her frequent absence from Committee meetings. She requested the secretariat to submit summary of Members' attendance of meetings to prove the actual position.

MIN.NO. /NA/CDL/2019/390 CONSIDERATION OF THE CRITERIA FOR THE DETERMINATION OF THE ELECTRICITY REBATE, 2019 BY THE MINISTRY OF ENERGY UNDER THE INCOME TAX ACT (*CAP 470*)

The Committee was informed THAT –

(1) Section 15 of the Income Tax Act (*Cap 470*) was amended through the Finance Act, 2018 to include in the procedure for ascertainment of taxable income, the requirement that in computing for a year of income the gains or profits chargeable to tax, there should be deducted, *inter alia- ...* "***thirty percent of electricity cost incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy***".

(2) The Cabinet Secretary, in publishing Legal Notice number 132 of 31st July 2019 in which the Ministry of Energy issued conditions [*set out in the schedule in the Notice*] for the reduction of an additional 30% of electricity costs incurred by manufacturers, was indeed performing a statutory obligation mandated by section 15(2) (ab) of the Income Tax Act (as amended by the Finance Act, 2018).

Projected Impact of the Rebate Programme to the manufacturing sector

1. The various categories of industrial consumers will have their current unit costs reduced considerably.
2. Based on projected tax payable by manufacturers in the large taxpayers' office in the financial year 2018/2019, the total impact on tax payable would reduce considerably.

3. The effect of the profits for the firms will vary from sector to sector e.g in the cement industry would save 5-8% on the taxable income.
4. The electricity rebate will enhance competitiveness of Kenya products in the region hence reduction of cement prices by 5%, steel products by 7.5%, and textile by about 3%.
5. Increase in GDP contribution by 1.6% due to low cost of production of goods due to the 30% rebate.

Committee Observations

(a) The Cabinet Secretary published *LN. No. 132* 2019 in which the Ministry of Energy issued conditions for the reduction of an additional 30% of electricity costs incurred by manufacturers is performing a statutory obligation mandated by section 15(2) (ab) of the Income Tax Act (as amended by the Finance Act, 2018).

(b) The Legal Notice was issued for information of the general public that the Cabinet Secretary had conducted the statutory obligation mandated under the Income Tax Act.

(c) **Statutory timeline** - the Legal Notice was **submitted to the National Assembly within** the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*) having been published on the 31st of July, 2019 and tabled on the 10th of September, 2019.

(d) The accompanying Explanatory Memorandum provides for the introduction and full background of the provisions, formulae and items contained in the Legal Notice.

(e) **Consultation outcome** – The Technical Working Group which made a presentation to various cabinet secretaries and has since been expanded to implement the rebate programme comprises of-

i. Ministry of Energy
ii. Industry, Trade and Cooperatives
iii. Energy Regulatory Commission
iv. Kenya Power Company
v. Kenya Association of Manufacturers
vi. Kenya Revenue Authority
vii. Kenya National Bureau of Statistics
viii. Kenya Institute for Policy Research and Analysis
ix. Kenya Electricity Transmission Company Ltd.(KETRIACO)
x. Office of the Attorney General

Committee Resolution

Having examined Legal Notice No. 145 of 2019 relating to the Criteria for the Determination of the Electricity Rebate, 2019 by the Ministry of Energy under the Income Tax Act (*Cap 470*), the Committee satisfied itself that the said statutory instrument is in accord with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), Income Tax Act (*Cap 470*) and the Statutory Instruments Act (*No 23 of 2013*), pursuant to which it is made and **approved** it.

The decision to approve the aforementioned Legal Notice was proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Abdi Koropu Tepo, MP.

MIN.NO. /NA/CDL/2019/391 **CONSIDERATION OF THE CENTRAL BANK OF KENYA (MORTGAGE REFINANCE COMPANIES) REGULATIONS, 2019**

The Committee was informed THAT –

1) The Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 were made by the Governor of Central Bank of Kenya pursuant to section 57(1) of the Central Bank of Kenya Act, *Cap 491*.

2) The Regulations were published in the Kenya Gazette vide *Legal Notice No 134 of 2019* on 2nd August, 2019. They were received by the Clerk of the National Assembly on 11th September, 2019 and tabled before the House on 11th September, 2019,

3) The Regulations are intended to operationalise the mortgage refinance legal regime introduced to the CBK Act through the Finance Act, 2018. The Finance Act amended the CBK Act to provide for the legal framework for licensing and regulation of the mortgage refinance business by the Central Bank.

4) **Section 57 (1)** of the Central Bank of Kenya Act (*Cap 491)* provides that the Bank may make regulations, issue guidelines, circulars and directives for the purpose of giving effect to the provisions of the Act and generally for the better carrying out of the objects of the Bank under the Act.

Overview of the Regulations

1. **Part I** contains the preliminary provisions including the citation and interpretation provisions.
2. **Part II (Mortgage Refinance Business):** Regulation 3 provides for and lists authorized activities in the mortgage refinance business and the penalties for any person who contravenes this provision.
3. **Part III (Licensing)** provides for licensing guidelines and requirements in the mortgage refinance business as follows –
   - **(i)** Regulation 4 provides for the conditions to be met by a mortgage refinance company before application for a licence. The regulation also makes provision for the process of application for a licence in the prescribed form, requisite information and the accompanying documents.
   - **(ii)** Regulation 5 provides for the factors to be considered by Central Bank in granting a licence. CBK is to grant a licence within 90 days of application.
   - **(iii)** Regulation 6 prohibits the transfer, assignment or encumbrance of a licence.
   - **(iv)** Regulation 7 provides for the suspension or revocation of licence.
   - **(v)** Regulation 8 guides amalgamations and transfer of assets and liabilities of a mortgage refinance company.
4. **Part IV (Governance)** provides for the governance of mortgage refinance companies as follows –

(i) Regulation 6 requires mortgage refinance companies to comply with corporate governance requirements issued by the Central Bank (*CBK Prudential Guidelines on Corporate Governance*);

(ii) Regulations 10 to 20 provide for the management of mortgage refinance companies including management boards, the chief executive officer, and committees of the company (Audit Committee, Credit Committee and Assets Committee);

(iii) Regulation 21 provides for a 25 *per centum* shareholding limit, save for the case of a public entity or a multilateral development bank;

(iv) Regulation 22 provides the setting of shareholder rules by shareholders of the company while Regulation 23 provide for maintenance of records;

(v) Regulation 25 prohibits mortgage refinance companies from engaging in reckless and fraudulent activities; and

(vi) Regulations 26 and 27 provide guidelines on places of business and the use of agents by mortgage refinance companies respectively.

5. **Part V (Loans)** provides the guidelines and conditions for the extension of loans/credit by mortgage refinance companies to primary mortgage lenders.

6. **Part VI (Risk Classification and Provisioning of Loans)** makes provisions for risk classification and provisioning of loans by mortgage refinance companies.

7. **Part VII (Capital Requirements and Liquidity of Management)** makes provision for capital requirements and liquidity management of mortgage refinance companies.

8. **Part IX (Internal Controls)** requires the development and maintenance of internal control systems and activities by mortgage refinance companies. Regulations 45 and 46 provide guidelines on internal audit and audit plan respectively.

9. **Part VIII (Reporting Requirements)** provides for reporting and monitoring requirements, information sharing and forms of accounts to be maintained as follows –

(i) Regulation 55 speaks to the powers of the Central Bank to issue directions to a mortgage refinance company that is being conducted in a manner contrary to the law.

(ii) Regulation 56 speaks to CBK's power to intervene in management of a mortgage refinance company.

(iii) Regulation 57 provides for sanctions imposed by CBK.

(iv) Regulation 58 provides guidelines for voluntary liquidation.

10. The Regulations also provide five **Schedules** as follows –

(i) First Schedule:	Capital Requirements for Mortgage Refinance Companies
(ii) Second Schedule:	Criteria for Determining Professional and Moral Suitability
(iii) Third Schedule:	Forms
(iv) Fourth Schedule:	Fees
(v) Fifth Schedule:	Conduct of Business and Affairs of a Board and Board Committees

Committee Observations –

The Committee observed THAT –

(i) **Statutory Timelines – section 11 of the SI Act** - The Regulations were submitted to the National Assembly within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act having been published on 2nd August, 2019, received by the Clerk of the National Assembly on 11th September, 2019 and tabled before the House on the same date.

(ii) **Consultation / Public participation** - Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210 require the regulation–making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.

The regulation making authority submitted its Explanatory Memorandum that the Central Bank of Kenya published a draft of the Regulations on its website in February 2019 and invited comments from interested parties including stakeholders and the general public.

The CBK submitted that it collected, collated, considered and incorporated in the draft regulations the views of the public and key stakeholders such as commercial banks, microfinance banks, SACCOs and the National Treasury. The Regulations were then submitted to the Attorney General for final drafting and publication.

(iii) **Regulatory Impact Statement-** Sections 6, 7, and 8 of the Act requires the regulation-making authority to carry out a Regulatory Impact Assessment and submit to Parliament a Regulatory Impact Statement if the proposed regulation has significant cost or impact to the community or a section of the community.

The regulation making authority did not conduct a regulatory impact assessment or submit a regulatory impact statement.

(iv) **Contrary to section 13 (m)** of the Statutory Instruments Act, the Regulations inappropriately delegates legislative powers as demonstrated below –

a) **Regulation 26 (2)** gives the CBK power to provide in guidelines other forms and the manner in which a place of business may be opened, relocated or closed; and

b) **Regulation 42** gives CBK power to issue guidelines on group structures of mortgage refinance companies.

(v) There is a **minor drafting error** where Part IX precedes Part VIII.

Committee Resolution

Having examined the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Central Bank of Kenya Act *(Cap 491)* and the Statutory Instruments Act (*No. 23 of 2013*), the Committee resolved to annul **Regulation 26 (2) and Regulation 42 as they contravene section**

13 (m) of the Statutory Instruments Act, 2013 by inappropriately delegating legislative powers to the Central Bank of Kenya to issue guidelines.

The decision to annul part of the Regulations was proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Abdi Koropu Tepo, MP.

MIN.NO. /NA/CDL/2019/392 ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE KENYA CIVIL AVIATION REGULATIONS 2018

The Committee adopted the Report the Consideration of the Kenya Civil Aviation Regulations 2018. The decision was proposed by Hon. Kamket Kassait, MP and seconded by Hon. Robert Mbui, MP.

MIN.NO. /NA/CDL/2019/393 ANY OTHER BUSINESS

The following issues were raised-

a) **Breakfast meeting with the Law Society of Kenya**

The Committee was reminded about the breakfast meeting to be hosted by the Law Society of Kenya at the Fairview Hotel at 7.30am.

b) **Pending Business before the Committee**

The Committee raised concern that the secretariat was not prioritising pending business that requires urgent attention. The Committee pointed out that this comprises conferment with the regulation making authority.

MIN.NO. /NA/CDL/2019/394 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.35 p.m. until Thursday, 21st November, 2019 at 11.30 a.m.

Signed: Chumgare .... **Date:** 21. 11. 019 ....

f/or **HON. GLADYS BOSS SHOLLEI CBS MP**

(CHAIRPERSON)

Deligated

Kenya Gazette Supplement No. 134 *2nd August, 2019*

(Legislative Supplement No. 43)

LEGAL NOTICE NO. 134

THE CENTRAL BANK OF KENYA ACT

(Cap. 491)

Arrangement of Regulations

PART I—PRELIMINARY PROVISIONS

PART II—MORTGAGE REFINANCE BUSINESS

PART III — LICENSING

PART IV—GOVERNANCE

SCHEDULES

THE CENTRAL BANK OF KENYA ACT

(Cap. 491)

IN EXERCISE of the powers conferred by 57 (1) of the Central Bank of Kenya Act, the Central Bank of Kenya makes the following Regulations—

THE CENTRAL BANK OF KENYA (MORTGAGE REFINANCE COMPANIES) REGULATIONS, 2019

PART I—PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

"Act" means the Central Bank of Kenya Act; Cap. 488.

"assets and liabilities committee" means an assets and liabilities management committee of the board of a mortgage refinance company;

"associate" means—

(a) in relation to a company or other body corporate—

(i) its holding company or its subsidiary;

(ii) a subsidiary of its holding company;

(iii) a holding company of its subsidiary;

(iv) its non-operating holding company as its subsidiary;

(v) a subsidiary of a non-operating holding company;

(vi) a significant shareholder to that company; and

(vii) any person who controls the company or body corporate whether alone or with his associates or with its associates;

(b) in relation to an individual—

(i) any member of his family:

Provided that a person shall be deemed to be a member of a family if he is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild and adopted child of the person concerned, and in case of an adopted child his adopter or adopters;

(ii) any company or other body corporate controlled directly or indirectly by the individual whether alone or with his associates;

"Bank" means the Central Bank of Kenya;

"board" means the board of a mortgage refinance company;

"capital" means paid-up share capital;

"core capital" means permanent shareholders' equity in the form of issued and fully paid-up shares of common stock plus all disclosed reserves, less goodwill or any other intangible assets;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to finance;

"capital markets" means that part of the financial system concerned with raising funds for investment by dealing in shares, bonds, and other long-term investments;

"chief executive officer" means the chief executive officer of a mortgage refinance company;

"control" includes—

(a) the ability to influence, whether directly or indirectly, the composition of the board of directors of a company or any other body corporate; or

(b) holding, directly or indirectly, whether personally or through a holding company or subsidiaries thereof, or in any other way, an aggregate of twenty per centum or more of the voting power of a company or body corporate, whether alone, with associates or with other associates of the company or body corporate.

"corporate governance" means the process and structure used to direct and manage the business and affairs of a company towards enhancing business prosperity and corporate accountability with the ultimate objective of realizing long-term shareholder value, whilst taking account of the interests of other stakeholders;

"eligible mortgage" means a mortgage that meets the criteria under the eligibility standards as may be set by a mortgage refinance company and approved by the Central Bank;

"leverage" means the use of debt to finance operations;

"long term financing" means a loan with a maturity of more than one year;

"mortgage" means a loan to purchase a residential house;

"mortgage refinance company" means a non-deposit taking company established under the Companies Act, 2015 and licensed by the Bank to conduct mortgage refinance business; No. 17 of 2015.

"multi-lateral development banks" include—

(a) the International Bank for Reconstruction and Development;

(b) the Inter-American Development Bank;

(c) the Asian Development Bank;

(d) the African Development Bank;

(e) the European Investment Bank; and

(f) Other multi-lateral development banks in which G10 countries (Belgium, Netherlands, Canada, Sweden, France, Switzerland, Germany, United Kingdom, Italy, United States and Japan) are shareholding members;

"primary mortgage lender" means an entity involved in mortgage finance including licensed banks, microfinance banks, Savings and Credit Co-operative Societies and any other entity that the Bank may by notice in the gazette declare;

"qualified collateral" means a collateral that meets underwriting standards set out by the law and the mortgage refinance company, and approved by the Central Bank for the purpose of granting a loan to a primary mortgage lender;

"significant shareholder" means a person, other than the government or a public entity who holds, directly or indirectly, or otherwise has a beneficial interest amounting to ten per cent or more of the share capital of a mortgage refinance company;

"senior officer" means a person who manages or controls an entity, and includes—

(a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary to the board of directors, treasurer, chief internal auditor, or manager;

(b) a person with a similar level of position or responsibilities as a person described in paragraph (a);

"subordinated debt" includes issued and paid-in unsecured subordinated debt instruments (debt equity, lines of credit, bonds, commercial paper or loan capital) having an original maturity of at least five years and—

(a) principal should be repayable after at least five years;

(b) during the last five years to maturity, a cumulative discount (amortization) factor of twenty per cent per annum will be applied to reflect the diminishing value of these instruments as a continuing source of strength;

(c) the amount included for capital adequacy calculations is limited to fifty per cent of core capital;

"supplementary capital" means subordinated debt, general provisions which are held against future and presently unidentified losses that are freely available to meet losses which subsequently materialize, and revaluation reserves on business premises which arise periodically from independent valuation of such premises, and any other form of capital as may be determined from time to time by the Central Bank; and

"total capital" means the total sum of core capital and supplementary capital.

PART II—MORTGAGE REFINANCE BUSINESS

Authorized activities.

3. (1) A mortgage refinance company shall engage in the following activities—

(a) refinancing or purchasing of eligible mortgage loans;

(b) investment in debt securities issued by the Government of Kenya or any guaranteed debt;

(c) providing fully secured long term financing to primary mortgage lenders for financing of eligible mortgages;

(d) issuing bonds, notes and other financial instruments for purposes of meeting its objectives; and

(e) other activities as may be determined by the Bank from time to time.

(2) Any person who contravenes the provisions of this regulation commits an offence and is liable, on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

PART III — LICENSING

Application for a licence.

4. (1) A mortgage refinance company shall not apply for a licence to conduct mortgage refinance business, unless the company—

(a) is a company incorporated under the Companies Act, 2015; No. 17 of 2015.

(b) meets the capital adequacy requirements set out in the First Schedule; and

(c) ensure that its significant shareholders, directors and senior officers meet the fit and proper criteria set out in the Second Schedule.

(2) An application for a licence under sub-regulation (1) shall be made in the Form CBK MRC 1-1 set out in the Third Schedule and accompanied by—

(a) a duly completed "fit and proper" form for proposed significant shareholders, directors, chief executive officer and other senior officers in form CBK MRC 1-2 set out in the Third Schedule;

(b) names and addresses of the shareholders of the company in form CBK MRC 1-3 set out in the Third Schedule;

(c) proof of payment of the application fee set out in the Fourth Schedule;

(d) a certified copy of the certificate of incorporation of the mortgage refinance company from the Registrar of Companies; and

(e) a certified copy of the Memorandum and Articles of Association of the mortgage refinance company.

(3) An applicant under this regulation shall submit the following additional information—

(a) a certified copy of the Memorandum and Articles of Association of any corporate body that proposes to have a significant shareholding in the mortgage refinance company;

(b) a certified copy of the constitutive documents of an unincorporated person that proposes to have a significant shareholding in the mortgage refinance company;

(c) a description of the accounting system and the information and communication technology to be used in the operations of the mortgage refinance company;

(d) the organization chart, number of employees, positions and job descriptions of senior officers;

(e) description of internal control procedures that the mortgage refinance company shall implement;

(f) description of shareholders, board and senior officers and strategy for the successful operation of the applicant;

(g) description of any intended products and services which the proposed mortgage refinance company intends to provide and how such products and services shall benefit the country;

(h) the master servicing and refinancing agreement governing the lending operations between the mortgage refinance company and the participating primary mortgage lenders;

(i) the shareholders or investment agreement (where applicable) governing the relationships between shareholders and ensuring that ownership is accessible for primary mortgage lenders meeting the requirements and standards specified by the Bank, in the agreement or in the mortgage refinance company's Memorandum and Articles of Association;

(j) the investment policy, credit policy, asset liability management, liquidity management, financial management, code of ethics and business conduct;

(k) a sworn declaration signed by every officer as specified in the application form;

(l) a business plan of the intended business with financial projections of at least three years; and

(m) the financial statements for the last three years, where applicable.

5. (1) The Bank may, if satisfied that the applicant meets the requirements under these Regulations, grant a licence to the applicant, within ninety days of the application. Issuance of a licence.

(2) In assessing the application, the Bank shall consider the following factors—

(a) the financial condition and history of the applicant;

(b) adequacy of the business strategy of the applicant;

(c) the professional and moral suitability of the persons proposed to manage or control the proposed mortgage refinance company;

(d) the adequacy of its capital structure and earning prospects; and

(e) the public interest which shall be served by the granting of the licence.

(3) The Bank may endorse on a licence granted under sub regulation (1), such conditions as it considers necessary and may, from time to time, vary or substitute such conditions.

(4) A person granted a licence shall pay an annual fee to the Bank as set out in the Fourth Schedule at such time as the Bank may determine.

(5) A licence shall remain valid unless suspended or revoked by the Bank in accordance with these Regulations.

(6) The Bank shall cause the name of a mortgage refinance company to be published in the *Gazette* within seven days of grant of licence.

Licence not transferable.

6. A licence granted under these Regulations shall not be transferred, assigned or encumbered in any way.

Suspension or revocation of licence.

7. (1) The Bank may suspend or revoke a licence of a mortgage refinance company if the licensee—

(a) ceases to carry on mortgage refinance business;

(b) goes into liquidation or an order is issued for winding up;

(c) contravenes any of the conditions in the licence;

(d) has contravened any of the provisions of the Act or any other relevant written law; or

(e) conducts its business in a manner detrimental to its customers, creditors or members of the public.

(2) A suspension of a licence under this regulation shall not exceed a period of three months:

Provided that the Bank may, if it considers necessary extend the suspension for a period not exceeding three months.

(3) The Bank shall at the expiry of the suspension period specified under sub-regulation (2) either lift the suspension or revoke the licence as the Bank considers appropriate.

(4) The Bank shall cause the names of mortgage refinance companies whose licences have been revoked to be published in the *Gazette* within seven days of the revocation.

(5) Where a licence has been revoked, the Bank may, by notice in writing—

(a) require the licensee to transfer to its customer, records relating to customer property or the affairs of the customer held at any time for the customer, in such manner, as the Bank may specify in the notice; or

(b) permit the licensee, subject to such conditions as the Bank may specify in the notice, to carry on business operations for the purpose of closing down the business connected with the revocation.

(6) The Bank shall, in all cases where the Bank takes action under this regulation give the licensee affected by such action an opportunity to be heard.

Amalgamations and transfer of assets and liabilities.

8. A mortgage refinance company shall not enter into an amalgamation or an arrangement to transfer all or any part of its assets and liabilities to another entity except with the prior written approval of the Bank.

PART IV — GOVERNANCE

Corporate governance.

9. A licensee shall comply with the corporate governance requirements issued by the Bank:

Provided that where the licensee issues securities to the public, the applicable corporate governance requirements for issuers of securities to the public shall also apply.

Board and committees.

10. (1) Every mortgage refinance company shall be managed by a board which shall have at least two thirds of its members being non-executive members.

(2) Every board shall constitute at least an audit committee, a credit committee, an assets and liabilities committee and such other committees as shall be necessary for the proper performance of its business.

Membership of committees.

11. (1) Every committee of the board shall consist of at least three members, two of whom shall be non-executive directors of the mortgage refinance company and who are qualified in finance, audit, information technology, banking, economics or law.

(2) The chief executive officer of a mortgage refinance company shall not be a member of the audit committee, while the chairperson of the board shall not be a member of the credit and audit committees, but may attend by invitation for consultation only.

(3) No person shall hold the position of a director in more than one mortgage refinance company, unless the mortgage refinance company are subsidiaries or holding companies of the mortgage refinance company.

Responsibilities of the board.

12. (1) A board shall have the overall responsibility of the mortgage refinance company, including approving and overseeing the implementation of the mortgage refinance company's strategic objectives, risk strategy, corporate governance and corporate values.

(2) The board shall have the following specific responsibilities—

(a) providing oversight of senior management;

(b) formulating a board charter that outlines, among other things—

(i) the demarcation of the functions, responsibilities and powers of the board, various board committees and matters reserved for final decision-making or pre-approval by the board;

(ii) the policies and practices of the board in respect of conflicts of interest and convening of board meetings;

(iii) declaration of interests that may give rise to a potential or perceived conflict or interfere with exercise of objective judgment;

(iv) the policy on directorships in other entities by board members;

(c) constitute an organizational structure that facilitates effective decision making and good governance;

(d) define the duties of management and appoint competent, qualified and experienced persons to administer the mortgage refinance company;

(e) regularly review policies, processes and controls with senior management or internal control functions (including internal audit, risk management and compliance) to determine areas needing improvement and address significant risks and issues;

(f) communicating the corporate values, professional standards or codes of conduct.

(4) Board members shall be and remain qualified, including through training and Continuous Professional Development, for their positions and shall have a clear understanding of their role in corporate governance and be able to exercise sound and objective judgment about the affairs of the mortgage refinance company.

13. (1) An audit committee shall assist the board in raising the standards of corporate governance and internal controls in the following areas— Audit committee.

(a) ensuring that financial and operational information is prepared in a timely and accurate manner;

(b) improving the quality of financial record keeping and reporting;

(c) strengthening the effectiveness of internal and external audit functions;

(d) strengthening the internal control environment and risk management;

(e) enhancing public confidence in the credibility and stability of the mortgage refinance company;

(f) monitoring incidences of non-compliance with the Act or any other relevant legislations and advising the board on the best solutions; and

(g) monitoring the ethical conduct of the mortgage refinance company and developing the code of conduct and ethical standards and requirements, including effectiveness of procedures for handling and reporting complaints.

(2) The external and internal auditors of a mortgage refinance company shall have free access to the audit committee.

(3) The external auditor may, upon request, attend and be heard at any meeting of the audit committee.

(4) Upon the request of the external auditors, the chairperson of the audit committee shall convene a meeting to consider any matter that the external auditor deems necessary to be brought to the attention of directors or shareholders.

14. Every credit committee shall— Credit committee.

(a) review and oversee the overall lending policy, including monitoring and risk management tools;

(b) review loan applications based on established discretionary approval limits;

(c) review lending practices and quality of loan portfolio;

(d) ensure that there are effective procedures and adequate resources to identify and mitigate credit risk;

(e) monitor and evaluate all issues that may materially impact on the present and future quality of the loan portfolio and credit risk management;

(f) delegate and review lending limits to the sanctioning arms of the mortgage refinance company;

(g) ensure adequate provisions for loans and advances, bad and doubtful debts and write off policy;

(h) conduct loan reviews independent of any person or committee responsible for sanctioning credit;

(i) ensure that the credit policy and risk lending limits are reviewed at least once on an annual basis and as and when the environment so dictates; and

(j) set limits on lending exposure in line with the mortgage refinance company's risk management programs and market conditions.

15. (1) Every mortgage refinance company shall establish a management committee to be known as the assets committee. Assets committee.

(2) The assets and liabilities committee shall drive the strategy for the mortgage refinance company regarding the mix of assets and liabilities and its expectations of the future and the potential consequences of interest rate movements, liquidity constraints, and capital adequacy.

(3) The responsibilities of the assets and liabilities committee shall include—

(a) reviewing and assessing the integrity of the internal and risk control systems;

(b) ensuring that the risk policies and strategies are effectively managed;

(c) setting out the nature, role, responsibility and authority of the risk management function of the mortgage refinance company;

(d) providing an independent and objective oversight and review of the information raised by management at different levels;

(e) monitoring the limits on loans to capital ratios;

(f) monitoring the limits on maximum and minimum maturities for all categories of assets and liabilities as set by the board;

(g) monitoring limits on the sensitivity of the net interest margin on changes in market interest rates as set by the board;

(h) monitoring the maximum percentage imbalance between rates and sensitive assets and liabilities as set by the board;

(i) monitoring the limits on minimum spread acceptable between costs and yields of liabilities and assets as set by the board;

(j) monitoring the limits on minimum liquidity provision to be maintained to sustain operations while longer term adjustments are set by the board;

(k) monitoring the sources of funding;

(l) monitoring the company's policies, procedures and holding portfolio to ensure that it achieves its goals; and

(m) generally, to implement the funds management policy of the mortgage refinance company.

(4) To perform its duties effectively, the assets and liabilities committee may access or obtain such professional advice as it may consider necessary to perform its functions.

(5) The assets and liabilities committee shall have access to any information and records it needs to fulfil its duties and responsibilities.

16. The conduct of the business and affairs of a board shall be as set out in the Fifth Schedule. Conduct of business.

17. (1) The Board shall evaluate its performance and that of the management by developing and submitting to the Bank— Monitoring and evaluation.

(a) a self-assessment questionnaire in the manner as may be prescribed; and

(b) an annual self-assessment evaluation, not later than three months after the end of each financial year.

(2) A mortgage refinance company that contravenes sub-regulation (1) shall be liable to any of the sanctions provided for under in regulation 57.

Fit and proper obligations.

18. (1) A person shall not be a director, a senior officer or a significant shareholder of a mortgage refinance company unless the Bank has certified the person as fit and proper in accordance with the criteria set out in the Second Schedule.

(2) The Bank may, where it deems it necessary, carry out an assessment of the professional and moral suitability of the persons managing or controlling a mortgage refinance company.

(3) Where the Bank determines that a significant shareholder does not fulfil the fit and proper criteria, the shareholder shall—

(a) cease to exercise all voting rights immediately upon the mortgage refinance company being notified by the Bank in writing that the shareholder does not fulfil the fit and proper criteria; and

(b) reduce the holding of shares to below ten per centum of the share capital in the mortgage refinance company within twelve months, or such other period as the Bank may determine.

(4) The Bank may direct a significant shareholder who has been found not to be fulfilling the fit and proper criteria to dispose of all of his shares in a mortgage refinance company within such period as the Bank may direct.

(5) The Bank may disqualify any director or senior officer from holding any office in a mortgage refinance company if he does not meet the fit and proper criteria or for any other good cause shown.

Chief executive officer.

19. (1) Every mortgage refinance company shall have a chief executive officer who shall be appointed by the board, with the approval of the Bank, on such terms and conditions of service as shall be provided in the instrument of appointment.

(2) A chief executive officer shall be a member of the board.

(3) A person shall not be appointed as a chief executive officer of a mortgage refinance company unless that person has at least five years' experience in banking business, economics, law or finance at senior management level with experience in microfinance practices or such other conditions as may be determined by the board.

(4) Where the chief executive officer resigns or is removed from office, the Board shall report to the Bank within seven days of such resignation or removal.

Responsibilities of the chief executive officer.

20. The chief executive officer shall undertake the following key responsibilities—

(a) implement the policies developed by the board;

(b) identify and recommend to the board competent officers to manage the operations of the institution;

(c) co-ordinate the operations of the various departments within the institution;

(d) establish and maintain efficient and adequate internal control systems;

(e) design and implement the necessary management information systems to facilitate efficient and effective communication within the institution; and

(f) frequently apprise the board on the operations of the institution including—

(i) the actual performance compared with the past performance and the budget together with explanations of all the variances;

(ii) the capital structure and adequacy;

(iii) the performance of advances including problem loans, losses, recoveries and provisions;

(iv) the income and expenses;

(v) the sources of funding and distribution profile;

(vi) all insider transactions that benefit directly or indirectly any officer or shareholder of the institution;

(vii) any violation of laws and remedial activities undertaken to ensure compliance with the banking laws and Bank guidelines;

(viii) large exposures;

(ix) non-performing insider loans;

(x) reports on the activities of the committees of the board;

(xi) reports from the Bank, external and internal audit reports;

(xii) any other area relevant to the institution's operations;

(g) ensure that the institution complies with all the relevant banking and other applicable laws in the execution of its operations; and

(h) any other duties as may be assigned by the board from time to time.

Shareholding limit.

21. (1) A shareholder of a mortgage refinance company shall not, whether directly or indirectly, hold more than twenty-five *per centum* of the shares of the mortgage refinance company unless it is a public entity or a multilateral development bank.

(2) The Bank may exempt any other person from the provisions of this regulation on such condition and requirements as may be specified by the Bank.

22. (1) The shareholders of a mortgage refinance company shall set binding rules relating to— Shareholder rules.

(a) terms and conditions under which eligible mortgages may be refinanced;

(b) eligibility of mortgages for refinancing;

(c) fair and equitable access by all shareholders to services of a mortgage refinance company; and

(d) the exceptional circumstances under which a certain category of primary mortgage lenders may access fully secured long term financing from a mortgage refinance company.

(2) In financing or refinancing a mortgage, a mortgage refinance company shall act equitably, fairly and consider the interests of all its shareholders.

23. (1) A mortgage refinance company shall maintain accurate and complete accounting records and reports. Records.

(2) The records and reports of a mortgage refinance company shall be retained for a period of seven years.

(3) An officer, employee or agent of a mortgage refinance company shall not make entries, or allow entries to be made, on any account, record or document of the mortgage refinance company that are false or mislead the true authorization limits or approval authority of such transactions.

(4) All records and computer files or programmes of the mortgage refinance company, including personnel files, financial statements and customer information shall be accessed and used only for the purposes for which they were originally intended.

24. A director, chief executive officer, senior officer, employee or agent of a mortgage refinance company shall— Confidentiality.

(a) protect the confidentiality of customer information and transactions;

(b) not divulge or use any secrets, copyright material, or any correspondence, accounts of the mortgage refinance company or its customers, during, upon or after termination of their engagement or employment, except in the proper course of duty or with the written consent of the company; and

(c) not use information so obtained for financial gain.

25. (1) A mortgage refinance company shall not— Reckless and fraudulent activities.

(a) allow a credit facility or guarantee to be outstanding;

(b) incur any liability;

(c) enter into any contract or transaction; or

(d) conduct its business or part thereof, in a fraudulent or reckless manner that is detrimental to the interest of the company, its customers or the general public.

(2) In this regulation—

"reckless" means—

(a) transacting the business beyond the limits set under the Act;

(b) offering facilities contrary to any guidelines or regulations issued by the Central Bank;

(c) failing to observe the mortgage refinance company's policies as approved by the board of directors; or

(d) misuse of position or facilities of the mortgage refinance company for personal gain;

"fraudulent" means intentional deception, false and material misrepresentation, concealment or non-disclosure of a material fact or misleading conduct, device or contrivance that results in loss and injury to the mortgage refinance company with an intended gain to the officer of the mortgage refinance company or to a customer of the mortgage refinance company.

Places of business.

26. (1) No branch of a mortgage refinance company shall be opened, relocated or closed without the prior written approval of the Bank.

(2) The Bank may provide in guidelines other forms and the manner in which a place of business may be opened, relocated or closed.

(3) The guidelines shall provide a framework for notification to the Bank of places of business whose opening, relocation or closure does not require the approval of the Bank.

Use of agents.

27. (1) The Bank may provide a framework for the appointment and operation of agents by mortgage refinance companies.

(2) A mortgage refinance company shall be liable for the acts or omissions of its agents if the acts or omissions relate to the agency business.

PART V — LOANS

Credit extensions.

28. (1) A mortgage refinance company may extend loans to primary mortgage lenders who are in good standing.

(2) A primary mortgage lender is considered to be in good standing if it—

(a) meets its payment obligations;

(b) has not received a qualified opinion on its most recent audited financial statements;

(c) meets the capital adequacy requirements;

(d) complies with regulatory requirements; and

(e) meets any other conditions set by the Bank and a mortgage refinance company.

(3) A mortgage refinance company shall set single borrower limits in its credit policy and the limits shall comply with any requirement provided for by the Bank.

(4) A mortgage refinance company shall extend a loan to a primary mortgage lender subject to its credit policy and any requirements of the Bank and shall provide clear disclosures of the terms and conditions of the loan to the borrower including —

(a) charges and fees, if any;

(b) interest rate to be charged and whether on a reducing balance or not; and

(c) total cost of credit which shall include the principal amount, interest, fees and charges.

(5) The Bank shall approve the criteria for mortgages eligible for refinancing under these Regulations.

(6) A refinanced mortgage to a director, chief executive officer or senior officer of a primary mortgage lender shall be on terms similar to those offered to ordinary customers of the primary mortgage lender.

Qualified collateral.

29. (1) A mortgage refinance company loan shall be fully secured by qualified collateral.

(2) A loan shall be deemed to be fully secured if—

(a) in the case of eligible mortgage, the qualified collateral covers at least one hundred and twenty per centum of that loan amount;

(b) it is secured by cash or government securities of equal amount; and

(c) any other qualified collateral as may be approved by the Bank.

(3) The qualified collateral shall be limited to the following assets—

(a) assignment of receivables;

(b) lien or assignment of a portfolio of first ranking charges or mortgages over owner-occupied properties which are fully insured and not in arrears;

(c) securities issued, insured or guaranteed by the Government of Kenya;

(d) cash deposits; or

(e) any other qualified collateral as may be determined by the Bank from time to time.

(4) The mortgage refinance company shall —

(a) assess the book value of the qualified collateral securing the outstanding loans at least every six months;

(b) require primary mortgage lenders to provide additional qualified collateral to compensate for any diminution in the market value or book value of the pledged collateral securing their outstanding loans;

(c) require primary mortgage lenders to substitute qualified collateral if any security or residential mortgage securing an outstanding loan matures, redeemed, defaults, or becomes more than ninety days delinquent;.

(d) require the primary mortgage lenders to provide such additional information as it may reasonably require; and

(e) carry out such site inspection as may be necessary or reasonable to verify the information provided by the primary mortgage lender.

(5) The outstanding loans to a mortgage refinance company shall become due and payable if the primary mortgage lender is unable to provide sufficient qualified collateral to support its outstanding loans.

PART VI—RISK CLASSIFICATION AND PROVISIONING OF LOANS

Loan review function of a mortgage refinance company.

30. (1) Every mortgage refinance company's loan review function shall ensure that—

(a) the loan portfolio and lending function conforms to a sound written lending policy, which has been approved and adopted by the board;

(b) management and the board are adequately informed regarding credit risk, among other risks and risk management control effectiveness;

(c) problem accounts are identified properly and on a timely basis and internally classified in accordance with the classification criteria in these Regulations; and

(d) appropriate and adequate level of provisions for potential loss are made and maintained at all times.

(2) A mortgage refinance company that contravenes sub-regulation (1) shall be liable to any of the sanctions provided for under in regulation 57.

Review of assets and reporting.

31. (1) Every mortgage refinance company shall, at least once every year, review its assets and make necessary provisions as the need arises, if an actual loss of an asset occurs or when the recoverable amount of the asset is less than its carrying value.

(2) Every mortgage refinance company shall submit a copy of the review report to the Bank within fifteen days from the date of the review.

(3) Every mortgage refinance company shall submit returns in such manner as may be provided by the Bank.

(4) A mortgage refinance company that fails to submit accurate information to the Bank on a timely basis is liable to such administrative sanction as may be provided by the Bank.

(5) A mortgage refinance company that contravenes this regulation is liable to any of the sanctions provided for under in regulation 57.

Review and classification of loans.

32. (1) Every mortgage refinance company shall review, classify and appropriately make provisions for its loan portfolio at least once every three months.

(2) Every mortgage refinance company shall classify loans and advances in the manner provided for by guidelines issued by the Bank.

(3) Where a mortgage refinance company has granted multiple loans to a single borrower, and any one of such loans is non-performing, the mortgage refinance company shall evaluate every other loan to that borrower and place such loans on non-performing status accordingly.

(4) Every mortgage refinance company shall classify a group loan as past due in its entirety, when any of the members of the group defaults and the amount due is not covered by the members of the group:

Provided that if the amount due is guaranteed by the members of the group, only the portion in arrears shall be accounted for as past due and the group members shall pay up for the guarantee.

(5) A mortgage refinance company that contravenes this regulation is liable to any of the sanctions provided under regulation 57.

Loan provisioning.

33. (1) In determining the amount of potential loss in specific loans or in the aggregate loan portfolio, every mortgage refinance company shall be guided by the following minimum provisioning percentage—

(a) for loans classified "Normal", one *per centum*;

(b) for loans classified "Watch", five *per centum*;

(c) for loans classified "Substandard", twenty five *per centum*;

(d) for loans classified "Doubtful", seventy five *per centum*; and

(e) for loans classified "Loss", one hundred *per centum*.

(2) Where the impairment charges computed under International Financial Reporting Standards are lower than provisions required under these Regulations, the excess provisions shall be treated as an appropriation of retained earnings.

(3) Where the impairment charges computed under International Financial Reporting Standards are higher than provisions required under these Regulations, the International Financial Reporting Standards impairment charges shall be considered adequate for the purposes of these Regulations.

(4) A mortgage refinance company that contravenes this regulation is liable to any of the sanctions provided for under in regulation 57.

Classification of renegotiated or restructured loans.

34. (1) Every mortgage refinance company shall classify a renegotiated or restructured loan in the substandard category unless—

(a) all past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to 'Normal' classification;

(b) all past due interest is repaid in full at the time of renegotiation in which case it may revert to 'Watch' classification.

(2) A renegotiated or restructured loan classified as doubtful or loss shall continue to be classified as doubtful or loss unless —

(a) all past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to 'Watch' classification or;

(b) all past due interest is repaid in full at the time of renegotiation in which case it may revert to 'substandard' classification; and

(c) all past due principal and interest is repaid in full at the time of renegotiation and there has been consistent repayment of three instalments in which case it may revert to 'Normal' classification.

(3) A mortgage refinance company shall not restructure or renegotiate any loan or credit facility more than twice over the life of the original loan or credit facility.

(4) Any loan or credit facility restructured for the second time shall be classified as "substandard" if all past due principal and interest is repaid in full at the time of renegotiation:

Provided that if all past due interest is repaid in full at the time of renegotiation, the loan or credit facility shall be classified as doubtful.

(5) A person who contravenes this regulation is liable to any of the sanctions provided for under regulation 57.

Limit on interest recoverable from non-performing loans.

35. (1) A mortgage refinance company shall be limited in what it may recover from a debtor with respect to a non-performing loan to the maximum amount under sub-regulation (2).

(2) The maximum amount referred to under sub-regulation (1) is the sum of the following—

(a) the principal owing when the loan becomes non-performing;

(b) interest, in accordance with the contract between the debtor and the mortgage refinance company, not exceeding the principal owing when the loan becomes non-performing; and

(c) expenses incurred in the recovery of any amounts owed by the debtor.

(3) If a debtor resumes payments on a non-performing loan and then the loan becomes non-performing again, the limitation under sub-regulation (2) (a) and (b) shall be determined with respect to the time the loan last became non-performing.

(4) This regulation shall not apply to limit any interest under a court order accruing after the order is made.

(5) A mortgage refinance company shall not recover through a court of law any interest which is affected by the requirements of this regulation.

(6) A loan becomes non-performing when principal or interest is due and unpaid for ninety days or more; or interest payments for ninety days or more have been re-financed, or rolled-over into a new loan.

(7) In this regulation —

"debtor" includes a person who becomes indebted to a mortgage refinance company because of a guarantee made with respect to the repayment of an amount owed by another person; and

"loan" includes any advance, credit facility, financial guarantee or any other liability incurred on behalf of any person.

Write-off of loans.

36. (1) A mortgage refinance company shall write-off a loan or a portion of a loan from its balance sheet when —

(a) the mortgage refinance company loses control of the contractual rights over the loan;

(b) all or part of a loan is deemed uncollectible or there is no realistic prospect of recovery;

(c) the borrower becomes insolvent; or

(d) efforts to collect debt are abandoned for any other reason.

(2) Every mortgage refinance company shall write off a loan or a portion of a loan classified as loss, within one hundred and eighty days of their being classified as loss, if there are no recoveries within that period.

(3) A mortgage refinance company that contravenes this regulation is liable to such administrative sanction as may be prescribed by the Central Bank.

PART VII—CAPITAL REQUIREMENTS AND LIQUIDITY MANAGEMENT

Capital adequacy.

37. (1) A mortgage refinance company shall at all times maintain capital requirements set out in the First Schedule.

(2) A mortgage refinance company shall maintain such leverage ratio as may be specified by the Bank by notice in the *Gazette*.

(3) No mortgage refinance company shall treat any subordinated debt as supplementary capital except with the prior written approval of the Bank.

(4) No mortgage refinance company shall raise any capital from the capital markets without the prior written approval of the Bank.

Liquidity management.

38. (1) A mortgage refinance company shall—

(a) adopt sound and prudent liquidity management and funding policies; and

(b) maintain sufficient liquid assets for meeting. its maturing obligations and liabilities.

(2) For purposes of sub-regulation (1), liquid assets include —

(a) notes and coins which are legal tender in Kenya;

(b) balances held at the Bank;

(c) balances at other banks in Kenya after deducting therefrom balances owed to those other banks;

(d) balances at banks abroad withdrawable on demand or short notice and money at call abroad after deducting therefrom balances owed to banks abroad where the balances and money at call and short notice are denominated in convertible currencies:

Provided that for the purposes of this paragraph "bank abroad" means a bank outside Kenya or an office of any bank outside Kenya;

(e) Kenya treasury bills and bonds of a maturity not exceeding ninety-one days which are freely marketable and re-discountable at the Bank; and

(f) such other assets as the Bank may specify.

Liquidity risk management plan.

39. (1) Every mortgage refinance company shall plan and fund its liquidity requirements over specific time periods as set by the mortgage refinance company.

(2) A liquidity risk management plan shall, at a minimum, address the following —

(a) management structures and information systems;

(b) measuring and monitoring net funding requirements;

(c) contingency planning schemes; and

(d) internal controls for liquidity management.

(3) A mortgage refinance company that fails to comply with this Regulation shall be liable to any of the sanctions provided for under regulation 57.

Risk Management.

40. (1) A mortgage refinance company shall establish a robust risk management framework that covers all plausible risks to its business including —

(a) strategic risk;

(b) credit risk;

(c) liquidity risk;

(d) market risk;

(e) operational risk;

(f) information and communication technology risk;

(g) reputational risk; and

(h) compliance risk.

(2) A mortgage refinance company shall identify, assess, manage, control and mitigate risks.

(3) A mortgage refinance company shall comply with any risk management guidelines issued by the Bank.

Market risk.

41. A mortgage refinance company shall not engage in activities that may lead it to incur foreign exchange, commodity or equity risks, or use financial derivatives except as hedging instruments.

Group structure.

42. The Bank may issue guidelines on group structures of mortgage refinance companies and such guidelines may provide for —

(a) powers of the Bank over group entities;

(b) consolidated supervision;

(c) reporting on consolidated basis;

(d) restrictions relating to group structures; and

(e) such other requirements as the Bank may determine.

Prohibited activities.

43. A mortgage refinance company shall not —

(a) engage, alone or with others, in wholesale or retail trade, including the import or export trade, except in the course of the satisfaction of debts due to it;

(b) acquire or hold, directly or indirectly, any part of the share capital of, or otherwise have a beneficial interest in, any financial, commercial, agricultural, industrial or other undertaking where the value of the mortgage refinance company's interest would exceed in the aggregate twenty-five per cent of the core capital of that mortgage refinance company:

Provided that an institution may take an interest in such an undertaking in satisfaction of a debt due to it and such interest shall be disposed of within such time as the Central Bank may allow;

(c) purchase or acquire or hold any land or any interest or right therein except such land or interest as may be reasonably necessary for the purpose of conducting its business, or for housing or providing amenities for its staff, where the total amount of such investment does not exceed such proportion of its core capital as the Central Bank may prescribe:

Provided that a mortgage refinance company may let part of any building which is used for the purpose of conducting business;

(d) purchase non-performing loans or mortgages.

PART IX—INTERNAL CONTROLS

44. (1) Every mortgage refinance company shall implement an effective internal control system that is consistent with the nature, complexity and risk inherent in their on- and off-balance sheet activities and that is designed to respond to changes in the company's environment and circumstances. Internal controls.

(2) Every mortgage refinance company shall develop and maintain internal control systems and activities that shall form an integral part of the daily activities of a mortgage refinance company and shall consist of —

(a) a comprehensive financial, operational and compliance data and information, as well as external market information about the mortgage refinance company's operations and activities, events and market conditions that are relevant for decision making and the information shall be accurate, reliable, timely, and accessible and maintained in a consistent format;

(b) reliable information systems to cover all significant activities and operations of the mortgage refinance company including the use of data in an electronic form; and

(c) effective channels of communication to ensure that staff fully understand and adhere to policies and procedures affecting their duties and responsibilities and that other relevant information is communicated to the appropriate personnel.

(3) Every mortgage refinance company shall review, at least once every year, its internal controls with a view to appropriately addressing any new or previously uncontrolled risks and changing market conditions.

(4) A mortgage refinance company that contravenes this regulation is liable to any of the sanctions provided for under regulation 57.

45. (1) Every mortgage refinance company shall — Internal audit.

(a) appoint an internal auditor; and

(b) develop a written internal audit charter that specifies and enhances the standing of the internal audit purpose, authority and responsibility within the mortgage refinance company.

(2) Every internal audit charter shall include —

(a) the objectives and scope of the internal audit function;

(b) internal audit's role and responsibility for governance, risk management, consulting services, and fraud investigations, among others; and

(c) internal auditor's position within the mortgage refinance company, its powers, responsibilities and relations with other control functions.

(4) Every mortgage refinance company shall review its audit charter at least once every year.

(5) The audit charter shall be approved by the audit committee and subsequently ratified by the board as part of their supervisory role before the start of each financial year.

(6) A mortgage refinance company that contravenes this regulation commits is liable to any of the sanctions provided for under regulation 57.

Audit plan.

46. (1) Every internal auditor shall prepare an annual audit work plan for the assignments to be performed during the next financial year and present it to the audit committee for review.

(2) The annual audit plan shall include —

(a) the scope;

(b) objective;

(c) timing;

(d) frequency; and

(e) resources of the planned internal audit work.

(3) The report of the internal auditor shall contain the findings and recommendations as well as the responses of the officers.

(4) The reports and working papers of the internal auditors shall be kept for at least five years.

(5) The audit committee shall follow up its recommendations to verify whether the recommendations provided are implemented and the status of the recommendations shall be communicated to the audit committee at least on a quarterly basis and permanent coordination shall be maintained with all functional officers.

PART VIII—REPORTING REQUIREMENTS

Examinations.

47. A mortgage refinance company shall make its books and records readily available for inspection and other supervisory purposes within a reasonable period upon request by the Bank.

Reporting requirements, on-site and off-site monitoring.

48. (1) A mortgage refinance company shall be subject to the Bank's on-site and off-site monitoring and shall make periodic reports in accordance with the form, instructions and schedules specified by the Bank including —

(a) quarterly financial statements;

(b) semi-annual financial statements;

(c) annual audited financial statements; and

(d) any other information which, in the opinion of the Bank, is relevant to the discharge of its supervisory role under this regulation.

(2) The reports under sub-regulation (1) shall be submitted no later than thirty days after the end of each reporting period in the case of paragraph (a) and (b) and three months in the case of paragraph (c).

(3) The financial statements shall be prepared in accordance with international financial reporting standards and such accepted Kenyan reporting standards as may be prescribed.

(4) Any person who contravenes the provisions of this regulation commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Financial year.

49. The financial year of a mortgage refinance company shall be the period of twelve months ending on the 31^{st} day of December in each year.

Appointment of external auditor.

50. (1) A mortgage refinance company shall, in each year, appoint an external auditor who shall be a member of the Institute of Certified Public Accountants of Kenya in good standing and approved by the Bank.

(2) A mortgage refinance company shall not remove or change its external auditor except with the prior approval of the Bank.

(3) An external auditor shall make a report to the Board of Directors identifying key concerns with respect to the financial condition of the business.

(4) An external auditor shall, within three months after the end of each financial year, submit an audit report to the Bank, on the financial condition of the business.

(5) An external auditor's reports submitted under sub-regulation (4) shall contain information on the —

(a) solvency of the business;

(b) any violation of a condition imposed on the licence; and

(c) any other contravention of the Act or these Regulations.

(6) The Bank may require an external auditor to undertake such additional duties as may be determined from time to time.

(7) If the external auditor of a mortgage refinance company, in the course of the performance of his duties under this Act, is satisfied that —

(a) there has been a serious breach of or non-compliance with the provisions of the Act, or the regulations, guidelines or other matters prescribed by the Bank;

(b) a criminal offence involving fraud or other dishonesty has been committed by a mortgage refinance company or any of its officers or employees; or

(c) losses have been incurred which reduce the core capital of a mortgage refinance company by fifty *per centum* or more,

shall immediately report the matter to the Bank.

(8) If an external auditor of a mortgage refinance company fails to comply with the requirements of the Act or these Regulations, the Bank may remove the auditor from office and appoint another auditor.

Form of accounts.

51. (1) All entries in any books and all accounts kept by a mortgage refinance company shall be recorded and kept in the English language, using the system of numerals employed in Government accounts.

(2) The Bank may, at any time, issue directions to a mortgage refinance company requiring it to maintain such books, records or information, in addition to any books, records or information then already maintained by it, as the Bank may consider to be necessary.

(3) The financial statements shall be in accordance with international financial reporting standards, including applicable consolidated accounting principles for groups.

Accounts to be exhibited.

52. (1) Every mortgage refinance company shall —

(a) exhibit throughout the year in a conspicuous position in every office and branch in Kenya a copy of its last audited financial statements which shall be in conformity with the minimum financial disclosure requirements prescribed from time to time by the Bank together with the full and correct names of all persons who are officers of the mortgage refinance company in Kenya; and

(b) within three months of the end of each financial year, cause a copy of the balance sheet and last audited income statements for that financial year to be published in a newspaper with wide circulation.

(2) The financial statements shall be in keeping with International Financial Reporting Standards, including applicable consolidated accounting principles for groups.

Uniform underwriting standards.

53. A mortgage refinance company shall set and uphold underwriting standards for the purpose of granting a loan to a primary mortgage lender.

Information sharing.

54. The Bank may disclose any information received in the performance of its duties or responsibilities under the Act to any financial regulatory authority, fiscal or tax agency or fraud investigations agency within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Bank or the requesting financial regulatory authority, fiscal or tax agency or fraud investigations agency:

Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement.

Powers of the Bank to issue directions.

55. (1) If, at any time, the Bank has reason to believe that —

(a) the business of a mortgage refinance company is being conducted in a manner contrary to or not in compliance with the requirements of the Act, these Regulations or guidelines issued by the Bank or in any manner detrimental to or not in the best interests of its creditors or members of the public; or

(b) an institution, any of its officers or other person participating in the general management of the mortgage refinance company is engaged in any practice likely to occasion a contravention of any of the provisions of the Act, these Regulations or guidelines issued,

the Bank may —

(i) give advice and make recommendations to the mortgage refinance company with regard to the conduct of its business generally;

(ii) issue directions regarding measures to be taken to improve the management or business methods of the mortgage refinance company or to secure or improve compliance with the requirements of the Act, the Regulations or guidelines issued or any other written law or regulations;

(iii) in any case to which paragraph (b) applies, issue directions to the institution, officer or other person to cease such practice;

(iv) appoint a person, suitably qualified and competent in the opinion of the Bank, to advise and assist the mortgage refinance company generally or for the purposes of implementing any directions under subparagraphs (ii) and (iii) and the advice of a person so appointed shall have the same force and effect as a direction made under subparagraphs (ii) and (iii) and shall be deemed to be a direction of the Bank.

(2) The Bank may, before issuing a direction under sub-regulation (1), serve upon the mortgage refinance company, officer or other person, a notice of such intent specifying the reasons therefor and requiring the mortgage refinance company, officer or other persons, within such period as may be specified in the notice, to show cause why such direction should not be issued.

(3) A mortgage refinance company which receives a direction under the provisions of this regulation shall comply with the direction within such period as may be specified in the direction and, if so required, shall produce evidence that it has done so.

(4) The Bank may issue directions to mortgage refinance companies generally for the better carrying out of its functions and in particular, with respect to —

(a) the standards to be adhered to by a mortgage refinance company in the conduct of its business; and

(b) guidelines to be adhered to by mortgage refinance companies in order to maintain a stable and efficient banking and financial system.

Power to intervene in management.

56. (1) The Bank may intervene in the management of a mortgage refinance company in any the following circumstances —

(a) if the mortgage refinance company fails to meet any financial obligation, when it falls due including an obligation to pay any creditor;

(b) if a petition is filed, or a resolution proposed, for the winding up of the mortgage refinance company or if any receiver or receiver and manager or similar officer is appointed in respect of the mortgage refinance company or in respect of all or any part of its assets;

(c) if the auditor of a mortgage refinance company makes a report to the Bank that a mortgage refinance company has violated the law in a serious manner or conducts its business in a detrimental way;

(d) if the Bank discovers (whether on an inspection or otherwise) or becomes aware of any fact or circumstance which, in the opinion of the Central Bank, warrants the exercise of the relevant power in the interests of the mortgage refinance company or its creditors;

(e) if the mortgage refinance company is significantly undercapitalized; or

(f) if the mortgage refinance company fails —

(i) to submit a capital restoration plan or a plan to resolve all deficiencies as directed by the Bank; or

(ii) to add more capital, and it fails,. neglects or refuses to comply, with an order to implement a plan of correction.

(2) The Bank shall take over the management of a mortgage refinance company and may appoint an officer of the Bank or any other person to manage the mortgage refinance company in such manner, for such purpose and for such period as may be determined in the guidelines.

Sanctions.

57. (1) The Bank may impose any or all of the following administrative sanctions with regard to a mortgage refinance company that fails to comply with the Act, these Regulations or its directives and against its board of directors, or its officers—

(a) monetary penalty on a mortgage refinance company, its directors, officers or employees responsible for non-compliance in such amounts not exceeding the amounts provided for under section 57(2) of the Act;

(b) prohibition from declaring or paying dividends;

(c) suspension of lending and investment operations;

(d) suspension of capital expenditure;

(e) suspension of issuance of debt instruments;

(f) suspension from office of the defaulting director, officer or employee;

(g) disqualification from holding any position or office in any licensed or financial institution in Kenya;

(h) undertake more frequent inspections of that mortgage refinance company;

(i) order the mortgage refinance company to submit to the Bank, within forty-five days, a capital restoration plan to restore the mortgage refinance company to the capital adequacy or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Bank;

(j) at the expense of the mortgage refinance company, appoint a person suitably qualified and competent, in the opinion of the Bank, to advise and assist the mortgage refinance company in designing and implementing a capital restoration plan or other corrective action plan under paragraph (i), and the person appointed shall regularly report to the Bank on the progress of the plan;

(k) impose restrictions on growth of assets of the mortgage refinance company;

(l) revocation of the licence; and

(m) any other action as the Bank may consider appropriate.

Voluntary liquidation.

58. (1) A mortgage refinance company may, with the approval of the Bank, voluntarily liquidate itself if it is able to meet all its liabilities.

(2) An application for the Bank's approval for the purposes of sub-regulation (1) shall be in such form as may be determined.

(3) The Bank may, upon receipt of an application under sub-regulation (2), approve the application if satisfied as to the solvency of the mortgage refinance company.

(4) Where the Bank approves an application by a mortgage refinance company under this regulation, such mortgage refinance company shall forthwith cease all its operations except such activities as are incidental to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

(5) Where a mortgage refinance company goes into liquidation under this regulation —

(a) the liability of the shareholders of the mortgage refinance company for uncalled subscriptions to the capital stock of the mortgage refinance company shall continue until the end of the liquidation process; and

(b) the mortgage refinance company shall first discharge its liability to its secured creditors and thereafter rank all other creditors in accordance with the provisions of the Companies Act.

(6) The Bank shall upon approval of a voluntary liquidation, follow up with the mortgage refinance company to ensure smooth execution of the liquidation process.

FIRST SCHEDULE (r. 4 (1)(b); r.36)

CAPITAL REQUIREMENTS FOR MORTGAGE REFINANCE COMPANIES

1. A core capital of not less than One billion Shillings

2. A core capital of not less than 10.5 *per centum* of total risk weighted assets plus risk weighted assets and off-balance sheet items.

3. A total capital of not less than 14.5 *per centum* of its total risk weighted assets plus risk weighted assets and off-balance sheet items.

4. The computation of risk weighted assets and off-balance sheet items shall be computed as may be determined by the Bank from time to time.

SECOND SCHEDULE (r. 4 (1)(c); r. 18(1))

PART A—CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY OF DIRECTORS AND SENIOR OFFICERS

1. For the purposes of determining the professional and moral suitability of persons, proposed to be directors and senior officers of a mortgage refinance company, the Bank shall have regard to the following qualities, in so far as they are reasonably determinable—

(a) possession of relevant qualification, knowledge, skills and experience;

(b) ability to recommend sound practices based on previous business experience;

(c) ability to provide objective advice;

(d) ability to avoid conflicts of interest in activities and commitments with other organizations

2. Without prejudice to the generality of the provisions of paragraph (a), the Bank, may have regard to the present and previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person —

(a) has been convicted of an offence of fraud or any other offence of which dishonesty is an element;

(b) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of or malpractices;

(c) was a director or a senior officer of an institution that has been liquidated or is under liquidation or statutory management;

(d) has taken part in any business practices that, in the opinion of the Bank, were fraudulent, prejudicial or otherwise improper (whether unlawful or not);

(e) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment;

(f) has defaulted in the repayment of a loan for three consecutive months advanced by a licenced financial institution; and

(g) has been adjudged bankrupt.

3. The Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person.

PART B—CRITERIA FOR DETERMINING MORAL SUITABILITY OF SIGNIFICANT SHAREHOLDERS

1. For the purposes of determining the moral suitability of significant shareholders of a mortgage refinance company the Bank shall have regard to the previous conduct and activities of the significant shareholder concerned in business or financial matters and, in particular, to any evidence that such person —

(a) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;

(b) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or malpractices by persons engaged in the provision of banking, insurance, investment or other financial services.

2. Where the significant shareholder is a corporate entity, its directors and senior officers shall satisfy the criterion specified in paragraph (a) above.

3. The Bank may request any person or corporate entity to furnish such information as may be necessary in determining the moral suitability of significant shareholders.

THIRD SCHEDULE (r. 4(1))

FORMS

FORM CBK MRC 1-1:

APPLICATION FOR A LICENCE TO CONDUCT THE BUSINESS OF A MORTGAGE REFINANCE COMPANY

NB: This form should be submitted, duly completed, accompanied by the complete set of documents required under Part III of these regulations

1. Name of Mortgage Refinance Company.

....

2. Physical Address of Head Office: L.R. No ....

Street: .... Building and Town/City ....

3. Postal Address and Postal Code ....

Telephone No: .... P.I.N.: ....

E-mail address...

4. Date of Incorporation ....Certificate Reg. No ....

5. Former name(s) (if any) by which the mortgage refinance company has been known:...

6. Particulars of shareholding:

Present & Former Name(s) of share-holder(s)	Postal Address of shareholder(s)	PIN No. & Identification No.	Incorporation or Registration Details	No. of shares held/allocated

7. Particulars of Officers:

A. Directors

	Name of Proposed Director	Age and Nationality	Proposed Capacity (Executive /Non-Executive)	ID No./ Passport No.	Qualification (academic and professional)	Postal and E-mail address	Tele-phone contacts	Experience /previous employment	Other Current Directorship (s)
1.									
2.									

(Attach all necessary supportive documentation; please indicate N/A where requested details are not applicable)

B. Senior Officers

	Name of Proposed Senior Officer	Age and Nationality	Proposed Designation	ID No./ Passport No.	Qualification (academic and professional)	Postal and E-mail address	Tele-phone contacts	Experience /previous employment	Current Position
1.									
2.									

(Attach all necessary supportive documentation; please indicate N/A where requested details are not applicable)

8. Names of the proposed mortgage refinance company's —

(a) bankers, branch and their address

....

(b) name of law firm and their address

....

(c) name of corporate secretary and their address

....

9. Sources of funds for the proposed business

....

....

10. Does the mortgage refinance company hold, or has it ever held any authority from a supervisory body to carry on any business activity in Kenya or elsewhere?

....

If any such authority has been revoked, give particulars

....

11. Has the mortgage refinance company been put under receivership in the past or made any compromise or arrangement with its creditors in the past or otherwise failed to satisfy creditors in full?

....

If so, give particulars ....

12. Has the mortgage refinance company been the subject of investigation by a government agency during the last three years ....

....

13. Is the mortgage refinance company engaged or does it expect to engage in Kenya or elsewhere in any litigation which may have a material effect on the resources of the mortgage refinance company? ....

14. If YES, give particulars ....

DECLARATION

We, the undersigned, being directors of the mortgage refinance company, declare that to the best of our knowledge and belief, the information contained herein is complete and accurate. We also certify that the capital to be invested in the mortgage refinance company is not from proceeds of crime.

Director (Name) ....

Signature.......... Date..........

Director (Name)..........

Signature.......... Date..........

FORM CBK MRC 1-2 (r.4 and r.7)

FIT AND PROPER FORM FOR DIRECTORS AND SENIOR OFFICERS

NB: This form should be duly completed, accompanied by the complete set of documents required under Part III and submitted to the Bank.

1. THE MORTGAGE REFINANCE COMPANY

Name ....

Type ....

Proposed position ....

2. PERSONAL INFORMATION

a) Surname ....

Other Names ....

b) Previous Names (if any) by which you have been known:

....

Reasons for change of names ....

c) Year and Place of birth: ....

d) Nationality and how acquired..........

e) Personal Identification Number (PIN) ....

f) (i) Identification Card number and date of issue ....

(ii) Passport number, place and date of issue..........

g) Postal Address: ....

h) Previous Postal Addresses (if any) ....

(i) Physical Address ....

(ii) Telephone numbers ....

Educational Qualifications

....

	Qualifications	Year obtained	Examining Body	Grade Obtained
1.				
2.				

Professional Qualifications and years obtained

....

	Qualifications	Year obtained	Examining body	Grade obtained
1.				
2.				

h) Name(s) of your bankers during the last 5 years

....

....

i) Responsibilities of Proposed position

3. EMPLOYMENT/ BUSINESS RECORD

Period	Name of Employer/ Business and Address	Position Held & Dates	Responsibilities	Reasons for Leaving (where applicable)

4. DESCRIPTION OF PAST AND PRESENT ACTIVITIES IN KENYA AND ABROAD

4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

Company's Name	Certificate of registration No.	Executive or Non-executive	Position held	Date of appointment	Reasons for leaving

4.2 DIRECTORSHIPS

Company's Name	Certificate of registration No.	Executive or Non-executive	Position held	Date of appointment	Reasons for leaving

4.3 MEMBERSHIP TO PROFESSIONAL BODIES

Name of the institution	Membership No.	Position held	Current status of membership	Reasons for leaving

5. BORROWINGS

5.1 Have you ever defaulted in your financial obligations in the last five years? ....

....

If yes, give details ....

5.2 Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction ....

....

5.3 Have you ever been disqualified, under any legislation or regulation from acting as a director or serving in a managerial capacity?

....

5.4 Have you, in any country, ever been dismissed from any office or employment, or been asked to resign or resigned from employment or position of trust or fiduciary appointment? If so give particulars

....

5.5 Have you ever been diagnosed as being mentally unfit or of unsound mind?

....

5.6 Have you ever been adjudged bankrupt? ... .

If so, give particulars ....

5.7 Have you ever been convicted of fraud or theft by a court of law in any country?

If so, give particulars

....

5.8 Has any entity with which you were associated as a director, shareholder or manager in any country been in financial distress, made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within three years after you ceased to be associated with it?

If so, give particulars...

....

5.9 Indicate the names, postal and e-mail addresses, telephone numbers and positions of at least three individuals of good standing who would be able to provide a reference on your personal and professional integrity. The referees must not be related to you, and should have known you for at least five years.

	Name of referee	Postal address	E-mail address	Tel no. (s)	Position (where applicable)	Relationship with applicant
1						
2						

5.10 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise for the position(s) held/to be held? The omission of material facts may represent the provision of misleading information ....

6. DECLARATION

I am aware that it is an offence to knowingly provide any information, which is false or misleading. I am also aware that omitting material information intentionally shall be construed to be an offence.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Bank should be aware.

I undertake to inform the Bank of any material changes to the information provided herein.

NAME..POSITION HELD ....

DATED..................... AT................. THIS DAY OF ....

SIGNED. ....

(Applicant)

(This declaration must be signed in the presence of the witness named below)

WITNESSED BEFORE ME:

COMMISSIONER FOR OATHS/MAGISTRATE

Name: ....

Signature: ....

Address: ....

Date......................and Stamp ....

N.B. The information given in response to this questionnaire shall be kept confidential by the supervisory authorities, except in cases provided for by law.

FORM CBK MRC 1-3 (r. 4)

FIT AND PROPER FORM FOR SIGNIFICANT SHAREHOLDERS

NB: This form should be duly completed, accompanied by the complete set of documents provided under Part III.

1. THE MORTGAGE REFINANCE COMPANY

Name ....

....

Registration No. ....

....

2. INFORMATION

a) Name of the corporate body

....

b) Previous Names (if any) by which you have been known:

....

c) Year and date of incorporation

....

d) Country of incorporation

....

e) Personal Identification Number...

f) Contacts details ....

g) Name(s) of your bankers over the last 5 years ....

3. DESCRIPTION OF PAST AND PRESENT ACTIVITIES IN KENYA AND ABROAD

3.1 SOURCES OF FUNDS

1. Please provide details of the actual source(s) of funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the mortgage refinance company.

a) ....

b) ....

c)..

2. Declaration on the sources of funds

Please provide a sworn statement that the funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the mortgage refinance company are not from proceeds of crime.

4. DECLARATION

I am aware that it is an offence to knowingly provide any information, which is false or misleading. I am also aware that omitting material information intentionally shall be construed to be an offence.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Bank should be aware.

I undertake to inform the Bank of any material changes to the information provided herein

NAME: ....

DATED AT:...................THIS...................DAY OF................ 20 ....

WITNESSED BEFORE ME:

SIGNED .... (Applicant) COMMISSIONER FOR OATHS/MAGISTRATE

Name: ....

Signature: ....

Address: ....

Made on ....20........

FOURTH SCHEDULE (r.4 (2)(c); r. 5(4))

FEES

	Item	Amount (Kshs.)
(a)	Application for a licence	5,000
(b)	On the granting of a licence and annually thereafter	100,000

FIFTH SCHEDULE (r.16)

CONDUCT OF BUSINESS AND AFFAIRS OF A BOARD AND BOARD COMMITTEES

1. Meetings

(1) The board and the board committees shall meet at least once in every quarter, to deliberate on the affairs and financial condition of the mortgage refinance company and provide oversight and guidance to the management.

(2) Every member of the board and board committees shall attend at least two thirds of the board meetings in any financial year.

2. Quorum

(1) The quorum for the conduct of business of a board shall be at least two-thirds of the members of the board.

(2) The quorum for a meeting of a board committee shall be at least two-thirds of the committee members, where at least one attendee must be a non-executive director of the mortgage refinance company.

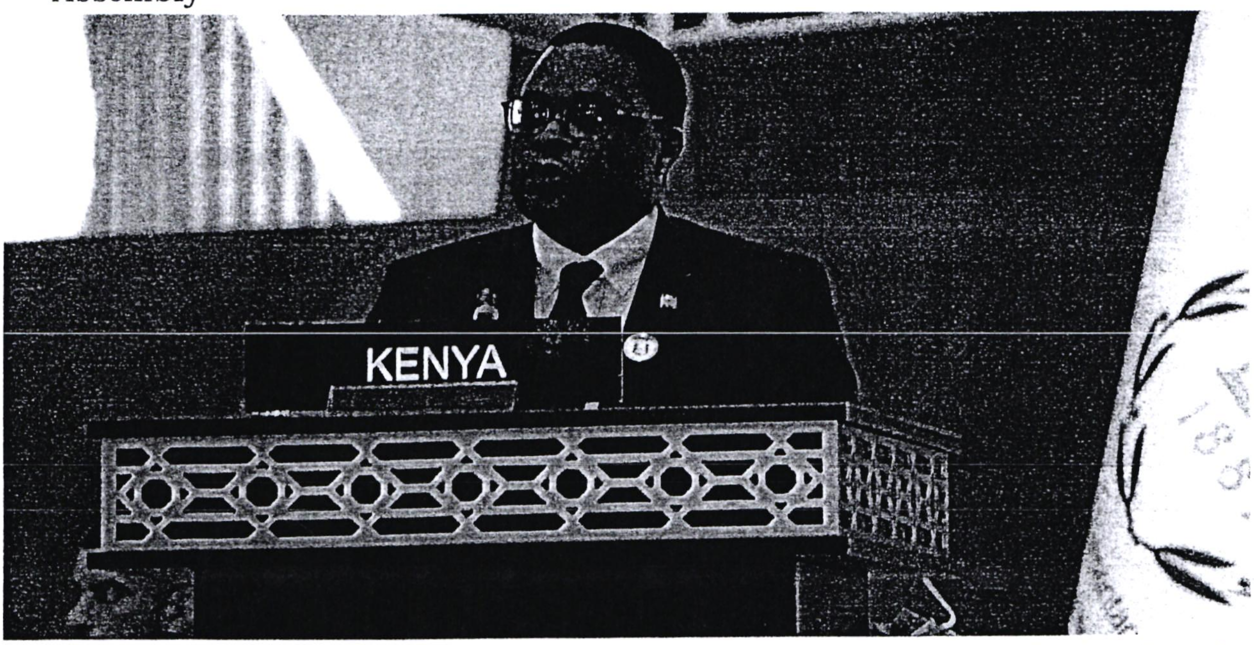
3. Chairperson

(1) The members of a board shall elect a chairperson pursuant to the provisions of the company's articles of association.

(2) The members of board committee shall elect a chairperson from amongst themselves who shall be a non-executive director.

N. PHOTOS OF THE DELEGATION

The Rt. Honourable Speaker of the Senate, Sen. Kenneth M. Lusaka, MP together with Amb. Paddy C. Ahenda, the Ambassador of Kenya to the Kingdom of Qatar during a Speaker's Round Table meeting at the 140th IPU Assembly



The Rt. Honourable Speaker of the Senate, Sen. Kenneth M. Lusaka addressing the 140th IPU Assembly

EXPLANATORY MEMORANDUM TO

THE CENTRAL BANK OF KENYA (MORTGAGE REFINANCE COMPANIES) REGULATIONS, 2019

(L.N. No 134 of 2019.)

PART I

Name of the Statutory Instrument:	The Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019
Name of the Principal Act:	Central Bank of Kenya Act
Enacted Pursuant to:	Section 57 (1) of the Central Bank of Kenya Act
Name of the Ministry/Department:	Central Bank of Kenya
Gazetted on:	August 16, 2019
Tabled on:	

PART II

1. **The purpose of the Statutory Instrument**

1.1. The purpose of the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 is to give effect to Section 57 (1) of the Central Bank of Kenya (CBK) Act, Cap. 491 of the Laws of Kenya which empowers the CBK to make Regulations to give effect to the provisions of the CBK Act. The purpose of the Regulations is to operationalize the mortgage refinance legal regime which was introduced to the CBK Act through the Finance Act, 2018.

1.2. The Regulations provide for, among other things, a clear framework for licensing, capital adequacy, liquidity management, corporate governance, risk management, and reporting requirements of mortgage refinance companies.

2. **Legislative Context**

2.1. The CBK Act was amended by the Finance Act, 2018 to provide the legal framework for the licensing and regulation of the mortgage refinance business and to bring the operations of Mortgage Refinance Companies within the regulatory and supervisory purview of the CBK. The Finance Act, 2018 amendments amended sections 2 and 4A and inserted Part VIB in the CBK Act.

2.2. Section 57 (1) of the CBK Act provides that the CBK may make regulations for the purpose of giving effect to the provisions of this Act and generally for the better carrying out of the objects of the Bank under the Act.

3. **Policy Background**

3.1. The Finance Act, 2018, among others, amended the CBK Act to introduce mortgage refinance business in Kenya. Mortgage refinance business is defined as the provision of long term financing to primary mortgage lenders for housing finance and any other activities that the CBK may from time to time prescribe. It

(3) The chairperson of the board or a board committee shall preside over every meeting of the board but in his absence the members present shall elect one of the members present to preside over that meeting and the business transacted thereat.

4. Reporting

Every committee of a board shall report to the board, at least once every three months.

5. Board to regulate its own procedure

Except as provided in this Schedule, the board may regulate its own procedure.

PATRICK NJOROGE,
Governor, Central Bank of Kenya.

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

is intended that the mortgage refinance business be under the regulatory, supervisory and reporting framework of the CBK. Pursuant to this, the CBK formulated the Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019.

3.2. Mortgage refinance business is intended to support the affordable housing agenda that is part of the Government's Big 4 Agenda to be implemented over the five-year period (2018- 2022). Mortgage refinance companies will facilitate provision of low cost housing as envisaged by the Big 4 Agenda on housing. Financial institutions will be expected to pass on the benefits of lower cost funding from mortgage refinance companies to Kenyans through affordable mortgages.

3.3. Mortgage refinance companies will at affordable interest rates refinance primary mortgage lenders such as commercial banks, microfinance banks and Saccos using funds from the capital markets so as to provide affordable mortgages to eligible members of the public. This will in the long run increase the number of households with affordable housing.

4. Consultation Outcome

4.1. The CBK published the draft Central Bank of Kenya (Mortgage Refinance Companies) Regulations, 2019 on its website in February, 2019 and invited comments from interested parties including stakeholders and the general public.

4.2. The CBK collected, collated, considered and incorporated in the draft Regulations views of the public and key stakeholders such as commercial banks, microfinance banks, Saccos and the National Treasury, amongst others. The Regulations were then forwarded to the Attorney General for legislative drafting and publication in the Kenya Gazette.

4.3. The Regulations were subsequently published in the Kenya Gazette (*Legal Notice 134 of 2019*) on August 16, 2019. The Regulations are currently before the National Assembly for parliamentary scrutiny and approval.

5. Monitoring and review

5.1. The Regulations may be amended from time to time in future to ensure that they are continually aligned to the nature of mortgage refinance business.

6. Contact

6.1. The contact person at the CBK shall be the Governor.