Bill for Introduction into the National Assembly — 3317

The Banking (Amendment) Bill, 2015 ................................. 3317
THE BANKING (AMENDMENT) BILL, 2015

A Bill for

AN ACT of Parliament to amend the Banking Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Banking (Amendment) Act, 2015.

2. The Banking Act in this Act referred to as “the Principal Act” is amended by inserting the following new section immediately after section 31.

Disclosure of information on loans.

31A. A bank or financial institution shall, before granting a loan to a borrower disclose all the charges and terms relating to the loan.

3. The Principal Act is amended by inserting the following new section immediately after section 33A.

Powers of Central Bank to enforce interest ceilings.

33B (1). A bank or a financial institution shall set —

(a) the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the base rate set and published by the Central Bank of Kenya; and

(b) the minimum interest rate granted on a deposit held in interest earning in Kenya to at least seventy per cent, the base rate set and published by the Central Bank of Kenya.

(2) A person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of that prescribed by law.

(3) A bank or financial institution which contravenes the provisions of
subsection (2) commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to imprisonment for a term not less than one year, or to both.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a mechanism for regulation of banks and financial institutions' interest rates through the introduction of ceilings. The Bill proposes to put a cap on the rate of interest charged for loans and to fix the minimum rate of interest that such institutions must pay on deposits held.

The Bill seeks to amend section 33A by introducing a new section 33B which provides for interest ceilings and further criminalizes the act of providing interest rates higher than those set by the law.

This Bill does concern county governments and it affects the powers and functions of county governments.

The enactment of this Bill does not occasion additional expenditure of public funds.

Dated the 12th November, 2015.

JUDE NJOMO,
Member of Parliament.

Section 31 of Cap. 488 that the Bill proposes to amend—

31. (1) The Central Bank or the Minister may publish in whole or in part, at such times and in such manner as it or he thinks fit, any information furnished to it or him under this Act:

Provided that the information so furnished shall not be published if it would disclose the financial affairs of any person, unless the consent in writing of that person has first been given.

(2) Except as provided in this Act, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties or responsibilities under this Act and, if he does so, he shall, for the purposes of section 49, be deemed to have contravened the provisions of this Act.

(3) Notwithstanding the provisions of this section —

(a) the Central Bank may disclose any information referred to in subsection (2) to any monetary authority or financial regulatory authority, fiscal or tax agency, fraud investigations agency within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority, fiscal or tax agency, fraud investigations agency;
Provided that the sharing of information with institutions outside Kenya shall only apply where there is a reciprocal arrangement.

(b) the Deposit Protection Fund Board, and institutions licensed under this Act shall, in the ordinary course of business and in such manner and to such extent as the Minister may, in regulations, prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Central Bank in guidelines under section 33(4);

(c) the Central Bank and institutions licensed under this Act may, in the ordinary course of business, in such manner and to such extent as the Minister may, in regulations prescribe, exchange such other information as is reasonably required for the proper discharge of their functions.

(4) Without prejudice to the generality of subsection (3) (b) or (c), regulations under that subsection may provide for the establishment and operation of credit reference bureaus, for the purpose of collecting prescribed credit information on clients of institutions licensed under this Act, and disseminating it amongst such institutions for use in the ordinary course of business, subject to such conditions or limitations as may be prescribed.

(5) No duty, to which an institution or its officers may be subject, shall be breached by reason of the disclosure, in good faith, of any information under subsection (2), to—

(a) the Central Bank or to another institution; or

(b) a credit reference bureau established under subsection (4),

in the course of the performance of their duties and no action shall lie against the institution or any of its officers on account of such disclosure.

Section 33A of Cap. 488 that the Bill proposes to amend—

33A. Powers upon audit or inspection report

Where an auditor's report under section 24 (4) or an inspection report under this Part reveals that an institution conducts its business in a manner contrary to the provisions of this Act, or in any manner detrimental to or not in the best interests of its depositors or members of the public, or that an institution is undercapitalized, the Central Bank may—

(a) restrict, suspend or prohibit the payment of dividends by the institution;
(b) prohibit the conversion of any profits of the institution into capital;

c) direct the suspension or removal of any officer involved in such conduct from the service of the institution;

d) require the institution to reconstitute its board of directors in accordance with the criteria set out in the First Schedule;

e) withhold branch or other corporate approval with respect to such institution;

f) undertake more frequent inspections of that institution;

g) order the institution to submit to the Central Bank, within forty-five days, a capital restoration plan to restore the institution to the capital adequacy prescribed in section 18, or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Central Bank;

h) prohibit the institution from awarding any bonuses or increments in salary, emoluments or other benefits to the directors and officers of the institution;

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

j) impose restrictions on growth of assets or liabilities of the institution as it deems fit;

(k) restrict the rate of interest on savings and time deposits payable by the institution to such rates as the Central Bank shall determine; or

(l) order the institution to do any or take such other actions as it may deem necessary to rectify a capital deficiency or other weaknesses.