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RULES FOR OPERATION OF THE CREDIT REFERENCE SYSTEM

CENTRAL BANK OF KENYA

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RULES FOR OPERATION OF CREDIT REFERENCE SYSTEM

CENTRAL BANK OF KENYA

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BACKGROUND

Guidelines and a manual were drafted on the behalf of the Central Bank of Kenya for the supervision and regulation of credit reference bureaus which incorporate best practices adapted to the Kenyan setting.

Consequently, the legal framework was reviewed with an analysis conducted on professional literature and, in addition, practitioners were consulted – all within the context of accepted international best practices to draft guidelines for the on and off-site supervision for licensed credit reference bureaus.

As a result of that work, the need became apparent to draft these proposed rules for the participation on the national credit information system of different parties, not only the licensed credit reference bureaus and the Central Bank, but also data providers, subscribers of credit reports, and the various natural and legal persons that apply and/or enter into credit-related transactions.

These proposed rules complement and expand the provisions of the banking (credit reference bureau) regulations, particularly by:

1. Specifying the respective duties of the various participants in the credit information system, including credit seekers, and the protection from suits and other damages for those bona fide participants – data providers, credit reference bureaus, and subscribers- who follow the Regulations and Rules;
2. Broadening the coverage credit information to more than credit-related financial transaction contracts, to include: credit related *applications*; *non financial* credit related transactions, and key persons involved – co-applicants, co-signers, and guarantors;
3. Requiring the non selective provision of client credit histories by data providers;
4. Requiring Central Bank approval of the methodology of credit reference bureaus, and of the use by subscribers, of credit scoring and other services to assess the credit worthiness of applicant classes;
5. Broadening the allowed activities and services of credit reference bureaus, to include:
 - a. Credit worthiness assessments
 - b. Verification/processing of credit application information
 - c. Cross-default notices or “watch services”
 - d. Data storage and statistical research
 - e. Debtor and guarantor tracing services
 - f. Employment, income, address, and asset verification services
 - g. Collateral registry services
 - h. Fraud prevention and detection

CENTRAL BANK OF KENYA

The Central Bank of Kenya, pursuant to its authority under the Banking Act and the Banking (Credit Reference Bureau) Regulations, 2008 hereby issues these rules governing the organization and operations of a credit Information system in the Republic of Kenya.

ADOPTS:

RULES N° .../... OF .../.../2010 GOVERNING THE ORGANIZATION AND FUNCTIONING OF A CREDIT INFORMATION SYSTEM IN THE REPUBLIC OF KENYA

CHAPTER I: GENERAL PROVISIONS

Article 1: Definitions of Terms and Expressions

Terms and expressions used in these rules have the following meanings:

1. “Consumer” means a person who has formally asked a data provider or a subscriber, usually in writing, for credit or credit related services, or obligations to make payments or to deliver goods or services, including co-applicants, co-signers and guarantors.
2. “Central Bank” means the Central bank of Kenya.
3. “Contingent obligations” includes obligations that are contingent upon the occurrence of an event, and include guarantees and other credit enhancing instruments issued by a person in favor of another person.
4. “Credit agreement” means direct, indirect and contingent obligations incurred by a person with another person and includes loans credit or guarantees; the obligation to pay for good or services; discounts, advances, and overdrafts; export bills purchased; securities, obligations and other bills received or purchased for future delivery; import bills; customers’ liability on off-balance sheet items; trade credits; goods and real assets sold, leased or rented; and any other credit facilities extended to a customer.
5. “Credit reference bureau” means a company properly organized and registered under the laws of Kenya, and licensed by the Central Bank to engage in credit reference activities.
6. “Credit reference report or credit bureau” means a written, oral or other communication to a subscriber made by a credit reference bureau which contains a full or partial disclosure of consumer or customer information contained in the credit reference bureau’s database.
7. “Credit information” means information concerning a customer’s identification and credit history, as more specifically defined in Article 18 of these rules.
8. “Credit scoring” means the service of providing a numerical value, based on a statistical analysis of a customer, consumer, or applicant’s credit file, to represent the credit worthiness of that borrower class.

9. “Customer or consumer information” means data on borrowers and/or guarantors, in electronic and/or paper form that is collected, collated, stored, disseminated and otherwise handled by a credit reference bureau.
10. “Database” means a set of information administered by a credit reference bureau.
11. “Data provider” means (a) a person that submits customer/consumer information to a credit reference bureau, pursuant to the terms of a valid data submission agreement, and (b) other public sources of information as detailed in Article 19 of these rules.
12. “Guarantor” means a person who promises to pay a debt or payment obligation, or the delivery of goods or services, if the person who should meet the obligation does not.
13. “Mandated participants” means legal persons which may be required to serve as data providers and/or subscribers, and include:
 - a. Banks and financial institutions supervised by the CBK
 - b. Other institutions
14. “Participants” means both mandated participants and voluntary participants and includes data providers and subscribers, as well as credit reference bureaus.
15. “Permissible purpose” means those purposes approved by the regulations and rules.
16. “Person” means a natural and legal person.
17. “Subscriber” means a person that is a party to a subscription agreement and is otherwise eligible to access credit reference bureau reports.
18. “Subscription agreement” means an agreement between a credit reference bureau and a subscriber that sets forth the modalities for requesting a credit reference bureau report, as well as other material terms of the arrangement.
19. “Voluntary participant” means a person who serves as either as a data provider, subscriber or both, on a voluntary basis.

Article 2: Purpose

These rules complement the banking (credit reference bureau) regulations to better prescribe the organization and functioning of the credit information system, establishing the conditions for credit reporting and providing for related matters in the Republic of Kenya.

The credit information system will:

1. Enable lenders and other data providers to share customer identifying and credit data and relevant sources of publicly available data in a centralized manner.
2. Allow subscribers access to that shared information to make informed decisions about the allocation of credit, risk or related activities.

3. Lower the probability of default, thus strengthening the financial services sector in Kenya.

CHAPTER II: CROSS-BORDER / CROSS-INDUSTRY DATA SHARING

Article 3: Cross-Border Information Storage, Processing or Sharing

The CBK shall have the authority to approve the storage, processing, and/or sharing of customer information beyond the borders of Kenya by a Credit Reference Bureau, specifically with respect to other member nations of the East African Community, subject to the terms and conditions of a Memorandum of Understanding between the CBK and the other credit reference bureau licensing authorities of other countries or the East African Community itself. The cross-border sharing of credit reports by a subscriber or Credit Reference Bureau with a related or third party with the express, written, approval of the involved customers or consumers is allowed.

Article 4: Cross-industry information sharing

Financial institutions supervised by the CBK, as well as and other entities, can share with the licensed credit reference bureaus data on credit applicants and on the credit history of clients, consumers or costumers, for the database, if allowed by law. Any person can sign data storage agreements with a credit reference bureau and store its data with that credit reference bureau, separately from the database owned by the CBK. All persons who subscribe agreements with a licensed credit reference bureau can obtain credit reference reports, to be used for approved purposes, provided they previously obtained written authorization from the subjects of the credit report.

CHAPTER III: DUTIES AND RIGHTS OF CUSTOMERS AND CONSUMERS

Article 5: Customers and Consumers Covered by Regulations and Rules

All persons applying for having or having had a contractual agreement with another party whatsoever to obtain credit related goods or services, or involving an obligation to make payments or to deliver goods or services, either as a direct signer, or co-signer, or guarantor, are covered under the duties, rights and protections provided by these rules and are hereby designated as "consumers". All consumers are covered under the duties, rights and protections provided by these rules, and by the banking (credit reference bureau) regulations applying to "customers" of financial institutions. Consumer information includes credit or payment history information, positive or negative, lawfully provided by a data provider to a credit reference bureau, or obtained from publicly available records.

Article 6: Full and Truthful Disclosure in Credit Related Applications and Contracts

All consumers and customers have the duty to make full and truthful disclosure of facts and information in applications and contracts with third parties to obtain credit related goods or services, or involving an obligation to make payments or to deliver goods or services, and their failure to do so may result in negative information as to their character being shared with the credit reference bureaus.

Article 7: Limitation of Liabilities for Bona Fide Acts and Omissions of Participants

Participants are subject to the duties and procedures specified in the banking (credit reference bureau) regulations 2008 and under these rules. The liability to consumers and customers for acts or omissions by participants supervised by the CBK, which are in bona fide compliance with the regulations and the rules, are hereby limited to the provisions in the Regulations and the rules. Participants not supervised by the CBK can include those same limitations of liability in their contracts and authorizations for credit reports with their consumers.

Article 8: Right of Consumers to Insert Statements in Credit Reports

Consumers have the right to demand that credit reference bureaus include in their credit report a brief statement explaining circumstances of a transaction. When facts of a transaction are not disputed by consumers, the credit reference bureaus may charge a nominal fee to insert the statement to recover costs.

Article 9: Right to Appeal Disputes to the CBK for Final Determination

Consumers disputing the facts of a transaction in their credit report, who are not satisfied after the mandatory investigation by the credit reference bureau with the data provider, may petition the CBK in writing asking it to make a final determination of the dispute. Consumers which appeal undertake to accept the determination of the CBK as final. The CBK may assign arbitration committees to review on its behalf such final appeals by consumers.

CHAPTER IV: DUTIES AND RIGHTS OF CREDIT REFERENCE BUREAUS

Article 10: Other Permissible Activities of Credit Reference Bureaus

In addition to the activities permitted under the Banking (Credit Reference Bureau) Regulations, credit reference bureaus may also engage in the following activities:

1. The collection, collation, storage, management, evaluation, updating and dissemination of customer information as provided by the regulations
2. Other services including, but not limited to:
 - a. Credit worthiness assessments, credit scoring and portfolio risk management tools as reviewed and approved by the CBK
 - b. Verification of credit application information and credit application processing
 - c. Cross-default notices or “watch services”
 - d. Data storage and statistical research
 - e. Debtor and guarantor tracing services with respect to funds lawfully due
 - f. The sale of literature, software and other material related to its activities
 - g. Collateral registry services
 - h. Employment, income, address and asset verification services
 - i. Fraud prevention and detection
 - j. Such other activities as may be approved by the Central Bank in writing

A credit reference bureau shall not engage in activities other than those specified in the regulations, these rules, or as approved by the CBK in writing.

Article 11: Duties of Credit Reference Bureaus with Respect to Operations

A credit reference bureau shall ensure that:

1. Its premises are safe and are adequate to operate its data systems, database and other operations are suitable to provide adequate customer service.
2. It uses hardware and software that meet security standards required by the CBK when setting up and using the information systems that houses its database.
3. It establishes and maintains an enquiry service unit and recruits and maintains personnel sufficiently trained in customer relations and credit reporting to handle queries of customers and participants.
4. It prepares and maintains operational manuals that ensure the accuracy of information contained in its database including manuals for: queries, loading of data, source quality control, maintenance, security and procedure for handling complaints.
5. It adopts measures and systems that record requests or queries for the credit reference bureau report of a customer as well as the misuse of data held in its database.
6. It releases customer information solely for one or more permissible purposes as set forth in the regulations and these rules.
7. It follows operating procedures and data integrity and safety requirements which the CBK may approve or require from time to time in accordance to international best practices and it supplies the CBK with all the reports and data on the frequency which it may require, including the following monthly reports:
 - a. Identification of any problems identified by the credit reference bureau or reported to the credit reference bureau by participants
 - b. Description of internal, participant, and third-party, data security incidents
 - c. Certification of compliance with the use of approved agreements for data provision and subscription to credit reports
 - d. Actions, if any, undertaken by the credit reference bureaus to ensure that all participants comply with regulations, including subscribers
 - e. Certification that all required procedures were adhered to, with exceptions and corrections noted
 - f. Number of consumer complaints, presented and resolved within the required dates, and with date brackets for complaints not resolved in time
 - g. Statistical registry of the number of regular and occasional data providers, type and number of subscribers
 - h. Fees charged for services
 - i. Breakdown of the services provided to subscribers
 - j. List of participants and volume of any service to assess the credit worthiness of customers

Article 12: Duties of Credit Reference Bureaus with Respect to Participants

A credit reference bureau shall:

1. Develop an approval process for participants to ensure that all approved data providers and subscribers are reasonably capable of complying with CBK regulations, guidelines and rules governing the credit information system.
2. Require each participant regular data provider and each subscriber to enter into an agreement, approved by the CBK which at a minimum:
 - a. Impose an obligation to jointly implement organizational and technical measures for the protection of customer and consumer information
 - b. Set forth specific modalities for the submission of information to and delivery of credit reference bureau reports by a credit reference bureau
 - c. Require that the data to be provided shall be of the type and in the format determined by the CBK from time to time
 - d. Set forth an acknowledgement of its obligations under the regulations and these rules regarding the defined permissible purposes and the standards for confidentiality
 - e. Contain such other provisions as may be required by the parties as approved by the CBK
3. Carry out such other duties as maybe required by the CBK from time to time in writing.
4. Take immediate remedial action with respect to any data provider or subscriber who fails to comply with provisions of the regulations and these rules.

Article 13: Duties of Credit Reference Bureaus with Respect to Consumer Information

A credit reference bureau shall take all steps as are reasonably necessary to ensure that all customer and consumer information received or collected by it is:

1. Properly and accurately recorded, maintained, collected and processed in a timely manner.
2. Properly placed in the correct file.
3. Protected against loss, including adequate back up and disaster recovery plans.
4. Protected against unauthorized access, use, modification or disclosure both within Kenya and if transferred to other countries.
5. Obtained from reliable sources which take responsibility for the accuracy, completeness and timeliness of information that is provided to the credit reference bureau.
6. Immediately corrected if at any given time it is found to be inaccurate and or erroneous.
7. Not request, nor include in the database, nor include in reports, information not allowed under law, these Rules, or as the CBK shall indicate.

Article 14: No Violation of Other Regulations or Rules

Credit reference bureaus are subject to the duties and procedures specified in the banking (credit reference bureau) regulations 2008 and under these rules. The liability to consumers and customers and to data providers and subscribers for acts or omissions by licensed credit reference bureaus supervised by the BK which are in bona fide compliance with the regulations and the rules, are hereby limited to the provisions in the regulations and the rules. A credit reference bureau supervised by the Central Bank which, in accordance with the banking (credit reference bureau) regulation 2008 and these rules, gathers information for inclusion in the database owned by the CBK and provides credit reports does not violate the provision of the Central Bank Law, the Banking Law, other financial and/non-financial services legislation or legislation on privacy or confidentiality.

Article 15: Permissible Fees for Services

The CBK has the authority to regulate the fees and other charges assessed by a duly licensed credit reference bureau.

CHAPTER V: DUTIES AND RIGHTS OF DATA PROVIDERS

Article 16: Role of a Data Provider

A participating data provider shall collect from customers /consumers, and from their guarantors, the information required by a licensed credit reference bureau, as approved by the CBK from time to time in writing, for submission to one of more duly licensed credit reference bureaus.

Article 17: Additional Duties of a Data Provider

A participant data provider, in addition to the requirements of the banking (credit reference bureau) regulations, shall be required to:

1. Enter into an agreement with at least one duly licensed credit reference bureau.
2. Collect customer information as provided under Article 18 and as the Central Bank may order.
3. Provide their complete, accurate and timely proprietary credit or other information that accurately identifies the customer and the guarantor.
4. Update customer information in accordance with the procedures of the credit reference bureau.
5. Provide contact information of credit reference bureaus to customers upon demand which the customer and guarantor's information have submitted.
6. Conduct enquires of customer and/or guarantor challenges, as requested by the credit reference bureau or the CBK.

7. Immediately correct any inaccuracies detected in its database.
8. Be responsible for any errors or inaccuracies within its control in the customer information provided to a credit reference bureau.
9. Fulfill such other obligations as may be required by the CBK.

Article 18: Additional Information to be Provided to the Credit Reference Bureau

A data provider shall provide to the credit reference bureau.

1. Data sufficient to confirm the identify of the specific customer or consumer, individual or corporate.
2. Information on credit related transactions, on obligations to make payments, or to deliver goods or services, or on collaterals or on guarantees from third parties.
 - a. The data provider internal credit facility or transaction identification number
 - b. Other information as may be reasonably required by the credit reference bureaus, as previously approved in writing by the CBK from time to time

Article 19: Other Data and Information Providers for Credit Reference Bureaus

A credit reference bureau may also receive, compile and report information, as regards to a person which is ordinarily available to the public, including information that may be obtained from the following government sources.

1. Government agencies that register business and maintain a register of businesses in operation.
2. Government agencies that register property rights and transactions including:
 - a. Registries which maintain information of interest in financial and movable/immovable property
 - b. Creation of charges and other encumbrances on assets
 - c. The registration of discharges of the encumbrances
3. Courts records, including but not limited to.
 - a. Data on judgments on debts
 - b. Records on insolvency proceedings
 - c. Orders for the winding-up of businesses

A public source may enter into contracts with credit reference bureaus to establish:

- The modalities for the provision of information by the public source.
- The manner and form in which the information is submitted.

The right of a credit reference bureau to access information from public sources shall be in addition to the right of access to information granted under any law or regulation.

Article 20: Customer or Consumer Information Not to be Included in Credit Reports

Information concerning race, creed, color, ancestry, ethnic origin, religion or political affiliation, state of health, or sex life may not be reported by a data provider, nor included in the credit reference bureau's database, nor provided in a credit reference bureau report. The CBK may otherwise limit the type of information that may be included in the credit reference bureau report.

Article 21: No Violation of Other Rules

A data provider supervised by the CBK which reports information to a credit reference bureau for inclusion in the database owned by the CBK in accordance with the banking (credit reference bureau) Regulation 2008 and these rules does not violate the provision of the Central Bank Law, the Banking Law, other financial and/ non-financial services legislation, or legislation on privacy or confidentiality. The liability, to consumers and customers or to credit reference bureaus or subscribers, for acts or omissions by a data provider, which are in bona fide compliance with the regulations and the rules, are hereby limited to the provisions in the regulations and the rules. A data provider not supervised by the CBK which reports information to a credit reference bureau for inclusion in the database owned by the CBK in accordance with the banking (credit reference bureau) regulation 2008, and these rules, does not violate the provision of the Central Bank Law or the Banking Law.

CHAPTER VI: DUTIES AND RIGHTS OF SUBSCRIBERS

Article 22: Subscribers and Their Role

Any person with a legitimate purpose, as defined in Article 25, can apply to a duly licensed credit reference bureau to be a subscriber.

Any financial institution required to become a subscriber by the CBK on a case by case basis, or through regulations or notices issued from time to time in writing, shall request a credit reference bureau report on the consumer and guarantor, as follows:

1. Before entering into, modifying or renewing, a credit agreement or insurance contract.
2. Annually, or on more frequent basis, to assess ongoing credit or insurance exposures.

The lack of information in the credit reference bureau database regarding the consumer and/or guarantor shall not, by itself, prevent the participant from extending credit or providing other services.

Article 23: Duties of a Subscriber

A subscriber shall be required to:

1. Obtain and use the information contained in the credit reference bureau report only for permissible purposes as set forth in the regulations and in Article 25 of these rules.
2. Abide by the confidentiality provisions set forth in the Regulations.

3. Obtain the consent of the consumer or guarantor as a condition to requesting a credit reference bureau report.
4. Not to sell, transfer or otherwise use the information obtained from a credit reference bureau for purposes other than outlined in the definition of permissible purposes as set forth in Article 25 of these Rules.
5. Fulfill other obligations under these or other applicable rules.

Article 24: Requirement to Obtain Consent from Present or New Consumers

Subscribers are required to secure the written consent of consumers, and of their guarantors, if any, before requesting from credit reference bureaus, information or reports on the credit history of customers/consumers and/or their guarantors, if any.

Subscribers must also inform consumers of their rights to:

1. Obtain copies of their credit report from the providing credit reference bureau.
2. Dispute erroneous information.

Subscribers are required to inform credit reference bureaus of the refusal to provide consent by clients and guarantors, if any, or consumers and their guarantors, if any, so that credit reference bureaus can include that information in their credit reports.

Article 25: Additional Permissible Purposes

A credit reference bureau shall furnish a credit reference bureau report to a subscriber, and a subscriber shall use data in the credit reference bureau report, only as allowed in the Regulations and under the following circumstances or for the following permissible purposes:

1. To assess an application for credit, the extension of additional credit and/or reviewing or collecting existing credit facilities, including but not limited to loans, guarantees, commercial credits, trade credits, obligations to make payments or to deliver goods or services, employment, and business-related credit background investigations.
2. To assess an application for insurance or an insurance claim or to monitor ongoing risk
3. In response to a court having jurisdiction.
4. To a government entity which is entitled to it under applicable legislation
5. To detect fraud and in fraud prevention activities, as provided by CBK regulation or notice.
6. At the request of, or as authorized by, the person who is the subject of the credit reference bureau report.
7. Such other purposes as may be approved from time to time in writing by the CBK.

Article 26: No Violation of Other Regulations or Rules

A subscriber supervised by the CBK which obtains from a credit reference bureau information in the database owned by the CBK in accordance with the banking (credit reference bureau) regulation 2008 and these rules does not violate the provision of the Central Bank Law, the Banking Law, other financial and/non-financial services legislation, or legislation on privacy or confidentiality. The liability to consumers and customers and to credit reference bureaus or data providers for acts or omissions by subscribers supervised by the CBK, which are in bona fide compliance with the regulations and the rules, are hereby limited to the provisions in the regulations and the rules. A subscriber not supervised by the CBK, which obtains from a credit reference bureau information in the database owned by the CBK in accordance with the Banking (credit reference bureau) regulation 2008 and these Rules does not violate the provision of the Central Bank Law or the Banking Law.