THE IMPACT OF THE CENTRAL BANK OF KENYA (AMENDMENT) ACT, 2021 RATIFICATION TO THE DIGITAL CREDIT LENDERS

On 7th December 2021, H.E President Uhuru Kenyatta ratified various Bills and among them was the the Central Bank of Kenya (Amendment) Bill, 2021, now the Central Bank of Kenya (Amendment) Act, 2021 (CBK Act, 2021). The impact of the enactment of the Amendment Act is discussed in detail below:

The access to credit by most Kenyans has significantly improved in the recent past due to the penetration of digital lending into the financial market by the unregulated Digital Lending Industry ("DLI"). However, this exciting venture, which initially proved to be convenient for most individuals and small businesses, has come under strong criticism by most users/subscribers due to the exorbitant interest rates imposed on the advanced credit.

To remedy this situation, the National Assembly of Kenya saw the need to create legislation to regulate the DLI through the enactment of the CBK Act, 2021 with the aim of ensuring that there is a fair and non–discriminatory market place for access to credit.

This will ensure that Kenyans accessing the credit facilities are protected from the high cost of the credit, unethical debt collection practices, and the abuse of personal information currently being witnessed in the unregulated DLI.

In line with the newly enacted Act, the CBK is required to publish specific regulations to guide the implementation of the provisions of the Act within 3 months (i.e. by 23rd March 2022).

The already drafted regulations provide:

i.   Information on the registration/licensing,
ii.   Governance of the players; and
iii. Lending rate parameters/credit operations, among other requirements for the digital credit providers (DCPs).

Highlights of the new law and proposals by the Draft Regulations:
- The Act provides that engaging in the digital credit business without a license will amount to an offence which will be chargeable to a fine up to KES 5 million, imprisonment for a term not exceeding 3 years or both.
- All digital credit lenders will be required to apply for a licence with the CBK within six months of publication of the Regulations.
- The draft regulations propose a licence application fee of KES 5,000 for the digital credit providers and an annual renewal fee of KES 20,000.
- The licence issued to a digital credit lender is not transferable from one person to another.
- The CBK will have powers to suspend or revoke licences issued to digital credit lenders.
- The CBK will not necessarily set the lending rate to be adopted by the digital credit lenders but will give lenders a pricing parameter for the loans.

Other CBK mandates will include:

a) approving digital platforms through which the digital creditors will operate in; and
b) supervising the operations of the providers and where necessary, suspend or revoke any licenses issued to a provider of digital lending services in the event of failure to adhere to set regulations.

As mandated, the CBK through a press release dated 23rd December 2021 invited the members of the public to provide their suggestions on the draft regulations through written submissions no later than Friday, 21st January 2022, at 5.00 p.m.

In addition, the CBK invited all unregulated digital credit providers to provide their business details by the same date.

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