

SPECIAL ISSUE

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REPUBLIC OF KENYA

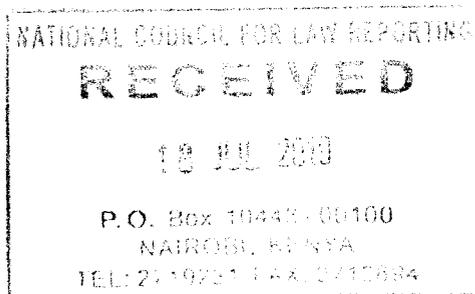
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 5th July, 2019

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THE BANKING (AMENDMENT) BILL, 2019

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, 2019.

Short title.

2. Section 33B of the Banking Act is amended —

Amendment of section 33B of Cap 488.

(a) by deleting subsection (1) and substituting therefor the following new subsection —

“(1) A bank or financial institution shall set the maximum annual interest rate chargeable for a loan in Kenya at no more than four percentage points above the Central Bank Rate set and published by the Central Bank of Kenya under section 36(4) of the Central Bank Act.”

Cap 491

(b) by deleting subsection (3) and substituting therefor the following new subsection —

(3) Any person who 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.

(c) by inserting the following new subsection immediately after subsection (3) —

(4) In this section, the term “loan” has the meaning assigned to it under section 44A(5).

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

The principal object of this Bill is to amend the Banking Act to clarify any vague, ambiguous, imprecise and indefinite words contained in Section 33B. The amendment firstly seeks to remove any ambiguity in section 33B (1) by clarifying that the interest rate under reference is to be computed or applied on an annual basis.

Secondly, the amendment will clarify what a credit facility is by replacing the term “credit facility” with the word “loan” which is a more suitable and comprehensive term for purposes of section 33B(1). The amendment will also ensure consistency in the use of terminologies bearing the same meaning in the context of the Act. In this regard, the term ‘loan’ is defined in section 44A(5) and its broad meaning thereunder addresses the mischief the provision seeks to cure, that is exorbitant interest rates charged for any financing given on credit terms by banks and financial institutions.

Thirdly, the amendment seeks to reaffirm that the maximum interest rate charged by banks and financial institutions on loans should not exceed four percentage points above the Central Bank Rate as set by the Central Bank of Kenya pursuant to the provisions of section 36(4) of the Central Bank Act. As it stands, the provision is unclear as to whether banks should set the maximum interest rate at four percentage points below or above the Central Bank Rate. For the avoidance of doubt, a further amendment here will also precisely point the applicable base rate as that which is set and published by the Central Bank under Section 36(4) of the Central Bank Act.

Finally, for a legal provision to have effect, it follows that a corresponding penalty be imposed for non-compliance. As it stands, the penal provision under subsection (3) is couched in discriminatory terms as it applies only to banks and financial institutions yet the legal obligation is aimed at both the bank/financial institution and the borrower/customer. The amendment to subsection (3) is therefore necessary as it seeks to create a penal provision that is not discriminatory.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers and it does not limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments

The Bill does not concern County Governments in terms of Article 110 (1) of the Constitution as it does not affect the functions and powers