

GUIDELINE ON INCIDENTAL BUSINESS ACTIVITIES CBK/PG/23

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PART I: PRELIMINARY

- 1.1 Title** – Guideline on Incidental Business Activities.
- 1.2 Authorization** - This Guideline is issued under Section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue guidelines to be adhered to by institutions in order to maintain a stable and efficient banking and financial system. In addition, Section 2 of the Banking Act empowers the Central Bank of Kenya to prescribe additional business activities that may be undertaken by a bank in addition to its core banking and financial business.
- 1.3 Application** - All banks licensed under the Banking Act (Cap. 488).
- 1.4 Definitions** - Terms used in this Guideline are as defined under the Banking Act (Cap. 488). Other terms used in this guideline shall be taken to have the meaning assigned to them hereunder:
- 1.4.1 “authorised financial services or products”** means financial services or products the distribution or cross-selling of which has been approved by the Central Bank.
- 1.4.2 “distribution channel”** means a path or medium through which financial services and products move from the financial service provider to the consumer or payments for those services and products move from the consumer to the financial service provider.
- 1.4.3 “incidental business activity”** means any financial service activity which can lawfully be carried on alongside banking business without breaching the Banking Act or any other written law;
- 1.4.4 “partnership”** means any agreement, association or relationship between two or more persons or between a bank and one or many service providers entered into for purposes of providing the services and products and in the manner covered under this Guideline;

PART II: STATEMENT OF POLICY

2.1 Purpose

The purpose of this guideline is to prescribe the business activities a bank may undertake in addition to its core banking and financial business.

2.2 Scope

This guideline applies to all banks intending to provide a distribution channel through their branch network and other banking channels for the provision of incidental financial services or products. The provisions of this guideline will also apply to the bank where the bank seeks to provide a distribution channel for financial services or products offered by its subsidiaries.

2.3 Responsibility

The Board of Directors of each bank shall be responsible for formulating policies, procedures and guidelines, which ensure that:

- (i) Only lawful incidental business activities are carried out by the bank.
- (ii) Risks associated with incidental business activities are properly identified, documented and mitigated.
- (iii) The carrying out of incidental business activities does not compromise or impair the core business of the bank.

PART III: PERMITTED INCIDENTAL BUSINESS ACTIVITIES

3.1 Incidental Business Activities

3.1.1 Banks licensed by the Central Bank offer banking services through their widely distributed banking channels. These banks may act as a distribution channel in the provision of authorised financial services or products. Banks providing a distribution channel for financial services or products will be permitted to engage in the following activities:-

- i. form partnerships with one or more financial service providers for purposes of cross-selling authorized financial services and products through their branch network.
- ii. enter into partnerships with one or more financial service providers for purposes of marketing authorized financial services and products. A bank may market or sell products to its customers by face to face offering (direct marketing), by using other means of communication (telemarketing), through mail delivery (direct mailing) or through other convenient means.
- iii. Any other incidental or complementary business activity as the Central Bank may approve.

3.1.2 For the purposes of this guideline, a partnership shall be formed where an agreement is entered into with one or more entities on whose behalf the bank will act as a distribution channel in the marketing or cross selling of financial services or products in line with the provisions of these guidelines.

3.1.3 A distribution partnership entered into for the purposes of this guideline shall be compliant with all relevant rules and regulations governing that type of business.

Prohibited Business

3.2. A bank acting as a distribution channel for the provision of financial services and products either through cross-selling or marketing shall not;

- i. undertake or engage in the actual business of insurance underwriting and securities brokerage or any other financial business which it is not authorized to undertake by the Central Bank. The involvement of banks will be limited to acting as a distribution channel in the provision of these financial services.
- ii. give the impression to its customers or imply in any way as to being the actual service provider of these financial services or products other than selling or marketing on behalf of or in partnership with other financial service providers.
- iii. engage in other business activity other than that permitted under this guideline and of which approval has been obtained from the Central Bank.
- iv. increase its rates or other charges on the permitted business activities except with the prior approval of the Central Bank pursuant to section 44 of the Banking Act.
- v. provide the financial services or products in a manner that contravenes any law that applies to or affects those services or products.

Approval by the Central Bank of Kenya

3.3 A bank seeking to engage in permitted incidental business activities as prescribed under sub clause 3.1 above, shall seek the prior approval of the Central Bank before engaging in such business activity. Where appropriate, a bank seeking approval should submit the following with its application:

- i. all draft contracts between that bank , the service provider and any other third party to be involved in the distribution of authorized financial services and products. At a minimum, the contract should set out the nature of services to be rendered, the rights and obligations of the parties both during and upon termination of the contract, circumstances under which the services can be suspended or revoked, action to be taken when the service provider's license has been suspended, revoked or otherwise restricted, fees charged, a requirement that the bank must publicly disclose that it is acting on behalf of the service provider, that services shall be offered on a non-exclusive basis, the right of the Central Bank or the regulator of the financial services to have access to the premises, of the service provider or distributor of financial services or products, documents or any information in respect of the services and to supervise the activities; dispute resolution mechanism and the steps to be taken to safeguard confidential information.
- ii. an approval framework by the bank for the business to be carried out under this guideline. This framework should detail the governance, internal approval processes and the parameters for businesses including a business plan/strategy. It should also clearly set out criteria and parameters for the Board and senior management to assess whether the proposed business activity meets the conditions and pre-requisites set by the Central Bank and or any other financial sector regulator.

- iii. the bank's assessment of the risks of the incidental business activities together with risk mitigants to be put in place.
- iv. the necessary board approvals to introduce the business activities.
- v. approval from the appropriate financial service regulator to engage in the permitted business activities where the financial service or product is regulated.

PART IV: SPECIFIC REQUIREMENTS

4.1 Policies and Procedures

4.1.1 A bank shall put in place appropriate policies and procedures to carry on the permitted incidental business activities. This shall include well-defined risk management policies on both financial and non-financial exposures and risk concentrations, and staff with the expertise to manage the businesses. In developing and implementing the appropriate risk management framework for carrying out incidental business activities, a bank shall have regard to the Risk Management Guidelines, 2013 and shall pay particular attention to operational risk, legal and regulatory risk, settlement risk and reputational risk.

4.2 Consumer Protection Safeguards

A bank acting as a distribution channel in the provision of approved financial services or products shall have regard to the CBK Guideline on Consumer Protection (CBK/PG/22). Adequate safeguards shall be put in place to ensure compliance with this Guideline. At a minimum, a bank shall be required to:

- i) disclose to their consumers, details of all commissions and or fees to be received for distributing the approved financial services and or products;
- ii) have in place an appropriate complaints redressal mechanism;
- iii) ensure the confidentiality of consumer data and information;
- iv) refrain from coercive selling and placing undue pressure on the consumer. Institutions are required to inform the customer of other available options to enable him/her make informed choices on the financial products;
- v) disclose to the consumer that it is acting as an agent for a disclosed financial service provider; and
- vi) disclose contact details including telephone number of the main financial service provider.

4.3 Relationship with service providers

4.3.1 The bank shall be required to:

- i. ensure that any risks contained in the permitted business are not transferred to the bank and the banking business.
- ii. enter into a formal written contract with the service provider. Any amendments to the contract between the bank and service providers should be reported to the Central Bank quarterly using the form CBK/PR/23-1.
- iii. ensure that products and services on offer are adequately regulated where regulation is required and the service providers have the relevant licenses or permits to undertake such businesses. A bank shall not continue to distribute or sell services or products of a financial service provider whose license or permit has been revoked, suspended or otherwise restricted or invalidated.
- iv. obtain detailed features of the service providers' services and products including the terms and conditions therein so as to ensure full disclosure to the potential customers.
- v. report to the Central Bank any contract which has been terminated. This information shall be captured under the quarterly reporting to be made to the Central Bank using form CBK/PR/23-1.

4.3.2 Where a bank has a subsidiary offering financial services or products contemplated under this Guideline, the bank may enter into such contracts, service level agreements or other arrangements as the bank may find appropriate to enable the bank provide the services or products on behalf of the subsidiary and in accordance with the provisions of this Guideline. The contract or service level agreement should set out the duties and responsibilities of each of the parties under such an arrangement and address the issue of product liability amongst other concerns.

PART V: REPORTING REQUIREMENTS

5.1 Quarterly Reports

5.1.1 A bank engaged in incidental business activities prescribed under this guideline shall report to the Central Bank on a quarterly basis on the performance of the incidental business activities using form CBK/PR/23-1.

5.1.2 Notwithstanding the periodic reporting requirements, the bank shall inform the Central Bank promptly of pertinent issues and concerns encountered in businesses carried on under this Guideline that have a material impact on the bank as and when these occur.

5.2 Annual Disclosures

- i. Banks shall disclose in their notes to annual financial statements the income/revenue and costs/expenses associated with incidental business activities carried on by the banks.

PART VI: COOPERATION BETWEEN THE CENTRAL BANK AND OTHER REGULATORS

6.1 Agreements

The Central Bank and other regulatory authorities may enter into suitable bilateral or multilateral agreements geared towards ensuring safe and efficient distribution of services and products by banks on behalf of service providers within the confines permitted under the law. These agreements may extend to the approval process for banks to distribute or sell financial services and products and to the supervision of these activities.

6.2 Coordination of supervision

The Central Bank and other regulators may, for purposes of supervising banks and financial service providers which have entered into agreements for banks to carry on activities permitted under this Guideline, coordinate their supervisory activities.

6.3 Information sharing

The Central Bank may, for the purposes of performing its functions under the Banking Act or this Guideline exchange with or seek information from other regulatory authorities regulating or overseeing the financial services and products which are distributed by banks on behalf of the financial service providers.

PART VII: CORRECTIVE MEASURES

7.1 Remedial measures

If a bank fails to comply with this guideline, the Central Bank may pursue any or all corrective sanctions and or actions as provided for under the Act.

7.2 Administrative sanctions

In addition to the use of corrective actions noted in 7.1 above, the Central Bank of Kenya may:

- i) prohibit a bank from carrying on incidental business activities;
- ii) restrict the nature of incidental business activities a bank may engage in; and

iii) direct a bank to terminate the contract between the bank and a particular financial service provider.

PART VIII: EFFECTIVE DATE

8.0 Effective date: The effective date of this Guideline shall be 1st October 2013.

PART IX: FORM CBK-PR23-1

Enquires

Enquiries on any aspect of these Guidelines should be referred to:

**The Director,
Bank Supervision Department
Central Bank of Kenya
P.o. Box 60000-00200
Nairobi
TEL. 2860000
e-mail: *fin@centralbank.go.ke***

PART IX: FORM CBK-PR23-1

		QUARTERLY RETURN OF INCIDENTAL BUSINESS ACTIVITIES UNDERTAKEN BY THE BANK (To be submitted to the Central Bank within 10 days following the end of the calendar quarter)
QUARTER ENDED:		
START DATE:		
END DATE:		
NAME OF REPORTING INSTITUTION:		
No	Item	Particulars
1.	Incidental Business Activities undertaken by the bank. 1. 2. ↓ 10. (Use additional paper and attach in case the space provided is insufficient)	
2.	Service Providers of the Incidental business activities mentioned in 1 above. 1. 2. ↓ 10. (Use additional paper and attach in case the space provided is insufficient)	
3.	i. Total income/revenue (Ksh.'000') ii. Total costs/expenses (Ksh.'000')	
4.	Amendments, if any, to the contracts entered between the institution and service provider and or third parties.	

No	Item	Particulars
5.	Contracts terminated: details of the financial service provider, services rendered, date of termination and reasons for termination.	
6.	Any supervisory, legal, reputational or other significant matters relating to the business activities.	

NOTE:

The information given in this return shall be kept confidential by the supervisory authority, except in cases provided for by law.

CERTIFICATION BY THE HEAD OF THE INCIDENTAL BANK SERVICES UNIT/DEPARTMENT

Signed at..... this..... day of..... 20.....

Name.....