

GUIDELINE ON NON-OPERATING HOLDING COMPANIES CBK/PG/24

CONTENTS

PART I: Preliminary

PART II: Statement of Policy

PART III: Approval of Non-Operating Holding Companies

PART IV: Information Gathering Powers over Non-Operating Holding Companies

PART V: Changes in Shareholdings and Control of Approved Non-Operating Holding Company

Part VI: Power of the Central Bank of Kenya to obtain information

PART VII: Exposures and Limits on Investments

PART VIII: Minimum Liquid Assets and Capital Requirement

PART IX: Audit, Inspections and Investigations

PART X: Powers of Control over Approved Non-Operating Holding Companies

PART XI Prudential and Reporting requirements

PART XII: Effective Date

FIRST SCHEDULE: Application Form for Approval

SECOND SCHEDULE: Fit and Proper form

PART I: PRELIMINARY

- 1.1 Title** – Guideline on Non-Operating Holding Companies.
- 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.
- 1.3 Application** - All institutions licensed under the Banking Act and those Non-Operating Holding Companies holding more than 25% shareholding in an institution licensed under the Banking Act (Cap. 488).
- 1.4 Definitions** - Terms used in this guideline are as defined in the Banking Act except as otherwise specified. Other terms used in this guideline shall be taken to have the meaning assigned to them hereunder:
 - 1.4.1 ‘banking group’** means a licensed institution and its subsidiaries, non-operating holding companies and subsidiaries of its non-operating holding companies.
 - 1.4.2 ‘competent authority’** means any of the bodies set out in the Third Schedule of the Banking Act.
 - 1.4.3 ‘co-ordinator’** means the Central Bank of Kenya.
 - 1.4.4 ‘consolidated supervision’** means an overall evaluation of an institution and the group to which it belongs, to ensure that all risk exposures are taken into account, whether the risks arise in the institution itself, or in a significant shareholder, subsidiary or associate of the institution.
 - 1.4.5 ‘consolidated financial statements’** means the financial statements of a group in which the assets, liabilities, equity, income, expenses and cash flows of the parent and its subsidiaries are presented as those of a single economic entity.
 - 1.4.6 “director”** includes an executive director and a non-executive director, unless expressly stated otherwise.
 - 1.4.7 ‘financial entity’** means any company whose business the conduct of which is regulated or authorised, or subject to oversight, by the financial sector regulators.

- 1.4.8 ‘financial institution’** for the purpose of this guideline means any holding company or any company whose business the conduct of which is regulated or authorised, or subject to oversight, by the financial sector regulators and is engaged in banking business, insurance business or securities or such other regulated financial business.
- 1.4.9 ‘Financial Sector Regulator’** for the purpose of this guideline means the Central Bank of Kenya, Capital Markets Authority, Insurance Regulatory Authority, Retirement Benefits Authority, the Sacco Societies Regulatory Authority and such other regulator as may be prescribed by an Act of Parliament.
- 1.4.10 ‘group’** means a non-operating holding company, its subsidiaries and all associated companies of the parent or its subsidiaries.
- 1.4.11 ‘holding company’** means a company that controls one or more companies.
- 1.4.12 ‘institution’** is as defined under Section 2 of the Banking Act.
- 1.4.13 ‘major stake’** means where the entity holds, directly or indirectly or otherwise has a beneficial interest in more than five per cent of the share capital of an institution.
- 1.4.14 ‘non-controlling interest’** means the equity in a subsidiary not attributable, directly or indirectly, to a parent.
- 1.4.15 ‘non-operating holding company’** means a company, other than the institution, which has approved control of an institution and whose activities are limited to holding investments in subsidiaries, holding properties used by group members; raising funds to invest in, or to provide support to, subsidiaries, raising funds to conduct its own limited activities, investing funds on behalf of the group, conducting the banking activities required for its own limited functions, and providing administrative, risk management and financial services to support the efficient operation of the group.
- 1.4.16 ‘significant shareholder’** means, a person other than the Government or a public entity that holds, directly or indirectly or otherwise has a beneficial interest in more than five per cent of the share capital of an institution.

1.4.17 ‘subsidiary’ means an institution having more than half (50 per cent) of its stock owned by another institution or an entity that is controlled by an institution or by a non-operating holding company.

1.4.18 ‘the Act’ means the Banking Act (Chapter 488) Laws of Kenya.

PART II: STATEMENT OF POLICY

2.1 Purpose

The purpose of this guideline is to:

- (i) Provide guidance on the acquisition of control of institutions by non-operating holding Companies in pursuance to section 13(1)(e) of the Banking Act;
- (ii) Regulate the non-banking activities in which non-operating holding companies can engage;
- (iii) Set forth the procedures for securing approval pursuant to section 13(1)(e) of the Banking Act; and
- (iv) Prescribe the minimum liquid assets and capital adequacy requirements to be observed by the non-operating holding companies.

2.2 Scope

This guideline applies to institutions as defined in the Banking Act and to non-operating holding companies owning a significant stake in an institution.

2.3 Responsibility

The board of directors of each institution and each non-operating holding company shall be responsible for ensuring that the provisions of this guideline are complied with accordingly.

PART III

APPROVAL OF NON-OPERATING HOLDING COMPANIES

3.1 The following transactions will require the Central Bank’s prior approval:

- (a) Formation of a non-operating holding company with the intention to acquire more than 25 per cent of an institution’s paid up share capital.

- (b) Acquisition of a subsidiary bank or any action that causes a bank to become a subsidiary of a non-operating holding company.
- (c) Acquisition of an institution's assets or the acquisition by a holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of an institution.
- (d) Any transaction described in paragraphs (a) to (c) of this clause by a foreign banking organization that involves the acquisition of an interest in a Kenyan bank or in a non-operating holding company incorporated in Kenya.

3.2 In seeking to approve an application under this Part, the Central Bank of Kenya shall take into consideration whether:

- (a) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in Kenya. Where the applicant is acquiring or merging with an existing institution to obtain control of an institution, it shall also obtain the approval of the Competition Authority of Kenya where such approval is required by any other law;
- (b) The effect of the transaction may be substantially to reduce competition in the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Central Bank of Kenya finds that the transaction's anti-competitive effects are clearly outweighed by its probable effect in meeting the needs of the public;
- (c) The applicant has failed to provide the Central Bank of Kenya with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the applicant's Board deems it appropriate to determine and enforce compliance with the Act and any other directions issued by the Central Bank; or
- (d) In the case of an application involving a foreign banking organization, the foreign banking organization is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country.

3.3 The Central Bank will also consider the following factors with respect to the applicant, its subsidiaries, any institutions related to the applicant

through common ownership or management, and the institutions to be acquired:

- (a) Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Central Bank.
- (b) Managerial resources, the competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, its subsidiaries, and the institutions and holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Central Bank of Kenya in connection with prior applications.
- (c) Convenience and needs of the target market to be served.

3.4 The Central Bank of Kenya may impose conditions on any approval, including conditions to address concerns on the competitive, financial, managerial, safety and soundness, convenience and needs, compliance or other concerns, to ensure that approval is consistent with the relevant statutory factors and other provisions of the Banking Act.

3.5 A non-operating holding company seeking the approval of the Central Bank under section 13(1)(e) of the Banking Act shall submit the application form set out in the First Schedule together with the requisite application fee. Such an application shall be accompanied with the following documents;

- i. A certified copy of the certificate of incorporation of the non-operating holding company.
- ii. A certified copy of the Memorandum and Articles of Association of the non-operating holding company or its local law equivalents.
- iii. Certified copies of returns filed with the Registrar of Companies providing information on the directors and shareholders of the non-operating holding company or its equivalent in the jurisdiction of registration.
- iv. Board and shareholder resolutions of the non-operating holding company approving the acquisition of shareholding.
- v. Board and shareholder resolutions of the institutions involved in the transaction.
- vi. Where available a certified copy of the latest audited statement of financial position and statement of comprehensive income for each

of the three years immediately preceding the date of the application if the applicant has been operating in any sector under any name and laws or in cases where any of the shareholders is a corporate body. Where the shareholders are individual natural persons, personal statements of affairs for the past three years certified by a certified public accountant should be submitted. Where such statements are not available for newly incorporated companies, projected accounts should instead be provided.

- vii. Where an applicant will acquire, merge/amalgamate or transfer assets and liabilities of an institution, they should have regard of the application documents required under CBK's Guideline on Mergers, Amalgamations, Transfers of Assets and Liabilities (CBK/PG/12).
- viii. Duly completed Fit and Proper forms set out under the Second Schedule to this Guideline for all significant shareholders, directors and senior officers.
- ix. Up-to-date and detailed curriculum vitae of every significant beneficial shareholder, director or senior officer who will take part in policy making, as well as certified copies of the following supporting documentation where appropriate or their equivalent in any other jurisdiction :
 - Academic and professional certificates.
 - Contact details (postal and e-mail addresses, phone contacts of at least three independent referees, one of whom should be a previous employer or business associate).
 - Valid Personal Identification Number (PIN) and tax compliance certificate issued by the relevant tax authority in Kenya.
 - The latest credit report from a licensed credit reference bureau.
 - Certified statement of personal financial affairs.
 - Two recent passport-size photographs.
- x. Any such additional information or documentation as may be required by the Central Bank.

3.6 The Central Bank may approve an application made by any person under section 13(1)(e) of the Banking Act where—

- (a) the Central Bank is satisfied that —
 - (i) the person seeking to become a significant shareholder or senior officer is a fit and proper person using the criteria set out under the Act; and

(ii) having regard to the likely influence of the person, the approved non-operating holding company will continue to carry on its activities prudently and comply with the provisions of the Banking Act, Regulations and Prudential Guidelines; and

(b) the Central Bank is satisfied that it is in the public interest to do so.

3.7 All persons seeking to become significant shareholders or senior officers of any non-operating holding company must complete the requisite fit and proper forms and be vetted as suitable persons by the Central Bank. The criterion for assessing suitability is as set out under the Second Schedule to the Act.

3.8 A non-operating holding company seeking approval by the Central Bank shall be required to pay an approval fee of Kshs. 1 Million to the Central Bank of Kenya.

3.9 An approval granted by the Central Bank under this guideline shall remain valid unless revoked.

3.10 An approved non-operating holding company shall thereafter be required to pay to the Central Bank an annual fee of five hundred thousand shillings.

3.11 The annual fee prescribed in clause 3.10 shall be paid within three months before the end of the calendar year.

3.12 An approved non-operating holding company that fails to pay the annual fee within three months before the end of the calendar year shall pay double the approval fee, if payment is made within ninety days after the end of the current calendar year.

3.13 If an approved non-operating holding company fails to pay the fee within ninety days after the end of the current calendar year, its approval may be revoked.

3.14 Where an approved non-operating holding company is granted approval by the Central Bank:

(a) there shall be no refund of any approval fee paid to the Central Bank in the event the approval is revoked or the company ceases to carry on business at any time before the end of the year;

(b) there shall be no proration of the approval fee paid in the course of the year.

ACTIVITIES OF AN APPROVED NON-OPERATING HOLDING COMPANY

- 3.15** An entity approved as a non-operating holding company pursuant to section 13(1)(e) of the Act shall not carry out any business or activity without the approval of the Central Bank of Kenya, other than the following:
- (a) being a non-operating holding company for its subsidiaries and any other company in which the non-operating holding company has a major stake as defined under this guideline;
 - (b) conducting management, and providing advisory, financial, accounting, or information processing services, for the purposes of providing support to the business conducted by any other company within the group of the approved non-operating holding company;
 - (c) raising funds to invest in or provide support to its subsidiaries;
 - (d) raising funds to conduct its own limited activities, investing funds on behalf of the group; and
 - (e) such other business or activity as may be approved by the Central Bank upon application by the approved non-operating holding company.

PART IV:

INFORMATION GATHERING POWERS OVER NON-OPERATING HOLDING COMPANIES.

4.0 Provision of information to the Central Bank of Kenya

- (i) The Central Bank may, by notice in writing, require any non-operating holding company to furnish it with such information or statement at such time and in such manner as the Central Bank may specify, if, in the opinion of the Central Bank, it requires that information or statement for the proper discharge of its functions.
- (ii) The Central Bank may require any information or statement submitted to it under sub clause (i) to be accompanied by a certificate from external auditors stating, whether in the opinion of the auditor, the information or statement provided therein is correct.

- 4.1** The Central Bank may in addition prepare and publish consolidated statements aggregating such information or statement as may be furnished in compliance with any notice issued under clause 4.0.

PART V

CHANGES IN SHAREHOLDINGS AND CONTROL OF AN APPROVED NON-OPERATING HOLDING COMPANY

- 5.0** No person shall become a significant shareholder of an approved non-operating holding company without first obtaining the prior approval of the Central Bank.
- 5.1** No person who, immediately before the date on which a non-operating holding company becomes approved under section 13(1)(e) of the Banking Act, is a significant shareholder of the non-operating holding company, shall continue to be such a shareholder unless he has, within 3 months after the date on which the non-operating holding company becomes approved sought the approval of the Central Bank to continue to be such a shareholder.
- 5.2** A non-operating holding company shall not transfer more than five per cent of its share capital to an individual or an entity except with the prior written approval of the Central Bank. Any transfer of share capital of a non-operating holding company below five per cent shall be notified to the Central Bank at least fourteen days after the transfer.
- 5.3** No person shall acquire or obtain control whether indirectly or indirectly of an approved non-operating holding without first obtaining the approval of the Central Bank.

Objection to existing control of an approved non-operating holding company

- 5.4** The Central Bank may serve a written notice of objection on any person or entity granted approval under section 13(1)(e) of the Banking Act if;
- (a) the Central Bank is satisfied that —
- (i) any condition of approval imposed on the entity or persons controlling the non-operating holding company has not been complied with;

- (ii) it is no longer in the public interest to allow the entity or person to continue to be a party to the agreement or arrangement described in section 13(1)(e) of the Act, or to continue to be a significant shareholder, or a person in control whether directly or indirectly, as the case may be;
 - (iii) the person has furnished any false or misleading information or document in connection with the person's application for approval under section 13(1)(e) of the Act or for suitability assessment purposes; or
 - (iv) the Central Bank would not have granted its approval under section 13(1)(e) of the Act had it been aware, at that time, of circumstances relevant to the person's application for such approval.
- (b) the Central Bank is satisfied that —
- (i) the person has ceased to be a fit and proper person;
 - (ii) having regard to the likely influence of the person, the approved non-operating holding company is no longer likely to carry on its activities prudently or to comply with the provisions of the Act.

5.5 The Central Bank shall, in any written notice of objection, specify a reasonable period within which the person to be served with the written notice of objection shall —

- (a) take such steps as are necessary to ensure that he ceases to be a party to the agreement or arrangement described in section 13(1)(e) of the Act or,
- (b) ceases to be a significant shareholder, a person in control whether directly or indirectly, as the case may be; or
- (c) comply with such directions as the Central Bank of Kenya may make.

5.6 Any person served with a written notice of objection under this part shall comply with the notice.

Part VI

POWER OF THE CENTRAL BANK TO OBTAIN INFORMATION

6.1 Pursuant to the provisions of Section 28 of the Act, the Central Bank may, by notice in writing, direct any approved non-operating holding

company to obtain from any of its shareholders and to transmit to the Central Bank any information relating to its shareholders which the Bank may require for the purposes of ascertaining or investigating into the control of shareholding or voting power in the approved non-operating holding company:-

(a) as to whether that shareholder holds any share in the approved non-operating holding company as beneficial owner or as nominee; and

(b) if he holds the share as nominee, to indicate as far as he can, the person for whom he holds the share (either by name or by other particulars sufficient to enable that person to be identified) and the nature of his interest, and the approved non-operating holding company shall comply with that direction within such time as may be specified in the notice.

6.2 The Central Bank of Kenya may, by notice in writing, require any shareholder of an approved non-operating holding company, or any person who appears from information provided to the Central Bank under sub clause 6.1(b) or this clause to have an interest in any share in an approved non-operating holding company, to provide to the Central Bank any information relating to the shareholder or the person, as the case may be, which the Central Bank may require for the purposes of ascertaining or investigating into the control of shareholding or voting power in the approved non-operating holding company.

PART VII

EXPOSURES AND LIMITS ON INVESTMENTS

Exposures

7.0 The provisions on the restrictions on advances, credits and guarantees set out under Section 11(1) and 11(2) of the Banking Act and the Central Bank Prudential Guidelines extend to the non-operating holding companies.

7.1 The Central Bank may in addition, by notice in writing to any approved non-operating holding company, impose such requirements as may be necessary or expedient for the purposes of limiting the exposure of the approved non-operating holding company.

7.2 Without prejudice to the generality of clause 7.1, the Central Bank may in a notice issued under that clause —

- (a) specify the limit on any exposure;
- (b) exclude any exposure from any limit;
- (c) specify the method of measuring any exposure;
- (d) exclude any approved non-operating holding company or class of approved non-operating holding companies from any requirement imposed under clause 7.1; and
- (e) vary any limit in a particular case.

7.3 An approved non-operating holding company shall not obtain any credit facility against the security of its own shares or those of any of its subsidiaries.

Disclosure of interests by directors

- 7.4** (1) Every director of an approved non-operating holding company who has in any manner, directly or indirectly, an interest in an exposure of; or a proposed exposure of —
- (a) that approved non-operating holding company; or
 - (b) any of the companies within the group of the approved non-operating holding company, shall as soon as practicable declare the nature of his interest to the board of directors of that approved non-operating holding company and the secretary of the board of that approved non-operating holding company shall cause the declaration to be circulated immediately to all the directors.
- (2) For the purposes of sub clause (1), a general notice given to the board of directors of an approved non-operating holding company to the effect that he is an officer or a member of a specified company, or a partner or manager of a specified firm or specified limited liability partnership, and that he is to be regarded as having an interest in any exposure which may, after the date of the notice, be acquired in respect of that company, firm or limited liability partnership, shall be deemed to be a sufficient declaration of interest in relation to any exposure so acquired if —
- (a) the notice specifies the nature and extent of his interest in that company, firm or limited liability partnership;
 - (b) his interest is not different in nature from or greater in extent than the nature and extent so specified in the notice at the time any exposure is so acquired; and

- (c) it is given at a meeting of the board of directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the board of directors after it is given.
- (3) Directors of an approved non-operating holding company are discouraged from engaging in activities that can result in a conflict of interest. Every director who becomes aware of an interest that may conflict with his duties as a director shall declare at a meeting of the directors of the fact, the nature, character and extent of the conflict.
- (4) The declaration referred to in sub clause (3) shall be made at the first meeting of the directors held —
 - (a) after he becomes a director of the approved non-operating holding company; or
 - (b) if already a director, after he commences to hold the office or to possess the property, as the case may be.

Investments in companies

- 7.5** An approved non-operating holding company shall not acquire or hold, directly or indirectly, a stake or shareholding in any company without the prior approval of the Central Bank.

Immovable property

- 7.6** No approved non-operating holding company shall acquire or hold interests in or rights over immovable property without the prior approval of the Central Bank.

- 7.7** In this section, “immovable property” shall exclude the following:

- (a) any interest in or right over immovable property or any part thereof used for the purposes of conducting the business of any of the companies within its non-operating group or housing or providing amenities for the officers of any of the companies within its non-operating group;
- (b) any interest in or right over immovable property held by way of security for the purposes of a transaction entered into in the ordinary course of the business of any of the companies within its non-operating group;

- (c) any interest in or right over immovable property held by way of enforcement of such security referred to in paragraph (b), provided that it is disposed of at the earliest opportunity;
- (d) any interest in or right over immovable property or any part thereof held for the benefit of persons other than any company in the non-operating group pursuant to an obligation imposed under any written law, contract or order of court; and
- (e) such other interest in or right over immovable property as the Central Bank may prescribe.

PART VIII

MINIMUM LIQUID ASSETS AND CAPITAL REQUIREMENT

Minimum liquid assets

- 8.1** The existing liquidity requirements applicable to institutions on a solo basis are extended to the group as well. If the related entities in the group are banking institutions, liquidity position will be monitored on a consolidated basis after netting out intra-group transactions and exposures. If the related entities in the banking group are heterogeneous comprising non-banking entities, compliance would be restricted to the banking entities on a consolidated basis. In respect of non-banking financial entities within bank groups, each should comply with its solo liquidity requirements as applicable.

Minimum capital requirements

- 8.2** An approved non-operating holding company shall be required to maintain the prescribed capital adequacy ratios. For banking entities in the group, minimum capital requirements should be complied with on a solo and consolidated basis.
- 8.3** Any approved non-operating holding company which fails to comply with any requirement under this part shall immediately notify the Central Bank.
- 8.4** Where the approved non-operating holding company fails to comply with requirements under this part, the Central Bank may, by notice in writing to the approved non-operating holding company —
- (a) restrict or suspend the activities of the approved non-operating holding company; or

- (b) give such other directions to the approved non-operating holding company as the Central Bank considers appropriate.

Capital Adequacy Requirements

8.5 Minimum Ratios

Unless a higher minimum ratio has been set by the Central Bank for an individual non-operating holding company, every banking institution in the group shall, at all times, maintain:

- a) A core capital of not less than eight per cent of total risk weighted assets plus risk weighted off-balance sheet items;
- b) A core capital of not less than eight per cent of its total deposit liabilities held by its subsidiaries;
- c) A total capital of not less than twelve per cent of its total risk weighted assets plus risk weighted off-balance sheet items

8.6 Capital Conservation Buffer

In addition to the above minimum capital adequacy ratios of 8% and 12%, banking institutions in the group are required to hold a capital conservation buffer of 2.5% over and above these minimum ratios on a solo and consolidated basis to enable the institutions withstand future periods of stress. This brings the minimum core capital to risk weighted assets and total capital to risk weighted assets requirements to 10.5% and 14.5%, respectively. The capital conservation buffer should be made up of high quality capital which should comprise mainly of common equity, premium reserves and retained earnings.

Members of the non-operating holding companies that currently meet the minimum capital ratios of 8% and 12% but remain below the buffer-enhanced ratios of 10.5% and 14.5% (current minimums plus conservation buffer) should maintain prudent earnings retention policies with a view to meeting the conservation buffer by January 2015.

- 8.7** Notwithstanding clause 8.5 and clause 8.6, the Central Bank may, if it considers appropriate in the particular circumstances of a banking group, having regard to;

- (a) the risks arising from the activities of the approved non-operating holding company and its group, as the case may be; and

(b) such other factors as the Central Bank considers relevant, vary the amount of capital adequacy to be maintained by that approved non-operating holding company.

8.8 Where an approved non-operating holding company fails to comply with any of the requirements of clause 8.5 or clause 8.6, the Central Bank may, by notice in writing to the approved non-operating holding company —

(a) restrict or suspend the activities of the approved non-operating holding company; or

(b) give such other directions to the approved non-operating holding company as the Central Bank considers appropriate, and the approved non-operating holding company shall comply with such directions.

Power of the Central Bank to secure compliance with any provision under this Part

8.9 Any approved non-operating holding company, if at any time called upon in writing by the Central Bank to do so, shall satisfy the Central Bank by the production of such evidence or information as it may require, that the approved non-operating holding company is not in contravention of any of the provisions under this part.

8.10 Without prejudice to the above, the Central Bank may, for the purposes of securing compliance with these provisions on a consolidated basis, from time to time by notice in writing, require any approved non-operating holding company to aggregate, in such manner as may be specified in the notice, its accounts, with all the accounts of all or any of the approved non-operating holding company's related companies.

8.11 The approved non-operating holding company shall comply with the requirement referred to in clause 8.9 within such time as is specified in the notice.

PART IX

AUDIT, INSPECTIONS AND INVESTIGATIONS

Annual Financial Statements and Audit

9.1 Every approved non-operating holding company —

(a) shall obtain the approval of the Central Bank for the appointment of an external auditor, and

(b) where, for any reason, the external auditor ceases to act for the approved non-operating holding company, it shall, as soon as practicable thereafter, appoint another external auditor approved by the Central Bank.

- 9.2** An external auditor shall not be approved by the Central Bank as an auditor for an approved non-operating holding company unless the auditor is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Central Bank.
- 9.3** The Central Bank may require a group or banking group to retain a single external auditor to provide an overall review of the group or banking group, including such consolidated financial statements as the Central Bank may prescribe.

Inspection of approved non-operating holding companies within the group

- 9.4** As provided for under section 32(5) of the Act, the Central Bank as the coordinator of consolidated supervision of banking groups may, from time to time, inspect –
- (a) the books of any approved non-operating holding company and any other company within its group;
 - (b) any branch, agency or office outside Kenya opened by any approved non-operating holding company or any other company within its group, referred to in paragraph (a) or;
 - (c) appoint a competent authority to carry out an inspection of the operations of an associate, holding or subsidiary company of an institution.

PART X PRUDENTIAL AND REPORTING REQUIREMENTS

- 10.1** In addition to the provisions of the Banking Act and this guideline, a non-operating holding company with a bank subsidiary shall ensure compliance with the provisions of the Central Bank Prudential Guideline on Capital Adequacy (CBK/PG/03), Liquidity Management (CBK/PG/05) and Consolidated Supervision (CBK/PG/19) with regard to capital adequacy, large exposures, liquidity ratios and market risk exposures.
- 10.2** Pursuant to section 28 of the Banking Act, an approved non-operating holding company shall be required to submit by March 31 each year the following information as at December 31 of the preceding year:
- i. The latest annual audited financial statements for the non-operating holding company.
 - ii. A chart or series of charts which show the relationship between the non-operating holding company and its subsidiary companies, associates, and significant shareholders, together with a brief outline of the nature of business, types of products or range of services and locations of principal places of business for each such company or person.

- iii. A list of significant shareholders, directors and senior officers and significant shareholders for each subsidiary and associates of the non-operating holding company.
- iv. The name and contact details of the authority or body responsible for regulation and supervision, if applicable, of each subsidiary, associate and significant shareholders of the non-operating holding company.
- v. The name and contact details of the external auditors for each subsidiary, associate and significant shareholders of the non-operating holding company.
- vi. A chart of the group management structure, if applicable, which clearly indicates the way in which senior management responsibilities (including the names and job titles) are allocated.

10.3 A non-operating holding company shall be required to submit the following returns on both a solo and consolidated basis:

- i) Return CBK/PR3: Capital to Risk Weighted Assets;
- ii) Return CBK/PR7-1: Advances, bills discounted and other facilities to any person or connected group exceeding 25 per cent of core capital;
- iii) Return CBK/PR4-4: Advances, bills discounted and other facilities to staff members, shareholders, directors and their associates;
- iv) CBK/PR4-5: 50 Largest Borrowers
- v) Liquidity ratios;

The consolidated returns will be provided separately with the returns compilation software.

PART XI: EFFECTIVE DATE

Effective date: The effective date of this guideline shall be 1st October, 2013

Enquires:

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

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

FIRST SCHEDULE

FORM 1 PG/24

APPLICATION FOR APPROVAL FOR A NON OPERATING HOLDING COMPANY TO ACQUIRE OR HOLD 25% OR MORE SHAREHOLDING IN AN INSTITUTION

Explanatory Notes

1. Please read the explanatory notes and questions carefully before completing the form
2. All questions must be answered. If a question is not applicable, please mark "N.A." in the space provided. If there is insufficient space for your answers, please attach annex (es) which should be identified as such and signed by the signatories to this application.
3. Where there is an asterisk (*), please delete whichever is inapplicable.
4. Please tick (✓) in the relevant boxes where appropriate.
5. If there are any changes in the submitted information prior to the completion of the review of this application, the Central Bank of Kenya should be notified immediately.
6.
 - (a) This application is to be signed by 2 directors or a director and company secretary of the applicant, and must be accompanied by the relevant documents and information requested in the various parts of this application and guideline.
 - (b) In case the space provided is inadequate, use additional paper.
 - (c) This form should be submitted duly completed, and accompanied by the complete set of documents required under this guideline.
7. This application is to be accompanied with an application fee of Kshs. 5,000 in the form of a bankers cheque made payable to the Central Bank of Kenya or other modes as prescribed by the Central Bank.

I. NAME OF APPLICANT

--

Application is hereby made for approval under section 13(1)(e) Banking Act (Cap. 488) as an approved non- operating holding company.

II. INFORMATION ON APPLICANT

1. Provide the following corporate information:

- (a) address, telephone number and facsimile number of the principal place at which the business of the applicant is to be carried on;
- (b) e-mail address and URL of the applicant's internet web page (if applicable);
- (c) registered office (address and country);
- (d) form of corporation (e.g. publicly listed/privately held, etc.);
- (e) date and place of incorporation;
- (f) description of the applicant's business or functions;
- (g) the applicant's authorised and paid-up capital, including relevant details of shares issued or to be issued (e.g. types, number and issue price) and evidence on the same;
- (h) attach an organisation chart showing the key officers and employees of the applicant, and their reporting lines; and
- (i) attach an organisation chart showing the applicant and its relationships with its subsidiaries, associates and other members of the group.

2. Describe and demonstrate, with supporting documents or information, how the applicant will:
 - (a) comply with the requirements of the Banking Act and the Central Bank's Prudential Guidelines.
 - (b) have adequate means of supervising its officers, employees and participants; and
 - (c) have adequate means to deal with any conflicts of interest that may arise.

Note:

Relevant supporting documents or information to be provided could include the applicant's

- (a) information on key officers and employees (including names, addresses, relevant experience, qualifications, etc.);
 - (b) risk management systems, including procedures relating to internal audit, internal controls, security, and the granting of credit;
 - (c) business continuity plan and system capacity planning procedures; and
 - (d) human resources, including information on the staffing levels of key functions.
3. If applicable, provide the name of any person (other than the applicant) that will be involved in managing or operating material aspects of the applicant's operations on behalf of the applicant. Provide a description of the role and responsibilities of each person to which the applicant has delegated or outsourced its operations.
4. Give an outline of the applicant's plans with regard to the operation and expansion of its business in Kenya and abroad (if applicable) over the next 3 to 5 years. The outline should include financial projections on the resources available to maintain the applicant's operations.
5. Attach certified true copies of the most recent auditor's report, audited balance-sheet, and audited profit and loss account, by whatever name called. Where these are not available, please provide financial projections for the first three years of operation.

6. If appropriate provide details of the method of valuation and the name of the valuer.
7. The proposed significant shareholders of the applicant should submit a collective undertaking signed by each significant shareholder to the effect that they accept their responsibility to ensure that the banking group is at all times adequately and appropriately capitalized. Additionally, every proposed significant individual and institutional shareholder should submit, as part of the sworn declaration a statement to the effect that the proposed capital is not from proceeds of crime.
8. Please also ensure that all other information set out under Clause 3.5 of this guideline has been provided with your application.

III. INFORMATION ON SENIOR OFFICERS AND DIRECTORS

Complete and attach Form 2 attached to the Second Schedule to this guideline on “Information on Senior Officers and Directors” for the purpose of completing this Part.

IV. FIT AND PROPER CRITERIA

If the answer to any of the following questions is in the affirmative, please attach annexes and supporting documents, where appropriate, giving all relevant particulars. (Please yes or no)

1. has the applicant or any of its individual significant shareholders, corporate significant shareholders, or any director senior officer of the applicant:
 - (a) been licensed or registered under any law which requires licensing or registration in relation to any regulated financial business;
 - (b) been refused the right or restricted in its/his right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law in any jurisdiction;
 - (c) been issued a prohibition order under any law or has been prohibited from operating in other jurisdiction by any financial services regulatory authority;
 - (d) been censured, disciplined, suspended or refused membership or registration by the Central Bank or any other regulatory authority, in Kenya or elsewhere;

- (e) been the subject of any complaint made reasonably and in good faith relating to activities regulated by the Authority or under any law in any jurisdiction;
- (f) been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
- (g) been convicted of any offence, or is being subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction;
- (h) had any judgment (including a finding of fraud, misrepresentation, or dishonesty) entered against it/him in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;
- (i) had any civil penalty enforcement action taken against it/him by the Central Bank or any other regulatory authority under any law in any jurisdiction;
- (j) contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, in Kenya or elsewhere;
- (k) been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by any regulatory authority, an operator of a market or clearing facility, professional body or government agency, in Kenya or elsewhere;
- (l) been refused a fidelity or surety bond, in Kenya or elsewhere?
- (m) been a director, partner or concerned in the management of a business that has been censured, disciplined, suspended or refused membership or registration by any regulatory authority, professional body or government agency, in Kenya or elsewhere;
- (n) been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, he was a director, partner or concerned in the management of the business, in Kenya or elsewhere;
- (o) been dismissed or asked to resign, from office, employment, a position of trust, or a fiduciary appointment or similar position, in Kenya or elsewhere;
- (p) been subject to disciplinary proceedings by his current or former employer(s), in Kenya or elsewhere;

- (q) been disqualified from acting as a director or disqualified from acting in any managerial capacity, in Kenya or elsewhere;
 - (r) been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, in Kenya or elsewhere;
 - (s) carried on business under any name other than the name or names shown in this application;
 - (t) been engaged in the management of any corporation other than those disclosed to the Central Bank;
2. Is the applicant or any of its individual substantial shareholders, significant shareholders, or any director or chief executive officer of the applicant:
- (a) unable to fulfill any of its/his financial obligations, in Kenya or elsewhere;
 - (b) entered into a compromise or scheme of arrangement with its/his creditors, being a compromise or scheme of arrangement that is still in operation, in Kenya or elsewhere;
 - (c) subject to a judgment debt which is unsatisfied, either in whole or in part, in Kenya or elsewhere;
 - (d) in the course of being wound-up or otherwise dissolved, in Kenya or elsewhere;
 - (e) a corporation that has a receiver or statutory manager or such other person having the powers and duties of a receiver, manager appointed in relation to, or in respect of any property of, the corporation, in Kenya or elsewhere?

V. OTHER INFORMATION

Is there any additional information considered relevant or material to this application?

VI. DECLARATION

We, the undersigned, being directors of the proposed institution, declare that to the best of our knowledge and belief, the information contained herein is complete and accurate.

Director (Name)

Signature.....Date.....

Director (Name).....

Signature.....Date.....

Director (Name)

Signature.....Date.....

Director (Name).....

Signature.....Date.....

SECOND SCHEDULE

FORM 2- CBK/PG 24

APPLICATION FOR APPROVAL OF SIGNIFICANT SHAREHOLDERS, DIRECTORS, SENIOR OFFICERS OR OTHER PERSONS IN CONTROL OF AN APPROVED NON- OPERATING HOLDING COMPANY

Explanatory Notes

1. Please read the explanatory notes and questions carefully before completing the application form.
2. All questions must be answered. If a question is not applicable, please mark "N.A." in the space provided. Should there be insufficient space for your answers, please attach annex(es) which should be identified as such and signed by the signatories to this application.
3. Where there is an asterisk (*), please delete whichever is inapplicable.
4. Please tick (✓) in the relevant boxes where appropriate.
5. If there are any changes in the information furnished in the application prior to the completion of the review of this application, the Central Bank of Kenya should be notified immediately.
6. The term "senior officer" is as defined under the Banking Act.

FORM 2- CBK/PG 24

I. NAME OF APPOINTEE

(Full name of appointee, including any alias and other names used currently or in the past. Please underline surname.)

2. Application for appointment as –

- Chairman
- Chief Executive Officer
- Director
- Significant Shareholder
- Senior Officer (State position) _____

3. Please provide the full name of the applying non-operating holding company

II. PERSONAL PARTICULARS

1. Set out below the personal particulars of the appointee:

- (a) Residential Address (if foreign address is provided, please update the Central Bank with a local address when available):
- (b) Telephone and facsimile number(s) (Home: Office: Facsimile: Mobile);
- (c) Date of Birth (dd/mm/yy):
- (d) Place of Birth:
- (e) Sex: Male Female
- (f) Nationality:
- (g) Identity Card Number:
- (h) Passport Number:
- (i) Permanent resident status in other countries (if applicable):

III. EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

1. Set out in the following format information on the appointee's highest academic and professional qualifications attained.

<i>Name and location of school/college/university/institution</i>	<i>Period (mm/yy)</i>	<i>Certificate/diploma/degree awarded/ professional qualifications</i>

IV. EMPLOYMENT HISTORY

1. Set out in the following format information on the appointee's employment history (including periods of part-time employment or unemployment), business and other activities during the past 10 years. If appointee is currently employed with a company other than the approved holding company stated in this application, please state his/her last day of employment with current employer.

Name and address of employer (if self-employed, please indicate)	Nature of business of employer	Designation and Department	Brief description of duties	Period (mm/yy)

V. DIRECTORSHIPS AND SUBSTANTIAL SHAREHOLDINGS

1. Set out in the following format information on the appointee's directorships in any corporation.

Name of company and place of incorporation	Nature of business	Directorship (executive /non-executive)	Date of appointment (mm/yy)	Percentage shareholding in corporation (if any)

2. Will there be any changes in the appointee's directorships following his/her appointment with the approved holding company? If yes, please elaborate.
3. Set out in the following format information on the appointee's significant shareholding (5% or more of the issued share capital) in any corporation

Name of company and place of incorporation	Nature of business	Date of acquisition (mm/yy)	Percentage shareholding in corporation

4. Are there any potential areas of conflict(s) of interest arising from the appointee's proposed duties with the approved holding company and his/her directorship(s) and/or shareholding(s) as stated above? If yes, please elaborate.
5. Does the appointee, or any corporation in which the appointee is in a position of control, have a beneficial interest, whether direct or indirect, in at least 5% of the issued shares of any corporation quoted on a securities exchange, whether in Kenya or elsewhere? If yes, please elaborate and provide a list of such corporations.

VI. OUTSTANDING BORROWINGS

Name of Borrower	Name of Lending Institution	Type of Facility	Amount Borrowed Kshs.	Terms of Facility	Security Offered	Value of Security Kshs.	Current Outstanding Balance, Kshs.	Current Status

VII. REFEREES

Indicate the names, postal and e-mail addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a

reference on your personal and financial integrity and honesty. The referees must not be related to you, and should have known you for at least five years.

Name of Referee	Postal Address	E-mail address	Tel no. (s)	Designation (where applicable)	Relationship with applicant

VIII. FIT AND PROPER CRITERIA

If the answer to any of the following questions is in the affirmative, please attach annexes and supporting documents, where appropriate, giving all relevant particulars. (Please respond yes or no)

1. Have you the appointee i.e. the individual significant shareholders, corporate significant shareholders, director or any senior officer;
 - (a) been licensed or registered under any law which requires licensing or registration in relation to any regulated financial business;
 - (b) been refused the right or restricted in its/his right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law in any jurisdiction;
 - (c) been issued a prohibition order under any law or has been prohibited from operating in other jurisdiction by any financial services regulatory authority;
 - (d) been censured, disciplined, suspended or refused membership or registration by the Central Bank or any other regulatory authority, in Kenya or elsewhere;
 - (e) been the subject of any complaint made reasonably and in good faith relating to activities regulated by the Authority or under any law in any jurisdiction;
 - (f) been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
 - (g) been convicted of any offence, or is being subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction;

- (h) had any judgment (including a finding of fraud, misrepresentation, or dishonesty) entered against it/him in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;
- (i) had any civil penalty enforcement action taken against it/him by the Central Bank or any other regulatory authority under any law in any jurisdiction;
- (j) contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, in Kenya or elsewhere;
- (k) been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by any regulatory authority, an operator of a market or clearing facility, professional body or government agency, in Kenya or elsewhere;
- (l) been refused a fidelity or surety bond, in Kenya or elsewhere;
- (m) been a director, partner or concerned in the management of a business that has been censured, disciplined, suspended or refused membership or registration by any regulatory authority, professional body or government agency, in Kenya or elsewhere;
- (n) been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, he was a director, partner or concerned in the management of the business, in Kenya or elsewhere;
- (o) been dismissed or asked to resign, from office, employment, a position of trust, or a fiduciary appointment or similar position, in Kenya or elsewhere;
- (p) been subject to disciplinary proceedings by his current or former employer(s), in Kenya or elsewhere;
- (q) been disqualified from acting as a director or disqualified from acting in any managerial capacity, in Kenya or elsewhere;
- (r) been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, in Kenya or elsewhere;
- (s) carried on business under any name other than the name or names shown in this application;
- (t) been engaged in the management of any corporation other than those disclosed to the Central Bank;

2. Have you the appointee, individual significant shareholders, corporate significant shareholders, or any director or senior officer;
- (a) been unable to fulfill any of its/his financial obligations, in Kenya or elsewhere;
 - (b) entered into a compromise or scheme of arrangement with its/his creditors, being a compromise or scheme of arrangement that is still in operation, in Kenya or elsewhere;
 - (c) subject to a judgment debt which is unsatisfied, either in whole or in part, in Kenya or elsewhere?
 - (d) in the course of being wound-up or otherwise dissolved, in Kenya or elsewhere;
 - (e) a corporation that has a receiver or statutory manager or such other person having the powers and duties of a receiver, manager appointed in relation to, or in respect of any property of, the corporation, in Kenya or elsewhere?

IX. OTHER INFORMATION

Are there any additional information considered relevant or material to this application.

X. DECLARATION

I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading in connection with an application for a banking license or approval to own significant shares in an institution or approved non-operating holding company. I am also aware that provision of false information in this regard may result in rejection of this application by the Central Bank.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Central Bank should be aware.

I also certify that the capital to be invested in the proposed bank is not from proceeds of crime.

I undertake to inform the Central Bank of any changes material to the applications which arise while this application is under consideration.

NAME:

DATED AT:.....**THIS**.....**DAY OF**..... **20**.....

WITNESSED BEFORE ME:

SIGNED **(Applicant)**

COMMISSIONER FOR OATHS/MAGISTRATE

Name

Signature:

Address: