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THE CENTRAL BANK OF KENYA ACT

(Cap. 491)

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THE CENTRAL BANK OF KENYA ACT

(*Cap. 491*)

IN EXERCISE of the powers conferred by sections 57 of the Central Bank of Kenya Act, the Central Bank of Kenya makes the following Regulations:—

THE MONEY REMITTANCE REGULATIONS, 2013

PART I—PRELIMINARY

1. These Regulations may be cited as the Money Remittance Regulations, 2013. Citation.

2. In these Regulations unless the context otherwise requires - Interpretation.

“agent” means an entity contracted by a money remittance operator and approved by the Central Bank to provide the services of money remittance on behalf of the money remittance operator;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“key officer” means a director, chief executive officer or any other senior officer of a money remittance operator who has been vetted and approved by the Bank to hold a senior position in a money remittance business;

“licensing” means approval granted in accordance with these regulations to allow the holder of the licence to carry on money remittance business;

No. 9 of 2009

“money laundering” has the meaning assigned to it under the Proceeds of Crime and Anti-Money Laundering Act;

“money remittance business” means a service for the transmission of money or any representation of monetary value without any payment accounts being created in the name of the payer or the payee, where -

(a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service operator acting on behalf of the payee; or

(b) funds are received on behalf of, and made available to the payee;

“money remittance operator” means a person licensed to undertake money remittance business;

“outlet” means a place of business of a money remittance operator that has been approved by the Bank; and

“spot transaction” means the purchase and sale of currencies or the purchase and sale of any other instruments approved by the Bank with immediate delivery against an agreed price.

3. (1) These regulations shall not apply to—

Exemptions.

- (a) authorized banks;
- (b) authorized mortgage finance companies;
- (c) the Kenya Post Office Savings Bank;
- (d) the Postal Corporation of Kenya;
- (e) deposit taking microfinance institutions; and
- (f) any other entity approved by the Bank.

(2) Where the Kenya Post Office Savings Bank or Postal Corporation of Kenya intend to transact foreign exchange business, they shall be required to seek permission from the Bank under section 33A (3) of the Central Bank of Kenya Act.

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PART II—ESTABLISHMENT AND LICENSING

4. A person shall not provide money remittance services unless such person—

Licensing

- (a) is incorporated as a limited liability company under the Companies Act; Cap 486.
- (b) has obtained the approval of Bank for the proposed business name before incorporation and has the words “money remittance” or “money transfer” as a brand name ; and
- (c) is licensed to provide money remittance services under these regulations.

5. An application for a licence to conduct money remittance business shall be made to the Bank in the form set out in the First Schedule accompanied by— Application for a licence.

- (a) a non-refundable application fee of twenty thousand shillings payable to the Bank by—
 - (i) bankers cheque;
 - (ii) real time gross settlement (RTGS); or
 - (iii) any other payment method that may be approved by the Bank;
- (b) a certified copy of the applicant’s certificate of incorporation;
- (c) a certified copy of the applicant’s memorandum and articles of association;
- (d) a feasibility study by the applicant indicating the nature of the planned business, organization structure, internal control systems and monitoring procedures of the company and covering the following aspects—
 - (i) the name and location of the proposed business premises;
 - (ii) ownership structure;
 - (iii) governance and management structure;
 - (iv) market analysis;
 - (v) proposed products;
 - (vi) three year projected financial statements; and
 - (vii) business continuity plan;
- (e) bank statements of the applicant, shareholders and directors of the proposed money remittance operator for a period of six months prior to the date of application;

- (f) Form/CBK/MRB/2 as set out in the Second Schedule of these regulations in respect of the shareholders and key officers of the money remittance operator;
- (g) credit reports from a credit reference bureau for the shareholders and key officers of the money remittance operator;
- (h) an undertaking by the applicant to comply with the relevant laws and any directives issued by the Bank;
- (i) a declaration by the applicant that none of its directors or shareholders holds a similar position or role in another money remittance operator;
- (j) a declaration by the applicant that none of its directors or shareholders has ever—
 - (i) been declared bankrupt;
 - (ii) participated in the management of a collapsed institution, or
 - (iii) been convicted of a criminal offence involving fraud, money-laundering, tax evasion or any other act of dishonesty;
- (k) a policy manual detailing procedures that the applicant will put in place to comply with any anti-money laundering obligations;
- (l) where a money remittance operator intends to provide money remittance services through an international location, a list of all agent locations around the world that are duly authorized entities according to the laws on money remittance in those countries; and
- (m) such other information as may be required by the Bank from time to time.

6. (1) When evaluating an application for a licence to operate as a money remittance operator, the Bank shall take into account the following—

- (a) the applicant's statement of financial affairs;
- (b) the adequacy of the applicant's capital structure, earning prospects, business and financial plans;
- (c) the history, character and integrity of the applicant's shareholders and proposed directors;

Evaluation of application.

- (d) the competence and integrity of the applicant's proposed management;
- (e) whether the public interest shall be served by the granting of the licence to the applicant; and
- (f) any other factors as may be determined by the Bank.

7. (1) The Bank may issue a money remittance licence if the applicant meets the requirements set out in these regulations.

Issuance of a licence.

(2) Where the Bank is dissatisfied with the information submitted by the applicant for purposes of processing the application, the Bank may request for additional information before making a final determination.

(3) Where the Bank is satisfied that all the necessary requirements have been met, the Bank shall within ninety days of the applicant lodging the application, issue a letter of intent to the applicant advising the applicant to submit to the Bank –

- (a) a banker's cheque for one hundred thousand shillings or such other amount as may be prescribed by the Bank being licence fees; and
- (b) a security consisting of either a surety bond, an irrevocable letter of credit from a commercial bank licensed pursuant to the Banking Act or a deposit taking microfinance business licensed pursuant to the Microfinance Act, an insurance bond of not less than five million shillings or an amount equal to one percent the applicant's projected total volume of business for the first year of operation.

Cap. 488

Act No. 19 of 2006

(4) Where a money remittance operator is licensed by the Bank -

- (a) there shall be no refund of the licence fee paid to the Bank in the event that the licence is cancelled or revoked or a money remittance operator ceases to carry on business at any time before the expiry of the licence;
- (b) there shall be no proration of the licence fee paid in the course of the year.

(5) The Bank may in conformity with the regulations add, vary or substitute any condition to the licence.

8. The licence granted shall not be transferred, assigned or encumbered in any way.

Licence not transferable.

9. The licence granted under regulation 7 shall expire on the thirty-first day of December in each year.

Validity of licence.

10. Where a money remittance operator is licensed under these Regulations, it shall at all times maintain a minimum core capital of not less than twenty million shillings.

Core capital.

11. Where the Bank finds that the applicant has not met any or all of the conditions, the Bank shall decline the application and inform the applicant accordingly and advise the unsuccessful applicant that an appeal to the Cabinet Secretary for review of the decision may be lodged within thirty days from the date thereof.

Appeal.

12. (1) An application for renewal of a licence to conduct money remittance services shall be submitted to the Bank in the form set out in the First Schedule of these regulations at least two months before the expiry of the licence.

Renewal of licence.

(2) A licensee who fails to pay the prescribed fees for renewal of a licence shall pay double the license fee, if payment is made within ninety days after expiry of the license.

(3) A licensee who fails to submit an application for renewal of license and to pay the license fee as prescribed under regulation 12 (2) shall have the license revoked.

(4) The Bank may renew a licence where -

(a) it is satisfied that the licensee has been operating in conformity with these regulations;

(b) the licensee has paid the prescribed licence renewal fee and all outstanding penalties imposed on the licensee under these regulations;

(c) the licensee has obtained the security outlined under regulation 7 (3)(b) equivalent to one percent of the total business turnover for the preceding twelve months to the thirtieth day of September of each year subject to a minimum of five million shillings;

(d) the licensee has fulfilled its tax obligations and submitted a current certified copy of a tax compliance certificate or its equivalent as issued by the Kenya Revenue Authority; and

(e) the licensee, its shareholders and directors have not defaulted in repayment of any credit facilities granted to them by any institution as indicated in the credit reports or any other source as the Bank may from time to time determine;

(5) Where the licensee submits an application for renewal of a licence as provided under subregulation (1), the licence shall be deemed to continue in force until the application for renewal is determined.

13. A licence for money remittance business shall be revoked if the licensee fails to conduct the money remittance business within twelve months of the date of issue of the licence without the written consent of the Bank or at any other time as provided under regulation 44.

Revocation of licence.

PART III—OWNERSHIP AND MANAGEMENT

14. A shareholder of a money remittance operator shall not own more than ten percent share capital of the money remittance business without prior written approval of the Bank.

Shareholders.

15. An application for the approval of shareholders shall be forwarded to the Bank accompanied by the following—

Approval of shareholders.

- (a) a duly completed fit and proper form, FORM/CBK/MRB/2, as set out in the Second Schedule of these regulations;
- (b) a certified copy of the identity card or passport;
- (c) curriculum vitae;
- (d) two passport size photographs;
- (e) a certificate of good conduct;
- (f) a credit report from a credit reference bureau;
- (g) a collective undertaking signed by each shareholder to the effect that the proposed capital is not from the proceeds of crime; and
- (h) any other document as may be required by the Bank from time to time.

16. (1) A money remittance operator shall have the following key officers—

Key officers.

- (a) at least two directors; and
 - (b) a chief executive officer and other senior officers responsible for all the operations of the money remittance business as may be determined by the Bank.
- (2) The key officers referred to in sub-regulation (1)(b) must have—
- (a) attained at least an ordinary level certificate of education or its equivalent; and
 - (b) adequate knowledge of money remittance operations and knowledge of applicable laws.
- (3) The chief executive officer and all senior officers approved by the Bank shall be full time employees of a money remittance operator.

17. An application for the approval of the key officers referred to in regulation 16 shall be forwarded to the Bank accompanied by the following—

Approval of key officers.

- (i) a duly completed fit and proper form, FORM/CBK/MRB/2, as set out in the Second Schedule of these regulations;
- (ii) a certified copy of the identity card or passport;
- (iii) a certified copy of the academic and school leaving certificates;
- (iv) curriculum vitae;
- (v) two passport size photographs;
- (vi) a certificate of good conduct;
- (vii) a credit report from a credit reference bureau; and
- (viii) any other document as may be required by the Bank from time to time.

18. A person shall not become a shareholder or be appointed as a key officer, unless such a person is—

Vetting.

- (a) certified as fit and proper by the Bank; and
- (b) not disqualified from holding office under these Regulations.

19. (1) The following factors shall be considered in determining whether or not a person is fit and proper to own or control a money remittance business—

Fit and proper test.

- (a) conviction of an offence of fraud or any other offence of which dishonesty is an element;
- (b) contravention of the provisions of any law designed to safeguard the integrity of the financial system or for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of financial services;
- (c) being a past director or senior officer of an institution licensed by the Bank that has been liquidated, placed under statutory management or whose licence has been revoked;
- (d) past engagement in any business practices that, in the opinion of the Bank, were fraudulent, prejudicial or otherwise improper whether lawful or not;
- (e) defaulting in repayment of any credit facility made to him by any institution;
- (f) evasion of taxes;
- (g) removal from an office of trust on account of misconduct, abuse of office, corruption or incompetence in the immediately preceding ten years;

- (h) legal disability; and
- (i) such other factors as may be determined by the Bank.

(2) The Bank shall undertake due diligence by seeking information from any person, financial institution or company which the Bank believes to be in a position to assist in determining the fitness and propriety of the proposed shareholders and key officers.

20. A person shall not become a shareholder or an officer in more than one money remittance operator.

Prohibitions.

21. (1) The Bank may disqualify shareholders or officers of a money remittance operator who -

Disqualification of shareholders and officers.

- (a) fail to adhere to these Regulations or any directives issued by the Bank; and
- (b) fail to meet vetting requirements on an on-going basis.

(2) A money remittance operator shall ensure that no person shall be an officer or an employee of the money remittance operator, or if already in employment, shall be disqualified and shall not thereafter be eligible to hold office or be in the employment of any money remittance operator if such person is—

- (a) an undischarged bankrupt or enters into a composition or scheme of arrangement with his or her creditors;
- (b) convicted of an offence involving fraud or dishonesty; or
- (c) removed from office under the provisions of these regulations.

PART IV—OPERATIONS OF MONEY REMITTANCE OPERATORS

22. (1) A money remittance operator shall deal in inbound and outbound international money transfer transactions.

Authorized activities.

(2) The transactions referred to in subregulation (1) shall consist of the following activities—

- (a) foreign exchange transfers consisting of the acceptance of monies for the purpose of transmitting them to persons resident in Kenya or another country.
- (b) spot foreign currency transactions involving cash and other instruments approved by the Bank.

(3) A money remittance business shall not engage in any other business other than as authorized by the Bank.

- (4) The following conditions shall apply in the transaction—
- (a) a payment transaction shall be executed in the currency agreed between the parties; and
 - (b) where a currency conversion service is offered before initiation of a payment transaction or at the point of payment, the money remittance operator must disclose all charges as well as the exchange rate to be used for converting the payment transaction.

23. (1) A money remittance operator is not authorized to—

Prohibited activities.

- (a) act as an authorized dealer in gold;
- (b) engage in lending money;
- (c) engage in deposit taking;
- (d) maintain current accounts on behalf of customers;
- (e) establish letters of credit; or
- (f) act as a custodian of funds on behalf of customers.

(2) Despite subregulation (1) a money remittance operator may carry out any other activity that the Bank may approve from time to time.

24. A money remittance operator shall not allow or process a transaction that is or appears to have been deliberately split into small amounts equivalent to ten thousand United States dollars or below to avoid the requirement of reporting to the Financial Reporting Centre as provided under the Proceeds of Crime and Anti-Money Laundering Act.

Split transactions.

No. 9 of 2009

25. (1) A money remittance operator may conduct money remittance business through an agent subject to approval by the Bank and shall—

Agents.

- (a) submit to the Bank a signed copy of the contract between the money remittance operator and the agent;
- (b) any other additional information as may be required by the Bank ; and
- (c) conduct the business in compliance with both the applicable laws.

(2) The contract between a money remittance operator and an agent shall contain the following—

- (a) a statement that the money remittance operator is wholly responsible for and liable for all actions or omissions of the agent.

- (b) measures to mitigate risks associated with agent business including limits, customer transactions, cash management, cash security, security of agent premises and insurance policies;
- (c) specific services to be rendered by the agent;
- (d) the rights, expectations, responsibilities and liabilities of both parties;
- (e) a statement that the Bank shall have free, unfettered and timely access to the internal systems, documents, reports, records, staff and premises of the agents in so far as money remittance business is concerned and shall exercise such powers as it may consider necessary;
- (f) appropriate policies and procedures to detect, prevent, report or otherwise deal with incidences of money laundering ;
- (g) responsibilities of the agent to deliver supporting transaction documents;
- (h) a statement that all information or data that the agent collects in relation to agency money remittance services, whether from the customers, the money remittance operator or from other sources, is the property of the money remittance operator;
- (i) adequate oversight safeguards for the money remittance operator to address instances of non-compliance by the agent with the stipulated obligations;
- (j) prohibition from charging the customer any fees other than the fees agreed upon between the money remittance operator and the customer at the initiation of the transaction;
- (k) business hours of the agent;
- (l) suitable limits on cash holding by the agent and also limits on individual customer payments and receipts;
- (m) confidentiality of customer and user information;
- (n) remuneration for the agent;
- (o) a transition clause on the rights and obligations of the money remittance operator and the agent upon termination or cessation of the agency contract; and
- (p) a requirement for the money remittance operator's prior approval to be obtained when an agent is seeking to transfer the agency business.

26. (1) A money remittance operator shall obtain approval from the Bank before opening an outlet and shall designate one of the outlets as its head office.

Place of business.

(2) An application to open an outlet as provided in subregulation (1) shall be in the form set out in the Third Schedule and shall be

accompanied by the prescribed fees and any other requirements as prescribed by the Bank.

(3) The Bank shall before granting any approval under these regulations in respect of opening an outlet, satisfy itself that -

- (a) the money remittance operator is financially sound;
- (b) the capital structure, earning prospects, business and financial plans of the money remittance operator are adequate;
- (c) the public interest will be served by the opening of a new place of business in that location;
- (d) the outlet will enhance the operations and performance of the money remittance operator;
- (e) the money remittance operator has integrated the systems to process information of all its outlets; and
- (f) the money remittance operator is fully compliant with the Act.

(4) The Bank may grant an approval to operate an outlet if an applicant fulfils the requirements in subregulation (2).

(5) The Bank may, in granting approval under sub subregulation (3), impose such other conditions as it may consider necessary.

(6) A money remittance operator shall not be allowed to sublet, lease or authorize any other person to undertake any other business or offer any other product or service in its business premises other than as approved by the Bank.

(7) The business premises of a money remittance operator shall be accessible to the general public and the Bank.

(8) A money remittance operator shall not relocate its business from the approved premises without the prior written approval of the Bank.

(9) A money remittance operator shall display prominently at each of its business premises -

- (a) the current licence to engage in money remittance;
- (b) the business hours;
- (c) details of the tariffs to be charged;
- (d) a notice informing the customers that they are entitled to be issued with a receipt for any money remittance transactions; and
- (e) a notice to the effect that the money remittance operator is not allowed to maintain current accounts on behalf of the clients.

27. The Bank may at its own discretion and from time to time carry out an inspection of premises prior to granting approval for the commencement of operations to determine the suitability of the

Inspection of premises.

premises for money remittance business and the adequacy of the management information system, administrative and operational processes and the internal control system.

28. A money remittance operator shall notify the Bank and its customers of—

Notification of business hours.

- (a) the business hours for each of its outlets;
- (b) any intended changes in business hours, in any of their places of business, fifteen days in advance before the changes are effected.

29. A money remittance operator facing operational challenges, disclosure of which shall be made to the Bank, will be required to seek prior written approval from the Bank to close or suspend the operations of the money remittance operator temporarily.

Temporary closure of business.

30. (1) A licensee shall maintain an account entitled “customers’ account” in the name of the licensee at any commercial bank licensed pursuant to the Banking Act or microfinance business licensed pursuant to the Microfinance Act in Kenya.

Bank accounts.

Cap 488
Act No. 19 of 2006

(2) All customer funds deposited with a money remittance operator for transmittal to a foreign country shall be deposited in the account referred to in subregulation (1).

(3) A money remittance operator may offset and deposit funds in the customer’s account, in order to effect the transfer of funds in accordance with the instructions of the clients.

(4) A money remittance operator shall maintain complete and accurate account records.

(5) A money remittance operator shall produce, upon request by the Bank, all documents pertaining to the account activity, including, but not limited to, bank statements, cheque books, deposit slips and reconciliations or other comparable account records.

31. A money remittance operator shall ensure that its officers are adequately trained in the operations of the money remittance business and regulatory requirements.

Training.

32. (1) A money remittance operator shall be allowed to net off payments during settlement with counterparties.

Foreign exchange payments.

(2) All foreign exchange inflows and outflows of money remittance operators shall be received through commercial banks, documented and advised to the Bank in the prescribed format.

33. (1) A money remittance operator shall maintain a sound management information system that facilitates efficient collection and processing of statistical data and information required to provide audit trails for use by internal auditors, external auditors and the Bank.

Records.

(2) A money remittance operator is required to maintain accurate and meaningful originator and beneficiary information for a period of not less than seven years on funds remitted or received by requiring the sender or recipient to complete and sign an application form, which shall contain the following data and information -

- (a) date of transaction;
- (b) name and signature of remitter;
- (c) name of beneficiary;
- (d) national identity card or passport number of customer and in the case of refugees an alien card, refugee card or UNCHR card or any other additional documents that the money remittance operator may consider necessary;
- (e) present address;
- (f) permanent address;
- (g) telephone number (if applicable).
- (h) nationality;
- (i) amount and currency to be remitted or received;
- (j) the principal activity of the customer conducting the transaction;
- (k) purpose of remittance; and
- (l) source of funds.

(3) A money remittance operator shall, for every transaction, issue an accurate receipt which shall contain the following information—

- (a) full names of the customer;
- (b) identity card or passport number of customer;
- (c) the type and amount of currency sent or received;
- (d) the transaction number;
- (e) the nature, time and date of the transaction;
- (f) name and address of the money remittance operator and name of the employee who served the customer;
- (g) a brief statement on source or purpose of the funds;

- (h) customer signature; and
- (i) commission charged if any.

(4) All transactions generated by the money remittance operator in the course of its business activities must be posted in its books of accounts.

(5) A money remittance operator shall maintain the following records—

- (a) a list of all transactions;
- (b) a daily summary of all monies received and sent;
- (c) a fixed assets register; and
- (d) any other records applicable to the money remittance operator or as may be specified by the Bank .

(6) A money remittance operator shall keep accurate and up to date records and ensure that the records are verified on a daily basis.

34. A money remittance operator shall submit the following returns to the Bank on-line or as directed in the prescribed format—

Returns.

- (a) daily returns of money sent and received equivalent to or above ten thousand United States dollars including customers who transact repeat transactions in a day amounting to ten thousand United States dollars;
- (b) weekly returns of money remittance transactions not later than 3.00 p.m. on the first working day of the following week;
- (c) quarterly balance sheet and profit and loss account within thirty days after the end of every quarter;
- (d) audited balance sheet and profit and loss accounts within three months after the end of the financial year; and
- (e) any other return as may be prescribed by the Bank from time to time.

35. The prescribed fees payable by a money remittance operator in respect of various applications shall be as set out in the Fourth Schedule.

Fees.

36. The financial year for all money remittance operators shall be the period of twelve months ending on the thirty-first day of December in each year.

Financial year.

PART V—ANTI-MONEY LAUNDERING

37. (1) A money remittance operator shall be required to comply with the Proceeds of Crime and Anti-Money Laundering Act and the relevant regulations.

Anti money
laundering
Measures.
No. 9 of 2009.

(2) Subject to subregulation (1) a money remittance operator shall submit to the Bank an independent audit of its anti-money laundering policies.

PART VI—CUSTOMER PROTECTION

38. A money remittance operator shall disclose the following information in writing to their client—

- (a) the fees, charges or commissions, if any, and other conditions applicable to the money remittance services rendered;
- (b) that the money remittance operator is neither a deposit taking nor lending institution within the meaning of the Banking Act, the Microfinance Act or the SACCO Societies Act and is not subject to any deposit protection; and
- (c) any customer care procedures for complaints together with the address, customer care contact number and other contact details for the money remittance operator.

Disclosure.

Cap 488,
No. 19 of 2006,
No. 14 of 2008

39. (1) A money remittance provider shall, within six months after commencing business establish a customer care system to address the complaints of clients.

Consumer redress.

(2) A money remittance provider shall provide easily understood information about the customer care system, including the customer care contact number, at its head office, outlets as well as the premises of agents.

(3) A complaint may be lodged orally or in writing, but in each case must be lodged within a period of thirty days from the date of occurrence.

(4) A money remittance provider shall acknowledge all complaints filed with them.

(5) At the time of making a complaint the complainant shall be advised of the expected actions and timing for investigating and resolving the complaint, provided that all complaints shall be resolved within sixty days of being lodged.

(6) A money remittance provider shall put in place processes to provide complainants with sufficient information and the means to inquire on the progress of complaints and such processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent inquiries by complainants.

(7) A complainant shall be advised of the outcome of the investigation of their complaint, and any resulting decision by the money remittance provider.

(8) Where a complainant is not satisfied with a decision reached pursuant to a complaint, the money remittance provider shall give the

complainant the option of pursuing an identified escalation process by which the decision may be examined by a suitably qualified person in the organization.

(9) The complaint handling process shall be provided free of charge but a money remittance provider may impose a reasonable charge for complaint handling processes where investigation of the complaint requires the retrieval of records more than three months old, and where the retrieval results in an incremental expense or significant inconvenience to the money remittance providers. Any such charges shall be identified and agreed to by the complainant.

(10) A money remittance provider shall make adequate provision to ensure that people with disabilities are able to access their complaint handling processes, including ensuring that such complainants can be easily represented by their authorised representatives in order to make a complaint. In cases where such complainants specifically request assistance in lodging complaints, money remittance providers shall be obliged to provide reasonable assistance.

PART VII—INSPECTION AND AUDIT

40. (1) The Bank may inspect the books of accounts and other documents of a money remittance operator at any time in order to ensure compliance with these regulations and guidelines issued by the Bank.

Inspection.

(2) The Bank may require a money remittance operator to produce books of account or any other documents for purposes of inspection.

(3) The Bank may, by notice in writing, require a money remittance operator to provide information to it, in such manner and form as may be specified by the Bank for purposes of assessing compliance with these regulations.

(4) An authorized officer of the Bank may, at any time, enter any premises where a money remittance operator is carrying on business, or any premises where it is reasonably suspected that any business is being carried on in contravention of these regulations.

(5) After conducting an inspection, the Bank may—

- (a) require a money remittance operator to put in place remedial measures as it may consider necessary;
- (b) institute an audit;
- (c) call for an investigation;
- (d) impose a financial penalty; or
- (e) take any other action as it may consider necessary.

41. (1) A money remittance operator shall, at its own expense, appoint an external auditor who shall be a member of good standing of the institute of Certified Public Accountants of Kenya to carry out an audit of the transactions in its business.

External
Auditors.

(2) The Bank may require an auditor appointed under subregulation (1) to—

- (a) submit to the Bank such information as it may require in relation to the audit carried out by the auditor;
- (b) extend the scope of an audit of the business and affairs of the business and to submit a report to the Bank;
- (c) carry out any examination or establish any procedure in any particular case; and
- (d) submit a report to the Bank on any matter referred to in paragraph (a) or (b).

(3) The money remittance operator shall be responsible for the remuneration of the auditor for the services rendered.

PART VIII—MISCELLANEOUS

42. The key officers of a money remittance operator shall—

Administrative
actions.

- (a) ensure that the activities conducted by the money remittance operators are in full conformity with these regulations;
- (b) ensure the money remittance operator maintains, at all times, an effective system of internal controls; and
- (c) develop appropriate policies and procedures to guide all areas of its operations including accounting, human resources and information technology.

43. (1) The Bank may levy monetary penalties—

Penalties

- (a) for failure to comply with these regulations or non-compliance with any directives issued by the Bank not exceeding five hundred thousand shillings; or
- (b) on non-compliance with other directives not covered under the regulations.

(2) The following shall constitute specific violations by a money remittance operator or any other person of directives of the Bank which shall be subject to the assessment of monetary penalties—

- (a) failure by a money remittance operator to—
 - (i) submit annual audited accounts and a copy of the auditor's report in the prescribed form to the Bank, within three months after the end of its financial year;

- (ii) furnish, at such time and in such manner as the Bank may direct, any information in an accurate and complete manner as the Bank may require to properly discharge its functions under the Act;
 - (iii) comply with the Regulations, guidelines or directions as the Bank may issue from time to time;
 - (iv) submit accurate periodic reports and returns to the Bank;
 - (v) maintain the minimum capital requirements prescribed by the Bank;
 - (vi) maintain a proper information management system to facilitate compilation and submission of information to the Bank;
 - (vii) accurately record all transactions relating to business of money remittance;
 - (viii) remit funds to customers;
 - (ix) obtain the prior written approval of the Bank to own or transfer shareholding of five percent share capital or to change directorship in a money remittance operator;
 - (x) produce books, accounts, records, documents, correspondence, statements, or other specified information without any reason;
 - (xi) comply with the requirement that prohibits tipping off a person suspected of money laundering that a disclosure has been made or otherwise prejudicing an investigation;
- (b) conducting money remittance business through a proxy or nominee;
 - (c) owning, transferring shareholding of ten percent share capital or changing directorship in a money remittance operator without obtaining the prior written approval of the Bank;
 - (d) engaging a senior officer who has not been vetted, approved and registered by the Bank;
 - (e) conducting business in a manner which in the view of the Bank is unsafe or unsound;
- (3) The Bank may, after reviewing all available information and making a determination that a provision under subregulation (2) has been contravened—

- (a) notify the person or money remittance operator of its finding and its intention to assess monetary penalties;
- (b) grant the person or money remittance operator reasonable time to rectify the violation;
- (c) issue a person or a money remittance provider seven days notice in writing requiring the person or money remittance provider to show cause why a penalty should not be imposed;

(4) Following the notification and expiration of the timeframe in sub-regulation (3) (c) or sooner if advised by the money remittance operator or a person of the correction of the violation, the Bank shall instruct the money remittance operator or that person, in writing, of the penalties assessed and the manner in which such monies shall be paid to the Bank.

(5) A penalty prescribed under these regulations shall be paid to the Bank by a money remittance operator or a person as the case may be, within fourteen days from the date of service of the notice, unless otherwise stated by the Bank in writing.

(6) Where a money remittance operator is required to pay a penalty under these regulations and fails to pay a penalty within the specified time, the Bank may recover the amounts due from the security or proceeds of the security provided under regulations 7 (3) (b) and 12 (4)(c).

(7) Where the Bank recovers any amount due on a penalty from the security provided to the Bank, the money remittance operator shall within thirty days of being notified by the Bank, raise the security amount to the level required by the Bank.

(8) Where no payment is made or received under sub-regulation (5), or where the security is not raised as provided in sub-regulation (7), the Bank may revoke the licence of the money remittance operator.

(9) Where the penalties under sub-regulation (4) are payable by a person and the person fails to pay, that person shall be disqualified from holding office in a money remittance operator.

(10) Where the Bank is not satisfied either by evidence provided by a money remittance provider or a person, or by information obtained by the Bank, that the violation has been rectified as directed, the Bank may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such contravention continues.

(11) If the Bank is satisfied that the violation has been rectified, the daily additional penalty of ten thousand shillings shall cease to accrue and the Bank shall assess the aggregate penalty.

(12) Where any provision of these regulations imposes a penalty on any money remittance operator or a person and, either the penalty or part of the penalty remains unpaid, the unpaid amount of the penalty shall constitute a civil debt due from a money remittance provider or a person to the Bank.

(13) The Bank may—

- (a) in addition to the provisions of sub-regulation (12), institute civil proceedings against a money remittance operator or a person for the recovery of the penalty; or
- (b) direct that any part of the penalty which remains unpaid after a particular period notified to the money remittance operator, shall constitute a debt payable by the money remittance operator.

44. (1) The Bank may suspend the licence of a money remittance operator for such period as it may specify but not exceeding ninety days if the money remittance operator fails to comply with the provisions of these regulations or any conditions attached to the licence.

Suspension and
revocation.

(2) The Bank may revoke the licence of a money remittance operator in cases where—

- (a) without the written consent of the Bank, the money remittance operator fails to conduct money remittance business within twelve months of the date of the issue of the licence;
- (b) the money remittance operator is found to have ceased to conduct the operations authorized by the licence;
- (c) a company is incapable of existing in law or of carrying on its operations or of meeting capital requirements or fulfilling any other provisions of these regulations;
- (d) the money remittance operator fails to pay the required licence fees by the stipulated date;
- (e) the beneficial owners of the money remittance operator, or the money remittance operator itself, is convicted by any court of competent jurisdiction, in Kenya or elsewhere, of an offence related to the use or laundering, in any manner, of illegal proceeds, or is an affiliate or subsidiary of a company that has been so convicted, and such conviction is not overturned on appeal;
- (f) the money remittance operator has supplied the Bank with false or misleading information as part of its application for a licence, or during the course of operation;
- (g) the money remittance operator is undercapitalized;
- (h) the money remittance operator fails to pay a penalty as directed by the Bank within fourteen days;

- (i) the money remittance operator fails to rectify violations within the specified time frame or persistently being non-compliant with these regulations;
 - (j) the money remittance operator submits in writing a request for the revocation of its licence;
- (3) Where the Bank intends to revoke or suspend the licence of a money remittance operator, the Bank shall immediately inform the money remittance operator of its decision in writing.

(4) Before revoking or suspending licence, the Bank shall give the money remittance operator not less than twenty one days notice in writing and may consider any representations made in writing by the money remittance operator within that period.

45. (1) A person who at the commencement of these Regulations, is carrying out money remittance business shall within six months from commencement comply with the requirements of these Regulations or cease to carry out such business.

Transitional clause.

(2) A person who fails to comply with the requirements of sub-regulation (1) within the prescribed period, commits an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for term not exceeding three years, or to both as prescribed under section 33A (2) of the Central Bank of Kenya Act.

Cap 486

(3) Where a money remittance operator is licensed under these Regulations, it shall at all times maintain a minimum core capital of not less than ten million shillings before the commencement of operations and increase the core capital to twenty million shillings by the thirty - first day of December 2014.

(4) A foreign exchange bureau intending to engage in money remittance business shall—

- (a) make an application to the Bank for change of name,
- (b) meet all the licensing requirements under these Regulations;
and
- (c) surrender the licence for foreign exchange bureau business.

FIRST SCHEDULE

(r.5)

APPLICATION FOR OR RENEWAL OF LICENCE TO TRANSACT MONEY
REMITTANCE BUSINESS—FORM/CBK /MRB/1

The application shall be addressed to the Director, Bank Supervision Department, Central Bank of Kenya, P.O. Box 60000-00200 Nairobi,

Application (Tick as appropriate):

Grant of new Licence		Renewal of Licence		Year	
----------------------	--	--------------------	--	------	--

Please use Block (Capitals) Letters

1. Name of Money Remittance Operator.....
2. Physical and postal address of head office/ proposed new outlet:
 - (a) City/Town.....
 - (b) L.R.No.....
 - (c) Street.....
 - (d) Building.....
 - (e) P.O Box No.....
 - (f) Telephone Numbers.....
 - (g) E-mail Address.....
3. Date of incorporation
4. Certificate of incorporation No.....
5. Number and date of issue of previous licence
6. Details of existing outlets:

	<i>Name of Outlet</i>	<i>County</i>	<i>City/Town</i>	<i>Street</i>	<i>Building</i>	<i>Date Opened</i>
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

7. Particulars of shareholders:

	<i>Name</i>	<i>Nationality</i>	<i>Date of acquisition</i>	<i>Amount of shareholding</i>	<i>% of shareholding</i>
1.					
2.					
3.					

	<i>Name</i>	<i>Nationality</i>	<i>Date of acquisition</i>	<i>Amount of shareholding</i>	<i>% of shareholding</i>
4.					
5.					
6.					
7.					

8. Particulars of directors:

	<i>Name</i>	<i>Nationality</i>	<i>Date of Appointment</i>	<i>Level of Education</i>
1.				
2.				
3.				
4.				
5.				
6.				
7.				

9. Particulars of the officers in the order of seniority:

	<i>Name</i>	<i>Designation</i>	<i>Nationality</i>	<i>Date of Appointment</i>
1.				
2.				
3.				
4.				
5.				
6.				
7.				

10. Declaration (by Director/Secretary):

I, the undersigned, hereby declare—

- (a) THAT the particulars set out herein are true and correct to the best of my knowledge and belief;
- (b) THAT if licensed, I shall transact money remittance business in accordance with the provisions of the Central Bank of Kenya Act, CAP 491 and of any regulations, guidelines or directive as may from time to time be issued by the Central Bank of Kenya.

Name.....

Signature.....

Date.....

SECOND SCHEDULE

(r. 5(f), r 17(a))

**SHAREHOLDERS' DIRECTORS' AND SENIOR OFFICERS' FIT & PROPER
FORM—FORM/CBK/MRB/2**

Criteria for determining professional and moral suitability of persons in control of a money remittance business licensed under the Central Bank of Kenya Act, CAP 491

NB:

(a) Read the declaration on *Section 6* below before completing this form.

(b) In case the space provided is inadequate, use additional paper.

1. NAME OF MONEY REMITTANCE OPERATOR.....

2. PERSONAL INFORMATION

(a) Surname:

Other names:

(b) Proposed position:

(c) Previous names (if any) by which you have been known:

(d) Year and place of birth:

(e) Nationality and how acquired:

(f) Personal Identification Number:

(g) Identification card number and date of issue:

(h) Passport number and date of issue:

(i) Postal address:

(j) Previous postal addresses (if any):

(k) Physical address:

(l) Email address:.....

(m) Telephone number:

(a) Office.....

(b) Mobile.....

(n) Educational qualifications:.....

(o) Professional qualifications and years obtained:

(p) Name(s) of your bankers during the last 5 years:

3. EMPLOYMENT/BUSINESS RECORD

<i>Period</i>	<i>Name of Employer/Business and address</i>	<i>Positions held and dates</i>	<i>Responsibilities</i>	<i>Reasons for leaving (where applicable)</i>

4. DESCRIPTION OF YOUR PAST AND CURRENT ACTIVITIES IN KENYA AND ABROAD

4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

<i>Company's Name</i>	<i>Date of incorporation</i>	<i>Amount of shareholding</i>	<i>% of shareholding</i>	<i>Past shareholding</i>		<i>Remarks</i>
				<i>A</i>	<i>B</i>	

A: Refers to date of sell, transfer, closure or surrender of shares

B: Refers to reasons for sell, transfer, closure or surrender

4.2 DIRECTORSHIP

<i>Company's Name</i>	<i>Date of appointment</i>	<i>Executive or Non-Executive</i>	<i>Position held in case of Executive</i>	<i>Past Directorships</i>		<i>Remarks</i>
				<i>C</i>	<i>D</i>	

C: Refers to date of retirement, resignation or dismissal

D: Refers to reasons for retirement, resignation or dismissal

4.3 PROFESSIONAL BODIES

<i>Name of body</i>	<i>Membership No.</i>	<i>Position held (if any)</i>	<i>Past membership</i>		<i>Remarks</i>
			E	F	

E: Refers to date of retirement, resignation or dismissal

F: Refers to reasons for retirement, resignation or dismissal

4.4 SOCIAL CLUBS

<i>Name of club</i>	<i>Membership No.</i>	<i>Position held (if any)</i>	<i>Past club membership</i>		<i>Remarks</i>
			G	H	

G: Refers to date of retirement, resignation or dismissal

H: Refers to reasons for retirement, resignation or dismissal

4.5 BORROWINGS

<i>Name of borrower</i>	<i>Name of lending institution</i>	<i>Type of facility</i>	<i>Amount borrowed</i>	<i>Date of offer</i>	<i>Terms of offer</i>	<i>Security offered</i>	<i>Value of security</i>	<i>Current outstanding balance</i>	<i>Remarks</i>

*Borrower to indicate both individually and the company where he holds more than 5% of the shareholding

5. QUESTIONNAIRE

5.1 Have you or any entity with which you are associated as director, shareholder or manager, ever held or applied for a licence or equivalent authorization to carry on

any business activity in any country? If so, give particulars. If any such application was rejected or withdrawn after it was made or any licence revoked, give particulars.

.....

5.2 Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction.

.....

5.3 Have you, or any entity with which you have been involved, been censured, disciplined, warned as to future conduct, or publicly criticized by any regulatory authority or any professional body in any country? If so, give particulars.

.....

5.4 Have you, or has any entity with which you are, or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency, professional association or other regulatory body? If so, give particulars.

.....

5.5 Have you, in any country, ever been dismissed from any office or employment, been subject to disciplinary proceedings by your employer or barred from entry of any profession or occupation? If so, give particulars.

.....

5.6 Have you failed to satisfy any debt adjudged due and payable by you on order of court, in any country, or have you made any compromise arrangement with your creditors within the last ten years? If so, give particulars.

.....

5.7 Have you ever been declared bankrupt by a court in any country or has a bankruptcy petition ever been served on you? If so, give particulars.

.....

5.8 Have you ever been held liable by a court, in any country, for any fraud or other misconduct? If so, give particulars.

.....

5.9 Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it? If so, give particulars.

.....

5.10 Are you presently, or do you, other than in a professional capacity, expect to be engaged in any litigation in any country? If so, give particulars.

.....

5.11 Indicate the names, addresses, telephone numbers, emails, and positions of three persons of good standing who would be able to provide a reference on your

personal and professional integrity. The referees must not be related to you, and should have known you for at least three years.....

5.12 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise for the position(s) held/to be held? The omission of material facts may represent the provision of misleading information.

N.B. The information given in response to this questionnaire shall be kept confidential by the supervisory authorities, except in cases provided for by law.

6. 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 licence.

I am also aware that omitting material information intentionally or un-intentionally shall be construed to be an offence and may lead to rejection of my application.

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 supervisory authority should be aware.

I undertake to inform the supervisory authority of any changes material to the applications which arise while the application is under consideration.

NAME POSITION HELD.....

DATED..... AT..... THIS DAY OF.....

WITNESSED BEFORE ME:

SIGNED..... (Applicant)

COMMISSIONER FOR OATHS/MAGISTRATE

Name:

Signature:

Address:

THIRD SCHEDULE

(r. 26 (2))

THE CENTRAL BANK OF KENYA ACT

(Cap. 491)

**APPLICATION TO OPEN HEAD OFFICE PREMISES OR AN OUTLET FORM /
CBK /MRB/4**

1. Name of the Money remittance operator.....
2. Names/locations of proposed/existing premises and dates of establishment.....
3. Proposed name of Head Office or outlet
4. (a) Name of the proposed location of Head-office or outlet
- (b) Postal address and telephone number(s)
- (c) Physical address: - L.R.NO.....Building.....Street.....
Town.....
5. (a) Officers of the proposed Head- office or outlet.....
- (b) Number and designation of non-management staff.....
6. Business hours
7. Is the new place of business:-
(a) Self-owned? Yes/No*
- If yes, cost of purchase or construction.....(b) Leased?
- Yes/No* If yes, terms of lease.....
8. Proposed date of commencing operations
9. Attach the following documents:
 - (a) A title deed or a signed lease agreement whichever is applicable, of the premises;
 - (b) Approvals by Relevant Authorities;
 - (c) An installation certificate and agreement from the security firm regarding physical security of premises;
 - (d) Adequate covers for the following policies from licensed insurance companies covering; Fire and other perils, Burglary and theft, Public liability, Fidelity, Workmen's compensation, Cash and valuables in transit, Cash and valuables in premises, Motor vehicles in premises, Other assets (e.g. computer), Employers' liability;
10. Declaration (by Director/Secretary):
I, the undersigned, hereby declare:
 - (a) THAT the particulars set out herein are true and correct to the best of my knowledge and belief;
 - (b) THAT if licensed, I shall transact money remittance business in accordance with the provisions of the Central Bank of Kenya Act and of any regulations,

guidelines or directive as may from time to time be issued by the Central Bank of Kenya.

Name.....

Signature.....

Date.....

FOURTH SCHEDULE

(r. 35)

PRESCRIBED FEES

1. The following are the prescribed fees for the various licences as outlined in the table.

	<i>Type</i>	<i>Fees (KSh.)</i>
1.	Annual licence fee per outlet	100,000
2.	Application fee for a new licence	20,000
3.	Application fee for a new outlet	10,000
4.	Application fee for an agent	1,000
5.	Annual renewal fee for an agent	1,000

2. Any fee payable under paragraph (1) shall be paid by bankers cheque payable to the Bank or by any other means prescribed by the Bank.
3. The prescribed fees in paragraph (1) may be reviewed by the Bank from time to time.

Made on the 11th April, 2013.

NJUGUNA NDUNG’U,
Governor, Central Bank of Kenya.