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31/7/2013

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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIRST SESSION

THE DEPARTMENTAL COMMITTEE
ON
FINANCE, PLANNING & TRADE

REPORT ON
THE MICROFINANCE (AMENDMENT) BILL, 2013

PARLIAMENT BUILDINGS
NAIROBI

31

JULY, 2013

INTRODUCTION

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental committees of the National Assembly established under SO 216 and mandated to, inter alia; 'to study and review all legislations referred to it;

Specifically, the Committee deals with *Public finance, monetary policies, public debt, financial institutions, investment and divestiture policies, pricing policies, banking, insurance, population, revenue policies, planning, national development, trade, tourism promotion and management, commerce and industry.*

The Standing Orders also empowers the Committee to make its own selection of the subjects regarding the policy, management and administration among others of the Ministries and Departments falling under its jurisdiction.

COMMITTEE'S MEMBERSHIP

The committee comprises of the following members:-

1. Hon. Benjamin Langat, MP (Chairman)
2. Hon. Nelson Gaichuhie, MP (vice Chairman)
3. Hon. Jones M Mlolwa, MP
4. Hon. Anyanga, Andrew Toboso, MP
5. Hon. Timothy M .E. Bosire, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Joash Olum, MP
8. Hon. Dr. Oburu Oginga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Abdullswamad Sheriff, MP
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12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Iringo Cyprian Kubai, MP
14. Hon. Dennis Waweru, MP
15. Hon. Tiras N. Ngahu, MP
16. Hon. Sakaja Johnson, MP
17. Hon. Jimmy Nuru Angwenyi, MP
18. Hon. Ronald Tonui, MP
19. Hon. Mary Emase, MP
20. Hon. Joseph Limo, MP
21. Hon. Lati Lelelit, MP
22. Hon. Kirwa Stephen Bitok, MP
23. Hon. Sammy Mwaita, MP
24. Hon. Daniel E. Nanok, MP
25. Hon. Eng. Shadrack Manga, MP
26. Hon. Abdul Rahim Dawood, MP
27. Hon. Sakwa John Bunyasi, MP
28. Hon. Alfred W. Sambu, MP
29. Hon. Sammy Koech, MP

On Thursday, 27th June, 2013, the Microfinance (Amendment) Bill, 2013 went through the First Reading and referred to the Departmental Committee on Finance, Planning & Trade pursuant to the provisions of the Standing Order No. 127 of the National Assembly.

Pursuant to Article 118 of the Constitution and Standing Order 127, the Departmental Committee on Finance, Planning & Trade facilitated the Public Participation by engaging the stakeholders on the Bill. The Committee met with the National Treasury and Association of Microfinance Institutions on 25th July 2013.

COMMITTEE'S OBSERVATIONS

The Committee observed that:

1. The Bill seeks to amend the Microfinance Act, 2006, by providing for deposit taking microfinance institutions to subcontract agency services, similar to the practice in the banking system. The Bill also allows greater sharing of information on performing and non-performing loans, and protects regulatory institutions such as the Central Bank of Kenya and Deposit Protection Fund Board from liability if such institutions share information in good faith to other authorized institutions. This particular amendment is in sync with that in the Finance Bill, 2013.
2. The Bill expands and strengthens the regulatory authority of the Central Bank of Kenya to intervene in the affairs of the institutions or initiate prompt corrective action if the institutions do not carry out their activities according to prudential guidelines (including capital requirements) and where the interest of depositors and creditors is under threat.
3. The Bill updates definition of terms by allowing sub-contracting of agency services. The Bill seeks to strengthen regulatory oversight of the institutions by adding the definitions of “significantly undercapitalized” and that of “undercapitalized institution” which are drawn from the Banking Act.
4. The Bill amends section 29 of the principal Act that deals with appointment of external auditors. It gives additional duties to the external auditors including carrying out special investigations and reporting on criminal offences and fraud committed within the institution, losses that could threaten the 50% of core capital requirements. This amendment is drawn from Section 24 of the Banking Act. This strengthens regulatory oversight and improves information necessary to undertake prompt corrective action by the CBK.
5. It further provides for sharing of information within the regulatory, investigatory, and tax agencies outside Kenya under reciprocal arrangement, and extends legal protection from prosecution of officers who in good faith share the information. This similar to an amendment in

Finance Bill, 2013 indemnifying sharing of information under Section 31 of Banking Act. This addresses cases of international financial crimes and for tax compliance purposes.

6. The Bill gives powers to the Central Bank of Kenya to take prompt corrective action to protect interest of depositors and creditors, including suspension of payment of dividends, suspension or removal of officers and board, prohibit awarding of bonuses, restrict growth of assets, among others upon audit if the institution is found to have violated regulations and prudential guidelines (e.g. undercapitalization).
7. The following is clause by clause analysis of the Bill:

Clause	Highlights	Comments
1	Short title and commencement	It is an amendment Bill
2	Interpretation: expands the definition of agency; inserts definition of various forms of capitalization	<ul style="list-style-type: none"> • Deposit Taking Microfinances cannot currently subcontract agents because the law requires them to sign individual contracts with the agents. This requirement is impeding the growth of the agency model. It is not only time consuming but it is also straining the capacity of DTMs in undertaking the task of identifying, selecting and contracting agents. • The proposed amendment will enable the development of a framework which will enable DTMs to subcontract suitable agents. It will also allow specialized entities such as Agent Acquirers/Network Managers to identify, select and acquire agents for the institutions. • The Central Bank needs to be fully empowered to take prompt corrective action whenever a DTM's capital adequacy position is deteriorating.

3	Provisional of additional duties to the external auditors	<ul style="list-style-type: none"> • External auditors play a major role in providing quality assurance on the financials and operations of a DTM. Their audits are used by the Central Bank, depositors, creditors and members of the public to make individual assessment on the financial position, management quality and risk profile of an institution/DTM. • Requirement for an external auditor to report immediately to the Central Bank whenever serious violations of the law or regulations or malpractices have been discovered
4	Provides for sharing of positive and negative credit information	<p>Obligates the DTMs, like other financial institutions, to share credit information to other financial institutions thus creating a level playing ground.</p> <p>The Central Bank of Kenya is also allowed to share this information to any regulatory authority and deposit protection fund within and outside Kenya</p>
5	Enhances the powers of the Central Bank when deficiencies are noted in a Deposit Taking Microfinance	<p>Gives the CBK powers to intervene in cases where financial institutions have violated the legal framework under which they operate. The CBK has been allowed additional measures to take in such cases to protect the depositors and the public.</p>
6	Provides for CBK intervention in the management of a Deposit Taking Microfinance	<p>CBK is hereby empowered to intervene and even order withdrawal of employees of a mismanaged DTM and ensure rectification of the anomaly within three months.</p>

PROPOSED AMENDMENTS

Arising from the Committee's interaction with the stakeholders, the Committee is considering the following amendments for possible presentation to the House during the Committee Stage of the Whole House:-

CLAUSE 2

THAT Clause 2 of the Bill be amended by-

- a) Inserting a definition of the words “microfinance bank” to mean a company which carries on or proposes to carry on microfinance business in Kenya and includes all branches, marketing units, outlets and offices and any other place of business that may be licensed by Central Bank of Kenya from time to time;
- b) Deleting all references in the Act to the words “deposit-taking microfinance institution” and substituting therefor with the words “Microfinance Bank”;
- c) Deleting the words “deposit-taking microfinance business” appearing in the Act and substituting therefor with the words “Microfinance Bank Business”

Rationale:

These amendments seek to bring a clearer understanding of the business of the licenced microfinance institutions and create market confidence through differentiation of Microfinance Banks from other unregulated lenders who use the term microfinance.

- a) The perception of microfinance market is that a “bank” is where people save money hence DTM is not understood as a safe place to save.
- b) Effective deposit mobilization will enable DTMs provide cheaper credit and attain deeper countrywide spread.
- c) In Kenya other non-banking institutions are allowed to use the name “bank” for their business e.g. Investment Banks licenced under the CMA Act and Kenya Post Office Savings Bank yet DTMs are the only other institutions other than banks regulated by CBK.
- d) DTMs are banks targeted to the bottom of the pyramid with a very wide rural spread.
- e) A survey of like economies such as Latin America, Philippines and Nigeria has shown that the use of the name “Bank” by MFIs has led to successful deposit mobilization.

CLAUSE 3

THAT Clause 3 of the Bill be amended by inserting the following new clause 3A immediately before clause 3-

3A Section 14 Sub Section 1 be amended by deleting the following three paragraphs (a) to (c)

- a) Issuing of third party cheques
- b) Operating current accounts
- c) Foreign trade operations

Rationale


- a) The amendments seek to increase the range of financial services that the deposit taking microfinance institutions can offer with a view to further strengthen these institutions to enhance financial access.
- b) The amendments will also enable deposit taking microfinance institutions to mobilize deposits thus lower their cost of credit to their clients majority are currently excluded from formal banking services.
- c) It will also reduce the Microfinance Banks' reliance on loans from local and international lenders for on lending.
- d) Microfinance Bank clients receive money transfers from the diaspora and since their offices are closer to the general public, the foreign exchange services will be cheaper and easily accessible from the Microfinance Bank.
- e) Most Microfinance Banks have loans in foreign currency and access to cheaper funds is critical for their survival.
- f) Inclusion of the proposed services by Microfinance Banks in like economies such as the Philippines has led to business growth. These are services that are demanded by microfinance clients whose businesses have grown.

ACKNOWLEDGEMENTS

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the Secretariat for the preparation of this report.

Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade to table this report on the Microfinance (Amendment) Bill, 2013 and commend it to the House for information pursuant to the provisions of Standing Order 127 of the National Assembly.

Signed 

CHAIRPERSON

(HON. BENJAMIN LANGAT, MP)

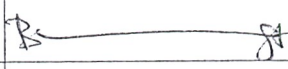
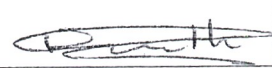

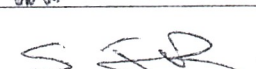
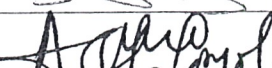


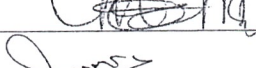


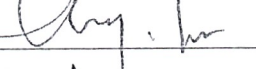


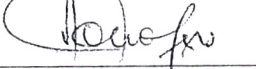

Date: 31-07-2013

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE (11TH PARLIAMENT)

MEMBERS ATTENDANCE REGISTER

DATE: 31/07/2013 TIME: 12:00 PM

AGENDA: Adoption of draft report on Manufacture (Kachera Bill, 2013)

N o.	NAME	SIGNATURE	DESIGNATION
1.	Hon. Benjamin K. Lagat		chair
2.	Hon Nelson Garchure		v/ chair
3.	Hon. Lati Lelelit		member.
4.	Hon. SAKWA BUNYATI		"
5.	Hon. Daniel Epuyo Nanok		"
6.	Hon. Angaga Andrew Toboso		"
7.	Hon Mary Enaase		member
8.	Hon ISHAD SUMRA		member
9.	Hon. Abdul Rahim Jawood		"
10.	Hon Isaac N. Osahel		"
11.	Hon. Abdullswamad S. Naimu		"
12.	Hon JOSEPH LIMO		"
13.	Hon. Joash Olum		"
14.	Hon. Ronald Tonui		"
15.	Hon. Jones M. Lolwa		"
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MEMO

To : The Speaker of the National Assembly
From: Chairman, Finance, Planning & Trade Committee
Date : 31st July, 2013

Approved
31/7/2013

Subject: PERMISSION TO SIT ON WEDNESDAY 31ST JULY AT 12:00 PM

The Departmental Committee Finance, Planning & Trade has been processing the following Bills that went through the First Reading on 27th June 2013 and 2nd July, 2013:

1. The Microfinance (Amendment)Bill, 2013
2. The Insurance (motor Vehicle Third Party Risks) (amendment Bill, 2013
3. The Capital Markets (Amendments) Bill, 2013
4. The Kenya deposits Insurance (Amendment) Bill, 2013
5. The Tax Appeals Tribunal Bill, 2013
6. Insurance (amendment) Bill, 2013

The Committee has been facilitating public participation on the above Bills Pursuant to Article 118 of the Constitution and Standing Order 127 and is currently compiling its reports. This is therefore to request you to allow the Committee to sit on Wednesday 31st July 2013 at 12:00 pm pursuant to Standing Order 186(2) to deliberate on the draft report on the Microfinance (Amendment) Bill, 2013 that is coming for Second reading in the afternoon.



Hon. Benjamin Langat, MP

**MINUTES OF THE 29TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON WEDNESDAY 31ST JULY, 2013 IN
THE SMALL DINING HALL, MAIN PARLIAMENT BUILDINGS, AT 12:00 P.M.**

PRESENT

Hon. Benjamin Langat, MP (**Chairperson**)
Hon. Nelson Gaichuhie, MP (**Vice Chairperson**)
Hon. Mary Emase, MP
Hon. Tiras N. Ngahu, MP
Hon. Daniel Epuyo Nanok, MP
Hon. Ronad Tonui, MP
Hon. Joseph Limo, MP
Hon. Anyanga Andrew Toboso, MP
Hon. Lati Lelelit, MP
Hon. Jones M. Mlolwa, MP
Hon. Abdullswamad Sheriff, MP
Hon. Sumra Irshadali, MP
Hon. Sakwa John Bunyasi, MP
Hon. Joash Olum, MP
Hon. Abdul Rahim Dawood, MP

ABSENT WITH APOLOGIES

Hon. Dr. Oburu Oginga, MP
Hon. Shakeel Shabbir Ahmed, MP
Hon. Ogendo Rose Nyamunga, MP
Hon. Sammy Mwaita, MP
Hon. Sammy Koech, MP
Hon. Eng. Shadrack Manga, MP
Hon. Timothy M. E. Bosire, MP
Hon. Kirwa Stephen Bitok, MP
Hon. Sakaja Johnson, MP
Hon. Alfred W. Sambu, MP
Hon. Iringo Cyprian Kubai, MP
Hon. Jimmy Nuru Angwenyi, MP
Hon. Patrick Makau King'ola, MP
Hon. Dennis Waweru, MP

INATTENDANCE

Evans Oanda	-	Clerk Assistant
Tobias Opana	-	Junior Legislative Fellow
Dennis Dindi	-	Office Attendant

MIN. NO. 118/2013 PRELIMINARY

The meeting was called to order by the Chairman at 10.30.am followed by the word of prayer.

MIN. NO.119/2013 ADOPTION OF THE DRAFT REPORT ON MICROFINANCE (AMENDMENT) BILL, 2013

The Committee went through the draft report on the Microfinance (Amendment) Bill, 2013 and adopted it unanimously. The Chairman was asked to table it pursuant to Standing Order 127.

MIN.NO. 120/2013: ADJOURNMENT AND DATE OF NEXT MEETING

There being no any other business, the Chairman adjourned the meeting at 1:10 P.M.

Chairman.....Date.....

**MINUTES OF THE 27TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON THURSDAY 25TH JULY, 2013 IN
THE COMMITTEE ROOM, 2ND FLOOR, MAIN PARLIAMENT BUILDINGS, AT
10:45 A.M.**

PRESENT

Hon. Benjamin Langat, MP (**Chairperson**)
Hon. Nelson Gaichuhie, MP (**Vice Chairperson**)
Hon. Patrick Makau King'ola, MP
Hon. Dr. Oburu Oginga, MP
Hon. Ogendo Rose Nyamunga, MP
Hon. Mary Emase, MP
Hon. Tiras N. Ngahu, MP
Hon. Sakwa John Bunyasi, MP
Hon. Daniel Epuyo Nanok, MP
Hon. Ronald Tonui, MP
Hon. Joseph Limo, MP
Hon. Anyanga Andrew Toboso, MP
Hon. Shakeel Shabbir Ahmed, MP
Hon. Alfred W. Sambu, MP
Hon. Iringo Cyprian Kubai, MP
Hon. Jimmy Nuru Angwenyi, MP
Hon. Lati Lelelit, MP

ABSENT WITH APOLOGIES

Hon. Abdullswamad Sheriff, MP
Hon. Sammy Mwaita, MP
Hon. Timothy M. E. Bosire, MP
Hon. Sammy Koech, MP
Hon. Eng. Shadrack Manga, MP
Hon. Jones M. Mlolwa, MP
Hon. Kirwa Stephen Bitok, MP
Hon. Abdul Rahim Dawood, MP
Hon. Sumra Irshadali, MP
Hon. Joash Oluo, MP
Hon. Dennis Waweru, MP
Hon. Sakaja Johnson, MP

INATTENDANCE

ASSOCIATION OF MICROFINANCE INSTITUTIONS IN KENYA

Benjamin Nkungi - CEO, Association of Microfinance Institutions
Caroline Karanja - Association of Microfinance Institutions of Kenya (AMFI)
Mwangi Githaiga - Managing Director Kenya Women Finance Trust (KWFT)
Phyllis I. Mbuugu - CEO, Small Medium Enterprises Programme (SMEP)

John Mwara - Chief Executive Officer, Faulu Kenya
Pauline Githugu - Chief Executive Officer, Centbury

KENYA NATIONAL ASSEMBLY

Robert Nyaga - Fiscal Analyst
Evans Oanda - Clerk Assistant
Marale Sande - Research Officer
Tobias Opana - Junior Legislative Fellow
Dennis Dindi - Office Attendant

MIN.NO. 112/2013: PRELIMINARIES

The meeting was called to order at 10:45 am by the Chairman followed by a word of prayer.

MIN.NO. 113/2013: CONSIDERATION OF THE MICROFINANCE (AMENDMENT) BILL, 2013

The Association of Microfinance Institutions in Kenya (AMFI) appeared before the committee and presented the following on the Microfinance (Amendment) Bill 2013:

CLAUSE 2

THAT Clause 2 of the Bill be amended by-

- a) Inserting a definition of the words “microfinance bank” to mean a company which carries on or proposes to carry on microfinance business in Kenya and includes all branches, marketing units, outlets and offices and any other place of business that may be licensed by Central Bank of Kenya from time to time;
- b) Deleting all references in the Act to the words “deposit-taking microfinance institution” and substituting therefor with the words “Microfinance Bank”;
- c) Deleting the words “deposit-taking microfinance business” appearing in the Act and substituting therefor with the words “Microfinance Bank Business”;

Rationale:

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- a) The perception of microfinance market is that a “bank” is where people save money hence DTM is not understood as a safe place to save.

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- c) In Kenya other non-banking institutions are allowed to use the name “bank” for their business e.g. Investment Banks licenced under the CMA Act and Kenya Post Office Savings Bank yet DTMs are the only other institutions other than banks regulated by CBK.
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- e) A survey of like economies such as Latin America, Philippines and Nigeria has shown that the use of the name “Bank” by MFIs has led to successful deposit mobilization.

CLAUSE 3

THAT Clause 3 of the Bill be amended by inserting the following new clause 3A immediately before clause 3-

3A Section 14 Sub Section 1 be amended by deleting the following three paragraphs (a) to (c)

- a) Issuing of third party cheques
- b) Operating current accounts
- c) Foreign trade operations

Rationale

- a) The amendments seek to increase the range of financial services that the deposit taking microfinance institutions can offer with a view to further strengthen these institutions to enhance financial access.
- b) The amendments will also enable deposit taking microfinance institutions to mobilize deposits thus lower their cost of credit to their clients majority are currently excluded from formal banking services.
- c) It will also reduce the Microfinance Banks’ reliance on loans from local and international lenders for on lending.
- d) Microfinance Bank clients receive money transfers from the diaspora and since their offices are closer to the general public, the foreign exchange services will be cheaper and easily accessible from the Microfinance Bank.
- e) Most Microfinance Banks have loans in foreign currency and access to cheaper funds is critical for their survival.
- f) Inclusion of the proposed services by Microfinance Banks in like economies such as the Philippines has led to business growth. These are services that are demanded by microfinance clients whose businesses have grown.

COMMITTEE CONCERNS/ OBSERVATIONS

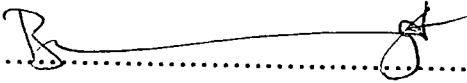
- The Microfinance Act, 2006 was a creation of the Committee to address the need of the marginalized Kenyans.
- Most of the Members concurred with proposal to transform Microfinance institutions from being a Deposit Taking Microfinance to “Microfinance Banking”. However, there is a likelihood that if converted to the ‘Banks’, they will loose their target market of the low income earners
- The Microfinance institutions have not been offering its customers adequate financial education/ capacity building.
- Engagement of Microfinance Institutions into forex Market did not violate the Banking law and therefore there is nothing wrong for the Microfinance institutions to enter into the business.
- Microfinance institutions should consider relieving the poor from their financial burden by buying off their loan debt from the major banks.
- The collateral requirement by the microfinance institutions and their loan recovery procedures was not clear to customers.

MIN.NO. 114/2013: VALUE ADDED TAX BILL, 2013

The Committee went through the Bill and adopted it unanimously after being proposed by the Hon. Nelson Gaichuhie, MP and seconded by the Hon. John Sakwa, MP. The Committee further resolved to have a meeting to agree on the final amendments on the Bill for presentation to the House during the Committee stage. Finally, the Chairman requested members to be present in the House during debate on the Bill to contribute.

MIN.NO. 114/2013: ADJOURNMENT AND DATE OF NEXT MEETING

There being no any other business, the Chairman adjourned the meeting at 12:50 P.M.

Chairman.......... Date 31-07-2013.....