

# DIGITAL LENDING IN KENYA

## Regulations for operations



### Who's a Digital lender

A digital credit provider is a person who has been licensed to conduct digital lending business through digital lending platforms such as the internet and mobile applications to provide a credit facility or arrangement where money is borrowed through digital channels or other any other digital systems as may be prescribed by the Central Bank of Kenya.

The Digital Credit Providers' Regulation, 2022 made under the Central Bank of Kenya Act came into effect on 18<sup>th</sup> March 2022 to address the public concerns raised about the predatory practices of unregulated digital credit providers in particular, unethical debt collection practices, abuse of personal information and high interest costs.



Digital credit providers are only permitted to engage in the business of providing credit and any other activity approved by Central Bank of Kenya (CBK). They are not allowed to collect deposits or take cash collateral as security for loans in the course of carrying out digital credit business.

### **Purpose of the Digital Lending Regulations**

The regulations provide licensing and oversight of previous unregulated digital credit providers. Pursuant to section 59(2) of the Central Bank of Kenya Act, requires all unregulated digital credit service providers to apply for a CBK license within six months of the publication. Failure to comply with the CBK regulation the affected digital credit provider should cease or desist from conducting digital credit business.

### **To Whom Does the Act Apply**

The regulation applies to entities conducting lending business through digital platforms in Kenya.

### **Licensing Requirements**

The regulations require any person or entity that wishes to carry out digital lending business in Kenya must meet the following criteria;

- Apply to the Central Bank of Kenya for a license in form CBK DCP 1.
- Application form to be accompanied by entity document as outlined under section 4(3(a-h)) of Central Bank of Kenya (Digital Credit Providers) Regulations, 2022.

### **Conduct of Business**

Digital lenders are required to conduct business in a manner outlined in the regulations. This entails but not limited to:

- Practice sound corporate governance principles that are based on ethics and integrity.
- Exercise sound risk management and compliance with the law.
- Prominently display a copy of its license in all its places of business.

- Maintain confidentiality of the customers' information and transactions.
- Use systems that are secure and reliable to safeguard client information.
- Put in place a business continuity system and plan for the purpose of minimizing disruptions
- Offer customer protection by:
  - Issuing transaction receipts to acknowledge transactions carried out by a customer through an electronic means or any other acceptable medium.
  - Establish a customer complaints resolution mechanism and a dedicated channel for communicating customer complaints.

### **Digital lending compliance requirements**

A licensed digital credit provider must comply with the following to be in good standing and retain the validity of the license pursuant to the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022 (the *Regulations*)

- Submit a return to the bank by 31st December each year to certify compliance with the Act and regulations.
- Notify the CBK of any changes to the shareholding, board or management structure, appointment of a new director, and Chief executive officer at least 30 days before effective date of such changes or appointments.
- Pay annual fees before 31st December each year in a manner specified by CBK.
- Have at least one registered physical office in accordance with the Companies Act, 2015.
- Notify the CBK 30 days before entering into any agreement with a third party for purposes of investing or financing activities of the digital credit provider.
- Comply with the Proceeds of Crime and Anti-Money Laundering Act, 2009 and the Prevention of Terrorism Act, 2012 and any other relevant Regulations and Guidelines.

### **Implications for non-compliance**

A person who contravenes the regulations will be liable to;



- Imprisonment for a term not less than 3 years, or a fine not exceeding 5 Million or both. This is pursuant to section 33S (10) of the Central Bank of Kenya Act.
- Penalties, revocation of license, and other administrative sanctions if the digital credit provider collects deposits in any form or takes cash collateral as security for loans in the course of carrying out digital credit business.
- Suspension or revocation of a license if,
  - Contravenes any licensing condition
  - Breach any provisions of the Act or any regulation made relating to digital lending
  - Violates Anti-Money laundering laws
  - Conducts business in a detrimental manner to the interest of its customers and the public
  - Fails to pay annual fees or monetary penalty imposed
  - Found to have given false information during application of license
  - Cease to carry business of a digital credit provider
  - Goes into liquidation

### **In Summary**

Compliance of Digital Credit providers to the Central Bank Act and Digital Credit Providers Regulations, 2022 helps to protect the business reputation and resources by avoiding fines, penalties, and sanctions imposed for non-compliance.

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### **For more assistance**

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