

# Financial Services Sector Report

Q3 2020

MMAN  
ADVOCATES



<b>Table of Contents</b>	
<b>Sub-Sector</b>	<b>Page Number</b>
<a href="#"><u>Banking</u></a>	3
<a href="#"><u>Fintech</u></a>	5
<a href="#"><u>Insurance</u></a>	5
<a href="#"><u>Investments</u></a>	6
<a href="#"><u>Retirement Benefits</u></a>	7
<a href="#"><u>Saccos</u></a>	8

## BANKING

Notable during the 3<sup>rd</sup> quarter were Government efforts to increase access to credit and increase savings.

### Parliamentary Bills

#### The Public Finance Management (Amendment) (No.2) Bill, 2020 published on 9 July 2020 ([find link here](#))

*The government is set to provide qualifying micro, small and medium enterprises (SMEs) with credit guarantees in respect of their borrowings.*

The Public Finance Management (Amendment) (No. 2) Bill 2020 (Bill) intends to amend the Public Finance Management Act, 2012 by introducing a public partial risk credit guarantee scheme (Scheme) to support lending to ‘micro’, ‘small’ and ‘medium’ enterprises. The Bill defines such enterprises as follows:

#### Micro

- has a maximum annual turnover of KES 500,000
- has less than 10 employees
- has total assets and financial investment as such be periodically determined by the CS, but in the case of –
  - (i) the manufacturing sector, has an investment in plant and machinery or registered capital not exceeding KES 10M
  - (ii) in the service sector and farming industry has an investment in equipment or registered capital not exceeding KES 5M

#### Small

- has an annual turnover between KES 500,000 and KES 500M
- has between 10 and 50 employees
- has total assets and financial investment as such be periodically determined by the CS, but in the case of –
  - (i) the manufacturing sector, has an investment in plant and machinery or registered capital between KES 10M and 50M

- (ii) in the service sector and farming industry has an investment in equipment or registered capital between KES 5M and 20M

#### Medium

- has a maximum annual turnover of KES 100M
- has between 51 and 250 employees
- has total assets and financial investment as such be periodically determined by the CS, but in the case of –
  - (i) the manufacturing sector, has an investment in plant and machinery or registered capital not exceeding KES 250M
  - (ii) in the service sector and farming industry has an investment in equipment or registered capital not exceeding KES 125M

If enacted into law, the Cabinet Secretary for the National Treasury and Planning (CS) will be empowered to provide partial risk guarantees to lenders for credit extended to qualifying private enterprises that do not have sufficient security for the credit extended to them.

To access the Scheme, borrowers must satisfy the minimum criteria below:

- a) be a micro, small or medium enterprise
- b) have complied with all relevant tax laws
- c) be registered by a county government and hold a valid business permit or trade license
- d) agree to comply with the provisions of the Public Finance Management Act, 2012 and any conditions imposed by the CS that relate to the guarantee, in writing.

Effectively, the CS will be required to establish the Scheme, issue regulations for its operation, additional eligibility criteria for the borrowers, the types of credit that will qualify under the Scheme, the conditions that will apply to such guarantees and the eligibility criteria for participating financial institutions.

## The Kenya Citizenship & Immigration (Amendment) Bill 2020 published on 10 August 2020 ([find link here](#))

*In recognition of the significant contribution diaspora remittances are reported to have on Kenya's GDP, the government is keen to leverage investment opportunities by Kenyans living abroad.*

A voluntary savings scheme (VSS) is set to be put in place and the Cabinet Secretary in charge of foreign affairs will liaise with various financial institutions for the purpose of providing favourable investment terms for contributions under the VSS.

The Central Bank of Kenya (CBK) will also have a role to play in developing policies and programmes as incentives for investing by Kenyans living abroad.

In addition, the CBK will also have the responsibility of establishing a database detailing information on the available investment programmes and projects for Kenyans living abroad and further putting in place measures to curb fraud.

Moreover, the Cabinet Secretary in charge of foreign affairs will be mandated to put in place mechanisms to safeguard the welfare of Kenyans living abroad including providing access legal representation, adequate healthcare and efficient consular services.

## Guidelines, Notices & Circulars

### The Internal Capital Adequacy Assessment Process

On 14th August 2020, the CBK issued [banking circular no. 11 of 2020](#) regarding the Internal Capital Adequacy Assessment Process (ICAAP) of the banking industry during the Covid-19

pandemic. The circular instructed all commercial banks and mortgage finance companies to:

- i. re-submit, by 31<sup>st</sup> October 2020, board approved ICAAP documents for 2020 taking into account:
  - a. impact of the pandemic and mitigating factors taken by the institutions;
  - b. measure taken and proposed to strengthen the balance sheet and maintain adequate capital and liquidity; and
  - c. any proposed distribution of 2020 profits.
- ii. discuss the re-submitted ICAAP documents for 2020 with CBK prior to making any decisions on distribution of 2020 profits.

### Licensing of the Kenya Mortgage Refinance Company PLC

On 18<sup>th</sup> September 2020, the CBK issued a [press release](#) announcing the licensing of the Kenya Mortgage Refinance Company PLC (KMRC) as Kenya's first mortgage refinance company. The announcement noted that KMRC's primary objective is to provide long term finance to primary mortgage lenders including commercial banks, mortgage finance companies, microfinance banks and Saccos so as to increase availability and affordability of mortgage loans to the public.

## FINTECH

Digital Service tax is payable on income derived or accruing in Kenya from the provision of services through a platform that enables the interaction between buyers and sellers of goods and services through electronic means.

### Guidelines, Notices & Circulars

**Request for Comment: Draft Income Tax (Digital Service Tax) Regulations, 2020 ([find link here](#))**

In June the Government introduced digital service tax which is payable on income derived or accruing in Kenya from the provision of

services through a digital marketplace and is calculated at the rate of 1.5% of the gross transaction value and shall be due at the time of transfer of payment from service to service provider. Draft Regulations to further clarify the tax have now been published for public comment. The draft aims to more clearly define stakeholders such as digital marketplace providers and digital service providers.

## INSURANCE

The quarter saw the sector Regulator take steps to improve standards within the sector by publishing the Insurance Professional Registration Bill 2020 which seeks to establish the Insurance Institute of Kenya and the Insurance Professional Examinations Board.

### Parliamentary Bills

**Insurance Professional Registration Bill 2020 published on 26th August 2020 ([find link here](#))**

*Insurance profession to be further regulated through the establishment of standard setting bodies in the insurance sector.*

The Insurance Professional Registration Bill 2020 (**Bill**) provides for the establishment of the Insurance Institute of Kenya (**Institute**) and the Insurance Professional Examinations Board (**Board**) which will serve as standard setting bodies for the sector. The Institute will among other responsibilities monitor and promote professional standards of practice amongst insurance professionals.

The Bill further proposes to regulate insurance professionals by requiring that all practicing insurance professionals be holders of a valid practicing certificate issued by the proposed Registration of Insurance Professionals Committee (**Registrations Committee**). To qualify for a practicing certificate, it is proposed that one must be a Kenyan citizen and must be certified by the proposed Examinations Board, or hold a qualification that is approved by the Registrations Committee.

## Subsidiary Legislation

### Exemption of Registered Insurers From Capital Adequacy Requirements

On 25th August 2020, the Cabinet Secretary for Treasury [gazetted legal notice no. 167 of 2020](#)

exempting all registered insurers from capital adequacy requirements under section 41 of the Insurance Act CAP 487. The exemption commenced on 1st July 2020 and lapses on 31st December 2020. You can find a copy [here](#).

## INVESTMENTS

All financial services sector Regulators and other Government agencies took joint action to warn the public about the emergence of unlicensed and fraudulent financial schemes

### Guidelines, Notices & Circulars

#### Guidance on CIS Performance Reporting

On 14th September 2020, the CMA [announced](#) the publication of a Guidance to Collective Investment Schemes on Performance Measurement and Presentation (the Guidance) that would be effective from 1st January 2021. The Guidance is expected to entrench international best practices in the capital markets by enhancing comparability and consistency of information presented in performance reports. Fund managers will now be required to establish comprehensive, documented investment policies and procedures governing the valuation of assets held by a collective investment scheme.

#### Joint Regulators Caution on Fraudulent Financial Schemes

On 25th August 2020 the CBK, CMA, IRA, the Ministry of Agriculture Livestock Fisheries and Cooperatives, RBA and SASRA issued a [joint press release](#) regarding fraudulent and unlicensed financial schemes. The regulators warned of re-emergence of fraudulent financial schemes taking advantage of Kenyans in the wake of the Covid-19 pandemic. The announcement stated that the schemes would present themselves as online foreign exchange brokers and online global networking companies. The regulators stated that appropriate action would be taken against unlicensed entities involved in offering fraudulent services to the public.

## RETIREMENT BENEFITS

Access to retirement benefits to purchase a residential house introduced by the Tax Laws (Amendment) Act 2020 was reinforced by the introduction of the Retirement Benefits (Mortgage Loans) (Amendment) Regulations 2020 whereby members who were previously restricted from utilizing their funds except for guaranteeing a mortgage loan, may now utilize 40% of their funds directly towards purchasing a residential house.

### Parliamentary Bills

**The Pensions (Amendment) Bill, 2020 published on 26 August 2020 seeks to amend the Pensions Act Cap 189 ([find link here](#))**

*This bill sets the timeline within which pensions are payable to public service officers. Its objective is to remedy the delays experienced in the payment of pensions long after they became due and payable.*

If the bill is passed into law, section 6 of the Pensions Act Cap 189 will be amended to require that pensions to public officers are paid within ninety-days of the date they become payable.

### Subsidiary Legislation

**Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020 ([find link here](#))**

The Cabinet Secretary in charge of the National Treasury on 14th September 2020 signed the Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020. The Regulations are yet to be gazetted.

Nevertheless, it introduces a raft of measures geared towards providing members of retirement benefits schemes with greater access to purchasing homes. Members who were previously restricted from utilizing their funds except for guaranteeing a mortgage loan, may now utilize 40% of their funds directly towards purchasing a residential house.

### Guidelines, Notices & Circulars

On 5th August 2020, the Cabinet Secretary for Treasury issued a [press briefing](#) announcing the gazettelement of the Public Service Superannuation Scheme Act 2012 (The Act) to commence from 1st January 2021. The Act establishes the Public Service Superannuation

Fund (the Fund) and its Board of Trustees. The Cabinet Secretary's speech indicated that the Fund would generate growth of the Capital Markets citing an expected monthly fund income of Kenya Shillings 3 Billion.

## SACCO SOCIETIES

Recommendation was made that smaller saccos merge if they are to remain competitive against the top twenty saccos who control up to 59.08 % of the total deposit market share.

### Guidelines, Notices & Circulars

On 14 September 2020 SASRA [published on its website](#) its Sacco Supervision Annual Report for the year 2019. In the report, the regulator

noted to recommend that smaller saccos merge if they are to remain competitive against the top twenty saccos who control up to 59.08 % of the total deposit market share.





NOTARIES PUBLIC • COMMISSIONERS FOR OATHS • PATENT AGENTS

**OFFICES:** 1st Floor, Wing B, Capitol Hill Square, Off Chyulu Road, Upper Hill, Nairobi

**POSTAL ADDRESS:** P. O. Box 8418-00200, Nairobi Kenya **TELEPHONE:** +254 20 259 69 94 / +254 20 273 75 75 / +254 20 273 75 72 / +254 20 273 75 78 / +254 71 826 86 83

**EMAIL:** [mman@mman.co.ke](mailto:mman@mman.co.ke) **WEBSITE:** [www.mman.co.ke](http://www.mman.co.ke)