KENYA CREDIT PROVIDERS ASSOCIATION

ROADMAP 2010 - 2015

SEPTEMBER 2010

KENYA BANKERS ASSOCIATION

Growth Fin
financing for growth

FSD Kenya
Financial Sector Deepening

This report was prepared for the Kenya Credit Information Sharing Initiative (KCISI) by Rashid Ahmed and Simon Karunditu.

The KCISI was established in August 2009 as a joint venture between the Central Bank of Kenya (CBK) and the Kenya Bankers Association (KBA) to coordinate the implementation of a credit information sharing mechanism in Kenya. It is jointly funded by the KBA, CBK and the Financial Sector Deepening (FSD Kenya), while some of the activities are funded by Financial and Legal Sector Technical Assistance Program (FLSTAP) through CBK. KCISI is currently housed at the KBA premises.

FSD Kenya
Financial Sector Deepening

The Kenya Financial Sector Deepening (FSD) programme was established in early 2005 to support the development of financial markets in Kenya as a means to stimulate wealth creation and reduce poverty. Working in partnership with the financial services industry, the programme's goal is to expand access to financial services among lower income households and smaller enterprises. It operates as an independent trust under the supervision of professional trustees, KPMG Kenya, with policy guidance from a Programme Investment Committee (PIC). In addition to the Government of Kenya, funders include the UK's Department for International Development (DFID), the World Bank, the Swedish International Development Agency (SIDA), Agence Française de Développement (AFD) and the Bill and Melinda Gates Foundation.

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Abbreviations

AGM	Annual General Meeting
AMFI	Association of Microfinance Institutions
CBK	Central Bank of Kenya
CCK	Communications Commission of Kenya
CMA	Capital Markets Authority
DFI	Development Financial Institutions
DTM	Deposit-taking Microfinance Institution
FOSA	Front Office Service Activities (of SACCOs)
FSDK	Financial Sector Deepening Kenya
GOK	Government of Kenya
ICT	Information and Communication Technology
IRA	Insurance Regulatory Authority
KBA	Kenya Bankers Association
KCISI	Kenya Credit Information Sharing Initiative
KCPA	Kenya Credit Providers Association
KSH	Kenyan Shilling
KUSCCO	Kenya Union of Savings and Credit Co-operatives
MFI	Micro-Finance Institution
MOF	Ministry of Finance
NPL	Non Performing Loan
RBA	Retirement Benefits Authority
SACCO	Savings and Credit Cooperative
SASRA	SACCO Societies Regulatory Authority

EXECUTIVE SUMMARY

The introduction by the Central Bank of Kenya (CBK) of mandatory submission of non-performing loan (NPL) data by banks marks an important step of credit information sharing[1] in the Kenyan credit market. This noteworthy achievement was established after approximately ten years of deliberation during which time various laws and regulations were passed and a credit bureau licensed. After conducting four "pilot runs," an important milestone was reached in July 2010 when as the CBK expected all 41 licensed commercial banks and one deposit insurance fund participated in live data submission.

The NPL data submission initiative is currently managed by the Kenya Credit Information Sharing Initiative (KCISI). The KCISI was jointly conceived by the CBK and the KBA. Although residing in the offices of the KBA, the KCISI operates as part de facto arm of both the CBK and KBA, has no legal status and is currently funded by a mixture of one donor, a bank and the KBA. Whilst the current status quo is understandable in the early phases of data submission, it is neither desirable nor tenable for the KCISI to exist in its "fluid" form in the medium- long term. The KCISI continues to be engaged in a number of advocacy, communication and education activities; however, it has been reviewing its strategic role, specifically looking at a future credit information scenario for Kenya.

Central to this future scenario is the inclusion of voluntary sharing of positive credit information to complement the mandatory submission of NPL data. Furthermore, there is a keen willingness to include non-bank sectors as part of a future credit information framework for Kenya. There can be little argument against these strategies as most developed economies have positive information sharing amongst all credit providers as part of their thrust to introduce information symmetries.

Currently, there exists no single institution in Kenya that has an over-arching strategic focus to build an inclusive credit information market. It is our recommendation that KCISI assumes this role by not only serving the interests of the banking sector, but also the greater credit provider community.

Whilst the Kenyan banking sector is the largest in terms of assets in the financial services industry, it is not the largest supplier of credit. Our tentative calculations point to a total banking loan portfolio of $10 billion representing 1.8 million accounts. Outside the formal banking sector, there exists potentially more than fourfold this amount of consumer and commercial accounts. The credit union/ SACCO industry in Kenya, the largest in Africa with over 3.5 million members and a $2 billion loan portfolio, is one of the most obvious non-bank targets for information sharing. Within the micro finance (MFI) sector, another potential 4 million clients exist with a $300 million portfolio. Their participation goes beyond simple information exchange. Anecdotal evidence points to potential consumers who have multiple borrowings within SACCOs/MFIs and between SACCOs/MFIs in addition to the same consumer obtaining finance from the formal banking sector. Furthermore, it is unlikely that this information will be centralised into one common repository if a concerted effort is not made to lay the foundation for such an exchange of information. There is sufficient evidence from large non-bank financial service economies such as Bolivia and Morocco where significant consumer indebtedness occurred in the wake of, amongst others, information asymmetries.

Deposit taking MFIs, other credit-only MFIs, cash lenders, hire purchase companies, credit card companies, telecom and utility service providers are further examples of the non-bank sector that could contribute to a rich repository of credit information. Simultaneously, in the commercial lending arena, there is a no doubt that credit information exchange amongst banks and non-banks would significantly improve credit making decisions and improve overall risk management. The sharing of collateral information ranks particularly high on their agenda. It is fair to assume that lending to the small, medium and micro enterprise sector will be encouraged to a far greater extent in view of more pertinent information being available thus reducing the cost of due diligence on these kinds of businesses.

The sharing of personal data is not without risk. Unchecked, personal data may be abused for a variety of reasons. Predatory lending and unsolicited marketing practices are just of some these. At the same time most credit markets evolve sustainably when information symmetries are present. Thus a system of checks and balances is required to ensure adequate consumer protection whilst simultaneously fostering an environment of credit information sharing. Data privacy/protection legislation will also require close examination. Whilst there is general consensus that data information sharing is permissible within industry sectors, there is no clear consensus that it is permissible between industries.

In terms of regulatory reform, we find that the CBK's regulations surrounding licensing of credit bureaus and consumer protection redress on credit information issues are within, and sometimes beyond, internationally accepted norms. Kenya has, however, not followed through best practice in making it mandatory to submit positive data. This is somewhat curious as all technical data layouts for positive information sharing has already been formalised and accepted by licensed institutions. We also note regulations imposed on the SACCO and deposit-taking MFI institutions. These industry specific regulatory regimes are encouraging but they all lack fundamental "best practice" consumer protection mechanisms. Thus, even though there are current regulations on consumer rights on incorrect information being loaded on an individual's credit profile, there is no specific mention in the regulations of who is actually going to undertake this task. Our concern, though, goes much broader than this.

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1 Some banks have been sharing bad debt data with the current licensed credit bureau for the last 10 years.

Although not the focus of this assignment, we recommend the relevant ministry(s) institute a comprehensive review of credit market practices in the financial services industry. This review should include lending practices across the banking and non-banking credit granting sectors with a view to introducing transparent and standardised market pricing (i.e. on interest rate and fees), adequate disclosure and simplicity of credit agreements, responsible lending measures, consumer redress including alternate dispute resolution agencies and rehabilitation mechanisms for over-indebted consumers. In the long term, it would be preferable that every credit agreement in Kenya fall under one uniform market conduct set of regulations instead of promulgating piecemeal legislation in response to certain industry sector requirements.

Such uniformity should address current anomalies, some of which can be summarised as follows:

- The silo dilemma – where, for example, consumer protection provisions on credit information exist for the banking sector, but a vacuum exists for the non-bank sector.
- The cross-silo dilemma – where micro lending banks, for example, fall within the CBK's regulatory net, whilst the rest of the micro finance industry are not subject to any consumer protection provisions.
- The uneven playing field dilemma – where, for example, there is no legal requirement for a credit bureau does to obtain a license should it wish to collect, display and sell non-bank (credit) data to unlicensed institutions. It thus falls outside any regulatory regime.

None of these regulatory loopholes should prevent the formation, or intended activities, of the KCPA. On the contrary, we believe one of the priority areas for the KCPA is to represent its constituency in areas of legislative reform. In the interim, the KCPA could adopt in its constitution all consumer protection provisions, already applicable to CBK licensed institutions, for its broader non-banking credit granting members. Even though this moves the KCPA into unfamiliar self regulatory territory, the message is made that all credit providers subscribe to existing consumer protection and other applicable regulations even though it is not formally mandatory for them to adopt these measures.

Thus we recommend that the KCISI be transformed into a tentatively named "Kenya Credit Providers Association", which represents the interest of the wider credit provider community and that promotes the development of a robust and credible credit information market for Kenya. Initial reception to the idea of an association has been encouraging. Our interviews with a range of stakeholders indicate:

- A willingness for banks and non-banks to share positive credit information;
- A willingness for all credit providers to be part of, and support the intended activities of the association;
- A data submission format that has already been approved for positive and negative credit information sharing;
- An ever increasing non-bank financial services sector that will look for risk enhancing information to develop its portfolio;
- A competitive and dynamic credit bureau market in the making – there is a strong likelihood for greater data accuracy and other value added services given the existence of one licensed bureau with three other bureaus awaiting their licenses.[2]

1. There is a great deal of energy currently being applied by licensed institutions to conform to NPL data submission requirements. We believe an ideal opportunity was lost in not submitting positive information together with NPL data. Lengthy delays in submitting positive information could be the result of licensed institutions being pre-occupied with NPL data submission issues. Within the banking sector, we recommend a timetable be established for submission of positive data. This could be undertaken through an appropriate notice or circular by the KBA. Within the realm of the non-bank sector, engagement with specific industries (such as SACCOs, MFIs and DFIs) should commence with the objective of submitting full-file information. These could be undertaken initially within closed user groups with an ultimate goal of full credit information integration across various sectors.

In establishing the KCPA, a re-appraisal of roles and responsibilities will be required. These should be diligently managed through a transition phase which we estimate should last approximately six months. The significant changes from an "initiative" to an "association" is summarised in figure 1.

[2] CRB Africa is currently the only fully licensed CRB in Kenya. Metropol East Africa has been granted an approval in principle, while the application by Credit Check and Compuscan are under consideration by CBK. This level of interest from private sector bureaus is encouraging as they tend to shy away from markets which they deem as unprofitable and lack sustainability.

Figure 1: Charting the way forward for a proposed Kenya Credit Providers Association

CURRENT	FUTURE
"Initiative," has no legal status	Association will have full legal status
De facto project manager for "mandatory" data submission as per CBK requirements	Exists for entire credit provider industry on a "voluntary" data-sharing basis
Only deal with licensed institutions under CBK	Open to all credit providers based on data reciprocity
KBA and CBK "principle sponsors"	KBA members become part of the association; CBK has only observer status
Supports mandatory "negative only" data submissions	Work towards full file positive/ negative data submission
Current initiative funded from variety of different institutions	Work towards self funding by members of the association

Chapter 1

CONCEPTUAL FRAMEWORK AND OBJECTIVES OF A KENYA CREDIT PROVIDERS ASSOCIATION

1.1 INTRODUCTION

The Kenya credit information sharing environment has over the last ten years experienced pertinent milestones:

i. The passing of relevant laws and legislation;

ii. The establishment of data standard manuals;

iii. The licensing of Kenya's first credit bureau; and

iv. The submission of the first data series of non-performing loans by licensed commercial banks expected in July 2010.

The interim initiative, KCISI, spearheaded by a project manager, and supported by 3 other staff members, has essentially been supporting the CBK and KBA in terms of ii) and iv) over the last 9 months. With the submission of all NPL data by licensed institutions now becoming a reality, it is an opportune time to review the strategic direction of the KCISI.

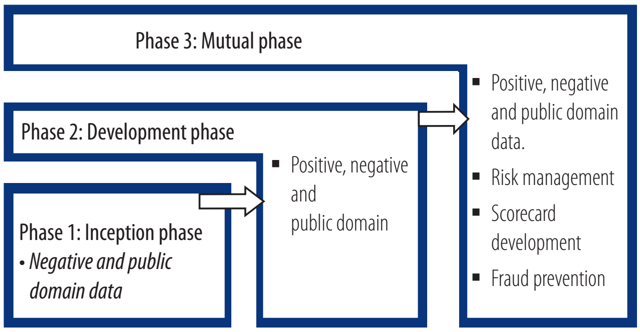
1.2 RATIONALE FOR THE ESTABLISHMENT OF A KENYA CREDIT PROVIDERS ASSOCIATION

At the outset, the idea of a Kenya Credit Providers Association was part of the original thinking when the KCISI was established.[3] Furthermore, the KCPA is considered an important step in the evolution of the Kenyan credit information sharing market. The NPL mandatory data submission has seen a significant first step. However, this falls far short of a robust credit information market for two specific reasons - it does not include the submission of positive data and excludes the non-bank sector.

The KCPA intends to be a non-profit body representing all credit providers who voluntarily choose to become a member of the Association. The KCPA will provide a self-regulatory framework by which consumer and commercial credit data is shared between all the members of the Association. The cornerstone of membership to the KCPA is based on reciprocity: a member has to share data in order to be able to receive data.

Whilst a fundamental foundation has been established, the Kenyan credit information market can be categorised as being in its inception phase (1). We estimate a 12 month period when the NPL data submissions will be running smoothly with all licensed institutions. The Kenyan market will only start realising its full potential once it accomplishes the sharing of positive and negative information (phase 2) for at least a period of two years when meaningful payment profiles of individuals would have been established over that period. Finally phase 3 can be regarded as the most desired position in any market where there is full data sharing with a variety of value added services on offer. We estimate that the Kenyan credit information market can reach some maturity within five years time, provided that positive data submission amongst, at least, all licensed institutions commences no later than early 2011.

Figure 2: Graduating Kenya's credit information market



The CBK's jurisdiction only extends to those licensed institutions which fall under the Banking Act. This covers primarily 41 banking institutions plus the Deposit Protection Fund. At the same time various non-banks have already made enquiries of how they can be co-opted into the structure of submitting data. There is thus a need to consider these requests. Furthermore there has been interest from various sectors – banking, SACCO's, DFIs, Deposit taking institutions - that have expressed interest that require on-going support of data standards, education and advocacy. Under the umbrella of an association representing various sectors it makes sense to galvanise the credit information industry in an orderly manner. Furthermore this "orderly manner" introduces the requirement that, in the absence of mandatory submission of data, the association will have to create its own data submission rules. This self regulatory mode has already seen the introduction of a draft constitution and code of conduct (Appendix III) which spells out the rules of membership, penalties etc.

1.3 OBJECTIVES AND CRITICAL SUCCESS FACTORS

1.3.1 Objectives

Although not yet formally incorporated, it is expected that the objectives of a newly created KCPA would include the following:

i. Promote full file information sharing on a voluntary basis amongst all credit providers;

ii. Represent the interests of all credit providers in policy and regulatory reform;

iii. Undertake education and communication initiatives;

iv. Disseminate credible credit market information on a regular basis.

1.3.2 Why an association?

Essentially the KCPA will bring together various industry sectors involved in credit granting under one umbrella with common goals and objectives.

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[3] See www.kenyacreditinfo.com

Membership to the association will be voluntary. The association should be sustainable, self-funding and not exist to maximise profits as it is not expected to generate income.

1.3.3 Summary of work plan and timing

Although a more detailed roadmap is supplied in Section 6, the six months starting in July 2010 will be structured as the "transition phase" of the KCPA's evolution. This will include finalising its:

i. approval from current sponsors to adopt the strategic direction of forming an association;

ii. incorporation structure;

iii. funding structure;

iv. transfer of duties currently done on behalf of the CBK, back to the CBK;

v. staff structure and job descriptions of each;

vi. the advertisement and placement of staff;

vii. constitution and code of conduct;

viii. governance structure; and,

ix. premises to conduct business

Early finalisation of (i) and (ii) will pave the way for the remaining items to be resolved. It is expected that current funders will continue its support for at least a further 6 months (until end of 2010); although a longer funding transition may be required. Our budget has been prepared for the formation period where all members will be required to contribute to those expenses of the association. The size of funding from members will depend on their size.

Chapter 2

A PROPOSED MEMBERSHIP STRUCTURE FOR THE KENYA CREDIT PROVIDERS ASSOCIATION

2.1 INTRODUCTION

The membership of the association will ultimately be the indicator of its success. Simply put, if the larger bank and non-bank credit providers do not find value in joining and maintaining their membership with the association, there can be little argument for its continued existence. It will thus be one of the important priorities of the KCPA to have key industry players join the association and subscribe to its objectives as soon as possible. Furthermore, the KCPA will need to structure its activities to accommodate the requirements of those members who operate:

- solely in the consumer credit market;
- in the commercial/corporate credit market;
- in both consumer and commercial credit markets.

2.2 MEMBERSHIP CRITERIA

Membership of the Association will be open to any form of a registered company or a sole trader who undertake transactions with members of the public whether they be individual consumers, or groups of individuals or commercial entities. Membership will be based on the following:

- must be a registered entity as duly provided under the laws of Kenya;
- licensed with the relevant regulatory authority in terms of the Kenyan regulatory environment;
- must be able to participate in data submission on a "see and share" bases of reciprocity;
- must submit data in the agreed format, as amended time to time, by the KCPA;
- must abide by the constitution of the KCPA; and
- membership fees must be fully paid and up-to-date.

2.3 CLASSES OF MEMBERSHIP

Three types of membership are envisaged. Any category of membership will be at the discretion of the Management Committee.

2.3.1 Full membership

This will include all credit providers who are involved in consumer and/or commercial lending. Their credit products terms must include regular payments to be made and they must be organisations who share, or intend to share full repayment history (positive and negative information).

These members have full voting rights, subject to their size.

2.3.2 Associate membership

These are open to any licensed credit bureau that process consumer and/or commercial records. This class of membership has no voting rights.

2.3.3 Affiliate membership

These apply to operators in the consumer or commercial credit market who have no intention of sharing data but align themselves with the objectives and activities of the association.

2.4 CATEGORIES OF MEMBERSHIP

It is envisaged that categories of membership should be delineated according to size, not market segment (i.e. bank/non-bank). These members will be drawn from the credit provider community. The following membership categories, and subscription fees, is proposed:

Table 1: Categories of membership

Member category	Turnover (KSh)	Expected annual subscription (KSh)
A	10 billion	1,000,000
B	1 bn – 9.9 bn	800,000
C	500m – 999m	400,000
D	100m – 499m	200,000
E	Under 100m	100,000
Associate	Not applicable	400,000
Affiliate	Not applicable	40,000

Chapter 3

ENVIRONMENTAL ANALYSIS

3.1 MARKET OVERVIEW

This section summarises the key points which emerge from the environmental analysis and the structural changes occurring in Kenya.

"Kenya's financial inclusion agenda is premised on its current development blueprint, Vision 2030. Under this Vision, Kenya aspires to be a middle income country by 2030 and the financial sector is expected to mobilize substantial financial resources required to realize this Vision".[5]

The Agriculture, fisheries and forestry industries remains the main driver in the Kenyan economy contributing around 25% of GDP. Financial services lag some way behind at 5%. According to the FinAccess (2009) survey[4] the biggest growth in the financial services sector came from non-bank financial institutions, specifically with the growth of the M-pesa product over the last four years. Access to "formal-other" and "informal" financial services account for approximately 45% of the Kenyan adult population as compared to 23% of the formal banking sector. Around one-third of Kenyans remain financially excluded.

Within the "formal-other" category the SACCO and MFI industries are the biggest contributors. Table 2 below reflects the "Big 4" SACCO countries in Africa. Kenya is the largest of these four by some distance, contributing over 50% of Africa's total savings and loans portfolios. Furthermore, discussions with the SACCO regulator point to the largest 230 Kenyan SACCO's having 75% market share – this concentration implies that some SACCO's may indeed have larger portfolio's than some licensed banking institutions. As large as the Kenyan SACCO market may be, it still has further upside potential given the current penetration rate of just over 17%.

The Association of Microfinance Institutions (AMFI) has 41 members which range from microfinance banks, wholesale MFI's, retail MFI's, development institutions and insurance companies representing the entire landscape of the microfinance industry in Kenya. Their membership serves over 4 million clients with an outstanding loan portfolio of over $300 million.

In terms of the total credit information universe (see Table 3), the number of non-bank accounts may exceed formal licensed bank accounts by a factor of 4:1.[6]

Table 3: Estimation of bank vs non-bank loan accounts

Sector	No of accounts	Total
Banks	1,800,000	1,800,000
Non-banks	8,100,000	8,100,000
SACCOs	3,600,000	
MFIs	4,000,000	
Other financiers	200,000	
Telecoms	300,000	

3.2 THE BENEFIT OF FULL FILE INFORMATION SHARING

The Credit Bureau Knowledge Guide[7] is a useful collation of credit information issues in emerging and developed markets. Their research shows that the existence of credit registries leads to increased lending volume and improved access to financing. Results of a study based on information from more than 100 developed and developing countries shows that, on a macro level, the existence of credit registries is associated with a higher private credit to GDP ratio, after controlling for other country-level measures of development. A study on credit reporting firms in more than 40 countries shows greater information sharing to increase lending as a percentage of GNP and lower default rates.

Table 2: Africa's largest SACCO markets

Country	No of credit unions	Members	Penetration*	Savings (USD)	Loans (USD)
Ethiopia	5,975	477,817	1.1%	88,381,822	12,846,339
Kenya	3,990	3,682,272	17.1%	2,269,620,502	1,978,861, 845
Tanzania	3,896	480,000	2,2%	29,511,252	24,251,349
Uganda	2,401	880,000	5.7%	55,442,523	47,812,818
Total: Africa	18,220	20,116,921	8.8%	4,387,563,971	3,748,738,399

* Penetration rate is calculated by dividing the total number of reported credit union members by the economically active population. Source: WOCCU 2008 Statistical Report, www.woccu.org.

4 See www.fsdkenya.org/finaccess/2009results.html

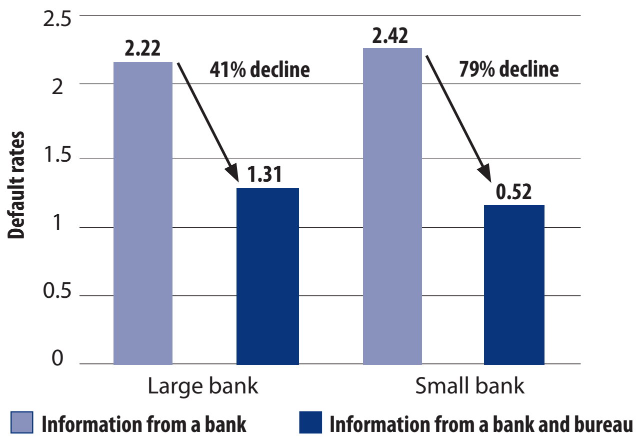
5 Introductory remarks by Prof. Njuguna Ndung'u, Governor: Central Bank of Kenya during the second scenario building workshop on the future of financial service delivery in Kenya. Crowne Plaza Hotel, Upper Hill, April 16, 2010.

6 This is a best guess scenario. Reliable, accurate non-bank data was not available. Discussions with the SACCO and MFI sectors revealed much higher membership numbers. We chose to use data which was reflected on web-sites and other published documents. Double counting is yet another variable that is difficult to quantify as most non-bank MFIs requiring clients to open accounts at formal banks.

7 Published by the International Finance Corporation, 2006, www.ifc.org

The Guide reports that in the United States, including information from non-bank lenders into a credit scoring model allows lenders with a target approval rate of 60 percent to reduce default rates by 38 percent. If the default rate is used as a target, the bank would be able to approve 11 percent more clients before reaching the target three percent default rate (see Figure 3 below). Overall, the simulations show that sharing positive information among the broader category of lenders would allow significant operational improvements either through the lower costs of default or increased lending volumes to new categories of borrowers.

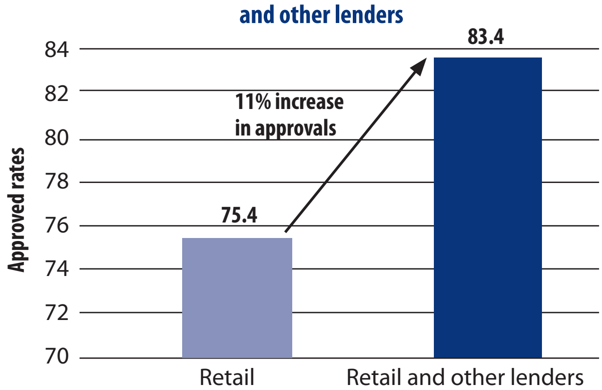
Figure 3: Effect on default rates of increasing number of information sources



Source: Credit Bureau Knowledge Guide

Information sharing brings benefits to both small and large institutions. The Guide reflects that, using information from Argentina, while small lenders do benefit more than large lenders from sharing information, large banks still experience a significant drop in defaults if positive information is used. Although the results may vary from country to country and from lender to lender, both anecdotal and available empirical evidence suggests that information sharing and use of credit scoring allows both large and small banks to significantly reduce default rates and/or increase lending volumes (see Figure 4 below).

Figure 4: Effect of including positive on approvals amongst retailers and other lenders



Source: Credit Bureau Knowledge Guide

3.3 REGULATORY ENVIRONMENT

Credit information regulation in Kenya is primarily guided by the gazetting of the Banking (Credit Bureau) Regulations, 2008 on 11th July 2007 and the licensing of a credit reference bureau by the CBK in February 2010. The Regulations were issued pursuant to an amendment to the Banking Act passed in 2006 that made it mandatory for the Deposit Protection Fund and institutions licensed under the Banking Act to share information on NPLs through credit reference bureaus licensed by the CBK. In addition, the amendment to the law also provides for sharing of information on Performing Loans. Other relevant legislation is provided in Appendix 1.

For a credit information system to be effective[8], the following conditions must be in place in any country:

- A reliable national identification system (ID) for individuals;
- An adequate policy/regulatory structure; and
- A system to protect clients' privacy and channels to dispute information.

We would argue that whilst an ID system exists in Kenya, it can only be effective if it can be verified that a particular number is accurate, is linked to the individual that has the ID number and is not fraudulent. In terms of an adequate regulatory regime and consumer protection measures for credit information, we believe that these are well within accepted international standards. There is however no mention in current regulations as to which entity is going to attend to dispute resolution. We assume that, by implication, the CBK is going to undertake this role. We would propose an industry solution in the form of an independent arbitrator to undertake this role. The biggest concern, however, is that current regulations only apply to licensed institutions under the CBK. A concerted attempt should be made to introduce uniform legislation across the credit provider industry.

The sharing of personal data is not without risk. Unchecked, personal data may be abused for a variety of reasons. Predatory lending and unsolicited marketing practices are just of some these. Currently, employment details of an individual are being submitted to bureaus. This is not unusual as a verification variable, but it does offer the possibility of individuals being denied employment because of their credit status. Data privacy/protection legislation will thus require close examination. Whilst there is general consensus that data information sharing is permissible within industry sectors, there is no clear consensus that it is permissible between industries. Credit markets evolve sustainably when information symmetries are present. Thus a system of checks and balances is required to ensure adequate consumer protection whilst simultaneously fostering an environment of credit information sharing.

8 Campion & Valenzuela, "Credit Bureaus: A necessity for Microfinance?", Oct 2001, pp 14-16.

3.3.1 Summary of applicable legislation

Included in the regulatory net

i. Banking Act and CRB regulations which cover inter alia:

- Mandatory negative Loan (NPL) data sharing amongst licensed institutions;
- Provision for positive information sharing amongst licensed institutions, but not mandatory;
- Licensing and activities of credit bureaus - only licensed credit bureaus may hold mandatory data (Credit Reference Bureau Regulation, 2008);
- Data retention periods for NPL data;
- Data management and quality control;
- Consumer protection provisions on incorrectly loaded information and corrective measures;

ii. The Co-operative Societies Act, No 12 of 1997 as Amended, in 2004;

iii. Deposit taking MFI Regulations, 2008;

iv. Other cross-cutting legislation e.g. Competition Bill.

Excluded from the regulatory net

- Submission and sharing of positive and negative data with non-licensed institutions;
- Consumer protection provisions of incorrectly loaded information from non-licensed institutions;
- No mention of retention periods for non-mandatory data e.g. number of enquiries made on a consumer's record, details and results of disputes lodged by consumers, payment profile, civil court judgments, other public domain data;
- An entity that operates as a credit bureau does not need to be licensed by the CBK as its entire operation is devoted to collecting and displaying data from non-licensed institutions;
- General data privacy legislation across the financial services sector;
- Submission of mandatory data to multiple bureaus.

3.4 ANALYSIS OF STRENGTHS AND WEAKNESS OF THE ESTABLISHMENT OF A KCPA BY BUILDING UPON THE CURRENT KCISI ORGANISATIONAL STRUCTURE, PROCESSES AND PRACTICES.

3.4.1 Strengths

- Competent management and staff team already in place within the KCISI;
- Together with licensed institutions and credit bureaus, the team understands credit information issues in Kenya;
- KCISI is already at the forefront of credit information consumer education initiatives;
- Competencies have been built through intimate involvement in developing and refining data submission standards;
- "Forward looking" to develop the industry beyond licensed institutions into the wider credit market;

3.4.2 Weaknesses

- Lack of precedence in Kenya;
- Little experience in working with non-licensed institutions;
- Relative inexperience to global best practice in credit information;
- Regulatory loopholes may slow innovative progress;
- In its current form, merely seen as an extension of the CBK and KBA and therefore too "bank-centric."

3.5 ASSESSMENT OF OPPORTUNITIES AND THREATS

3.5.1 Opportunities

- As a stand-alone institution, it becomes the voice and the "agenda pusher" of the entire credit provider industry;
- Co-opts non-licensed institutions into one integral credit information framework;
- Becomes the portal for credible credit market statistics;
- Contributes to on-going regulatory reform both in credit information and consumer protection.

3.5.2 Threats

- Slow progress in encouraging all credit providers to share positive information;
- Unable, or reluctant, to impose adequate self regulatory discipline amongst its members where non-compliance to its own code has been detected;
- Potential challenges in obtaining funding for the Association

Chapter 4

KEY STRATEGIC THRUSTS

4.1 INTRODUCTION

In order to realise the business objectives outlined above, it will be necessary for the KCPA to define and develop certain strategic thrusts. Prior to outlining these strategic thrusts, however, it is useful analysing the strengths, weaknesses, opportunities and threats currently relevant to the KCPA. Thereon, it will be possible to:

- determine how strengths, which are currently inherent in the KCISI, can be taken advantage of for the expedient realisation of the established KCPA business goals;
- determine how the adverse effects arising from the current weaknesses can be minimised or avoided;
- determine how the opportunities facing the KCPA can be exploited to develop an inclusive credit information sharing market;
- determine how external threats can be avoided or wherever possible how such threats can be turned into opportunities.

4.1.1 Lack of precedence in Kenya

Much of the KCPA's activity in its initial stages will have to be a drive to inform stakeholders as to its proposed activities.

There is no current industry association that represents all credit providers under one umbrella. There may well be skeptics who believe that such a diverse group will not fit well under one association. There are two factors to consider in this aspect:

- This association does not replace industry-specific associations e.g. KBA, AMFI, KUSCCO etc.
- By the same token there will always be cross-cutting issues which affect all players in the credit providing industry. The KCPA will thus be expected to fulfill this role.

4.1.2 Insufficient exposure to global best practice in credit information

This is not uncommon in a relatively new credit information market such as Kenya. There is no substitute to learning by "trial and error". By the same token the KCPA should be adequately equipped to lead debates on global best practice credit information trends. It should therefore subscribe to various credible newsletters, maintain a library of relevant information, staff must attend relevant conferences and seminars, etc.

4.1.3 Little experience in working with non-licensed institutions

The KCPA should actively make a detailed study of its constituency and obtain the necessary knowledge and skills to deal with a range of non-bank credit providers. This can practically be undertaken by visiting various associations and their members in order to be able to understand and spell out KCPA mission and objectives. Current KCISI staff are mostly drawn from the formal banking and regulatory sectors. There can be some discomfort in working with other sectors, some of which are less formal in their approach to business (e.g. SACCOs); whilst others are outside mainstream financial services (e.g. telecom and utilities).

4.1.4 Regulatory loopholes may slow progress

Whilst the sharing of positive data is not mandatory, its submission format is already finalised and agreed upon by licensed institutions. If the KCPA succeeds only in creating a groundswell of energy for all major bank and non-bank players to share positive data within a period of three years, it would have achieved much. Consent clauses signed by consumers to submit information to third party information brokers are another oft-mentioned obstacle to submit positive data. Most banks commented that they included a consent clause in all their credit agreement some time ago.

There are thus no immediate impediments for positive data sharing. At the very least industry specific sectors should be sharing positive information in closed user groups with the ultimate aim of integrating all closed user groups into one common credit information repository once legal opinion and/or legislative change paves the way for such integration.

4.1.5 Too close to banks and Central Bank, thus too "bank-centric"

The KCISI should re-position itself as an association as soon as it obtains the necessary approval. With a physical move out of the offices of the KBA, its own legal status and branding, the KCPA will start losing its close association with the banking sector. The key criterion to dispel the notion of representing only the interests of the banking sector is to ensure an appropriate representation of bank and non-bank members within the KCPA's governance structures.

4.2 STRATEGIES TO COUNTER IDENTIFIED THREATS

4.2.1 Slow progress with sharing positive information

Through this assignment, many of the larger banks have already been sensitized to the possible formation of the KCPA. There have been no objections to the idea. Much more advocacy and education will need to be done through the KCPA to achieve "buy-in" from remaining banks and non-bank credit providers. Careful consideration should also be given to the selection of chairperson and management committee members. Whilst rigorous discussion is expected, all committee members must be a firm advocate of the KCPA, its mission and objectives.

Section G (Account information) of the data standard manual (DSM) already makes provisions for sharing of positive information and as the DSM was designed and approved by the banking IT sub-committee, it should be relatively easy to commence submission of positive data.

The KBA can considerably influence this process by issuing directives and timelines to start sharing information among banks. The regulator of SACCOs has mentioned that it is unlikely that data submission will happen for another two years as their legislative framework has only recently been published and it requires time to bed down. AMFI has already indicated a willingness to be part of the Association and share information. With respect to the SACCO and AMFI membership, some preliminary assessment of their technical ability to submit data will be necessary.

4.2.2 Unable to effectively self regulate its members

Self regulation will mainly involve timely submission of data and accuracy of data by KCPA members. The KCPA will be required to institute adequate vigilance and controls to maintain data integrity within its membership. This it can achieve by obtaining relevant management information reports from credit bureaus to monitor the performance of its members. The KCPA will also need to understand what validation rules for rejecting data has been established with each credit bureau that hosts its data.

Penalties and disciplinary action detailed in the KCPA constitution must be enforced if it is serious about self regulating its membership. In the absence of uniform legislation across the credit provider industry, self regulation will play an instrumental role in establishing credibility in the formative years of Kenya's credit information market.

4.3 EDUCATION AND COMMUNICATION

In the first instance, education and communication initiatives should be driven by the architect of the regulations and consumer protection mechanisms – in this instance it would be the CBK's primary responsibility. However, there is no limit to the amount of education that is required (for consumers and institutions alike) and all stakeholders are expected to play some part in formulating the correct messages. Thus all of credit providers, credit bureaus, consumer advocacy groups, industry network bodies, media and regulators are expected to formulate education strategies.

By the same token, the KCPA is expected to develop a relevant education and communications strategy. Throughout this assignment we have received varied responses on the benefits of information sharing. Overall, interviewees were unfamiliar with global credit information trends with most institutions reverting to age-old "protecting their turf"[8] arguments. The KCPA should therefore be instrumental in forming alliances with strategic partners (credit bureaus, the IFC's Global credit programme initiatives, credit scoring organisations etc) to regularly hold workshops and seminars on topics related to credit information exchange.

At a "grassroots" level, the KCPA should continue the outreach programme (it started under the KCISI banner) amongst consumers, advocacy groups, labour unions etc. Because of cost factors, we do not advocate an overly extensive consumer education budget. Rather, suitable partners and/or donors should be utilised for these purposes. For example, the use of media (print, radio, TV) as partners is extremely useful in gaining saturation exposure with minimal adspend. Mainstream media invariably look for pro- consumer stories. By retaining a public relations consultancy, for example, the KCPA stand to benefit from much publicity through leveraging the media.

4.4 INFORMATION DISSEMINATION

Outside of the CBK, there is little in the way of credible credit market statistics. Then too, the CBK can only report on trends within licensed institutions. As an association, the KCPA technically owns its members data which it allows private sector bureaus to manage on its behalf. As such, the KCPA can request aggregate data from bureaus which can cover the entire credit provider spectrum. Thus on a periodic (e.g. quarterly, semi-annual) basis, the KCPA could report on trends such as:

- No of credit active consumer/commercial accounts;
- Age analysis of accounts (e.g. those falling within current, 30, 60, 90 days);
- Those accounts falling within bad debt/NPL categories;
- The type of sectors making the most credit enquiries;
- No of free credit reports versus paid reports;
- No of disputes lodged and disputes resolved.

4.5 HUMAN RESOURCE CONSIDERATIONS

Particular to the KCPA as a body, its success will depend on the quality of the human resources at its disposal. The KCPA is expected to have a small staff complement. Recruitment and selection of dedicated personnel who are committed to the association, in particular, and the industry as a whole should be a priority. Consistent with best practice, all existing KCISI staff should not be assured of a position with the KCPA. A human resource consultant will be expected to draw up job specifications, benchmark salary structures and all posts advertised.

4.6 OUTSOURCING OPTIONS

In undertaking the organisational review, the KCPA should consider which of its proposed functions can cost effectively and efficiently be managed internally and which business and support systems can be sourced externally. The KCPA may wish to consider some functional areas such as human resources and ICT which could be undertaken or supported externally.

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[9] This means that credit providers would rather not share information on their good clients for fear of them being poached by a competitor. In competitive credit markets, most institutions rarely use this as an argument; they have come to realize that if superior service is not part of their core customer retention strategy, they stand to lose the client anyway.

Chapter 5

FIVE YEAR ROAD MAP

5.1 PHASE 1: YEAR 1
THEME: "TRANSITION PHASE"

5.1.1 Key activities and focus

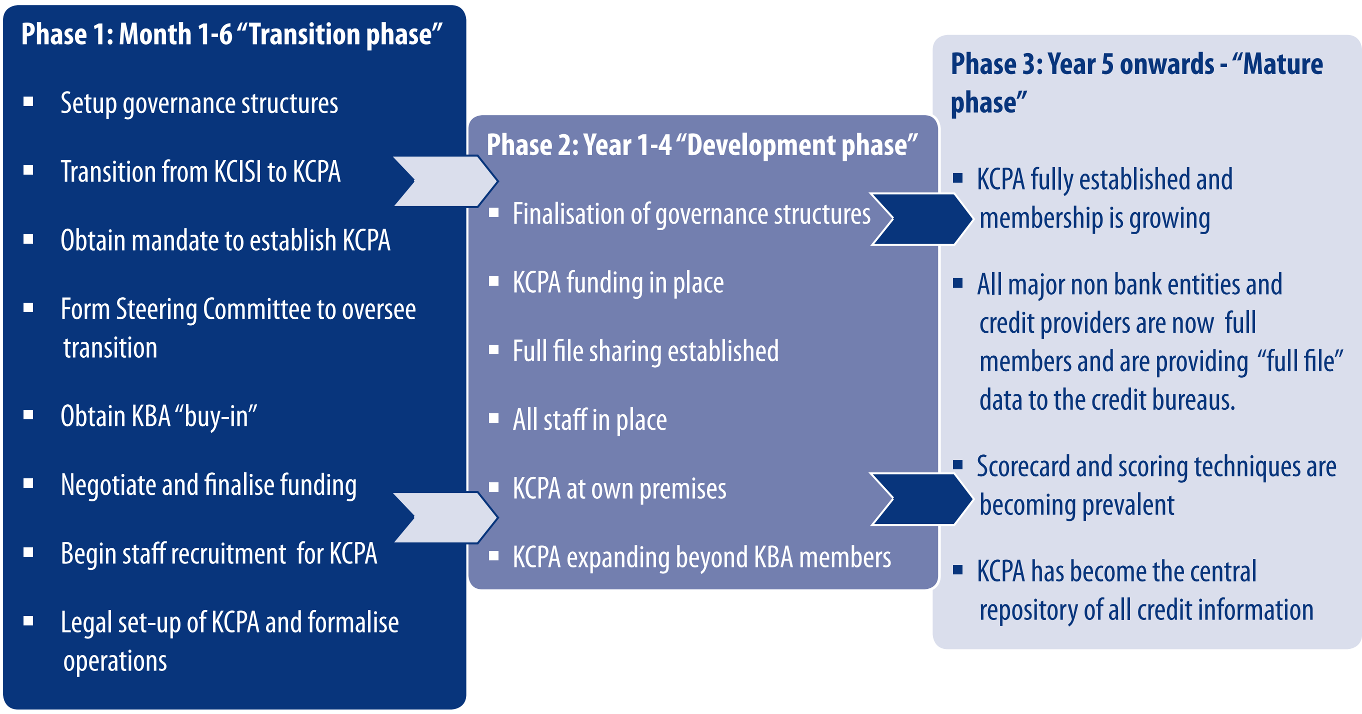
This business plan for the KCPA allows for a three phase development over a five year period, during which the capacity of the KCPA and its objective to advocate an inclusive credit information sharing market will be built up.

The Transition Phase is expected to last approximately six months (approximately July – December, 2010) during which time much energy will be required to formalise the legal identity of the association, office bearers, governance structures, and "marketing" its objectives.

Governance

- Obtain mandate from CBK and KBA to establish an association representing the broader industry beyond their respective constituencies;
- Negotiate a cut-off date that all duties performed by the KCISI on behalf of the CBK, will be transferred to the CBK;

Figure 5: The five year road map



- Form a steering committee, ("steerco"), to oversee the transition phase. The steerco should preferably have no more than six members with, preferably, equal representation from the banking and non-banking sectors. If not entirely balanced between representatives of banks and non-banks in the transition phase, then appropriate allowance should be made to cater for such representation within 12 months of the legal incorporation of the KCPA. A chairperson of the steerco will be nominated from one of the six members. The current project manager will report to the steerco;
- The steerco will remain in force until such time as the first annual general meeting (AGM) takes place;
- At the AGM, a chairperson, manco members are formally appointed;
- At the AGM, ratify KCPA's constitution, mission and objectives;
- At the AGM approve staff recruitment strategies, membership structure, subscription fees, and projected budget for the first 12 months.

Funding

- Negotiate with all existing funders to the KCISI to continue with supporting staff salaries for at least six months from the date the KCPA is formally established as a legal entity;
- Obtain "buy-in" from the KBA on the proposed membership fee structure for its members;
- Negotiate, if necessary, donor funds and/or soft "interest free" loans/ guarantees to be provided to the newly created KCPA entity so that it may enter into lease/rental agreements and purchase office equipment.

Advocacy

- Dissemination of this report to targeted stakeholders;
- Existing data format for positive information sharing finalised;
- "Roadshows" to obtain buy-in from a range of bank and non-bank credit providers;
- Invite as many bank and non-bank credit providers to the first AGM;
- The KBA issues timetable for banks to start submitting positive information.

Human resources

- All current staff of the KCISI should be made aware that they are welcome to stay on during the transition phase, but will have to formally apply for positions under the newly formed KCPA.
- Human Resource consultants are appointed to draw up job descriptions, benchmark salary structures and advertise positions.

Administration

- Incorporate the association as a not-for-profit legal entity;
- Banking account opened and operational processes formalised;
- Finalise office premises shortlist and motivate to steerco to approve at first AGM;

5.1.2 Critical success factors

The success of the KCPA in Phase 1 will be determined by the extent to which:

- steerco members are regarded as ambassadors and "market" the objectives of the association;
- the name and objectives of the KCPA are communicated by the current KCISI project manager and support staff to key opinion shapers in the Kenyan credit provider community;
- the first AGM draws at least all the major banks and some prominent non-banks; endorses the objectives of the association and provides evidence that KCPA is well on its way to represent the broader credit provider community;

5.2 PHASE 2: YEARS 1-4 THEME: "DEVELOPMENT PHASE"

5.2.1 Key activities and focus

This phase follows immediately after the transition phase and is expected to last from year one until the end of year four. During this phase, the KCPA will now have established its own identity, completed its move to its own offices and be fully staffed. In this phase, the primary activity will be building a cohesive association of key credit providers. Marketing the objectives of the association and driving full-file information sharing will therefore be considered as key focus areas.

The development of new initiatives should be preceded by thorough research and promoted by controlled initiatives to ensure that the KCPA adheres to its mandate. After a successful transition phase for the establishment of the KCPA in Phase 1, the focus in the second phase will be the following:

Governance

- After the first AGM, the interim steerco paves the way for the election of members to the management committee.
- Timetable for further meetings in the forthcoming 12 months are finalised;
- The KCPA's constitution and code of conduct is formally ratified at the first AGM;
- The KCPA's executive director, chairperson and treasurer are formally appointed at the first AGM;

- By the end of year two, the KCPA has equal representation of bank and non-bank members on its management committee;

Funding

- The KCPA's funding structure/subscription fees is ratified at the first AGM;
- Raises invoices to all registered members representing first year levies.

Advocacy

- Consumer and commercial data sub groupings established;
- Data format for commercial information sharing finalised;
- Data retention periods for positive information sharing has been finalised amongst members of the KCPA in conjunction with licensed bureaus;
- To obtain legal expert opinion on full file sharing between bank and non- bank sectors;
- Full file information sharing established with at least the six of the largest ten banking institutions by the end of year one; by the end of year four the top fifteen banks have already been sharing full file information for two years;
- Continue to meet with bank and non-bank credit providers with the aim of broadening the association;

Human resources

- All advertised posts have been filled within six months of the legal incorporation of the KCPA;
- Key performance/employment contracts signed with each staff member appointed.

Administration

- The KCPA physically moves to its own premises not later than six months after its legal incorporation;
- The KCPA establishes its own unique identity/"branding;"
- Concludes service level arrangements with at least once licensed credit bureau which will host KCPA data.
- Concludes a relationship with an organisation to run back-office functions e.g., salary payments, leave, pension and medical aid benefit administration etc.
- Establish KCPA web-site;
- By the end of year one, has negotiated appropriate MIS reports from one or more licensed bureau with the aim of monitoring its member's data submissions.

5.2.2 Critical success factors

The success of the KCPA in this phase is dependent on its ability to:

- have appointed key staff positions to carry out the functions of the KCPA;
- motivate all major banks to be part of the association;
- spur full file information amongst the banking industry so that by the end of year one, the six largest banks are already uploading positive data;
- pro-actively navigate relevant legislation to facilitate the sharing of credit information between banks and non-banks;
- start with at least six major non-bank credit providers sharing full file information, initially within closed user groups, or if permissible, with banking institutions by the end of year three;
- be inclusive of banks and non-banks within its governance structures, thus representing the interests of the wider credit granting community;
- educate financial institutions and consumer groups alike on the benefits of credit information sharing;
- to self regulate effectively where non-compliance is found amongst its members;
- be completely self funded by the end of year three.

5.3 PHASE 3: YEAR 5 ONWARDS THEME: "MATURE PHASE"

5.3.1 Key activities and focus

In this phase the KCPA has laid all the groundwork for full file information sharing. All consumer and commercial banks are now submitting positive information. All major non-bank entities, especially the larger MFIs and SACCOs, have already been submitting data within closed user groups and are now sharing information with the banking sector. The KCPA becomes known in the industry as the custodian of the bulk of consumer and commercial credit information. Its data is held by all licensed credit bureaus under service level agreements held with each of them. Scorecard development and scoring techniques have started to become increasing prevalent on the back of at least two years of payment history from a variety of bank and non-bank players.

The KCPA no longer finds the need to actively promote its activities. Rather a variety of financial service providers wish to become part of the KCPA based on the rich repository of credit information available. The KCPA also become the central portal whereby all credit information statistics are made available on a regular basis.

5.3.2 Critical success factors

In this phase, the success of the KCPA will be dependent on:

- its ability to maintain membership of the largest bank and non-bank credit providers;
- its ability to ensure data integrity amongst its members by introducing effective self regulatory controls;
- its ability to remain financially sustainable;
- it continues with a small but dynamic team that fosters innovation in credit information sharing.

Chapter 6

GOVERNANCE, MANAGEMENT COMMITTEE AND STAFF

6.1 GOVERNANCE

The KCPA is to be legally incorporated under the Society Act as a non-profit organisation. In terms of the Act, a chairperson, secretary and treasurer requires to be appointed. These office bearers will be appointed in terms of the interim steering committee mentioned in 5.1.1. The activities and governance of the KCPA is detailed in its constitution, code of conduct (see Appendix 4) and its highest decision making body, the management committee.

As the KCPA is expected to be a small unit, oversight will be through the following:

- Chairperson;
- Management Committee (manco) members; and,
- Executive Director.

All credit provider interests should be adequately represented in governance structures to ensure that no one sector has predominance over the other. However, it is expected that the banking sector may have an initial larger representation than other sectors. This may be adjusted as other sectors become members of the association.

6.2 MANDATE OF THE MANAGEMENT COMMITTEE

This will be the main decision making body of the KCPA. It is proposed that manco will have the following terms of reference:

- review activities and budgets of the KCPA;
- review the constitution and code of conduct from time to time;
- nominate members to the disciplinary committee (as reflected in the Constitution); and,
- appoint the chairperson and executive director.

6.3 PROPOSED ASSOCIATION STRUCTURE

6.3.1 The organisation structure comprises:

- Non-executive office bearers including a chairperson and members of the Management Committee;
- Executive Director;
- Staff.

6.4 INITIAL KEY STAFF REQUIRED

The role of the Executive Director will be to:

- carry out the mission and objectives of the KCPA;
- carry out duties from time to time as determined by the management committee;
- assume overall management of the Association.

The following support functions has been identified for the Executive Director, of which the most important are the appointment of:

- An accounting officer/analyst;
- A legal/compliance officer;
- A data standards officer; and,
- An education and communications officer.

A provisional organogram of a proposed KCPA is provided in Appendix 2.

Chapter 7

PROJECTED FIVE YEAR FINANCIAL STATEMENTS

Table 4: Africa's largest SACCO markets

Revenue and expense	Year 1	Year 2	Year 3	Year 4	Year 5
Total Revenue	38,000,000	38,400,000	38,400,000	38,800,000	38,800,000
Total Operating Costs	37,464,500	35,362,900	37,932,252	38,723,185	38,736,345
NET Operating Surplus	535,500	3,037,100	467,748	76,815	63,655

These figures assume the following:

- Contributions are done only by the banks and credit bureaus throughout this period based on the membership categories shown in section 3.4.
- There are one-off start up costs in year one to establish a separate office for the KCPA and include charges such as office set-up, furniture, equipment purchase, recruitment costs, legal registration fees, etc. These fall away in year two hence the large operating surplus at the end of that year. However it is recommended that this surplus be spent on further training, marketing and information dissemination campaigns to the general public and credit providers. Educating the Kenyan public about the role of the association and overall developments in the credit information space in Kenya throughout this initial five year phase is a very important function which cannot be carried out by any other institution.
- Although this projection assumes only bank members throughout this initial five year phase, it is expected that other credit providers e.g. MFIs, telecoms, utility companies, etc, will join. This may have the effect of reducing individual contributions of members as the association membership grows.

Chapter 8

ACTION AND IMPLEMENTATION PLAN

8.1 OVERVIEW

In order for the KCPA to be established a diverse range of skills and capacity will be required both to undertake the overall co-ordination and management of the transition and subsequent phases, as well as to provide specialist expertise. Accordingly, it is recommended that such expertise be obtained through a range of specialist consultants including inter alia:

- Independent legal opinion;
- Human Resource; and,
- Information system development and management.

The current KCISI project manager will be expected to assume overall management and co-ordination of the transition phase. Some of the identified specialist consultants may go on to provide service to the KCPA as part of the outsourcing of activities as detailed in Section 8.3.3. This is particularly true in terms of the specialist legal resources, human resources and information system development. Implementation through this range of specialist consultants will need to be undertaken within a co-ordinated framework.

8.2 KEY TASKS REQUIRED TO IMPLEMENT THE KCPA

The key tasks that must be undertaken in order to implement the KCPA are categorised as follows:

a. Obtaining the approval of the Task Team to establish the association;

b. Establishing the legal structure of the association;

c. Finalising its funding model;

d. Identifying and inviting management committee members;

e. Finalising its constitution;

f. Hold first annual general meeting to ratify association mandate and objectives;

g. Establish job descriptions and recruiting staff;

These are detailed more fully below. In addition recommendations are made as to who should be responsible for undertaking the task in the long term and in the short term during the implementation phase. [The latter recommendations are made in italics].

The section concluded with a summary of all tasks to be undertaken and the recommended implementers during the transition phase.

8.3 DETAILED STEPS

8.3.1 Establishing the association

Establishing the association is a short term task that will be undertaken during the transition phase only. The tasks required to establish the KCPA as an organisation are as follows:

a. Finalise agreements with the key stakeholders including the CBK, KBA and funders of KCISI. This agreement will cover the terms and conditions of the transformation of KCISI to an association (KCPA).

This task should be undertaken by the legal expert, together with the current project manager.

b. Finalise the name of the association: This will comprise of identifying and agreeing a name with the key stakeholders.

This task should be undertaken by the legal expert, together with the current project manager.

c. Commencing the business as an Association. This compromises of:

- Incorporating the Association;
- Appointing office bearers; and,
- Opening bank accounts

This task should be undertaken by the legal expert, together with the current project manager.

d. Secure premises: This task will include identifying a suitable office location that the KCPA requires and signing the lease.

This task should be undertaken by the legal expert, together with the current project manager.

e. Purchase furniture and equipment

This task will comprise of developing an initial list of furniture and equipment required by the KCPA and purchasing such items. This will include both furniture as well as photostat, fax machines, computers etc. In addition, purchasing a switchboard system and arranging for a sufficient number of telephone lines to be installed.

This task should be undertaken by the project manager.

f. Establish a governance framework

This task will comprise of finalising the draft constitution and code of conduct to be adopted by the first management committee.

This task should be undertaken by the current project manager subject to the approval of the trustees.

g. Identify and appoint the Secretary, Treasurer, Chairman, and Manco members.

This task will compromise of identifying and appointing key individuals. ***This task should be undertaken by the project manager and Steerco.***

h. Hold Inaugural Board Meeting

This task will compromise of holding the inaugural Board meeting. This will include setting the date and developing the agenda and all of the documents that need to be ratified at this meeting.

This task should be undertaken by the current project manager, supported by support staff and the Chairman in conjunction with the identified committee members.

8.3.2 Employing staff

As reflected in 7.4, the KCPA requires requisite staff and the acquisition of such staff is critical to the success of the organisation. The approach taken in terms of forming the KCPA will be to appoint staff as early on in the process as is possible, so that such employees are part of the development phase.

The key tasks to be undertaken in terms of employing staff are as follows:

i. Finalise job specification and recruit Executive Director

The following steps should be undertaken:

- Finalising the job specification for the Executive Director; - Contacting employment agencies;
- Arranging for advertisements to be placed;
- Establishing an interviewing panel;
- Selecting and appointing the Executive Director

This task should be undertaken by the Human Resource expert together with the interim chairperson.

ii. Finalise the organisation structure and the staff functions required within the KCPA.

In addition this task will specify which functions should be undertaken by in house staff and which functions should be outsourced.

This task will be undertaken by the project manager.

iii. Develop job descriptions for in-house staff

This task will compromise of developing job descriptions initially for all in house staff and then for all staff members.

This task will be undertaken by the project manager together with the Human Resource expert.

iv. Recruit staff

This task will comprise of recruiting all staff required for the successful running of the KCPA. As in the case of the Executive Director, this will be undertaken through both advertisements and employment agencies. This task will compromise of:

- Contacting employment agencies;
- Arranging for advertisements to be placed;
- Establishing an interviewing panel;
- Selecting and appointing key personnel.

This task will be undertaken by the Executive Director together with the Human Resource expert.

v. Undertake initial induction

This task will comprise an initial induction for all staff. It will comprise of a briefing on the current credit (information) environment, the Kenyan credit provider stakeholder environment, initiating data requirements for full file sharing information, reviewing current legislation and regulations, the role of banks and non-banks in the association.

This task should be undertaken by the Executive Director.

vi. Induction and staff training

All of the staff members of the association will be required to undertake specific and unique tasks in a dynamic operating environment. Consequently all staff members should undergo an intensive induction and training to ensure that they have the skills and are equipped to the environment in which they will be required to operate. Consequently it is proposed that all staff members undergo an intensive induction which will comprise of the following:

- A briefing on the role of the KCPA in the Kenyan credit information market and the environment in which the staff member will be required to operate.
- Training on how to deal with various stakeholders.

This task should be undertaken by the Executive Director.

8.3.3 Identifying outsourced functions

This task will comprise of securing the staff functions that are to be outsourced. Given the organisational structure and operating procedures formulated for the KCPA and detailed in this report it is envisaged that the following functions should be outsourced.

- The management of human resources which could be undertaken by a personnel consultant or by utilising the administration capabilities of an existing organisation (e.g. KBA).
- Network/systems infrastructure which could be undertaken by a specialist ICT firm or by utilising the administration capabilities of an existing organisation.
- Identifying and retaining senior counsel expertise in legal services.

In all cases in-house capacity and systems should be established to manage issues such as:

- The development of terms of references/ tenders specifications; - Identification of organisations;
- Securing proposals;
- Evaluating proposals;
- Making appointments and finalising agreements

This task should be undertaken by the relevant staff member who will assume responsibility for the function to be outsourced, together with the Executive Director and relevant experts.

8.3.4 Development of operating policies and system

a) Financial systems

This function includes:

- all tasks relating to the management of member subscriptions (income) and expenditure/payment of accounts.
- production of monthly management accounts;
- production of audited annual financial statements;

There is no standard contractual material to be developed in terms of this function.

Apart from the appointment of external auditors to produce audited annual financial statements, all other accounting functions would be undertaken by the accounting/analyst resource. The Executive Director should manage this task.

b) Human resource administration

i. Developing recruitment policies;

ii. Administration of the payroll;

iii. Development of the terms and conditions of employment;

iv. Developing the organisational code of conduct; and,

v. Development of policies for staff development and training

The standard contractual material to be developed in terms of this function includes employment contracts, letters of appointment for full-time employees and consultants and disciplinary letters.

This task should be undertaken by the Human Resource expert together with the Executive Director.

APPENDIX 1

SUMMARY OF RELEVANT LEGISLATION

BACKGROUND

The existing regulatory framework for the financial sector in Kenya consists of a number of independent regulators each charged with the supervision of their particular sub sectors.

The recent creation of the Insurance Regulatory Authority has completed the shift from having departments under the Ministry of Finance to having independent regulators for each sub-sector.

The current regulatory structure is characterized by regulatory gaps, regulatory overlaps, multiplicity of regulators, inconsistency of regulations and differences in operational standards. For example, some of the regulators have at least partial exemption from the State Corporations Act while others do not, some have tax exemption, others do not. Some regulators have powers to issue regulations while in other cases the power is retained by the Minister for Finance.

REGULATORY GAPS

The Savings and Credit Cooperative Societies

The Sacco Societies Regulatory Authority Act is now in place and is mandated to license, regulate, supervise and develop the SACCO sector in Kenya. However in regard to information sharing, it currently only provides for sharing within a closed user group.

The Companies Act (CAP 486)

For a long time it has been noted that the Companies Act, which is a holdover of pre-colonial British Law, is creating problems for private sector activities in Kenya and indeed the financial services sector. It is archaic complicated, cumbersome, inconsistent and at odds with modern “enabling” regulation of corporations. Another layer of complexity and compliance is added to an already burdensome structure, leading to multiple disclosure requirements, overlap and expensive duplication.

The registration of companies is currently under the Registrar of Companies in the Office of the Attorney General but could be brought under the financial sector regulatory framework for more responsiveness to market dynamism. Many unregulated credit providers are registered and operate under this Act and indeed many other Acts which provide for registered unregulated credit providers as can be witnessed by the AMFI membership.

Development finance institutions

DFIs have always provided the impetus for economic development be it in the developed or developing countries. In Kenya, DFIs were specifically established to spearhead the development process by:

- availing credit funds to those venturing into commerce, tourism and industry;
- assisting those wishing to venture into small-scale manufacturing enterprises;
- assisting in the initiation and expansion of small, medium and large-scale industrial; and,
- tourist undertakings;
- provide long-term lending (Project financing) to sustain economic development;
- provide technical assistance/co-operation extension services;
- Provision of special financing and support services to stimulate private sector to live up to its potential and create jobs and wealth, develop and expand indigenous skills.

The existing framework has potential for disharmony as they fall under different regulators. For example ICDC/KIE are under the Ministry of Trade and Industry, IDB Capital is regulated by the Ministry of Finance, AFC the Ministry of Agriculture and KTDC the Ministry of Tourism.

Premium and other financing

A number of premium finance companies have evolved in the Kenyan market. These companies offer financing to companies and individuals to meet insurance premium payments. This is clearly a financial service but is currently not regulated by any of the existing regulatory institutions.

Similarly, there are other money lenders and financers who are totally unregulated. There is also need for regulation of leasing which is a developing financial service.

Registration

Registration is also complex and under various acts like the NGO Coordination Act 1990, Companies Act, Societies Act and Provincial Administration in the case of Community Based organizations.

Laws and regulations related to microfinance and the financial sector

- Banking Act (as amended through 2010).
- Central Bank of Kenya Act (as amended through 2009) Microfinance Act, 2006.
- SACCO Societies Act, 2008.
- Cooperative Societies Act (Amended) 2004.
- Non-Governmental Organizations Co-ordination Act, 1990.
- Microfinance Regulations, 2008.
- Banking (Credit Reference Bureau) Regulations, 2008.

Laws and regulations related to branchless banking

Guideline on agent banking (CBK/PG/15), 2010

CHAPTER 411 A - THE KENYA INFORMATION AND COMMUNICATIONS ACT

93. (1) No information with respect to any particular business which -

a. has been obtained under or by virtue of the provisions of this Act; and

b. relates to the private affairs of any individual or to any particular business, shall, during the lifetime of that individual or so long as that business continues to be carried on be disclosed by the Commission or by any other person without the consent of that individual or the person for the time being carrying on that business.

2) Subsection (1) shall not apply to any disclosure of information which is made -

a. for the purpose of facilitating the performance of any statutory functions of the Commission; or

b. in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings; or

c. for the purpose of any civil proceedings brought under or by virtue of this Act.

3) Any person who discloses any information in contravention of this section commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings.

In view of these legal constraints in the Act, the telecoms sector is restricted from sharing credit information at the moment.

In the current finance Bill there is a proposed amendment to allow sharing of information between regulatory authorities.

This should be seen as a positive first step to a wider initiative to create a well structured information gathering mechanism it does show the government's recognition of the need for better information sharing which can be accomplished in the credit markets through this association with great benefit to the financial markets and the Kenyan economy as a whole.

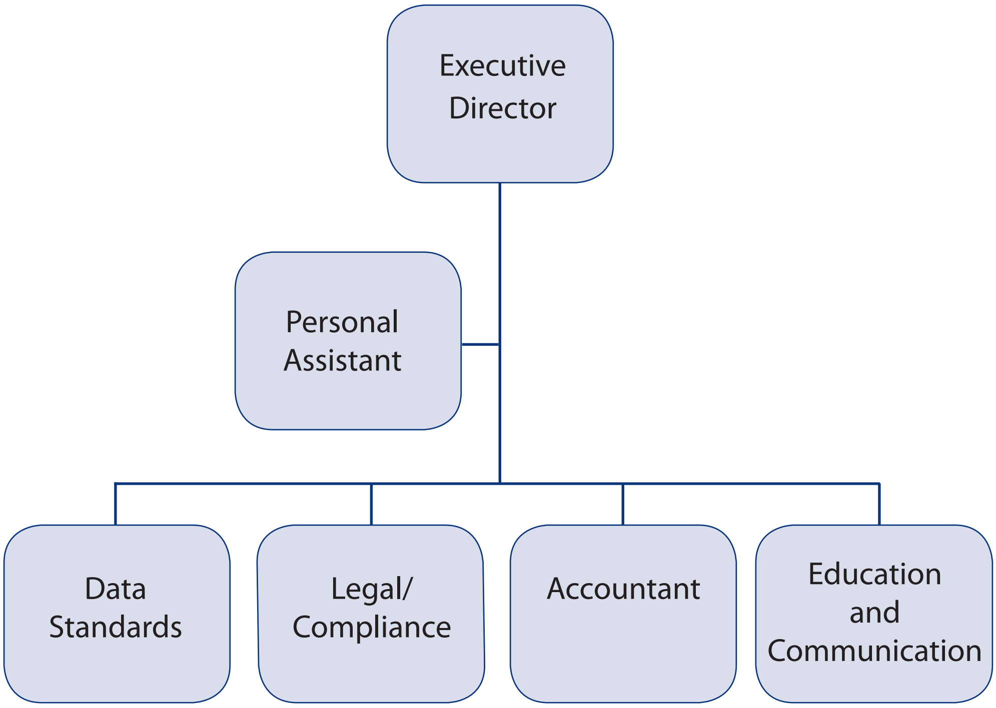
The Kenyan Government (the AG's office) should ensure that new and existing laws dealing with related subject matters are properly harmonised to ensure effective and coordinated execution.

There should be a firm requirement for all governmental, regulatory and private sector agencies established under legislation to work together especially when they are dealing with the same or related matters.

APPENDIX 2

PROVISIONAL ORGANOGRAM OF THE KCPA

Figure 6



APPENDIX 3

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APPENDIX 4(A)

CREDIT PROVIDERS ASSOCIATION DRAFT CONSTITUTION

1. NAME AND STATUS

1.1 The name of the Association shall be KENYA CREDIT PROVIDERS ASSOCIATION (hereinafter referred to as **"the Association"**).

1.2 The Association shall be an unincorporated Association not for gain.

1.3 The Association shall have a financial year commencing 1 January each year and terminating 31 December of the same year. A general meeting shall have the power, by simple majority, to change the financial year.

1.4 In this constitution, any reference to the masculine gender shall apply equally to the feminine gender.

1.5 The Association shall be non political and shall not associate with any organization of a political nature.

This constitution shall only be capable of being amended as provided for in clause 10.3.

2. OBJECTS

The objects, for which the Association is formed, are -

2.1 to promote and facilitate the highest standards in consumers and commercial credit particularly in regard to information sharing and credit granting and ensure that the value of consumers and commercial credit, both to the economy and to the individual, is fully appreciated;

2.2 to carry out any activities directly or indirectly related to both consumers and commercial credit information and Consumer and Commercial credit granting which will further the interests of members, Consumers and the economy;

3. POWERS

The Association shall have the power to do all such things as are reasonably necessary to the carrying out of its objects and in particular it may -

3.1 set up and equip an office;

3.2 employ an Executive Director, Secretary and staff;

3.3 borrow money and incur debt provided the borrowings shall at no stage exceed 50% of accumulated reserves at that date;

3.4 invest funds;

3.5 open and maintain accounts with banks and other financial institutions;

3.6 act as a single mouthpiece for its membership;

3.7 own property of whatever nature.

4. APPLICATION OF INCOME AND PROPERTY

4.1 The income and property of the Association shall be applied solely towards the promotions of its objects, and no portion thereof shall be paid or transferred by any means to any or all of its members, provided that nothing herein contained shall prevent the payment in good faith of remuneration to any its officers, employees or members for services actually rendered on its behalf or the refund of any expenses incurred on its behalf.

4.2 If, upon the dissolution of the Association there remains, after satisfaction of its debts, any property or funds, these shall not be paid to, nor distributed amongst its members but shall be transferred to some other institution/s having objects similar to the Association, failing which some institutions/s having the object of furthering the interest of the business community to be determined by the management committee at, or prior to, dissolution.

5. LIABILITY OF KENYA CONSUMER AND COMMERCIAL CREDIT ASSOCIATION MEMBERS

The Association may sue or be sued in its own name. Any judgment creditor may attach its property in execution of a judgment debt.

The members shall not, in the event that the Association shall not be able to pay its debts, whether during its existence or on dissolution, be liable to contribute towards the payment of such debts.

6. MEMBERSHIP

Membership of the Association shall be open to companies, corporations, partnerships or sole traders, who, in the course of business, lend money or grant credit to individual consumers and commercial organisations, or who have other direct or related business interests in lending money or granting credit to consumers and commercial organisations. Membership of the Association shall also be open to other Credit and Consumer service providers subject to authorization by the management committee. There shall be the following classes of membership -

6.1 Full membership

Available to consumers and commercial credit grantors, lenders and organisations which undertake transactions with members of the public in terms of which regular payments are required to be made who share, or intend sharing, full repayment history of all trading divisions of such entities, and who are accepted by the management committee, subject to the payment of the prevailing entrance fee and the subsequent subscriptions. Full membership shall not be granted to selected subsidiaries or divisions of a member while excluding other credit granting subsidiaries or divisions of that member. Any exception to the provisions of this clause 6.1.1 is to be agreed thereto by the management committee in writing. Only representatives of full members shall be elected to the management committee.

6.2 Associate membership

6.2.1 Available to Credit Reference Bureaus accepted by the management committee and who process full members' consumer and commercial credit and payment information.

6.2.2 This is a participatory membership aligned with the association's objects.

6.2.3 This membership has no voting rights but supports the objects and activities of the Association and assists in any way to achieve such objects.

6.2.4 Any entrance fee or subscription, which may be applied to this class of membership, will be set at a general meeting.

6.3 Affiliate membership

Available to other operators in the consumers and commercial credit granting field, lending or related fields that have no intention to share payment performance information. Also available to other persons/bodies who carry on business, professions, or associations which have a close association with and/or vital interest in the objects and activities of the Association. This membership is granted at the discretion and approval of the management committee. This is a passive membership that requires a subscription fee set by the general meeting. Affiliate members receive routine communication from the Association and have no voting rights or right of access to the database of the Association.

6.4 Membership fee and subscriptions

No member shall by virtue of payment of his membership fee or emergency subscription or by virtue of his membership acquire or be deemed to have acquired at any time any proprietary rights of interest whatever in the Association, property of the Association or its management or affairs.

6.4.1 Any applicants for membership shall apply in writing and may, at the discretion of the management committee, be admitted as members, provided that they subscribe to the constitution and the code of conduct of the Association.

6.4.2 A member may by notice of one month in writing resign from the Association, provided that such member shall be liable for subscript subscription for the balance of the financial year in which he or it resigned.

6.4.3 For the purpose of this clause 6 and for the purpose of this Constitution generally, the term" Credit Reference Bureau"shall mean a business or organization carrying on business of accumulating and maintaining data in regard to the names, addresses, identification numbers and other relevant information in respect of natural or juristic persons and the payment performance of such persons and which Bureau is an associate member of the Association.

7. SUBSCRIPTIONS AND ENTRANCE FEES

7.1 A general meeting may fix an entrance fee payable by new applications for membership.

7.2 Members shall pay subscriptions due, which shall be determined by the Management Committee and ratified at the next Annual General Meeting

7.3 The subscription shall be due on the 1st day of January each year. Should membership commence on a date other than the date referred to, a pro-rata subscription shall be payable in respect of the unexpired period ending on the 31st day of December of that year.

7.4 A member, whose subscription is more than 2 months in arrears, shall be suspended until payment of such subscription and access to the shared database of the Association shall be withheld during the period of suspension. The Management Committee may at its discretion terminate the membership of such suspended member.

8. VOTING RIGHTS

Only paid-up full members, present at any general meeting, having voting rights shall vote at the meeting. Each full member shall have one vote. Members shall be entitled to nominate a proxy in writing to participate and vote at the annual meeting of the Association.

9. REPRESENTATIVES

9.1 The full members at the General Meeting shall determine the policies of the Association and may amend the constitution as set out in 10.3.

9.2 The Executive Director shall be appointed by the management committee of the Association on such terms and conditions as are mutually agreed. The Executive Director shall present a job description to the management committee for ratification, which job description may be amended by the management committee as and when necessary to cater for changing circumstances.

9.3 Auditors shall be appointed or re-appointed annually by the management committee and any such appointment or reappointment shall be ratified at the next succeeding General Meeting of the Association.

Such auditors shall, in addition to the usual duties required of an auditor, generally ensure that proper administrative procedures and sound accounting practices in respect of the Association's finances are followed at all times. Auditors appointed by the Association shall be eligible for re-election subject to the provisions of this clause 9.3.

All the Association's accounts, records and documents shall be opened to the inspection of the auditor at any time.

9.4 Each member of the Association shall nominate not only a representative but also an alternate for their organization. Such representatives shall be fully briefed on and competent to address the affairs of their own organisations relating to the aims and activities of the Association. Members shall be entitled to change their nominees and any changes to such nominations shall be communicated to the Association in writing.

10. MEETINGS

10.1 An Annual General Meeting shall be held in each calendar year, not more than eighteen months after the previous AGM and within six months of the end of the financial year, at a time and place and with an agenda determined by the management committee. Common sound secretarial practice shall be followed as to the calling and conduct of such meetings provided that -

10.2 a statement of the financial affairs of the Association shall be tabled;

10.3 This Constitution may only be amended by not less than a two-thirds majority;

10.4 Resolutions other than an amendment of this Constitution shall be passed by a simple majority;

10.5 The Chairperson of the Annual General Meeting shall, in the case of equality of votes on a resolution, have a casting vote;

10.6 A quorum shall consist of not less than one fifth of the paid-up full members;

10.7 if, within 30 minutes of the time for an Annual General Meeting, a quorum is not present, the meeting shall stand adjourned to the same day and time in the following week at the same place and whoever shall attend shall constitute a quorum;

10.8 An Annual General Meeting shall elect the management committee;

10.9 The Chairperson of the management committee of the Association shall be the Chairperson of the Annual General Meeting. In his/her absence the Vice-Chairperson shall chair the meeting and should the Vice-Chairperson also not be available, the meeting shall elect a Chairperson in his/her absence;

10.10 The management committee can also be empowered by the Annual General Meeting to make rules for proper custody and maintenance of the files, registers and accounts, subject to the approval of the Annual General Meeting before implementation. The management committee may as and when necessary call a General Meeting other than an Annual General Meeting. Furthermore upon receipt of a petition by one third or more of the voting members, the Executive Director or Chairperson of the management committee shall call a General Meeting, provided that the rules applying to the notice of the meeting, the conduct and the resolutions at an Annual General Meeting, shall apply at any other General Meeting, provided further, that a General Meeting called following a petition shall only be competent to pass resolutions upon the items mentioned in the notice of meeting and no other items.

10.11 The management committee may adopt resolutions, outside of General Meetings, by circulating such resolutions in writing to all voting members. Members shall be allowed a period of not less than twenty-one days from date of posting of such resolution to respond thereto. A motion so passed by a majority of voting members shall be valid as if passed at a General Meeting.

10.12 In order for an Annual General Meeting or General Meeting to be properly constituted all members shall be given written notice 21 days prior to such meeting and where practicable, by press advertisement not less than 14 days before the date of the meeting. The period shall commence on posting of such notice.

10.13 Notwithstanding anything to the contrary in this Constitution, this Constitution shall only be capable of being amended by a majority of two thirds of the members of the Association personally present at a duly constituted Annual General Meeting or General Meeting of the Association and voting on any such proposed amendment shall be by way of a show of hands.

11. MANAGEMENT COMMITTEE

11.1 The Management Committee shall be elected by voting members or their Proxies present at the Annual General Meeting.

11.2 The Management Committee will consist of nine members, to be identified from a cross-section of the membership.

11.3 Fifty percent of the nine members elected in clause 11.1 must be category "A" members?

11.4 Members elected in clause 11.1 must attend at least seventy-five percent of total meetings in a financial year. Reasons for absence will be forwarded to the Management Committee to establish the validity of the reasons. If reasons are judged not to be valid the representative can not be voted in again. However, the member may be voted in again with a new representative.

11. 5 The Executive Director will be an ex-officio member of the Management Committee but shall have no vote nor shall he serve as Chairperson or Vice-Chairperson.

11.6 The Treasurer shall be a member of the Management Committee and shall only be able to vote and be eligible to serve as Chairperson or Vice-Chairperson if he is the duly appointed representative of a Full Member.

11.7 Immediately after the Annual General Meeting, a newly elected Management Committee shall convene to elect a Chairperson and a Vice-Chairperson. The Vice-Chairperson shall automatically take over as Chairperson when the Chairperson vacates office or is unable to act for any reason during the course of his term and the Committee shall then appoint a new Vice-Chairperson. Where required, the Chairperson will have a casting vote.

11.8 The Management Committee, under the direction of the Chairperson, shall meet from time to time and shall conduct the business of the Association.

11.9 The members of the management committee shall comprise representatives of full members of the Association who are able to contribute to the affairs of the Association and to work in the interests of all members. Full members of the Association who have representation on the management committee shall be entitled to change such representatives subject to the provisions of this clause 11.6 and provided that any such change is communicated to the Association in writing and that the new representatives have the requisite authority to bind the relevant Full Member of the Association.

11.10 The management committee may co-opt further representatives of full members of the Association who shall serve until the next Annual General Meeting.

11.11 The management committee may as required, set up working Sub-Committees to address specific issues in detail. Each Sub-committee shall operate for a specified duration and under the guidance of a definite brief. The management committee may co-opt both members of the Association, and outside specialists, to participate in these working Sub-Committees.

11.12 The management committee shall retire at the end of each Annual General Meeting. Retiring members may put themselves forward for re-election.

11.13 Any member of the management committee, whose employer is suspended by the Association, or resigns, will automatically retire himself from the management committee.

11.14 A quorum for the management committee shall consist of at least five members.

12. DISCIPLINARY PROCEDURES

12. 1 Any complaint against a member concerning an alleged breach, non-observance or contravention of the Association's Constitution or Code of Conduct, by a member of the Association, if found that the problem cannot be resolved expeditiously or satisfactorily by the Executive Director, Chairperson and/or Vice-Chairperson of the Management Committee, shall be referred to a Disciplinary Committee, appointed by the Management Committee, hereinafter referred to as the "DC" and consisting of at least three full members of the Association. Any member who has an interest in the complaint may not be a member of the DC.

12.2 During the course of the enquiry the DC shall have power to call before it any member for the purposes of conducting the enquiry and investigating the complaint.

12.3 The member being investigated shall be given notice in writing which notice shall be hand delivered or sent by pre-paid registered post to the member concerned and which notice shall specify the nature of the offence or misconduct alleged against the member and the date, time and venue of the meeting of DC which the member is required to attend.

12.4 If in the opinion of the DC it is necessary for the complainant to attend the meeting, written notice shall be served on him requesting such attendance.

12.5 The notice period referred to shall be at least 21 consecutive days from the hand delivery or 30 consecutive days from the posting.

12.6 The member being investigated shall be afforded the opportunity of stating his case at the meeting either personally and/or through a legal representative. He shall furthermore have the right, but not be obliged, to submit documentary evidence in support of his case.

12.7 Should the member being investigated or his legal representative or the complainant, where applicable, fail to attend the meeting, the DC shall be entitled to draw such reasonable inferences as it considers appropriate in the circumstances on the evidence before it.

12.8 The DC after hearing the parties and after considering any other reports shall have the power to acquit, caution, suspend or expel the member under investigation if on finding, on balance of probability, he committed or did not commit the alleged offence.

12.9 A member who is not satisfied with the decisions given by the DC shall be entitled to appeal in writing to the Management Committee within 30 days from the date of such decision, as per the aforementioned timeliness. The Management Committee, excluding any members who have an interest in the issue, shall consider the decision of the DC, and the Management Committee's decision shall be final and binding.

12.10 The Management Committee may at the request of the disputing parties, intervene in a dispute regarding credit practices between two or more members of the Association or between any of the members of the Association and itself or its office bearers or its officials working on its behalf.

13. DISSOLUTION

If the continued existence of the Association will serve little or no purpose, it shall be dissolved upon a resolution to this effect by an Annual General Meeting or General Meeting. The management committee shall thereupon proceed to liquidate the assets of the Association, to pay its debts and to deal with any surplus as set out in clause 4.2.

14. CODE OF CONDUCT

Each member of the Association including associate and affiliate members shall be obliged to adhere to this Code of Conduct.

15. REPUTATION

Members shall conduct their businesses in such a manner that the image, reputation and credibility of the Association or any of its members shall not be adversely affected.

16. THE LAW

Members shall abide by the letter and spirit of every law, code, regulation, or notice promulgated or published or to be promulgated or published by central or Government of Kenya.

17. THE ASSOCIATION'S CONSTITUTION

Members shall abide by the Constitution and all other rules, resolutions and policies of the Association.

18. FAIR DEALINGS

Members shall practice honest, fair and reasonable dealings with Consumers and commercial organisations in the matter of credit granting and related aspects and thus demonstrate the integrity of membership of the Association and the advantages to Consumers and commercial organisations when dealing with members.

The books of account and all documents relating thereto and a list of members of the Association shall be available for inspection at the office of the Association by any officer or member of the Association on giving not less than seven days notice in writing to the Association.

19. CREDIT SHARING INFORMATION DATABASES

19.1 Databases

Credit Bureau shall maintain repayment history databases which shall only be accessed by those Members who provide full payment data in respect of all consumers lending or credit transactions and agreements as per current Standard Input Format. "Repayment History" is that information relating to the payment performance of individuals. All reasonable steps shall be taken by the members to ensure that payment performance input data is accurate, does not form part of a dispute, and is timeously submitted to the credit bureaux at regular monthly intervals. Members shall not have the right to selectively provide consumer information or repayment information or only supply information from selected divisions of their consumer information or repayment information or only supply information from selected divisions of their consumer lending business.

19.2 In addition to the requirements of this clause, members shall submit data to all Credit Bureaux to whom the maintenance of the repayment database has been entrusted, irrespective of whether the member only subscribes to one Credit Bureau.

20. CONCESSIONARY ACCESS

Full members who are gearing up to provide payment performance information may at the sole discretion of the Executive Director or the management committee, be granted interim concessionary access for three months to the repayment history databases of the Association on such terms and conditions and for such periods as the Executive Director or the management committee may direct. The three month concessionary access period may be extended for one or more periods of three months, with a proviso that such extensions may not be granted unless the full member concerned is making a concerted effort to achieve a situation of providing payment performance information.

20.1 Concessionary access shall be monitored by the Executive Director on an ongoing basis and extensions shall be reviewed at least once every three months by the Executive Director or the management committee.

20.2 Concessionary access may also be allowed for a limited period or a limited number of enquiries, for test purposes to Affiliate or Prospective Members – at the sole discretion of the Executive Director or the management committee.

21. USE OF INFORMATION

Subject to clause2(1), Credit Reference Bureau may use the payment performance information submitted by full members of the Association in the normal course of their business without divulging detailed account history or the source of the account or utilizing the information for marketing lists of any type or description.

21.1 Should the information submitted by full members of the Association be used for or in connection with credit bureau scores or credit evaluation mechanisms of any nature, then the detailed payment performance information supplied by members of the Association may only be used in respect of such credit evaluation products which are supplied to full members of the Association.

No member, of any class of membership, shall utilize nor permit to be utilized by any other party, the shared payment performance information provided by full members of the Association in any way or for any purpose, other than specifically detailed in this constitution.

22. PUBLIC DOMAIN SECTOR

The Credit Reference Bureaus shall be entitled to load default data, as a result of which a member sustained a loss, on to the public domain sector of their databases which are also accessible by users who do not participate in the Association's shared repayment history databases. Such losses will be amounts written off as bad debts, losses incurred on the repossession of goods and losses incurred when credit cards issued by banks are revoked.

23. CREDIT GRANTING AND CONTROL CRITERIA

Credit granting criteria shall not unfairly discriminate against any group or class of applicants on the basis of race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age (unless a minor), disability, religion, conscience, belief, culture, language and birth.

24. QUERIES/COMPLAINTS/DISPUTES

Members shall provide details to consumers and commercial organization regarding contact details within their company (telephone number, contact person, and/or postal address) where complaints can be lodged, accounts can be queried and payments can be rescheduled and other procedures which should be followed to obtain satisfactory results.

25. CONDITIONS OF PURCHASE

Terms and conditions pertaining to credit which is granted shall be stated in writing to credit receivers in plain and easy to understand language.

26. ADDITIONAL CHARGES

Details of other charges, whether optional or conditional, shall be stated in writing to credit receivers in plain and easy to understand language.

27. FAIRNESS IN ASSESSING CREDITWORTHINESS

The real reasons for declining credit or granting a lower credit limit and in the case of application credit, the dominant reasons must be made available to credit applicants either verbally, or in writing if requested. Members shall refrain from automatically stating that a poor credit bureau record was the reason for the declining credit. If, however, the decision was due to a poor credit bureau record, details of the credit bureau concerned shall be supplied to the applicant.

28. PERMISSIBLE PURPOSE

Members shall obtain permission from a credit applicant to access any bureau, to make enquiries to verify information provided by the applicant and to submit information of a customer's payment performance with the credit grantor to the Credit Reference Bureau and/or other prospective credit grantors.

29. OVERDUE ACCOUNTS

Members shall collect overdue accounts in accordance with sounds business and legal practices, without undue intimidation and threats. Members shall inform debtors, prior to listing them at the Credit Reference Bureau as defaulters in the Public Domain Sector by way of a written notice at least 28 days prior to forwarding the information to the Bureau.

30. REMOVAL OF DATA

No data shall, before the time prescribed for it to remain on a database has lapsed, be removed, unless the data is found to be incorrect.

31. DEBTOR'S REQUEST ENTITLEMENT

If no information appears on the database regarding prevailing circumstances that caused the debtor's account to fall into arrears, the debtor is, on request, entitled to a note from the member where he has the account, stating what the circumstances are.

32. NO CONDITIONAL CREDIT GRANTING

No member shall, before granting credit to any person, make it a condition of the grant of such credit any correct information regarding the past payment performance of such person be expunged from any database with any credit bureau than in the normal course.

APPENDIX 4(B)

CREDIT PROVIDERS ASSOCIATION DRAFT CODE OF CONDUCT FOR MEMBERS

A code to provide for ethical and professional conduct of the members of the Credit Providers Association and for connected purposes.

1. GENERAL PROVISIONS

1.1 Purpose

This Code is intended to guide credit service providers in the financial market, collectively being members of the Credit Providers Association (CPA), in ensuring professionalism, high ethical standards and fair play while carrying out their professional activities. The paramount objective of the Code is to promote and uphold good conduct, ethics, professionalism and discipline amongst members of the CPA at all times in order to ensure provision of quality professional credit services in Kenya.

1.2 Scope

1.2.1 The Code shall be binding on all members of the CPA and shall be enforceable by or against any member of the CPA.

1.2.2 The Code is not intended to replace, amend or vary any provisions of the laws currently in force relating to banking services, financial markets or credit service provision services in Kenya.

1.3 Interpretation

1.3.1 In this Code unless the context provides or requires otherwise;

"adverse action notice" means a notice issued by a member to a customer conveying denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavourable change in the terms of coverage or amount of any credit facility, existing or applied, or any other action or determination adversely affecting the customer, based on customer information obtained from a Bureau;

"Bureau" means a Credit Reference Bureau duly established and licensed under the law;

"CBK" means the Central Bank of Kenya as from time to time established by law;

"credit information" means any positive or negative information bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, including but not limited to the history and/or profile of an individual or entity with regard to credit, assets, and any financial obligation;

"customer" means a person, whether individual or corporation, who has been provided with credit services by a member and shall include former and/or prospective customer;

"customer information" means credit information, or any other positive or negative information provided by a customer or obtained from a third party, or public record information, and is eligible to be exchanged under the law;

"market" means the credit provision services sector;

"member" means a person who has been admitted to membership of the Association;

"the Association" means the Credit Providers Association (CPA);

"the Code" means this code as amended from time to time;

1.3.2 Reference to the relevant authorities, the regulator or the licensing authority shall be deemed to include the CBK;

1.3.3 Reference to any statutory provision or any law shall be deemed to be reference to that law as amended from time to time and to all rules, regulations and directives issued thereunder;

1.3.4 Words importing masculine gender only include the feminine gender and all other genders and vice versa;

1.3.5 Words importing singular number only include the plural number and vice versa.

2. PROFESSIONALISM

2.1 Knowledge of the law

Every member shall: -

a. understand and comply with all applicable laws, rules, regulations and directives given by the government, regulatory authorities, licensing agencies and the Association;

b. not engage in conducts that constitute a violation of the laws relating to banking services, financial market and credit provision services in Kenya;

c. if it has reasonable grounds to believe that imminent or ongoing activities are illegal or unethical, dissociate from the activities immediately and report any suspicious activities or transactions to the relevant authorities, and the CBK;

d. in the case of apparent conflict or ambiguity in the applicable laws, immediately notify the relevant authority and the Association of the conflict or ambiguity.

2.2 Misconduct

2.2.1 No member shall engage in any professional conduct involving dishonesty, fraud or deceit or commit any act that reflects adversely on their professional reputation, integrity and competence.

2.2.2 Every member shall develop, within their management, systems which comprehensively tackle malpractice and misconduct by their employees, and in particular shall: -

a. develop a code of ethics to which every employee must subscribe;

b. disseminate to all employees a list of potential violations and associated disciplinary sanctions;

c. check references of potential employees to ensure that they are of good character and not ineligible to work in the banking sector, financial market or the credit provision industry;

d. ensure that their employees do not engage in any conducts that compromise the reputation or integrity of the credit provision services or the services offered by members;

e. ensure that their employees conduct business efficiently, honestly and fairly, with the integrity and professional skills appropriate to the nature and scale of the activities involved.

3. OBLIGATIONS AS MEMBERS OF THE ASSOCIATION

3.1 Conduct as members of the Association

No member shall:

a. engage in any conduct that compromises or in any way violates the reputation or integrity of the Association or the services offered by members;

b. provide credit services otherwise than as permitted by the law.

3.2 Reference to the Association

No member shall, when making reference to the Association, misrepresent or exaggerate the meaning or implications of membership of the Association.

3.3 Unauthorised arrangements

3.3.1 No member shall: -

a. enter into any agreement, whether formal or informal, with another member whether directly or through another person, whose terms relate to any credit provision service which is likely to undermine competition and fairness in trade practices and services in the market;

b. hold beneficial interest in another member, except as may be allowed under the law;

c. hold ownership or beneficial interest in a Bureau, save as may be permitted by law;

d. hold any shares in a Bureau, whether by itself or through a nominee or a third party, except as may be permitted by law.

3.3.2 Every member shall, in relation to its directors and employees, ensure that:

a. its directors, officers and/or employees do not hold whether directly or indirectly more than 5% of the shareholding of a Bureau;

b. none of its directors, officers and/or employees is a director or in any capacity a board member or officer of a Bureau.

4. DUTIES TO CUSTOMERS

4.1 Prudence and diligence

Every member has a duty of loyalty to its customers, and in accordance with the said duty every member shall: -

a. act with reasonable care and exercise prudent judgment when dealing with its customers;

b. act for the benefit of its customers;

c. put the interests of its customers above its own interests.

4.2 Fair dealing

Every member shall:

a. deal fairly and objectively with all customer when providing credit services or engaging in other professional activities;

b. ensure that the criteria for credit provision and other professional services offered do not unfairly discriminate against any individual, group or class of applicants on any unlawful basis including but not limited to race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age (unless a minor), disability, religion, conscience, belief, culture and language among others.

c. not use any information obtained from a Bureau solely for the purpose of adversely affecting a customer's chances of obtaining credit but to inform the decision making process;

d. collect overdue accounts in accordance with sound business and legal practices, without undue intimidation and threats to customers.

4.3 Competing compensation arrangements

No member shall accept gifts, benefits, compensation or consideration that competes, or might reasonably create conflict of interest, with their customer's interest unless it has obtained prior written consent of the customer.

4.4 Confidentiality

4.4.1 Every member shall keep confidential all customer information he has acquired about current, former, and prospective customers. Information may be disclosed only if:

a. the information concerns illegal activities on the part of the customer or prospective customer;

b. disclosure is required under the law;

c. the disclosure is being made to the concerned customer;

d. the customer has given his written consent permitting the disclosure;

e. it is required by the CBK for the purposes of carrying out its objectives;

f. the disclosure is lawfully made to its appointed agents for the sole purpose of assisting the member in the lawful and proper process of recovering a debt due to it from the customer.

4.4.2 Proper custody and use of customer information

Every member shall:

a. utilize the customer information solely for the purposes set out in the law;

b. take all such steps as are reasonably necessary to ensure that the customer information obtained and/or retained by it is duly protected against any loss or unauthorised access, unauthorised use or unauthorised disclosure;

c. ensure that the customer information under its custody is not mortgaged or charged for any purpose whatsoever;

d. observe, through its shareholders, directors, officers, employees or agents, a perpetual duty of confidentiality with regard to customer information;

e. implement strict quality control procedures in order to ensure the maximum possible accuracy of customer information in its custody.

4.5 Consent of and notices to customers

Every member shall:

a. obtain a written consent of the concerned customer before requesting for the customer's credit information from a Bureau;

b. notify a customer of the name and address of a Bureau to which the customer's credit information has been submitted, within thirty days of the first listing of the customer's information with the Bureau;

c. where an adverse decision has been taken or determination made in whole or in part against a customer based on credit information obtained from a Bureau, issue an adverse action notice to the customer and the notice shall specify the following:

i. that credit information about the customer obtained from a Bureau played a role in the decision;

ii. the name, address and telephone number of the Bureau that provided the credit information;

iii. the customer's right to a free copy of the information provided by the Bureau; and

iv. the customer's right to dispute such information with the Bureau and, if erroneous, incorrect or outdated, have it corrected.

4.6 Obligation to furnish customer information

Every member shall:

a. ensure that customer information is furnished to all licensed Bureaus;

b. ensure that customer information submitted to a Bureau is accurate;

c. take all such steps as are reasonably necessary to ensure that customer information maintained by it is current, authentic, truthful and reflects the existing situation of a customer;

d. where circumstances have arisen mutating or otherwise affecting customer information submitted to a Bureau, by a written notice instruct the Bureau to update the information to reflect the true position;

e. where the member has submitted customer information to a Bureau and subsequently becomes aware that the information was inaccurate at the time it was submitted, or circumstances have arisen that renders the information inaccurate, within five working days from the day it becomes aware of the inaccuracy, give the Bureau an amendment notice instructing it to immediately delete the inaccurate information and replace with the correct information;

f. where the member has submitted customer information to a Bureau, on a monthly basis or within such earlier time as an update is rendered necessary, ensure that the customer information furnished is accordingly and timely updated;

g. ensure confidentiality, security and safety of credit information obtained from a Bureau.

4.7 Disclosure of interest

Every member shall: -

a. make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity or otherwise interfere with their duties to the customer;

b. ensure that every such disclosure as in (a) above are prominent, delivered in plain language, and communicated effectively.

4.8 Priority of transactions

Every member shall give priority to credit service transactions for customers over those ones in which the member is the beneficial owner or has beneficial interest.

4.9 Communications to customers

Every member shall ensure that: -

a. terms and conditions pertaining to credit which is granted to a customer are clearly stated in writing to the customer in plain and easy to understand language;

b. details of fees payable and other charges, whether optional or conditional, are stated in writing to the customer in plain and easy to understand language;

c. every communication to the customer is evidenced in writing and made by the appropriate officer or agent of the member.

5. RISK MANAGEMENT

5.1 Good corporate management practices

5.1.1 Every member shall adopt good corporate management practices accepted by the CBK, the regulator and the Association.

5.1.2 Without prejudice to the provision of sub-clause 5.1.1 (above) every member shall ensure that that a person occupying the position of a director, a board member or any management position in the member does NOT fall under any of the following description:

a. is a minor or is under legal disability;

b. has previously been convicted of an offence involving theft, fraud, forgery, causing financial loss or perjury, or any other offence involving dishonesty;

c. is an undischarged bankrupt or has entered into a composition or scheme of arrangement with his creditors;

d. was an officer of an institution that has been liquidated or is under liquidation or any statutory management, the same having been commenced while he was in office of the said institution;

e. has been convicted of contravention of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractice by, persons engaged in the provision of banking, insurance, investment or other financial services;

f. has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such a manner as to cast reasonable doubt on his competence and sound judgment.

5.2 Internal compliance mechanisms

Every member shall establish legal, financial and other risks' compliance procedures acceptable to the CBK, the regulator and the Association.

5.3 Money laundering

Every member shall:

a. take all reasonable steps and inquiries to ensure that it does not benefit from proceeds of any illegal business, activity or money laundering scheme;

b. adopt measures reasonably necessary to guard against possible misuse of its resources by employees, directors or other persons for the purposes of money laundering or other illegal activities.;

c. take all appropriate steps necessary to notify the relevant authorities and the CBK of any illegal activity or money laundering which has come to its attention during the ordinary course of business.

6. BREACHES OF THE CODE AND DISPUTE RESOLUTION

6.1 Any member may submit a complaint of violation of the Code by another member. Such complaints shall be submitted in writing to the Association which shall take appropriate steps to ensure that the member in breach remedies the breach.

6.2 In case of a dispute between two or more members, the members shall endeavor to settle the dispute amicably by negotiation; failing to reach a settlement, the dispute shall be submitted to the Association which shall ensure amicable settlement of the dispute by arbitration in such a manner that the Association shall deem necessary. In case the dispute cannot be resolved by the Association, it shall be referred to the CBK, which shall determine the issues involved and settle the dispute.

6.3 Subject to the exhaustion of the dispute settlement procedures provided for in this clause), a member shall be entitled to invoke dispute settlement procedures and remedies available to the member under the law.

7. AMENDMENT

7.1 This Code may be amended from time to time as may be agreed by the members.

7.2 No amendment to this Code may come into force unless and until it has been approved by the Association.

APPENDIX 5

LIST OF PERSONS INTERVIEWED

Table 5

Organisation	Contact	Title
Central Bank of Kenya	Matu Mugo	Assistant Director, Bank Supervision
KBA	John Wanyela	Executive Director
KCISI	Jared Getenga	Project Manager
KCISI	Fidelis Muia	ICT, Head
KCISI	Phyllis Wangwe	Legal, Head
KCISI	Patricia Musau	Communications, Head
Deposit Protection Fund Board	Mohamud Ahmed	Assistant Director
Ministry of Finance	Ezra Anyango	Senior Expert, MFIs
Equity Bank	Mark Kiambo	IT ,Head
IDB Capital	James Ochami	Chief Executive Officer
Association of Micro-finance Institutions (AMFI)	Benjamin F. Nkungi	Chief Executive Officer
SASRA	Carilus Ademba	Chief Executive Officer
FSD - FEPP	Bilha Maina	Project Manager, Financial Education
Credit Reference Bureau	Wachira Ndege	Group Chief Executive
Kenya Commercial Bank	Joseph Tiampati	Director, Retail Credit
Diamond Trust Bank	Nita Shah	General Manager, Risk and Compliance
Co-operative Bank	Anthony Mburu	Director, Credit Risk
NIC Bank	Edwin Induli	Head of Credit Risk
Safaricom	Mary Nyale	Head of Credit
AAR Credit Services Ltd	John Kariuki	Managing Director
Compuscan	Mike Malan	Chief Executive Officer
FAULU	Anne Kimari	Head of Finance
Metropol	Sam Omukoko	Managing Director
Barclays Bank of Kenya Limited	Mark Kimondo	Credit Operations

NOTES

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FSD Kenya
Financial Sector Deepening

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