

“ THE BANKING SECTOR REGULATORY
FRAMEWORK IN KENYA: ITS ADEQUACY IN
REDUCING BANK FAILURES ”

BY

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DECLARATION

This Management report is my own original work and has not been presented for a degree in any other University.

May God bless them.

Signed: *Danio* Date: *7th OCT. 2002*

OBIERO DAN

This Management project has been submitted for examination with my approval as University supervisor.

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DEDICATION

This study is dedicated to my parents Mr. & Mrs Nelson Obiero Adipo. May God bless them.

Especially I would like to single out the support and guidance of Mr. Moses Anyangu, Chairman dept. of accounting as my supervisor in providing the necessary guidance, suggestions and encouragement.

I would also like to thank the following for their support in putting the research project together: Kings Matu for brilliant criticism during the formation of the paper, Diane Jancy and Gorryty for typing the text, Mingale and Jackie for the data analysis support and all the lecturers and students who made their contribution during the project proposal presentation stage.

I am also grateful to members of my family especially Christine and Brian for the understanding during the course journey which has been quite long but fulfilling.

Thank you all.

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To identify the most dominant factors causing bank failures in Kenya.

To assess the adequacy of the banking sector regulatory framework in reducing probability of bank failures in Kenya.

Secondary data obtained from various Central Bank of Kenya publications, and the Banking Act Chapter 488 of Kenya laws, was used in the study. Data analysis was done using the SPSS statistical package. Cross tabulation of cause of institutions failures and the number of institutions in which they occurred was done. Frequency distribution tables were generated from the data collected and a summary of the causes tabulated. A review of the legal provisions in place over the period was then done to assess the adequacy of the various sections of the law in curbing the various causes of failures.

The results of the study indicated that the Kenyan regulatory framework was fairly comprehensive in coverage and adequate in context to reduce the probability of failure. The framework hinged on very clear and independent Acts i.e. the CBK Act and the Banking Act. It was also apparent from the analysis that some failures precipitated due to the delay of the supervising authority in promptly and effectively implementing the provisions of the law. Some provisions of the Act, which would be invoked to forestall problems, were not and have not been applied at all.

As Turner (1980) puts it "if action is not implemented in a timely and efficient manner, the edifice may fall out of bread".

ABSTRACT

1.0 Background

This study set out to achieve the following two objectives:

- To identify the most dominant factors causing bank failures in Kenya.
- To assess the adequacy of the banking sector regulatory framework in reducing probability of bank failures in Kenya.

Secondary data obtained from various Central Bank of Kenya publications, and the Banking Act Chapter 488 of Kenya laws, was used in the study. Data analysis was done using the SPSS statistical package. Cross tabulation of cause of institutions failures and the number of institutions in which they occurred was done. Frequency distribution tables were generated from the data collected and a summary of the causes tabulated. A review of the legal provisions in place over the period was then done to assess the adequacy of the various sections of the law in cubing the various causes of failures.

The results of the study indicated that the Kenyan regulatory framework was fairly comprehensive in coverage and adequate in content to reduce the probability of failure. The framework hinged on very clear and independent Acts i.e. the CBK Act and the Banking Act. It was also apparent from the analysis that some failures precipitated due to the delay of the supervisor/regulator in promptly and effectively implementing the provisions of the law. Some provisions of the Act, which would be invoked to forestal problems, were not and have not been applied at all.

As Tanner 1990 puts it "if action is not implemented in a timely and efficient manner, the crisis may get out of hand".

CHAPTER ONE: INTRODUCTION

TABLE 1: COMMERCIAL BANKS, NBFIs AND FOREIGN EXCHANGE BUREAUS

1. 0 Background

| Type of Institutions | Bureau | Dec 2000 | Dec 2001 |
|----------------------|--------|----------|----------|
|----------------------|--------|----------|----------|

Banks are important because they are the main channels of savings and the allocators of credit in an economy. Banks offer instruments that are money substitutes, and they operate the payment system. Their efficiency affects the entire economy, and banking system failure erodes public wealth and confidence in the economy. To the casual observer, most bank failures are the result of abuses of power and trust by bank owners and managers, and in many cases this diagnosis is correct. But large-scale bank failures are symptoms of a broader malaise. The failure of 10,000 banks in the United States between 1930 and 1933 made the great depression much deeper and longer lasting than it might otherwise have been (La Ware 1994). That trauma led to the current existence of the extensive U.S. Deposit Insurance Scheme and its associated regulatory framework.

Policy makers everywhere protect or regulate the banking system on efficiency, welfare and public policy growth. One problem is that it is almost impossible to find a banking system where there is no intervention, so it becomes academic to describe how an intervention – free banking system would look and behave (Nicholl). What then is the role of the modern bank supervisor? The supervisor's primary role is damage control. The form of the damage control in banking begins with diagnosis, assessments and evaluation of problems on a timely basis (Sheng A 1996).

Banks are in the business of risk intermediation, but the deposit insurance schemes One of the principle objectives of bank supervision or regulation by the Central Bank is that of fostering the liquidity, solvency and proper functioning of a stable market based financial system (Central Bank of Kenya Act Section 4(2)). The mandate includes the maintenance of soundness and efficiency by minimizing failure through the regulation process.

In Kenya as at 31st December 2001 there were 47 commercial banks, 3 non-banking financial institutions, 2 mortgage finance companies 4 building societies and 47 forex bureaus making up the mainstream banking system under the supervision of the Central Bank of Kenya (Table 1).

TABLE 1: COMMERCIAL BANKS, NBFIs AND FOREIGN EXCHANGE BUREAUS

| Type of Institutions/Bureau | Dec 2000 | Dec 2001 |
|--|----------|----------|
| Commercial Banks of which; | 48 | 47 |
| a) Operating | 48 | 46 |
| b) Not operating | - | - |
| c) Under Central Bank Statutory Management | - | 1 |
| Building Societies | 4 | 4 |
| Mortgage Finance Companies | 2 | 2 |
| Non Bank Financial Institutions | 7 | 3 |
| a) Operating | 7 | 3 |
| b) Under Central Bank Statutory Management | - | - |
| Total | 61 | 56 |
| Foreign Exchange Bureaus | 47 | 47 |

Source: Central Bank of Kenya Monthly Economic Review January 2002

The need to protect depositors and consequently the banking system has generated the danger of moral hazards, the socialization of losses, and the privatisation of gains. Hence, the drive to strengthen supervision of the financial sector to avoid the high cost of bank failure and disruption.

Banks are in the business of risk intermediation, but the deposit insurance schemes in place around the world have led to bank risk-taking that is asymmetric, speculative risks are taken for private gain at public cost. Where financial sector liberalization programs have failed to take account of this asymmetry reforms have generally failed. Banking crises have convinced policymakers of the need to level the playing field and to evenly match risks with rewards or punishments. (Sheng A. 1996)

A corollary of this objective requires bank supervisors to minimize moral hazard behaviour, connected lending, conflicts of interest, fraud, and mismanagement, through effective regulation backed by a good legal regulation framework. Accordingly, financial sector liberalization is going through a phase of re-regulation

with a broader coverage extending not only to the banking sector but also to non-banking financial intermediaries. (Sheng A 1996).

1.1 The Kenyan Banking Regulatory Framework

The Kenyan banking regulatory framework draws its legitimacy from the Central Bank of Kenya Act Chapter 491 of Kenya Laws and the Banking Act Chapter 488 of Kenya Laws.

In Section 4(2) of the CBK Act, one of its principle objects is to "Foster the liquidity, solvency and proper functioning of a stable market-based financial system". Section 4A then goes ahead to give the details of the other objects of the Central Bank which includes. "Licensing and supervising authorized dealers".

To achieve this principle object the CBK uses the provisions of the Banking Act, which is an Act of Parliament, used to regulate the business of banking and for matters incidental thereto.

The regulation of the banking system is important not only for purposes of the reduction of possibility of bank failure or minimizing depositors possible loss, but also because banking sector collapse is a systemic risk which may impact heavily and negatively in other areas of macro economy (Nicholl).

The Banking Act gives the various provisions of regulation in details ranging from:

- The licensing requirement if one is to enter into the business of banking.
- The prohibited business in banking
- Issues relating to the reserves and dividend payments by banking institutions
- The accounts and audit of banking institutions
- Information and reporting requirements
- The inspection and control of institutions carrying out banking business.

In addition to the provision of the Banking Act, the Central Bank of Kenya also issues from time to time Prudential regulations and banking circulars backed by law to guide the policy making and operation of the institutions in the banking sector (CBK c).

1.2 Definitions of Terms

The following are the definitions of some of the terms used in this study.

- **The Banking regulatory framework** refers to the relevant provisions of the:
 - (i) Banking Act Chapter 488 of Kenya laws
 - (ii) Central Bank of Kenya Act Chapter 491 of Kenya laws
 - (iii) Prudential Regulations and banking circulars issued by the Central Bank of Kenya.which are referred to when, regulating the banking sector.
- **Bank Failure:** A bank which has failed to meet its obligations to its customers due to one reason or another and is placed under Central Bank of Kenya's statutory management or liquidation by the Deposit Protection Fund (DPF). (CBK a).
- **Banking Sector**
For purposes of the study this term will be referring to Commercial banks and Non-Bank Financial Institutions, Mortgage finance companies, operating banking business under the Banking Act.

According to the Banking Act Chapter 488 of Kenya Laws:

- **A bank means**

“ A company which carries on, or proposes to carry on, banking business in Kenya and includes the Co-operative Bank of Kenya Limited but does not include the Central Bank of Kenya”.

OTHER TERMS include:

• A **“Financial Institution”** or **“Non-Bank financial institution”**

“A company, other than a bank which carries on, or proposes to carry on, financial business and includes any other company which the minister may, by notice in the gazette, declare to be a financial institution for the purpose of the Banking Act.”

• **An Institution means:**

“ A bank or financial institution or a mortgage finance company.”

• **“Banking Business” means**

- “The accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice;
- The accepting from members of the public of money on current account and payment and acceptance of cheques
- The employing of money held on deposit or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money.”

OTHER TERMS Include:

- (i) **Interference by directors.** The involvement of directors of the bank in the day-to-day operations. This is getting involved with what they do not actually understand very well
- (ii) **High incidences of non-performing loans.** Non-performing loans are those loans, which are not being repaid as per contract and fall into arrears eventually leading to illiquidity and insolvency, of the bank.
- (iii) **Poor lending practices:** This refers to lending where no proper credit appraisal is done, documentation of the process is not complete and security/collateral charging is not perfected before disbursement of funds.
- (iv) **Ineffective board/management:** Inability of the board to issue proper policies and managers to effectively handle the management of the bank. The issue touches on poor corporate governance.
- (v) **Under-capitalization/insolvency:** This refers to a case where the bank's paid-up capital and reserves is eroded by accumulated losses to an extent that it cannot support the level of business risk it has entered into. It therefore becomes insolvent.
- (vi) **Unsecured insider loans:** This refers to lending to the shareholders, directors, or their associates without taking collateral.
- (vii) **Heavy reliance on parastatal deposits:** Means having over 50% of deposit liabilities from parastatals.

1.3 STATEMENT OF PROBLEM

In the period 1984 – 2001 there has been a total of 39 bank failures. Two of which were placed under CBK statutory management and were restructured and re-opened (performance of which are to be evaluated) and one, which is currently under the Central Bank of Kenya Statutory Management (Appendix 2).

The failure of these institutions translated to a total monetary cost of about Ksh. 19,685 millions over the period, being Ksh.400 million pumped in by the Treasury in form of loans and grants to restructure the Consolidated bank of Kenya Ltd through the Deposit protection Fund (DPF). Ksh. 4,905 million from the DPF being compensation to depositors using accumulated reserves from the fund and Ksh.14, 380 million being depositor's money that was not covered under any scheme and is so far not paid. (The total amount excludes deposits lost in institutions under the official Receiver) (DPF reports).

The Non-Monetary costs which accompany bank failures and restructuring of banks in terms of business folding ups, creation of unemployment and general instability in the financial system have not been fully quantified but no doubt a financial sector crisis has far reaching effects to the general economic growth of the country.

Bank failures are not a unique phenomenon to the Kenyan economy only, but have been experienced in both the developed and developing world. Effective regulation is therefore meant to reduce failure and loss to depositors (Nicholl).

In Spain 52 out of the country's 110 banks were in a crisis in the period 1982-1983. The banking problem resulted from a combination of factors the most prominent being rapid liberalisation and expansion of the banking sector without adequate regulation and supervision (Larrain & Montes – Negnet 1986). The bank of Spain began to tighten supervision and control during this period.

In Ghana the Government spent \$300 million i.e. 6% of GDP in 1989 to restructure its financial sector to be able to turn around the economy. The shortcomings in banking regulation and supervisory capacity contributed to the build up in these bank losses. The Banking Act 1970 was grossly outdated, permitting high concentration

of portfolio risk, inadequate levels of capital and reserves and no limits on to unsecured lending (Tannar 1990).

In Malaysia similar financial crisis was experienced in the period 1985-1986 and several banks were closed and the country spent about 4.6% of its GDP (3.1 million M\$) in restructuring. This was due to deficiencies in regulation and recognition of the portfolio problems. Bank Negara (Central Bank of Malaysia) made substantial changes designed to strengthen the structure of the banking system and regulatory process to control the damage (Sheng A 1996).

It is observed from the above cases that the main reasons for the precipitation of the failures is amongst others the lack of a proper, independent and legally backed regulatory framework to instill financial sector discipline and guide the sector at the right time.

There are many factors contributing to bank failures and a single study to cover all areas of such a complex subject is not possible (Sinkey J.F. 1975). This study recognizes this fact. Kenyan literature reviewed indicates that bank failures predictive models (Bett (1992) and Kathanje (2000)) have focused on performance measures internal to commercial banks. Mugo (2001) studied the impact of external macroeconomic variables on bank failures in Kenya.

This study therefore undertakes to review the Kenyan regulatory framework (in the period 1984 to 2001) to evaluate if it was appropriate enough to guide the sector in such a manner as to reduce the probability of bank failures.

1.4 OBJECTIVES OF THE STUDY

1. To identify the most dominant factors causing bank failures in Kenya.
2. To assess the adequacy of the banking Sector regulatory framework in reducing bank failures in Kenya.

1.5 IMPORTANCE OF THE STUDY

1. To educate the public on the major causes of bank failures in Kenya as they are major stakeholders in the financial sector.
2. Educate investors/depositors on the potential risk areas to review before dealing with a bank.
3. To sensitise the regulators and other policy formulators on the need of a dynamic financial sector regulation framework to keep pace with the globalisation of the industry.
4. Make recommendations for improvements in the framework depending on experiences from other countries.
5. Assist the bank Management and Board of Directors in assessing their performance in the banking business.
6. Update the existing body of knowledge on bank failures from a regulatory framework perspective.

CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

Banking problems have many roots ranging from distorted management incentives, to institutional failure, to misguided macroeconomic policies. No study of such a complex subject can cover all these issues in one study. (Sinkey J.F. 1975) – There is also enough evidence from around the world in a variety of regimes to show that supervision has not prevented bank failures and the aim of effective supervision is hoped that the probability of bank failure will be reduced and the loss to depositors reduced because there would be fewer bank failures and depositors would be better informed (Nicholl).

2.1 Development of Banking Regulation in Kenya

Banking Supervision department was established in April 1969 following the enactment of the Banking Act, in 1968. It drew its supervisory powers under Section 19 of the said Act. Several amendments have since been made to the Act over the years with the present Banking Act, vesting the supervision powers to the Central Bank under section 32 of the Banking Act (CBK (c)).

The inspection office was started in 1969 with only two members of staff. There were only 10 banks and 6 financial institutions two of which were subsidiaries of Commercial Banks (CBK (c)).

From its inception to 1987 the department had operated without any documented guidelines, or inspection programs and the scope and depth of inspection relied very much on the initiative and knowledge of individual inspectors whom had not even been well trained (CBK (c)).

The CBK through the assistance of the World Bank Financial Sector Reform programme, employed the services of Banking and Audit consultants to assist draw up the regulatory guidelines and inspection programs for the first time and the first phase of this programme was completed in 1990 (CBK (c)).

Exchange Bank was the first American bank ever to fail. The Gazette stated that the
To attain its primary objective as spelt out in Section 4 of the Central Bank of Kenya
Act, the CBK through bank supervision department strives to ensure that stability
and public confidence is enhanced in the financial sector and that the functions of
the sector is Safe, Sound and Consistent with the overall Kenyan monetary policy
targets. It therefore has to ensure prudent management of banking institutions in
order to protect depositors' funds by preventing or reducing incidences of bank
failures.

The approach to Supervision is geared towards ensuring through on-site inspection
and off-site surveillance that institutions meet reasonable prudential standards with
respect to Capital, Asset quality, Management effectiveness and competence,
Earnings and profitability and finally Liquidity and liability management. This
approach goes under the acronym "**CAMEL**".

The financial sector is quite dynamic with many institutions and banking products
being introduced into the market ranging from forex dealing, stock banking, credit
cards, etc and its therefore important that the CBK keep pace with the development
in the market by further developing its supervisory skills and prudential regulations if
its to attain its objective (CBK (c)).

Even though the role of the regulator is supportive and complementary to that of the
institutions management the regulator should utilize his position to offer meaningful
advice and put prudent regulation in place to guide in the management and
operations of banking institutions (CBK (c)).

Currently the department of bank supervision has about 57 technical staff. Several
amendments have been made to the Banking Act and the CBK Act to try and keep
pace with the dynamic financial market (CBK c).

CAN BANKS FAILURES BE PREVENTED/REDUCED?

2.2 The US Experience

On March 25, 1809, the Providence Gazette reported the failure of the Farmers
Exchange Bank, Gloucester, Rhode Island (Bray Hammond 1987). Farmers

Exchange Bank was the first American bank ever to fail. The Gazette stated that the directors and managers of the bank "... practiced a system of fraud beyond which the ingenuity and dishonesty of man cannot go". The Rhode Island legislative report for 1809 indicated that business at the Farmers Exchange Bank was conducted "as the perplexed and confused state of the books sufficiently evinces, negligently and unskillfully".

2.3 The Spain Experience

For over 167 years, the major cause of bank failures, which is mainly dishonest bank managers, has remained the same. The form of dishonesty (e.g. insider transaction, embezzlement, manipulation, etc) has varied but the driving force has not changed (Sinkey J.F. 1975).

In the US for example of the 84 banks that failed between 1960 and April 30, 1976, 45 were due to improper loans to officers, directors, or owners or loans to out of territory borrowers; 25 of the cases could be traced to embezzlement and manipulation and 14 of the failures were due to managerial weakness in loan portfolio administration to summarize nothing essentially is new in the causes of bank failure (Hill G.W. 1976).

The causes of large bank failures have not been much different from those of small-bank failures. For example the failure of United States National, Northern Ohio and Sharpstown state can be traced mainly to some form of dishonest managerial practice (C. Armhold Smith).

Generalising from the casual factors it appears that the failure of larger banks can be traced more to incompetent Managers and/or increased economic uncertainty rather than the dishonesty factor that has been so prevalent in the closing of smaller banks.

In the USA despite the advanced supervisory system, there were 1,100 commercial bank failures and 630 savings and loans institutions insolvencies. This level of instability was unparalleled. Since the banking crisis of the 1930s when 4,370 banks failed between 1933 and 1940. 4000 of them in 1933 alone. The lessons drawn from economic liberalisation is that, anti competition regulations should be removed to promote competition, but regulations against conflicts of interest, fraud and moral hazard should be strictly enforced (Sheng A. 1996).

In the US case, the will was manifested; considerable national resources were harnessed, backed by professional skills, to deal with the problems. Few developing countries have neither the will nor the capacity to deal with the banking problems in this manner.

2.3 The Spain Experience

As with other banking crisis, Spain's (which peaked in 1982 and 1983 affecting 52 of the countries 110 banks). Banking problem resulted from a combination of factors including the oil shock of 1973-1974. Inappropriate policy responses to these shocks, and the rapid liberalisation and expansion of the banking sector **without adequate regulation and supervision**. Institutional factors such as the extensive ownership of banks and bad bank management were also responsible. One of the most striking features of the crisis was the extent to which failed banks had exceeded permissible levels of loan concentration to related parties and risk concentration to single persons or entities. The initial response to the emerging problems was slow, partly because the legal framework for the banking sector was antiquated. The Central bank initially had neither legal power to intervene nor adequate powers to impose and enforce sanctions against wrong doers. The initial response to the growing crisis was simple deposit insurance scheme introduced in November 1977 (Larrain & Montes-Negret 1986).

The bank of Spain began to tighten supervision and control during this period. It devoted more attention to loan and investment analysis and to asset quality. There were important improvements in information disclosures as well. Substantial improvements in the legal and accounting frameworks and in bank regulations and supervisions have since followed e.g. Law 13 (1985) – reduced the amount of compulsory investments by banks and addressed issues of Capital Adequacy and Financial Disclosure.

- Royal Decree 144 (1988) regulates creation of new banks & Installation of Foreign banks
- Law 26 (1988) enhanced official intervention & enforcement powers
- Law 19 (1988) on external Audits.

2.5 The Malaysian Experience

2.4 The Ghana Experience

Sharp deflation in the Malaysian economy in 1985-86 precipitated large losses

In 1988 Ghana's formal banking system had about 11 commercial banks and 112 rural banks under the supervision of Bank of Ghana. Their first phase of financial sector restructuring program began in 1988 and ended in 1991 costing an estimated US\$300 million or 6% of GDP (World Bank 1989), shortcomings in banking regulation and supervisory capacity contributed to the build up in the bank losses. The Banking Act 1970 was grossly outdated, permitting high concentrations of portfolio risk, inadequate levels of capital and reserves and overstatement of profits. There were no limits on unsecured lending. The lack of uniform accounting standards meant that interest accruals on non-performing loans continued to be treated as income and there was no effective way of assessing or classifying non-performing loans. Consequently transfers to reserves and provisioning for potential losses were insufficient. Since no minimum capital adequacy ratios were in place, lending risk and asset quality went unsupervised. Development banks that emerged in commercial banking activities were not subject to provisioning standards (Tannar 1990).

is designed to strengthen the structure of the banking system and regulatory process to prevent and control damage arising from recession. These included key

To revamp the financial sector the regulatory and supervisory framework was strengthened. In August 1989 a new Banking Act replaced the 1970 Act. Banks adopted new prudential reporting system and accounting standards including auditing standards for external audits based International Accounting Standards in addition an Intensive training program was established for bank supervisors, and computerized off-site surveillance system was installed to enable supervision to monitor bank performance and detect problems. On-site inspection capacities were also strengthened (Tannar 1990).

and consistent and prudent lending policies, and

standardized the accounting treatment of income from those sources. Audit and
Ghana has achieved a remarkable recovery in economic and financial performance since 1988. The financial sector restructuring in Ghana is almost a textbook example of how strong macro-economic stabilization, coupled with financial sector reforms, can restore growth and price stability. If holding action measures are not implemented in a timely and efficient manner, the crisis may get out of hand (Tannar 1990).

2.5 The Malaysian Experience

Sharp deflation in the Malaysian economy in 1985-86 precipitated large losses among a number of financial institutions, most notably four (of thirty nine) commercial banks, four (of forty seven) finance companies, thirty two (of thirty five) deposit taking cooperatives and thirty three illegal deposit taking institutions. Losses among the regulated deposit taking institutions were relatively small as well as those sustained by the banks and finance companies – which were supervised by the Central bank. The unregulated deposit taking cooperatives had the greatest losses. Between 1985 & 1987 those forty institutions lost roughly equivalent to 4.6. % GDP (3.1 M\$). Losses were distributed more heavily among lightly supervised deposit taking cooperatives, whereas bank losses amounted to only 2.4% of total deposits in 1986. This suggests that deficiencies in oversight and delay in recognizing the magnitude of the portfolio problems of non-bank financial intermediaries were chiefly to blame for this short-lived crisis (Sheng A. 1996).

In 1985 – 1986 Bank Negara (the Central Bank of Malaysia) made substantial changes designed to strengthen the structure of the banking system and regulatory process to prevent and control damage arising from recession. These included key changes to the banking laws and regulation. A minimum capital adequacy requirement was introduced. The holding of individuals including family holding companies in equity of financial institutions were limited. Penalties were introduced to prevent abuses of authority in bank lending. Bank credit to single customers was restricted and lending to the directors and staff of banks and finance companies prohibited. Bank Negara introduced guidelines on suspension of interest on non-performing loans and on provisions for bad and doubtful debts to ensure that the financial community followed sound, consistent and prudent lending policies, and standardized the accounting treatment of income from those sources. Audit and examination committees were established to re-enforce boards of director's oversight of bank management handling of day-to-day operations among other changes. Also several legal changes were effected to empower Bank Negara to deal with issues arising from the sector expeditiously.

Among the key lessons learnt from the Malaysia experience is that banking laws and regulations need to change with Competition, Technology and Internationalisation of banking business.

3.0 Study Population and Sample

2.6 Summary

Population:

In recognition of the importance of supervision and regulation, the Basel Committee of Banking Supervision was established in 1975 established by the Group of 10. The Committee has developed 25 core principles of supervision as a guide to Bank Supervisors internationally. They take cognisance of developments in the International Banking environment and strive to keep pace with the changes by issuing the relevant guidelines to supervisors to ensure that they minimise causes of bank failures and possible losses to depositors (Basle Report 10).

represents about 95% of the population and is considered as being adequate representation of the issues under study.

3.1 Data Collection:

Secondary data from the following sources was used:

- Various Central Bank of Kenya-Bank Supervision Annual reports.
- Deposit Protection Fund Board Annual Reports
- Various Central Bank of Kenya Annual Reports
- Various Central Bank of Kenya Monthly Economic Reviews.
- Banking Act chapter 488 of Kenya Laws
- A guide to wise management of loans from banking institutions.

The Basle Committee on Banking Supervision is a committee of banking supervisory authorities, which was established by the Central Bank Governors of the group of ten countries in 1975. It consists of senior representations of bank supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom and the United States. It usually meets at the Banks for International Settlements in Basle, where its permanent Secretariat is located.

CHAPTER THREE: RESEARCH METHODOLOGY

3.0 Study Population and Sample

Population:

The population of interest to this study was the total number of failed banks in Kenya from 1984 to 2001 i.e. 39 institutions as reported by the Central Bank of Kenya as per Appendix 2.

Sample:

The sample used was 37 out of 39 failed institutions the reason being that these are the ones that the regulator gave reasons for their failure. This represents about 95% of the population and is considered as being adequate representation of the issues under study.

3.1 Data Collection:

Secondary data from the following sources was used:

- Various Central Bank of Kenya-Bank Supervision Annual reports.
- Deposit Protection Fund Board Annual Reports
- Various Central Bank of Kenya Annual Reports
- Various Central Bank of Kenya Monthly Economic Reviews.
- Banking Act chapter 488 of Kenya Laws
- A guide to wise management of loans from banking institutions.

3.2 Data Analysis

1.0 CHAPTER FOUR: DATA ANALYSIS AND FINDINGS

- (i) I used the SPSS statistical package to carry out cross tabulation of reasons for failures stated for failed institutions and the number of times they occurred, and generated frequency tables and ranked the various causes of bank failures in Kenya.
- (ii) Using the results in (i) above reviewed the evolution of the relevant Sections of the Banking Act and regulations issued by CBK over the years, covering period of the various failures, and established if there were any inadequacies in the provisions of the laws.
- (iii) Reviewed if there were still failures (after 2-3 years) after amendments to the laws due to the same reasons that were earlier stated and the regulations had been amended to resolve.

A comprehensive review of the provisions of the Banking Act and prudential regulations was done focussing particularly in the sections of the law relating to the causes of the bank failures each at a time. Extracts of the various Sections of the Banking Act Chapter 485 of the Kenyan laws are as attached to Appendix 1.

Frequency distribution tables were generated showing the number of occurrences of particular problems in failed institutions and a summary of the same generated to show the order of frequency of occurrence of problems in failed institutions- see Table 3.

It is appreciated that an institution may fail for various reasons and/or a combination of reasons.

A review of the various causes of bank failures and the provisions in the law are as follows:

4.0 CHAPTER FOUR: DATA ANALYSIS AND FINDINGS

4.1 Introduction

This study assessed the adequacy of the banking regulatory framework in reducing bank failures in Kenya. The sample was made up of 37 institutions. The following were identified as causes for the failure of the institutions; Ineffective board and management malpractice, High incidences of non-performing loans, Unsecured insider loans, Poor lending practices, Under capitalisation, Run on deposits, Run on certificate of deposits, Heavy reliance on parastatal deposits, Persistent violation of the Banking Act and Cheque kiting.

Data on the dates of liquidation or when the institutions were put under CBK management, the legal provisions which were in place at the time of failure and the amendments made to the law subsequent to failure was collected and the details are as given in Appendix 1.

A comprehensive review of the provisions of the Banking Act and prudential regulation was done focussing particularly in the sections of the law relating to the causes of the bank failures each at a time. Extracts of the various Sections of the Banking Act Chapter 488 of the Kenyan laws are as attached to Appendix 1.

Frequency distribution tables were generated showing the number of occurrences of particular problems in failed institutions and a summary of the same generated to show the order of frequency of occurrence of problems in failed institutions- see Table 3.

It is appreciated that an institution may fail for various reasons and/or a combination of reasons.

A review of the various causes of bank failures and the provisions in the law are as follows:

4.2 Ineffective board and management

Analysis revealed that ineffective board and management malpractices was the most dominant reason for bank failures in Kenya in the period 1984 to 2001. It affected 16 institutions or 43.2% of the total failed institutions. This meant that the management and board failed to issue and operationalize proper policies to steer the institutions into profitability.

In 1984, only one institution failed and the issue of inefficient board and management was among the observed reasons for the failure. The Banking Act, Sections 20(1) and 20(A) as amended in 1984 which gave the Central Bank of Kenya powers to issue orders and take remedial action once they detected that the affairs of an institution was being conducted in a manner detrimental to the interests of the depositors or to the interest of the bank or financial institution or the public interest. The CBK could appoint a competent person to advise the institution and even assume the management of the bank and conduct its affairs.

In 1987 one institution failed and poor management was among the reasons for failure. Further amendments were made to the Act in the same year to ensure that penalty would be levied on institutions and officers who fail to discharge their duties well.

However in 1989 with all these comprehensive legal provisions in place seven banks failed and in four out of the seven cases, Ineffective Board and Management was given as one of the contributing reasons to the failures. The Central Bank invoked the provisions of Section 34 of the Banking Act and moved into these four institutions to protect the interest of the depositors, the institutions and the general public. The institutions were restructured under the World Bank funded project of the Consolidated Bank of Kenya Ltd. (see Appendix 3) In June 1990 the CBK issued guideline CBK/ PG/ 01 on the duties and responsibilities of directors, which further tightened the provisions of the law.

Having demonstrated seriousness with implementation of the law in respect to poor management and board, in 1993 when fourteen banks failed, only one bank had

among other reasons the reason of bad management. However in 1998 six institutions failed and four reported the reason of management malpractices and ineffective board. The Central Bank once again invoked the provisions of section 34 and took over the management of three of the four institutions. It attempted to restructure them to protect the depositors' interest but failed to eventually revive them thus putting them into liquidation.

In 1998 the Central Bank was given further powers to advise and direct the affairs of the banks. The First Schedule was introduced in the Banking Act, which gave guidance on the criteria for determining the professional and moral suitability of persons proposed to be Directors and Senior Managers of institutions. This was an attempt to ensure that professionalism is achieved in the banking sector and bank failures due to mismanagement is minimised.

It was however noted that the Central Bank has not invoked the provisions of Sections 29(1) (as amended in 1987) on penalties to act as deterrent to further deterioration of the condition of the institutions. It only moves in to close the institutions when losses have accumulated beyond redress.

4.3 High incidence of non-performing loans

In the period 1984 to 2001 fourteen institutions i.e. 37.8% failed partly due to the Incidence of high non-performing loans. In 1984 one bank failed and incidence of non-performing loans was a contributing factor. In 1989 seven banks failed, and in four cases high incidence of non-performing loans was a factor. In 1993 fourteen banks failed and in four cases this reason was mentioned again. In 1996 three banks failed and in two cases high NPLs was quoted as a reason. In 1997, 1999 and 2001 one bank failed in each year high incidence of non-performing loans leading to insolvency of banks was quoted as reasons for the failure.

During the period 1984 to 2000 there was no Section of the Banking Act or prudential regulation which was in place to directly assist in keeping low the levels of non-performing loans, nor was there any way of identifying regular defaulters in the banking sector and finding out ways and means of stopping them from roaming the

market. The issue of customer confidentiality was overplayed to the detriment of the banking sector stability.

In 1994 an amendment was made to the Banking Act Section 10, which only dwelt on credit concentration limits to reduce exposure to single borrowers, but the bad borrowers were not being identified early until the event occurred. The regulator should have developed a guideline hinged on other parts of the law to assist in curbing this problem then.

In 2001 an amendment was introduced in the Banking Act section 31(3) which allowed for sharing of credit information among regulatory authorities and even among commercial banks. This amendment was brought into force belatedly having recognised the fact that more serious credit rating and referencing on borrowers should be done and that there was need for banks to share information about their potential borrowers performance in other institutions. This would assist credit officers make more informed decision and reduce the rate of making bad loans that led to bank failures. To date credit rating and referencing agencies are yet to mature for use in the Kenyan banking sector.

4.4 Unsecured insider loans

In the period under review 35.1% or thirteen failed institutions identified unsecured insider loans as a cause of failures.

In 1985, Section 10 of the Banking Act categorically stated that there should be "no unsecured lending to insiders". However, in 1989 out of the seven failed banks unsecured insider lending was a reason of failure in three institutions. This implies that unsecured lending was going on despite the ban in law. The regulator did not implement the law effecting and promptly.

In 1989 exposure limits to insiders were revisited to ensure tighter measures and the issue of unsecured lending was reiterated but in 1993 out of the fourteen failed institutions nine or 60% of the cases quoted unsecured insider lending as a contributing factor. One notes further that the law was actually not the issue but its

implementation. The regulator was only responding to the symptoms of the problem tightening exposure limits and ignoring the real problem of implementation.

In 1994 two banks failed and unsecured insider lending was a contributing factor in one of the cases.

Since 1994 to date the reason for unsecured insider lending leading to bank failure has not been mentioned.

Section 11(e) was amended in 1989 giving strict conditions for granting insider advances. In the same year, section 11(5) and (6) were introduced to disqualify directors who default in repayment of their loans even if they are secured and penalise the institutions that fail to disqualify such directors. In the year 2002 section 11 (1A) was introduced to define certain terms relating to insider transactions more clearly and penalise appropriately where default arises.

The provisions of the law in this area have been quite comprehensive and clear and if the regulator were to implement no failures could have arisen due the unsecured insider loans.

4.5 Under capitalisation/insolvency

Under capitalisation and subsequent insolvency's contributed to failure of 32.4% or 12 institutions in the period 1984 to 2001.

Under capitalisation arise due to several factors, which include loss making due to Non-Performing Loans and making of provisions against these losses, or simply because an institution opened for business without injecting adequate capital to cushion the business risk they take up.

In 1985 Section 7 and 7(A) of the Banking Act stipulated the minimum capital requirements for banks and NBFIs. It was only Kshs7.5 million to open an NBFi and it is noted that in the period 1987 to1993 many NBFi's were opened. One may speculate that the minimum capital requirement was so low, easy to

achieve but was not adequate to support the business risk some institutions took.

Poor lending practices were identified as a contributing factor to failure in two In 1989 when seven banks failed and three were due to under capitalisation. Section 7(1) on the minimum capital requirement was amended and the first schedule introduced to the Banking Act showing the required minimum capital levels, one required Ksh 75 million to open a bank and Ksh37.5 million for a NBFIs. This was subsequently increased by amendments to the second schedule in 1999.

To ensure evaluation of Capital adequacy based on ratios to show the level of risk cover in banks, Section 17 and 18 were introduced to the Banking Act in 1989 stipulating the ratio of capital to total deposit liabilities (gearing ratio), and capital to assets ratios to be maintained by institutions. Section 20 was also amended in the same year restricting payment of dividends before making adequate provisions for bad and doubtful loans so as to ensure that the capital and reserves are not eroded in case a bank was making losses.

In 1990 a prudential guideline CBK/PG/04 on capital adequacy incorporating the 1988 Basel capital accord requirements was introduced to the financial sector to ensure more accurate measure of capital adequacy.

Run on deposits

The definition of capital in terms of Core capital and Supplementary capital was introduced in the banking act in 1999 to ensure close monitoring of capital adequacy by the regulator and the institutions taking into account the asset risk weights an institution has in its portfolio.

Since 1994 the regulator has not given inadequate capital as a reason for bank failure directly.

The legal provisions in this area have been regularly updated since 1985 and any failure due to the same could be partly attributed to the delay by the regulator in taking action not the non-recognition and documentation of the law to guide the supervisor.

4.6 Poor lending practices

Poor lending practices were identified as a contributing factor to failure in two institutions in 1986 and four in 1989. Since then it has not been specifically mentioned by the regulator as a reason among others leading to bank failures.

The direct and strict legal provision in this area has been quite scanty since it's more of a practise issue arising from the quality of board and management in place. With only section 12 (1)(1A) of 1985 upgraded in an amendment to Section 14 (1A) in 1989, detailed restricted lending for purposes of purchasing land, as a poor lending practise. This was principally to assist institutions march assets and liabilities and stay liquid.

An amendment to section 11 (1A) in 2000 having recognised the possibility of abuse by senior management defined what fraudulent or reckless lending is, and introduced penalty for this action to deter any officer of the bank for engaging in poor lending practices which could eventually lead to bank failures. Its therefore evident that the law in this area is now adequate and if well implement will forestall failure of institutions.

4.7 Run on deposits

Run on deposits led to failure of four banks in 1998, one each in 1999 and 2001. This is a situation where customers run to withdraw their deposits at the same time. This panic is normally triggered off by any adverse information about the institution received by the public. The institutions normally cannot withstand the pressure created by the loss of confidence in the institution.

There is no specific legal provision therefore that can monitor a run on an institution other than ensuring that it is prudently managed in accordance with the law and regulations issued by CBK to boost the confidence of the depositors. Enhanced market disclosure about the financial performance

CHAPTER 4 of an institution may also assist in boosting the confidence of customers especially for strong institutions.

4.1 Conclusions

4.8 Persistent violations of the banking Act

This study was carried out with an aim of achieving the following objectives -

It was established that three banks were closed in 1993 for persistently violating various Sections of the banking act and Central Bank of Kenya regulations. The Minister invoked the provisions Section 6 (amendments of 1987) of the Banking Act to get them out of the financial market. One went into voluntary liquidation and two the Deposit Fund Board under Section 35 of the act put one into liquidation.

4.9 Heavy reliance on parastatals deposits

Over the period 1984 to 2001 four institutions were closed having suffered from abrupt call up of parastatal funds. These are normally politically mobilised funds and when called up by the placing parastatal due to one reason or another the bank finds it impossible to meet the liability at once. No legal provisions are in place to check this other than the deterrent banking Circular issued in 1994 directing that the parastatal deposits held by institutions should be invested in Treasury Bills so that they can be repaid immediately they are required by the placing organisations. This has subsequently made excess holding of parastatals deposits unattractive and therefore is no longer a reason given a failing institution.

They had the option of penalizing them or even disqualifying them. However the Central Bank did not take action at the appropriate time, but they only intervened a time when it was not possible to salvage the institutions from collapse. This is evidenced from the fact that all banks which were put into CBR management eventually ended up into liquidation. The only exceptions were the institution restructured under the Consolidated Bank of Kenya Ltd. These might have succeeded because of the injection of fresh funds by the Treasury.

The above that even if the legal provisions are adequate, timely implementation is important if they are to be effective. It also shows that once

CHAPTER 5: CONCLUSIONS AND RECOMMENDATION

5.1 Conclusions

This study was carried out with an aim of achieving the following objectives: -

- To identify the most dominant factors causing bank failures in Kenya.
- To assess the adequacy of the banking sector regulatory framework in reducing bank failures in Kenya.

The period covered by the study was 1984 to 2001 and the main sources of information were the various Central Bank of Kenya publications and the Banking Act Chapter 488 of Kenya laws, which is the main Act from which the regulatory and supervisory powers are derived.

The study established the following results.

That the most dominant factor causing bank failures in Kenya is ineffective board and management. The Directors did not formulate appropriate policy guidelines to guide senior management on how to run the institutions.

A review of the legal provisions in place during this period showed that the law provided adequately for ways and means the Central Bank would deal with Officers and Directors of institutions who were not steering the institutions properly. They had the option of penalizing them or even disqualifying them. However the Central Bank did not take action at the appropriate time, but they only intervened a time when it was not possible to salvage the institutions from collapse. This is evidenced from the fact that all banks, which were put into CBK management eventually, ended up into liquidation. The only exceptions were the institution restructured under the Consolidated Bank of Kenya Ltd. These might have succeeded because of the injection of fresh funds by the Treasury.

This shows that even if the legal provisions are adequate, timely implementation is important if they are to be effective. It also shows that once

the Board of an institution is not effective and management malpractices are in place the probability of failure is very high. The regulator should therefore identify this problem early enough and take appropriate supervisory action as stated in the law and regulations derived there from.

- The second most dominant cause of failures was the high incidence of Non-performing loans. Bad loans may arise from poor macro economic performance, poor lending policies or poor risk analysis at the time of availing credit. It therefore has a close link to poor management and ineffective board.

It was however noted that throughout the period there was no clear legal provision directly aimed at reducing the incidences of high NPL's. Instead the Central Bank concentrated on identifying the Non-performing loans that existed in the books. It is not until 1999 that the Central Bank started formulating laws on Credit reference and rating agencies where banks could exchange information on the bad borrowers. In 2001 Section 31(3) of the Banking Act was amended to allow for exchange of credit status information among institutions and regulatory authorities to try and reduce the incidence of bad loans. The law in this area is now been put in perspective.

To resolve the issue of the current stock of non-performing loans the court system is being improved by establishment of commercial courts e.g. Milimani courts in Nairobi, more judges have been appointed to expedite the cases and the relevant laws are currently being amended.

Studies are also underway exploring the possibility of formation of Non-performing Assets Recovery Trust to take over non-performing loans from the banking system.

The Central Bank should also explore ways and means of coming up with comprehensive credit analysis, policies and procedures to reduce the level of bad loans being made.

- Under capitalization was the third major reason for failures in Kenya. This may arise due to inadequate injection of capital at time of establishment or accumulated losses made during the trading period due to high incidences of non-performing loans.

The legal provisions on issues of capital have been regularly reviewed to keep pace with the developments in the sector. Section 7, 17 and 18 has been constantly reviewed. The Central bank has fully implemented the provisions of the 1988 capital accord, which adequately assists in monitoring capital adequacy. Failures due to under capitalisation should therefore be minimal if any.

The study has managed to rank the dominant factors leading to bank failures in Kenya and concludes that the Kenyan regulatory framework which draws its authority from the Central Bank of Kenya Act, the Banking Act, and the prudential regulations (all of which are implemented by the Central Bank of Kenya) is adequate in reducing bank failures in Kenya.

Achieving a zero rate of failure is not possible in any financial sector, neither is it possible to have framework which covers one hundred percent of possible cause of failure

However precaution had been taken and provision made in law to deal with the causes of bank failure in the period 1984 to 2001 The Banking Act was regularly updated in case any weaknesses were noted. The Supervisor for whatever reasons seemed to have been unable to implement the provision of the law effectively and promptly.

The Central Bank lacked capacity to implement the law promptly and it alludes to this fact by stating in its 1994 Bank Supervision report that from its inception in 1969 to 1987 the department had operated without documented guidelines, or inspection programs and the scope and depth of inspection relied very much on incentive and knowledge of individual inspectors who were not even well trained. In its 1999 annual report (pg 11) it states, "With the increasing challenges in the financial sector and especially after the collapse of the six institution in 1998, the Central Bank of Kenya appreciated the need of enhancing capacity of Bank supervision Department. Training of staff was to be intensified both locally and overseas". No doubt the issue of capacity to supervise the sector is crucial issue.

The study has also managed to educate the public on the major causes of bank failures and the legal provisions in place. The depositors and investors are now better equipped with the area to personally review before indulging in transactions with banks. The policy makers can now identify their weaknesses, and the Board members and management should be able to review their policies and implementation of the same.

5.1 Limitations of study

- Certain information especially CBK inspection reports and correspondences with failed institutions were not accessible. These could have shade more light on the action the supervisor took prior to eventual failure.
- The regulator may not give information about his weaknesses as directly related with bank failures, thus the causes being used in the study may not have been exhaustively presented.

5.2 Recommendation for further research.

This study looked at the causes of bank failures as given by the regulator and attempted to relate them to the existing legal provisions guiding the operations of banks in the sector.

A review of the bank supervision reports made on various failed institutions several years before failure needs to be done to establish if the supervisor identified the real cause of bank failure before hand. Find out what recommendations were made to the institutions and the type of action the Board of Directors and Senior Management of these institutions took to avert the impending collapse.

This will assist in identifying the real reason for failures. Its not in the adequacy of regulatory framework and is already shown in this study.

APPENDIX 1: DATA COLLECTION FORM

| Name of Failed Institution | Date placed in liquidation/CBK Management | Reason for the failure | Legal provision in place at time of failure | Legal provisions in place subsequent to failure |
|---|---|---|---|--|
| 1. Rural-Urban Credit & Financial Co. 2. Capital Finance Ltd 3. Business Finance Co. Ltd 4. Estate Finance Co. of Kenya Ltd 5. Home savings and Mortgages Co. Ltd. 6. Union Bank of Kenya Ltd. 7. United Trustee Finance Ltd 8. Meridian Biao (K) Ltd. 9. Heritage Bank Ltd 10. Nairobi Finance Corporation Ld. 11. Post Bank Credit Ltd. 12. Ari Banking Corp. Ltd. 13. Trust Bank Ltd. 14. Prudential Bank Ltd. 15. City Finance Bank Ltd. 16. Fortune Finance | December 1984 January 1987 December 1989 December 1989 December 1989 December 1989 August 1993 April 1996 September 1996 April 1998 May 1993 December, 1997 September, 1998 November, 1998 November 1998 September, 1999 | Ineffective Board and Management (Malpractices) | <ul style="list-style-type: none"> ▪ Section 20(1) and 20A. Amendments of 1984 & 1987 – CBK allowed intervening in management. ▪ Section 29 – (1987) penalties to officers and directors. ▪ Section 33 amended in 1989 – more powers of CBK to advice & direct Section 34 (1989) – CBK more powers to manage banks 1990 issued guidelines on Duties and Responsibilities of Directors and senior managers CBK/PG/02. ▪ 1998 First schedule of Banking | <ul style="list-style-type: none"> ▪ Section 34 (1989) giving more powers. After 84 & 87 failures. ▪ Guidelines on duties and responsibilities of directors CBK/PG/02 – June 1990.. ▪ Section 4(3) (4) Vetting of Directors – First schedule of Banking Act. ▪ Section 33 (1989) powers to advice and direct |

| | | | Act fit and proper vetting of directors. | |
|---------------------------------------|----------------|--|--|--|
| 1. Rural-Urban Credit & Financial Co. | December 1984 | High incidence of Non-Performing Loans (Poor Asset Quality). | None | Section 31(3) |
| 2. Business Finance Co. | December 1989 | | | Sharing of Credit information on bad borrowers in the market. Credit referencing |
| 3. Estate Finance Co. of Kenya Ltd | December 1989 | | | |
| 4. Home Savings & Mortgages Co. Ltd | December 1989 | | | |
| 5. Nationwide Finance Co. Ltd | December 1989 | | | |
| 6. Nairobi Finance Corporation | April 1993 | | | Amendment introduced in 2001. |
| 7. Middle African Finance | August 1993 | | | |
| 8. Kenya Finance Bank Ltd | August 1993 | | | Section 10 Limits on credit concentration (1994) |
| 9. Heritage Bank Ltd | August 1993 | | | |
| 10. Trade Bank Ltd | July 1996 | | | |
| 11. Trade Finance Ltd | September 1996 | | | |
| 12. Ari Banking Corp. Ltd. | December 1997 | | | |
| 13. Prudential Bank Ltd. | November 1999 | | | |
| 14. Delphis Bank Ltd. | June 2001 | | | |
| 15. Thabiti Finance Co. Ltd. | August 1994 | | | |
| 1. Continental Bank of Kenya Ltd | August 1996 | Poor Lending Practices | Section 12 (1) (1A) (1995)- restrictions on advances for purchase of property. | Section 10 limit on credit concentration (1994) |
| 2. Continental Credit Finance Ltd | August 1996 | | | |
| 3. Nationwide Finance Co. Ltd | December 1989 | | | |
| 4. Union Bank of Kenya Ltd | December 1989 | | Section 14 (1989) restrictions on advances for purchase of land | Section 11 (1A) refusing business, decline lending |
| 5. Jiriba Credit Corporation Ltd | December 1989 | | | |

| Name of Failed Institution | Date placed in liquidation/CBK Management | Reason for the failure | Legal provision in place at Time of failure | Legal provisions in place subsequent to failure |
|--|---|-------------------------|--|--|
| 1. Home Savings & Mortgages Co. 2. Nationwide Finance Co. Ltd 3. Jimba Credit Corporation Ltd 4. Middle African Finance Co. 5. Trade Bank Ltd 6. Trade Finance Ltd 7. Central Finance (K) Ltd 8. Allied Credit Ltd 9. United Trustee Finance Ltd 10. Inter African Credit Finance Ltd. 11. International Finance Co. Ltd 12. Post Bank Credit Ltd 13. Thabiti Finance Co. Ltd. | December 1989 December 1989 December 1989 August 1993 August 1993 August 1993 August 1993 August 1993 August 1993 June 1993 April 1993 May 1993 August 1994 | Unsecured insider loans | <ul style="list-style-type: none"> ▪ Section 10-amendments of 1985. ▪ No unsecured lending to insiders ▪ Exposure limits to insiders well spelt n Section 10 (1989) – revised lending limits. ▪ Section 11 (1989)– no unsecured lending to insiders. | Section 11 (e) (1998) conditions of granting insider advances Section 11 (5) (6) (1998) and Section 11(1A)(2000) – disqualification of directors who default, penalties for institutions, which fail to disqualify such directors. |
| 1. Continental Bank of Kenya Ltd 2. Continental Credit Finance Ltd 3. Nationwide Finance Co. Ltd 4. Union Bank of Kenya Ltd 5. Jimba Credit Corporation Ltd | August 1986 August 1986 December 1989 December 1989 December 1989 | Poor Lending Practices | Section 12 (1) (1A) (1995)- restrictions on advances for purchase of property. Section 14 (1989) restrictions on advances for purchase of land. | Section 10 limit on credit concentration (1994) Section 11 (1A) defining fraudulent, reckless lending, |

| | | | | |
|--------------------------------------|----------------|--|---|--|
| 6. Kenya savings and Mortgages Ltd | December 1989 | | | introducing penalties. (2000) |
| 1. Home Savings & Mortgages Co. Ltd. | December 1989 | Under Capitalization (insolvency) | <ul style="list-style-type: none"> ▪ Section 7 and Section 7 A (1985) -Minimum capital requirements -Ratios between capital and reserves and deposits. ▪ Amendments in 1989 to section 7(1) on minimum capital requirements. ▪ Second schedule on minimum capital introduced (1989). | Revised second schedule of Banking Act on minimum capital requirements in 1990 and 1999. |
| 2. Nationwide Finance Co. Ltd | December 1989 | | | |
| 3. Kenya savings & Mortgages Ltd | December 1989 | | | |
| 4. Nairobi Finance Corporation Ltd | April 1993 | | | |
| 5. Middle African Finance Co. Ltd. | April 1993 | | | |
| 6. Trade Bank Ltd | August 1993 | | | |
| 7. Trade Finance Ltd | August 1993 | | | |
| 8. Diners Finance Ltd | August 1993 | | | |
| 9. Central Finance (K) Ltd | August 1993 | | | |
| 10. Allied Credit Ltd | August 1993 | | | |
| 11. United Trustee Finance Ltd. | August 1993 | | | |
| 12. Thabiti Finance Co. Ltd. | August 1994 | | | |
| 1. Bullion Bank Ltd. | September 1998 | | | |
| 2. Trust Bank Ltd. | September 1998 | | | |
| 3. City Finance Bank Ltd. | November 1998 | | | |
| 4. Portico Finance | September 1997 | | | |
| 5. Delphi Bank Ltd. | June 2001 | | | |
| 1. Central Finance (K) Ltd | August 1993 | Heavy reliance on Personal Note deposits | | All personal deposits to be invested in Treasury Bills, C&A Banking circular No. |
| 2. Inter-African Credit Finance Ltd | June 1993 | deposits | | |
| 3. International Finance Co. Ltd | April 1985 | | | |

| Name of Failed Institution | Date placed in liquidation/CBK Management | Reason for the failure | Legal provision in place at Time of failure | Legal provisions in place subsequent to failure |
|--|---|---|---|--|
| | | | <ul style="list-style-type: none"> ▪ Section 18 – ratio of capital assets 8% (1989). ▪ Section 20 (1989) restrictions on dividends payouts. ▪ Issue capital guidelines in June 1990 CBK/PG/04. | |
| <ol style="list-style-type: none"> 1. Reliance Bank Ltd. 2. Bullion Bank Ltd. 3. Trust Bank Ltd. 4. City Finance Bank Ltd. 5. Fortune Finance 6. Delphis Bank Ltd. | <p>September 1998</p> <p>September 1998</p> <p>September 1998</p> <p>November 1998</p> <p>September 1999</p> <p>June 2001</p> | <p>Run on deposits</p> <p>Run on certification of deposits</p> <p>Run on deposits</p> <p>“</p> <p>“</p> | None | None |
| <ol style="list-style-type: none"> 1. Central Finance (K) Ltd 2. Inter-African Credit Finance Ltd 3. International Finance Co. Ltd | <p>August 1993</p> <p>June 1993</p> <p>April 1983</p> | <p>Heavy Reliance on Parastatal deposits</p> | None | <p>All parastatal deposits to be invested in Treasury bills CBK Banking circular No...</p> |

| | | | | |
|---|--|--|--|------|
| 4. Thabiti Finance Co. Ltd | August 1994 | | | |
| 1. Exchange Bank Ltd. 2. Pan African Credit & Finance Ltd. 3. Pan African Bank Ltd. | April 1993 October 1993 October 1993 | Persistent violation of banking act hence revocation of license by the Minister. | Section 6 (1987) revocation of licenses. | |
| 1. Reliance Bank Ltd. | September, 1998 | Cheque kiting | None | None |

Source: A guide to wise management of loans from banking institutions (1997) and other CBK reports.

Key:

Section: Section of Banking Act Chapter 488 of Kenya Laws. – Details of which are given as attachments to Appendix 1.

CBK/PG.....Central Bank of Kenya Prudential Guidelines.

EXTRACTS OF THE BANKING ACT REFERRED TO IN THE DATA COLLECTION FORM. SHOWING THE EVOLUTION OF THE LEGAL PROVISIONS RELEVANT TO REASONS FOR BANK FAILURES (Attachments to appendix 1)

(1A) For the purposes of subsection (1) (c) the term "assume the management and conduct of" includes the control or conduct of all

I. INEFFECTIVE BOARD AND MANAGEMENT MALPRACTICES:

Banking Act Amendments 1984, 1987, 1998

Central Bank
may issue
orders after
inspection
(1984)

Section 20 (1) If it is found upon an inspection under section 19 that the business of the bank or financial institution concerned is being conducted in a manner detrimental to the interests of the depositors or to the interest of the bank or financial institution or to the public interest, the Central bank may –

- a) issue directions to the bank or financial institution concerned requiring it to take remedial measures which in the opinion of the Central Bank are necessary or desirable in the circumstances; or
- b) with the approval of the Minister, appoint a person who in the opinion of the Central Bank is competent to advise the bank or financial institution on the necessary remedial measures and the advice of the person so appointed shall have the same force and effect as direction of the bank made under paragraph (a) and for the purpose of this section the advice shall be deemed to be a requirement of the Central Bank; or
- c) with the approval of the Minister, assume or appoint any other person to assume the management and conduct of the affairs of the bank or financial institution, and the bank or financial institution shall submit its business to the Central Bank or a person appointed to assume control under this paragraph and shall provide the Central Bank or that other person with all the

- d) facilities necessary for the effective management and conduct of the affairs of the bank or financial institution.

(1A) For the purposes of subsection (1) (c) the term "assume the management and conduct of" includes the control or conduct of all categories or classes of business normally undertaken by a bank or financial institution.

Powers of
Central Bank to
Powers of
Manager
(1987)

Section 20(A) (1) Where the Central Bank has exercised the powers conferred by section 20, the Central Bank may direct the bank or financial institution –

- a) to restructure or reorganize the management of the bank or financial institution by removing any officer who has conducted the affairs of the bank or financial institution in contravention of any provisions of this Act;
- b) appoint a competent banker to be a director of the bank or financial institution for such duration as the Central Bank deems necessary;
- c) appoint an attorney or attorneys who shall act for and on behalf of the bank or financial institution in respect of any business transaction;
- d) revoke any prior mandate or other authority issued to any person as an attorney or agent.

Penalties for
default by
officers 1987

Section 29 (1) Any officer of a licensed bank or licensed financial institution who –

- a) fails to take all reasonable steps to secure the compliance of the bank or financial institution with this Act or
- b) fails to take all reasonable steps to secure the compliance of the bank or financial institution with this Act; or
- c) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act or any other written law applicable to banks;

- d) fails to supply any information required under section 20A, the winding up of the institution or if any receiver or liquidator of the institution is appointed, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings or to both.

*Powers of
Central Bank to
advise and
direct. 1998*

Section 33 If, at any time, the Central Bank has reason to believe that the business of an institution is being conducted in a manner to or not in compliance with the requirements of this Act or any regulations made hereunder or in a manner detrimental to or not in the best interests of its depositors or members of the public, the Central Bank may-

- a) give directions regarding measures to be taken to improve the management or business methods of the institution or to secure or improve compliance with the requirements of this Act, any regulations made hereunder or any other written law or regulations;
- b) appoint a person (in this Act referred to as "a manager") in the opinion of the Central Bank, to advise and assist the institution generally or for the purposes of implementing any directions under paragraph (b); and the advice of a person so appointed shall have the same force and effect as a direction made under paragraph (b) and shall be deemed to be a direction of the Central Bank under this section.

Section 34 (1) this section applies, and the powers conferred by subsection (2) may be exercised, in the following circumstances –

- c) if the institution fails to meet any financial obligation, when it falls due including an obligation to pay any depositor;

*Powers of
Central Bank to
intervene in
management
(1989)*

d) if a petition is filed, or a resolution proposed, for the winding up of the institution or if any receiver or receiver and manager or similar officer is appointed in respect of the institution or in respect of all or any part of its assets;

e) if the auditor of an institution makes a report to the Central Bank under the provisions of subsection (4) of section 24;

f) if the Central Bank discovers (whether on an inspection or otherwise) or becomes aware of any fact or circumstances which, in the opinion of the Central Bank, warrants the exercise of the relevant power in the interests of the institution or its depositors or other creditors.

(2) In any case to which this section applies, the central bank may with the approval of the Minister-

a) appoint any person (in this Act referred to as "a manager") to assume the management, control and conduct of the affairs and business of an institution to exercise all the powers of the institution to the exclusion of its board of directors including the use of its corporate seal;

b) remove any officer or employee of an institution who, in the opinion of the Central Bank, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder or to any deterioration in the financial stability of the institution or has been guilty of conduct detrimental to the interests of depositors or other creditors of the institution;

c) appoint a competent person familiar with the business of institutions to its board of directors to hold office as a director who shall not be capable of being removed from office without the approval of the Central Bank; and

d) by notice in the Gazette, revoke or cancel any existing

(2) For power of attorney, mandate, appointment or other shall have authority by the institution in favour of any officer or institution employee or any other person.

(3) The appointment of a manager shall be for such period, not exceeding six months, as the Central Bank shall specify in his appointment and may be extended by the High Court, upon the application of the Central Bank, if such extension appears to the Court to be justified.

(4) A manager shall, upon assuming the management, control and conduct of the affairs and business of an institution, discharge his duties with diligence and in accordance with sound banking and financial principles and, in particular, with due regard to the interests of the institution, its depositors and other creditors.

(5) The responsibilities of a manager shall include –

- a) tracing and preserving all the property and assets of the institution;
- b) recovering all debts and other sums of money due to and owing to the institution;
- c) evaluating the capital structure and management of the institution and recommending to the central Bank any restructuring or reorganizing which he considers necessary and which, subject to the provisions of any other written law, may be implemented by him on behalf of the institution;
- d) entering into contracts in the ordinary course of the business of the institution, including the raising of funds by borrowing on such terms as he may consider reasonable;
- e) obtaining from any officers or employees of the institution any documents, records, accounts, statements or information relating to its business.

(6) Neither the Central Bank nor any officer or employee thereof

(6) For the purposes of discharging his responsibilities, a manager shall have power to declare a moratorium on the payment by the institution of its depositors and other creditors and the declaration of a moratorium shall –

a) be applied equally and without discrimination to all classes of creditors;

b) limit the maximum rate of interest which shall accrue on deposits and other debts payable by the institution during the period of the moratorium to the minimum rate determined by the Central Bank under the provisions of section 39 of the Central Bank of Kenya Act or such other rate as may be prescribed by the Central Bank for the purposes of this section provided that the provisions of this paragraph shall not be construed so to impose an obligation on the institution to pay interest or interest at a higher rate to any depositor or creditor than would otherwise have been the case;

c) suspend the running of time for the purposes of any law of limitation in respect of any claim by any depositor or creditor of the institution;

d) cease to apply upon the termination of the manager's appointment whereupon the rights and obligations of the institution, its depositors and creditors shall, save to the extent provided in paragraphs (b) and (c), be the same as if there had been no declaration under the provisions of this subsection.

III UNSECURED INSIDER LENDING

(7) If any officer or employee of an institution removed under the provisions of subsection (2)(b) is aggrieved by the decision, he may apply to the High Court and the court may confirm, reverse or modify the decision and make such other order in the circumstances as it thinks just; and pending the determination of any application or appeal there from, the order of removal shall remain in effect.

(8) Neither the Central Bank nor any officer or employee thereof

nor any manager nor any other person appointed, designated or approved by the Central Bank under the provisions of this Part shall be liable in respect of any act or omission done in good faith by such officer, employee, manager or other person in the execution of the duties undertaken by him.

II. HIGH INCIDENCE OF NON-PERFORMING LOANS

Banking Act Amendments of 2001

Section 31 (3) Notwithstanding the provisions of this section –

- a) the Central Bank may disclose any information referred to in subsection (2) to any monetary authority or financial regulatory authority, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Central Bank or the requesting monetary authority or financial regulatory authority;
- b) the Central Bank and institutions licensed under this Act may, in the ordinary course of business, in such manner and to such extent as the Minister may prescribe, exchange such information as is reasonably required for the proper discharge of their functions.

III UNSECURED INSIDER LENDING

Prohibited Business - Banking Act Amendment 1985, 1989, 1998, 2000

- 10) Section 10 of the principal Act is amended by inserting 10(1)
10(1) A licensed bank or licensed financial institution shall not in Kenya –
 - a) grant to any person any advance or credit facility or give any

Publication of
information

Act No. 7 of
2001

- 5) financial guarantee or incur any other liability on behalf of any person, so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of that person at any time exceed five per cent of the total deposit liabilities of that bank or financial institution or more than one hundred per cent of its paid-up capital or assigned capital and unimpaired reserves, whichever is the greater.

Banking Act Amendments 1989

- b) Grant any advance or credit facility against the security of its own shares; or

- c) Grant or permit to be outstanding any unsecured advances in respect of any of its officers or employees or members of their families, or any company of which the officer or employee or member of their families is a shareholder, director or employee; or

Section 11 (1) an institution shall not in Kenya

- d) grant advances, loans or credit facilities which are **unsecured or advances, loans or credit facilities which are not fully secured**

- i) to any of its **directors**, whether those advances, loans or credit facilities are obtained by its directors jointly or severally; or
- ii) to a company, corporation or firm in which it or any of its directors has an interest as an agent, director, manager, partner or shareholder; or
- iii) to any individual or firm of whom or of which any of its directors is a guarantor.

- 4) All the directors of the bank or financial institution shall be liable jointly and severally to indemnify the bank or financial institution against any loss arising from the making of any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured

Limits on
Advances,
credits and
guarantees
(1985)

as required by paragraph (d) of subsection (1). Twenty-five per cent of the capital of the institution; or

- 5) A licensed bank or licensed financial institution, which contravenes any of the provisions of this section, shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings.

Banking Act Amendments 1989

Section 10 (1) An institution shall not in Kenya grant to any person or permit to be outstanding any advance or credit facility or give any financial guarantee or incur any other liability on behalf of any person, so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of that person at any time exceed one hundred per cent of its capital and unimpaired reserves

Section 11 (1) an institution shall not in Kenya-

- g) grant or permit to be outstanding any unsecured advance or credit facility advanced in respect of any of its employees or their associates; or
- h) grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured –

Section 11 (1)(e) Grant or permit to be outstanding any advance, loan or credit facility

- i. to any of its officers or their associates; or
- ii. to any person of whom or of which any of its officers has an interest as an agent, director, manager or shareholder; or
- iii. to any person of whom or of which any of its officers is a guarantor; or

- e) grant or permit to be outstanding any advance or credit facility or give any financial guarantee or incur any other liability to, or in favour of, or on behalf of, any associate or any of the persons mentioned in

Limit on
advances,
credits and
guarantees.
1989

(b) Of this paragraphs (c) and (d) in excess of twenty-five per cent of the capital of the institution; or

- f) grant or permit to be outstanding advances or credit facilities or give any financial guarantee or incur any other liabilities to or in favour of or on behalf of, its associates and the persons mentioned in paragraphs (c) and (d) amounting in the aggregate to more than one hundred per cent of the capital of the institution; or
- g) grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance with the provisions of this Act.

3. All officers of an institution which contravenes any of the provisions of this section shall be liable jointly and severally to indemnify the institution against any loss arising in respect of the relevant advance, loan or credit facility; but an officer shall not be so liable if he shows that, through no act or omission on his part, he was not aware that the contravention was taking place or was intended or about to take place, or that he took all reasonable steps to prevent it taking place.

Section 11 1(e) Grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the institution unless such advance, loan or credit facility –

- (i) is approved by the full board of directors of the institution upon being satisfied that it is viable.
- (ii) Is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution and the institution shall notify the Central Bank of every approval given pursuant to subparagraph

(iii) Of this paragraph, within seven days of such approval; thereof during which the offence continues

Section 11 (1A) In relation to conduct contemplated under paragraph (h) of subsection (1) –

Act No. 9 of
2002

“fraudulent” includes international deception, false and material representation, concealment or non-disclosure of a material fact or misleading conduct, device or contrivance that results in loss and injury to the institution with an intended gain to the officer of the institution or to a customer of the institution.

(a) in case of a bank incorporated in Kenya, its paid-up capital and unimpaired reserves are not less than at least fifteen million Kenya shillings and its

- “reckless” includes-
- (a) transacting business beyond the limits set under this Act or the Central Bank of Kenya Act;
 - (b) offering facilities contrary to any guidelines or regulations issued by the Central Bank; one hundred and fifty million
 - (c) failing to observe the institution's policies as approved by the Board of Directors; or g authority has given an undertaking

Section 11(5) A director of an institution who defaults in the repayment of any advance or loan made to him by the institution for three consecutive months shall forthwith be disqualified from holding office as such. seven-and-a-half per cent of its total deposit

No. 5 of 1998

(6) An institution which –

- (a) fails to comply with any direction of the Central Bank under subsection (3)(b); or institution shall not carry on business,
- (b) permits a director who is disqualified by virtue of subsection (5) to continue holding office as such, shall be guilty of an offence.
- (c) e of a financial institution incorporated in Kenya, its paid-up capital is at least seven million five hundred

(7) Where an offence under subsection (6) continues, the institution shall, in addition to the penalty prescribed under section 49, be liable

to such penalty as may be prescribed for each day or part thereof during which the offence continues.

IV UNDERCAPITALISATION

Banking Act Amendments 1985, 1989

Section 7(1) Subject to this Act, a licence shall not be granted to a bank, and a bank may not carry on banking business, unless—

- a) in case of a bank incorporated in Kenya, its paid-up capital is at least fifteen million Kenya shillings and its paid-up capital and unimpaired reserves are not less than seven-and-a-half per cent of its total deposit liabilities;
- b) In case of a bank incorporated outside Kenya, its paid-up capital is not less than one hundred and fifty million Kenya shillings, and in addition the board of management or other controlling authority has given an undertaking satisfactory to the Minister to keep within Kenya at all times during the currency of its licence, out of its own funds, a capital assigned to its Kenya branches (in this Act referred to as assigned capital) amounting to not less than seven-and-a-half per cent of its total deposit liabilities in Kenya with a minimum of thirty million Kenya shillings.
- 2) Subject to this Act, a licence shall not be granted to a financial institution, and a financial institution shall not carry on business, unless —
- c) in the case of a financial institution incorporated in Kenya, its paid-up capital is at least seven million five hundred thousand Kenya shillings and its paid-up capital and unimpaired reserves are not less than seven-and-a-half per cent of its total deposit liabilities;

- cent of its total deposit liabilities;
- d) in the case of a financial institution incorporated out-side Kenya, its paid-up capital is at least seventy-five million Kenya shillings and in addition the board of management or other controlling authority gives an undertaking satisfactory to the Minister to keep within Kenya at all times during the currency of its licence, out of its own funds, assigned capital amounting to not less than seven-and-a-half per cent of its total deposit liabilities in Kenya with a minimum of fifteen Kenya shillings.

Section 7A. (1) The Central Bank may, in consultation with the Minister, prescribe the minimum ratios which licensed banks and licensed financial institutions shall maintain as between their paid-up capital and unimpaired reserves on the one hand and their assets (including their total loans and advances) on the other.

*Ratio between
paid-up capital
and unimpaired
reserves 1985*

- 2) Any licensed bank or licensed financial institution, which fails to comply with the ratio prescribed under this section, shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings.

Section 14 (1) No licensed bank or licensed financial institution, which is incorporated in Kenya, shall pay any dividend on its shares until all its capitalized expenditure (including preliminary expenses, organization expenses, share-selling commission, brokerage, amount of losses incurred and items of expenditure not represented by tangible assets) has been written off.

*Dividend and
Reserves
(1995)*

- (2) Every licensed bank and every licensed financial institution shall
- (a) make provision for bad and doubtful debts before any profit or loss is declared; and
- (b) ensure that the provision for bad and doubtful

Minimum
capital
requirements
1989

- shall, at all times, be not less than seven and a half per cent of its total deposit liabilities.
- (3) For the purposes of subsection (1), an issue of bonus shares out of the profits of a licensed bank or licensed financial institution shall be deemed to be a payment of dividends.
- Section 7 (1) A licence shall be granted to an institution unless the institution meets the minimum capital requirements specified in the first schedule.
- Section 20 (1) No institution incorporated in Kenya shall pay any dividend or make any other form of distribution to its shareholders.
- ### First Schedule Minimum Capital Requirements
- No licence shall be issued to an institution, unless-
- in case a bank incorporated in Kenya, its paid-up capital is at least seventy five million Kenya shillings and its paid-up capital and unimpaired reserves are not less than seven-and-a-half per cent of its total deposit liabilities;
 - in case of a bank incorporated outside Kenya, its paid-up capital is at least two hundred million Kenya shillings;
 - in case a financial institution and mortgage finance company incorporated in Kenya, its paid-up capital is at least thirty seven million five hundred thousand shillings and its paid-up capital and unimpaired reserves are not less than seven-and-a-half per cent of its total deposit liabilities; and
 - in case of a financial institution or mortgage finance company incorporated outside Kenya, its paid-up capital is at least one hundred and fifty million shillings.
- Section 17. The capital and unimpaired reserves of an institution shall, at all times, be not less than seven and a half per cent

shall, at all times, be not less than seven-and-a-half per cent of its total deposit liabilities.

Ratio between capital and deposits

Section 18 The Central Bank may prescribe the minimum ratios, which shall be maintained by institutions as between their capital and unimpaired reserves on the one hand, and their assets (including their total loans and advances) on the other and, for that purpose, may also determine the method of classifying and evaluating assets.

Ratio between capital and assets

Section 20 (1) No institution incorporated in Kenya shall pay any dividend on its shares or make any other form of distribution to its shareholders until all its capitalized expenditure (including preliminary expenses, share-selling commission, brokerage, amount of losses incurred and items of expenditure not represented by tangible assets) has been written off and provision has been made for bad and doubtful debts in accordance with subsection (2).

Restrictions on dividends (1989)

Section 20 (1) No institution incorporated in Kenya shall pay any dividend on its shares or make any other form of distribution to its shareholders until all its capitalized expenditure (including preliminary expenses, share-selling commission, brokerage, amount of losses incurred and items of expenditure not represented by tangible assets) has been written off and provision has been made for bad and doubtful debts in accordance with subsection (2).

(2) Every institution shall:

- (a) make provision for bad and doubtful debts before any profit or loss is declared; and
- (b) ensure that the provision for bad and doubtful debts made under paragraph (a) is adequate according to such guidelines as may be prescribed by the Central Bank.

Section 17 The core capital of an institution shall at all times be not less than eight per cent of its total deposit liabilities.

Ratio between core capital and deposits No. 4 of 1999

Section 18 The Central Bank may prescribe the minimum ratios which shall be maintained by institutions as between their core capital and total capital on one hand and their assets (including their total loans and advances) and off balance sheet items on the other and for that purpose, may also determine the method of classifying and evaluating assets.

Ratio between Capital &

V. POOR LENDING PRACTICES

Section 6. The Minister may, by notice in writing to the licensee,
re Banking Act Amendments 1985, 1989

*Restriction on
making loans
on security of
immovable
property (1985)*

Section 12 (1) No licensed bank shall make loans or advances on the security of immovable property for the purpose of purchasing, improving or altering the property, so that he aggregate amount of those loans or advances exceeds twenty-five percent (or with the consent of the Central Bank, forty per cent) of the amount of its total deposit liabilities.

(1A) No licensed financial institution shall make loans or advances on the security of immovable property for the purpose of purchasing, improving or altering the property so that the aggregate amount of those loans or advances exceeds twenty-five per cent (or with the consent of the Central Bank, sixty per cent) of the amount of its total deposit liabilities.

Section 14 (1) No institution, other than a mortgage finance company, shall make loans or advances for the purchase, improvement or alteration of land, so that the aggregate amount of those loans or advances exceeds twenty-five per cent of the amount of its total deposit liabilities.

*Restrictions on
advances for
purchase of
land.*

(2) The Central Bank may authorize an institution to exceed the percentage specified in subsection (1) up to a maximum of forty per cent in the case of a bank and sixty per cent in the case of a financial institution.

(3) The provisions of this section shall not prevent an institution accepting a security over land for a loan or advance made in good faith for any other purpose.

VII. PERSISTENT VIOLATIONS OF THE BANKING ACT

FIRST SCHEDULE

(s.4)

Section 6. The Minister may, by notice in writing to the licensee, revoke a licence if the licence –

a) ceases to carry on business in Kenya or goes into liquidation or is wound up or is otherwise dissolved; or

b) fails to comply with this Act, the Central Bank of Kenya Act or the Exchange Control Act, or any rules, regulations, order or directions issued under any of those Acts or any condition of a licence.

(i) his general probity;

(ii) his competence and soundness of judgement for the fulfilment of the responsibilities of the office in question; and

(iii) the diligence with which the person concerned is likely to fulfil those responsibilities.

(b) For the purposes of and without prejudice to the generality of the provisions of paragraph (a), the Minister or the Central Bank, as the case may be may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person-

(i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;

(ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services;

Banking
Amendments
1987. Section
6

FIRST SCHEDULE (s.4)

CRITERIA FOR DETERMINING PROFESSIONAL AND MORAL SUITABILITY OF PERSONS PROPOSED TO MANAGE OR CONTROL INSTITUTIONS

- (a) In order to determine, for the purposes of this Act, the professional and moral suitability of persons proposed to manage or control an institution the Minister or the Central Bank, as the case may be, shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned-
- (i) his general probity;
 - (ii) his competence and soundness of judgement for the fulfillment of the responsibilities of the office in question; and
 - (iii) the diligence with which the person concerned is likely to fulfill those responsibilities.

- (b) For the purposes of and without prejudice to the generality of the provisions of paragraph (a), the Minister or the Central Bank, as the case may be may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person-

- (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
- (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services;

(iii) was a director of an institution that has been liquidated or is under liquidation or statutory management under Part VII of this Act;

(iv) has taken part in any business practices that in the opinion of the Minister or the Central Bank, as the case may be, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;

(v) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgement.

(c) The Minister may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of that person under section 4.

SECOND SCHEDULE (s.7)

MINIMUM CAPITAL REQUIREMENTS

1. Every institution shall, at all times, maintain-

(a) a core capital of not less than eight per cent of total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank;

(b) a core capital of not less than eight per cent of its total deposit liabilities;

(c) a total capital of not less than twelve per cent of its total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by Central Bank;

(d) a core capital of at least two hundred million Kenya shillings in the case of a bank or a mortgage finance company;

(e) a core capital of at least one hundred and fifty million Kenya shillings in the case of a financial institution:

Provided that the provisions of paragraphs (d) and (e) shall, apply in accordance with the following table -

Minimum Core Capital

| Act No. 4/99 Compliance <u>Date</u> | <i>Banks and Mortgage Finance Companies (Kshs. Millions)</i> | <i>Financial Institutions (Kshs Millions)</i> |
|-------------------------------------|--|---|
| 31st December, 1999 | 200 | 150.00 |
| 31st December, 2000 | 250 | 187.50 |
| 31st December, 2001 | 300 | 225.00 |
| 31st December, 2002 | 350 | 262.50 |
| 31st December, 2003 | 400 | 300.00 |
| 31st December, 2004 | 450 | 337.50 |
| 31st December, 2005 | 500 | 375.00 |

Appendix 2: Institutions failure rate in Kenya (1984 – 2001)

| Year | No of failed institutions | Total No. Of institutions | % Of Total institutions failure |
|------|---------------------------|---------------------------|---------------------------------|
| 1984 | 1 | 56 | 1.79 |
| 1985 | 0 | 62 | 0.00 |
| 1986 | 2 | 67 | 2.99 |
| 1987 | 1 | 71 | 1.41 |
| 1988 | 0 | 68 | 0.00 |
| 1989 | 7 | 73 | 9.59 |
| 1990 | 0 | 77 | 0.00 |
| 1991 | 0 | 80 | 0.00 |
| 1992 | 0 | 82 | 0.00 |
| 1993 | 14 | 85 | 16.47 |
| 1994 | 2 | 85 | 2.35 |
| 1995 | 0 | 80 | 0.00 |
| 1996 | 3 | 71 | 4.23 |
| 1997 | 1 | 70 | 1.43 |
| 1998 | 6 | 69 | 8.70 |
| 1999 | 1 | 65 | 1.5 |
| 2000 | 0 | 61 | 0.00 |
| 2001 | 1 | 56 | 1.79 |

Source: Central Bank of Kenya Annual Reports various issues

DPF Annual Reports – various issues

Appendix 3: List of institutions restructured under Consolidated Bank of Kenya Ltd.

| | Name of Institution | Date taken over | Reason for failure |
|---|-------------------------------------|-----------------|--|
| 1 | Estate Finance Company of Kenya Ltd | Dec 1989 | <ul style="list-style-type: none"> • Ineffective Board and management • High incidence of non-performing loans |
| 2 | Home Savings and Mortgages Co. Ltd | Dec 1989 | <ul style="list-style-type: none"> • Undercapitalisation • Insider loans (unsecured) • Ineffective Board of Directors • High incidence of non-performing loans |
| 3 | Nationwide Finance Co. Ltd | Dec 1989 | <ul style="list-style-type: none"> • Poor credit policies • Unsecured insider lending • Undercapitalisation • High incidence of non-performing loans. |
| 4 | Union Bank of Kenya Ltd | Dec 1989 | <ul style="list-style-type: none"> • Mismanagement • Poor credit policies |
| 5 | Jimba Credit Co. Ltd | Dec 1989 | <ul style="list-style-type: none"> • Poor lending practices • Credit concentration |
| 6 | Kenya Savings and Mortgages Ltd | Dec 1989 | <ul style="list-style-type: none"> • Undercapitalisation • Poor lending practices • Liquidity problems |

Table 2: Frequency Distribution Tables**Ineffective board and management**

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 16 | 43.2 | 43.2 | 43.2 |
| No | 21 | 56.8 | 56.8 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

High incidences of non performing loans

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 14 | 37.8 | 37.8 | 37.8 |
| No | 23 | 62.2 | 62.2 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

Unsecured insider loans

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 13 | 35.1 | 35.1 | 35.1 |
| No | 24 | 64.9 | 64.9 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

Poor lending practices

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 6 | 16.2 | 16.2 | 16.2 |
| No | 31 | 83.8 | 83.8 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

Under capitalisation

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 12 | 32.4 | 32.4 | 32.4 |
| No | 25 | 67.6 | 67.6 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

Run on deposit

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 4 | 13.5 | 13.5 | 13.5 |
| No | 4 | 86.5 | 86.5 | 100.0 |
| Total | 37 | 100.0 | 100.00 | |

Table 3: Summary of bank failures in Kenya by causes

Run on certification of deposits

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 1 | 2.7 | 2.7 | 2.7 |
| No | 36 | 97.3 | 97.3 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

Heavy reliance on parastatal deposits

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 4 | 10.8 | 10.8 | 10.8 |
| No | 33 | 89.2 | 89.2 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

Persistent violation of banking acts hence revocation of licences

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 3 | 8.1 | 8.1 | 8.1 |
| No | 34 | 91.9 | 91.9 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

Cheque Kiting

| | Frequency | Percent | Valid Percent | Cumulative Percent |
|-----------|-----------|---------|---------------|--------------------|
| Valid Yes | 1 | 2.7 | 2.7 | 2.7 |
| No | 36 | 97.3 | 97.3 | 100.0 |
| Total | 37 | 100.0 | 100.0 | |

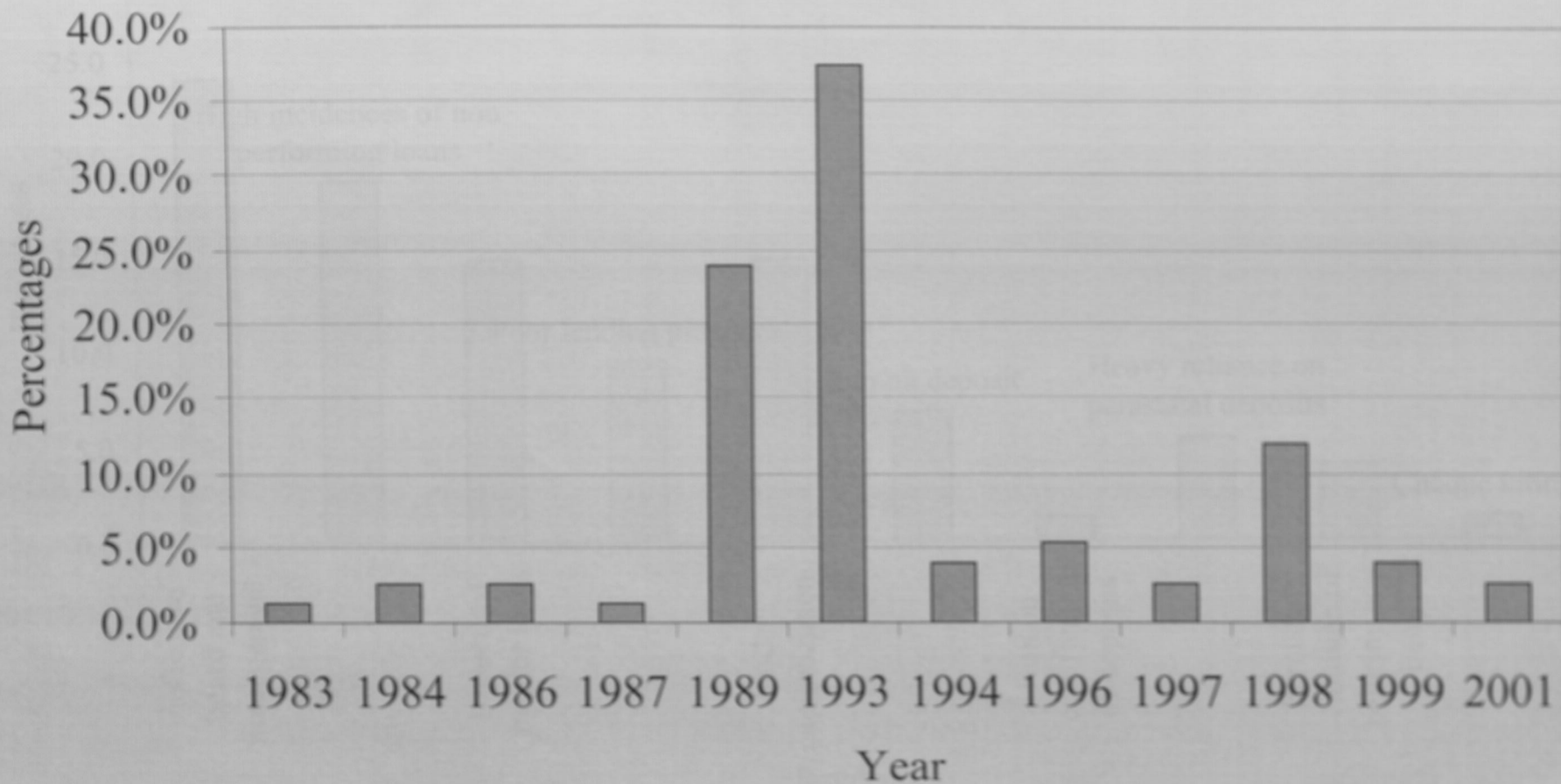
0 missing cases; 37 valid cases

Table 3: Summary of bank failures in Kenya by causes

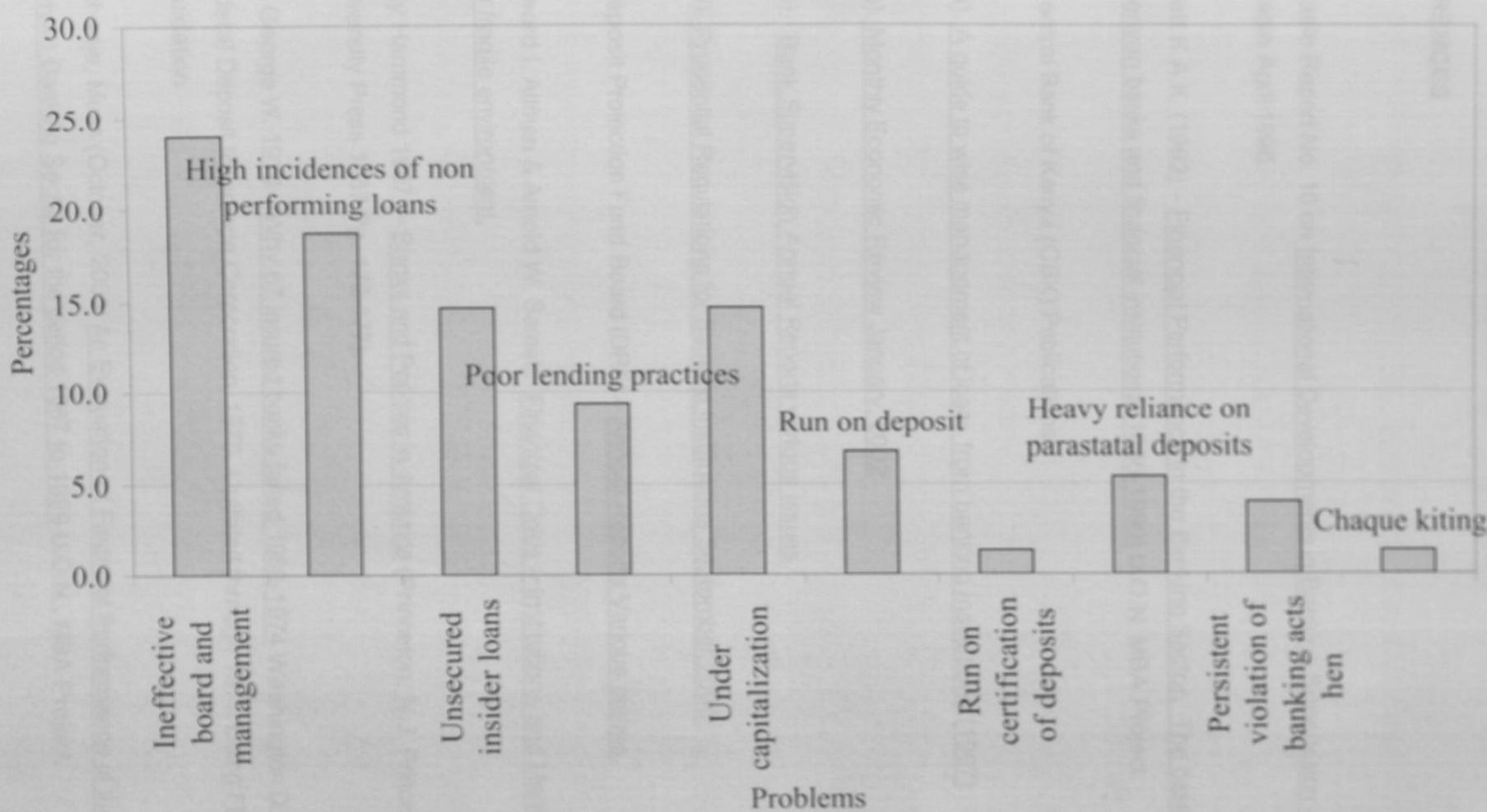
| Name | Dichotomy | No of counts | % of count | % of cases |
|--|-----------|--------------|--------------|--------------|
| Ineffective board and management | IBM | 16 | 21.3 | 43.2 |
| High incidences of on-performing loans | HINPL | 14 | 18.8 | 37.8 |
| Unsecured insider loans | UIL | 13 | 17.3 | 35.1 |
| Poor lending practices | PLP | 6 | 8.0 | 16.2 |
| Under capitalisation | UC | 12 | 16.0 | 32.4 |
| Run on deposit | ROD | 5 | 6.7 | 13.5 |
| Run on certification of deposits | ROCD | 1 | 1.3 | 2.7 |
| Heavy reliance on parastatal | HRPD | 4 | 5.3 | 10.8 |
| Persistent violation of banking acts | PVBA | 3 | 4.0 | 8.1 |
| Cheque kiting | CK | 1 | 1.3 | 2.7 |
| Total responses | | 75 | 100.0 | 200.0 |

0 missing cases; 37 valid cases

Occurrence of Bank Failure by Year



Problems Causing Bank Failures in Kenya



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