

# **THE MOBILE MONEY LENDING BILL 2019**

## **ARRANGEMENT OF CLAUSES**

### **PART I- PRELIMINARY**

#### Clauses

1. Short title
2. Interpretation
3. Objects and purposes

### **PART II- ESTABLISHMENT OF THE MOBILE MONEY LENDING AUTHORITY**

4. The Authority
5. Functions
6. The Board
7. Tenure of Office
8. Remuneration of Board Members
9. Appointment of Chairperson
10. Vacation of the Office of Chairperson and Members
11. Powers of the Board
12. Delegation by the Board
13. Conduct of Business and Affairs of the Board
14. Staff of the Authority
15. Seal of the Authority

### **PART III - REGISTRATION AND LICENSING OF MOBILE MONEY LENDERS**

16. Registration of Mobile Money Lenders
17. Certificate of Registration
18. Registration Requirements
19. Appeal
20. Licensing Application
21. Granting of License
22. Appeals
23. Statement of Licensing

### **PART IV - RIGHTS OF LENDERS AND BORROWERS**

24. Rights of Lenders and Borrower
25. Obligations of borrowers and lenders
26. Terms and conditions in loan borrowing
27. Loan repayment period
28. Guarantors
29. Cyber Security
30. Advertisement
31. Borrower

#### **PART V - MOBILE LOANS**

32. Interests Rates
33. Forms of Mobile Money Lending
34. Credit Referencing

#### **PART VI- FINANCIAL PROVISIONS**

35. Financial Year
36. Forms of Account
37. Accounts to be Dominated in Shillings
38. Submission of Accounts to Central Bank
39. Appointment of Internal Auditor
40. Appointment of External Auditors

#### **PART VII- MISCELLANEOUS PROVISIONS**

41. Regulations

#### **FIRST SCHEDULE**

**FORM MML1- Application for Registration of Mobile Money Lenders Form  
MML2**

**FORM MML2- Complaint Form MML2**

# THE MOBILE-MONEY LENDING BILL, 2019.

A Bill for

AN ACT of Parliament to establish a harmonized and coherent legal framework to regulate mobile money lending transactions, establish the Mobile Loans Regulatory Authority; provide for licensing of mobile money lenders; and other connected purposes.

ENACTED By Parliament of Kenya as follows -

## PART I - PRELIMINARY

### Short Title

1. This Act may be cited as the Mobile-Money Lending Act 2019.

### Interpretation

2. In this Act, unless the context otherwise requires -

“**Authority**” means the Authority created under section 4 of this Act;

“**application**” means a software designed to run on multiple operating systems including the mobile device and which is programmed to issue out financial services;

“**Board**” means the Board established under section 6 of this Act;

“**borrower**” means a person who receives money from a mobile money provider to be paid back in future at an interest rate as set in this Act;

“**Cabinet Secretary**” means cabinet secretary for the time being responsible for finance;

“**capital**” means paid up share capital or, in the case of an institution incorporated outside Kenya its assigned capital;

“**data**” means information recorded in a format which it can be processed by equipment operating automatically in response to instructions given for that purpose and includes

representation of facts, information and concepts held in any removable storage medium;

**“The Central bank”** means the Central Bank established by the Central Bank of Kenya Act (CAP 491);

**“licence”** means any licence issued under this Act;

**“lender”** means any corporation that makes funds available for another person repayable in future on interest;

**“loan”** a sum of money advanced to any person which is expected to be paid back in the future with interest;

**“mobile”** means any cellular device that can access a cellular radio system without physical connection to a network; and

**“mobile banking”** means any financial services transacted by the use of a mobile phone including accepting from members of the public money on deposit repayable on demand or expiry of a fixed period or employing of money held on deposit or on current account or on any part of it by lending or investing;

### **3. Objects and Purposes of the Act**

(1) The objects and purposes of this Act are to –

- a) regulate mobile loans and interest rates;
- b) establish the Mobile-Loans Regulatory Authority;
- c) provide for licensing of mobile money lenders;
- d) protect borrowers and lenders; and

- e) create and enforce sanctions against exploitative money lending practices.

## **PART II - ESTABLISHMENT OF THE MOBILE LOANS REGULATORY AUTHORITY**

### **4. The Authority**

(1) There is established an Authority to be known as the Mobile Loans Regulatory Authority.

The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

### **5. Functions of the Authority**

The functions of the Authority are to-

- (a) advise and make recommendations to the Cabinet Secretary on matters relating to mobile loans;
- (b) implement policies relating to mobile loans;

- (c) plan, manage and regulate the mobile loans system in accordance with the provisions of this Act;
- (d) ensure the provision of reliable and efficient mobile loans;
- (e) set mobile loans interest rates in consultation with the Central Bank of Kenya from time to time;
- (f) issue licenses to mobile money lenders that meet the requirements provided in this Act;
- (g) receive and investigate complaints relating to mobile loans transactions;
- (h) impose fines on non-compliant lenders; and
- (i) cooperate with the CBK in regulating financial institutions that provide mobile loans.

## **6. The Board**

(1)The management of the Authority shall vest in a Board which shall consist of;

- (a) a chairperson appointed by the Cabinet Secretary;
  - (b) the Principal Secretary in the Ministry responsible for finance;
  - (c) the Principal Secretary in the Ministry for Information, Communication and Technology;
  - (d) one person nominated by the Law Society of Kenya;
  - e) one person nominated by the Bankers Association of Kenya;
  - f) one person nominated by the Consumer Federation of Kenya;
  - g) one person nominated by the Mobile Money Lenders Association;
- and

h) the Director-General of the Mobile Loans Regulatory Authority who shall be an ex-officio member.

(2) The appointment of the chairperson and the members of the Board under subsection (1) shall be by notice in the *Gazette*.

(3) In appointing the members of the Board, the Cabinet Secretary shall have regard to the principle of gender equality and regional balance.

## **7. Tenure of office**

The chairperson and members of the Board, other than the ex officio member, shall hold office for a period of three years and shall be eligible for reappointment for one further term.

## **8. Remuneration of Board members**

The members of the Board shall be paid such remuneration, fees or allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

## **9. Appointment of Chairperson**

(1) A person shall be qualified for appointment as the chairperson or a member of the Board under section 6 if that person –

- a) holds a degree from a university recognized in Kenya;
- b) has knowledge in any of the following fields –
  - i. finance;
  - ii. law;
  - iii. economics; or
  - iv. public policy.

## **10. Vacation of office of chairman and members**

- (1) The office of the chairperson or a member of the Board appointed under Section 6 shall become vacant if the chairperson or member –
- (a) is unable to perform the functions of his office by reason of mental or physical infirmity;
  - (b) is otherwise unable or unfit to continue serving as the chairperson or member of the Board;
  - (c) is adjudged bankrupt;
  - (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
  - (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
  - (f) resigns in writing addressed, in the case of the chairperson, to the Cabinet Secretary and in the case of a member appointed under section 6 to the chairperson;
  - (g) fails to declare his interest in any matter being considered or to be considered by the Board; or
  - (h) dies.

## **11. Powers of the Board**

The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to –

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Authority in such manner and for such purposes as best promotes the purpose for which the Authority is established;



(c) receive gifts, grants, donations or endowments made to the Authority and make disbursement therefrom in accordance with the provisions of this Act;

(d) subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Authority funds not immediately required for the purposes of this Act, as it may determine; and

(e) open a bank account for the funds of the Authority.

## **12. Delegation by the Board**

The Board may by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

## **13. Conduct of business and affairs of the Board**

The Board shall conduct its affairs in accordance with the provisions of the Second Schedule.

## **14. Staff of the Authority**

(1) The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

## **15. Seal of the Authority**

(1) The common seal of the Authority shall be kept in the custody of the chairperson or such other person as the Board may direct, and shall not be used except upon the order of the Board

(2) The common seal of the Board shall, when affixed to a document and authenticated, be judicially and officially noticed and unless the contrary is proved, any order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The seal of the Authority shall be authenticated by the signature of the chairperson of the Board or in the absence of chairperson, such other member of the Board who shall be designated by the Board for that purpose on his behalf.

### **PART III - REGISTRATION AND LICENSING OF MOBILE MONEY LENDERS**

#### **16. Registration of Mobile Money Lenders**

A person who wishes to be registered as a money lender under this Act shall lodge with the authority-

(1) A duly filled application for registration in Form MML1; and

(2) Pay the prescribed registration fee.

#### **17. Certificate of Registration**

If satisfied that the requirements of Section 18 have been complied with, the Authority shall register the money lender in the Register of Money Lenders and issue them a Certificate of Registration in Form MML2.

#### **18. Registration Requirements**

A money lender shall be registered if:

(1) They are registered as-

(a) a company under the Companies Act No. 17 of 2015;

(b) a limited liability partnership under the Limited Liability Partnership Act No. 42 of 2011;

(c) a savings and credit co-operative society (SACCO) under the Co-operative Societies Act Cap 490; or

(d) a bank registered under the Banking Act Cap 488;

(2) the minimum paid up share capital prescribed;

(3) they have a certificate of approval from the Communications Authority of Kenya indicating that their digital lending platform or application complies with the regulations on data protection, privacy and cyber security requirements set out in the Sixth Schedule of this Act; and

(4) are tax compliant.

## **19. Appeal**

A person aggrieved by a decision of the Registrar of Mobile Money Lenders may appeal the decision to the Cabinet Secretary.

## **20. Licensing Application**

(1) A registered mobile money lender wishing to conduct the business of mobile money lending shall apply to the Registrar for a license in Form MML3.

(2) A person who carries on the business of mobile money lending without a licence from the commencement date of this Act commits an offence and is liable on conviction to a fine not exceeding one million shillings or an

imprisonment term not exceeding one year or to both fine and imprisonment.

## **21. Granting of License**

- (1) On receiving the application, the Registrar shall either grant the license with conditions or refuse to grant the license and state the reasons for the denial.
- (2) The Registrar, in deciding whether to grant a license, shall consider the financial condition of the applicant, the applicant's manner of conducting business; and may require the applicant to provide information to aid in making a decision.
- (3) On receiving the licence, the successful applicant shall pay the prescribed licensing fee.
- (4) The license granted shall remain valid for a period of one year, after which it is to be renewed.

## **22. Appeals**

A person who is denied a licence may appeal to the Cabinet Secretary within one month of the refusal date.

## **23. Statement of Licensing**

A registered and licensed mobile money lender shall issue a statement of licensing and registration in their mobile money lending platform.

# **PART IV - RIGHTS OF LENDERS AND BORROWERS**

## **24. Rights of Lenders and Borrowers**

(1) Subject to the provisions of this Act, a mobile money lender duly registered and licensed has the following rights-

- (a) to receive payment of the mobile loan on time;
- (b) to earn an interest at the standard rate set by section 34 of this Act;
- (c) to forward defaulters of the loan repayment to the Credit Reference Bureau; and
- (d) to choose who to grant mobile loans.

(2) A borrower has the following rights-

- (a) to be charged interest rates at the rates prescribed under Section 34 of this act;
- (b) to enjoy the loan, for the period stipulated by law, without being demanded to pay before expiration of the payment period stipulated in the contract; and
- (c) to be informed of the total amount they are allowed to borrow.

## **25. Obligations of borrowers and lenders**

(1) A borrower is obliged to-

- (a) pay back the mobile loan on or before the time stipulated in the contract; and
- (b) disclose all the right information to the mobile money lender before getting into the contract of acquiring the mobile loan.

(2) A mobile money lender is obliged to-

- (a) disclose the prescribed information to borrowers, including the terms of the contract and the consequences of default;
- (b) safeguard any data collected from their customers and shall not disclose any such information to third parties unless otherwise authorised by this Act; and

(c) report every two years to the Cabinet Secretary on the status of the money lending sector in Kenya.

## **26. Terms and conditions of borrowing**

(1) The terms and conditions set out in a mobile loan contract shall not contradict any provisions of this Act or any other written law.

(2) The terms and conditions shall be written in either English or Kiswahili.

(3) Every money lending entity shall draft their own terms and conditions.

(4) The borrower shall read and understand the terms and conditions and if they agree to them shall indicate their agreement as provided in the mobile loan platform.

## **27. Loan repayment period**

(1) The loan repayment period shall be classified into two -

(a) long term repayment period for loans above KES 100,000 to be repaid within three months; and

(b) short term repayment period for loans of KES 100,000 and below to be repaid within two months.

(2) Upon expiry of the period set in subsection 1 above and upon issuance of a notice as set out in the Third Schedule to this Act, the lender shall have the right to forward the name of the defaulter to the Credit Referencing Bureau and take any reasonable steps to recover the money owed.

(3) The provisions of subsection 2 above are subject to Part IV of this Act.

## **28. Guarantors**

(1) A borrower shall have at least two guarantors before they may be granted a mobile loan.

- (2) A person shall only be made a guarantor of a mobile loan if they expressly consent to being a guarantor.

## **29. Cyber security**

A person who, without lawful authority or lawful excuse, does an act which causes a denial of access to any program or data stored in a computer system of a mobile money lender is liable upon conviction to a fine of not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

## **30. Advertisement**

(1) A mobile money lender may advertise in any written, audio-visual, audio or digital media.

(2) The advertisement shall state the interest rate to be charged on the loans.

(3) A mobile money lender that contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding one year, or both.

## **31. Who may be a borrower**

A person who wishes to be a borrower under this Act must-

- (a) be a natural person;
- (b) have attained the age of majority;
- (c) not be listed in the Credit Reference Bureau as a loan defaulter;
- (d) not have been declared bankrupt;
- (e) not have outstanding loans from other mobile money lenders; and
- (f) have a guarantor.

## **PART V-MOBILE LOANS AND CREDIT REFERENCING**

### **32. Interest Rates**

- (1) The Authority shall set the maximum interest rates to be imposed by the mobile money lenders and issue a 30-day Gazette Notice to that effect.
- (2) A registered and licensed mobile money lender that charges interest rates at a higher rate than the maximum prescribed by the Authority commits an offence and is liable upon conviction to a Kshs. 5 million fine or two years imprisonment or both fine and imprisonment.

### **33. Forms of Mobile Money Lending**

- (1) The forms of mobile money lending regulated in this Act are-
  - (a) mobile banking;
  - (b) mobile service providers;
  - (c) hybrid service providers, which are partnerships between banks and mobile service providers;
  - (d) mobile applications;
  - (e) Unstructured Supplementary Service Data (USSD) protocols; and
  - (f) websites;
- (2) The Authority, in consultation with the Communication Authority of Kenya and the Central Bank of Kenya may from time to time add or remove any form of mobile money lending regulated under this Act.

### **34. Credit Referencing**

- (1) The following conditions must be met before a borrower is listed as a defaulter in the Credit Reference Bureau:
  - (a) For short term loans of less than Kshs. 200, 000, the borrower must have defaulted for a period of at least two months; or



(b) For long term loans of Kshs. 200, 000 and above, the borrower must have defaulted for a period of at least 6 months; and

(c) A notice must be sent to the borrower outlining the default, how much is owed, the time within which they must pay, and the consequences of non-payment.

(2) After meeting the conditions set out in subsection (1) above, the mobile money lender may cause the defaulter to be listed in the Credit Reference Bureau as a defaulter.

(3) A borrower who repays their loan before the expiry of the notice shall not be listed in the Credit Reference Bureau as a loan defaulter.

(4) A borrower who repays their loan after being listed in the Credit Reference Bureau as a loan defaulter must be delisted within a week of repaying the loan.

(3) Any mobile money lender who fails to comply with subsection (4) above is liable to have their license revoked for a period not exceeding two years.

## **PART VI - FINANCIAL PROVISIONS**

### **35. Financial Year**

The financial year of a Money Lender, for the purpose of accounting, shall be the period of twelve months ending on the 31st December in each year.

### **36. Forms of Account**

All entries in any books of accounts and all accounts kept by a Money Lender shall be recorded in the English language and a system of numerals employed in the government accounts.

### **37. Accounts to be denominated in Shillings**

The accounts and other financial records of a Money Lender shall be denominated in Kenya shillings and shall comply with the requirements of;

- (1) The companies Act; and
- (2) such other requirements as the Central Bank of Kenya may prescribe.

### **38. Submission of accounts to the Central Bank**

A Money Lender shall, not later than three months after the end of each financial year, submit to the Central Bank-

- (1) An audited balance sheet showing its assets and liabilities;
- (2) An audited profit and loss account; and
- (3) A copy of the auditor's report.

### **39. Appointment of an internal auditor**

- (1) Every Money Lender shall appoint an internal auditor who shall report to the board of directors on its financial matters;
- (2) No person shall be appointed as an auditor under this section unless the person holds such professional qualifications in accounting.

### **40. Appointment of external auditors**

- (1) A Money Lender shall, in each year, appoint an external auditor who shall be a person qualified and approved for appointment as such by the Central Bank;
- (2) The external auditor shall audit the accounts of the Money Lender and shall make a report on the annual balance sheet and profit and loss account to be submitted to the Central Bank;
- (3) A Money Lender shall not remove or change an external auditor unless with the approval of the Central Bank;

- (4) The external auditor shall, not less than four months after the end of each financial year, submit an audit report to the Central Bank, on the financial condition of the business.

## **PART VII- REGULATIONS AND REPEALS**

### **41. Regulations**

- 1) The Cabinet Secretary shall in consultation with the Authority and relevant sector players make policies and regulations in the following areas;
  - a) review of interest rates charged in the sector;
  - b) issuance and approval of code of conduct and practice in the sector;
  - c) fees charged upon registration and renewal of licences; and
  - d) any other matter that the Cabinet Secretary may deem fit.

### **42. Repeal of Cap 123**

The Internet Money Lenders Act (Cap 123 of 2000) is repealed.

**APPENDIX 1**

**REGISTRATION FORM MML1**

**APPLICATION FOR REGISTRATION OF MOBILE MONEY LENDERS- FORM  
(MML1)**

The Mobile Money Lending Act 2019

1. Name of the Mobile Money lending service provider.....  
.....
2. Physical and Postal address of head office
  - a.) City .....
  - b.) Street .....
  - c.) Building.....
  - d.)P.O.Box No. ....
  - e.) Telephone number .....
  - f.) Email address.....
3. Date of incorporation .....
4. Certificate of incorporation number .....
5. Particulars of shareholders

No.	Name	Nationality	Date of acquisition	Percentage of shareholding
1				
2				

3				
4				
5				
6				
7				

6. Particulars of directors

No.	Name	Nationality	Date of Appointment
1			
2			
3			
4			
5			
6			

7. Declaration (by Director/Secretary):

I, the undersigned, hereby declare:-

a) THAT the particulars set out herein are true and correct to the best of my knowledge and belief;

b) THAT if registered, I shall transact business in accordance with the provisions of the Mobile Money Lending Act 2019 and of any regulations, guidelines or directive as may from time to time be issued by the Mobile Money Lending Authority

Name.....  
Signature.....  
Date.....

COMPLAINT FORM (MML2)

<b>NAME OF COMPLAINANT</b>	
<b>ADDRESS</b>	
<b>PHONE NUMBER</b>	
<b>EMAIL ADDRESS</b>	
<b>DATE OF LODGING COMPLAINT</b>	
<b>NAME OF MOBILE MONEY LENDER COMPLAINED AGAINST</b>	
<b>THE ISSUE</b> (Provide a detailed account of the issue between you and the mobile money lender)	
<b>SIGNATURE OF COMPLAINANT</b>	

## MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to regulate the mobile loans industry in Kenya. The mobile loans sector has been growing and is projected to keep growing due to the convenience of and relatively easy access to mobile loans compared to bank loans. There has been media and public outcry over the unfavourable terms and conditions attached to mobile loans, high interest rates, high transaction costs and fraud. This is likely to worsen as there is currently no effective legislative framework that properly regulates mobile loans, which allows the mobile money lenders to operate largely unregulated.

The Mobile Loans Bill comes in with an effective solution to the problems above. The Bill provides for an authority; the Mobile Loans Regulatory Authority, which is tasked with regulating the mobile loans sector. Given that the mobile loans sector touches on the banking and communication sectors, the regulation of mobile loans will include the respective regulators of the mentioned sectors as well as the Cabinet Secretary responsible for finance. With such a framework in place, mobile loan interest rates and transaction costs will no longer be unreasonably high, the terms and conditions attached to them will be fair and fraud will be mitigated.

**PART I (Clauses 1-3)** of the Bill provides for preliminary provisions of the Bill including the short title of the Bill and the interpretation provisions.

**PART II (Clauses 4-15)** of the Bill provides for the establishment, powers and functions of the Authority. Clause 4 specifically establishes the Mobile Loans Regulatory Authority. The functions and powers of the Authority are outlined in clause 5 and 11 respectively.



**PART III (Clauses 16-23)** of the Bill provides for the registration and licensing of mobile money lenders. Specifically, Clause 18 provides for the registration requirements imposed on prospective mobile money lenders.

**PART IV (Clauses 24-31)** of the Bill provides for the rights of lenders and borrowers. Clause 29 specifically provides for cybersecurity for the protection of the personal data of the borrowers.

**PART V (Clauses 32-34)** of the Bill provides for mobile loans and credit referencing. Specifically, Clause 32 provides for the regulation of interest rates as the province of the Authority and the Central Bank of Kenya.

**PART VI (Clauses 35-40)** of the Bill deals with the financial provisions. The Bill outlines the sources of the funds at the disposal of the Authority in Clause 36.

**PART VII (Clauses 41-42)** of the Bill deals with regulations and repeals. The Bill proposes to repeal the Internet Money Lenders Act (Cap 123 of 2000).

**Statement on delegation of legislative powers and limitation of fundamental rights and freedoms.**

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

**Statement on whether the Bill concerns county governments**

The Bill does not affect the functions of county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

**Statement on whether the Bill is a money bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill will occasion additional expenditure of public funds to be provided for through annual estimates.

*Dated ..... 2019*

**HON. MLAWATU**

**Member of Parliament, Majimazuri**