LESINKO NJOROGE & GATHOGO ADVOCATES

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LOANS RESTRUCTURING DURING THE COVID-19 PANDEMIC

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In March 2020, the Central Bank of Kenya (CBK) promulgated some Emergency Measures to protect bank loans borrowers due to the adverse effects of the coronavirus disease (COVID-19) pandemic to the Kenyan and global economy.

BANKS FAIRNESS

The promulgated Emergency Measures require banks to be fair in dealing with borrowers of personal loans, in accordance with CBK Prudential Guideline on Consumer Protection. The stated Prudential Guideline requires banks to treat borrowers fairly, and to act in their best interest. The Guideline emphasises that a financial institution should act fairly and reasonably in all its dealings with consumers of its services. Further, the Guideline calls upon financial institutions to maintain constant correspondence with the consumers in order to remain updated about the utilisation of the loaned money, including 'any intervening development which might affect the repayment obligations of the consumer'.

With the prevailing COVID-19 pandemic situation, which has resulted in the Government ordering the closure or limited operation of non-essential businesses, in addition to reduced investment and employment opportunities, there is no doubt that many individuals with bank loans may be unable to consistently make requisite repayment instalments. The CBK Governor has urged banks to restructure personal loans, with an extension of the repayment period of upto a further one year being one of the options.

It is noteworthy that as stated or implied by the CBK, the promulgated relief options for borrowers that are contained in the discussed Emergency Measures are subject to the borrowers satisfying the enumerated conditions in order to benefit. Among the requisite conditions is the requirement that, first, the loan repayment relief is only applicable in circumstances relating to the effect of the COVID-19 pandemic, thus excluding other factors, such as financial hardships long before the epidemic outbreak. Second, they are applicable in respect to 'personal loans'. Nonetheless, as discussed below, banks have suitably and reasonably expanded the concept of personal loans to cover a widespread variety of credit products. Third, qualification for the grant of the relief measures is to be evaluated in accordance with the circumstances of the specific consumer, as he may have been impacted upon by the pandemic. Fourth, in order to initiate the process of benefiting from the relief measures, borrowers are to initiate the process by contacting their respective banks.

DIVERSE LOANS

Even though the CBK made reference to 'personal loans', banks have suitably liberally and broadly interpreted this to include other loan products, including mortgages and credit cards, which are also widely consumed. This is indeed a welcome move as different banks grant a variety of loan products depending on their target markets.

Having made the above observations in respect of the need to cushion the beneficiaries of diverse loan products, particularly the mortgage facility borrowers, it is noteworthy that banks have devised different ways of accommodating customers, such as:

- Granting customers a repayment holiday. This has mostly applied to personal loans and mortgage facilities, whereby customers who have experienced payment difficulties as a result of the COVID-19 pandemic have been granted a repayment holiday. It is advisable for a customer to approach their bank and directly request for a repayment holiday, if they have been adversely affected and wish to receive one. This gives customers room not to be in any payment shortfall. Many banks are currently giving a repayment holiday of three to four months.

- Extension of the tenure of customer loans by upto 12 months. The CBK directed bank to consider extending this option to customers who request it, which in turn translates to reduced monthly repayments.

- Repayment of interest only. For customers who do not want a repayment holiday or extension of tenure, banks are upon request, allowing customers to repay only the interest component on their mortgage or personal loans for specific periods, some for as long as up to eight months. This again means that a customer will pay a smaller amount per month for the period, easing any pressure they would have had if their usual monthly repayments were maintained.

Given the existing curfew and restricted movement, amendment of the loan contracts may be done in short one paged modification document exchanged between a customer and the bank via emails. The laws currently make allowance for use of electronic signatures.

Further, in line with the spirit of the directives from the CBK, banks are unlikely to commence or continue repossession of loan securities proceedings against consumers during the COVID-19 pandemic period. Banks that are at advanced stages of undertaking the sale of customers' properties given as loan security are unlikely to proceed with such recovery, unless it is obvious that the default by the borrower was due to other reasons unrelated to the COVID-19 pandemic. Banks should act with caution, by being aware of the fact that commencing or continuing repossession proceedings at this time is very likely to contravene the CBK Guideline requiring that they act fairly and reasonably, and in the best interest of the customer.

OUR SERVICES

At Lesinko, Njoroge and Gathogo (LNG) Advocates, we are committed to assisting our clients understand, implement and benefit from the regulatory measures aimed at mitigating the effects of the COVID-19 pandemic on both the banks and borrowers.

This information does not constitute legal advice and is for general information only. For specific information regarding regulatory measures aimed at mitigating the effects of the COVID-19 pandemic on both the banks and borrowers, please get in touch with Faith Cheruiyot at: cfaith@lesinkonjoroge.com and Chege Njoroge at: njoroge@lesinkonjoroge.com