REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

National Policy to Support

Credit Information Sharing (CIS) Mechanism

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National Policy to Support

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Executive summary

Preamble

Credit Information (CI) is generally deemed as information about a person or company's ability to pay its debt, examined by credit providers before they decide to lend money. CI adds value at various levels - it improves credit risk management and reduces the risk of credit provider failure, increases access to finance, reduces reliance on collateral, curbs over-indebtedness and assists in the monitoring of credit markets. Conventional literature reflects that credit information is important for credit growth, economic growth and employment.

A credit information sharing (CIS) mechanism generally refers to arrangements made between all pertinent role players operating in a CI market. These may refer to any of policy makers, credit reference bureaus (CRBs), industry associations, data (credit) providers and regulators. A healthy CIS mechanism requires all role players to align to a common goal. Whilst much emphasis is usually placed on the establishment of private sector CRBs as the vital cog within the mechanism, an over-arching policy framework is required to ensure that strategic credit information imperatives are established. CRBs were first introduced in Kenya in the 90's following a major collapse of banks, fuelled in great part by a sharp increase in non-performing loans as the proportion of bad loans grew by an average of 16.5 percent between 1996 and 1999. However, formal licensing of CRBs only commenced in 2010.

Over the last two decades the shift, globally, has been an introduction of dedicated credit information regulations over European Union-type broad data protection frameworks. Kenya enjoys both frameworks in that it has dedicated CRB regulations and the imminent promulgation of the Data Protection Act. CRB regulations places a mandatory requirement on Central Bank of Kenya (CBK) licensed institutions to submit data to three licensed CRBs. Later, these regulations were expanded to include the participation of non-banks into the mechanism on a voluntary basis. To date, approximately 56 institutions are submitting CI on a mandatory basis and over 2,200 non-banks on a voluntary basis. This is a notable achievement undertaken in a relatively short period of nine years.

Fragmented regulatory framework

However, the CIS regulatory landscape is fragmented with much emphasis placed on institutions licensed by the CBK. Overall, the parameters of "voluntary" versus "mandatory" data submission is unequal. Whilst clear parameters exist on mandatory data submission, limited parameters exist for the submission of voluntary data. Within some categories, notably digital credit, data quality has deteriorated. Furthermore, a number of other data sharing challenges has become apparent. This has placed the CIS mechanism at a reputational and operational risk.

Effective oversight remains a concern

It remains unclear how these disparate credit information trends have been allowed to emerge. Very early on, key stakeholders such as the CBK and Kenya Banker's Association recognized the need for an institutional mechanism that would manage operational credit information issues. Although CIS Kenya was established fairly recently, its origins can be traced back nine years ago when it was established as a "project" with significant long-term objectives. Central to these objectives,

was its role as a self-regulatory organization (SRO). CIS Kenya was intended to be an institutional entity that would manage various data issues across various economic sectors with the aim of monitoring and promoting CI that is accurate, up-to-date and relevant. To date, CIS Kenya has been unable to execute its SRO role. With a static membership that is loyal yet uncertain what value it derives from the institution, CIS Kenya finds itself at a strategic impasse.

Banks, in particular, have shied away from credit information usage

As far as the use of credit information, per se, uptake has been disappointing. Despite interest rate ceilings within the banking sector and competition between the banking and non-banking sectors, there has been little signs of innovation. The use of credit scores, for example, is negligible amongst major financial institutions. Indeed, the banking sector's approach to credit information is more "compliance based" than "value based". The unregulated digital credit sector is probably an exception, although its market share, it is reported, is a tiny fraction of commercial banks engaged in digital credit. Digital credit currently overwhelms public discourse as this rapidly growing industry is viewed as the instigator of increasing consumer indebtedness. The average Kenyan has an average of six lending accounts including multiple mobile lending applications. Small loans repaid on an almost daily basis, at relatively high cost, recycled multiple times over a 30-day period, is an easy target for critique.

Unequal data sharing arrangements is placing the CIS mechanism at risk

Yet the Kenyan credit market is much more diverse than this. The fault-lines of growing indebtedness did not emerge in the digital credit sector. A regulatory regime, having positioned itself arbitrary along "mandatory" and "voluntary" lines has retarded meaningful progress with the overall CIS mechanism. No doubt, over 2,200 non-banks participating voluntarily in the mechanism is a welcome development, yet its overall contribution remains miniscule. Most non-banks only participate in the CIS mechanism to offload "bad"/NPL data to CRBs. That makes up approximately 5% -10% of data available from any loan portfolio. The absence of positive data from the likes of SASRA-licensed SACCOs and AMFI credit-only lenders has contributed to the CIS data malaise. Then there are credit market sectors that operate completely under the radar. From "energy" solar powered kits which are financed directly from suppliers to an estimated market of 2-3 million consumers, to a financial lease market dominated by non-banks to an, as yet, unquantified digital credit provider community. Even then, if all credit providers *were* participating the CIS mechanism, there still exists one fundamental flaw in regulation – the compulsion to *submit* data, but not *view* data. Simply put, if there's no compulsion to view debt exposures of a potential borrower, there's very little chance this lack of responsible lending will reverse indebtedness concerns.

A market conduct framework will enhance credit information usage

Herein lies a dilemma. As much as revised CIS policy and regulations and can invigorate the mechanism, it's potential will remain undermined if due consideration is not given to parallel consumer protection measures. In a diverse, growing non-bank credit market, there should be little choice – every credit agreement should fall under some regulatory conduct regime. Within the CIS mechanism, this translates to a mandatory requirement that every credit record from every credit provider should be should be submitted to all licensed CRBs with the added requirement that a credit enquiry should be undertaken before a loan is disbursed. Furthermore, data loads from every

credit provider should be prominently published and, when required, sanctions / fines / punitive measures should be introduced.

A formal CIS Policy is overdue

Kenya has never had a formal CIS policy. This paper is the first attempt to do so. Thus, while this Policy Paper is mostly a response to current developments, the failure of a formal policy, from the outset, has had repercussions. For example, despite global best-practise encouraging the sharing of positive and negative data, Kenya started out sharing negative credit data only. The weakness of this strategy was soon realised with full-file information submission following shortly. However, there are other policy considerations that should have received consideration at inception – for example, why should the submission of bank data be mandatory; all other data, on a voluntary basis? Why is there a compulsion to submit data, but no obligation to view credit information at a CRB? Which credit information should be non-competitive / in the national interest and which information should be competitive? Should there be a data reciprocity policy? Why should oversight be vested only in the CBK when it has no jurisdiction on a range of non-banks participating in the CIS mechanism?

Thus, notwithstanding various regulatory amendments made over the last decade including new CRB Regulations (2019) amendments under consideration, the current status quo of credit information still suffers from a clear and unambiguous policy. This paper attempts to magnify those principles which should form the cornerstone of a sustainable credit information framework. Failure to consider meaningful policy reforms places the CIS mechanism at a perpetual operational and reputational risk.

To this end, this Policy Paper has been prepared with multiple objectives (Chapter 3). Foremost amongst these is a change of approach currently heavily weighed on a CBK-licensed / non-CBK-licensed credit information provider delineation. There are no prudential criteria involved in the CIS mechanism. Thus, a paradigm shift in policy is required.

Key policy recommendations (Chapter 4), is thus summarised as follows:

- To do away with segmenting CIS data management along "bank" and "non-bank/3rd party" lines
- To expand non-bank/3rd party participation in the CIS mechanism on a mandatory basis.
- All licensed CRBs should receive all credit agreement data from all bank and non-bank credit providers.
- All credit providers must be obliged to make a credit enquiry on a potential borrower, at a CRB, before a loan is disbursed and that this information be used to check borrower affordability.
- There should only be one Data Standardisation Template (DST) accommodating the requirements of banks and non-banks.
- An oversight institution should be identified, whose role should be entrenched in legislation, which can best manage data arrangements within the CIS mechanism.
- The introduction of new legislation and/or the revision of CRB Regulations will be required to reflect the recommendations within this Policy Paper.

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Acronyms and abbreviations

ADR	Alternate Dispute Resolution
AMFI	Association of Microfinance Institutions
CBK	Central Bank of Kenya
CI	Credit Information
CIS	Credit Information Sharing
CIS KENYA	Credit Information Sharing Kenya
CRB	Credit Reference Bureau
DLAK	Digital Lenders Association of Kenya
DST	Data Standardisation Template
FSDK	FSD Kenya
KBA	Kenya Bankers Association
KCISI	Kenya Credit Information Sharing Initiative
KUSCCO	Kenya Union of Savings and Credit Cooperatives
LAK	Leasing Association of Kenya
MTP3	Third Medium Term Plan
NCR	National Credit Regulator
OI	Oversight Institution
SACCO	Savings and Credit Cooperative Organisation
SACRRA	South Africa Credit Risk & Reporting Association
SASRA	Sacco Societies Regulatory Authority
SRO	Self-Regulating Organisation

CHAPTER 1: INTRODUCTION

1.1 Background

Kenya's Credit Information Sharing (CIS) has seen numerous developments since its inception a decade ago. Foremost amongst these has been the rapid inclusion of non-banks/3rd parties into the CIS Mechanism over the past four years. However, for the most part, this inclusion has been unregulated and uncoordinated.

Yet this sector is a strategic factor in developing the future of the CIS mechanism. To this end, the National Treasury, wishes to review the CIS mechanism. The main objectives of the review is to coordinate:

(i) the development of a Policy Paper that defines the direction for evolution of CIS across the entire credit market in line with the anticipated Medium-Term Plan (MTP3) under Vision 2030; and

(ii) the implementation activities spelt out in the approved policy framework. This includes:

- Undertaking a comprehensive review of the CIS landscape covering local, regional and international status and trends and clearly identify existing gaps in Kenya's CIS environment
- Supporting legal reforms in line with the Policy, when approved
- Liaising with the National Treasury, Financial Sector Regulators and other stakeholders to ensure that the draft Legal and Regulatory reforms are prepared in line with the approved policy; and provide technical support to lobby for comprehensive legal reforms
- Preparing a comprehensive work plan for establishment of a sustainable Self-Regulatory Organization (SRO) framework with delegated authority; establishment of a more efficient data transmission mechanism; growth of the existing Alternative Dispute Resolution mechanism for Credit lnformation into a robust and sustainable establishment.
- Liaising with the National Treasury, Financial Sector Regulators and other stakeholders to ensure delivery of a financial literacy programme on credit reporting and responsible lending and borrowing.

Specific objectives this Policy Paper is outlined in Chapter 3. This paper also places into context all stakeholders in the CIS mechanism, the role they perform and specific interventions required. Finally, Chapter 2 outlines various challenges within the CIS mechanism. Chapter 4 summarises key policy recommendations. Chapter 5 provides for accountability and oversight whilst Chapter 6 reviews policy implementation measures.

CHAPTER 2: SITUATION ANALYSIS

2.1 Credit Market Trends

The weightiest of issues that has dominated Kenya's credit market discourse over the past five years has been indebtedness and the incidence of multiple borrowings, specifically, within the non-bank sector. However, increasing non-performing loan (NPL) trends within the banking sector is of equal concern. Kenyan banks' non-performing loan (NPL) ratios are among the most elevated among major economies in Africa[1] - this against the recent collapse of three banks[2] in as many years. This paper does not dwell on "Indebtedness" research per se. However, there is an increasing body of evidence that points to concerns in this regard:

> "Kenya Bankers Association…. says …that 21 percent of digital loans were not repaid between 2015 and last year …..The default rate is more than double the average ratio of non-performing loans for conventional borrowing - whose default rate has stood at 10.2 percent over the three-year period……. Non-performing loans in the banking industry have increased to double digits for the first time since 2007…."
>
> businessdailyafrica.com, 17 Sept, 2019

> "DLAK chairman Robert Masinde says the entry of many new players into the digital lending segment has led to a "disorderly and chaotic" industry that has seen many companies raise loan limits drastically to the pain of customers….It is not unusual to find rogue players emerging in such an infant industry. We are concerned with malpractices that have emerged. We can't just wait for somebody to regulate us….. Twelve firms under the umbrella Digital Lenders Association of Kenya (DLAK) have signed a code of conduct to cap initial lending at a maximum of Sh4,000 to customers with no borrowing history. The newly formed lobby says this will ensure member firms match customer debt levels with repayment ability so as not to plunge borrowers into over indebtedness…"
>
> businessdailyafrica.com, 27 June, 2019

> "….FSD-Kenya, in partnership with the Central Bank of Kenya (CBK), Kenya National Bureau of Statistics (KNBS) and CGAP…The rise of the digital credit market has raised concerns about the risk of excessive borrowing and over-indebtedness among lower-income households. Digital loans are easy to obtain, short-term, carry a high interest rate and are available from numerous bank and nonbank institutions. The survey found that 14 percent of digital borrowers were repaying multiple loans from more than one provider at the time of the survey. This means over 800,000 Kenyans were juggling multiple digital loans. Although having multiple loans is not necessarily an indicator of debt distress, it is important to closely monitor the market going forward and detect possible risks.
>
> It is also important to note that debt stress does not occur only when customers borrow multiple loans: It can happen even with a single, microsize loan. About half of those surveyed reported being late at least once with their digital credit and about 13 percent admitted defaulting on their loan, although the actual number may be higher due to under-reporting. Over half of digital borrowers reported dipping into their short- and long-term savings to pay back a loan, 20 percent reported reducing food purchases and 16 percent reported borrowing (mostly through family and friends). The main reasons for late repayment are problems with business performance and losing a key source of income.

[1] businessdailyafrica.com, 2 December, 2018

[2] Chase Bank, Imperial Bank and Dubai Bank. Distressed National Bank of Kenya is currently being acquired by Kenya Commercial Bank.

> M-Shwari seems to have benefitted from a first-mover advantage. Today, it has more than twice as many unique borrowers as its closest competitor, KCB M-Pesa. Both services are offered through Safaricom's M-Pesa platform — Kenya's largest telecommunication provider — and reach a network of customers that is far higher than any individual bank or FinTech can reach. Nevertheless, customers today can choose between a plethora of solutions. Kenya's three largest banks (Kenya Commercial Bank, Equity Bank, and Co-operative Bank) have launched their own digital credit solutions since 2016, either by partnering with Safaricom (e.g., KCB), establishing an independent virtual mobile network operator (e.g., Equity's Equitel) or developing a standalone smartphone app (e.g., Cooperative Bank's M-Coop Cash)….."
>
> Kenya's Digital Credit Revolution Five Years On, cgap.org, March 18

> "….CGAP research found that roughly half of all digital credit customers in …. Kenya are behind on their loan payments, and up to 31 percent default entirely. Many of these customers are listed as bad credit risks by credit bureaus, sometimes for failing to repay amounts as low as $0.20 (USD)
>
> It's Time to Change the Equation on Consumer Protection, cgap.org, June 19

> "…..In recent years, many in the financial inclusion community have supported digital credit because they see its potential to help unbanked or underbanked customers meet their short-term household or business liquidity needs. Others have cautioned that digital credit may be just a new iteration of consumer credit that could lead to risky credit booms. Both the demand- and supply-side data show that transparency and responsible lending issues are contributing to high late-payment and default rates in digital credit . The data suggest a market slowdown and a greater focus on consumer protection would be prudent to avoid a credit bubble and to ensure digital credit markets develop in a way that improves the lives of low-income consumers…"
>
> It's Time to Slow Digital Credit's Growth in East Africa, cgp.org, Sept 18.

Although more detailed research would be welcomed across other products and credit market sectors (eg. SACCOs, Payroll lending etc) policy-makers would do well to reflect on some of the empirical evidence detailed above. It is, for example, clear that both banks and non-banks are pursuing the same market segments with signs of borrower over-indebtedness and multiple borrowings already prevalent. Yet, as recent as the draft CRB Regulations (2019), there is little recognition in the evolving credit market landscape. There is, thus, still the arbitrary distinction between "institutions" (ie. CBK-licensed institutions) and "3rd parties" (all other institutions) whereas, for example, banks appear to be far more involved in digital credit[3] than non-banks. The imperative for affordability assessments / responsible lending practices / general consumer protection lending policies is singularly absent from current policy-maker discourse. Instead we find a quantum leap in strategy to "credit scores" without the apparent acknowledgement of inherent loan origination weaknesses which, partly, could be addressed through mandatory credit enquiries at a CRB from all credit providers.

2.2 The CIS Mechanism

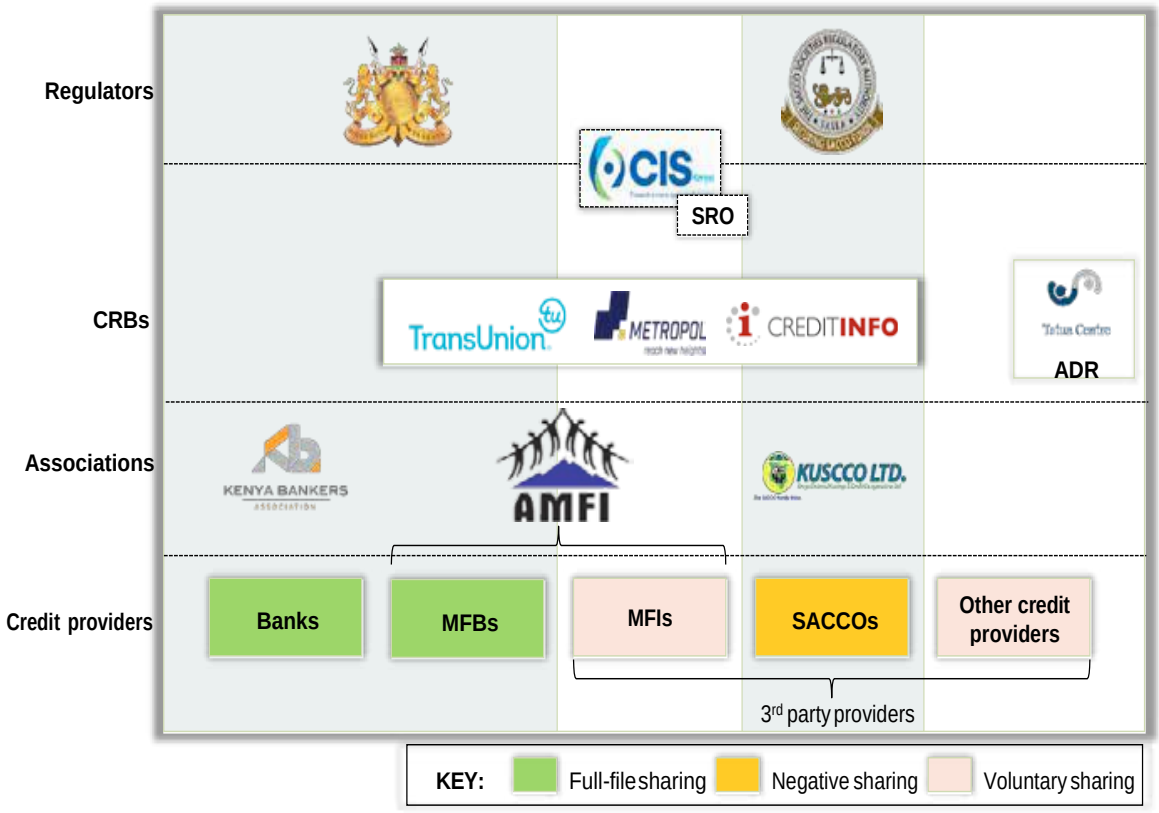
Although it took the better part of a decade to being finalized, the promulgation of CRB regulations kick-started credit data sharing in 2010. Initially only negative data was being shared by CBK licensed institutions. Thus, from around only 185,000 credit records being recorded on CRBs in 2011, eight years later, this averages almost 15 million records per month. All 40 commercial banks,

[3] Interview with Rose Muturi (Tala) who reflected that banks disburse 96% of total digital credit, non-banks only 4%

13 Microfinance banks and over 2,200 non-banks are submitting data to any one of three licensed credit reference bureaus (CRBs). The diagram below reflects the major role players in Kenya's CIS mechanism. The three licensed CRBs stands as the pivotal repository of full-file credit information data. Two of the three CRBs are multinational (Transunion and Creditinfo), operating in diverse global geographic locations. Metropol is Kenya's only local CRB which has since expanded into Uganda in 2015.

CIS Kenya is generally perceived as the primary institution that promotes credit information in Kenya. Three stakeholders were initial supporters of CIS Kenya since its early days as the KCISI, viz. the Central Bank of Kenya, Kenya Bankers Association and FSD Kenya. The largest contributor in terms of direct financial assistance and indirect technical support for over six years was FSD Kenya. This support ceased in 2018. The progress of the CIS mechanism has been well documented with regular evaluation reports commissioned over the past few years (Davel et. al., 2011, OPM, 2013; O Keefe, et. al., 2012). Specific challenges in the CIS mechanism are equally well documented (Szydlowska, 2015; Hajat et. al, 2016).

Kenya's CIS Mechanism



Source: Genesis (2014)

Initially, it was envisaged that oversight of the CIS mechanism was, broadly, to have been arranged along the following lines:

(i) The Central Bank of Kenya would attend to the licensing and supervision of CRBs and monitoring and supervision of "mandatory" data submission by all CBK-licensed banks and micro-finance deposit banks (MFDBs); and

(ii) CIS Kenya, as a self-regulatory organization (SRO), would attend to the "voluntary" data submission of all other entities not falling under (i) above.

The Sacco Societies Regulatory Authority (SASRA) does not play any specific role in CI regulation; however, some of its 174 licensed SACCOs are already participating in the mechanism; albeit mostly negative data. All lender associations – Kenya Banker's Association (KBA), Association of Microfinance Institutions (AMFI) and Kenya Union of Savings and Credit Cooperatives (KUSCCO) are fully supportive of the CIS mechanism. They are all associated with CIS Kenya in one way or another – some as members of their governing council; others as paid members. The Tatua Center, operating under a CIS Kenya "incubation" arrangement, occupies a substantial alternate dispute resolution role. It intervenes in dispute resolution when consumers do not find satisfactory relief after lodging a complaint at a CRB.

With over 2,200 third parties submitting data, there is an increasing requirement on oversight authorities to pay particular attention to this sector. Currently the status in oversight is, at best, blurry, with very little coordination between regulator (CBK) and apparent SRO (CIS Kenya). The CBK provides a "no objection" for a non-bank to participate in the CIS mechanism; thereafter there is a vacuum who is actually is supposed to monitor 3rd party data submissions. If it is supposed to be CRBs only, then global evidence indicates that this will probably be inefficient. Enforcing strict data compliance is a challenge for CRBs as they are dependent on credit providers for the constant supply of data whilst also earning revenue from them. Moreover, in a competing CRB environment, it is preferable that an independent institution reach consensus on a number of divergent operational CIS issues. CIS Kenya was supposed to play that role. Thus far, it has been unable to execute its SRO function. This is examined more closely in paragraph 2.7.

Number of Institutions participating in the CIS Mechanism as at 31 May, 2019

CBK-licensed Institutions		*Other Institutions*	
Banks	40	Unregulated SACCOs	1,240
Microfinance Banks	13	Regulated SACCOs	154
		Microfinance Institutions*	337
		Trade Institutions	502
		Insurance Companies	42
		Development Finance	3
		Learning Institutions (Selective data)	1
Total	53	Total	2,279

Source: Central Bank of Kenya

**Digital Credit lenders are included in this figure*

2.3 Why an Integrated Data Sharing Policy is Important

To gain maximum benefit on credit information sharing, the ideal is for Kenya to progress to the "shaded block" in the diagram below. With full data sharing, credit information becomes much more valuable because it a) produces the fullest picture of a borrower's debt obligations, thus encouraging responsible lending and b) results in highly predictive decision-making scoring models. However, full data sharing will not occur unless there is a concerted effort by all major stakeholders to work towards this primary objective. Foremost amongst these is a policy environment that encourages data integration in a coordinated and systematic manner.

Types of Information / Sources of Information	Positive & Negative Information	Negative Information only
"Full" (i.e. information shared by banks, MFIs, digital credit, telecoms etc)	High Predictiveness eg, US, SA, UK, Italy	Lower Predictiveness eg. Australia
"Fragmented" (information shared by only one or two industries eg. banks, MFDBs)	Lower Predictiveness eg. Mexico, Tanzania **,** Uganda, Zambia, **Kenya**	Lower Predictiveness eg. Morocco

Source: IFC Credit Bureau Manual, 2005; own

In Kenya, data is primarily gained from licensed banks, microfinance banks, some Saccos and a few digital credit lenders.

However, there is still much to be done in collecting positive information from:

- All SASRA-licensed SACCOs
- All digital credit lenders
- AMFI members ranging from MFIs to payroll lenders to credit-only lenders
- Utilities
- Leasing companies
- Mortgage companies
- Pawnbroking
- Public sector institutions
- All other institutions involved in credit extension
- Telecom companies

The MTP3 identifies utility payments, specifically, to be included in the CIS mechanism. Utility payments can be regarded as "financial obligations" rather than "direct credit". They are thus, generally, regarded as "alternative" data, not usually found within CRBs. Yet the use of this alternative data can have a positive impact on borrower scores. Alternative data enables mainstream lenders to establish a financial identity, understand a borrower's credit capacity, and assess their credit risk. Simply put, lenders are able to on-board more creditworthy clients as opposed to declining them. Furthermore, they are able to grant credit more responsibly, sustainably, and profitably.

2.4 A Roadmap for Data Integration

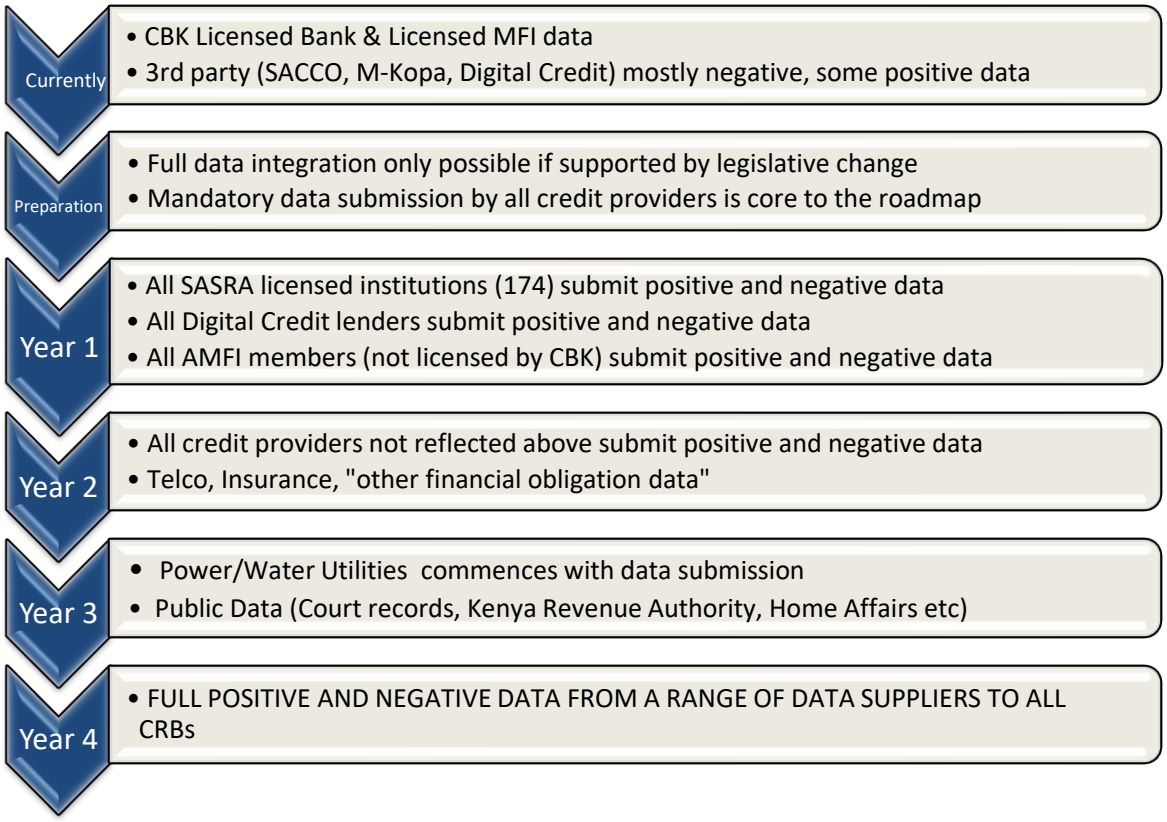
It appears that the CIS mechanism stands to benefit substantially by targeting "loose hanging fruit". These are, simply, the over 2,200 lenders who are already submitting some, mostly negative, data to CRBs. Submission of full-file data from 174 SASRA-licensed Sacco's, all AMFI members (not licensed by CBK) and digital credit lenders should considerably improve data integration as a first priority. However, for this to materialise, (i) legislation needs to be introduced to make all credit data submission mandatory and (ii) borrower consent criteria needs to reviewed.

To achieve (i) and (ii) might not be insurmountable. The Data Protection Act 30 (b) infers that no specific consent is required if borrower enters into a contract with a credit provider. Whilst data

from "utilities" forms part of this report's assessment, it is recommended that this sector's data first be assessed in terms of quality and conformance to data standards. Second, utility payments represent incidental credit or a "financial obligation" rather than "direct credit". Thus, in terms of milestones, it is recommended that greater emphasis be placed on credit providers who are either minimally sharing or not sharing data at all.

There is a particular thrust of CRBs to collect as much data as they can from public and non-public sources. However, it would be a singular achievement of Kenya's CIS mechanism if full attention is paid just to get every credit provider sharing data within the mechanism. With an appropriate regulatory framework, much can be achieved within a five-year period - as summarised below.

A Five-Year Roadmap for Data Integration



2.5 A Regulatory Perspective

In terms of full bank/non-bank data integration, there are provisions in primary and secondary legislation that specifically promotes such an imperative.

The Bank's Act (S. 31) refers to the establishment of CRBs for the "*...the purpose of collecting prescribed credit information on clients of institutions licensed under this Act, and institutions licensed under the Microfinance Act, 2006 and the Societies Act, 2008 and public utility companies and disseminating it amongst such institutions for use in the ordinary course of business….*"

CRB Regulations (S23(2), 2013) further reflects "…. *A government agency, public entities and other credit information providers may enter into contracts with Bureaus for the provision of information….*"

The SACCO Societies Amended Bill, 2016 reflects that "…. *Sacco societies may, in the ordinary*

course of business and in such manner and to such extent as may be prescribed under the Banking Act, exchange such information on performing and nonperforming loans as may be specified by the Authority from time to time…."

The principle stumbling block for full participation of all credit providers into the CIS mechanism is the arbitrary distinction between mandatory and voluntary data submission. If Kenya is to achieve full data integration, then this distinction should be eliminated.

Notwithstanding new amendments under consideration, CRB Regulations have not entirely kept pace with developments (See Appendix II for comments on CRB Regulations, 2013 and Appendix III for comments related to the draft CRB Regulations, 2019). Moreover, CRB Regulations are evolving piecemeal, not following any particular policy direction. Kenya has never had a formal policy for its CIS mechanism. A strategic direction of the mechanism is thus overdue.

2.6 Challenges within the CIS Mechanism

Whilst there has been commendable progress in a number of areas, inherent challenges remain. More importantly, whilst just about every stakeholder acknowledges these challenges, there appears to be no real impetus to resolve them.

a) *The Policy and Regulatory environment have not kept pace with developments*. The CIS mechanism is "institution centric" whereas there is a lack of emphasis on being "functional centric". Thus "bank data" receives particular focus whilst limited attention is paid on the treatment of non-bank data integration. Yet non-bank data suppliers outnumber CBK-licensed data suppliers by a multiple of 40:1, and still climbing. CRB regulations commenced in 2008; an amendment to Regulations was published in 2013. A further amendment (2019) has just been released for comment. Overall, however, these amendments do not fully address the substantial challenges reflected below. Furthermore, the CIS mechanism will be more entrenched within a broader market conduct legislative framework. Issues such as responsible lending practices should receive particular attention in such a framework.

b) *Oversight arbitrage.* The CBK is the supervisor of licensed credit bureaus and licensed data suppliers (Banks and MFBs). Outside of this, data arrangements are uncoordinated leading to uncompetitive[4] practices and fragmented availability of credit data. With respect to non-bank data submission, the CBK expect its licensed CRBs to play a dual role as "client" and "supervisor" for non-bank data. CIS Kenya plays no role in compliance, monitoring or oversight of non-bank data submission.

c) *Data silo's have emerged.* All CBK-licensed institutions are expected to submit all data to all three CRBs in terms of Regulation 50 (6), 2013. For CBK-licensed institutions, this is far from certain as there is a significant variation in the number of records being submitted to each of the three CRBs. For non-banks, who obtain a "no objection" from the CBK to participate in the CIS mechanism, each of the CRBs must apply individually to participate in the mechanism. The "first to regulatory approval" has not found favour amongst competing CRBs. They simply

[4] Whichever CRB gets CBK approval for a non-bank to participate in the CIS mechanism gets a "captive" client with no obligation to share data with other licensed bureaus. No competition means the non-bank is unaware of potential competitor pricing, product offering or services.

ignore a rather tedious process (given there are over 2,200 currently). Thus, data silo's have emerged within bank data and between bank and non-bank data.

d) *Clearance Certificates are potentially compromised.* As a result of the above, there is every likelihood that each CRB will display different information on the same borrower. This undermines the value of clearance certificates[5], especially for employers trying to obtain an accurate picture of potential candidates for employment.

e) *Non-bank data submission is minimal.* Even though there are supposedly over 2,200 non-banks submitting data to any one of three CRBs, current non-bank data is estimated at 5% - 10% of total volumes. This is the result of mostly "blacklisted"/NPL clients being submitted to CRBs.

f) *Lack of transparency of the CIS Mechanism*. Many credit providers and all CRBs query whether full portfolio submission by all licensed-CBK credit providers is actually taking place. In the absence of regular public/industry information, there is a concern that not all CBK-licensed institutions are submitting <u>full</u> credit portfolios to all three CRBs.

g) *Use of CRB data is minimal*. Credit enquiry trends reflect a spike, in particular, from the digital credit sector. There is generally an indifference of CBK-licensed institutions, in particular, towards making credit enquiries at CRBs. This raises questions around credit origination procedures with respect to borrower affordability. In an effort to reverse these trends, the use of credit scores features prominently in the draft CRB Regulations, 2019.

h) *Lack of innovation*. A price control regime within a competitive CRB environment and sufficient borrower credit histories has done little to stimulate innovation in the sector. The widespread use of credit scores and other innovative tools has yet to take effect. Perhaps the digital credit sector is the only discernable group that has meaningfully engaged with credit information at their disposal.

i) *Data standardisation*: Officially, there is only one data format in Kenya – the Data Standardisation Template (DST) is prescribed, and updated, by the CBK from time-to-time. This establishes one set of harmonized data submission rules for all CBK-licensed institutions. However, for non-banks there is a vacuum on which data template(s) are applicable. Multiple DSTs for each potential credit sector should be avoided.

2.7 CIS Kenya

CIS Kenya is widely perceived as the promoter of Kenya's CIS mechanism. Its origins can be traced back to being a "project" within the offices of the KBA, then known as the Kenya Credit Information Sharing Initiative (KCISI). The KCISI was a partnership between the Central Bank of Kenya (CBK) and Kenya Bankers Association (KBA). Later it became institutionalised under the name of the Association of Kenya Credit Providers (AKCP). As the name bore little resemblance to the CIS mechanism, it then rebranded itself more appropriately to "CIS Kenya". CIS Kenya was launched in September 2013, and its governing council was constituted soon thereafter at its first

[5] Employers, particularly national and county governments, are increasingly making it a requirement for job applicants to show their credit status as part of the job application process. To do this, the applicant is required to obtain a clearance certificate that has to be obtained from a CRB.

AGM in November 2013. By mid-2014, CIS Kenya embarked on a strategic planning exercise to define its five-year focus, from 2015-2019.

The forerunner to CIS Kenya, KCISI, started its "road map" in 2011. The core of its strategic plan was an expectation that it was to assume a self-regulatory (SRO) role. In 2014, FSDK supported CIS Kenya to further define its SRO role by, inter alia, obtaining technical expertise to produce a detailed Operations Manual for the institution. The requisite foundation was being put in place for CIS Kenya to finally fulfill its primary role as a SRO.

However, once licensed institutions did become "compliant," it is arguable that CBK deemed CIS Kenya as not warranting overt support from them due to its status as an industry body[6]. It further appears that the CBK has not determined[7] how its direct supervisory function should exist alongside CIS Kenya's SRO role. Consequently, this has stymied CIS Kenya's progress as a SRO with no express mandate to intervene in the CIS mechanism. Central to the marginalisation of this SRO role, has been CBKs decision to approve non-bank data submission into the CIS mechanism by bypassing CIS Kenya. Furthermore, on bank data itself, CIS Kenya has not been mandated to intervene on operational issues. The CBK remains the only supervisor of bank data in Kenya.

The activities of CIS Kenya range from advocacy to recruiting more members to arranging regional conferences to the occasional education dissemination session. Not included in these five activities is the incubation of an alternate dispute resolution (ADR) mechanism, the Tatua Center. However, and notwithstanding the lack of independence of the Center, this is one of the more tangible success stories for CIS Kenya. On average, for every ten disputes lodged with the Center, eight are found in favour of the consumer. The Tatua Center thus offers credibility to the CIS mechanism as a whole.

Financially, CIS Kenya is running at a deficit. This, after FSDKs original support of 80% of its budget completely fell away by 2018. Only approximately a quarter of CIS Kenya's annual budget of KES 51 million is funded by membership fees. Unsurprisingly, audit reports point to "going concern" issues in the absence of greater annuity income. As reflected in the table below, if CIS Kenya did not arrange a profitable conference ("other income") in 2018, they would have run at a substantial loss.

CIS Kenya currently has 70 members contributing membership fees. It estimates that approximately 510 paid members will eliminate the need for any external financial assistance. The reality is simply this – over 2,200 non-banks currently participate in the CIS mechanism but are not members of CIS Kenya. If they were *paid* members, this could significantly boost revenues to beyond break-even. However, these are the kind of scenario's facing policy makers if they view CIS Kenya playing a constructive role in the CIS mechanism.

[6] It should, however, be noted that the CBK supported the physical relocation of CIS Kenya to its current premises on the CBKs "Monetary School" campus.

[7] CIS Kenya's offer of a "memorandum of understanding" clarifying its role and that of the CBK was not favourably received by the latter.

CIS Kenya's Revenue Sources - % contribution to Total Income

Revenue Source	2016	2017	2018
FSD Kenya	45%	29%	Nil
Kenya Bankers Association	17%	22%	19.9%
Membership Fees	25%	33%	26.7%
Kenya School of Monetary Studies	2.3%	3%	2.7%
Entrance Fees	1%	0.3%	0.1%
Other Income	8.3%	9.6%	**47.4%**
Interest Income	1.4%	2.7%	3.2%
Total	100%	100%	100%

Source: CIS Kenya

In the meantime, cognisant of its growing pains, CIS Kenya continues to receive a financial grant from the KBA, over and above membership contributions. However, this is neither desirable nor sustainable in the long term. Ultimately, CIS Kenya should be fully funded by its membership. It set a goal for 2019 to achieve this. However, in the absence of its explicit SRO role, it is doubtful that CIS Kenya can attract more members in meaningful numbers. Annexure III provides an example of how a market conduct regulator operates alongside a SRO within a mature CI market.

2.8 Data Standardisation

The only official data template is derived from the Data Standardisation Template (DST) managed by the CBK. This template, however, primarily exists for CBK-licensed institutions. There is a vacuum on a "template policy" for 3rd party data submission. Ideally, all credit providers should subscribe to one DST even though some 3rd parties are expected not to meet all DST requirements.

Assessment of Non-bank data submission against Data Standardisation Template

		Creditinfo			Metropol			Transunion		
	Number of fields in DST v4.1[8]	Credit only MFI	SACCO	Digital Credit lender	Credit only MFI	SACCO	Digital Credit lender	Credit only MFI	SACCO	Digital Credit Lender
Mandatory	32	32	29	29	Information not supplied			27	27	26
Conditional	26	3	8	3				29	29	30
Optional	12	5	5	5				11	11	11
Total	70	40	42	37				67	67	67
Missing Mandatory fields		1. Occupational Industry Type 2. Income Amount 3. Prudential Risk Classification			1. Date of Birth 2. Gender 3. Nationality 4. Occupational Industry Type 5. Income Amount 6. Prudential Risk Classification			1. Gender 2. Occupational Industry Type 3. Income Amount		

Source: Creditinfo, Metropole, Transunion

[8] DST v4.1 was still in "testing phase" at the time of this report. A full roll-out had not yet commenced. Some CRB submissions thus used earlier versions of the DST when completing this table.

A “reduced requirement” is usually then included in the DST to cater for these categories of data providers. With this as an objective, a study was commissioned to assess current data submissions from a variety of 3rd party data suppliers at each of the three CRBs. The specific aim was to determine how far these 3rd parties are able to meet mandatory data requirements, as called for in the DST. From the table above, there is every indication that, with some minor adjustments, all non-banks could be accommodated under the existing DST. The key determinant is compliance to “mandatory fields” – in the table above, the level of non-compliance ranges from 3-6 fields out of a total of 32. It is thus recommended that the current DST be regarded as the *de facto* standard for all credit information providers.

CHAPTER 3: RATIONALE AND OBJECTIVES

3.1 Rationale for the Policy

This Policy is borne from the identification of existing gaps in Kenya's CIS environment.

3.2 Goal and objectives

The goal of the Policy Paper is to:

1. To provide direction for the evolution of the CIS mechanism across the entire credit market in line with the Medium-Term Plan (MTP3) under Vision 2030, and,
2. To formulate the implementation activities spelt out in the approved policy framework

3.3 Strategies

The above goal and objectives will be achieved through the following strategies:

1. To consider Kenya's credit market as homogenous, where a credit information policy will apply to any institution in the business of granting credit;
2. To acknowledge that credit information plays an integral role in sustainable credit markets;
3. To acknowledge that credit information is not associated with prudential requirements, thus eliminating the need to focus on one credit granting sector over the other;
4. To prevent data silo's emerging with reference to credit data in general and, specifically, clearance certificate data;
5. To purposefully use credit data to prevent borrower over-indebtedness;
6. To foster innovation through the use of credit scores and other behavioural techniques;
7. To propose the incorporation of various public data and private data into the CIS mechanism;
8. To propose an institutional oversight framework for a sustainable a CIS mechanism;
9. To lay the groundwork for transforming Kenya's CIS mechanism from an "emerging" status to that of a "mature" market; and
10. To strengthen the legal and regulatory framework in tandem with the new policy objectives.

CHAPTER 4: POLICY INTERVENTIONS

4.1 Appropriate Regulatory Framework

Recognising that full, up-to-date, accurate, reliable credit information from all institutions providing credit is the cornerstone of a healthy CIS mechanism that promotes responsible lending, a shift in policy emphasis is required. This shift recognizes harmonized credit information suppliers of credit. Policy is thus guided by the following principles:

a) Arbitrary distinctions such as "institutions" (CBK-licensed institutions) and "3rd parties" (non-CBK licensed institutions), "subscribers" etc found in current CRB Regulations should be replaced by one unified term (eg. "credit providers" or credit information provider etc");
b) All credit providers submit to a set of universal data submission rules and procedures;
c) All credit providers, irrespective of whether they are bank or non-bank, licensed or unlicensed, must be incorporated within the CIS mechanism;
d) All credit providers must submit full credit portfolio's, including all sub-product segments, to all licensed CRBs;
e) All credit providers must submit positive and negative data of its entire portfolio, including all sub-product segments, to all licensed CRBs;
f) All credit providers must perform a credit enquiry at a CRB as part of its credit origination procedures on every borrower loan application and that the information received from the CRB must be utilised to check borrower affordability;
g) There is also a category of data which can be referred to as "financial obligation data" but not credit data eg. utilities, telecom, medical accounts, insurance premiums etc. This category should be encouraged to participate in the CIS mechanism on a voluntary basis;
h) The definition of a CRB should be expanded to include all institution's which potentially manage personal and commercial credit;
i) An oversight institution (OI) should be identified to manage all credit information issues across various sectors of the credit market; and
j) All credit providers shall, annually, submit to the oversight institution a letter from the external auditor of the credit provider, confirming the number of accounts it has in its entire loan portfolio, dis-aggregated by product type.

4.1.1 Rationale

New legislation and/or amendments to current CRB Regulations will be required to enact the proposals outlined in 4.1 Below are reasons for proposing regulatory changes:

a) Why mandatory submission for all?

The current regulatory framework place considerable weighting on CBK-licensed institutions. These institutions total 53 in number. Meanwhile there are more than 2,200 institutions in the "non-licensed" area that require attention. There is no rational reason why CBK licensed institutions must submit data on a mandatory basis, whilst for everyone else it is entirely optional. There is one, particularly diverse, yet homogenous credit market in Kenya where all credit providers should submit credit data by one unified set of rules. The current regulatory distinction between bank and non-bank/3rdparty/subscriber data suppliers, has created a skewed picture of information sharing in Kenya. Furthermore, it appears Kenya has not learnt valuable lessons from the past – the first set of regulations only compelled the sharing of negative information. When the weakness of this policy was realised, a repeal to regulations was made to enforce the submission of full-file, positive

and negative, information. The CBK has jurisdiction only over banks and MFBs. Yet, it is also involved in the "licensing / no objection" of non-banks/3rd parties in the CIS mechanism without exercising any particular oversight.

b) Why full positive and negative data from all, why full portfolio submission?

To derive the best possible symmetry's in credit information, all credit providers must submit all positive and negative data to all licensed bureaus. This will enhance better credit origination through the fullest picture of borrower financial obligations, irrespective of which source the borrower received funding. It will also ensure improved predictive credit scores. Current arrangements are lopsided – CBK licensed entities are expected to submit full portfolio data to all CRBs, whilst there is no expectation for every other credit grantor in the mechanism to do the same. Why does this situation prevail? There should be no room for a borrower who has access to credit to "hide" financial obligations. Conversely, every credit grantor in the CIS mechanism should expect to see the fullest extent of credit obligations from any one borrower so that informed decisions are made before credit is granted. There are also question marks surrounding which credit providers are providing full portfolio data to all CRBs. The draft CRB Regulations, 2019 hints at these changes; however, provisions should be more explicit and unambiguous.

c) Why should every credit provider make a credit enquiry at a CRB before a loan is being disbursed?

Current regulations are inadequate if responsible lending practices are to be considered. The compulsion for credit providers to *submit* credit data, but not *view* credit data is a flawed policy. It implies, especially if reliance is placed on collateral or a payroll deduction, that a credit provider has every incentive to ignore borrower affordability in arriving at a decision to grant credit. Furthermore, Kenya has a diverse credit supplier market, where some products are traversing the traditional bank/non-bank divide. Paragraphs 38 & 39 of the draft CRB Regulations, 2019, on credit scores may infer that credit enquiries will become mandatory anyway. Again, it is recommended that these draft regularities should be more specific.

d) Why change the parameters of licensing CRBs?

"Bureau" means a credit reference bureau licensed under these Regulations to prepare or provide credit reports to credit information recipients based on data maintained by the Bureau and to carry out such other activities as are authorised under these Regulations. This is a narrow definition. There's a potential gap of what is a CRB or not a CRB. Regulations imply that only conventional CRBs need to obtain a license. Ideally there should be an "all-inclusive" provision. In other words, something along the lines of "…..*if you in the business of storing and maintaining individual and/or non-individual credit information and/or customer information and generating reports for subscribers who require such reports to assess risk or any other matter, then you will be deemed to be operating as a credit bureau in terms of these Regulations and should apply for a license …*" There may well be institutions that operate already as qausi-credit bureaus but are "not in the net" as the emphasis only falls on traditional CRBs. A consumer does not enjoy protection on their data being held, potentially by other institutions, is thus not covered in Regulations. Also, in keeping with the broader interpretation of the Data Protection Act (2018), mention is made of a "data processor" implying a natural or legal person, public authority, agency or other body which processes personal data.

e) Why audit credit portfolio submissions?

Transparency creates credibility in the CIS mechanism. There should be no reason for any credit provider to perceive any irregularities in data submission from any other credit provider. The OI can thus also carry out its oversight function with more certainty.

4.2 Oversight

An oversight institution should be identified to manage and coordinate a range of credit information issues from a diverse group of banks and non-banks. Kenya has a diverse group of credit providers – banks, deposit-taking MFIs, credit-only MFIs, Sacco's, digital credit lenders, agricultural lenders, payroll lenders, assurance companies, leasing financiers, asset-based financiers, pawnbrokers etc. It is beyond the purview of the CBK to supervise these disparate type institutions, thus an appropriate oversight institution should be considered. Policy is thus guided by the following principles:

a) Although it is recognised that the CBK is currently responsible for compliance of CRB regulations, its jurisdiction is limited to licensed institutions (ie. banks and MFDBs). Instead, an institution should be identified that will manage data issues for all credit providers and those non-credit providers (eg. assurance companies) who wish to participate within the CIS mechanism on a voluntary basis;
b) Thus, on licensed institutions, the CBK should only intervene as "last resort";
c) This does not include the licensing and supervision of CRBs, where only the CBK will continue to have oversight;
d) The oversight institution's core mandate will be to monitor, supervise and facilitate credit data submission amongst all credit providers and non-credit providers within the CIS mechanism;
e) The oversight institution, after reaching consensus amongst its members, may introduce standards for data submission (eg. Code of Conduct) which may exceed, but not conflict with, any law of Kenya;
f) The oversight institution's existence is only for the purposes of coordinating credit data arrangements within the CIS mechanism and does not replace industry-specific institutions (eg, KBA, KUSSCO, AMFI, DLAK etc);
g) The oversight institution's governance structures / committees should be representative of a wide range of credit providers and non-credit providers;
h) All CBK-licensed and non-licensed credit providers must be a member of the oversight institution and subscribe to its membership rules;
i) The oversight institution must have the authority to enforce data integrity and other compliance issues in terms of legislation and/or its own code of conduct;
j) Where sanctions potentially involve a CBK-licensed credit provider, the institution will, first, notify the CBK before implementing such sanction(s);
k) The oversight institution should receive all pertinent data load reports from all licensed CRBs on a monthly basis to effectively supervise and monitor compliance amongst its membership;
l) The management of the DST, including updates, should rest with the oversight institution;
m) The oversight institution will also be responsible for publishing regular reports reflecting key trends within the CIS mechanism including, but not limited to, the accuracy of data submissions, the submission of full portfolio's against audited returns, the consistency of data displayed in clearance certificates across all licensed CRBs, the volumes of data submissions and credit enquiries, general level of compliance, number of credit-active borrowers, number

of accounts per borrower, trends in non-performing loans, the number of disputes resolved by CRBs vs ADRs etc;

n) The oversight institution should have the ability, from time to time, to recommend regulatory and other changes to government to keep pace with developments within the CIS mechanism; and
o) The financial sustainability of the oversight institution should be legislated.

4.2.1 Rationale

An appropriate oversight / self-regulatory organization is recommended to coordinate credit information issues

a) Why is an oversight institution is required and why should it be legislated?

CIS Kenya, in its differing institutional guises over the past nine years, was established as a self-regulatory organisation within the CIS mechanism. That it has failed to receive an express mandate to carry out this function, is a distinct peculiarity in the evolution of Kenya's CIS mechanism. This, against the background of increased diversity and number of institutions participating in the mechanism. The lack of an oversight institution has seen a number of inefficiencies develop over time, with no apparent end in sight. For example, after World Bank involvement in the most recent revision, who will manage the next DST update? And if a further DST update needs to consider the fullest spectrum of non-banks, is CBK equipped to manage such an undertaking? As much as 30% of a category of 3rd party data is being rejected by a CRB. Who is assuming responsibility for this and other operational issues? In terms of the CIS mechanism, why should banks be under supervision, and non-banks/3rd parties/subscribers, not? If CBK has no mandate to carry out supervisory activities on non-banks/3rd parties/trade organisations, who then should fulfil this role? Simultaneously, CRBs cannot effectively supervise credit providers for various reasons: (1) CRBs are not in the business of "oversight", it is not their core competency, (2) there will be unequal supervision standards imposed amongst competing CRBs, and (3) there is a natural disinclination to "bite the hand that feeds you" meaning CRBs, who are commercial entities, will be hard-pressed to invoke punitive sanctions against a credit provider from whom it also earns revenue. A credit information market has no prudential requirement. The collapse of the entire CIS mechanism will pose, at best, an inconvenience but cannot cause systemic risk in a financial system. Yet oversight remains exclusively under the purview of a central bank with limited reach / jurisdiction. Thus, the existence of an oversight institution covering all credit market sectors should be considered.

The draft CRB Regulations, 2019 introduces a Code of Conduct. This is appreciated; however, it does not carry the same weight as legislation. All credit providers should belong to the oversight institution with its primary constituency association (eg. AMFI, KBA, KUSCCO, DLAK, LAK etc) responsible for ensuring that requisite membership fees are collected to ensure the financial sustainability of the institution.

Finally, as within any emerging market, there should be little choice allowed for credit providers if the principal imperative is to create a sustainable and dynamic CIS mechanism. Stakeholders are usually unaware of long-term benefits of policies which are relatively new to a market – akin to the old adage that, simply, "they don't know what they don't know".

Only once policies have been introduced, via legislation, and implemented over a considered period of time, does a demonstration effect take hold. Thereafter, as a market enters a "mature" period, does policy objectives become realised.

4.3 Competitive and Non-Competitive Data

All Credit Reference Bureaus must receive complete credit portfolio data. There are different categories of private sector and public sector data which can be hosted by CRBs. A distinction is also made between "credit data" (ie. direct lending to a borrower) and "financial obligation" data (ie. that which is not direct lending to a borrower, yet represents a financial obligation). Policy is thus guided by the following principles:

a) All consumer and SME credit data shall be non-competitive[9] ie. all licensed CRBs shall receive the same data submissions from all credit providers;
b) All utility data shall be non-competitive;
c) No CRB shall be entitled to exclusivity of publicly available data. However, there is no mandatory requirement for public bodies to submit such data. Each CRB should make its own arrangements to collect such data; and
d) All "financial obligation data" (except utilities) and any other data (eg. transactional data, vehicle registration data, property rental data, tertiary education data etc) may be collected by CRBs on a competitive basis.

4.3.1 Rationale

Sustainable credit markets which encourages responsible lending demands information symmetries. All credit agreement data should be shared with all licensed CRBs so that no single credit provider is disadvantaged by using one CRB over the other. If this does not happen, an inaccurate picture of borrower of debt obligations will permeate throughout the credit landscape. This follows through to an inconsistent picture of information gained on clearance certificates from any of the licensed bureaus.

CRBs should compete on product and price ie. the way they manipulate data to suit the needs of their clients at competitive pricing should be the differential between competing CRBs. The argument is further bolstered when global practice indicates that CRBs do not earn revenue by credit providers *submitting* data; rather revenue is earned by *viewing* data (ie. making credit enquiries). Finally, the regulatory framework disparity in the treatment of banks and non-bank, again, is evident in Reg 50 (6) which requires all CBK-licensed institutions to submit all credit data to all CRBs; yet there is no such requirement for any other supplier of credit data. By contrast, the current practice whereby client data is introduced by a CRB is the exclusive domain of that CRB, does not help information symmetry. The introduction of para 24 (7) and para 58 (6) of the draft CRB Regulations, 2019 will go a long way in reversing these weaknesses. Apart from credit agreement data and utility data, CRBs may obtain any other data at their own initiative. CRBs should also not be able to enter any exclusivity contract with state-owned entities.

[9] For the sake of clarity, "competitive data" means any data collected by a CRB remains the property of that particular CRB with no onus to share it amongst anyone else.

4.4 Data Reciprocity

Data sharing should be fair and equitable. Not all credit providers will have the fullest data available to share, nor should they expect to receive the fullest data in return. Policy is thus guided by the following principles:

a) Every participant in the CIS mechanism should operate on the basis of "you get what you submit" ie. credit providers who submit full file information should receive the same information when making a credit enquiry;
b) Equally, any supplier of negative data should only receive the same in return;
c) There will be categories of business' (eg. trade credit) who are not in the business of formal credit, does not have a credit portfolio, but wish to check the creditworthiness of prospective clients on an "ad-hoc" basis. The amount and type information to be displayed in this instance should be decided by membership of the oversight institution.

4.4.1 Rationale

Currently, the playing field is not level, with some credit providers and/or trade organisations either submitting minimal (mostly negative) data or no data, yet receiving full credit reports in return. By contrast, CBK-licensed banks and MFDBs are expected to maintain resources, adhere to the DST etc if it wants to view a full credit report. Equitable arrangements should thus be thoroughly debated and agreed upon by members of the oversight institution and reflected in a Code of Conduct.

4.5 Data Standardisation

The template for data submission should be universal for all categories of credit providers. Even though different categories of credit providers will not all have the fullest data required, there should be sufficient commonality to implement this policy. Furthermore, once this policy is established, all credit providers will be aware of requirements within its specific user group, and plan accordingly. Policy is thus guided by the following principles:

a) There should only be one Data Standardisation Template (DST) for the entire CIS mechanism;
b) Recognising that there are differences / challenges in populating all mandatory data fields from a range of credit providers, the DST should nevertheless accommodate such variations eg. Format A will apply to all CBK-licensed institutions; Format B will apply to ….. etc;
c) Data formats will be the subject of negotiation / consultation with different user groups. The oversight institution should play a facilitation role in this process and provide final approval to these formats; and
d) Recognising that the CBK has no jurisdiction on non-licensed user groups, management of the DST should be managed by the oversight institution

4.5.1 Rationale

Different DSTs for different categories of credit providers unnecessarily complicates data sharing arrangements in the long-term especially if full data integration is at the heart of a CIS policy. The current scenario is another example where there are data submission rules, via the Data Standardisation Template (DST), for CBK-licensed institutions and a vacuum for everyone else. Thus, the current DST should be the only one harmonising all data issues from a variety of credit providers. Draft CRB Regulations, 2019 para. 60 is vague in this aspect.

4.6 Consent

Consent should not be compulsory. Consumer consent for credit providers to submit their credit information data to a CRB is an integral part of an overall consumer protection policy. However, there is a trade-off to consider between consumer protection policies and the absence of a borrower's credit information which could negatively impact a credit market. Policy is thus guided by the following principles:

a) Although personal consent is always recommended; the lack of it should not prevent data submission;
b) The Data Protection Act para. 30 (b) infers that no specific consent is required on any individual who enters into a contract (which in financial services is interpreted as entering into a credit agreement); and
c) There is thus no compelling reason why the submission of credit data, not currently being submitted, should be further delayed.

4.6.1 Rationale

There's an economic cost of delaying the submission of credit information to a CRB. Traditionally, and following general international consumer protection guidelines, specific consent from a borrower is required for his or her information to be submitted to a CRB. The downside to this guideline is that a borrower's debt exposure may never reach a CRB if, for whatever reason, consent is not obtained. There is thus, a counter-view, in that the moment a borrower enters into a credit agreement, he or she summarily loses the right to decide on whether consent *should* be given. Information symmetry is at the heart of a sustainable credit market where all credit information should be shared. Significant pockets of information may never reach a centralised portal of credit obligations (vis-à-vis CRBs) if the borrower consent principle is strictly enforced. Furthermore, credit decision-making / origination procedures will be based on incomplete information leading to potential bad debt and increasing non-performing loans. Thus, the principle of borrower consent should be carefully considered against the economic cost of not sharing information. This appears to be at the heart of para 30(b) of the Data Protection Act, 2018 which suggests that consent is not required should an individual enter into a contract. Para 22 and Para 24 (6) of the draft CRB Regulations, 2019 should include this aspect.

CHAPTER 5: ACCOUNTABILITY AND OVERSIGHT

5.1 The need for policy coordination

The National Treasury should assume responsibility with overall oversight of the CIS mechanism. The current scenario of viewing the CIS mechanism along "licensed/bank" and "unlicensed/3rd party" lines has a created a distorted regulatory regime. The CBK is limited by its jurisdiction, thus a different paradigm for oversight is recommended**.**

5.2 Enhancing compliance and enforcement

Legislation should be enacted that seeks to promulgate the establishment of an Oversight Institution (OI). This legislation should also give due consideration to other Policy recommendations reflected in Chapter 4. Ultimately it is recommended that the SRO monitors all CIS compliance matters as a "first layer". The entire CIS mechanism is rooted in non-prudential criteria. A market conduct supervisory authority would thus have been the preferred institution to act as a "final layer" on all compliance and enforcement issues related to credit providers and CRBs. In its place, the default "final layer" would be the CBK. However, this should be regarded as a sub-optimal solution in view of the CBKs limited jurisdiction.

5.3 Promoting transparency and credit market trends

Very little information on the CIS mechanism is published in the public domain. Furthermore, CRB aggregate credit data contains a wealth of information which, if published, would add value to a) the mechanism in general and b) understanding credit market trends, in particular. Paragraph 4.2 (m) highlights some of these indicators. The "updated/recency" nature of CRB data also makes it an invaluable source to gain insight into most recent credit market trends compared to traditional statutory returns which have, at least, a 12-month time lag before publication. The OI is thus expected to be adequately resourced that will enable it to publish key statistics/credit market trends on a regular basis.

CHAPTER 6: POLICY IMPLEMENTATION

6.1 Framework for Monitoring and Evaluation

The Policy will be implemented through the National Treasury on the following basis:

- ***Steering Committee:*** Chaired by the Cabinet Secretary/National Treasury and Planning, this Committee will: i) strategically lead and oversee implementation of the CIS Policy and Legal Framework; and, ii) make policy decisions regarding emergent issues impacting CIS issues. The Steering Committee will meet at least twice a year.
- ***Technical Committee:*** Chaired by the Principal Secretary/National Treasury, this Committee will: i) review and make recommendations on issues pertaining to the CIS mechanism; and ii) oversee policy and legal matters; iii) oversee any procurement and engagement of Technical Assistance. The Technical Committee will meet at least four times a year.

The Policy's broader impact on the overall economy will be monitored within the context of the National Integrated Monitoring and Evaluation System (NIMES).

6.2 Format for progress reports

Annual M&E reports on implementation of the Policy will be prepared by the National Treasury. The National Treasury will also commission a midterm evaluation, to be conducted by an independent agency to measure outcomes and impacts of the Policy and inform its review. All M&E studies will be undertaken jointly with relevant stakeholders.

6.3 Feedback mechanisms and stakeholder consultation

Every two years, the National Treasury will hold CIS stakeholder engagement. The purpose of this engagement is to monitor progress in implementation of the Policy and receive feedback from stakeholders.

6.4 Review timelines

The Policy will be operational for a period of ten years and will be subjected to a midterm review after five years.

Issues to consider when amending CRB Regulations, 2013

Ref	Issue	Implication
Definition	"Bureau" means a credit reference bureau licensed under these Regulations to prepare or provide credit reports to credit information recipients based on data maintained by the Bureau and to carry out such other activities as are authorised under these Regulations	This is a narrow definition. There's a potential gap of what is a CRB or not a CRB. Regulations imply that only conventional CRBs need to obtain a license. Ideally there should be an "all-inclusive" provision. In other words, something along the lines of "…..*if you in the business of storing and maintaining individual and/or non-individual credit information and/or customer information and generating reports for subscribers who require such reports to assess risk or any other matter, then you will be deemed to be operating as a credit bureau in terms of these Regulations and should apply for a license …*" There may well be institutions that operate already as qausi-credit bureaus but are "not in the net" as the emphasis only falls on traditional CRBs. A consumer does not enjoy protection on their data being held potentially by other institutions is thus not covered in regulations. Also, the Data Protection Act (2018) makes mention of a "data processor" means a natural or legal person, public authority, agency or other body which processes personal data
18 (3),	An institution other than banks **must** (not "may") in addition to exchanging the information required …..exchange positive information with Bureaus with prior written consent of the customers concerned	Two issues: • Failure from all participants in the CIS mechanism to share full file information undermines the efficacy of the CIS mechanism. • The data reciprocity principle is undermined ie. currently a 3rd party submitting negative data only is able to see positive and negative data from all licensed CBK institutions
18 (5)	Data Standardisation….. " customer information …using…standard format…..**issued by CBK**"	This relates to the Data Standardisation Template (DST) which management requires to be reviewed. There is a vacuum on the treatment of non-bank/3rd party data. The current practice is lopsided in favour of CBK-licensed institutions. There should be broader consensus from a range of

		credit providers, given the number of non-banks in the CIS mechanism far out-numbering the number of CBK-licensed institutions.
23 (2)	Market expansion….. "govt agency, public entities, other **credit info providers may enter into contracts**"	Clear and unambiguous provision that non-regulated entities may participate in the CIS mechanism
23 (3)	A third party credit information provider shall not furnish any credit information of a customer to a Bureau or its agent except with the prior written **consent** of the customer	Are explicit borrower consent's now a thing of the past given clause 30 (b) of the Data Protection Act? **30**. *A data controller or data processor shall not process personal data, unless –* *(b) the processing is necessary –* *(i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract*;
23 (4)	"The **Central Bank** may…..**prohibit** a Bureau from receiving credit info"	The CBK acts as gatekeeper as to which information is allowed into the mechanism. Is this feasible when it has no jurisdiction outside licensed institutions?
45(3)	Jurisdiction. "**CBK may issue directions, guidelines, rules** …for better carrying out supervisory function"	CBK does not appear to have issued any directive how 3rd party/non-bank data will be managed. An oversight vacuum thus exists.
47(2)	Data ownership. "**CBK** shall be the **owner** of all information and data held by Bureaus…"	This could be an area of contention if credit providers wish to utilize credit information for the development of unique scorecards and other decision making tools. Usually a central bank is perceived to be the owner of data *only* in the event of credit bureau failure.
50 (6)	An institution shall ensure that the customer **information** furnished pursuant to this regulation **is provided to all licensed Bureaus** or to a centralised point or location from which the information can be accessed by all Bureaus.	Only CBK-licensed institutions are required to submit data to all three bureaus; no such requirement for other 3rd parties/non-banks coming on board thus creating information silo's.

Comments related to Draft CRB Regulations, 2019

Par.	Paragraph	Comment
24 (4)	A Bureau shall before engaging a third party credit information provider carry out due diligence and suitability assessment of the third party credit information provider and shall establish- (a) the nature and character of its ownership and management; (b) the nature of its business and whether it is subject to any legal or regulatory framework; (c) the soundness of its information management system in relation to generation, storage and transmission of customer information; (d) the accuracy and integrity of its records; (e) the credibility of credit information of every person it deals with;	Recommend that this be done by an oversight institution for the purposes of "neutrality." For example, 24 (4)(d) could include test files of the 3rd party applicant to each licensed CRB, for a period of, say, 3 months before final approval. If each CRB performs its own due diligence, it would appear to be a waste of resources as this paragraph appears counter-intuitive to paragraph's 24 (7) and 56 (6).
24 (6)	A third party credit information provider shall not furnish any credit information of a customer to a Bureau or its agent except with the prior written consent of the customer	Consent is always preferable, but it should not be insisted upon where a credit agreement exists and records fails to be submitted to a CRB. Data Protection Act paragraph 30 (b) has reference. Recommend: Reword accordingly. Not to be confused where consent is required for 3rd parties. Para 31 is thus entirely appropriate
24 (7)	Where a third party credit information provider is approved by the Central Bank to share credit information of its customers with a Bureau, the credit information shall be shared with all licensed Bureaus and may be submitted to a central hub where a central hub is in use.	Paragraph 56 (6) appear to be saying the same thing. Perhaps one of the two be deleted?
24 (9)	A third party credit information provider shall be subject to such industry Code of Conduct as may be approved by the Central Bank.	A Code of Conduct to be drawn up by whom? Who is the focal point, "neutral" in all data submission matters between data suppliers and CRBs? This paragraph does not go far enough in identifying the potential existence of an oversight institution

34	Data retention periods	Why only on non-performing loans. Credit enquiries? Payment profile data? Under this provision, CRB 1 may hold a category of data for 1 year, CRB 2 the same data for 2 years etc. CRBs should provide more input on this based on how this can potentially influence credit scores etc. Put another way, perhaps a data retention table should be proposed on various categories of data and their retention period so that it removes potential inconsistencies between CRBs
34 (2)	Any other information not covered under sub-regulation (1) may be retained for a period not exceeding five years from the date of submission of the information or receipt of the information by a Bureau.	
34 (3), (4), (5)	(3) A Bureau shall implement procedures that ensure that the information registered in its database is regularly updated. (4) An institution or a third party credit information provider that furnishes customer information to a Bureau shall, on a daily basis update customer information whenever an update is necessary. (5) A Bureau shall update its database as and when information is provided by the institutions responsible for the timely updating of the information submitted to the Bureau and the information shall be updated on an on-going basis, or as often as necessary, in accordance with the nature of the information and in any event within two days from date of receipt of new information.	More regular updating – timely, given new products especially in the digital lending space.
39. (2)	An institution shall consider a customer's credit score in appraising a customer's credit application and in pricing a credit facility to a customer.	Why only institution's? Why not 3rd parties as well?. If this paragraph is interpreted as all credit providers must do a credit enquiry at a CRB as part of the loan application process, then this is probably the most significant amendment to be introduced. Having said that, appropriate terminology of "responsible lending," "affordability assessment" should be included alongside "credit scores"
43. (1)	A Bureau shall at all times maintain sufficient capital to enable it run its operations efficiently and soundly.	How much is sufficient? CRBs are expected to be profitable to maintain operations, invest in latest technologies, prevent security breaches etc; however, this provision appears to be an onerous addition as CRBs are not, by their nature, lending organisations running the risk of

		being capital depleted. Recommend delete this provision.
56 (6)	An institution and a third party credit information provider shall ensure that the customer information furnished pursuant to this regulation is provided to all licensed Bureaus or to a centralized point or location from which the information can be accessed by all Bureaus	Recommend that this be more explicit in that …. "…shall ensure that positive and negative customer information….."
56 (10)	An institution which fails or neglects to submit to the Bureaus credit information of a person whose credit information ought to be submitted to the Bureaus shall be liable to such penalty not exceeding two million shillings or to such administrative action as the Central Bank may consider appropriate	An institution and 3rd party… Would have preferred explicit wording that those credit providers who do not submit full portfolio's will be penalised! Who will monitor this? And how will it be monitored? Must institutions issue external auditor letters confirming portfolio volumes, both as an aggregate and within each product segment?
60	An institution or third party credit information provider shall submit to a Bureau credit information using such format or template as may be prescribed or approved by the Central Bank.	Multiple DSTs are to be avoided. Recommend all institutions and 3rd party work from the same DST
64	Every Bureau which has entered into a credit information sharing arrangement with a third party credit information provider shall publish in a prominent and conspicuous place within its business premises and on its website and shall keep updated, a list of all third party credit information providers that have been approved by the Central Bank to submit credit information to the Bureau.	Not sure why only 3rd parties…. shouldn't it include banks, MFDBs etc?
65	Bureaus and institutions either alone or in partnership with each other or others shall conduct public education programmes on credit information sharing, benefits, risks to mitigate, availability of services, how to access the services and any other useful or material information	An addition to this, possibly the submission of an annual report by bureaus and institutions + 3rd parties on what they have achieved in the past 12 months regarding public education

	which would be beneficial to the public.	

Appendix III

Credit Information Regulation in South Africa: Roles of the Regulator and the SRO

The South African Credit Risk Reporting Association (SACRRA) occupies the SRO credit information role in South Africa. It attends to all operational issues related to data quality and data submission across all industry sectors participating in CI sharing. This includes the management of the data standardization template. It has a Code of Conduct that establishes minimum standards for all data providers. These standards are not only in harmony with credit information regulations, but goes beyond that. All five "full-file" CRBs receive over 80 million credit records each month through a data hub platform. Any new data provider that wants to participate in the CIS mechanism, goes through a vetting process through SACRRA to ensure that data quality is of an acceptable and consistent standard. On a monthly basis, SACRRA receives various data load reports from CRBs to ensure that data quality standards are adhered to. If required, the Code of Conduct makes allowance for implementing sanctions against any member that does not adhere to the Code.

The National Credit Regulator (NCR) acknowledges the role of SACRRA. Consequently, it rarely intervenes in any CI operational matters. The NCR focusses itself on the licensing of CRBs and its ongoing supervision through quarterly and annual compliance reports, on-site inspections etc.

An important component of these arrangements is that the NCR has not abdicated any of its regulatory responsibilities. It thus remains the regulator of "last resort" of data quality issues – it has, however, acknowledged that SACRRA will perform a first level of compliance checking on data providers. To date, there has been no need for regulatory intervention. By implication, therefore, SACRRA appears to be fulfilling an important role. The NCR has also seen the need to engage more formally with SACRRA. This includes entering into a "Memorandum of Understanding" with SACRRA and prescribing fee categories for its members. Thus, it is worth noting that, although the SRO started out as a voluntary organization, after 30 years of operation, SACRRAs position as a SRO is being cemented through legislation [Reg 19 (13) of the National Credit Act (34 of 2005) of South Africa, with accompanying Guidelines].