



THE SACCO SOCIETIES REGULATORY AUTHORITY (SASRA)

Our ref: **SASRA/800/2/2019**

11th June, 2019

**The Chairpersons,
Board of Directors
Deposit-Taking SACCO Societies**

Dear Sirs/Madam,

RE: GENERAL ADVISORY NOTE ON NON-REMITTED DEDUCTIONS DUE TO SACCOs FROM VARIOUS EMPLOYER-INSTITUTIONS

A. BACKGROUND

Many deposit-taking SACCOs are noted to be owed colossal amounts of money in the form of non-remitted deductions due from various employer-institutions. These non-remitted deductions are in the form of either loan recovery deductions on the one hand; or deductions due towards the non-withdraw-able deposits accounts (popularly known as the BOSA deductions). The statistics collated by the Authority showed that a total sum of Kshs 2.82 Billion was owed to various SACCOs as at September, 2018, out of which 79% were deductions meant for loan repayments and 21% were meant for the *non-withdraw-able deposits* contributions.

The perennial failure by various employer-institutions to remit deductions made from employee's emoluments has had serious adverse effects on the financial soundness; loan performance and quality; financial sustainability and prudential compliance of various SACCOs including -

- a) Failure by SACCOs to meet and maintain the prescribed prudential standards especially the liquidity ratio, and capital adequacy ratios;
- b) Recurrent overstating of the total assets portfolio of SACCOs, particularly where the non-remitted deductions are recorded as receivables but which are eventually never recovered when the employer-institutions ultimately collapse;

- c) Frequent liquidity constraints to SACCOs, including failure to meet the demands for loans from qualifying members, as well as demands for refunds which in return result into discontentment and apathy towards the SACCO by the members;
- d) Incessant complaints from members arising from the SACCOs' inability to meet members' credit and other financial needs, which in turn reduces the confidence and trust bestowed upon SACCOs by members or potential members;
- e) Defaulted loans and submission of members' names for listing with Credit Reference Bureaus (CRBs), without the member having prior information of the failure by the employer-institutions to remit the deductions;
- f) Denial of credit facilities to members on the basis of insufficient deposits as collateral, despite the fact that the deposit was actually deducted by the employer-institutions from the employee's emoluments but not remitted to the SACCO (with the member having no knowledge).

The Authority takes cognizance of the multifaceted nature of the root causes of problem of non-remittances deductions due to SACCOs. Consequently, the long lasting solutions to the problem must also be multifaceted, and includes collaboration between SACCOs, the employer-institutions and other government agencies.

B. ADVISORY MEASURES TO REDUCE THE INCIDENCES OF NON-REMITTANCES

Whereas, the Authority is putting in place a raft of legal and institutional proposals aimed at protecting SACCOs from employers who make deductions from emoluments of SACCO members but fail to remit the same; the SACCOs on their part must take the following administrative measures to mitigate and/or address the recurrent of the problem.

1. Deepening the Usage FOSA for Receipt of Deductions

The use of the withdraw-able deposits savings accounts (FOSA) by members of SACCOs as *the salary or other income pay-points* is one of the most effective and efficient ways of ensuring that SACCOs have a first charge on the deductions due to it from its members' emoluments. This is particularly necessary in cases where the deductions are meant to repay credit or loan facilities which had been issued to the members.

This mode of avoiding non-remittances by employers has been successfully used by the banking institutions and a number of Saccos, which ensures that the salary or other incomes due from employees whom credit facilities has been advanced are channeled

through accounts held in the bank or the sacco, so as to ensure that any deductions due are made as a first charge, and only the balance is released to the account holder.

In this regard, SACCOs particularly those whose members are drawn from employer institutions with the perennial tendencies to default in remittances, are therefore directed to take advantage of their FOSA savings accounts and -

- a) take proactive measures to ensure that their membership are encouraged to use their FOSA savings accounts, for receipt of salary or other income, particularly where such a member has been advanced a loan or other credit facility; and
- b) obtain instructions from their members allowing direct deductions in respect of any sum due to the SACCO from the member from the members' salary or other income, particularly those whom loans and other credit facilities have been granted; and
- c) ensure that the members do not change pay-points in respect of the processing of their salaries and other income during the term of any credit or loan facility issued to the member. This is generally done by requiring the members to sign irrevocable instructions to the employer-institution that any change of pay-point can only be effected with the written consent of the Sacco.

2. Prompt Notification to Members in Case of Non-Remittance

The Authority noted a rise in incidences of member complaints as well as legal proceedings arising from members of SACCOs, in respect of whom deductions were made by the employers, but which deductions were never remitted. These complaints and proceedings are principally premised on the lack of information or notification by the members that even though deductions were made from their emoluments either to repay a loan or as BOSA deposits, such deductions were never remitted to the SACCO. Some SACCOs have even proceeded to report these members to Credit Reference Bureaus (CRBs), without these members having prior information or knowledge of the remittance default by their employers; thereby resulting into unnecessary legal proceedings

It should be appreciated that in most cases, members of SACCOs may not ordinarily have opportunity to know whether the deductions made have been remitted or not; but the SACCO as the expected recipient does have this opportunity. Consequently and in order to reduce the number of complaints or exposures to risks of legal proceedings which normally erodes the public confidence in the SACCO system, the Authority advises that-

- a) SACCOs should always take measures to promptly notify their members in writing of any default to submit the deductions made from the member's emoluments by the member's employer; and
- b) SACCOs should always notify their members in writing of any intention to submit the member's details to any CRBs, as a result of any default in repayment of loans arising from non-remitted deductions due from the member's employer.

3. Formalization of all Services Provided by Employers Institutions

It was noted that some SACCOs are currently operating on the informal benevolence of some of the employer institutions from which they derive or they used to derive the bulk of their membership. Some of the most common informal benevolence services offered by employer institutions include provision of office space and accommodation *without the existence of any enforceable contractual agreement*; the sharing of ICT and MIS infrastructure of the employer institution such as servers, service providers etc. among others.

Whereas, it is normal for SACCOs to receive benevolence services in the form of donations etc; it was noted that some of the employer institutions with the perennial tendency to default in remittances, have been using the threat to withdraw these benevolence services from the SACCO whenever a demand for payment or non-remitted deductions is made. Knowing that the affected SACCOs will be incapable of operating if these services are withdrawn, these employer institutions normally use the threat of withdrawal of these services to withhold the deductions or delay the remittance of the deductions as they deem fit to the detriment of the SACCOs.

SACCOs must thus take note that such over-dependence on the informal benevolence of third party entities has the effect threatening their financial sustainability and perpetuity as financial institutions. Indeed as deposit-taking entities, the perpetual financial sustainability of SACCOs cannot depend on the informal benevolence of third parties such as the employer-institutions, particularly with regard to key infrastructural requirements such as office space, ICT, MIS among others. Consequently, the Authority advises all SACCOs to –

- a) Ensure that all critical services provided by an employer institution such as office space, ICT and MIS among others, are backed by legally enforceable contractual instruments between the parties, and which protects the interests of the SACCOs and which cannot be sabotaged by a third party.

- b) Take appropriate measures and steps to build the SACCOs' capacity to independently and autonomously provide the core critical and vital services necessary for the SACCO to provide primary services to its members, without the fear of external sabotage by a third party, including employer-institutions.
- c) Ensure that the provision of any non-critical or non-vital services offered to the SACCO at the discretion and benevolence of an employer-institution, are done at an arms-length and that any withdrawal of the service or termination thereof at the discretion of the employer-institution may not negatively impact or effect the SACCOs' capacity to render primary services to the members.

4. Maintenance of Full and Accurate Documentations Relating to Remittances

The liability of an employer-institution to make deductions from the emoluments of a member of a SACCO is based on the written instructions from the member (whose is an employee in that institution). Many SACCOs have notably not been keeping any of these instructions or any commitment by the employer institutions to effect and remit deductions. Indeed the Authority noted that many legal proceedings which have been commenced against employer-institutions have been lost due to lack of adequate documentary evidence to support the SACCOs' claims, with employers denying the existence of any instructions to make deductions or having ever made any deductions in the first place.

To address the challenges associated with denial of liability by employers whenever an enforcement action is commenced, the Authority advises SACCOs to always -

- a) maintain a full, accurate and up to date record of instructions issued by their members to various institutions to make deductions. In this regard *Form VIA* prescribed in *Rule 31 of the Cooperative Society Rules, 2004* should always be maintained in the members' files as evidence that the SACCO member did in fact authorize the deductions by the Employer.
- b) ensure that an accurate and up to date record containing at the minimum the following information and records -
 - (i) all the expected deductions for any period of time;
 - (ii) any expected deductions which remain unremitted after their due dates;
 - (iii) the particulars and details of the SACCO members in respect of whom such non-remitted deductions relate;
 - (iv) the particulars and details of the employer from whom the deductions are expected or outstanding;

- (v) any standing agreement or instructions to the employer-institution among others.

In this regard the monthly remittance returns in *Form VIB* as prescribed in *Rule 31(b) of the Cooperative Society Rules, 2004* should always be prepared and furnished to the Commissioner for Cooperative Development, *with a copy to the Authority.*

5. Strengthening the Legal Enforcement Framework for Defaulted Remittances

It was noted that the existing legal framework for taking action against employer-institutions that default to promptly remit deductions dues to SACCOs is not strong enough to deter defaulters. The legal recovery proceedings against defaulting employer-institutions were also noted to be complex and thus a discouragement to many SACCOs to pursue.

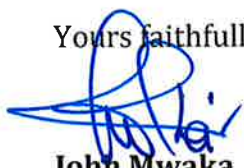
Consequently, the Authority shall be engaging the appropriate stakeholders with a view to making appropriate proposals aimed at amending the existing legal framework which will greatly deter perennial defaulters, as well as ease the procedures for recovering any defaulted remittances. The draft proposals shall soon be shared with SACCOs as the primary stakeholders, as well as other actors within the sector for comments accordingly.

C. CONCLUSION

It is the Authority's expectation that with a full implementation and observation of the direction contained in this guidance note shall greatly assist the SACCOs in reducing incidences of perennial non-remittance of deductions by various employers. The observance of this guidance note shall reduce the legal bottlenecks often faced in legal proceedings against defaulting employers, thereby making recovery of defaulted sums less protracted as is currently the case. And, with a strengthened legal enforcement framework as a long term solution, it is hoped that incidences of non-remitted deductions shall be reduced to the bare minimum in the SACCO sector.

Thank you for your kind cooperation and any queries in this regard may be addressed to the Authority vide email policy@sasra.go.ke or in writing to the undersigned.

Yours faithfully,



John Mwaka
Chief Executive Officer

Copy to:

1. **The Commissioner for Co-operative Development,**
State Department of Cooperatives
Ministry of Trade, Industrialization and Co-operative,
P.O. Box 30547-00100,
Nairobi

2. **The Chief Executive Officers,**
All Deposit-Taking SACCO Societies in Kenya

3. **Managing Director,**
KUSCCO Ltd
P.O. Box 28403 - 00200,
Nairobi

