



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc. Appli. 54 of 2006

IN THE MATTER OF *EABS BANK LIMITED*

AND

IN THE MATTER OF THE COMPANIES ACT, CAP. 485 OF THE LAWS OF KENYA

AND

**IN THE MATTER OF AN APPLICATION FOR CONFIRMATION
OF A REDUCTION OF THE CAPITAL OF *EABS BANK LIMITED***

R U L I N G

This is a petition by EABS BANK LIMITED (hereinafter called the Petitioner) seeking an order that the reduction of its capital pursuant to a Special Resolution passed by the shareholders of the Petitioner on 2nd November, 2005 be approved and confirmed by the court as required by Article 60 of the Petitioner's Articles of Association. That article provides:-

“60. (The) Company may by Special Resolution and subject to confirmation by the courts reduce its share capital in any way.”

The Special Resolution of 2nd November, 2005 is said to have been passed in accordance with section 141 of the Companies Act, Cap. 486 at an extra-ordinary general meeting of the Petitioner. The Special Resolution is in the following terms:-

“ a) That subject to the sanction of the Court being obtained the share capital of the company be reduced from Kenya Shillings one billion six hundred and sixty-two million five hundred thousand (KShs.1,662,500,000/=) divided into eleven million (11,000,000) Original Ordinary shares of KShs.100/= each and eleven million two hundred and fifty thousand (11,250,000) A Ordinary Shares of KShs.50/= each to Kenya Shillings one billion one hundred and twelve million five hundred thousand (KShs.1,112,500,000) divided into eleven million (11,000,000) Original Ordinary shares of KShsh.50/= each and eleven million two hundred and fifty thousand (11,250,000) A Ordinary Shares of KShs.50/= each by canceling the paid up capital which has been lost or is unrepresented by available assets to the extent of KShs.50/= per share upon each of the eleven million (11,000,000) Original Ordinary shares which have been issued and are fully paid up and reducing the nominal amount of all such Original Ordinary shares from KShs.100/= to KShs.50/= each.

b) That the eleven million (11,000,000) Original Ordinary shares of KShs.50/= each be and are

hereby re-designated as Ordinary shares and the eleven million two hundred and fifty thousand (11,250,000) Ordinary shares be and are hereby designated as ordinary shares. All such shares henceforth rank pari passu and pro-rata in every respect so that the authorized and issued share capital is Kenya Shillings one billion one hundred and twelve million five hundred thousand (KShs.1,112,500,000) divided into twenty-two million two hundred and fifty thousand (22,250,000) Ordinary shares of KShs.50/= each.

c) That upon the reduction of the Company's capital specified in resolution (a) taking effect, the Capital of the Company be increased by Kenya Shillings Five hundred and fifty million to Kenya Shillings one billion six hundred and sixty-two million five hundred thousand (1,665,500,000) by the creation of eleven million (11,000,000) Ordinary shares of KShs.50/= each."

It has been stated that the reduction of capital undertaken by the Petitioner in this Special Resolution does not involve the diminution of liability in respect of unpaid capital or the payment to any share-holder of any paid-up share capital, and is solely intended to reflect the true asset position of the Petitioner, and no creditor of the Petitioner will be prejudiced in any manner by the said reduction of capital. I accept that.

By way of caution the court ordered on 14th January, 2006 that notice of filing of the petition and hearing thereof be given in one issue of the "**Daily Nation**" newspaper, and that any creditor wishing to make any representation to court in response to the said notice do enter appearance within seven (7) days of publication of the notice. That notice was duly advertised in the "**Daily Nation**" of Wednesday 1st February, 2006 (see the affidavit of advertisement of notice to creditors filed on 3rd February, 2006). When the petition was heard on 28th February, 2006 no creditor of the Petitioner had entered appearance. The court also ordered that the petition be served upon the Governor of the Central Bank of Kenya. That was duly done. At the hearing of the petition there was appearance for him. He had no objection to the petition.

I have considered the petition. I note that there is no objection raised by any creditor of the Petitioner. I also note that the Petitioner is a bank within the meaning of that term to be found in section 2 of the Banking Act, Cap. 488, and that the Governor of the Central Bank of Kenya has no objection to the petition. I am satisfied that the reduction of the Petitioner's share capital proposed in the above-quoted Special Resolution will be in the best interest of the Petitioner and its shareholders. I am also satisfied that the reduction of capital will not prejudice the interests of any creditor of the Petitioner. In the circumstances, I will grant the approval sought in the form of the Minute proposed to be registered, and which appears in paragraph 9 of the petition. There will be no order as to costs of the petition. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 10TH DAY OF MARCH, 2006.