

# Legal Framework

## Legal Framework for ADR

For a long time, Kenya has not had an integrated legal framework to govern the application of ADR in the resolution of disputes. The institutions undertaking ADR mechanism in Kenya, e.g. Chartered Institute of Arbitrators (Curb), Dispute Resolution Centre (DRC), Family Mediation Centre (FAMEC), FIDA Kenya have relied on international practice. The recent popularity of ADR can be largely attributed to development of legislations.

The Constitution of Kenya, 2010 enjoins courts and other adjudicating authorities to promote and encourage reconciliation, mediation, arbitration and other ADR in settlement of disputes- Art 159 (2)(c). This is supported under CRB Regulations, 2013, The Consumer Protection Act and Civil procedure 2010 as elaborated below:

## Credit Reference Bureau Regulations, 2013

This law outlines the interaction between the players in the CIS mechanism. In clause 35, the data subject is allowed to access and raise concern on any data that he/she feels is not right. In turn, the CRB and the institutions are obliged to investigate the information disputed and amend, retain or delete accordingly. The customer must be notified of the outcome of this process. Regulation 28 grants customers the right to refer a dispute to an ADR mechanism where they feel that their dispute has not been resolved to their satisfaction.

## ADR Models

### Negotiation

Two parties are involved in the process, the settlement reached is the point where both parties agree on. No third party is involved in the discussion.

### Mediation

A neutral third party (mediator) assists the parties to reach a resolution. The mediator does not make a decision, he only facilitates a discussion between the parties and the parties come up with their own resolution

### Conciliation

A neutral third party (conciliator) gives a non-binding proposal at the end of the process

### Arbitration

A third party (arbitrator) listens to both parties and makes a binding decision.

### Early Neutral Evaluation

The neutral evaluator provides an opinion at an early stage on the likely outcome of a case if it were to be litigated. The evaluator seeks to bring the parties together and assist them in finding an agreement by common consent. This provides more insight into the strengths and weaknesses of the dispute and helps the parties identify areas of agreement and focus the issues that remain for resolution. It can provide a 'reality check' for the parties and lead to more focused and less costly dispute resolution.

### **Adjudication**

Adjudication involves an independent third party with specialist knowledge (the adjudicator) reaching an independent decision on a dispute. Although similar to arbitration, adjudication processes can be simpler, and usually produce decisions that are binding on the company but not on the consumer. They can be more flexible and adjustable to meet specific commercial or other needs.

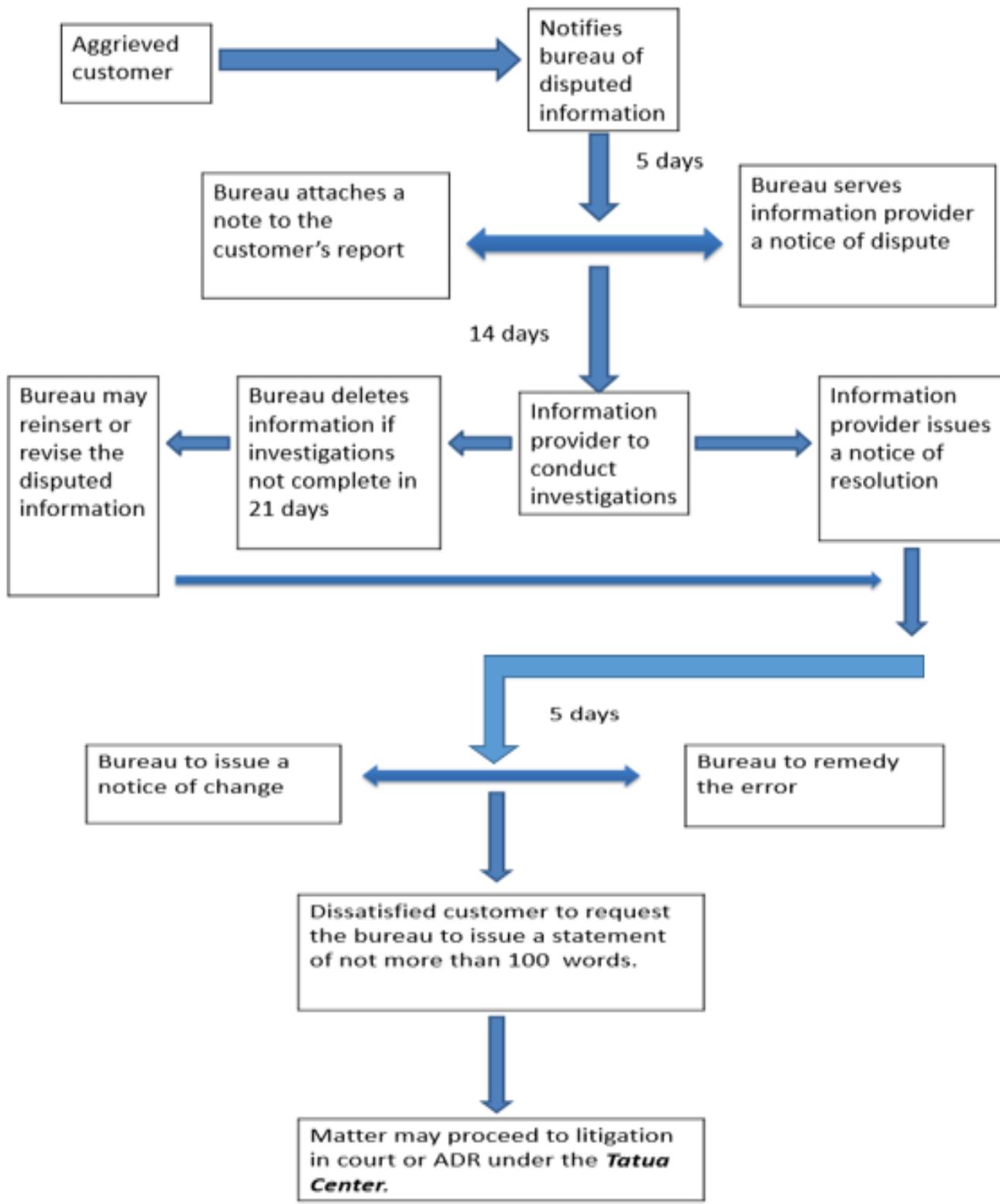
### **Expert determination**

This involves the use of an independent expert to resolve a dispute. There are several forms of expert determination: an independent expert can be appointed to reach a binding decision; an independent expert can be appointed to provide expert advice to an adjudicator who is charged with reaching a decision on the dispute; or the parties may each commission independent expert reports to provide to the adjudicator.

### **Dispute Resolution Process under CRB Regulations, 2013**

Regulation 28 (5) Provides consumers with a right to have their dispute referred to an ADR mechanism or a court of law in cases where they are not satisfied with the resolution process provided for in the law. It is against this background Tatua Center, an ADR Centre was established to handle CIS disputes.

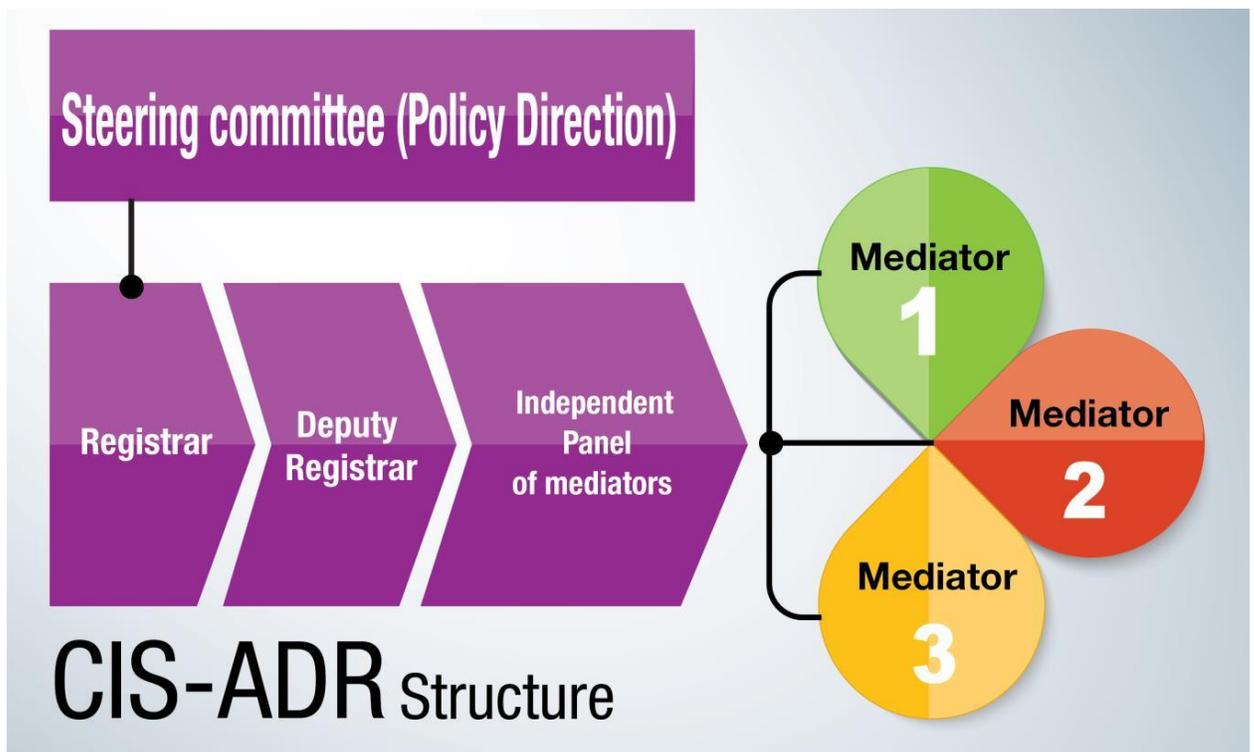
Table 1 below shows a summary of the dispute resolution process as provided for in the law;



#### 4. Dispute Resolution Through Tatua Center

On 28<sup>th</sup> November 2014, CIS-ADR Center (later christened as **TATUA Center**) was launched. It was set up as an independent office to resolve all CRB-related disputes between consumers, lenders and Credit Reference Bureaus (CRB) through Alternative Dispute Resolution (ADR) mechanisms.

Composition structure of the Center is as below;



#### ADR Process

These are the stages employed by Tatua Center in resolving disputes filed with it;

- a) **Verification** - This is an educative stage that guides the customer on dispute lodging process and if dispute not filed with the bureau yet, the Centre sends the customer to the bureaus.
- b) **Intervention** – The Center seeks clarification and more documents if need be and intervenes via calls.

- c) **Facilitation** – The Center writes formally to both parties, correspondence is shared across at this stage to try resolving the dispute. Meetings are also held.
- d) **Mediation** – A third party, independent mediator, takes over and mediation meeting is organized by the Center.

### **Mediation Guidelines**

The Center has its own mediation guidelines and Code of Conduct that are aligned to the Judiciary guidelines.

### **Why Tatua Center?**

- a) It offers a conducive environment for dispute resolution to both customer and financial institution.
- b) It is very efficient compared to court process.
- c) Operates within the law and mediation guidelines.
- d) It has qualified mediators who are also accredited by the Judiciary.
- e) It offers services at no cost to the customer.

### **Comments on the website**

1. When you open the website, you get to the page with TATUA CENTER, Alternative (CRB-Related) Dispute Resolution. Replace this with TATUA CENTER, Alternative Dispute Resolution(ADR) Center for CRB disputes
2. There is a repetition on OUR PROCESS-Dispute Resolution, intervention & facilitation then Dispute Resolution again-Replace with the ADR process above
3. **Our Work at Tatua Center is to exclusively deals with CRB-Related disputes. Aggrieved borrowers can access the services of [Tatua Center](#) free of charge.**

Remove the **s** on the word deal

### **Ann Kinuta-copy the messages below**

"I would highly recommend Tatua Center to anyone seeking a quick resolution to their CRB dispute. Tatua guarantees a fair, fast and honest process and keeps customers best interest and unique needs at the forefront. Should the situation arise, I would not hesitate to seek assistance from Tatua center again"

## Christopher Meli

"While working with Tatua center, I felt as though my situation was in adept and trustworthy hands, and it did not steer me wrong."

Our Work at Tatua Center is to exclusively deals with CRB-Related disputes. Aggrieved borrowers can access the services of Tatua Center free of charge. Please remove s on the word deal

Under contacts, alight KSMS well...looks haphazard a bit. Add Code-00618 Ruaraka

Our official font is Open Sans, 11. Make everything that font

### ABOUT US

Our *Work* at Tatua Center is to exclusively deals with CRB-Related disputes. Aggrieved borrowers can access the services of [Tatua Center](#) free of charge

Remove s in the word deal

### **Vision**

No Kenyan fears CRB Dispute

**Mission**-To facilitate resolution of CRB disputes in the most efficient and cost effective manner for the benefit of the lenders, borrowers, CRBs and CIS mechanism.

### Values

#### Excellence

We challenge ourselves to deliver the highest quality programs and services. We stay abreast of new ideas and developments and seek out changes and innovations that help us continuously raise the bar in everything we do.

## Collaboration

We value different views and ideas and believe that by working effectively together and with others we can reach our goals. We embrace the opportunity to explore mutual interests and new relationships. We welcome opportunities to leverage our resources through partnering.

## Leadership

We will promote new and important directions and opportunities for our profession and our organization, even though the path may be difficult. We recognize that it is only through trying new ideas and learning from our failures that we can grow and move forward.

## Uncompromising Ethics

We treat others with honesty, openness, fairness, and respect in every situation.

## Accountability

We steward our resources with diligence and care. We honour the commitments we make to others.

Tatua Center and Credit Information Sharing Association of Kenya (CIS Kenya) was set up to institutionalize the National Credit Information Sharing (CIS) Forum. The Forum was created in early 2012 in order to bring together both bank and non-bank credit providers to map the way forward towards implementing full file comprehensive CIS in Kenya. Prior to the formation of CIS Kenya, the implementation of CIS in Kenya was spearheaded by the Kenya Credit Information Sharing Initiative (KCISI), a partnership between Central Bank of Kenya (CBK) and Kenya Bankers Association (KBA).

CIS Kenya was launched on September 24th 2013 (then referred to as Association of Kenya Credit Providers (AKCP)), and its Governing Council was constituted soon thereafter at its first AGM in November 2013.

In Mid-2014, CIS Kenya embarked on a strategic planning exercise to define its five-year focus, from 2015-2019.

Atua-Delete this and replace with the below

Credit information sharing is a risk management tool designed to be one of the factors for consideration in making lending decisions. It is a mechanism through which banks and other financial institutions may justifiably divulge information about their customers without breaching the banker's duty of confidentiality, which is one of the key tenets of the banker customer relationship. The Banking Credit Reference Bureau Regulations 2013 were made to provide a framework for the governance of licensing, operation and supervision of Credit Reference Bureaus ("CRBs") by the Central Bank of Kenya. The credit information sharing (CIS) mechanism in Kenya is, however, threatened by the risk of litigation arising from information

shared by lending institutions, particularly in cases where adverse reports have led to decisions unfavourable to a customer seeking credit facilities, such as denial of the facilities sought.

Left unchecked, the result could be the reversal of gains made towards addressing the challenge of the non-performing loans portfolio that led to the collapse of financial institutions in the 1980s and 1990s in Kenya. In addition, the CIS mechanism is quite new in Kenya and many borrowers do not have full understanding of the CRB Regulations and processes provided in the law for dispute resolution. As an attempt to educate customers, minimize the threat of court action and reduce on cost of resolving CRB disputes by dissatisfied customers, Tatua Center was established in November 2004. To date, it has dealt with thousands of disputes, some of which were already filed in court.

[All the below should be removed and replaced with some of the text I provided above](#)

### **For the consumer of credit**

Consumer education on CIS rights, benefits and responsibilities • Improving access to affordable credit • Free and fair dispute resolution service • Knowledge generation for innovation and financial inclusion • Lobbying for reforms in consumer protection



### **For Credit Lenders**

- Provide guidelines for the data sharing process • Capacity building on credit risk management
- Amicable Dispute resolution through mediation Industry based self-regulation • Lobbying for reforms in CIS legal framework



#### **For the regulator**

- . Compliment monitoring for industry compliance • Strengthening self-regulation • Enhance credit market stability

[On the customer beneficiary video-remove "lendee"](#)

[Below the video, remove the S on the word deal and align font to the one advised. Revise email to be \[tatua@tatuacenter.co.ke\]\(mailto:tatua@tatuacenter.co.ke\)-align well and put full address as indicated above](#)

[FAQs-I don't want us to repeat what is in the video](#)

#### [Who is Tatua Center?](#)

Tatua center is an alternative dispute resolution center, that focuses on disputes that arises in the credit information sharing space (CRB related disputes)

Remove the s on the word arises

[Why was Tatua Center established?](#)

The CIS mechanism is still quite new in Kenya and is yet to be well understood by members of the public. Tatua center was established to educate customers on their rights under the mechanism as well as on how to enforce those rights in the most efficient and cost effective manner. Some of the information sent to the CRBs may not be accurate, Tatua Center helps the customers to have their information corrected and where a dispute arises, it helps in resolving that dispute outside the court process.

#### [What services does Tatua Center offer?](#)

- It teaches customers about their rights and obligations and the CIS mechanism
- It assists the customers to file their disputes with CRBs
- It facilitates meetings between borrowers and lenders
- It helps in mediating disputes that escalate beyond negotiation between lenders and borrowers at no cost
- It updates CRBs on outcome of disputes to ensure customer profiles are updated
- It facilitates reforms aimed at improving the CIS mechanism

#### [Who can access these services?](#)

Tatua Center is accessible to every credit consumer that has a problem with his/her credit report. There is no cost to the customer. It is also available to lenders who would want their CRB disputes resolved through ADR. Tatua Center has experts who have been in the CIS field since its inception in Kenya and thus fully understand both the law and practice. There is no better place to take your CRB disputes.

#### [Am I assured of a successful resolution at Tatua?](#)

94% of the cases that we have handled as at August 2019 have been successful where the borrower and the lender shake hands and they say 'thank you, let us do business in future"  
Please try us today.

*Our slogan in KARIBU TATUA! [Contact Us and let us help you resolve your CRB problems today.](#)*

Below this, align the address, remove the s on deals and have the correct email address and P.O Box and fonts

#### [LATEST NEWS](#)

[This is all about CIS Kenya...why why why? Replace with part of the write up provided above.](#)