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**THE CAPITAL MARKETS ACT**

CHAPTER 485A

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**CHAPTER 485A**

**CAPITAL MARKETS ACT**

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**CHAPTER 485A**

**CAPITAL MARKETS ACT**

*[Date of assent: 13th December, 1989.]*

*[Date of commencement: 15th December, 1989.]*

**An Act of Parliament to establish a Capital Markets Authority for the purpose of promoting, regulating and facilitating the development of an orderly, fair and efficient capital market in Kenya and for connected purposes**

[Act No. 17 of 1989, Act No. 14 of 1991, Act No. 10 of 1994, Act No. 3 of 2000, Act No. 2 of 2002, Act No. 15 of 2003, Act No. 4 of 2004, Act No. 10 of 2006, Act No. 9 of 2007, Act No. 8 of 2008, Act No. 8 of 2009, Act No. 10 of 2010, Act No. 37 of 2011, Act No. 4 of 2012, Act No. 35 of 2012, Act No. 57 of 2012, Act No. 48 of 2013, Act No. 38 of 2016, Act No. 15 of 2018, Act No. 23 of 2019, Act No. 24 of 2019, Act No. 8 of 2020, Act No. 8 of 2021, Act No. 22 of 2022, Act No. 10 of 2023, Act No. 19 of 2023.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Capital Markets Act.

[Act No. 3 of 2000, s. 3.]

**2. Interpretation**

In this Act, unless the context otherwise requires—

“agent” means any person appointed in writing by a licensed person, except in a derivatives market, to perform any of the functions ordinarily performed by the licensed person on behalf of that licensed person;

“authorised securities dealer” means a person authorized to deal in securities and operate in a specific market segment as may be prescribed by the Authority;

“Authority” means the Capital Markets Authority established by section 5;

“beneficial owner” means a natural person who, whether alone or with associates, is the ultimate owner or controller of a legal person or arrangement, or, if there is no legal person or arrangement, the person on whose behalf a transaction is being conducted;

“Board” means the Board of the Authority constituted under section 5;

“capital market instrument” means any long-term financial instrument whether in the form of debt or equity developed or traded on a securities exchange or directly between two or more parties for the purpose of raising funds for investment;

“collective investment scheme” includes an investment company, a unit trust, a mutual fund or other scheme whether or not established or organized in Kenya which—

- (a) collects and pools funds from the public or a section of the public for the purpose of investment;
- (b) is managed by or on behalf of the scheme by the promoter of the scheme;

and includes an umbrella scheme whose shares as herein defined are split into a number of different class schemes or sub-schemes,

each of which is managed by or on behalf of a common promoter, but does not include—

- (i) a body corporate incorporated under any law in Kenya relating to building societies, co-operative societies, retirement benefit schemes, credit unions or friendly societies;
- (ii) an arrangement where each of the holders of the shares is a body corporate in the same group as the promoter;
- (iii) an arrangement where each of the holders of the share is a *bona fide* employee, former employee, wife, husband, widow, widower, child, stepchild of the employee or former employee of the directors or shareholders of a body corporate in the same group as the promoter;
- (iv) arrangements where the receipt of contributions from the holders of shares in the collective investment scheme constitutes the acceptance of deposits in the course of a business which is a deposit-taking business for the purpose of the Banking Act (Cap. 488);
- (v) contracts of insurance;
- (vi) retirement benefits scheme;

"commodity" means—

- (a) agricultural, livestock, fishery, forestry, mining or energy goods or any product that is manufactured or processed from any such goods;
- (b) financial instruments;
- (c) an index, right, or interest in any such commodity;
- (d) such other thing as the Cabinet Secretary may, by notice in the *Gazette*, determine to be the subject of a commodity contract;

"commodity contract" includes—

- (a) spot commodity contract;
- (b) commodity futures contract; and
- (c) such other contract or class of contracts as the Authority may, by regulations prescribe;

"commodity market" means a market or facility licensed by the Authority or a facility, whether electronic or otherwise at which, offers or invitations to sell, purchase or exchange commodity contracts are regularly made on a centralized basis, being offers or invitations that are intended or may reasonably be expected to result directly or indirectly in the acceptance or making, respectively of offers to sell, purchase or exchange of commodity contracts but does not include—

- (a) the office or facilities of a commodity dealer or broker;
- (b) the office or facilities of a clearing house;

"company" means a company formed and registered under the Companies Act (Cap. 486);

"Compensation Fund" means the Investor Compensation Fund established by section 18;



“credit rating agency” means an organisation which provides the service of evaluating the relative creditworthiness of issuers of securities and assigns ratings to such securities;

“dealer” means a person who carries on the business of buying, selling, dealing, trading, underwriting or retailing of securities except exchange-traded derivatives contracts whether or not he or she carries on any other business;

“dealer’s representative” *deleted by Act No. 3 of 2000, s. 4;*

“dealing in securities” means making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into—

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities except in exchange-traded derivatives contracts; or
- (b) any agreement the purpose or intended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities except in exchange-traded derivatives contracts;

“derivatives exchange” means a securities exchange which has been granted a license to list exchange-traded derivative contracts by the Authority under the Act or approved for such purposes and in accordance with the regulations issued thereunder;

“derivatives dealer” *deleted by Act No. 48 of 2013, s. 2(e);*

“derivatives market” means a place at which, or a facility, whether electronic or otherwise, by means of which offers or invitations to sell, purchase or exchange-traded derivative contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange-traded derivative contracts, whether through that place, facility or otherwise, but does not include—

- (a) the office or facilities of a derivatives broker; or
- (b) the facilities of a clearinghouse;

“director” has the meaning assigned to it in the Companies Act (Cap. 486);

“exchange-traded derivative contracts” means standardized type of securities or financial instruments which derive their value from the value of underlying assets, indices, or interest rates that are transacted on a licensed derivatives exchange;

“expert” in respect of a matter or an opinion, means a person whose profession, occupation, religious standing, expertise or reputation gives authority to a statement made by that person in relation to that matter or opinion;

“financial instrument” includes securities, mortgage contracts, property contracts, pension contracts, insurance contracts, leasehold contracts, certificates of interest and any variations or derivatives thereof;

“fund manager” means a manager of a collective investment scheme, registered venture capital company or an investment adviser who manages a portfolio of securities in excess of an amount prescribed by the Authority from time to time;

“futures broker” means a body corporate admitted into the membership of a derivatives exchange and duly licensed by the Authority to engage in the business

of trading in exchange-traded derivatives contracts as an agent for investors in return for a commission and on its own account;

“futures contract” *deleted by Act No. 48 of 2013, s. 2(f)*;

“futures member” means a person admitted to the membership of a futures exchange in accordance with the Regulations made under the Act and rules of that derivatives exchange but does not denote a shareholder or an equity holder of that derivatives exchange;

“incorporation documents” means the principal documents governing the formation of a collective scheme and includes the trust deed, memorandum and the articles of association and all material agreements as the case may be;

“information memorandum” means any prospectus or document, notice, circular, advertisement or other invitation, in print or electronic form, containing information on a company or other legal person authorized to issue securities or a collective investment scheme calculated to invite offers from the public or a section of the public and includes a short-form prospectus, a shelf prospectus, information notice, an offering memorandum in respect of asset backed securities and a supplementary prospectus;

“insider” means any person who is or was connected with a company, or is deemed to have been connected with a company and who is reasonably expected to have access, by virtue of such connection, to unpublished information which, if made generally available, would be likely to materially affect the price or value of the securities of the company, or who has received or has had access to such unpublished information;

“investment adviser” means any person (other than a *bona fide* officer, director, trustee, member of an advisory board or employee of a company as such) who, for remuneration—

- (a) carries on the business of advising others concerning securities; or
- (b) as part of a regular business, issues or promulgates analyses or reports concerning securities; or
- (c) *deleted by Act No. 22 of 2022, s. 53*;
- (d) deals with long term financing equity and debt and acts as adviser or under writer in relation to a public issue of securities; or
- (e) such other persons as the Authority may, prescribe to be within the intent of this definition, but the expression does not include—
  - (i) a bank as defined in section 2 of the Banking Act (Cap. 488);
    - (A) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
    - (B) the advice is given or the analyses or reports are issued or promulgated only through that newspaper;
    - (C) that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports;
    - (D) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person’s business as a newspaper proprietor;

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- (ii) a company or association registered under Part III of the Insurance Act (Cap. 487);
- (iii) an advocate, accountant or certified public secretary in practice whose carrying on of that business is solely incidental to the practice of his profession;
- (iv) a trust corporation within the meaning of the Trustee Act (Cap. 167);
- (v) a dealer or his employee whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities; or
- (vi) a person who is the proprietor of a newspaper and holder of a permit issued under the Books and Newspapers Act (Cap. 111), where—

“investment bank” means a non-deposit taking institution licensed by the Authority to advise on offers of securities to the public or a section of the public, takeovers, mergers, acquisitions, corporate restructuring involving companies listed or quoted on a securities exchange, privatisation of companies listed or to be listed on a securities exchange or underwriting of securities issued or to be issued to the public and to engage in the business of a stockbroker or dealer;

“investment company” means a collective investment scheme organised as a limited liability company under the Companies Act (Cap. 486) in which the rights of the participants are represented by shares of the company;

“key personnel” means a person who manages or controls the activities of a licensed or a regulated person and includes—

- (a) the chief executive officer, chief financial officer, chief compliance officer, secretary to the Board, chief internal auditor, or any manager of licensed persons; and
- (b) any person who holds a position or discharges responsibilities of any person referred to in paragraph (a);

“licence” *deleted by Act No. 3 of 2000, s. 4;*

“licensed person” means a person or body corporate who has been issued with a licence or approved by the Authority;

“member” *deleted by Act No. 10 of 2010, s. 45;*

“mutual fund” means a collective investment scheme set up as a body corporate under section 30(5) whereby—

- (a) the assets of the scheme belong beneficially to and are managed by or on behalf of the body corporate;
- (b) the investments of the participants are represented by shares of that body corporate;
- (c) the body corporate is authorised by its articles of association to redeem or repurchase its shares otherwise than in accordance with section 68 of the Companies Act (Cap. 486);

“online forex broker” means a body corporate duly licensed by the Authority to engage in the business of online trading in foreign exchange as an agent of investors in return for a commission and on its own account;

“options contract” means a contract that gives its holder the right and not the obligation to buy or sell a fixed number of securities or any other instrument at a fixed price on or before a given date;

“over the counter” means the trading of securities except in exchange-traded derivatives contracts otherwise than at an approved securities exchange;

“promoter” means a person acting alone or in conjunction with others directly or indirectly who takes the initiative in forming or organising the business of a collective investment scheme but does not include an underwriter commission without taking any part in the founding or organising of the collective investment scheme business;

“quotation”, in relation to securities and in relation to a securities exchange, or a derivatives exchange includes the displaying or providing, on a securities exchange or a derivatives exchange, of information concerning—

- (a) in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that securities market or a derivatives market, those prices or that consideration;
- (b) in a case where offers or invitations are made on that securities market or a derivatives market, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices or for particular consideration, those prices or that consideration; or
- (c) in any other case, the price at which, or the consideration for which particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities;

“real estate investment trust” mean an arrangement in respect of real estate or interest in real estate of any description, structured in accordance with the rules prescribed by the Authority to enable a person taking part in the arrangement, whether by becoming an owner of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the real estate or interest in the real estate or sums paid out of such profits of income;

“registered venture capital company” means a company approved by the Authority and incorporated for purposes of providing risk capital to small and medium sized businesses in Kenya with high growth potential, whereby not less than seventy-five per cent of the funds so invested consist of equity or quasi-equity investment in eligible enterprises;

“regulated person” means an operator of an approved person, a licensed person, a listed company or a person approved to offer securities to the public;

"REIT manager" means a company incorporated in Kenya and licensed by the Authority to provide real estate management services in respect of a real estate investment trust;

“representative” means a representative of any person licensed by the Authority who is in the employment of the licensed person and plays a critical role in that company, and includes a trader, director, general manager, analyst, or any other person employed by the licensee who plays a critical role;

“securities” means—

- (a) shares in the share capital of a company ("shares");
- (b) any instrument creating or acknowledging indebtedness which is issued or proposed to be issued ("debt securities");
- (c) loan stock, bonds and other instruments creating or acknowledging indebtedness by or on behalf of the Government, Central Bank, or public authority ("Government and public entities");
- (d) rights, options, or interests, whether described as units or otherwise, in, or in respect of such shares, debt securities and Government and public securities;
- (e) any right, whether conferred by warrant or otherwise, to subscribe for shares or debt securities ("warrants");
- (f) any option to acquire or dispose of any other security;
- (g) futures in respect of securities or other assets or property;
- (h) securities and collective investment scheme products structured in conformity with Islamic principles for investments;
- (i) units in a collective investment scheme, including shares in an investment company, or other similar entities whether established in Kenya or not;
- (j) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (k) the rights under any depositary receipt in respect of shares, debt securities and warrants ("depositary receipts");
- (l) asset backed securities; and
- (m) any other instrument prescribed by the Authority to be securities for the purposes of this Act,

but does not include—

- (i) securities of a private company, other than asset backed securities;
- (ii) bills of exchange;
- (iii) promissory notes, other than asset backed securities;
- (iv) certificates of deposit issued by a bank; and
- (v) any other instrument prescribed by the Authority not to be securities for the purposes of this Act;

“securities exchange” means a market, derivatives exchange, securities organization or other place at which securities are offered for sale, purchase or exchange, including any clearing or settlement, with or without novation, or transfer services connected therewith;

“self-regulatory organization” means an organization whose object is to regulate the operations of its members or of the users of its services and includes the organizations that may be recognized as such, by the Authority;

“share” means a share in the share capital of a body corporate, a unit in a unit trust or an interest in any collective investment scheme;

"sophisticated investor" means—

- (a) a person who is licensed under this Act;

- (b) an authorized scheme or a collective investment scheme;
- (c) a bank, a subsidiary of a bank, insurance company, co-operative society, statutory fund, pension or retirement fund; or
- (d) an individual, company, partnership, association or a trustee on behalf of a trust which, either alone or with any associates on a joint account subscribes for securities with an issue price as the Authority may prescribe from time to time;

“spot commodity trading” means the purchase or sale of a commodity at its current market or spot price, where it is intended that such transaction results in the physical delivery of the commodity, and “spot commodity contract” shall be construed accordingly;

“stockbroker” means a person who carries on the business of buying or selling of securities as an agent for investors in return for a commission;

“stockbroking agent” means a person, not being a salaried employee of a stockbroker, who, in consideration of a commission, solicits or procures stockbroking business on behalf of a stockbroker;

“stock exchange” means a market, exchange or other place at which securities are offered for sale, purchase or exchange, including any clearing, settlement or transfer services connected therewith;

“stock market” means a market, or other place at which, or a facility by means of which—

- (a) offers to sell, purchase or exchange securities are regularly made or accepted;
- (b) offers or invitations are regularly made, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities; or
- (c) information is regularly provided concerning the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange securities;

“substantial shareholder” means any person who is the beneficial owner of, or is in a position to exert control over, not less than fifteen per cent of the shares of a body corporate;

“trading participant” means a licensed person with rights to trade at an approved securities exchange;

“trustee” in relation to real estate investment trust or a collective investment scheme, means a person appointed under a trust deed of a real estate investment trust or a collective investment scheme, as the case may be, as its trustee;

“underwriting” means the purchase or commitment to purchase or distribute by dealers or other persons of issue or offer of securities for immediate or prompt public distribution by or through them;

“unit trust” means any scheme or arrangement in the nature of a trust in pursuance whereof members of the public are invited or permitted, as beneficiaries under the trust, to acquire an interest or undivided share (unit of investment) in one

or more groups or blocks of specified securities and to participate proportionately in the income or profits derived therefrom.

[Act No. 3 of 2000, s. 4, Act No. 2 of 2002, Sch., Act No. 8 of 2008, s. 47, Act No. 10 of 2010, s. 45, Act No. 37 of 2011, s. 2, Act No. 4 of 2012, s. 32, Act No. 48 of 2013, s. 2, Act No. 38 of 2016, ss. 48 & 68, Act No. 15 of 2018, s. 2, Act No. 23 of 2019, s. 41, Act No. 22 of 2022, s. 53.]

### 3. Meaning of the term associate

For the purpose of this Act—

"associate", in relation to—

- (a) an individual, means—
  - (i) a spouse, son, adopted son, step-son, son-in-law, daughter, adopted daughter, step-daughter, daughter-in-law, father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister or step-sister, sister-in-law, grandchild or spouse of a grandchild; of that individual;
  - (ii) any company in which that individual is a director or secretary, has a controlling interest or is the controlling interest;
  - (iii) any company in which that individual, or any of the persons specified in subparagraph (i), has control of twenty per cent or more of the voting power on appointments to the board of directors or entitlement to dividends in the company, whether such control is exercised individually or jointly;
  - (iv) any employee of that individual; or
- (b) a company, means another company in which the first mentioned company has control of not less than twenty *percent* of the voting power in that company,

and a reference in this Act, regulations, rules, guidelines or notices issued thereunder, to an associated person or associated company shall be construed accordingly.

[Act No. 48 of 2013, s. 3.]

### 4. Definition of "interest in securities"

(1) Where any property held in trust consists of or includes securities in which a person knows, or has reasonable grounds for believing, that he or she has an interest, he or she shall be deemed to have an interest in those securities.

(2) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and—

- (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with directions, instructions or wishes of that person in relation to that security;
- (b) that person has a controlling interest in the body corporate; or
- (c) that person is, or the associates of that person or that person and his associates are, entitled to exercise or control the exercise of not less than fifteen per cent of the votes attached to the voting shares in the body corporate.

(3) A person shall be deemed to have an interest in a security in any one or more of the following circumstances—

- (a) where he or she has entered into a contract to purchase a security;
- (b) where he or she has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfillment of a condition or not;
- (c) where he or she has the right to acquire a security, or an interest in a security, under an option, whether on the fulfillment of a condition or not; or
- (d) where he or she is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he or she is the registered holder.

(4) A person shall be deemed to have an interest in a security if that security is held jointly with another person.

(5) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(6) There shall be disregarded—

- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
- (b) an interest in a security of a person whose ordinary business includes the lending of money if he or she holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security being an interest held by him or her by reason of his holding a prescribed office; and
- (d) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons as is prescribed.

(7) An interest in a security shall not be disregarded by reason only of—

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

## PART II – THE CAPITAL MARKETS AUTHORITY

### **5. Establishment and membership of the Authority**

(1) There is hereby established an authority to be known as the Capital Markets Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and



- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(3) The Authority shall consist of—

- (a) a Chairperson to be appointed by the President on the recommendation of the Cabinet Secretary;
- (b) six other members appointed by the Cabinet Secretary;
- (c) the Principal Secretary to the National Treasury or a person deputed by him or her in writing for the purposes of this Act;
- (d) the Governor of the Central Bank of Kenya or a person deputed by him or her in writing for the purposes of this Act;
- (e) the Attorney-General or a person deputed by him or her in writing for the purposes of this Act;
- (f) the chief executive of the Authority.

(4) The Chairperson and every member appointed under paragraph (b) of subsection (3) shall be appointed from amongst persons who have experience and expertise in legal, financial, banking, accounting, economics or insurance matters.

(4A) The Chairperson and every member appointed under paragraph (b) of subsection (3) shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years.

(4B) The members of the Authority shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(5) Any member appointed under subsection (3)(b) shall cease to hold office if—

- (a) he or she delivers to the Cabinet Secretary a written resignation of his appointment;
- (b) on the advice of the Authority, the Cabinet Secretary removes him or her from office on the grounds that he or she is incapacitated by mental or physical illness or is otherwise unable or unfit to discharge the functions of a member or is unable to continue as a member;
- (c) he or she has been absent from three consecutive meetings of the Authority without leave or good cause;
- (d) he or she is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (e) he or she is sentenced by a court to imprisonment for a term of six months or more; or
- (f) he or she is convicted of an offence involving dishonesty, fraud or moral turpitude.

(6) In the event of vacation of office by any member appointed under subsection (3)(b) the Cabinet Secretary may appoint another person to hold office for the unexpired period of the term of office of the member in whose place he or she is appointed.

(7) If any member of the Authority appointed under paragraph (b) of subsection (3) is temporarily unable to perform his duties, the Cabinet Secretary may appoint another person to act in his place during the period of his absence.

(8) The members of the Authority shall be paid such remuneration and allowances out of the general fund of the Authority as may be determined by the Cabinet Secretary.

[Act No. 3 of 2000, s. 5.]

## **6. Meetings and procedures of the Authority**

(1) The Board shall meet not less than six times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

(2) The quorum for the conduct of the business of the Board shall be six members including the chief executive.

(3) The Chairperson shall preside at every meeting of the Board at which he or she is present but in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(4) All questions for decisions at any meeting of the Authority shall be decided by the vote of the majority of the members present and in case of an equality of votes the Chairperson shall have a casting vote.

(5) If the Chairperson of the Authority, by reason of extended illness or absence is temporarily unable to perform the duties of his office, the President, on the recommendation of the Cabinet Secretary, shall appoint another member of the Authority to act in his place during the period of absence.

(6) The Chairperson may at any time resign by a letter addressed to the President and the resignation shall take effect upon being accepted by the President.

(7) Any member who has a direct or indirect interest in any decision that is to be taken on any specific non-rule making matter by the Authority, shall disclose the nature of such interest at the meeting of the Authority where such decision is being taken and the disclosure shall be recorded in the minutes of the meeting, and if either the member or majority of the members of the Authority believe that such member's interest in the matter is such as to influence his judgment, he or she shall not participate in the deliberation or the decision of the Authority on such matter:

Provided, that if a majority of the members in attendance at a meeting where such matter is considered determine that the experience or expertise of the interested member is necessary for the deliberation on the matter, they may permit such member to participate as they deem appropriate.

[Act No. 3 of 2000, s. 6.]

## **7. Seal and execution of documents**

(1) The common seal of the Authority shall be kept in the custody of the Authority and shall not be affixed to any instrument or document except as authorized by the Authority.

(2) The common seal of the Authority shall be authenticated by the signature of the chief executive and the Chairperson or of one other member authorised by the Board in that behalf.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of, the Authority may be signified under the hand of the

Chairperson, or, in the case of a decision taken at a meeting at which the Chairperson is not present, under the hand of the person presiding at such meeting.

[Act No. 3 of 2000, s. 7.]

#### **8. Appointment of chief executive of the Authority**

(1) There shall be a Chief Executive of the Authority who shall be appointed by the Cabinet Secretary and who shall, subject to this section, hold office on such terms and conditions of service as may be specified in the instrument of appointment, or otherwise from time to time.

(2) No person shall be qualified for appointment under this section unless such person—

- (a) has at least ten years' experience at a senior management level in matters relating to law, finance, accounting, economics, banking or insurance; and
- (b) has expertise in matters relating to money or capital markets or finance.

(3) The Cabinet Secretary, in consultation with the Board, shall appoint a person qualified in terms of this section as the chief executive.

(4) The chief executive shall hold office for a period of four years but shall be eligible for reappointment for a further term of four years:

Provided that no person shall serve as the chief executive for more than two terms.

(5) The chief executive shall, subject to the general direction and control of the Authority, be charged with the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions and duties, and the administration and control of the servants of the Authority.

[Act No. 3 of 2000, s. 8, Act No. 2 of 2002, Sch.,  
Act No. 35 of 2012, s. 2, Act No. 48 of 2013, s. 4.]

#### **9. Appointment and remuneration of staff**

(1) The Authority may appoint such other officers and servants as it considers necessary for the efficient discharge of its responsibilities and functions.

(2) The officers and servants appointed under subsection (1) shall be remunerated in such manner and at such rates, and shall be subject to such conditions of service, as may be determined by the Authority.

(3) Every officer or servant appointed under subsection (1) shall, subject to this Act, exercise such powers and functions and perform the duties assigned to him or her from time to time by the chief executive.

#### **10. Protection from legal action**

(1) Neither the Authority, any of its members, officers nor servants shall be personally liable for any act which is done in good faith or purported to be done by such person, on the direction of the Authority or in the performance or intended performance of any duty or in the exercise of any power under this Act or the regulations guidelines or notices made thereunder.

(2) Any expenses incurred by any person referred to in subsection (1) in any suit or prosecution brought against him or her before any court in respect of any act which is done or purported to be done by him or her under the Act or on the direction of the Authority shall, if the Court holds that such act was done in good

faith, be paid out of the general fund of the Authority, unless such expenses are recovered by him or her in such suit or prosecution.

[Act No. 48 of 2013, s. 5.]

## **11. Objectives of the Authority**

(1) The principal objectives of the Authority shall be—

- (a) the development of all aspects of the capital markets with particular emphasis on the removal of impediments to, and the creation of incentives for longer term investments in, productive enterprises;
- (b) to facilitate the existence of a nationwide system of securities commodities market and derivatives market and brokerage services so as to enable wider participation of the general public in the securities commodities market and derivatives market;
- (c) the creation, maintenance and regulation of a market in which securities can be issued and traded in an orderly, fair and efficient manner, through the implementation of a system in which the market participants are self-regulatory to the maximum practicable extent;
- (d) the protection of investor interests;
- (e) the facilitation of a compensation fund to protect investors from financial loss arising from the failure of a licensed broker or dealer to meet his contractual obligations; and
- (f) the development of a framework to facilitate the use of electronic commerce for the development of capital markets in Kenya.

(2) A reference to electronic commerce shall be construed as a reference to the use of information technology to effect linkages among functions provided by licensed persons or other market participants and describes technology platforms that allow—

- (a) the transfer and dissemination of market information to a wider number of users within and between networks;
- (b) the offer, distribution or delivery in electronic form of securities or services ordinarily provided by licensed persons; and
- (c) the execution of securities transactions without the need for parties to the transaction to be physically present at the same location.

(3) For the purpose of carrying out its objectives, the Authority may exercise, perform or discharge all or any of the following powers, duties and functions—

- (a) advise the Cabinet Secretary on all aspects of the development and operation of capital markets;
- (b) implement policies and programmes of the Government with respect to the capital markets;
- (c) employ such officers and servants as may be necessary for the proper discharge of the functions of the Authority;
- (cc) impose sanctions for breach of the provisions of this Act or the regulations made thereunder, or for non-compliance with the Authority's requirements or directions, and such sanctions may include—
  - (i) levying of financial penalties, proportional to the gravity or severity of the breach, as may be prescribed:

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Provided that the financial penalties shall be recoverable summarily by the Authority as civil debts;

- (ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;
  - (iii) publishing findings of malfeasance by any person;
  - (iv) suspending or cancelling the listing of any securities or exchange-traded derivatives contracts, or the trading of any securities or exchange-traded derivatives contracts, for the protection of investors;
- (d) to issue guidelines and notices on all matters within the jurisdiction of the Authority under this Act;
  - (e) to grant a licence to any person to operate as a stockbroker, derivatives broker, dealer or investment adviser, fund manager, investment bank, central depository or authorised securities dealer, and ensure the proper conduct of that business;
  - (f) to grant approval to any person to operate as a securities exchange, commodity exchange, derivatives exchange, credit rating agency, registered venture capital company or to operate in any other capacity which directly contributes to the attainment of the objectives of this Act and to ensure the proper conduct of that business;
  - (fa) regulate spot commodity markets;
  - (ff) recognize any person duly licensed by a prescribed foreign authority to carry on any licensed activity in Kenya which requires a license or an approval under this Act;
  - (g) register, approve and regulate collective investment schemes;
  - (ga) license, approve and regulate private equity and venture capital companies that have access to public funds;
  - (h) inquire, either on its own motion or at the request of any other person, into the affairs of any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market;
  - (i) give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market;
  - (j) conduct inspection of the activities, books and records of any persons approved or licensed by the Authority;
  - (k) *deleted by Act No. 9 of 2007, s. 46(b)*;
  - (l) *deleted by Act No. 9 of 2007, s. 46(b)*;
  - (m) appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market, if such action is deemed to be in the interest of the investors, at the expense of such collective investment scheme or company;

- (n) grant compensation to any investor who suffers pecuniary loss resulting from the failure of a licensed broker or dealer to meet his contractual obligations;
- (o) have recourse against any person whose act or omission has resulted in a payment from the Compensation Fund;
- (p) act as an appellate body in respect of appeals against any self regulatory organization securities or exchange-traded derivatives contracts exchange, derivatives exchange or central depository in actions by parties aggrieved thereby;
- (q) co-operate or enter into agreements for mutual co-operation with other regulatory authorities for the development and regulation of cross-border activities in capital markets;
- (r) regulate and oversee the issue and subsequent trading, both in primary and secondary markets, of capital market instruments;
- (s) regulate the use of electronic commerce for dealing in securities or offer services ordinarily carried out by a licensed person;
- (t) trace any assets, including bank accounts, of any person who, upon investigation by the Authority, is found to have engaged in any fraudulent dealings in an issuer and its securities or insider trading;
- (u) in writing, order caveats to be placed against the title to such assets or prohibit any such person from operating any such bank accounts as may be directed by the Authority, pending determination of any charges instituted against that person;
- (v) prescribe notices or guidelines on corporate governance of a company whose securities have been issued to the public or a section of the public;
- (va) ensure processing of personal data in the operations of capital markets is in accordance with principles set out under the Data Protection Act (Cap. 411C);
- (w) do all such other acts as may be incidental or conducive to the attainment of the objectives of the Authority or the exercise of its powers under this Act.

[Act No. 10 of 1994, s. 2, Act No. 3 of 2000, s. 9, Act No. 9 of 2007, s. 46, Act No. 8 of 2008, s. 48, Act No. 37 of 2011, s. 3, Act No. 48 of 2013, s. 6, Act No. 38 of 2016, s. 69, Act No. 15 of 2018, s. 3, Act No. 23 of 2019, s. 42, Act No. 24 of 2019, Sch., Act No. 8 of 2020, s. 30.]

#### **11A. Delegation of functions**

- (1) The Authority may delegate any of its functions under this Act to—
  - (a) a committee of the Board;
  - (b) a recognized self regulatory organization; or
  - (c) an authorized person.
- (2) The Authority may, at any time revoke a delegation made under this section.
- (3) A delegation made under this section shall not prevent the Authority from performing the delegated function.

[Act No. 37 of 2011, s. 4.]

#### **12. Power of the Cabinet Secretary to issue rules and regulations**

- (1) The Cabinet Secretary shall formulate such rules and regulations as may be required to regulate—

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- (a) listing and de-listing of securities on a securities exchange;
  - (b) disclosures about securities transactions by—
    - (i) stockbrokers, derivatives brokers and dealers;
    - (ii) persons who acquire or dispose of securities or exchange-traded derivatives contracts; and
    - (iii) a securities exchange;
  - (c) the keeping and proper maintenance of books, records, accounts and audits by all persons approved or licensed by the Authority and regular reporting by such persons to the Authority of their affairs;
  - (d) the operations of any other bodies corporate or persons dealing with capital market instruments;
  - (e) the procedure for the participation of foreign investors in the securities market;
  - (f) collective investment schemes;
  - (g) registered venture capital companies;
  - (h) credit rating agencies;
  - (hh) the issue and subsequent trading in Kenya, of offers approved outside Kenya;
  - (i) the issue, transfer, clearing and settlement of securities;
  - (j) securities clearing and settlement or depository organisations;
  - (jj) the operations and supervision of online forex trading activities and online forex brokers;
  - (k) fund managers;
  - (ka) spot commodity trading and commodity markets;
  - (l) investment banks;
  - (m) authorized securities dealers;
  - (n) self regulatory organizations;
  - (nn) the use of money raised from the issue of securities, in cases in which the securities are issued to raise money for a specified purpose;
  - (o) the financial penalties or sanctions for breach of rules, guidelines or notices made or issued by the Authority or non-compliance with the requirements imposed by the Authority;
  - (p) the fees payable annually by a securities exchange, derivatives exchange or central depository or for securities or exchange-traded derivatives contracts' transactions, licences and approvals required by this Act to be issued or granted on an application to the Authority;
  - (q) the disclosure requirements and other terms and conditions on which securities or exchange-traded derivatives contracts may be listed or de-listed from a securities exchange or a derivatives exchange, respectively, or offered for sale to the public or a section thereof.
- (2) All rules and regulations formulated under subsection (1) shall—
- (a) take into account and be consistent with the objective of promoting and maintaining an effective and efficient securities market; and

(b) be exposed for comment by stakeholders and the general public for a period of thirty days through notification in at least two daily newspapers of national circulation and the electronic media.

(c) *deleted by Act No. 35 of 2012, s. 3(b)(ii).*

(3) For the purposes of this Act, stakeholders shall include listed companies and all persons licensed or approved by the Authority or financial or other institutions whose operations have, in the opinion of the Authority, a bearing on the development and regulation of capital markets in Kenya.

[Act No. 10 of 1994, s. 3, Act No. 3 of 2000, s. 10, Act No. 15 of 2003, s. 46, Act No. 4 of 2004, s. 74, Act No. 8 of 2008, s. 49, Act No. 37 of 2011, s. 3, Act No. 35 of 2012, s. 3, Act No. 57 of 2012, s. 30, Act No. 48 of 2013, s. 7, Act No. 38 of 2016, ss. 49 & 70.]

#### **12A. Authority to issue guidelines and notices**

(1) The Authority may issue such guidelines and notices as the Authority considers necessary for the better carrying out the functions of the Authority under this Act and in particular—

- (a) for the regulation of capital markets activities and products subject to the assessment of the extent to which they appropriately cater for—
  - (i) efficient, orderly and fair operation of the segment, product or intermediaries;
  - (ii) adequate provisions for risk management and controls on market misfeasance;
  - (iii) the proper protection of investor interests and appropriate level of disclosure; and
  - (iv) a facilitative environment for transparent operations;
- (b) the standards to be adhered to by regulated persons in the conduct of their business;
- (c) the attainment of any objectives of the Authority;
- (d) any matter relating to any power, duty or function conferred or imposed on the Authority under this Act or any other legislation administered by the Authority;
- (e) the supervision of persons licensed by a prescribed foreign regulatory authority; and
- (f) the operation of any provision of this Act or any other legislation vesting responsibility in the Authority.

(2) The Authority may publish guidelines and notices issued under subsection (1) in such manner as the Authority may consider appropriate.

(3) The guidelines and notices issued under subsection (1) shall be subjected to comment by stakeholders and the general public for a period of thirty days from the date of issue, and notification for that purpose shall be made through advertisement in at least two daily newspapers of national circulation and in the electronic media.

[Act No. 48 of 2013, s. 8.]

#### **12B. Powers on anti-money laundering, combating the financing of terrorism and countering proliferation financing matters**

(1) Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act (Cap 59A), the Authority shall regulate, supervise and enforce compliance for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes by all reporting



institutions regulated and supervised by the Authority and whom the provisions of the Proceeds of crime apply.

(2) In undertaking its mandate under subsection (1), the Authority may—

- (a) vet proposed significant shareholders, proposed beneficial owners, proposed directors and senior officers of a reporting institution;
- (b) conduct onsite inspection;
- (c) conduct offsite surveillance;
- (d) undertake consolidated supervision of a reporting institution and its group;
- (e) compel the production of any document or information the Authority may require for the purpose of discharging its supervisory mandate under the Proceeds of Crime and Anti-Money Laundering Act (Cap 59A);
- (f) impose monetary, civil or administrative sanctions for violations related to anti-money laundering, combating the financing of terrorism countering proliferation financing purposes;
- (g) issue regulations, guidelines, directions, rules or instructions for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;
- (h) cooperate and share information for anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes; and
- (i) take such action as is necessary to supervise and enforce compliance by reporting institutions in line with the provisions of the Proceeds of Crime and Anti-Money Laundering Act (Cap 59A) and any regulations, guidelines, rules, instruction or direction made or issued thereunder.

(3) For purposes of this section, "reporting institution" has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act (Cap 59A).

[Act No. 10 of 2023, Sch.]

### **13. Furnishing of information to the Authority**

(1) The Authority or any person officially authorized in that behalf by the Authority may, by notice in writing, require any person to furnish to the Authority or to the authorized person, within such period as is specified in the notice, all such returns or information as specified in such notice.

(2) The Authority or any member thereof, or any officer or servant of the Authority, shall not disclose to any person or use any return or information acquired under subsection (1) except for the purpose of achieving the objectives of the Authority unless required to do so by a court of law.

(3) Notwithstanding subsection (2), the Authority may, where it receives a request from a regulatory body, whether established within or outside Kenya, for assistance in investigating a person specified by the regulatory body who has contravened or is contravening any legal or regulatory requirements which—

- (a) are enforced or administers by that regulatory body; or
- (b) relate to securities transactions regulated by that regulatory body,

and where it is of the opinion that the request meets the requirements of subsection (5), provide the assistance requested for by exercising any of its powers

under this Act or by providing such other assistance as the Authority may consider necessary.

(4) For the purposes of subsection (3), the provisions of this Act shall, with such modifications as may be necessary, apply and have effect as if the contravention of the legal or regulatory requirement referred to in subsection (3) were an offence under this Act.

(5) A regulatory body which requests for assistance under subsection (3) shall demonstrate that—

- (a) it is desirable or expedient that the assistance requested should be provided in the interest of the public; or
- (b) the assistance shall assist the regulatory body in the discharge and performance of its functions.

(6) The Authority shall, in deciding whether the requirement under subsection (5) is satisfied in a particular case, take into account whether the regulatory body shall—

- (a) pay the Authority any of the costs and expenses incurred in providing the assistance; and
- (b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a similar request for assistance from Kenya.

(7) Nothing in this section shall be construed to limit the powers of the Authority to cooperate or coordinate with any other regulatory body in the exercise of its powers under this Act, in so far as such cooperation or coordination is not contrary to the objectives of this Act.

[Act No. 10 of 2010, s. 46, Act No. 35 of 2012, s. 4.]

### **13A. Power of entry and search**

(1) The chief executive officer may authorise an officer of the rank of Senior Officer or above to inquire into the affairs of a person under this Act.

(2) An officer authorised under subsection (1) may, where he or she is satisfied that a person has committed or is reasonably suspected of committing an offence under this Act in Kenya or elsewhere, apply to a magistrate for a warrant to search the premises of that person.

(3) The magistrate may issue a warrant authorizing the officer to exercise all or any of the following powers—

- (a) to enter any premises between sunrise and sunset to search for money, documents or other assets relevant to the inquiry;
- (b) to seize money, documents or assets which may be necessary for the inquiry or for which the purpose of civil or criminal proceedings and to retain them for as long as they are so required; and
- (c) to direct any person who has control over such assets to take any action with respect to such assets as the Authority may reasonably require with a view to protecting the assets until the court determines the appropriate course of action.

(4) In the interest of bank confidentiality, the powers of the officer in respect of any documents held by a banker shall be limited to making copies or extracts therefrom.

[Act No. 8 of 2008, s. 50.]

**13B. Authority may investigate**

(1) Where the Authority has reasonable cause to believe, either on its own motion or as a result of a complaint received from any person, that—

- (a) an offence has been committed under this Act; or
- (b) a director, manager or employee of a licensee, approved person or an issuer or any other person, may have engaged in embezzlement, fraud, misfeasance or other misconduct in an issuer, licensee or approved person in connection with its regulated activity; or
- (c) the manner in which a licensed or approved person has engaged or is engaging in the regulated activity is not in the interest of the person's clients or in the public interest, the Authority may in writing depute a suitably qualified person to conduct investigations into the matter on behalf of the Authority.

(2) An investigator appointed under subsection (1) may require any person whom the investigator reasonably believes or suspects to be in possession or in control of any record or document which contains, or which is likely to contain, information relevant to an investigation under this section—

- (a) to produce to the investigator, within such time and at such place as the investigator may require in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation, and which is in the possession or under the control of that person;
- (b) to give an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) to attend before the investigator at the time and place specified in writing by the investigator, and to the best of his ability under oath or affirmation answer any question relating to the matters under investigation as the investigator may put to him or her; and
- (d) to assist the investigator with the investigation to the best of the person's ability.

(3) A person who contravenes the provisions of subsection (2) commits an offence.

(4) The Authority may, where satisfied that the capital markets or an investor shall suffer irreparable damage as a result of an activity under subsection (1), impose an interim measure for not more than three months to prevent further damage pending completion of an of inquiry.

[Act No. 35 of 2012, s. 5, Act No. 15 of 2018, s. 4.]

**13C. Data protection principles**

The principles of personal data protection as set out in the Data Protection Act (Cap. 411C) shall apply to the collection and processing of personal data by the Authority or any person authorized by the Authority.

[Act No. 24 of 2019, Sch.]

**14. Committees**

(1) The Authority may appoint committees, whether of its own members or otherwise, to carry out such general or special functions as may be specified by the Authority, and may delegate to any such committee such of its powers as the Authority may deem appropriate.

(2) Without prejudice to the generality of subsection (1), the Authority shall establish—

- (a) a committee to hear and determine complaints of shareholders of any public company listed on an authorized securities exchange, relating to the professional conduct or activities of such securities exchange or such public company, or any other person under the jurisdiction of the Authority and recommend actions to be taken, in accordance with rules established by the Authority for that purpose; and
- (b) a committee to make recommendations with respect to assessing and awarding compensation in respect of any application made in accordance with rules established by the Authority for that purpose.

[Act No. 3 of 2000, s. 11.]

#### **15. General fund**

(1) The Authority shall have its own general fund.

(2) There shall be paid into the general fund—

- (a) all such sums of money as may be paid as fees under this Act; and
- (b) all such sums of money as may be received by the Authority for its operations from any other source approved by the Cabinet Secretary.

(3) There shall be paid out of the fund all such sums of money required to defray the expenditure incurred by the Authority in the exercise, discharge and performance of its objectives, functions and duties.

#### **16. Financial year of Authority**

The financial year of the Authority shall be the period of twelve months commencing on the first day of July in each year.

#### **17. Accounts**

The Authority shall cause proper books of accounts to be kept of its income and expenditures, assets and liabilities and all other transactions of the Authority.

#### **18. Establishment of the Investor Compensation Fund**

(1) There shall be established a Fund to be known as the Investor Compensation Fund for the purposes of granting compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer to meet his contractual obligations.

(2) The Compensation Fund shall consist of—

- (a) such moneys as are required to be paid into the Compensation Fund by licensed persons;
- (b) such sums of money as are paid under this Act as fines or penalties or under section 34 as ill-gotten gains where those harmed are not specifically identifiable;
- (c) such sums of money as accrue from interest and profits from investing Compensation Fund moneys;
- (d) such sums of money recovered by or on behalf of the Authority from entities whose failure to meet their obligations to investors result in payments from the Compensation Fund;
- (e) interest deemed to accrue on the proceeds of a public issue or offer for sale of shares of a company listed or to be listed on an

approved securities exchange, between the closing date and the date of dispatch of refund cheques, or, where there is no refund, the date of dispatch of share certificates or crediting of securities accounts, to be determined at the rate prescribed by the Authority;

(ee) *deleted by Act No. 48 of 2013, s. 9(a)*;

(f) such sums of money as are received for purposes of the Compensation Fund from any other source approved by the Cabinet Secretary.

(2A) The Authority may reward any person who provides new and timely information leading to the recovery of sums of money referred to in subsection (2):

Provided that—

(a) this provision shall not apply to any officer of the Authority;

(b) the reward payable under this subsection shall be three per cent of the amount recovered subject to a maximum of five million shillings; and

(c) the reward referred to in paragraph (a) shall be paid before the recovered sums of money are transferred to the Fund.

(2B) The Cabinet Secretary shall make regulations to give effect to the provisions of subsection (2A).

(2C) A person who—

(a) colludes with an officer of the Authority for the purpose of collecting the reward under subsection (2A);

(b) while working at the Authority aids another person to get and provide information under subsection (2A);

(c) provides false information under subsection (2A),

commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years.

(3) Moneys which have accumulated in the Compensation Fund may be invested by the Authority.

[Act No. 3 of 2000, s. 12, Act No. 10 of 2006, s. 39, Act No. 9 of 2007, s. 47, Act No. 8 of 2008, s. 51, Act No. 48 of 2013, s. 9, Act No. 15 of 2018, s. 5, Act No. 8 of 2020, s. 31.]

## 18A.

[Repealed by Act No. 15 of 2018, s. 6.]

## PART IIA – RECOGNITION OF SELF-REGULATORY ORGANIZATIONS

### 18B. Recognition of self-regulatory organization

(1) An organization which intends to operate as a self-regulatory organization shall apply to the Authority, in the prescribed form, for recognition as such.

(2) An application made under subsection (1) shall specify the functions and powers that the organization is seeking to exercise upon recognition.

(3) The Authority may, in respect of an application made under subsection (1), subject to such terms and conditions as it considers necessary, by notice in the *Gazette*, declare an organization to be a recognized self-regulatory organization where it is satisfied that the organization—

(a) has a constitution and internal rules and policies which are consistent with this Act or related legislation;

- (b) has the capacity and financial and administrative resources necessary or desirable to carry out its functions as a self-regulatory organization, including dealing with a breach of the law or of any other applicable standards or guidelines;
- (c) is a fit and proper person;
- (d) has competent personnel for the carrying out of its functions; and
- (e) satisfies such other criteria as may be specified by the Authority.

(4) A person who operates or purports to operate as a self-regulatory organization without being recognized as such by the Authority commits an offence.

(5) The Authority may, in writing, delegate any of its powers or functions to a self-regulatory organization.

(6) A delegation made under subsection (5) shall specify—

- (a) the function or power delegated to the self-regulatory organization;
- (b) the extent of disciplinary powers delegated and the scope of sanctions which may be imposed;
- (c) the terms and conditions upon which the power or function has been delegated and may be exercised;
- (d) the persons authorized to exercise the delegated powers or functions on behalf of the self-regulatory organization;
- (e) the manner in which a self-regulatory organization shall submit periodical reports to the Authority in respect of the exercise of a delegated power or function; and
- (f) any other matter which the Authority may prescribe.

[Act No. 37 of 2011, s. 6.]

### **18C. Rules of self-regulatory organizations**

(1) A self-regulatory organization shall make rules relating to the matters for which it has regulatory or supervisory functions, including any sanction and disciplinary powers to be exercised in connection with the functions delegated to it.

(2) The rules made under subsection (1) shall make provisions relating to—

- (a) management structures and shareholding rights of the self-regulatory organization taking into consideration the interests, rights and liabilities of its members, consumers, investors and users of their services;
- (b) rules of membership and conditions for approval and admission of members;
- (c) the procedure for dispute resolution between members, users, investors and their clients and the right of appeal to the Authority or other relevant primary regulator;
- (d) the rules and procedures of the self-regulatory organization relating to reporting and accountability to any primary regulator other than the Authority; and
- (e) mechanisms of protecting personal data of the data subjects in compliance with the Data Protection Act (Cap. 411C).

(3) The rules made under subsection (1) shall not be implemented unless they have been approved by the Authority.

(4) A self-regulatory organization shall submit any amendments to its constitution to the Authority for approval before the amendments come into operation.

[Act No. 37 of 2011, s. 6, Act No. 24 of 2019, Sch.]

#### **18D. Restriction on decision by a self-regulatory organization**

A self-regulatory organization shall not make a decision, under its rules, which is likely to adversely affect the rights of a person unless the self-regulatory organization—

- (a) has given that person an opportunity to make representations about the matter; or
- (b) considers, on a reasonable ground, that a delay in making the decision will prejudice a class of consumers.

[Act No. 37 of 2011, s. 6.]

#### **18E. Disciplinary action by a self-regulatory organization**

(1) A self-regulatory organization may take disciplinary action against any of its members in accordance with its rules, if the member contravenes any provision of the rules.

(2) A self-regulatory organization shall, where it has taken disciplinary action under subsection (1), immediately inform the Authority, in writing, of the name of the member, the action taken and the reason therefor, including the amount of any fine and the period of suspension, if any.

(3) The Authority may, on its own motion or on application by an aggrieved person, review any disciplinary action taken under subsection (1) and may affirm, modify or set aside the decision after giving the aggrieved person and the self-regulatory organization an opportunity to be heard.

(4) Nothing in this section shall preclude the Authority, in any case where a self-regulatory organization fails to act against its member, from suspending, expelling or otherwise disciplining a member of the self-regulatory organization.

(5) The Authority shall, before taking any action under subsection (4), give the licensed person and the self-regulatory organization an opportunity to be heard.

(6) Any action taken by a self-regulatory organization under subsection (1) shall not prejudice the power of the Authority to take any further action that it considers necessary with regard to the licensed person.

[Act No. 37 of 2011, s. 6.]

#### **18F. Protection from personal liability**

No civil liability, whether arising in contract, tort, defamation, equity or otherwise shall be incurred by—

- (a) a self-regulatory organization; or
- (b) any person acting on behalf of a self-regulatory organization including—
  - (i) any member of the Board of directors, employee or agent of the self-regulatory organization; or
  - (ii) any member of any committee established by the self-regulatory organization,

in respect of anything done or omitted in good faith in the discharge of the duties delegated to the self-regulatory organization under this Part or in the performance of its functions under its rules.

[Act No. 37 of 2011, s. 6.]

#### **18G. Appointment of key personnel by a self-regulatory organization**

A self-regulatory organization shall not change its key personnel except with prior written notification to the Authority of the intention to change and receipt from the Authority of a confirmation that it has no objection to the proposed change.

[Act No. 37 of 2011, s. 6.]

#### **18H. Directions to a self-regulatory organization**

(1) The Authority may, after giving a self-regulatory organization a reasonable opportunity to be heard in respect of any matter, give a direction, in writing, to the self-regulatory organization in terms of this section.

(2) A direction given under subsection (1) may—

- (a) suspend any provision of the constitution or rules of a self-regulatory organization for a period specified in the direction;
- (b) require a self-regulatory organization, subject to the Companies Act (Cap. 486) or any other law, to amend its constitution in the manner specified in the direction so as to bring it in conformity with this Act, or any other law;
- (c) require a self-regulatory organization to amend its rules; or
- (d) require a self-regulatory organization to implement or enforce its constitution or its rules.

[Act No. 37 of 2011, s. 6.]

#### **18I. Removal of an officer of the self-regulatory organization**

The Authority may, if it reasonably believes that—

- (a) an officer of a self-regulatory organization is not a fit and proper person to be an officer of the organization; or
- (b) an appointment of a person or the continuing in office as an officer of a self-regulatory organization is likely to be detrimental to the self-regulatory organization, or may prejudice the interest of investors and consumers of financial services or members of the relevant sector or industry,

after giving the officer and the self-regulatory organization an opportunity to be heard, direct the self-regulatory organization not to appoint the officer, or to remove the officer from office.

[Act No. 37 of 2011, s. 6.]

#### **18J. Annual report**

(1) A self-regulatory organization shall, within ninety days after the end of every financial year, submit to the Authority, its financial statement and an annual report which shall include—

- (a) a report on the corporate governance policy of the self-regulatory organization;
- (b) financial statements prepared and audited in accordance with the accounts and audit requirements for regulated persons; and



(c) such other requirements as may be specified by the Authority.

(2) An auditor who, in the course of his audit, has reason to believe that—

- (a) there is or has been an adverse change in the risks inherent in the business of a self-regulatory organization with the potential to jeopardize the ability of the self-regulatory organization to continue as a going concern;
- (b) the self-regulatory organization may be in contravention of any provisions of this Act, or directions issued by the Authority;
- (c) a financial crime has been or is likely to be committed; or
- (d) serious irregularities have occurred,

shall report the matter, in writing, to the Authority.

(3) A report made under subsection (2) shall not constitute a breach of the duties of the auditor.

[Act No. 37 of 2011, s. 6.]

### PART III – PROVISIONS RELATING TO EXCHANGES

[Act No. 38 of 2016, s. 71.]

#### **19. Approval of securities exchange required**

Subject to this Act, no person shall carry on a business as a securities exchange, commodities exchange or a derivatives exchange or hold himself out as providing or maintaining a securities market or a derivatives market unless he or she has been approved as a securities exchange, commodities exchange or a derivatives exchange by the Authority in such manner as the Authority may prescribe.

[Act No. 3 of 2000, s. 13, Act No. 37 of 2011, s. 7,  
Act No. 48 of 2013, s. 10, Act No. 38 of 2016, s. 72.]

#### **19A. Restriction on use of the words “stock exchange”, “securities exchange” etc.**

A person shall not use the words “stock exchange”, “securities exchange”, “commodities exchange”, “derivatives exchange” or “futures exchange” in connection with a business except in accordance with an exchange licence granted by the Authority.

[Act No. 37 of 2011, s. 8, Act No. 38 of 2016, s. 73.]

#### **20. Application for securities exchange, commodities exchange approval**

(1) An application for securities exchange, commodities exchange or derivatives exchange approval shall be made to the Authority in the form and manner prescribed by the Authority and shall be accompanied by the prescribed fee.

(2) The Authority may, by notice in writing, approve a person as a securities exchange, commodities exchange or derivatives exchange if it is satisfied—

- (a) that the applicant is a limited liability company whose liability is limited by shares, or as may be prescribed by the Authority;
- (b) that the applicant’s board of directors is constituted in a manner prescribed by the Authority;
- (c) the applicant has made and adopted rules in compliance with the Act and any Regulations made thereunder.

(3) Deleted by of Act No. 10 of 2010, s. 47(b).

(4) The directors of a securities exchange, commodities exchange or a derivatives exchange other than the chief executive shall elect a Chairperson from amongst themselves.

(5) The function of the board of directors of a securities exchange, commodities exchange or a derivatives exchange shall be the overall administration of the securities exchange.

(6) All fees to be charged by a securities exchange, commodities exchange or a derivatives exchange shall be subject to prior approval by the Authority notwithstanding the constitution of such securities exchange.

(7) An approved securities exchange, commodities exchange or a derivatives exchange shall comply with all requirements of the Authority and pay an annual fee to the Authority at such rate as the Authority may prescribe.

(8) The Authority may require an applicant for a licence as a securities exchange, commodities exchange or a derivatives exchange to lodge an application to be recognized as a self regulatory organization as a condition for obtaining and maintaining its licence.

[Act No. 10 of 1994, s. 4, Act No. 3 of 2000, s. 14, Act No. 10 of 2010, s. 47, Act No. 37 of 2011, s. 9, Act No. 48 of 2013, s. 11, Act No. 38 of 2016, s. 74.]

## **21. Changes in securities exchange, commodities exchange rules**

(1) The rules of an approved securities exchange, commodities exchange or a derivatives exchange, in so far as they have been approved by the Authority, shall not be amended, varied or rescinded without the prior approval of the Authority.

(2) Where the board of directors of an approved securities exchange, commodities exchange or a derivatives exchange wishes to amend its rules, it shall forward the amendments to the Authority for approval.

(3) The Authority shall, after hearing from the securities exchange, commodities exchange or a derivatives exchange, and within thirty days of receipt of a notice under subsection (2) give written notice to the securities exchange, commodities exchange or a derivatives exchange stating whether such amendments to the rules are allowed or disallowed and in the event of the rules being disallowed, the Authority shall give reasons for such disallowance.

(4) Notwithstanding the provisions of paragraph (2), a proposed rule change may take effect upon filing with the Authority if designated by the exchanges as—

- (a) a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule;
- (b) a proposal establishing or changing a fee or other charge; or
- (c) a proposal dealing solely with the administration of the exchange or other matters which the Authority may specify.

(5) In addition to the provisions of subsection (4), the Authority may add other items which it determines to be appropriate in fulfilling its objective under this Act:

Provided that the Authority may summarily abrogate such exchange rules within thirty days of their implementation and require that the rules undergo the procedure prescribed in subsection (3) except that the summary abrogation shall not effect the validity of the rules while in force nor shall it be subject to appeal.

(6) Where an approved securities exchange, commodities exchange or a derivatives exchange proposes to alter any particulars already furnished or

undergoes or intends to undergo a change from its state specified in the application for approval it shall inform the Authority and obtain its prior consent before such alteration or change is effected.

[Act No. 48 of 2013, s. 12, Act No. 38 of 2016, s. 75.]

#### **21A. Securities exchange to make rules**

An approved securities exchange may make rules for the carrying out of its functions and, in particular, for the regulation of its activities, products, systems and fees.

[Act No. 48 of 2013, s. 13.]

#### **21B. Submission of rules to Authority**

Not less than thirty days prior to the proposed date of introduction of the rules made under section 21A, an approved securities exchange shall submit the rules to the Authority for review and consideration to determine if there exists risks that have not been adequately mitigated in the proposed rules.

[Act No. 48 of 2013, s. 13.]

#### **21C. Authority may abrogate rules**

Subject to section 21B, the Authority may abrogate any rules made under section 21A if there exists risks that have not been adequately mitigated in the rules.

[Act No. 48 of 2013, s. 13.]

### **22. Disciplinary action by securities exchange**

(1) Where a securities exchange or a derivatives exchange reprimands, fines, suspends or expels, or otherwise takes disciplinary action against a trading participant or a listed company, it shall within seven days give notice to the Authority in writing, giving particulars including the name of the person, the reason for and nature of the action taken.

(2) The Authority may review any disciplinary action taken by a securities exchange or derivatives exchange under subsection (1) and, on its own motion, or in response to the appeal of an aggrieved person, may affirm or set aside a securities exchange or derivatives exchange decision after giving the trading participant or the company and the securities exchange or derivatives exchange an opportunity to be heard.

(3) Nothing in this section shall preclude the Authority, in any case where a securities exchange fails to act against a trading participant or a listed company or a derivatives exchange fails to act against a futures member, from itself, suspending, expelling or otherwise disciplining the subject person, but before doing so the Authority shall give such persons and the exchange an opportunity to be heard.

[Act No. 10 of 2010, s. 48, Act No. 48 of 2013, s. 14.]

#### **22A. Directions to a securities exchange, commodities exchange and a futures exchange**

(1) The Authority may, by notice in writing, issue a general or specific direction to a securities exchange, commodities exchange or derivatives exchange where it considers it necessary or expedient—

(a) to ensure—

(i) the fair, transparent and efficient operation of a securities market, commodities markets or derivatives market;

- (ii) the fair, transparent and effective clearing and settlement of transactions in exchange-traded derivatives contracts or securities transactions;
  - (iii) the integrity and proper management of systemic risks in securities markets, commodities markets or derivatives market; or
  - (iv) a fair and proper governance structure of the securities exchange, commodities exchange or derivatives exchange;
- (b) in the interest of the public; or
  - (c) for the protection of the interests of investors.

(2) Without prejudice to the generality of subsection (1), a direction issued by the Authority may provide for—

- (a) the clearing or settlement of securities or exchange-traded derivatives contracts and the making of adjustments to contractual obligations arising out of those securities transactions or exchange-traded derivatives contracts;
- (b) the trading or the termination of trading on or through the facilities of that securities exchange, commodities exchange or derivatives exchange;
- (c) the manner in which a securities exchange, commodities exchange carries on its business, including the reporting of off-market trades by trading participants of the securities exchange; or
- (d) any other matter that the Authority may consider necessary for the effective administration of this Act.

[Act No. 48 of 2013, s. 15, Act No. 38 of 2016, s. 76.]

## **22B. Powers of the Authority to intervene in the operations of securities and futures exchanges**

(1) The Authority may, where—

- (a) there is in place, an act of Government affecting securities or commodities;
- (b) there is a major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such securities or commodities;
- (c) there is a threatened or actual manipulation of the market;
- (d) the Authority considers it necessary or expedient in the interest of the public or for the protection of the interests of the investors,

direct, by notice in writing, a securities exchange or a derivatives exchange to take such action as the Authority considers necessary to—

- (i) maintain or restore the fair, efficient and transparent trading in securities or any class of securities or exchange-traded derivatives contracts or any class of exchange-traded derivatives contracts; or
- (ii) liquidate any position in respect of any securities or any class of securities or exchange-traded derivatives contracts or any class of exchange-traded derivatives contracts.

- (2) A notice issued under subsection (1) may include a directive—
- (a) terminating trading on a securities market or a derivatives market or trading of a specific security or a exchange-traded derivatives contract;
  - (b) suspending trading on a securities market or derivatives market or trading of a specific security;
  - (c) confining trading to liquidation of securities or exchange-traded derivatives contracts' positions;
  - (d) ordering the liquidation of all positions or part thereof or the reduction in such positions;
  - (e) limiting trading to a specific price range;
  - (f) modifying the trading days or hours;
  - (g) altering the conditions of delivery;
  - (h) fixing the settlement price at which exchange-traded derivatives contracts' positions are to be liquidated;
  - (i) requiring any person to act in a specified manner in relation to trading in securities or any class of securities or exchange-traded derivatives contracts or any class of exchange-traded derivatives contracts;
  - (j) requiring margins or additional margins for any securities or exchange-traded derivatives contracts; and
  - (k) modifying or suspending any of the rules of a securities exchange or a derivatives exchange.

(3) Where the Authority suspends trading under subsection (2)(b), the suspension shall not exceed a period of three months:

Provided that the Authority may, if it considers it necessary, extend the suspension for one further period not exceeding three months at the expiry of which the Authority shall either notify the securities exchange or the derivatives exchange in writing that the suspension has expired, or proceed to cancel the securities exchange or the derivatives exchange license, as the Authority considers appropriate.

(4) Where a securities exchange or a derivatives exchange fails to comply with a direction of the Authority within the time specified in the notice issued under subsection (2), the Authority may—

- (a) set emergency margin levels in any securities or class of securities or any exchange-traded derivatives contracts or class of exchange-traded derivatives contracts;
- (b) set limits that may apply to market positions acquired in good faith prior to the date of the direction of the Authority; or
- (c) take such other action as the Authority may consider necessary to maintain or restore fair, efficient and transparent trading in any securities or class of securities or exchange-traded derivatives contracts or class of exchange-traded derivatives contracts, or liquidation of any position in respect of exchange-traded derivatives contracts or class of exchange-traded derivatives contracts.

[Act No. 48 of 2013, s. 15.]

**22C. Futures contract to be approved by the Authority**

(1) A derivatives exchange shall not permit the trading of an exchange-traded derivatives contract on the derivatives market established or operated by the derivatives exchange without the written approval of the Authority to trade in such exchange-traded derivatives contracts.

(2) The Authority may grant approval for the trading of an exchange-traded derivatives contract on the derivatives market established or operated by the derivatives exchange subject to such conditions or restrictions as the Authority may impose.

(3) The Authority may, by notice in writing, withdraw the approval granted under subsection (1) with effect from the date specified in the notice where—

- (a) the derivatives exchange fails to comply with a condition or restriction imposed under subsection (2); or
- (b) the Authority considers that it would be contrary to the interests of the investing public to permit the trading in that exchange-traded derivatives contract to continue.

(4) The Authority shall not withdraw its approval under subsection (3) without first giving the derivatives exchange an opportunity to be heard.

(5) An exchange-traded derivative contract approved to trade on a derivatives market of a derivatives exchange by the Authority under this Act shall be lawful for all purposes and shall not constitute a gaming or wagering contract under the Betting, Lotteries and Gaming Act (Cap. 131).

[Act No. 48 of 2013, s. 15.]

**22D. Fixing of position and trading limits in futures contracts**

(1) The Authority may, for the purpose of preventing, diminishing or eliminating excessive speculation in any commodity under an exchange-traded derivatives contract, by notice in writing, from time to time, fix such limits as the Authority considers necessary on the amount of trading which may be done or exchange-traded derivatives contracts' positions which may be held by any person, generally or specifically, under an exchange-traded derivatives contract traded on the derivatives market of or subject to the rules of a derivatives exchange.

(2) The limits upon exchange-traded derivatives contracts' positions and trading fixed by the Authority under subsection (1) shall apply to positions held by, and trading done by two or more persons acting in accordance with an express or implied agreement or understanding, as if the positions were held by, or the trading done by a single person.

(3) A person shall not, directly or indirectly—

- (a) buy or sell or agree to buy or sell, under an exchange-traded derivatives contract traded on the derivatives market of or subject to the rules of a derivatives exchange, any number of contracts in excess of the trading limits fixed for one business day or any other stated period set by the Authority; or
- (b) hold or control a gross buy or sell position under an exchange-traded derivatives contract traded on the derivatives market of or subject to the rules of a derivatives exchange in excess of any position limit fixed by the Authority.

(4) Nothing in this section shall preclude the Authority from—

- (a) fixing different trading or position limits for different exchange-traded derivatives contracts, different delivery months or for different days remaining until the last day of trading in an exchange-traded derivatives contract; or
- (b) exempting transactions under this section.

[Act No. 48 of 2013, s. 15.]

## **22E. Default process of a clearing house to take precedence over laws of insolvency**

The provisions in respect of a default process and the precedence of the default process over the laws of insolvency in relation to a central depository under the Central Depositories Act (Cap. 485C) shall apply to a clearing house of a securities or a derivatives exchange.

[Act No. 48 of 2013, s. 15.]

## **PART IV – SECURITIES INDUSTRY LICENCES**

### **23. Licences required**

(1) No person shall carry on business as a stockbroker, derivatives broker, REIT manager, trustee, dealer, investment adviser, fund manager, investment bank, central depository, authorised securities dealer, authorized depository, online forex broker, commodity dealer, commodity broker or hold himself out as carrying on such a business unless he or she holds a valid licence issued under this Act or under the authority of this Act.

(2) No person shall carry on or hold himself out as carrying on business as a securities exchange, commodities exchange or derivatives exchange, registered venture capital company, collective investment scheme or credit rating agency unless he or she is approved as such by the Authority.

(3) A person approved by the Authority to carry out any business required by this Act to be approved shall comply with all requirements of the Authority and pay an annual fee to the Authority at such rate as the Authority may prescribe.

(4) Nothing in this section shall be construed as limiting the powers of the Authority to approve or license any other person operating in any other capacity which has a direct impact on the attainment of the objectives of this Act.

[Act No. 3 of 2000, s. 15, Act No. 2 of 2002, Sch., Act No. 8 of 2008, s. 53, Act No. 37 of 2011, s. 10, Act No. 48 of 2013, s. 16, Act No. 38 of 2016, ss. 50 & 77.]

### **24. Application for licence**

(1) An application for a licence or for the renewal of a licence shall be made to the Authority in the prescribed form and shall be accompanied by the prescribed fee and in the case of an application for the renewal of a licence, may be made within three months but not later than one month prior to the expiry of the licence.

(2) The Authority may require an applicant to supply such further information as it considers necessary in relation to the application.

(3) A licence shall only be granted if the applicant meets and continues to meet such minimum financial and other requirements as may be prescribed by the Authority.

(4) The Authority may grant a licence subject to such conditions or restrictions as it thinks fit and the Authority may, at any time by written notice to a licence holder, vary any condition or restriction or impose further conditions or restrictions.

(5) The Authority shall not refuse to grant a licence without first giving the applicant or holder of a licence an opportunity of being heard.

(6) *Deleted by Act No. 48 of 2013, s. 17(b).*

(7) A license granted under this Act shall remain valid unless suspended or revoked by the Authority in accordance with this Act.

(8) Any person licensed by the Authority shall not change its shareholders, directors, chief executives or key personnel except with the prior confirmation in writing, by the Authority that it has no objection to the proposed change and subject to compliance with any conditions imposed by the Authority.

[Act No. 3 of 2000, s. 16, Act No. 9 of 2007, s. 49,  
Act No. 8 of 2008, s. 54, Act No. 48 of 2013, s. 17.]

#### **24A. Criteria for suitability**

(1) The Authority shall, in determining if a person is suitable for the grant of a licence under this Act, consider the—

- (a) financial status or solvency of the person;
- (b) educational or other qualifications or experience of the person, having regard to the nature of the functions which, if the application is granted, the person shall perform;
- (c) status of any other licence or approval granted to the person by any financial sector regulator;
- (d) ability of the person to carry on the regulated activity competently, honestly and fairly; and
- (e) reputation, character, financial integrity and reliability—
  - (i) in the case of a natural person, of that individual; or
  - (ii) in the case of a company, of the company chairperson, directors, chief executive, management and all other personnel including all duly appointed agents, and any substantial shareholder of the company.

(2) Without prejudice to the generality of subsection (1) the Authority may, in considering whether a person is fit and proper—

- (a) take into account whether the person—
  - (i) has contravened the provision of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty, incompetence, or malpractice by persons engaged in transacting with marketable securities;
  - (ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
  - (iii) has taken part in any business practice which, in the opinion of the Authority, was fraudulent prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the person's methods of conducting business; or
  - (iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that person; or
  - (v) has acted in such a manner as to cast doubt on the person's competence and soundness of judgment;



- 
- (b) take into account any information in the possession of the Authority, whether provided by the applicant or not, relating to—
    - (i) any person who is to be employed by, associated with, or who shall be acting for or on behalf of, the applicant for the purposes of a regulated activity, including an agent;
    - (ii) where the applicant is a company in a group of companies—
      - (A) any other company in the same group of companies; or
      - (B) any substantial shareholder or key personnel of the company or any company referred to in subparagraph (a);
  - (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
  - (d) have regard to the state of affairs of any other business which the person carries on or purports to carry on.

(3) The Authority shall give a person an opportunity to be heard before determining whether the person is fit and proper for the purposes of this Act.

(4) For the purposes of this section, "group of companies" means any two or more companies one of which is the holding company of the others.

[Act No. 35 of 2012, s. 6.]

## **25.**

[Repealed by Act No. 48 of 2013, s. 18.]

### **25A. Imposition of additional sanctions and penalties**

(1) Without prejudice to any other provision of this Act, the Authority may impose the following sanctions or levy financial penalties in accordance with this Act, for the breach of any provisions of this Act, the regulations, rules, guidelines, notices or directions made thereunder, or the rules of procedure of a securities, commodities or derivatives exchange, by a licensed or approved person, issuer, employee or a director of a licensed or approved person or employee director of a issuer as provided under section 11(3)(cc)—

- (a) with respect to a licensed person, issuer, securities, commodities or derivatives exchange or other approved person—
  - (i) a public reprimand;
  - (ii) suspension in the trading of an issuer's securities, commodities or derivatives for a specified period;
  - (iii) suspension of a licensed person from trading for a specified period;
  - (iv) restriction on the use of a licence;
  - (v) recovery from such person of the benefit accrued from the breach and an amount equivalent to two times the amount of the benefit accruing to such person by virtue of the breach;
  - (vi) the levying of financial penalties not exceeding ten million shillings;
  - (vii) revocation of the licence of such person;
- (b) with respect to an employee of a licensed or approved person, including a securities, commodities or derivatives exchange—

- (i) require the licensed or approved person to take disciplinary action against the employee;
  - (ii) disqualification of such employee from employment in any capacity by any licensed or approved person or employee issuer for a specified period;
  - (iii) recovery from the employee the benefit accrued from the breach of a licensed or approved person an amount double the benefit accruing to such person be reason of the breach;
  - (iv) the levying of financial penalties not exceeding five million shillings;
- (c) with respect to a director of a issuer or a licensed or approved person, including a securities, commodities or derivatives exchange—
- (i) disqualification of such person from appointment as a director of an issuer or licensed or approved person including, a securities, commodities or derivatives exchange;
  - (ii) the recovery from such person of the benefit accrued from the breach an amount equivalent to two times the amount of the benefit accruing to the person by reason of the breach;
  - (iii) the levying of financial penalties in such amounts as may be prescribed.

(1A) The financial penalties and recoveries set out under paragraphs (1)(a)(v) and (vii), (1)(b)(iii) and (iv), (1)(c)(ii) and (iii), (2) and (6) shall be recoverable summarily by the Authority as civil debts.

(2) In addition to any other sanction or penalty that may be imposed under this section, the Authority may make orders for restitution, subject to the provisions of subsection (3).

(3) The Authority shall make orders under subsection (2) where the breach of the provisions of this Act or the regulations made under the Act results in a loss to one or more aggrieved persons, but subject to the following conditions—

- (a) that the amount of the loss is quantified and proved to the Authority by the person making the claim; and
- (b) that notice is served by the Authority on the person expected to make the restitution, containing details of the amount claimed and informing them of their right to be heard.

(4) The Authority shall, in its annual report, publish the names of persons against whom actions has been taken by the Authority under this Part.

(5) For the purposes of this Act, an act, omission or failure of an agent, employee or any other person acting on behalf of a licensed person shall be considered to be the act, omission or failure of the licensed person as well as of the agent, employee or any other person acting as such.

(6) The financial penalties with respect to—

- (a) a breach of trading rules of a securities exchange by a licensed person shall be double the brokerage commission payable to the licensed person on the relevant trade, or double the annual fees, whichever is higher;
- (b) failure to comply with a reporting requirement by an issuer or a licensed person shall be double the applicable prescribed annual

listing fee or license fee, whichever is higher, for every calendar quarter during which the reporting requirement remains outstanding; and

- (c) failure on the part of the securities exchange to enforce and ensure compliance with this Act and the rules of the exchange as approved by the Authority, shall be equal to the annual license fee of the securities exchange.

[Act No. 9 of 2007, s. 50, Act No. 8 of 2008, s. 55, Act No. 48 of 2013, s. 19, Act No. 38 of 2016, s. 78, Act No. 15 of 2018, s. 7, Act No. 23 of 2019, s. 43.]

## **26. Suspension or revocation of a licence**

(1) The Authority may suspend or revoke a license, for such period or until the occurrence of such event as the Authority may specify, if a licensed person—

- (a) goes into liquidation or an order is issued for the winding up of the licensed person;
- (b) carries out any activity outside the scope of the licensed or approved activities;
- (c) has a receiver or a manager appointed on all or a substantial part of the property of the company;
- (d) ceases to carry on the licensed business for a period of more than thirty days unless it has obtained the approval of the Authority to do so;
- (e) any of its directors or key employees has not, in the opinion of the Authority, performed their duties honestly and fairly;
- (f) has contravened or failed to comply with any condition applicable in respect of the licence;
- (g) fails to comply with a direction of the Authority;
- (h) fails to provide the Authority with such information as it may require;
- (i) provides false or misleading information;
- (j) for any other reason, is no longer fit and proper person to hold a license; or
- (k) is in breach of any other provision under this Act.

(2) A suspension of a license under this section shall not exceed a period of three months:

Provided that the Authority may, if the Authority considers necessary, extend the suspension for a further period not exceeding three months.

(3) The Authority shall, at the expiry of the suspension period specified under subsection (2), lift the suspension or revoke the license, as the Authority considers appropriate.

(4) Where a licensed person fails to pay the prescribed annual fee, the license held by such licensee shall be considered suspended.

(5) Where a licence is suspended under subsection (4), and the licensee has not paid the prescribed fee within thirty days after the day on which the suspension takes effect or such further period as the Authority may specify, the licence shall stand revoked.

(6) The Authority may revoke or suspend a license at the request of a licensed person.

(7) The Authority shall publish, in the *Gazette*, all the licences suspended or revoked under this section.

(8) The Authority shall, in all cases where the Authority takes action under sections 25 and 26, give the person affected by such action an opportunity to be heard.

[Act No. 3 of 2000, s. 18, Act No. 2 of 2002, Sch, Act No. 48 of 2013, s. 20.]

#### **26A. Effect of revocation of a licence**

(1) A restriction, suspension or revocation of a licence under section 26, shall not—

- (a) void or affect an agreement, transaction or arrangement entered into by a licensed person on the securities market of a securities exchange or derivatives exchange before the revocation or suspension; or
- (b) affect the right, obligation or liability of any person arising under the agreement, transaction or arrangement.

(2) The Authority may, where a licence has been restricted, suspended or revoked under this Part, by notice in writing—

- (a) require the licensed person to transfer to its client, records relating to client property or the affairs of the client held at any time for the client, in such manner, as the Authority may specify in the notice; or
- (b) permit the licensed person, subject to such conditions as the Authority may specify in the notice, to—
  - (i) in case of a restriction or suspension, carry on the essential business operations for the protection of the interests of clients during the period of restriction or suspension; or
  - (ii) in case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation.

[Act No. 48 of 2013, s. 20.]

#### **27. Register of licence holders**

(1) The Authority shall—

- (a) before the thirtieth day of April in each year, cause the names and addresses of all persons licensed or approved to be published in the *Gazette*; and
- (b) within thirty days of suspension or revocation of a licence, cause the names of any persons whose licence is suspended or revoked to be published in the *Gazette*.

(2) The Authority shall keep in such form as it deems appropriate a register of the holders of current licences specifying, in relation to each holder of a licence—

- (a) his name;
- (b) the address of the principal place at which he or she carries on the licensed business; and
- (c) the name or style under which the business is carried on if different from the name of the holder of the licence.

[Act No. 3 of 2000, s. 19, Act No. 2 of 2002, Sch., Act No. 48 of 2013, s. 21.]

**28. Obligation to report changes**

Where—

- (a) the holder of a licence ceases to carry on the business to which the licence relates; or
- (b) a change occurs in any particulars which are required by section 27 to be entered in a register of licence holders with respect to the holder of a licence,

the holder of the licence shall within fourteen days of the occurrence of the event concerned, give to the Authority, particulars of such event.

[Act No. 3 of 2000, s. 20.]

**29. Licensing requirements**

(1) Before granting any licence or approval, the Authority in respect of a business that requires to be licensed or approved shall satisfy itself—

- (a) that the applicant is such legal entity as may be prescribed in the Regulations as the Authority may prescribe or is duly constituted as a collective investment scheme;
- (b) *deleted by Act No. 35 of 2012, s. 7;*
- (c) that at least one the director, chief executive officer or such other person who directs, conducts, manages or supervises the business of the applicant has satisfied such minimum qualification requirements as may be prescribed;
- (d) in the case of a stockbroker, dealer or other person prescribed by the Authority that the applicant company has lodged security in such sum as may be determined by the Authority or an equivalent bank guarantee or bond with the securities exchange in which it is a trading participant or with the Authority or other person approved by the Authority as the case may be;
- (e) that the applicant company has the necessary administrative capacity to carry on business for which the licence is required;
- (f) in the case of an application for a stockbroker's licence, that the applicant shall carry on business solely on behalf of clients;
- (g) in the case of an application for a dealer's licence, that the applicant shall carry on business solely on the applicant's own behalf;
- (gg) in the case of an application for a derivatives broker licences, that the applicant may carry on business either on behalf of clients or on the applicant's own behalf, or both;
- (h) *deleted by Act No. 35 of 2012, s. 7.*

(2) A securities exchange or a derivatives exchange shall admit an applicant for a stockbroker, dealer or derivatives broker license if the applicant—

- (a) fulfils all the requirements imposed by the Authority and the relevant securities exchange, derivatives exchange or any self-regulatory organization; and
- (b) pays an admission fee which has been approved by the Authority.

(3) A securities broker, a derivatives broker or a dealer whose license is revoked under section 26, shall cease to be a trading participant of the securities exchange.

(4) An individual or a corporate person shall not, in relation to a company—

- (a) control or be beneficially entitled, directly or indirectly, to more than thirty three and a third percent of the issued share capital or voting rights in a company;
- (b) appoint more than one-third of the members of the Board of directors; or
- (c) receive more than thirty-three and a third percent of the aggregate dividends and interest on shareholders loans to be paid in any given financial year:

Provided that the provisions of this subsection shall not apply—

- (i) to a corporate entity which is licensed by a banking, insurance, pensions or securities regulator in Kenya or elsewhere in so far as such licence imposes restrictions on the entity in relation to the majority shareholding; or
- (ii) where the ownership structure of that corporate shareholder is diverse and no person holds or controls more than twenty-five percent of its shares, votes, directorship appointments, dividends or interest on shareholder loans.

(5) A person who, in relation to a company, exercises control or is beneficially entitled, directly or indirectly—

- (a) to more than twenty-five percent of the listed share capital or voting right;
- (b) to appoint more than one quarter of the members of the Board of Directors; or
- (c) to receive more than twenty-five percent of the aggregate dividends and interest on shareholders loans to be paid in any given financial year,

shall not be appointed as a key personnel of that company.

(6) The Authority shall, in determining whether a person has direct or indirect control or beneficial entitlement for the purposes of subsection (4) and (5), have regard to whether that person is an associate or party to any contract, arrangement or understanding between persons that may allow for control to be exercised directly or indirectly in relation to the company.

(7) For the purposes of subsection (4), (5) and (6), “company” means—

- (a) a stockbrokerage;
- (b) an investment bank;
- (c) a fund manager; or
- (d) derivatives broker;
- (e) such other class of licensee as may be prescribed by the Authority by notice in the *Gazette*.

[Act No. 14 of 1991, Act No. 10 of 1994, s. 5, Act No. 3 of 2000, s. 21, Act No. 2 of 2002, Sch., Act No. 9 of 2007, s. 51, Act No. 8 of 2008, s. 56, Act No. 10 of 2010, s. 49, Act No. 37 of 2011, s. 11, Act No. 35 of 2012, s. 7, Act No. 48 of 2013, s. 22, Act No. 22 of 2022, s. 54.]

### 30. Procedure for collective investment schemes

(1) No person shall carry on any business or engage in any activity as a collective investment scheme, in or from within Kenya, unless such person is registered under this Act.

(2) The promoters of a collective investment scheme that is proposed to be formed, may apply to the Authority for consent to register a collective investment scheme upon complying with the requirements prescribed under this Act.

(3) Where the Authority grants its consent under subsection (2), the promoters of the proposed collective investment scheme shall, within three months from the date of granting such consent, deliver to the Authority—

- (a) in the case of a unit trust or investment company, satisfactory proof that the proposed collective investment scheme is lawfully constituted in Kenya;
- (b) in the case of a mutual fund, proposed incorporation documents and such other information or documents as may be stipulated by the Authority; and
- (c) an application in the prescribed form for registration as a collective investment scheme accompanied by the prescribed fee.

(4) If the Authority is satisfied that the applicant has complied with all the requirements, it shall register the collective investment scheme and issue to the applicant a certificate of registration in the prescribed form.

(5) In the case of a collective investment scheme to be set up as a mutual fund, upon the issue of a certificate of registration under subsection (4), a body corporate shall be deemed to have been incorporated as a collective investment scheme with variable capital, notwithstanding the provisions of the Companies Act (Cap. 486).

(6) Notwithstanding the requirements of subsection (1), any person whom immediately before the commencement of this Act was carrying on business as an investment company within the meaning of this Act shall be entitled to carry on such business without registration for a period of six months from such commencement:

Provided that such person shall apply for and obtain registration under this Act prior to the expiration of such period.

(7) During the period referred to in subsection (6), the investment company shall be subject to all the provisions of this Act except the requirement as to registration.

(8) No registered collective investment scheme shall, in or outside Kenya, offer its shares to the public unless prior to such offer, it publishes in writing an information memorandum signed by or on behalf of its officers and files a copy thereof with the Authority.

(9) Every information memorandum under subsection (8) shall comply with such requirements as may be prescribed by the Authority.

(10) Subject to the provisions of this Act, any regulations, rules, guidelines or notices issued thereunder, or anything contained in the articles of association or information memorandum, a mutual fund shall be a body corporate with perpetual succession and a common seal and shall be capable, in its corporate name, of doing and performing all things and acts which may lawfully be done by a body corporate.

[Act No. 3 of 2000, s. 22, Act No. 48 of 2013, s. 23.]

## PART IVA – PUBLIC OFFERS OF SECURITIES

### **30A. Offers of securities**

(1) For the purposes of this Act, a person is considered to offer securities if that person—

- (a) invites another person to enter into an agreement for, or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
- (b) invites another person to make an offer under paragraph (a).

(2) An offer of securities to the public (a "public offer") includes an offer to any section of the public in Kenya, however selected.

(3) An offer shall not be considered as a public offer if—

- (a) the offer is not calculated to result, directly or indirectly, in the securities of the company being available to persons other than those receiving the offer; or
- (b) otherwise being a private concern of the person receiving the offer and the person making the offer.

(4) Subject to the provisions of this Act, an issuer or an offeror shall not make a public offer of securities unless that issuer or offeror has submitted a prospectus in respect of that offer to the Authority for approval.

(5) The Authority may, from time to time, exempt an offer from the requirements of this section.

(6) The Authority may impose different requirements in relation to a prospectus and ongoing disclosure in respect of a restricted public offer of securities, asset backed securities or other forms and structures of securities offering.

(7) A person who contravenes the provisions of this section commits an offence.

[Act No. 48 of 2013, s. 24.]

### **30B. Restricted public offers**

An issuer or offeror may, where a public offer of securities is—

- (a) restricted to sophisticated investors; or
- (b) directly communicated to a prescribed category and number of persons,

submit a short-form prospectus to the Authority for approval.

[Act No. 48 of 2013, s. 24.]

### **30C. Filing of information notice**

An issuer or offeror shall file an information notice with the Authority—

- (a) in respect of a restricted public offer of securities—
  - (i) where the minimum amount which may be paid under the offer of securities is not less than such amount as the Authority may prescribe from time to time; or
  - (ii) where the securities are denominated in such an amount as the Authority may prescribe from time to time;
- (b) in the case of any issue or offer exempted from issuing a prospectus or a short-form prospectus, except in respect of asset-backed securities.

[Act No. 48 of 2013, s. 24.]

### **30D. Criminal liability for a defective prospectus**

(1) A person who—

- (a) makes a false, misleading or deceptive statement in a prospectus; or



- (b) omits information or a statement from a prospectus which is required under this Act to be included,

commits an offence and shall be liable on conviction—

- (i) in the case of an individual, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both; and
- (ii) in the case of a company, to a fine not exceeding thirty million shillings.

(2) It shall be a defence in proceedings against a person in respect of an offence committed under subsection (1), to prove that—

- (a) the statement was immaterial; or
- (b) he or she had reasonable grounds to believe and did, up to the time of the issue of the prospectus, that the statement was true.

[Act No. 48 of 2013, s. 24.]

### **30E. Compensation for false or misleading prospectus**

(1) This section applies to—

- (a) an issuer of securities to which a prospectus relates;
- (b) where the issuer is a body corporate—
  - (i) each person who is a director of that body corporate at the time when the prospectus is published; and
  - (ii) each person who has given his consent to be named and is so named in the prospectus as a director or has agreed to become a director of that body corporate either immediately or at a future time;
- (c) each person who accepts, and is stated in the prospectus or supplementary prospectus as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;
- (d) the offeror of the securities, where the offer or is not the issuer;
- (e) where the offeror is a body corporate, but is not the issuer and is not making the offer in association with the issuer, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published; and
- (f) each person not falling within paragraphs (a) to (e) who has authorized the contents of, or of any part of, the prospectus or supplementary prospectus.

(2) Any person to whom subsection (1) applies shall be jointly and severally liable to pay compensation to any person who acquires any of the securities, in reliance upon the prospectus, including acquisition in the secondary market, to which the prospectus relates and, suffers loss as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required by this Act to be included.

(3) Notwithstanding the provisions of subsection (2), a person shall not be responsible for a prospectus or a supplementary prospectus—

- (a) under subsection (1)(a) or (b), unless the issuer has made or authorized the offer in relation to which the prospectus or supplementary prospectus is published; or

- (b) under subsection (1)(b), (c), (e) or (f), if such prospectus or supplementary prospectus is published without his or her knowledge or consent and on becoming aware of its publication, he or she gives reasonable notice to the public and to the Authority that the prospectus or supplementary prospectus was published without his knowledge or consent.

(4) A person shall, where he or she has accepted responsibility for, or authorized only part of the contents of a prospectus, be liable under paragraph (1) (d) or (g) only for that part if it is included or substantially included in the form and context in which that person has agreed.

[Act No. 48 of 2013, s. 24.]

### **30F. Disclosure obligations**

(1) An issuer whose securities have been issued in accordance with an approved offer shall keep the Authority, members of the company and other holders of its securities, any listing exchange and the general public informed as soon as reasonably practicable, but in any event not later than the end of the next working day, of any information relating to the issuer and its subsidiaries which—

- (a) is necessary to enable them appraise the financial position and the state of corporate governance of the issuer and its subsidiaries;
- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) might be reasonably be expected to materially affect market activity in the price of its securities.

(2) An issuer shall, in addition to the obligations imposed under subsection (1) comply with such other requirements as the Authority may prescribe.

(3) A person who contravenes this section commits an offence.

[Act No. 48 of 2013, s. 24.]

### **30G. Power of the Authority to issue directions to issuers**

The Authority may, if it appears to it that—

- (a) it is desirable to protect members, other than holders of securities or investors in asset backed securities or other listed securities;
- (b) a listed company is in breach of its listing agreement;
- (c) a listed company is contravening, has contravened or is about to contravene any provision or requirement under this Act;
- (d) a listed company has failed to comply with any provision of or requirement under this Act or rules of its listing exchange;
- (e) a listed company has furnished the Authority with false, inaccurate or misleading information;
- (f) there is a breach of the listing agreement in respect of any other securities;
- (g) an issuer or other obligated party has furnished the Authority with false, inaccurate or misleading information; or
- (h) an issuer or offeror has contravened or is about to contravene a provision of this Act,

issue directions to an issuer or offeror of an approved offer or in the case of other listed securities to the responsible or relevant party—

- (i) to cease and desist from the breach;
- (ii) to do or not to do any matter as specified; or
- (iii) with regard to any other matter that the Authority may consider necessary.

[Act No. 48 of 2013, s. 24.]

### **30GA. Form of report books, records and internal accounting directives**

(1) Every issuer of securities, licensed and approved persons shall devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with the International Financial Reporting Standards.

(2) An issuer of securities, a licensed or an approved person shall not falsify its books or record of accounts or financial statements or report financial statements not in line with the International Financial Reporting Standards.

(3) An officer or director of an issuer, a licensed or an approved person or any other person acting under the direction thereof, shall not take any action to mislead an auditor engaged in the performance of an audit or review of the financial statements of that issuer, licensed or approved person that such action would render the issuer's financial statements materially misleading as to their completeness and correctness.

[Act No. 15 of 2018, s. 8.]

## **PART IVB – ASSET BACKED SECURITIES**

### **30H. Interpretation**

For the purposes of the Part—

"asset backed securities" means—

- (a) any securities including promissory notes but does not include shares or entitlements under a collective investment scheme;
- (b) any rights or interests, debentures or certificates evidencing the legal, equitable or beneficial interest or entitlement of its holder to a share of the assets of a special purpose vehicle or to entitlement to payment from such assets where payments or distributions of capital, income, principal or interest to investors accrue principally from the assets of the special purpose vehicle as a consequence of the establishment or operation of a securitization transaction; and
- (c) any other right, interest, instrument of security or class of securities prescribed to be asset backed securities;

"asset" means any asset or property whether moveable or immovable, tangible or intangible, financial, or non-financial, including any rights, benefits or entitlements sold, transferred or to be transferred or assigned by an originator or seller to special purpose vehicle or originated into an special purpose vehicle, including where permitted under any written law future assets, and includes any or all other assets, rights, benefits and entitlements in law or in equity of the special purpose vehicle supporting the asset backed securities or the payment of any obligations or expenses in respect thereof or in respect of the special purpose vehicle or the securitisation transaction and anything else prescribed to be an asset;

"issuer or offeror" means an originator or seller of assets to a securitisation trust, any securitisation arranger and transaction adviser but not does not include a trustee;

"limited investor" means any qualified investor which is not—

- (a) a retirement benefit fund or pension fund formed or established under the laws of Kenya;
- (b) an insurance company formed or established under the laws of Kenya;
- (c) a collective investment scheme formed or established under the laws of Kenya;
- (d) any other investor as the Authority may prescribe.

"limited restricted offer" means an issue or offer made only to a limited investor;

"obligor" means any person having an obligation to make payment in relation to or in connection with the assets sold, transferred or assigned to a special purpose vehicle and may, where permitted by law, include persons having a future payment obligation;

"offer" in relation to asset backed securities, except where the context otherwise requires, includes sales or transfers of asset backed securities by the originator but shall not include the issue of asset backed securities to an originator or seller in exchange for or consideration for the sale, transfer or assignment of assets to the trustee for the purpose of establishing or maintaining the operation of the securitisation trust or in accordance with the transaction documents;

"offering memorandum" means any a notice, circular, material, advertisement, publication or other invitation offering for subscription or purchase of any asset backed securities in restricted or limited restricted offers;

"originator" means a person who directly or indirectly originates assets into a special purpose vehicle or arranges for the acquisition, sale, transfer or assignment of the assets previously owned by that person to the special purpose vehicle and may, where the context permits, include a seller of the assets;

"qualified investor" in relation to asset backed securities, means—

- (a) any originator or seller of the assets of the securitisation trust;
- (b) any professional investor;
- (c) a bank;
- (d) an insurance company;
- (e) a pension fund or a retirement benefit fund;
- (f) a corporation or authority which meets the asset tests for a professional investor;
- (g) the Central Bank;
- (h) the Government; and
- (i) any other person prescribed to be a qualified investor;

"rating" means a public rating issued from time to time by a credit rating agency and where the context permits includes any subsequent review, update or modification;

"restricted offer" means an issue or offer made only to a qualified investor;

"securitisation arranger" means a person, who is appointed by the trustee under section 30O from amongst persons who are not employees of the originator or seller or who are acting solely in the capacity of a legal adviser or the auditor of the originator or the seller or who sponsor or assist in—

- (a) the formation of a securitisation trust;
- (b) the preparation of the structure of a securitisation transaction;
- (c) its financial or cash flow models; or
- (d) a prospectus or an offering memorandum in asset backed securities;

"securitisation manager" means any person appointed by a trustee under section 30N to assist in the administration of assets, the management or operation of the securitisation transaction;

"securitisation transaction" means a transaction which involves offer or issue of asset backed securities to any investor other than a seller or originator and includes all the ancillary, incidental or related arrangements which are entered into, in relation to, or in connection with the—

- (a) sale;
- (b) transfer or assignment of assets;
- (c) appointment of a trustee;
- (d) establishment of a trust;
- (e) appointment of a servicer; or
- (f) entering into all or any arrangements, necessary or desirable to provide any structural or credit support or manage risks or other arrangements to operate or give effect to the securitisation transaction or issue or offer of asset backed securities;

"securitisation trust" means a trust settled, formed or established to act as a special purpose vehicle for a securitisation transaction;

"seller" means a person who sells, assigns or transfers any assets into a special purpose vehicle and who may be the originator of the assets;

"servicer" means a person appointed by the trustee under section 30P to be primarily responsible for—

- (a) the day to day administration functions of the cash flow of the securitised assets;
- (b) the ongoing relationship with any obligor;
- (c) the provision of service to obligors;
- (d) cash management;
- (e) collection and remission of funds to the trustee; or
- (f) the conduct such other activities as are specified in the transaction documents,

and includes any successor or alternative servicer from the time that such alternative servicer becomes primarily responsible as servicer and trustee if that alternative servicer undertakes those functions and may include a securitisation manager;

"special purpose vehicle" means a securitisation trust established in accordance with a trust deed subject to the laws under which asset backed securities are issued;

"transaction document" means a trust deed and any other documents prescribed to be transaction documents;

"trustee" means a person appointed under the trust deed as a trustee of the securitisation trust and any successor;

"unrestricted offer" means an issue or offer to the public or which is not a restricted offer or a limited restricted offer.

[Act No. 48 of 2013, s. 24.]

### **30I. Restrictions on issues, offers etc. of asset backed securities**

(1) A person shall not issue, offer for subscription purchase, or invite the subscription or purchase of asset backed securities to the public or to restricted investors, except in accordance with this Act.

(2) A person shall not act as an originator, seller, issuer, securitisation arranger, transaction adviser, trustee, securitisation manager or servicer of asset backed securities except in accordance with this Act.

(3) A person shall not act as an agent in the sale or purchase of asset backed securities unless that person is a regulated person and complies with the requirements of this Act.

(4) A person shall not issue or offer any asset backed security other than to a seller or an originator of the asset backed security.

(5) A person shall not issue an asset backed security unless it is made in accordance with a prospectus or an offering memorandum.

(6) The Authority may prescribe the contents of a prospectus or offering memorandum taking into consideration on the classification of the issue or offer and the nature of the assets backing the securities or such other factors that the Authority may consider appropriate.

(7) Where a limited restricted offer is made, the issuer shall file an information notice with the Authority.

(8) For the purposes of this Act, a person offers asset backed securities if that person invites another person to enter into an agreement for or with the view to subscribing for or otherwise acquiring or underwriting any asset backed securities, or if he or she invites another person to make such an offer.

(9) A person who contravenes any provisions of this section commits an offence.

[Act No. 48 of 2013, s. 24.]

### **30J. Form of asset backed securities to be offered**

(1) Asset backed securities issued or offered under this Act shall consist of beneficial entitlements to a unit, participation, share of or interest in the assets of the trust established as a special purpose vehicle for undertaking a securitisation transaction and issuing asset backed securities to investors who shall be beneficiaries of the trust.

(2) A person may issue or offer different classes or tranches of asset-backed securities reflecting beneficial entitlements with differing rights including priorities of payments from the income or capital of the trust or distribution of assets or voting

entitlements and provision may be made for a beneficiary to be entitled to a residual interest.

[Act No. 48 of 2013, s. 24.]

### **30K. Nature of assets that may be sold, transferred or assigned**

Assets which may be originated into a securitisation trust or sold, transferred or assigned to the trust shall—

- (a) generate or result in a cash flow;
- (b) not be encumbered to a third party at the time at which an issue or offer of asset backed securities is made;
- (c) be capable of being legally originated, sold, transferred or assigned; and
- (d) comply with any requirements imposed under this Act.

[Act No. 48 of 2013, s. 24.]

### **30L. Origination of assets for sale, transfer or assignment**

(1) Subject to such requirements that may be imposed by the Authority, all securitisation transactions shall involve either one or a combination of—

- (a) the direct origination of the assets into the securitisation trust; or
- (b) the sale, transfer or assignment of the assets to the trustee to be held under the terms of the securitisation trust in a manner which constitutes a true sale according to the laws of Kenya in relation to the particular type of asset, the laws governing the transaction or the jurisdiction or location of the assets.

(2) Assets may be transferred to a securitisation trust by more than one seller or originator:

Provided that—

- (a) the sale, transfer or assignment of the asset is recognized as such by the relevant law or law governing the transaction, and in such case, it shall not be necessary, in order to achieve a true sale and to satisfy the requirements of this Act that off balance sheet treatment is achieved under the accounting rules by the originator or the seller or that capital relief be provided by any other regulator.

(3) The sale, transfer or assignment in relation to a specific asset or a specific securitisation transaction under subsection (1) shall, subject to such conditions as the Authority may impose, be a legal and not an equitable sale, transfer or assignment of the asset or assets.

(4) Failure to achieve a true sale shall not as a consequence of the operation of this Act operate to invalidate the sale, transfer or assignment, the issue or offer of asset backed securities or otherwise adversely affect the rights of the investors in asset backed securities.

[Act No. 48 of 2013, s. 24.]

### **30M. Trustees**

(1) The Authority may, from time to time, prescribe the qualifications of a person to be appointed as a trustee.

(2) A trustee shall—

- (a) be the custodian of the assets of a securitisation trust;

- (b) manage the operation of the securitisation trust and the securitisation transaction in a fiduciary capacity,

to give effect to the objectives and purposes of the trust for the benefit of the beneficiaries in accordance with the trust deed, any other law governing trustees and the transaction documentation.

(3) All assets of the securitisation trusts shall be held by the trustee in trust for the investors in asset backed securities as the beneficiaries of the securitisation trust may consider appropriate.

(4) Except as specifically provided for in the trust deed, and to the extent that the trust deed relates to the implementation and operation of the securitisation trust and securitisation transaction, the preservation of assets and fulfilment by the trustee of its fiduciary obligations, the assets of a securitisation trust shall not be available to—

- (a) the trustee;
- (b) any creditors of the trustee;
- (c) any other claimants against the trustee; or
- (d) satisfy any liabilities of the trustee.

(5) The assets of a securitisation trust shall not be included in the assets of trustee in the event the trustee is declared insolvent, wound up, placed under administration, dissolved, amalgamated or restructured.

(6) A trust deed shall contain such information, including the roles and duties of a trustee, as the Authority may prescribe.

(7) A trustee shall, in addition to such other duties and obligations as may be imposed on it under any other written law, perform such other roles and duties as the Authority may prescribe.

[Act No. 48 of 2013, s. 24.]

### **30N. Appointment and liability of securitisation manager**

(1) A trustee may appoint a securitisation manager in such manner as may be provided for in the transaction documentation.

(2) A securitisation manager shall assist the trustee with the operation and management of the securitisation transaction and assets.

(3) A securitisation manager shall not operate to reduce or alleviate any obligor, seller, servicer or trustee of any of its obligations under the trust deed, the transaction documentation, this Act or any other written law.

(4) A trustee shall, notwithstanding any delegation to a securitisation manager of its duties, be liable for any action or omission by the securitization manager.

(5) The Authority may prescribe requirements in relation to a securitisation manager.

[Act No. 48 of 2013, s. 24.]

### **30O. Securitisation arranger**

(1) A trustee may appoint a securitisation arranger in accordance with the transaction documentation.

(2) An issuer shall, where a trustee has not appointed a securitisation arranger, be liable to investors in the asset backed securities for—



- (a) all matters relating to the structure, conduct of due diligence, cash flow and financial modelling; and
- (b) any information in the prospectus or an offering memorandum.

[Act No. 48 of 2013, s. 24.]

### **30P. Servicers, alternative servicers and successor servicers**

(1) The Authority may prescribe the eligibility requirements for servicers, alternative servicers and successor servicers.

(2) Subject to the provisions of this Act, a seller or an originator may be appointed to act as a servicer.

(3) Where—

- (a) the trustee does not appoint a servicer appointed; or
- (b) the servicer retires or has been removed,

the trustee or securitisation manager appointed by the trustee shall carry out the functions of the servicer until another servicer is appointed.

(4) The servicer shall—

- (a) in addition to any contractual obligations which the servicer may have under the transaction documents, in conducting its role, owe a fiduciary duty to the trustee and the investors in the asset backed securities as beneficiaries of the securitisation trust; and
- (b) provide access to obligor, files and other documents, records data, systems, software, documentation and personnel information that the trustee or any auditor may require to fulfil its obligations under the securitisation trust transaction.

[Act No. 48 of 2013, s. 24.]

### **30Q. Classification of issues or offers of asset backed securities**

(1) An issue or offer of asset backed securities may be classified as—

- (a) an unrestricted offer;
- (b) a restricted offer; or
- (c) a limited restricted offer.

(2) All offers which are not restricted offers or limited restricted offers shall be classified as unrestricted offers and no issue or offer of asset backed securities shall be made to a person who is not the originator or seller of the assets or a qualified investor or limited investor unless the requirements of this Act in relation to unrestricted offers or the conversion to an unrestricted offer have been complied with.

(3) Subject to the provisions of this Act, a person shall not make an unrestricted offer of asset backed securities unless the issuer or offeror has submitted a prospectus to the Authority, and the Authority has approved the prospectus.

(4) The Authority shall not approve a prospectus in respect of an unrestricted offer unless the Authority is satisfied that there is a binding listing arrangement in respect of the offer with a securities exchange.

(5) Unrestricted issue or offer of asset backed securities may be made together with a restricted issue or offer or a limited restricted offer of asset backed securities:

Provided that where more than one category of offer is made together with an unrestricted issue or offer, the offer, in its entirety, shall be subject to the approval of the Authority as provided for in subsection (3).

(6) Subject to the provisions of this Act, a person shall not make a restricted offer of asset backed securities or a limited restricted offer unless the issuer or an offeror has submitted to the Authority an offering memorandum which complies with the requirements of this Act.

(7) The Authority shall not be liable to any action in damages suffered as a result of—

- (a) any prospectus approved by the Authority;
- (b) any offering memorandum submitted to the Authority; or
- (c) the issue of or failure to issue a stop order.

(8) The Authority may make regulations prescribing the—

- (a) issues or offers of asset backed securities; and
- (b) requirements of the various classifications.

[Act No. 48 of 2013, s. 24.]

### **30R. Conversion of restricted or unrestricted offers**

A securitisation transaction which has been classified as—

- (a) a restricted offer;
- (b) a limited restricted offer; or
- (c) any tranche or portion of an offer so classified may, with the consent of the trustee and, where provided for in the transaction documents, with the consent of the investors in the asset backed securities, be converted to unrestricted or a restricted offer in such manner as they Authority may prescribe.

[Act No. 48 of 2013, s. 24.]

### **30S. Content of the prospectus, offering memorandum or information notice**

(1) A prospectus or an offering memorandum and information notice shall—

- (a) contain such information as investors and their professional advisers may reasonably require to make an informed assessment of the securitisation transaction, the cash flow and the risk associated with investing in an asset backed securities; and
- (b) comply with any other requirements, as the Authority may impose.

(2) The Authority may approve a prospectus if the prospectus contains the information required under this Act:

Provided that the approval of the prospectus shall not operate to waive, relieve or reduce any obligation by any party to make a disclosure or provide any defense to any action under this Act or under any other law.

(3) The Authority may prescribe the form and content of an information notice under subsection (1).

[Act No. 48 of 2013, s. 24.]

**30T. Secondary sales or transfer of asset backed securities**

A secondary sale or transfer of an asset backed security shall comply with the requirements of this Act and such other requirements as the Authority may impose.

[Act No. 48 of 2013, s. 24.]

**30U. Obligations applicable to restricted offers**

(1) A reference in this Act to a false, untrue, misleading or deceptive statement in a prospectus or to the omission of information or a statement when making an application relating to or in connection with any securitisation transaction or any issue or offer of asset backed securities shall—

- (a) include any statement made in or any representation or warranty included in any prospectus or offering memorandum, transaction document or made to any credit rating agency in connection with the rating of any asset backed securities or the review of such a rating and includes any omission; and
- (b) include any information, statement in, or, omission from, the continuing disclosure obligations under this Act.

(2) The provisions of section 30D, 30E and 30F shall apply to an application relating to or in connection with a securitization transaction or issue or offer of asset backed securities under this Part.

(3) The provisions of section 30D, 30E, 30JM, 30K and 33O shall apply to an offering memorandum in relation to an issue or offer involving a restricted offer, whether it is made in combination with or is a tranche of another issue or offer.

(4) The powers of the Authority to—

- (c) make an application to court in case of unfair prejudice under section 33C; or
- (d) require production of records and documents under section 33D;
- (e) issue a direction under section 30G,

shall apply to restricted offers in the same manner as if the asset backed securities had been listed.

[Act No. 48 of 2013, s. 24.]

**30V. Obligation to conduct due diligence**

(1) An issuer, an originator, a seller, a securitisation arranger, a transaction adviser or any party involved in or connected with the issue or offer or named as an expert in the prospectus or offering memorandum shall conduct an independent verification and due diligence in respect of the assets, the issue of asset backed securities, all statements included in the prospectus or offering memorandum and the presentations and warranties included in any transaction document.

(2) A person shall not be held liable for a statement in or omission from a prospectus or offering memorandum or in respect of a representation or warranty in a transaction document if that person proves that prior to making such statement, omission, representation or warranty that person—

- (a) made such inquiries that were reasonable in the circumstances; and
- (b) believed, on reasonable grounds, that the statement, representation, warranty or omission was not misleading, deceptive or material.

(3) A credit rating agency shall include, prominently in any credit rating report issued in respect of asset backed securities, details of due diligence or verification

of facts, data, assumptions or other information or statements, if any, that the credit rating agency has undertaken.

(4) Due diligence or verification under this section shall be carried out in such manner as the Authority may prescribe.

[Act No. 48 of 2013, s. 24.]

### **30W. Rating requirement and obligations of credit rating agencies**

(1) A trustee shall, where a rating under this Act is required, ensure that a rating is obtained and maintained.

(2) A trustee shall, if a rating is obtained, provide the rating agency with the necessary information for the purposes of maintaining the rating.

(3) An auditor, a servicer, a securitisation manager or any other party to the securitisation transaction shall provide information to the trustee which is necessary to enable the trustee to fulfil its obligations.

(4) A credit rating agency shall comply with any requirements prescribed by the Authority in relation to asset backed securities.

(5) A person who contravenes this section commits an offence.

[Act No. 48 of 2013, s. 24.]

### **30X. General disclosure obligations**

(1) A servicer and a trustee or any other specified person in a securitisation trust shall, whether the asset backed securities are listed or not, comply with the disclosure requirements under section 30F, and any further obligations and requirements as may be prescribed by the Authority.

(2) The continuing disclosure obligations imposed under this Part and any other obligations imposed by the Authority shall apply, to the servicer, trustee or any other specified person under subsection (1), in addition to any requirements provided for in the transaction documents or the requirements of any listing entity.

[Act No. 48 of 2013, s. 24.]

### **30Y. Trustee to file a summary of transferred assets**

(1) A trustee shall, irrespective of the classification of the issue or offer of asset backed securities, within seven working days of the issue or offer of asset backed securities to a person other than a seller or an originator, or the sale, transfer or assignment of assets to a securitisation trust, file with the Authority—

- (a) a summary of the assets transferred which discloses the nature and the number of assets transferred;
- (b) details of the consideration for sale, transfer or assignment;
- (c) details of the nature of the sale, transfer or assignment; and
- (d) such other information as the Authority may prescribe.

(2) A filing made under subsection (1) shall not operate to affect the sale, transfer or assignment of assets.

[Act No. 48 of 2013, s. 24.]

### **30Z. Securitisation requirements**

(1) The Authority may issue guidelines for the better carrying out of the provisions of this Part.

(2) Without prejudice to the generality of subsection (1), the Authority may issue guidelines in relation to—

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- (a) the application for approval to issue or offer asset backed securities;
- (b) the inclusion or exclusion from the definition of assets;
- (c) obtaining prior consent of another regulator, if required, in respect of the sale, transfer or assignment of assets or the participation in a securitisation transaction;
- (d) the form or structure of a special purpose vehicle and documentation requirements;
- (e) the classification of issues or offers with respect to unrestricted, restricted or limited restricted issues or offers and the requirements in respect of each classification;
- (f) the conversion of issues or offers from one classification to another;
- (g) the issue of orders to stop a proposed issue or a restricted offer of asset backed securities;
- (h) the nature of assets that may be originated into a securitisation trust or be sold, transferred or assigned to a trust based on the type or characteristics of the asset or the specific transaction;
- (i) the preparation of reports, accounts and financial statements;
- (j) rating requirements;
- (k) the obligations and liabilities of credit rating agencies;
- (l) the registration of details of transfer of assets;
- (m) the content of the prospectus or offering memorandum as the case may be to be published in connection with the issue or offer of asset backed securities and the requirements for supporting data and verification;
- (n) the initial, continuing and ongoing disclosure, audit and compliance statements and provision of data on the performance of assets;
- (o) civil liability regimes for offering memoranda and prospectus;
- (p) the filing of reports and information;
- (q) access to reports and information, inspection, copying and fees payable in relation thereto;
- (r) the appointment, removal, liability and regulation of a securitisation arranger, an originator, a seller, a servicer, a trustee, a securitisation manager, an auditor and any other party involved in or associated with the promotion, management or operation of a securitisation transaction or proposed securitization;
- (s) the imposition of economic sanctions and the issuing of prohibition orders in respect of parties associated with a securitisation transaction;
- (t) the rights of investors in asset backed securities and requirements for trust deeds and transaction documents including the powers and obligations of trustees, the holding of meetings and voting rights and the obligations of other parties;
- (u) fees payable in respect of making an application, the filing, lodging or inspection of any documents or reports filed or lodged with the Authority and in respect of the provision of copies of such documents and reports;

- (v) listing on a securities exchange;
- (w) the provision of data, including pricing on post issuance trading;
- (x) takeover offers in respect of listed asset backed securities; and
- (y) advertisements.

[Act No. 48 of 2013, s. 24.]

## PART V – SECURITIES TRANSACTIONS AND REGISTERS

### 31. Transactions in securities

(1) No licensed person, broker or dealer shall transfer listed securities outside the securities exchange in which he or she is a trading participant except as provided for by the Authority in rules or as authorised by the Authority on a case by case basis, and on payment of a prescribed fee.

(1A) The Authority may authorise the transfer of a listed security outside the securities exchange if the Authority is satisfied that—

- (i) the transaction is a private transaction as prescribed by the Authority;
- (ii) the security trades over the counter and such trade is reported in accordance with the rules prescribed by the Authority; or
- (iii) it would be in the interest of the holders of ordinary shares of the company having regard to the prevailing conditions and all factors which are relevant in the circumstances to so authorise.

(2) No licensed person, broker or dealer shall trade in listed securities in contravention of such rules as the Authority shall prescribe with respect to the clearance, settlement, payment, transfer or delivery of securities.

(3) No licensed person, broker or dealer shall effect any transaction in a margin account in a manner contrary to requirements adopted by the Authority.

(4) No licensed person, broker or dealer shall lend or arrange for the lending of any securities carried for the account of any customer without the customer's written consent, or borrow, or arrange to borrow, using the securities, carried for the account of any customer, as collateral, without the customer's written consent.

(5) No licensed person, broker or dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any listed security by means of any manipulative deception, or other fraudulent device or contrivance.

(6) No person holding shares in a public company listed on an approved securities exchange, shall sell or transfer such shares except in compliance with the trading procedures adopted by such securities exchange.

(7) No person shall, directly or indirectly, in connection with the purchase or sale of any security—

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
- (c) make any untrue statement of a material fact; or
- (d) omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading.

(8) A person who contravenes this section commits an offence.

[Act No. 10 of 1994, s. 6, Act No. 3 of 2000, s. 24, Act No. 8 of 2009 s. 45, Act No. 10 of 2010, s. 50, Act No. 37 of 2011, s. 12, Act No. 48 of 2013, s. 26.]

**32. Register of interest in securities**

- (1) This section applies to—
- (a) any person who is licensed under this Act; and
  - (b) a financial journalist.

(2) For the purposes of this section, “financial journalist” means a person who contributes advice concerning securities or prepares analyses or reports concerning securities for publication in a newspaper or periodical.

(3) For the purposes of this section, a reference to securities is a reference to securities which are quoted on a securities exchange.

(4) A person to whom section (1) applies shall maintain a register of the securities in which he or she has an interest and such interest or any changes in such interest shall be entered in the register within seven days of the acquisition or change in the interest.

(5) The Authority or any person authorized by it in that behalf may require any person to whom section (1) applies to produce for inspection the register required under subsection (4) and the Authority or any person so authorized may make extracts from the register.

**PART VI – INSIDER TRADING AND OTHER MARKET ABUSES****32A. Application**

(1) This Part applies to listed securities, their derivatives and derivatives traded on any market regulated by the Authority.

- (2) For the purposes of this Part—
- (a) securities are “price-affected securities” in relation to inside information if the information is likely to, if made public, materially affect the price of the securities;
  - (b) information shall be treated as relating to an issuer of securities where it may affect the business prospects of the company;
  - (c) “insider” means a person in possession of inside information.

[Act No. 48 of 2013, s. 27.]

**32B. Insider trading**

(1) A person who deals in listed securities or their derivatives that are price-affected in relation to the information in his possession commits an offence of insider trading if that person—

- (a) encourages another person, whether or not that other person knows it, to deal in securities or their derivatives which are price-affected securities in relation to the information in the possession of the insider, knowing or having reasonable cause to believe that the trading would take place; or
- (b) discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

(2) For the purposes of subsections (1) and (2), a person deals in securities or their derivatives if, whether as principal or agent, sells, purchases, exchanges or subscribes for any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of the right to sell, purchase, exchange or subscribe for any listed securities or their derivatives.

(3) A contract shall not be void or unenforceable by reason only of the commission of an offence under this section.

[Act No. 48 of 2013, s. 27.]

### **32C. Inside information**

For the purposes of this Part, "inside information" means information which—

- (a) relates to particular securities or to a particular issuer of securities;
- (b) has not been made public; and
- (c) if it were made public is likely to have a material effect on the price of the securities.

[Act No. 48 of 2013, s. 27.]

### **32D. Information made public**

(1) For the purposes of section 32C, information is made public if—

- (a) it is published in accordance with the rules of a securities exchange for the purpose of informing investors and their professional advisers;
- (b) it is contained in records which by virtue of any law are open to inspection by the public;
- (c) it can readily be acquired by those likely to deal in any securities—
  - (i) to which the information relates; or
  - (ii) of an issuer to which the information relates; or
- (d) is derived from information which has been made public.

(2) Information may be treated as having been made public even though the information—

- (a) can be acquired by persons exercising diligence or expertise;
- (b) is communicated to a section of the public;
- (c) can be acquired by observation;
- (d) is communicated on the payment of a fee; or
- (e) is published outside Kenya.

[Act No. 48 of 2013, s. 27.]

### **32E. Penalty for insider trading**

A person who contravenes the provisions of section 32B commits an offence and is liable on conviction—

- (a) on a first offence, in the case of—
  - (i) an individual, to a fine not exceeding two million five hundred thousand shillings or to imprisonment for a term of two years and payment of the amount of the gain made or loss avoided; and
  - (ii) a company, to a fine of up to five million shillings and payment of the amount of the gain made or loss avoided;
- (b) on any subsequent offence, in the case of—
  - (i) an individual, to a fine not exceeding five million shillings or to an imprisonment for seven years and payment of twice the amount of the gain made or loss avoided ; and



- (ii) a company, to a fine not exceeding ten million shillings and payment of twice the amount of the gain made or loss avoided.

[Act No. 48 of 2013, s. 27.]

### **32F. Market manipulation**

(1) A person who enters into or carries out, directly or indirectly, two or more transactions in the securities of a company, or in other listed securities, which by themselves or in conjunction with any other transaction—

- (a) increase, or are likely to increase the price with the intention of inducing another person to purchase, or subscribe for, or to refrain from selling securities issued by the same company or a related company, or such other listed securities;
- (b) reduce, or are likely to reduce, the price with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the same company or a related company, or such other listed securities; or
- (c) stabilize, or are likely to stabilize, the price with the intention of inducing another person to sell, purchase, or subscribe for, or to refrain from selling, purchasing or subscribing for, securities issued by the same company or by a related company, or such other listed securities,

commits an offence.

(2) For the purposes of this section, "securities" includes exchange-traded derivatives contracts, and options on futures contracts, in connection with securities.

[Act No. 48 of 2013, s. 27.]

### **32G. False trading and market rigging**

(1) A person who creates or does anything which is intended or likely to create a false or misleading impression—

- (a) of active trading in securities on the securities market of a securities exchange; or
- (b) with respect to the market for, or the price for dealings in, securities traded on the securities market of a securities exchange;

commits an offence.

(2) Without prejudice to the generality of subsection (1), a false or misleading impression of active trading in securities is created for the purpose of this section if a person—

- (a) enters into or carries out, directly or indirectly, any transaction for the sale or purchase of securities which does not involve a change in the beneficial ownership of the securities, or offers to do so; or
- (b) offers to sell securities at a price which is substantially the same as the price at which he or she has made or proposes to make, or knows that an associate of his has made or proposes to make an offer to buy the same or substantially the same number of securities.

[Act No. 48 of 2013, s. 27.]

**32H. Fraudulently inducing trading in securities**

A person who induces or attempts to induce another person to subscribe for, sell or purchase securities by—

- (a) making or publishing any statement, promise or forecast that is false, misleading or deceptive;
- (b) concealing any material facts;
- (c) making or publishing any statement, promise or forecast which is misleading, false or deceptive; or
- (d) recording or storing in, or by means of, any mechanical, electrical or other device, information that is false or misleading,

commits an offence.

[Act No. 48 of 2013, s. 27.]

**32I. Use of manipulative devices**

A person who, directly or indirectly, in connection with any transaction with any other person involving the subscription, purchase or sale of securities—

- (a) uses any device, scheme or artifice to defraud the other person;
- (b) engages in any act, practice or course of business which is fraudulent, deceptive or likely to defraud or deceive that other person; or
- (c) makes any false statement in relation to a matter or omits to state a material fact that is necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading,

commits an offence.

[Act No. 48 of 2013, s. 27.]

**32J. False or misleading statements inducing securities transactions**

A person who, directly or indirectly, for the purpose of inducing the subscription for, sale or purchase of securities by another person of any company, or of any other listed securities, or to maintain, increase, reduce or stabilize the price of such securities, makes with respect to the securities—

- (a) any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which that person knows or reasonably ought to know is false or misleading; or
- (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which that person knows or ought to know is rendered false or misleading by reason of omission of that fact,

commits an offence.

[Act No. 48 of 2013, s. 27.]

**32JA. Front-running**

(1) Any person in a market intermediary who has insider information on client orders with a price differential or is aware of such orders and effects an own account transaction in the securities concerned or in any related investments directly or

through any other person, to take advantage of the price differential before the client order is executed commits an offence.

(2) Any other person who facilitates the commission of the offence referred to in subsection (1) commits an offence.

[Act No. 15 of 2018, s. 9.]

### **32K. Liability to pay damages**

(1) A person who is convicted of an offence under this Part shall, in addition to the penalty imposed for committing the offence, be liable to an action by a person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.

(2) Nothing in subsection (1) shall be construed to limit or diminish any civil liability which any person may incur under any other Act or law.

[Act No. 48 of 2013, s. 27.]

### **32KA. Obtaining gain by fraud**

Any person who on his own action or conspires with another by deceit, intentional concealment, omission or any fraudulent means to obtain financial or personal gain from the public, an issuer or a regulated person commits an offence.

[Act No. 15 of 2018, s. 10.]

### **32L. Penalty for insider trading and market abuse**

A person who contravenes the provisions of this Part commits an offence and is liable on conviction in the case of—

- (a) an individual, to a fine not exceeding five million shillings or to imprisonment for a term of two years and payment of twice the amount of the gain made or loss avoided;
- (b) company, to a fine not exceeding ten million shillings and payment of twice the amount of the gain made or loss avoided.

[Act No. 48 of 2013, s. 27.]

## **PART VII – MISCELLANEOUS PROVISIONS**

### **33A. Powers of the Authority to intervene in management of a licence**

(1) This section shall apply and the powers conferred by subsection (2) may be exercised in the following circumstances—

- (a) if a person's licence or approval is suspended under section 25 (4) (c)(ii);
- (b) if a petition is filed, or a resolution proposed, for the winding up of a licensed person or if any receiver or receiver manager or similar officer is appointed in respect of the licensed person or in respect of all or any part of its assets;
- (c) if the Authority discovers (whether on an inspection or otherwise) or becomes aware of any fact or circumstance which, in the opinion of the Authority, warrants the exercise of the relevant power in the interests of investors:

Provided that the Authority shall give the licensed person an opportunity to be heard prior to the exercise of this power.

(2) Notwithstanding the provisions of any other written law, in any case to which this section applies, the Authority may—

- (a) appoint any competent person or persons (in this Act referred to as “a statutory manager”) to assume the management, control and conduct of the affairs and business of a licensed person to exercise all the powers of a licensed person to the exclusion of its board of directors, including the use of its corporate seal;
- (b) remove any officer or employee of the licensed person who, in the opinion of the Authority, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder or to any deterioration in the financial stability of the licensed person or has been guilty of conduct detrimental to the interests of investors;
- (c) appoint a competent person familiar with the business of the licensed person to its board of directors to hold office as a director who shall not be capable of being removed from office without the approval of the Authority other than by order of the High Court;
- (d) by notice in the *Gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the licensed person in favour of any officer or employee or any other person.

(3) The appointment of a statutory manager shall be for such period, not exceeding twelve months, as the Authority shall specify in the instrument of appointment and may be extended by the High Court upon the application of the Authority if such extension appears to the Court to be justified, and any such extension shall be notified to all interested parties.

(4) A statutory manager shall, upon assuming the management, control and conduct of the affairs and business of a licensed person, discharge his duties with diligence and in accordance with sound investment and financial principles and in particular, with due regard to the interests of the licensed person’s customers or investors.

(5) The responsibilities of the statutory manager shall include—

- (i) tracing and preserving all the property and assets of the licensed person or of its customers;
- (ii) recovering all debts and other sums of money due to and owing to the licensed person;
- (iii) evaluating the capital structure and management of the licensed person and recommending to the Authority any restructuring or reorganisation which he or she considers necessary and which, subject to the provisions of any other written law, may be implemented by him on behalf of the licensed person;
- (iv) entering into contracts in the ordinary course of the business of the licensed person; and
- (v) obtaining from any officers or employees of the licensed person, any documents, records, accounts, statements or information relating to its business.

(5A) For the purposes of discharging his responsibilities, a statutory manager shall have to declare a moratorium on payment by the licensed person of its customers and other person creditors and the declaration of a moratorium shall—

- (a) be applied equally and without discrimination to all classes of creditors:

Provided that the statutory manager may offset the liabilities owed by the licensed person to any creditor against any debts owed by that creditor to the licensed person;

- (b) suspend the running of time for the purposes of any law of limitation of actions in respect of any claim by a creditor of the licensed person; or

(5B) A moratorium shall cease to apply upon the termination of the statutory manager's appointment, whereupon the rights and obligations of the licensed person and creditors shall, save to the extent provided in subsection (5A)(b), be the same as if there had been no declaration under the provisions of that subsection:

Provided that a moratorium declared by the statutory manager for payment shall not exceed twelve months.

(6) The statutory manager shall, once every month, furnish the Authority the shareholders of the licensed person which has been placed under statutory management and any other person whom the Authority may direct in writing with a report of his activities during the preceding month, in such form as may be prescribed by the Authority.

(7) If any officer or employee of the licensed person removed under the provisions of subsection (2)(b) is aggrieved by the decision, he or she may appeal to the Capital Markets Tribunal, and the Tribunal may confirm, reverse or modify the decision and make any other order in the circumstances as it thinks just; and pending the determination of the appeal, the order of removal shall remain in effect.

(8) Neither the Authority nor any officer or employee thereof nor any manager nor any other person appointed, designated or approved by the Authority under this Act shall be liable in respect of any act or omission done in good faith by such officer, employee, manager or other person in the execution of the duties undertaken by him.

(9) Where it appears to the statutory manager that it is just and equitable to do so in the interest of all interested parties, the statutory manager may after consultation with the Authority, petition the High Court for the winding-up of the licensed person.

(10) All costs and expenses properly incurred by the statutory manager shall be payable out of the assets of the licensed person in priority to all other claims.

[Act No. 3 of 2000, s. 29, Act No. 9 of 2007, s. 52,  
Act No. 8 of 2008, s. 57, Act No. 48 of 2013, s. 28.]

### **33B. Prohibited conduct to be reported**

(1) Any person who, in the course of providing services to a licensed person or company whose securities are listed at a securities exchange, comes into possession of information indicating that such licensed person or company is engaged in any conduct prohibited by this Act, shall report the matter to the Authority.

- (2) A person who contravenes subsection (1) commits an offence.

[Act No. 3 of 2000, s. 29.]

### **33C. Remedy for unfair prejudice**

(1) The Authority may, if it appears to it, that the affairs of—

- (a) a listed company or any special purpose vehicle;

- (b) any other issuer of listed securities; or
- (c) issuer of publicly offered securities,

are being or have been conducted in a manner that is prejudicial to the interests of its members or investors in its securities or the investors in the securities market or of some part of the members or investors or conducted contrary to the law, make an application to the Court for an order under subsection (2).

(2) The Court may, if it is satisfied that the an application under subsection (1), raises reasonable grounds, make an order—

- (b) restraining the carrying out of the act or conduct;
- (c) requiring the company to bring in its name, proceedings against the persons on such terms as the Court may impose;
- (d) appointing a receiver or manager for the whole or part of the property or business of the company and may specify the powers and duties of the receiver or manager;
- (e) imposing such conditions as the Court may consider fit whether for regulating the conduct of the affairs of the company in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the capital of the company or otherwise.

(3) The Court may, if, on an application under this section, it is of the opinion that the management and activities of a special purpose vehicle or a securitisation transaction are being conducted contrary to the terms of the transaction documentation or the law, whether or not the conduct consists of an isolated act or a series of acts—

- (a) make an order restraining the carrying out of the act;
- (b) make an order directing the trustee to institute such proceedings the as Court may consider appropriate against the person, on terms the Court orders;
- (c) make an order for the change of the trustee, appointment of a receiver or manager of the trust and may specify the powers and duties of the receiver or manager; or
- (d) make such other order the Court may consider appropriate, whether for regulating the conduct of the securitisation transaction or special purpose vehicle affairs in future, to recover assets or provide for compensation or otherwise to protect the interests of investors in the asset backed securities.

(4) A company shall not, where an order under this section has the effect of altering its constitution, without the leave of the Court, make any further alteration to the constitution which is inconsistent with the order.

[Act No. 4 of 2004, s. 75, Act No. 48 of 2013, s. 29.]

### **33D. Powers of the Authority to demand for production of records and documents**

- (1) The Authority may issue directions to—
  - (a) a company;
  - (b) a subsidiary of the company;

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- (c) a company which is substantially under the control of the same person as the company;
- (d) a securitisation arranger, originator, servicer, trustee, securitisation manager, auditor or any other party associated with a securitisation transaction or special purpose vehicle; or
- (e) any party associated with the issue, offer or listing of securities;
- (f) where it appears to the Authority that there are reasonable grounds to believe that—
  - (i) the business of a listed company, an entity whose securities have been offered to the public or the activities or operations of any special purpose vehicle or the arrangements in respect of any securitisation transaction involving listed asset backed securities has been or is being conducted—
    - (A) with the intent to defraud its creditors, creditors of another person or creditors of any securitisation trust, special purpose vehicle or investors in any listed securities for a fraudulent or unlawful purpose;
    - (B) in a manner prejudicial to any of its members or to investors in any listed securities;
    - (C) by a company, an entity or a special purpose vehicle which was formed for a fraudulent or unlawful purpose; or
    - (D) by persons who have, in relation to the formation, management or operation of the company, entity or special purpose vehicle been found guilty by a Court for fraud, misfeasance or other misconduct towards the company, entity or special purpose vehicle, its members or the investors in any listed securities; or
  - (ii) the members of a company or investors in a listed or publicly offered securities have not been given all the information relating to its affairs that they might reasonably expect,

requiring it, at the time and place specified in the direction, to produce records and documents specified in the direction.

(2) The Authority may, in issuing a direction under subsection (1), authorize a person, to require a company or other person referred to in subsection (1) to produce records and documents specified by the authorized person.

(3) The Authority or an authorized person may require a person, who appears to be in possession of any records or documents, to produce the records or documents to the Authority or to the authorized person.

(4) A power under this section to require a company or any other person to produce records or documents includes the power to—

- (a) take copies or extracts;
- (b) demand an explanation from that person, or any other person who is a present or past officer of the company, or is or was at any time employed by the company or other relevant person; or

- (c) require, if the records or documents are not produced, the person who was required to produce them to give an explanation for failing to produce the records or documents.

(5) The powers in respect of any documents held by a bank shall be limited to the making of copies or extracts.

- (6) A person who contravenes this section commits an offence.

[Act No. 48 of 2013, s. 29.]

### **33E. Winding up**

The Authority may, if it appears to it that it is desirable, for the protection of clients or investors, that a licensed person should be wound up under the Companies Act (Cap. 486) or relevant constituting document, present a petition for the licensed person to be wound up or institute winding up proceedings under the relevant instrument on the ground that it is just and equitable that the licensed person should be wound up.

[Act No. 48 of 2013, s. 29.]

### **34. Other offences**

- (1) Any person who—

- (a) contravenes any provision of this Act or any requirement imposed under the provision of this Act or any rule or regulation made thereunder;
- (b) furnishes or publishes for the purpose of this Act or in connection with an issuer whose securities are listed or quoted to be listed on a securities exchange, or issued or to be issued to the public or a collective investment scheme, any information or any returns the contents of which are to his knowledge untrue or incorrect or misleading because of material omissions; or
- (c) wilfully obstructs any member of the Authority or an officer or servant of the Authority in the performance of his duties under the provisions of that Act,

shall be guilty of an offence.

(2) *Deleted by Act No. 48 of 2013, s. 30.*

(3) *Deleted by Act No. 48 of 2013, s. 30.*

(4) *Deleted by Act No. 48 of 2013, s. 30.*

(5) *Deleted by Act No. 48 of 2013, s. 30.*

[Act No. 3 of 2000, s. 30, Act No. 9 of 2007, s. 53,  
Act No. 8 of 2008, s. 58, Act No. 48 of 2013, s. 30.]

### **34A. Offences and penalties**

(1) Where a person commits an offence under this Act and no specific penalty is provided for, that person shall be liable on conviction—

- (a) on a first offence, in the case of—

- (i) an individual, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years and pay two times the amount of any gain made or loss avoided as a result of the contravention; or



- (ii) a company, to a fine not exceeding ten million shillings and pay two times the amount of any gain made or loss avoided as a result of the contravention;
- (b) on any subsequent offence, in the case of—
  - (i) an individual, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years and pay three times the amount of any gain made or loss avoided as a result of the contravention; or
  - (ii) a company, to a fine not exceeding thirty million shillings and pay three times the amount of any gain made or loss avoided as a result of the contravention.

(1A) The financial penalties imposed under subsections (1) and (2) shall be recoverable summarily by the Authority as civil debts.

(2) The court may make an order for the payment by a person convicted for an offence under this Act of compensation to a person who suffers loss by reason of the offence.

(3) An order for compensation under subsection (2) may be in addition to or in substitution of any other penalty or remedy available to that person.

(4) The amount of restitution or compensation for which a person is liable under subsection (2), is—

- (a) the loss sustained or adverse impact of the breach on the person or persons claiming compensation or restitution;
- (b) the profits that have accrued to the person in breach;
- (c) where harm has been done to the market as a whole, the illegal gains received or loss averted as a result of the illegal action as may be determined by the court.

(5) To the extent that a person convicted of an offence under subsection (1) profited by committing that offence, but those harmed cannot reasonably and practically be determined, the payment under subsection (3) shall be made to the Compensation Fund established under this Act.

(6) The discretion conferred on the Authority to levy financial penalties or to impose any other sanctions under this Act may be exercised separately or cumulatively, and the imposition of such penalties or sanctions shall not, in any circumstance, prejudice the right to any other legal proceedings that may be vested in the Authority.

(7) All financial penalties levied under this Act shall be paid into the Investor Compensation Fund.

[Act No. 9 of 2007, s. 54, Act No. 48 of 2013, s. 31, Act No. 23 of 2019, s. 44.]

### **34B. Compounding of offences**

(1) The Authority may, with the consent of the Director of Public Prosecutions and with the written consent of the person who commits an offence, compound an offence and make an order for the payment by that person, of a sum not exceeding two-thirds of the maximum fine that would otherwise have been imposed upon conviction.

(2) The Authority shall, it has compounded an offence under subsection (1)—

- (a) make the order in writing and attach a written admission of the person who has committed the offence and the consent of the Director of Public Prosecution to compound the offence;
  - (b) give the person who has committed the offence a copy of the order upon the request of that person; and
  - (c) specify the offence committed, the sum of money ordered to be paid, and the date to which payment is due.
- (3) Where the amount ordered to be paid under subsection (1)—
- (a) is paid to the Authority within fourteen days of the order, the Authority shall not institute any proceedings against that person; or
  - (b) is not paid within fourteen days of the order, the Authority may institute proceedings in relation to the offence.
- (4) The Authority shall pay all sums of money received under this section into the Investor Compensation Fund.
- (5) The compounding of an offence under this section shall not prejudice any orders for compensation or restitution that may be imposed by the Authority.

[Act No. 48 of 2013, s. 32.]

### **35. Appeals from action by Authority**

- (1) Any person aggrieved by any direction given by the Authority to such person or by a decision of the Authority or by the Investor Compensation Fund Board—
- (a) refusing to grant a licence;
  - (b) imposing limitations or restrictions on a licence;
  - (c) suspending or revoking a licence;
  - (cc) refusing to approve a public offer of securities;
  - (d) refusing to admit a security to the official list of a securities exchange;
  - (e) suspending trading of a security on a securities exchange; or
  - (f) requiring the removal of a security from the official list of a securities exchange;
  - (g) refusing to grant compensation to an investor who has suffered pecuniary loss resulting from failure of a licensed stockbroker or dealer, to meet his contractual obligations or pay unclaimed dividends to a beneficiary who resurfaces,

may appeal to the Capital Markets Tribunal against such directions, refusal, limitations or restrictions, cancellations, suspension or removal, as the case may be, within fifteen days from the date on which the decision was communicated to such person.

- (2) The Capital Markets Tribunal may require the Authority or the Investor Compensation Fund Board to show cause for its action or decision, and may affirm or, after affording the Authority or the Board an opportunity to be heard, set aside such action or decision.

[Act No. 3 of 2000, s. 31, Act No. 8 of 2008, s. 59, Act No. 37 of 2011, s. 14.]

### **35A. Establishment of the Capital Markets Tribunal**

- (1) There is established a tribunal to be known as the Capital Markets Tribunal which shall consist of the following members and the secretary appointed by the Cabinet Secretary—

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- (a) a Chairperson who at the time of his appointment shall be an advocate of not less than seven years standing;
- (b) one lawyer having at least seven years' experience in the commercial and corporate sector;
- (c) one accountant who shall have been in practice for a period of not less than seven years; and
- (d) two persons who have demonstrated competence in the field of securities;
- (e) the secretary shall be an advocate with at least five years' experience commercial law.

(2) All appointments to the Tribunal under subsection (1) shall be by notice in the *Gazette* issued by the Cabinet Secretary and shall be for a period of three years.

(3) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of three years from the date of his appointment;
- (b) if he or she accepts any office the holding of which, if he or she were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal;
- (c) if he or she is removed from membership of the Tribunal by the Cabinet Secretary for failure to attend three consecutive meetings of the Tribunal or is unable to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; or
- (d) if he or she resigns from the office of a member of the Tribunal.

(4) The Tribunal shall, upon an appeal made to it in writing by an aggrieved party following a determination by the Authority on any matter relating to this Act, inquire into the matter and make an award thereon, and every award made shall be notified by the Tribunal to the parties concerned and the Authority as the case may be.

(5) For the purposes of hearing an appeal, the Tribunal shall have all the powers of the High Court to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

(6) Where the Tribunal considers it desirable for the purposes of avoiding expenses or delay or any other special reasons so to do, it may receive evidence by affidavit and administer interrogatories within the time specified by the Tribunal.

(7) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence would not otherwise be admissible under the law relating to evidence.

(8) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed.

(9) All summonses, notices or other documents issued under the hand of the Chairperson of the Tribunal shall be deemed to be issued by the Tribunal.

(10) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may admit to be heard on behalf of such party.

(11) The Tribunal shall sit at such times and in such places as it may appoint.

(12) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(13) Except as expressly provided in this Act or any rules made thereunder, the Tribunal shall regulate its own procedure.

(14) For the purposes of hearing and determining any cause or matter under this Act, the Chairperson and two members of the Tribunal shall form a quorum.

(15) A member of the Tribunal who has an interest in any matter which is the subject of the proceedings of the Tribunal shall not take part in those proceedings.

(16) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority or any of its committees in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including an order, for costs, as it may deem just.

(17) The Tribunal shall hear and determine an appeal within ninety days from the date of filing of the appeal.

(18) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be paid in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(19) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.

(20) Every certificate issued under subsection (19) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

(21) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto; and until such rules are made, and subject thereto; the provisions of the Civil Procedure Act (Cap. 21) shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

(22) Any party to proceedings before the Tribunal who is dissatisfied by a decision or order of the Tribunal on a point of law may, within thirty days of the decision or order, appeal against such decision or order to the High Court.

(23) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or where the appeal has been commenced until the appeal has been determined.

(24) Upon the hearing of an appeal under this section, the High Court may—

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

- (d) make such other order as it may deem just, including an order as to costs of the appeal of earlier proceedings in the matter before the Tribunal.

(25) There shall be paid to the Chairperson, secretary and the members of the Tribunal, such remuneration and allowances as the Cabinet Secretary shall, from time to time, determine.

(26) All expenses of the Capital Markets Tribunal shall be charged to the general fund of the Authority.

[Act No. 3 of 2000, s. 32, Act No. 15 of 2018, s. 11, Act No. 8 of 2021, s. 54.]

### **35A. Rights and fundamental freedoms**

All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined in the Constitution unless limited to the extent specified in Article 24 of the Constitution, this Act or any other Act.

[Act No. 10 of 2023, Sch.]

### **35B. Limitation of right to privacy**

(1) The right to privacy guaranteed under Article 31 of the Constitution is hereby limited under Article 24 of the Constitution only to the nature and extent contemplated under subsection (2).

(2) Where a person is suspected or accused of an offence under this Act—

- (a) the person's home or property may, with a warrant, be searched;
- (b) the person's possessions may be seized;
- (c) information relating to that person's financial, family or private affairs where required may be revealed; or
- (d) the privacy of a person's communications may be investigated or otherwise interfered with.

(3) A limitation of a right under subsection (1) shall apply only for the purpose of the prevention, detection, investigation and prosecution of proceeds of crime, money laundering and financing of terrorism.

[Act No. 10 of 2023, Sch.]

### **36. Directions and submission of reports**

(1) The Cabinet Secretary may, from time to time, direct the Authority to furnish in such form as he or she may require, returns, accounts and any other information with respect to the work of the Authority and the Authority shall comply with such direction.

(2) The Authority shall, within six months after the close of each financial year, submit to the Cabinet Secretary a report of its operations and activities throughout the year together with audited accounts in such form and detail as the Cabinet Secretary shall, from time to time, determine.

(3) The Cabinet Secretary shall table the report submitted under subsection (2) before above to Parliament within three months of its submission.

[Act No. 3 of 2000, s. 33, Act No. 48 of 2013, s. 33.]

### **36A. Exemption of existing securities exchange**

(1) Notwithstanding the provisions of this Act or any regulations or rules made thereunder in relation to derivatives or futures exchanges and participants therein, any securities exchange approved by the Authority under this Act as on the date this

section comes into force shall be entitled to conduct the business of a derivatives exchange, whether by itself or through its wholly owned subsidiary, for a period of up to three years, subject only to complying with any requirements for its current approval as a securities exchange, provided that such an exchange will be required to—

- (a) have an issued and paid up share capital of a minimum of five hundred million shillings only;
- (b) make arrangements for the efficient and effective clearing and settlement of transactions effected through the exchange and its clearing house, and for the management of settlement risk;
- (c) implement an effective and reliable infrastructure to facilitate the trading, of derivatives listed on the exchange;
- (d) formulate rules for the listing of derivatives contracts, for trading, clearing and settlement on the exchange and its clearing house, and for dispute resolution and for compensation of investors, and will have submitted these for approval by the Authority.

(2) At the end of the period referred to in subsection (1), a securities exchange shall be required to comply with all the requirements governing a derivatives exchange.

(3) During the period referred to in subsection (1), and notwithstanding any other provisions of this Act and any regulations made thereunder, all trading participants who are or who become trading participants of such exchange shall be entitled to be derivatives brokers subject only to complying with the licensing requirements for a trading participant subsisting on the date this section comes into force.

(4) The Authority may approve the rules of the exchange aforesaid relating to its derivatives operations within thirty days of submission of the draft rules or of any changes requested thereon by the Authority.

[Act No. 48 of 2013, s. 34.]

### **37. Supercession**

Where there is a conflict between the provisions of this Act and the provisions of any other written law with regard to the powers or functions of the Authority under this Act, the provisions of this Act shall prevail.

[Act No. 3 of 2000, s. 34.]

### **38. Prosecution of offences**

The Director of Public Prosecutions may, on the request of the Authority, appoint any officer of the Authority or advocate of the High Court to be a public prosecutor for the purposes of offences under the provisions of this Act.

[Act No. 3 of 2000, s. 34, Act No. 19 of 2023, Sch.]

### **39. Exemption from Cap. 446**

The provisions of the State Corporations Act (Cap. 446) shall not apply to the Authority.

[Act No. 3 of 2000, s. 35.]

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