

(Legislative Supplement No. 74)

LEGAL NOTICE NO. 170

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (ALTERNATIVE INVESTMENT
FUNDS) REGULATIONS, 2023

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1—Citation and Commencement

2—Application

3—Interpretation

4—Constitutive Documents

PART II—APPROVAL OF ALTERNATIVE INVESTMENT FUNDS

5—Approval of Alternative Investment Funds

6—Eligibility Criteria

7—Furnishing of Information

8—Procedure for Approval

9—Conditions for the issue of Approval

10—Procedure where approval is denied

PART III — INVESTMENT CONDITIONS AND RESTRICTIONS

11—Investment strategy

12—Investment in Alternative Investment Funds

13—Placement Memorandum

14—Capital Raising

15—Tenure

16—General Investment Conditions

17—Conditions for investment in asset classes

PART IV—GENERAL OBLIGATIONS AND RESPONSIBILITIES
AND TRANSPARENCY

18—General Obligations

19—Conflict of Interest

- 20—Transparency
- 21—Valuation
- 22—Obligations of Fund Manager
- 23—Maintenance and transfer of Record
- 24—Submission of Report to the Authority
- 25—Winding up

PART V—INSPECTION

- 26—Authority’s right to inspect
- 27—Notice before Inspection
- 28—Obligations of alternative Investment Funds on Inspection
- 29—Submission of Report to the Authority
- 30—Communication of finding etc—to the fund manager and the Alternative Investment Funds

PART VI—PROCEDURE FOR ACTION IN CASE OF DEFAULT

- 31—Liability for action in case of Default
- 32—Liability for loss
- 33—Transition

PART VII—TEMPORARY EXEMPTION FROM OPERATION OF
THE REGULATIONS

PART VIII—MISCELLANEOUS

SCHEDULES

FIRST SCHEDULE — Application form

SECOND SCHEDULE— General information

THIRD SCHEDULE — Fees

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by Section 12(1)(f) of the Capital Markets Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

THE CAPITAL MARKETS (ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2023

PART I—PRELIMINARY

1. These Regulations may be cited as the Capital Markets (Alternative Investment Funds) Regulations, 2023. Citation

2. In these Regulations, unless the context otherwise requires— Interpretation

“alternative investment fund” means a collective investment scheme that privately pools funds from at least two but not more than one hundred investors in Kenya or outside Kenya to invest on the investor’s behalf in accordance with a defined investment policy statement:

“change in control” means change in the controlling interest or change in legal form in relation to a fund manager;

“final account” means an account of the winding up approved by the board of directors, partners or trustees showing how the fund manager has conducted the affairs of the scheme and how the scheme property has been disposed of;

“formation document” means—

- (a) a memorandum and articles of incorporation for the constitution of an alternative investment fund as an investment company;
- (b) a trust deed and supplemental deed for the constitution of an alternative investment fund as a trust;
- (c) in relation to an alternative investment fund constituted as a limited liability partnership, a partnership deed and any other supplementary deed; and
- (d) in relation to any other alternative investment fund, such documents as may be prescribed by the Authority;

“investee company” means an enterprise, company, special purpose vehicle, limited liability partnership or body corporate in which an alternative investment fund may invest;

“leverage” means any method by which a fund manager increases the exposure of the scheme it manages through borrowing of cash or securities, or by any other means;

“participant” means the holder of a participatory interest;

“participatory interest” means any interest or share, undivided or otherwise, whether called a participatory interest, share, unit or by any other name, and whether the value of such interest, unit or share

remains constant or varies from time to time, which may be acquired by an investor in a portfolio; and

“placement memorandum” means the information document used for the purpose of the private placement of participatory interests in an alternative investment fund.

PART II—APPROVAL OF ALTERNATIVE INVESTMENT FUNDS

3. (1) A person seeking to operate an alternative investment fund shall apply to the Authority for approval to operate an alternative investment fund.

Requirements for approval

(2) No entity or person shall operate or hold itself out as an alternative investment fund unless it has applied for and obtained approval from the Authority.

(3) A fund manager shall seek approval to operate an alternative investment fund which can be any of the following—

- (a) a debt fund and debt-linked fund;
- (b) an equity and equity-linked investment;
- (c) a hedge fund;
- (d) a property fund;
- (e) an infrastructure fund; or
- (f) any other alternative investment fund.

(4) An application for approval to operate an alternative investment fund shall be in the form specified in the First Schedule and be accompanied by a non-refundable application fee specified in the Third Schedule.

(5) The fund manager shall be required to pay an annual regulatory fee as specified out in the Third schedule.

4. (1) The Authority shall consider the following conditions for eligibility of grant of approval—

Eligibility criteria.

- (a) the formation documents which—
 - (i) shall conform with the Second Schedule;
 - (ii) shall not include any provision which is unfairly prejudicial to the interests of participants; and
 - (iii) shall demonstrate its authority or power to carry on the activity of an alternative investment fund;
- (b) an alternative investment fund shall not make an invitation to the public to subscribe to its securities;
- (c) the directors, trustees or partners of the applicant, or their equivalent, are fit and proper persons as provided under the Act;
- (d) the key investment team of the fund manager has adequate experience, with at least one key person having not less than five years’ experience in—

- (i) advising or managing pools of capital;
 - (ii) fund, asset, wealth or portfolio management;
 - (iii) the business of buying of, selling of and dealing in securities or other financial assets; and
 - (iv) has relevant professional qualifications;
- (e) the fund manager has the necessary infrastructure and human resources to effectively discharge its activities;
- (f) the fund manager has, on behalf of the alternative investment fund, clearly described at the time of approval—
- (i) the investment objective;
 - (ii) the targeted investor;
 - (iii) the proposed scheme assets;
 - (iv) the investment policy or strategy; and
 - (v) the proposed tenure of the alternative investment fund; and
- (g) the entity or any other entity established by the fund manager has not previously been denied approval by the Authority.
- (2) The following arrangements shall not be considered as alternative investment funds for the purposes of these Regulations—
- (a) a family trusts;
 - (b) an employee participation scheme or employee savings scheme;
 - (c) holding company; or
 - (d) a securitisation special purpose vehicle; and where the pooling is by members of a club or association, whether or not incorporated, and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;

5. (1) The Authority may require the applicant to furnish further information or clarifications regarding the fund manager or nature of the alternative investment fund or fund management activities or any other matter connected therewith to the application for grant of approval.

Furnishing of information

(2) The Authority may require the applicant or fund manager to appear before the Authority to make representations in respect of the application.

6. (1) The Authority shall grant approval to operate an alternative investment fund where the fund manager and the fund fulfil the requirements as specified in these Regulations and any other requirement specified by the Authority.

Approval to operate a fund

(2) The approval may be granted with such conditions as may be deemed appropriate by the Authority.

(3) A fund manager may after submitting an application for approval accept commitments from participants but shall not accept any monies until it is granted approval under sub-regulation (1) of this Regulation.

(4) The approval shall be valid unless its revoked as per these regulations.

7. (1) The Approval granted under regulation 7 shall be subject to the conditions that the fund manager and the fund shall—

Conditions for grant of approval

- (a) abide by the provisions of the Act and these Regulations;
- (b) not carry on any activity other than permitted activities;
- (c) immediately inform the Authority in writing, if any information or particulars previously submitted to the Authority are found to be incomplete in any material particular or if there is any material change in the information already submitted.

(2) An alternative investment fund which has been approved shall not amend its investment policy statement except with the approval of the Authority and its participants.

8. (1) If after considering an application made under Regulation 4, the Authority is of the opinion that an approval should not be granted, it may reject the application after giving the applicant an opportunity to be heard.

Procedure where approval is denied.

(2) If the Authority, after hearing the applicant, refuses to grant an approval, it shall communicate the decision to the applicant within fourteen (14) days of the decision, stating the grounds for refusal.

(3) Where an application is rejected by the Authority under sub-regulation (2), the applicant shall ensure that the fund ceases or does not commence any activities for which a fund is required to be approved in terms of these Regulations:

Provided that nothing contained in these Regulations shall affect the liability of the applicant and the fund, where applicable, towards its existing investors under law or agreement.

(4) An applicant aggrieved by the decision of the Authority may appeal against such refusal to the Capital Markets Tribunal within fifteen (15) days of communication of the decision.

9. The Authority shall withdraw its approval to operate a fund, where the fund—

Withdrawal of approval

- (a) expressly renounces its approval;
- (b) ceases to conduct its activities for a period of six months;
- (c) obtained the Authority's approval through making false statements or any irregular means; or

- (d) no longer meets the conditions under which the approval was granted.

10. A fund manager shall cease to operate an approved fund after obtaining a resolution of the unitholders approving cessation of the fund and issuing the Authority a thirty days' notice in writing and on compliance with any terms and conditions that the Authority may impose to ensure orderly cessation of business.

Cessation

PART III—INVESTMENT CONDITIONS

11. The fund manager shall ensure that—

Investment
strategy

- (a) for each fund it manages, the fund states its investment strategy, investment purpose and investment methodology in its placement memorandum to the investors;
- (b) any material alteration to the alternative investment funds' strategy shall be made with the consent of at least two-thirds of the holders of participatory interests by value of their investment in the alternative investment fund.

12. Investment in all asset classes shall be subject to the following investment conditions—

Investment in a
fund

- (a) the fund may pool funds from any investor wherever resident by way of issue of participatory interests;
- (b) the fund shall not accept from a participant, an initial investment of less than one million Kenya shillings and the participant must maintain the minimum investment in book value throughout the duration of their investment in the fund;
- (c) the fund manager, may have a continuing interest in the fund and such interest shall not be through the waiver of management fees;
- (d) the fund manager shall disclose its investment or lack thereof in the fund to the participants of the fund in the placement memorandum and such quarterly and annual reports as may be required;
- (e) a fund shall not have more than one hundred participants:

Provided that the provisions of any other legislation governing the structure of the fund shall apply to the fund;

- (f) a fund shall not solicit or collect funds except by way of private placement.

13. (1) A fund manager may pool capital from investors subject to submitting its placement memorandum to the Authority for approval.

Placement
memorandum

(2) The placement memorandum shall contain—

- (a) all material information about the fund and the fund manager;
- (b) background of the key investment team of the fund manager;

- (c) targeted investors;
- (d) fees and all other expenses proposed to be charged in the duration of the alternative investment fund;
- (e) a statement that the directors, trustees or partners are liable for the correctness of the statements contained therein;
- (f) conditions or limits on redemption;
- (g) disclosure of all related fees and charges;
- (h) investment strategy;
- (i) risk management framework;
- (j) key service providers;
- (k) conflict of interest and procedures to identify and address them;
- (l) its enforcement history;
- (m) the terms and conditions on which the fund manager offers investment services;
- (n) its affiliations with other intermediaries;
- (o) its dispute resolution mechanisms;
- (p) manner of winding up of the fund; and
- (q) such other information as may be necessary for an investor to make an informed decision.

(3) The application for approval shall be subject to such fees as specified in the Third Schedule.

(4) The Authority shall approve the placement memorandum subject to incorporation of the Authority's comments.

(5) The Authority may by notice in writing, require the fund manager to furnish to it, within such period as is specified in the notice, all such information with respect to itself or the alternative investment fund as is specified in the notice.

14. (1) The tenure of the fund shall be as provided in the formation documents. Tenure

(2) Extension of the tenure of the fund may be permitted subject to approval of two-thirds of the participants by number and value of their investment in the fund.

(3) In the event there is no approval of an extension by the participants, the fund shall fully liquidate within one year following expiration of the stated tenure or extended duration thereof.

(4) The Authority may extend the duration for liquidating the fund under sub-regulation (3) upon request by the fund manager.

PART IV—GENERAL OBLIGATIONS, RESPONSIBILITIES AND
TRANSPARENCY

15. (1) A fund manager shall—

General
obligations

- (a) develop and review policies and procedures and their implementation on a regular basis or as a result of business developments to ensure their continued appropriateness;
- (b) appoint a custodian licensed by the Authority for the safekeeping of the assets of the scheme;
- (c) ensure that the fund complies with its duties and obligations under the Act and these Regulations;
- (d) address all participants complaints;
- (e) provide the Authority with any information it may require.

(2) The fund manager may engage such technical experts as are reasonably required for the purposes of the fund and pay for the same out of the resources of the fund.

16. The fund manager shall appoint an auditor in good standing with the Institute of Certified Public Accountants of Kenya and shall cause the books of accounts of the fund to be audited annually by the appointed auditor.

Audit

17. (1) The fund manager shall act in a fiduciary capacity towards its participants and shall disclose to the participants, all conflicts of interests as and when they arise or seem likely to arise.

Conflict of
interest

(2) The fund manager shall establish and implement written policies and procedures to identify, monitor and appropriately mitigate conflicts of interest throughout the scope of business

(3) The fund manager shall avoid conflicts of interest with associated persons, as may be specified by the Authority from time to time.

18. (1) The fund manager shall ensure that there is transparency and disclosure of information to investors on all funds it manages, including the following—

Transparency

- (a) financial, risk management, operational, portfolio, and transactional information regarding fund investments on a quarterly basis;
- (b) any fees ascribed to the fund manager and any fees charged to the fund or any investee company by an associate of the fund manager on a quarterly basis;
- (c) any inquiries or legal actions by legal or regulatory bodies in Kenya on a quarterly basis;
- (d) any material liability arising during the funds duration or tenure shall be disclosed, as and when occurred;
- (e) any breach of a provision of the placement memorandum or agreement made with a participant or any other scheme or incorporation documents, if any, as and when occurred;

(f) change in control of the fund manager or investee company.

(2) The fund manager shall ensure that quarterly reports are provided to participants which shall include the following information, as may be applicable to the fund—

- (a) financial information of investee companies;
- (b) material risks and how they are managed which, may include—
 - (i) concentration risk at fund level;
 - (ii) foreign exchange risk at fund level;
 - (iii) leverage risk at fund and investee company levels;
 - (iv) realization risk (change in exit environment) at fund and investee company levels;
 - (v) strategy risk (change in or divergence from business strategy) at investee company level;
 - (vi) reputation risk at investee company level;
 - (vii) extra-financial risks, including environmental, social and corporate governance risks, at fund and investee company level;
 - (viii) any significant change in the key investment team; and information on systemic risk (including the identification, analysis and mitigation of systemic risks); and
 - (ix) any other emerging risks.

19. A fund manager shall—

Valuation

- (a) have a valuation policy, procedures and methodology for valuing assets including discount rates and reference prices where applicable;
- (b) notify the Authority and the participants of any changes to the valuation policy;
- (c) ensure that the calculation of the net asset value is done at least quarterly and disclosed to the Authority and the participants;
- (d) appoint an independent valuer to undertake valuations of the fund's investments at least annually;
- (e) submit the valuation report to the Authority and disclose the report to the participants.

20. (1) The fund manager shall maintain records describing—

Maintenance and transfer of record

- (a) the assets under management of the fund;
- (b) valuation policies and practices;

- (c) decisions of the investments committee and investment strategies;
- (d) particulars of participants and their contribution;
- (e) rationale for investments made.

(2) The records under sub-regulation (1) shall be maintained for a minimum period of seven years after the winding up of the fund.

(3) The Authority may, in the interest of the investors, issue directions with regard to the transfer of records, documents or securities or disposal of investments relating to the activities as an alternative investment fund.

(4) The Authority may, in order to protect the interests of the participants, appoint any person to take charge of records, documents, securities and for this purpose, also determine the terms and conditions of such an appointment.

21. The Authority may from time to time require the fund manager to submit reports on the activities of the fund.

Submission of report to the Authority

22. (1) A fund manager may resign by giving a three months' notice to the board of directors, partners or trustee of the fund and to the Authority stating the reasons for the resignation.

Resignation of fund manager

(2) The board of directors, partners or trustee shall upon receipt of the notice of resignation by the fund manager in sub regulation (1) find a replacement within the notice period.

(3) The board of directors, partners or trustee shall enter into agreements with the new fund manager in order to secure the due performance of its duties as fund manager.

(4) In the event a fund manager is not found upon the expiry of the notice, the board of directors, partners, or trustee as the case may be shall call for an extra-ordinary general meeting to pass a resolution to liquidate the fund.

23. (1) A fund manager shall be removed—

Removal and replacement of fund manager

- (a) immediately upon the suspension or revocation of its license by the Authority; or
- (b) by the board of directors, partners, or trustee of the fund by giving at least three months' notice in writing to the fund manager, the unit holders and the Authority upon the occurrence of the following events—
 - (i) the fund manager goes into liquidation;
 - (ii) the fund manager is placed under administration;
 - (iii) for good and sufficient reason the trustee, board of directors, partners, is of the opinion, and so states in writing, that a change of fund manager is desirable in the interest of the participants; or

(iv) at an extraordinary resolution of removing the fund manager is passed by three quarters majority in value of the participatory interests in existence (excluding participatory interests held or deemed to be held by the fund manager or by any associate of the fund manager) and the total number of participants.

(2) The fund manager shall on receipt of a notice under sub regulation (1) cease to be the fund manager of the fund and the board of directors, partners or trustee shall, by deed, appoint another person eligible under these regulations to be the fund manager of the fund.

24. (1) A scheme set up as either a trust, limited liability partnership or company may be wound up by the fund manager—

Winding up of an alternative investment fund.

- (a) where the Authority revokes the approval of the alternative investment fund;
- (b) where the fund manager or the trustee or custodian requests for the revocation of the Authority's approval of the scheme; or
- (c) upon the expiration of the tenure of the fund;
- (d) if it is the opinion of the fund manager or trustee, as the case may be, that the fund be wound up in the interests of participants;
- (e) if seventy five percent of the participants by value of their investment in the fund pass a resolution at a meeting of participants that the fund be wound up; or
- (f) if the Authority so directs in the interests of participants.

(2) Upon the occurrence of any of the events specified in this regulation, the fund manager shall proceed to wind up the fund in accordance with regulation 23 on the manner of winding up.

(3) The fund manager shall advise the Authority and participants of the circumstances leading to the winding up of the fund where applicable.

(4) On and from the date of advice under sub-regulation (3) no further pooling of funds for investments shall be made on behalf of the fund that has been wound up.

(5) The fund manager shall within one year from the date of the advice on winding up, liquidate the assets of the fund and distribute proceeds accruing to the participants after paying all liabilities.

(6) The Authority may extend the duration for winding up the fund under upon request by the fund manager.

25. (1) Pursuant to regulation 23 on winding up of a fund, a fund manager shall wind up—

Manner of winding up

- (a) A fund set up as a trust in accordance with the provision of its formation documents;

- (b) A fund set up as a limited liability partnership, in accordance with its formation documents; and
- (c) A fund set up as a company shall be wound up in accordance with the provisions of the Companies Act, 2015. No. 17 of 2015
- (2) The Authority shall require a final account from the fund manager upon conclusion of the winding up of the fund.
- (3) Upon winding up of the fund, the approval by the Authority shall stand revoked.

PART V—INSPECTION

26. (1) The Authority may carry out an inspection on any aspect of the business of the fund either on an ad-hoc basis or on notice. Authority's right to inspect

(2) During an inspection, the fund manager whose fund is being inspected shall be bound to discharge its obligations as provided in these regulations.

27. (1) It shall be the duty of—

Obligation on Inspection

- (a) the fund manager in respect of whom an inspection has been ordered under regulation 25; and
- (b) any other associated person who is in possession of relevant information pertaining to the conduct and affairs of the fund,

to produce and furnish to the Authority such books, accounts and other documents in its custody or control as the Authority may require for the purposes of inspection.

(2) The Authority shall, for the purposes of inspection, have power to obtain authenticated copies of documents, books, accounts of the fund manager and the fund, from any person having control or custody of such documents, books or accounts.

28. Where the Authority finds a material breach of the Act or these regulations after the inspection, the Authority shall after giving the fund manager, its trustees, board of directors or partners or custodian an opportunity to be heard, issue such direction as it deems fit in the interest of the market or participants which may include—

Communication of findings etc. to the Fund Manager and the fund

- (a) prohibiting a fund manager from launching a new schemes or pooling money from investors for a particular period;
- (b) prohibiting the person concerned from disposing of any of the assets of the scheme acquired in violation of these regulations;
- (c) requiring the person concerned to dispose of the assets of the fund or scheme in a manner as may be specified in the directions;
- (d) requiring the person concerned to refund any money or the assets to the concerned participants along with the requisite interest or otherwise, collected under the alternative investment fund;

- (e) prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specified period; or
- (f) requiring the performance of any other action as the it may deem fit.

PART VI—PROCEDURE FOR ACTION IN CASE OF DEFAULT

29. Any person who contravenes these regulations or such other regulations as may be applicable to the fund may be liable to such sanctions as may be imposed by the Authority under the Act.

Liability for action in case of default

30. A person who contravenes or fails to comply with any provision of these regulations or such other regulations as may be applicable to the fund, may in addition to sanctions as may be imposed by the Authority be liable for loss or damage suffered as a result of such contravention or failure.

Liability for loss

PART VII—TEMPORARY EXEMPTION FROM OPERATION OF THE REGULATIONS

31. (1) The Authority may exempt any person or class of persons from the operation of all or any of the provisions of these Regulations for a period as may be specified but not exceeding twenty-four months, for furthering innovation in the capital markets in a live environment of the regulatory sandbox in the securities markets.

Exemptions in special cases

(2) Any exemption granted by the Authority under sub-regulation (1) shall be subject to the Applicant satisfying such conditions as may be specified by the Authority including conditions to be complied with on a continuous basis.

PART VIII—MISCELLANEOUS

32. Any person who contravenes the provisions of these regulations shall be liable upon conviction to the penalty specified under section 34A of the Act and general damages where applicable, for any loss occasioned to the other party.

Offences

33. (1) An existing fund falling within the definition of alternative investment fund which is not approved by the Authority may continue to operate for a period of one year from commencement of these Regulations or if it has made an application for approval under this Regulation within the said period of one year, till the determination of such application.

Transition

(2) Any entity referred to in sub-regulation (1) which fails to make an application for approval under these Regulations within one year from the commencement of these regulations shall cease to carry on any activity as an alternative investment fund failure to which, will constitute an offence.

FIRST SCHEDULE [r. 4(3)]
APPLICATION FOR APPROVAL OF AN ALTERNATIVE INVESTMENT FUND

PROMOTER	
Name:	
Contact address:	
License details	
CONSTITUTION	
Legal form of the alternative investment fund: i. unit trust ii. investment company iii. Limited liability partnership	
Title of the law under which the alternative investment fund is or is to be constituted.	
KEY OFFICERS	
State name, address, place of birth and citizenship of: i. Directors. ii. chief executive	
State educational and professional qualifications of the key officers.	
Give details of business, occupation or employment history of the key officers.	
REFERENCES	
Give two personal references and a bank reference of the key officers.	
FUNCTIONARIES:	
State names, addresses and business activities of each of the collective investment scheme's	
Fund manager,	Name:
	Address:
	Business activities:
Custodians	Name:
	Address:
	Business activities:
Administrators;	Name:
	Address:
	Business activities:
Investment Advisers	Name:
	Address:
	Business activities:
Trustees	Name:
	Address:
	Business activities:

PRIOR REGISTRATION:	
State if the alternative investment fund is now or has been registered, licensed, recognized or authorized under any law or regulation in any country or jurisdiction outside Kenya.	
REFUSAL OR DISCIPLINARY MEASURES	
Has the fund manager or any of its officers, managers, administrators, investment advisers or custodians been the subject of —	
Refusal of an application for registration, licence, recognition or authorization; Give details and reasons if yes	
Suspension, cancellation or revocation of registration, licence, recognition or authorization by any authority in any country or jurisdiction including Kenya? Give details and reasons if yes	
CIVIL PROCEEDINGS	
Has a judgment been rendered or any suit, action or proceedings pending against any officer of the fund manager or of any of its functionaries listed above in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct? Give details if yes.	
OFFENCES	
Has any key officer of the fund manager or any of its functionaries listed above been or is being charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft arising out of dealing in mutual funds, alternative investment funds or securities?	
BANKRUPTCY	
Has any key officer or the fund manager or of any of its functionaries listed above been —	
(a) declared bankrupt or been party to bankruptcy or insolvency proceedings? or	
(b) subject to proceedings relating to winding up, dissolution or creditors' arrangements; or	

(c) subject to proceedings relating to receivership or creditors' compromise; in any country or jurisdiction?	
DECLARATION STATEMENT	
We hereby agree and declare that the information supplied in the application, including the attachment sheets, is complete and true. AND we further agree that, we shall notify the Authority immediately of any change in the information provided in the application. We further agree that we shall comply with, and be bound by the Act, these Regulations and such guidelines/instructions as may be announced by the Authority from time to time. We further agree that as a condition of registration, we shall abide by such operational instructions/directives as may be issued by the Authority from time to time. We..... (Director/Partner/Trustee) (Director/Partner/Trustee)and (Secretary)	
declare that all the information given in this application and in the attached documents is true and correct	
Dated this day of 20	
Signed: Director/Partner/Trustee Director/Partner/Trustee Secretary)	

SECOND SCHEDULE

GENERAL INFORMATION

[r. 5(a)(i)]

EACH APPLICATION FOR APPROVAL OF AN ALTERNATIVE INVESTMENT FUND SHALL BE ACCOMPANIED BY THE INFORMATION INDICATED BELOW. AS RELEVANT:

1. GENERAL INFORMATION

- a) Name, address of the registered office, address for correspondence and principal place of business, telephone number(s), e-mail address of the applicant.
- b) Name, direct line number, mobile number and e-mail of the contact person(s).
- c) Legal structure of applicant - Whether the applicant is a company or trust or limited liability partnership or any other body corporate.
- d) Date and place of incorporation/ establishment.
- e) Asset classes for which registration of the alternative investment fund is applied
- f) Whether the applicant or its associates is/ are registered with the Authority or any other regulatory authority in any capacity along with the details of its registration.
- g) Details of infrastructure for conducting activities as an alternative investment fund
- h) Copy of the draft placement memorandum.

2. DETAILS OF THE ALTERNATIVE INVESTMENT FUND

I. Alternative investment fund as a Trust:

- a) Written submission on the activities of the applicant;
- b) registration documents to be attached;
- c) State whether the trust deed permits the carrying on of the activity of an alternative investment fund;
- d) State whether the applicant is prohibited by its trust deed from making an invitation to the public to subscribe to its participatory interests;
- e) Provide details of trustee and copy of the proposed contract between the fund manager and the trustee as required in terms of these regulations;

II. Alternative Investment Fund as a company:

- a) Written submission on the activities of the applicant
- b) Shareholding structure and profile of the directors (Enclose Identity proof and address proof of the directors)
- c) incorporation documents to be attached

- d) State whether the incorporation documents permit carrying on of the activity of an alternative investment fund (Enclose relevant extract of the memorandum of association)
- e) Whether the applicant is prohibited by its articles of association from making an invitation to the public to subscribe to its securities;
- f) Provide details of custodian and copy of the proposed contract between the alternative investment fund and the custodian as required in these regulations

III. Alternative Investment Fund as a Limited Liability Partnership:

- a) Written submission on the activities of the applicant
- b) Beneficial ownership structure and profile of the partners (Enclose Identity proof and address proof of the partners)
- c) Attach copy of the partnership agreement/deed;
- d) Whether the applicant is prohibited by its partnership deed from making an invitation to the public to subscribe to its securities;
- e) Provide details of trustee and a copy of the proposed contract between the alternative investment fund and the trustee as required in these regulations.

3. DETAILS OF FUND MANAGER

- a) Certified copy of the license certificate

4. DETAILS OF BUSINESS PLAN AND INVESTMENT STRATEGY

- a) Investment objective and investment style/ strategy of the alternative investment fund.
- b) The target investors
- c) The target industries/ sectors, if any
- d) Proposed scheme assets
- e) Proposed fees to the fund manager
- f) Tenure/duration of the AIF or scheme
- g) Details of proposed use of leverage

5. OTHER INFORMATION/DECLARATIONS

- a) Amount contributed/ proposed to be contributed by the fund manager along with details of the same. (Provide copies of commitment letters from the fund manager.
- b) Whether the fund manager, trustee or custodian or any of their associates are fit and proper persons based on the criteria specified in the Capital Markets (Licensing) (General) Regulations; (Enclose a declaration to that effect).

- c) Declaration that the applicant shall comply with the provisions of these Regulations with respect to investment in the alternative investment fund.
- d) Declaration that the applicant shall comply with the provisions of these Regulations with respect to general investment conditions and conditions for the applicable category.

THIRD SCHEDULE

[r. 4(4)]

Application fees

Ksh. 10,000

Approval and annual regulatory fees

Ksh. 250,000

Made on 3rd October, 2023.

NJUGUNA NDUNG’U,
*Cabinet Secretary for the
National Treasury and Economic Planning.*