

THE FINANCIAL SERVICES AUTHORITY BILL, 2016

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MEMORANDUM OF OBJECTS AND REASONS

THE FINANCIAL SERVICES AUTHORITY BILL, 2016

A Bill for

AN ACT of Parliament to provide for the establishment of uniform norms and standards in relation to the conduct of providers of financial products and financial services, the establishment of the Financial Services Authority, the Financial Sector Ombudsman and the Financial Sector Tribunal, to provide for the prudential supervision of prudentially regulated non-bank financial institutions, to provide for the promotion and maintenance of a fair and efficient financial sector in Kenya, and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

PART I — PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Financial Services Authority Act, 2016.

(2) Subject to this Act, this Act shall come into force on such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

(3) The Cabinet Secretary may appoint different dates for coming into force of different provisions of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“administrative penalty” means an amount payable under section 108;

“administrative penalty order” means an order under section 108;

“Authority” means the Financial Services Authority established by section 9;

“Board” means—

(a) in Part II, sections 152, 153, 154 and 155 and Schedule 1 — the Board of the Authority appointed under section 15(1)(a);

(b) in Part IX and sections 156, 157, 158 and 159 — the Board of the Ombudsman appointed under section 119(1)(a);

- (b) in Part XII and sections 160, 161, 162, 163, 164, 165, 166 and 167 —the Compensation Funds Board appointed under section 129(1)(a);

“Board member” means—

- (a) in Part II and Schedule 1 — a member of the Board of the Authority appointed under section 15(1)(a);
- (b) in Part IX — a member of the Board of the Ombudsman appointed under section 119(1)(a);
- (b) in Part XII — a member of the Compensation Funds Board appointed under section 129(1)(a);

“Board Secretary” means the Board Secretary for the time being appointed under section 23;

“business document” means a document held by a person in connection with carrying on a business;

“business premises” means premises, including a building or a part of a building, used for carrying on a business;

“Cabinet Secretary” means the Cabinet Secretary responsible for finance;

“Capital Markets Act” means the Capital Markets Act (Cap. 485A);

“Capital Market Compensation Fund” means the fund of that name established by section 162;

“Central Bank of Kenya” means the Central Bank of Kenya established by the Central Bank of Kenya Act (Cap. 491);

“Central Bank of Kenya supervised entity” means, except as specified in regulations made for this definition, an entity regulated by the Central Bank of Kenya under a written law;

“Central Depositories Act” means the Central Depositories Act (Cap. 485D);

“Chairperson” means—

- (a) in Part II —the Chairperson of the Board appointed under section 15(1)(a);
- (b) in Part IX —the Chairperson of the Board appointed under section 119(1)(a);

(b) in Part XII —the Chairperson of the Compensation Funds Board appointed under section 129(1)(a);

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 19;

“Chief Ombudsman” means the Chief Ombudsman appointed under section 19 as applied by section 120;

“Companies Act” means the Companies Act, 2015 (No. 17 of 2015);

“conduct rule” means a rule made under section 29;

“Compensation Fund” means a fund established by section 162;

“Compensation Funds Board” means the Board established under section 130;

“Conduct Compensation Fund” means the fund of that name established by section 162;

“Consumer Protection Act” means the Consumer Protection Act (No. 46 of 2012);

“control function” means each of the following—

- (a) the risk management function;
- (b) the compliance function;
- (c) the internal audit function; and
- (d) the actuarial function;

“dealing” in a financial product is defined in sections 4(5) to (7);

“decision-maker” means—

- (a) in relation to a reviewable decision by the Authority — the Authority;
- (b) in relation to a reviewable decision by an SRO in the exercise of powers or performance of functions that the SRO is authorised to exercise or perform — the SRO;
- (c) in relation to a reviewable decision on a claim for compensation from a Compensation Fund — the Compensation Funds Board;
- (d) in relation to a decision referred to in paragraph (c) of

the definition of “reviewable decision” in this section —
the person identified in the regulations as the decision-
maker;

“directive” means a directive under section 99, 100 or 101 or
under a sectoral law;

“disqualified person” means a person who—

- (a) is or has at any time been adjudged bankrupt or has
entered into a composition scheme or arrangement with
his or her creditors;
- (b) has been convicted or found guilty of an offence, either
in the Republic or in a foreign country, being an
offence—
 - (i) involving dishonesty, fraud or moral turpitude; or
 - (ii) the maximum penalty for which is or includes a
term of imprisonment for six months or more;
- (c) is prohibited by or under a written law from being a
director of, or taking part in the management of, a
financial institution (however described) or a company,
either in the Republic or in a foreign country;
- (d) has been involved in the management or administration
of a financial institution (however described) that was
deregistered, wound up or placed under statutory
management (however described) for any failure on the
part of its management or administration;
- (e) is a member of the National Assembly or of a local
authority;
- (f) is a director or employee of, or is engaged as an auditor
for, a non-bank financial institution; or
- (g) has a direct material financial interest in a non-bank
financial institution, except as a financial customer;

“eligible prudentially regulated non-bank financial institution”
means—

- (a) a securities exchange and a derivatives exchange, as
these are defined in the Capital Markets Act;
- (b) a central depository as defined in the Central

Depositories Act;

- (c) a clearing house as referred to in the Capital Markets Act;
- (c) an insurer as defined in the Insurance Act;
- (d) a Sacco;
- (e) a prudentially regulated non-bank financial institution of a kind specified in regulations made for this definition;

“enforceable undertaking” means an undertaking described in section 105;

“*ex officio* Board member” means a Board member referred to in section 15(1)(b), (c) or (d);

“financial conduct licence” means a licence under Part IV;

“financial crime” includes—

- (a) an offence against this Act or a sectoral law;
- (b) engaging in conduct that amounts to—
 - (i) corruption or an economic crime as defined in the Anti-Corruption and Economic Crimes Act (Cap. 56); or
 - (ii) an offence against the Prevention of Terrorism Act (No. 30 of 2012) or the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59B);

“financial customer” means a final user of a financial product or financial service;

“financial product” has the meaning assigned to it in section 3;

“financial product advice” has the meaning assigned to it in section 4(2);

“financial product provider” means a person that, as a business or as part of a business, provides a financial product;

“financial service” has the meaning assigned to it in section 4;

“financial service provider” means a person that, as a business or as part of a business, provides a financial service;

“financial year” means a period of 12 months starting on 1 July;

“fit and proper” has the meaning assigned to it in section 6;

“FSA Fund” means the fund established by section 153;

“governing body”, in relation to a non-bank financial institution, means a person or body of persons, whether elected or not, that—

- (a) manages or controls the institution;
- (b) controls or formulates the policy and strategy of the institution;
- (c) directs the affairs of the institution; or
- (d) has the authority to exercise the institution’s powers and perform its functions, or the power to control the exercise of those powers or the performance of those functions;

“holding company” of a company (“company A”) means a company incorporated in Kenya that is a holding company of company A under the Companies Act;

“inspection” means an inspection under section 88;

“Insurance Act” means the Insurance Act (Cap. 487);

“Insurance Compensation Fund” means the fund of that name established by section 146;

“investigation” means an investigation under section 90;

“investigator” means an investigator appointed under section 89;

“key person” in relation to a non-bank financial institution, means each of the following—

- (a) a member of the governing body of the institution;
- (b) the chief executive officer or other person in charge of the institution;
- (c) a person other than a member of the governing body of the institution who makes or participates in making decisions that—
 - (i) affect the whole or a substantial part of the business of the institution; or

- (ii) may affect significantly the financial standing of the institution;
- (d) a person other than a member of the governing body of the institution who oversees the enforcement of the policies of, or the implementation of strategies of, the institution;
- (e) the head of a control function of the institution;
- (f) the head of a function of the institution that a sectoral law requires to be performed;

“levy” means levy imposed under section 169;

“levy payer” means a person liable to pay levy;

“licensee” means a person that holds a non-bank financial sector licence;

“Managing Director” means the Managing Director appointed under section 19 as applied by section 130;

“non-bank financial conglomerate” means a group (as defined in the Companies Act) designated as such under section 80;

“non-bank financial institution” means each of the following—

- (a) a financial product provider;
- (b) a financial service provider;
- (c) a person licensed or required to be licensed under a non-bank financial sector law;
- (d) a holding company in a non-bank financial conglomerate;
- (e) an SRO;
- (f) an institution of a kind specified in regulations made for this definition;

but not the Central Bank of Kenya or a Central Bank of Kenya supervised entity;

“non-bank financial sector” means the sector comprised of non-bank financial institutions;

“non-bank financial sector law” means—

- (a) this Act;
- (b) a sectoral law;
- (c) an instrument made or issued under this Act (including a prudential rule and a conduct rule) or under a sectoral law; and
- (d) a written law specified in regulations made for this definition;

“non-bank financial sector licence” means each of the following—

- (a) a financial conduct licence;
- (b) a written licence, registration, approval, recognition, permission, consent or any other authorisation under a sectoral law, however it is described in that law, required to provide a financial product or a financial service;

“Ombudsman” means the Financial Sector Ombudsman established by section 116;

“party”, in relation to proceedings in the Tribunal for review of a reviewable decision, means a party as described in section 147;

“Pensions Compensation Fund” means the fund of that name established by section 162;

“predecessor regulator” means each of the following—

- (a) the Capital Markets Authority established by the Capital Markets Act;
- (b) the Insurance Regulatory Authority established by the Insurance Act;
- (c) the Retirement Benefits Authority established by the Retirement Benefits Act;
- (d) the Sacco Societies Regulatory Authority established by the Sacco Societies Act;

“provider”, in Parts XI and XII, means a person that provides a financial product or a financial service;

“prudentially regulated non-bank financial institution” means each of the following—

- (a) an entity carrying on an activity that is required by the Capital Markets Act or the Central Depositories Act to be licensed;
- (b) an entity carrying on insurance business as defined by the Insurance Act or an activity that is required by that Act to be licensed;
- (c) a trustee of a scheme fund, or a manager, custodian or administrator of a retirement benefits scheme, as each of these is defined in the Retirement Benefits Act;
- (d) a Sacco;
- (f) an entity of a kind specified in regulations made for this definition;

“prudential rule” means a rule made under section 28;

“regulatory authority” means an authority within Kenya or in a foreign country that performs—

- (a) functions corresponding or similar to those performed by the Authority; or
- (b) functions that, in the opinion of the Authority, relate to the regulation or supervision of financial products, financial services, foreign financial products or foreign financial services;

“Retirement Benefits Act” means the Retirement Benefits Act (Cap. 197);

“reviewable decision” means each of the following—

- (a) a decision by the Authority under a non-bank financial sector law in relation to a specific person;
- (b) a decision on a claim for compensation under section 128;
- (c) a decision of a kind prescribed by regulations for the purposes of this paragraph;

and includes—

- (d) an omission to take such a decision within a prescribed period;
- (e) an omission to take such a decision within a reasonable

period, if the applicable non-bank financial sector law requires the decision to be taken but without prescribing a period;

but does not include—

- (f) a decision in relation to making a prudential rule or a conduct rule;
- (g) a decision of the Authority under section 76, 77 or 79;
- (h) a decision under Part VIII or IX;
- (i) an assessment of levy issued to a specific person; or
- (j) a decision prescribed by regulations made for this paragraph;

“Sacco” has the meaning it has under the Sacco Societies Act;

“Sacco Societies Act” means the Sacco Societies Act (Cap. 490B);

“Sacco Compensation Fund” means the fund of that name established by section 162;

“sectoral law” means—

- (a) the Capital Markets Act;
- (b) the Central Depositories Act;
- (c) the Insurance Act;
- (d) the Retirement Benefits Act;
- (e) the Sacco Societies Act; and
- (f) a law specified in regulations made for this definition;

“securities” has the meaning assigned to it in section 2 of the Capital Markets Act, but does not include those identified in paragraph (h) of that definition;

“significant owner” of a non-bank financial institution means a person who is a significant owner of the institution because of section 5;

“SRO” means an organisation—

- (a) recognised under the Capital Markets Act immediately

before the commencement of Part V; or

(b) authorised as mentioned in section 52;

“SRO rules” means rules made by an SRO under its constitution;

“Statutory Instruments Act” means the Statutory Instruments Act, 2013 (Act No 23 of 2013);

“Tribunal” means the Financial Services Tribunal established by section 136;

“Tribunal Rules” means rules made under section 142;

“unfair business practice” means conduct declared by a conduct rule to be an unfair business practice.

(2) A reference in a financial sector law, or in an instrument made or issued under a non-bank financial sector law, to compliance with or contravention of a non-bank financial sector law includes a reference to compliance with or contravention of:

- (a) regulations under that law;
- (b) a directive (however described) under that law;
- (c) prudential rules or conduct rules;
- (d) an enforceable undertaking;
- (e) a determination of the Ombudsman; or
- (f) a decision of the Tribunal or of a court in relation to that law.

(3) Unless the contrary intention appears—

- (a) any application, nomination, licence, approval, consent, permission, designation, delegation, directive or notice required by or provided for in a non-bank financial sector law shall be in writing; and
- (b) any information required by or under this Act to be provided must be provided in writing.

(4) Where a body corporate is convicted of an offence against a non-bank financial sector law, the court may, if the contrary intention does not appear in the financial sector law and the court thinks fit, impose a pecuniary penalty not exceeding 5 times the amount of the maximum pecuniary penalty that could be imposed

Financial products

by the court on a natural person convicted of the same offence.

3. (1) Subject to this section, a financial product is a facility or arrangement through which, or through the acquisition of which, a person does one or more of the following—

- (a) makes a financial investment (see subsection (11));
- (b) manages financial risk (see subsection (12));
- (c) makes non-cash payments (see subsection (13)).

(2) The provision of credit under a credit agreement as defined in the Consumer Protection Act (No. 46 of 2012) is a financial product.

(3) Securities are financial products.

(4) A facility or arrangement described, in regulations made for this subsection, as an Islamic investment arrangement is a financial product.

(5) A facility or arrangement with substantially the same economic effect as a facility or arrangement described in subsection (1), (2), (3) or (4), whatever its form, is a financial product.

(6) A facility identified in regulations for this subsection as a financial product is a financial product.

(7) A facility identified in regulations for this subsection as not being a financial product is not a financial product.

(8) In determining whether a particular facility or arrangement is a financial product, the way in which a facility or arrangement is provided to the financial customer (for example, over the internet) shall be ignored.

(9) Subject to this section, a particular facility that is of a kind through which people commonly make financial investments, manage financial risks or make non-cash payments is a financial product even if that facility is acquired by a particular person for some other purpose.

(10) A facility does not cease to be a financial product merely because—

- (a) the facility has been acquired by a person other than the person to whom it was originally issued; and

(b) that person, in acquiring the facility, was not making a financial investment or managing a financial risk.

(11) For this section, a person (“the investor”) makes a financial investment if—

(a) the investor gives money or money’s worth (the “contribution”) to another person and any of the following apply—

(i) the other person uses the contribution to generate a financial return, or other benefit, for the investor;

(ii) the investor intends that the other person will use the contribution to generate a financial return, or other benefit, for the investor (even if no return or benefit is in fact generated);

(iii) the other person intends that the contribution will be used to generate a financial return, or other benefit, for the investor; and

(b) the investor has no day-to-day control over the use of the contribution to generate the return or benefit.

(12) For the purposes of this section, a person manages financial risk if the person—

(a) manages the financial consequences to himself or herself of particular circumstances happening; or

(b) avoids or limits the financial consequences of fluctuations in, or in the value of, receipts or costs (including prices and interest rates).

(13) For the purposes of this section, a person makes non-cash payments if the person makes payments, or causes payments to be made, otherwise than by the physical delivery of Kenyan currency in the form of notes or coins.

Financial services

4. (1) Subject to this section, a person provides a financial service if the person—

(a) provides any of the following services in relation to a financial product—

(i) providing financial product advice;

(ii) dealing in a financial product;

(iii) making a market for a financial product;

(iv) administering or managing a financial product;

(b) engages in conduct of a kind prescribed in regulations made for the purposes of this paragraph; or

(c) administers or manages a financial service as defined in paragraph (a) or (b).

(2) A service identified in regulations for this subsection as a financial service is a financial service.

(3) A service identified in regulations for this subsection as not being a financial service is not a financial service.

(4) For this section, “financial product advice” means a recommendation or a statement of opinion, or a report of either of those things, that—

(a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or

(b) could reasonably be regarded as being intended to have such an influence;

but does not include—

(c) the mere provision of factual information (including about pricing);

(d) advice given by a legal practitioner in a professional capacity about matters of law, legal interpretation or the application of the law to any facts; or

(e) anything in a document of a kind prescribed by regulations made for this paragraph.

(5) For this section, “dealing in a financial product” means—

(a) facilitating, managing or administering the issue of a financial product;

(b) in relation to securities -- - underwriting the securities or interests;

(c) varying a financial product;

- (d) disposing of a financial product;
- (e) arranging for a person to do any of the things mentioned in paragraphs (a) to (d);

but does not include—

- (f) dealing by a person in a financial product as described in paragraphs (a) to (e) on the person's own account; or
- (g) conduct of a kind prescribed by regulations made for this paragraph.

(6) For this section, a person makes a market for a financial product if—

- (a) either through a facility, at a place or otherwise, the person regularly states the prices at which it proposes to acquire or dispose of financial products on its own behalf; and
- (b) other persons have a reasonable expectation that they will be able to effect transactions regularly at the stated prices; and
- (c) the actions of the person do not, or would not if they happened through a facility or at a place, constitute operating a financial market because of the effect of subsection (5)(a).

(7) For this section, a financial market is a facility through which—

- (a) offers to acquire or dispose of financial products are regularly made or accepted; or
- (b) offers or invitations are regularly made to acquire or dispose of financial products that are intended to result or may reasonably be expected to result, directly or indirectly, in—
 - (i) the making of offers to acquire or dispose of financial products; or
 - (ii) the acceptance of such offers.

However, none of the following constitutes operating a financial market—

- (c) a person making or accepting offers or invitations to

acquire or dispose of financial products on the person's own behalf, or on behalf of one party to the transaction only;

- (d) conducting treasury operations between related bodies corporate;
- (e) conducting an auction of forfeited shares;
- (f) conduct of a kind prescribed by regulations made for the purposes of this paragraph.

Significant owners

5. (1) For this Act, a person is a significant owner of a non-bank financial institution if the person, directly or indirectly, alone or together with one or more associated persons, has the ability to control or influence materially the business or strategy of the institution.

(2) Without limiting subsection (1), a person shall be taken to have the ability referred to in that subsection if—

- (a) the person, directly or indirectly, alone or together with one or more associated persons—
 - (i) has the power to appoint at least the prescribed proportion of the members of the governing body of the institution; or
 - (ii) holds a qualifying stake in the institution; or
- (b) the person's consent is required for the appointment of at least the prescribed proportion of the members of the governing body of the institution.

(3) Despite subsection (1), the Cabinet Secretary, the Central Bank of Kenya and the Authority are not, in those capacities, significant owners of a non-bank financial institution.

(4) For this section, a person holds a qualifying stake in an institution that is a company if—

- (a) the person, directly or indirectly, alone or together with one or more associated persons—
 - (i) holds at least the prescribed proportion of the issued shares of the institution;
 - (ii) has the ability to exercise or control the exercise of at least the prescribed proportion of the voting

rights attached to securities of the institution;

(iii) has the ability to dispose of or direct the disposal of at least the prescribed proportion of the institution's securities; or

(b) holds rights in relation to the institution that, if exercised, would result in an outcome described in paragraph (a).

(5) For this section, a person holds a qualifying stake in an institution that is a trust if the person, directly or indirectly, alone or together with one or more associated persons—

(a) has the ability to exercise or control the exercise of at least the prescribed proportion of the votes of the trustees;

(b) has the power to appoint at least the prescribed proportion of the trustees; or

(c) has the power to appoint or change any beneficiaries of the trust.

(6) In this section—

“prescribed proportion”, in relation to a non-bank financial institution, means—

(a) 25%; or

(b) if a sectoral law applicable to the institution prescribes a lower percentage — the lower percentage.

Fit and proper
person requirements

6. (1) In determining for the purposes of a non-bank financial sector law whether a person is fit and proper to hold a particular position, the matters that shall be taken into account include—

(a) the person's probity, competence and soundness of judgment in fulfilling the responsibilities of the position;

(b) the diligence with which the person is fulfilling or can be expected to fulfil those responsibilities;

(c) whether the person has committed any offence (including any financial crime), irregularities or misappropriated funds of financial customers;

(d) whether the person has contravened a written law intended to protect members of the public from loss

arising out of dishonesty, incompetence or malpractice in connection with financial products or financial services;

- (e) whether the person was a director or senior officer of a body that provided financial products or financial services that has been liquidated in insolvency, or subject to statutory management (however described);
- (f) has engaged in conduct that, in the Authority's opinion, is fraudulent, prejudicial or otherwise improper (whether unlawful or not).

(2) Subsection (1) does not limit the provisions that a sectoral law, or a prudential rule or a conduct rule, may make about fit and proper person requirements.

Compliance by
bodies corporate

7. Where a non-bank financial sector law imposes an obligation to be complied with by an entity that is a body corporate, the members of the governing body of the body corporate shall ensure that the obligation is complied with.

Application of
Statutory
Instruments Act

8. (1) The following are statutory instruments for the purposes of the Statutory Instruments Act—

- (a) a prudential rule;
- (b) a conduct rule;
- (c) regulations under this Act or a non-bank financial sector law;
- (d) an instrument under a sectoral law, and specified in that law to be a statutory instrument for purposes of the Statutory Instruments Act.

(2) No other instrument under a non-bank financial sector law is a statutory instrument for the purposes of the Statutory Instruments Act.

PART II — THE FINANCIAL SERVICES AUTHORITY

Establishment of the
Authority

9. (1) There is established an authority to be known as the Financial Services Authority.

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

capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) having and managing its own funds including borrowing and lending money;
- (d) entering into contracts;
- (e) employing or engaging the services of persons to assist it in performing its functions and exercising its powers; and
- (f) 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) Except as otherwise provided in this Act or another financial services law, the Authority shall be operationally independent in the performance of its functions.

(4) No person shall give a direction to the Authority in relation to a particular case.

(5) The Authority is a national public entity for the purposes of the Public Finance Management Act (Cap. 412C).

(6) The provisions of the State Corporations Act (Cap. 446) shall not apply to the Authority.

Objectives of the
Authority

10. The objectives of the Authority shall be to—

- (a) promote and enhance the safety and soundness of prudentially regulated non-bank financial institutions;
- (b) enhance and support the efficiency and integrity of financial markets;
- (c) promote public confidence in and encourage the development of the non-bank financial sector;
- (d) protect financial customers by—
 - (i) promoting fair treatment of financial customers by non-bank financial institutions; and

- (ii) providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions; and
- (e) promote systemic stability in the non-bank financial sector; and
- (f) subject to paragraphs (a) to (e) —support the economic policy of the Government, including its objectives for growth and employment.

Functions of the
Authority

11. (1) The functions of the Authority shall be to—

- (a) regulate and supervise (including by licensing) prudentially regulated non-bank financial institutions in accordance with this Act and the sectoral laws;
- (b) regulate and supervise, in accordance with this Act, the conduct of non-bank financial institutions;
- (c) promote, to the extent consistent with achieving the objective of the Authority, sustainable competition in the provision of financial products and financial services;
- (d) promote an appropriate degree of self-regulation in the non-bank financial sector, including through SROs;
- (e) promote awareness of the need for, and undertake and assist in providing, financial education;
- (f) promote financial inclusion, that is, that all persons have timely and fair access to appropriate, fair and affordable financial products and financial services;
- (g) advise the National Treasury on policies with respect to the non-bank financial sector including in relation to national development plans;
- (h) monitor the operation of non-bank financial sector laws and their effectiveness in achieving the objectives set out in section 10, and report to the Cabinet Secretary on those matters;
- (i) cooperate with, and provide appropriate assistance to,

State organs and foreign regulatory authorities and law enforcement agencies; and

- (j) perform its functions under any other law.

(2) When performing its functions, the Authority shall adopt an outcomes focused, risk-based and proportionate approach that embodies, to the extent relevant to circumstances in the Republic, international best practice as described by international regulatory organisations and standards-setting bodies.

Powers of the Authority

12. The Authority shall have all the powers necessary for the proper performance of its functions under the non-bank financial sector laws, and in particular the power to—

- (a) control, supervise and administer the assets of the Authority as will promote the achievement of the Authority's objectives in section 10;
- (b) manage the funds of the Authority, including its reserves;
- (c) receive grants, gifts or endowments;
- (d) establish a bank accounts;
- (e) with the consent of the Cabinet Secretary, borrow money, mortgage or charge any of its assets;
- (f) engage staff, on terms and conditions, as it may consider necessary for performance of its functions, including establishing retirement benefits funds and medical funds for them and making contributions to those funds for their benefit;
- (g) co-operate with its counterparts in other jurisdictions; and
- (h) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.

Co-operation and collaboration

13. (1) The Authority and the Central Bank of Kenya shall co-operate and collaborate when performing their functions, and shall for this purpose—

- (a) generally assist and support each other in pursuing their objectives;

- (b) to the extent permitted by law, inform each other about, and share information about, matters of common interest;
- (c) strive to adopt consistent regulatory strategies, including addressing regulatory and supervisory challenges;
- (d) co-ordinate, to the extent appropriate, actions they take, including in relation to—
 - (i) licensing;
 - (ii) inspections and investigations;
 - (iii) actions to enforce laws;
 - (iv) information sharing;
 - (v) recovery and resolution; and
 - (vi) reporting by non-bank financial institutions, including statutory reporting and data collection measures; and
- (e) minimise the duplication of effort and expense, including by establishing and using, where appropriate, common or shared databases and other facilities.

(2) The Authority and any other State organ that has a regulatory or supervisory function in relation to non-bank financial institutions shall co-operate and collaborate when performing their functions, including by consulting each other in relation to the performance of their functions.

(3) The Authority may request a State organ to provide information about any action that the State organ has taken or proposes to take in relation to a non-bank financial institution specified in the request. The State organ shall comply with the request, but this subsection does not require or permit a State organ to do something that would contravene a law.

Memorandums of
understanding

14. (1) The Authority may enter into memorandums of understanding with other organs of State in the Republic in relation to co-operation between them in performing their functions.

(2) The Authority may enter into memorandums of understanding and other arrangements with financial sector regulatory authorities in other countries in relation to co-operation between them, and exercising their powers to assist each other, in

performing their functions.

(2) The validity of an action taken by the Authority is not affected by a failure to comply with this section or a memorandum of understanding.

(3) The Authority shall publish each memorandum of understanding and each amendment of a memorandum of understanding.

The Board

15. (1) There is established a board for the Authority, which shall consist of—

- (a) a Chairperson, who shall be appointed by the President;
- (b) the Principal Secretary to the National Treasury;
- (c) the Governor of the Central Bank of Kenya;
- (d) the Chief Executive Officer; and
- (e) five other members, who shall be appointed by the Cabinet Secretary.

(2) In appointing the Chairperson and the Board members mentioned in paragraph (1)(e), the President and the Cabinet Secretary shall have regard to the principles of gender equity and regional balance and the need to have a mix of skills relevant to the financial sector.

(3) The Chairperson and Board members appointed under subsection (1)(e) shall be selected from persons who—

- (a) are not public officers or employees, officers or significant owners of any licensee;
- (b) hold a bachelor's degree in law, finance, economics, commerce, actuarial science or other relevant discipline;
- (c) have at least ten years experience in top management of a public or private institution within the financial sector;
- (d) have at least five years experience as a board member;
- (e) satisfy the requirements of the relevant provisions of the Constitution and national laws in respect to National Values, Governance, Leadership, Integrity and Principles of Public Service; and

(f) have not served as an employee of the Authority or a predecessor regulator in the preceding five years.

(4) A disqualified person shall not be appointed as a Board member.

(5) A Board member (other than an *ex officio* Board member) shall hold office for a period specified in the instrument of appointment, not exceeding three years, and on terms and conditions specified in the instrument of appointment. At the end of his or her term, the member may be re-appointed for one further term of a period not exceeding three years.

(6) The Board members (other than *ex officio* Board members) shall be appointed at different times so that the ends of their terms fall at different times.

(7) A Board member (other than the Chairperson or an *ex officio* Board member) —

(a) may at any time resign from office by notice to the Cabinet Secretary;

(b) may be removed from office by the Cabinet Secretary if the member—

(i) has been absent from three consecutive meetings of the Board without permission from the Chairperson;

(ii) is incapacitated by physical or mental illness or other cause from fulfilling the responsibilities of a Board member; or

(iii) conducts himself or herself in a manner not befitting a Board member; and

(c) shall be removed from office by the Cabinet Secretary if the member becomes a disqualified person.

(8) The Chairperson—

(a) may at any time resign from office by notice to the President;

(b) may be removed from office by the President if the Chairperson—

(i) has been absent from three consecutive meetings of

the Board without permission from the Cabinet Secretary;

- (ii) is incapacitated by physical or mental illness or other cause from fulfilling the responsibilities of Chairperson; or
 - (iii) conducts himself or herself in a manner not befitting a Board member; and
- (c) shall be removed from office by the President if the Chairperson becomes a disqualified person.

(9) An *ex officio* Board member other than the Chief Executive Officer may, by notice to the Chairperson, nominate a suitable alternate to attend meetings of the Board. If the member is not present at a meeting of the Board but the alternate is, the alternate has, for the meeting, all the powers and responsibilities of the member.

(10) The Cabinet Secretary shall ensure that the appointment of a Board member, and the resignation or removal from office of a Board member, is notified in the *Gazette*, but failure to do so does not affect the validity of the appointment, resignation or removal.

Functions of the Board

16. (1) The functions of the Board shall be to—

- (a) generally oversee the management and administration of the Authority;
- (b) formulate and approve strategies and plans for the Authority, including—
 - (i) the strategic priorities of the Authority;
 - (ii) regulatory strategies; and
 - (iii) operational strategies and plans;
 and monitor the implementation of those strategies and plans;
- (c) monitor the performance of the Authority and the extent to which the objectives set out in section 10 are being achieved;
- (d) any other functions conferred on the Board by a written law.

Board committees

17. (1) The Board may establish such committees as it may consider necessary for the performance of its functions.

(2) The Board may co-opt any person with appropriate knowledge and skills to sit on any committee established under subsection (1).

Board procedure

18. (1) The Board shall conduct its affairs in accordance with the provisions of the First Schedule.

(2) Except as provided in this Part and the First Schedule, the Board shall regulate its own procedure.

Chief Executive Officer

19. (1) There shall be a Chief Executive Officer for the Authority, who shall be appointed by the Board in consultation with the Cabinet Secretary and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) The Chief Executive Officer shall hold office for a term of four years from the date of appointment and shall be eligible for reappointment for one further term not exceeding four years.

(3) A person shall not be appointed as Chief Executive Officer—

- (a) unless the person has at least a relevant master's degree and membership in a professional body;
- (b) unless the person has knowledge, competence and at least ten years' experience in finance, law, accounting, economics, banking, actuarial science, insurance, cooperative practice or matters relating to capital markets, at least five years of which are in senior management;
- (c) unless the person satisfies the requirement of the relevant provisions of the Constitution in respect to National Values, Governance, Leadership, Integrity and Principles of Public Service.

(4) A disqualified person shall not be appointed as Chief Executive Officer.

(6) The Chief Executive Officer may be removed from office by the Board, in consultation with the Cabinet Secretary, on any

ground on which a Board member may be removed from office under section 15.

Role of the Chief Executive Officer

20. (1) The Chief Executive Officer—

- (a) is responsible for the day-to-day management and administration of the Authority; and
- (b) subject to this Act and the sectoral laws, shall perform the functions of the Authority, including exercising the powers and carrying out the duties associated with those functions;

(2) In performing the functions of the Authority, the Chief Executive officer shall implement the policies and strategies adopted by the Board.

Delegations

21. The Chief Executive Officer may, either generally or in any particular case, delegate to any staff member or contractor of the Authority the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

Common seal

22. (1) The common seal of the Authority shall be kept in the custody of the Chief Executive Officer.

(2) The common seal of the Authority shall be authenticated by the signatures of—

- (a) the Chief Executive Officer or the Chairperson; and
- (b) one other Board member authorised by the Board in that behalf or the Board Secretary.

(3) The common seal of the Authority, when affixed to a document and duly authenticated, shall be judicially and officially noticed and, unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

Board Secretary

23. The Board shall appoint an individual as Secretary to the Board.

Staff

24. (1) The Authority may appoint such staff as it considers necessary for the discharge of its responsibilities and functions under this Act.

(2) Staff appointed under subsection (1) shall be remunerated at a rate determined by the Board and shall be subject to conditions of

service as the Board may determine.

Liability

25. (1) No matter or thing done or omitted to be done by a person who is a Board member, a member of the staff of, or an agent of, the Authority, or an investigator, in execution of the functions and objectives of the Authority shall render the person, or any person acting on his or her directions, personally liable to any action, claim or demand whatsoever unless the matter or thing was done or omitted in bad faith.

(2) Any expenses incurred or to be incurred by any person referred to in subsection (1) in any suit brought against that person before any court in respect of any act which is done or purported to be done by that person under this Act, or on the direction of the Authority, shall be reimbursed or met by the Authority unless the act concerned was done in bad faith.

Confidentiality

26. (1) A person who is a Board member or a staff member of the Authority shall, at all times, in the performance of a function authorised under this Act, preserve confidentiality with regard to all matters coming to the knowledge of that person in the performance of any such function.

(2) A person who is Board member, a member of the staff of the Authority or an agent of the Authority shall not, at any time, without reasonable justification or excuse—

- (a) communicate any confidential information to any person; or
- (b) permit any person to have access to any document in the possession, custody or control of the Authority.

Penalty — Kshs. 5,000,000 and imprisonment for 2 years.

Annual and other reports

27. (1) The Authority shall, not later than 90 days after the end of each financial year, prepare an annual report of its activities during the financial year.

(2) Each annual report shall include a report on—

- (a) the steps taken to co-operate and collaborate with the Central Bank of Kenya; and
- (b) the operation of non-bank financial sector laws and their effectiveness in achieving the objectives set out in section 10;

during the financial year to which the report relates.

(3) The Authority shall submit each annual report to the Cabinet Secretary, who shall submit it to the National Assembly.

(4) The Authority shall publish a copy of each annual report.

(5) The Authority shall comply with any request by the Cabinet Secretary for information about the Authority and its operations.

PART III — PRUDENTIAL AND CONDUCT RULES

Prudential rules

28. (1) The Cabinet Secretary shall, in consultation with the Authority, make rules (“prudential rules”) for or in respect of—

- (a) prudentially regulated non-bank financial institutions; and
- (b) holding companies in non-bank financial conglomerates.

(2) A prudential rule shall be aimed at one or more of the following:

- (a) ensuring the safety and soundness of prudentially regulated non-bank financial institutions;
- (b) in the case of holding companies in non-bank financial conglomerates — ensuring the safety and soundness of the eligible prudentially regulated non-bank financial institutions in those conglomerates;
- (c) reducing the risk that prudentially regulated non-bank financial institutions engage in conduct that amounts to, or contributes to, financial crime; and
- (d) promoting non-bank financial sector stability.

(3) Without limiting subsection (1), a prudential rule may make provision in respect of—

- (a) financial soundness requirements, including in relation to capital adequacy, minimum liquidity and minimum asset quality;
- (b) in the case of non-bank financial conglomerate—
 - (i) intra-group financial and other exposures of companies in non-bank financial conglomerates;

- (ii) the governance and management arrangements for holding companies in non-bank financial conglomerates;
 - (iii) reporting of information about companies in non-bank financial conglomerates that are not non-bank financial institutions; and
 - (iv) reducing or managing risks to the safety and soundness of eligible prudentially regulated non-bank financial institutions in non-bank financial conglomerates arising from the other members of the conglomerates; and
- (c) matters that a relevant sectoral law provides may be provided for in a prudential rule.

Conduct rules

29. (1) The Cabinet Secretary shall, in consultation with the Authority, make rules (“conduct rules”) for or in respect of the conduct of non-bank financial institutions in relation to the provision of financial products or financial services.

(2) A conduct rule shall be aimed at one or more of the following—

- (a) ensuring the efficiency and integrity of financial markets;
- (b) ensuring that non-bank financial institutions treat financial customers fairly;
- (c) reducing the risk that non-bank financial institutions engage in conduct that is or contributes to financial crime; and
- (d) promoting non-bank financial sector stability.

(3) Without limiting subsection (1), a conduct rule may be made on any of the following matters—

- (a) efficiency and integrity requirements for non-bank financial markets;
- (b) measures to combat abusive practices;
- (c) requirements for the fair treatment of financial customers, including in relation to—
 - (i) the promotion, marketing and distribution of, and

advice in relation to, those products and services;
and

(ii) the resolution of complaints and disputes concerning those products and services, including redress;

(d) the disclosure of information to financial customers.

Unfair business practices

30. (1) A conduct rule may declare specific conduct in connection with a financial product or a financial service to be an unfair business practice if the conduct—

(a) is or is likely to be materially inconsistent with the fair treatment of financial customers;

(b) is deceptive or misleading or is likely to deceive or mislead financial customers; or

(c) unfairly prejudices, or is likely to prejudice unfairly, financial customers or a category of financial customers.

(2) A non-bank financial institution that engages in conduct declared to be an unfair business practice commits an offence.

Penalty —

(a) for a first offence — Kshs. 5,000,000; and

(b) for a second or later offence — Kshs. 10,000,000.

Prudential rules and conduct rules — additional matters

31. (1) Without limiting section 28 or 29, a prudential rule or a conduct rule may make provision for any of the following—

(a) fit and proper person requirements in relation to non-bank financial institutions, key persons of non-bank financial institutions, significant owners of non-bank financial institutions and holding companies in non-bank financial conglomerates;

(b) governance, including in relation to—

(i) the composition, membership and operation of governing bodies;

(ii) identifying and managing conflicts of interest and

(c) the terms and conditions of office of (including remuneration and incentives for) members of governing bodies;

- (d) the terms and conditions of engagement of key persons;
- (e) financial management, including—
 - (i) accounting, actuarial and auditing requirements;
 - (ii) risk management and internal control requirements;
 - (iii) financial statements, updates on financial position, and public reporting and disclosures;
- (f) control functions;
- (g) reporting, including to the Authority;
- (h) outsourcing;
- (i) the amalgamation, merger, acquisition, disposal and dissolution of non-bank financial institutions;
- (j) recovery, resolution and business continuity of non-bank financial institutions.

(2) A prudential rule or a conduct rule may provide for the Authority to make determinations, in accordance with the rule, for the purposes of the rule.

(3) A prudential rule or a conduct rule may make different provision for—

- (a) different categories of non-bank financial institutions or key persons; and
- (b) different circumstances.

(4) A prudential rule may amend or revoke another prudential rule.

(5) A conduct rule may amend or revoke another conduct rule.

Prudential or
conduct rules
requiring
concurrence of or
consultation with
Central Bank of
Kenya

32. (1) A prudential rule made under section 28(3)(b) shall not include a provision that imposes requirements on a Central Bank of Kenya supervised entity without the concurrence of the Central Bank of Kenya.

(2) A prudential rule or a conduct rule shall not include provision aimed at promoting non-bank financial sector stability unless the Central Bank of Kenya has been consulted.

PART IV — FINANCIAL CONDUCT LICENCES

Requirement for
financial conduct
licences

33. (1) Subject to this Act, a person shall not provide, as a business or part of a business, a financial product or a financial service except in accordance with a financial conduct licence.

(2) A person who does not hold a financial conduct licence shall not describe or hold itself out as being so licensed.

(3) A person who does not hold a financial conduct licence to provide particular financial products or financial services shall not describe or hold itself out as being so licensed.

(4) A person shall not permit another person to identify the first person as holding a financial conduct licence, or a particular conduct licence, unless the first person is so licensed.

(5) For this section, a person whose financial conduct licence has been suspended or revoked does not hold a conduct licence.

(6) A person who contravenes a provision of this section commits an offence and is liable on conviction to a penalty not exceeding—

- (a) for a first offence — Kshs. 5,000,000 and imprisonment for 2 years; and
- (b) for a second or later offence — Kshs. 10,000,000 and imprisonment for 5 years.

Exemptions for
Central Bank of
Kenya supervised
entities and
securities issuers

34. Subsection 33(1) does not require any of the following to hold a financial conduct licence—

- (a) a Central Bank of Kenya supervised entity;
- (b) an issuer of securities.

Exemption orders

35. (1) The Authority may make an order (an “exemption order”) exempting a non-bank financial institution, or a class of non-bank financial institutions, from the requirements of section 33(1) in circumstances set out in the order, and may at any time vary or revoke such an order.

(2) The Authority shall not make an exemption order unless satisfied that the costs of administering and enforcing the requirement for a financial conduct licence, including the costs of compliance, substantially outweigh the risk of loss to financial customers arising from the exemption.

Phase in for
licensing
requirement

(3) An exemption order has effect according to its terms.

36. (1) The Authority shall, within four months after the commencement of Part II, adopt a phase-in plan specifying, for particular classes of non-bank financial institutions, the dates on which section 33(1) shall come into force.

(2) The Authority must publish the adopted phase-in plan, and publish notice of the plan in *Gazette*.

(3) The Authority may amend the phase-in plan.

(4) The phase-in plan, and an amendment of the phase-in plan, comes into force on the date it is notified in the *Gazette*.

(5) The phase in plan (including as amended) shall not specify, as the date on which section 33(1) shall come into force in relation to a non-bank financial institution, a date that is—

(a) earlier than six months after the date on which notice of the plan is published in the *Gazette*; or

(b) later than—

(i) three years after that date; or

(ii) if the Cabinet Secretary, by notice in the *Gazette*, specifies a later date — the later date.

(6) The Authority shall not adopt or amend a plan under this section without the approval of the Cabinet Secretary.

(7) Section 33(1) shall come into force for a non-bank financial institution included in a class of non-bank financial institutions on —

(a) the date specified in the phase-in plan for that class; or

(b) if the phase in plan does not specify a date for the class — the date determined in accordance with subsection (5)(b).

Grant of financial
conduct licences

37. (1) The Authority may, on application by a non-bank financial institution, grant the institution a financial conduct licence.

(2) A financial conduct licence remains in force until suspended or revoked.

Applications for
financial conduct

38. (1) An application for a financial conduct licence shall—

licences

- (a) be in a form approved or accepted by the Authority; and
- (b) include or be accompanied by the information and documents required in the form or by the Authority.

(2) The Authority may, by notice to an applicant for a financial conduct licence, require the applicant to—

- (a) give the Authority additional information or documents specified by the Authority; and
- (b) verify any information given by the applicant in connection with the application, as specified by the Authority.

The Authority need not deal further with the application until the applicant has complied with the notice.

Criteria for grant of financial conduct licences

39. (1) The matters that the Authority shall take into account in relation to an application for a financial conduct licence include—

- (a) the objectives set out in section 10;
- (b) the financial and other resources of and available to the applicant;
- (c) fit and proper person requirements applicable to the applicant and to any key person or significant owner of the applicant;
- (d) the governance and risk management arrangements of the applicant;
- (e) whether the applicant, or a key person of the applicant, has engaged in an unfair business practice or in conduct that contravenes the Consumer Protection Act; and
- (e) whether the applicant made a statement that is false or misleading, including by omission, in or in relation to the application.

(2) The Authority shall not grant a financial conduct licence to an applicant unless satisfied that—

- (a) the applicant has or has available to it sufficient financial and other resources to ensure that it will be able to comply with the requirements of non-bank financial sector laws in relation to the financial conduct licence; and

- (b) the institution, and its key persons, are fit and proper;
- (c) the applicant has effective internal mechanisms for dealing with complaints from financial customers about financial products and financial services that it provides; and
- (d) issuing the financial conduct licence to the applicant will not be contrary to the interests of financial customers generally.

Determination of applications

40. (1) The Authority shall determine each application for a financial conduct licence by—

- (a) granting the application and issuing a financial conduct licence to the applicant; or
- (b) refusing the application and notifying the applicant accordingly.

(2) If the Authority has not granted an application, or notified the applicant under subsection (1)(b), within the notification period for the application, it is taken to have refused the application.

(3) For subsection (2), the notification period for an application is 60 days starting in the day in which the application is lodged with the Authority. The Authority may, by notice to the applicant, extend the notification period for one further period not exceeding 60 days.

(4) In working out when the notification period expires, any period between the Authority giving the applicant a notice under section 38(2) and the requirements in the notice being satisfied is not to be counted.

Scope of financial conduct licences

41. (1) A financial conduct licence may be limited—

- (a) to specified financial products or specified financial services;
- (b) to the provision of financial products or financial services to persons in a specified class, or in specified circumstances.

(2) A financial conduct licence may be subject to conditions specified in the licence.

Notification obligations of licensees

42. (1) A licensee shall promptly notify the Authority of any of the following—

- (a) the fact that it has contravened or is contravening, a non-bank financial sector law;
- (b) the fact that it has become aware that information given in connection with the application for the financial conduct was false or misleading.

Penalty — Kshs. 100,000.

(2) Subsection (1) also applies in relation to events and circumstances that occur while the person's financial conduct licence is suspended.

Financial conduct licences not transferable

43. A financial conduct licence is not transferable.

Varying financial conduct licences

44. (1) The Authority may, by notice to the holder of a financial conduct licence, vary the licence if to do so will assist in achieving the objectives set out in section 10.

(2) A variation of a financial conduct licence may include—

- (a) removing or varying a condition of the licence, or adding a condition; and
- (b) changing the categories of financial products, financial services or financial customers to which the licence relates.

(3) A variation of a financial conduct licence takes effect on a date of the notice under subsection (1) or, if a later date is specified in the notice, the later date.

Suspending financial conduct licence

45. (1) The Authority may, by notice to the holder of a financial conduct licence, suspend the licence for the period specified in the notice if—

- (a) the licensee applies for suspension;
- (b) a condition of the licence has been contravened or has not been complied with in a material respect;
- (c) a non-bank financial sector licence held by the licensee has been suspended, cancelled or revoked under a sectoral law;
- (d) the licensee, or a key person of the licensee, has contravened a non-bank financial sector law in a material respect;

- (e) the licensee, or a key person of the licensee, has engaged in conduct that contravenes the Consumer Protection Act or a warranty implied into an agreement by that Act;
 - (f) the licensee, or a key person of the licensee, has in a foreign country contravened in a material respect a law of that country that corresponds to a non-bank financial sector law or the Consumer Protection Act;
 - (g) information provided in or in relation to an application in relation to the licence was false or misleading (including by omission) in a material respect;
 - (h) the suspension is necessary to prevent—
 - (i) a serious contravention of a non-bank financial sector law; or
 - (ii) financial customers of the person suffering material prejudice; or
 - (i) any of the following (including any interest) are unpaid and have been unpaid for at least 30 days—
 - (i) fees or charges in respect of the financial conduct licence or another non-bank financial sector licence held by the licensee;
 - (ii) a levy or an administrative penalty payable by the licensee.
- (2) The Authority may refuse to suspend a financial conduct licence under subsection (1)(a) if the suspension—
- (a) would not be in the best interests of financial customers; or
 - (b) would frustrate the achievement of objectives set out in a non-bank financial sector law applicable to the licence.
- (3) The Authority may at any time revoke the suspension.
- (4) A suspension of a financial conduct licence takes effect on the date of the notice under subsection (1) or, if a later date is specified in the notice, the later date.
- (5) The suspension of a financial conduct licence does not

affect an obligation of the licensee that it has under a non-bank financial sector law.

Revoking financial
conduct licences

46. (1) The Authority may, by notice to the holder of a financial conduct licence, revoke the licence—

- (a) if the licensee applies for revocation of the licence;
- (b) on any of the grounds on which it may suspend the licence, as set out in section 45(1)(b) to (i); or
- (c) if the licensee has ceased to conduct the licensed activities.

(2) Without limiting its powers, the Authority may refuse to revoke a financial conduct licence under subsection (1)(a) if the revocation—

- (a) would not be in the best interests of financial customers; or
- (b) would frustrate the achievement of objectives set out in a non-bank financial sector law applicable to the licence.

(3) Revocation of a financial conduct licence takes effect on the date of the notice under subsection (1) or, if a later date is specified in the notice, the later date.

Continuation of
licensed activity
despite suspension
or revocation

47. (1) The Authority may, by notice to a person whose financial conduct licence has been suspended or revoked and on conditions specified in the notice, allow the licensee to carry out the licensed activity to the extent, and for the period, specified in the notice.

(2) The purpose of the notice shall be to facilitate the orderly suspension or termination of the activity.

(3) The conditions may be aimed at ensuring that financial customers of the licensee are treated fairly in relation to suspension or termination of the licensed activity

(4) Carrying out a licensed activity in accordance with the requirements of a notice under subsection (1) is not a contravention of section 33.

Procedure for
varying, suspending
and revoking

48. (1) Before the Authority varies, suspends or revokes a financial conduct licence, it shall—

conduct licences

- (a) give the licensee notice of the proposed action and a statement of the reasons for it; and
- (b) invite the licensee to make submissions on the matter, and give it a reasonable period (which shall be at least 30 days) to do so.

(2) The Authority need not comply with subsection (1) if the licensee applied for the variation, suspension or revocation.

(3) In deciding whether to vary, suspend or revoke the licence, the Authority shall consider all submissions made under subsection (1).

(4) If the delay involved in complying, or complying fully, with subsection (1) in respect of a proposed action is likely to prejudice financial customers, prejudicially affect non-bank financial sector stability or defeat the object of the action, the Authority may take the action without having complied, or complied fully, with that subsection.

(5) If the Authority takes action without having complied, or complied fully, with subsection (1) for the reason set out in subsection (4), the Authority shall give the licensee a statement of the reasons why that subsection was not complied with.

(6) The licensee may make submissions to the Authority within 30 days after being provided with the statement.

(7) The Authority shall consider the submissions and, as soon as practicable, notify the licensee whether the Authority proposes to amend or revoke the variation, suspension or revocation.

Disclosure of
financial conduct
licences

49. (1) A non-bank financial institution shall comply with the applicable requirements of a conduct rule in relation to the identification of financial conduct licences in business documentation, including advertisements and other promotional material.

(2) A non-bank financial institution shall make its financial conduct licence or a copy of its financial conduct licence available at no cost to any person on reasonable request.

Penalty — Kshs. 500,000.

Licences, variations,
suspensions and
revocations to be

50. The Authority shall publish each financial conduct licence, and each instrument varying, suspending or revoking a financial

published

Other provisions not limited

Authorising SROs to perform Authority's functions

Applications for SRO authorisations

conduct licence.

51. This Part does not limit any other provision of this Act, or any provision of a non-bank financial sector law, that specifies matters to be considered in relation to the grant of a financial conduct licence, or the circumstances in which a financial conduct licence may be granted, varied, suspended or revoked.

PART V — SELF-REGULATORY ORGANISATIONS

52. (1) The Authority may, on application by an organisation, authorise the organisation to exercise specified powers, or perform specified functions, of the Authority under a non-bank financial sector law in relation to specified non-bank financial institutions or a specified class of non-bank financial institutions.

(2) An authorisation shall specify—

- (a) the circumstances in which and the conditions on which the SRO may to exercise the powers or perform the functions; and
- (b) the persons (or their positions) who are to exercise the powers or perform the functions on behalf of the SRO.

(3) The Authority shall not authorise an SRO to exercise a power under section 108, 111 or 114 or under Part XVIII.

(4) The authorisation of an organisation under this section to exercise powers or perform functions of the Authority does not prevent the Authority from exercising the powers or performing the functions.

(5) The authorisation of an organisation under this section remains in force until suspended or revoked.

53. (1) An application for authorisation as an SRO under section 52 shall—

- (a) be in a form approved or accepted by the Authority; and
- (b) include or be accompanied by the information and documents required in the form or by the Authority.

(2) The Authority may, by notice to an applicant for authorisation as an SRO, require the applicant to—

- (a) give the Authority additional information or documents

specified by the Authority; and

- (b) verify any information given by the applicant in connection with the application, as specified by the Authority.

The Authority need not deal further with the application until the applicant has complied with the notice.

Criteria for SRO
authorisation

54. (1) The Authority shall not authorise an organisation as an SRO under section 52 unless satisfied that—

- (a) there is a need for the organisation to act as an SRO, or it is desirable that the organisation act as an SRO; and
- (b) the organisation's constitution is consistent with its proposed role as an SRO and is in other respects satisfactory;
- (c) the organisation's SRO rules are or will be satisfactory; and
- (d) the organisation has or has available to it sufficient financial and other resources to ensure that it will—
 - (i) effectively perform the functions and exercise the powers it will be authorised to perform and exercise as an SRO; and
 - (ii) comply with the requirements of non-bank financial sector laws.

(2) The matters that the Authority shall consider, in determining whether an organisation's constitution is satisfactory include the interests, rights and liabilities of the members of the organisation and of relevant financial customers.

Determination of
applications for
authorisation as an
SRO

55. (1) The Authority shall determine each application for authorisation as an SRO by—

- (a) granting the application and authorising the applicant as an SRO; or
- (b) refusing the application and notifying the applicant accordingly.

(2) If the Authority has not granted an application, or notified the applicant under subsection (1)(b), within the notification period for the application, it is taken to have refused the application.

(3) For subsection (2), the notification period for an application is 60 days starting in the day in which the application is lodged with the Authority. The Authority may, by notice to the applicant, extend the notification period for one further period not exceeding 60 days.

(4) In working out when the notification period expires, any period between the Authority giving the applicant a notice under section 53(2) and the requirements in the notice being satisfied shall not be counted.

Varying SRO
authorisations

56. (1) The Authority may, by notice to an SRO, vary the SRO's authorisation if to do so will assist in achieving the objectives set out in section 10.

(2) A variation of an SRO's authorisation may include—

- (a) removing or adding powers or functions that the SRO is authorised to exercise or perform; and
- (b) removing or varying a condition of the authorisation, or adding a condition.

(3) A variation of an SRO's authorisation takes effect on a date of the notice under subsection (1) or, if a later date is specified in the notice, the later date.

Suspending SRO
authorisations

57. (1) The Authority may, by notice to an SRO, suspend the SRO's authorisation for the period specified in the notice if—

- (a) the SRO applies for the suspension;
- (b) a condition of the SRO's authorisation has been contravened or has not been complied with in a material respect;
- (c) there is no further need for the organisation to act as an SRO, or it is no longer desirable that the organisation act as an SRO;
- (d) a non-bank financial sector licence held by the SRO has been suspended, cancelled or revoked under this Act or a sectoral law;
- (e) the SRO does not have, or is likely not to have, available to it sufficient financial and other resources to ensure that it will—
 - (i) effectively perform the functions and exercise the powers it is authorised to perform and exercise as

- an SRO; or
 - (ii) comply with the requirements of non-bank financial sector laws.
- (f) the SRO, or a key person of the SRO, has contravened in a material respect—
- (i) a non-bank financial sector law;
 - (ii) a conduct rule;
 - (iii) a directive;
 - (iv) an enforceable undertaking;
 - (vi) a decision of the Tribunal; or
 - (vii) an order of a court made under a non-bank financial sector law;
- (g) information provided in or in relation to an application in relation to the authorisation was false or misleading (including by omission) in a material respect;
- (h) the suspension is necessary to prevent—
- (i) a serious contravention of a non-bank financial sector law; or
 - (ii) financial customers suffering material prejudice; or
- (i) any of the following (including any interest) are unpaid and have been unpaid for at least 30 days—
- (i) fees or charges in respect of the authorisation or another non-bank financial sector licence held by the SRO;
 - (ii) a levy or an administrative penalty payable by the SRO.

(3) The Authority may at any time revoke the suspension.

(4) The suspension of an SRO's authorisation takes effect on the date of the notice under subsection (1) or, if a later date is specified in the notice, the later date.

(5) The suspension of an SRO's authorisation does not affect an obligation of the SRO that it has under a non-bank financial sector law.

Revoking SRO
authorisations

58. (1) The Authority may, by notice to an SRO, revoke the SRO's authorisation—

- (a) if the SRO applies for the revocation;
- (b) on any of the grounds on which it may suspend the authorisation, as set out in section 57(1)(b) to (i); or
- (c) if the SRO has ceased to act as an SRO.

(2) Revocation of an authorisation as an SRO takes effect on the date of the notice under subsection (1) or, if a later date is specified in the notice, the later date.

Continuation
despite suspension
or revocation

59. (1) The Authority may, by notice to a SRO whose authorisation has been suspended or revoked and on conditions specified in the notice, allow and require the SRO to continue to exercise powers and perform functions as an SRO to the extent, and for the period, specified in the notice.

(2) The purpose of the notice shall be to facilitate the orderly completion of the exercise of the powers or performance of the functions.

Procedure for
varying, suspending
and revoking SRO
authorisations

60. (1) Before the Authority varies, suspends or revokes a SRO's authorisation, it shall—

- (a) give the SRO notice of the proposed action and a statement of the reasons for it; and
- (b) invite the SRO to make submissions on the matter, and give it a reasonable period (which shall be at least 30 days) to do so.

(2) The Authority need not comply with subsection (1) if the SRO applied for the variation, suspension or revocation.

(3) In deciding whether to vary, suspend or revoke an authorisation, the Authority shall consider all submissions made under subsection (1).

(4) If the delay involved in complying, or complying fully, with subsection (1) in respect of a proposed action is likely to prejudice financial customers, prejudicially affect non-bank financial sector stability or defeat the object of the action, the Authority may take the action without having complied, or complied fully, with that subsection.

(5) If the Authority takes action without having complied, or complied fully, with subsection (1) for the reason set out in subsection (4), the Authority shall give the SRO a statement of the reasons why that subsection was not complied with.

(6) The SRO may make submissions to the Authority within 30 days after being provided with the statement.

(7) The Authority shall consider the submissions and, as soon as practicable, notify the SRO whether the Authority proposes to amend or revoke the variation, suspension or revocation.

SRO authorisations, variations, suspensions and revocations to be published

61. The Authority shall publish each authorisation, and each instrument varying, suspending or revoking an authorisation.

Other provisions not limited

62. This Part does not limit any other provision of this Act, or any provision of a non-bank financial sector law, that specifies matters to be considered in relation to an authorisation, or the circumstances in which an authorisation may be granted, varied, suspended or revoked.

Amendments to SRO constitutions to be approved SROs

63. Despite anything in the Companies Act, an amendment to the constitution of an SRO is of no effect unless it has been approved by the Authority.

SRO rules

64. (1) SRO rules shall include provision authorising the SRO to suspend the operation of SRO rules, in circumstances, and for periods, specified in the rules.

(2) SRO rules and an amendment of SRO rules, are of no effect unless they have been approved by the Authority.

(3) An SRO shall not make a decision, under its rules, that is likely to affect adversely the rights of a person unless the SRO—

- (a) gave the person an opportunity to make representations about the matter and considers all submissions made by or for the person in relation to the proposed decision; or
- (b) considers, on reasonable grounds, that a delay in making the decision will prejudice a class of financial customers.

Directives to SROs

65. (1) The Authority may give a directive to an SRO—

- (a) requiring the SRO to give effect to a specified provision

of its constitution or its rules; or

- (b) requiring the SRO to amend its constitution or its SRO rules, as specified in the directive, so as to bring it in conformity with non-bank financial sector laws.

(2) The SRO shall comply with the directive.

Penalty — Kshs. 10,000,000.

Disciplinary action
by SROs to be
notified

66. If an SRO takes disciplinary action in accordance with its SRO rules against a member of the SRO, the SRO shall, as soon as practicable but no later than 14 days after taking the action, notify the Authority of the matter.

Penalty — Kshs. 2,000,000.

Change of SRO key
personnel to be
notified

67. An SRO shall not change its key personnel unless—

- (a) the SRO has notified the Authority of the proposed change, including the identity of the replacement key person; and
- (b) the Authority has notified the SRO that it has no objection to the change.

Offence

68. (1) A person who is not authorised under section 52 shall not describe or hold itself out as being an SRO.

(2) A person shall not permit another person to identify the first person as being authorised under section 52 unless the first person is so authorised.

(3) For this section, a person whose authorisation under section 52 has been suspended or revoked is not so authorised.

(4) A person who contravenes a provision of this section commits an offence and is liable on conviction to a penalty not exceeding—

- (a) for a first offence — Kshs. 5,000,000 and imprisonment for 2 years; and
- (b) for a second or later offence — Kshs. 10,000,000 and imprisonment for 5 years.

Liability

69. No matter or thing done or omitted to be done by an SRO, or a member of the governing body or staff of an SRO, exercising powers and performing functions of the Authority that the SRO is authorised to exercise and perform under this Part shall render the

SRO or the member personally liable to any action, claim or demand whatsoever unless the matter or thing was done or omitted in bad faith.

Annual reports of SROs

70. Each SRO shall, not later than 90 days after the end of its financial year, prepare and submit to the Authority and the Cabinet Secretary an annual report of its activities during that financial year.

Penalty — Kshs. 5,000,000.

PART VI — ELIGIBLE PRUDENTIALLY REGULATED NON-BANK FINANCIAL INSTITUTIONS

Approval to become significant owner of eligible prudentially regulated non-bank financial institution

71. (1) A person shall not enter into any of the following arrangements in respect of an eligible prudentially regulated non-bank financial institution without the approval of the Authority—

- (a) an arrangement that results, or would result, in the person, alone or together with one or more associated persons, becoming or ceasing to be a significant owner of the institution;
- (b) if the person is a significant owner of the financial institution — an arrangement that results or would result in a material increase or decrease in the extent of the ability of the person, alone or together with one or more associated persons, to control or influence the business or strategy of the institution.

Penalty— Kshs. 10,000,000 and imprisonment for 2 years.

(2) The arrangement need not involve the acquisition of, or disposition of, shares or other interests or property.

(3) An arrangement in contravention of subsection (1) is void to the extent that it has an effect mentioned in that subsection.

(4) The Authority shall not give approval under subsection (1) in respect of a person unless satisfied that—

- (a) the person meets applicable fit and proper person requirements; and
- (b) the person's becoming a significant owner, or the arrangement, will not prejudicially affect the prudent management and the financial soundness of the prudentially regulated non-bank financial institution.

(5) This section does not affect any other law.

Notification of increase in significant owner's control of eligible prudentially non-bank regulated financial institution

72. If a person—

- (a) is a significant owner of an eligible prudentially regulated non-bank financial institution; and
- (b) enters into an arrangement in respect of the institution that results or would result in an increase in the extent of the ability of the person, alone or together with one or more associated persons, to control or influence the business or strategy of the institution; and
- (c) section 71 does not require the arrangement to be approved;

the person shall notify the Authority of the arrangement within 30 days after the arrangement is entered into.

Penalty — Kshs. 5,000,000 and imprisonment for 2 years.

Authority to be notified of compromises and arrangements involving eligible prudentially regulated non-bank financial institutions

73. (1) If an eligible prudentially regulated non-bank financial institution is proposed to be a party to a compromise or arrangement to which Part XXXIV of the Companies Act applies, the institution must ensure that a copy of each of the following is given to the Authority—

- (a) all applications to the Court in relation to the proposal; and
- (b) all documents to be given to members or creditors of the bodies corporate involved in the proposal, either in relation to a meeting of members or creditors or otherwise;

in good time before the application is made or the documents are provided to the members or creditors.

(2) The Authority shall be entitled to be heard in any proceeding in the Court in relation to the proposal.

(3) The Court shall not make an order under Part XXXIV of the Companies Act in relation to a compromise or arrangement to which an eligible prudentially regulated non-bank financial institution is a party unless the Authority has approved the compromise or arrangement.

(4) Subsection (3) does not apply to an interlocutory or similar

order.

(5) The regulations may make further provision about compromises and arrangements involving eligible prudentially regulated non-bank financial institutions.

Transfer of business of eligible prudentially regulated non-bank financial institutions

74. (1) None of the business of an eligible prudentially regulated non-bank financial institution, being business in respect of which it is licensed under a non-bank financial sector law, may be transferred to another person or amalgamated with the business of another person except under a scheme for the transfer or amalgamation that has been approved by the Authority.

(2) A purported transfer or amalgamation contrary to subsection (1) shall be void.

(3) This section does not apply to an insurer to which Part XI of the Insurance Act applies.

Sections 73 and 74 prevail over Companies Act

75. Sections 73 and 74 prevail over the Companies Act to the extent that there is an inconsistency between them and the Companies Act.

Statutory managers for eligible prudentially regulated non-bank financial institutions

76. (1) The Authority may appoint a person to be the statutory manager of an eligible prudentially regulated non-bank financial institution if—

- (a) the institution requests the appointment; or
- (b) if it appears to the Authority that—
 - (i) the institution—
 - (A) is not complying with a financial services law;
 - (B) is or is likely to be in an unsound financial position; or
 - (C) is or may be involved in financial crime; and
 - (ii) the appointment will assist in protecting—
 - (A) the interests of the clients of the institution;
 - (B) the stability, fairness, efficiency and orderliness of the financial system; or
 - (C) the safety and soundness of non-bank financial institutions.

(3) An appointment under subsection (1) or (2) takes effect

immediately it is made.

Role of statutory
manager

77. (1) The statutory manager of an eligible prudentially regulated non-bank financial institution—

- (a) has the management of the affairs of the institution to the exclusion of its directors and other managers;
- (b) has power to repudiate a contract to which the institution is a party, but only if the statutory manager considers the contract detrimental to the interests of clients of the institution; and
- (c) is entitled to receive such remuneration from the institution as the Authority determines.

(2) A repudiation of a contract under subsection (1)(b) does not give rise to any liability of the eligible prudentially regulated non-bank financial institution and does not affect any rights of the parties that have accrued before the repudiation.

(3) The statutory manager of an eligible prudentially regulated non-bank financial institution shall manage the affairs of the institution with the greatest economy possible compatible with efficiency and, as soon as practicable, shall report to the Authority—

- (a) what steps should be taken to ensure that the institution—
 - (i) complies with the financial services laws; or
 - (ii) will be financially sound; or
 - (iii) will not be involved in financial crime;
- (b) if the statutory manager considers that it is not practicable to take steps as mentioned in paragraph (a)—
 - (i) whether steps should be taken to transfer the business of the institution to another appropriate person and, if so, to whom and on what terms; and
 - (ii) whether the institution should be wound up.

(4) The statutory manager of an eligible prudentially regulated non-bank financial institution shall comply with directions of the Authority in relation to his or her functions.

(5) The Authority may at any time remove a statutory manager from office, and appoint a replacement.

(6) The statutory manager of an eligible prudentially regulated non-bank financial institution is not liable for a loss that the institution suffers unless it is established that the loss was caused by the statutory manager's fraud, dishonesty, negligence or wilful failure to comply with the law.

Duration of statutory management

78. If a statutory manager is appointed to a prudentially regulated non-bank financial institution, the Authority shall ensure that such a statutory manager remains appointed until the later of the times when—

- (a) the Authority is satisfied that the grounds for making the appointment no longer exist; and
- (b) a court makes an order for winding up the institution.

Winding up eligible prudentially regulated non-bank financial institutions

79. (1) A resolution, demand or other step to wind up an eligible prudentially regulated non-bank financial institution is of no effect unless the Authority has approved.

(2) The Court may, on the application of the Authority, order that a prudentially regulated non-bank financial institution be wound up if—

- (a) a statutory manager has been appointed to the institution; and
- (b) the institution is insolvent and will not be restored to solvency within a reasonable period.

(3) An application to the Court for the winding up of an eligible prudentially regulated non-bank financial institution (whether under the Companies Act or under another law) is not to be made except with the Authority's approval.

(4) The Authority shall not give approval under subsection (3) unless—

- (a) the institution's financial conduct licence, or its licence under a sectoral law, has been or is to be revoked; and
- (b) the Authority is satisfied that adequate provision has been made to protect the interests of the clients of the institution.

(5) This section does not apply to an insurer to which Part XII

of the Insurance Act applies.

PART VII — NON-BANK FINANCIAL CONGLOMERATES

Designation of non-
bank financial
conglomerates

80. (1) The Authority may designate members of a group of companies as a non-bank financial conglomerate.

(2) A non-bank financial conglomerate shall include—

- (a) an eligible prudentially regulated non-bank financial institution; and
- (b) either—
 - (i) a holding company of the institution; or
 - (ii) a subsidiary of the institution;

but need not include all the members of the group of companies.

(3) A non-bank financial conglomerate shall not include as a holding company a Central Bank of Kenya supervised entity.

(4) The purpose of a designation of members of a group of companies as a non-bank financial conglomerate shall be only to facilitate the supervision of the eligible prudentially regulated non-bank financial institution in relation to its safety and soundness (rather than its conduct).

(5) In deciding whether to designate members of a group of companies as a non-bank financial conglomerate, the Authority shall take into account at least the following—

- (a) the risk to effective prudential supervision of the eligible prudentially regulated non-bank financial institution from the structure of the group of companies;
- (b) submissions made by or for the holding company under section 81; and
- (c) any comments made by the Central Bank of Kenya.

(6) The Authority must keep designations under this section under review.

(7) The Authority may, by notice to the eligible prudentially regulated non-bank financial institution or the holding company in a non-bank financial conglomerate—

- (a) amend the designation of the conglomerate by adding or removing group companies from the conglomerate; or
- (b) revoke the designation of the conglomerate.

(8) The Authority shall publish each designation under this section, and each amendment and revocation of a designation.

81. (1) Before designating members of a group of companies as a non-bank financial conglomerate, or amending a designation, under section 80, the Authority shall—

- (a) give the eligible prudentially regulated non-bank financial institution, or a holding company of the eligible prudentially regulated non-bank financial institution, notice of the proposed designation and a statement of the reasons why the designation is proposed; and
- (b) invite the institution or the holding company to make submissions on the matter, and give it a reasonable period to do so.

(2) The Authority shall consult the Central Bank of Kenya in connection with any proposed designation under section 80.

(3) The Authority may designate members of a group of companies as a non-bank financial conglomerate without having complied, or complied fully, with subsection (1) if the delay involved in complying, or complying fully, with that subsection in respect of a proposed designation is likely to lead to material prejudice to financial customers, prejudicially affect financial stability or defeat the object of the designation.

(4) If the Authority designates members of a group of companies as a non-bank financial conglomerate without having complied, or complied fully, with subsection (1) for the reason set out in subsection (3)—

- (a) the Authority shall give the eligible prudentially regulated non-bank financial institution or the holding company a statement of the reasons why subsection (1) was not complied with and the effect of this subsection;
- (b) the institution or the holding company may make submissions to the Authority within a reasonable period after being provided with the statement;
- (c) the Authority shall consider any submissions made by or

for the institution or the holding company; and

- (d) the Authority shall notify the institution or the holding company, as soon as practicable, whether the Authority proposes to amend or revoke the designation.

Notifications by eligible prudentially regulated non-bank financial institutions

82. An eligible prudentially regulated non-bank financial institution shall, within 14 days after becoming part of a group of companies, notify the Authority of that event.

Penalty — Kshs. 10,000,000.

Licensing requirement for holding companies in non-bank financial conglomerates

83. (1) The Authority may, by notice to the eligible prudentially regulated non-bank financial institution or a holding company in a non-bank financial conglomerate, require the holding company to hold a licence under this section so long as it is the holding company of an eligible prudentially regulated non-bank financial institution in the conglomerate.

(2) Subsection (1) does not apply if the holding company is licensed under a sectoral law.

(3) A requirement under subsection (1) may be imposed only to facilitate the Authority's proper and effective exercise of its powers in relation to the safety and soundness of the eligible prudentially regulated non-bank financial institution in the conglomerate.

(4) A holding company that is given a notice under subsection (1) shall comply with the requirements of the notice.

Penalty — Kshs. 10,000,000.

(5) Subject to the remaining provisions of this section, the procedure in relation to applications for licences under this section is that set out in Part IV, with necessary changes.

(6) The Authority may, by notice to a holding company licensed under this section—

(a) vary the licence by varying the conditions of the licence;
or

(b) revoke the licence.

(7) The matters that the Authority shall take into account in relation to an application for a licence under this section, or in deciding whether to vary or revoke such a licence, include—

(a) the objectives set out in section 10;

- (b) fit and proper person requirements applicable to the holding company and significant owners of the holding company;
- (c) the governance and risk management arrangements of the group;
- (d) whether the holding company made a statement that is false or misleading, including by omission, in or in relation to the application.

(8) Without limiting its powers, the Authority shall not grant a licence under this section to a holding company unless satisfied that—

- (a) it is necessary to do so—
 - (i) to achieve the objective set out in subsection (3); or
 - (ii) to enhance the safety and soundness of the eligible prudentially regulated non-bank financial institution in the group; and
- (b) the holding company, and its key persons and significant owners, meet the applicable fit and proper person requirements.

Non-operating holding companies of non-bank financial conglomerates

84. (1) The Authority may, by notice to the eligible prudentially regulated non-bank financial institution or a holding company in a non-bank financial conglomerate, require that a holding company be a non-operating company.

(2) A requirement under subsection (1) may be imposed only to enable the Authority to manage more effectively risks to the safety and soundness of the eligible prudentially regulated non-bank financial institution arising from the other members of the conglomerate.

(3) A holding company that is given a notice under subsection (1) shall comply with the requirements of the notice.

Penalty — Kshs. 20,000,000.

Obligations to provide information to holding companies

85. (1) This section applies in relation to members of a non-bank financial conglomerate if a holding company of the eligible prudentially regulated non-bank financial institution —

- (a) holds a non-bank financial sector licence or a licence

under section 83; or

(b) has been given a notice under section 83(1).

(2) Each other member of the group of companies in the conglomerate (including the eligible prudentially regulated non-bank financial institution) shall, on demand by the holding company, provide such information to the holding company as is needed to enable the holding company to comply with its obligations under a non-bank financial sector law.

Penalty — Kshs. 5,000,000.

(3) Subsection (2) applies despite any restriction, under any other Act or any contract, on disclosure by the member of the group of companies in the conglomerate.

Approval of
acquisitions and
disposals

86. (1) A holding company in a non-bank financial conglomerate shall not acquire or dispose of a material asset (as defined in prudential rules made for this section) without the approval of the Authority.

Penalty — Kshs. 30,000,000 plus twice the fair market value of the asset.

(2) The Authority may not give an approval under subsection (1) unless satisfied that the acquisition or disposal will not prejudicially affect the prudent management and the financial soundness of an eligible prudentially regulated non-bank financial institution within the conglomerate.

(3) An approval under subsection (1) for a particular acquisition or disposal is valid for six months.

(4) An acquisition or disposal contrary to subsection (1) is void.

PART VIII — INFORMATION GATHERING

Information
gathering

87. (1) The Authority may, by notice to any person, request the person to provide specified information or a specified document in the possession of, or under the control of, the person that is relevant to assisting the Authority to perform its functions under a non-bank financial sector law.

(2) The Authority may, by notice to a non-bank financial institution, require the institution to provide specified information or a specified document in the possession of, or under the control of,

the institution that is relevant to the Authority's assessment of compliance with, or risk of contraventions by a licensed institution of—

- (a) a non-bank financial sector law;
- (b) a directive; or
- (c) an enforceable undertaking accepted by the Authority.

(3) The notice may require the information or document to be verified as specified in the notice, including by an auditor approved by the Authority.

(4) A non-bank financial institution that is given a notice under this section and fails to comply with the requirements in the notice commits an offence.

Penalty — Kshs. 5,000,000.

PART IX — INSPECTIONS AND INVESTIGATIONS

Inspections

88. (1) The Authority may, at any time during normal business hours, enter the business premises of a licensed non-bank financial institution and conduct an inspection of the institution on the premises.

(2) The purpose for which the Authority may conduct an inspection of a licensed non-bank financial institution under this section is to—

- (a) check compliance by the institution with non-bank financial sector laws or an enforceable undertaking accepted by the Authority;
- (b) determine the extent of the risk posed by the institution of contraventions of a non-bank financial sector law; and
- (c) assist the Authority in supervising the non-bank financial institution.

(3) An inspection shall be conducted with strict regard to decency and good order.

(4) An official of the Authority has, when conducting an inspection on premises, the right of access to any part of the premises and to any business document on the premises, and may do

any of the following—

- (a) examine, make extracts from and copy any business document in the premises;
- (b) question any person on the premises to find out information relevant to the inspection;
- (c) give the licensed institution or a person on the premises a directive to produce to the Authority, at a time and place and in a manner specified in the directive, a specified business document that is relevant to the inspection and is in the possession or under the control of the licensed institution;
- (d) when a business document is produced as required by a directive under paragraph (c), examine, make extracts from and copy the document;
- (e) if, as a result of the inspection, the official or the Authority suspects on reasonable grounds that a contravention of a non-bank financial sector law has occurred or is likely to occur—
 - (i) give a directive to the person apparently in charge of the premises not to remove from the premises, or conceal, destroy or otherwise interfere with, a specified business document; or
 - (ii) take possession of, and remove from the premises, a business document for the purpose of preventing another person from removing, concealing, destroying or otherwise interfering with the document.

(5) The Authority shall ensure that the person apparently in charge of the premises is given a receipt for any business document taken as mentioned in paragraph (4)(e)(ii).

(6) The Authority shall ensure that any business document removed as contemplated in paragraph (4)(e)(ii) is returned to the licensed institution when retention of the document is no longer necessary to achieve the object of a non-bank financial sector law.

(7) The licensed institution from whose premises a document was removed as contemplated in paragraph (4)(e)(ii), or its authorised representative, may, during normal office hours and

under the supervision of the Authority, examine, copy and make extracts from the document.

Investigators

89. (1) The Authority may appoint a person as an investigator and may appoint any person to assist the investigator in carrying out an investigation.

(2) The Authority shall give each investigator a certificate of appointment, which shall be in the possession of the investigator when an investigator exercises any power or performs a duty under this Act.

(3) An investigator shall produce the certificate of appointment at the request of any person in respect of whom a power is being exercised.

(4) An investigator shall return to the Authority his or her certificate of appointment within 7 days after ceasing to be an investigator.

Penalty — Kshs. 50,000.

(5) It is a defence to a prosecution for an offence against subsection (4) that the certificate was lost through no fault of the defendant.

Investigations

90. The Authority may instruct an investigator to conduct an investigation in respect of any person if—

- (a) the Authority suspects that the person has contravened, may be contravening or is about to contravene, a non-bank financial sector law;
- (b) the person is a licensee and the Authority suspects that the licensee may have engaged in embezzlement, fraud, misfeasance or other misconduct in connection with its regulated activity; or
- (c) it is necessary to do so to assist a foreign regulatory authority to investigate a contravention of a foreign non-bank financial sector law.

Powers of
investigators to
question and require
production of
documents or other
things

91. (1) An investigator may, for the purposes of conducting an investigation, do any of the following—

- (a) by notice, require any person who the investigator reasonably believes may be able to provide information relevant to the investigation to appear before the

- investigator, at a time and place specified in the notice, to be questioned by an investigator;
- (b) by notice, require any person who the investigator reasonably believes may be able to produce a document or item relevant to the investigation, to—
 - (i) produce the document or item to an investigator, at a time and place specified in the notice; or
 - (ii) produce the document or item to an investigator, at a time and place specified in the notice, to be questioned by an investigator about the document or item;
 - (c) question a person who is complying with a notice under paragraph (a) or (b)(ii);
 - (d) require a person being questioned as mentioned in paragraph (c) to make an oath or affirmation, and administer such an oath or affirmation;
 - (e) examine, copy or make extracts from any document or thing produced to an investigator as required under this subsection;
 - (f) take possession of, and retain, any document or item produced to an investigator as required under this subsection; and
 - (g) give a directive to a person present while the investigator is exercising powers under this section, to facilitate the exercise of such powers.

(2) An investigator who takes a document or item under paragraph (1)(f) shall give the person producing it a receipt.

(3) The investigator shall ensure that a document or item taken under paragraph (1)(f) is returned to the person who produced it when—

- (a) retention of the document or item is no longer necessary to achieve the object of the investigation; or
- (b) all proceedings arising out the investigation have been finally disposed of.

(4) A person otherwise entitled to possession of a document or item taken under paragraph (1)(f), or its authorised representative,

may, during normal office hours and under the supervision of the Authority, examine, copy and make extracts from the document, or inspect the item.

(5) A person being questioned under this section may be assisted and represented by a legal practitioner.

Entry and search
powers

92. (1) An investigator may, for the purposes of conducting an investigation, do any of the following—

- (a) enter any premises at any time with the prior consent of the person apparently in control of the premises;
- (b) enter any premises at any time—
 - (i) if the entry is authorised by a warrant; or
 - (ii) if an investigator believes, on reasonable grounds, that the delay caused by applying for and obtaining the warrant will defeat the purpose of the search, and believes on reasonable grounds that a warrant would be issued; and
- (c) search the premises for anything that may afford evidence of a contravention of a non-bank financial sector law.

(2) An entry or search of premises under this Part shall be done during the day, not the night, unless it is authorised by warrant and the warrant expressly authorises entry at night.

(3) An investigator may be accompanied and assisted during the entry and search of any premises for an investigation by a police officer or a person appointed under section 89.

(4) While on premises under this section, an investigator, for the purpose of conducting the investigation, has the right of access to any part of the premises and to any document or item on the premises, and may do any of the following—

- (a) open or cause to be opened any strongroom, safe, cabinet or other container in which the investigator reasonably suspects there is a document or item that may afford evidence of the contravention concerned or be relevant to the request;
- (b) examine, make extracts from and copy any document in the premises;

- (c) question any person on the premises to find out information relevant to the investigation;
 - (d) require a person on the premises to produce to the investigator any document or item that is relevant to the investigation and is in the possession or under the control of the person;
 - (e) require a person on the premises to operate any computer or similar system on or available through the premises to—
 - (i) search any information in or available through that system; and
 - (ii) produce a record of that information in any media that the investigator reasonably requires;
 - (f) if it is not practicable or appropriate to make a requirement under paragraph (e) — operate any computer or similar system on or available through the premises for a purpose set out in that paragraph; and
 - (g) take possession of, and take from the premises, a document or item that may afford evidence of the contravention concerned or be relevant to the request.
- (5) An investigator, and any person assisting an investigator, may use reasonable force to exercise any power under this section.
- (6) An investigator shall give the person apparently in charge of the premises a receipt for any document or item taken by the investigator under this section.
- (7) An investigator shall ensure that any document or item taken by the investigator as mentioned in paragraph (4)(g) is returned to the person when—
- (a) retention of the document or item is no longer necessary to achieve the object of the investigation; or
 - (b) all proceedings arising out the investigation have been finally disposed of.
- (8) A person from whose premises a document or item was taken as mentioned in paragraph (4)(g), or its authorised representative, may, during normal office hours and under the supervision of the Authority, examine, copy and make extracts from

the document or item.

Warrants

93. (1) On application by an investigator, any judge or magistrate may issue a warrant for this Part authorising entry onto and search of specified premises if satisfied that—

- (a) the investigator is conducting or is about to conduct an investigation; and
- (b) there is a reasonable suspicion that a document or item relevant to the investigation is at the premises.

(2) The judge or magistrate may be satisfied as mentioned in subsection (1)(b) on the basis that the occupier of the premises has refused an investigator entry to the premises.

(3) A warrant under this section shall be signed by the judge or magistrate issuing it.

(4) An investigator who enters premises under the authority of a warrant shall—

- (a) if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place in the premises; and
- (b) on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant.

Interference with inspections and investigations

94. (1) A person shall not intentionally or negligently interfere with or hinder the conduct of an inspection or an investigation.

(2) Subject to section 95—

- (a) a person who is given a notice or directive under this Part shall comply with the requirements in the notice or directive; and
- (b) a person who is asked a question under this Part shall answer the question fully and truthfully, to the best of the person's knowledge.

(3) A person shall not, without a lawful excuse, refuse or fail to comply with any reasonable request by an investigator in connection with the conduct of an investigation.

(4) A person shall not give an investigator any information that is false or misleading, including by omission, and is relevant to an

investigation, if the person knows that the information was false or misleading, including by omission, and relevant to an investigation.

(5) If—

- (a) a person destroys or renders illegible any document; and
- (b) the person knew that the document was or was likely to be relevant to an investigation;

the person commits an offence unless an investigator or the Authority had authorised the person's action.

Penalty — Kshs. 20,000,000.

Protections

95. (1) For the purposes of this section, an answer tends to incriminate a person if it would tend to show, and the contents of a document or information tend to incriminate a person if they tend to show, that the person has committed an offence, a contravention of a non-bank financial sector law or an offence or contravention under the law of a foreign country.

(2) A person who is questioned, or required to produce a document or information, by the Authority or an investigator under this Part may object to answering the question on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

(3) On such an objection, the Authority or investigator may require the question to be answered or the document or information to be produced.

(4) An answer given, and a document or information produced, as required under subsection (3), is not admissible in evidence against the person in any proceedings for an offence, except proceedings in respect of a contravention of this Act based on the false or misleading nature of the answer.

(5) Before the Authority or an investigator starts to question a person under this Part, if the Authority or the investigator suspects that the person has contravened a non-bank financial sector law, the Authority or the investigator shall inform the person of the right to object under this section.

(6) This section does not limit any right of a person.

Legal professional
privilege

96. (1) A person does not have to answer a question under this Part, or comply with a requirement under this Part to produce a

document or information, to the extent that the person is entitled to claim legal professional privilege in relation to the answer, contents of the document or the information.

(2) If the person is a legal practitioner, the person is entitled and required to claim that privilege on behalf of a client of the person.

(3) This section does not limit any right of a person.

PART X — ENFORCEMENT

Guidance notes

97. (1) The Authority may publish guidance notes on the application of a non-bank financial sector law.

(2) Guidance notes are for information, and are not binding.

Interpretation rulings

98. (1) The Authority may publish a statement (an “interpretation ruling”) regarding the interpretation or application of a non-bank financial sector law, in circumstances specified in the statement.

(2) The purpose of an interpretation ruling is to promote clarity, consistency and certainty in the interpretation and application of non-bank financial sector laws.

(3) The Authority shall interpret and apply the non-bank financial sector law to which the interpretation ruling relates in accordance with the interpretation ruling.

(4) The Authority may amend or revoke an interpretation ruling if it is necessary to do so because of a judicial decision or a change in the law.

Directives to licensees

99. (1) The Authority may issue to a non-bank financial institution that is a licensee a directive requiring the institution to take action specified in the directive if the institution or a key person of the licensee—

- (a) has contravened or is likely to contravene a non-bank financial sector law;
- (b) is involved or is likely to be involved in financial crime; or
- (c) is causing or contributing to instability in the financial

system, or is likely to do so.

(3) A directive shall be aimed at—

- (a) stopping the licensee from contravening applicable non-bank financial sector laws, or reducing the risk of such contraventions;
- (b) stopping the licensee from being involved in financial crime, and reducing the risk that it may be so involved; or
- (c) remedying the effects of a contravention of a non-bank financial sector law or the involvement in financial crime.

(4) Action that may be specified in a directive includes the following—

- (a) the licensee ceasing providing a specific financial product or financial service;
- (b) the licensee modifying a financial product or financial service or the terms on which it is provided;
- (c) removing a person from a specified position or function in or in relation to the licensee;
- (d) the licensee not paying a specified bonus or performance payment;
- (e) the licensee ceasing to engage in specified conduct that is inconsistent with its obligations in relation to fairness to financial customers; and
- (f) the licensee remedying the effects of a contravention of a non-bank financial sector law.

(5) Action specified in a directive shall be aimed at achieving the objective of the Authority and ensuring that the key person performs its function in compliance with the applicable non-bank financial sector laws.

(6) In addition to its other powers to issue a directive, if a person is engaging, or is proposing to engage, in conduct that contravenes a non-bank financial sector law, the Authority may issue a directive to the person requiring the person to cease engaging, or not to engage, in the conduct.

(7) A directive shall specify a reasonable period for compliance.

(8) The Authority may, at any time, by notice to the person to whom it was issued, revoke a directive.

(9) A person to whom a directive has been issued shall comply with the directive.

Penalty —

(a) for a first offence — Kshs. 5,000,000 and imprisonment for 2 years; and

(b) for a second or later offence — Kshs. 10,000,000 and imprisonment for 5 years.

Directives to
significant owners

100. (1) In addition to section 99, the Authority may issue a directive to a significant owner of a licensee, and the institution, requiring them—

(a) to prepare and submit to the Authority a plan satisfactory to the Authority under which the significant owner will, within a period acceptable to the Authority, cease to be a significant owner of the licensee; and

(b) on the Authority's approving the plan, implementing the plan.

Directives to
holding companies
in non-bank
financial
conglomerates

101. (1) In addition to section 99, the Authority may issue a directive to a holding company in a non-bank financial conglomerate requiring the holding company—

(a) to manage and otherwise mitigate risks to the prudent management or financial soundness of an eligible prudentially regulated non-bank financial institution in the conglomerate arising from other members of the conglomerate; or

(b) to ensure that an eligible prudentially regulated non-bank financial institution in the conglomerate complies with a non-bank financial sector law.

(2) Requirements that a directive under subsection (1) may impose include requirements—

(a) to prepare and submit to the Authority a plan satisfactory to the Authority under which the non-bank financial conglomerate will, within a period acceptable

to the Authority, be restructured as described in the plan; and

- (b) on the Authority's approving the plan, implementing the plan.

Directives to remove
key persons

102. The Authority shall not issue a directive that requires the removal of a person from a specified position or function in or in relation to a licensee unless the person—

- (a) has contravened a non-bank financial sector law;
- (b) no longer complies with applicable fit and proper person requirements; or
- (c) has been involved in financial crime.

Consultation
requirements

103. (1) Before issuing a directive, the Authority shall—

- (a) give the licensee or person to whom it is proposed to issue the directive a draft of the proposed directive and a statement of the reasons why it is proposed to issue it, including a statement of the relevant facts and circumstances; and
- (b) invite the licensee or person to make submissions on the matter within a specified, reasonable, submission period.

(2) If the directive requires removing a person from a specified position or function in or in relation to a licensee, the Authority shall also—

- (a) give the person a draft of the proposed directive and a statement of the reasons why it is proposed to issue it, including a statement of the relevant facts and circumstances; and
- (b) invite the person to make submissions on the matter within the submission period.

(3) In deciding whether to issue the directive, the Authority shall take into account all submissions received by the end of the submission period.

(4) If the delay involved in complying, or complying fully, with subsection (1) or (2) and in respect of a proposed directive is likely to lead to prejudice to financial customers, prejudicially affect financial stability or defeat the object of the directive, the Authority

may issue the directive without having complied, or complied fully, with those subsections.

(5) If the Authority issues a directive without having complied, or complied fully, with subsection (1) or (2), it shall, at the same time, give a statement of the reasons why those subsections were not complied with to—

- (a) the person to whom it was issued; and
- (b) if subsection (2) applies — the person referred to in that subsection;

together with a statement of the effect of subsections (6) and (7).

(6) A person to whom a statement under subsection (5) is given may make submissions to the Authority within 30 days after being given the statement.

(7) The Authority shall consider the submissions, and notify the person, as soon as practicable, whether the Authority proposes to revoke the directive.

Tribunal may adjust
contracts

104. (1) If—

- (a) the Authority gives a licensee a directive under this Act, or a directive (however described) under a sectoral law; and
- (b) the licensee is a party to a contract that is affected by the directive;

the Tribunal may, on application by another party to a contract, make an order relating to the effect of the directive on the contract.

(2) Without limiting what the order may do, the order may require the licensee to—

- (a) perform specified obligations under the contract; or
- (b) compensate the applicant, as specified in the order;

but may not require a person to take action that would contravene the directive.

Enforceable
undertakings

105. (1) A person may give an undertaking to the Authority in respect of its conduct in relation to a matter regulated by a non-bank financial sector law, and that undertaking, upon its acceptance by the Authority, becomes enforceable by the Authority as

contemplated by this Act.

(2) A undertaking may include an undertaking to provide specified redress to financial customers.

(3) The person who gave an enforceable undertaking may, with the consent of the Authority, vary or withdraw the undertaking at any time.

(4) If a licensee that is a non-bank financial institution that gave an enforceable undertaking breaches the undertaking, the Authority may suspend or withdraw the institution's financial sector licence.

(5) The Authority shall publish each enforceable undertaking that it accepts, and each variation or withdrawal of an enforceable undertaking.

(6) If the Tribunal is satisfied, on application by the Authority, that a person has contravened an enforceable undertaking, the Tribunal may make any one or more of the following orders—

- (a) an order directing the person to comply with the undertaking;
- (b) if the undertaking relates to a contravention of the non-bank financial sector law, an order directing the person to perform a specified act, or refrain from performing a specified act, for one or both of the following purposes—
 - (i) to remedy the effects of the contravention;
 - (ii) to ensure that the person does not contravene the undertaking again;
- (c) any incidental order.

(7) The Authority may file with the registrar of a competent court a certified copy of an order under subsection (6) if—

- (a) the order has not been complied with; and
- (b) either—
 - (i) no proceedings in a court appealing against the making of the order have been commenced by the end of the period for lodging such appeals; or
 - (ii) if such proceedings have been commenced, they

have been finally disposed of.

(8) The order, on being filed, has the effect of a civil judgement, and may be enforced as if lawfully given in that court.

High Court may
order compliance
with non-bank
financial sector laws

106. (1) The High Court may, on application by the Authority, make—

- (a) an order that a person do, or not do, a specified thing to ensure compliance with the non-bank financial sector law; and
- (b) any incidental order.

(2) The High Court may make such an order—

- (a) if it appears to the High Court that the person is engaging, or proposes to engage, in conduct contravening a non-bank financial sector law;
- (b) if the person has previously engaged in such conduct; or
- (c) if there is a danger of substantial or irreparable damage, prejudice or harm if the person engages in conduct contravening a non-bank financial sector law;

and may do so even if another remedy is available.

(3) The High Court may not require the Authority to give any undertaking as to damages in connection with the application for the order.

Debarment

107. (1) If a natural person has—

- (a) contravened a non-bank financial sector law in a material respect;
- (b) contravened in a material respect an enforceable undertaking accepted by the Authority;
- (c) attempted, or conspired with, aided, abetted, induced, incited or procured another person to contravene a non-bank financial sector law in a material respect; or
- (d) contravened in a material respect a law of a foreign country that corresponds to a non-bank financial sector law;

the Authority may make an order (a “debarment order”) prohibiting the person, for the period specified in the order, from doing one or

more of the following, to the extent specified in the order—

- (e) providing, or being involved in the provision of, specified financial products or financial services, generally or in circumstances specified in the order;
- (f) acting as a key person of a non-bank financial institution; or
- (g) providing specified services to a non-bank financial institution, whether under outsourcing arrangements or otherwise.

(3) A debarment order in respect of a person takes effect from—

- (a) the date on which it is served on the person; or
- (b) if the order specifies a later date, the later date.

(4) A person who is subject to a debarment order may not engage in conduct that, directly or indirectly, contravenes the debarment order.

Penalty—

- (a) for a first offence — Kshs. 5,000,000 and imprisonment for 2 years; and
- (b) for a second or later offence —Kshs. 10,000,000 and imprisonment for 5 years.

(5) Without limiting subsection (4)—

- (a) if a person is subject to a debarment order; and
- (b) the debarred person enters into an arrangement with another person (“person B”) under which person B will engage in the conduct that directly or indirectly contravenes the debarment order; and
- (c) person B is acting on behalf of, or in accordance with the directions, instructions or wishes of, the debarred person;

both the debarred person and person B shall be taken to have committed an offence against subsection (4).

(6) A licensee that becomes aware that a debarment order has been made in respect of a person employed or engaged by the

licensee shall take all reasonable steps to ensure that the debarment order is given effect to.

Penalty — Kshs. 10,000,000.

(7) The Authority may, by order—

- (a) reduce the period of a debarment order; or
- (b) revoke a debarment order.

The Authority may do so on application by the debarred person or on its own initiative.

(8) The Authority shall publish each debarment order, and each order under subsection (7), that it makes.

Administrative
penalties

108. (1) The Authority may, if satisfied that a person has engaged in conduct that contravenes a non-bank financial sector law, by order served on the person, impose on the person an administrative penalty not exceeding Kshs. 10,000,000.

(2) In determining an appropriate administrative penalty for particular conduct—

- (a) the matters that the Authority shall have regard to include the following—
 - (i) the need to deter such conduct;
 - (ii) the degree to which the person has co-operated with the Authority in relation to the contravention; and
 - (iii) any submissions by, or on behalf of, the person; and
- (b) without limiting paragraph (a), the matters that the Authority may have regard include the following—
 - (i) the nature, duration, seriousness and extent of the contravention;
 - (ii) any loss or damage suffered by any person as a result of the conduct;
 - (iii) the extent of any financial or commercial benefit to the person, or to an associated person of the person, arising from the conduct;
 - (iv) whether the person has previously contravened a non-bank financial sector law;

- (v) the effect of the conduct on non-bank financial sector stability;
- (vi) the effect of the proposed penalty on non-bank financial sector stability;
- (vii) the effect of the proposed penalty on financial customers of the person;
- (viii) the extent to which the conduct was deliberate or reckless.

(3) An administrative penalty may include an amount to reimburse the Authority for reasonable costs incurred by the Authority in connection with the contravention.

(4) The Authority may not impose an administrative penalty on a person if a prosecution of the person for an offence arising out of the same set of facts has been commenced.

(5) An administrative penalty order is not a conviction.

Payment

109. An amount payable under an administrative penalty order is due and payable as set out in Regulations made for this Part.

Interest

110. Interest is payable in respect of the unpaid portion of the amount payable as an administrative penalty until it is fully paid.

Enforcement

111. (1) If—

- (a) the amount payable under an administrative penalty order has not been paid as required by this Part; and
- (b) either—
 - (i) no application for review of the order under this Act, or for judicial review of the order, has been lodged by the end of the period for making such applications; or
 - (ii) if such an application has been made — proceedings on the application have been finally disposed of;

the Authority may file with the registrar of a competent court a certified copy of the administrative penalty order and an affidavit as to payment.

(2) The order, on being filed, has the effect of a civil judgement for the unpaid amount of the administrative penalty, and may be

enforced as if lawfully given in that court.

Application of
amounts paid as
administrative
penalties

112. All amounts recovered by the Authority as administrative penalties shall be applied—

- (a) first, to reimburse the Authority its costs and expenses reasonably and properly incurred in investigating the relevant contravention, making the order and enforcing it; and
- (b) then, by paying the balance into a Compensation Fund as required by sections 163, 164, 165, 166 or 167 .

Administrative
penalty taken into
account in
sentencing

113. When determining the sentence to impose on a person convicted of an offence against a non-bank financial sector law, a court shall take into account any administrative penalty order made in respect of the same facts.

Remission of
administrative
penalties

114. The Authority may, on application, remit all or some of an administrative penalty, and all or some of the interest payable on an administrative penalty.

Prohibition of
indemnity for
administrative
penalties

115. (1) Except in circumstances prescribed by regulation, a person shall not undertake to indemnify or compensate another person, directly or indirectly, wholly or partly, in respect of a payment made or liability incurred by the other person in connection with an administrative penalty order imposed on the other person.

Penalty — An amount equal to twice the maximum amount payable under the indemnity.

(2) An undertaking given in contravention of subsection (1) is void.

PART XI — FINANCIAL SECTOR OMBUDSMAN

Establishment of
Financial Sector
Ombudsman

116. (1) There is established an organisation to be known as the Financial Sector Ombudsman.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable

property;

- (c) having and managing its own funds including borrowing and lending money;
- (d) entering into contracts;
- (e) employing or engaging the services of persons to assist it in performing its functions and exercising its powers; and
- (f) 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) Except as otherwise provided in this Act or another financial services law, the Ombudsman shall be operationally independent in the performance of its functions and shall not be subject to the direction or control of any person or authority.

(5) The Ombudsman is a national public entity for the purposes of the Public Finance Management Act (Cap. 412C).

(6) The provisions of the State Corporations Act (Cap. 446) shall not apply to the Ombudsman.

Functions of the
Ombudsman

117. The functions of the Ombudsman are—

- (a) to resolve, in accordance with this Part, complaints by financial customers about financial product providers and financial service providers in relation to the provision of financial products and financial services to financial customers; and
- (b) any other function of the Ombudsman under a written law.

Powers of the
Ombudsman

118. The Ombudsman shall have all the powers necessary for the proper performance of its functions, and in particular the power to—

- (a) control, supervise and administer the assets of the Ombudsman as will promote the achievement of the objectives in section 10;
- (b) manage the funds of the Ombudsman, including its reserves;
- (c) receive grants, gifts or endowments;

- (d) establish a bank accounts;
- (e) with the consent of the Cabinet Secretary, borrow money, mortgage or charge any of its assets;
- (f) engage staff, on terms and conditions, as it may consider necessary for performance of its functions, including establishing retirement benefits funds and medical funds for them and making contributions to those funds for their benefit;
- (g) co-operate with its counterparts in other jurisdictions; and
- (h) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.

Ombudsman
Board

119. (1) There is established a Board for the Ombudsman, which shall consist of—

- (a) a Chairperson, who shall be appointed by the President;
- (b) the Chief Ombudsman; and
- (c) two other members, who shall be appointed by the Cabinet Secretary.

(2) In appointing the Chairperson and the Ombudsman Board members mentioned in subsection (1)(c), the President and the Cabinet Secretary shall have regard to the principles of gender equity and regional balance and the need to have a mix of skills relevant to the financial sector.

(3) The Chairperson and Ombudsman Board members appointed as mentioned in subsection (1)(c) shall be selected from persons who—

- (a) are not public officers or employees, officers or significant owners of any licensee;
- (b) have at least ten years experience in management of a public or private institution within the financial sector;
- (e) satisfy the requirements of the relevant provisions of the Constitution and national laws in respect to National Values, Governance, Leadership, Integrity and Principles of Public Service; and
- (f) have not served as an employee of the Ombudsman in the

preceding five years.

(4) A disqualified person shall not be appointed as a Board member.

(5) A Board member mentioned in subsection (1)(a) or (c) shall hold office for a period specified in the instrument of appointment, not exceeding three years, and on terms and conditions specified in the instrument of appointment. At the end of his or her term, the member may be re-appointed for one further term of a period not exceeding three years.

(6) A Board member (other than the Chairperson) —

(a) may at any time resign from office by notice to the Cabinet Secretary;

(b) may be removed from office by the Cabinet Secretary if the member—

(i) has been absent from three consecutive meetings of the Board without permission from the Chairperson;

(ii) is incapacitated by physical or mental illness or other cause from fulfilling the responsibilities of a Board member; or

(iii) conducts himself or herself in a manner not befitting a Board member; and

(b) shall be removed from office by the Cabinet Secretary if he or she becomes a disqualified person.

(7) The Chairperson of the Ombudsman Board—

(a) may at any time resign from office by notice to the President;

(b) may be removed from office by the President if the member—

(i) has been absent from three consecutive meetings of the Board without permission from the Cabinet Secretary;

(ii) is incapacitated by physical or mental illness or other cause from fulfilling the responsibilities of the Chairperson; or

(iv) conducts himself or herself in a manner not befitting

the Chairperson; and

(b) shall be removed from office by the President if the he or she becomes a disqualified person.

(8) The Cabinet Secretary shall ensure that the appointment of a Board member, and the resignation or removal from office of a Board member, is notified in the *Gazette*, but failure to do so does not affect the validity of the appointment, resignation or removal.

Application of
certain provisions

120. Sections 18, 19, 21, 22, 24, 25 and 26 apply in relation to the Board, changing what needs to be changed, but references to the Chief Executive Officer shall be read as references to the Chief Ombudsman.

Annual and other
reports

121. (1) The Ombudsman shall, not later than 90 days after the end of each financial year, prepare an annual report of its activities during the financial year.

(2) The Ombudsman shall submit each annual report to the Cabinet Secretary, who shall submit it to the National Assembly.

(3) The Ombudsman shall publish a copy of each annual report.

(4) The Ombudsman shall comply with any request by the Cabinet Secretary for information about the Ombudsman and its operations.

Complaints about
financial products
and financial
services

122. (1) A financial customer may make a complaint to the Ombudsman that a financial product provider or a financial service provider (“the provider”)—

(a) contravened a law in relation to the provision of the financial product or financial service to the financial customer;

(b) breached the contract for the provision of the financial product or financial service;

(c) treated the financial customer unfairly in relation to the provision of the financial product or financial service.

(2) The Ombudsman shall provide assistance to a complainant to formulate the complaint properly.

(3) The Ombudsman shall not deal with a complaint against a provider unless the financial customer had made the complaint to the provider and, after three months, the complaint has not been

Ombudsman to mediate and make determinations

satisfactorily resolved.

123. (1) The Ombudsman shall, on receiving a complaint, attempt to mediate the complaint.

(2) If the Ombudsman considers that it will not be efficient or effective to mediate a complaint, the Ombudsman shall make a determination resolving the complaint.

(3) Without limiting what the Ombudsman may determine under subsection (2), the Ombudsman may determine that the provider—

- (a) pay the financial customer a specified amount;
- (b) forgive, or vary, a debt;
- (c) release a security;
- (d) repay, waive or vary a fee or other amount paid, or owing to, the provider, including varying the interest rate on a loan; or

(e) perform its obligations under the contract for the provision of the financial product or financial service.

(4) A determination by the Ombudsman binds the provider.

Providers to co-operate

124. (1) A provider shall co-operate in good faith with the Ombudsman in the exercise of the Ombudsman's powers and the performance of its functions in relation to a complaint about a financial product or financial service provided by the provider, including complying with the directions of the Ombudsman in relation to the complaint.

(2) The Ombudsman may give a provider a notice requiring the provider to produce specified documents, or provide specified information, to the Ombudsman in connection with a complaint.

(3) A provider that fails or refuses to comply with a notice under subsection (2) commits an offence and is liable on conviction to a penalty not exceeding Kshs. 500,000.

Ombudsman Rules

125. The Board may make rules, not inconsistent with this Act or the sectoral laws, with respect to mediation and determination of complaints to which this Part applies.

Application to providers other than non-bank financial

126. This Part apply in relation to a provider that is not a non-bank financial institution only if and to the extent that the Cabinet Secretary, by notice in the *Gazette*, determines.

institutions

PART XII — COMPENSATION

Compensation for
contraventions of
non-bank financial
sector laws

127. A person who suffers loss because of a contravention of a non-bank financial sector law by another person may recover the amount of the loss by action in a court of competent jurisdiction against—

- (a) the other person; and
- (b) any person who was knowingly involved in the contravention.

Financial
customers may
claim
compensation
from
Compensation
Funds

128. (1) Subject to this Part, if—

- (a) a financial customer suffers loss because a licensee—
 - (i) contravened a non-bank financial sector law in relation to the provision of the financial product or financial service to the financial customer; or
 - (ii) breached the contract for the provision of the financial product or financial service; or
- (b) a provider has failed to comply with a determination of the Ombudsman, or an order or judgment of the Tribunal or a court, to compensate a financial customer for loss suffered by the financial customer because a licensee acted as described in paragraph (a);

the Board may, on application by the financial customer, pay to the financial customer the amount calculated in accordance with the Regulations.

(2) The amount is to be paid—

- (a) if the financial product or financial service is one regulated by the Capital Markets Act or the Central Depositories Act— from the Capital Markets Compensation Fund;
- (b) if the financial product or financial service is one regulated by the Insurance Act — from the Insurancce Compensation Fund;
- (c) if the financial product or financial service is one regulated by the Retirement Benefits Act — from the

Retirement Benefits Compensation Fund;

- (d) if the financial product or financial service is one regulated by the Sacco Societies Act — from the Sacco Compensation Fund;
- (e) in other cases — from the Conduct Compensation Fund.

(3) The Regulations shall make provision, not inconsistent with this Act or a sectoral law, with respect to claims for compensation from a Compensation Fund, including with respect to—

- (a) the procedure for lodging claims;
- (b) the investigation and verification of claims;
- (c) the circumstances in which, and the extent to which, claims are to be paid; and
- (d) the determination of claims, including maximum amounts payable on claims or classes of claims.

Compensation
Funds Board may
recover from
licensed person

129. If the Board makes a compensation payment to a person under this arising from a contravention of a law, or a breach of contract, by a provider, the amount of the payment, together with the costs incurred by the Board in connection with the payment, is a debt due by the provider to the Board and may be recovered by action in a court of appropriate jurisdiction.

Establishment of
Compensation
Funds Board

130. (1) There is established a board to be known as the Compensation Funds Board.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) having and managing its own funds including borrowing and lending money;
- (d) entering into contracts;
- (e) employing or engaging the services of persons to assist it in performing its functions and exercising its powers; and

- (f) 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) Except as otherwise provided in this Act or another financial services law, the Compensation Funds Board shall be operationally independent in the performance of its functions and shall not be subject to the direction or control of any person or authority.

(4) The Compensation Funds Board is a national public entity for the purposes of the Public Finance Management Act (Cap. 412C).

(5) The provisions of the State Corporations Act (Cap. 446) shall not apply to the Compensation Funds Board.

Functions of the
Compensation
Funds Board

131. The functions of the Compensation Funds Board are—

- (a) to hold and manage the Financial Sector Compensation Funds;
- (b) to determine and make compensation payments under section 128; and
- (c) any other function of the Compensation Funds Board under a written law.

Powers of the
Compensation
Funds Board

132. (1) The Compensation Funds Board shall have all the powers necessary for the proper performance of its functions under the non-bank financial sector laws, and in particular the power to—

- (a) control, supervise and administer the assets of the Compensation Funds;
- (b) manage the funds of the Compensation Funds Board, including its reserves;
- (c) receive grants, gifts or endowments;
- (d) establish a bank accounts;
- (e) with the consent of the Cabinet Secretary, borrow money, mortgage or charge any of its assets; and
- (f) engage staff, on terms and conditions, as it may consider necessary for performance of its functions, including establishing retirement benefits funds and medical funds for them and making contributions to those funds for their benefit.

133. (1) The Compensation Funds Board shall consist of—

- (a) a Chairperson, who shall be appointed by the President;
- (b) the Managing Director; and
- (c) two other members, who shall be appointed by the Cabinet Secretary.

(2) In appointing the Chairperson and the Board members mentioned in subsection (1)(c), the President and the Cabinet Secretary shall have regard to the principles of gender equity and regional balance and the need to have a mix of skills relevant to the financial sector.

(3) The Chairperson and Board members appointed as mentioned in subsection (1)(c) shall be selected from persons who—

- (a) are not public officers or employees, officers or significant owners of any licensed person;
- (b) have at least ten years experience in management of a public or private institution within the financial sector; and
- (c) satisfy the requirements of the relevant provisions of the Constitution and national laws in respect to National Values, Governance, Leadership, Integrity and Principles of Public Service.

(4) A disqualified person shall not be appointed as Board member.

(5) A Board member mentioned in subsection (1)(a) or (c) shall hold office for a period specified in the instrument of appointment, not exceeding three years, and on terms and conditions specified in the instrument of appointment. At the end of his or her term, the member may be re-appointed for one further term of a period not exceeding three years.

(6) A Board member (other than the Chairperson) —

- (a) may at any time resign from office by notice to the Cabinet Secretary;
- (b) may be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of

- the Board without permission from the Chairperson;
- (iii) is incapacitated by physical or mental illness or other cause from fulfilling the responsibilities of a Board member; or
 - (iv) conducts himself or herself in a manner not befitting a Board member; and
- (c) shall be removed from office by the Cabinet Secretary if he or she becomes a disqualified person.
- (6) The Chairperson—
- (a) may at any time resign from office by notice to the Cabinet Secretary;
 - (b) may be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Compensation Funds Board without permission from the Chairperson;
 - (ii) in the case of the Chairperson — has been absent from three consecutive meetings of the Compensation Funds Board without permission from the Cabinet Secretary;
 - (iii) is incapacitated by physical or mental illness or other cause from fulfilling the responsibilities of Chairperson; or
 - (iv) conducts himself or herself in a manner not befitting the Chairperson; and
 - (c) shall be removed from office by the Cabinet Secretary if he or she becomes a disqualified person.

(10) The Cabinet Secretary shall ensure that the appointment of a Board member, and the resignation or removal from office of a Board member, is notified in the *Gazette*, but failure to do so does not affect the validity of the appointment, resignation or removal.

Annual and other reports

134. (1) The Compensation Funds Board shall, not later than 90 days after the end of each financial year, prepare an annual report of its activities during the financial year.

(2) The Compensation Funds Board shall submit each annual

report to the Cabinet Secretary, who shall submit it to the National Assembly.

(3) The Compensation Funds Board shall publish a copy of each annual report.

(4) The Compensation Funds Board shall comply with any request by the Cabinet Secretary for information about the Compensation Funds Board and its operations.

Application of
certain provisions

135. Sections 18, 19, 21, 22, 24, 25 and 26 apply in relation to the Compensation Funds Board, changing what needs to be changed, but references to the Chief Executive Officer shall be read as references to the Managing Director.

PART XIII — THE FINANCIAL SERVICES TRIBUNAL

Establishment of
Tribunal

136. There is established a tribunal to be known as the Financial Sector Tribunal.

Tribunal members

137. (1) The Tribunal shall consist of the following members appointed by the Judicial Service Commission by notice in the *Gazette*—

- (a) the Chairperson, who shall be an advocate of the High Court of Kenya of not less than ten years good standing;
- (b) a Vice-Chairperson, who shall be an advocate of the High Court of Kenya of not less than ten years good standing;
- (c) three members with knowledge and expertise in relation to the businesses of prudentially regulated non-bank financial institution;
- (d) two members, who shall have ten years' experience in finance, actuarial science, economics, banking or senior management.

(2) A disqualified person may not be appointed to, or hold office as, a Tribunal member.

(3) Unless the Tribunal member is removed or resigns, a Tribunal member holds office for five years and, subject to this Act, is eligible, on expiry of his or her term of office, to be reappointed once for a further term of five years.

(4) Tribunal members shall be appointed at different times, so

that the terms of office expire at different times.

(5) A Tribunal member may at any time resign office by giving at least 90 days notice to the Judicial Service Commission, or a shorter period of notice that the Judicial Service Commission may accept.

(6) The Judicial Service Commission shall remove a Tribunal member from office if the member ---

- (a) becomes a disqualified person; or
- (b) accepts any position or employment the holding of which would make the member ineligible to be appointed as a Tribunal member.

(7) The Judicial Service Commission may remove a Tribunal member from office if the member—

- (a) is unable to discharge the functions of office (whether arising from illness of body or mind or from any other cause); or
- (b) has failed in a material way to discharge the responsibilities of the office; or
- (c) has acted in a way that is inconsistent with continuing to hold the office.

(8) There shall be paid to the Tribunal members remuneration and allowances as the Chief Justice shall determine.

Chairperson and
Vice-Chairperson

138. (1) The Chairperson shall manage the work of the Tribunal.

(2) The Vice-Chairperson shall perform the functions of the Chairperson in the absence of the Chairperson from office or if the office of Chairperson is vacant.

Secretary to
Tribunal

139. The Judicial Service Commission shall appoint the Secretary to the Tribunal.

Staff for Tribunal

140. (1) The Judicial Service Commission may appoint such staff as it considers necessary for the Tribunal.

(2) Staff appointed under subsection (1) shall be remunerated at a rate determined by the Judicial Service Commission and shall be subject to conditions of service as the Judicial Service Commission may determine

Liability

141. No matter or thing done or omitted to be done by the Tribunal or a Tribunal member exercising powers under this Part shall render the Tribunal or the member personally liable to any action, claim or demand whatsoever unless the matter or thing was done or omitted in bad faith.

Tribunal Rules

142. (1) The Chief Justice may make rules, not inconsistent with the non-bank financial sector laws, in respect of the procedure to be followed in connection with proceedings in the Tribunal, and may at any time make rules amending or revoking those rules.

(2) Without limiting subsection (1), Tribunal Rules may make provision in relation to—

- (a) the way in which applications for review of reviewable decisions are to be made;
- (b) fees;
- (c) the procedure to be adopted by the Tribunal;
- (d) records to be kept by the Tribunal;
- (e) giving notice to parties; and
- (f) costs.

(3) The Tribunal Rules shall be published.

(3) Subject to the Tribunal Rules, the Civil Procedure Act (Cap. 21) shall apply to proceedings in the Tribunal as if the reviewable decision concerned were a decree of a subordinate court exercising original jurisdiction.

PART XIV — REVIEW OF DECISIONS

Right to be informed

143. An obligation in a non-bank financial sector law to notify a person of a reviewable decision taken in relation to the person includes an obligation to notify the person of the person's right—

- (a) to request reasons for the decision; and
- (b) to have the decision reviewed under this Part.

Right to reasons for decisions

144. (1) A person affected by a reviewable decision and who has not already been given the reasons for the decision may, within 30 days after being notified of the decision, request a statement of the reasons for the decision from the decision-maker.

Applications for
review of
decisions

(2) The decision-maker shall, within 30 days after receiving the request, give the person a statement of the reasons for the decision, which shall include a statement of the material facts on which the decision was based.

145. (1) A person aggrieved by a reviewable decision may apply to the Tribunal, in accordance with the Tribunal Rules, for a review of the decision.

(2) The application shall be made --

- (a) if the applicant requested reasons under section 144— within 30 days after the statement of reasons was given to the person; or
- (b) otherwise — within 60 days after the person was notified of the decision.

Operation of
decisions not
affected

146. Neither an application for a review of a decision, nor the proceedings on the application, suspends the operation of the decision unless the Tribunal so orders.

Parties

147. (1) The parties to proceedings in the Tribunal for a review of a decision are—

- (a) the applicant for the review;
- (b) the decision-maker; and
- (c) any other person permitted by the Tribunal to be joined as a party.

(2) The Tribunal may permit a person to be joined as party to proceedings on any terms it sees fit.

Proceedings

148. (1) In proceedings before the Tribunal—

- (a) the procedure is, subject to the non-bank financial sector laws and the Tribunal Rules, determined by the Tribunal;
- (b) the proceedings are to be conducted with as little formality and technicality, and as expeditiously, as the requirements of the non-bank financial sector laws and a proper consideration of the matter permit; and
- (c) a party may be represented by a legal practitioner or, if the Tribunal permits, another person.

(2) The Chairperson may give directions to facilitate the conduct

of proceedings.

(3) The Tribunal is not bound by the rules of evidence, but may, subject to this section, inform itself on any relevant matter in any appropriate way.

(4) The person presiding over proceedings in the Tribunal—

- (a) has all the powers of the Chief Magistrate's court to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents; and
- (b) shall administer an oath to or accept an affirmation from any person called to give evidence.

(5) A person summoned by the Tribunal to attend and give evidence or to produce specified documents, shall not, without reasonable cause—

- (a) refuse or fail to attend at the time and place specified in the summons;
- (b) refuse or fail to answer, to the best of his or her knowledge and belief, all questions lawfully put to him in the proceedings;
- (c) if the specified documents are within the person's possession or under his or her control — refuse or fail to produce them as required by the summons.

Penalty —Kshs. 5,000,000 and imprisonment for 2 years.

(6) The Tribunal may appoint a person with relevant special skills or knowledge to act as an assessor in an advisory capacity in a proceeding on a review.

(7) Any hearing in proceedings of the Tribunal shall be open to the public unless the Tribunal, for good cause, otherwise directs.

(8) A person giving evidence or information, or producing documents, in relation to proceedings for review of a decision has the protections and liabilities of a witness giving evidence in proceedings before the High Court.

Tribunal orders

149. (1) In proceedings on an application for review of a reviewable decision, the Tribunal may, by order—

- (a) set the decision aside;

- (b) set the decision aside and remit the matter to the decision-maker for further consideration;
- (c) in the case of a decision of any of the following kinds, also make an order setting aside the decision and substituting the decision of the Tribunal—
 - (i) a decision in relation to an administrative penalty order;
 - (ii) a decision of a kind prescribed by regulation for the purposes of this section; or
- (d) dismiss the application.

(2) The Tribunal may, in exceptional circumstances, make an order that a party to proceedings on an application for review of a decision pay some or all of the costs reasonably and properly incurred by the other party in connection with the proceedings.

(3) Subsections (1) and (2) are subject to any provision of a non-bank financial sector law that excludes, restricts or qualifies the orders that the Tribunal may make in proceedings for reconsideration of a decision.

(4) The Tribunal may, by order, summarily dismiss an application for review of a decision if the application is frivolous, vexatious or trivial.

(5) If the Tribunal members hearing an application for review of a decision are divided in opinion as to an order to be made, the opinion of the majority of those members prevails, but if they are equally divided in opinion, the opinion of the member presiding prevails.

Appeal to High
Court

150. (1) A party to proceedings on a review who is aggrieved by a decision of the Tribunal on or involving a question of law may appeal the decision to the High Court.

(2) The appeal shall be commenced within 30 days after the decision is notified to the party.

(3) In this section, “question of law” does not include a question whether there is sufficient evidence to justify a finding.

Enforcement of
Tribunal orders

151. (1) A party to proceedings on an application for review of a decision may file with the registrar of a competent court a certified copy of an order made by the Tribunal in the proceedings if—

- (a) no proceedings in relation to the making of the order have been commenced in a court by the end of the period for commencing such proceedings; or
- (b) if such proceedings have been commenced — the proceedings have been finally disposed of.

(2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.

PART XV — FINANCIAL PROVISIONS — THE AUTHORITY

Estimates of the Authority's income and expenditure

152. (1) For each financial year, the Authority shall prepare—

- (a) an estimate of its operating expenditure;
- (b) an estimate of its income, including from fees and charges; and
- (c) projected estimates of its operating expenditure for the next two financial years.

(2) The Authority shall submit the estimates to the Cabinet Secretary for approval.

FSA Fund

153. (1) There is established a fund, to be known as the FSA Fund, which vests in the Authority.

(2) The purpose of the FSA Fund is to defray the expenses of the Authority.

(3) The FSA Fund shall be administered and controlled by the Authority.

(4) There shall be paid into the FSA Fund—

- (a) the funds standing to the credit of—
 - (i) the general fund of the Capital Markets Authority referred to in section 15 of the Capital Markets Act;
 - (ii) the Insurance Regulatory Authority Fund established by section 4 of the Insurance Act;
 - (iii) the Retirement Benefits Authority Fund established by section 17 of the Retirement Benefits Act; and
 - (iv) the General Fund established by section 16 of the Sacco Societies Act;

- (b) amounts appropriated by Parliament;
- (c) fees and charges imposed under the non-bank financial sector laws in relation to the Authority;
- (d) amounts payable to the Authority out of the Levies Account; and
- (e) any other amount paid to or received by the Authority.

(5) The FSA Fund may include reserves, which, for a financial year, shall not be more than the amount of the Authority's estimated operating expenditure for the financial year.

(6) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Authority in the performance of its functions.

Investment of FSA
Fund

154. The Authority may—

- (a) place on deposit with such bank or banks as it may determine; or
- (b) otherwise invest, in accordance with Government Policy on investment and a policy approved by the Board;

any amount standing to the credit of the FSA Fund not immediately required for its purposes.

Authority's
financial records
and reports

155. (1) The Authority shall cause to be kept proper books of accounts of the income, expenditure, assets, liabilities and all other financial transactions of the Authority.

(2) Within 90 days after the end of each financial year, the Board shall prepare financial statements.

(3) Within 120 days after the end of each financial year, the FSA Board shall submit the financial statements to the Auditor-General or to an auditor appointed by the Board under the authority of the Auditor-General.

(4) The financial statements shall be audited and reported upon in accordance with the Public Audit Act, 2015.

PART XVI — FINANCIAL PROVISIONS — THE OMBUDSMAN

Estimates of the
Ombudsman's

156. (1) For each financial year, the Ombudsman shall prepare—

income and
expenditure

- (a) an estimate of its operating expenditure;
- (b) an estimate of its income, including from fees and charges;
- (c) projected estimates of its operating expenditure for the next two financial years.

(2) The Ombudsman shall submit the estimates to the Cabinet Secretary for approval.

Ombudsman Fund

157. (1) There is established a fund, to be known as the Ombudsman Fund, which vests in the Ombudsman.

(2) The purpose of the Ombudsman Fund is to defray the expenses of the Ombudsman.

(3) The Ombudsman Fund shall be administered and controlled by the Ombudsman.

(4) There shall be paid into the Ombudsman Fund—

- (a) amounts appropriated by Parliament;
- (b) fees and charges imposed under the non-bank financial sector laws in relation to the Ombudsman;
- (d) amounts payable to the Ombudsman out of the Levies Account; and
- (d) any other amount paid to or received by the Ombudsman.

(5) The Ombudsman Fund may include reserves, which, for a financial year, shall not be more than the amount of the Ombudsman's estimated operating expenditure for the financial year.

(6) There shall be paid out of the Ombudsman Fund all such sums of money required to defray the expenditure incurred by the Ombudsman in the performance of its functions.

Investment of
Ombudsman Fund

158. The Ombudsman may—

- (a) place on deposit with such bank or banks as it may determine; or
- (b) otherwise invest, in accordance with Government Policy on investment and a policy approved by the Ombudsman Board;

any amount standing to the credit of the Ombudsman Fund not

immediately required for its purposes.

Ombudsman's
financial records
and reports

159. (1) The Ombudsman shall cause to be kept proper books of accounts of the income, expenditure, assets, liabilities and all other financial transactions of the Ombudsman.

(2) Within 90 days after the end of each financial year, the Ombudsman shall prepare financial statements.

(3) Within 120 days after the end of each financial year, the Ombudsman shall submit the financial statements to the Auditor-General or to an auditor appointed by the Ombudsman under the authority of the Auditor-General.

(4) The financial statements shall be audited and reported upon in accordance with the Public Audit Act, 2003.

PART XVII — FINANCIAL PROVISIONS — THE COMPENSATION FUNDS BOARD AND THE COMPENSATION FUNDS

Estimates of the
Compensation
Funds' and
Compensation
Funds Board's
income and
expenditure

160. (1) For each financial year, the Compensation Funds Board shall prepare—

- (a) an estimate of its operating expenditure and the operating expenditure of each of the Compensation Funds;
- (b) an estimate of its income, including from fees and charges, and the income of each of the Compensation Funds;
- (c) projected estimates of its operating expenditure, and the operating expenditure of each of the Compensation Funds, for the next two financial years.

(2) The Compensation Funds Board shall submit the estimates to the Cabinet Secretary for approval.

Compensation
Funds Board's
financial records
and reports

161. (1) The Compensation Funds Board shall cause to be kept proper books of accounts of the income, expenditure, assets, liabilities and all other financial transactions of the Ombudsman.

(2) Within 90 days after the end of each financial year, the Compensation Funds Board shall prepare financial statements.

(3) Within 120 days after the end of each financial year, the Compensation Funds Board shall submit the financial statements to the Auditor-General or to an auditor appointed by the Compensation

Funds Board under the authority of the Auditor-General.

(4) The financial statements shall be audited and reported upon in accordance with the Public Audit Act, 2003.

Non-bank
financial sector
Compensation
Funds

162. (1) There are established five funds, each of which vests in the Compensation Funds Board, to be called—

- (a) the Capital Market Compensation Fund;
- (b) the Insurance Compensation Fund;
- (c) the Pensions Compensation Fund;
- (d) the Sacco Compensation Fund; and
- (e) the Conduct Compensation Fund;

(2) The purpose of each Compensation Fund is to fund relevant compensation payments under section 128.

(3) Each Fund shall be administered and controlled by the Compensation Funds Board.

Operation of
Capital Market
Compensation
Fund

163. (1) There shall be paid into the Capital Market Compensation Fund—

- (a) the amount standing to the credit of the Investor Compensation Fund established by section 18 of the Capital Markets Act;
- (b) amounts referred to in section 34A(5) or 34B of the Capital Markets Act;
- (c) amounts appropriated by Parliament;
- (d) amounts payable to the Compensation Funds Board out of the Levies Account in respect of the Capital Markets Act or the Central Depositories Act;
- (e) amounts of administrative penalties in respect of contraventions of the Capital Markets Act or the Central Depositories Act;
- (f) any other amount paid to or received by the Compensation Funds Board for payment into the Capital Market Compensation Fund.

(2) There shall be paid out of the Capital Market Compensation Fund—

- (a) all such amounts as are required to be paid out of the Fund under section 128;
- (b) a reasonable proportion of the amounts required to defray the expenditure incurred by the Compensation Funds Board in the performance of its functions.

Operation of the
Insurance
Compensation
Fund

164. (1) There shall be paid into the Insurance Compensation Fund—

- (a) the amount standing to the credit of the Policyholders Compensation Fund established under Part XIX of the Insurance Act;
- (b) amounts appropriated by Parliament;
- (c) amounts payable to the Compensation Funds Board out of the Levies Account in respect of the Insurance Act; and
- (d) amounts of administrative penalties in respect of contraventions of the Insurance Act;
- (e) any other amount paid to or received by the Compensation Funds Board for payment into the Insurance Compensation Fund.

(2) There shall be paid out of the Insurance Compensation Fund—

- (a) all such amounts as are required to be paid out of the Fund under section 128;
- (b) a reasonable proportion of the amounts required to defray the expenditure incurred by the Compensation Funds Board in the exercise, discharge and performance of its objectives, functions, powers and duties.

Operation of
Pensions
Compensation
Fund

165. (1) There shall be paid into the Pensions Compensation Fund—

- (a) amounts appropriated by Parliament;
- (b) amounts payable to the Compensation Funds Board out of the Levies Account in respect of the Retirement Benefits Act; and
- (c) amounts of administrative penalties in respect of contraventions of the Retirement Benefits Act;

- (d) any other amount paid to or received by the Compensation Funds Board for payment into the Pensions Compensation Fund.

(2) There shall be paid out of the Pensions Compensation Fund—

- (a) all such amounts as are required to be paid out of the Fund under section 128;
- (b) a reasonable proportion of the amounts required to defray the expenditure incurred by the Compensation Funds Board in the exercise, discharge and performance of its objectives, functions, powers and duties.

Operation of
Sacco
Compensation
Fund;

166. (1) There shall be paid into the Sacco Compensation Fund—

- (a) the amount standing to the credit of the Deposit Guarantee Fund established by section 55 of the Sacco Societies Act;
- (b) amounts appropriated by Parliament;
- (c) amounts payable to the Compensation Funds Board out of the Levies Account in respect of the Sacco Societies Act; and
- (d) amounts of administrative penalties in respect of contraventions of the Sacco Societies Act;
- (e) any other amount paid to or received by the Compensation Funds Board for payment into the Sacco Compensation Fund.

(2) There shall be paid out of the Saco Compensation Fund—

- (a) all such amounts as are required to be paid out of the Fund under section 128;
- (b) a reasonable proportion of the amounts required to defray the expenditure incurred by the Compensation Funds Board in the exercise, discharge and performance of its objectives, functions, powers and duties.

Operation of
Conduct
Compensation
Fund

167. (1) There shall be paid into the Conduct Compensation Fund—

- (a) amounts appropriated by Parliament;

- (b) amounts payable to the Compensation Funds Board out of the Levies Account in respect of this Act; and
- (c) amounts of administrative penalties in respect of contraventions of this Act;
- (d) any other amount paid to or received by the Compensation Funds Board for payment into the Conduct Compensation Fund.

(2) There shall be paid out of the Conduct Compensation Fund—

- (a) all such amounts as are required to be paid out of the Fund under section 128;
- (b) a reasonable proportion of the amounts required to defray the expenditure incurred by the Compensation Funds Board in the exercise, discharge and performance of its objectives, functions, powers and duties.

Investment of
Compensation
Funds

168. (1) The Compensation Funds Board may—

- (a) place on deposit with such bank or banks as it may determine; or
- (b) otherwise invest, in accordance with Government Policy on investment and a policy approved by the Compensation Funds Board;

any amount standing to the credit of a Compensation Fund not immediately required for its purposes.

(2) Despite any other law or agreement, the Compensation Funds Board is not required to manage or invest the Compensation Funds as separate funds.

PART XVIII — LEVY, FEES AND CHARGES

Financial sector
levy

169. (1) The Cabinet Secretary shall, for each financial year, in consultation with the Authority, by Regulation impose in accordance with this Act on non-bank financial institutions identified in the Regulation.

(2) The amount of levy payable by a non-bank financial institution in respect of a financial year is calculated in accordance with the Regulations imposing the levy.

Information
required for

170. (1) The Authority may determine what information a non-

assessment of
levy

bank financial institution is to give the Authority to assist the Authority to work out the institution's liability for levy for a financial year.

(2) A determination under subsection (1) may specify the way in which and time by which information is to be provided.

(3) A non-bank financial institution to which a determination under subsection (1) applies shall comply with the requirements of the determination.

Penalty — Kshs. 5,000,000.

Assessment of
levy

171. (1) The Authority shall issue to each levy payer for a financial year an assessment of levy payable by the levy payer.

(2) Levy is due and payable by a levy payer at the end of 30 days after the assessment of the levy is issued to the institution.

Penalty levy

172. (1) If a levy payer fails to pay the whole amount of levy when it is due, penalty levy is imposed, for each month during which the amount remains unpaid.

(2) Penalty levy for a month is calculated as follows:

- (a) if the amount unpaid at the beginning of the month is or is less than Kshs. 1,000,000 — Kshs. 500;
- (b) if the amount unpaid at the beginning of the month is more than Kshs. 1,000,000 but less than Kshs. 5,000,000 — Kshs. 1,000; and
- (c) if the amount unpaid at the beginning of the month is or is more than Kshs. 5,000,000 — Kshs. 5,000.

Refund of
overpaid levy

173. (1) If an amount of levy has been overpaid, the amount overpaid shall be refunded by the Authority.

(2) The Authority, the Ombudsman and the Compensation Funds Board shall, in accordance with arrangements agreed between them, make adjusting payments to take account of amounts refunded under subsection (1).

Levy Account

174. (1) The Authority shall establish an account in its name with a bank licensed under the Banking Act, specially designated as the Levy Account.

(2) The Levy Account shall be an interest bearing account.

(3) The following are to be paid into the Levy Account—

- (a) amounts received by the Authority as levy;
- (b) amounts received by the Authority from the investment of money standing to the credit of the Levy Account.

(4) Money standing to the credit of the Levy Account is to be applied only for the following purposes—

- (a) to make investments authorised under this Act;
- (b) to make payments to the Authority, the Ombudsman and the Compensation Funds Board;
- (c) to repay amounts of levy that have been waived, and amounts paid into the Account in error.

Distributions from
Levy Account

175. (1) The Authority shall, at times, and in accordance with arrangements, agreed between the Authority, the Ombudsman and the Compensations Funds Board, make payments out of the Levies Account to the itself, Ombudsman and the Compensations Funds Board.

(2) The Authority may retain from those payments agreed amounts to reimburse the Authority in respect of the costs incurred by the Authority in collecting and administering the levy.

Requirements for
levy in respect of
first five financial
years after
commencement

176. The rate at which levy is imposed on a non-bank financial institution in respect of each of the five financial years after the commencement of this Act shall not exceed the highest of the rates at which levy (however described) under a non-bank financial sector law as in force immediately before the commencement of this Act was imposed.

Requirements for
levy

177. (1) This section applies in relation to levy in respect of financial years after the five financial years after the commencement of this Act.

(2) The total amount of levy imposed for a financial year shall not exceed the amount that will fund the total of the estimates of the operating expenditures approved under sections 152, 156 and 160 for the year, adjusted—

- (a) to take into account the estimates of income approved under those sections for the year;
- (b) to take into account the reserves available for operating

expenditure for the year;

- (c) if the operating expenditure actually incurred by the Authority, the Ombudsman or the Compensation Funds Board in respect of the previous financial year are less than, or more than, the relevant estimate of operating expenditure so approved for that year — to ensure that the saving, or over-expenditure, is credited to, or borne by, all levy payers; and
- (d) if the amounts actually received by the Authority, the Ombudsman and the Compensation Funds as levy and penalty levy in respect of levy in respect of the previous financial year are less than, or more than, the relevant estimate of income so approved for that year — to ensure that the over-collection or under collection is credited to, or borne by, all levy payers.

(3) The Cabinet Secretary shall not make Regulations for section 169 for a financial year unless the Authority has published—

- (a) a draft of the Regulations;
- (b) the estimates and projected estimates of its income and expenditure approved by the Cabinet Secretary under sections 152, 156 and 160 for the financial year and the next 2 financial years;
- (c) a statement of the amounts actually received by the Authority, the Ombudsman and the Compensation Funds as levy and penalty levy in respect of levy in respect of the previous financial year;
- (d) a statement of the reserves of each of the Authority, the Ombudsman and the Compensation Funds at the start of the relevant financial year and an estimate of those as at the start of each of the next 2 financial years; and
- (d) a notice inviting submissions on the draft Regulations and stating—
 - (i) where and how submissions are to be made.
 - (ii) the period within which submissions are to be made (the “submission period”).

(4) The submission period shall be at least one month.

(5) The Cabinet Secretary shall take into account, in deciding whether to make the Regulations, all submissions made within the submission period.

Fees and charges

178. (1) The Cabinet Secretary, in consultation with the Authority, may by Regulation prescribe fees and charges payable in respect of services rendered by the Authority and the Ombudsman in the performance of their functions under a non-bank financial sector law.

(2) Fees and charges under this section shall not be such as amount to a tax mentioned in section 114 of the Constitution.

(3) Fees in respect of services provided to a person are payable by the person when the service is provided, or at a later time as agreed to by the person to whom the amount is payable.

(4) No fees or charges shall be payable by a financial customer to make a complaint to the Ombudsman.

(5) A person to whom an amount is payable as a fee or charge may, on application by a person liable to pay the fee or charge, waive the whole or a part of the fee or charge.

Levies, fees and charges excluded from the Consolidated Fund

179. Amounts raised or received as levy, fees or charges under this Part are excluded from the Consolidated Fund.

Levy and other amounts a debt

180. (1) Each of the following is a debt due to the Authority—

- (a) an amount of levy imposed on a person;
- (b) an amount of an administrative penalty or financial penalty payable by a person under this Act or a sectoral law;
- (b) an amount of fees and charges imposed on a person in respect of services provided by the Authority;
- (d) an amount payable by way of interest under this Act on unpaid administrative penalty or financial penalty.

(2) The amount of a debt due under this section and may be recovered by action in a court of appropriate jurisdiction.

Income tax

181. The income of the FSA Fund, the Ombudsman Fund and a Compensation Fund are exempted from income tax.

PART XIX — MISCELLANEOUS PROVISIONS

Exemptions
generally

182. (1) The Authority may exempt any person or class of persons from a specified provision of a non-bank financial sector law.

(2) The Authority shall not do so if it considers that the exemption—

- (a) will be contrary to the public interest;
- (b) is contrary to a non-bank financial sector law; or
- (c) may otherwise prejudice the achievement of the objects of a non-bank financial sector law.

(3) The Authority shall publish each exemption.

Notifications to
Authority

183. (1) The Authority may determine procedures and requirements for notifications to the Authority required by this Act or a sectoral law.

(2) To be valid, a notification to the Authority shall comply with those procedures and requirements.

(3) The Authority shall publish determinations under subsection (1).

Reporting to
Authority

184. (1) An auditor of a licensee, or of a holding company in a non-bank financial conglomerate, shall, without delay, submit a detailed report to the Authority, the governing body of the licensee and, in the case of non-bank financial conglomerate, the holding company of the relevant eligible prudentially regulated non-bank financial institution, about any matter relating to the business of the licensee or a company within the conglomerate, being a matter—

- (a) of which the auditor becomes aware of in the course of performing functions and duties as auditor; and
- (b) that the auditor considers—
 - (i) is causing or is likely to cause the licensee or relevant eligible prudentially regulated non-bank financial institution to be financially unsound;
 - (ii) is contravening or may contravene a non-bank financial sector law in a material respect; or
 - (iii) in the case of an auditor, that it may result in an audit not being completed or may result in a

qualified or adverse opinion on accounts.

(2) Compliance, in good faith, with subsection (1) is not a contravention of a law, a breach of a contract or a breach of a code of professional conduct.

(3) A person may report to the Authority—

- (a) financial difficulties or suspected financial difficulties in a non-bank financial institution;
- (b) a contravention or suspected contravention of a non-bank financial sector law in relation to a non-bank financial institution; or
- (c) the involvement or the suspected involvement of a non-bank financial institution in financial crime.

(4) Unless the report was made in bad faith, a person who makes a report under subsection (1) is not—

- (a) criminally liable for making the report; or
- (b) liable to pay compensation or damages to any person in relation to a loss caused by the report.

Prohibition of victimisation

185. A person shall not subject another person to any prejudice in employment, or penalise another person in any way, on the ground that the other person made a report under section 184, even if the report was not required by law.

Penalty —

- (a) for a first offence — Kshs. 5,000,000 and imprisonment for 2 years;
- (b) for a second or later offence — Kshs. 10,000,000 and imprisonment for 5 years.

Protected disclosures

186. Sections 184 and 185 apply in addition to, and do not limit, any other law that provides protection for persons who properly report contraventions of the law.

Preventing compliance

187. (1) A person who knowingly hinders or prevents compliance with a direction, order or requirement of the Authority given under a non-bank financial sector law shall be guilty of an offence.

(2) A person who, without lawful excuse, obstructs or

hinders—

- (a) the Authority;
- (b) a Board member or employee of the Authority; or
- (c) an inspector or an investigator;

in the performance of their functions shall be guilty of an offence.

(2) Any person who, without lawful excuse, obstructs or hinders a statutory manager in the performance of his functions under this Act shall be guilty of an offence.

Penalty — Kshs. 5,000,000 and imprisonment for 1 year.

False or
misleading
information

188. (1) A person who provides to the Authority, in connection with the operation of a non-bank financial sector law, information that is false or misleading, including by omission, commits an offence.

Penalty — Kshs. 5,000,000.

(2) A person who—

- (a) provides to the Authority, in connection with the operation of a non-bank financial sector law, information that is false or misleading, including by omission; and
- (b) knew or believed, or ought reasonably to have known or believed, that the information was false or misleading;

commits an offence.

Penalty — Kshs. 10,000,000 and imprisonment for 5 years.

Accounts and
records

189. (1) A person who is required under a non-bank financial sector law to keep accounts or records commits an offence if the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate.

Penalty — Kshs. 5,000,000.

(2) If—

- (a) a person is required under a non-bank financial sector law to keep accounts or records;
- (b) the accounts or records do not correctly record and explain the matters, transactions, acts or operations to

which they relate; and

(c) the person—

- (i) knew that, or was reckless whether, the accounts or records correctly recorded and explained the matters, transactions, acts or operations to which they relate;
- (ii) intended to deceive or mislead a financial sector regulator or an investigator; or
- (iii) intended to hinder or obstruct a financial sector regulator, or an investigator in performing his or her duties under a non-bank financial sector law;

the person commits an offence.

Penalty — Kshs. 10,000,000 and imprisonment for 5 years.

False assertion of connection with Authority

190. A person who, without the consent of the Authority, applies to a company, body, business or undertaking a name or description that signifies or implies some connection between the company, body, business or undertaking and the Authority commits an offence.

Penalty— Kshs. 5,000,000.

Provisions about liability in relation to bodies corporate

191. (1) If a non-bank financial institution commits an offence against a non-bank financial sector law, each member of the governing body of the institution is guilty of the same offence.

(2) It is a defence to a prosecution for an offence against subsection (1) that the defendant took all reasonably practicable steps to prevent the commission of the offence.

(3) If a key person of a non-bank financial institution engages in conduct relating to the provision of financial products or financial services that amounts to a contravention of a non-bank financial sector law, the institution is taken also to have engaged in the conduct.

(4) It is a defence to a prosecution for an offence against subsection (3) that the institution took all reasonably practicable steps to prevent the conduct.

Extension of periods for compliance

192. (1) The Authority may extend any period for compliance with, or a period prescribed by, a provision of a non-bank financial sector law, other than a provision that the Authority is to comply

with.

(2) The Authority may do so—

- (a) on application by a person required to comply with the provision or on its own initiative; and
- (b) more than once; and
- (c) either before or after the time for compliance has passed or the period prescribed has ended.

Requirements for
notification and
concurrence

193. (1) An obligation of the Authority under a non-bank financial sector law to notify the Central Bank of Kenya or another State organ of a particular matter does not apply if the Central Bank of Kenya or other State organ has agreed that notification is unnecessary.

(2) If a non-bank financial sector law provides that the Authority may not take a particular action without the concurrence of the Central Bank of Kenya or another State organ, the concurrence is not required if the Central Bank of Kenya or another State organ has agreed its concurrence is unnecessary.

Certificates,
records and entries
in books of
account admissible
in evidence

194. (1) A certificate, in a form determined by, and authenticated as determined by, the Authority, that, at a specified date—

- (a) a person was or was not licensed under a non-bank financial sector law;
- (b) a specified licence was or was not subject to specified conditions;
- (c) a specified licence was, at a specified time, suspended, cancelled or revoked;
- (d) a specified non-bank financial institution was at a specified time a prudentially regulated non-bank financial institution or an eligible prudentially regulated non-bank financial institution;
- (e) specified companies formed a non-bank financial conglomerate; or
- (f) states the contents of a register kept under a non-bank financial sector law;

is admissible as evidence of the facts and matters stated in it and,

unless the contrary is established, is conclusive.

(2) In any proceedings under or in relation to a non-bank financial sector law, a business document of or held by a non-bank financial institution is admissible as evidence of the matters, transactions and accounts recorded in it.

Notices to
licensees

195. (1) A notice under or relating to a non-bank financial sector law to a person who is or was licensed under the non-bank financial sector law may be served on, or given to—

- (a) the person; or
- (b) if the person cannot be found after reasonable inquiry — some other person apparently involved in the management or control of a place where the person carries or carried on the licensed activities.

(2) For the purposes of a non-bank financial sector law, service under subsection (1) is effective service.

Publication
requirements

196. A requirement in a non-bank financial sector law for information or a document to be published shall be read as including a requirement for the information or document to be published on the website of the body required to publish it.

Limits on
fundamental rights
and freedoms

197. (1) This section has effect for the purposes of section 24 of the Constitution.

(2) It is the intention of the Parliament that the following rights and freedoms be limited by this Act:

- (a) the right recognised by section 31 of the Constitution (the right to privacy) — limited to the extent provided for in Part IX, section 170 and the other provisions of this Act that authorise the Authority or another person to require a person to give information or produce documents, or authorise an investigator to enter premises;
- (b) the right recognised by section 35 of the Constitution (the right to access to information) — limited to the extent provided for in section 26 (which imposes confidentiality obligations in relation to information and documents of the Authority, the Ombudsman or the Compensation Funds Board);
- (c) the right recognised by section 40 of the Constitution

(the right to right to acquire and own property) — limited to the extent provided for in sections 71 (which imposes requirements for becoming a significant owner of an eligible prudentially regulated non-bank financial institution), 74 (which regulates the transfer of the businesses of an eligible prudentially regulated non-bank financial institution), 76 (which authorises the appointment of a statutory manager to an eligible prudentially regulated non-bank financial institution) and 86 (which regulates the acquisition of a material asset by the holding company in a non-bank financial conglomerate).

Regulations

198. The Cabinet Secretary may, after consultation with the Authority, make Regulations for giving effect to this Act and any other non-bank financial sector law.

PART XX — REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS

Repeals and amendments

199. The provisions identified in the Second Schedule are repealed or amended, as set out in that Schedule.

Subsidiary legislation

200. Subject to this Act, any regulation or other instrument made or issued under a sectoral law shall continue to have effect but may be amended or revoked in accordance with the sectoral law.

Enforcement action

201. The Authority may continue any enforcement action by a predecessor regulator that is being undertaken but is not complete immediately before the commencement of this Part.

Appeals and litigation

202. (1) An appeal made to a tribunal established under a sectoral law that has not been determined before the commencement of Part XIII shall be transferred to the Tribunal in accordance with the Tribunal rules.

(2) Where proceedings in a court to which a predecessor regulator was a party had not been finally determined before the commencement of this Act, the Authority shall be substituted for the predecessor regulator in the proceedings.

MoUs and membership of associations

203. (1) All memoranda of understanding signed by a predecessor regulator shall be taken, at the commencement of this Act, to be entered into by the Authority.

(2) All memberships to associations entered into by a

predecessor regulator and in force immediately before the commencement of this Act shall be taken, at the commencement of this Act, to be entered into by the Authority.

Assets and liabilities

204. All the property, assets (including any contracts of employment), rights, liabilities, obligations and agreements vested in, acquired, incurred or entered into by or on behalf of a predecessor regulator shall be vested in the Authority and may be enforced by or against the Authority in accordance with its terms.

Staff

205. (1) All persons who, before the commencement of this Act were employed by a predecessor regulator shall, at the commencement of this Act, be taken to be staff of the Authority and employed in accordance with this Act on terms no less favourable than their terms of employment immediately before that time.

(2) Where at the commencement of this Act any penalty has been imposed on any staff of a predecessor regulator, and the penalty has not been or remains to be served by that staff, that staff shall serve or continue to serve such penalty to its full term.

FIRST SCHEDULE — CONDUCT OF THE AFFAIRS OF THE BOARD

Meetings

1. (1) Meetings of the Board shall be held as often as may be necessary, for the performance of its functions, but not less than four times in every financial year and not more than 90 days shall elapse between the date of one meeting and the next meeting and such meetings shall be held at such places, times and days as the Chairperson may determine.

(2) The Chairperson may at any time call for a special meeting of the Board and shall convene a special meeting within seven days of the receipt of a request for that purpose addressed to him by not less than two Members or from management.

(3) The Chairperson shall chair all the Board meetings and if the Chairperson is not present, the members present shall choose one member to chair that meeting.

(4) The quorum for a Board meeting is five Members.

(5) A member shall be regarded as being present at a meeting of the Board if that member participates in the meeting by telephone, video conferencing or other electronic means, provided that that member is able to communicate with the other members present at

the meeting.

(6) Each Board member present at a meeting of the Board, except the Chief Executive Officer, shall have one vote.

(7) Unless a unanimous decision is reached, a decision at a meeting of the Board shall be determined by a majority of votes of the Board members present who are entitled to vote and, in the event of a tie, the person chairing that meeting shall also have a casting vote.

(8) No proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) The Board Secretary shall maintain minutes of each meeting.

Disclosure of
interests

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter, without the approval of a majority of the Board members.

(2) A disclosure of interest made under paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

SECOND SCHEDULE — REPEALS AND AMENDMENTS

Part 1 — Amendments of the Capital Markets Act

Long title

1. The long title of the Capital Markets Act is amended by omitting “to establish a Capital Markets Authority”.

Section 2

2. Section 2 of the Capital Markets Act is amended by—

(a) substituting for the definition of “Authority” the following—

“ ‘Authority’ means the Financial Services Authority established by the Financial Services Authority Act;”

(b) omitting the definitions of “Board” and “Compensation Fund”;

(c) inserting in appropriate alphabetical order—

“ ‘Financial Services Authority Act’ means the Financial Services Authority Act, 2016;”;

(d) substituting for the definition of “licensed person” the following—

“ ‘licensed person’ means a person or body corporate who has been issued with a licence, or approved, by the Authority under this Act;”

(e) by inserting in the definition of “representative”, after “licensed by the Authority”, the words “under this Act”;

(f) omitting the definition of “self-regulatory organization”; and

(g) adding at the end the following new subsection—

“(2) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning assigned to them under the Financial Services Authority Act.”.

New section 4A

3. The Capital Markets Act is amended by inserting after section 4 but in Part I—

Relationship
between Act
and Financial
Services
Authority
Act

“4A. (1) Except as otherwise provided by this Act or the Financial Services Authority Act, the powers and duties of the Authority under this Act are in addition to its powers and duties under the Financial Services Authority Act.

(2) Unless expressly provided otherwise in this Act, a reference in this Act to a matter being prescribed by the Authority shall be read as a reference to the matter—

(a) being prescribed in a prudential rules or a conduct rule; or

(b) being prescribed in writing by the Authority and published in a way required or permitted by this Act or the Financial Services Authority Act.

(3) A reference in this Act to a determined or prescribed fee shall be read as a reference to the

relevant fee determined under section 178 of the Financial Services Authority Act.

(4) A reference in this Act to an appeal in relation to a decision of the Authority shall be read as a reference to a review of the decision by the Tribunal under the Financial Services Authority Act.”.

Sections 5, 6, 7, 8,
9, 10, 11A, 12A,
13, 13A, 13B, 14,
15, 16, 17, 18
and 18A, Part IIA,
sections 35, 35A,
36, 37 and 39

4. Sections 5, 6, 7, 8, 9, 10, 11A, 12A, 13A, 13B, 14, 15, 16, 17, 18 and 18A, Part IIA and sections 35, 35A, 36, 37 and 39 of the Capital Markets Act are repealed.

Section 11

5. (1) Section 11(1) of the Capital Markets Act is amended by—

(a) omitting “The principal objectives of the Authority shall be” and substituting “The principal objectives of the Authority shall include”; and

(b) omitting paragraph s (d) and (e) and substituting—

“(d) the protection of the interests of investors in capital markets;”.

(2) Section 11(3) of the Capital Markets Act is amended by omitting paragraph s (c), (cc), (d), (h), (i), (j), (n), (o), (p), (q) and (v).

Section 12

6. (1) Section 12(1) of the Capital Markets Act is amended—

(a) by omitting “The Minister shall formulate such rules and regulations as may be required to regulate” and substituting “Conduct rules may make provision with respect to”;

(b) by substituting for paragraph (n)—

“(n) self regulatory organizations in relation to capital markets;” and

(c) by omitting paragraph s (o) and (p).

(2) Section 12 of the Capital Markets Act is amended by omitting subsection (2).

Section 22A

7. Section 22A (1) of the Capital Markets Act is amended by omitting all words to and including “necessary or expedient” and substituting “The power of the Authority to issue a directive to a securities exchange or derivatives exchange extends to issuing a

direction”.

Section 22B

8. Section 22B (4) of the Capital Markets Act is amended by omitting “the Authority may” and substituting “the Authority may, by directive to the securities exchange or a derivatives exchange,”.

Section 26

9. Section 26 of the Capital Markets Act is amended by adding at the end of subsection (1)—

“; or the licensed person’s financial conduct licence is suspended or revoked under the Financial Services Authority Act.”.

Section 30A

10. Section 30A of the Capital Markets Act is amended by omitting subsection (5).

Section 33A

11. Section 33A of the Capital Markets Act is amended by inserting before subsection (1)—

“(1A) This section does not apply to an eligible prudentially regulated non-bank financial institution.”.

Section 34A

12. Section 34A of the Capital Markets Act is amended—

- (a) by omitting from subsection (5) “the Compensation Fund established under this Act” and substituting “the Capital Markets Compensation Fund”;
- (b) by omitting subsection (6); and
- (c) by omitting from subsection (7) “Investor Compensation Fund” and substituting “the Capital Markets Compensation Fund”.

Section 34B

13. Section 34B (4) of the Capital Markets Act is amended by omitting “Investor Compensation Fund” and substituting “Capital Markets Compensation Fund”.

Part 2 — Amendments of the Central Depositories Act

Section 2

1. Section 2 of the Central Depositories Act is amended by—

- (a) substituting for the definition of “Authority” the following—

“ ‘Authority’ means the Financial Services Authority established by the Financial Services Authority Act;”

- (b) inserting in appropriate alphabetical order—

“ ‘Financial Services Authority Act’ means the Financial Services Authority Act, 2016;”;

- (c) substituting for the definition of “Minister” the following—

“ ‘Minister’ means the Cabinet Secretary responsible for finance;”;

- (d) by adding at the end the following new subsection—

“(4) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning assigned to them under the Financial Services Authority Act.”.

New section 4A

2. The Central Depositories Act is amended by inserting after section 2 but in Part I—

Relationship
between Act
and Financial
Services
Authority Act

“2AA. (1) Except as otherwise provided by this Act or the Financial Services Authority Act, the powers and duties of the Authority under this Act are in addition to its powers and duties under the Financial Services Authority Act.

(2) Unless expressly provided otherwise in this Act, a reference in this Act to a matter being prescribed by the Authority shall be read as a reference to the matter—

- (a) being prescribed in a prudential rule or a conduct rule; or
- (b) being prescribed in writing by the Authority and published in a way required or permitted by this Act or the Financial Services Authority Act.

(3) A reference in this Act to a determined or prescribed fee shall be read as a reference to the relevant fee determined under section 178 of the Financial Services Authority Act.

(4) A reference in this Act to an appeal in relation to a decision of the Authority shall be read as a reference to a review of the decision by the Tribunal under the Financial Services Authority

Act.”.

Section 2A 3. (1) Section 2A of the Central Depositories Act is amended by omitting “The functions of the Authority under this Act shall be to” and substituting “The functions of the Authority shall include to”.

Section 59D 4. Section 59D of the Central Depositories Act is amended by adding at the end of subsection (1)—

“; or the central depository’s financial conduct licence is suspended or revoked under the Financial Services Authority Act.”.

Section 65 5. Section 65 of the Central Depositories Act is amended by—

- (a) omitting paragraph (2)(a);
- (b) omitting subsections (3) and (4).

Part 3 — Amendments of the Insurance Act

Section 2 1. Section 2 of the Insurance Act is amended by—

- (a) substituting for the definition of “authority” the following—

“ ‘Authority’ means the Financial Services Authority established by the Financial Services Authority Act;”;

- (b) omitting the definitions of “Board”, “Commissioner”, “financial institution” and “Tribunal”;
- (c) inserting in appropriate alphabetical order—

“ ‘Commissioner’ means the Chief Executive Officer of the Authority;

“ ‘Financial Services Authority Act’ means the Financial Services Authority Act, 2016;”;

- (d) by adding at the end the following new subsection—

“(2) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning assigned to them under the Financial Services Authority Act.”.

New section 2A

2. The Insurance Act is amended by inserting after section 2 but in Part I—

Relationship
between Act
and Financial
Services
Authority Act

“2A. (1) Except as otherwise provided by this Act or the Financial Services Authority Act, the powers and duties of the under this Act are in addition to its powers and duties under the Financial Services Authority Act.

(2) Unless expressly provided otherwise in this Act, a reference in this Act to a matter being prescribed by the Authority shall be read as a reference to the matter—

- (a) being prescribed in a prudential rule or a conduct rule; or
- (b) being prescribed in writing by the Authority and published in a way required or permitted by this Act or the Financial Services Authority Act.

(3) A reference in this Act to the Board or the Commissioner shall be read as a reference to the Authority.

(4) A reference in this Act to a determined or prescribed fee shall be read as a reference to the relevant fee determined under section 178 of the Financial Services Authority Act.

(5) A reference in this Act to an appeal in relation to a decision of the Authority shall be read as a reference to a review of the decision by the Tribunal under the Financial Services Authority Act.”.

Part II

3. The heading to Part II of the Insurance Act is amended to read “**Part II —The Authority**”.

Sections 3 to 4C
(inclusive), 168,
169, 170, 171,
172, 179, 181,
186, First
Schedule

4. Sections 3 to 4C (inclusive), 168, 169, 170, 171, 172, 179, 181 and 186 and the First Schedule of the Insurance Act are repealed.

Section 24

5. Section 24(1) of the Insurance Act is amended by omitting “the Minister” from paragraph (a) and substituting “the Authority”.

substituting “to provide”.

Section 2

2. Section 2 of the Retirement Benefits Act is amended by—

(a) substituting for the definition of “authority” the following—

“ ‘Authority’ or ‘authority’ means the Financial Services Authority established by the Financial Services Authority Act;”

(b) omitting the definitions of “Board”, “Chief Executive Officer”, “Fund”, “Levy” and “Tribunal”;

(c) inserting in appropriate alphabetical order—

“ ‘Financial Services Authority Act’ means the Financial Services Authority Act, 2016;”;

(d) substituting for the definition of “Minister” the following—

“ ‘Minister’ means the Cabinet Secretary responsible for finance;”;

(e) by adding at the end the following new subsection—

“(2) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the meanings assigned to them under the Financial Services Authority Act.”.

New section 2A

3. The Retirement Benefits Act is amended by inserting after section 2 but in Part I—

Relationship
between Act
and Financial
Services
Authority Act

“2A. (1) Except as otherwise provided by this Act or the Financial Services Authority Act, the powers and duties of the under this Act are in addition to its powers and duties under the Financial Services Authority Act.

(2) Unless expressly provided otherwise in this Act, a reference in this Act to a matter being prescribed by the Authority shall be read as a reference to the matter—

(a) being prescribed in a prudential rule or a conduct rule; or;

(b) being prescribed in writing by the

Authority and published in a way required or permitted by this Act or the Financial Services Authority Act.

(3) A reference in this Act to the Board or the Chief Executive Officer shall be read as a reference to the Authority.

(4) A reference in this Act to a determined or prescribed fee shall be read as a reference to the relevant fee determined under section 178 of the Financial Services Authority Act.

(5) A reference in this Act to an appeal in relation to a decision of the Authority shall be read as a reference to a review of the decision by the Tribunal under the Financial Services Authority Act.”.

Sections 3, 4, 6, 8,
9 to 21
(inclusive), 47 to
52 (inclusive), 56,
58 and 59 and
First Schedule

4. Sections 3, 4, 6, 8, 9 to 21 (inclusive), 47 to 52 (inclusive), 56, 58 and 59 and the First Schedule of the Retirement Benefits Act are repealed.

Section 5

5. Section 5 of the Retirement Benefits Act is amended by omitting all words before paragraph (a) and substituting “The objects and functions of the Authority include”.

Section 7

6. Section 7 of the Retirement Benefits Act is amended by omitting paragraphs (c), (e) and (f).

Section 28

7. Section 20 of the Retirement Benefits Act is amended—

(a) by inserting after paragraph (1)(c)—

“(ca) the financial conduct licence of the manager, administrator or custodian of the scheme is suspended or revoked under the Financial Services Authority Act;”; and

(b) by inserting after paragraph (2)(b)—

“(ca) the manager’s, custodian’s or administrator’s financial conduct licence is suspended or revoked under the Financial Services Authority Act;”.

Sections 43, 44

8. Section 45(2) of the Retirement Benefits Act is amended by

- and 45 omitting all words before paragraph (a) and substituting “The Authority—”.
- Section 55 9. Section 55 of the Retirement Benefits Act is amended by omitting paragraph (2)(e).
- Part 5 — Amendments of the Sacco Societies Act**
- Long title 1. The long title of the Sacco Societies Act is amended by omitting “to establish the Sacco Societies Regulatory Authority”.
- Section 2 2. Section 2 of the Sacco Societies Act is amended by—
- (a) inserting in its appropriate alphabetical location the following—
- “ ‘Authority’ means the Financial Services Authority established by the Financial Services Authority Act;”
- (b) omitting the definitions of “Board”, “Board of Trustees”, “chief executive officer”, “Deposit Guarantee Fund”, “General Fund”, “Tribunal” and “trustees”;
- (c) inserting in appropriate alphabetical order—
- “ ‘Financial Services Authority Act’ means the Financial Services Authority Act, 2016;”;
- (c) by substituting for the definition of “Minister” the following—
- “ ‘Minister’ means the Cabinet Secretary responsible for finance;”;
- (c) by adding at the end the following new subsection—
- “(2) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning assigned to them under the Financial Services Authority Act.”.
- New section 2A 3. The Sacco Societies Act is amended by inserting after section 2—
- Relationship between Act and Financial Services Authority Act “2A. (1) Except as otherwise provided by this Act or the Financial Services Authority Act, the powers and duties of the under this Act are in addition to its powers and duties under the Financial

Services Authority Act.

(2) Unless expressly provided otherwise in this Act, a reference in this Act to a matter being prescribed by the Authority shall be read as a reference to the matter—

- (a) being prescribed in a prudential rule or a conduct rule; or;
- (b) being prescribed in writing by the Authority and published in a way required or permitted by this Act or the Financial Services Authority Act.

(3) A reference in this Act to a determined or prescribed fee shall be read as a reference to the relevant fee determined under section 178 of the Financial Services Authority Act.

(4) A reference in this Act to an appeal in relation to a decision of the Authority shall be read as a reference to a review of the decision by the Tribunal under the Financial Services Authority Act.”.

Section 3

4. Section 3(2) of the Sacco Societies Act is amended by inserting “, in consultation with the Authority,” after “the Minister”.

Part II

5. Part II of the Sacco Societies Act is repealed and the following substituted—

“PART II — THE AUTHORITY

The Authority

5. The objects and functions of the Authority shall include to—

- (a) license Sacco societies to carry out deposit-taking business in accordance with this Act; and
- (b) regulate and supervise Sacco societies.

Section 24

6. Section 24 of the Sacco Societies Act is amended by omitting subsections (3), (4) and (5).

Section 25

7. Section 25(7) of the Sacco Societies Act is amended by

omitting “and its decision shall be final”.

Section 27

8. Section 27 of the Sacco Societies Act is amended—

(a) by adding at the end of subsection (1)—

“; or its financial conduct licence is suspended or revoked under the Financial Services Authority Act.”; and

(b) by omitting subsections (5) to (7).

Section 52

9. (1) Section 52 and Part VI of the Sacco Societies Act is repealed.

(2) The Schedule to the Sacco Societies Act is repealed.

Section 54

10. Section 54(1) of the Sacco Societies Act is amended by omitting “or the Minister”.

MEMORANDUM OF OBJECTS AND REASONS

1. The principal objective of the Financial Services Authority (FSA) Bill, 2016, is to create the Financial Services Authority (FSA) to take over and merge the mandate and functions of the Capital Markets Authority (CMA), the Insurance Regulatory Authority (IRA), the Retirement Benefits Authority (RBA), and the Sacco Societies Regulatory Authority (SASRA), to provide strengthened oversight of safety, soundness and market conduct (that is, protection of customer interests and regulation of how providers of financial products and services treat their customers) of the financial institutions that will come under the FSA. There are four primary policy motivations for the Government's proposal of the FSA Bill.
2. Firstly, in 2013, H.E. President received the report, and approved for implementation, the recommendation of the Presidential Taskforce on Parastatal Reforms, which among other measures, recommended the creation of a Financial Services Authority (FSA) to take over the mandate and functions of the CMA, RBA, IRA and SASRA, in order to save on costs, avoid duplication, enhance coordination and, more importantly, eliminate regulatory arbitrage, especially as more products and services are offered across sectoral boundaries.
3. Secondly, in 2014, the Committee on Increasing Private Sector Credit and Mortgage Finance, appointed by H.E. Deputy President finalised a major review of the factors prohibiting affordable and appropriate credit in particular, and financial services in general. The Committee recommended that the envisaged FSA should provide a clear and strong legal and institutional framework for protecting the interests of consumers of financial services (which has been lacking in Kenya). This framework should enhance consumer education and financial literacy, and provide full oversight of parts of the financial system and providers that are currently unregulated, as these unregulated providers expose Kenyans to vulnerabilities and potential abuse. The FSA was agreed as the institution to implement and operationalise these and other recommendations. However, to achieve this, the new Authority required a bill to facilitate its creation, and the FSA Bill is intended to achieve that objective.
4. Thirdly, successive Governments have attempted to create a framework for protecting customers of financial services and products, given the uniqueness and complexity of the financial sector and the products and services it offers. However, some of these attempts have not been successful. For example, the enactment of the Consumer Protection Act of 2012 did not address the specific and complex nature of abuses that are specific to the financial sector, since its focus was generic, looking at the economy across the board, rather than on credit and leasing specifically. The FSA Bill marks a watershed reform as it will create a robust and comprehensive framework that will address the uniqueness and complexity of financial services and products for the benefit of all Kenyans.

5. Finally, and more importantly, the Government continues to be concerned that many Kenyans do not enjoy sufficient protections of their interests when it comes to the financial sector. Given the recent closure of three commercial banks in a period of nine months, and the strengthening of banking supervision that is currently underway, the Government is desirous of ensuring that oversight of the non-bank and currently unregulated parts of the financial sector is strengthened, both for safety and soundness, but also for consumer protection and market conduct. Additionally, the FSA Bill will enable the Government to provide for the protection of consumers in line with Article 46 of the Constitution of Kenya (2010) that enshrines consumer protection with respect to goods and services provided by public and private entities.

6. The financial sector plays a pivotal role in the delivery of the Kenya Vision 2030, and is one of the key pillars for achievement of the Vision. The reforms in the financial sector are all aimed at achieving the Medium Term Plan (2013-2017) (MTP2) vision for the sector which is “*A vibrant and globally competitive financial sector driving high level of savings to finance Kenya’s investment needs*”. MPT2 identifies access, efficiency and stability as key strategic goals for the financial sector. The Government has created a supportive policy and regulatory environment which has resulted in the growth and development that we have witnessed in the sector. Today, more Kenyans have access to formal financial services, which has increased from 26.7% in 2006 to 75.3% in 2016.

7. However, as the sector evolves, new risks and challenges emerge. Therefore, it is incumbent upon all of us to ensure effective and appropriate oversight to guarantee protection of customers of financial services, and that the market develops in line the needs and aspirations of Kenyans. The need to strengthen consumer protection and conduct supervision has been identified for a long time in Kenya. Previous attempts have been hampered by the lack of a comprehensive legal and institutional framework and the fact that many providers of financial products and services currently do so outside the regulatory umbrella. The FSA Bill addresses these regulatory gaps in a comprehensive way. The Bill, when enacted and fully implemented, will establish comprehensive regulatory coverage of the Kenyan financial sector. All providers of financial products or services in Kenya will be licensed and regulated, either by the FSA or the CBK.

SPECIFIC OBJECTIVES AND PURPOSES

8. The key objectives and purposes of the FSA Bill are, among others:

- (a) To establish the Financial Services Authority (FSA) by taking over the existing regulatory roles and responsibilities of the Capital Markets Authority (CMA), the Insurance Regulatory Authority (IRA), the Retirement Benefits Authority (RBA), and the Sacco Societies Regulatory Authority (SASRA);

- (b) To provide the FSA with the mandate and legal powers to prudentially regulate and supervise financial conglomerates that are not otherwise supervised by the Central Bank of Kenya (CBK);
- (c) To provide the FSA with the mandate and powers to regulate and supervise the conduct of all providers of financial products and services in Kenya that are not otherwise supervised by the Central Bank of Kenya (CBK), or any other entity;
- (d) To establish a low-cost dispute resolution scheme for aggrieved financial customers of all non-bank financial institutions regulated by the FSA. This is a major improvement as, for the first time, consumers will have a legal mechanism that effectively settles disputes they have with their providers on a timely basis. Decisions by the scheme will be binding on the financial institution.
- (e) To establish a compensation fund to compensate financial customers who have suffered a loss from a contravention of a financial sector law by a non-bank financial institution regulated by the FSA;
- (f) To establish a Tribunal to review certain reviewable decisions where they are raised by licensed individuals and entities who are aggrieved by such a decision made by the FSA, self-regulatory organisations (SROs), and the manager of the Compensation Fund;
- (g) To provide clear coordination and cooperation arrangements between the FSA, the CBK and other domestic and international bodies for the achievement of the goals and objectives set out in the FSA Bill.

KEY PRINCIPLES

9. The philosophy of the FSA Bill is underpinned by two fundamental principles, namely:

- (a) Firstly, that there should be no gaps in the regulatory coverage of the Kenyan financial system. The basis of extending the regulatory net is built on the proposition that, while only a sub-set of financial institutions warrant prudential regulation, all such institutions warrant conduct regulation, that is, to govern and oversee how financial institutions treat their customers and to ensure they do so fairly;
- (b) Secondly, that the CBK's range of regulatory responsibilities should not be diminished by the establishment of the FSA. If the CBK currently regulates a provider of a financial product or service (for either prudence or conduct), the intention is that it will continue to do so after the FSA Bill is enacted. Put simply, the FSA will be the default regulator in the event that the CBK does not regulate an entity that should be regulated.

10. These principles inform how the Bill and its various clauses have been designed.

PART I: SELECTED KEY DEFINITIONS

11. Some of the key definitions contained in Part I of the Bill are as follows:

- (a) Central Bank of Kenya supervised entities — means, except as specified in regulations made for this definition, an entity regulated by the Central Bank of Kenya under a written law.
- (b) Non-bank financial institution – means each of the following— (a) a financial product provider; (b) a financial service provider; (c) a person licensed or required to be licensed under a financial sector law; (d) a holding company in a financial conglomerate; (e) an SRO; (f) an institution of a kind specified in regulations made for this definition; but not the Central Bank of Kenya or a Central Bank of Kenya supervised entity;
- (c) Non-bank financial sector – means the sector comprised of non-bank financial institutions (as defined above);
- (d) Non-bank financial conglomerate – means a group (as defined in the Companies Act) designated as such under section 80 (Section 80(3), in turn limits the FSA’s power to designate conglomerates to groups for which the holding company is not a CBK supervised entity);

12. These definitions have been constructed deliberately so as to ensure that there is both comprehensive regulatory coverage of the financial system and elimination of any duplication or conflict with other laws or entities.

PART II: ESTABLISHMENT OF THE FSA AND ITS AUTONOMY

13. Establishes the FSA as an independent regulatory agency, with a governance and oversight board, a Chief Executive Officer and the legal powers needed to operate as a legal entity. The FSA’s Board will include a combination of *ex officio* members (including the Governor of the CBK for coordination purposes) and qualified independent members (including an independent Chair). Independent members will be appointed by a combination of the President and Cabinet Secretary, and the Bill includes requirements for their suitability and terms of their dismissal.

14. The independence of the FSA is protected by Section 4, which states that no person shall give a direction to the Authority in relation to a particular case. The use of the term “particular” recognises that the FSA is a public agency that operates under delegation from the Government. Thus, the FSA is subject to the Government’s overall policy direction for the sector, but not subject to direction with respect to decisions about individual institutions or specific set of issues before it.

PART III: PRUDENTIAL AND CONDUCT RULES

15. Part III of the Bill provides the FSA with a broad power to originate and issue (in consultation with the Cabinet Secretary) both prudential and conduct rules. As the complexity of financial sector activity has increased over time it has become increasingly common around

the world for primary law to specify the broad principles and for the regulator to elaborate the details of the regulatory regime in subordinate instruments such as rules, regulations or standards. Not only do subordinate instruments allow a level of granularity that would be inappropriate in primary law, it provides the regulator with greater flexibility to adapt quickly to changes in the market, international and other circumstances that arise.

16. The power to make conduct rules is a new power and will apply not only to the four prudentially regulated sectors but also to currently unregulated providers of financial products or services. The conduct rules will, in effect, set out the FSA's expectations and requirements for good behavior and practices in terms of how non-bank financial sector players treat their customers.

17. The prudential rules supplement the equivalent prudential powers in the underlying sectoral statutes for each of the regulators. It is expected that, in a second round of reforms, the sectoral acts will be amended and the powers better aligned. Until that time the FSA will be able to issue a prudential rule under either the sectoral statutes of the FSA law itself. Since the FSA Bill provides powers that can be applied equally to all four sectors (capital markets, insurance, pensions and Saccos), it is expected that the power to issue rules and regulations will give sufficient stamina for the FSA to establish common standards across the four industries and decisively deal with issues that arise in order to protect consumers and foster market development.

PART IV: MARKET CONDUCT LICENSE

18. The market conduct licensing will be the cornerstone of effective regulation and will provide the FSA with effective powers and ability to authorise and ensure that provisions of this law are implemented in full. A conduct licence will be required of every financial institution (that is not a CBK supervised entity) that provides a financial product or service to customers in Kenya, unless it is exempted, under very specific circumstances, by the FSA. The FSA will also inherit a range of licensing arrangements from its predecessor regulatory agencies. These two types of licences are quite distinct.

19. Whereas the sectoral licences authorise an entity to operate as a particular type of financial institution (such as a pension fund or an insurer), the conduct licence is additional to any such institutional licence and essentially provides the holder with an authorisation to deal with customers and treat them fairly. Failure to do so will attract sanctions, penalties and other forms of punishment. Importantly, the fact that the conduct licence applies to all (non-CBK supervised) providers of financial products or services, regardless of any other licence they may hold, means that the FSA will have the capacity to extend the regulatory perimeter (for consumer protection purposes) beyond those entities that were licensed (or otherwise authorised) by the predecessor regulators that are being merged.

20. The Bill recognises that implementing such a comprehensive licensing regime will take time. Consequently, all entities are initially exempted from the licensing condition on a transition basis, but with the requirement that the FSA will roll out the licensing requirement over time. The FSA is required to make public its timetable for rolling out the conduct licensing requirement, which should start no earlier than six months and no longer than three years. This timeframe may be changed and/or extended with the Cabinet Secretary's concurrence.

PART V: SELF-REGULATORY ORGANIZATIONS

21. Self-regulatory organisations (SROs) can support a regulator such as the FSA by setting rules and providing discipline for their members. Part V of the FSA Bill allows the FSA to delegate certain regulatory roles and responsibilities to SROs under strict conditions and obligations on the part of the SRO.

22. It is a condition of authorisation for an SRO that it must satisfy all of the FSA's requirements and demonstrate the capacity to:

- (a) support the objectives of relevant governing laws, regulations and its own rules;
- (b) enforce compliance by its members and associated persons subject to those laws, regulations, and rules; and
- (c) impose appropriate sanctions for non-compliance.

PARTS VI AND VII: DESIGNATION AND SUPERVISING NON-BANK FINANCIAL CONGLOMERATES/GROUPS

23. Financial conglomerates, that offer multiple financial products and services are a feature of Kenya's financial system. It is also a feature of Kenya's financial system that many financial conglomerates are currently unregulated on a consolidated basis. The risk in this situation is that conglomerates can use gaps in regulation to take advantage of parts in the regulatory framework where there is least oversight and scrutiny, hence putting customers and their funds at risk.

24. An emerging feature of Kenya's system is that not all financial groups are headed by banks, even where the group includes one or more banks. Currently in Kenya the CBK has power to regulate banking groups on a consolidated basis. This ensures that such groups do not create undue risk for the licensed entities within the group and that any contagion among entities within a group can be managed. As noted earlier, the principles underlying this Bill include that there should be no regulatory gaps. Thus, the Bill establishes a framework under which financial groups that are not regulated by the CBK may be designated as a non-bank financial group and regulated (primarily for prudence) as such by the FSA.

25. To avoid unnecessary regulation of low-risk entities, the Bill defines a sub-group of financial institutions called "eligible financial institutions". These include insurance

companies, Saccos, and financial market infrastructures such as exchanges and clearing houses. Part VI of the FSA Bill allows the FSA to approve significant owners of such institutions. Part VII allows the FSA to designate a non-bank financial group that includes an eligible non-bank financial institution and a holding company (provided it is not a CBK supervised entity) and to regulate and supervise such a group on a consolidated basis. Since such groups may include a CBK supervised entity (e.g., where a bank is a subsidiary of a Sacco or an insurance company), certain protections are included to preserve the CBK's mandate. It should be noted that the CBK will continue to regulate any CBK supervised entities within a non-bank financial group on a solo basis; the FSA will likewise regulate any FSA regulated entities in the group on a solo basis, as well as the group on a consolidated basis.

PART VIII: INFORMATION GATHERING

26. Part VIII gives the FSA powers to summon or acquire information from institutions that it regulates, and there will be appropriate penalty for non-compliance. Updated information and data is the lifeline that underpins effective regulatory practices and decisions. This is especially true for Kenya for three key reasons. One, for parts of the financial sector where the FSA will be covering parts of the financial system have hitherto been unregulated (hence little or no information exists on the players, risks, and so on). Two, the financial sector changes rapidly and new risks emerge, resulting in abuses that need to be addressed on the basis of up to date information. Thirdly, financial literacy levels in Kenya are improving, but are still quite low, providing an environment for unscrupulous providers to exploit ignorant or misinformed customers.

PART IX: INSPECTIONS, INVESTIGATIONS AND ENFORCEMENT

27. A regulator is unlikely to be effective unless it has both the legal power to enforce the law (including any rules that have been set). Parts IX to X deal with the FSA's powers. These include the power to conduct routine on-site inspections of licensed entities, to investigate suspected breaches of the law, and to impose sanctions. The FSA Bill provides the FSA with a graduated set of enforcement powers that are designed to allow it to impose sanctions that are proportionate to the nature of the regulatory breach. These enforcement powers include:

- (a) directives;
- (b) enforceable undertakings;
- (c) administrative penalties; and
- (d) debarment.

PART XI: DISPUTE RESOLUTION FOR AGGRIEVED CUSTOMER

28. Consistent with international experience and best practice, Part XI of the FSA Bill provides for the establishment of a statutory Financial Sector Ombudsman Scheme for the non-bank financial institutions regulated by the FSA. This is a significant improvement for

enacting new laws in each of these four statutes would have been a burdensome, demanding and time-consuming process that would have resulted in complexity and possible problems in implementation and oversight.

PHASED AND GRADUAL IMPLEMENTATION

35. The Government recognises that the changes that will be ushered in by the FSA law will be momentous and demanding, specifically for the four regulatory institutions that will be merged, and for the non-bank financial sector in general. For the four agencies, there will be significant work on preparing for the merger, further review and alignment of the underlying statutes, integration of systems, organisational cultures and prior preparation for the new framework in order to ensure successful roll out. This is to be done while they are currently discharging their current mandates and day to day operations.

36. It is for this reason that the Government is implementing the new framework on a gradual and phased approach that will proceed as follows:

- *Phase I* – Finalisation and enactment of the FSA Bill in order to provide a clear and strong legal framework for the consolidated regulator as per the policy rationale and objectives set out above, including stakeholder consultations
- *Phase II* – there will be multiple processes undertaken in parallel in this phase, for example.
 - Transition and implementation planning, to ensure sufficient readiness for merger and implementation in anticipation of approval of the FSA Bill
 - Review of the related statutes, especially the four sub-sector laws, in order to fully align them with the new framework. It was deemed necessary to first create the FSA so that it can be the legal entity to lead the review and reform of the law that it will be expected to implement
 - Training, re-tooling and beefing up capacity to ensure there is requisite staff and systems to roll out the new framework and manage day to day operations
 - More work streams will also be rolled out to minimise disruption during the transition and preparation for change
- *Phase III* – further improvements in the regulatory framework, including further legal review and development to ensure effectiveness and efficiency of the new regulatory framework, macro-prudential and crisis management frameworks

37. The enactment of this Bill shall occasion additional expenditure of public funds which will be provided for through the annual estimates.

the Kenyan consumer of financial services who have lacked an effective and statutory mechanism to ensure that complaints and grievances are dealt with in an effective and timely basis. Aggrieved customers should first attempt to resolve their disputes with the financial institution. But a failure to reach resolution does not prevent the customer from having access to the Ombudsman scheme. The Ombudsman may hear grievances where the customer believes the financial product or service provider has contravened the law, breached their product or service contract, or treated them unfairly. Decisions by the Ombudsman are binding on the financial institution.

PARTS XII AND XIII: COMPENSATION SCHEME AND TRIBUNAL

29. The Bill also establishes a single framework for the establishment and operation of industry-based compensation schemes (Part XII). While the general principle of each fund is to provide compensation to customers who have suffered loss as a result of unfair or fraudulent action by an FSA-licensed entity, the way in which the particular schemes will operate in practice is likely to vary materially. Thus the details of the schemes will be set down in regulations following enactment of the Bill.

30. Part XIII of the Bill also establishes a single Tribunal to hear and adjudicate on industry grievances against the FSA.

PARTS XIV: FINANCIAL PROVISIONS

31. This part establishes a number of funds that will be important in the operation of the FSA and the discharge of its mandate, including the Ombudsman and Compensation funds. Overall, the FSA is expected to continue the practice set by its predecessor agencies in terms of its operations and functions being industry funded. Little or no reliance on the Government for funding operations will ensure autonomy, independence and effectiveness of the FSA.

PARTS XV AND XVI: MISCELLANEOUS PROVISIONS AND CONSEQUENTIAL AMENDMENTS

32. A number of miscellaneous provisions are contained in Part XV of the FSA Bill and transitional provisions in Part XVI.

FIRST AND SECOND SCHEDULES

33. The first schedule of the FSA Bill sets out how the FSA Board will conduct its affairs.

34. The second schedule is an important part of the FSA Bill that has a set of amendments to the four sectoral underlying laws and others to ensure that the FSA is able to operate effectively with the context of the Capital Markets Act (Cap. 485A), Central Depositories Act (Cap. 485D), Insurance Act (Cap. 487), Retirement Benefits Act (Cap. 197) and Sacco Societies Act (Cap. 490B), which will continue to operate until they are reviewed in the second phase in order to fully align them to the new regulatory structure. Reviewing and

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ARRANGEMENT OF CLAUSES

Clause

PART I — PRELIMINARY

- 1—Short title and commencement
- 2—Interpretation
- 3—Financial products
- 4—Financial services
- 5—Significant owners
- 6—Fit and proper person requirements
- 7—Compliance by bodies corporate
- 8—Application of Statutory Instruments Act

PART II — THE FINANCIAL SERVICES AUTHORITY

- 9—Establishment of the Authority
- 10—Objectives of the Authority
- 11—Functions of the Authority
- 12—Powers of the Authority
- 13—Co-operation and collaboration
- 14—Memorandums of understanding
- 15—The Board
- 16—Functions of the Board
- 17—Board committees
- 18—Board procedure
- 19—Chief Executive Officer
- 20—Role of Chief Executive Officer
- 21—Delegations
- 22—Common seal
- 23—Board Secretary
- 24—Staff
- 25—Liability
- 26—Confidentiality
- 27—Annual and other reports

PART III — PRUDENTIAL AND CONDUCT RULES

- 28—Prudential rules
- 29—Conduct rules
- 30—Unfair business practices
- 31—Prudential rules and conduct rules —additional matters
- 32—Prudential or conduct rules requiring concurrence of or consultation with Central Bank of Kenya

PART IV — FINANCIAL CONDUCT LICENCES

- 33—Requirement for financial conduct licences
- 34—Exemptions for Central Bank of Kenya supervised entities and securities issuers
- 35—Exemption orders
- 36—Phase in for licensing requirement
- 37—Grant of financial conduct licences
- 38—Applications for financial conduct licences
- 39—Criteria for grant of financial conduct licences
- 40—Determination of applications
- 41—Scope of financial conduct licences
- 42—Reporting obligations of licensees

- 43—Financial conduct licences not transferable
- 44—Varying financial conduct licences
- 45—Suspending financial conduct licence
- 46—Revoking financial conduct licences
- 47—Continuation of licensed activity despite suspension or revocation
- 48—Procedure for varying, suspending and revoking conduct licences
- 49—Disclosure of financial conduct licences
- 50—Licences, variations, suspensions and revocations to be published
- 51—Other provisions not limited

PART V — SELF-REGULATORY ORGANISATIONS

- 52—Authorising SROs to perform Authority's functions
- 53—Applications for SRO authorisations
- 54—Criteria for SRO authorisation
- 55—Determination of applications for authorisation as an SRO
- 56—Varying SRO authorisations
- 57—Suspending SRO authorisations
- 58—Revoking SRO authorisation
- 59—Continuation despite suspension or revocation
- 60—Procedure for varying, suspending and revoking SRO authorisations
- 61—SRO authorisations, variations, suspensions and revocations to be published
- 62—Other provisions not limited
- 63—Amendments to SRO constitutions to be approved
- 64—SRO rules
- 65—Directives to SROs
- 66—Disciplinary action by SROs to be notified
- 67—Change of SRO key personnel to be notified
- 68—Offence
- 69—Liability
- 70—Annual reports of SROs

PART VI — ELIGIBLE PRUDENTIALLY REGULATED NON-BANK FINANCIAL INSTITUTIONS

- 71—Approval to become significant owner of eligible prudentially regulated non-bank financial institution
- 72—Notification of increase in significant owner's control of eligible prudentially regulated non-bank financial institution
- 73—Authority to be notified of compromises and arrangements involving eligible prudentially regulated non-bank financial institutions
- 74—Transfer of business of eligible prudentially regulated non-bank financial institutions
- 75—Sections 73 and 74 prevail over Companies Act
- 76—Statutory managers for eligible prudentially regulated non-bank financial institutions
- 77—Role of statutory manager
- 78—Duration of statutory management
- 79—Winding up eligible prudentially regulated non-bank financial institutions

PART VII — NON-BANK FINANCIAL CONGLOMERATES

- 80—Designation of non-bank financial conglomerates
- 81—Procedure for making and varying designations
- 82—Notifications by eligible prudentially regulated non-bank financial institutions
- 83—Licensing requirement for holding companies in non-bank financial conglomerates
- 84—Non-operating holding companies of non-bank financial conglomerates
- 85—Obligations to provide information to holding companies
- 86—Approval of acquisitions and disposals