

LAWS OF KENYA

**THE CAPITAL MARKETS
ACT**

CHAPTER 485A

THE CAPITAL MARKETS ACT

ARRANGEMENT OF SECTIONS

Section

PART I - PRELIMINARY

1. Short title.
2. Interpretation
3. Meaning of the term “associated person”.
4. Definition of “interest in securities”.

PART II - THE CAPITAL MARKETS AUTHORITY.

5. Establishment and membership of the Authority.
6. Meetings and procedures of the Authority.
7. Seal and execution of documents.
8. Appointment of chief executive of the Authority.
9. Appointment and remuneration of staff.
10. Protection from legal action.
11. Objectives of the Authority.
12. Power of Authority to issue rules, regulations and guidelines.
13. Furnishing of information to the Authority.
14. Committees
15. General fund.
16. Financial year of Authority.
17. Accounts
18. Establishment of the Investor Compensation Fund.
- 18A. The Investor Compensation Fund Board.

PART III - PROVISIONS RELATING TO SECURITIES EXCHANGES

19. Approval of securities exchange required.
20. Application for securities exchange approval.
21. Changes in securities exchange rules.
22. Disciplinary action by securities exchange.

PART IV - SECURITIES INDUSTRY LICENCES

23. Licences required
24. Application for licence.
25. Renewal of licence.
- 25A. Imposition of additional financial sanctions and penalties.
26. Revocation of licence.
27. Gazettement and register of licence holders
28. Obligation to report changes.
29. Licensing requirements.
30. Procedure for collective investment schemes

PART V - SECURITIES TRANSACTIONS AND REGISTERS

- 30A. Publication of Information Memorandum
31. Transactions in securities.
32. Register of Interest in securities

PART VI – INSIDER TRADING

- 32A. Prohibition against use of unpublished insider information
33. Insider trading prohibited.

PART VII – MISCELLANEOUS PROVISIONS

- 33A. Powers of the Authority to intervene in management of a licensee
- 33B. Prohibited conduct to be reported
- 33C. Asset Backed Securities
- 34. Other offences
- 34A. Financial penalties
- 35. Appeals from action by the Authority.
- 35A. Establishment of the Capital Markets Tribunal.
- 36. Regulations
- 37. Supercession
- 38. Prosecution of offences
- 39. Exemption from Cap. 446

CHAPTER 485A

THE CAPITAL MARKETS ACT

Date of Amendment: 22nd August, 2000

(Amended by Act
No. 15 of 2003)

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

ENACTED by the Parliament of Kenya, as follows:-

PART I - PRELIMINARY.

Short title.

1. This Act may be cited as the Capital Markets Act.

Interpretation

2. In this Act, unless the context otherwise requires -

“agent”, means any person appointed in writing by a licensee, to perform any of the functions ordinarily performed by the licensee on behalf of the licensee;

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

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

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

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

“collective investment scheme” includes an investment company, a unit trust, a mutual fund or other scheme which is incorporated or organized under the laws of Kenya which-

- (a) collects and pools funds from the public or a section of the public for the purpose of investment;

- (b) is managed by or on behalf of the scheme by the promoter of the scheme;

and includes an umbrella scheme whose shares as herein defined are split into a number of different class schemes or sub-schemes, each of which is managed by or on behalf of a common promoter, but does not include –

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

Cap. 488

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

Cap. 486

“company” means a company formed and registered under the Companies Act;

“Compensation Fund” means the Investor Compensation Fund established by section 18.

“dealer” means a person who carries on the business of buying, selling, dealing, trading, underwriting or retailing

of securities; whether or not he carries on any other business;

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

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

Cap. 486

“director” has the meaning assigned to it in the Companies Act;

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

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

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

“information memorandum” means any prospectus or document, notice, circular, advertisement, or other invitation in print or electronic form containing information on a company or other legal person authorized to issue securities or a collective investment scheme calculated to invite offers from the public or a section of the public to subscribe for the purchase of securities;

“insider” means any person who, is or was connected with a company or is deemed to have been connected with a company, and who is reasonably expected to have access, by virtue of such connection to unpublished information which if made generally

available would be likely to materially affect the price or value of the securities of the company, or who has received or has had access to such unpublished information;

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

- (1) carries on the business, of advising others concerning securities; or
- (2) as part of a regular business, issues or promulgates analyses or reports concerning securities; or
- (3) pursuant to a contract or arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise) the management of a portfolio of securities for the purpose of investment, where the total portfolio does not exceed the amount prescribed by the Authority from time to time; or
- (4) deals with long term financing equity and debt and acts as adviser or underwriter in relation to a public issue of securities; or
- (5) such other persons as the Authority may, by rules or regulations, determine to be within the intent of this definition; but the expression does not include –

(Cap.488)

(a) a bank as defined in section 2 of the Banking Act;

(Cap.487)

(b) a company or association registered under Part III of the Insurance Act

(c) an advocate, accountant or certified public secretary in practice whose carrying on of that business is solely incidental to the practice of his profession;

(Cap. 167)

(d) a trust corporation within the meaning of the Trustee Act;

- (e) a dealer or his employee whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities; or
- (f) a person who is the proprietor of a newspaper and holder of a permit issued under the Books and Newspapers Act where -
 - (i) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
 - (ii) the advice is given or the analyses or reports are issued or promulgated only through that newspaper;
 - (iii) that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports; and
 - (iv) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper proprietor;

(Cap.111)

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

"investment company" means a collective investment scheme organized as a limited liability company under

the Companies Act in which the rights of participants are represented by shares of that company.

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

“member” means a person who is recognized as a member of a securities exchange;

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

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

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

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

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

- (c) in any other case, the price at which, or the consideration for which particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities;

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

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

"securities" means -

- (a) debentures or bonds issued or proposed to be issued by a government;
- (b) debentures, shares, bonds, commercial paper, or notes issued or proposed to be issued by a body corporate;
- (c) any right, warrant, option or futures in respect of any debenture, shares, bonds, notes or in respect of commodities;
- (d) any unit, interest or share offered under a collective investment scheme; or
- (e) any instruments commonly known as securities but does not include –
 - (i) bills of exchange;
 - (ii) promissory notes; or
 - (iii) certificates of deposits issued by a bank or financial institution licensed under the Banking Act;

Cap 488

"securities exchange" means a market, exchange, securities organization or other place at which securities are offered for sale, purchase or exchange, including any

clearing, settlement or transfer services connected therewith;

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

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

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

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

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

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

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

securities and to participate proportionately in the income or profits derived therefrom.

Meaning of the term 'associated person.'

3(1)

For the purpose of this Act, a reference to a person associated with another person shall be construed as a reference to -

- (a) where the other person is a body corporate -
 - (i) a director or secretary of the body corporate;
 - (ii) a body corporate that is related to the other person; or
 - (iii) a director or secretary of such related body corporate;

- (b) whether the matter to which the reference relates in the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an understanding or undertaking, whether express or implied -
 - (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the body corporate;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
 - (iii) under which either of those persons may acquire from the other of them shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other of them.

- (c) a person in concert with whom the other person is acting or proposes to act, in relation to the matter to which the reference relates;

- (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise or control the exercise of, the

voting power attached to voting shares in a body corporate -

- (i) subject to subsection (2), a person who is a director of a body corporate that carries on a business of a dealing in securities and of which the other person is also a director;
- (ii) subject to subsection (2), a person who is a director of a body corporate of which the other person is director, not being a body corporate that carries on a business of dealing in securities; or
- (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is, by virtue of any law, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) whether the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with the person mentioned in paragraph (a), (b), (c), (d), (e), or (f), that last mentioned person.

(2) Where it is alleged that a person referred to in subsection (1) (d) (i) and (ii) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to the subject matter unless the person alleging the association proves that the first mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be deemed to be associated with another person by virtue of subsection (1) (b), (c), (e), or (f) solely by reason of the fact that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to this professional capacity or to his business relationship with the other person.

Definition of "interest in shares". (4) (1)

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

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

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

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

- (a) where he has entered into a contract to purchase a security;
- (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfillment of a condition or not;
- (c) where he has the right to acquire a security, or an interest in a security, under an option, whether on the fulfillment of a condition or not; or

- (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.
- (4) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (5) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.
- (6) There shall be disregarded -
 - (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
 - (b) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
 - (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
 - (d) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.
- (7) An interest in a security shall not be disregarded by reason only of -
 - (a) its remoteness;
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

PART II - THE CAPITAL MARKETS AUTHORITY

Establishment
and membership
of the Authority

- 5 (1) There is hereby established an authority to be known as the Capital Markets Authority.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of -
- (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
 - (c) borrowing and lending money;
 - (d) entering into contracts; and
 - (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.
- (3) The Authority shall consist of -
- (a) a chairman to be appointed by the President on the recommendation of the Minister;
 - (b) six other members appointed by the Minister;
 - (c) the Permanent Secretary to the Treasury or a person deputed by him in writing for the purposes of this Act;
 - (d) the Governor of the Central Bank of Kenya or a person deputed by him in writing for the purposes of this Act;
 - (e) the Attorney-General or a person deputed by him in writing for the purposes of this Act;
 - (f) the Chief Executive of the Authority.
- (4) The chairman and every member appointed under paragraph(b) of subsection (3) shall be

appointed from amongst persons who have experience and expertise in legal, financial, banking, accounting, economics or insurance matters.

- (4A) The chairman and every member appointed under paragraph (b) of subsection (3) shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years.
- (4B) The members of the Authority shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.
- (5) Any member appointed under paragraph (b) of sub-section (3) shall cease to hold office if-
 - (a) he delivers to the Minister a written resignation of his appointment;
 - (b) on the advice of the Authority, the Minister removes him from office on the grounds that he is incapacitated by mental or physical illness or is otherwise unable or unfit to discharge the functions of a member or is unable to continue as a member;
 - (c) he has been absent from three consecutive meetings of the Authority without leave or good cause;
 - (d) he is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (e) he is sentenced by a court to imprisonment for a term of six months or more; or
 - (f) his is convicted of an offence involving dishonesty, fraud or moral turpitude.
- (6) In the event of vacation of office by any member appointed under paragraph (b) of subsection (3) the Minister may appoint

another person to hold office for the expired period of the term of office of the member in whose place he is appointed.

- (7) If any member of the Authority appointed under paragraph (b) of subsection (3) is temporarily unable to perform his duties, the Minister may appoint another person to act in his place during the period of his absence.
- (8) The members of the Authority shall be paid such remuneration and allowances out of the general fund of the Authority as may be determined by the Minister.

Meeting and procedures
of the Authority

- 6 (1) The Board shall meet not less than six times in ever financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.
- (2) The quorum for the conduct of the business of the Board shall be six members including the chief executive.
- (3) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
- (4) All questions for decisions at any meeting of the Authority shall be decided by the vote of the majority of the members present and in case of an equality of votes the chairman shall have a casting vote.
- (5) If the chairman of the Authority, by reason of extended illness or absence is temporarily unable to perform the duties of his office, the President, on the recommendation of the Minister, shall appoint another member of the Authority to act in his place during the period of absence.
- (6) The chairman may at any time resign by a letter addressed to the President and the resignation shall take effect upon being accepted by the President.

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

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

Seal and execution of documents

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

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

- (3) All documents, other than those required by law to be under seal, made by, and all decisions of, the Authority may be signified under the hand of the chairman, in the case of a decision taken at a meeting at which the chairman is not present, under the hand of the person presiding at such meeting.

Appointment of chief executive of the Authority

- 8 (1) There shall be a chief executive of the Authority who shall be appointed by the President on the recommendation of the Minister and who shall, subject to this section, hold office on such terms and conditions of service as may be specified in the instrument of appointment, or otherwise from time to time.

- (2) No person shall be qualified for appointment under this section unless such person -
 - (a) has at least ten years' experience at a senior management level in matters relating to law, finance, accounting, economics, banking or insurance; and
 - (b) has expertise in matters relating to money or capital markets or finance.
- (3) The Minister, in consultation with the Board, shall recommend to the President a person qualified in terms of this section for appointment as the chief executive.
- (4) The chief executive shall hold office for a period of four years but shall be eligible for re-appointment for a further term of four years:

Provided that no person shall serve as the Chief Executive for more than two terms.

Act No. 2 of 2002

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

Appointment and
Remuneration of staff

- 9. (1) The Authority may appoint such other officers and servants as it considers necessary for the efficient discharge of its responsibility and functions.
- (2) The officers and servants appointed under subsection (1) shall be remunerated in such manner and at such rates, and shall be subject to such conditions of service, as may be determined by the Authority.
- (3) Every officer or servant appointed under subsection (1) shall, subject to this Act, exercise such powers and functions and perform the duties assigned to him from time to time by the chief executive.

Protection from legal action 10. (1)

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

- (2) Any expenses incurred by any person referred to in subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under the Act or on the direction of the Authority shall, if the court holds that such act was done in good faith, be paid out of the general fund of the Authority, unless such expenses are recovered by him in such suit or prosecution.

Objectives of the Authority

11. (1)

The principles objectives of the Authority shall be –

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

- (f) the development of a framework to facilitate the use of electronic commerce for the development of capital markets in Kenya.
- (2) A reference to electronic commerce shall be construed as a reference to the use of information technology to effect linkages among functions provided by licence d person or other market participants and describes technology platforms that allow –
- (a) the transfer and dissemination of market information to a wider number of users within and between networks;
 - (b) the offer, distribution or delivery in electronic form of securities or services ordinarily provided by licence d persons; and
 - (c) the execution of securities transactions without the need for parties to the transaction to be physically present at the same location.
- (3) For the purpose of carrying out its objectives the Authority may exercise, perform or discharge all or any of the following powers, duties and functions -
- (a) advise the Minister on all aspects of the development and operation of capital markets;
 - (b) implement policies and programs of the Government with respect to the capital markets;
 - (c) employ such officers and servants as may be necessary for the proper discharge of the functions of the Authority
 - (cc) impose sanctions for breach of the provisions of this Act or the regulations made thereunder, or for non-compliance

with the Authority's requirements or directions, and such sanctions may include –

- (i) levying of financial penalties, proportional to the gravity or severity of the breach, as may be prescribed;
- (ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;
- (iii) publishing findings of malfeasance by any person;
- (iv) suspending or canceling the listing of any securities, or the trading of any securities, for the protection of investors;
- (d) to frame rules and guidelines on all matters within the jurisdiction of the Authority under this Act as such rules and guidelines may prescribe -
 - (i) the financial penalties or sanctions for breach of the Authority's rules or non-compliance with the Authority's requirements;
 - (ii) the fees payable annually by a securities exchange or a central depository or for securities transactions, licences and approvals required by this Act to be issued or granted on an application to the Authority.
 - (iii) the disclosure requirements and other terms and conditions on which securities may be listed on or de-listed from a securities exchange or offered for sale to the public or a section thereof;
- (e) to grant a licence to any person to operate as a stockbroker, dealer or investment adviser, fund manager, investment bank or authorized securities dealer, and ensure the proper conduct of that business

- (f) to grant approval to any person to operate as a securities exchange, central depository, credit rating agency, registered venture capital fund or to operate in any other capacity which directly contributes to the attainment of the objectives of this Act and to ensure the proper conduct of that business.
- (g) register, approve and regulate collective investment schemes;
- (h) inquire, either on its own motion or at the request of any other person, into the affairs of any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are traded on an approved securities exchange;
- (i) give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are traded on an approved securities exchange;
- (j) conduct inspection of the activities, books and records of any persons approved or licenced by the Authority;

Deleted by The Finance Act No. 9 of 2007 (k);

Deleted by The Finance Act No. 9 of 2007 (l);

- (m) appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or public company the securities of which are traded on an approved securities exchange, if such action is deemed to be in the interest of the investors, at the expense of such collective investment scheme or company;
- (n) grant compensation to any investor who suffers pecuniary loss resulting from the failure of a licenced broker or dealer to meet his contractual obligations;

- (o) have recourse against any person whose act or omission has resulted in a payment from the Compensation Fund;
- (p) act as an appellate body in respect of appeals against any securities exchange or central depository in actions by parties aggrieved thereby;
- (q) co-operate or enter into agreements for mutual co-operation with other regulatory authorities for the development and regulation of cross-border activities in capital markets;
- (r) regulate and oversee the issue and subsequent trading, both in primary and secondary markets, of capital market instruments;
- (s) regulate the use of electronic commerce for dealing in securities or offer services ordinarily carried out by a licensed person;
- (t) trace any assets, including bank accounts, of any person who, upon investigation by the Authority, is found to have engaged in any fraudulent dealings in securities or insider trading;
- (u) in writing, order caveats to be placed against the title to such assets or prohibit any such person from operating any such bank account as may be directed by the Authority, pending determination of any charges instituted against that person;
- (v) prescribe rules or guidelines on corporate governance of a company whose securities have been issued to the public or a section of the public;
- (w) do all such other acts as may be incidental or conducive to the attainment of the objectives of the Authority or the exercise of its powers under this Act.

Inserted by Act No. 2 of 2002

Power of
Authority to
issue rules,
regulations
and guidelines

12.(1) Without prejudice to the generality of the powers conferred by section 11, the Authority with the consultation of the Minister shall formulate such rules, regulations and guidelines as may be required for the purpose of carrying out its

(Amended by Act. No. 15 of 2003)

objectives to regulate -

- (a) listing and de-listing of securities on a securities exchange;
- (b) disclosures about securities transactions by -
 - (i) stockbrokers and dealers;
 - (ii) persons who acquire or dispose of securities; and
 - (iii) a securities exchange;
- (c) proper maintenance of books, records, accounts and audits by all persons approved or licensed by the Authority and regular reporting by such persons to the Authority of their affairs;
- (d) the operations of any other bodies corporate or persons dealing with capital market instruments;
- (e) the procedure for the participation of foreign investors in the stock market;
- (f) collective investment schemes;
- (g) registered venture capital funds;
- (h) credit rating agencies;
- (i) the issue, transfer, clearing and settlement of securities;
- (j) securities clearing and settlement or depository organizations;
- (k) fund managers;
- (l) investment banks; and
- (m) authorized securities dealers.
- (n) (Deleted by Act No. 4 of 2004)

(2) All rules, regulations and guidelines formulated by the Authority shall –

- (a) take into account and be consistent with the objective of promoting and maintaining an effective and efficient securities market;
- (b) be exposed for comment by stakeholders and the general public for a period of thirty

days through notification in at least two daily newspapers of national circulation and the electronic media; and

- (c) be signed by the chairman and chief executive and published in the Gazette.

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

Furnishing of information
to the Authority

13 (1)

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

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

Committees

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

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

- (a) a committee to hear and determine complaints of shareholders of any public company listed on an authorized securities exchange, relating to the professional conduct or activities of such securities exchange or such public company or any other person under the jurisdiction of the Authority and recommend actions to be taken, in

accordance with rules established by the Authority for that purpose; and

- (b) a committee to make recommendations with respect to assessing and awarding compensation in respect of any application made in accordance with rules established by the Authority for that purpose

General Fund

- 15. (1) The Authority shall have its own general fund.
- (2) There shall be paid into the general fund -
 - (a) all such sums of money as may be paid as fees under this Act; and
 - (b) all such sums of money as may be received by the Authority for its operations from any other source approved by the Minister.
- (3) There shall be paid out of the fund all such sums of money required to defray the expenditure incurred by the Authority in the exercise, discharge and performance of its objectives, functions and duties.

Financial year of Authority

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

Accounts

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

Establishment of
Investor Compensation
Fund

- 18. (1) There shall be established a Fund to be known as the Investor Compensation Fund for the purposes of granting compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer, to meet his contractual obligations and paying beneficiaries from collected unclaimed dividends when they resurface.

Inserted by The Finance
Act No. 9 of 2007

- (2) The Compensation Fund shall consist of -

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

Inserted by The Finance Act No. 9 of 2007

- (ee) unclaimed dividends outstanding in listed companies for more than seven years; and
- (f) such sums of money as are received for purposes of the Compensation Fund from any other source approved by the Minister.

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

The Investor
the Compensation

18A. (1) There is hereby established a Board to be known as Investor Compensation Fund Board.

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

- (a) suing and being sued;
- (b) taking, acquiring, holding and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing such other things as may lawfully be done by a body corporate.

The Board shall consist of -

(2) a Chairman appointed by the President on the recommendation of the Minister;

- (a) the Permanent Secretary to the Treasury or a person deputed by him in writing;
- (b) the Attorney-General or a person deputed by him in writing;
- (c) the Public Trustee;
- (d) the chief executive of the Capital Market Authority or a person deputed by him in writing;
- (e) the chief executive of the Board, and
- (f) five other members appointed by the Minister by virtue of their knowledge and experience in legal, financial, business or administrative matters.

(4) The function of the Board shall be to administer the Fund established under section 18.

PART III - PROVISIONS RELATING TO SECURITIES EXCHANGES

19. Subject to this Act, no person shall carry on a business as a securities exchange or hold himself out as providing or maintaining a stock market unless he has been approved as a securities

exchange by the Authority in such manner as the Authority may prescribe.

Application for securities
Exchange approval

20. (1) An application for securities exchange approval shall be made to the Authority in the form and manner prescribed by the Authority and shall be accompanied by the prescribed fee.
- (2) The Authority may, by notice in writing, approve a person as a securities exchange if it is satisfied -
- (a) that the applicant is a limited liability company incorporated under the Companies Act, whose liability is limited by guarantee, or as may be prescribed by the Authority.
 - (b) that the applicant's board of directors is constituted in accordance with subsection (3);
 - (c) that the applicant meets the conditions set out in rules issued by the Authority.
- (3) The board of directors of a securities exchange shall comprise-
- (a) five persons elected from amongst the brokers and dealers who are members of the securities exchange;
 - (b) two persons elected by the members of the securities exchange to represent listed companies;
 - (c) three persons who have knowledge and experience in investments, appointed by the securities exchange with the approval of the Authority, to represent individual investors, institutional investors and the general public; and
 - (d) the chief executive of the securities exchange.
- (4) The directors of a securities exchange other than the chief executive shall elect a chairman from amongst themselves.

- (5) The function of the board of directors of a securities exchange shall be the over-all administration of the stock exchange.
- (6) All fees to be charged by a securities exchange shall be subject to prior approval by the Authority notwithstanding the constitution of such securities exchange.
- (7) An approved securities exchange shall comply with all requirements of the Authority and pay an annual fee to the Authority at such rate as the Authority may prescribe.

Changes in
securities exchange
rules

21.

- (1) The rules of an approved securities exchange, in so far as they have been approved by the Authority, shall not be amended, varied or rescinded without the prior approval of the Authority.
- (2) Where the board of directors of an approved securities exchange wishes to amend its rules, it shall forward the amendments to the Authority for approval.
- (3) The Authority shall, after hearing from the securities exchange, and within thirty days of receipt of a notice under subsection (2) give written notice to the securities exchange stating whether such amendments to the rules are allowed or disallowed and in the event of the rules being disallowed, the Authority shall give reasons for such disallowance.
- (4) Notwithstanding paragraph (2), a proposed rule change may take effect upon filing with the Authority if designated by the exchange as -
 - (a) a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule;
 - (b) a proposal establishing or changing a fee or other charge; or
 - (c) a proposal dealing solely with the administration of the exchange or other matters which the Authority may specify.
- (5) In addition to the provisions of subsection (4) the Authority may add other items which it determines

to be appropriate in fulfilling its objectives under this Act:

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

- (6) Where an approved securities exchange proposes to alter any particulars already furnished or undergoes or intends to undergo a change from its state specified in the application for approval it shall inform the Authority and obtain its prior consent before such alterations or change is effected.

Disciplinary
Action by
securities exchange

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

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

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

PART IV - SECURITIES INDUSTRY LICENCES

Licenses
required.
Amended by Act
No. 2 of 2002

23. (1) No person shall carry on business as a stockbroker, dealer, investment adviser, fund manager, investment bank, authorized securities dealer, authorized depository, or hold himself out as carrying on such a business unless he holds a valid licence issued under this Act or under the authority of this Act.

Amended by Act
No. 2 of 2002

(2) No person shall carry on or hold himself out as carrying on business as a securities exchange, registered

venture capital fund, collective investment scheme, central depository or credit rating agency unless he is approved as such by the Authority.

- (3) A person approved by the Authority to carry out any business required by this Act to be approved shall comply with all requirements of the Authority and pay an annual fee to the Authority at such rate as the Authority may prescribe.
- (4) Nothing in this section shall be construed as limiting the powers of the Authority to approve or licence any other person operating in any other capacity which has a direct impact on the attainment of the objectives of this Act.

Application for
Licence

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

- (2) The Authority may require an applicant to supply such further information as it considers necessary in relation to the application.
- (3) A licence shall only be granted if the applicant meets and continues to meet such minimum financial and other requirements as may be prescribed by the Authority.
- (4) The Authority may grant a licence to such conditions or restrictions as it thinks fit and the Authority may, at any time by written notice to a licence holder, vary any condition or restriction or impose further conditions or restrictions.
- (5) The Authority shall not refuse to grant or renew a licence without first giving the applicant or holder of a licence an opportunity of being heard.
- (6) Subject to subsection (7), a licence granted under this subsection shall expire on the thirty-first day of December in each year.

Inserted by The Finance
Act No. 9 of 2007

Provided that where an application for renewal of a licence is made under this section, the licence shall be deemed to continue in force until the application for renewal is determined.

- (7) A licence that has been renewed in accordance with the provisions of this section shall continue in force for a

period of one year next succeeding the date upon which but for its renewal, it would have expired.

Renewal of
licence

25. (1) In granting a renewal of a licence, the Authority shall satisfy itself that the licensed person is in compliance with the provisions of this Act and the rules and regulations made thereunder.
- (2) In considering an application for a licence renewal, the Authority may extend an existing licence for a period of three months in order to permit an applicant to take such action as the Authority deems necessary to come into compliance with the Act and rules and regulations made thereunder.
- (3) In granting an extension to any person under subsection (2), the Authority may impose any conditions or restrictions it deems appropriate on the activities of such person.
- (4) Where the Authority is satisfied that a licensed person has -
- (a) acted in contravention of any provision of this Act, or any rules or regulations made thereunder; or
 - (b) has since the grant of a licence, ceased to qualify for such a licence; or
 - (c) is guilty of malpractice or irregularity in the management of his affairs, the Authority may -
 - (i) direct the person to take whatever action the Authority deems necessary -
 - (A) to correct the conditions resulting from any contravention of any provisions of this Act or any rules or regulations made thereunder; and
 - (B) to come into compliance with the provisions of this Act or any rules or regulations made thereunder; or
 - (ii) suspend or impose restrictions or limitations on the licence granted to the person.

Imposition
of additional
sanctions
and penalties
Inserted by The
Finance
Act No. 9 of 2007

25A. (1) Without prejudice to any other provision of this Act, the Authority may impose the following sanctions or levy financial penalties in accordance with this Act, for the breach of any provisions of this Act, the regulations made hereunder, or the rules of procedure of a securities exchange a licensed or approved person, listed company, employee or a director of a licensed or approved person or director of a listed company as provided under section 11 (3) (d) –

(a) with respect to a licensed person, listed company, securities exchange or other approved person -

- (i) a public reprimand;
- (ii) suspension in the trading of a listed company's securities for a specified period;
- (iii) suspension of a licensed person from trading for a specified period;
- (iv) restriction on the use of a licence;
- (v) recovery from such person of an amount equivalent to two times the amount of the benefit accruing to such person by virtue of the breach;
- (vi) the levying of financial penalties in such amounts as may be prescribed;
- (vii) revocation of the licence of such person;

(b) with respect to an employee of a licensed or approved person, including a securities exchange -

- (i) require the licensed or approved person to take disciplinary action against the employee;
- (ii) disqualification of such employee from employment in any capacity by any licensed or approved person or listed company for a specified period;
- (iii) recovery from the employee of a licensed or approved person an amount double the

benefit accruing to such person by reason of the breach;

(iv) the levying of financial penalties as such amounts as may be prescribed;

(c) with respect to a director of a listed company or a licensed or approved person, including a securities exchange -

(i) disqualification of such person from appointment as a director of a listed company or licensed or approved person including, a securities exchange;

(ii) the recovery from such person of an amount equivalent to two times the amount of the benefit accruing to the person by reason of the breach;

(iii) the levying of financial penalties in such amounts as may be prescribed.

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

(3) The Authority shall exercise the power of restitution where the breach of the provisions of this Act or the regulations made under the Act results in a loss to one or more aggrieved persons, but subject to the following conditions –

(a) that the amount of the loss is quantified and proved to the Authority by the person making the claim; and

(b) that notice is served by the Authority on the person expected to make the restitution, containing details of the amount claimed and informing them of their right to be heard.

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

Revocation of licence 26. (1)

The Authority may revoke a licence or approval if it is satisfied that the licensed or approved person -

- (a) has contravened or failed to comply with any provisions of this Act or any rules or regulations made thereunder; or
- (b) has ceased to be in good financial standing; or
- (c) has since the grant of the licence , ceased to qualify for such a licence ; or
- (d) is guilty of malpractice or irregularity in the management of his business; or
- (e) is adjudged bankrupt.

PROVIDED that the Authority shall not revoke a licence or approval, other than an approval to operate as a credit rating agency, without first exercising its powers under section 33 A.

- (2) In all cases where action under section 25 and 26 is taken, the Authority shall give the person affected by such action an opportunity to be heard.

Gazette and
register of licence holders
(Amended by Act No. 2 of 2002)

27.(1) The Authority shall –

- (a) before the thirtieth day of April each year, cause the names and addresses of all persons licensed or approved during the current year to be published in the Gazette; and
 - (b) within thirty days of revocation of a licence , cause the names of any persons whose licence is revoked to be published in the Gazette.
- (2). The Authority shall keep in such form as it deems appropriate a register of the holders of current licence s specifying, in relation to each holder of a licence -
- (a) his name;
 - (b) the address of the principal place at which he carries on the licensed business; and
 - (c) the name or style under which the business is carried on if different

from the name of the holder of the licence .

Obligation to
Report changes

28. (1)Where -

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

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

Licensing
Requirements (inserted by
The Finance Act No. 9 of 2007)

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

- (a) that the applicant is a company incorporated under the Companies Act, with such minimum share capital as the Authority may prescribe or is duly constituted as a collective investment scheme;
- (b) that none of the directors of the applicant company-
 - (i) has been declared bankrupt;
 - (ii) has been a director of a company that has been denied any licence or approval under this Act or equivalent legislation in any other jurisdiction.
 - (iii) has been a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority.
- (c) that at least one director and at least one employee who is the chief executive of the applicant company, have satisfied such

minimum qualification requirements as may be prescribed;

- (d) in the case of a stockbroker, dealer or other person prescribed by the Authority that the applicant company has lodged security in such sum as may be determined by the Authority or an equivalent bank guarantee or bond with the securities exchange of which it is a member or with the Authority or other person approved by the Authority as the case may be;
- (e) that the applicant has the necessary administrative capacity to carry on business for which the licence is required;
- (f) in the case of an application for a stockbroker's licence, that the applicant shall carry on business solely on behalf of clients;
- (g) in the case of an application for a dealer's licence, that the applicant shall carry on business solely on the applicant's own behalf;
- (h) that none of the persons engaged or to be engaged in the position of executive director or other senior capacity –
 - (i) has previously been involved in the management or administration of an institution offering financial services whose licence has been revoked owing to any failure on the part of the management; or
 - (ii) has taken part in or been associated with any such business practices as would, or have, cast doubt on his competence or soundness of judgment.

Amended by Act No. 2 of 2002

- (2) A licensed stockbroker or dealer may, on fulfilment of all requirements and payment of the admission fee approved by the Authority, be admitted as a member of a securities exchange.
- (3) A stockbroker or dealer whose licence is not renewed under section 25, or whose licence is

revoked under section 26 shall forthwith cease to be a member of a securities exchange.

Procedure for
collective
investment
schemes.

30. (1) No person shall carry on any business or engage in any activity as a collective investment scheme, in or from within Kenya, unless such person is registered under this Act
- (2) The promoters of a collective investment scheme that is proposed to be formed, may apply to the Authority for consent to register a collective investment scheme upon complying with the requirements prescribed under this Act.
- (3) Where the Authority grants its consent under subsection (2), the promoters of the proposed collective investment scheme shall, within three months from the date of granting such consent, deliver to the Authority -
- (a) in the case of a unit trust or investment company, satisfactory proof that the proposed collective investment scheme is lawfully constituted in Kenya;
- (b) in the case of a mutual fund, proposed incorporation documents and such other information or documents as may be stipulated by the Authority; and
- (c) an application in the prescribed form for registration as a collective investment scheme accompanied by the prescribed fee.
- (4) If the Authority is satisfied that the applicant has complied with all the requirements, it shall register the collective investment scheme and issue to the applicant a certificate of registration in the prescribed form.
- (5) In the case of a collective investment scheme to be set up as a mutual fund, upon the issue of a certificate of registration under subsection (4), a body corporate shall be deemed to have been incorporated as a collective investment scheme with variable capital, notwithstanding the provisions of the Companies Act.
- (6). Notwithstanding the requirements of subsection (1), any person who immediately before the commencement of this Act was carrying on

business as an investment company within the meaning of this Act shall be entitled to carry on such business without registration for a period of six months from such commencement:

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

- (7) During the period referred to in sub-section (6), the investment company shall be subject to all the provisions of this Act except the requirement as to registration.
- (8) No registered collective investment scheme shall, in or outside Kenya, offer its shares to the public unless prior to such offer, it publishes in writing an information memorandum signed by or on behalf of its officers and files a copy thereof with the Authority.
- (9) Every information memorandum under subsection (8) shall comply with such requirements as may be prescribed by the Authority.
- (10) Subject to the provisions of this Act, any regulations issued thereunder, or anything contained in the articles of association or information memorandum, a mutual fund shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of doing and performing all things and acts which may lawfully be done by a body corporate.

PART V - SECURITIES TRANSACTIONS AND REGISTERS

Publication of
Information
Memorandum

(Amended by Act No. 2 of 2002)

30A (1) No person shall, in Kenya, offer its securities for subscription or sale to the public or a section of the public unless prior to such offer, it publishes an information memorandum signed by or on behalf of its officers and files a copy thereof with the Authority.

- (2) Every information memorandum shall comply with such requirements as may be prescribed by the Authority:

Provided that nothing in this section shall be construed to apply to an information memorandum issued by a co-operative society incorporated

under the Co-operative Societies Act for the purpose of raising capital from its members.

31(1) No licensed person, broker or dealer shall trade in listed securities outside the securities exchange of which he is a member except as provided for by the Authority in rules or as authorized by the Authority on a case by case basis, and on payment of a prescribed fee.

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

- (i) the transaction is a private transaction as prescribed by the Authority; or
 - (ii) it would be in the interest of the holders of ordinary shares of the company having regard to the prevailing conditions and all factors which are relevant in the circumstances to so authorize.
- (2) No licensed person, broker or dealer shall trade in listed securities in contravention of such rules as the Authority shall prescribe with respect to the clearance, settlement, payment, transfer or delivery of securities.
- (3). No licensed person, broker or dealer shall effect any transaction in a margin account in a manner contrary to requirements adopted by the Authority.
- (4). No licensed person, broker or dealer shall lend or arrange for the lending of any securities carried for the account of any customer without the customer's written consent, or borrow, or arrange to borrow, using the securities carried for the account of any customer, as collateral, without the customer's written consent.
- (5). No licensed person, broker or dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any listed security by means of any manipulative deception, or other fraudulent device or contrivance.
- (6). No person holding shares in a public company listed on an approved securities exchange,

shall sell or transfer such shares except in compliance with the trading procedures adopted by such securities exchange.

- (7). No person shall, directly or indirectly, in connection with the purchase or sale of any security -
 - (a) employ any device, scheme or artifice to defraud;
 - (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
 - (c) make any untrue statement of a material fact; or
 - (d) omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading.

Register of
Interests in securities

32. (1) This section applies to -

- (a) any person who is licensed under this Act; and
 - (b) a financial journalist.
- (2) For the purposes of this section, "financial journalist" means a person who contributes advice concerning securities or prepares analyses or reports concerning securities for publication in a newspaper or periodical.
 - (3) For the purposes of this section, a reference to securities is a reference to securities which are quoted on a securities exchange.
 - (4) A person to whom section (1) applies shall maintain a register of the securities in which he has an interest and such interest or any changes in such interest shall be entered in the register within seven days of the acquisition or change in the interest.
 - (5) The Authority or any person authorized by it in that behalf may require any person to whom section (1) applies to produce for inspection the register required under subsection (4) and the Authority or any person so authorized may make extracts from the register.

PART VI –INSIDER TRADING

Prohibition against use of unpublished insider information

- 32A.(1) No insider shall
- (a) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange on the basis of any unpublished price sensitive information; or
 - (b) communicate any unpublished price sensitive information to any person, with or without his request for such information, except as required in the ordinary course of business or under any law; or
 - (c) counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.
- (2) Any insider, who deals in securities or communicates any information or consults any person dealing in securities in contravention of the provisions of subsection (1) shall be guilty of insider trading.

Insider trading Prohibited

- 33 (1) A person who is, or at any time in the preceding six months has been, connected with a body corporate shall not deal in any securities of that body corporate if by reason of his being, or having been, connected with that body corporate he is in possession of information that is not generally available but, if it were, would be likely materially affect the price of those securities.
- (2) A person who is, or at any time in the preceding six months has been, connected with a body corporate shall not deal in any securities of any body corporate if by reason of his so being, or having been, connected with that first mentioned body corporate he is in possession of information that -
- (a) is not generally available but, if it were, would be likely materially to affect the price or value of those securities; and
 - (b) relate to any transaction (actual or expected) involving both bodies corporate

or involving one of them and securities of other.

- (3) Where a person is in possession of any such information referred to in subsection (2) which if made generally available, would be likely materially affect the price of securities but is not precluded by that subsection from dealing in those securities, he shall not deal in those securities if -
- (a) he has obtained the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is himself precluded by subsection (1) from dealing in those securities; and
 - (b) when the information was so obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which that subsection applies with a view to dealing in securities by himself and that other person or either of them.
- (4) A person shall not, at any time when he is precluded by subsections (1), (2), or (3) from dealing in any securities cause or procure any other person to deal in those securities.
- (5) A person shall not, at any time when he is precluded by subsection (1), (2), or (3) from dealing in any securities by reason of his being in possession of any information, communicate that information to any other person if -
- (a) trading in those securities is permitted on any securities exchange; and
 - (b) he knows, or has reason to believe, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.
- (6) Without prejudice to subsection (3), but subject to subsections (7) and (8), a body corporate shall not deal in any securities at a time when any officer of that body corporate is precluded by subsections (1), (2), or (3) from dealing in those securities.

- (7) A body corporate is not precluded by subsection (6) from entering into a transaction at any time by reason only of information in the possession of an officer of that body corporate if -
- (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;
 - (b) it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to him by a person in possession of the information; and
 - (c) the information was not so communicated and such advice was not so given.
- (8) A body corporate is not precluded by subsection (6) from dealing in securities of another body corporate at any time by reason only of information in the possession of an officer of that first mentioned body corporate, being information that was obtained by the officer in the course of the performance of his duties as an officer of that first mentioned body corporate and that relates to proposed dealings by that first mentioned body corporate in securities of that other body corporate.
- (9) For the purpose of this section, a person is connected with a body corporate if, being a natural person -
- (a) he is an officer of that body corporate or of a related body corporate;
 - (b) he is a substantial shareholder in that body corporate or in a related body corporate; or
 - (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply by virtue of -
 - (i) any professional or business relationship existing between himself (or his employer or a body corporate of which he is an officer) and that

body corporate or a related body corporate; or

- (ii) his being an officer of a substantial shareholder in that body corporate or in a related body corporate.

(10) This section does not preclude the holder of a stockbroker's or dealer's licence from dealing in securities, or rights or interests in securities, of a body corporate, being securities or rights or interests that are permitted by a securities exchange to be traded on the stock market of that securities exchange, if -

- (a) the holder of the licence enters into the transaction concerned as agent for another person pursuant to a specific instruction by that other person to effect that transaction;
- (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first mentioned securities; and
- (c) the other person is not associated with the holder of the licence .

(11) For the purpose of subsection (8), "officer", in relation to a body corporate, includes -

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver, or receiver and manager, of property of the body corporate;
- (c) an official manager or a deputy official manager of the body corporate;
- (d) a liquidator of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

(12) A person who contravenes this section shall be guilty of an offence and shall be liable -

- (a) on a first offence -
 - (i) in the case of a body corporate, to a fine not exceeding five million shillings;
 - (ii) in the case of any other person, including a director or officer of a body corporate, to a fine not exceeding two million five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both;
 - (b) on any subsequent conviction -
 - (i) in the case of a body corporate, to a fine not exceeding ten million shillings; or
 - (ii) in the case of any other person, including a director or officer of a body corporate, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding seven years or to both.
- (13) An action under this section for the recovery of a loss shall not be commenced after the expiration of six years after the date of completion of the transaction in which the loss occurred.
- (14) Nothing in subsection (12) affects any liability that a person may incur under any other section of this Act or any other law.
- (15) This section shall apply without prejudice to the generality of section 32A.

PART VII – MISCELLANEOUS PROVISIONS

Powers of the Authority to intervene in management of a licensee.

33A. (1) This section shall apply and the powers conferred by subsection (2) may be exercised in the following circumstances:-

- (a) if a person's licence or approval

is suspended under section 25
(4) (c) (ii);

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

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

- (2) Notwithstanding the provisions of any other written law, in any case to which this section applies, the Authority may-
 - a. appoint any competent person or persons (in this Act referred to as "a statutory manager") to assume the management, control and conduct of the affairs and business of a licensed person to exercise all the powers of a licensed person to the exclusion of its board of directors, including the use of its corporate seal;
 - b. remove any officer or employee of the licensed person who, in the opinion of the Authority, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder or to any deterioration in the financial stability of the licensed person or has been guilty of conduct detrimental to the interests of investors;
 - c. appoint a competent person familiar with the business of the licensed person to its board of directors to hold office as a director who shall not be capable of being removed from

office without the approval of the Authority other than by order of the High Court;

d. by notice in the Gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the licensed person in favour of any officer or employee or any other person.

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

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

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

(i) tracing and preserving all the property and assets of the licensed person or of its customers;

(ii) recovering all debts and other sums of money due to and owing to the licensed person;

(iii) evaluating the capital structure and management of the licensed person and recommending to the Authority any restructuring or re-organization which he considers necessary and which, subject to the provisions of any other written law, may be implemented by him on

behalf of the licensed person;

(iv) entering into contracts in the ordinary course of the business of the licensed person; and

(v) obtaining from any officers or employees of the licensed person, any documents, records, accounts, statements or information relating to its business.

- (6) The statutory manager shall, once in every month, furnish the Authority and all interested parties with a report of his activities during the preceding month, in such form as may be prescribed by the Authority.
- (7) If any officer or employee of the licensed person removed under the provisions of subsection (2) (b) is aggrieved by the decision, he may appeal to the Capital Markets Tribunal, and the Tribunal may confirm, reverse or modify the decision and make any other order in the circumstances as it thinks just; and pending the determination of the appeal, the order of removal shall remain in effect.
- (8) Neither the Authority nor any officer or employee thereof nor any manager nor any other person appointed, designated or approved by the Authority under this Act shall be liable in respect of any act or omission done in good faith by such officer, employee, manager or other person in the execution of the duties undertaken by him.
- (9) Where it appears to the statutory manager that it is just and equitable to do so in the interest of all interested parties, the statutory manager may after consultation with the Authority, petition the High Court for the winding up of the licensed person.
- (10) All costs and expenses properly incurred by the statutory manager shall be payable out of the assets of the licensed person in priority to all other claims.

Prohibited
conduct to be
reported

- 33B (1) Any person who, in the course of providing services to a licensed person or company whose securities are listed at a securities exchange, comes into possession of information indicating that such licensed person or company is engaged in any conduct prohibited by this Act, shall report the matter to the Authority.
- (2) A person who contravenes subsection (1) commits an offence.

Inserted by Act No. 4 of 2004
Asset backed securities

- 33C (1) This section applies with respect to asset backed securities which, for the purposes of this section, are securities:-
- (a) that are issued as part of a securitization transaction in which assets are transferred to a third party that issues the securities; and
 - (b) that are primarily serviced, with respect to both return of investment and return on investment, by the cash flow from the assets described in paragraph (a).
- (2) No person shall issue or list, or cause to be issued or listed, asset backed securities without the prior written approval of the Authority.
- (3) The Authority shall consult with the Minister before giving any approval under subsection (2).
- (4) The Authority shall, under section 12, regulate asset backed securities, including their issue and listing subject to subsection (5).
- (5) In addition to any other requirements, the rules, regulations and guidelines of the Authority under section 12 shall require -
- (a) that the issuer of the asset backed securities shall be a company or a trust that has no purpose other than the implementation and operation of the securitization transactions in respect of which the securities are issued;
 - (b) that the issuer shall have the professional and technical capacity to implement and operate the securitization transaction;

- (c) that the issuer shall have the capability to meet its obligations to the holders of the asset backed securities; and
 - (d) that the issuer shall adequately protect the rights of the holders of the asset backed securities.
- (6) For the purposes of this section, securities of an investment company are not asset backed securities.

Other offences

34 (1) Any person who -

- (a) contravenes any provision of this Act or any requirement imposed under the provision of this Act or any rule or regulation made thereunder;
- (b) furnishes or publishes for the purpose of this Act or in connection with an issuer whose securities are listed or quoted to be listed on a securities exchange, or issued or to be issued to the public or a collective investment scheme, any information or return the contents of which are to his knowledge untrue or incorrect, or misleading because of material omissions; or”
- (c) willfully obstructs any member of the Authority or an officer or servant of the Authority in the performance of his duties under the provisions of that Act,

shall be guilty of an offence.

- (2) Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifteen million shillings or to both.

Amended by The Finance Act No. 9 of 2007

- (3) In addition to the penalties provided for elsewhere in this Act, any person guilty of an offence under this Act shall be liable *to make restitution or* pay compensation to any person, who in a transaction for the purchase or sale of securities, entered into with the first mentioned person or with a person acting on his behalf, suffers loss, by reason of the

Inserted by The Finance Act No. 9 of 2007

difference between the price at which securities were transacted and the price at which they would likely have occurred if the offence had not been committed.

Inserted by The Finance Act (4)
No. 9 of 2007

The amount of *restitution or compensation* for which a person is liable under subsection (3), is

Inserted by The Finance Act
No. 9 of 2007

- (a) the loss sustained or adverse impact of the breach on the person or persons claiming compensation or restitution;
- (b) the profits that have accrued to the person in breach;
- (c) where harm has been done to the market as a whole, the illegal gains received or loss averted as a result of the illegal action as may be determined by the court.

- (5) To the extent that a person found guilty of an offence under subsection (1) profited by that offence but those harmed cannot reasonably and practically be determined the payment under subsection (3) shall be made to the Compensation Fund established under this Act.

Financial 34A (1)
Penalties
Inserted by
The Finance
Act No. 9 of 2007

The Minister may, in regulations, prescribe penalties to be paid for breach of or failure to comply with any of the provisions of this Act, which shall not exceed ten million shillings in the case of an institution, of five million in the case of natural person:

Provided that the financial penalties with respect to -

- (a) a breach of trading rules of a securities exchange by a licensed person, the penalty shall be double the brokerage commission payable to the licensed person on the relevant trade, or double the annual licence fees, whichever is higher;
- (b) failure to comply with a reporting requirement by a listed company or licensed person, the penalty shall be double the applicable prescribed annual listing fee or licence fee, whichever is higher, for every calendar quarter during which the reporting requirement remains outstanding; or
- (c) failure on the part of the securities exchange to enforce and ensure compliance with this Act

and the rules of the securities exchange as approved by the Authority, the penalty shall be equal to the annual licence fee of the securities exchange.

- (2) The discretion conferred on the Authority to levy financial penalties or to impose any other sanctions under this Act may be exercised separately or cumulatively, and in no circumstances shall the exercise of such penalties or sanctions prejudice, in any way, any right to any other legal proceedings that may be vested in the Authority.
- (3) All financial penalties levied under this Act shall be paid into the Investor Compensation Fund.

Appeals from action 35 (1) Any person aggrieved by any direction given by the Authority -
by the Authority

- (a) refusing to grant a licence ;
- (b) imposing limitations or restrictions on a licence ;
- (c) suspending or revoking a licence ;
- (d) refusing to admit a security to the official list of a securities exchange;
- (e) suspending trading of a security on a securities exchange; or
- (f) requiring the removal of a security from the official list of a securities exchange,

may appeal to the Capital Markets Tribunal against such directions, refusal, limitations or restrictions, cancellations, suspension or removal as the case may be, within fifteen days from the date on which the decision was communicated to such person.

- (2) The Capital Markets Tribunal may require the Authority to show cause for its action and may affirm or, after affording the Authority an opportunity of being heard, set aside the Authority's decision.

Establishment
of the Capital
Markets
Tribunal

35A(1) There is established a tribunal to be known as of the Capital Markets Tribunal which Tribunal shall consist of the following members and the Secretary appointed by the Minister –

- (a) a chairman who at the time of his appointment shall be an advocate of not less than seven years standing;
- (b) one lawyer having at least seven years experience in the commercial and corporate sector;
- (c) one accountant who shall have been in practice for a period of not less than seven years;
- (d) two persons who have demonstrated competence in the field of securities.
- (e) the secretary shall be an advocate with at least five years' experience in commercial law.

(2) All appointments to the Tribunal under subsection (1) shall be by Notice in the Gazette issued by the Minister and shall be for a period of three years.

(3) The office of a member of the Tribunal shall become vacant -

- (a) at the expiration of three years from the date of his appointment;
- (b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal;
- (c) if he is removed from membership of the Tribunal by the Minister for failure to attend three consecutive meetings of the Tribunal or is unable to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehavior; and
- (d) if he resigns the office of a member of the Tribunal.

- (4) The Tribunal shall, upon an appeal made to it in writing by any party or a reference made to it by the Authority or by any committee or officer of the Authority, on any matter relating to this Act, inquire into the matter and make an award thereon, and every award made shall be notified by the Tribunal to the parties concerned, the Authority or any committee or officer thereof, as the case may be.
- (5) For the purposes of hearing an appeal, the Tribunal shall have all the powers of the High Court to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.
- (6) Where the Tribunal considers it desirable for the purposes of avoiding expenses or delay or any other special reasons so to do, it may receive evidence by affidavit and administer interrogatories within the time specified by the Tribunal.
- (7) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence would not otherwise be admissible under the law relating to evidence.
- (8) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed.
- (9) All summons, notices or other documents issued under the hand of the chairman of the Tribunal shall be deemed to be issued by the Tribunal.
- (10) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may admit to be heard on behalf of such party.
- (11) The Tribunal shall sit at such times and in such places as it may appoint.
- (12) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

- (13) Except as expressly provided in this Act or any rules made thereunder, the Tribunal shall regulate its own procedure.
- (14) For the purposes of hearing and determining any cause or matter under this Act, the chairman and two members of the Tribunal shall form a quorum.
- (15) A member of the Tribunal who has an interest in any matter which is the subject of the proceedings of the Tribunal shall not take part in those proceedings.
- (16) Upon any appeal, the Tribunal may -
- (a) confirm, set aside or vary the order or decision in question;
 - (b) exercise any of the powers which could have been exercised by the Authority or any of its committees in the proceedings in connection with which the appeal is brought; or
 - (c) make such other order, including an order, for costs, as it may deem just.
- (17) Upon any appeal to the Tribunal under this section the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.
- (18) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be paid in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.
- (19) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.
- (20) Every certificate issued under subsection (19) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.
- (21) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the

procedure to be followed therein, and the manner of notifying the parties thereto; and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

(22) Any party to proceedings before the Tribunal who is dissatisfied by a decision or order of the Tribunal on a point of law may, within thirty days of the decision or order, appeal against such decision or order to the High Court.

(23) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or where the appeal has been commenced until the appeal has been determined.

(24) Upon the hearing of an appeal under this section, the High Court may -

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make such other order as it may deem just, including an order as to costs of the appeal of earlier proceedings in the matter before the Tribunal.

(25) There shall be paid to the chairman, secretary and the members of the Tribunal, such remuneration and allowances as the Minister shall, from time to time, determine.

(26) All expenses of the Capital Markets Tribunal shall be charged to the general fund of the Authority.

Regulations

36 (1) The Minister may, in consultation with the Authority, make regulations in respect of the following matters:-

- (a) sources of funding or fees payable to the

Authority; and

(b) participation of foreign investors in the stock market.

(2) The Minister may, from time to time, direct the Authority to furnish in such form as he may require, returns, accounts and any other information with respect to the work of the Authority and the Authority shall comply with such direction.

(3) The Authority shall, within six months after the close of each financial year, submit to the Minister a report of its operations and activities throughout the year together with audited accounts in such form and detail as the Minister shall, from time to time, determine.

(4) The Minister shall table the report submitted under subsection (3) before above to Parliament within three months of its submission.

Supercession

37. Where there is a conflict between the provisions of this Act and the provisions of any other written law with regard to the powers or functions of the Authority under this Act, the provisions of this Act shall prevail.

Prosecution
of offences.

38. The Attorney-General may, on the request of the Authority, appoint any officer of the Authority or advocate of the High Court to be a public prosecutor for the purposes of offences under the provisions of this Act.

Exemption from
Cap 446

39. The provisions of the State Corporations Act shall not apply to the Authority.