

LAWS OF KENYA

THE CAPITAL MARKETS ACT

CHAPTER 485A

THE CAPITAL MARKETS ACT

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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 -

Amended by Act
No. 48 of 2013

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

“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;

Inserted by The
Finance
Act of 2008

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

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

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

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

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

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

- (i) a body corporate incorporated under any law in Kenya relating to building societies, co-operative societies, retirement benefit schemes, credit unions or friendly societies;
- (ii) an arrangement where each of the holders of the shares is a body corporate in the same group as the promoter;
- (iii) an arrangement where each of the holders of the share is a bona fide employee, former employee, wife, husband, widow, widower, child, stepchild of the employee or former employee of the directors or shareholders of a body corporate in the same group as the promoter;
- (iii) 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;
- (iv) contracts of insurance;

Amended by Act
No. 48 of 2013

(v) retirement benefits scheme;

Inserted by the
Finance Act of
2016

"commodity" means —

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

Inserted by the
Finance Act of
2016

"commodity contract" includes —

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

Inserted by the
Finance Act of
2016

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

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

“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;

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

Cap 486

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

Amended by Act
No. 48 of 2013

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

Amended by Act
No. 48 of 2013

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

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

Inserted by Act
No.48 of 2013

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

Inserted by Act
No.48 of 2013

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

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

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

Inserted by Act No.48 of 2013 “exchange-traded derivative contracts” means standardized type of securities or financial instruments which derive their value from the value of underlying assets, indices, or interest rates that are transacted on a licensed derivatives exchange.”

Inserted by Act No.48 of 2013 “expert” in respect of a matter or an opinion, means a person whose profession, occupation, religious standing, expertise or reputation gives authority to a statement made by that person in relation to that matter or opinion;

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

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

Inserted by Act No.48 of 2013 “futures broker” means a body corporate admitted into the membership of a derivatives exchange and duly licensed by the Authority to engage in the business of trading in exchange-traded derivative contracts as an agent for investors in return for a commission and on its own account;

Amended by Act No.48 of 2013 “futures contract” means an agreement to buy or sell a particular security or other financial instrument or commodity for delivery or settlement in the future, at a price that is agreed upon when the contract is made, which obligates each party to the contract to fulfil the contract at the specified price and that may be settled by delivery, cash or offset at a derivatives exchange duly licensed by the Authority;

Inserted by Act No.48 of 2013 “ futures member” means a person admitted to the membership of a derivatives exchange in accordance with the Regulations made under the Act and rules of that derivatives exchange but does not denote a shareholder or an equity holder of that derivatives exchange;

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

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

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

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

- (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, prescribe 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 -

(Cap 111)

- (i) in so far 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;

“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.

(Cap 486)

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

- (a) the chief executive officer, chief financial officer, chief compliance officer, secretary to the Board, chief internal auditor or any manager of licensed persons; and

Amended by the
Finance Act No.
23 of 2019

(b) any person who holds a position or discharges responsibilities of any person referred to in paragraph (a);

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

“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;

(Cap 486)

Inserted the
Finance Act of
2016

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

Inserted by Act
No. 37 of 2011

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

Amended by Act
No.48 of 2013

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

"promoter” means a person acting alone or in conjunction with others directly or indirectly who takes the initiative in forming or 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;

Amended by Act
No.48 of 2013

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

exchange or a derivatives exchange, of information concerning-

Amended by Act
No.37 of 2011

(a) in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that securities market or a derivatives market, those prices or that consideration;

Amended by Act
No.37 of 2011

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

Amended by Act
No. 48 of 2013

(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;

Inserted by Act
No.48 of 2013

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

Inserted by Act
No.4 of 2012

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

Inserted by Act
No. 37 of 2011.

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

disposal of the real estate or interest in the real estate or sums paid out of such profits or income.

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

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

“securities” means –

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

Amended by Act
No.48 of 2013

- (j) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (k) the rights under any depositary receipt in respect of shares, debt securities and warrants (“depositary receipts”);
- (l) asset backed securities; and
- (m) any other instrument prescribed by the Authority to be securities for the purposes of this Act,

but does not include –

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

Amended by Act
No.48 of 2013

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

Inserted by Act
No.37 of 2011

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

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

Inserted by Act
No.48 of 2013

“sophisticated investor” means-

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

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

Inserted by the Finance Act of 2016

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

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

Inserted by Finance Act, 2008

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

“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;

Amended by Act
No.48 of 2013

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

Inserted by Act
No.48 of 2013

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

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

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

Meaning of the term
“associate”.
Amended by Act
No.48 of 2013

3. For the purpose of this Act-

“associate”, in relation to –

- (a) an individual, means –
 - (i) a spouse, son, adopted son, step-son, son-in-law, daughter, adopted daughter, step-daughter, daughter-in-law, father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister or step-sister, sister-in-law, grand child or spouse of a grandchild; of that individual;
 - (ii) any company in which that individual is a director or secretary, has a controlling interest or is the controlling interest;

- (iii) any company in which that individual, or any of the persons mentioned in subparagraph (i), has control of twenty per cent or more of the voting power on appointments to the board of directors or entitlement to dividends in the company, whether such control is exercised individually or jointly;
- (iv) any employee of that individual; or
- (b) a company, means another company in which the first mentioned company has control of not less than twenty *percent* of the voting power in that company;

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

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) he 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.

Meetings and procedures of the Authority.

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

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

(3) The 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 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.

Amended by Act
No.48 of 2013

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

(4) The chief executive shall hold office for a period of four years but shall be eligible for 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
Amended by Act
No.48 of 2013

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, guidelines or notices made thereunder.

(2) Any expenses incurred by any person referred to in subsection (1) in any suit or prosecution brought against him 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 principle 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

Amended by Act
No.48 of 2013
Amended by Act
No.38 of 2016

investments in, productive enterprises;

- (b) to facilitate the existence of a nationwide system of securities commodities market and derivatives market and brokerage services so as to enable wider participation of the general public in the securities market and derivatives market;
- (c) the creation, maintenance and regulation, of a market in which securities can be issued and traded in an orderly, fair, and efficient manner, through the implementation of a system in which the market participants are self-regulatory to the maximum practicable extent;
- (d) the protection of investor interests;
- (e) the facilitation of a compensation fund to protect investors from financial loss arising from the failure of a 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 licenced 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 licensed persons; and

- (c) the execution of securities transactions without the need for parties to the transaction to be physically present at the same location.

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

- (a) advise the 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 Co 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, provided that the financial penalties shall be recoverable summarily by the Authority as civil debts.;
 - (ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;
 - (iii) publishing findings of malfeasance by any person;

Inserted by the
Finance Act No. 9
of 2007,
Commencement
Date; January 1,
2008.

Amended by the
Finance Act No. 23
of 2019

Amended by Act
No.48 of 2013

(iv) suspending or canceling the listing of any securities or exchange-traded derivative contracts, or the trading of any securities or exchange-traded derivative contracts, for the protection of investors;

Amended by Act
No.48 of 2013

(d) to issue guidelines and notices on all matters within the jurisdiction of the Authority under this Act;

Amended by Act
No.48 of 2013

(e) to grant a licence to any person to operate as a stockbroker, derivatives broker, dealer or investment adviser, fund manager, investment bank, central depository or authorized securities dealer, and ensure the proper conduct of that business

Amended by Act
No.48 of 2013
Amended by Act
No.38 of 2016

(f) to grant approval to any person to operate as a securities exchange, commodities exchange, derivatives exchange, credit rating agency, registered venture capital company or to operate in any other capacity which directly contributes to the attainment of the objectives of this Act and to ensure the proper conduct of that business.

Inserted by Act
No.38 of 2016

(fa) regulate spot commodity markets

Inserted by Act
No.48 of 2013

(ff) recognize any person duly licensed by a prescribed foreign authority to carry on any licensed activity in Kenya which requires a license or an approval under this Act;

(g) register, approve and regulate collective investment schemes;

Amended by Act
No 37 of 2011.

(h) inquire, either on its own motion or at the request of any other person, into the affairs of any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market”;

Inserted by Act No
37 of 2011

(i) give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market”;

(j) conduct inspection of the activities, books and records of any persons approved or licenced by the Authority;

Deleted by The
Finance Act No. 9
of 2007

(k);

Deleted by 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;

Amended by Act
No.48 of 2013

(p) act as an appellate body in respect of appeals against any self regulatory organization, securities exchange, derivatives exchange or central depository in actions by parties aggrieved thereby;

- (q) co-operate or enter into agreements for mutual co-operation with other regulatory authorities for the development and regulation of cross-border activities in capital markets;
- (r) regulate and oversee the issue and subsequent trading, both in primary and secondary markets, of capital market instruments;
- (s) regulate the use of electronic commerce for dealing in securities or offer services ordinarily carried out by a licensed person;
- (t) trace any assets, including bank accounts, of any person who, upon investigation by the Authority, is found to have engaged in any fraudulent dealings in an issuer and its securities or insider trading;
- (u) in writing, order caveats to be placed against the title to such assets or prohibit any such person from operating any such bank account as may be directed by the Authority, pending determination of any charges instituted against that person;
- (v) prescribe notices or guidelines on corporate governance of a company whose securities have been issued to the public or a section of the public;
- (va) ensure processing of personal data in the operations of capital markets is in accordance with principles set out under the Data Protection Act, 2018.
- (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.

Amended by Act
No.15 of 2018

Amended by Act
No.48 of 2013

Inserted by Act
No 24 of 2019

Inserted by Act No.
2 of 2002

Delegation of
functions

11A. (1)The Authority may delegate any of its functions under this Act to—

Inserted by Act No
37 of 2011 2

- (a) a committee of the Board;
- (b) a recognized self regulatory organization; or
- (c) an authorized person.

(2) The Authority may, at any time, revoke a delegation under this section.

(3) A delegation made under this section shall not prevent the Authority from performing the delegated function.

Power of the
Minister to issue
rules and
regulations
Amended by Act
No 48 of 2013

12. (1) The Minister shall formulate such rules and regulations as may be required to regulate -

- (a) listing and de-listing of securities on a securities exchange;
- (b) disclosures about securities transactions by -
 - (i) stockbrokers, derivatives brokers and dealers;
 - (ii) persons who acquire or dispose of securities or exchange-traded derivative contracts; and
 - (iii) a securities exchange or a derivatives exchange;
- (c) the keeping and proper maintenance of books, records, accounts and audits by all persons approved or licenced by the Authority and regular reporting by such persons to the Authority of their affairs;
- (d) the operations of any other bodies corporate or persons dealing with capital market instruments;
- (e) the procedure for the participation of foreign investors in the securities market;
- (f) collective investment schemes;
- (g) registered venture capital companies;

Amended by Act
No. 37 of 2011

Inserted by Act. No
48 of 2013

- (h) credit rating agencies;
- (hh) the issue and subsequent trading in Kenya, of offers approved outside Kenya
- (i) the issue, transfer, clearing and settlement of securities;
- (j) securities clearing and settlement or depository organizations;

Inserted by Act
No.38 of 2016

- (jj) the operations and supervision of online forex trading activities and online forex brokers;
- (k) fund managers;

Inserted by Act
No.38 of 2016

- (ka) spot commodity trading and commodity markets;
- (l) investment banks; and
- (m) authorized securities dealers.
- (n) self regulatory organizations

Inserted by Act. No
48 of 2013

- (o) the financial penalties or sanctions for breach of rules, guidelines or notices made or issued by the Authority or non-compliance with the requirements imposed by the Authority;

Inserted by Act. No
48 of 2013

- (p) the fees payable annually by a securities exchange, derivatives exchange or a central depository or for securities or exchange-traded derivative contracts transactions, licences and approvals required by this Act to be issued or granted on an application to the Authority;

Inserted by Act. No
48 of 2013

- (q) the disclosure requirements and other terms and conditions on which securities or exchange-traded derivative contracts may be listed or de-listed from a securities exchange or a derivatives exchange, respectively, or offered for sale to the public or a section thereof;

(2) All rules and regulations formulated under subsection (1) shall –

Amended by Act
No.48 of 2013

- (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.
- (c)

(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

Authority to issue
guidelines and
notice.
Inserted by Act
No.48 of 2013

12A. (1)The Authority may issue such guidelines and notices as the Authority considers necessary for the better carrying out the functions of the Authority under this Act and in particular-

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

(f) the operation of any provision of this Act or any other legislation vesting responsibility in the Authority.

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

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

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.

Inserted by the Finance Act, 2010.

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

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

and where it is of the opinion that the request meets the requirements of subsection (5), provide the assistance requested for by exercising any of its powers under this Act or by providing such other assistance as the Authority may consider necessary.

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

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

- (a) it is desirable or expedient that the assistance requested should be provided in the interest of the public; or

(b) the assistance shall assist the regulatory body in the discharge and performance of its functions.

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

(a) pay the Authority any of the costs and expenses incurred in providing the assistance; and

(b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a similar request for assistance from Kenya.

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

Inserted by the
Finance Act, 2008
Power of entry and
search.

13A (1) The Chief Executive Officer may authorise an officer of the rank of Senior Officer or above to inquire into the affairs of a person under this Act.

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

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

a) to enter any premises between sunrise and sunset to search for money, documents or other assets relevant to the inquiry;

b) to seize money, documents or assets which maybe necessary for the inquiry or for the purpose of civil or criminal proceedings and to retain them for as long they are so required; and

c) to direct any person who has control over such assets to take any action with respect to such assets as the Authority may reasonably require with a view to protecting the assets until the court determines the appropriate course of action.

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

Authority may
investigate
Inserted by Act
No 35 of 2012.

13B. (1) Where the Authority has reasonable cause to believe, either on its own motion or as a result of a complaint received from any person, that –

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

Amended by Act
No.15 of 2018

the Authority may in writing depute a suitably qualified person to conduct investigations into the matter on behalf of the Authority.

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

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

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

Inserted by Act No.
15 of 2018

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

Inserted by Act No.
24 of 2019

13C. The principles of personal data protection as set out in the Data Protection Act shall apply to the collection and processing of personal data by the Authority or any person authorized by the Authority.

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

Deleted by Act No
48 of 2013

(ee)

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

Inserted by
Act.No.15 of 2018

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

Provided that –

- (a) this provision shall not apply to any officer of the Authority;
- (b) the reward payable under this subsection shall be three per cent of the amount recovered subject to a maximum of five million shillings; and
- (c) the reward referred to in paragraph (a) shall be paid before the recovered sums of money are transferred to the Fund.

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

- (2C) A person who –
- (a) colludes with an officer of the Authority for the purpose of collecting the reward under subsection (2A);
 - (b) while working at the Authority aids another person to get and provide information under subsection (2A)
 - (c) provides false information under subsection (2A), commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years.

Amended by
Act No.48 of 2013
Amended by
Act No.15 of 2018
Repealed by Act
No. 15 of 2018

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

18A.

PART IIA

RECOGNITION OF A SELF REGULATORY ORGANIZATION

Recognition of self-regulatory organizations.

Inserted by Act No 37 of 2011

18B. (1) An organization which intends to operate as a self-regulatory organization shall apply to the Authority, in the prescribed form, for recognition, as such.

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

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

- (a) has a constitution and internal rules and policies which are consistent with this Act or related legislation;
- (b) has the capacity and financial and administrative resources necessary or desirable to carry out its functions as a self-regulatory organization, including dealing with a breach of the law or of any other applicable standards or guidelines;
- (c) is a fit and proper person;
- (d) has competent personnel for the carrying out of its functions; and

- (e) satisfies such other criteria as may be specified by the Authority.

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

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

(6) A delegation made under subsection (5), shall specify –

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

Rules of a self-regulatory organizations

18C. (1) A self-regulatory organization shall make rules relating to the matters for which it has regulatory or supervisory functions, including any sanction and disciplinary powers to be exercised in connection with the functions delegated to it.

Inserted by Act No 37 of 2011

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

- (a) management structures and shareholding rights of the self-regulatory organization taking into consideration the interests, rights and liabilities of its members, consumers, investors and users of their services;
- (b) rules of membership and conditions for approval and admission of members;

(c) the procedure for dispute resolution between members, users, investors and their clients and the right of appeal to the Authority or other relevant primary regulator; and

(d) the rules and procedures of self-regulatory organization with respect to reporting and accountability to any primary regulator other than the Authority.

(e) mechanisms of protecting personal data of the data subjects in compliance with the Data Protection Act.

Inserted by Act No. 24 of 2019

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

(4) A Self-Regulatory Organization shall submit any amendments to its constitution to the Authority for approval before the amendments come into operation.

Restriction on decision by a self-regulatory organization

18D. A self-regulatory organization shall not make a decision, under its rules, which adversely affect the rights of a person unless the self-regulatory organization –

(a) has given that person an opportunity to make representations about the matter; or

(b) considers, on a reasonable ground, that a delay in making the decision will prejudice a class of consumers.

Inserted by Act No 37 of 2011

Disciplinary action by a self-regulatory organization

18E. (1) A self-regulatory organization may take a disciplinary action against any of its members in accordance with its rules, if the member contravenes any provisions of the rules.

Inserted by Act No 37 of 2011

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

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

(4) Nothing in this section shall preclude the Authority, in any case where a self-regulatory organization fails to act against its member, from

suspending, expelling or otherwise disciplining a member of the self-regulatory organization.

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

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

Protection from personal liability

Inserted by Act No 37 of 2011

18F. No civil liability, whether arising in contract, tort, defamation, equity or otherwise shall be incurred by –

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

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

Appointment of key personnel by a self-regulatory organization

Inserted by Act No 37 of 2011

18G. A self-regulatory organization shall not change its key personnel except with the prior written notification to the Authority of such intention to change and receipt from the Authority of a confirmation that it has no objection to the proposed change.

Directions to a self-regulatory organization.

Inserted by Act No 37 of 2011

18H. (1) The Authority may, after giving a self-regulatory organization reasonable opportunity to be heard in respect of any matter, give direction, in writing, to the self-regulatory organization in terms of this section.

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

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

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- (c) require a self-regulatory organization to amend its rules; or
- (d) require a self-regulatory organization to implement or enforce its constitution or its rules.

Removal of an officer of the self-regulatory organization.

Inserted by Act No 37 of 2011

18I. The Authority may, if it reasonably believes that –

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

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

Annual report.

Inserted by Act No 37 of 2011

18J. (1) A self-regulatory organization shall, within ninety days after the end of every financial year, submit to the Authority, its financial statement and an annual report which shall include –

- (a) a report on the corporate governance policy of the self-regulatory organization;
- (b) financial statements prepared and audited in accordance with the accounts and audit requirements for regulated persons; and
- (c) such other requirements as may be specified by the Authority.

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

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

(d) serious irregularities have occurred;

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

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

PART III - PROVISIONS RELATING TO EXCHANGES

Approval of securities exchange required
Amended by Act No.48 of 2013
Amended by Act No.38 of 2016

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

Restriction on use of the words “stock exchange”, “securities exchange”, “securities exchange”, “exchange” e.t.c”

19A. A person shall not use the words “stock exchange”, “securities exchange”, commodities exchange, “derivatives exchange” or “futures exchange” in connection with a business except in accordance with an exchange licence granted by the Authority.

Inserted by Act No. 37 of 2011
Amended by Act No.38 of 2016

Application for securities exchange approval

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

Inserted by Finance Act, 2010
Amended by Act No.38 of 2016

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

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

Inserted by Act No.48 of 2013

(3) *deleted by Finance Act, 2010*

Amended by Act No 48 of 2013

Amended by Act
No.38 of 2016

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

Amended by Act.
No 48 of 2013
Amended by Act
No.38 of 2016

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

Amended by Act.
No 48 of 2013
Amended by Act
No.38 of 2016

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

Amended by Act.
No 48 of 2013
Amended by Act
No.38 of 2016

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

Amended by Act.
No 48 of 2013
Amended by Act
No.38 of 2016

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

Changes in
securities exchange
rules
Amended by Act.
No 48 of 2013
Amended by Act
No.38 of 2016
Amended by Act
No.38 of 2016

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

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

Amended by Act
No.38 of 2016

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

(4) Notwithstanding 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 affect the validity of the rules while in force nor shall it be subject to appeal.

Amended by Act
No.38 of 2016

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

Securities Exchange
to make rules
Inserted by Act
No.48 of 2013

21A. An approved securities exchange may make rules for the carrying out of its functions and, in particular, for the regulation of its activities, products, systems and fees.

Submission of rules
to Authority
Inserted by Act
No.48 of 2013

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

Authority may
abrogate rules
by securities
Inserted by Act
No.48 of 2013

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

Disciplinary Action
by securities
exchange

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

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

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

Directions to a securities exchange and a derivatives exchange.
Inserted by Act. No 48 of 2013
Amended by Act No.38 of 2016
Amended by Act No.38 of 2016

22A. (1) The Authority may, by notice in writing, issue a general or specific direction to a securities exchange, commodities exchange or derivatives exchange, where it considers it necessary or expedient-

(a) to ensure-

- (i) the fair, transparent and efficient operation of a securities market, commodities markets or derivatives market;
- (ii) the fair, transparent and effective clearing and settlement of transactions in exchange-traded derivative contracts or securities transactions;
- (iii) the integrity and proper management of systemic risks in securities markets, commodities markets or derivatives market; or
- (iv) a fair and proper governance structure of the securities exchange, commodities exchange or derivatives exchange;

Amended by Act No.38 of 2016

(b) in the interest of the public; or

(c) for the protection of the interests of investors;

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

- (a) the clearing or settlement of securities or exchange-traded derivatives contracts and the making of adjustments to contractual obligations arising out of those securities transactions or exchange-traded derivative contracts;

Amended by Act No.38 of 2016

- (b) the trading or the termination of trading on or through the facilities of that securities exchange, commodities exchange or derivatives exchange;
- (c) the manner in which a securities exchange carries on its business, including the reporting of off-market trades by trading participants of the securities exchange, commodities exchange; or
- (d) any other matter that the Authority considers necessary for the effective administration of this Act.

Powers of the Authority to intervene in the operations of securities and derivatives exchanges.
Inserted by Act. No 48 of 2013

22B. (1) The Authority may, where-

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

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

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

(2) A notice issued under subsection (1) may include a directive –

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

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

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

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

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

Exchange-traded derivative contracts to be approved by the Authority.
Inserted by Act. No 48 of 2013

22C.(1) A derivatives exchange shall not permit the trading of an exchange-traded derivative contract on the derivatives market established or operated by the derivatives exchange without the written approval of the Authority to trade in such exchange-traded derivative contracts.

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

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

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

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

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

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Fixing of position and trading limits in exchange-traded derivative contracts.
Inserted by Act. No 48 of 2013

22D. (1) The Authority may, for the purpose of preventing, diminishing or eliminating excessive speculation in any commodity under an exchange-traded derivative contract, by notice in writing, from time to time, fix such limits as the Authority considers necessary on the amount of trading which may be done or exchange-traded derivative contracts positions which may be held by any person, generally or specifically, under an exchange-traded derivative contract traded on the derivatives market of or subject to the rules of a derivatives exchange.

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

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

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

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

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

Default process of a clearing house to take precedence

22E. The provisions in respect of a default process and the precedence of the default process over the laws of insolvency in relation to a central

over laws of
insolvency.
No. 4 of 2000

Inserted by Act. No
48 of 2013

Licenses required
Amended by Act
No. 37 of 2011
Amended by Act.
No 48 of 2013
Amended by Act
No.38 of 2016

Amended by Act
No. 37 of 2011
Amended by Act.
No 48 of 2013
Amended by Act
No.38 of 2016

Application for
licence

Amended by Act.
No 48 of 2013

depository under the Central Depositories Act shall apply to a clearing house of a securities or a derivatives exchange.

PART IV - SECURITIES INDUSTRY LICENCES

23. (1) No person shall carry on business as a stockbroker, derivatives broker, REIT manager, trustee, dealer, investment adviser, fund manager, investment bank, central depository, authorized securities dealer, authorized depository, online forex broker, commodity dealer, commodity broker 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.

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

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 a licence without first giving the applicant or holder of a licence an opportunity of being heard.

(6) *(Deleted by Act No.48 of 2013)*

Amended by Act.
No 48 of 2013

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

Inserted by The
Finance Act 2008

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

Inserted by Act
No. 35 of 2012
Criteria for
suitability

24A (1) The Authority shall, in determining if a person is suitable for the grant of a licence under this Act, consider the –

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

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

- (a) take into account whether the person –
 - (i) has contravened the provision of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty, incompetence, or malpractice by persons

engaged in transacting with marketable securities;

(ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;

(iii) has taken part in any business practice which, in the opinion of the Authority, was fraudulent prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the person's methods of conducting business; or

(iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that person; or

(v) has acted in such a manner as to cast doubt on the person's competence and soundness of judgment;

(b) take into account any information in the possession of the Authority, whether provided by the applicant or not, relating to –

(i) any person who is to be employed by, associated with, or who shall be acting for or on behalf of, the applicant for the purposes of a regulated activity, including an agent;

(ii) where the applicant is a company in a group of companies–

(A) any other company in the same group of companies; or

(B) any substantial shareholder or key personnel of the company or any company referred to in subparagraph (a);

(c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and

(d) have regard to the state of affairs of any other business which the person carries on or purports to carry on.

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

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

25. (Deleted by Act No.48 of 2013)

Imposition of additional sanctions and penalties.

Amended by Act. No 48 of 2013

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, rules, guidelines, notices or directions made hereunder, or the rules of procedure of a securities exchange, by a licensed or approved person, issuer, employee or a director of a licensed or approved person, employee or director of an issuer as provided under section 11 (3) (cc) –

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

(i) a public reprimand;

(ii) suspension in the trading of an issuer’s securities, commodities or derivatives for a specified period;

(iii) suspension of a licensed person from trading for a specified period;

(iv) restriction on the use of a licence;

(v) recovery from such person of the benefit accrued from the breach and an amount equivalent to two times the amount of the benefit accruing to such person by virtue of the breach;

(vi) the levying of financial penalties not exceeding ten million shillings;

(vii) revocation of the licence of such person;

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

Amended by Act No.38 of 2016

Amended by Act. No 48 of 2013

- (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 the benefit accrued from the breach and an amount double the benefit accruing to such person by reason of the breach;
- (iv) the levying of financial penalties not exceeding five million shillings;

Amended by Act.
No 48 of 2013

(c) with respect to a director of an issuer or a licensed or approved person, including a securities exchange

- (i) disqualification of such person from appointment as a director of an issuer or licensed or approved person including, a securities exchange;
- (ii) the recovery from such person of the benefit accrued from the breach and an amount equivalent to two times the amount of the benefit accruing to the person by reason of the breach;
- (iii) the levying of financial penalties in such amounts as may be prescribed.

Amended by Act
No.15 of 2018

Inserted by Act No.
23 of 2019

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

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

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

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

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

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

(6) The financial penalties with respect to-

Inserted by Act. No
48 of 2013

(a) a breach of trading rules of a securities exchange by a licensed person shall be double the brokerage commission payable to the licensed person on the relevant trade, or double the annual fees, whichever is higher;

Inserted by Act. No
48 of 2013

(b) failure to comply with a reporting requirement by an issuer or a licensed person shall be double the applicable prescribed annual listing fee or license fee, whichever is higher, for every calendar quarter during which the reporting requirement remains outstanding; and

Amended by Act
No. 15 of 2018

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

Suspension or
revocation of a
license
Amended by Act.
No 48 of 2013

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

- (a) goes into liquidation or an order is issued for the winding up of the licensed person;
- (b) carries out any activity outside the scope of the licensed or approved activities;

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

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

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

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

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

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

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

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

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

Effect of revocation
of a licence.
Inserted by Act. No
48 of 2013

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

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

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

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

Gazettement and
register of licence
holders.
(Amended by Act
No. 2 of 2002)
Amended by Act.
No 48 of 2013

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 to be published in the Gazette; and
- (b) within thirty days of suspension or revocation of a licence, cause the names of any persons whose licence is suspended or revoked to be published in the Gazette.

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

- (a) his name;
- (b) the address of the principal place at which he 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 –

- (c) the holder of a licence ceases to carry on the business to which the licence relates; or
- (d) 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)

Deleted by Act No. 35 of 2012

- (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 in which it is a trading participant or with the Authority or other person approved by the Authority as the case may be;
- (e) that the applicant 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;

Amended by Act.
No 48 of 2013

(gg) in the case of an application for a derivatives broker licenses, that the applicant may carry on business either on behalf of clients or on the applicant's own behalf, or both.

Deleted by Act
No. 35 of 2012

(h)

Amended by Act.
No 48 of 2013

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

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

Amended by Act.
No 48 of 2013

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

Amended by Act.
No 48 of 2013

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

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

Provided that the provisions of this subsection shall not apply-

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

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

Amended by Act.
No 48 of 2013

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

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

(6) The Authority shall, in determining whether a person has direct or indirect control or beneficial entitlement for the purposes of subsection (4) and (5), have regard to whether that person is an associate or

Amended by Act.
No 48 of 2013

party to any contract, arrangement or understanding between persons that may allow for control to be exercised directly or indirectly in relation to the company.

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

Amended by Act.
No 48 of 2013

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

Procedure for
collective
investments scheme

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.

Amended by Act.
No 48 of 2013

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

PART IVA- PUBLIC OFFERS OF SECURITIES

Offers of securities.
Inserted by Act. No
48 of 2013

30A. (1) For the purposes of this Act, a person is considered to offer securities if that person-

(a) invites another person to enter into an agreement for, or with a view to subscribing for or otherwise acquiring or underwriting any securities; or

(b) invites another person to make an offer under paragraph (a).

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

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

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

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

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

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

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

Restricted public offers.
Inserted by Act. No 48 of 2013

30B. An issuer or offeror may, where a public offer of securities is –

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

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

Filing of Information notice
Inserted by Act. No 48 of 2013

30C. An issuer or offeror shall file an information notice with the Authority

-

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

Criminal liability
for a defective
prospectus.
Inserted by Act. No
48 of 2013

30D.(1) A person who –

- (a) makes a false, misleading or deceptive statement in a prospectus; or
- (b) omits information or a statement from a prospectus which is required under this Act to be included,

commits an offence and shall be liable on conviction –

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

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

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

Compensation for
false or misleading
prospectus.
Inserted by Act. No
48 of 2013

30E. (1) This section applies to-

- (a) an issuer of securities to which a prospectus relates;
- (b) where the issuer is a body corporate,-
 - (i) each person who is a director of that body corporate at the time when the prospectus is published; and
 - (ii) each person who has given his consent to be named and is so named in the prospectus as a director or has agreed to become a director of that body corporate either immediately or at a future time;
- (c) each person who accepts, and is stated in the prospectus or supplementary prospectus as

accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;

- (d) the offeror of the securities, where the offeror is not the issuer;
- (e) where the offeror is a body corporate, but is not the issuer and is not making the offer in association with the issuer, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published; and
- (f) each person not falling within paragraphs (a) to (e) who has authorized the contents of, or of any part of, the prospectus or supplementary prospectus.

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

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

- (a) under subsection (1)(a) or (b), unless the issuer has made or authorized the offer in relation to which the prospectus or supplementary prospectus is published; or
- (b) under subsection (1)(b),(c), (e) or (f), if such prospectus or supplementary prospectus is published without his or her knowledge or consent and on becoming aware of its publication, he or she gives reasonable notice to the public and to the Authority that the prospectus or supplementary prospectus was published without his knowledge or consent.

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

30F. (1) An issuer whose securities have been issued in accordance with an approved offer shall keep the Authority, members of the company and other holders of its securities, any listing exchange and the general public informed as soon as reasonably practicable, but in any event not later than the end of the next working day, of any information relating to the issuer and its subsidiaries which-

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

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

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

30G. The Authority may, if it appears to it that –

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

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

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

Form of report
books, records and
internal accounting
directives

30GA. (1) Every issuer of securities, licensed and approved persons shall devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with the International Financial Reporting Standards.

Inserted by Act No.
15 of 2018

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

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

PART IVB – ASSET BACKED SECURITIES

Interpretation.
Inserted by Act. No
48 of 2013

30H. For the purposes of the Part-

“asset backed securities” means –

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

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

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

“limited investor” means any qualified investor which is not –

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

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

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

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

“offering memorandum” means any notice, circular, material, advertisement, publication or other invitation offering for subscription or

purchase of any asset backed securities in restricted or limited restricted offers;

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

“qualified investor” in relation to asset backed securities, means –

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

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

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

“securitisation arranger” means a person, who is appointed by the trustee under section 300 from amongst persons who are not employees of the originator or seller or who are acting solely in the capacity of a legal adviser or the auditor of the originator or the seller or who sponsor or assists in-

- (a) the formation of a securitisation trust;
- (b) the preparation of the structure of a securitisation transaction;
- (c) its financial or cash flow models; or

- (d) a prospectus or an offering memorandum in asset backed securities;

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

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

- (a) sale;
- (b) transfer or assignment of assets;
- (c) appointment of a trustee;
- (d) establishment of a trust;
- (e) appointment of a servicer; or
- (f) entering into all or any arrangements;

necessary or desirable to provide any structural or credit support or manage risks or other arrangements to operate or give effect to the securitisation transaction or issue or offer of asset backed securities;

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

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

“servicer” means a person appointed by the trustee under section 30P to be primarily responsible for –

- (a) the day to day administration functions of the cash flow of the securitised assets;
- (b) the ongoing relationship with any obligor;
- (c) the provision of service to obligors;
- (d) cash management;
- (e) collection and remission of funds to the trustee;
or

- (f) to conduct such other activities as are specified in the transaction documents;

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

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

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

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

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

Restrictions on issues, offers etc. of asset backed securities.
Inserted by Act. No 48 of 2013

30I. (1) A person shall not issue, offer for subscription purchase, or invite the subscription or purchase of asset backed securities to the public or to restricted investors, except in accordance with this Act.

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

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

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

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

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

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

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

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

Form of asset backed securities to be offered.

30J. (1) Asset backed securities issued or offered under this Act shall consist of beneficial entitlements to a unit, participation, share of or interest in the assets of the trust established as a special purpose vehicle for undertaking a securitisation transaction and issuing asset backed securities to investors who shall be beneficiaries of the trust.

(2) A person may issue or offer different classes or tranches of asset backed securities reflecting beneficial entitlements with differing rights including, priorities of payments from the income or capital of the trust or distribution of assets or voting entitlements and provision may be made for a beneficiary to be entitled to a residual interest.

Nature of assets that may be sold, transferred or assigned.
Inserted by Act. No 48 of 2013

30K. Assets which may be originated into a securitisation trust or sold, transferred or assigned to the trust shall –

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

Origination of assets for sale, transfer or assignment.
Inserted by Act. No 48 of 2013

30L. (1) Subject to such requirements that may be imposed by the Authority, all securitisation transactions shall involve either one or a combination of –

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

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

Provided that-

- (a) the sale, transfer or assignment of the asset is recognized as such by the relevant law or law governing the transaction, and in such case, it shall not be necessary in order to achieve a true sale and to satisfy the requirements of this Act that off balance sheet treatment is achieved under the accounting rules by the originator or the seller or that capital relief be provided by any other regulator;
- (3) The sale, transfer or assignment in relation to a specific asset or a specific securitisation transaction under subsection (1) shall, subject to such conditions as the Authority may impose, be a legal and not an equitable sale, transfer or assignment of the asset or assets.
- (4) Failure to achieve a true sale shall not as a consequence of the operation of this Act operate to invalidate the sale, transfer or assignment, the issue or offer of asset backed securities or otherwise adversely affect the rights of the investors in asset backed securities.

Trustees.
Inserted by Act. No
48 of 2013

30M. (1) The Authority may, from time to time prescribe the qualifications of a person to be appointed as a trustee.

(2) A trustee shall -

- (a) be the custodian of the assets of a securitisation trust;
- (b) manage the operation of the securitisation trust and the securitisation transaction in a fiduciary capacity;

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

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

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

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

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

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

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

Appointment and liability of securitisation manager.
Inserted by Act. No 48 of 2013

30N. (1) A trustee may appoint a securitisation manager in such manner as may be provided for in the transaction documentation.

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

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

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

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

Securitisation arranger.
Inserted by Act. No 48 of 2013

30O. (1) A trustee may appoint a securitisation arranger in accordance with the transaction documentation.

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

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

Servicers, alternative servicers and successor servicers.

Inserted by Act. No 48 of 2013

30P. (1) The Authority may prescribe the eligibility requirements for servicers, alternative servicers and successor servicers.

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

(3) Where-

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

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

(4) The servicer shall-

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

Classification of issues or offers of asset backed securities.

Inserted by Act. No 48 of 2013

30Q. (1) An issue or offer of asset backed securities may be classified as –

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

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

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

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

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

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

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

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

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

(8) The Authority may make regulations prescribing the-

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

Conversion of restricted or unrestricted offers. Inserted by Act. No 48 of 2013

30R. A securitisation transaction which has been classified as-

- (a) a restricted offer;
- (b) a limited restricted offer; or
- (c) any tranche or portion of an offer so classified

may, with the consent of the trustee and, where provided for in the transaction documents, with the consent of the investors in the asset backed securities, be converted to unrestricted or a restricted offer in such manner as the Authority may prescribe.

Content of the prospectus, offering memorandum or information notice. Inserted by Act. No 48 of 2013

30S.(1) A prospectus or an offering memorandum and information notice shall –

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

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

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

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

Secondary sales or transfer of asset backed securities. Inserted by Act. No 48 of 2013

30T. A secondary sale or transfer of an asset backed security shall comply with the requirements of this Act and such other requirements as the Authority may impose.

Obligations applicable to restricted offers. Inserted by Act. No 48 of 2013

30U.(1) A reference in this Act to a false, untrue, misleading or deceptive statement in a prospectus or to the omission of information or a statement when making an application relating to or in connection with any securitisation transaction or any issue or offer of asset backed securities shall –

- (a) include any statement made in or any representation or warranty included in any prospectus or offering

memorandum, transaction document or made to any credit rating agency in connection with the rating of any asset backed securities or the review of such a rating and includes any omission; and

- (b) include any information, statement in, or, omission from, the continuing disclosure obligations under this Act.

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

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

(4) The powers of the Authority to –

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

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

Obligation to conduct due diligence.
Inserted by Act. No 48 of 2013

30V. (1) An issuer, an originator, a seller, a securitisation arranger, a transaction adviser or any party involved in or connected with the issue or offer or named as an expert in the prospectus or offering memorandum shall conduct an independent verification and due diligence in respect of the assets, the issue of asset backed securities, all statements included in the prospectus or offering memorandum and the presentations and warranties included in any transaction document.

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

- (a) made such inquiries that were reasonable in the circumstances; and

- (b) believed on reasonable grounds that the statement, representation, warranty or omission was not misleading, deceptive or material.

(3) A credit rating agency shall include, prominently in any credit rating report issued in respect of asset backed securities, details of due diligence or verification of facts, data, assumptions or other information or statements, if any, that the credit rating agency has undertaken.

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

Rating requirement and obligations of credit rating agencies.
Inserted by Act. No 48 of 2013

30W. (1) A trustee shall, where a rating under this Act is required, ensure that a rating is obtained and maintained.

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

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

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

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

General disclosure obligations.
Inserted by Act. No 48 of 2013

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

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

Trustee to file a summary of transferred assets.
Inserted by Act. No 48 of 2013

30Y. (1) A trustee shall, irrespective of the classification of the issue or offer of asset backed securities, within seven working days of the issue or offer of asset backed securities to a person other than a seller or an originator, or the sale, transfer or assignment of assets to a securitisation trust, file with the Authority –

- (a) a summary of the assets transferred which discloses the nature and the number of assets transferred;
- (b) details of the consideration for sale, transfer or assignment;

- (c) details of the nature of the sale, transfer or assignment, and
- (d) such other information as the Authority may prescribe.

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

Securitisation
requirements.
Inserted by Act. No
48 of 2013

30Z. (1) The Authority may issue guidelines for the better carrying out of the provisions of this Part.

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

- (a) the application for approval to issue or offer asset backed securities;
- (b) the inclusion or exclusion from the definition of assets;
- (c) obtaining prior consent of another regulator, if required, in respect of the sale, transfer or assignment of assets or the participation in a securitisation transaction;
- (d) the form or structure of a special purpose vehicle and documentation requirements;
- (e) the classification of issues or offers with respect to unrestricted, restricted or limited restricted issues or offers and the requirements in respect of each classification;
- (f) the conversion of issues or offers from one classification to another;
- (g) the issue of orders to stop a proposed issue or a restricted offer of asset backed securities;
- (h) the nature of assets that may be originated into a securitisation trust or be sold, transferred or assigned to a trust based on the type or characteristics of the asset or the specific transaction;
- (i) the preparation of reports, accounts and financial statements;
- (j) rating requirements;

- (k) the obligations and liabilities of credit rating agencies;
- (l) the registration of details of transfer of assets;
- (m) the content of the prospectus or offering memorandum as the case may be to be published in connection with the issue or offer of asset backed securities and the requirements for supporting data and verification;
- (n) the initial, continuing and ongoing disclosure, audit and compliance statements and provision of data on the performance of assets;
- (o) civil liability regimes for offering memoranda and prospectus;
- (p) the filing of reports and information;
- (q) access to reports and information, inspection, copying and fees payable in relation thereto;
- (r) the appointment, removal, liability and regulation of a securitisation arranger, an originator, a seller, a servicer, a trustee, a securitisation manager, an auditor and any other party involved in or associated with the promotion, management or operation of a securitisation transaction or proposed securitization;
- (s) the imposition of economic sanctions and the issuing of prohibition orders in respect of parties associated with a securitisation transaction;
- (t) the rights of investors in asset backed securities and requirements for trust deeds and transaction documents including the powers and obligations of trustees, the holding of meetings and voting rights and the obligations of other parties;
- (u) fees payable in respect of making an application, the filing, lodging or inspection of any documents or reports filed or lodged with the Authority and in respect of the provision of copies of such documents and reports;
- (v) listing on a securities exchange;
- (w) the provision of data, including pricing on post issuance trading;

- (x) takeover offers in respect of listed asset backed securities;
- (y) advertisements.

PART V - SECURITIES TRANSACTIONS AND REGISTERS

Transactions in securities

31(1) No licensed person, broker or dealer shall transfer listed securities outside the securities exchange in which he is a trading participant 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) the security trades over the counter and such trade is reported in accordance with the rules prescribed by the Authority;
- (iii) it would be in the interest of the holders of ordinary shares of the company having regard to the prevailing conditions and all factors which are relevant in the circumstances to so authorize.

Inserted by Act No. 37 of 2011

(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 –

- (d) employ any device, scheme or artifice to defraud;
- (e) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
- (f) make any untrue statement of a material fact; or
- (g) 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.

Inserted by Act. No
48 of 2013

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

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 AND OTHER MARKET ABUSES

Application
Inserted by Act. No
48 of 2013

32A. (1) This Part applies to listed securities, their derivatives and derivatives traded on any market regulated by the Authority.

(2) For the purposes of this Part–

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

Insider trading.
Inserted by Act. No
48 of 2013

32B. (1) A person who deals in listed securities or their derivatives that are price-affected in relation to the information in his possession commits an offence of insider trading if that person –

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

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

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

Inside information.
Inserted by Act. No
48 of 2013

32C. (1) For the purposes of this Part, "inside information" means information which –

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

Information made
public.
Inserted by Act. No
48 of 2013

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

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

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

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

Penalty for insider
trading.
Inserted by Act. No
48 of 2013

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

- (a) on a first offence, in the case of –

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

Market
manipulation.
Inserted by Act. No
48 of 2013

32F. (1) A person who enters into or carries out, directly or indirectly, two or more transactions in the securities of a company, or in other listed securities, which by themselves or in conjunction with any other transaction –

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

commits an offence.

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

False trading and
market rigging.
Inserted by Act. No
48 of 2013

32G. (1) A person who creates or does anything which is intended or likely to create a false or misleading impression –

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

commits an offence.

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

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

Fraudulently
inducing trading in
securities.
Inserted by Act. No
48 of 2013

32H. A person who induces or attempts to induce another person to subscribe for, sell or purchase securities by–

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

commits an offence.

Use of manipulative
devices.
Inserted by Act. No
48 of 2013

32I. A person who, directly or indirectly, in connection with any transaction with any other person involving the subscription, purchase or sale of securities –

- (a) uses any device, scheme or artifice to defraud the other person; or

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

commits an offence.

False or misleading statements inducing securities transactions.
 Inserted by Act. No 48 of 2013

32J. A person who, directly or indirectly, for the purpose of inducing the subscription for, sale or purchase of securities by another person of any company, or of any other listed securities, or to maintain, increase, reduce or stabilize the price of such securities, makes with respect to the securities

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

commits an offence.

Front-running
 Inserted by Act No. 15 of 2018

32JA. (1) Any person in a market intermediary who has insider information on client orders with a price differential or is aware of such orders and effects an own account transaction in the securities concerned or in any related investments directly through any other person, to take advantage of the price differential before the client order is executed commits an offence.

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

Liability to pay damages.
 Inserted by Act. No 48 of 2013

32K. (1) A person who is convicted of an offence under this Part shall, in addition to the penalty imposed for committing the offence, be liable to an action by a person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.

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

Obtaining gain by fraud

Inserted by Act No. 15 of 2018

Penalty for insider trading and market abuse.

Inserted by Act. No 48 of 2013

32KA. Any person who on his own action or conspires with another by deceit, intentional concealment, omission or any fraudulent means to obtain financial or personal gain from the public, an issuer or a regulated person commits an offence

32L. A person who contravenes the provisions of this Part commits an offence and is liable on conviction in the case of—

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

PART VII – MISCELLANEOUS PROVISIONS

Powers of the Authority to intervene in management of a licensee

Inserted by The Finance Act No. 9 of 2007

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 twelve months, as the Authority shall specify in the instrument of appointment and may be extended by the High Court upon the application of the Authority if such extension appears to the Court to be justified, and any such extension shall be notified to all interested parties.

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

Inserted by the
Finance Act 2008

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

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

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

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

Inserted by the
Finance Act 2008

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

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

Amended by Act.
No 48 of 2013

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

Amended by Act.
No 48 of 2013

(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.

Remedy for unfair
prejudice
Amended by Act.
No 48 of 2013

33C. (1) The Authority may, if it appears to it that the affairs of-

- (a) a listed company or any special purpose vehicle;
- (b) any other issuer of listed securities; or
- (c) issuer of publicly offered securities,

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

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

- (a) restraining the carrying out of the act or conduct;
- (b) requiring the company to bring in its name, proceedings against the persons on such terms as the Court may impose;
- (c) appointing a receiver or manager for the whole or part of the property or business of the company and may specify the powers and duties of the receiver or manager;

- (d) imposing such conditions as the Court may consider fit whether for regulating the conduct of the affairs of the company in future; or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the capital of the company or otherwise.

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

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

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

Powers of the Authority to demand for production of records and documents.
Inserted by Act. No 48 of 2013

33D. (1) The Authority may issue directions to—

- (a) a company;
- (b) a subsidiary of the company;
- (c) a company which is substantially under the control of the same person as the company;
- (d) any securitisation arranger, originator, servicer, trustee, securitisation manager, auditor or any other party associated with a securitisation transaction or special purpose vehicle; or

- (e) any party associated with the issue, offer or listing of securities;

where it appears to the Authority that there are reasonable grounds to believe that –

- (i) the business of a listed company, an entity whose securities have been offered to the public or the activities or operations of any special purpose vehicle or the arrangements in respect of any securitisation transaction involving listed asset backed securities has been or is being conducted –
 - (A) with the intent to defraud its creditors, creditors of another person or creditors of any securitisation trust, special purpose vehicle or investors in any listed securities for a fraudulent or unlawful purpose;
 - (B) in a manner prejudicial to any of its members or to investors in any listed securities;
 - (C) by a company, an entity or a special purpose vehicle which was formed for a fraudulent or unlawful purpose; or
 - (D) by persons who have, in relation to the formation, management or operation of the company, entity or special purpose vehicle been found guilty by a Court for fraud, misfeasance or other misconduct towards the company, entity or special purpose vehicle, its members or the investors in any listed securities; or
- (ii) the members of a company or investors in a listed or publicly offered securities have not been given all the information relating to its affairs that they might reasonably expect;

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

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

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

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

- (a) take copies or extracts;
- (b) demand an explanation from that person, or any other person who is a present or past officer of the company, or is or was at any time employed by the company or other relevant person; or
- (c) require, if the records and documents are not produced, the person who was required to produce them to give an explanation for failing to produce the records or documents.

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

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

Winding up.
Inserted by Act. No
48 of 2013

Cap. 486

33E. The Authority may, if it appears to it that it is desirable for the protection of clients or investors, that a licensed person should be wound up under the Companies Act or relevant constituting document, present a petition for the licensed person to be wound up or institute winding up proceedings under the relevant instrument on the ground that it is just and equitable that the licensed person should be wound up.

Other offences

34 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) *Deleted by Act No.48 of 2013*

(3) *Deleted by Act No.48 of 2013*

(4) *Deleted by Act No.48 of 2013*

(5) *Deleted by Act No.48 of 2013*

Offences and penalties.
Amended by Act.
No 48 of 2013

34A. (1) Where a person commits an offence under this Act and no specific penalty is provided for, that person shall be liable on conviction-

(a) on a first offence, in the case of -

- (i) an individual, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years and pay two times the amount of any gain made or loss avoided as a result of the contravention; or
- (ii) a company, to a fine not exceeding ten million shillings and pay two times the amount of any gain made or loss avoided as a result of the contravention;

(b) on any subsequent offence, in the case of-

- (i) an individual, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years and pay three times the amount of any gain made or loss avoided as a result of the contravention; or
- (ii) a company, to a fine not exceeding thirty million shillings and pay three times the amount of any gain made or loss avoided as a result of the contravention;

Inserted by Act No.
23 of 2019

(1A) The financial penalties imposed under subsections (1) and (2) shall be recoverable summarily by the Authority as civil debts.

(2) The court may make an order for the payment by a person convicted for an offence under this Act of compensation to a person who suffers loss by reason of the offence.

(3) An order for compensation under subsection (2) may be in addition to or in substitution of any other penalty or remedy available to that person.

(4) The amount of *restitution or compensation* for which a person is liable under subsection (2), is-

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

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

(6) The discretion conferred on the Authority to levy financial penalties or to impose any other sanctions under this Act may be exercised separately or cumulatively, and the imposition of such penalties or sanctions shall not, in any circumstance, prejudice the right to any other legal proceedings that may be vested in the Authority.

(7) All financial penalties levied under this Act shall be paid into the Investor Compensation Fund.

Compounding of offences.
Inserted by Act. No 48 of 2013

34B.(1) The Authority may, with the consent of the Director of Public Prosecutions, and with the written consent of the person who commits an offence, compound an offence and make an order for the payment by that person of a sum not exceeding two-thirds of the maximum fine that would otherwise have been imposed upon conviction.

(2) The Authority shall, if it has compounded an offence under subsection(1) –

- (a) make the order in writing and attach a written admission of the person who has committed the offence and the consent of the Director of Public Prosecution to compound the offence;
- (b) give the person who has committed the offence a copy of the order upon the request of that person; and
- (c) specify the offence committed, the sum of money ordered to be paid, and the date to which payment is due.

(3) Where the amount ordered to be paid under subsection (1) –

- (a) is paid to the Authority within fourteen days of the order, the Authority shall not institute any proceedings against that person; or
- (b) is not paid within fourteen days of the order, the Authority may institute proceedings in relation to the offence.

(4) The Authority shall pay all sums of money received under this section into the Investor Compensation Fund.

(5) The compounding of an offence under this section shall not prejudice any orders for compensation or restitution that may be imposed by the Authority.

Appeals from action
by the Authority

35 (1) Any person aggrieved by any direction given by the Authority or by the Investor Compensation Fund Board -

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

Inserted by Act No.
37 of 2011

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.

Inserted by Finance Act 2008

(g) refusing to grant compensation to an investor who has suffered pecuniary loss resulting from failure of a licensed stockbroker or dealer, to meet his contractual obligations or pay unclaimed dividends to a beneficiary who resurfaces;

Amended by the Finance Act 2008

(2) The Capital Markets Tribunal may require the Authority or the Investor Compensation Fund Board to show cause for its action or decision, and may affirm or, after affording the Authority or the Board an opportunity to be heard, set aside such action or decision.

Establishment of the Capital Markets Tribunal

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

Amended by Act
No.15 of 2018

(4) The Tribunal shall, upon an appeal made to it in writing by an aggrieved party following a determination by the Authority on any matter relating to this Act, inquire into the matter and make an award thereon, and every award made shall be notified by the Tribunal to the parties concerned and the Authority as the case may be.

(5) For the purposes of hearing an appeal, the Tribunal shall have all the powers of the High Court to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

(6) Where the Tribunal considers it desirable for the purposes of avoiding expenses or delay or any other special reasons so to do, it may receive evidence by affidavit and administer interrogatories within the time specified by the Tribunal.

(7) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence would not otherwise be admissible under the law relating to evidence.

(8) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed.

(9) All 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.

36. (1) 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.

(2) 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.

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

Exemption of
existing securities
exchange
Inserted by Act. No
48 of 2013

36A. (1) Notwithstanding the provisions of this Act or any regulations or rules made thereunder in relation to derivatives or futures exchanges and participants therein, any securities exchange approved by the Authority under this Act as on the date this section comes into force shall be entitled to conduct the business of a derivatives exchange, whether by itself or through its wholly owned subsidiary, for a period of up to three years, subject only to complying with any requirements for its current approval as a securities exchange, provided that such an exchange will be required to-

- (a) have an issued and paid up share capital of a minimum of five hundred million shillings only;
 - (b) make arrangements for the efficient and effective clearing and settlement of transactions effected through the exchange and its clearing house, and for the management of settlement risk;
 - (c) implement an effective and reliable infrastructure to facilitate the trading of derivatives listed on the exchange;
 - (d) formulate rules for the listing of derivatives contracts, for trading, clearing and settlement on the exchange and its clearing house, and for dispute resolution and for compensation of investors and will have submitted these for approval by the Authority.
- (2) At the end of the period referred to in subsection (1), a securities exchange shall be required to comply with all the requirements governing a derivatives exchange.
- (3) During the period referred to in subsection (1), and notwithstanding any other provisions of this Act and any regulations made thereunder, all trading participants who are or who become trading participants of such exchange shall be entitled to be derivatives brokers subject only to complying with the licensing requirements for a trading participant subsisting on the date this section comes into force.

- (4) The Authority may approve the rules of the exchange aforesaid relating to its derivatives operations within thirty days of submission of the draft rules or of any changes requested thereon by the Authority.

Supersession

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.