



LAWS OF KENYA



CAPITAL MARKETS ACT

CHAPTER 485A

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CHAPTER 485A

CAPITAL MARKETS ACT

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CHAPTER 485A

CAPITAL MARKETS ACT

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

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

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

[Act No. 17 of 1989, Act No. 14 of 1991, Act No. 10 of 1994, Act No. 3 of 2000, Act No. 2 of 2002, Act No. 15 of 2003, Act No. 4 of 2004, Act No. 10 of 2006, Act No. 9 of 2007, Act No. 8 of 2008, Act No. 8 of 2009, Act No. 10 of 2010, Act No. 37 of 2011, Act No. 4 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Capital Markets Act.

2. Interpretation

In this Act, unless the context otherwise requires—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; 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;

“derivatives dealer” means a person who carries on the business of buying, selling, dealing, trading, underwriting, or retailing securities derivatives as an agent for investors or on his own account, with the intention of selling them to the public;

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

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

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

“**futures contract**” means a contract for the acquisition or disposal of securities or other instruments, such as a commodity or a financial instrument, under which delivery is to be made at a future date and at a price agreed upon when the contract is made and shall include a reference to a date and a price determined in accordance with the terms of the contract;

“**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;

“**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 under writer in relation to a public issue of securities; or
- (5) such other persons as the Authority may, by rules or regulations, determine to be within the intent of this definition: but the expression does not include—
 - (a) a bank as defined in section 2 of the Banking Act (Cap. 488);
 - (b) a company or association registered under Part III of the Insurance Act (Cap. 487);

- (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;
- (d) a trust corporation within the meaning of the Trustee Act (Cap. 167);
- (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 (Cap. 111), where—
 - (i) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
 - (ii) the advice is given or the analyses or reports are issued or promulgated only through that newspaper;
 - (iii) that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports;
 - (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 licensed by the Authority to advise on offers of securities to the public or a section of the public, takeovers, mergers, acquisitions, corporate restructuring involving companies listed or quoted on a securities exchange, privatisation of companies listed or to be listed on a securities exchange or underwriting of securities issued or to be issued to the public and to engage in the business of a stockbroker or dealer;

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

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

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

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

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

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

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

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

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

“over the counter” means the trading of securities otherwise than at an approved securities exchange;

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

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

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

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

“registered venture capital company” means a company approved by the Authority and incorporated for purposes of providing risk capital to small

and medium sized businesses in Kenya with high growth potential, whereby not less than seventy-five per cent of the funds so invested consist of equity or quasi-equity investment in eligible enterprises;

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

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

“securities” means—

- (a) debentures or bonds issued or proposed to be issued by a government;
- (b) debentures, shares, bonds, commercial paper, or notes issued or proposed to be issued by a body corporate;
- (c) derivatives including futures contracts and options contracts on—
 - (i) securities;
 - (ii) indices;
 - (iii) interest or other rates;
 - (iv) currency;
 - (v) futures; or
 - (vi) commodities;
- (d) any unit, interest or share offered under a collective investment scheme or other similar vehicles, whether established in Kenya or not; or
- (e) any instruments commonly known as securities, but does not include—
 - (i) bills of exchange;
 - (ii) promissory notes; or
 - (iii) certificates of deposits issued by a bank or financial institution licensed under the Banking Act, 1989 (Cap. 488);

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

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

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

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

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

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

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

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

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

“trading participant” means a licensee of the Authority with rights to trade at an approved securities exchange;

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

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

[Act No. 3 of 2000, s. 4, Act No. 2 of 2002, Sch., Act No. 8 of 2008, s. 47, Act No. 10 of 2010, s. 45, Act No. 37 of 2011, s. 2, Act No. 4 of 2012, s. 32.]

3. Meaning of the term “associated person”

(1) For the purpose of this Act, a reference to a person associated with another person shall be construed as a reference to—

- (a) where the other person is a body corporate—
 - (i) a director or secretary of the body corporate;
 - (ii) a body corporate that is related to the other person; or
 - (iii) a director or secretary of such related body corporate;
- (b) where the matter to which the reference relates in the extent of a power to exercise, or to control the exercise of, the voting power

attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an understanding or undertaking, whether express or implied—

- (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the body corporate;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
 - (iii) under which either of those persons may acquire from the other of them shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other of them;
- (c) a person in concert with whom the other person is acting or proposes to act, in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise or control the exercise of, the voting power attached to voting shares in a body corporate—
- (i) subject to subsection (2), a person who is a director of a body corporate that carries on a business of dealing in securities and of which the other person is also a director;
 - (ii) subject to subsection (2), a person who is a director of a body corporate of which the other person is director, not being a body corporate that carries on a business of dealing in securities; or
 - (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is, by virtue of any law, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with the person mentioned in paragraph (a), (b), (c), (d), (e), or (f), that last mentioned person.

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

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

4. Definition of “interest in securities”

(1) Where any property held in trust consists of or includes securities in which a person knows, or has reasonable grounds for believing, that he 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

5. Establishment and membership of the Authority

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

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

- (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
 - (c) borrowing and lending money;
 - (d) entering into contracts; and
 - (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.
- (3) The Authority shall consist of—
- (a) a 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 subsection (3)(b) 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 of subsection (3)(b) the Minister may appoint another person to hold office for the unexpired 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.

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

6. Meetings and procedures of the Authority

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

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

(3) The 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.

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

7. Seal and execution of documents

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

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

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

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

8. Appointment of chief executive of the Authority

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

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

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

(3) The Minister, in consultation with the Board, shall recommend to the President a person qualified in terms of this section for appointment as the chief executive.

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

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

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

[Act No. 3 of 2000, s. 8, Act No. 2 of 2002, Sch.]

9. Appointment and remuneration of staff

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

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

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

10. Protection from legal action

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

11. Objectives of the Authority

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

- (a) the development of all aspects of the capital markets with particular emphasis on the removal of impediments to, and the creation of incentives for longer term investments in, productive enterprises;
- (b) to facilitate the existence of a nationwide system of securities market and brokerage services so as to enable wider participation of the general public in the securities market;
- (c) the creation, maintenance and regulation of a market in which securities can be issued and traded in an orderly, fair and efficient

manner, through the implementation of a system in which the market participants are self-regulatory to the maximum practicable extent;

- (d) the protection of investor interests;
- (e) the facilitation of a compensation fund to protect investors from financial loss arising from the failure of a licensed broker or dealer to meet his contractual obligations; and
- (f) the development of a framework to facilitate the use of electronic commerce for the development of capital markets in Kenya.

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

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

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

- (a) advise the Minister on all aspects of the development and operation of capital markets;
- (b) implement policies and programmes of the Government with respect to the capital markets;
- (c) employ such officers and servants as may be necessary for the proper discharge of the functions of the Authority;
- (cc) impose sanctions for breach of the provisions of this Act or the regulations made thereunder, or for non-compliance with the Authority's requirements or directions, and such sanctions may include—
 - (i) levying of financial penalties, proportional to the gravity or severity of the breach, as may be prescribed;
 - (ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;
 - (iii) publishing findings of malfeasance by any person;
 - (iv) suspending or cancelling the listing of any securities, or the trading of any securities, for the protection of investors;
- (d) to frame rules and guidelines on all matters within the jurisdiction of the Authority under this Act and such rules and guidelines may prescribe—
 - (i) the financial penalties or sanctions for breach of the Authority's rules or non-compliance with the authority's requirements;

- (ii) the fees payable annually by a securities exchange or a central depository or for securities transactions, licences and approvals required by this Act to be issued or granted on an application to the Authority;
 - (iii) the disclosure requirements and other terms and conditions on which securities may be listed on or de-listed from a securities exchange or offered for sale to the public or a section thereof;
 - (iv) the criteria for determining whether a person is fit and proper to be licensed or approved under this Act;
- (e) to grant a licence to any person to operate as a stockbroker, dealer or investment adviser, fund manager, investment bank, central depository or authorised securities dealer, and ensure the proper conduct of that business;
 - (f) to grant approval to any person to operate as a securities exchange, 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;
 - (g) register, approve and regulate collective investment schemes;
 - (h) inquire, either on its own motion or at the request of any other person, into the affairs of any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market;
 - (i) give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market;
 - (j) conduct inspection of the activities, books and records of any persons approved or licensed by the Authority;
 - (k)-(l) *deleted by Act No. 9 of 2007, s. 46(b)*;
 - (m) appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market, if such action is deemed to be in the interest of the investors, at the expense of such collective investment scheme or company;
 - (n) grant compensation to any investor who suffers pecuniary loss resulting from the failure of a licensed broker or dealer to meet his contractual obligations;
 - (o) have recourse against any person whose act or omission has resulted in a payment from the Compensation Fund;
 - (p) act as an appellate body in respect of appeals against any self regulatory organization securities exchange or central depository in actions by parties aggrieved thereby;

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

[Act No. 10 of 1994, s. 2, Act No. 3 of 2000, s. 9, Act No. 9 of 2007, s. 46, Act No. 8 of 2008, s. 48, Act No. 37 of 2011, s. 3.]

11A. Delegation of functions

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

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

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

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

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

12. Power of Authority to issue rules, regulations and guidelines

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

- (a) listing and de-listing of securities on a securities exchange;
- (b) disclosures about securities transactions by—
 - (i) stockbrokers and dealers;
 - (ii) persons who acquire or dispose of securities; and
 - (iii) a securities exchange;

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- (c) the keeping and proper maintenance of books, records, accounts and audits by all persons approved or licensed by the Authority and regular reporting by such persons to the Authority of their affairs;
 - (d) the operations of any other bodies corporate or persons dealing with capital market instruments;
 - (e) the procedure for the participation of foreign investors in the securities market;
 - (f) collective investment schemes;
 - (g) registered venture capital companies;
 - (h) credit rating agencies;
 - (i) the issue, transfer, clearing and settlement of securities;
 - (j) securities clearing and settlement or depository organisations;
 - (k) fund managers;
 - (l) investment banks;
 - (m) authorized securities dealers;
 - (n) self regulatory organizations; and
 - (nn) the use of money raised from the issue of securities, in cases in which the securities are issued to raise money for a specified purpose.
- (2) All rules, regulations and guidelines formulated by the Authority shall—
- (a) take into account and be consistent with the objective of promoting and maintaining an effective and efficient securities market;
 - (b) be exposed for comment by stakeholders and the general public for a period of thirty days through notification in at least two daily newspapers of national circulation and the electronic media; and
 - (c) be signed by the chairman and chief executive and published in the *Gazette*.

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

[Act No. 10 of 1994, s. 3, Act No. 3 of 2000, s. 10, Act No. 15 of 2003, s. 46, Act No. 4 of 2004, s. 74, Act No. 8 of 2008, s. 49, Act No. 37 of 2011, s. 5.]

13. Furnishing of information to the Authority

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

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

(3) Notwithstanding subsection (2), the Authority may share information with other regulatory authorities.

[Act No. 10 of 2010, s. 46.]

13A. Power of entry and search

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

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

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

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

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

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

14. Committees

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

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

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

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

15. General fund

- (1) The Authority shall have its own general fund.
- (2) There shall be paid into the general fund—
 - (a) all such sums of money as may be paid as fees under this Act; and
 - (b) all such sums of money as may be received by the Authority for its operations from any other source approved by the 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.

16. Financial year of Authority

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

17. Accounts

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

18. Establishment of the Investor Compensation Fund

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

- (2) The Compensation Fund shall consist of—
 - (a) such moneys as are required to be paid into the Compensation Fund by licensed persons;
 - (b) such sums of money as are paid under this Act as fines or penalties or under section 34 as ill-gotten gains where those harmed are not specifically identifiable;
 - (c) such sums of money as accrue from interest and profits from investing Compensation Fund moneys;
 - (d) such sums of money recovered by or on behalf of the Authority from entities whose failure to meet their obligations to investors result in payments from the Compensation Fund;
 - (e) interest deemed to accrue on the proceeds of a public issue or offer for sale of shares of a company listed or to be listed on an approved securities exchange, between the closing date and the date of dispatch of refund cheques, or, where there is no refund, the date of dispatch of share certificates or crediting of securities accounts, to be determined at the rate prescribed by the Authority;
 - (ee) unclaimed dividends outstanding in listed companies at the expiry of the applicable statutory limitation period;

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

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

[Act No. 3 of 2000, s. 12, Act No. 10 of 2006, s. 39, Act No. 9 of 2007, s. 47, Act No. 8 of 2008, s. 51.]

18A. The Investor Compensation Fund Board

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

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

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

(3) The Board shall consist of—

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

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

[Act No. 9 of 2007, s. 48, Act No. 8 of 2008, s. 52.]

PART IIA – RECOGNITION OF SELF REGULATORY ORGANIZATIONS

18B. Recognition of self regulatory organization

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

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

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

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

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

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

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

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

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

18C. Rules of self regulatory organizations

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

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

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

- (c) the procedure for dispute resolution between members, users, investors and their clients and the right of appeal to the Authority or other relevant primary regulator; and
- (d) the rules and procedures of the self regulatory organization relating to reporting and accountability to any primary regulator other than the Authority.

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

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

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

18D. Restriction on decision by a self regulatory organization

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

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

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

18E. Disciplinary action by a self regulatory organization

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

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

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

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

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

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

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

18F. Protection from personal liability

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

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

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

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

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

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

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

18H. Directions to a self regulatory organization

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

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

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

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

18I. Removal of an officer of the self regulatory organization

The Authority may, if it reasonably believes that—

- (a) an officer of a self regulatory organization is not a fit and proper person to be an officer of the organization; or
- (b) an appointment of a person or the continuing in office as an officer of a self regulatory organization is likely to be detrimental to the self

regulatory organization, or may prejudice the interest of investors and consumers of financial services or members of the relevant sector or industry,

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

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

18J. Annual report

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

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

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

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

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

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

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

PART III – PROVISIONS RELATING TO SECURITIES EXCHANGES

19. Approval of securities exchange required

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

[Act No. 3 of 2000, s. 13, Act No. 37 of 2011, s. 7.]

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

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

[Act No. 37 of 2011, s. 8.]

20. Application for securities exchange approval

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

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

- (a) that the applicant is a limited liability company 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.

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

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

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

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

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

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

[Act No. 10 of 1994, s. 4, Act No. 3 of 2000, s. 14, Act No. 10 of 2010, s. 47, Act No. 37 of 2011, s. 9.]

21. Changes in securities exchange rules

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

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

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

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

- (a) a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule;
- (b) a proposal establishing or changing a fee or other charge; or

- (c) a proposal dealing solely with the administration of the exchange or other matters which the Authority may specify.

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

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

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

22. Disciplinary action by securities exchange

(1) Where a securities 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 under subsection (1) and, on its own motion, or in response to the appeal of an aggrieved person, may affirm or set aside a securities exchange decision after giving the trading participant or the company and the securities exchange an opportunity to be heard.

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

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

PART IV – SECURITIES INDUSTRY LICENCES

23. Licences required

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

(2) No person shall carry on or hold himself out as carrying on business as a securities 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 license any other person operating in any other capacity which has a direct impact on the attainment of the objectives of this Act.

[Act No. 3 of 2000, s. 15, Act No. 2 of 2002, Sch., Act No. 8 of 2008, s. 53,
Act No. 37 of 2011, s. 10.]

24. Application for licence

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

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

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

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

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

(6) Subject to subsection (7), a licence granted under this subsection shall expire on the thirty-first day of December in each year:

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

(7) A licence that has been renewed in accordance with the provisions of this section shall continue in force for a period of one year next succeeding the date upon which but for its renewal, it would have expired.

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

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

25. Renewal of licence

(1) In granting a renewal of a licence, the Authority shall satisfy itself that the licensed person is in compliance with the provisions of this Act and the rules and regulations made thereunder.

(2) In considering an application for a licence renewal, the Authority may extend an existing licence for a period of three months in order to permit an applicant to take such action as the Authority deems necessary to come into compliance with the Act and rules and regulations made thereunder.

(3) In granting an extension to any person under subsection (2), the Authority may impose any conditions or restrictions it deems appropriate on the activities of such person.

- (4) Where the Authority is satisfied that a licensed person has—
- (a) acted in contravention of any provision of this Act, or any rules or regulations made thereunder; or
 - (b) has since the grant of a licence, ceased to qualify for such a licence; or
 - (c) is guilty of malpractice or irregularity in the management of his affairs,

the Authority may—

- (i) direct the person to take whatever action the Authority deems necessary—
 - (A) to correct the conditions resulting from any contravention of any provisions of this Act or any rules or regulations made thereunder; and
 - (B) to come into compliance with the provisions of this Act or any rules or regulations made thereunder; or
- (ii) suspend or impose, restrictions or limitations on the licence granted to the person.

[Act No. 3 of 2000, s. 17.]

25A. Imposition of additional sanctions and penalties

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

- (a) with respect to a licensed person, listed company, securities exchange or other approved person—
 - (i) a public reprimand;
 - (ii) suspension in the trading of a listed company's securities for a specified period;
 - (iii) suspension of a licensed person from trading for a specified period;
 - (iv) restriction on the use of a licence;
 - (v) recovery from such person of an amount equivalent to two times the amount of the benefit accruing to such person by virtue of the breach;
 - (vi) the levying of financial penalties in such amounts as may be prescribed;
 - (vii) revocation of the licence of such person;
- (b) with respect to an employee of a licensed or approved person, including a securities exchange—
 - (i) require the licensed or approved person to take disciplinary action against the employee;

- (ii) disqualification of such employee from employment in any capacity by any licensed or approved person or listed company for a specified period;
 - (iii) recovery from the employee of a licensed or approved person an amount double the benefit accruing to such person be reason of the breach;
 - (iv) the levying of financial penalties as such amounts as may be prescribed;
- (c) with respect to a director of a listed company or a licensed or approved person, including a securities exchange—
- (i) disqualification of such person from appointment as a director of a listed company or licensed or approved person including, a securities exchange;
 - (ii) the recovery from such person of an amount equivalent to two times the amount of the benefit accruing to the person by reason of the breach;
 - (iii) the levying of financial penalties in such amounts as may be prescribed.

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

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

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

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

[Act No. 9 of 2007, s. 50, Act No. 8 of 2008, s. 55.]

26. Revocation of licence

(1) The Authority may revoke a licence or approval if it is satisfied that the licensed or approved person—

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

(e) is adjudged bankrupt:

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

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

(3) *Deleted by Act No. 3 of 2000, s. 18.*

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

27. Register of licence holders

(1) The Authority shall—

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

(2) The Authority shall keep in such form as it deems appropriate a register of the holders of current 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.

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

28. Obligation to report changes

Where—

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

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

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

29. Licensing requirements

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

- (a) that the applicant is a company incorporated under the Companies Act (Cap. 486), with such minimum share capital as the Authority may prescribe or is duly constituted as a collective investment scheme;
- (b) that none of the directors of the applicant company—
 - (i) has been declared bankrupt;

- (ii) has been a director of a company that has been denied any licence or approval under this Act or equivalent legislation in any other jurisdiction;
 - (iii) has been a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority;
- (c) that at least one director and at least one employee who is the chief executive of the applicant company, have satisfied such minimum qualification requirements as may be prescribed;
- (d) in the case of a stockbroker, dealer or other person prescribed by the Authority that the applicant company has lodged security in such sum as may be determined by the Authority or an equivalent bank guarantee or bond with the securities exchange in which it is a trading participant or with the Authority or other person approved by the Authority as the case may be;
- (e) that the applicant company has the necessary administrative capacity to carry on business for which the licence is required;
- (f) in the case of an application for a stockbroker's licence, that the applicant shall carry on business solely on behalf of clients;
- (g) in the case of an application for a dealer's licence, that the applicant shall carry on business solely on the applicant's own behalf;
- (gg) in the case of an application for a derivatives dealer's licence, that the applicant may carry on business either on behalf of clients or on the applicant's own behalf, or both;
- (h) that none of the persons engaged or to be engaged in the position of executive director or other senior capacity—
 - (i) has previously been involved in the management or administration of an institution offering financial services whose licence has been revoked owing to any failure on the part of the management; or
 - (ii) has taken part in or been associated with any such business practices as would, or have, cast doubt on his competence or soundness of judgment.

(2) A licensed stockbroker or dealer may, on fulfilment of all requirements imposed by the Authority or the relevant securities exchange and any self regulatory organization and payment of the admission fee approved by the Authority, be admitted as a trading participant in a securities exchange.

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

(4) No person who, in relation to a company—

- (a) controls or is beneficially entitled directly or indirectly to more than twenty-five per cent of the listed share capital or voting right;
- (b) is entitled to appoint more than twenty-five per cent of the board of directors; or

- (c) is entitled to receive more than twenty-five per cent of the aggregate dividends and interest on shareholders loans to be paid in any given financial year,

shall be appointed as an executive director of that company or to any senior position in the management of the company:

Provided that any person who, before the commencement of this section, is appointed to any position in a company in contravention of this subsection, relinquish such position by the 31st December, 2009.

(5) No individual or corporate person shall, in relation to a company—

- (a) control or be beneficially entitled directly or indirectly, to more than twenty-five per cent of the issued share capital or voting rights of a company;
- (b) be entitled to appoint more than twenty-five per cent of the board of directors; or
- (c) be entitled to receive more than twenty-five 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 that is licensed by a banking, insurance, pensions or securities regulator in Kenya or elsewhere;
- (ii) where the ownership structure of that corporate shareholder is sufficiently diverse and no single person holds or controls more than twenty-five per cent of its shares, votes, directorship appointments or dividend or interest on shareholder loans.

(6) Any person who, at the commencement of this section, does not meet any of the requirements of subsection (5), shall comply with such requirements by the 31st December, 2009.

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

- (a) a stockbrokerage;
- (b) an investment bank; or
- (c) a fund manager.

[Act No. 10 of 1994, s.5, Act No. 14 of 1991, Act No. 3 of 2000, s. 21, Act No. 2 of 2002, Sch., Act No. 9 of 2007, s. 51, Act No. 8 of 2008, s. 56, Act No. 10 of 2010, s. 49, Act No. 37 of 2011, s. 11.]

30. Procedure for collective investment schemes

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

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

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

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

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

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

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

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

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

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

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

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

[Act No. 3 of 2000, s. 22.]

30A. Publication of information memorandum

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

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

Provided that nothing in this section shall be construed to apply to an information memorandum issued by a co-operative society incorporated under the Co-operative Societies Act (Cap. 490) for the purpose of raising capital from its members.

[Act No. 3 of 2000, s. 23, Act No. 2 of 2002, Sch.]

PART V – SECURITIES TRANSACTIONS AND REGISTERS

31. Transactions in securities

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

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

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

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

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

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

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

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

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

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;

- (c) make any untrue statement of a material fact; or
- (d) omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading.

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

32. Register of interest in securities

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

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

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

(4) A person to whom section (1) applies shall maintain a register of the securities in which he 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

32A. Prohibition against use of unpublished insider information

- (1) No insider shall—
 - (a) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange or otherwise publicly offered on the basis of any unpublished price sensitive information; or
 - (b) communicate any unpublished price sensitive information to any person, with or without his request for such information, except as required in the ordinary course of business or under any law; or
 - (c) counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.

[Act No. 3 of 2000, s. 25.]

(2) Any insider, who deals in securities or communicates any information or consults any person dealing in securities in contravention of the provisions of subsection (1) shall be guilty of insider trading.

[Act No. 3 of 2000, s. 26, Act No. 37 of 2011, s. 13.]

33. Insider trading prohibited

(1) A person who is, or at any time in the preceding six months has been, connected with a body corporate shall not deal in any securities of that body corporate if by reason of his being, or having been, connected with that body corporate he is in possession of information that is not generally available but, if it were, would be likely materially to affect the price of those securities.

(2) A person who is, or at any time in the preceding six months has been, connected with a body corporate shall not deal in any securities of any body corporate if by reason of his so being or having been connected with that first-mentioned body corporate he is in possession of information that—

- (a) is not generally available but, if it were, would be likely materially to affect the price of those securities; and
- (b) relate to any transaction (actual or expected) involving both bodies corporate or involving one of them and securities of the other.

(3) Where a person is in possession of any such information referred to in subsection (2) which if made generally available, would be likely to materially affect the price of securities but is not precluded by that subsection from dealing in those securities, he shall not deal in such securities if—

- (a) he has obtained the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is himself precluded by subsection (1) from dealing in those securities; and
- (b) when the information was so obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which that subsection apply with a view to dealing in securities by himself and that other person or either of them.

(4) A person shall not, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.

(5) A person shall not, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities by reason of his being in possession of any information, communicate that information to any other person if—

- (a) trading in those securities is permitted on any securities exchange; and
- (b) he knows, or has reason to believe, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.

(6) Without prejudice to subsection (3) but subject to subsections (7) and (8), a body corporate shall not deal in any securities at a time when any officer of that body corporate is precluded by subsection (1), (2), or (3) from dealing in those securities.

(7) A body corporate is not precluded by subsection (6) from entering into a transaction at any time by reason only of information in the possession of an officer of that body corporate if—

- (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;

- (b) it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to him by a person in possession of the information; and
- (c) the information was not so communicated and such advice was not so given.

(8) A body corporate is not precluded by subsection (6) from dealing in securities of another body corporate at any time by reason only of information in the possession of an officer of that first-mentioned body corporate, being information that was obtained by the officer in the course of the performance of his duties as an officer of that first-mentioned body corporate and that relates to proposed dealings by that first-mentioned body corporate in securities of that other body corporate.

(9) For the purpose of this section, a person is connected with a body corporate if, being a natural person—

- (a) he is an officer of that body corporate or of a related body corporate;
- (b) he is a substantial shareholder in that body corporate or in a related body corporate; or
- (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply by virtue of—
 - (i) any professional or business relationship existing between himself (or his employer or a body corporate of which he is an officer) and that body corporate or a related body corporate; or
 - (ii) his being an officer of a substantial shareholder in that body corporate or in a related body corporate.

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

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

(11) For the purpose of subsection (8), “**officer**”, in relation to a body corporate, includes—

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver, or receiver and manager, of property of the body corporate;
- (c) an official manager or a deputy official manager of the body corporate;

- (d) a liquidator of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

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

- (a) on a first offence—
 - (i) in the case of a body corporate, to a fine not exceeding five million shillings;
 - (ii) in the case of any other person, including a director or officer of a body corporate, to a fine not exceeding two million five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both;
- (b) on any subsequent conviction—
 - (i) in the case of a body corporate, to a fine not exceeding ten million shillings; or
 - (ii) in the case of any other person, including a director or officer of a body corporate, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding seven years or to both.

(13) An action under this section for the recovery of a loss shall not be commenced after the expiration of six years after the date of completion of the transaction in which the loss occurred.

(14) Nothing in subsection (12) affects any liability that a person may incur under any other section of this Act or any other law.

(15) This section shall apply without prejudice to the generality of section 32A.

[Act No. 3 of 2000, s. 27.]

PART VII – MISCELLANEOUS PROVISIONS

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

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

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

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

[Act No. 3 of 2000, s. 28.]

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

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

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

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

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

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

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

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

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

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

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

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

(6) The statutory manager shall, once every month, furnish the Authority and all interested parties with a report of his activities during the preceding month, in such form as may be prescribed by the Authority.

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

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

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

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

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

33B. Prohibited conduct to be reported

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

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

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

33C. Asset backed securities

(1) This section applies with respect to asset backed securities which, for the purposes of this section, are securities—

- (a) that are issued as part of a securitization transaction in which assets are transferred to a third party that issues the securities; and
- (b) that are primarily serviced, with respect to both return of investment and return on investment, by the cash flow from the assets described in paragraph (a).

(2) No person shall issue or list, or cause to be issued or listed, asset backed securities without the prior written approval of the Authority.

(3) The authority shall consult with the Minister before giving any approval under subsection (2).

(4) The Authority shall, under section 12, regulate asset backed securities, including their issue and listing, subject to subsection (5).

(5) In addition to any other requirements, the rules, regulations and guidelines of the Authority under section 12 shall require—

- (a) that the issuer of the asset backed securities shall be a company or a trust that has no purpose other than the implementation and operation of the securitization transaction in respect of which securities are issued;
- (b) that the issuer shall have the professional and technical capacity to implement and operate the securitization transaction;
- (c) that the issuer shall have the capability to meet its obligations to the holders of the asset backed securities; and
- (d) that the issuer shall adequately protect the rights of the holders of the asset backed securities.

(6) For the purposes of this section, securities of an investment company are not asset backed securities.

[Act No. 4 of 2004, s. 75.]

34. Other offences

(1) Any person who—

- (a) contravenes any provision of this Act or any requirement imposed under the provision of this Act or any rule or regulation made thereunder;
- (b) furnishes or publishes for the purpose of this Act or in connection with an issuer whose securities are listed or quoted to be listed on a securities exchange, or issued or to be issued to the public or a

collective investment scheme, any information or any returns the contents of which are to his knowledge untrue or incorrect or misleading because of material omissions; or

- (c) wilfully obstructs any member of the Authority or an officer or servant of the Authority in the performance of his duties under the provisions of that Act,

shall be guilty of an offence.

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

(3) Any person convicted of an offence under this Act may be ordered by the court to pay compensation to any person who suffers loss by reason of the offence and the compensation may be either in addition to or in substitution for any other penalty.

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

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

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

[Act No. 3 of 2000, s. 30, Act No. 9 of 2007, s. 53, Act No. 8 of 2008, s. 58.]

34A. Financial penalties

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

Provided that the financial penalties with respect to—

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

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

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

[Act No. 9 of 2007, s. 54.]

35. Appeals from action by Authority

(1) Any person aggrieved by any direction given by the Authority to such person or by a decision of the Authority or by the Investor Compensation Fund Board—

- (a) refusing to grant a licence;
- (b) imposing limitations or restrictions on a licence;
- (c) suspending or revoking a licence;
- (cc) refusing to approve a public offer of securities;
- (d) refusing to admit a security to the official list of a securities exchange;
- (e) suspending trading of a security on a securities exchange; or
- (f) requiring the removal of a security from the official list of a securities exchange;
- (g) refusing to grant compensation to an investor who has suffered pecuniary loss resulting from failure of a licensed stockbroker or dealer, to meet his contractual obligations or pay unclaimed dividends to a beneficiary who resurfaces,

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

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

[Act No. 3 of 2000, s. 31, Act No. 8 of 2008, s. 59, Act No. 37 of 2011, s. 14.]

35A. Establishment of the Capital Markets Tribunal

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

- (d) two persons who have demonstrated competence in the field of securities;
- (e) the secretary shall be an advocate with at least five years' experience commercial law.

(2) All appointments to the Tribunal under subsection (1) shall be by notice in the *Gazette* issued by the 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 misbehaviour; or
- (d) if he resigns from the office of a member of the Tribunal.

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

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

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

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

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

(9) All summonses, 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 (Cap. 21) shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

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

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

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

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;

- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make such other order as it may deem just, including an order as to costs of the appeal of earlier proceedings in the matter before the Tribunal.

(25) There shall be paid to the 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.

[Act No. 3 of 2000, s. 32.]

36. Regulations

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

- (a) sources of funding or fees payable to the Authority; and
- (b) participation of foreign investors in the stock market.

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

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

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

[Act No. 3 of 2000, s. 33.]

37. Supercession

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

[Act No. 3 of 2000, s. 34.]

38. Prosecution of offences

The 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.

[Act No. 3 of 2000, s. 34.]

39. Exemption from Cap. 446

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

[Act No. 3 of 2000, s. 35.]

CHAPTER 485A**CAPITAL MARKETS ACT****SUBSIDIARY LEGISLATION***List of Subsidiary Legislation*

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PART II TO PART X

(Repealed by L.N. 125/2002, s. 81.)

PARTS XI AND XII

(Repealed by L.N. 60/2002, s. 24.)

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(Repealed by L.N. 125/2002, s. 81.)

PART XIV

(Repealed by L.N. 87/2002, s. 2.)

SCHEDULE – TAKE-OVER OFFERS

[Subsidiary]

CAPITAL MARKETS AUTHORITY RULES, 1992

[L.N. 429/1992, L.N. 286/1996, L.N. 87/2002.]

PART I – PRELIMINARY

1. Citation

These Rules may be cited as the Capital Markets Authority Rules, 1992.

PART II to PART X

(Repealed by L.N. 125/2002, s. 81.)

PARTS XI and XII

(Repealed by L.N. 60/2002, s. 24.)

PART XIII

(Repealed by L.N. 125/2002, s. 81.)

SCHEDULE

[Rule 42]

TAKE-OVER OFFERS

PART A – REQUIREMENTS WITH WHICH TAKE-OVER OFFERS TO COMPLY

1. (1) The offer shall be dated and shall be despatched to the offeree within three days of its date and shall state that, except in so far as it and all other take-over offers made under the take-over scheme may be totally withdrawn and every person released from any obligation incurred thereunder, it will remain open for acceptance by the offeree for at least twenty-one days from the date of despatch.

(2) The offer shall not be conditional upon the offeree approving or consenting to any payment or other benefit being made or given to any director of the offeree company or any company which is deemed by virtue of paragraph 42(4) to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office.

(3) The offer shall state—

- (a) whether or not the offer is conditional upon acceptance of offers made under the take-over scheme being received in respect of a minimum percentage of share and, if so, that percentage;
- (b) if the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of payment; and
- (c) if the shares are to be acquired for a consideration other than cash, the period within which the offeree will receive that consideration.

(4) Where the offer is conditional upon acceptances in respect of a minimum percentage of shares being received, the offer shall specify—

- (a) a date not being a date later than sixty days after the date of the despatch of the offer or such later date as the registrar may in a competitive situation or

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in special circumstances allow as the latest date on which the offeror company can declare the offer to have become free from that condition; and

- (b) a further period of not less than fourteen days from the date on which the offer would otherwise have expired during which the offer will remain open for acceptance after it has been declared unconditional.

Where the offer becomes or is declared unconditional as to acceptances on or by an expiry date and the offeror company has given at least fourteen days' notice in writing to the shareholders of the offeree company that the offer will not be open for acceptance beyond that date, the offer need not remain open for acceptance for the further period specified in sub-paragraph (b). No such notice may be given between the time when a competing offer has been announced and the resultant competitive situation has ended.

(5) Every offer document shall contain the following words which are to be displayed prominently in that document:

"If you are in any doubt about this offer you should consult your stockbroker, bank manager, lawyer or other professional adviser."

PART B – REQUIREMENTS WITH WHICH STATEMENT GIVEN BY OFFEROR COMPANY TO COMPLY

2. (1) The statement shall—

- (a) specify the names, descriptions addresses of all the directors of the offeror company;
- (b) contain a summary of the principal activities of the offeror company;
- (c) specify the number and description and amount of marketable securities in the offeree company held by or on behalf of the offeror company, or if none are so held contain a statement to that effect;
- (d) if the shares are to be acquired for a consideration which consists of shares or debentures in the offeror company or in a company which is by virtue of paragraph 42(4) deemed to be related to the offeror company—
 - (i) set out the reports which, if the statement were a prospectus issued on the date on which notice of the take-over scheme is given to the offeree company, would be required to be set out in it under paragraph 19 in Part II of the Third Schedule of the Companies Act (Cap.486) and Part XII of these Rules;
 - (ii) specify details of any alterations in the capital structure of the offeror company or of any subsidiary of the offeror company during the period of five years immediately preceding the date on which notice of the take-over scheme is given to the offeree company and particulars of the source of any increase in capital;
- (e) if the shares are to be acquired for a consideration other than wholly in cash or other than for a consideration such as is referred to in SUB-paragraph (d) contain such information and details as to the consideration as the Registrar requires.

(2) The statement shall contain particulars of any restriction on the right to transfer the shares to which the take-over scheme relates contained in the memorandum or articles or other instrument constituting or defining the constitution of the offeree company which has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the offeree company or to any other person and, if there is any such restriction, the arrangements, if any, being made to enable the shares to be transferred in pursuance of the take-over scheme.

(3) If the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details

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of the arrangements that have been, or will be, made to secure payment of the cash consideration and, if no such arrangements have been or will be made, shall contain a statement to that effect.

(4) The statement shall set out—

- (a) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any company which is by paragraph 42(4) deemed to be related to the offeree company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and if so, particulars of the proposed payment or benefit in respect of each such director;
- (b) whether or not there is any other agreement or arrangement made between the offeror company and any of the directors of the offeree company in connection with or conditional upon the outcome of the scheme, and, if so, particulars of any such agreement or arrangement;
- (c) whether or not there has been within the knowledge of the offeror company any material change in the financial position or prospects of the offeree company since the date of the last balance sheet laid before the offeree company in general meeting, and, if so, particulars of any such change; and
- (d) whether or not there is any agreement or arrangement whereby any shares acquired by the offeror company in pursuance of the scheme will or may be transferred to any other person, and, if so—
 - (i) the names of the persons who are a party to the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred; and
 - (ii) the number, if any, and description and amount of shares of the offeree company held by or on behalf of each of these persons, or if no such shares are so held, a statement to that effect.

(5) Paragraphs (6) to (8) apply only where the consideration to be offered in exchange for share of the offeree company consists in whole or in part of marketable securities issued or to be issued by the offeror company or by any other company.

(6) Where the marketable securities are quoted or dealt in on a securities exchange, the statement shall state this fact and specify the securities exchanges concerned and specify—

- (a) the latest available market sale price prior to the date on which notice of the take-over scheme is given to the offeree company;
- (b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales; and
- (c) where the take-over scheme has been the subject of a public announcement in a newspaper or by any other means, the latest market sale price immediately prior to the public announcement.

(7) Where the securities are quoted or dealt in on more than one securities exchange, it is sufficient compliance with paragraph 6(a) if information with respect to the securities is given in relation to the securities exchange at which there have been the greatest number of recorder dealings in the securities in the three months immediately preceding the date on which notice of the take-over scheme is given to the offeree company.

(8) Where the take-over scheme relates to securities which are not quoted or dealt in on a securities exchange, the statement shall contain all the information which the offeror company may have as to the number, amount and price at which the securities have been

sold in three months immediately preceding the date on which notice of the scheme is given to the offeree company and, if the offeror company has no such information, a statement to that effect.

PART C – REQUIREMENTS WITH WHICH STATEMENT GIVEN BY OFFEREE COMPANY TO COMPLY

3. (1) The statement shall indicate whether or not the board of directors of the offeree company recommends to shareholders the acceptance of take-over offers made, or to be made, by the offeror company under the take-over scheme.

(2) The statement shall set out—

- (a) the number, description and amount of marketable securities in the offeree company held by or on behalf of each director of the offeree company or, in the case of a director where none are so held, that fact;
- (b) in respect of each such director of the offeree company by whom, or on whose behalf, shares to which the take-over scheme relates are held—
 - (i) whether or not the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of those shares; or
 - (ii) that the director has not decided whether he will accept such a take-over offer;
- (c) whether or not any marketable securities of the offeror company are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of the marketable securities so held;
- (d) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any other company which is by virtue of paragraph 42(4) deemed to be related to that company as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit;
- (e) whether or not there is any other agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;
- (f) whether or not any director of the offeree company has any direct or indirect interest in any contract entered into by the offeror company and, if so, particulars of the nature and extent of such interest;
- (g) if the shares to which the scheme relates are not quoted or dealt in on a stock exchange all the information which the offeree company may have as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which notice of the take-over scheme was given to the offeree company; and
- (h) whether or not there has been any material change in the financial position of the offeree company since the date of the last balance sheet laid before the company in general meeting and, if so, particulars of such change.

**CAPITAL MARKETS AUTHORITY COLLECTIVE INVESTMENT SCHEMES
REGULATIONS, 2001**

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**CAPITAL MARKETS (COLLECTIVE INVESTMENT SCHEMES)
REGULATIONS, 2001**

[L.N. 181/2001, L.N. 165/2002, L.N. 100/2009.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Collective Investment Schemes) Regulations, 2001.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” means the Capital Markets Act;

“**certificate of entitlement**” means a document of title, statement of account or any other document evidencing ownership of the holder thereof to one or more shares acquired by the holder in a collective investment scheme;

“**collective investment scheme portfolio**” means all cash and other collective investment scheme portfolio for the time being held or deemed to be held upon trust pursuant to a trust deed establishing a collective investment scheme or other incorporation or offering document of a collective investment scheme, other than the amount for the time being standing to the credit of the distribution account;

“**custodian**” means a company approved by the Authority to hold in custody funds, securities, financial instruments or documents of title to assets of a collective investment scheme;

“**dealing**” means an act of buying, selling or agreeing to buy or sell or trade shares by a fund manager;

“**dilution**” means that a collective investment scheme may suffer reduction in the value of its collective investment scheme portfolio as a result of costs incurred in dealing in its underlying investments and of any spread between the buying and the selling prices of such investments;

“**holder**” means any person (other than a fund manager) who is the lawful holder of a certificate evidencing that he has an interest in the collective investment scheme and includes a purchaser of or a subscriber for such an interest who is entitled to have a certificate issued to him;

“**initial charge**” means that portion of the selling price of a share which represents the fund manager’s charge in respect of expenditure incurred and work performed by it in connection with the creation and issue of such share but does not include any compulsory charge;

“**portfolio**” means a group of securities in which members of the public are invited to acquire shares pursuant to the collective investment scheme and includes any amount in cash forming part of the assets pertaining to such portfolio;

“**shillings**” means shillings in the currency of the Republic of Kenya;

“**trust**” means a trust within the meaning of the Trustee Act (Cap. 167);

“**trust deed**” in relation to a collective investment scheme, means the trust deed that sets out the trusts governing the unit trust or mutual fund and includes even instrument that varies those trusts, or effects the powers, duties, or functions of the trustee or manager of the unit trust or mutual fund;

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“trustee” in relation to a unit trust, means a trustee in which are invested the money, investments or other collective investment scheme portfolio that are for the time being subject to the trusts governing the unit trust;

“unit” means an undivided share in the collective investment scheme portfolio of a unit trust scheme;

“working day” excludes Saturday, Sunday and public holidays.

PART II – CONSENT, REGISTRATION AND APPROVAL OF COLLECTIVE INVESTMENT SCHEMES

3. Application for consent

An application for consent to register a collective investment scheme shall be submitted to the Authority by the promoter of a proposed collective investment scheme, and shall be accompanied by—

- (a) the prescribed application fee;
- (b) the documents specified in Regulation 4; and
- (c) such other documents that may be required by the Authority.

4. Documents to accompany application

(1) The application in Regulation 3 shall be accompanied by the following documents—

- (a) draft incorporation documents of the collective investment scheme;
- (b) memorandum and articles of association of the promoter;
- (c) memorandum and articles of association of the proposed fund manager;
- (d) business plan;
- (e) one bank reference; and
- (f) two professional or business references.

(2) Consent granted for the registration of collective investment scheme shall lapse after three months.

5. Application for registration of a collective investment scheme

An application for registration of a collective investment scheme shall be made to the Authority by a promoter of the collective investment scheme, in triplicate in Form 1 set out in the First Schedule, within three months after the grant of consent, accompanied by the following—

- (a) the incorporation documents;
- (b) the information memorandum;
- (c) audited reports for the preceding 3 years of the proposed fund manager, where applicable;
- (d) audited reports for the preceding 3 years of the proposed trustee;
- (e) audited reports for the preceding 3 years of the proposed custodian;
- (f) a letter of consent to act as a fund manager;
- (g) a letter of consent to act as a trustee;
- (h) a letter of consent to act as a custodian; and
- (i) the prescribed registration fee.

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6. Notification of registration

The Authority shall advise the promoter within thirty days of receipt of the application for registration of a collective investment scheme whether registration has been granted.

7. Form of certificate

The certificate of registration of a collective investment scheme shall be in Form 2 set out in the First Schedule.

PART III – INCORPORATION DOCUMENTS OF A COLLECTIVE INVESTMENT SCHEME**8. Requirements of incorporation documents**

(1) The incorporation documents of a collective investment scheme shall contain the documents specified in the Second Schedule.

(2) Nothing in the incorporation documents may provide that a trustee, custodian, fund manager or board of directors of a collective investment scheme shall be exempt from liability to a holder for breach of trust, fraud or negligence, or be indemnified against such liability by holders or at the holder's expense.

9. Alteration of incorporation documents

(1) All proposed alterations or additions to the incorporation documents shall be submitted to the Authority for prior approval.

(2) The Authority shall determine whether holders shall be notified of any alterations or additions to the incorporation documents and the period of notice if any to be applied before the changes are to take effect.

(3) The notice period referred to in sub-regulation (2) shall not exceed three months unless the Authority, having regard to the merits of the case, otherwise determines.

10. Alterations subject to approval of the Authority

(1) Subject to Regulation 9, the incorporation documents may be altered by the fund manager without consulting the holders, provided that the trustee or the board of directors, as the case may be, certify in writing that in their opinion the proposed alteration—

- (a) is necessary to enable compliance with fiscal, statutory or other official requirements; or
- (b) does not materially prejudice holders' interests, does not to any material extent release the trustee, custodian, fund manager or the board of directors, their agents or associates from any liability to holders and does not materially increase the costs payable from the collective investment scheme portfolio concerned; or
- (c) is necessary to correct a manifest error.

(2) All alterations under this Regulation shall be filed with the Authority within seven days of the relevant decision.

11. Inspection of incorporation documents

The fund manager shall make the incorporation documents available for inspection free of charge to any of the collective investment scheme's holders at all times during ordinary office hours at the registered office of the fund manager.

PART IV – COLLECTIVE INVESTMENT SCHEME INFORMATION MEMORANDUM

12. Collective Investment scheme to issue information memorandum

A collective investment scheme shall not offer its shares for sale to the public or a section of the public issued an information memorandum approved by the Authority which complies with the Fourth Schedule.

13. Requirements of information memorandum

(1) Every information memorandum of a collective investment scheme shall contain the information listed in the Fourth Schedule.

(2) Application forms supplied to persons who are not holders shall be accompanied by the information memorandum but advertisements or investment plans containing an application form and all the information listed in the Fourth Schedule may also be used.

(3) Where performance data or estimated yields are included in an information memorandum, advertisement or any other invitation to the public to invest in the collective investment scheme, the Authority may require justification of the calculations resulting in such performance data or estimated yields.

(4) Forecast of a collective investment scheme's performance shall not be made in the information memorandum and the publication of a prospective yield shall not constitute a forecast of performance and a statement to the effect that the publication is that of a prospective yield and not a forecast of performance shall be made in the information memorandum, advertisement or any other invitation to the public.

14. Revision of information memorandum

(1) An information memorandum shall be—

- (a) reviewed and revised at least once in every six months to take account of any change or new matter, other than a matter which reasonably appears to the fund manager to be insignificant;
- (b) revised immediately upon the occurrence of any material change in the matters stated therein or upon the occurrence of any new material information which ought to be disclosed therein.

(2) A revision of the information memorandum may take the form of a complete substitution of the previous information memorandum or a supplement to the information memorandum and the date of the revision shall be prominently displayed.

(3) Any amendments to the information memorandum shall require the prior approval of the Authority.

PART V – MANAGEMENT OF A COLLECTIVE INVESTMENT SCHEME

*Fund Manager***15. Obligation to appoint a fund manager**

Every collective investment scheme shall appoint in writing a fund manager approved by the Authority to manage the day to day operation of the collective investment scheme.

16. Management of a collective investment scheme

(1) No person shall be appointed as fund manager of a collective investment scheme unless such a person holds a licence to operate as a fund manager issued by the Authority.

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(2) A fund manager of a collective investment scheme may in relation to the custodian or trustee of such collective investment scheme, be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act (Cap. 486) or be deemed by the Authority to be otherwise under control of substantially the same persons or the consist substantially of the same shareholders, provided that the investment in a related company shall be limited to ten percent of the total funds managed by the fund manager.

(3) A fund manager shall at all times maintain a paid-up share capital and unimpaired reserves of not less than ten millions shillings for the operation of the collective investment scheme.

[L.N. 165/2002, s. 2.]

17. Duties of a fund manager

(1) A fund manager of a collective investment scheme shall carry out the administration of the fund including the management of the portfolio of investments in accordance with the direction and the authority of the trustee or the board of directors, as the case may be, as well as the provisions of the incorporation documents, the information memorandum, the rules of the collective investment scheme and these Regulations.

(2) The principal duties of a fund manager shall include but shall not be restricted to—

- (a) advising the trustee or board of directors, as the case may be, on the asset classes which are available for investment;
- (b) formulating a prudent investment policy;
- (c) investing the scheme's assets in accordance with the scheme's investment policy;
- (d) reinvesting any income of the scheme fund which is not required for immediate payments;
- (e) instructing the custodian to transfer, exchange, deliver in the required form and manner the scheme assets held by such custodian;
- (f) ensuring that the shares or units in the collective investment scheme are priced in accordance with the information memorandum, the rules of the collective investment scheme and these Regulations;
- (g) not selling any shares otherwise than on the terms and at a price calculated in accordance with the provisions of the information memorandum, rules of the collective investment scheme or these Regulations;
- (h) rectifying any breach of matters arising under paragraph (f) or (g) provided that where the breach relates to incorrect pricing of shares or to the late payment in respect of the issue or redemption of shares, rectification shall, unless the trustee or board of directors, as the case may be, otherwise directs, extend to the reimbursement or payment or arranging the reimbursement or payment of money by the fund manager to the holders or former holders, by the fund manager to the scheme, or by the scheme to the fund manager;
- (i) purchasing at the request of a holder, any shares held by such holder on the terms and at a price calculated in accordance with the provisions hereof;
- (j) publishing daily the price of shares in at least two daily newspapers of national circulation, published in the English language:

Provided that where a collective investment scheme is not dealing on a daily basis, there shall be at least one publication a month of the prices of shares in at least two daily newspapers of national circulation, at least three days before the dealing day, specifying therein the date of the dealing day;

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- (k) preparing and timeously dispatching all cheques, warrants, notices, accounts, summaries, declarations, offers and statements required under the provisions of the information memorandum, rules of the collective investment scheme or these Regulations, to be issued, served or sent and signing and executing all certificates and all transfers of securities;
- (l) making available for inspection to the trustee or board of directors or any approved auditor appointed by the trustee or directors, the records and the books of account of the fund manager giving to the trustee or board of directors or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the fund manager, its properties and its affairs;
- (m) making available or ensuring that there is made available to the trustee or board of directors such details as the trustee or board of directors may require with respect to all matters relating to the collective investment scheme; and
- (n) being fair and equitable in the event of any conflict of interest that may arise in the course of its duties.

(3) A fund manager shall not engage or contract any advisory or management services on behalf of a collective investment scheme without prior written approval of the trustee or the board of directors:

Provided that—

- (a) the fund manager shall remain liable for any act or omission of the sub-contracted fund manager;
- (b) the fees and expenses of any such persons shall be payable by the fund manager and shall not be payable out of the collective investment scheme portfolio;
- (c) any expenses incurred by any such persons which, if incurred by the fund manager would have been payable out of the collective investment scheme portfolio, may be paid out of the collective investment scheme portfolio to the fund manager by way of reimbursement; and
- (d) any such appointment or termination of appointment shall be notified in writing to all holders.

(4) All monetary benefits or commissions arising out of managing scheme funds shall be credited to the scheme fund by the fund manager.

(5) The fund manager shall account to the trustee within thirty days after receipt by the fund manager any monies payable to the trustee.

(6) Every fund manager shall issue a receipt evidencing the purchase of shares of the collective investment scheme for each purchase.

(7) The fund manager shall issue a certificate of entitlement to the holders every thirty days, specifying any shares held by any holder and showing the transactions in the holder's account during the preceding month and which shall be *prima facie* evidence of the title of the holder to the units or shares.

18. Records to be maintained by a fund manager

(1) A fund manager of a collective investment scheme shall—

- (a) keep and maintain a record of all minutes, statements of accounts and resolutions in respect of the scheme's investment portfolio;
- (b) keep or cause to be kept proper books of accounts and records in which shall be entered all transactions effected by the fund manager for the

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account of the collective investment scheme and permit the trustee or board of directors from time to time on demand to examine and take copies of or extracts from any such books and records;

- (c) maintain a daily record of shares held by the fund manager, including the type of such shares acquired or disposed of, and of the balance of any acquisitions and disposals; and
- (d) keep and maintain a daily record of the shares of the scheme which are held, issued, redeemed, exchanged, and the valuation of the collective investment scheme portfolio including particulars given in Regulation 69, required upon completion of a valuation.

(2) The fund manager shall make the collective investment scheme's records available for inspection by the trustee, board of directors or the Authority free of charge at all times during office hours and shall supply the trustee, board of directors or Authority with a copy of the records or any part of such records on request at no charge.

19. Fund manager's reports

(1) The fund manager shall provide the trustee, board of directors, holders and the Authority quarterly from the date of the fund manager's appointment with—

- (a) a valuation of the scheme fund and of all the investments representing the same, including the details of the cost of such investments and their estimated yields;
- (b) a report reviewing the investment activity and performance of the investment portfolios comprising the scheme fund since the last report date and containing the fund manager's proposals for the investment of the scheme fund during the period; and
- (c) a record of all investment transactions during the previous period.

(2) The fund manager of a collective investment scheme shall once every year provide every holder and the Authority with audited accounts and such other statements as may be necessary in relation to the operations of that scheme during the period which ended not more than three months before the date on which such accounts or statements are submitted, and in regard to its position as at the end of that period, including—

- (a) the fund manager's capital resources actually employed or immediately available for employment for the purposes of the scheme;
- (b) in respect of the collective investment scheme portfolio, the total market value of each of the several securities included in the collective investment scheme portfolio, and the value of each of those securities expressed—
 - (i) as a percentage of the total market value of the collective investment scheme portfolio;
 - (ii) as a percentage of the total amount of securities of that class issued by the concern in which the investment is held; and
 - (iii) indicating the percentage of such securities in relation to the investment guidelines specified in Regulation 78(2);
- (c) the amount of dividends and interest and any other income for distribution which have accrued to the underlying securities comprised in the collective investment scheme portfolio, indicating the classes of income and the amount derived from each class, and how the income has been or is intended to be allocated;
- (d) the amount of proceeds of capital gains, rights and bonus issues and any other accruals and receipts of a capital nature which have been or are to be

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invested in the scheme for the benefit of the holders, indicating the classes thereof and the amount derived from each class, but excluding amounts derived from the sale of shares;

- (e) the total amount derived from the sale of shares, indicating the total amount paid in respect of compulsory charges, and the total amount paid in respect of the repurchase of shares;
- (f) the fund manager's income derived from all sources in the operation of the scheme, indicating the sources and the amount derived from each source, and its net profit or loss derived from such operation;
- (g) a review of the fluctuations in the selling and repurchase prices per share during the period in question including the highest and lowest selling prices and the highest and lowest repurchase price.

(3) Copies of the accounts and statements referred to in sub-regulation (2) shall be kept at the registered office of the fund manager and made available for inspection during ordinary office hours by any holder or other person *bona fide* interested in the purchase of shares of the scheme.

(4) A fund manager shall in addition, within a period of thirty days after receipt of a written request from the Authority, or within such further period thereafter as the Authority may allow, lodge with the Authority such further information and explanations in connection with any accounts or statement referred to in sub-regulation (2) as may be specified in the request.

(5) The fund manager of a mutual fund shall report to the board of directors within seven days of the creation and cancellation of shares.

20. Liability of a fund manager

(1) The fund manager of a collective investment scheme shall not be liable for any loss, damage or depreciation in the value of the scheme fund or of any investment comprised therein or the income therefrom which may arise by reason of depreciation of the market value of the shares and other assets in which scheme funds are invested unless such loss, damage or depreciation in the value of the scheme fund arises from negligence whether professional or otherwise, wilful default or fraud by the fund manager or any of its agents, employees or associates.

(2) In the absence of fraud or negligence by the fund manager, the fund manager shall not incur any liability by reason of any matter or thing done or suffered or omitted by it in good faith under the provisions of the, incorporation documents, information memorandum, rules of the collective investment scheme or these Regulations.

(3) The fund manager shall not be under any liability except such liability as may be expressly assumed by the fund manager under the incorporation documents, information memorandum, the rules of the collective investment scheme and these Regulations, nor shall the fund manager save as expressly provided herein be liable for any act or omission of the trustee.

21. Remuneration of a fund manager

(1) The fund manager shall be entitled by way of remuneration for its services and to cover expenses and fees in performing its obligations including obligations to pay the remuneration to the trustee and the trustee's disbursements and the auditors fees and expenses but excluding expenses incurred by the fund manager or the trustee for the purpose of enabling the trust to conform to legislation passed after the date hereof the expenses whereof to be paid out of the collective investment scheme portfolio to receive the following amounts, namely—

- (a) the initial charge referred to in Regulation 65(1); or
- (b) any charge disclosed in the information memorandum.

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(2) The fund manager may at any time at the fund manager's discretion waive or rebate in full or any part of the amounts mentioned in sub-regulation (1):

Provided that the fund manager shall report to the trustee or board of directors any such changes and give the reasons therefor.

22. Removal of a fund manager

(1) A fund manager shall be removed immediately on the happening of any of the following events—

- (a) if a court of competent jurisdiction orders liquidation of the fund manager (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the trustee, board of directors, as the case may be, and the Authority); or
- (b) if a receiver is appointed for the undertaking of the fund manager's assets or any part thereof; or
- (c) if for good and sufficient reason the trustee or board of directors, as the case may be, is of the opinion and so states in writing to the Authority that a change of fund manager is desirable in the interest of the holders.

(2) A fund manager shall be removed by three months notice in writing by the trustee or board of directors to the fund manager as the case may be—

- (a) if an extra-ordinary resolution is passed by the holders removing the fund manager; or
- (b) if the holders of three quarters majority in value of the shares in existence (excluding shares held or deemed to be held by the fund manager or by any associate of the fund manager) request in writing to the trustee or board of directors as the case may be, that the fund manager be removed.

23. Resignation of a fund manager

A fund manager may resign by giving three months' notice to the trustee or board of directors, as the case may be, of the collective investment scheme, and shall give reasons for the resignation.

24. Service of notice and handing over

(1) Notice shall be deemed to have been served seven days from the date of its dispatch and shall come into effect four days after it is served and such termination will be deemed to be effective ninety days after the notice comes into effect.

(2) During the last thirty days of the notice period given under Regulations 22 and 23 the fund manager shall—

- (a) hand over, transfer and deliver to a fund manager, appointed in writing by the trustee or board of directors and licensed by the Authority to succeed the outgoing fund manager, all information within itself in relation to its contractual duties to the scheme including—
 - (i) statements pertaining to the entire scheme fund;
 - (ii) investment portfolio including details of the cost of such investments and estimated yields;
 - (iii) statements pertaining to all incomplete transactions; and
 - (iv) any other information as may reasonably be required by the scheme;
- (b) hand over, transfer and deliver all records of accounts required to be maintained by a fund manager under Regulation 18, as may be reasonably required by the incoming fund manager:

Provided that copies of the said information shall be submitted to the Authority within the same period.

*Trustee***25. Obligation to appoint a trustee**

Subject to these Regulations, a collective investment scheme shall in writing appoint as trustee a person approved by the Authority.

26. Eligibility for appointment of a trustee

(1) No person shall be appointed a trustee of a collective investment scheme unless such person is a bank or financial institution approved for that purpose by the Authority.

(2) A trustee of a collective investment scheme may in relation to the fund manager or custodian of such collective investment scheme, be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act (Cap. 486) or be deemed by the Authority to be otherwise under control of substantially the same persons or consist of substantially of the same shareholders, provided that the investment in a related company shall be limited to ten percent of the total funds managed by the fund manager.

(3) The Authority may revoke any approval already granted if at any time thereafter a trustee ceases to satisfy the requirements of these Regulations.

[L.N. 165/2002, s. 3.]

27. Duties and obligations of a trustee

(1) In the case of a unit trust, a trustee shall cause proper books of accounts to be kept by the fund manager, in respect of the unit trust and shall make available annually in such manner as may be prescribed by the Authority, audited statement of accounts in respect of the unit trust, together with a summary of any amendments of the trust deed that have been made since the date of the last statement.

(2) The trustee of a collective investment scheme, shall serve the scheme in compliance with the trust deed, and the trustee's duties shall include the following, to—

- (a) ensure that the custodian takes into custody all the collective investment scheme portfolio and holds it in trust for the holders in accordance with these Regulations;
- (b) take all steps and execute all documents which are necessary to secure acquisitions or disposals properly made by the fund manager in accordance with the trust deed, incorporation documents and these Regulations;
- (c) collect any income due to be paid to the scheme and/or claim any repayment of tax and direct any income received in trust for the holders to the custodian in accordance with these Regulations or the trust deed;
- (d) keep such records as are necessary—
 - (i) to enable it to comply with these Regulations; and
 - (ii) to demonstrate that such compliance has been achieved;
- (e) execute all documents as are necessary and take all steps to ensure that instructions properly given to it by the fund manager as to the exercise of rights (including voting rights) attaching to the ownership of collective investment scheme portfolio are carried out;
- (f) exercise any right of voting conferred by any of the collective investment scheme portfolio which is in shares in other collective investment schemes managed or otherwise operated by the fund manager;
- (g) execute and deliver to the fund manager or its nominee upon the written request of the fund manager from time to time such powers of attorney or proxies as the fund manager may reasonably require, in such name or

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names as the fund manager may request, authorising such attorneys and proxies to vote consent or otherwise act in respect of all or any part of the collective investment scheme portfolio;

- (h) forward to the fund manager and the custodian without delay all notices of meetings, reports, circulars, proxy solicitations and other documents of a like nature received by it as registered holder of any investment;
- (i) ensure that the collective investment scheme is managed by the fund manager in accordance with the agreement of service with the fund manager, these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme;
- (j) issue a report to be included in the annual report of the collective investment scheme on whether in the opinion of the trustee, the fund manager has in all material respects managed the scheme in accordance with the provisions of these Regulations, incorporation documents, the information memorandum and the rules of the collective investment scheme, and if the fund manager has not done so, the respect in which it has not done so and the steps which the trustee has taken in respect thereof;
- (k) ensure that decisions about the constituents of the collective investment scheme portfolio do not exceed the powers conferred on the fund manager; and
- (l) ensure that the fund manager maintains sufficient records and adopts such procedures and methods for calculation of prices at which shares are issued and redeemed to ensure that those prices are within the limits prescribed by these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme:

Provided that if the trustee is not satisfied with any matter(s) specified in this regulation it must inform the Authority.

(3) In this regulation “**voting**” includes giving any consent or approval of any arrangement, scheme or resolution or any alternation in or abandonment of any rights attaching to any part of the collective investment scheme portfolio and “**right**” includes a requisition or joining in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement or to consent to any short notice of any meeting.

28. No delegation of duties of a trustee

A trustee shall not delegate to the fund manager, his agent or associate—

- (a) any function of oversight in respect of the fund manager; or
- (b) any function of custody or control of the collective investment scheme portfolio.

29. Resignation of a trustee

(1) A trustee shall not be entitled to resign except upon the appointment of a new trustee. If a trustee wishes to resign it shall give three months notice in writing to that effect to the fund manager and the Authority and the fund manager shall appoint within two months after the date of such notice, some other qualified person as the new trustee upon and subject to such person entering into a trust deed supplemental to the trust deed comprised in the incorporation documents. If the fund manager is unable to appoint a new trustee as aforesaid within such period of two months, the trustee shall be entitled to appoint a qualified company selected by it as the new trustee on the same basis as aforesaid.

(2) In this clause the expression “**qualified person**” means a company qualified to act as trustee in terms of these Regulations.

30. Removal of a trustee

(1) A trustee shall be removed by the fund manager in writing immediately on the happening of any of the following events, that is if—

- (a) a court of competent jurisdiction orders its liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation under a scheme approved by the Authority);
- (b) a manager or a receiver is appointed over any of its assets; or
- (c) the trustee ceases to carry on business as a bank or financial institution.

(2) A trustee shall be removed by three months notice in writing given to the trustee by the fund manager with the approval of the Authority if—

- (a) the trustee fails or neglects after reasonable notice from the fund manager to carry out or satisfy any duty imposed on the trustee in accordance with the trust deed, the incorporation documents, the information memorandum, the rules of the collective investment scheme or these Regulations; or
- (b) the holders, by extraordinary resolution resolve that such notice be given.

(3) The fund manager shall by deed supplemental to the trust deed appoint as trustee some other qualified person with the approval of the Authority to replace a trustee who has been removed.

31. Matters to be provided for in the trust deed

(1) A collective investment scheme trust deed shall make provisions on all the matters specified in the Third Schedule of these Regulations.

(2) Every trust deed shall prescribe the rules for the administration of the collective investment scheme complying with provisions of the Third Schedule and including the following—

- (a) appointment of a custodian;
- (b) the issue of a receipt evidencing the purchase of the shares of the collective investment scheme;
- (c) the issue of a certificate of entitlement to the holders within thirty days specifying shares held by each holder and showing the transactions in the holder's account during the preceding month, and that such certificate shall be *prima facie* evidence of the title of the holder to the units or shares;
- (d) authentication of every share certificate by the trustee, provided that before it is issued by the fund manager to the purchaser, the trustee shall not countersign any share certificate unless it has received from the fund manager a full account of the cash proceeds of the issue of that certificate or securities to the required value, together with all documents necessary to effect transfer thereof;
- (e) the funds of the collective investment scheme to be deposited in the trust account(s) with the custodian approved by the Authority and the securities of the collective investment scheme be kept with such custodian;
- (f) that—
 - (i) any funds for investment accruing from the issue of shares;
 - (ii) dividends, interest or any other income accruing on underlying securities;
 - (iii) the proceeds of capital gains, rights or bonus issues; and
 - (iv) any funds received by the fund manager from the realization of underlying securities,

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- be accounted for in full to the trustee by the fund manager and the custodian and deposited in the trust account(s);
- (g) that the proceeds of capital gains, rights and bonus issues be vested in the collective investment scheme for the benefit of the holders;
 - (h) all transactions of the collective investment scheme portfolio be individually reported to the trustee by the fund manager by the next working day following such transaction;
 - (i) the obligation of the fund manager to repurchase, subject to such terms and conditions as may in terms of the trust deed apply, any number of shares offered to it, on such basis as may be prescribed in the trust deed;
 - (j) that the specific method of calculation of the value of the collective investment scheme portfolio and of the share value at which holders shall transact their holdings with the collective investment scheme, should be acceptable to the Authority including the specific time of the day the week or date of the month and time for taking the valuation of securities, and the particulars relating to valuation given in Part VI of these Regulations;
 - (k) the fee charged by the fund manager (which shall be the only monies payable to the fund manager annually) be disclosed in the financial reports of the collective investment scheme;
 - (l) the accounts and financial records of a collective investment scheme be maintained in a system and manner acceptable to the Authority;
 - (m) the fees payable to the trustee and the custodian of the collective investment scheme portfolio be disclosed in the financial reports of the collective investment scheme; and
 - (n) amendment of the trust deed be in accordance with the provisions of the trust deed, these Regulations, the incorporation documents, the information memorandum and with the prior approval of the Authority.
- (3) Every such trust deed shall further prescribe—
- (a) the investment policy to be followed in respect of the scheme concerned;
 - (b) the manner in which the selling price of shares is to be calculated;
 - (c) the terms and conditions on which the fund manager will repurchase shares and the manner in which repurchase price is to be calculated;
 - (d) the manner in which shares can be transferred from one holder to another;
 - (e) if applicable, the manner in which additional shares are to be calculated;
 - (f) the manner in which the yield from shares is to be calculated; and
 - (g) the manner in which the initial charge and other charges are to be calculated.
- (4) The Authority may authorize any—
- (a) inclusion in the trust deed or the information memorandum as the case may be of any provision that in its opinion is deemed to be consistent with international market practices; or
 - (b) omission from the trust deed or the information memorandum as the case may be of any information whose inclusion would otherwise be required under these Regulations if in the opinion of the Authority such information would be inconsistent with the international market practices or would be inappropriate to the nature of the collective investment scheme or would not be in the best interest of the holders.

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(5) The parties to a trust deed may by a supplemental deed alter or rescind any provisions of such trust deed or add further to the provisions thereto, but no alteration or rescission of, or addition to a trust deed shall be valid—

- (a) unless the consent thereto of the holders and the Authority has been obtained in the manner prescribed in the trust deed; or
- (b) the Authority is satisfied that any such alteration, rescission or addition does not contain anything inconsistent with the provisions of the Act or with sound financial principles.

(6) A provision in any trust deed, whether entered into before or after the commencement of these Regulations purporting to relieve any party from liability to the holders on account of his own negligence, shall be void.

[L.N. 165/2002, s. 5.]

32. Remuneration of trustee

The agreement between the fund manager, the trustee and the board of directors, as the case may be, shall make provision on the computation of the fee in respect of the trustee's services which will be disclosed to the holders in the annual report each year and the trustee shall in addition to such remuneration be entitled to be repaid by the fund manager on demand the amount of all its disbursements other than disbursements expressly required or authorised to be paid out of the collective investment scheme portfolio.

Custodian

33. Obligation to appoint a custodian

Every collective investment scheme shall appoint a custodian approved by the Authority.

34. Eligibility for appointment of a custodian

(1) No person shall be appointed a custodian of a collective investment scheme unless such person is a bank or financial institution approved for that purpose by the Authority.

(2) A custodian of a collective investment scheme may in relation to the fund manager or the trustee of such collective investment scheme, be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act (Cap.486) or be deemed by the Authority to be otherwise under control of substantially the same persons or consist substantially of the same shareholders, provided that the investment in a related company shall be limited to ten percent of the total funds managed by the fund manager.

(3) The Authority may revoke the approval of a custodian if at any time thereafter the custodian ceases to satisfy the requirements of these Regulations.

[L.N. 165/2002, s. 4.]

35. Duties of a custodian

(1) A custodian shall render custodial services to the collective investment scheme pursuant to a written agreement between the custodian and the board of directors, fund manager or trustee as the case may be, including the following—

- (a) to maintain the custody of all the collective investment scheme portfolio and hold it to the order of the trustee or fund manager in accordance with the provisions of these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme;

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- (b) to receive and keep in safe custody title documents, securities and cash amounts of the collective investment scheme;
- (c) to open an account in the name of the collective investment scheme for the exclusive benefit of such collective investment scheme;
- (d) to transfer exchange or deliver in the required form and manner securities held by the custodian upon receipt of proper instructions from the fund manager, trustee or board of directors, as the case may be;
- (e) to require from the fund manager, board of directors or trustee, such information as it deems necessary for the performance of its functions as a custodian of the collective investment scheme;
- (f) to promptly deliver to the trustee or fund manager or to such other persons as the fund manager or trustee may authorize, copies of all notices, proxies, proxy soliciting materials received by the custodian in relation to the securities held in the collective investment scheme portfolio, all public information, financial reports and stockholder communications the custodian may receive from the issuers of securities and all other information the custodian may receive, as may be agreed between the custodian trustee or fund manager, as the case may be from time to time;
- (g) to exercise subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the fund manager or the trustee as the case may be;
- (h) to exercise the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of the collective investment scheme portfolio and in fulfilling obligations in the agreement;
- (i) where title to investments are recorded electronically, to ensure that entitlements are separately identified from those of the fund manager or the trustee, as the case may be, of the collective investment scheme in the records of the person maintaining records of entitlement;
- (j) to attend general meetings of the holders and be heard at any general meeting on matters which concern it as custodian:

Provided that the custodian shall in executing its duties exercise the degree of care expected of a prudent professional custodian for hire.

(2) A custodian discharging its contractual duties to the scheme shall not contract an agent to discharge those functions; except where a portion of the collective investment scheme portfolio is invested in offshore investments, in which case the custodian may engage the services of an overseas sub-custodian approved by the trustee or board of directors, with the notification of such appointment to the Authority.

(3) The agreement between the custodian and the trustee or board of directors or fund manager as the case may be, shall make provision on the computation of the fee in respect of custodial services which shall be disclosed to the holders in the annual report each year.

36. Records to be maintained by a custodian

The custodian must keep such books, records and statements as may be necessary to give a complete record of—

- (a) the entire fund of the collective investment scheme portfolio held by the custodian; and
- (b) each and every transaction carried out by the custodian on behalf of the collective investment scheme,

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and shall permit the trustee, board of directors, the fund manager or a duly authorized agent of the Authority to inspect such books, records and statements within the premises of the custodian at any time during business hours.

37. Reports by a custodian

The custodian must provide to the fund manager, trustee or board of directors as the case may be and other Authority—

- (a) a written statement at agreed reporting dates which lists all assets of the scheme in the scheme account(s) together with a full account of all receipts and payments made and other actions taken by the custodian;
- (b) advice or notification of any transfers of collective investment scheme portfolio or securities to or from the scheme account(s) indicating the securities acquired for the account(s) and the identity of the party having physical possession of such securities;
- (c) a copy of the most recent audited financial statements of the custodian prepared together with such information regarding the policies and procedures of the custodian as the fund manager, trustee or board of directors may request in connection with the agreement or the duties of the custodian under that agreement; and
- (d) provide a report annually to the Authority demonstrating that compliance with these Regulations the incorporation documents, the information memorandum and the rules of the collective investment scheme, has been achieved.

38. Resignation of a custodian

(1) The custodian shall not be entitled to resign except upon the appointment of a new custodian and if the custodian wishes to resign it shall give three months notice in writing to that effect to the board of directors or the fund manager, as the case may be and the Authority and the custodian shall give reasons for the resignation.

(2) The fund manager shall appoint within two months after the date of a notice under sub-regulation (1) some other qualified person as the new custodian upon and subject to such person being approved by the Authority and entering into an agreement similar to the agreement comprised in the incorporation documents.

(3) If the fund manager is unable to appoint a new custodian as within the period of two months, the custodian shall be entitled to appoint a qualified company selected by it as the new custodian on the same basis as a custodian appointed under Regulation 34.

(4) On receipt of the notice by the trustee, board of directors or the fund manager as the case may be the agreement between the board of directors fund manager as the case may be and the custodian shall be deemed to have been terminated.

(5) In the event the custodian desiring to retire or ceasing to be registered as a custodian with the Authority, the fund manager may with the approval of the Authority appoint another eligible person to be a custodian in its place.

39. Removal of a custodian

(1) A custodian shall be removed in writing immediately on the happening of any of the following events that is if—

- (a) a court of competent jurisdiction orders its liquidation except a voluntary liquidation for the purpose of reconstruction or amalgamation approved by the Authority; or

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- (b) a statutory manager or a receiver is appointed over any of its assets; or
- (c) the custodian ceases to carry on business as a bank or financial institution.

(2) A custodian shall be removed by three months notice in writing given by the fund manager to the custodian if—

- (a) the custodian fails or neglects after reasonable notice from the fund manager, trustee or board of directors as the case may be, to carry out or satisfy any duty imposed on the custodian in accordance with the agreement; or
- (b) the holders, by extra ordinary resolution resolve that such notice be given, and the fund manager appoint as custodian some other qualified institution with the approval of the Authority.

(3) In the event of a termination of the agreement provided for under Regulation 38(4), or from the date of a winding up order issued by a competent court against the custodian, the custodian shall immediately hand over, and deliver all assets, documents and funds including those from the bank account(s) of the collective investment scheme held by such custodian to the custodian appointed in writing by the board of directors, fund manager or trustee, as the case may be, and approved by the Authority within thirty days from the date of such termination.

(4) Within twenty days from the termination of the agreement, the custodian shall submit to the Authority an audit report indicating the assets, liabilities and an inventory of the scheme fund, securities and title documents of the scheme assets which have been handed over transferred and delivered to the appointed custodian.

(5) A copy of the notice given to the custodian for termination of services by the fund manager shall be given to the trustee and the board of directors.

(6) In the event of any disagreement between the fund manager, the trustee or the board of directors as the case may be and the custodian, notification shall be made to the Authority by the fund manager giving reasons for the termination of services of the custodian.

*Umbrella Schemes and Investment Companies***40. Meaning of umbrella scheme**

A promoter of a collective investment scheme may establish two or more sub-funds under the management of one fund manager (hereinafter called an umbrella scheme).

41. Minimum requirements for umbrella schemes

(1) An umbrella scheme does not qualify for approval from the Authority to operate unless each of its proposed sub-funds qualify for a separate approval to operate as a collective investment scheme, except as provided in Regulation 80.

(2) Subject to the provisions of sub-regulation (4), if for a period of twenty-four consecutive months commencing at any time after the first issue of any shares of an umbrella scheme, shares in respect of less than two sub-funds are in issue the trustee or board of directors of the scheme shall take such action as is necessary to change the category of the scheme or to cause shares in respect of more than one sub-fund to be in issue.

(3) If sub-regulation (2) becomes, or should reasonably be expected by the trustee or board of directors to become applicable, the fund manager shall, prior to or forthwith upon the expiry of the twenty-four month period notify the holders and the Authority of any action proposed in order to comply with sub-regulation (2).

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(4) Sub-regulation (2) shall not apply if, on or prior to the expiry of the twenty-four month period, winding-up of the umbrella scheme has commenced.

42. Allocation of costs for umbrella schemes

In so far as any of the collective investment scheme portfolio of an umbrella scheme, or any assets to be received as part of the collective investment scheme portfolio or any costs, charges or expenses to be paid out of the collective investment scheme portfolio, are not attributable to one sub-fund only, the umbrella scheme shall allocate such assets, costs, charges or expenses between and among the sub-funds in a manner which is fair to the holders of the umbrella scheme generally.

43. Reports

Regulation 19 (fund manager's reports) shall be applied as if each sub-fund were a separate collective investment scheme.

44. Special provisions relating to investment companies

(1) Every collective investment scheme incorporated as an investment company shall list on an approved securities exchange within six months of a period of expiry of two years after the date of registration of the collective investment scheme.

(2) The minimum amount to be raised for a collective investment scheme set up as an investment company shall be twenty five million shillings.

(3) The investment company with the express approval of the Authority shall offer its securities for sale.

(4) The investment company will be registered as a collective investment scheme upon providing proof that it has raised the minimum amount of twenty-five million shillings.

(5) In the event that the minimum amount of twenty-five million shillings is not raised then the investment company shall refund the monies received as subscriptions to the subscribers.

PART VI – PRICING, VALUATION AND DEALING OF SHARES

Initial Offer

45. Application

This sub part applies to the setting up of a new scheme by way of an initial offer and during the period of such offer.

46. Compliance with incorporation documents

A fund manager shall not issue or sell shares of a collective investment scheme otherwise than at a price calculated in accordance with these Regulations, the incorporation documents, the latest information memorandum and the rules of the collective investment scheme.

47. Period of initial offer

A period of initial offer shall not exceed thirty days from the date of launch, to be so specified in the initial information memorandum and subject to the provisions of regulation 46, an initial offer shall remain open for the prescribed period.

48. Creation of shares during initial offer

(1) The fund manager shall create or in the case of a unit trust, instruct the trustee to create shares in the scheme at the beginning of the first day of business in the initial offer period and during the period.

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(2) At or before the beginning of the day referred to in sub-regulation (1) the fund manager must irrevocably choose, in respect of that initial offer to proceed either under paragraph (3)(a) ("up and running") or under paragraph (3)(b) ("pay over and wait") and in the case of a unit trust, notify its choice to the trustee.

(3) Where on any business day during the period of initial offer the fund manager assumes any obligation to issue shares it must, depending on its choice under paragraph (2) either—

- (a) create shares or instruct the trustee (in the case of a unit trust), at the beginning of the next business day, to create shares in the scheme in such number at least as will enable the fund manager immediately to fulfil that obligation, whether from the shares so created or from other shares; or
- (b) proceed as follows—
 - (i) pay to the custodian or trustee (in any case where the purchaser has sent a remittance) on the day of receipt of the remittance or on the next business day, the total amount (or the total amount less the total of the fund manager's preliminary charge, if any, in respect of those shares); and
 - (ii) as soon as the period of the initial offer has come to an end, create shares or in the case of a unit trust, instruct the trustee to create shares in the scheme in such number at least as will enable the fund manager to fulfil his obligation to issue shares whether from the units so created or from other shares.

(4) The instructions given by the fund manager to the trustee shall state, in relation to each type of share to be created, the number to be created, expressed either as a number of shares or as an amount in value or as a combination of the two.

(5) The trustee must create shares on receipt of instructions by the fund manager given under this rule, and must not during an initial offer create shares otherwise.

49. Initial price

(1) The initial issue price and offer period, which shall not exceed thirty days from the date of the launching, shall be prescribed in the incorporation documents and the latest information memorandum and the proceeds of the issue shall be remitted by the fund manager to the custodian of the collective investment scheme with advice to the trustee.

(2) The initial issue of shares of a new fund shall not be less than the issue price paid by investors during the launching and offer period less the fund manager's fee and service charges prescribed in the incorporation documents and the latest information memorandum.

50. Determination of selling and repurchase price

(1) The selling price and repurchase price quoted by the fund manager shall be based on the net asset value of the fund in this respect, the value of an investment in securities listed and quoted on the securities exchange shall be the value based on the last done market price which is the last transacted price of the securities.

(2) In the event of a suspension in the quotation of securities for a period exceeding fourteen days, or such shorter period as determined by the trustee, the value of such securities shall be based on other methods such as the net tangible assets of the issuer of the securities and the nominal value of the securities.

(3) With respect to unlisted securities, the valuation shall be based on methods that are fair and reasonable and that are acceptable to the fund manager and approved by the trustee.

51. Pricing of additional shares

The price of additional shares created and payable by the fund manager to the trustee, after the offer period of the initial offer of new fund shall be based on the net asset value of the fund. The same basis in the computation of the price shall also be applicable to the price payable by the trustee on redemption by way of cancellation of shares.

52. Valuation point for selling price

The value of the fund to be used in determining the selling price quoted by the fund manager and the price payable by the fund manager to the trustee on creation of additional shares shall be the net asset value at the end of the business day immediately preceding the business day on which the written request to buy and create shares is received by the fund manager and the trustee respectively.

53. Valuation point for repurchase price

The value of the fund to be used in determining the repurchase price quoted by the fund manager and the price payable by a trustee of a collective investment scheme on the redemption of units shall be the net asset value at the end of the business day on which the written request to repurchase and redeem is received by the fund manager and the trustee respectively.

54. Allowance for service charge

In addition to the selling price which is derived from the net asset value; the fund manager may charge a service fee as disclosed in the information memorandum and such charge shall be disclosed separately in the application form.

55. Determination of repurchase price

The repurchase price quoted by the fund manager shall be the net asset value of the fund. However, if the determination of the repurchase price is computed on a different basis, the repurchase price so computed and quoted by the fund manager shall not be less than the net asset value of the fund and no deductions, other than deductions for incidental expenses such as stamp duty shall be made from the computed repurchase price.

56. Calculation of net asset value per share

(1) The formula to be adopted to determine the value of the fund per share is to divide the value of the assets of the fund less its liabilities (including such provisions and allowances for contingencies as the fund manager may think appropriate) by the number of shares issued and fully paid.

(2) The net asset value of the fund and the net asset value per share shall be calculated by the fund manager as at the end of each business day.

(3) Liabilities shall include the amount of any accrued fees and expenses at the relevant valuation date of the fund.

(4) The number of units in issue shall be those units that are issued and fully paid.

*Redemption and Cancellation of Shares***57. Cancellation of shares**

(1) Where the fund manager wishes that shares be cancelled, it shall cancel such shares and in the case of a unit trust, instruct the trustee to cancel such shares; and any

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instruction given by the fund manager shall state, in relation to each type of shares to be cancelled, the number to be cancelled, expressed either as a number of shares or as an amount in value or as a combination of the two:

Provided that at any moment of such instruction the fund manager shall not have any outstanding obligation to issue shares, which by cancellation of shares, would prevent the fund manager from fulfilling any such instruction.

(2) The trustee shall cancel the units on receipt of instructions given by the fund manager.

(3) On cancellation of shares and on delivery to the custodian or the trustee as the case may be of such evidence of the title to those shares, as the custodian or trustee may reasonably require, the custodian or the trustee shall, within two business days of the instructions given by the fund manager pay the repurchase price of the shares—

- (a) to the person who was the holder of those shares; or
- (b) in accordance with the relevant provisions of the information memorandum, trust deed and incorporation documents.

58. Repurchase price

The repurchase price payable for each share by the custodian or the trustee shall be based on the net asset value of the fund.

59. Timing of instructions to create or cancel units

(1) A fund manager may at any time give instructions to the trustee to create or to cancel units.

(2) Where instructions are given at a time which is less than twelve hours after the last valuation point and before the next valuation point the instructions must be given by reference to the price calculated or being calculated for the last valuation point.

(3) Where instructions are given at a time which is more than twelve hours after the last valuation point—

- (a) instructions must be given by reference to the price next to be calculated; and
- (b) the trustee shall create or cancel the units only after the next valuation point has been reached.

*Operational Requirements (Dealing)***60. Dealing**

(1) Every collective investment scheme shall stipulate in the information memorandum the days when dealings in its shares shall be computed.

(2) In the event of a scheme not dealing on a daily basis, there shall be at least one regular dealing day every two weeks.

(3) Suspension in dealings may be provided for only in exceptional circumstances having regard to the interest of all the holders.

(4) The fund manager shall immediately notify the Authority if dealing has been cancelled or suspended and the fact of the cancellation shall be published immediately following such decision and at least once every week during the period of suspension, in the newspaper in which the scheme's prices are normally published.

61. Fund manager's obligation to issue or redeem shares

(1) Subject to the provisions of sub-regulation (2), the fund manager shall at all times during the dealing day issue or redeem shares of the scheme at a price arrived at under these Regulations.

(2) Sub-regulation (1) shall not apply if the—

- (a) number or value of the shares sought to be issued or redeemed is less than any number or value stated in the information memorandum as the minimum number or value to be purchased or held or redeemed;
- (b) fund manager believes on reasonable grounds that the number or value of shares sought to be issued would lead to the holding by any one person or by any one person and any other person appearing to the fund manager to be acting in concert with that person of more shares than any number stated in the information memorandum as the maximum number to be purchased or held; or
- (c) fund manager has reasonable grounds, having regard to the interests of all the holders relating to the circumstances of the person concerned, for refusing to issue units to or redeeming shares from such person.

(3) This regulation shall also apply during an initial offer in so far as it relates to the issuing of shares.

62. Restrictions on issued shares in an investment company

No person shall after expiry of six months from the closing date of the initial offer period have beneficial interest in shares of collective investment scheme set up as an investment company representing more than twenty five per cent of the collective investment scheme's issued shares.

63. Issue price parameters

(1) The fund manager's price for issue of shares shall not exceed the maximum issue price, that is, a price fixed by the fund manager and notified to the custodian or the trustee: and that maximum issue price itself must not exceed the total of—

- (a) the relevant creation price; and
- (b) the current initial charge.

(2) In the case of an initial offer, the fund manager's price for issue of shares shall not exceed the initial price.

64. Redemption price parameters

(1) A fund manager's price for redemption of shares shall not be less than the relevant minimum repurchase price already notified to the trustee.

(2) The minimum repurchase price shall not be less than the relevant repurchase price.

(3) In case of an umbrella fund, the maximum price at which shares in one constituent part may be exchanged for shares in another such part shall not exceed the relevant maximum issue price (less any preliminary charge) of the new shares; and the minimum price at which the old shares may be taken in exchange shall not be less than the equivalent minimum repurchase price.

65. Charges on Issue

(1) If the trust deed or the information memorandum so permits, the issue price may include an initial charge which may be expressed either as a fixed amount or calculated as

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a percentage of the creation price and such initial charge shall not exceed the amount stated in the information memorandum as the current initial charge.

(2) A fund manager wishing to increase the current initial charge, shall give a ninety day notice in writing after obtaining approval from the trustee or board of directors, as the case may be, of that increase and the date of its commencement to the trustee and all persons who ought reasonably to be known to the fund manager to have made an arrangement for the purchase of shares at regular intervals and the information memorandum shall be revised in accordance with these Regulations to reflect the new initial charge and the date of its commencement.

66. Charges on redemption or cancellation

If the trust deed or the information memorandum so permits, the amount payable as proceeds of redemption may be arrived at after deduction of a charge for the benefit of the fund manager, and that charge may be expressed either as a fixed amount, or calculated as a percentage of the proceeds of redemption which would otherwise have been payable:

Provided that—

- (a) the amount or percentage may be expressed as diminishing over the time during which the holder has held the shares, but may not be expressed as liable to vary in any other respects;
- (b) where the fund manager is permitted to make a deduction, the amount shall not exceed the amount that would be derived by applying the rate or method prescribed in the information memorandum at the date on which the relevant shares were issued;
- (c) where the trust deed or information memorandum of a scheme, whenever executed, is modified so as to include the provision on fund manager's charge on redemption the modification shall be expressed so as to apply only to shares issued after the date on which the modification takes effect; and
- (d) the fund manager shall not rely on the introduction of the charge on redemption or increase in the rate or method of the charge, unless—
 - (i) the fund manager has obtained approval to the introduction or increase of the charge from the trustee or board of directors, as the case may be and thereafter has given a notice in writing of introduction or increase of the charge on redemption and of the date of its commencement to all persons who ought reasonably to be known to the fund manager to have made an arrangement for the purchase of shares at regular intervals;
 - (ii) the fund manager has revised the information memorandum in accordance with these Regulations and incorporation documents and to reflect the new charge, rate or method and the date of its commencement; and
 - (iii) ninety days have elapsed since the revised information memorandum became available.

67. Dilution Levy

- (1) The fund manager shall have the power to require either or both of—
 - (a) the payment of a dilution levy in respect of the issue or sale of shares or any class of shares; and
 - (b) the deduction of a dilution levy in respect of the redemption or the cancellation of shares or any class of shares.

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(2) Any payment or deduction provided for under sub-regulation (1) shall become due the same time as payment becomes due in respect of the relevant issue, sale, redemption or cancellation.

(3) A dilution levy may be imposed only in a manner that is, so far as practicable, fair to all holders and potential holders and the maximum rate must be disclosed in the current information memorandum.

68. Payment on Redemption

(1) On agreeing to redeem shares, the fund manager shall, within the period specified in sub-regulation (2), pay the appropriate proceeds of redemption to the holder.

(2) The period provided for under sub-regulation (1) expires at the close of business on the sixth (6) business day next after the valuation point immediately following receipt by the fund manager of the request to redeem.

(3) Nothing in this Regulation shall require the fund manager to part with money in respect of a cancellation or redemption of shares where it has not yet received money due on the earlier issue or sale of those shares from the holder.

(4) The amount to be paid by the fund manager as the proceeds of redemption of a share shall not be less than the price of a share of the relevant class notified or to be notified to the custodian in respect of the last valuation point or, for a redemption at a forward price to be notified in respect of the next valuation point less—

- (a) any redemption charge permitted under Regulation 66;
- (b) any withholding taxes or other taxes to be deducted; and
- (c) any dilution levy permitted under Regulation 67.

69. Notification of price to trustee or custodian

(1) Forthwith upon completion of a valuation the fund manager shall notify the custodian or the trustee, as the case may be, of—

- (a) the creation price;
- (b) the repurchase price;
- (c) the maximum issue price;
- (d) the minimum repurchase price; together, in the case of an umbrella fund; and
- (e) the maximum issue price for shares in any part on an exchange of shares.

(2) The prices to be notified under sub-regulation (1) are those relevant to deals based on prices determined at that valuation day.

(3) Any notification under sub-regulation (1) shall include a statement of the number of shares owned by the trustee or fund manager as the case may be, for the scheme at that valuation day, or notified point if there is one.

70. Publication of price

(1) The fund manager shall publish on the business day following any valuation, the repurchase price of those shares and the maximum selling price and if there is one, the current initial charge and redemption charge if any which shall be the relevant prices last notified to the trustee or custodian under Regulation 69.

(2) Publication required by sub-regulation (1) shall not be in less than two daily newspapers of national circulation published in the English language.

(3) During the period of the initial offer, the fund manager shall not agree to issue shares of the scheme at a price other than the initial price.

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Valuation

71. General

(1) For the purposes of determining the price at which shares of any class in a unit trust or a mutual fund may be issued, cancelled, sold or redeemed, the fund manager shall carry out a valuation of the collective investment scheme portfolio at each valuation point for the unit trust or mutual fund, or a sub fund of an umbrella scheme, as the case may be, at each valuation point.

(2) An investment included in the collective investment scheme portfolio for which different prices are quoted according to whether it is being bought or sold shall be valued at its mid market price.

(3) For the purposes of the preceding paragraphs, there shall be excluded from the value of an investment or other part of the collective investment scheme portfolio any fiscal charges or commissions or other charges that were paid or would be payable on the acquisitions or disposals of the investment or other part of the collective investment scheme portfolio.

(4) There must be at least two valuation points in each calendar month and if there are only two valuation points in any calendar month they must be two weeks apart.

(5) The frequency of regular valuation points and the manner in which valuations will be carried out, must be specified in the information memorandum.

(6) Sub-regulations (1) to (5) shall not apply to a collective investment scheme set up as an investment company under the Companies Act (Cap. 486) and listed on a securities exchange.

Income

72. Annual income allocation date

(1) A collective investment scheme shall have an annual income allocation date which is the date in the calendar year stated in the most recently published information memorandum as the date on or before which, in respect of each annual accounting period, an allocation of income is to be made.

(2) The annual income allocation date shall be a date within three calendar months after the relevant accounting reference date.

73. Annual allocation of income

(1) At the end of each accounting period, the trustee, board of directors or the fund manager, as the case may be, shall arrange for the custodian to transfer the income of a collective investment scheme portfolio to an account to be known as "the distribution account".

(2) The trustee, board of directors or the fund manager, as the case may be, are not obliged to comply with sub-regulation (1) if it appears to them that the average of the allocations of income from the distribution account to the holders would be less than such minimum amount as may be prescribed in the information memorandum.

(3) Any income that in accordance with sub-regulation (2) is not transferred to the distribution account must be carried forward to the next accounting period and be regarded as received at the start of the next period and the fund manager shall disclose the maximum number of periods in which any income in accordance with this sub-regulation can be carried forward.

- (4) The calculation of the available income shall be as follows—
- (a) take the aggregate of the income of a collective investment scheme portfolio received or receivable for the account of the collective investment scheme in respect of the period;
 - (b) deduct the charges and expenses of the collective investment scheme paid or payable out of the income of the collective investment scheme portfolio in respect of the period;
 - (c) add the fund manager's best estimate of any relief from tax on such charges and expenses;
 - (d) make such other adjustments as the fund manager considers appropriate (in the case of subparagraph (i) and (ii), after consulting the auditors) in relation to—
 - (i) taxation;
 - (ii) the proportion of the price received or paid for shares that is related to income (taking account of any provisions in the incorporation documents relating to equalisation);
 - (iii) potential income which is unlikely to be received until twelve months after the income allocation date;
 - (iv) income which should not be accounted for on an accrual basis because of lack of information about how it accrues;
 - (v) any transfer between income and capital account; and
 - (vi) any other adjustments that the fund manager considers appropriate after consulting the auditors;
 - (e) on or before the annual income allocation date, the fund manager shall allocate the available income to the shares of each class in issue taking account of the provision of its incorporation documents relating to the proportion of available income attributable to each class in the case of an umbrella scheme.

74. Annual allocation to accumulation shares

(1) The amount of income allocated to accumulation shares shall with effect from the end of the annual accounting period, become part of the capital of the collective investment scheme portfolio and the interests of the holders in the amount shall be satisfied by an adjustment as at the end of the period, in the proportion of the value of the collective investment scheme portfolio to which the price of a share of the relevant class is related.

(2) The adjustments under sub-regulation (1) shall be such as will ensure that the price of an accumulation share of the relevant class remains unchanged notwithstanding the transfer of the income to the capital of the collective investment scheme portfolio.

75. Annual distribution to holders of income shares

(1) Subject to sub-regulation (2), where the shares in issues in a collective investment scheme are or include income shares, on or before each annual income allocation date, the fund manager shall give the custodian timely instructions sufficient to enable the custodian to distribute the income allocated to income shares amongst the holders in accordance with the number of such shares held or deemed to be held by them respectively at the end of the relevant annual accounting period and the custodian shall pay the distribution in accordance with the instructions.

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(2) In calculating the amount to be distributed under sub-regulation (1), the fund manager shall—

- (a) deduct any amounts previously allocated by way of interim allocation of income in respect of that annual accounting period; and
- (b) deduct and carry forward in the income account such amount as shall be necessary to adjust that allocation of income to the nearest one hundredth of a cent (or the equivalent amount in the base currency) per income share or such lesser fraction as the trustee or board of directors, as the case may be, from time to time determine.

76. Interim allocation of income

(1) This Regulation applies if at any time the most recently published information memorandum—

- (a) states that an allocation of income will be made before the annual income allocation date in any year in respect of a period (hereinafter referred to as an interim accounting period) within the annual accounting period; and
- (b) specifies a date as the interim income allocation date in relation to that interim accounting period.

(2) In a case such as that provided for under sub-regulation (1), Regulations 73, 74 and 75 shall apply so as to secure the making of an interim allocation of income as if—

- (a) the interim accounting period in question and all previous interim accounting periods in the same annual accounting period taken together, were the annual accounting period;
- (b) the interim income allocation date were the annual income allocation date; and
- (c) the trustee or board of directors were to treat as the available amount of income for the interim allocation a sum which, in the opinion of the fund manager, would be available for allocation of income if the interim accounting period and all previous interim accounting periods in the same annual accounting period taken together were an annual accounting period.

77. Income equalisation

An information memorandum may provide that an allocation of income whether annual or interim to be made in respect of each share issued or sold during the accounting period in respect of which that income allocation is made shall include a capital sum to be referred to as "income equalisation".

PART VII – INVESTMENT, BORROWING, LENDING**78. Broad investment guidelines**

(1) All investments of a collective investment scheme made by the fund manager shall—

- (a) be consistent with the objectives of the scheme;
- (b) be transferable;
- (c) have a ready price or value; and
- (d) have adequate proof of title or ownership to allow proper custodial arrangements to be made.

(2) The book value of the investments of a collective investment scheme portfolio shall not exceed the following limits—

- (a) securities listed on a securities exchange in Kenya – 80%;

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- (b) securities issued by the Government of Kenya – 80%;
- (c) immovable property – 25%;
- (d) other collective investment schemes including umbrella schemes – 25%;
- (e) any other security not listed on a securities exchange in Kenya – 25%;
- (f) off-shore investments – 10%:

Provided that—

- (a) no limits shall apply to investment of the collective investment scheme portfolio in an interest bearing account, product or financial instrument of or issued by a bank or financial institution as defined by the Banking Act (Cap. 488); or and insurance company as defined in the Insurance Act (Cap. 487);
- (b) the book value of an investment in an interest bearing account, financial product or instrument of or issued by any single bank or financial institution or insurance company or a combination of any such investment in a single bank, financial institution or insurance company shall not in aggregate exceed 25% of the collective investment scheme portfolio and net asset value;
- (c) the book value of a collective investment scheme's holding of securities relating to any single issuer shall not exceed twenty-five per cent of the collective investment scheme's properties net asset value; and
- (d) a collective investment scheme established for the investment of retirement benefits schemes shall comply with the investment guidelines prescribed under the Retirement Benefits Act (Cap. 3);
- (e) sub-regulation 78(2)(c) and (e) shall not apply to a collective investment scheme established as an investment company.

(3) A fund manager shall not apply any part of the collective investment scheme portfolio in the acquisition of any investments which are for the time being, partly paid or otherwise in the opinion of the trustee likely to involve the trustee in any liability contingent or otherwise.

(4) The limits and restrictions in this Part shall be complied with at all times based on the most up-to-date value of the collective investment scheme portfolio, but a five percent allowance in excess of any limit or restriction shall be permitted where the limit or restriction is breached through the appreciation in value of the collective investment scheme portfolio.

79. Restriction on borrowing and lending

No collective investment scheme shall—

- (a) lend all or any part of the collective investment scheme portfolio; or
- (b) assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person.

80. Investment and borrowing powers for umbrella schemes

Regulations 78 and 79 shall not apply to sub funds of an umbrella scheme.

Advertisements and Public Announcements

81. Advertising only for approved schemes

(1) No person shall advertise or make other invitations to the public or a section of the public in Kenya to invest in a collective investment scheme which has not obtained approval from the Authority.

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(2) Every advertisement or invitation to the public, or a section of the public shall be submitted to the Authority at least forty-eight hours before the date of publication, and may be used until such significant or material changes arise in the information contained in the advertisement, invitations, public announcement or other promotional materials, after which a new submission for approval may be made to the Authority.

82. General contents

(1) Any advertisement or invitation or other promotional material to the public or a section of the public, which includes information on the trustee, shall be accompanied by the trustee's written consent.

(2) If a collective investment scheme is described as having been approved by the Authority it shall be stated that, in giving this approval, the Authority does not take responsibility for the financial soundness of the scheme or for the correctness of any statements made or opinions expressed in this regard.

(3) Advertisements shall include a warning statement that—

- (a) the price of shares, and the income therefrom if the collective investment scheme pays dividends may go down as well as up; and
- (b) investors are reminded that in certain specified circumstances their right to redeem their shares may be suspended.

(4) Warning statements shall be written in such a manner as to be capable of being read with reasonable ease by anyone reading the advertisement.

*Meetings***83. General and extra-ordinary meetings**

(1) The trustee, board of directors, fund manager or holders, as the case may be, shall convene a general meeting within three months after the relevant accounting reference date.

(2) The trustee, board of directors, fund manager or holders, as the case may be, may convene an extra-ordinary meeting of holders at any time but not later than six weeks after receipt of the requisition.

(3) A requisition shall—

- (a) state the objects of the meeting;
- (b) be dated;
- (c) be signed by holders who, at that date, are registered as the holders of shares representing not less than one-tenth in value of all of the shares in the collective investment scheme then in issue;
- (d) be deposited at the head office of the collective investment scheme.

(4) A requisition may consist of several documents deposited with the fund manager at the same time, each being in like form and signed by one or more holders.

84. Notice of meetings

(1) Not less than twenty-one days written notice, inclusive of the date on which the notice is deemed to be served and the day of the meeting, shall be given to the holders of a general meeting.

(2) Sub-regulation (1) shall not apply to notice of an adjourned meeting.

(3) The non-receipt of notice by a holder shall not invalidate the proceedings at any meeting.

85. Quorum

(1) The quorum at a meeting of holders shall be specified in the information memorandum or the trust deed.

(2) No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of the meeting.

(3) If within half an hour from the time appointed for the meeting a quorum is not present the meeting, if convened on the requisition of holders, shall be dissolved and in any other case it shall stand adjourned to such day and time not being less than seven days thereafter and to such place as may be appointed by the chairman if any has been appointed pursuant to the incorporation documents or otherwise by the trustee, board of directors or fund manager, as the case may be and if at such adjourned meeting a quorum is not present within fifteen minutes from the time appointed for the meeting, the holders present shall comprise the quorum.

(4) Notice of any adjourned meeting of holders shall be given and such notice shall state that the holders present at the adjourned meeting whatever their number and the number of shares held by such holder or holders shall form a quorum.

86. Resolutions

(1) Except where an extraordinary resolution is specifically required or permitted by these Regulations, any resolution required under the Companies Act (Cap. 486) or these Regulations shall be passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of holders.

(2) In the case of an equality of votes cast, in respect of a resolution, put to a general meeting, any chairman appointed pursuant to the incorporation documents shall be entitled to a casting vote in addition to any other vote he may have.

(3) An extra-ordinary resolution shall mean a resolution passed at an extra-ordinary meeting as defined in Regulation 83(2).

87. Voting rights

(1) On a show of hands, every holder who, being an individual is present in person or, being a corporation, is present by its representative duly authorized in that regard, shall have one vote.

(2) Votes may be given either personally or by proxy or in any other manner permitted by the incorporation document and the voting rights attached to each shall be such proportion of the voting rights attached to all of the shares in issue as the price of the share bears to the aggregate price or prices of all the shares in issue at the date specified in Regulation 84 and a holder entitled to more than one vote need not, if he votes, use all his votes or cast all his votes in the same way.

(3) In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and for this purpose, seniority shall be determined by the order in which the names stand in the register of holders.

(4) No director of a collective investment scheme shall be entitled to be counted in the quorum of, and no director or any associate of the director shall be entitled to vote at, any meeting of a collective investment scheme except in respect of any shares which the director or his associate holds on behalf of or jointly with a person who, if himself the registered holder would be entitled to vote and from whom the director or his associate, as the case may be, has received voting instructions, and accordingly, shares held by any director shall not, except as mentioned in this subregulation be regarded as being in issue.

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88. Proxies

(1) A holder entitled to attend and vote at a meeting of a collective investment scheme is entitled to appoint another person to attend and vote in his place whether such other person is a holder or not.

(2) Except insofar as the incorporation documents otherwise provides a holder shall be entitled to appoint more than one proxy to attend on the same occasion but a proxy shall be entitled to vote only on a poll.

(3) Every notice calling a meeting of the holders in the collective investment scheme shall contain a reasonably prominent statement that a holder entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him.

(4) An instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy shall not be required to be received by the collective investment scheme or any other person more than forty-eight hours before the meeting or adjourned meeting in order that the appointment may be effective.

89. Holders to be notified

In this Part, “**holders**” shall mean only the persons who were holders seven days before the notice of the relevant meeting was deemed to have been served in accordance with Regulation 84(1), but excluding any persons who are known to the fund manager not to be holders at the time of the meeting.

90. Special resolutions required for amendments to incorporation documents

(1) The incorporation documents of a collective investment scheme may be amended by an extraordinary resolution subject to sub-regulation (2).

(2) An amendment to the incorporation documents may be made by resolution of the directors if—

- (a) the instrument of incorporation provides for amendment to be made in such manner; and
- (b) the amendment is required solely—
 - (i) to implement any change in the law, including a change brought by an amendment of these Regulations; or
 - (ii) as a direct consequence of any such change; or
 - (iii) to change the name of the collective investment scheme; or
 - (iv) to remove from the incorporation documents obsolete provisions; or
 - (v) to make any other change to the instrument of incorporation which the board of directors consider does not involve any holder or potential holder in any material prejudice; and
- (c) it would not introduce or affect any provision relating to the descriptions of the transferable securities in which the collective investment scheme portfolio may be invested unless it is required solely to reflect the introduction of a new sub-fund.

91. Service of notices and other documents

(1) Any notice or document required to be served upon a holder shall be deemed to have been duly served if it is sent by post to or left at holder’s address appearing in the register.

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(2) Any notice required to be served or information to be supplied or given to any other person, including the Authority, shall be in writing or in such other form as enables the recipient to know or to record the time of receipt and to preserve a legible copy of the notice.

(3) Any notice or document served by post shall be deemed to have been served on the fourth day following that on which the letter containing the same is posted, and in providing such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted; and any notice or document left at a registered address or delivered other than by post shall be deemed to have been served on the day it was so left or delivered.

Accounts and Audit

92. Obligation to appoint an auditor

The fund manager shall at the outset and upon any vacancy, appoint an auditor for the collective investment scheme.

93. Qualifications of an auditor

A person shall not be qualified for appointment as auditor unless he is a member of and holds a valid practicing certificate issued by the Institute of Certified Public Accountants of Kenya.

94. Independence

An auditor shall be independent of the trustee, board of directors, fund manager and the custodian, their agents or associates.

95. Accounting period

Every collective investment scheme shall have an annual accounting period ending the last day of December in each year; but the fund manager shall publish and submit to the Authority an un-audited interim report for the half-year period ending on the last day of June in each year within thirty days from the end of that month.

[L.N. 100/2009, s. 1.]

96. Audit of annual report

The fund manager shall cause the scheme's annual report to be audited, and such report shall contain the information provided in the Fifth Schedule.

PART VIII – AMALGAMATION AND RECONSTRUCTION

97. General

(1) In this part, "**amalgamation**" means a scheme of arrangements whereby the whole of the collective investment scheme portfolio becomes the collective investment scheme portfolio (but not the first collective investment scheme portfolio) of a regulated collective investment scheme and whereby holders in the collective investment scheme receive shares in the regulated collective investment scheme and reference to a collective investment scheme includes a sub-fund or equivalent separately pooled part of such a scheme.

(2) "**Reconstruction**" in relation to a collective investment scheme (which in this definition includes a sub-fund) is a scheme of arrangement whereby—

- (a) part of the collective investment scheme portfolio becomes the collective investment scheme portfolio of a regulated collective investment scheme (which includes a sub-fund or equivalent separately pooled part, of a regulated collective investment scheme); or

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- (b) the whole of that collective investment scheme portfolio becomes the collective investment scheme portfolio of two or more regulated collective investment schemes; or
- (c) the whole of that collective investment scheme portfolio becomes the first collective investment scheme portfolio of a regulated collective investment scheme.

98. Amalgamation and reconstruction

(1) Neither a collective investment scheme nor a sub-fund of an umbrella fund shall be subject to an amalgamation or reconstruction which would result in its holders becoming holders in any body other than a regulated collective investment scheme that complies with these Regulations.

(2) Where for the purpose of an amalgamation or reconstruction, it is proposed that the collective investment scheme portfolio or collective investment scheme portfolio attributable to a sub-fund of an umbrella scheme, should become the collective investment scheme portfolio of another regulated collective investment scheme or sub-fund (or equivalent separately pooled part) of a regulated collective investment scheme, the proposal shall not be implemented without the sanction of an extraordinary resolution of the holders of the collective investment scheme or as the case may be, of the class or classes of shares related to the sub-fund.

(3) Where it is proposed that a collective investment scheme or a sub-fund of an umbrella scheme should receive a collective investment scheme portfolio of another collective investment scheme as a result of amalgamation or reconstruction of some other collective investment scheme or sub-fund (or equivalent separately pooled part) of such a scheme or of a body corporate, then the proposal shall not be implemented without the sanction of an extraordinary resolution of the holders of the collective investment scheme or, as the case may be, of the class or classes of shares related to the sub-fund unless sub-regulation (4) applies.

(4) This sub-regulation applies if the trustee or board of directors of the collective investment scheme are reasonably satisfied that the inclusion of the collective investment scheme portfolio concerned—

- (a) is not likely to result in any material prejudice to the interests of the holders of the collective investment scheme; and
- (b) is consistent with the objectives of the collective investment scheme or its sub-fund.

(5) The fund manager shall obtain the approval of the Authority in writing, of the proposed amalgamation or reconstruction and shall submit a copy of the extraordinary resolution by the holders approving the amalgamation or reconstruction within two days after holding of the extraordinary meeting.

*Suspension and Resumption of Dealings in Shares***99. Suspension and resumption of dealings in shares**

(1) The fund manager may, at any time, with prior agreement of the trustee or directors as the case may be, or shall without delay, if the trustee or board of directors, as the case may be, so require, suspend the issue, cancellation, sale and redemption of shares (referred to in this Regulation as “dealings in shares”) if the fund manager, or the trustee or board of directors as the case may be, are of the opinion that due to exceptional circumstances there is good and sufficient reason to do so having regard to the interests of holders.

(2) At the time of suspension under paragraph (1) the fund manager shall—

- (a) inform the Authority of the suspension, stating the reason for its action; and
- (b) forthwith give written confirmation of the suspension and the reasons for it to the Authority.

(3) During the period of suspension, none of the obligations in Part VI relating to the issue, cancellation, sale or redemption of shares or to the valuation of the collective investment scheme portfolio shall apply.

(4) The suspension of dealings in shares shall cease as soon as practicable after the trustee or board of directors as the case may be are no longer of the opinion referred to in sub-regulation (1) and in any event within twenty-eight days of the commencement of the suspension of dealings in shares.

(5) Before the suspension of dealings in shares ceases, the fund manager shall inform the Authority of the proposed resumption and forthwith after the resumption shall confirm the resumption by giving notice in writing to the Authority.

(6) This Regulation may be applied to one or more classes of shares without being applied to other classes of shares in an umbrella scheme and shall apply to a sub-fund as it applies to the collective investment scheme but by reference to the shares of the class or classes relating to the sub-fund and to the collective investment scheme portfolio attributable to the sub-fund, however, for the purpose of subregulation (1), the fund manager shall have regard to the interests of all the holders in the collective investment scheme or the umbrella scheme.

Winding-up of Collective Investment Schemes

100. When a collective investment scheme may be wound up

(1) A collective investment scheme shall not be wound up otherwise than by a court order except under the provisions of these Regulations—

- (a) unless and until effect may be given in accordance with the provisions relating to winding up given in the Companies Act (Cap. 486), to a proposal to wind up the affairs of a company otherwise than by the court, and provided that the Authority shall have first exercised its powers to intervene in the management of the collective investment scheme before an application is made to court for winding up of the collective investment scheme;
- (b) unless a statement has been prepared and sent or delivered to the Authority in accordance with paragraphs (3)(a), (4) and (5) and received by the Authority prior to satisfaction of the condition in subregulation (1)(a).

(2) Subject to sub-regulation (1) and the subsequent provisions of this regulation, a collective investment scheme shall be wound up under these Regulations if an extraordinary resolution to that effect has been passed; or when the period (if any) fixed for duration of the collective investment scheme by its incorporation documents, expires or the event occurs, on the occurrence of which its instrument of incorporation provides that the collective investment scheme is to be wound up.

(3) On or before a notice is given to the Authority in the event of a proposal to wind up the affairs of the collective investment scheme otherwise than by the court, the trustee or board of directors shall commence to make a full enquiry into the collective investment scheme's affairs so as to ascertain whether the scheme will be able to meet all its liabilities (which include contingent and prospective liabilities) and the fund manager shall prepare a statement, which shall reflect the results of such enquiry, and either—

- (a) confirm that the collective investment scheme will be able to meet all its liabilities within twelve months of the date of the statement; or

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(b) state that such confirmation cannot be given.

(4) The statement referred to in sub-regulation (3) shall—

(a) relate to the collective investment scheme's affairs at the date which must not be more than twenty-one days prior to the date on which notice is given to the Authority; and

(b) be approved by the trustee or board of directors and be signed on their behalf by the fund manager, and if it is given under paragraph (a) of sub-regulation (3) of this regulation by at least one other director or alternatively be signed by the fund manager and contain a statement signed by the auditor to the effect that in his opinion the enquiry required by sub-regulation (3) has been properly made and is fairly reflected by the confirmation.

(5) Following compliance with sub-regulation (4), the statement referred to in sub-regulation (3) must be sent or delivered to the Authority and a copy sent to the custodian.

101. Consequences of commencement of winding up

(1) In this regulation the “**effective time**” means either the time at which both the condition referred to in sub-regulation (1) of Regulation 100 are satisfied or, if later, the time, determined in accordance with sub-regulation (2) of Regulation 100, at which the collective investment scheme shall be wound up.

(2) Immediately following the effective time—

(a) regulations pertaining to pricing, dealing investment and borrowing powers shall cease to apply to the collective investment scheme;

(b) the collective investment scheme shall cease to issue and cancel shares;

(c) the fund manager shall cease to sell or redeem shares or to arrange for the collective investment scheme to issue to cancel them;

(d) no transfer of a share shall be registered and no other change to register of holders shall be made without the sanction of the trustee or board of directors, as the case may be; and

(e) the collective investment scheme shall cease to carry on its business, except so far as may be required for its beneficial winding up; however the corporate state and corporate powers of the scheme and (subject to the preceding provisions of this Regulation) the powers of the trustee or board of directors shall continue until the collective investment scheme is dissolved.

(3) The fund manager shall as soon as practicable after the effective time—

(a) publish in not less than two daily newspapers of national circulation published in the English language management's decision to wind up the collective investment scheme and the date of commencement of the winding up; and

(b) if the fund manager has not previously notified the holders of the proposal to wind up, give written notice of the commencement of the winding up to the holders.

102. Manner of winding up

(1) The fund manager shall, as soon as practicable after the effective time cause the collective investment scheme portfolio to be utilized and the liabilities of the collective investment scheme to be met out of the proceeds.

(2) The fund manager shall give instructions to the custodian as to how such proceeds (until utilized to meet liabilities or make distributions to holders) shall be held and such instructions shall be with a view to the prudent protection of the creditors and holders against loss.

(3) Provided there are sufficient liquid funds available after making adequate provision for the expenses of the winding up and the discharge of the liabilities of the collective investment scheme remaining to be discharged, the fund manager may arrange to make one or more interim distributions out of such funds to the holders proportionately to the right to participate in collective investment scheme portfolio attached to their respective shares as at the effective time.

(4) When the fund manager has caused all the collective investment scheme portfolio to be realized and all of the liabilities of the collective investment scheme known to the fund manager to be met, the fund manager shall make a final distribution, on or prior to the date on which the final account is sent to the holders in accordance with Regulation 103, of the balance remaining (net of a provision for any further expenses of the collective investment scheme) to the holders in the same proportions as provided in sub-regulation (3).

(5) Sub-regulations (1) to (4) are subject to the terms of any scheme of amalgamation or reconstruction sanctioned by an extraordinary resolution of the collective investment scheme passed on or before the effective time.

103. Final account

(1) As soon as the collective investment scheme's affairs are fully wound up including distribution or provision for distribution in accordance with Regulation 102(3), the fund manager shall prepare an account of the winding up showing how it has been conducted and how the collective investment scheme portfolio has been disposed of and the account shall, following its approval by the trustee or board of directors as the case may be, be signed on their behalf by the fund manager and the trustee or at least one other director as the case may be and the account once signed, shall be the 'final account' for the purposes of these Regulations.

(2) The final account shall state the date on which the collective investment scheme's affairs were fully wound up and the date stated shall be regarded as the final day of the accounting period of the scheme then running of the "final accounting period".

(3) The collective investment scheme's auditor shall make a report in respect of the final account, which shall state the auditor's opinion as to whether the final account has been properly prepared for the purpose of sub-regulation (1).

(4) Within two months of the end of the final accounting period, the fund manager shall send a copy of the final account and the auditor's report on it to the Authority, and to each person who was a holder (or the first named joint holders) immediately before the final accounting period.

104. Duty to ascertain liabilities

(1) The fund manager shall have a duty to use all reasonable endeavours to ensure that all the liabilities of the collective investment scheme are discharged prior to the completion of the winding up.

(2) The duty in sub-regulation (1) relates to all liabilities of the scheme of which—

- (a) the fund manager is, or becomes, aware prior to the completion of the winding up; or
- (b) the fund manager would have become aware of prior to the completion of the winding-up had it used all reasonable endeavours to ascertain the liabilities of the collective investment scheme.

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(3) If the fund manager rejects any claim against the collective investment scheme in whole or part, the fund manager shall forthwith send to the claimant written notice of its reasons for doing so.

(4) If after the effective time the fund manager becomes of the opinion that the collective investment scheme will be unable to meet all its liabilities within twelve months of the date of the statement provided under sub-regulation (3)(a) of Regulation 100—

- (a) the fund manager shall notify the trustee or board of directors as the case may be immediately; and
- (b) the trustee or board of directors as the case may be shall forthwith present a petition or cause the collective investment scheme to present a petition for the winding up in accordance with the provisions in the Companies Act (Cap. 486).

105. Accounts and reports

(1) While a collective investment scheme is being wound up—

- (a) the annual and half-yearly accounting periods shall continue to run;
- (b) the provisions about annual and interim allocation of income shall continue to apply; and
- (c) annual and half-yearly reports shall continue to be required.

(2) The fund manager need not send to each holder a copy of any report relating to an accounting period or half-yearly accounting period which began after the effective time, if the trustee or board of directors of the collective investment scheme as the case may be, after consulting the Authority, are satisfied that the interests of the holders are not such as to require the report to be sent to the holders, but a copy of the report shall be sent or supplied free of charge to any holder requesting the same.

106. Liability of a fund manager

(1) The fund manager shall be personally liable to meet any liability of a collective investment scheme wound up under these Regulations (whether or not the collective investment scheme has been dissolved) that was not discharged prior to the completion of the winding up, except to the extent that the fund manager can show that it has complied with Regulation 104.

(2) If the proceeds of the realization of the assets attributable, or allocated to a particular sub fund of an umbrella scheme are insufficient to meet the liabilities attributable or allocated to that sub-fund, the fund manager shall pay to the scheme for the account of that sub-fund the amount of the deficit, except and to the extent that the fund manager can show that the deficit did not arise as a result of any failure by the fund manager to comply with these Regulations.

(3) The obligations of the fund manager under this regulation shall not affect any other obligation of the fund manager under these Regulations or the general law.

107. Additional provisions applicable to umbrella schemes

(1) Liabilities of an umbrella scheme attributable, or allocated in accordance with Regulation 42 to a particular sub-fund shall be met out of the scheme collective investment scheme portfolio attributable or allocated to such sub-fund.

(2) In this Part—

- (a) references to shares are references to shares of the class(es) related to the sub-fund to be terminated;
- (b) references to holders are references to holders of such shares;

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- (c) references to a resolution or extraordinary resolution are references to such resolution passed at a meeting of holders of shares of the class or classes referred to in paragraph (a);
- (d) references to collective investment scheme portfolio are references to collective investment scheme portfolio allocated or attributable to the sub-fund to be terminated; and
- (e) references to liabilities are references to liabilities of the company allocated or attributable to the sub-fund to be terminated.

108. Capital Markets Tribunal

Any dispute or difference which may arise between the holders, fund manager, trustee or the board of directors as the case may be, custodian and the other or others shall be referred to as the Capital Markets Tribunal established under section 35A of the Act.

PART IX – EMPLOYEE SHARE OWNERSHIP PLANS (ESOPS)

109. Approval of and registration with the Authority

(1) A listed company may set up an employee share ownership plan (hereinafter referred to as ESOP) to enable its employees own shares of the listed company subject to approval of the Authority.

(2) Every ESOP shall be registered with the Authority.

110. ESOP Unit Trust

An Employee Share Ownership Plan shall be structured as a unit trust (the ESOP Unit Trust).

111. Requirements for ESOPS

An ESOP Unit Trust shall comply with the following requirements—

- (a) application and registration for an ESOP Unit Trust shall be accompanied with the following information and documents—
 - (i) proposed trust deed and scheme rules;
 - (ii) names of the proposed trustees;
 - (iii) board of directors resolution approving the establishment of ESOP Unit Trust and the appointment of the proposed trustees;
 - (iv) shareholders' approval for the establishment of the ESOP Unit Trust and the terms of the trust deed (where already obtained); and
 - (v) any other information that the Authority may require.
- (b) every trust deed to an ESOP Unit Trust shall include the following particulars—
 - (i) parties to the trust deed;
 - (ii) interpretation of terms used in the trust deed;
 - (iii) declaration of trust;
 - (iv) appointment and removal procedures for trustees;
 - (v) procedure for creation and issuance of units;
 - (vi) method of pricing and valuation of units;
 - (vii) procedure for repurchase of units;
 - (viii) procedure for income distribution;
 - (ix) apportionment of unit holders' entitlements in respect of dividends, rights and capitalization issues;

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- (x) company's and trustees covenants;
 - (xi) restrictions on the trustees;
 - (xii) trustees fees and charges;
 - (xiii) liability of the trustees;
 - (xiv) register of unit holders and records of trust fund charges and commissions;
 - (xv) audit and periodic reports;
 - (xvi) procedures for winding up;
 - (xvii) applicable law;
 - (xviii) procedure for variation of trust deed;
 - (xix) procedure for settlement of disputes.
- (c) Every ESOP Unit Trust shall have scheme rules which shall include the following—
- (i) eligibility for membership;
 - (ii) procedure for saving and/or acquisition and repurchase of units;
 - (iii) maximum individual holding;
 - (iv) employee rights in respect to units;
 - (v) pricing and valuation of units;
 - (vi) in case of an options scheme there shall be a procedure for granting options, maximum limit, executive rights in respect to units and entitlement in the event of reconstruction or winding up.

112. Investment parameters

An ESOP Unit Trust shall acquire or purchase shares of the listed company from time to time as may required by the rules of the ESOP:

Provided that an ESOP Unit Trust shall not acquire or purchase any securities other than the shares of the listed company for which it is established.

113. Minimum number of trustees

There shall be at least three trustees of ESOP Unit Trust save that a trust corporation may act as sole trustee of an ESOP Unit Trust.

114. Creation of units

The trustees of an ESOP Unit Trust shall hold the certificates representing the shares of the listed company in the trustees' names and create corresponding units in the same denominations as the listed company shares purchased by the trustees to be allotted and issued the employee entitled thereto under the ESOP.

115. Certificate of entitlement to holders

The trustees shall issue to every employee entitled to the units under the ESOP a certificate of entitlement representing the number of units owned by the employee in the ESOP Unit Trust within thirty days of receiving the company's certificate of entitlement against which such units were issued and maintain a register of all unit holders.

116. Rights on the certificate of entitlement

The certificates representing the units owned by employees shall not be transferable nor traded at any securities exchange but the units represented therein may, at the option of the unit holder be pledged or repurchased by the trustees for cash.

117. Price of units

The rules of the ESOP shall prescribe the price at which an ESOP Unit Trust shall allot the units to the employee, the price at which the trustees shall repurchase units and the liability for incidental expenses but such repurchase shall reflect the latest traded price of the company's shares at the securities exchange.

118. Surrender of certificates by employee

On termination of employment of an employee, the employee shall surrender all certificates representing the units held by such employee in an ESOP Unit Trust to the trustees at such time as prescribed by the ESOP rules.

119. Redemption or transfer

At the option of the employee, the trustees shall upon receipt of the surrendered certificates, either—

- (a) transfer in a private transaction in accordance with the prescribed procedure for private transactions, to the name of the employee, the number of shares of the listed company corresponding in value to the units represented in the surrendered share certificate and cause the employee's name to be registered as the owner of such shares in the register of the listed company; or
- (b) re-purchase the surrendered units.

120. Exchange of units not permitted

Save as provided in these Regulations, the trust deed of an ESOP Unit Trust shall not permit the exchange of units of an ESOP Unit Trust with shares of the listed company.

121. Audit

The trustees of an ESOP Unit Trust shall cause an audit of the ESOP to be carried out once every year by qualified persons and shall submit a copy of the auditor's report to the unit holders and the Authority within sixty days of the completion of the audit.

122. Winding up

An ESOP Unit Trust may be varied or wound up in accordance with its rules but three months' notice of intention to wind up an ESOP Unit Trust shall be given to the unit holders and the Authority.

123. Disclosures

Every listed company shall disclose any options granted to employees under the ESOP and disclose the total value of the ESOP (including the number of shares purchased from the exchange and the number of units created and issued under the ESOP) in its annual report.

*Special Interest Collective Investment Schemes***124. Definition**

For the purposes of these Regulations, a special interest collective investment scheme means a collective investment scheme established by a promoter for the purposes of facilitating investment by a special group of individuals with a common interest in a listed company and may include farmers, distributors, supplier, among others.

[Subsidiary]

125. Approval and registration with the Authority

(1) A promoter may set up a special interest collective investment scheme for the purposes of investing in the securities of a specified listed company subject to the approval of the Authority.

(2) Every special interest collective investment scheme shall be registered with the Authority.

126. Special interest unit trust

A special interest collective investment scheme shall be structured as a unit trust and the promoter shall notify the listed company upon approval and registration with the Authority.

127. Requirements for special interest unit trust

A special interest collective investment scheme shall comply with the following requirements—

- (a) application and registration for a special interest unit trust shall be accompanied with the following information and documents—
 - (i) proposed trust deed and scheme rules;
 - (ii) names of the proposed trustees;
 - (iii) board of directors or promoter resolution approving the establishment of a special interest collective investment scheme and the appointment of the proposed trustees;
 - (iv) holders approval for the establishment of the special interest collective investment scheme and the terms of the trust deed (where already obtained); and
 - (v) any other information that the Authority may require.
- (b) every trust deed to a special interest collective investment scheme shall include the following particulars—
 - (i) parties to the trust deed;
 - (ii) interpretation of terms used in the trust deed;
 - (iii) declaration of trust;
 - (iv) appointment and removal procedures for trustees;
 - (v) procedure for creation and issuance of units;
 - (vi) method of pricing and valuation of units;
 - (vii) procedure for repurchase of units;
 - (viii) procedure for income distribution;
 - (ix) apportionment of unit holders' entitlements in respect of dividends, rights and capitalisation issues;
 - (x) trustees covenants;
 - (xi) restrictions on trustees;
 - (xii) trustees fees and charges;
 - (xiii) liability of the trustees;
 - (xiv) register of holders and records of trust fund charges and commissions;
 - (xv) audit and periodic reports;
 - (xvi) procedures for winding-up;
 - (xvii) procedure for variation of trust deed; and
 - (xviii) procedure for settlement of disputes.

[Subsidiary]

- (c) every special interest collective investment scheme shall have scheme rules which shall include the following—
- (i) eligibility of membership;
 - (ii) procedure for saving and/or acquisition and repurchase of units;
 - (iii) maximum individual holding;
 - (iv) holders rights in respect of units;
 - (v) pricing and valuation of units; and
 - (vi) entitlement to holders in the event of reconstruction or winding up.

128. Investment parameters

A special interest collective investment scheme shall acquire or purchase shares of the listed company from time to time as may be required by the rules of the scheme:

Provided that a special interest collective investment scheme shall not acquire or purchase any securities other than the shares of the listed company for which it is established.

129. Minimum number of trustees

There shall be at least three trustees of a special interest collective investment scheme.

130. Creation of units

The trustees of a special interest collective investment scheme shall hold the certificates representing the shares of the listed company in the trustees' names and create corresponding units in the same denominations as the listed company's shares purchased by the trustees to be allotted and issued to the holder entitled thereto under the special interest collective investment scheme.

131. Certificate of entitlement to holders

The trustees shall issue to every holder entitled to the units under the special interest collective investment scheme a certificate of entitlement representing the number of units owned by the holder in the special interest collective investment scheme within thirty days of receiving the company's certificate of entitlement against which such units were issued and maintain a register of all unit holders.

132. Rights on the certificate of entitlement

The certificates representing the interest of a holder shall not be transferable nor traded at any securities exchange but the units represented therein may, at the option of the holder be pledged or repurchased by the trustees for cash.

133. Price of units

The rules of the special interest collective investment scheme shall prescribe the price at which that unit trust shall allot units to the holders or potential holders, the price at which the trustees shall re-purchase units and the liability for incidental expenses but such re-purchase shall reflect the latest or previous day's traded price of the company's shares at the securities exchange.

134. Redemption or transfer

At the option of the holder, the holder shall surrender the certificates to the trustee who shall upon receipt of the surrendered certificates either—

- (a) transfer in a private transaction in accordance with the prescribed procedure for private transactions to the name of the holder, the number of shares of

[Subsidiary]

the listed company corresponding in value to the units represented in the surrendered share certificate and cause the holder's name to be registered as the owner of such shares in the register of listed company; or

- (b) re-purchase the surrendered units.

135. Exchange of units not permitted

Save as provided in these Regulations, the trust deed of a special interest collective investment scheme shall not permit the exchange of units of the scheme with shares of the listed company.

136. Audit

The trustees of a special interest collective investment scheme shall cause an audit of the scheme to be carried out once every year by qualified persons and shall submit a copy of the auditor's report to the holders and the Authority within sixty days of the completion of the audit.

137. Winding up

A special interest collective investment scheme may be varied or wound up in accordance with its rules but three month's notice of intention to wind up the scheme shall be given to the holders and the Authority.

138. Disclosures

Every listed company shall disclose any special interest collective investment scheme which has an acquired or is to acquire shares, the number of shares purchased from the exchange and the aggregate holding of the scheme in the listed company in its annual report.

FIRST SCHEDULE
Form 1**(r. 5)****CAPITAL MARKETS ACT**

[Cap. 485A.]

APPLICATION TO REGISTER A COLLECTIVE INVESTMENT SCHEME

- (1) Promoter:** State name and address of the fund.
- (2) Constitution:**
- (a) State the legal form of the collective investment scheme—
- (i) mutual fund;
- (ii) unit trust;
- (iii) investment company.
- (b) State the name of the country or jurisdiction where the collective investment scheme is constituted.
- (c) State the title of the law under which the collective investment scheme is or is to be constituted.
- (d) State certificate of incorporation.
- (3) Key Officers:**
- (a) State name, address, place of birth and citizenship of:
- (i) directors;
- (ii) chief executive.
- (4) References:** Give two personal references and a bank reference of the key officers.
- (5) Functionaries:** State names, addresses and business activities of each of the collective investment scheme's—
- (a) fund manager;

[Subsidiary]

FIRST SCHEDULE, Form 1—continued

- (b) administrators;
- (c) investment advisers;
- (c) custodians; and
- (d) Trustees.

(6) Prior Registration: State if the collective investment scheme is now or has been registered, licensed, recognized or authorized under any law or regulations relating to mutual funds, collective investment schemes/fields or securities in any country or jurisdiction.

(7) Refusal or Disciplinary Measures: Has the collective investment scheme, any of its officers, managers, administrators, investment advisers or custodians been the subject of—

- (a) refusal of an application for registration, licence, recognition or authorization; or
- (b) suspension, cancellation or revocation of registration, licence, recognition or authorization,

by any authority in any country or jurisdiction?
YES/NO. If yes, provide details.

(8) Civil Proceedings: Has a judgment been rendered or any suit, action or proceedings pending against any officer of the collective investment scheme or of any of its functionaries listed in question (5) above, in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct? YES/NO If yes, provide details.

(9) Offences: Has any key officer of the collective investment scheme or any of its functionaries listed in question (5) above been or is being charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft arising out of dealing in mutual funds, collective investment schemes/funds or securities?

If so, provide details.

(10) Bankruptcy: Has any key officer or the collective investment scheme or of any of its functionaries listed in question 5 above been—

- (a) declared bankrupt or been party to bankruptcy or insolvency proceedings?
- (b) subject to proceedings (elating to winding – up, dissolution or creditors' arrangements; or
- (c) subject to proceedings relating to receivership or creditors' compromise;

in any country or jurisdiction? If so, provide details.

AFFIDAVIT

I as a director of Limited, the promoter of the proposed collective investment scheme, do depose and say that I. have read and understood the questions in this application form and hereby certify under oath that the foregoing answers and statements are true, correct and complete to the best of my knowledge, information and belief.

Sworn before me
Commissioner of Oaths

Name and
Signature of
Deponent

at the city of
this day 20

Capital Markets

[Subsidiary]

FIRST SCHEDULE, Form 1—*continued*

- (b) State educational and professional qualifications of the key officers.
- (c) Give details of business, occupation or employment history of the key officers.

Form 2

(r. 7)

CAPITAL MARKETS ACT

[Cap. 485A.]

CERTIFICATE OF REGISTRATION

The CAPITAL MARKETS AUTHORITY hereby certifies that
has this day been registered as a unit trust/mutual fund/investment company* under the provisions of section 30(4) of the Capital Markets Act (Cap. 485A of the Laws of Kenya)

Dated theday of 20

SEALED with the common
seal of the Capital Markets
Authority in the presence of:

.....
Chairman.....
Chief Executive

* Delete as necessary

SECOND SCHEDULE

[Regulation 8(1).]

THE INCORPORATION DOCUMENTS

1. Particulars of the Promoters;
2. Information Memorandum;
3. Trust Deed;
4. Management Agreement;
5. Custody Agreement;
6. Rules of the Scheme;

THIRD SCHEDULE

[Regulation 31.]

TRUST DEED

PART I – THE TRUST

1. Interpretation – definition of terms used in the Trust Deed
2. The constitution of the collective investment scheme

[Subsidiary]

A statement of the name, address and registered office of the collective investment scheme. If the collective investment scheme is to terminate after the expiration of a particular period, a statement to that effect.

3. Declaration of trust

A declaration that, subject to the provisions of the deed and all rules of the collective investment scheme for the time being in force, the collective investment scheme portfolio (other than sums standing to the credit of the distribution account) is held by the trustee on trust for the holders of the shares *pari passu* according to the number of shares held by each holder, and the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance with these Regulations.

4. Objects of the trust**5. Trust Deed to be binding and authoritative**

A statement that the deed is binding on each holder as if he had been a party to it and is bound by its provisions and authorizes and requires the trustee and the fund manager to do the things required or permitted of them by the terms of the deed.

6. The investment policy and authorized investments

The categories in which the funds of the collective investment scheme may invest as well as the investment and borrowing restrictions.

7. Valuation of the collective investment scheme portfolio**8. Restricted economic or geographical objectives**

If there are to be any restrictions on the geographic areas or economic sectors in which investment of capital of the collective investment scheme portfolio may be made, a statement of what they are.

9. Holder's liability to pay

A provision that a holder is not liable to make any further payment after he has paid the purchase price of his shares and that no further liability can be imposed on him in respect of the shares which he holds.

10. Certificates

A provision requiring the fund manager or the trustee to issue certificates representing shares to holders whose names are entered on the register.

A provision authorizing the trustee to charge a fee for issuing any document recording or for amending an entry on the register otherwise than on the issue or sale of shares.

PART II – FUND MANAGER**11. Appointment of a Fund Manager**

A declaration that the scheme will at all times be managed and administered by a fund manager licensed by the Capital Markets Authority.

12. Fund Manager's capital

A provision that the fund manager shall at all times maintain a paid-up share capital as prescribed by the Authority.

13. Duties of a Fund Manager

A description of duties to be carried out by the fund manager.

[Subsidiary]**14. Fund Manager's preliminary charge**

A statement authorizing the fund manager to make a preliminary charge to be included in the issue price of a share, specifying a maximum to that charge expressed either as a fixed amount in the base currency or as a percentage of the creation price of a share.

15. Fund Manager's periodic charge

A statement authorizing the fund manager to make a periodic charge payable out of the income of the collective investment scheme portfolio and a statement that provides for the charge to be expressed as annual percentage (to be specified in the information memorandum) of the value of the collective investment scheme portfolio (and the statement may provide for the addition to the charge of value added tax, if any, payable thereon), specifying the accrual intervals and how the charge is to be paid, and the maximum charge expressed as an annual percentage of the value of the collective investment scheme portfolio.

16. Fund Manager's remuneration

A provision that expressly details the fund manager's entitlement by way of remuneration for its services and to cover its expenses in performing its obligations under this Deed.

17. Reports by Fund Manager to Trustee

A provision that expressly requires the fund manager to make periodic reports to the trustee, board of directors and the Authority.

18. Fund Manager's powers

A provision detailing the powers and discretions of the Fund Manager.

19. Documents to be prepared by the Fund Manager

A provision detailing the documents to be prepared for signature and execution by the trustee.

20. Retirement, Substitution, Suspension or Liquidation of Fund Manager

Provisions on the circumstances under which the fund manager may retire, be replaced or suspended.

21. Removal of the Fund Manager

Provisions on the circumstances under which the fund manager may be suspended.

PART III – TRUSTEE**22. Appointment of Trustee**

A provision setting out the name, address and the terms and conditions of service for the trustees.

23. Trustee's share capital**24. Role, powers, duties and obligations of trustee****25. Registration and retention of securities by the trustee****26. Legal proceedings by or against the trustee****27. Trustee's remuneration**

[Subsidiary]

A statement authorizing any payments to the trustee by way of remuneration for his services to be paid (in whole or in part) out of the collective investment scheme portfolio and specifying the basis on which that remuneration is to be determined and how it should accrue and be paid.

- 28. Retirement and appointment of new trustee
Provisions on the circumstances under which the trustee may retire or be replaced.
- 29. Removal of trustee
Provisions on the circumstances under which the trustee may be removed.

PART IV – CUSTODIAN

- 30. Appointment of custodian by trustee
- 31. Duties of a custodian
- 32. Records to be maintained by a custodian
- 33. Reports by a custodian
- 34. Retirement of a custodian
- 35. Removal of a custodian

PART V – UNIT PORTFOLIO

- 36. Issue and purchase of units
- 37. The creation of units
- 38. The cancellation of units
- 39. The redemption of units

PART VI – MUTUAL FUNDS

- 40. Issue and purchase of shares
- 41. Cancellation of shares
- 42. Redemption of shares

PART VII – VALUATION

- 43. Details on the method used for valuation of units or shares

PART VIII – MEETINGS

- 44. Notice of meetings
- 45. Quorum for a meeting
- 46. Voting rights
- 47. Proxies

[Subsidiary]**48.** Resolutions**49.** Amendments to incorporation documents

PART IX – SUSPENSION AND TERMINATION

50. Winding up of a unit trust or mutual fund**51.** Manner of winding up**52.** Manner in which collective investment scheme portfolio to be dealt with on liquidation of fund manager**53.** Termination of a sub-fund of an umbrella company

PART X – OTHER MATTERS TO BE PROVIDED FOR IN THE TRUST DEED

54. Every trust deed of a unit trust shall prescribe the rules for the administration of the unit trust concerned and shall *inter alia* contain provisions to the following effect namely that—

- (a) the trustee shall, subject to the terms of the trust, hold the underlying securities in trust for the unit holders;
- (b) certificates shall be issued to unit holders within seven days of any purchase;
- (c) the trustee shall countersign, graphically or otherwise, every certificate before it is delivered by the fund manager to a purchaser;
- (d) the trustee shall not so countersign any certificate unless it has received from the fund manager a full account of the cash proceeds of the issue of that certificate or securities to the required value, together with all documents necessary to effect transfer thereof;
- (e) the monies of the unit trust shall be kept in a trust account at a licensed bank;
- (f)
 - (i) any monies for investments accruing from the issue of securities;
 - (ii) dividends, interest or any other income accruing on underlying securities;
 - (iii) the proceeds of capital gains, rights or bonus issues; and
 - (iv) any money received by the unit trust fund manager from the realization of underlying securities,shall be accounted for in full to the trustee and deposited in a trust account or accounts;
- (g) the securities of the unit trust shall be kept with a custodian approved by the Authority;
- (h) the proceeds of capital gains, rights and bonus issues shall be invested in the unit trust scheme concerned for the benefit of the unit holders;
- (i) all transactions of the unit trust collective investment scheme portfolio shall be individually reported to the trustee by the fund manager within two weeks of such transaction;
- (j) the funds of the unit trust shall be invested on accordance with the investment limits prescribed by the Authority;
- (k) it shall be incumbent upon the fund manager to repurchase, subject to such terms and conditions as may in terms of the trust deed apply, any number of units offered to it;

[Subsidiary]

- (l) the specific method of calculations of the value of the unit trust and of the unit at which unit holders shall transact their holdings with the unit trust shall be acceptable to the Authority;
- (m) the specific date of the week or month and time for taking valuation of securities;
- (n) the valuation of securities be at the last stock exchange transaction prices at or prior to that time and date;
- (o) the unit value shall be the market valuation of all monies and properties of the funds of the unit trust divided by units outstanding at that time; and
- (p) the initial charge, which shall be the only deductible charge from unit values in transaction with unit holders be stated;
- (q) the fee charge by the fund manager which shall be the only monies payable to the fund manager shall be stated and shall be an annual fee;
- (r) the accounts and financial records of the unit trust shall be maintained in a system acceptable to the Authority;
- (s) the fees payable to the trustee and the custodian of the collective investment scheme portfolio shall be stated; and
- (t) the trust deed may be amended in the manner prescribed in the trust deed.

55. Every such trust deed shall further prescribe—

- (a) the investment policy to be followed in respect of the scheme concerned;
- (b) the manner in which the selling price of units is to be calculated;
- (c) the terms and conditions on which the fund manager will repurchase units and the manner in which the repurchase price is to be calculated;
- (d) if applicable, the manner in which additional units for sale to the public are to be created;
- (e) the manner in which the yield from units is to be calculated;
- (f) the manner in which the initial charge and the service charge are to be determined;
- (g) the manner in which units are to be cancelled.

PART X – CERTAIN VOID PROVISIONS OF TRUST DEED, AND AMENDMENTS TO TRUST DEED

56. Any provision in a trust deed relating to the unit trust which is inconsistent with any provision of the Capital Markets Act or these Regulations shall be void.

57. The parties to a trust deed may be a supplemental deed alter or rescind any provisions of such trust deed or add further provisions thereto, but no alterations or rescission of or addition to any trust deed shall be valid—

- (a) unless the consent thereto of unit holders has been obtained in the manner prescribed in the trust deed:

Provided that if the trustee is satisfied that any such alienation, rescission or addition is required only to enable the provision of the trust deed to be given effect to more conveniently or economically or otherwise to benefit the unit holders, will not prejudice the interests of the unit holders and does not alter the fundamental provisions or objects of the trust deed or operate to release the trustee or the unit trust fund manager from any responsibility to the unit holders, such consent may be dispensed with; or

[Subsidiary]

- (b) unless the Authority is satisfied that any such alteration, rescission or addition does not contain anything inconsistent with the provisions of the Capital Markets Act or with sound financial principles.

58. A provision in any trust deed, whether entered into before or after the commencement of these Regulations purporting to relieve any party thereto from liability to the unit holders on account of his own negligence shall be void.

FOURTH SCHEDULE

[Regulation 12.]

PARTICULARS OF INFORMATION MEMORANDUM

(NOTE: This list is not intended to be exhaustive. The board of directors of the scheme or the fund manager or trustee, as the case may be are obliged to disclose any information which may be necessary for investors to make an informed judgment.)

1. Prominent statement

Prominent statement on the period for which the prospectus is valid.

2. Disclaimer

The following statement shall be contained on the front cover of the prospectus—

“Permission has been granted by the Capital Markets Authority to offer to the public the securities which are the subject of this issue. As a matter of policy, the Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus”.

3. The Collective Investment Scheme

State—

- (a) the name of the collective investment scheme;
- (b) that the collective investment scheme is a unit trust or a mutual fund; or
- (c) where the duration of the collective investment scheme is not unlimited, when it may terminate;
- (d) that the holders are not liable for the debts of the collective investment scheme;
- (e) particulars of registration of the collective investment scheme;
- (f) the address of its head office and its branch office;
- (g) the address of the place in Kenya for service on the collective investment scheme of notices or other documents required or authorized to be served on it if different from (f);
- (h) the date of the licence granted by the Authority to operate as a collective investment scheme;
- (i) the base currency for the collective investment scheme;
- (j) the maximum and minimum sizes of the collective investment scheme's capital;
- (k) the circumstances in which the collective investment scheme may be wound up under the rules of the collective investment scheme and a summary of the procedure for, and the rights of the holders under, such a winding up; and

[Subsidiary]

- (l) in the case of an investment company, the fact that the minimum subscription value of Kenya shillings 25 million must be attained during the offer period and what would occur if the expected amount is not received during the initial offer.

4. Investment Objectives and Policy

- (1) Give sufficient information to enable a shareholder to ascertain—
 - (a) the investment objectives (e.g. capital growth or income) of the collective investment scheme or of each sub-fund of an umbrella scheme;
 - (b) the collective investment scheme's investment policy for achieving investment objectives referred to under (a) including the general nature of the portfolio and any intended specialization (e.g. economic sector, geographical area or type of investment);
 - (c) the extent (if any) to which the policy under (b) does not envisage remaining fully invested at all times; and
 - (d) any restrictions in the range of transferable securities in which investment may be made, including restrictions in the extent to which the collective investment scheme may invest in any category of investment, indicating (where appropriate) where the restrictions are tighter than those imposed by the Regulations.

(2) Where all or part of the remuneration of the fund manager is to be treated as a capital charge, it must be made clear that the investment objectives of the collective investment scheme are to treat the generation of income as a higher priority than capital growth or as the case may be, to place equal emphasis on the generation of income and on capital growth and that (in either case) this may accordingly constrain capital growth.

(3) List any individual eligible securities markets through which the collective investment scheme may invest or deal.

(4) State the extent (as a percentage of the total) to which the collective investment scheme intends to invest its assets in any one security or sector and whether or not it has done so.

(5) State the policy in relation to the exercise of borrowing powers by the collective investment scheme.

(6) In the case of a collective investment scheme, which may invest in other collective investment schemes state the extent to which the collective investment scheme portfolio may be invested in the shares of collective investment schemes, which are managed by the fund manager or by an associate of the fund manager.

5. Distributions

State—

- (a) the date on which the collective investment scheme's annual accounting period is to be in each year;
- (b) if there are interim accounting periods, what they are and the policy in relation to interim distributions (whether interim distribution will be made and if so, the policy on smoothing of income distributions within an annual accounting period);
- (c) the date or dates in each year on or before which payment or accumulation of income is to be made or take place;
- (d) if applicable, the policy on payment of income equalisation;
- (e) how distributable income is determined; and

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- (f) if applicable, that unclaimed distributions may be forfeited and summarize the relevant provisions of the instrument of incorporation.

6. The characteristics of shares in the collective investment scheme

State—

- (a) where there is more than one class of shares in issue or available for issue, the names of such classes, the rights attached to each class in so far as they vary from the rights attached to other classes;
- (b) how holders may exercise their voting rights and what these are; and
- (c) what the method is for conversion between shares of different classes; and
- (d) in what circumstances, if any, a mandatory redemption, cancellation or conversion of shares from one class to another may be required.

7. The Fund Manager

State the following particulars of the fund manager—

- (a) name;
- (b) the nature of corporate form;
- (c) the date of incorporation;
- (d) the address of registered office;
- (e) the address of head office if different from (d);
- (f) if it is a subsidiary, the name and place of incorporation of ultimate holding company;
- (g) the amount of issued share capital and how much of it is paid up;
- (h) the date of licence with the Authority to operate as fund manager;
- (i) whether the fund manager is in any capacity in relation to any other regulated collective investment schemes and if so the names of the schemes and the nature of the capacity in relation to those schemes; and
- (j) a summary of the material provisions of the contract between the collective investment scheme and the fund manager which may be relevant to the holders including provisions relating to terminations, compensation on termination and indemnity.

8. Other directors of the collective investment scheme

State—

- (a) the names and positions of the directors in the collective investment scheme;
- (b) the main business activities of each of the directors (other than those connected with the business of the collective investment scheme);
- (c) the manner, amount and calculation of the remuneration of directors;
- (d) in summary form, the main terms of each contract of service between the collective investment scheme and a director; and
- (e) if the director is a body corporate in a group of which any other corporate director of the collective investment scheme is a member, a statement of that fact.

9. The Trustee

State the following particulars of the trustee—

- (a) name and address;

[Subsidiary]

- (b) date and place of its incorporation;
- (c) if it is a subsidiary, the name of its ultimate holding company and the date and place of its incorporation;
- (d) the address of its registered office (if different from (a));
- (e) the address of its head office if that is different from (a) and (d); and
- (f) a description of its principal business activity.

10. The Custodian

State the following particulars of the custodian—

- (a) name and address;
- (b) the date of incorporation;
- (c) if it is a subsidiary, the name of its ultimate holding company and its place of incorporation;
- (d) the address of its registered office (if different from (a));
- (e) the address of its head office (if different from (a) and (d));
- (f) a description of its principal business activity; and
- (g) a summary of the material provisions of the contract between the collective investment scheme and the custodian, which may be relevant to holders including provisions relating to the remuneration of the custodian.

11. The Auditor

State the name and address of the auditor of the collective investment scheme.

12. The Register of Holders

State the address in Kenya where the register of the holders is kept and can be inspected by the holders.

13. Payments to the Fund Manager

State the payments that may be made to the fund manager out of the collective investment scheme portfolio whether by way of remuneration for its services or reimbursement of expenses. For each category of remuneration, specify—

- (a) the current amounts of such remuneration;
- (b) how will it be calculated and accrue and when it will be paid;
- (c) if notice is to be given to holders of the fund manager's intention to introduce a new category of remuneration for its services or to increase any amount currently charged, particulars of that increase and when it will take place;
- (d) whether all or part of the remuneration is to be treated as a capital charge—
 - (i) that fact; and
 - (ii) the actual or maximum amount of the charge which may be so treated; and
 - (iii) if notice has been given to holders of an intention to propose an increase in the maximum amount of that charge at a meeting of holders and particulars of that proposal.

14. Other Payments out of the Collective Investment Scheme Portfolio

Provide details of—

- (a) any liability of the collective investment scheme to reimburse costs incurred by any of its directors, its custodian or any third party;

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- (b) any remuneration payable by the collective investment scheme to any third party; and
- (c) the types of other charges and expenses that may be taken out of the collective investment scheme portfolio.

15. Movable and immovable property

Give an estimate of any expenses likely to be incurred by the collective investment scheme in respect of movable and immovable property in which the collective investment scheme has an interest.

16. Sale and redemption of shares

State—

- (a) the dealing days and times in the dealing day on which the fund manager will be available to receive requests for the issue and redemption of shares;
- (b) the procedures for effecting the sale and redemption of shares and the settlement of transactions;
- (c) whether certificates will be issued in respect of registered shares;
- (d) the steps required to be taken by a holder in redeeming shares before he can receive the proceeds;
- (e) the circumstances in which the redemption of shares may be suspended;
- (f) the days and time on which recalculation of the price will commence;
- (g) the amounts of the following minima (if they apply) for each type of share in the collective investment scheme—
 - (i) the minimum number of shares which any one person may hold;
 - (ii) the minimum value of shares which any one person may hold;
 - (iii) the minimum number of shares which may be the subject of any one transaction of shares or redemption;
 - (iv) the minimum value of shares which may be subject of any one transaction of sale or redemption;
- (h) the circumstances in which the fund manager may arrange for, and the procedure for, a cancellation of shares;
- (i) in which local newspaper the most recent price will be published and how often the prices will be published;
- (j) the time period for the custodian to pay the repurchase price of the shares to the holder.

17. Valuation of the collective investment scheme portfolio

State—

- (a) how frequently and at what time of the day the collective investment scheme portfolio will be valued for the purpose of determining the price at which shares in the collective investment scheme may be purchased from or redeemed by the fund manager and a description of any circumstances in which the collective investment scheme portfolio may be specially valued;
- (b) the basis on which the collective investment scheme portfolio will be valued; and
- (c) how the price of the shares of each class will be determined.

18. Dilution levy

State—

- (a) what is meant by dilution and by dilution levy; and
- (b) the fund manager's policy on imposing a dilution levy.

19. Forward and historic pricing

- (1) Disclose the fund manager's normal basis of dealing.
- (2) Disclose the basis of the management fee and the service charge.

20. Initial charge

If the fund manager makes a preliminary charge state—

- (a) the current amount or rate of the initial charge; and
- (b) if notice has been given to holders of the fund manager's intention to introduce a initial charge or to increase the rate or amount currently charged, particulars of that introduction or increase and when it will take effect.

21. Redemption charge

If the fund manager may make a redemption charge, state—

- (a) the amount of that charge, or if it is a variable, the rate or method of arriving at it;
- (b) if the amount, rate or method has been changed, that the details of any previous amount, rate or method may be obtained from the fund manager on request;
- (c) if notice has been given to holders of the fund manager's intention to introduce a redemption charge or to propose a change in the rate or amount or method which is adverse to the holders, particulars of that proposal; and
- (d) how the order in which shares acquired at different times by a holder shall be determined insofar as necessary for the purposes of the imposition of the redemption charge.

22. General information

State—

- (a) when annual and half yearly reports will be published;
- (b) the address at which copies of instruments of incorporation, any amending instrument and most recent annual and half yearly reports may be inspected and from which, copies may be obtained.

23. Umbrella collective investment scheme

- (a) State, in the case of an umbrella collective investment scheme—
 - (i) whether or not a shareholder is entitled to exchange shares in one sub-fund for shares in any other sub-fund;
 - (ii) whether or not an exchange of shares in one sub fund for shares in any other sub-fund is treated as a redemption and a sale and will be subject to taxation on capital gains or withholding tax, as the case may be;
 - (iii) subject to (i) and (ii), that in no circumstances will a holder who exchanges shares in one sub-fund for shares in any other sub-fund be given a right by law to withdraw from or cancel that transaction;

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- (iv) what charges, if any, may be made on exchanging shares in one sub-fund for shares in another sub-fund;
 - (v) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of the collective investment scheme portfolio, which are not attributable to any particular sub-fund;
 - (vi) in respect of each sub fund, the currency in which the collective investment scheme portfolio allocated to it will be valued and the price of shares calculated and payments made, if this currency is not the base currency of the umbrella collective investment scheme; and
 - (vii) if there are shares in respect of less than two sub funds in issue the effect of regulation 42.
- (b) In the application of this Schedule to an umbrella scheme, information required—
- (i) shall state in relation to each sub fund where the information for any sub fund differs from that for any other;
 - (ii) shall state for the collective scheme as a whole but only where the information is relevant to the collective investment scheme as a whole;
 - (iii) shall contain a statement to the effect that the sub funds of an umbrella scheme are not “ring fenced” and the event of an umbrella scheme being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may have to be met out of the assets attributable to other sub-funds.

24. Marketing outside Kenya

(List other countries in which marketing and selling of collective investment shares will occur.)

An information memorandum which is prepared for the purpose of marketing shares in States outside Kenya shall state the following—

- (a) that all formalities and requirements of such country have been fulfilled;
- (b) what special arrangements have been made—
 - (i) for paying in that country amounts distributable to holders residing in that country;
 - (ii) for redeeming in that country the shares of holders resident in that country;
 - (iii) for inspecting and obtaining copies in that country of the instrument of incorporation and the amendments thereto, of the prospectus and of the annual and half yearly reports; and
 - (iv) for making public the prices of shares of each class;
- (c) how the collective investment scheme will publish in that country the following information that—
 - (i) annual and half yearly reports are available for inspection;
 - (ii) a distribution has been declared;
 - (iii) amendments have been made to the incorporation documents;
 - (iv) the information memorandum has been revised or that changes have been made to the arrangements under paragraph (a).

The information memorandum will state that the shares are to be marketed in that country.

25. Additional information

State any other material information which is within the knowledge of the fund manager or which the fund manager would have obtained by making of reasonable inquiries—

- (a) which investors and their advisers would reasonably require and reasonably expect to find in an information memorandum to enable them to make an informed judgment about the merits of investing in the collective investment scheme and the extent and characteristics of the risks accepted by so participating;
- (b) including a statement of any risk factors in the collective investment scheme that may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
- (c) in the case of an investment company, information on whether there is a minimum subscription value which must be raised during the limited offer period.

FIFTH SCHEDULE

[Regulation 96.]

INTERIM AND ANNUAL REPORTS

Except as stated the following matters shall be set out in every annual and half-yearly report of a collective investment scheme.

**PART I – REPORT OF THE TRUSTEE OR BOARD OF DIRECTORS/FUND MANAGER
(AS THE CASE MAY BE)**

1. The names and addresses of the following—
 - (a) the fund manager;
 - (b) the Trustee;
 - (c) the custodian; and
 - (d) the Auditor.
2. The names of all the directors.
3. A statement that—
 - (a) the collective investment scheme is an approved collective investment scheme within the meaning of the Capital Markets Act; and
 - (b) the holders are not liable for the debts of the collective investment scheme.
4. A statement on the nature of the funds in the collective investment scheme (i.e. price index funds, securities funds, money market funds, etc.) or an umbrella scheme, as the case may be.
5. The investment objectives of the collective investment scheme.
6. The collective investment scheme's policy for achieving that objective.
7. A review of the collective investment scheme's investment activities during the period to which the report relates.

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8. Particulars of any significant change in the information memorandum made since the date of the last report.
9. Particulars of any significant change in the incorporation documents since the date of the last report.
10. A statement of any sub-division or consolidation of shares which has been effected during the period to which the report relates.
11. Any other significant information which would enable shareholders to make an informed judgment on the development of the activities of the collective investment scheme during this period and the results of those activities as at the end of that period.
12. In the case of a report relating to an umbrella scheme—
 - (a) information required under the above paragraphs shall be given in respect of each sub-fund if it would vary from that given in respect of the umbrella scheme as a whole and paragraph 4 shall apply as if it required a statement in respect of each sub-fund; and
 - (b) the report shall contain statements to the effect that—
 - (i) there are and/or as the case may be, in the future there may be, other sub funds of that umbrella collective investment scheme; and
 - (ii) a sub-fund is not a legal entity, if the assets attributable to any sub-fund were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other sub-funds of the umbrella scheme.

PART II – COMPARATIVE TABLE

1. A performance record over the last 5 calendar years, or if the collective investment scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing—
 - (a) the highest and the lowest price of a share of each class in issue during each of those years; and
 - (b) the net income distributed for a share of each class during each of those years, taking account of any sub-division or consolidation of shares that occurred during that period.
2. As at the end of each of the last three annual accounting periods (or all of the collective investment scheme's accounting periods, if less than three) the total value of the collective investment scheme portfolio at the end of each of those years and the price for a share of each class and the number of shares of each class in issue at the end of each of those years.
3. If in the period covered by the table—
 - (a) the collective investment scheme has been subject of any event (such as an amalgamation or reconstruction but excluding any issue or cancellation of shares for cash) having a material effect of the size of the collective investment scheme; or
 - (b) there have been changes in the investment objectives of the collective investment scheme,

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

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4. In the case of an umbrella scheme paragraphs 1 to 3 shall not apply and the information required under each of paragraphs 1 to 3 shall instead be given in respect of each sub-fund of the umbrella scheme.

PART III – REPORT OF THE CUSTODIAN

The report of the custodian to the holders for any annual accounting period shall contain statements—

- (a) which may be in summary form, describing the duties of the custodian under regulation 35 and in respect of the safekeeping of the collective investment scheme portfolio;
- (b) to the effect of whether—
 - (i) the issue, sale, redemption and cancellation, and calculation of the price of the collective investment scheme's shares and the application of the collective investment scheme's income have been carried out in accordance with these Regulations; and
 - (ii) the investment and borrowing powers and restrictions applicable to the collective investment scheme in accordance with these Regulations and the documents of incorporation have been exceeded.

PART IV – REPORT OF THE AUDITOR

[Regulation 96.]

The report of the auditor to the shareholders in respect of the accounts of the collective investment scheme shall state—

- (a) whether in the auditor's opinion, the accounts have been properly prepared in accordance with these Regulations;
- (b) whether, in the auditor's opinion, the accounts give a true and fair view of the net income and the net gains or losses on the collective investment scheme portfolio for the annual accounting period in question and the financial position of the collective investment scheme or the sub-fund as at the end of that period;
- (c) if the auditor is of the opinion that proper accounting records for the collective investment scheme have not been kept or that the accounts are not in agreement with those records, that fact; and
- (d) if the auditor has not been given all the information and explanation which, to the best of his knowledge and belief, are necessary for the purpose of his audit, that fact; and
- (f) if the auditor is of the opinion that the information given in the report of the directors for that period is inconsistent with the accounts, that fact.

GUIDELINES ON THE APPROVAL AND REGISTRATION OF CREDIT RATING AGENCIES

[G.N. 8512/2001.]

SCHEDULE**1. Introduction**

The Capital Markets Authority is seeking to promote the establishment of credit rating agencies as part of measures aimed at building an active corporate securities debt market and impetus to deepening of the domestic capital markets.

These are guidelines on the requirements for approval and registration of credit rating agencies in Kenya.

1.1 Credit Rating:

Credit rating is an objective and independent opinion on the general creditworthiness of an issuer of a debt instrument, and its ability to meet its obligations in a timely manner over the life of the financial instrument based on relevant risk factors including the ability of the issuer to generate cash in the future. Ratings rank the debt issue within a consistent framework to compare risk among the different debt instruments in the market and assign a risk grade.

As it pertains to assessment of future likely positions on the basis of both quantitative and qualitative judgment and past performance, credit rating is necessarily subjective. The goal of the rating process is to arrive at a reasoned judgment on credit risk not through a set formula but rather through a careful review and analysis of the critical issues surrounding a specific debt and the issuer. This in particular includes the ability of the management to sustain in future, cash generation in the face of adverse changes in the business and economic environment. A rating is therefore an informed opinion of future outcome based on known qualitative and quantitative factors.

A rating does not constitute a recommendation to purchase, sell or hold a particular security. In addition, a rating does not comment on the suitability of an investment for a particular investor.

The objective of a credit rating is to provide independent, high quality, impartial, value-added quantitative and qualitative review as well as analytical information on the risk profile assessment of issuers of financial instruments.

It therefore serves to promote confidence in the capital markets and enhance transparency by facilitating investors' awareness on underlying risks of an issuer or issued financial instrument through assignment of ratings.

2. Core Professional Capacity

- 2.1 The applicant must make evident its capacity to perform the role of a rating agency.
- 2.2 The applicant must have a background and experience as well as professional expertise to provide the service of a rating agency.

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- 2.3 The applicant must either be in the process of appointing or have appointed professionals including economic, financial and research analysts, and other relevant quantitative and qualitative analysts who have the relevant background in the rating business.

3. Objectivity and Independence

- 3.1. The applicant must demonstrate its independence and objectivity.
- 3.2. The applicant must not be associated directly or indirectly with group(s) who have conflicting interests in the area of the rating business.
- 3.3. The applicant must also demonstrate that it has a proven rating methodology.
- 3.4. The rating process must have sufficient internal checks and balances to safeguard objectivity in particular where qualitative judgment also plays an important role in the rating process.
- 3.5. The rating process must be based on quantitative and qualitative review of facts and must not rely in hearsay or rumours to downgrade or upgrade a particular issuer or issued financial instrument.

4. Ownership

- 4.1 In order to ensure independence and objectivity, the applicant must be a body corporate with a preponderance of an institutional shareholding of repute.
- 4.2 The shareholders, board of directors, management and professional analytical staff should be persons of impeccable character.
- 4.3 The applicant should partly be owned by an internationally recognized rating agency or have a contractual arrangement with an internationally recognized rating agency that provides technical and strategic support drawn from international experience.
- 4.4 For purposes of this guidelines, an internationally recognized agency shall be a rating agency which has been in the business of providing credit ratings for debt securities or any securities of interest to investors, which obligates the issuer to pay back the principal amount raised in more than two markets for at least five years.
- 4.5 The ownership structure or association and capital level shall not be the only basis or criteria of determining the independence and integrity of a rating agency.

5. Capital Requirements

The applicant shall have a stable financial base with a minimum paid up capital of KSh. 12 million (or the equivalent in US dollars).

6. Disclosure of Information by Rating Agency

The rating agency must disclose to the Authority, issuers and the general public the following—

- (a) General fee structure or any change thereof;
- (b) downgrades of ratings;
- (c) disclosure of ratings of commercial paper or corporate bonds as applicable.

7. Confidentiality

The rating agency must have a system of maintaining on a confidential basis the information supplied strictly for the purpose of rating by issuers in order to safeguard and promote confidence in the rating process.

8. Documents to Accompany the Application for Approval and Registration of a Credit Agency in Kenya

An application for approval and registration should be made to the Capital Markets Authority accompanied by the following—

- (a) certificate of Incorporation, Memorandum and Articles of Association;
 - (b) business plan (to include resumes of the top management staff, management structure, brief on the rating methodology, rating grades, fee structure);
 - (c) a sample of a standard agreement between the rating agency and its clients;
 - (d) draft sample “letter of requests” for rating accompanied by a draft of the “information requirements for rating securities”.
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GUIDELINES ON CORPORATE GOVERNANCE PRACTICES BY PUBLIC LISTED COMPANIES IN KENYA

[G.N. 3362/2002.]

SCHEDULE**1. Introduction**

- 1.1 The Capital Markets Authority (the Authority) has developed these guidelines for good corporate governance practices by public listed companies in Kenya in response to the growing importance of governance issues both in emerging and developing economies and for promoting growth in domestic and regional capital markets. It is also in recognition of the role of good governance in corporate performance, capital formation and maximization of shareholders value as well as protection of investors' rights.
- 1.2 Corporate governance, for the purpose of these guidelines is defined as the process and structure used to direct and manage business affairs of the company towards enhancing prosperity and corporate accounting with the ultimate objective of realising shareholders long-term value while taking into account the interest of other stakeholders.
- 1.3 These guidelines have been developed taking into account the work which has been undertaken extensively by several jurisdictions through many task forces and committees including but not limited to the United Kingdom, Malaysia, South Africa, Organization for Economic Cooperation and Development (OECD) and the Commonwealth Association for Corporate Governance.

The Authority has also supported development of a code of best practice for corporate governance in Kenya issued by the Private Sector Corporate Governance Trust, Kenya, whose efforts have also been useful in the development of these guidelines and are supplementary thereto.
- 1.4 The objective of these guidelines is to strengthen corporate governance practices by public listed companies in Kenya and to promote the standards of self-regulation so as to bring the level of governance in line with international trends.
- 1.5 The Authority, in developing these guidelines has adopted both a prescriptive and a non-prescriptive approach in order to provide for flexibility and innovative dynamism to corporate governance practices by public listed companies.
- 1.6 Good corporate governance practices must be nurtured and encouraged to evolve as a matter of best practice but certain aspects of operation in a body corporate must of necessity require minimum standards of good governance. In this regard the Authority expects the directors of every public listed company to undertake or commit themselves to adopt good corporate governance practices as part of their continuing listing obligations.
- 1.7 It is important that the extent of compliance with these guidelines should form an essential part of disclosure obligations in the corporate annual reports. It is equally important the extent of non-compliance be also disclosed.

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- 1.8 Every public listed company shall disclose, on an annual basis, in its annual report, a statement of the directors as to whether the company is complying with these guidelines on corporate governance with effect from the financial year ending during 2002, as prescribed under the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002.
- 1.9 All issuers of fixed income securities or debt instruments through the capital markets such as bonds and commercial paper shall also comply with these guidelines. The issuer of the fixed income securities or debt instrument shall disclose in the information memorandum the extent of compliance with these guidelines.
- 1.10 Where the company or Issuer is not fully compliant with these guidelines, the Issuer shall identify the reasons for non-compliance and indicate the steps being taken to become compliant.
- 1.11 Whilst these guidelines have been developed for public listed companies and issuers of fixed income securities and debt instruments in Kenya's capital market, companies in the private sector are also encouraged to practice good corporate governance.

2. Principles of Good Corporate Governance Practices

There are a number of principles that are essential for good corporate governance practices of which the following have been identified as representing critical foundation and virtues of good corporate governance practices:

2.1 Directors

Every public listed company should be headed by an effective board to offer strategic guidance, lead and control the company and be accountable to its shareholders.

2.1.1 The Board and Board committees

- (i) the Board should establish relevant committees and delegate specific mandates to such committees as may be necessary.
- (ii) the Board shall specifically establish an audit and nominating committee.

2.1.2 Directors' Remuneration

- (i) the directors' remuneration should be sufficient to attract and retain directors to run the company effectively and should be approved by shareholders.
- (ii) the executive directors remuneration should be competitively structured and linked to performance.
- (iii) the non-executive directors' remunerations should be competitive in line with remuneration for other directors in competing sectors.

Companies should establish a formal and transparent procedure for remuneration of directors, which should be approved by the shareholders.

2.1.3 Supply and Disclosure of Information

- (i) the board should be supplied with relevant, accurate and timely information to enable the board discharge its duties.

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- (ii) every board should annually disclose in its annual report, its policies for remuneration including incentives for the board and senior management, particularly the following—
 - (a) quantum and component of remuneration for directors including non executive directors on a consolidated basis in the following categories—
 - (aa) executive directors' fees;
 - (bb) executive directors' emoluments;
 - (cc) non-executive directors' fees;
 - (dd) non-executive directors' emoluments;
 - (b) a list of ten major shareholders of the Company;
 - (c) share options and other forms of executive compensation that have to be made or have been made during the course of the financial year; and
 - (d) aggregate directors' loans.

2.1.4 Board balance

The Board should compose of a balance of executive directors and non-executive directors (including at least one third independent and non-executive directors) of diverse skills or expertise in order to ensure that no individual or small group of individuals can dominate the board's decision-making processes.

2.1.4.1 “**Independent Director**” means a director who—

- (i) has not been employed by the Company in an executive capacity within the last five years;
- (ii) is not associated to an adviser or consultant to the Company or a member of the Company's senior management or a significant customer or supplier of the Company or with a not-for-profit entity that receives significant contributions from the Company; or within the last five years, has not had any business relationship with the Company (other than service as a director) for which the Company has been required to make disclosure;
- (iii) has no personal service contract(s) with the Company, or a member of the Company's senior management;
- (iv) is not employed by a public listed company at which an executive officer of the Company serves as a director;
- (v) is not a member of the immediate family of any person described above; or
- (vi) has not had any of the relationships described above with any affiliate of the Company.

2.1.4.2 “**Non-executive Director**” means a director who is not involved in the administrative or managerial operations of the Company.

2.1.5 Appointments to the Board

There should be a formal and transparent procedure in the appointment of directors to the board and all persons offering

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themselves for appointment, as directors should disclose any potential area of conflict that may undermine their position or service as director.

2.1.6 Multiple Directorships

Every person save a corporate director who is a director of a listed company shall not hold such position in more than five public listed companies at any one time to ensure effective participation in the board and in the case where the corporate director has appointed an alternate director, the appointment of such alternate shall be restricted to three public listed companies, at any one time, subject to the requirements under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

2.1.7 Re-election of Directors

- (i) all directors except the managing director should be required to submit themselves for re-election at regular intervals or at least every three years.
- (ii) executive directors should have a fixed service contract not exceeding five years with a provision to renew subject to—
 - (a) regular performance appraisal; and
 - (b) shareholders approval.
- (iii) disclosure should be made to the shareholders at the annual general meeting and in the annual reports of all directors approaching their seventieth (70th) birthday that respective year.

2.1.8 Resignation of Directors

Resignation by a serving director should be disclosed in the annual report together with the details of the circumstances necessitating the resignation.

2.2 Role of Chairman and Chief Executive

2.2.1 There should be a clear separation of the role and responsibilities of the chairman and chief executive, which will ensure a balance of power of authority and provide for checks and balances such that no one individual has unfettered powers of decision making. Where such roles are combined a rationale for the same should be disclosed to the shareholders in the annual report of the Company.

2.2.2 Every person who is a Chairperson of a public listed company shall not hold such position in more than two public listed companies at any one time, in order to ensure effective participation in the board, subject to the requirements under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

2.3 Shareholders**2.3.1 Approval of Major Decisions by Shareholders**

There should be shareholders participation in major decisions of the Company. The Board should therefore provide the shareholders with information on matters that include but are not limited to major disposal of the Company's assets, restructuring, takeovers, mergers, acquisitions or reorganisation..

2.3.2 Annual General Meetings

- (i) the board should provide to all its shareholders sufficient and timely information concerning the date, location and agenda of the general meeting as well as full and timely information regarding issues to be decided during the general meeting;

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- (ii) the board should make shareholders' expenses and convenience primary criteria when selecting venue and location of annual general meetings; and
- (iii) the directors should provide sufficient time for shareholders questions on matters pertaining to the Company's performance and seek to explain to the shareholders' their concern.

2.4 *Accountability and Audit*

2.4.1 *Annual reports and Accounts*

The board should present an objective and understandable assessment of the Company's operating position and prospects. The board should ensure that accounts are presented in line with International Accounting Standards.

2.4.2 *Internal Control*

The board should maintain a sound system of internal control to safeguard the shareholders investments and assets.

2.4.3 *Independent Auditors*

The board should establish a formal and transparent arrangement for shareholders to effect the appointment of independent auditors at each annual general meeting.

2.4.4 *Relationship with Auditors*

The board should establish a formal and transparent arrangement for maintaining a professional interaction with the Company's auditors.

2.5 *General*

2.5.1 *Public Disclosure*

There shall be public disclosure in respect of any management or business agreements entered into between the Company and its related companies, which may result in a conflict of interest.

2.5.2 *Chief Financial Officers of Public Listed Companies*

- (i) The Chief Financial Officers and persons heading the accounting department of every issuer shall be members of the Institute of Certified Public Accountants established under the Accountants Act (Cap. 531).
- (ii) where the persons referred to in paragraph (i) are members of other internationally recognized professional bodies and are yet to register as members of the Institute of Certified Public Accountants such persons shall register as members of the Institute within a period of twelve months from the date of appointment to such position, subject to requirements under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

2.5.3 *Company Secretaries of Public Listed Companies*

The Company Secretary of every public listed company shall be a member of the Institute of Certified Public Secretaries of Kenya established under the Certified Public Secretaries of Kenya Act (Cap. 534).

2.5.4 *Auditors of Public Listed Companies*

The auditor of a public listed company shall be a member of the Institute of Certified Public Accountants and shall comply with the International Auditing Standards.

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3. Recommended Best Practices in Corporate Governance by Public listed Companies

The adoption of international standards in corporate governance best practices is essential for public companies in Kenya in order to maximize shareholders value through effective and efficient management of corporate resources. As a matter of best practice, every public listed company should endeavour to achieve the following:

3.1 *Best Practices Relating to the Board of Directors*

3.1.1 *The Role and Responsibilities of the Board of Directors*

The board of Directors should assume a primary responsibility of fostering the long-term business of the corporation consistent with their fiduciary responsibility to the shareholders. The board of directors should accord sufficient time to their functions and act on a fully informed basis while treating all shareholders fairly, in the discharge of the following responsibilities, among others—

- (i) define the company's mission, its strategy, goals, risk policy plans and objectives including approval of its annual budgets;
- (ii) oversee the corporate management and operations, management accounts, major capital expenditures and review corporate performance and strategies at least on a quarterly basis;
- (iii) identify the corporate business opportunities as well as principal risks in its operating environment including the implementation of appropriate measures to manage such risks or anticipated changes impacting on the corporate business;
- (iv) development of appropriate staffing and remuneration policy including the appointment of chief executive and the senior staff, particularly the finance director, operations director and the company secretary as may be applicable;
- (v) review on a regular basis the adequacy and integrity of the Company's internal control, acquisition and divestitures and management information systems including compliance with applicable laws, regulations, rules and guidelines; and
- (vi) establish and implement a system that provides necessary information to the shareholders including shareholder communication policy for the Company;
- (vii) monitor the effectiveness of the corporate governance practices under which the Company operates and propose revisions as may be required from time to time;
- (viii) take into consideration the interests of the Company's stakeholders in its decision making process.

3.1.2 *A balanced Board Constitutes an Effective Board*

- (i) the board of directors of every listed company should reflect a balance between independent, non-executive directors and executive directors.
- (ii) the independent and non-executive directors should form at least one-third of the membership of the board.
- (iii) the structure of the board should also comprise a number of directors, which fairly reflects the Company's shareholding structure. The Board composition should not be biased towards representation by a substantial shareholder but should reflect the Company's broad shareholding structure. The composition of the

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board should also provide a mechanism for representation of the minority shareholders without undermining the collective responsibility of the directors.

- (iv) A substantial shareholder, for the purpose of these guidelines is a person who holds not less than fifteen per cent of the voting shares of a listed company and has the ability to exercise a majority voting for the election of the directors.
- (v) In circumstances where there is no major shareholder but there is a substantial shareholder the board should exercise judgment determining the representation on the board of such shareholder and of the other shareholders that effectively reflects the shareholding structure of the Company.
- (vi) The board should disclose in its annual report whether independent and non-executive directors constitute one third of the board and if it satisfies the representation of the minority shareholders.
- (vii) The size of the board should not be too large to undermine an inter-active discussion during board meetings or too small such that the inclusion of a wider expertise and skills to improve the effectiveness of the board is compromised.
- (viii) the board should monitor and manage potential conflict of interest at management, Board and shareholder levels.

3.1.3 *Appointment and Qualifications of Directors*

- (i) the board of every public listed company should appoint a nominating committee consisting mainly of independent and non-executive directors with the responsibility of proposing new nominees for the board and for assessing the performance and effectiveness of directors in the Company.
- (ii) the nominating committee should consider only persons of calibre, credibility and who have the necessary skills and expertise to exercise independent judgment on issues that are necessary to promote the Company's objectives and performance in its area of business.
- (iii) the nominating committee should also consider candidates for directorship proposed by the chief executive and shareholders.
- (iv) the board, through the nominating committee, should on an annual basis review its required mix of skills and expertise that the executive directors as well as independent and non-executive directors bring to the Board and make disclosure of the same in the annual report.
- (v) the Board should also implement a process of assessing the effectiveness of the board as a whole, the committees of the Board, as well as of each individual director and such task should be assigned to the nominating committee.
- (vi) newly appointed directors should be provided with necessary orientation in the area of the Company's business in order to enhance their effectiveness in the Board.
- (vii) the nominating committee should recommend to the board candidates for directorship to be filled by the shareholders as the responsibility of nominating rests on the full board, after considering the recommendations of the nominating committee.

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- (viii) The process of the appointment of directors should be sensitive to gender representation, national outlook and should not be perceived to represent single or narrow community interest.
- (ix) No person shall be a director in more than five public listed companies at any one time in order to ensure effective participation in the board.

3.1.4 Remuneration of the directors

- (i) The Board of Directors of every listed company should appoint a remuneration committee or assign a mandate to a nominating committee consisting mainly of independent and non-executive directors to recommend to the board the remuneration of the executive directors and the structure of their compensation package.
- (ii) The determination of the remuneration for the non-executive and independent directors should be a matter for the whole board.
- (iii) The remuneration of the executive director should include an element that is linked to corporate performance including a share option scheme so as to ensure the maximization of the shareholders' value.
- (iv) The consolidated total remuneration of the directors should be disclosed to the shareholders in the annual report specifying the following categories—
 - (a) total remuneration for executive directors;
 - (b) total fees for non-executive and independent directors.

3.2 Best Practices Relating to the Position of Chairman and Chief Executive

- (i) Every public listed company should as a matter of best practice separate the role of the chairman and chief executive in order to ensure a balance of power and authority and provide for checks and balances.
- (ii) Where the role of the chairman and the chief executive is combined, there should be a clear rationale and justification which must—
 - (a) be for a limited period;
 - (b) be approved by the shareholders;
 - (c) include measures that have been implemented to ensure that no one individual has unfettered powers of decision in the Company; and
 - (d) include plan for separation of the role where such combined role is deemed necessary for a limited period during the restructuring or change process.
- (iii) Chairmanship of a public listed company should be held by an independent and non-executive director.
- (iv) No person shall be a chairman in more than two public listed companies at any one time in order to ensure effective participation in the board.
- (v) Every public listed company should also have a clear succession plan for its chairman and chief executive in order to avoid unplanned and sudden departures, which could undermine the company's and shareholders' interest.
- (vi) The chief executive should be responsible for implementing the Board corporate decision and there should be a clear flow of information

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between management and the board in order to facilitate both quantitative and qualitative evaluation and appraisal of the company's performance.

- (vii) The chairman of the board should undertake a primary responsibility for organizing information necessary for the board to deal with and for providing necessary information to the directors on a timely basis.
- (viii) The chief executive is obliged to provide such necessary information to the board in the discharge of the board's business.

3.3 *Best practices relating to the rights of the shareholders*

The essence of good corporate governance practices is to promote and protect shareholders' rights—

- (i) a board of a public listed company should ensure equitable terms of shareholders including the minority and foreign shareholders.
- (ii) all shareholders should receive relevant information on the company's performance through distribution of regular annual reports and accounts, half-yearly results and quarterly results as a matter of best practice.
- (iii) the shareholders should receive a secure method of transfer and registration of ownership as well as a certificate or statement evidencing such ownership in the case of a central depository environment.
- (iv) every shareholder shall have a right to participate and vote at the general shareholders meeting including the election of directors.
- (v) every shareholder shall be entitled to ask questions, seek clarification on the Company's performance as reflected in the annual reports and accounts or in any matter that may be relevant to the Company's performance or promotion of shareholders' interests and to receive explanation by the directors and/or management.
- (vi) every shareholder shall be entitled to distributed profit in form of dividend and other rights for bonus shares, script dividend or rights issue, as applicable and in the proportion of its shareholding in the Company.
- (vii) the board should maintain an effective communication policy that enables both management and the board to communicate effectively with its shareholders, stakeholders and the public in general.
- (viii) the annual report and accounts to the shareholders must include highlights of the operation of the Company and financial performance.
- (ix) all shareholders should be encouraged, to participate in the annual general meetings and to exercise their votes.
- (x) Institutional investors are particularly encouraged to make direct contact with the Company's senior management and board members to discuss performance and corporate governance matters as well as vote during the annual general meetings of the Company.
- (xi) companies, as a matter of best practice, are encouraged to organize regular investor briefings and in particular when the half-yearly and annual results are declared or as may be necessary to explain their performance and promote interaction with investors.
- (xii) every public listed company should encourage the establishment and use of the Company's website by shareholders to ease communication and interaction among shareholders and the Company.
- (xiii) every public listed company should encourage and facilitate the establishment of a Shareholders' Association to promote dialogue

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between the Company and the shareholders. The Association should play an important role in promoting good corporate governance and actively encourage all shareholders to participate in the annual general meeting of the Company or assign necessary voting proxy.

- (xiv) Shareholders while exercising their right of participation and voting during annual general meetings of the Company should not act in a disrespectful manner as such action may undermine the Company's interest.

3.4 *Best Practices Relating to the Conduct at Annual General Meetings*

The Board of a public listed company should ensure that shareholders' right of full participation at annual general meetings are protected by giving shareholders—

- (i) sufficient information on voting rules or procedures;
- (ii) the opportunity to quiz management;
- (iii) the opportunity to place items on the agenda at annual general meetings;
- (iv) the opportunity to vote *in absentia*;
- (v) sufficient information to enable them to consider the costs and benefits of their votes.

3.5 *Best Practices Relating to Accountability and the Role of Audit Committees*

As a matter of best practice, the constitution of audit committees represents an important step towards promoting good corporate governance. The following shall represent the recommended best practice relating to the role and constitution of audit committees by public listed companies:

3.5.1 *The Audit Committee*

The board shall establish an audit committee of at least three independent and non-executive directors who shall report to the board, with written terms of reference, which deal clearly with its authority and duties. The chairman of the audit committee should be an independent and non-executive director. The board should disclose in its annual report whether it has an audit committee and the mandate of such committee.

3.5.2 *Attributes of Audit Committee Members*

Important attributes of committee members should include—

- (i) broad business knowledge relevant to the Company's business;
- (ii) keen awareness of the interests of the investing public and familiarity with basic accounting principles; and
- (iii) objectivity in carrying out their mandate and no conflict of interest.

3.5.3 *Duties of Audit Committees*

Audit Committees should have adequate resources and authority to discharge their responsibilities. The members of the audit committee shall—

- (i) be informed, vigilant and effective overseers of the financial reporting process and the Company's internal controls;
- (ii) review and make recommendations on management programs established to monitor compliance with the code of conduct;

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- (iii) consider the appointment of the external auditor, the audit fee and any questions of resignation or dismissal of the external auditor;
- (iv) discuss with the external auditor before the audit commences, the nature and scope of the audit, and ensure co-ordination where more than one audits firm is involved;
- (v) review management's evaluation of factors related to the independence of the Company's external auditor. Both the audit committee and management should assist the external auditor in preserving its independence;
- (vi) review the quarterly, half-yearly and year-end financial statements of the Company, focusing particularly on—
 - (a) any changes in accounting policies and practices;
 - (b) significant adjustments arising from the audit;
 - (c) the going concern assumption; and
 - (d) compliance with International Accounting Standards and other legal requirements;
- (vii) discuss problems and reservations arising from the interim and final audits, and any matter the external auditor may wish to discuss (in the absence of management where necessary);
- (viii) review any communication between external auditor(s) and management;
- (ix) consider any related party transactions that may arise within the company or group;
- (x) consider the major findings of internal investigations and management's response;
- (xi) have explicit authority to investigate any matter within its terms of reference, the resources that it needs to do so and full access to information;
- (xii) obtain external professional advice and to invite outsiders with relevant experience to attend, if necessary; and
- (xiii) consider other issues as defined by the Board including regular review of the capacity of the internal audit function.

3.5.4 *Audit Committee and Internal Audit Functions*

The Board should establish an internal audit function. The internal audit function should be independent of the activities they audit and should be performed with impartiality, proficiency and due care. The Audit Committee should determine the remit of the internal audit function and in particular—

- (i) review of the adequacy, scope, functions and resources of the internal audit function, and ensure that it has the necessary authority to carry out its work;
- (ii) review the internal audit program and results of the internal audit process and where necessary ensure that appropriate action is taken on the recommendations of the internal audit function;
- (iii) review any appraisal or assessment of the performance of members of the internal audit function;
- (iv) approve any appointment or termination of senior staff members of the internal audit function;

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- (v) ensure that the internal audit function is independent of the activities of the company and is performed with impartiality, proficiency and due professional care;
- (vi) determine the effectiveness of the internal audit function; and
- (vii) be informed of resignations of internal audit staff members and provide the resigning staff members an opportunity to submit reasons for resigning.

3.5.5 Participation in the Meetings of Audit Committees

- (i) the finance director, the head of internal audit (where such a function exists) and a representative of the external auditors shall normally attend meetings of the audit committee while other board members may attend meetings upon the invitation by the audit committee.
- (ii) at least once a year the committee shall meet with the external auditors without executive Board members present.
- (iii) the audit committee should meet regularly, with adequate notice of the issues to be discussed and should record its conclusions.
- (iv) the board should disclose in an informative way, details of the activities of audit committees, the number of audit committee meetings held in a year and details of attendance of each audit committee member at such meetings.

4. The Capital Markets Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya are revoked.

[G.N. 369/2002.]

**CAPITAL MARKETS (SECURITIES) (PUBLIC OFFERS, LISTING AND
DISCLOSURES) REGULATIONS, 2002**

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CAPITAL MARKETS (SECURITIES) (PUBLIC OFFERS, LISTING AND DISCLOSURES) REGULATIONS, 2002

[L.N. 60/2002, L.N. 30/2008, L.N. 101/2009, L.N. 61/2012.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Alternative Investment Market Segment” means a market segment for which securities of issuers that satisfy the eligibility requirements prescribed under regulation 7(1)(b) are listed;

“days” means calendar days excluding Saturdays, Sundays and public holidays;

“Directors Induction Program” means a training programme, approved by the Securities Exchange in consultation with the Authority, covering issues relating to directors responsibility in listed entities including corporate governance, regulatory compliance and accountability;

“Fixed Income Securities Market Segment” means a market segment for which fixed income securities of issuers that satisfy the eligibility requirements prescribed under regulation 7(1)(c) are listed, and include Government and corporate securities;

“Growth Enterprise Market Segment” means a market segment where issues that satisfy the eligibility requirements prescribed under Regulation (7)(1)(c), are listed.

“IAS” means International Accounting Standards;

“introduction” means the listing of securities that are listed on another securities exchange or that are publicly held other than as a result of an immediately preceding public offer;

“issuer” in relation to any securities, means the person by whom securities have been issued or are to be issued and shall include a company or other legal entity that offers securities to the public or a section thereof in Kenya, whether or not such securities are subject of an application for admission or have been admitted to listing;

“listing” means admission of a security to the official list of a securities exchange; and the terms **“list”** and **“listed”** shall be construed accordingly;

“listing statement” means an information document prepared in connection with a listing on the Growth Enterprise Market Segment and does not constitute an information memorandum or prospectus unless specifically provided;

“Main Investment Market Segment” means a market segment for which securities of issuers that satisfy the eligibility requirements prescribed under regulation 7(1)(a) are listed;

“material information” means any information that may affect the price of an issuer’s securities or influence investment decisions and includes information on—

- (a) a merger, acquisition or joint venture;
- (b) a block split or stock dividend;
- (c) earnings and dividends of an unusual nature;

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- (d) the acquisition or loss of a significant contract;
- (e) a significant new product or discovery;
- (f) a change in control or significant change in management;
- (g) a call of securities for redemption;
- (h) the public or private sale of a significant amount of additional securities;
- (i) the purchase or sale of a significant asset;
- (j) a significant labour dispute;
- (k) a significant law suit against the issuer;
- (l) establishment of a programme to make purchases of the issuer's own shares;
- (m) a tender offer for another issuer's securities;
- (n) significant alteration of the memorandum and articles of association of the issuer; or
- (o) any other peculiar circumstances that may prevail with respect to the issuer or the relevant industry;

“market segment” means a separate segment of the official list established by a securities exchange, with the approval of the Authority, with respect to listings of securities for which specific eligibility and disclosure requirements are prescribed;

“Nominated Advisor” means a registered person appointed to undertake the responsibilities set out under regulation 10A;

“offer period” means a period not exceeding ten working days, or such longer period as the Authority may approve, during which an offer for subscription or sale of securities to the public remains open;

“official list” means a list specifying all securities which have been admitted to listing on any of the market segments of a securities exchange;

“Registrar” has the meaning as assigned to it in section 2 of the Companies Act (Cap. 486);

“related company” means a holding company, a subsidiary of another company or a subsidiary of the holding company of another company;

“supplementary prospectus” means the prospectus referred to in regulation 13.

[L.N. 30/2008, s. 2, L.N. 61/2012, s. 2.]

PART II – ELIGIBILITY, DISCLOSURE AND GENERAL REQUIREMENTS FOR PUBLIC OFFERS

3. Application

(1) These Regulations shall apply to all offers of securities to the public in Kenya whether or not the issuer is seeking a listing on any securities exchange in Kenya.

(2) The Authority shall be the competent authority to grant approval for all public listing of securities on any securities exchange in Kenya.

(2A) A Securities Exchange may approve the listing of a security on a Growth Enterprise Market Segment if—

- (i) that security is not offered to the public; and
- (ii) the listing is by way of introduction.

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(3) A securities exchange shall list all securities approved for listing by the Authority upon being satisfied that the issuer has—

- (a) obtained a letter of approval from the Authority for the listing of securities confirming that the issuer has satisfied the eligibility requirements prescribed under regulation 7(1) and the disclosure requirements prescribed under regulation 10 (1) with respect to the market segment in which the securities are to be listed; and
- (b) attained the—
 - (i) total minimum subscription of shares as disclosed in the approved prospectus by the Authority in respect of public offering and listing of securities;
 - (ii) minimum shareholders prescribed for the respective market segment under regulation 7(1)(a) and (b); and
- (c) with respect to additional issue and listing of securities of the same class as those already listed, obtained a letter of approval from the Authority confirming that the issuer satisfied the requirements for additional issues prescribed under regulation 11.

(4) Every issuer of securities approved for listing by the Authority at a securities exchange shall pay the listing fees prescribed under the Sixth Schedule, to the securities exchange at which its securities are listed.

(4A) An issuer of securities approved for listing by a securities exchange shall pay the listing fees as set out in the Seventh Schedule.

(5) Every person whose securities have been approved by the Authority for a public offer or listing shall state that fact on all announcements of the public offer or listing.

(6) A person whose securities have been approved by a Securities Exchange for listing shall state that fact on all announcements of the listing.

[L.N. 30/2008, s. 3, L.N. 61/2012, s. 3.]

4. Meaning of “offer of securities”

A person is to be regarded as offering securities if, as principal—

- (a) he makes an offer which, if accepted, would give rise to a contract for the issue or sale of the securities by him or by another person with whom he has made arrangements for the issue or sale of the securities; or
- (b) he invites a person to make such an offer,

but not otherwise and, except where the context otherwise requires, “offer” and “offeror” shall be construed accordingly.

5. Meaning of “offer to the public”

(1) A person offers securities to the public in Kenya if, to the extent that the offer is made to persons in Kenya, it is made to the public and for this purpose, an offer which is made to any section of the public, whether selected as members or debenture holders of a body corporate, or as clients of the person making the offer, or in any other manner, is to be regarded as made to the public; and the terms “public offer” and “public offering” shall be construed accordingly.

(2) An issuer applying for a listing shall be bound by all the obligations arising in respect of a public offer of securities in so far as the obligations apply.

(3) An issuer applying for a listing on the Growth Enterprise Market Segment shall be bound by all the obligations arising in respect of listing in such market.

[L.N. 30/2008, s. 4, L.N. 61/2012, s. 4.]

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5A. Appointment of transaction advisor

(1) Any company proposing to offer its securities to the public or a section of the public shall appoint a transaction advisor.

(2) A transaction advisor appointed under paragraph (1) shall be responsible for ensuring that the offer of securities is made in accordance with the provisions of the Act and regulations issued thereunder.

(3) A person shall not be eligible for appointment as a transaction advisor unless such person is licensed as an investment bank or is approved by the Authority to act as a transaction advisor for the particular offer of securities.

[L.N. 101/2009, s. 2.]

6. Issuer to publish prospectus

(1) When securities are to be offered to the public, or a section of the public in Kenya the issuer shall publish an Information Memorandum by making it available to the public or the section of the public, free of charge at an address in Kenya, during the offer period or for such period prior to Listing as prescribed by the Authority.

(2) The issuer shall, before the time of publication of the prospectus, obtain approval of the Authority that the information memorandum with these Regulations and shall deliver a copy thereof to the Registrar for registration.

(3) With respect to initial offers to the public, the prospectus shall include—

- (a) an accountant's report confirming compliance by the issuer of the financial disclosures prescribed under regulation 10(1); and
- (b) a legal opinion which shall include but not be limited to the following—
 - (i) whether all licences and consents required to perform the business or proposed business of the issuer have been duly obtained;
 - (ii) the validity of evidence of ownership of land, plant and equipment and other important and relevant assets of the issuer;
 - (iii) any agreements or contracts with respect to the proposed issue of securities, including, where applicable but not limited to, underwriting contracts, agreements or contracts with any securities exchange, registrar and trustees of bonds, debentures or other credit securities;
 - (iv) any material litigation, prosecution or other civil or criminal legal action in which the issuer or any of its director is involved;
 - (v) whether the existing capital of the issuer and any proposed changes thereto is in conformity with applicable laws and has received all necessary authorizations; and
 - (vi) any other material items with regard to the legal status of the issuer and the proposed issue:

Provided that where by reasons of exceptional circumstances acceptable to the Authority and disclosed in the prospectus, the issuer is not able to obtain a legal opinion, the directors of the issuer will be required individually and severally to declare and give an undertaking on the matters stated in regulation 6(3)(b)(i) to (vi), and such declaration and undertaking shall be included in the prospectus.

(4) The prospectus shall be published in the English language and shall be in black and white except for the issuer's logo.

(5) No person shall offer any securities to the public through an electronic form, unless on the basis of a prospectus approved by the Authority.

(6) Any person offering securities through an electronic form which has been approved by the Authority shall state in the prospectus whether the application for

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subscription of such securities may be made in an electronic form and in that regard, the procedure and process of facilitating subscription and payment shall be disclosed in the prospectus.

(7) An issuer may distribute a prospectus to prospective investors through electronic form provided such prospectus shall be in the form and content as approved by the Authority.

(8) Where securities are offered through an electronic form the results of the subscription including the allocation process shall be posted on the issuer's website which shall disclose the broad classification of the allottees into individuals, local institutional investors and foreign investors.

(9) Allotment of securities offered to the public shall be made on the basis of the allotment policy disclosed in the prospectus unless the results of the subscription make such policy impractical and in such a case an amendment of the allotment policy shall be made with the approval of the Authority:

Provided where such amendment has been approved by the Authority the issuer shall announce the fact within twenty-four hours of the grant of approval.

(9A) When developing an allocation policy, an issuer or offeror shall ensure that the policy reserves at least forty *per centum* of the ordinary shares that are subject to an initial public offering and subsequent listing for investment by local investors.

(9B) Where the *per centum* reserved for local investors is not fully subscribed for by local investors, the issuer or offeror may, with the prior written approval of the Authority allocate the shares remaining to foreign investors.

(10) No person shall publish the results of the allotment of the public offer without notifying the Authority of the results at least twenty four hours prior to the date on which the allotment results are to be released to the public.

[L.N. 30/2008, s. 5.]

6A. Issuing on growth Enterprise Market Segment

(1) A person who intends to issue securities on a Growth Enterprise Market Segment shall publish a listing statement by making it available to the public or to a section of the public, free of charge at an address in Kenya, for such period prior to listing as prescribed by the Securities Exchange.

(2) The issuer shall, before the time of publication of the listing statement, obtain approval of the Securities Exchange that the listing statement complies with these Regulations.

(3) A Securities Exchange shall, at least seven days prior to granting any approval of a listing statement, submit to the Authority a copy of the listing statement it is considering for approval with a confirmation that the listing statement is in compliance with these Regulations.

[L.N. 61/2012, s. 5.]

7. Eligibility to issue securities

(1) No person shall be eligible to issue securities to the public or list at a securities exchange, unless—

- (a) with respect to securities to be listed on the Main Investment Market Segment, the issuer complies with the eligibility requirements prescribed in Part A of the First Schedule;
- (b) with respect to securities to be listed on the Alternative Investment Market Segment, the issuer complies with the eligibility requirements prescribed in Part B of the First Schedule;

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- (bb) with respect to securities to be listed on the Growth Enterprise Market Segment, the issuer complies with the eligibility requirements as set out in Part C of the First Schedule.
- (c) with respect to securities to be listed on the Fixed Income Securities Market Segment, the issuer complies with the eligibility requirements prescribed in the Second Schedule.

(2) Any person who does not receive the minimum number of subscriptions in a public offering shall not be eligible to make another public offering before the expiry of one year from the date of approval of the previous public offering.

[L.N. 30/2008, s. 6, L.N. 61/2012, s. 6.]

8. Issuers not seeking listing

(1) An issuer who does not wish to list on any market segment of a securities exchange shall comply with the eligibility and disclosure requirements prescribed for the Alternative Investment Market Segment in the case of an offer of shares to the public or for the Fixed Income Securities Market Segment in the case of an offer of debt securities or other fixed income security to the public.

(2) An issuer who has made a public offer in accordance with subsection (1), may, after the expiry of not less than one year since the securities in question ceased to be the subject of an offer to the public list those securities by introduction.

[L.N. 30/2008, s. 7.]

9. Transfer to other market segment

(1) An issuer whose shares are listed on the any market segment of a Securities Exchange shall not be eligible to transfer such securities to the other market segment before the expiry of one year from the date of listing on the first mentioned market segment.

(2) A transfer of shares from or to the any market segment of a Securities Exchange shall be subject to the approval of the Authority and compliance with the eligibility and disclosure requirements prescribed under these Regulations.

[L.N. 61/2012, s. 7.]

10. Disclosure requirement for public issues

(1) The form and content of a prospectus or listing statement shall comply with—

- (a) Part A of the Third Schedule where the issuer seeks to list in the Main Investment Market Segment;
- (b) Part B of the Third Schedule where the issuer seeks to list in the Alternative Investment Market Segment;
- (c) Part C of the Third Schedule where the issuer seeks to list in the Fixed Income Securities Market Segment;
- (cc) Part CC of the Third Schedule where the issuer seeks to list on the Growth Enterprises Market Segment; and
- (d) Part D of the Third Schedule where the issuer seeks to list on any segment of the market by way of introduction.

(2) Every prospectus or listing statement shall—

- (a) contain the following statement on its front page—

“As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus or listing statement, as the

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case may be. Approval of the issue and/or listing is not to be taken as an indication of the merits of the issuer or of the securities"; and

- (b) state the allotment procedure to be applied in case of an over subscription for the securities to be issued pursuant to the prospectus.

[L.N. 30/2008, s. 8, L.N. 61/2012, s. 8.]

10A. Nominated Advisors

(1) An issuer seeking to be listed on the Growth Enterprise Market Segment shall appoint a Nominated Adviser by a written contract and shall ensure that it has a Nominated Advisor at all times.

(2) The Securities Exchange shall suspend an issuer from trading if the issuer, at any time, ceases to have a duly appointed Nominated Advisor.

(3) A Nominated Advisor shall—

- (a) advise and guide an issuer on the application of listing requirements of Growth Enterprise Market Segment;
- (b) manage the submission of the listing statement and all other documentation to the Securities Exchange and ensure its completeness and correctness before submission;
- (c) confirm to the Securities Exchange that—
- (i) the issuer complies with all the conditions for listing as set out in the listing requirements for the Growth Enterprise Market Segment;
 - (ii) the information contained in the listing statement is accurate and complete in all material aspects;
 - (iii) there are no other matters, the omission of which would make any statement in the listing statement false or misleading;
 - (iv) statements of fact and opinion expressed by the directors in the listing statement have been arrived at after due and careful consideration on the part of the directors founded on fair and reasonable bases and assumptions; and
 - (v) the directors of the applicant have made sufficient enquiries to enable them give the confirmations set out in the responsibility statement contained in the listing statement;
- (d) satisfy itself on the credentials of the reporting accountants, auditors, competent persons, valuers, providers of opinions and any other party responsible for a listing statement as required under paragraph A.02 of Part CC of the Third Schedule;
- (e) satisfy itself, prior to submitting any documentation which requires approval by the Securities Exchange, that to the best of its knowledge and belief, having made due and careful enquiry of the issuer and its advisers—
- (i) it is in compliance with the eligibility and disclosure requirements for listing on the Growth Enterprise Market Segment; and
 - (ii) there are no material matters, other than those disclosed in writing to the Securities Exchange, which should be taken into account by the Securities Exchange in considering the application;
- (f) provide the Securities Exchange with any information or explanation known to it in such form and within such time as the Securities Exchange may reasonably require for the purposes of verifying whether the Nominated Advisor or the issuer have complied with the listing requirements;

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- (g) advise the Securities Exchange immediately if it is aware or have reason to suspect that any of its clients have or may have breached the listing requirements;
- (h) submit all documents to the Securities Exchange and ensure that where such documents or any announcements are required, that they are in compliance with the continuous listing obligations;
- (i) take all reasonable steps to brief all new appointments to the board of directors of the issuer as to the nature of their responsibilities under the listing requirements, other applicable regulation and the general nature of their obligations in relation to shareholders and shall ensure that—
 - (i) at least one third of the directors of the issuer have completed the Directors Induction Programme (DIP) prior to listing and the remainder complete the same within six months after the listing; and
 - (ii) all new appointments to the board of directors of the issuer complete the DIP within six months of appointment;
- (j) review with the issuer, prior to publication, all periodic financial information announcements, and any other documentation to ensure that the directors of the issuer, after due and careful consideration, understand the importance of accurately disclosing all material information to shareholders and the market;
- (k) ensure that at least one of its authorised representatives attends all board audit committee meetings of the issuer in an advisory capacity to ensure that the issuer conducts its meetings in compliance with the listing requirements and any applicable regulations; and
- (l) carry out any activities relating to company for which it is the Nominated Advisor as may be requested by the Securities Exchange, from time to time.

(4) A Nominated Adviser shall, in the discharge of its responsibilities under these Regulations, observe due care and skill and ensure, at all times, that its conduct or judgment does not impair the integrity and reputation of the Growth Enterprise Market Segment.

[L.N. 61/2012, s. 9.]

11. Disclosure requirements for additional issues

An issuer whose securities are listed at a securities exchange shall not issue, or authorize its registrar to issue or register, by way of capitalization, scrip dividend, right issue or additional shares of the class listed, to a greater amount than the number hitherto authorized for listing except in accordance with the disclosure requirements for additional listing prescribed in the Fourth Schedule.

12. General duty of disclosure in prospectus

(1) In addition to the information required to be disclosed by virtue of these Regulations, a prospectus or information memorandum or a listing statement shall, subject to these Regulations, contain all such information as investors would reasonably require, and reasonably expect to find therein, for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
- (b) the rights attaching to those securities.

(2) The information to be included by virtue of these Regulations shall be such information as is referred to in paragraph (1) which is within the knowledge of any person responsible for the prospectus, or which it would be reasonable for him to obtain by making enquiries.

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(3) In determining what information is required to be included in a prospectus by virtue of these Regulations, regard shall be had to the nature of the securities and of the offeror of the securities.

(4) The Authority may require additional information to be included in a prospectus if, in its opinion, it deems it in the interests of investors to be in a prospectus, supplementary prospectus or information memorandum.

(5) A Securities Exchange may require additional information to be included in a listing statement if, in its opinion, it is in the interest of investors to be in a listing statement.

[L.N. 61/2012, s. 10.]

13. Supplementary prospectus

(1) Where a prospectus has been approved under these Regulations in respect of a public offer of securities and, at any time between the opening date and the closing date while an agreement in respect of those securities can be entered into in pursuance of that public offer—

- (a) there is a significant change affecting any matter contained in the prospectus the inclusion of which was required by these Regulations; or
- (b) a significant new matter arises the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared; or
- (c) there is a significant inaccuracy in the prospectus,

the offeror shall, of its own motion, with prior consent of the Authority, or if required by the Authority, publish a supplementary prospectus containing particulars of the change or new matter or, in the case of an inaccuracy, correct it and deliver the supplementary prospectus to the Registrar for registration.

(2) In paragraph (1), the word “**significant**” means significant for the purpose of making an informed assessment of the matters mentioned in these Regulations.

(3) Where a supplementary prospectus has been approved in respect of a public offer of securities, the preceding paragraphs of these Regulations shall have effect as if any reference to a prospectus were a reference to the prospectus originally registered and that supplementary prospectus, taken together.

(4) The provisions of regulation 6 shall apply to a supplementary prospectus.

13A. Supplementary listing statement

(1) Where a listing statement has been approved under these Regulations, and at any time between the date of the listing statement and the date of listing of the relevant securities—

- (a) there is a significant change affecting any matter contained in the listing statement the inclusion of which was required by these regulations;
- (b) a significant new matter arises the disclosure of which would have been required if it had arisen when the listing statement was prepared; or
- (c) there is a significant inaccuracy in the listing statement, the issuer shall, on its own motion, with prior consent of the Securities Exchange, or if required by the Securities Exchange, publish a supplementary listing statement containing particulars of the change or new matter or in the case of inaccuracy, correct it.

(2) For the purposes of this regulation, “**significant**” means material change for the purposes of making an informed assessment of the matters mentioned in these Regulations.

[L.N. 61/2012, s. 11.]

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14. Power of Authority to extend, re-open or cancel

Where, in the opinion of the Authority, circumstances have occurred or new information has emerged that fundamentally alters the basis of approval of a public offer before the allotment date or date of listing in the case of an introduction which renders the information memorandum inadequate, the Authority may require the issuer—

- (a) to issue a supplementary prospectus disclosing such additional information; or
- (b) extend the offer to allow investors to make an informed decision in light of the new disclosure; or
- (c) re-open the offer for such period as shall be determined by the Authority to allow investors either to re-confirm their applications for subscription or withdraw their applications; or
- (d) cancel the offer.

[L.N. 30/2008, s. 9.]

15. Exceptions

The Authority may authorise the omission from a prospectus or supplementary prospectus of information whose inclusion would otherwise be required by these Regulations if the Authority considers that the disclosure of that information would be prejudicial to the interest of the offer or but does not prejudice the interest of investors.

15A. Listing statement exceptions

The Securities Exchange may, in consultation with the Authority, authorize the omission from a listing statement, information whose inclusion would otherwise be required by these Regulations if the Securities Exchange considers that the disclosure of that information would be prejudicial to the interests of the issuer but does not prejudice the interests of investors.

[L.N. 61/2012, s. 12.]

16. Advertisements, etc., in connection with offer of securities

(1) An advertisement, notice, poster or documents including a bridge prospectus announcing a public offer or listing of securities for which a prospectus or a listing statement is or will be required under these Regulations shall not be issued to or caused to be issued to the public in Kenya unless it states that a prospectus or a listing statement is or will be published, as the case may be, and gives an address in Kenya from which it can be obtained or will be obtainable.

(2) The advertisements, notices, posters or documents referred to in paragraph (1) shall be submitted to the Authority or Securities Exchange in the case of listing on the Growth Enterprise Market Segment not later than forty-eight hours prior to publication, and the Authority or the Securities Exchange may require such amendments thereto as it may consider necessary.

(3) Every application form for subscription of the securities offered in a prospectus shall state, in a conspicuous position, where the prospectus may be obtained, and the issuer shall disclose to the Authority the number of copies of the prospectus printed.

(4) Every issuer shall publish a bridge prospectus in at least two daily newspapers of national circulation and such prospectus shall disclose basic information on the issuer, including—

- (a) a summary of balance sheet and profit and loss accounts for the three years immediately preceding the issue;
- (b) the broad shareholding structure prior to the issue and the anticipated structure after the issue;

- (c) important highlights of the issue; and
- (d) any other information on the issue considered essential by the issuer.

[L.N. 30/2008, s. 10, L.N. 61/2012, s. 13.]

17. Persons responsible for prospectus

(1) Subject to paragraphs (2) and (3), the persons who, for the purposes of these Regulations are responsible for a prospectus or a supplementary prospectus or a listing statement or a supplementary statement are—

- (a) the issuer of the securities to which the prospectus or supplementary prospectus or a listing statement or a supplementary statement relates;
- (b) where the issuer is a body corporate, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus or a listing statement or a supplementary statement or a listing statement or a supplementary statement is published;
- (c) where the issuer is a body corporate, each person who has given his consent to be named and is so named in the prospectus or supplementary prospectus as a director or as having agreed to become a director of that body corporate either immediately or at a future time;
- (d) each person who accepts, and is stated in the prospectus or supplementary prospectus or a listing statement or a supplementary statement as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;
- (e) the offer or of the securities, where the offer or is not the issuer;
- (f) where the offer or 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 or a listing statement or a supplementary statement is published; and
- (g) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the prospectus or supplementary prospectus or a listing statement or a supplementary statement.

(2) Notwithstanding the provisions of paragraph (1), a person shall not be responsible for a prospectus or a supplementary prospectus or a listing statement or a supplementary statement—

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

(3) Where a person has accepted responsibility for, or authorised, only part of the contents of any prospectus or supplementary prospectus or a listing statement or a supplementary statement, he shall be responsible under paragraph (1)(d) or (g) only for that part and only if it is included or substantially included in the form and context to which he has agreed.

[L.N. 61/2012, s. 14.]

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18. Underwriting requirements

(1) Every issuer shall seek professional financial advice to determine whether or not underwriting of the public offer of securities is deemed necessary and any underwriting arrangement shall be subject to the prior approval of the Authority.

(2) Where the underwriter is a person related or associated to the issuer, the underwriter shall undertake to the Authority to dispose of any share arising from the underwriting agreement within a period predetermined by the issuer and approved by the Authority.

(3) The Authority may extend the period referred to in paragraph (2) if satisfied that such extension would be in the best interest of the holders of ordinary shares of the company, having regard to the prevailing market conditions and any other factors that are relevant in the circumstances.

(4) Where the Authority extends the period referred to in paragraph (2) in accordance with paragraph (3), the issuer shall make a public announcement disclosing the period of such extension, any conditions attached to the extension and the circumstances necessitating the extension, in at least two daily newspapers of wide circulation.

PART III – CONTINUING OBLIGATIONS AND MISCELLANEOUS PROVISIONS

19. Continuing obligations

(1) Every issuer whose securities have been offered to the public or listed shall comply with the continuing obligations specified in the Fifth Schedule with respect to the relevant market segment.

(2) In relation to the continuing obligation to disclose information, an issuer shall make immediate public disclosure of information which might reasonably be expected to have a material effect on market activity in and prices of, its securities.

(3) The information required to be disclosed under these Regulations shall be disclosed within twenty-four hours of the event, simultaneously to the Authority, the securities exchange at which the issuer's securities are listed, if applicable, and to the public during non-trading hours of the relevant market segment.

(4) The announcement shall state whether the consent of the Authority or the securities exchange or other person is necessary and where necessary, the issuer shall apply for such consent within seven days of the announcement.

(5) An issuer who fails to comply with any continuing obligation within the prescribed time shall be liable to pay a penalty at the rate prescribed by the Authority.

[L.N. 61/2012, s. 15.]

20. Exceptions

(1) These Regulations shall not apply to—

- (a) securities issued by or on behalf of the Government of Kenya or a body corporate established under any written law in Kenya other than the Companies Act (Cap. 486); and
- (b) private offers.

(2) In considering the issue and listing of securities by a body corporate falling under subparagraph (a) of paragraph (1), the Authority shall take into account the issuer's ability to meet all financial obligations arising out of the issue and approve the issue subject to such conditions as may be necessary for the protection of investors or the public interest.

21. Meaning of private offers

(1) For purposes of these Regulations, an offer of securities shall be regarded as private offer and accordingly shall be deemed not to be an offer to the public in Kenya if, to the extent that the offer is made to persons in Kenya under the following conditions—

- (a) the securities are offered to not more than one hundred persons;
- (b) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;
- (c) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
- (d) the securities are offered in connection with a *bona fide* invitation to enter into an underwriting agreement with respect to them;
- (e) the securities are of a private company and are offered by that company to—
 - (i) members or employees of the company;
 - (ii) members of the families of any such members or employees; or
 - (iii) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
- (f) the minimum subscription for securities per applicant is not less than Kenya Shillings one hundred thousand (Kshs. 100,000);
- (g) the securities result from the conversion of convertible securities and a prospectus relating to the convertible securities was approved by the Authority and published in accordance with these Regulations;
- (h) the securities of a listed company are offered in connection with a take-over scheme approved by the Authority; or
- (i) the securities are not freely transferable.

(2) For the purposes of paragraph (e)(ii) the members of a person's family are the person's husband or wife, widow or widower and children (including stepchildren) and their descendants, and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself or herself, or any of those relatives.

22. Suspension and de-listing

(1) No security shall be suspended or de-listed by a securities exchange without the prior approval of the Authority.

(2) The Authority may require a securities exchange to suspend a listed security where—

- (a) a decision has been made or is imminent that will lead to the placing of the issuer of such securities under statutory management, receivership, liquidation or voluntary winding-up;
- (b) there is a significant restructuring involving the listed securities such as in the process of acquisition, mergers or takeovers; or
- (c) a recommendation has been made by the directors to the shareholders to have the securities suspended and where the holders of such securities through a special resolution at which a minimum of 75% of such security

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holders are represented without objection to the proposed suspension from at least 10% of the holders of securities resolve to have the securities suspended.

(3) The suspension of securities shall be subject to such time as predetermined by the Authority.

(4) The Authority may require a securities exchange to de-list a security where—

- (a) the issuer of such securities has been placed under statutory management, receivership or liquidation or voluntary winding-up;
- (b) as a result of restructuring involving the listed securities, the issuer ceases to exist; or
- (c) a recommendation has been made by the directors to the shareholders to have the securities de-listed and where the share holders of such securities through a special resolution at which a minimum of 75% of such security holders are represented without objection to the proposed withdrawal from at least 10% of the holders of securities resolve to have the securities de-listed.

(5) Notwithstanding the provisions of paragraphs (2) and (4), the Authority may require the suspension or de-listing of an issuer in any other circumstances, which in the opinion of the Authority, serves to protect the interest of the investors.

(6) Where a security has been suspended or de-listed, the securities exchange shall publish such information in at least two local English dailies of national circulation.

23. Revocation of L.N. 13/2002

The Capital Markets (Securities) (Public Offers and Listing Requirements) Regulations, 2002 are revoked.

24. Amendment of L.N. 429/1992

The Capital Markets Rules, 1992 are amended by deleting Parts XI and XII.

25. Amendment of L.N. 428/1992

The Capital Markets Authority Regulations, 1992 are amended by deleting Part VIII.

FIRST SCHEDULE
 [Rule 7(1)(a) and (b), L.N. 30/2008, s. 11, L.N. 61/2012, s. 16.]
 ELIGIBILITY REQUIREMENTS FOR PUBLIC OFFERING OF SHARES AND LISTING

	PART A	PART B	PART C
Requirement	Criteria for the Main Investment Market Segment	Criteria for the Alternative Investment Market Segment	Criteria for the Growth Enterprise Market Segment
Incorporation status	<ul style="list-style-type: none"> The issuer to be listed shall be a public company limited by shares and registered under the Companies Act (Cap. 486 of the Laws of Kenya). 	<ul style="list-style-type: none"> The issuer to be listed shall be a public company limited by shares and registered under the Companies Act (Cap. 486 of the Laws of Kenya). 	<ul style="list-style-type: none"> The issuer to be listed shall be a public company limited by shares and registered under the Companies Act (Cap. 486 of the Laws of Kenya).
Size: Share capital	<ul style="list-style-type: none"> The issuer shall have a minimum authorized issued and fully paid up ordinary share capital of fifty million shillings. 	<ul style="list-style-type: none"> The issuer shall have a minimum authorized issued and fully paid up ordinary share capital of twenty million shillings. 	<ul style="list-style-type: none"> The issuer shall have a minimum authorized and fully paid up ordinary share capital of ten million shillings; and The issuer must have not less than one hundred thousand shares in issue.
Net assets	<ul style="list-style-type: none"> Net assets immediately before the public offering or listing of shares should not be less than one hundred million shillings. 	<ul style="list-style-type: none"> Net assets immediately before the public offering or listing of shares should not be less than twenty million shillings. 	
Free transferability of shares	<ul style="list-style-type: none"> Shares to be listed shall be freely transferable and not subject to any restrictions on marketability or any preemptive rights. 	<ul style="list-style-type: none"> Shares to be listed shall be freely transferable and not subject to any restrictions on marketability or any preemptive rights. 	<ul style="list-style-type: none"> Shares to be listed shall be freely transferable and not subject to any restrictions on marketability or any preemptive rights.
Availability and reliability of financial records	<ul style="list-style-type: none"> The issuer shall have audited financial statements complying with International Financial Reporting Standards (IFRS) for an accounting 	<ul style="list-style-type: none"> The issuer shall have audited financial statements complying with International Financial Reporting Standards (IFRS) for an accounting 	

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FIRST SCHEDULE—continued

	PART A	PART B	PART C
	<i>Criteria for the Main Investment Market Segment</i>	<i>Criteria for the Alternative Investment Market Segment</i>	<i>Criteria for the Growth Enterprise Market Segment</i>
<i>Requirement</i>	<p>period ending on a date not more than four months prior to the proposed date of the offer or listing for issuers whose securities are not listed at the securities exchange, and six months for issuers whose securities are listed at the securities exchange.</p> <ul style="list-style-type: none"> The issuer must have prepared financial statements for the latest accounting period on a going concern basis and the audit report must not contain any emphasis of matter or qualification in this regard. 	<p>period ending on a date not more than four months prior to the proposed date of the offer or listing for issuers whose securities are not listed at the securities exchange, and six months for issuers whose securities are listed at the securities exchange.</p> <ul style="list-style-type: none"> The issuer must have prepared financial statements for the latest accounting period on a going concern basis and the audit report must not contain any emphasis of matter or qualification in this regard. 	
Competence and suitability of directors and management	<ul style="list-style-type: none"> At the date of the application, the issuer must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity. As at the date of the application and for a period of at least two years prior to the date of the application, no director of the issuer shall have— <ul style="list-style-type: none"> any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); 	<ul style="list-style-type: none"> At the date of the application, the issuer must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity. As at the date of the application and for a period of at least two years prior to the date of the application, no director of the issuer shall have— <ul style="list-style-type: none"> any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); 	<ul style="list-style-type: none"> The issuer must have a minimum of five directors, with at least a third of the Board as non executive directors. As at the date of the application and for a period of at least two years prior to the date of the application, no director of the issuer shall have— <ul style="list-style-type: none"> (i) any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for individuals), or any winding-up petition pending or threatened against it (for corporate bodies);

FIRST SCHEDULE—continued

	PART A	PART B	PART C
Requirement	Criteria for the Main Investment Market Segment	Criteria for the Alternative Investment Market Segment	Criteria for the Growth Enterprise Market Segment
	<p>- any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceeding, or any other offence or action either within or outside Kenya;</p> <p>- been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction, that permanently or temporarily prohibits such director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction.</p> <p>• The issuer must have suitable senior management with relevant experience for at least one year prior to the listing, none of whom shall have committed any serious offence in any jurisdiction that may be considered inappropriate for the management of a listed company.</p>	<p>- any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceeding, or any other offence or action either within or outside Kenya;</p> <p>- been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction, that permanently or temporarily prohibits such director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction.</p> <p>• The issuer must have suitable senior management with relevant experience for at least one year prior to the listing, none of whom shall have committed any serious offence in any jurisdiction that may be considered inappropriate for the management of a listed company.</p>	<p>(ii) any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceeding, or any other offence or action either within or outside Kenya; or</p> <p>(iii) been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction, that permanently or temporarily prohibits such director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction.</p> <p>• The directors and senior management of an applicant must collectively have appropriate expertise and experience for the governance and management of the applicant and its business.</p>

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FIRST SCHEDULE—continued

	PART A <i>Criteria for the Main Investment Market Segment</i>	PART B <i>Criteria for the Alternative Investment Market Segment</i>	PART C <i>Criteria for the Growth Enterprise Market Segment</i>
<i>Requirement</i>	<ul style="list-style-type: none"> The issuer shall ensure continued retention of suitably qualified management during listing and no change of management for a period of twelve months following the listing other than for reason of a serious offence that may be considered to affect the integrity or be inappropriate for management of a listed company. The issuer must have at least a third of the Board as non executive directors. 	<ul style="list-style-type: none"> The issuer shall ensure continued retention of suitably qualified management during listing and no change of management for a period of twelve months following the listing other than for reason of a serious offence that may be considered to affect the integrity or be inappropriate for management of a listed company. The issuer must have at least a third of the Board as non executive directors. 	<ul style="list-style-type: none"> Details of such expertise and experience must be disclosed in any listing particulars prepared by the applicant. "appropriate expertise and experience shall mean at least one year experience in the applicant's business, or where the applicant has no previous record, experience in similar line of business". One third of the directors must have completed the Directors Induction Programme (DIP) prior to listing and the remainder must complete the same within six months after listing. The issuer shall ensure continued retention of qualified management during listing and no change of management for a period of twelve months following the listing other than for reason of a serious offence that may be considered to affect the integrity or be inappropriate for management of a listed company.
Track record, profitability and future prospects	<ul style="list-style-type: none"> The issuer must have declared profits after tax attributable to shareholders in at least three of the last five completed accounting periods to the date of the offer. 	<ul style="list-style-type: none"> The issuer must have been in existence in the same line of business for a minimum of two years one of which should reflect a profit with good growth potential. 	

FIRST SCHEDULE—continued

	PART A	PART B	PART C
<i>Requirement</i>	<i>Criteria for the Main Investment Market Segment</i>	<i>Criteria for the Alternative Investment Market Segment</i>	<i>Criteria for the Growth Enterprise Market Segment</i>
	<ul style="list-style-type: none"> For purposes of listing by introduction by issuers listed on a foreign securities exchange, the issuer must have been listed for a minimum of two years. The issuer must have a clear future dividend policy. The issuer should not be insolvent. The issuer should have adequate working capital. 	<ul style="list-style-type: none"> For purposes of listing by introduction by issuers listed on a foreign securities exchange, the issuer must have been listed for a minimum of two years. The issuer must have a clear future dividend policy. The issuer should not be insolvent. The issuer should have adequate working capital. 	
Dividend policy	<ul style="list-style-type: none"> The issuer must have a clear future dividend policy. 	<ul style="list-style-type: none"> The issuer must have a clear future dividend policy. 	
Solvency and adequacy of working capital	<ul style="list-style-type: none"> The issuer should not be insolvent. The issuer should have adequate working capital. 	<ul style="list-style-type: none"> The issuer should not be insolvent. The issuer should have adequate working capital. 	<ul style="list-style-type: none"> The issuer should not be insolvent. The issuer should have adequate working capital. The Directors of the Issuer shall give an opinion on the adequacy of working capital for at least twelve months immediately following the share offering, and the auditors of the issuer shall confirm in writing the adequacy of that capital.
Share ownership structure	<ul style="list-style-type: none"> Following the public share offering or immediately prior to listing in the case of an introduction, at least twenty five <i>per centum</i> of the shares must be held by not less than one thousand shareholders excluding employees of the issuer. 	<ul style="list-style-type: none"> Following the public share offering or immediately prior to listing in the case of an introduction, at least twenty <i>per centum</i> of the shares must be held by not less than one hundred shareholders excluding employees of the issuer or family members of the controlling shareholders. 	<ul style="list-style-type: none"> The Issuer must ensure at least fifteen per cent of the issued shares (excluding those held by a controlling shareholder or people associated or acting in concert with him; or the Company's Senior Managers) are available for trade by the public.

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FIRST SCHEDULE—continued

	PART A	PART B	PART C
<i>Requirement</i>	<p><i>Criteria for the Main Investment Market Segment</i></p> <ul style="list-style-type: none"> In the case of a listing by introduction, the issuer shall ensure that the existing shareholders, associated persons or such other group of controlling shareholders who have influence over management shall give an undertaking not to sell their shareholding before the expiry of a period of twenty four months following listing and such undertaking shall be disclosed in the Information Memorandum. 	<p><i>Criteria for the Alternative Investment Market Segment</i></p> <ul style="list-style-type: none"> No investor shall hold more than three per centum of the twenty per centum shareholding. The issuer must ensure that the existing shareholders, associated persons or such other group of controlling shareholders who have influence over management shall give an undertaking to the Authority not to sell their shareholding before the expiry period of twenty four months following listing and such undertaking shall be disclosed in the Information Memorandum. 	<p><i>Criteria for the Growth Enterprise Market Segment</i></p> <ul style="list-style-type: none"> An issuer shall cease to be eligible for listing upon the expiry of three months of the listing date, if the securities available for trade by the public are held by less than twenty-five shareholders (excluding those held by a controlling shareholder or people associated or acting in concert with him, or the Company's Senior Managers.) The issuer must ensure that the existing shareholders, associated persons or such other group of controlling shareholders who have influence over management shall give an undertaking in terms agreeable to the Authority and the Securities Exchange restricting the sale of part or the whole of their shareholding before the expiry of a period of twenty four months following listing and such undertaking shall be disclosed in the listing statement.
Certificate of comfort	<ul style="list-style-type: none"> If the issuer is listed in a securities exchange outside Kenya or is licensed by any regulator the Authority shall obtain a certificate of no objection from that foreign securities exchange and from the relevant regulators. 	<ul style="list-style-type: none"> If the issuer is listed in a securities exchange outside Kenya or is licensed by any regulator the Authority shall obtain a certificate of no objection from that foreign securities exchange and the relevant regulators. 	

FIRST SCHEDULE—continued

	PART A	PART B	PART C
Requirement	Criteria for the Main Investment Market Segment	Criteria for the Alternative Investment Market Segment	Criteria for the Growth Enterprise Market Segment
Listed Shares to be immobilized			<ul style="list-style-type: none"> All issued shares must be deposited at a central depository established under the Central Depositories Act, 2000 (No. 4 of 2000).
Nominated Advisor			<ul style="list-style-type: none"> The issuer must appoint a Nominated Advisor in terms of a written contract and must ensure that it has a Nominated Advisor at all times.

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SECOND SCHEDULE

[Rule 7(1)(c), L.N. 30/2008, s. 12.]

ELIGIBILITY REQUIREMENTS FOR PUBLIC OFFERING OF FIXED INCOME
SECURITIES AND LISTING ON THE FIXED INCOME SECURITIES MARKET
SEGMENT

<i>REQUIREMENT</i>	<i>CRITERIA</i>
Incorporation status	The issuer to be listed shall be a body corporate.
Size: share capital and net assets of issuer	The issuer shall have minimum issued and fully paid up share capital of fifty million shillings and net assets of one hundred million shillings before the public offering or listing of the securities.
Listing and transferability of securities	All fixed income securities offered to the public or a section thereof except for commercial papers shall be listed and shall be freely transferable and not subject to any restrictions on marketability or preemptive rights. Commercial papers are not transferable or to be listed at a securities exchange.
Availability and reliability of financial records	The issuer other than the Government of Kenya issuing Treasury Bonds or other Government Securities, must have audited financial statements complying with International Financial Reporting Standards (IFRS) for an accounting period ending on a date not more than four months prior to the proposed date of the offer. The issuer must have prepared financial statements for the latest accounting period on a going concern basis and the audit report must not contain any emphasis of matter or qualification in this regard. At the date of the application, the issuer must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity.
Directors and senior management	In the case of issuers whose securities are listed at a securities exchange in Kenya but where not more than six months have elapsed since the end of the financial year, un-audited financial statements covering the period preceding the six months must be included in or appended to the Information Memorandum. As at the date of the application and for a period of at least two years prior to the date of the application, no director of the issuer shall have— <ul style="list-style-type: none"> — any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); — any criminal proceedings in which the director was convicted of fraud or any criminal offence, to be named subject of pending criminal proceeding, or any other offence or action either within or outside Kenya; or — been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction, that permanently or temporarily prohibits such director from acting as an investment advisor or as a director or employee of a stockbroker, dealer or any financial institution or engaging in any type of business practice or activity in that jurisdiction. <p>The issuer must have suitable senior management with relevant experience for at least one year prior to the listing, none of whom shall have committed any serious offence that may be considered inappropriate for the management of a listed company.</p> <p>At least one third of the issuer's Board of Directors shall be non-executive directors.</p>

SECOND SCHEDULE—*continued*

<i>REQUIREMENT</i>	<i>CRITERIA</i>
Certificate of comfort	<p>If the issuer is licensed to operate by any regulator in any country the Authority shall obtain a certificate of no objection from the relevant regulators.</p> <p>Where there is a guarantor, the consent of its regulator shall be obtained by the Authority.</p> <p>Where there is a guarantor, the guarantor shall provide the Authority with a financial capability statement duly certified by its auditors.</p>
Profitable historic track record and future prospects	The issuer must have declared profits after tax attributable to shareholders in at least two of the last three financial periods preceding the application for the issue.
Guarantee requirements	<p>Where the issuer does not satisfy the requirements it may seek a credit enhancement to have the securities it seeks to issue guaranteed.</p> <p>The guarantor may only be a bank or an insurance company or any other institution with necessary financial capacity acceptable to the Authority and a copy of the guarantee document shall be subject to approval of an be submitted to the Authority with the Information Memorandum.</p>
Debt ratios	<p>Total indebtedness, including the new issue if fixed income securities shall not exceed four hundred per centum of the company's net worth (or gearing ratio of 4:1) as the latest balance sheet.</p> <p>The funds from operations to total debt for the three trading periods preceding the issue shall be maintained as long as the fixed income securities remain outstanding.</p> <p>The conditions as provided must be maintained as long as the fixed income securities remain outstanding.</p>
Size of the issue	<p>The minimum size of the issue shall be fifty million shillings.</p> <p>The minimum issue lot size shall be:</p> <ul style="list-style-type: none"> (i) one hundred thousand for corporate bonds and preference shares or such higher amount s as may be required by the Authority; and (ii) one million shillings for commercial paper.
Minimum size for listing	For an issuer to maintain listing of its fixed income security, the minimum size of the fixed income security listed shall be fifty million shillings except in the case of redemption.
Renewal date	Every issuer of commercial paper shall apply for renewal at least three months before the expiry of the approved period of twelve months from the date of approval.

 THIRD SCHEDULE

[Rule 7(1)(d), L.N. 30/2008, s. 13, L.N. 61/2012, s. 17, Regulation 10(a).]

 PART A – MAIN INVESTMENT MARKET SEGMENT DISCLOSURE REQUIREMENTS
 FOR PUBLIC OFFERINGS

ID.A.00. Identity of directors, senior management and advisers (i.e. persons responsible for the information disclosed)

A.01 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.02

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THIRD SCHEDULE, *continued*

A.02 A declaration in the following form—

The directors of [the issuer], whose names appear on page [] of the prospectus, accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.03 The names, addresses and qualifications of the auditors who have audited the issuer's annual accounts in accordance with IAS for the last three financial years.

A.04 If auditors have resigned, have been removed or have not been re-appointed during the last three financial years and have deposited a statement with the issuer of circumstances which they believe should be brought to the attention of members and creditors of the issuer, details of such matters must be disclosed.

A.05 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the prospectus has been attributed.

ID.B.00. Offer statistics and expected timetable

B.01 (1) A statement that the Authority has approved the public offering and listing of the shares on the Main Investment Market Segment of a securities exchange.

(2) Cautionary statement of the Authority.

B.02 A statement that a copy of the prospectus has been delivered to the Registrar.

B.03 If the offer is by more than one method, for each method of offering, state the total amount of the issue, including the expected issue price or the method of determining the price and the number of securities expected to be issued.

B.04 For each public offering, and separately for each group of targeted potential investors, state the following information to the extent applicable—

- (a) the period during which the offer will be open, and where and to whom purchase or subscription applications shall be addressed. Describe whether the purchase period may be extended or shortened, and the manner and duration of possible extensions or possible early closure or shortening of the period. Describe the manner in which the latter shall be made public. If the exact dates are not known when the documents are first filed or distributed to the public, describe arrangement for announcing final or definitive date or period;
- (b) method and time limits for paying up securities;
- (c) method and time limits for delivery of securities (including provisional certificates, if applicable) to subscribers or purchasers;
- (d) in case of pre-emptive purchase rights, the procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised; and
- (e) a full description of the manner in which results of the distribution of securities are to be made public, and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest is to be paid).

ID.C.00. Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last five years, the old name must be printed in bold type under the new name.

THIRD SCHEDULE, *continued*

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under that legislation.

C.05 A description of the issuer's principal objects and reference to the clause(s) of the memorandum of association in which they are described.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not less than five working days from the date of the prospectus or for the duration of any offer to which the prospectus relates, if longer, at a named place as the Authority may agree, the following documents (or copies thereof), where applicable, could be inspected—

- (a) the memorandum and articles of association of the issuer;
- (b) any trust deed of the issuer or of its subsidiary companies which is referred to in the prospectus;
- (c) each document mentioned in paragraphs C.18 (material contracts) and E.11 (directors' service contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (d) copies of service agreements with managers or secretary/ies; underwriting, vendors' and promoters' agreements entered into during the last two financial years;
- (e) in the case of an issue of shares in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a take over offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual accounts (as appropriate);
- (f) the latest competent person's report, in the case of a mineral company;
- (g) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;
- (h) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the prospectus;
- (i) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountants' report pursuant to paragraph G.04 and giving the reasons therefor; and
- (j) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the five financial years preceding the publication of the prospectus, including, in the case of a company incorporated in Kenya, all notes, reports or information required by the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.18 (material contracts), a translation of a summary of such document may be made available for inspection, if the Authority so requires.

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C.09 The amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 Where the issuer has authorised but un-issued capital or is committed to increase the capital, an indication of—

- (a) the amount of such authorised capital or capital increase and, where appropriate, the duration of the authorisation;
- (b) the categories of persons having preferential subscription rights for such additional portions of capital; and
- (c) the terms and arrangements for the share issue corresponding to such portions.

C.11 If the issuer has shares not representing capital—

- (a) the number and main characteristics of such shares;
- (b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and
- (c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

C.12 A summary of the provisions of the issuer's memorandum and articles of association regarding changes in the capital and in the respective rights of the various classes of securities.

C.13 A summary of the changes during the three preceding years in the amount of the issued capital of the issuer and, if material, the capital of any member of the group and/or the number and classes of securities which it is composed. Intra-group issues by partly owned subsidiaries and changes in the capital structure of subsidiaries which have remained wholly owned throughout the period may be disregarded. Such summary must also state the price and terms granted and (if not already fully paid) the dates when any instalments are in arrears. If any asset has been acquired or is to be acquired out of the proceeds of the issue, its value must be stated. If there are no such issues, an appropriate negative statement must be made.

C.14 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer.

C.15 Details of any change in controlling shareholder(s) as a result of the issue.

C.16 The history of any change in the controlling shareholder(s) and trading objectives of the issuer and its subsidiaries during the previous two financial years. A statement of the new trading objectives and the manner in which the new objects will be implemented. If the issuer or the group, as the case may be, carries on widely differing operations, a statement showing the contributions of such respective differing operations to its trading results. The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar.

C.17 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name of and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.18 A summary of the principal contents of—

- (a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last two years in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and
- (b) any contractual arrangement with a controlling shareholder required to ensure that the company is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.19 If any contract referred to in paragraph C.18 relates to the acquisition of securities in an unlisted subsidiary, or associate company, where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associate companies, or its subsidiaries is interested and to what extent.

C.20 Details of the name of any promoter of any member of the group and the amount of any cash, securities or benefits paid, issued or given within the three years immediately preceding the date of publication of the prospectus, or proposed to be paid, issued or given to any such promoter in his capacity as a promoter and the consideration for such payment, issue or benefit. Where the interest of such promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such promoter's interest in the partnership, company, syndicate or other association.

C.21 A statement of all sums paid or agreed to be paid within the three years immediately preceding the date of publication of the prospectus, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the issuer.

C.22 Where securities are issued in connection with any merger, division of a company, takeover offer, acquisition of an undertaking's assets and liabilities or transfer of assets—

- (a) a statement of the aggregate value of the consideration for the transaction and how it was or is to be satisfied;
- (b) if the total emoluments receivable by the directors of the issuer will be varied in consequence of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect; and
- (c) if the business of the issuer or any of its subsidiaries or any part thereof is managed or is proposed to be managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

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C.23 A description of the group's principal activities, stating the main categories of products sold and/or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.24 For the business(es) described in paragraph C.23 above, the degree of any government protection and of any investment encouragement law affecting the business(es).

C.25 Information on any significant new products and/or activities.

C.26 A breakdown of net turnover during the last five financial years by categories of activity and into geographical markets in so far as such categories and markets differ substantially from one another, taking account of the manner in which the sale of products and the provision of services falling within the group's ordinary activities are organised.

C.27 The location, size and tenure of the group's principal establishments and summary information about land or buildings owned or leased. Any establishment which accounts for more than 10% of net turnover or production shall be considered a principal establishment.

C.28 Details of any material changes in the businesses of the issuer during the past five years.

C.29 Where the information given pursuant to paragraphs C.23 to C.28 has been influenced by exceptional factors, that fact must be mentioned.

C.30 Summary of information on the extent to which the group is dependent, if at all, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes, where such factors are of fundamental importance to the group's business or profitability.

C.31 Particulars of royalties payable or items of a similar nature in respect of the issuer and any of its subsidiaries.

C.32 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous nine months) a significant effect on the group's financial position or an appropriate negative statement.

C.33 Information on any interruptions in the group's business which may have or have had during the recent past (covering at least the previous nine months) a significant effect on the group's financial position.

C.34 A description, with figures, of the main investments made, including interests such as shares, debt securities, etc., in other undertakings over the last five financial years and during the current financial year.

C.35 Information concerning the principal investments (including new plant, factories and research and development) during the current financial year being made, with the exception of interests being acquired in other undertakings, including—

- (a) the geographical distribution of these investments; and
- (b) the method of financing such investments.

C.36 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuer's directors have already made firm commitments.

C.37 Information concerning policy on the research and development of new products and processes over the past three financial years, where significant.

C.38 The basis for any statements made by the issuer regarding its competitive position shall be disclosed.

ID.D.00. Operating and financial review and prospectus (the recent development and prospects of the group)

D.01 Unless otherwise approved by the Authority in exceptional circumstances—

- (a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular;
 - (i) the most significant recent trends in production, sales, stocks and the state of the order book; and
 - (ii) recent trends in costs and selling prices; and
- (b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry and make an offering speculative or on high risk in a section headed "Risk Factors".

D.03 Describe the—

- (a) extent to which the financial statements disclose material changes in net revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or service;
- (b) impact of inflation if material – if the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and discussion of the impact of the hyperinflation on the issuer's business shall be disclosed;
- (c) impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by the currency borrowing and other hedging instruments; and
- (d) impact of any governmental factors that have materially affected or could materially affect, directly or indirectly, the issuer's operations or investments by the host country shareholders.

D.04 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out. There must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.05 The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00. Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

- (a) directors, alternate and proposed directors of the issuer and each of its subsidiaries including details of other directorships;

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- (b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and
- (c) founders, if the issuer has been established as a family business or in existence for fewer than five years and the nature of family relationship; if any
- (d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty-four months following the issue and listing of the security or appropriate negative statement.

E.02 A description of other relevant business interests and activities of every such person as is mentioned in paragraph E.01 and, if required by the Authority particulars of any former forename or surname of such persons.

E.03 In the case of a foreign issuer, information similar to that described in E.01 and E.02 above, relative to the local management, if any. Where the Authority considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.04 The total aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by any member of the group during the last two completed financial years under any description whatsoever.

E.05 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 3% of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the prospectus, or if there has been no such change, disclosure of that fact.

E.06 All relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and their nature or conditions or significant to the business of the group, and which were effected by the issuer during—

- (a) the current or immediately preceding financial year; or
- (b) an earlier financial year and remain in any respect outstanding or unperformed;

or an appropriate negative statement.

E.07 The total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.

E.08 Details of any schemes for involving the staff in the capital of any member of the group.

E.09 Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments which occurred during the past financial and particulars of waivers in force at the date of the prospectus.

E.10 An estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the listing prospectus.

E.11 Details of existing or proposed directors' service contracts (excluding contracts previously made available for inspection in accordance with paragraph C.07 and not subsequently varied); such details to include the matters specified in paragraphs (a) to (g) below or an appropriate negative statement—

- (a) the name of the employing company;

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- (b) the date of the contract, the unexpired term and details of any notice periods;
- (c) full particulars of the director's remuneration including salary and other benefits;
- (d) any commission or profit sharing arrangements;
- (e) any provision for compensation payable upon early termination of the contract;
- (f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract; and
- (g) details relating to restrictions prohibiting the director, or any person acting on his behalf or connected to him, from any dealing in securities of the company during a close period or at a time when the director is in possession of unpublished price sensitive information in relation to those securities.

E.12 A summary of the provisions of the memorandum and articles of association of the issuer with regards to—

- (a) any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested;
- (b) any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; and
- (c) retirement or non-retirement of directors under an age limit.

E.13 Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in E.01 above, was selected as a director or member of senior management.

E.14 The average numbers of employees and changes therein over the last five financial years (if such changes are material), with, if possible, a breakdown of persons employed by main categories of activity.

E.15 Details relating to the issuer's audit committee, remuneration committee and nomination committee including the names of committee members and a summary of the terms of reference under which the committees operate.

ID.F.00. Major shareholders and related party transactions

F.01 The following information shall be provided regarding the issuer's major shareholders, which means shareholders that are the beneficial owners of at least 3% or more of each class of the issuer's voting securities—

- (a) provide the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major shareholders;
- (b) disclose any significant change in the percentage ownership held by any major shareholders during the past three years; and
- (c) indicate whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of shareholders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by any other corporation(s), foreign government or any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

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F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in 10% or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide the information required on (a) and (b) below for the period since the beginning of the issuer's preceding five financial years up to the date of the prospectus, with respect to transactions or loans between the issuer and—

- (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;
- (b) associates;
- (c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;
- (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individuals' families; and
- (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the issuer and enterprises that have a number of key management in common with the issuer. Shareholders beneficially owning a 10% interest in the voting power of the issuer are presumed to have a significant influence on the issuer including—
 - (i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiary(ies) was a party; and
 - (ii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above.

The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan, the transaction in which it was incurred, and the interest rate on the loan.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the prospectus, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of the prospectus, and has not withdrawn his consent.

F.09 If any of the named experts employed on a contingent basis, owns an amount of shares in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

ID.G.00. Financial information

G.01 A statement that the annual accounts of the issuer for the of the last five financial years have been audited. If audit reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and the reasons given.

G.02 A statement of what other information in the prospectus has been audited by the auditors.

G.03 Financial information as required by paragraphs G.14 and G.15 set out in the form of a comparative table together with any subsequent interim financial statements if available.

G.04 Financial information as required by paragraphs G.14 and G.15 set out in the form of an accountant's report.

G.05 If applicable, an accountant's report, as set out in paragraphs G.14 and G.15 on the asset which is the subject of the transaction.

G.06 (1) If the issuer prepares consolidated annual accounts only, it must include those accounts in the prospectus in accordance with paragraph G.03 or G.04.

(2) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the prospectus in accordance with paragraph G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts with the approval of the Authority and such accounts shall be available for inspection in accordance with paragraph C.07.

G.07 (1) Where the issuer includes its annual accounts in the prospectus, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last five financial years.

(2) Where the issuer includes consolidated annual accounts in the prospectus, it must state the consolidated profit or loss per share for each of the last five financial years; this information must appear in addition to that provided in accordance with (1) above where the issuer also includes its own annual accounts in the prospectus.

G.08 If, in the course of the last five financial years, the number of shares in the issuer has changed as a result, for example, of an increase in or reduction or reorganisation of capital, the profit or loss per share referred to in paragraph G.07 must be adjusted to make them comparable; in that event the basis of adjustment used must be disclosed.

G.09 Particulars of the—

- (a) dividend policy to be adopted;
- (b) *pro-forma* balance sheet prior to and immediately after the proposed issue of securities; and
- (c) effect of the proposed issue of securities on the net asset value per share.

The above particulars must be prepared and presented in accordance with IAS. If the issuer is a holding company, the information must be prepared in consolidated form.

G.10 The amount of the total dividends, the dividend per share and the dividend cover for each of the last three financial years, adjusted, if necessary, to make it comparable in accordance with paragraph G.08.

G.11 (1) Where not more than nine months have elapsed since the end of the financial year to which the last published annual accounts relate, an interim audited financial statement covering at least the first six months following the end of that financial year must be included in or appended to the prospectus. Where not more than six months have elapsed since the end of the financial year, un-audited financial statements covering the period preceding the six months shall be included in the prospectus of the issuer whose securities are already listed at a securities exchange.

(2) Where the issuer prepares consolidated annual accounts, the interim financial statements must either be consolidated statements or include a statement that, in the opinion of the issuer's directors, the interim financial statements enable investors to make an informed assessment of the results and activities of the group for the period.

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G.12 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.13 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.14 A table showing the changes in financial position of the group over each of the last five financial years in the form of a cash-flow statement.

G.15 (1) Information in respect of the matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses—

- (a) the name and address of the registered office;
- (b) the field of activity;
- (c) the proportion of capital held;
- (d) the issued capital;
- (e) the reserves;
- (f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;
- (g) the value at which the issuer shows in its accounts the interest held;
- (h) any amount still to be paid up on shares held;
- (i) the amount of dividends received in the course of the last financial year in respect of shares held; and
- (j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 20% of the capital and reserves of the issuer or if that interest accounts for at least 20% of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 20% of the consolidated net assets or at least 20% of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or, with the exception of (1)(i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the Authority, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

G.16 The name, registered office and proportion of capital held in respect of each undertaking not failing to be disclosed under paragraph G.15(1) or (2) in which the issuer holds at least 20% of the capital. These details may be omitted when they are of negligible

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importance for the purpose of enabling investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or group and of the rights attaching to the securities for which application is made.

G.17 When the prospectus includes consolidated annual accounts, disclosure—

- (a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with IAS);
- (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.15; and
- (c) for each of the undertakings referred to in (b) above—
 - (i) the total proportion of third-party interests, if annual accounts are wholly consolidated; or
 - (ii) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis.

G.18 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

G.19 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the prospectus) of the following, if material—

- (a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;
- (b) the circumstances, if applicable, under which the borrowing powers have been exceeded during the past three years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;
- (c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but un-issued, and term loans, distinguishing between loans guaranteed, unguaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;
- (d) all off-balance sheet financing by the issuer and any of its subsidiaries;
- (e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases;
- (f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or
- (g) how the borrowings required to be disclosed under paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities described in (1) above. As a general rule, no account shall be taken of liabilities or guarantees between undertakings within the same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

- (a) the names of the lenders if not debenture holders;

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- (b) the amount, terms and conditions of repayment or renewal;
- (c) the rates of interest payable on each item;
- (d) details of the security, if any;
- (e) details of conversion rights; and
- (f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed.

(4) If the issuer prepares consolidated annual accounts, the principles laid down in paragraph G.06 apply to the information set out in this paragraph G.19.

G.20 Details of material loans by the issuer or by any of its subsidiaries stating—

- (a) the date of the loan;
- (b) to whom made;
- (c) the rate of interest;
- (d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;
- (e) the period of the loan;
- (f) the security held;
- (g) the value of such security and the method of valuation;
- (h) if the loan is unsecured, the reasons therefor; and
- (i) if the loan was made to another company, the names and addresses of the directors of such company.

G.21 Details as described in paragraph G.20 above of loans made or security furnished by the issuer or by any of its subsidiaries for the benefit of any director or manager or any associate of any director or manager.

G.22 Disclose how the loans receivable arose, stating whether they arose from the sale of assets by the issuer or any of its subsidiaries.

G.23 A statement that in the opinion of the directors, the issued capital of the issuer (including the amount to be raised in pursuance of this issue) is adequate for the purposes of the business of the issuer and of its subsidiaries for the foreseeable future, and if the directors are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the issuer and its subsidiaries are to be financed. The statement should be supported by a report from the issuer's auditor, reporting accountant, investment banker, sponsoring stockbroker or other adviser acceptable to the Authority.

G.24 The foreseeable future should normally be construed as the nine months subsequent to the date of the publication of the prospectus.

G.25 The following information regarding the acquisition, within the last five years, or proposed acquisition by the issuer or any of its subsidiaries, of any securities in or the business undertaking of any other company or business enterprise or any immovable property or other property in the nature of a fixed asset (collectively called "the property") or any option to acquire such property shall be disclosed—

- (a) the date of any such acquisition or proposed acquisitions;
- (b) the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;
- (c) details of the valuation of the property;
- (d) any goodwill paid and how such goodwill was or is to be accounted for;

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- (e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;
- (f) the nature of title or interest acquired or to be acquired; and
- (g) details regarding the vendors as described in paragraph I.01.

G.26 The following details regarding any property disposed of during the past five years, or to be disposed of, by the issuer, or any of its subsidiaries—

- (a) the dates of any such disposal or proposed disposal;
- (b) the consideration received, detailing that settled by the receipt of securities or cash or by any other means and detailing how any outstanding consideration is to be settled;
- (c) details of the valuation of the property; and
- (d) the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial shareholders of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

G.27 Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the mean exchange rate designated by the Central Bank of Kenya for this purpose, if any—

- (a) at the latest practicable date;
- (b) the high and low exchange rates for each month during the preceding twelve months; and
- (c) for the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

ID.H.00. The offer and listing

H.01 An indication whether or not all the shares have been marketed or are available in whole or in part to the public in conjunction with the application.

H.02 A statement of the resolutions, authorisations and approvals by virtue of which the shares have been or will be created and/or issued.

H.03 The nature and amount of the issue.

H.04 The number of shares which have been or will be created and/or issued, if predetermined.

H.05 (1) A summary of the rights attaching to the shares for which application is made, and in particular the extent of the voting rights, entitlement to share in the profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one class of shares of the issuer in issue, like details must be given for each class.

(2) If the rights evidenced by the securities being offered or listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities qualification and its effect on the rights evidenced by the securities to be listed or offered.

H.06 The time limit (if any) after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates.

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H.07 A statement regarding tax on the income from the shares withheld at source—

- (a) in the country of origin; and
- (b) in Kenya.

H.08 Arrangements for transfer of the shares and (where permitted) any restrictions on their free transferability (for example, provisions requiring transfers to be approved).

H.09 The fixed date(s) (if any) on which entitlement to dividends arises.

H.10 Other securities exchanges (if any) where admission to listing is being or will be sought.

H.11 The names and addresses of the issuer's Registrar and paying agent(s) for the shares in any other country where admission to listing has taken place.

H.12 The following information must be given concerning the terms and conditions of the issue of the securities whether through a public or private placing with respect to the listing at a securities exchange where such issue or placing is being effected at the same time as the listing or has been effected within the three months preceding admission—

- (a) a statement of any right of pre-emption of shareholders exercisable in respect of the shares or of the disapplication of such right (and where applicable, a statement of the reasons for the disapplication of such right; in such cases, the directors' justification of the issue price where the issue is for cash; if the disapplication of the right of pre-emption is intended to benefit specific persons, the identity of those persons);
- (b) the total amounts which have been or are being issued or placed and the number of shares offered, where applicable by category;
- (c) if a public or private issue or placing has been or is being made simultaneously on the markets of two or more countries and if a tranche has been or is being reserved for any of these, details of any such tranche including—
 - (i) the issue price or offer or placing price, stating the nominal value or, in its absence, the accounting par value or the amount to be capitalised;
 - (ii) the issue premium and the amount of any expenses specifically charged to any subscriber or purchaser; and
 - (iii) the methods of payment of the price, particularly as regards the paying-up of shares which are not fully paid;
- (d) the procedure for the exercise of any right of pre-emption, transferability of subscription rights and treatment of subscription rights not exercised;
- (e) the period during which the issue or offer remained open or will remain open after publication of the prospectus, and the names of the receiving agents;
- (f) the names, addresses and descriptions of the persons underwriting or guaranteeing the issue and where the underwriter is a company, the description must include—
 - (i) the place and date of incorporation and registered number of the company;
 - (ii) the names of the directors of the company;
 - (iii) the name of the secretary of the company;
 - (iv) the bankers to the company; and
 - (v) the authorised and issued share capital of the company;
- (g) where not all of the issue has been or is being underwritten or guaranteed, a statement of the portion not covered;
- (h) a statement or estimate of the overall amount and/or of the amount per share of the charges relating to the issue payable by the issuer, stating the total

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remuneration of the financial intermediaries, including the underwriting commission, margin, guarantee commission placing or selling agent's commission; and

- (i) the estimated net proceeds accruing to the issuer from the issue and the intended application of such proceeds. If the capital offered is more than the amount of the minimum subscription referred to in paragraph H.13 below, the reasons for the difference between the capital offered and the said minimum subscription.

H.13 The minimum amount which, in the opinion of the directors, must be raised by the issue of the securities in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—

- (a) the purchase price of any property, as referred to in paragraph G.25, purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
- (b) any preliminary expenses payable by the issuer, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting any securities of the issuer;
- (c) the repayment of any monies borrowed in respect of any of the foregoing matters;
- (d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each of such purposes;
- (e) any other material expenditure, stating the nature and purpose thereof and the estimated amount in each case;
- (f) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided; and
- (g) if the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the issuer or associates, disclose the person from whom they will be acquired and how the cost to the issuer will be determined.

H.14 A description of the shares for which application is made and, in particular, the number of shares and nominal value per share or, in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.

H.15 If shares are to be marketed and no such shares have previously been sold to the public, a statement of the number of shares made available to the market (if any) and of their nominal value, or, if they have no nominal value, of their accounting par value, or a statement of the total nominal value and, where applicable, a statement of the minimum offer price.

H.16 The securities exchange at which the shares will be listed and the dates on which the shares will be admitted to listing and on which dealings will commence.

H.17 The names of the securities exchanges (if any) on which shares of the same class are already listed.

H.18 If during the period covered by the last financial year and the current financial year, there has occurred any public takeover offer by a third party in respect of the issuer's shares, or any public takeover offer by the issuer in respect of another company's shares, a statement to that effect and a statement of the price or exchange terms attaching to any such offers and the outcome thereof.

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H.19 Where the shares for which application is being made are shares of a class which is already listed, information regarding the price history of the securities to be offered or listed shall be disclosed as indicated from (a) to (c) below. This information shall be given with respect to the market price at the securities exchange at which the securities are listed in Kenya and the principal trading market outside Kenya. If significant trading suspensions occurred in the prior three years, the issuer shall disclose—

- (a) for the five most recent full financial years, the annual high and low market prices;
- (b) for the two most recent full financial years and any subsequent period, the high and low market prices for each full financial quarter; and
- (c) for the most recent six months, the high and low market prices for each month.

H.20 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.21 To the extent known to the issuer, indicate whether major shareholders, directors or members of the issuer's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe for more than 5% of the offering.

H.22 Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for any of these, indicate any such tranche.

H.23 If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the issuer or its subsidiaries, provide details of these and any other preferential allocation arrangements.

H.24 Indicate whether the amount of the offering could be increased by the issuer or vendor by the exercise of a "greenshoe" option subject to a maximum of 15% of the securities offered in the prospectus in case of over subscription of securities.

H.25 Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of stockbrokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities and identify the stockbroker(s) or dealer(s) that will participate in the offering stating the amount to be offered through each.

H.26 If the securities are to be offered in connection with the writing of exchange-traded call options where applicable, (in the case of issuers listed, in securities exchange(s) outside Kenya) describe briefly such transactions.

H.27 Where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons.

H.28 Disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

H.29 In the case of a subscription offering to existing shareholders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.

H.30 The following information on expenses shall be provided—

- (a) the total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the issuer shall be

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disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share;

- (b) an itemised statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered and by whom the expenses are payable, if other than the issuer.

The following expenses shall be disclosed separately—

- (i) advertisement;
- (ii) printing of prospectus;
- (iii) approval and listing fees;
- (iv) brokerage commissions;
- (v) financial advisory fees;
- (vi) legal fees; and
- (vii) underwriting fees.

If any of the securities are to be offered for the account of a selling shareholder, indicate the portion of such expenses to be borne by such shareholder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given; and

- (c) a statement or estimate of the overall amount, percentage and amount per share of the charges relating to the issue payable by the issuer, stating the total remuneration of the intermediaries, including the underwriting commission or margin, guarantee commission, placing or selling agent's commission.

H.31 Disclose the minimum amount which in the opinion of the directors must be raised through the issue of securities in the form of total subscriptions in shares and value.

ID.I.00. Vendors

I.01 The names and addresses of the vendors of any assets purchased or acquired by the issuer or any subsidiary company during the five years preceding the publication of the prospectus or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid or payable to each vendor, and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them if within the preceding five financial years. Where the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of the company, if required by the Authority. Where this information is unobtainable, the reasons therefore are to be stated.

I.02 State whether or not the vendors have given any indemnities, guarantees or warranties.

I.03 State whether the vendors agreements preclude the vendors from carrying on business in competition with the issuer or any of its subsidiaries, or impose any other restriction on the vendor, and disclose details of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.

I.04 State how any liability for accrued taxation, or any apportionment, thereof to the date of acquisition, will be settled in terms of the vendors' agreements.

I.05 Where securities are purchased in a subsidiary company, a reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in companies other than subsidiary companies, a statement as to how the value of the securities was arrived at.

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I.06 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

I.07 The amount of any cash or securities paid or benefit given within five preceding years or proposed to be paid or given to any promoter not being a director, and the consideration for such payment or benefit.

I.08 State whether the assets acquired have been transferred into the name of the issuer or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

PART B – ALTERNATIVE INVESTMENT MARKET SEGMENT DISCLOSURE
REQUIREMENTS FOR PUBLIC OFFERINGS

[Regulation 10(b).]

ID.A.00. Identity of directors, senior management and advisers (i.e. persons responsible for the information disclosed)

A.01 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.02.

A.02 A declaration in the following form—

The directors of [the issuer], whose names appear on page [], of the prospectus accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.03 The names, addresses and qualifications of the auditors who have audited the issuer's annual accounts in accordance with IAS for the last two financial years.

A.04 If auditors have resigned, have been removed or have not been re-appointed during the last two financial years and have deposited a statement with the issuer of circumstances which they believe should be brought to the attention of members and creditors of the issuer, details of such matters must be disclosed.

A.05 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the prospectus has been attributed.

ID.B.00. Offer statistics and expected timetable

B.01 (1) A statement that the Authority has approved the public offering and listing of the shares on the Alternative Investment Market Segment of a securities exchange.

(2) Cautionary statement of the Authority.

B.02 A statement that a copy of the prospectus has been delivered to the Registrar.

B.03 If the offer is by more than one method, for each method of offering state the total amount of the issue, including the expected issue price or the method of determining the price and the number of securities expected to be issued.

B.04 For each public offering, and separately for each group of targeted potential investors, state the following information to the extent applicable—

- (a) the period during which the offer will be open, and where and to whom purchase or subscription applications shall be addressed. Describe whether the purchase period may be extended or shortened, and the manner and

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duration of possible extensions or possible early closure or shortening of the period. Describe the manner in which the latter shall be made public. If the exact dates are not known when the documents are first filed or distributed to the public, describe arrangement for announcing final or definitive date or period;

- (b) method and time limits for paying up securities;
- (c) method and time limits for delivery of securities (including provisional certificates, if applicable) to subscribers or purchasers;
- (d) in case of pre-emptive purchase rights, the procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised; and
- (e) a full description of the manner in which results of the distribution of securities are to be made public, and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest is to be paid).

ID.C.00. Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last two years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under the legislation.

C.05 A description of the issuer's principal objects and reference to the clause(s) of the memorandum of association in which they are described.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not less than five working days from the date of the prospectus or for the duration of any offer to which the prospectus relates, if longer, at a named place as the Authority may agree, the following documents (or copies thereof), where applicable, could be inspected—

- (a) the memorandum and articles of association of the issuer;
- (b) any trust deed of the issuer or of its subsidiary companies which is referred to in the prospectus;
- (c) each document mentioned in paragraphs C.12 (material contracts) and E.10 (directors' service contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (d) copies of service agreements with managers or secretary/ries, underwriting, vendors' and promoters' agreements entered into during the last two financial years;
- (e) in the case of an issue of shares in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a takeover offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual accounts (as appropriate);
- (f) the latest competent person's report, in the case of a mineral company;
- (g) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;

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- (h) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the prospectus;
- (i) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountant's report pursuant to paragraph G.04 and giving the reasons therefor; and
- (j) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years (three years, if the issuer has been in existence for such a period) preceding the publication of the prospectus, including, in the case of a company incorporated in Kenya, all notes, reports or information required by the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.18 (material contracts), a translation of a summary of such document may be made available for inspection, if the Authority so requires.

C.09 The amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 Where the issuer has authorised but un-issued capital or is committed to increase the capital, an indication of—

- (a) the amount of such authorised capital or capital increase and, where appropriate, the duration of the authorisation;
- (b) the categories of persons having preferential subscription rights for such additional portions of capital; and
- (c) the terms and arrangements for the share issue corresponding to such portions.

C.11 If the issuer has shares not representing capital—

- (a) the number and main characteristics of such shares;
- (b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and
- (c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

C.12 A summary of the provisions of the issuer's memorandum and articles of association regarding changes in the capital and in the respective rights of the various classes of securities.

C.13 A summary of the changes during the two preceding financial years in the amount of the issued capital of the issuer and, if material, the capital of any member of the group and/or the number and classes of securities of which it is composed. Intra-group issues by partly owned subsidiaries and changes in the capital structure of subsidiaries which have remained wholly owned throughout the period may be disregarded. Such summary must also state the price and terms granted and (if not already fully paid) the dates when any instalments are in arrears. If any asset has been acquired or is to be acquired out of the proceeds of the issue, its value must be stated. If there are no such issues, an appropriate negative statement must be made.

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C.14 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer.

C.15 Details of any change in controlling shareholder(s) as a result of the issue.

C.16 The history of any change in the controlling shareholder(s) and trading objectives of the issuer and its subsidiaries during the previous two financial years. A statement of the new trading objectives and the manner in which the new objectives will be implemented. If the issuer or the group, as the case may be, carries on widely differing operations, a statement showing the contributions of such respective differing operations to its trading results. The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar.

C.17 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.18 A summary of the principal contents of—

- (a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last two years in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and
- (b) any contractual arrangement with a controlling shareholder required to ensure that the company is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.19 If any contract referred to in paragraph C.18 relates to the acquisition of securities in an unlisted subsidiary, or associate company where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associate companies, or its subsidiaries is interested and to what extent.

C.20 Details of the name of any promoter of any member of the group and the amount of any cash, securities or benefits paid, issued or given within the two years immediately preceding the date of publication of the prospectus, or proposed to be paid, issued or given to any such promoter in his capacity as a promoter and the consideration for such payment, issue or benefit. Where the interest of such promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such promoter's interest in the partnership, company, syndicate or other association.

C.21 A statement of all sums paid or agreed to be paid within the two years immediately preceding the date of publication of the prospectus, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the issuer.

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C.22 Where securities are issued in connection with any merger, division of a company, take-over offer, acquisition of an undertaking's assets and liabilities or transfer of assets—

- (a) a statement of the aggregate value of the consideration for the transaction and how it was or is to be satisfied;
- (b) if the total emoluments receivable by the directors of the issuer will be varied in consequence of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect; and
- (c) if the business of the issuer or any of its subsidiaries or any part thereof is managed or is proposed to be managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

C.23 A description of the group's principal activities, stating the main categories of products sold and/or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.24 For the business(es) described in paragraph C.23 above, the degree of any government protection and of any investment encouragement law affecting the business(es).

C.25 Information on any significant new products and/or activities.

C.26 A breakdown of net turnover during the last two financial years (three where available) by categories of activity and into geographical markets in so far as such categories and markets differ substantially from one another, taking account of the manner in which the sale of products and the provision of services falling within the group's ordinary activities are organised.

C.27 Particulars of royalties payable or items of a similar nature in respect of the issuer and any of its subsidiaries.

C.28 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous four months) a significant effect on the group's financial position or an appropriate negative statement.

C.29 Information on any interruptions in the group's business which may have or have had during the recent past (covering at least the previous four months) a significant effect on the group's financial position.

C.30 A description, with figures, of the main investments made, including interests such as shares, debt securities, etc., in other undertakings over the last two financial years and during the current financial year.

C.31 Information concerning the principal investments (including new plant, factories and research and development) during the current financial year being made, with the exception of interests being acquired in other undertakings, including—

- (a) the geographical distribution of these investments; and
- (b) the method of financing such investments.

C.32 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuers directors have already made firm commitments.

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C.33 Information concerning policy on the research and development of new products and processes over the past two financial years, where significant.

C.34 The basis for any statements made by the company regarding its competitive position shall be disclosed.

ID.D.00. Operating and financial review and prospectus (the recent development and prospects of the group)

D.01 Unless otherwise approved by the Authority in exceptional circumstances—

- (a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular—
 - (i) the most significant recent trends in production, sales and stocks and the state of the order book; and
 - (ii) recent trends in costs and selling prices; and
- (b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry and make an offering speculative or on high risk in a section headed "Risk Factors".

D.03 Describe the—

- (a) extent to which the financial statements disclose material changes in net revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services;
- (b) impact of inflation if material – if the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a history of the annual rate of inflation covering the period, and discussion of the impact of the hyperinflation on the issuer's business shall be disclosed;
- (c) impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by the currency borrowing and other hedging instruments; and
- (d) impact of any material governmental factors that have materially affected or could materially affect, directly or indirectly the issuer's operations or investments by the host country shareholders.

D.04 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out. There must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.05 The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

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ID.E.00. Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

- (a) directors, alternate and proposed directors of the issuer and each of its subsidiaries, including details of other directorships; and
- (b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and
- (c) founders, if the issuer has been established as a family business or has been in existence for fewer than five years and the nature of family relationship, if any; and
- (d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty-four months following the issue and listing of the security or appropriate negative statement.

E.02 A description of other relevant business interests and activities of every such person as is mentioned in paragraph E.01 and, if required by the Authority particulars of any former forename or surname of such persons.

E.03 In the case of a foreign issuer, information similar to that described in E.01 and E.02 above, relative to the local management if any. Where the Authority considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.04 The total aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by any member of the group during the last two completed financial years under any description whatsoever.

E.05 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 3% of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the prospectus, or if there has been no such change, disclosure of that fact.

E.06 All relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during—

- (a) the current or immediately preceding financial year; or
- (b) an earlier financial year and remain in any respect outstanding or unperformed,

or an appropriate negative statement.

E.07 The total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.

E.08 Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments in force at the date of the prospectus.

E.09 An estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the prospectus.

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E.10 Details of existing or proposed directors' service contracts (excluding contracts previously made available for inspection in accordance with paragraph C.07 and not subsequently varied); such details to include the matters specified in paragraphs (a) to (g) below or an appropriate negative statement—

- (a) the name of the employing company;
- (b) the date of the contract, the un-expired term and details of any notice periods;
- (c) full particulars of the director's remuneration including salary and other benefits;
- (d) any commission or profit sharing arrangements;
- (e) any provision for compensation payable upon early termination of the contract;
- (f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract; and
- (g) details relating to restrictions prohibiting the director, or any person acting on his behalf or connected to him, from any dealing in securities of the company during a close period or at a time when the director is in possession of unpublished price sensitive information in relation to those securities.

E.11 A summary of the provisions of the memorandum and articles of association of the issuer with regards to—

- (a) any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested;
- (b) any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; and
- (c) retirement or non-retirement of directors under an age limit.

E.12 Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person, referred to in E.01 above, was selected as a director or member of senior management.

E.13 Details relating to the issuer's audit, remuneration and nomination committees including the names of committee members and a summary of the terms of reference under which the committees operate.

ID.F.00. Major shareholders and related party transactions

F.01 The following information shall be provided regarding the issuer's major shareholders, which means shareholders that are the beneficial owners of at least 3% or more of each class of the issuer's voting securities—

- (a) provide the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as at the most recent practicable date, or an appropriate negative statement if there are no major shareholders;
- (b) disclose any significant change in the percentage ownership held by any major shareholders during the past three financial years; and
- (c) indicate whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of shareholders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by any other corporation(s), foreign government or other

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natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 Insofar as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in 10% or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide information required on (a) and (b) below for the period since the beginning of the issuer's preceding two financial years (three where available) up to the date of the prospectus, with respect to transactions or loans between the issuer and—

- (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;
- (b) associates;
- (c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;
- (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individual's families; and
- (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the issuer and enterprises that have a number of key management in common with the issuer. Shareholders beneficially owning a 10% interest in the voting power of the issuer are presumed to have a significant influence on the issuer including—
 - (i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiary(ies) was a party; and
 - (ii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above.

The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan, the transaction in which it was incurred, and the interest rate on the loan.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the prospectus, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of prospectus, and has not withdrawn his consent.

F.09 If any of the named experts employed on a contingent basis, owns an amount of shares in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

ID.G.00. Financial information

G.01 A statement that the annual accounts of the issuer for the last two financial years (three where available) have been audited. If audited reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and reasons given.

G.02 A statement of what other information in the prospectus has been audited by the auditors.

G.03 Financial information as required by paragraphs G.14 and G.15 set out in the form of a comparative table together with any subsequent interim financial statements if available.

G.04 Financial information as required by paragraphs G.14 and G.15 set out in the form of an accountants' report.

G.05 If applicable, an accountant's report, as set out in paragraphs G.14 and G.15 on the asset which is the subject of the transaction.

G.06 (1) If the issuer prepares consolidated annual accounts only, it must include those accounts in the prospectus in accordance with paragraph G.03 or G.04.

(2) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the prospectus in accordance with paragraph G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts with the approval of the Authority and such accounts shall be available for inspection in accordance with paragraph C. 07.

G.07 (1) Where the issuer includes its annual accounts in the prospectus, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last two financial years.

(2) Where the issuer includes consolidated annual accounts in the prospectus, it must state the consolidated profit or loss per share for each of the last two financial years; this information must appear in addition to that provided in accordance with (1) above where the issuer also includes its own annual accounts in the prospectus.

G.08 If, in the course of the last two financial years, the number of shares in the issuer has changed as a result, for example, of an increase in or reduction or reorganisation of capital, the profit or loss per share referred to in paragraph G.07 must be adjusted to make them comparable; in that event the basis of adjustment used must be disclosed.

G.09 Particulars of—

- (a) the dividend policy to be adopted;
- (b) the *pro-forma* balance sheet prior to and immediately after the proposed issue of securities; and
- (c) the effect of the proposed issue of securities on the net asset value per share,

The above particulars must be prepared and presented in accordance with IAS. If the issuer is a holding company, the information must be prepared in consolidated form.

G.10 The amount of the total dividends, the dividend per share and the dividend cover for each of the last two financial years, adjusted, if necessary, to make it comparable in accordance with paragraph G.08.

G.11 (1) Where not more than nine months have elapsed since the end of the financial year to which the last published annual accounts relate, an interim audited financial statement covering at least the first six months following the end of that financial year must be included in or appended to the prospectus. Where not more than six months

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have elapsed since the end of the financial year, un-audited financial statements covering the period preceding the six months shall be included in the prospectus of the issuer whose securities are currently listed at a securities exchange.

(2) Where the issuer prepares consolidated annual accounts, the interim financial statement must either be consolidated statements or include a statement that, in the opinion of the issuer's directors, the interim financial statements enable investors to make an informed assessment of the results and activities of the group for the period.

G.12 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.13 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.14 A table showing the changes in financial position of the group over each of the last two financial years (three where available) in the form of a cash flow statement.

G.15 (1) Information in respect of the matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long-term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses—

- (a) the name and address of the registered office;
- (b) the field of activity;
- (c) the proportion of capital held;
- (d) the issued capital;
- (e) the reserves;
- (f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;
- (g) the value at which the issuer shows in its accounts the interest held;
- (h) any amount still to be paid up on shares held;
- (i) the amount of dividends received in the course of the last financial year in respect of shares held; and
- (j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 20% of the capital and reserves of the issuer or if that interest accounts for at least 20% of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 20% of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or, with the exception of (1) (i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts,

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provided that in the opinion of the Authority the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

G.16 The name, registered office and proportion of capital held in respect of each undertaking not failing to be disclosed under paragraph G.15(1) or (2) in which the issuer holds at least 20% of the capital. These details may be omitted when they are of negligible importance for the purpose of enabling investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or group and of the rights attaching to the securities for which application is made.

G.17 When the prospectus includes consolidated annual accounts, disclosure—

- (a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with IAS);
- (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.15; and
- (c) for each of the undertakings referred to in (b) above;
 - (i) the total proportion of third-party interests, if annual accounts are wholly consolidated; or
 - (ii) the proportion of the consolidation calculated on the basis of interest, if consolidation has been effected on a pro rata basis.

G.18 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

G.19 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the prospectus) of the following, if material—

- (a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;
- (b) the circumstances, if applicable, if the borrowing powers have been exceeded during the past two years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;
- (c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but unissued, and term loans, distinguishing between loans guaranteed, unguaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;
- (d) all off-balance sheet financing by the issuer and any of its subsidiaries;
- (e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases;
- (f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or
- (g) how the borrowings required to be disclosed by paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

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(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities described in (1) above. As a general rule, no account should be taken of liabilities or guarantees between undertakings within the same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

- (a) the names of the lenders if not debenture holders;
- (b) the amount, terms and conditions of repayment or renewal;
- (c) the rates of interest payable on each item;
- (d) details of the security, if any;
- (e) details of conversion rights; and
- (f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed.

(4) If the issuer prepares consolidated annual accounts, the principles laid down in paragraph G.06 apply to the information set out in this paragraph G.19.

G.20 Details of material loans by the issuer or by any of its subsidiaries stating—

- (a) the date of the loan;
- (b) to whom made;
- (c) the rate of interest;
- (d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;
- (e) the period of the loan;
- (f) the security held;
- (g) the value of such security and the method of valuation;
- (h) if the loan is unsecured, the reasons therefor; and
- (i) if the loan was made to another company, the names and addresses of the directors of such company.

G.21 Details as described in paragraph G.20 above of loans made or security furnished by the issuer or by any of its subsidiaries for the benefit of any director or manager or any associate of any director or manager.

G.22 Disclose how the loans receivable arose, stating whether they arose from the sale of assets by the issuer or any of its subsidiaries.

G.23 A statement that in the opinion of the directors, the issued capital of the issuer (including the amount to be raised in pursuance of this issue) is adequate for the purposes of the business of the issuer and of its subsidiaries for the foreseeable future, and if the directors are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the issuer and its subsidiaries are, to be financed.

G.24 The statement should be supported by a report from the issuer's auditor, reporting accountant, investment banker, sponsoring stockbroker or other adviser acceptable to the Authority.

The foreseeable future should normally be construed as the nine months subsequent to the date of the publication of the prospectus.

G.25 The following information regarding the acquisition, within the last two financial years, or proposed acquisition by the issuer or any of its subsidiaries, of any securities in

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or the business undertaking of any other company or business enterprise or any immovable property or other property in the nature of a fixed asset (collectively called "the property") or any option to acquire such property shall be disclosed—

- (a) the date of any such acquisition or proposed acquisitions;
- (b) the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;
- (c) details of the valuation of the property;
- (d) any goodwill paid and how such goodwill was or is to be accounted for;
- (e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;
- (f) the nature of title or interest acquired or to be acquired;
- (g) details regarding the vendors as described in paragraph I.01.

G.26 The following details regarding any property disposed of during the past two years (three where available), or to be disposed of, by the issuer, or any of its subsidiaries—

- (a) the dates of any such disposal or proposed disposal;
- (b) the consideration received, detailing that settled by the receipt of securities or cash or by any other means and detailing how any outstanding consideration is to be settled;
- (c) details of the valuation of the property; and
- (d) the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial shareholders of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

G.27 Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the exchange rate designated by the Central Bank of Kenya for this purpose, if any—

- (a) at the latest practicable date;
- (b) the high and low exchange rates for each month during the preceding twelve months; and
- (c) for the two most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

ID.H.00. The offer and listing

H.01 An indication whether or not all the shares have been marketed or are available in whole or in part to the public in conjunction with the application.

H.02 A statement of the resolutions, authorisations and approvals by virtue of which the shares have been or will be created and/or issued.

H.03 The nature and amount of the issue.

H.04 The number of shares which have been or will be created and/or issued, if predetermined.

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H.05 (1) A summary of the rights attaching to the shares for which application is made, and in particular the extent of the voting rights, entitlement to share in the profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one class of shares of the issuer in issue, like details must be given for each class.

(2) If the rights evidenced by the securities being offered or listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed or offered.

H.06 The time limit (if any) after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates.

H.07 A statement regarding tax on the income from the shares withheld at source—

- (a) in the country of origin; and
- (b) in Kenya.

H.08 Arrangements for transfer of the shares and (where permitted) any restrictions on their free transferability (for example, provisions requiring transfers to be approved).

H.09 The fixed date(s) (if any) on which entitlement to dividends arises.

H.10 Other securities exchanges (if any) where admission to listing to being or will be sought.

H.11 The names and addresses of the issuer's Registrar and paying agent(s) for the shares in any other country where admission to listing has taken place.

H.12 The following information must be given concerning the terms and conditions of the issue of securities whether through a public or private placing with respect to the listing at a securities exchange where such issue or placing is being effected at the same time as the listing or has been effected within the three months preceding admission—

- (a) a statement of any right of pre-emption of shareholders exercisable in respect of the shares or of the disapplication of such right (and where applicable, a statement of the reasons for the disapplication of such right; in such cases, the directors' justification of the issue price where the issue is for cash; if the disapplication of the right of pre-emption is intended to benefit specific persons, the identity of those persons);
- (b) the total amounts which have been or are being issued or placed and the number of shares offered, where applicable by category;
- (c) if a public or private issue or placing has been or is being made simultaneously on the markets of two or more countries and if a tranche has been or is being reserved for any of these, details of any such tranche including—
 - (i) the issue price or offer or placing price, stating the nominal value or, in its absence, the accounting par value or the amount to be capitalised;
 - (ii) the issue premium and the amount of any expenses specifically charged to any subscriber or purchaser; and
 - (iii) the methods of payment of the price, particularly as regards the paying-up of shares which are not fully paid;
- (d) the procedure for the exercise of any right of pre-emption, transferability of subscription rights and treatment of subscription rights not exercised;
- (e) the period during which the issue or offer remained open or will remain open after publication of the prospectus, and the names of the receiving agents;

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- (f) the names, addresses and descriptions of the persons underwriting or guaranteeing the issue and where the underwriter is a company, the description must include—
 - (i) the place and date of incorporation and registered number of the company;
 - (ii) the names of the directors of the company;
 - (iii) the name of the secretary of the company;
 - (iv) the bankers to the company; and
 - (v) the authorised and issued share capital of the company;
- (g) where not all of the issue has been or is being underwritten or guaranteed, a statement of the portion not covered;
- (h) a statement or estimate of the overall amount and/or of the amount per share of the charges relating to the issue payable by the issuer, stating the total remuneration of the financial intermediaries, including the underwriting commission or margin, guarantee commission, placing or selling agent's commission; and
- (i) the estimated net proceeds accruing to the issuer from the issue and the intended application of such proceeds. If the capital offered is more than the amount of the minimum subscription referred to in paragraph H.13 below, the reasons for the difference between the capital offered and the said minimum subscription.

H.13 The minimum amount which, in the opinion of the directors, must be raised by the issue of the securities in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—

- (a) the purchase price of any property, as referred to in paragraph G.25, purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
- (b) any preliminary expenses payable by the issuer, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting any securities of the issuer;
- (c) the repayment of any moneys borrowed in respect of any of the foregoing matters;
- (d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
- (e) any other material expenditure, stating the nature and purpose(s) thereof and the estimated amount in each case;
- (f) the amount(s) to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided; and
- (g) if the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the issuer or associates, disclose the person from whom they will be acquired and how the cost to the issuer will be determined.

H.14 A description of the shares for which application is made and, in particular, the number of shares and nominal value per share in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.

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H.15 If shares are to be marketed and no such shares have previously been sold to the public, a statement of the number of shares made available to the market (if any) and of their nominal value, or, if they have no nominal value, of their accounting par value, or a statement of the total nominal value and, where applicable, a statement of the minimum offer price.

H.16 The securities exchange at which the shares are to be listed and the dates on which the shares will be admitted to listing and on which dealings will commence.

H.17 The names of the securities exchanges (if any) on which shares of the same class are already listed.

H.18 If during the period covered by the last financial year and the current financial year, there has occurred any public takeover offer by a third party in respect of the issuer's shares, or any public takeover offer by the issuer in respect of another company's shares, a statement to that effect and a statement of the price or exchange terms attaching to any such offers and the outcome thereof.

H.19 Where the shares for which application is being made are shares of a class which is already listed, information regarding the price history of the securities to be offered or listed shall be disclosed as indicated from (a) to (c) below. This information shall be given with respect to the market price at the securities exchange at which the securities are listed in Kenya and the principal trading market outside Kenya. If significant trading suspensions occurred in the prior two years, the issuer shall disclose—

- (a) for the two most recent full financial years, the annual high and low market prices;
- (b) for the one most recent full financial year, and any subsequent period, the high and low market prices for each full financial quarter; and
- (c) for the most recent six months, the high and low market prices for each month.

H.20 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.21 To the extent known to the issuer, indicate whether major shareholders, directors or members of the issuer's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe for more than 5% of the offering.

H.22 Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for any of these, indicate any such tranche.

H.23 If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the issuer or its subsidiaries, provide details of these and any other preferential allocation arrangements.

H.24 Indicate whether the amount of the offering could be increased by the issuer or vendor by the exercise of a "greenshoe" option subject to a maximum of 15% of the securities offered in the prospectus in case of over subscription of the securities.

H.25 Indicate the amount, and outline briefly the plan of distribution of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of stockbrokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities and identify the stockbroker(s) or dealer(s) that will participate in the offering stating the amount to be offered through each.

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H.26 If the securities are to be offered in connection with the writing of exchange-traded call options where applicable in the case of an issuer whose securities are listed at a securities exchange outside Kenya, describe briefly such transactions.

H.27 Where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons.

H.28 Disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

H.29 In the case of a subscription offering to existing shareholders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.

H.30 The following information on expenses shall be provided—

- (a) the total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the issuer shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share;
- (b) an itemised statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered and by whom the expenses are payable, if other than the issuer;

The following expenses shall be disclosed separately—

- (i) advertisement;
- (ii) printing of prospectus;
- (iii) approval and listing fees;
- (iv) brokerage commissions;
- (v) financial advisory fees;
- (vi) legal fees; and
- (vii) underwriting fees.

If any of the securities are to be offered for the account of a selling shareholder, indicate the portion of such expenses to be borne by such shareholder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given; and

- (c) a statement or estimate of the overall amount, percentage and amount per share of the charges relating to the issue payable by the issuer, stating the total remuneration of the intermediaries, including the underwriting commission or margin, guarantee commission, placing or selling agent's commission.

H.31 Disclose the minimum amount which in the opinion of the directors must be raised through the issue of securities in form of total subscriptions in shares and value.

ID.1.00. Vendors

I.01 The names and addresses of the vendors of any assets purchased or acquired by the issuer or any subsidiary company during the two years preceding the publication of the prospectus or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid or payable to each vendor, and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them if within the preceding two years. Where the vendor is a

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company, the names and addresses of the beneficial shareholders, direct and indirect, of the company if required by the Authority. Where this information is unobtainable, the reasons therefor are to be stated.

I.02 State whether or not the vendors have given any indemnities, guarantees or warranties.

I.03 State whether the vendors agreements preclude the vendors from carrying on business in competition with the issuer or any of its subsidiaries, or impose any other restriction on the vendor, and disclose of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.

I.04 State how any liability for accrued taxation, or any apportionment thereof to the date of acquisition, will be settled in terms of the vendors' agreements.

I.05 Where securities are purchased in a subsidiary company, a reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in companies other than subsidiary companies, a statement as to how the value of the securities was arrived at.

I.06 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

I.07 The amount of any cash or securities paid or benefit given within two preceding years or proposed to be paid or given to any promoter not being a director, and the consideration for such payment or benefit.

I.08 State whether the assets acquired have been transferred into the name of the issuer or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

PART C – FIXED INCOME SECURITIES MARKET SEGMENT DISCLOSURE
REQUIREMENTS FOR PUBLIC ISSUES

[Regulation 10(c).]

ID.A.00. Identity of directors, senior management and advisers (i.e. persons responsible for the information disclosed)

A.01 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.02.

A.02 A declaration in the following form—

The directors of [the issuer], whose names appear on page [] of the prospectus, accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.03 The names, addresses and qualifications of the auditors who have audited the issuer's annual accounts in accordance with IAS for the last two financial years.

A.04 If auditors have resigned, have been removed or have not been re-appointed during the last two financial years and have deposited a statement with the issuer of circumstances which they believe should be brought to the attention of members and creditors of the issuer, details of such matters must be disclosed.

A.05 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the prospectus has been attributed.

ID.B.00. Offer statistics and expected timetable

B.01 (1) A statement that the Authority has approved the public offering and listing of the securities at the Fixed Income Securities Market Segment of a securities exchange.

(2) Cautionary statement of the Authority.

B.02 A statement that a copy of the prospectus has been delivered to the Registrar.

ID.C.00. Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last three years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under that legislation.

C.05 A description of the issuer's principal objects and reference to the clause(s) of the memorandum of association in which they are described.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not less than five working days from the date of the information memorandum or for the duration of any offer to which the information memorandum relates, if longer, at a named place as the Authority may approve, where the following documents or copies thereof (where applicable) could be inspected—

- (a) the memorandum and articles of association of the issuer;
- (b) any trust deed of the issuer or of its subsidiary undertakings which is referred to in the information memorandum;
- (c) each document mentioned in paragraphs C.12 (material contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (d) copies of service agreements with managers or secretary/ies, underwriting, vendors' and promoters' agreements entered into during the last two financial years;
- (e) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;
- (f) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the prospectus;
- (g) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountants' report included pursuant to paragraph G.04 and giving the reasons therefor; and
- (h) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the prospectus, including, in the case of a company incorporated in Kenya, all notes, reports or information required by the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.12 (material contracts), a translation of a summary of such document may be made available for inspection, if the Authority so requires.

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C.09 The amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement, which may lead to their adopting a common policy in respect of the issuer.

C.11 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name of and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.12 A summary of the principal contents of—

- (a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last two years in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and
- (b) any contractual arrangement with a controlling shareholder required to ensure that the issuer is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.13 If any contract referred to in paragraph C.12 relates to the acquisition of securities in an unlisted subsidiary, or associated company, where all securities in the issuer have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associated companies, or its subsidiaries is interested and to what extent.

C.14 A description of the group's principal activities, stating the main categories of products sold and/or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.15 Details of any material changes in the businesses of the issuer during the past five years.

C.16 Where the information given pursuant to paragraphs C.14 to C.15 has been influenced by exceptional factors, that fact must be mentioned.

C.17 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous four months) a significant effect on the group's financial position or an appropriate negative statement.

C.18 Information on any interruptions in the group's business, which may have or have had during the recent past (covering at least the previous four months) a significant effect on the group's financial position.

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C.19 Information concerning the principal investments (including new plant, factories and research and development) being made during the current financial year, with the exception of interests being acquired in other undertakings, including—

- (a) the geographical distribution of these investments; and
- (b) the method of financing such investments.

C.20 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuer's directors have already made firm commitments.

C.21 Information concerning policy on the research and development of new products and processes over the past three financial years, where significant.

C.22 The basis for any statements made by the issuer regarding its competitive position shall be disclosed.

ID.D.00. Operating and financial review and prospectus (the recent development and prospects of the group)

D.01 Unless otherwise approved by the Authority in exceptional circumstances—

- (a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular—
 - (i) the most significant recent trends in production, sales and stock and the state of the order book; and
 - (ii) recent trends in costs and selling prices; and
- (b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry and make an offering speculative or on high risk in a section headed "Risk Factors".

D.03 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out; there must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.04 The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00. Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

- (a) directors, alternate and proposed directors of the issuer and each of its material subsidiaries including details of other directorships;

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- (b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and
- (c) founders, if the issuer has been established as a family business or in existence for fewer than five years and the nature of family relationship; if any
- (d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty-four months following the issue and listing of the security or appropriate negative statement.

E.02 In the case of a foreign issuer, information similar to that described in E.01, relative to the local management, if any. Where the Authority considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.03 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 3% of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the prospectus, or if there has been no such change, disclosure of that fact.

ID.F.00. Major shareholders and related party transactions

F.01 The following information shall be provided regarding the issuer's major shareholders, which means shareholders that are the beneficial owners of at least 3% or more of the issuer's voting securities—

- (a) provide the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major shareholders;
- (b) disclose any significant change in the percentage ownership held by any major shareholders during the past three financial years; and
- (c) indicate whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of shareholders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by another corporation(s), by any foreign government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in 10% or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide information required on (a) and (b) below for the period since the beginning of the issuer's preceding five financial years up to the date of the information memorandum, with respect to transactions or loans between the issuer and—

- (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under intermediaries, control or are controlled by, or are under common control with, the issuer;
- (b) associates;

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- (c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;
- (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individuals' families; and
- (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the issuer and enterprises that have a number of key management in common with the issuer. Shareholders beneficially owning a 10% interest in the voting power of the issuer are presumed to have a significant influence on the issuer, including—
 - (i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiaries was a party; and
 - (ii) the information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, nature of the costs, the transaction(s) in which it was incurred and the interest rate on such transaction(s);
 - (iii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiary(ies) to or for the benefit of any of the persons listed above.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the information memorandum, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of the information memorandum, and has not withdrawn his consent.

F.09 If any of the named experts was employed on a contingent basis, owns an amount of shares in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

ID.G.00. Financial information

G.01 A statement that the annual accounts of the issuer for the last three financial years have been audited. If audit reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and the reasons given.

G.02 A statement of what other information in the prospectus has been audited by the auditors.

G.03 Financial information as required by paragraphs G.09 to G.11 set out in the form of a comparative table together with any subsequent interim financial statements if available.

G.04 Financial information as required by paragraphs G.09 to G.11 set out in the form of an accountant's report.

G.05 If applicable, an accountant's report, as set out in paragraphs G.09 to G.11 in the asset which is the subject of the transaction.

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G.06 (a) If the issuer prepares consolidated annual accounts only, it must include those accounts in the prospectus in accordance with paragraph G.03 or G.04.

(b) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the prospectus in accordance with paragraph G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts, with the approval of the Authority.

G.07 (a) Where the issuer includes its own annual accounts in the prospectus, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last five financial years.

(b) Where the issuer includes consolidated annual accounts in the prospectus, it must state the consolidated profit or loss per share for each of the last five financial years; this information must appear in addition to that provided in accordance with (a) above where the issuer also includes its own annual accounts in the prospectus.

G.08 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.09 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.10 A table showing the changes in financial position of the group over each of the last three financial years in the form of a cash flow statement.

G.11 The accountant's report shall disclose a pro-forma balance sheet, profit and loss account and a cash flow projection for the next twelve months following the issue and the following ratios for the last three financial years immediately preceding the issue—

- (a) earnings before interest and taxes interest cover;
- (b) funds from operations to total debt percentage;
- (c) free cash flow to total debt percentage;
- (d) total free cash flow to short-term debt obligations;
- (e) not profit margin;
- (f) post-tax return (before financing on capital employed);
- (g) long term debt to capital employed; and
- (h) total debt to equity.

G.12 Where the prospectus includes consolidated annual accounts, disclosures are required—

- (a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with IAS);
- (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.15; and
- (c) for each of the undertakings referred to in (b) above—
 - (i) the total proportion of third party interests, if annual accounts are wholly consolidated; or

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- (ii) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis.

G.13 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the prospectus) of the following, if material—

- (a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;
- (b) the circumstances, if applicable, if the borrowing powers have been exceeded during the past two years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;
- (c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but un-issued, and term loans, distinguishing between loans guaranteed, unguaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;
- (d) all off-balance sheet financing by the issuer and any of its subsidiaries;
- (e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire-purchase commitments and obligations under finance leases;
- (f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or
- (g) how the borrowings required to be disclosed by paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital; borrowings, indebtedness and contingent liabilities described in (1) above; as a general rule, no account should be taken of liabilities or guarantees between undertakings within the same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

- (a) the names of the lenders, if not debenture holders;
- (b) the amount, terms and conditions of repayment or renewal;
- (c) the rates of interest payable on each item;
- (d) details of the security, if any;
- (e) details of conversion rights;
- (f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed; and
- (g) if the issuer prepares consolidated annual accounts, the principles laid down in paragraph G.06 apply to the information set out in this paragraph G.13.

G.14 Details of material loans by the issuer or by any of its subsidiaries stating—

- (a) the date of the loan;
- (b) to whom made;
- (c) the rate of interest;
- (d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;
- (e) the period of the loan;

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- (f) the security held;
- (g) the value of such security and the method of valuation;
- (h) if the loan is unsecured, the reasons therefor; and
- (i) if the loan was made to another company, the names and addresses of the directors of such company.

G.15 (1) Information in respect to matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long-term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits or losses—

- (a) the name and address of the registered office;
- (b) field of activity;
- (c) the proportion of capital held;
- (d) the issued capital;
- (e) the reserves;
- (f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;
- (g) the value at which the issuer shows in its accounts the interest held;
- (h) any amount still to be paid up on shares held;
- (i) the amount of dividends received in the course of the last financial year in respect of shares held; and
- (j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 20% of the capital and reserves of the issuer or if that interest accounts for at least 20% of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 20% of the consolidated net assets or at least 20% of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts, or, with the exception of (1)(i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the Authority, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of securities in question.

G.16 A statement by the directors of the issuer that in their opinion the working capital available to the group is sufficient for the group's present requirements, or, if not, how it is proposed to provide the additional working capital thought by the directors of the issuer to be necessary. The working capital statement should be prepared on the group, as enlarged by the acquisition of assets.

G.17 Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the mean exchange rate designated by the Central Bank of Kenya for this purpose, if any—

- (a) at the latest practicable date;

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- (b) the high and low exchange rates for each month during the preceding twelve months;
- (c) for the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period; and
- (d) if the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the issuer or associates, disclose the person from whom they will be acquired and how the cost to the issuer will be determined.

FI.H.00. The debt securities for which application is being made

H.01 A statement that application has been made to the Authority for the securities to be listed (if applicable) in the Fixed Income Securities Market Segment, setting out the relevant debt securities.

H.02 A statement whether or not all the debt securities have been marketed or are available in whole or in part to the public in conjunction with the application.

H.03 A statement that a copy of the information memorandum or prospectus, as the case may be, has been delivered to the Registrar.

H.04 The nominal amount of the debt securities and if this amount is not fixed, a statement to that effect must be made.

H.05 The nature, number and numbering of the debt securities and the denominations.

H.06 Except in the case of continuous issues of short-term debt securities, the issue and redemption prices and nominal interest rate. If several interest rates or variable interest rates are provided for, an indication of the conditions for changes in the rate.

H.07 The procedures for the allocation of any other advantages and the method of calculating such advantages.

H.08 A statement regarding tax on the income from the debt securities withheld at source—

- (a) in the country of origin (if applicable); and
- (b) in Kenya.

H.09 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.10 Arrangements for the amortisation of the loan, including the repayment procedures.

H.11 The names and addresses of the issuer's Registrar and paying agent(s) for the securities in any other country where the securities listing (if applicable) has taken place.

H.12 The currency of the loan and any currency option; if the loan is denominated in units of account, the contractual status of such units.

H.13 The final repayment date and any earlier repayment dates.

H.14 The date from which interest becomes payable and the due dates for interest.

H.15 The time limit on the validity of claims to interest and repayment of principal.

H.16 The procedures and time limits for delivery of the debt securities, and a statement as to whether temporary documents of title will be issued.

H.17 Except in the case of continuous issues in respect of short-term securities, a statement of yield. The method whereby that yield is calculated must be described in summary form.

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H.18 A statement of the resolutions, authorisations and approvals by virtue of which the debt securities have been or will be created and/or issued.

H.19 The nature and amount of the issue.

H.20 The number of debt securities which have been or will be created and/or issued.

H.21 The nature and scope of the guarantees, sureties and commitments intended to ensure that the loan will be duly serviced as regards both the repayment of the debt securities and the payment of interest.

H.22 Details of trustees or of any other representation for the body of debt security holders.

H.23 (1) The name, function, description and head office of the trustee or other representative of the debt security holders; and

(2) the main terms of the document governing such trusteeship or representation and in particular the conditions under which such trustee or representative may be replaced.

H.24 A summary of clauses subordinating the loan to other debts of the issuer already contracted or to be contracted.

H.25 A statement of the legislation under which the debt securities have been created and the courts competent in the event of litigation.

H.26 A statement whether the debt securities are in registered or certificate form or where dematerialised a statement of account to be issued.

H.27 Details of any arrangements for transfer of the securities and any restrictions on the free transferability of the debt securities.

H.28 Other securities exchanges (if any) where listing is being or will be sought.

H.29 (1) The names, addresses and descriptions of the persons underwriting or guaranteeing the issue, and—

(a) where the underwriter is a company, the description must include—

(i) the place and date of incorporation and registered number of the issuer;

(ii) the names of the directors of the company;

(iii) the name of the secretary of the company;

(iv) the bankers to the company where applicable; and

(v) the authorised and issued share capital of the company;

(b) (i) where the issue is fully or partially guaranteed, the guarantor shall assume the responsibility and redemption obligation under the issue and in that regard, shall satisfy the Authority of its financial capacity to guarantee the issue;

(ii) where the guarantor is a bank or an insurance company licensed to operate in Kenya, the consent of the Central Bank of Kenya or the Commissioner of Insurance, as the case may be, will be required.

(2) Where not all of the issue is underwritten or guaranteed, a statement of the portion not covered shall be made.

H.30 If a public or private offer or placing has been or is being made simultaneously on the markets of two or more countries and if a tranche has been or is being reserved for certain of these, details of any such tranche.

H.31 The names of the securities exchanges (if any) on which debt securities of the same class are already listed.

H.32 If debt securities of the same class have not yet been listed but are dealt in on one or more other regulated, regularly operating, recognised, open markets, an indication of such markets.

H.33 If an issue is being effected at the same time as listing or has been effected within the three months preceding such listing the following information must be given—

- (a) the procedure for the exercise of any right of pre-emption; the negotiability of subscription rights, the treatment of subscription rights not exercised and—
 - (i) the issue price or offer or placing price, stating the nominal value or, in its absence, the accounting par value or the amount to be capitalised;
 - (ii) the issue premium or discount and the amount of any expenses specifically charged to the subscriber or purchaser; and
 - (iii) the methods of payment of the price, particularly as regards the paying-up of securities which are not fully paid;
- (b) except in the case of continuous debt security issues, the period during which the issue or offer remained open or will remain open and any possibility of early closure;
- (c) the methods of and time limits for delivery of the securities and a statement as to whether temporary documents of title have been or will be issued;
- (d) the names of the receiving agents;
- (e) a statement, where necessary, that the subscriptions may be reduced and a statement of the relative facts where it is the intention, in the event of over subscription, to extend a preference on allotment to any particular company or group such as employees and pension funds;
- (f) except in the case of continuous debt security issues, the estimated net proceeds of the loan. If the capital offered is more than the amount of the minimum subscription referred to in paragraph H.34, the reason for the difference between the capital offered and the said minimum subscription;
- (g) the purpose of the issue and intended application of its proceeds.

H.34 The minimum amount which, in the opinion of the directors, must be raised by the issue of the securities in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—

- (a) the purchase price of any property, purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
- (b) any preliminary expenses payable by the issuer, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting or guaranteeing any securities of the issuer;
- (c) the repayment of any moneys borrowed in respect of any of the forgoing matters;
- (d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
- (e) any other material expenditure, stating the nature and purposes thereof and the estimated amount in each case; and
- (f) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

H.35 A summary of the rights conferred upon the holders of the debt securities and particulars of the security (if any) therefor.

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H.36 Where debt securities are issued by way of conversion or replacement of debt securities previously issued, a statement of all material difference between the security for the old debt securities and the security for the new debt securities, or, if appropriate, a statement that the security for the new debt securities is identical with all security for the old debt securities.

H.37 Particulars of the profits cover for interest (if fixed), and of the net tangible assets.

H.38 Where the debt securities for which application is being made are offered by way of rights or open offer to the holders of an existing listed security, the following information must be given—

- (a)
 - (i) the pro rata entitlement;
 - (ii) the last date on which transfers were or will be accepted for registration for participation in the issue;
 - (iii) how the securities rank for interest;
 - (iv) the nature of the document of title and its proposed date of issue;
- (b) in the case of a rights issue or open offer, how debt securities not taken up will be dealt with and the time in which the offer may be accepted;
- (c) a statement pointing out possible tax implications for non-residents.

H.39 In respect of convertible debt securities, information concerning the nature of the shares offered by way of conversion, exchange or for subscription and the rights attaching thereto.

H.40 In respect of convertible debt securities, the conditions of and procedures for conversion, exchange or subscription and details of the circumstances in which they may be amended.

H.41 Where the debt securities for which application is being made are debt securities of a class which is already listed, being offered by way of rights or open offer, a table of market values for the securities of the class to which the rights issue or offer relates for the first dealing day in each of the six months before the date of the particulars, for the last dealing day before the announcement of the rights issue or offer and (if different) the latest practicable date prior to publication of the particulars.

H.42 Where an issuer seeks to raise additional capital amounting to twenty percent or more of the aggregate value of its listed fixed income securities such issuer shall obtain prior approval of the holders of such listed fixed income securities and the Authority.

PART CC – GROWTH ENTERPRISES MARKET SEGMENT DISCLOSURE
REQUIREMENTS

[Rule 10(1)(cc), L.N. 61/2012, s. 17.]

ID.A.00 Identity of directors, senior management and advisors (i.e persons responsible for the information disclosed)

A.01 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.02.

A.02 A declaration in the following form—

The directors of the issuer, whose names appear on page [], of the listing statement accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.03 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the listing statement has been attributed.

ID.B.00 Offer statistics and expected timetable

B.01 (1) A statement that the Securities Exchange has approved listing of the shares on the Growth Enterprise Market Segment of the securities exchange.

(2) Cautionary statement of the Exchange.

B.02 The proposed listing price and the basis of determining the price.

B.03 The total amount of the securities to be listed.

ID.C.00 Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last two years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under that legislation.

C.05 A description of the issuer's principal objects and reference to the clause(s) of the memorandum of association in which they are described.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not less than five working days from the date of the listing statement, at a named place as the Securities Exchange may agree, the following documents (or copies thereof), where applicable, could be inspected—

- (a) the memorandum and articles of association of the issuer;
- (b) any trust deed of the issuer or of its subsidiary companies which is referred to in the listing statement;
- (c) each document mentioned in paragraphs C.18 (material contracts) and E.10 (directors' service contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (d) copies of service agreements with managers or secretary/ies, underwriting, vendors' and promoters' agreements entered into during the last two financial years;
- (e) in the case of an issue of shares in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a takeover offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual accounts (as appropriate);
- (f) the latest competent person's report, in the case of a mineral company;
- (g) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;
- (h) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the listing statement;
- (i) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountants' report in accordance with paragraph G.04 and giving the reasons therefor; and

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- (j) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for at least one year (two years, if the issuer has been in existence for such a period) preceding the publication of the listing statement, including, in the case of a company incorporated in Kenya, all notes, reports or information required under the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.18 (material contracts), a translation of a summary of such document may be made available for inspection, if the securities exchange so requires.

C.09 The amount of the issuer's authorized and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 Where the issuer has authorized but un issued capital or is committed to increase the capital, an indication of—

- (a) the amount of such authorized capital or capital increase and, where appropriate, the duration of the authorization;
- (b) the categories of persons having preferential subscription rights for such additional portions of capital; and
- (c) the terms and arrangements for the share issue corresponding to such portions.

C.11 If the issuer has shares not representing capital—

- (a) the number and main characteristics of such shares;
- (b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and
- (c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

C.12 A summary of the provisions of the issuer's memorandum and articles of association regarding changes in the capital and in the respective rights of the various classes of securities.

C.13 If an issuer has been in operation, a summary of the changes during the preceding one financial year in the amount of the issued capital of the issuer and, if material, the capital of any member of the group or the number and classes of securities of which it is composed. Intra group issues by partly owned subsidiaries and changes in the capital structure of subsidiaries which have remained wholly owned throughout the period may be disregarded. Such summary must also state the price and terms granted and (if not already fully paid) the dates when any installments are in arrears. If any asset has been acquired or is to be acquired out of the proceeds of the issue, its value must be stated. If there are no such issues, an appropriate negative statement must be made.

C.14 The names of the persons so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons.

For these purposes, joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer.

C.15 Details of any change in controlling shareholder(s) as a result of the issue.

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C.16 The history of any change in the controlling shareholder(s) and trading objectives of the issuer and its subsidiaries during the previous financial year.

A statement of the new trading objectives and the manner in which the new objectives will be implemented. If the issuer or the group, as the case may be, carries on widely differing operations, a statement showing the contributions of such respective differing operations to its trading results.

The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar.

C.17 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.18 A summary of the principal contents of—

- (a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the year immediately preceding the publication of the listing statement, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last year in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and
- (b) any contractual arrangement with a controlling shareholder required to ensure that the company is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.19 If any contract referred to in paragraph C.18 relates to the acquisition of securities in an unlisted subsidiary, or associate company where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associate companies, or its subsidiaries is interested and to what extent.

C.20 Details of the name of any promoter of any member of the group and the amount of any cash, securities or benefits paid, issued or given within the year immediately preceding the date of publication of the listing statement, or proposed to be paid, issued or given to any such promoter in his capacity as a promoter and the consideration for such payment, issue or benefit. Where the interest of such promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such promoter's interest in the partnership, company, syndicate or other association.

C.21 A statement of all sums paid or agreed to be paid within the year immediately preceding the date of publication of the listing statement, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the issuer.

C.22 Where securities are issued in connection with any merger, division of a company, takeover offer, acquisition of an undertaking's assets and liabilities or transfer of assets—

- (a) a statement of the aggregate value of the consideration for the transaction and how it was or is to be satisfied;

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- (b) If the total emoluments receivable by the directors of the issuer will be varied in consequence of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect; and
- (c) if the business of the issuer or any of its subsidiaries or any part thereof is managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

C.23 A description of the group's principal activities, stating the main category of products sold or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.24 For the business(es) described in paragraph C.23 above, the degree of any government protection and of any investment encouragement law affecting the business(es).

C.25 Information on any significant new products or activities.

C.26 Particulars of royalties payable or items of a similar nature in respect of the issuer and any of its subsidiaries.

C.27 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous four months) a significant effect on the group's financial position or an appropriate negative statement.

C.28 Information on any interruptions in the group's business which may have or have had during the recent past (covering at least the previous four months) a significant effect on the group's financial position.

C.29 A description, with figures, of the main investments made, including interests such as shares, debt securities etc., in other undertakings over the last financial year and during the current financial year.

C.30 Information concerning the principal investments (including new plant, factories and research and development) during the current financial year being made, with the exception of interests being acquired in other undertakings, including—

- (a) the geographical distribution of these investments; and
- (b) the method of financing such investments.

C.31 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuers directors have already made firm commitments.

C.32 Information concerning policy on the research and development of new products and processes over the past two financial years, where significant.

C.33 The basis for any statements made by the company regarding its competitive position shall be disclosed.

ID.D.00 Operating and financial review and listing statements (the recent development and prospects of the group)

D.01 Unless otherwise approved by a securities exchange in exceptional circumstances and with the approval of the Authority:

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If the issuer had declared annual accounts in the past—

- (a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, if the issuer has published annual accounts in the past, and in particular—
 - (i) the most significant recent trends in production, sales and stocks and the state of the order book; and
 - (ii) recent trends in costs and selling prices; and
- (b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the listing statement and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry and make an offering speculative or on high risk in a section headed "Risk Factors".

D.03 Describe the—

- (a) extent to which the financial statements disclose material changes in net revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services;
- (b) impact of inflation if material - if the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a history of the annual rate of inflation covering the period, and discussion of the impact of the hyperinflation on the issuer's business shall be disclosed;
- (c) impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by the currency borrowing and other hedging instruments; and
- (d) impact of any material governmental factors that have materially affected or could materially affect, directly or indirectly the issuer's operations or investments by the host country shareholders.

D.04 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out. There must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.05 The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00 Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

- (a) directors, alternate and proposed directors of the issuer and each of its subsidiaries, including details of other directorships;

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- (b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and
- (c) founders, if the issuer has been established as a family business or has been in existence for fewer than five years and the nature of family relationship, if any; and
- (d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty four months following the issue and listing of the security or appropriate negative statement.

E.02 A description of other relevant business interests and activities of every such person as is mentioned in paragraph E.01 and, if required by the securities exchange particulars of any former forename or surname of such persons.

E.03 In the case of a foreign issuer, information similar to that described in E.01 and E.02 above, relative to the local management if any. Where the securities exchange considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.04 The total aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by any member of the group during the last completed financial year under any description whatsoever.

E.05 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 5% of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the listing statement, or if there has been no such change, disclosure of that fact.

E.06 All relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during—

- (a) the current or immediately preceding financial year; or
- (b) an earlier financial year and remain in any respect outstanding or unperformed; or
- (c) an appropriate negative statement.

E.07 The total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.

E.08 Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments in force at the date of the listing statement.

E.09 An estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the listing statement.

E.10 Details of existing or proposed directors' service contracts (excluding contracts previously made available for inspection in accordance with paragraph C.07 and not subsequently varied); such details to include the matters specified in paragraphs (a) to (g) below or an appropriate negative statement—

- (a) the name of the employing company;
- (b) the date of the contract, the un-expired term and details of any notice periods;

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- (c) full particulars of the director's remuneration including salary and other benefits;
- (d) any commission or profit sharing arrangements;
- (e) any provision for compensation payable upon early termination of the contract;
- (f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract; and
- (g) details relating to restrictions prohibiting the director, or any person acting on his behalf or connected to him, from any dealing in securities of the company during a close period or at a time when the director is in possession of unpublished price sensitive information in relation to those securities.

E.11 A summary of the provisions of the constitution documents of the issuer regarding—

- (a) any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested;
- (b) any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; and
- (c) retirement or non-retirement of directors under an age limit.

E.12 Any arrangement or understanding with major security holders, customers, suppliers or others, pursuant to which any person referred to in E.01 above, was selected as a director or member of senior management.

E.13 Details relating to the issuer's audit committee, remuneration committee and nomination committee including the names of committee members and a summary of the terms of reference under which the committees operate.

ID.F.00 Major shareholders and related party transactions

F.01 The following information shall be provided regarding the issuer's major security holders, which means security holders that are the beneficial owners of at least three per cent or more of each class of the issuer's voting securities—

- (a) provide the names of the major security holders, and the number of securities and the percentage of outstanding securities of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major security holders;
- (b) disclose any significant change in the percentage ownership held by any major security holders during the past year; and
- (c) indicate whether the issuer's major security holders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of security holders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by any other corporation, foreign government or any other natural or legal person severally or jointly, and, if so, give the name of such controlling corporation, government or other person, and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

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F.05 In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in 3% per cent or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide the information required on (a) and (b) below for the period since the beginning of the issuer's preceding five financial years up to the date of the Information Memorandum, with respect to transactions or loans between the issuer and—

- (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;
- (b) associates;
- (c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;
- (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individuals' families; and
- (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major security holders of the issuer and enterprises that have a number of key management in common with the issuer. Shareholders beneficially owning a 3% interest in the voting power of the issuer are presumed to have a significant influence on the issuer including—
 - (i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiary(ies) was a party; and
 - (ii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above.

The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan, the transaction in which it was incurred, and the interest rate on the loan.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the listing statement, a statement that it is included, in the form and context in which it is included, with the written the form and context in which it is included, with the written consent of that person, who has authorized the contents of that part of the listing statement, and has not withdrawn his consent.

F.09 If any of the named experts employed on a contingent basis, owns an amount of securities in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the listing, provide a brief description of the nature and terms of such contingency or interest.

F.10 Provide a copy of the share register to the securities exchange.

ID.G.00 Financial information

G.01 Financial information as required by paragraphs G.11 and G.12 set out in the form of an accountants' report.

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G.02 If applicable, an accountants' report, as set out in paragraphs G.11 and G.12 on the asset which is the subject of the transaction.

G.03 (1) If the issuer prepares consolidated annual accounts only, it must include those accounts in the listing statement in accordance with paragraph G.01.

(2) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the listing statement in accordance with paragraph G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts with the approval of the securities exchange and such accounts shall be available for inspection in accordance with paragraph C. 07.

G.04 (1) Where the issuer includes its annual accounts in the listing statement, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last one financial year.

(2) Where the issuer includes consolidated annual accounts in the listing statement, it must state the consolidated profit or loss per share for each of the preceding financial year; this information must appear in addition to that provided in accordance with (1) above where the issuer also includes its own annual accounts in the listing statement.

G.05 If, in the course of the preceding financial year, the number of shares in the issuer has changed as a result, for example, of an increase in or reduction or re-organisation of capital, the profit or loss per share referred to in paragraph G.07 must be adjusted to make them comparable; in that event the basis of adjustment used must be disclosed.

G.06 Particulars of the dividend policy to be adopted—

- (a) the dividend policy to be adopted;
- (b) the *pro-forma* balance sheet prior to and immediately after the proposed issue of securities;
- (c) the effect of the proposed issue of securities on the net asset value per share.

The above particulars must be prepared and presented in accordance with IAS. If the issuer is a holding company, the information must be prepared in a consolidated form.

G.07 The amount of the total dividends, the dividend per share and the dividend cover for each of the last financial year, adjusted, if necessary, to make it comparable in accordance with paragraph G.05.

G.09 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.10 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.11 A table showing the changes in financial position of the group over each of the last one financial year in the form of a cash-flow statement.

G.12 (1) Information in respect of the matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses—

- (a) the name and address of the registered office;

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- (b) the field of activity;
- (c) the proportion of capital held;
- (d) the issued capital;
- (e) the reserves;
- (f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;
- (g) the value at which the issuer shows in its accounts the interest held;
- (h) any amount still to be paid up on securities held;
- (i) the amount of dividends received in the course of the last financial year in respect of shares held; and
- (j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 20% of the capital and reserves of the issuer or if that interest accounts for at least twenty per cent of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least twenty per cent of the consolidated net assets or at least twenty per cent of the consolidated net profit or loss of the group.

(3) The information required by (l)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or, with the exception of 1(i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the securities exchange, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

G.13 The name, registered office and proportion of capital held in respect of each undertaking not failing to be disclosed under paragraph G.12(1) or (2) in which the issuer holds at least twenty per centum of the capital. These details may be omitted when they are of negligible importance for the purpose of enabling investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or group and of the rights attaching to the securities to be listed.

G.14 When the listing statement includes consolidated annual accounts, disclosure—

- (a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with International Financial Reporting Standards (IFRS));
- (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.12; and
- (c) for each of the undertakings referred to in (b) above—
 - (i) the total proportion of third-party interests, if annual accounts are wholly consolidated; or
 - (ii) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a *pro rata* basis.

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G.15 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

G.16 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the listing statement of the following, if material—

- (a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;
- (b) the circumstances, if applicable, under which the borrowing powers have been exceeded during the past three years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;
- (c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but unissued, and term loans, distinguishing between loans guaranteed, un-guaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;
- (d) all off-balance sheet financing by the issuer and any of its subsidiaries;
- (e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, un-guaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases;
- (f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or
- (g) how the borrowings required to be disclosed under paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities described in (1) above; As a general rule, no account shall be taken of liabilities or guarantees between undertakings within same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable —

- (a) the names of the lenders if not debenture holders;
- (b) the amount, terms and conditions of repayment or renewal;
- (c) the rates of interest payable on each item;
- (d) details of the security, if any;
- (e) details of conversion rights; and
- (f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed.

(4) The principles set out in paragraph G.06 shall apply where the issuer prepares consolidated annual accounts under this paragraph.

G.17 Details of material loans by the issuer or by any of its subsidiaries stating—

- (a) the date of the loan;
- (b) to whom made;
- (c) the rate of interest;
- (d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;
- (e) the period of the loan;

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- (f) the security held;
- (g) the value of such security and the method of valuation;
- (h) if the loan is unsecured, the reasons therefor; and
- (i) if the loan was made to another company, the names and addresses of the directors of such company.

G.18 Details as described in paragraph G.17 above of loans made or security furnished by the issuer or by any of its subsidiaries for the benefit of any director or manager or any associate of any director or manager.

G.19 Disclose how the loans receivable arose, stating whether they arose from the sale of assets by the issuer or any of its subsidiaries.

G.20 A statement that in the opinion of the directors, the issued capital of the issuer is adequate for the purposes of the business of the issuer and of its subsidiaries for the foreseeable future, and if the directors are of the opinion that it is inadequate; the extent of the inadequacy and the manner in which and the sources from which the issuer and its subsidiaries are to be financed. The statement should be supported by a report from the issuer's auditor, reporting accountant, investment banker, sponsoring stockbroker or other adviser acceptable to the Authority.

The foreseeable future should normally be construed as the nine months subsequent to the date of the publication of the listing statement.

G.21 The issuer shall make the following information regarding the acquisition, within the last year, or proposed acquisition by the issuer or any of its subsidiaries, of any securities in or the business undertaking of any other company or business enterprise or any immovable property or other property in the nature of a fixed asset (collectively called "the property") or any option to acquire such property shall be disclosed—

- (a) the date of any such acquisition or proposed acquisitions;
- (b) the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;
- (c) details of the valuation of the property;
- (d) any goodwill paid and how such goodwill was or is to be accounted for;
- (e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;
- (f) the nature of title or interest acquired or to be acquired; and
- (g) details regarding the vendors as described in paragraph I.O.

G.22 The following details regarding any property disposed of during the past year, or to be disposed of, by the issuer, or any of its subsidiaries—

- (a) the dates of any such disposal or proposed disposal;
- (b) the consideration received, detailing that settled by the receipt of securities or cash or by any other means and detailing how any outstanding consideration is to be settled;
- (c) details of the valuation of the property; and
- (d) the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial shareholders of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

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Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the mean exchange rate designated by the Central Bank of Kenya for this purpose, if any—

- (a) at the latest practicable date;
- (b) the high and low exchange rates for each month during the preceding twelve months; and
- (c) for the most recent financial year and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

ID.H.00 The listing

H.01 A statement of the resolutions, authorizations and approvals by virtue of which the securities are to be listed.

H.02 The nature and amount of the securities to be listed.

H.03 (1) A summary of the rights attaching to the securities, and in particular the extent of the voting rights, entitlement to share in the profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one class of shares of the issuer in issue, like details must be given for each class.

(2) If the rights evidenced by the securities being listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed.

(3) The time limit (if any) after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates.

H.04 A statement regarding tax on the income from the shares withheld at source—

- (a) in the country of origin; and
- (b) in Kenya.

H.05 The fixed date(s) (if any) on which entitlement to dividends arises.

H.06 Details of any other securities exchanges (if any) where admission to listing is being or will be sought.

H.07 The following information must be given concerning the terms and conditions of the listing at a securities exchange where such listing is being effected at the same time as the subject listing or has been effected within the three months preceding application of the subject listing—

- (a) if the listing has been or is being made simultaneously on the markets of two or more countries—
 - (i) the listing price, stating the nominal value or, in its absence, the accounting par value; and
 - (ii) the share premium;
- (b) the period during which the listing statement will be available prior to the admission to listing and the names of the agents where the listing statement may be accessed;
- (c) a statement or estimate of the overall amount of the charges relating to the listing payable by the issuer, stating the total remuneration of the financial intermediaries

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H.9 A description of the securities for which application is made and, in particular, the number of securities and nominal value per security or, in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.

H.10 The securities exchange at which the securities will be listed and the dates on which the securities will be admitted to listing and on which dealings will commence.

H.11 The names of the securities exchanges (if any) on which securities of the same class are already listed.

H. 12 If during the period covered by the last financial year and the current financial year, there has occurred any public takeover offer by a third party in respect of the issuer's shares, or any public takeover offer by the issuer in respect of another company's shares, a statement to that effect and a statement of the price or exchange terms attaching to any such offers and the outcome thereof.

H.13 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.14 Where there is a substantial disparity between the listing price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison between that offer price and the listing price.

H.15 Disclose the amount and percentage of immediate dilution resulting from the listing, computed as the difference between the listing price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

H.16 The following information on expenses shall be provided—

- (a) the total amount of the discounts or commissions agreed upon by the financial intermediaries and the issuer shall be disclosed, as well as the percentage such commissions represent of the total amount of the listing costs per share;
- (b) an itemised statement of the major categories of expenses incurred in connection with the listing and by whom the expenses are payable, if other than the issuer. The following expenses shall be disclosed separately—
 - (i) advertisement;
 - (ii) printing of listing statement;
 - (iii) approval and listing fees;
 - (iv) financial advisory fees; and
 - (v) the legal fees;

The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given; and

- (c) a statement or estimate of the overall amount, percentage and amount per share of the charges relating to the listing are payable by the issuer, stating the total remuneration of the intermediaries.

ID.I.00 Vendors

I.01 The names and addresses of the vendors of any assets purchased or acquired by the issuer or any subsidiary company during the year preceding the publication of the Information Memorandum or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid or payable to each vendor, and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them if within the preceding five financial years. Where

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the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of the company, if required by the Authority. Where this information is unobtainable, the reasons therefor are to be stated.

I.02 State whether or not the vendors have given any indemnities, guarantees or warranties.

I.03 State whether the vendors' agreements preclude the vendors from carrying on business in competition with the issuer or any of its subsidiaries, or impose any other restriction on the vendor, and disclose details of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.

I.04 State how any liability for accrued taxation, or any apportionment, thereof to the date of acquisition, will be settled in terms of the vendors' agreements.

I.05 Where securities are purchased in a subsidiary company, reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in companies other than subsidiary companies, a statement as to how the value of the securities was arrived at.

I.06 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

I.07 The amount of any cash or securities paid or benefit given within the preceding year or proposed to be paid or given to any promoter not being a director, and the consideration for such payment or benefit.

I.08 State whether the assets acquired have been transferred into the name of the issuer or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

PART D – DISCLOSURE REQUIREMENTS FOR LISTING BY INTRODUCTION

[Regulation 10(1)(d), L.N. 30/2008, s. 13.]

ID.A.00. Directors and advisors

A.01 A declaration in the following form:

The directors of [the issuer], whose names appear on page [] of the Information Memorandum, accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.02 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.01

A.03 The names, addresses and qualifications of the auditors who have audited the issuer's annual accounts in accordance with International Financial Reporting Standards (IFRS) for the last three financial years.

A.04 If auditors have resigned, have been removed or have not been re-appointed during the last three financial years and have deposited a statement with the issuer of circumstances which they believe should be brought to the attention of members and creditors of the issuer, details of such matters must be disclosed.

A.05 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the Information Memorandum has been attributed.

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ID.B.00. Listing Statistics

B.01 (1) A statement that the Authority has approved the listing of the securities on the relevant market segment of a securities exchange.

(2) Cautionary statement of the Authority.

B.02 A statement that a copy of the Information Memorandum has been delivered to the Registrar.

B.03 The proposed listing price and the basis of determining the price.

B.04 The total amount of the securities to be listed.

ID.C.00. Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last five years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under that legislation.

C.05 A description of the issuer's principal objects with reference to its constitution documents.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not more than fourteen days before the date of listing and until fourteen days after the date of listing, at a named place as the Authority may agree, the following documents (or copies thereof), where applicable, could be inspected—

- (a) the Information Memorandum;
- (b) the constitution documents of the issuer;
- (c) any trust deed of the issuer or of its subsidiary undertakings which is referred to in the Information Memorandum;
- (d) each document mentioned in paragraphs C.17 (material contracts) and E.11 (directors' service contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (e) copies of service agreements with managers or secretary/ies; underwriting, vendors' and promoters' agreements entered into during the last two financial years;
- (f) in the case of a listing in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a takeover offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual accounts (as appropriate);
- (g) the latest competent person's report, in the case of a mineral company;
- (h) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;
- (i) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the Information Memorandum;

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- (j) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountants' report pursuant to paragraph G.04 and giving the reasons therefore; and
- (k) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the five financial years preceding the publication of the Information Memorandum, including, in the case of a company incorporated in Kenya, all notes, reports or information required by the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.17 (material contracts), a translation of a summary of such document may be made available for inspection, if the Authority so requires.

C.09 The amount of the issuer's authorised and issued capital, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 Where the issuer has authorised but un-issued capital or is committed to increase the capital, an indication of—

- (a) the amount of such authorised capital or capital increase and, where appropriate, the duration of the authorisation;
- (b) the categories of persons having preferential subscription rights for such additional portions of capital; and
- (c) the terms and arrangements for the share issue corresponding to such portions.

C.11 If the issuer has shares not representing capital—

- (a) the number and main characteristics of such shares;
- (b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and
- (c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

C.12 A summary of the provisions of the issuer's constitution documents regarding the respective rights of the various classes of securities.

C.13 A summary of the changes during the three preceding years in the amount of the issued capital of the issuer and, if material, the capital of any member of the group and/or the number and classes of securities of which it is composed. Intra group issues by partly owned subsidiaries and changes in the capital structure of subsidiaries which have remained wholly owned throughout the period may be disregarded. Such summary must also state the price and terms granted and (if not already fully paid) the dates when any instalments are in arrears.

C.14 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer.

C.15 The history of any change in the controlling shareholder(s) and trading objectives of the issuer and its subsidiaries during the previous two financial years. A statement of the new trading objectives and the manner in which the new objects will be

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implemented. If the issuer or the group, as the case may be, carries on widely differing operations, a statement showing the contributions of such respective differing operations to its trading results. The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar.

C.16 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name of and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.17 A summary of the principal contents of—

- (a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the Information Memorandum, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last two years in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and
- (b) any contractual arrangement with a controlling shareholder required to ensure that the company is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.18 If any contract referred to in paragraph C.17 relates to the acquisition of securities in an unlisted subsidiary, or associate company, where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associate companies, or its subsidiaries is interested and to what extent.

C.19 Details of the name of any promoter of any member of the group and the amount of any cash, securities or benefits paid, issued or given within the three years immediately preceding the date of publication of the Information Memorandum, or proposed to be paid, issued or given to any such promoter in his capacity as a promoter and the consideration for such payment, issue or benefit. Where the interest of such promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such promoter's interest in the partnership, company, syndicate or other association.

C.20 A statement of all sums paid or agreed to be paid within the three years immediately preceding the date of publication of the Information Memorandum, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the issuer.

C.21 Where securities are listed in connection with any merger, division of a company, takeover offer, acquisition of an undertaking's assets and liabilities or transfer of assets—

- (a) a statement of the aggregate value of the consideration for the transaction and how it was or is to be satisfied;
- (b) if the total emoluments receivable by the directors of the issuer will be varied in consequence of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect; and

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- (c) if the business of the issuer or any of its subsidiaries or any part thereof is managed or is proposed to be managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

C.22 A description of the group's principal activities, stating the main categories of products sold and/or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.23 For the business described in paragraph C.22 above, the degree of any government protection and of any investment encouragement law affecting the business.

C.24 Information on any significant new products and/or activities.

C.25 A breakdown of net turnover during the last five financial years by categories of activity and into geographical markets in so far as such categories and markets differ substantially from one another, taking account of the manner in which the sale of products and the provision of services falling within the group's ordinary activities are organised.

C.26 The location, size and tenure of the group's principal establishments and summary information about land or buildings owned or leased. Any establishment which accounts for more than ten *per centum* of net turnover or production shall be considered a principal establishment.

C.27 Details of any material changes in the business of the issuer during the past five years.

C.28 Where the information given pursuant to paragraphs C.22 to C.27 has been influenced by exceptional factors, that fact must be mentioned.

C.29 Summary of information on the extent to which the group is dependent, if at all, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes, where such factors are of fundamental importance to the group's business or profitability.

C.30 Particulars of royalties payable or items of a similar nature in respect of the issuer and any of its subsidiaries.

C.31 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous nine months) a significant effect on the group's financial position or an appropriate negative statement.

C.32 Information on any interruptions in the group's business which may have or have had during the recent past (covering at least the previous nine months) a significant effect on the group's financial position.

C.33 A description, with figures, of the main investments made, including interests such as shares, debt securities etc., in other undertakings over the last five financial years and during the current financial year.

C.34 Information concerning the principal investments (including new plant, factories and research and development) during the current financial year being made, with the exception of interests being acquired in other undertaking, including—

- (a) the geographical distribution of these investments; and
- (b) the method of financing such investments.

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C.35 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuer's directors have already made firm commitments.

C.36 Information concerning policy on the research and development of new products and processes over the past three financial years, where significant.

C.37 The basis for any statements made by the issuer regarding its competitive position shall be disclosed.

ID.D.00. Operating and financial review (the recent development and prospects of the group)

D.01 Unless otherwise approved by the Authority in exceptional circumstances—

- (a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular—
 - (i) the most significant recent trends in production, sales, stocks and the state of the order book; and
 - (ii) recent trends in costs and selling prices; and
- (b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the Information Memorandum and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry in a section headed "Risk Factors" and highlight those that make the security speculative or high risk.

D.03 Describe—

- (a) the extent to which the financial statements disclose material changes in net revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or service;
- (b) the impact of inflation if material - if the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and discussion of the impact of the hyperinflation on the issuer's business shall be disclosed;
- (c) the impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by the currency borrowing and other hedging instruments; and
- (d) the impact of any governmental factors that have materially affected or could materially affect, directly or indirectly, the issuer's operations or investments by the host country shareholders.

D.04 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out. There must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.05 The opinion of the directors, stating the grounds therefore, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00. Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

- (a) directors, alternate and proposed directors of the issuer and each of its subsidiaries including details of other directorships;
- (b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and
- (c) founders, if the issuer has been established as a family business or in existence for fewer than five years and the nature of family relationship, if any;
- (d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty four months following the listing of the security or appropriate negative statement.

E.02 A description of other relevant business interests and activities of every such person as is mentioned in paragraph E.01 and, if required by the Authority particulars of any former forename or surname of such persons.

E.03 In the case of a foreign issuer, information similar to that described in E.01 and E.02 above, relative to the local management, if any. Where the Authority considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.04 The total aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by any member of the group during the last two completed financial years under any description whatsoever.

E.05 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of three *per centum* of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the Information Memorandum, or if there has been no such change, disclosure of that fact.

E.06 All relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during—

- (a) the current or immediately preceding financial year; or
- (b) an earlier financial year and remain in any respect outstanding or unperformed;

or an appropriate negative statement.

E.07 The total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.

E.08 Details of any schemes for involving the staff in the capital of any member of the group.

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E.09 Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments which occurred during the past financial year and particulars of waivers in force at the date of the Information Memorandum.

E.10 An estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the listing Information Memorandum.

E.11 Details of existing or proposed directors' service contracts (excluding contracts previously made available for inspection in accordance with paragraph C.07 and not subsequently varied); such details to include the matters specified in paragraph (a) to (g) below or an appropriate negative statement—

- (a) the name of the employing company;
- (b) the date of the contract, the unexpired term and details of any notice periods;
- (c) full particulars of the director's remuneration including salary and other benefits;
- (d) any commission or profit sharing arrangements;
- (e) any provision for compensation payable upon early termination of the contract;
- (f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract; and
- (g) details relating to restrictions prohibiting the director, or any person acting on his behalf or connected to him, from any dealing in securities of the company during a close period or at a time when the Director is in possession of unpublished price sensitive information in relation to those securities.

E.12 A summary of the provisions of the constitution documents of the issuer regarding—

- (a) any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested;
- (b) any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; and
- (c) retirement or non-retirement of directors under an age limit.

E.13 Any arrangement or understanding with major security holders, customers, suppliers or others, pursuant to which any person referred to in E.01 above, was selected as a director or member of senior management.

E.14 The average numbers of employees and changes therein over the last five financial years (if such changes are material), with, if possible, a breakdown of persons employed by main categories of activity.

E.15 Details relating to the issuer's audit committee, remuneration committee and nomination committee including the names of committee members and a summary of the terms of reference under which the committees operate.

ID.F.00. Major security holders and related party transactions

F.01 The following information shall be provided regarding the issuer's major security holders, which means security holders that are the beneficial owners of at least three per centum or more of each class of the issuer's voting securities—

- (a) provide the names of the major security holders, and the number of securities and the percentage of outstanding securities of each class owned by each of

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them as of the most recent practicable date, or an appropriate negative statement if there are no major security holders;

- (b) disclose any significant change in the percentage ownership held by any major security holders during the past three years; and
- (c) indicate whether the issuer's major security holders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of security holders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by any other corporation, foreign government or any other natural or legal person severally or jointly, and, if so, give the name of such controlling corporation, government or other person, and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in ten *per centum* or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide the information required on (a) and (b) below for the period since the beginning of the issuer's preceding five financial years up to the date of the Information Memorandum, with respect to transactions or loans between the issuer and—

- (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;
- (b) associates;
- (c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;
- (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individuals' families; and
- (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major security holders of the issuer and enterprises that have a number of key management in common with the issuer. Security holders beneficially owning a ten *per centum* interest in the voting power of the issuer are presumed to have a significant influence on the issuer including—
 - (i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiary(ies) was a party; and
 - (ii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above.

The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan, the transaction in which it was incurred, and the interest rate on the loan.

F.07 Full information of any material inter-company finance.

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F.08 Where a statement or report attributed to a person as an expert is included in the Information Memorandum, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of the Information Memorandum, and has not withdrawn his consent.

F.09 If any of the named experts employed on a contingent basis, owns an amount of securities in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the listing, provide a brief description of the nature and terms of such contingency or interest.

F.10 Provide a copy of the share register to the Authority.

ID.G.00. Financial information

G.01 A statement that the annual accounts of the issuer for the last five financial years have been audited. If audit reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and the reasons given.

G.02 A statement of what other information in the Information Memorandum has been audited by the auditors.

G.03 Financial information as required by paragraphs G.14 and G.15 set out in the form of a comparative table together with any subsequent interim financial statements if available.

G.04 Financial information as required by paragraphs G.14 and G.15 set out in the form of an accountants' report.

G.05 If applicable, an accountants' report, as set out in paragraphs G.14 and G.15 on the asset which is the subject of the transaction.

G.06 (1) If the issuer prepares consolidated annual accounts only, it must include those accounts in the Information Memorandum in accordance with paragraph G.03 or G.04.

(2) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the Information Memorandum in accordance with paragraph G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts with the approval of the Authority and such accounts shall be available for inspection in accordance with paragraph C.07.

G.07 (1) Where the issuer includes its annual accounts in the Information Memorandum, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last five financial years.

(2) Where the issuer includes consolidated annual accounts in the Information Memorandum, it must state the consolidated profit or loss per share for each of the last five financial years; this information must appear in addition to that provided in accordance with (1) above where the issuer also includes its own annual accounts in the Information Memorandum.

G.08 If, in the course of the last five financial years, the number of shares in the issuer has changed as a result, for example, of an increase in or reduction or reorganisation of capital, the profit or loss per share referred to in paragraph G.07 must be adjusted to make them comparable; in that event the basis of adjustment used must be disclosed.

G.09 Particulars of the dividend policy to be adopted.

G.10 The amount of the total dividends, the dividend per share and the dividend cover for each of the last two financial years, adjusted, if necessary, to make it comparable in accordance with paragraph G.08.

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G.11 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.12 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.13 A table showing the changes in financial position of the group over each of the last five financial years in the form of a cash-flow statement.

G.14 (1) Information in respect of the matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses—

- (a) the name and address of the registered office;
- (b) the field of activity;
- (c) the proportion of capital held;
- (d) the issued capital;
- (e) the reserves;
- (f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;
- (g) the value at which the issuer shows in its accounts the interest held;
- (h) any amount still to be paid up on securities held;
- (i) the amount of dividends received in the course of the last financial year in respect of shares held; and
- (j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least twenty *per centum* of the capital and reserves of the issuer or if that interest accounts for at least twenty *per centum* of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least twenty *per centum* of the consolidated net assets or at least twenty *per centum* of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or, with the exception of 1(i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the Authority, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

G.15 The name, registered office and proportion of capital held in respect of each undertaking not disclosed under paragraph G.15(1) or (2) in which the issuer holds at least twenty *per centum* of the capital. These details may be omitted when they are of negligible importance for the purpose of enabling investors and their investment advisers

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to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or group and of the rights attaching to the securities to be listed.

G.16 When the Information Memorandum includes consolidated annual accounts, disclosure—

- (a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with International Financial Reporting Standards (IFRS));
- (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.15; and
- (c) for each of the undertakings referred to in (b) above—
 - (i) the total proportion of third-party interests, if annual accounts are wholly consolidated; or
 - (ii) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis.

G.17 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

G.18 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the Information Memorandum) of the following, if material—

- (a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;
- (b) the circumstances, if applicable, under which the borrowing powers have been exceeded during the past three years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;
- (c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but un-issued, and term loans, distinguishing between loans guaranteed, un-guaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;
- (d) all off-balance sheet financing by the issuer and any of its subsidiaries;
- (e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, un-guaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases;
- (f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or
- (g) how the borrowings required to be disclosed under paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities described in (1) above; As a general rule, no account shall be taken of liabilities or guarantees between undertakings within the same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

- (a) the names of the lenders if not debenture holders;
- (b) the amount, terms and conditions of repayment or renewal;
- (c) the rates of interest payable on each item;
- (d) details of the security, if any;
- (e) details of conversion rights; and
- (f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed.

(4) If the issuer prepares consolidated annual accounts, the principles laid down in paragraph G.06 apply to the information set out in this paragraph G.18.

G.19 Details of material loans by the issuer or by any of its subsidiaries stating—

- (a) the date of the loan;
- (b) to whom made;
- (c) the rate of interest;
- (d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;
- (e) the period of the loan;
- (f) the security held;
- (g) the value of such security and the method of valuation;
- (h) if the loan is unsecured, the reasons therefor; and
- (i) if the loan was made to another company, the names and addresses of the directors of such company.

G.20 Details as described in paragraph G.19 above of loans made or security furnished by the issuer or by any of its subsidiaries for the benefit of any director or manager or any associate of any director or manager.

G.21 Disclose how the loans receivable arose, stating whether they arose from the sale of assets by the issuer or any of its subsidiaries.

G.22 A statement that in the opinion of the directors, the issued capital of the issuer is adequate for the purposes of the business of the issuer and of its subsidiaries for the foreseeable future, and if the directors are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the issuer and its subsidiaries are to be financed. The statement should be supported by a report from the issuer's auditor, reporting accountant, investment banker, sponsoring stockbroker or other adviser acceptable to the Authority.

The foreseeable future should normally be construed as the nine months subsequent to the date of the publication of the Information Memorandum.

G.23 The following information regarding the acquisition, within the last five years, or proposed acquisition by the issuer or any of its subsidiaries, of any securities in or the business undertaking of any other company or business enterprise or any immovable property or other property in the nature of a fixed asset (collectively called "the property") or any option to acquire such property shall be disclosed—

- (a) the date of any such acquisition or proposed acquisitions;
- (b) the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;
- (c) details of the valuation of the property;
- (d) any goodwill paid and how such goodwill was or is to be accounted for;

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- (e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;
- (f) the nature of title or interest acquired or to be acquired;
- (g) details regarding the vendors as described in paragraph I.01; and

G.24 The following details regarding any property disposed of during the past five years, or to be disposed of, by the issuer, or any of its subsidiaries—

- (a) the dates of any such disposal or proposed disposal;
- (b) the consideration received, detailing that settled by the receipt of securities or cash or by any other means and detailing how any outstanding consideration is to be settled;
- (c) details of the valuation of the property; and
- (d) the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial security holders of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

G.25 Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the mean exchange rate designated by the Central Bank of Kenya for this purpose, if any—

- (a) at the latest practicable date;
- (b) the high and low exchange rates for each month during the preceding twelve months; and
- (c) for the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

ID.H.00. Particulars of the listing

H.01 A statement of the resolutions, authorisations and approvals by virtue of which the securities are to be listed.

H.02 The nature and amount of the securities to be listed.

H.03 (1) A summary of the rights attaching to the securities, and in particular the extent of the voting rights, entitlement to share in the profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one class of shares of the issuer in issue, like details must be given for each class.

(2) If the rights evidenced by the securities being listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed.

(3) The time limit (if any) after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates.

H.04 A statement regarding tax on the income from the securities withheld at source—

- (a) in the country of origin; and
- (b) in Kenya.

H.05 The fixed date(s) (if any) on which entitlement to dividends arises.

H.06 Details of any other securities exchanges (if any) where admission to listing is being or will be sought.

H.07 The names and addresses of the issuer's registrar and paying agent(s) for the shares in any other country where admission to listing has taken place.

H.08 The following information must be given concerning the terms and conditions of the listing at a securities exchange where such listing is being effected at the same time as the subject listing or has been effected within the three months preceding application of the subject listing—

- (a) if the listing has been or is being made simultaneously on the markets of two or more countries—
 - (i) the listing price, stating the nominal value or, in its absence, the accounting par value; and
 - (ii) the share premium;
- (b) the period during which the Information Memorandum will be available prior to the admission to listing and the names of the agents where the Information Memorandum may be accessed;
- (c) a statement or estimate of the overall amount of the charges relating to the listing payable by the issuer, stating the total remuneration of the financial intermediaries.

H.09 A description of the securities for which application is made and, in particular, the number of securities and nominal value per security or, in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.

H.10 The securities exchange at which the securities will be listed and the dates on which the securities will be admitted to listing and on which dealings will commence.

H.11 The names of the securities exchanges (if any) on which securities of the same class are already listed.

H.12 If during the period covered by the last financial year and the current financial year, there has occurred any public takeover offer by a third party in respect of the issuer's shares, or any public takeover offer by the issuer in respect of another company's shares, a statement to that effect and a statement of the price or exchange terms attaching to any such offers and the outcome thereof.

H.13 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.14 Where there is a substantial disparity between the listing price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison between that offer price and the listing price.

H.15 Disclose the amount and percentage of immediate dilution resulting from the listing, computed as the difference between the listing price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

H.16 The following information on expenses shall be provided—

- (a) the total amount of the discounts or commissions agreed upon by the financial intermediaries and the issuer shall be disclosed, as well as the percentage such commissions represent of the total amount of the listing costs per share;
- (b) an itemised statement of the major categories of expenses incurred in connection with the listing and by whom the expenses are payable, if other than the issuer. The following expenses shall be disclosed separately—
 - (i) advertisement;

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- (ii) printing of Information Memorandum;
- (iii) approval and listing fees;
- (iv) financial advisory fees; and
- (v) legal fees;

the information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given; and

- (c) a statement or estimate of the overall amount, percentage and amount per share of the charges relating to the listing are payable by the issuer, stating the total remuneration of the intermediaries.

ID.1.00. Vendors

I.01 The names and addresses of the vendors of any assets purchased or acquired by the issuer or any subsidiary company during the five years preceding the publication of the Information Memorandum or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid or payable to each vendor, and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them if within the preceding five financial years. Where the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of the company, if required by the Authority. Where this information is unobtainable, the reasons therefor are to be stated.

I.02 State whether or not the vendors have given any indemnities, guarantees or warranties.

I.03 State whether the vendors' agreements preclude the vendors from carrying on business in competition with the issuer or any of its subsidiaries, or impose any other restriction on the vendor, and disclose details of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.

I.04 State how any liability for accrued taxation, or any apportionment, thereof to the date of acquisition, will be settled in terms of the vendors' agreements.

I.05 Where securities are purchased in a subsidiary company, a reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in companies other than subsidiary companies, a statement as to how the value of the securities was arrived at.

I.06 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

I.07 The amount of any cash or securities paid or benefit given within five preceding years or proposed to be paid or given to any promoter not being a director, and the consideration for such payment or benefit.

I.08 State whether the assets acquired have been transferred into the name of the issuer or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

FOURTH SCHEDULE

[Regulation 11.]

DISCLOSURE REQUIREMENTS FOR ADDITIONAL ISSUES (RIGHTS, SCRIP
DIVIDEND, CAPITALIZATION ISSUES AND OPEN OFFERS)

1. An issuer of securities to the public must ensure equality of treatment for all holders of such securities of the same class in respect of all rights attaching to such securities.
2. An issuer proposing to issue shares for cash may first offer those shares to existing shareholders in proportion to their existing holdings. Only to the extent that the securities are not taken up by such persons under the offer, may they then be issued for cash to others or otherwise than in the proportion to their existing holdings.
3. An issuer shall not issue shares which confer a controlling interest without prior approval of shareholders in general meeting through a special resolution.
4. An issuer intending to make an additional issue should make an announcement within twenty-four hours from the Board's resolution to recommend the additional issue to the shareholders and such announcement shall state that the issue is subject to the approval of the shareholders and the Authority.
5. (1) Where an issuer obtains a general approval from the shareholders to issue shares for purposes of acquisition and authorizes directors to issue such shares for that purpose, the directors shall disclose to the shareholders and the general public any acquisition involving such shares in which an existing shareholder has an interest, or where the shareholding percentage or structure of the existing shareholding will change as a result of such acquisition.

(2) Where as a result of such acquisition a shareholder by virtue of shares arising out of the acquisition is in a position to exercise control of an issuer, such acquisition shall only be carried out with a special resolution of the shareholders in general meeting notwithstanding the existence of the general provisions.
6. Where an issuer which has listed shares has received notification from its parent company that the parent company proposes to participate in future issues of shares by the issuer not made to existing shareholders in proportion to their existing holdings (in order to maintain its percentage shareholding in the issuer), such participation shall first be authorised by the shareholders in general meeting by special resolution and such authority shall be valid for a period of twelve months unless renewed by shareholders at another general meeting.
7. An issuer must obtain the consent of shareholders before any subsidiary company of the issuer makes any issue of shares for cash or transfer of existing shares of such subsidiary company so as to materially dilute the issuer's percentage interest in the shares of that subsidiary company. For the purposes of this paragraph and paragraph 5(1) above, a subsidiary company which represents 25% or more of the aggregate of the share capital and reserves or profits (after deducting all charges except taxation and excluding extraordinary items) of the group will be regarded as a major subsidiary company.
8. The obligation to obtain the consent of shareholders set out in paragraph 7 does not apply if the subsidiary company is itself listed and so must comply with paragraph 6. In such a case, the issuer must ensure that its equity interest in the subsidiary company is not materially diluted through any new cash issue or transfer of shares by such subsidiary company. In the case of rights issue, if the issuer does not propose to take up its rights, an arrangement must be made for the rights to be offered to its shareholders so that they can avoid a material dilution in their percentage equity interest.

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9. In a rights issue or open offer an issuer need not comply with paragraph (8) above with respect to—

- (a) securities representing fractional entitlements; or
- (b) securities which the directors of the issuer consider necessary or expedient to exclude from the offer on account of either legal problems under the laws of any territory or the requirements of a regulatory body, provided that the Authority's consent is obtained.

10. In relation to a rights issue in which shareholders are given the right to participate in proportion to the amount of existing shares, such rights shall allow for renunciability in part or in whole in favour of a third party at the option of the entitled shareholders.

11. In relation to rights issues the issuer shall fix the closing date for the receipt of applications for and acceptance of the new shares not later than thirty days after the books closing date.

12. An issuer shall issue to the persons entitled to a rights issue within ten days after a books closing date—

- (a) letter of entitlement of rights; and
- (b) provisional letter of allotment incorporating—
 - (i) form of acceptance;
 - (ii) request for splits;
 - (iii) form of renunciation; and
 - (iv) excess shares application form.

13. Except in the case of a rights issue to shareholders, no director of an issuer shall be given preferential allotment directly or indirectly in an issue of shares or other securities with rights of conversion to shares unless shareholders in general meeting have approved of the specific allotment to be made to such director.

The notice of meeting shall state—

- (a) the number of securities to be so allotted;
- (b) the precise terms and conditions of the issue; and
- (c) that such directors shall abstain from exercising any voting rights.

14. When shareholders are offered a specific entitlement in a new issue of shares, such entitlement must be on *pro rata* basis with no restrictions placed on the number of shares to be held before entitlements accrue.

15. Once the basis of the entitlement is declared the issuer shall not make any subsequent alterations to such entitlements.

16. (1) Where the shares for which application is being made are offered by way of rights, open offer or otherwise or allotted by way of capitalization of reserves or undistributed profits or scrip dividend to the existing shareholders, the application shall be lodged with the Authority at least ten days prior to the date of books closure.

(2) The Authority shall be at liberty to impose such conditions as it deems fit for the protection of existing shareholders and potential investors in approving the application.

(3) Where the shareholders resolutions have not been obtained, the Authority may approve the application subject to the approval of the shareholders.

17. (1) The issuer's application shall state—

- (a) the applicant's name and date, place and number of incorporation;

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- (b) the dates of resolutions passed by its board of directors and shareholders (where already obtained) furnish certified copies as required under the Companies Act (Cap. 486), authorizing the issue of new shares, and if there were any proceedings of a court of law involved, the date and outcome of such proceedings;
- (c) designation or title of each class of shares proposed for additional listing and its amount, par value and whether fully paid;
- (d) the number of additional shares to be listed;
- (e) the effective date on which the additional shares are to be fully qualified for admission to trading;
- (f) the exchange at which the applicant's shares are listed;
- (g) purpose of issuance;
- (h) the names of the persons responsible for the application;
- (i) number of shares authorized by the articles and number of shares issued and fully paid;
- (j) where applicable, the number of un-issued shares of each class of security reserved for issuance for any purpose, and purpose for which they are reserved;
- (k) a brief description of the rights attached to the shares with regard to voting, dividends, liquidation proceeds, pre-emption in future capital increases or any other special circumstances;
- (l) the date with effect from which the additional shares will qualify for dividend, whether dividend will be paid in full, and the circumstances relevant to the time limitation on the right to dividend;
- (m) the nature of the document of title (if any) and its proposed date of issue;
- (n) how any fractions will be treated;
- (o) details regarding the proposed listing of the letters of allocation, the subsequent listing of the new shares and the amount payable in respect of listing fees;
- (p) details regarding the letters of allocation such as—
 - (i) acceptance;
 - (ii) renunciation;
 - (iii) splitting; and
 - (iv) mode of payment;
- (q) in the case of a rights or scrip dividend issue or open offer—
 - (i) how shares not taken up will be dealt with and the time in which the offer may be accepted;
 - (ii) whether or not the documents of title (if any) are renounceable; and
 - (iii) a statement in bold and uppercase, on the front page, drawing shareholders' attention to the type of election to be made (i.e. whether shareholders will receive either cash or scrip if they fail to make the election).

Where the shares for which application is being made are shares of a class which is already listed, being offered by way of rights or open offer, a table of high and low traded market values for the securities of the class to which the rights issue or offer relates for the first dealing day in each of the six months before the date of the information memorandum and for the last dealing day

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before the announcement of the rights issue or offer and (if different) the latest practicable date prior to publication of the information memorandum;

- (r) a statement pointing out possible tax implications for non-residents.

(2) The issuer's application shall be endorsed with the following declaration under the signature of two directors or one director and the secretary—

"We hereby declare that all information stated in this application and the statements contained in the report are correct, and neither the board of directors' minutes, audit reports or any other internal documents contain information which could distort the interpretation of the report."

18. An issuer shall issue to the persons entitled to a rights issue within ten days after a books closing date—

- (a) letter of entitlement of rights; and
(b) provisional letter of allotment incorporating—
(i) form of acceptance;
(ii) request for splits;
(iii) form of renunciation; and
(iv) excess shares application form.

19. An issuer shall not close its register to determine shareholders' entitlement to participate in a rights, scrip dividend or capitalization issue or open offer until one week after the information memorandum to shareholders has been approved by the Authority.

20. All schemes involving the issue of shares or other securities (including options) to employees shall comply with the registration and approval procedures for employee share ownership schemes prescribed in the Capital Markets (Collective Investment Schemes) Regulations, 2001.

21. The issuer shall in the case of rights or scrip dividend issue—

- (a) show a timetable in respect of the following events—
(i) books closure date to determine rights entitlement;
(ii) last day for splitting;
(iii) last day for exercise or rights;
(iv) last day for renunciation of rights;
(v) last day for application for additional shares; and
(b) state—
(i) the rights new issue ratio, date and basis of determining the price of new issue shares;
(ii) the expected net proceeds and its application;
(iii) if any underwriting agreement exists, a copy of such agreement shall be submitted to the Authority;
(iv) the names and addresses of the auditors who have audited the accounts of the issuer during the preceding three years; and
(v) the names and addresses of the stockbrokers sponsoring the application for admission to listing.

22. An application for rights issue shall be accompanied by the following—

- (a) information about the management of the applicant;
(b) a statement on any important development(s) affecting the applicant or its business since the latest annual report of the applicant;

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- (c) if the applicant's securities have been suspended, provide details of the same;
- (d) if the shares to be listed are to be issued in connection with the acquisition of a controlling interest in, or of all the assets subject to a liability of another company and that company's profit and loss accounts to the date of the last balance sheet supplemented by the latest available interim statements;
- (e) one copy of each contract, plan or agreement pursuant to which the shares applied are to be issued;
- (f) if the shares applied for are to be issued in acquisition of an equity interest in another company, or properties or other assets, one copy of any engineering, geological or appraisal report, which may have been obtained in connection with the proposed acquisition;
- (g) one copy each of all letters of approval from the relevant government authorities; and
- (h) a statement or estimate of the cost involved in the application divided into—
 - (i) brokerage expenses;
 - (ii) approval and listing fees;
 - (iii) printing;
 - (iv) advertising;
 - (v) professional fees (legal, auditors, valuers); and
 - (vi) other costs.

23. The issuer shall state in tabular form, for each issue or series of funded or long-term debt of the issuer and its subsidiary companies, the following—

- (a) full title (including interest rate and maturity date);
- (b) amount authorized by the debt instrument;
- (c) amount issued to-date;
- (d) amount redeemed;
- (e) amount outstanding;
- (f) issue price;
- (g) date of payment of interest; and
- (h) date and terms of redemption.

24. The issuer shall, in the case of acquisitions, state—

- (a) whether the shares applied for are to be issued as a total or part of the consideration for the acquisition of—
 - (i) a controlling interest in, or the major part of the business and assets of, another company; or
 - (ii) specific assets or properties;
- (b) names of parties involved in the acquisition and the date of contract entered into;
- (c) the transaction, and the assets or business to be acquired, in sufficient detail to indicate the relative value thereof in relation to the consideration to be paid;
- (d) the principle followed and factors considered in determining the consideration to be paid in the acquisition, and the persons making the determination and their relationship to the applicant;

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- (e) why the management of the issuer regards the acquisition as a favourable one from its point of view; and
 - (f) whether or not any officer, director or major shareholder of the issuer (or a related company of the issuer) has any direct or indirect beneficial interest in the assets to be acquired or the consideration to be paid and, if such interest does exist, describe it.
- 25.** If the controlling interest in, or the major part of the business and assets of another company is being acquired, the issuer shall state briefly the history and business of that other company and furnish the financial statements of that other company.
- 26.** If any engineering, geological or appraisal reports, were obtained in connection with the proposed acquisition the issuer shall include appropriate excerpts from such reports.
- 27.** If the shares applied for are in respect of bonus shares capitalized from reserves the issuer shall—
- (a) identify the reserves from which the bonus shares are to be capitalized;
 - (b) show a three year schedule of the movements in the relevant reserve accounts; and
 - (c) where any of the reserves were created following a revaluation of the assets of the issuer, submit a copy of the relevant appraisal report, and a certificate from the issuer's auditors that the reserves are sufficient to cover the capitalisation.
- 28.** The issuer shall—
- (a) make a declaration that the annual accounts have been audited; and
 - (b) furnish a statement from the issuer's auditor stating all circumstances regarding the additional listing known to the auditor, which could influence the evaluation by investors of the assets, liabilities, financial position, results and prospectus are included in the report.
- 29.** Where an issuer considers it necessary to make underwriting arrangements for the rights issue, details of such underwriting arrangements shall be subject to the approval of the Authority.
- 30.** Disclosure of underwriting agreement, costs, details of the underwriter and relationship (if any) of the underwriter to the issuer or any of its directors shall be made.

FIFTH SCHEDULE

[Regulation 19, L.N. 101/2009, s. 3, L.N, 61/2012, s. 18.]

CONTINUING OBLIGATIONS**General continuing obligations**

A.01 Information to be disclosed shall include but not be restricted to any major development in the issuer's sphere of activity or expectation of performance which is not public knowledge which may—

- (a) by virtue of the effect of such development on its assets and liabilities or financial position or on the general course of its business, lead to substantial movement in the price of its securities; or

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- (b) in the case of an issuer of debt securities, by virtue of the effect of those developments on its assets and liabilities or financial position or on the general course of its business, lead to substantial movement in the price of its securities, or significantly affect its ability to meet its commitments.

A.02 An issuer may give information in strict confidence to its advisers and to persons with whom it is negotiating with a view to effecting a transaction or raising finance. These persons may include prospective underwriters of an issue of securities, providers of funds or loans or the places of the balance of a rights issue not taken up by shareholders. In such cases, the issuer must advise, preferably in writing, the recipients of such information that it is confidential.

A.03 Information required by and provided in confidence to, and for the purposes of a government department, the Central Bank of Kenya, the Authority, or any other statutory or regulatory body need not be published.

A.04 Where the information relates to a proposal by the issuer which is subject to negotiations with employees or trade union representatives, the issuer may defer publication of the information until such time as an agreement has been reached as to the implementation of the proposal.

A.05 Where it is proposed to announce at any meeting of holders of an issuer's listed securities, information which might lead to substantial movement in their price, arrangements must be made for publication of that information to the securities exchange and the market so that the announcement at the meeting is made no earlier than the time at which the information is published to the market and forwarded to the Authority.

A.06 An issuer must publish, by way of a cautionary announcement, information which could lead to material movements in the ruling price of its securities if at any time the necessary degree of confidentiality cannot be maintained, or that confidentiality has or may have been breached.

A.07 An issuer whose securities are listed on more than one securities exchange must ensure that equivalent information is made available at the same time to the market at all such securities exchange.

CO.B.00. Disclosure of periodic financial information – Dividends and interest

B.01 (1) Announcements of dividends and/or interest payments on issued securities should be notified to the securities exchange, the Authority and the holders of the relevant security within twenty four hours following the Board's resolution in the case of an interim dividend or recommendation in the case of a final dividend, by means of a press announcement. The resolution must be at least twenty one days prior to the closing date of the register and shall contain at least the following information—

- (a) the closing date for determination of entitlements;
- (b) the date on which the dividend or interest will be paid; and
- (c) the cash amount that will be paid for the dividend or interest.

(2) Where the shareholders at the annual general meeting do not approve a dividend recommended by the Board, this fact shall be announced by the Board by means of a notice within twenty four hours following the annual general meeting.

B.02 Dividends declared by an issuer shall be paid out within ninety days of the date of the books closure in case of interim dividends, and ninety days of approval of the shareholders in the case of the final dividend.

B.03 Notification of non-declaration of dividends or payment of interest must be published either in the interim or quarterly report, the annual financial statements or by way of a press announcement or where the issuer is listed on the Growth Enterprise Market Segment, on the issuer's website.

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B.04 An issuer declaring a final dividend prior to the publication of the annual financial statements or quarterly report must ensure that the dividend notice given to shareholders contains a statement of the ascertained or estimated consolidated profits before taxation of the issuer and its subsidiaries for the year, and also particulars of any amounts appropriated from accumulated profits, revenue and reserves of past years, or other special sources subject to the approval of the Authority, to provide wholly or partly for the dividend.

B.05 An issuer whose securities are listed shall announce any intention to fix a books closing date and the reason thereof, stating the books closure date, which shall be at least twenty one days after the date of notification to the securities exchange at which the securities are listed, in the case of an interim dividend, and in the case of a final dividend, the closure date shall be subject to the approval of the shareholders at the annual general meeting. The announcement shall include, the address of the share registry at which documents will be accepted for registration.

Interim and quarterly reports

B.06 (1) In this Part the terms—

“**interim report**” means half-year financial reports to be issued within sixty days of the interim balance date;

“**final report**” means annual/year end financial report;

“**quarterly report**” means a financial report, other than a interim or final report, covering a period of three months issued in the course of a financial year on a best practice basis.

(2) All interim reports shall be prepared in accordance with the relevant provisions of the International Financial Reporting Standards (IFRS).

(3) All issuers who have adopted a quarterly reporting practice shall, except in the case of a report issued pursuant to paragraph B.18, continue to issue reports on a quarterly basis in order to maintain consistency.

B.07 Every issuer of securities issued to the public approved by the Authority whether or not such securities are listed, shall prepare and publish an interim report within sixty days of the respective interim reporting date. An interim financial report shall include at a minimum the following components—

- (a) condensed balance sheet;
- (b) condensed income statement;
- (c) condensed statement showing either—
 - (i) all changes in equity; or
 - (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners (statement of recognised gains and losses);
- (d) condensed cash flow statement; and
- (e) selected explanatory notes.

B.08 If an issuer publishes a set of condensed financial statements in its interim financial report, those condensed statements should include, at a minimum, each of the headings and subtotals that were included in its most recent annual financial statements and the selected explanatory notes. Additional line items or notes should be included if their omission would make the condensed interim financial statements misleading.

B.09 Basic and diluted earnings per share should be presented on the face of an income statement, complete or condensed, for an interim period.

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B.10 An issuer should include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report—

- (a) a statement that the same accounting policies and methods of computation are followed in the interim financial statements as compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change;
- (b) explanatory comments about the seasonality or cyclicity of interim operations;
- (c) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence; and
- (d) the nature and amount of changes in estimates of amounts reported.

The information should normally be reported on a financial year-to-date basis. However, the issuer should also disclose any events or transactions that are material to an understanding of the current interim period.

B.11 Interim reports should include interim financial statements (condensed or complete) for periods as follows—

- (a) balance sheet as of the end of the current interim period and a comparative balance sheet as of the end of the immediately preceding financial year;
- (b) income statements for the current interim period and cumulatively for the current financial year to date, with comparative income statements for the comparable interim periods (current and year-to-date) of the immediately preceding financial year;
- (c) a statement showing changes in equity cumulatively for the current financial year to date, with a comparative statement for the comparable year-to-date period of the immediately preceding financial year; and
- (d) cash flow statement cumulatively for the current financial year to date, with a comparative statement for the comparable year-to-date period of the immediately preceding financial year.

B.12 If an estimate of an amount reported in an interim period is changed significantly during the financial year and a separate financial report is not published for that interim period, the nature and amount of that change in estimate should be disclosed in a note to the annual financial statements for that financial year.

B.13 An issuer should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements. However, the frequency of an issuer's reporting (annual, half-yearly, or quarterly) should not affect the measurement of its annual results. To achieve that objective, measurements for interim reporting purposes should be made on a year-to-date basis.

B.14 Revenues that are received seasonally, cyclically, or occasionally within a financial year should not be anticipated or deferred as of an interim date if anticipation or deferral would not be appropriate at the end of the issuer's financial year.

B.15 Costs that are incurred unevenly during an issuer's financial year should be anticipated or deferred for interim reporting purposes if, and only if, it is also appropriate to anticipate or defer that type of cost at the end of the financial year.

B.16 The measurement procedures to be followed in an interim financial report should be designed to ensure that the resulting information is reliable and that all material financial information that is relevant to an understanding of the financial position or performance of the enterprise is appropriately disclosed. While measurements in both

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annual and interim financial reports are often based on reasonable estimates, the preparation of interim financial reports generally will require a greater use of estimation methods than annual financial reports.

B.17 A change in accounting policy, other than one for which the transition is specified by a new IAS, should be reflected by—

- (a) restating the financial statements of prior interim periods of the current financial year and the comparable interim periods of prior financial years, if the issuer follows the benchmark treatment under IAS 8; or
- (b) restating the financial statements of prior interim periods of the current financial year, if the issuer follows the allowed alternative treatment under IAS 8. In this case, comparable interim periods of prior financial years are not restated.

B.18 Any announcement made by the issuer in respect of—

- (a) a dividend;
- (b) a capitalisation or rights issue;
- (c) the closing of the books;
- (d) a capital return; or
- (e) sales or turnover,

shall be issued so as to coincide with the release of the annual, interim or quarterly financial statement.

B.19 An issuer of securities listed at a securities exchange in Kenya shall publish an interim report within two months of the end of the interim period in the financial year and shall notify the securities exchange and the Authority. Where an issuer has subsidiaries, the said report shall be based on the group accounts.

B.19A. Arrangers of commercial papers and corporate bonds shall submit quarterly returns in the prescribed form by the 10th day of the month following the end of the quarter.

Annual Financial Statements

B.20 (1) Every issuer of securities to the public whether listed or not shall prepare an annual report containing audited annual financial statements within four months of the close of its financial year.

(2) A complete set of financial statements includes the following components—

- (a) balance sheet;
- (b) income statement;
- (c) a statement showing either—
 - (i) all changes in equity; or
 - (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
- (d) cash flow statement; and
- (e) accounting policies and explanatory notes.

B.21 Directors should select and apply accounting policies so that the financial statements comply with all the requirements of each applicable IAS and interpretation of the Standing Interpretations Committee of IAS. Where there is no specific requirement, directors should develop policies to ensure that the financial statements provide information that is—

- (a) relevant to the decision-making needs of users; and

- (b) reliable in that they—
- (i) represent accurately the results and financial position of the issuer;
 - (ii) reflect the economic substance of events and transactions and not merely the legal form;
 - (iii) are neutral, that is free from bias;
 - (iv) are prudent; and
 - (v) are complete in all material respects.

B.22 The presentation and classification of items in the financial statements should be retained from one period to the next unless—

- (a) a significant change in the nature of the operations of the issuer or a review of its financial statement presentation demonstrates that the change will result in a more appropriate presentation of events or transactions; or
- (b) a change in presentation is required by an IAS or an interpretation of the Standing Interpretations Committee of the IAS.

B.23 Each component of the financial statements should be clearly identified. In addition, the following information should be prominently displayed, and repeated when it is necessary for a proper understanding of the information presented—

- (a) the name of the issuer or other means of identification;
- (b) whether the financial statements cover an individual company or a group;
- (c) the balance sheet date or the period covered by the financial statements, whichever is appropriate to the related component of the financial statements;
- (d) the reporting currency; and
- (e) the level of precision used in the presentation of figures in the financial statements.

The period covered by financial statements should be no less than twelve months.

B.24 As a minimum, the face of the balance sheet should include line items which present the following amounts—

- (a) property, plant and equipment;
- (b) intangible assets;
- (c) financial assets (excluding amounts shown under (d), (f) and (g));
- (d) investments accounted for using the equity method;
- (e) inventories;
- (f) trade and other receivables;
- (g) cash and cash equivalents;
- (h) trade and other payables;
- (i) tax liabilities and assets as required by IAS 12 – Income Taxes;
- (j) provisions;
- (k) non-current interest-bearing liabilities;
- (l) minority interest;
- (m) issued capital and reserves; and
- (n) unclaimed dividends since the adoption of the IAS.

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B.25 An issuer should disclose the following either on the face of the balance sheet or in the notes—

- (a) for each class of share capital—
 - (i) the number of shares authorised;
 - (ii) the number of shares issued and fully paid, and issued but not fully paid;
 - (iii) par value per share, or that the shares have no par value;
 - (iv) a reconciliation of the number of shares outstanding at the beginning and at the end of the year;
 - (v) the rights, preference and restrictions attaching to that class including restrictions on the distribution of dividends and the repayment of capital;
 - (vi) shares of the issuer held by related companies of the issuer; and
 - (vii) shares reserved for issuance under options and sales contracts, including the terms and amounts;
- (b) a description of the nature and purpose of each reserve within owner's equity; and
- (c) when dividends have been proposed but not formally approved for payment, the amount included (or not included) in liabilities.

B.26 As a minimum, the face of the income statement should include line items which present the following amounts—

- (a) revenue;
- (b) the results of operating activities;
- (c) finance costs;
- (d) share of profits and losses of associates and joint ventures accounted for using the equity method;
- (e) tax expense;
- (f) profit or loss from ordinary activities;
- (g) extraordinary items;
- (h) minority interest; and
- (i) net profit or loss for the period.

B.27 (1) An issuer should present, as a separate component of its financial statements, a statement showing—

- (a) the net profit or loss for the period;
- (b) each item of income and expense, gain or loss which, is recognised directly in equity, and the total of these items; and
- (c) the cumulative effect of changes in accounting policy and the correction of fundamental errors dealt with under the benchmark treatments in IAS 8.

(2) In addition, an issuer should present, either within this statement or in the notes—

- (a) capital transactions with owners and distributions to owners;
- (b) the balance of accumulated profit or loss at the beginning of the period and at the balance sheet date, and the movements for the period; and
- (c) a reconciliation between the carrying amount of each class of equity capital, share premium and each reserve at the beginning and the end of the period, separately disclosing each movement.

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B.28 An issuer should disclose the following if not disclosed elsewhere in information published with the financial statements—

- (a) the domicile and legal form of the issuer, its country of incorporation and the address of the registered office (or principal place of business, if different from the registered office);
- (b) a description of the nature of the issuer's operations and its principal activities;
- (c) the name of the parent company and the ultimate parent company of the group; and
- (d) either the number of employees at the end of the period or the average for the period covered by the financial statements.

B.29 Every issuer shall notify the Authority, the securities exchange and the media of its annual results within twenty-four hours following approval of the issuer's directors for submission to shareholders.

B.30 Every issuer shall, within six months after the end of each financial year and at least twenty-one clear days (including weekends and public holidays) before the date of the annual general meeting, distribute to all shareholders and holders of its debt securities—

- (a) a notice of annual general meeting and annual financial statements for the relevant financial year; and
- (b) the auditors report on the issuer's financial statements.

B.31 Where an issuer has subsidiaries, its annual audited accounts shall be prepared in consolidated form in accordance with the Companies Act (Cap. 486) and the relevant IAS. There shall be set out as separate items in every issuer's annual report—

- (a) the amount of turnover and investments and other income excluding extraordinary items, together with comparative figures for the previous year;
- (b) a statement of source and application of funds with comparative figures for the previous year;
- (c) a statement as at end of the financial year, showing the interest of each director of the issuer in the stated capital of the issuer, its subsidiary or in an associated company, appearing in the register maintained under the provisions of the Companies Act (Cap. 486);
- (d) particulars of material contracts involving directors' interests, either still subsisting at the end of the financial year or, if not then subsisting, entered into since the end of the previous financial year, providing—
 - (i) the name of the lender and the borrower;
 - (ii) the relationship between the borrower and the director (if the director is not the borrower);
 - (iii) the amount of the loan;
 - (iv) the interest rate;
 - (v) the terms as to payment of interest and repayment of principle; and
 - (vi) the security provided.

B.32 In respect of land and buildings, whether freehold or leasehold, to show as a note to the accounts a brief description of each of the major properties together with an indication as to the location of the properties concerned.

B.33 In the case where a valuation has been conducted on the fixed assets of the issuer and/or its subsidiaries, a copy of the valuation report shall be made available for inspection at the issuer's registered office. Fixed assets of the issuer must be re-valued as regularly as possible but in any case at least once in ten years.

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CO.C.00. Notifications relating to capital

C.01 An issuer must make a public announcement and notify the securities exchange and the Authority of the following information relating to its capital—

- (a) alterations to capital structure
any proposed change in its capital structure including the structure of its debt securities.
- (b) new issues of debt securities
where a company has debt securities, any new issues of debt securities, and in particular any guarantee or security in respect thereof.
- (c) changes of rights attaching to securities
any change(s), in the rights attaching to any class of securities, in loan terms (or in the rate of interest carried by a debt security) or to any securities which are convertible.
- (d) basis of allotment
the basis of allotment of securities offered generally to the public for cash and open offers to shareholders.
- (e) issues affecting conversion rights
the effect, if any, of any issue of further securities on the terms of the exercise of rights under options, warrants and convertible securities.
- (f) results of new issues
the results of any new issue of securities or of a public offering of existing securities.

CO.D.00. Shareholding

D.01 An issuer shall at the end of each calendar quarter, disclose to the securities exchange every person who holds or acquires 3% or more or in the case of an issuer listed on the Growth Enterprise Market Segment, 5% or more of the issuer's ordinary shares, and shall publish in its annual report the following information on the its shareholding—

- (a) distribution of shareholders—

Shareholding (No. of shares)	No. of shareholders	No. of shares held	% shareholding
less than 500			
500 – 5,000			
5,001 – 10,000			
10,001 – 100,000			
100,001 – 1,000,000			
above 1,000,000			

- (b) names of the ten largest shareholders and the number of shares in which they have an interest as shown in the issuer's register of members;
- (c) distribution schedule of each class of shares other than ordinary shares, setting out the number of holders in the categories set out in sub paragraph (a) above;
- (d) name and address of the company secretary;
- (e) address and telephone number of the registered office; and
- (f) address of each office at which register of securities is kept.

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D.01A. Where an issuer is listed in the Growth Enterprise Market Segment, the disclosure in paragraph D.01 shall include a report on a consolidated basis of the quantity and characteristics of the company's securities directly or indirectly held by the Controlling Shareholder, and the senior managers, and the report on the evolution of the volume of securities held by them.

D.02 An issuer shall inform the Authority and the securities exchange in writing without delay if it becomes aware that the proportion of its securities in the hands of the public has fallen below the minimum prescribed in these Regulations.

D.03 An issuer shall provide the Authority and the securities exchange details of its shareholders which may be required by the Authority or the securities exchange.

CO.E.00. Communication with shareholders

E.01 Any meeting of shareholders (other than an adjourned meeting) shall be called by a twenty-one day notice in writing. All notices convening meetings shall specify the place, date, hour and agenda of the meeting. If the conventional meeting place is changed, full justification for the change must be given. The place chosen must be convenient to the general body of shareholders.

E.02 An issuer shall ensure that at least in each securities exchange in which its securities are listed all the necessary facilities and information are available to enable holders of such securities exercise their rights. In particular it shall—

- (a) inform holders of securities of the holding of meetings which they are entitled to attend;
- (b) enable them to exercise their right to vote, where applicable; and
- (c) publish notices or distribute circulars giving information on—
 - (i) the allocation and payment of dividends and interest;
 - (ii) the issue of new securities, including arrangements for the allotment, subscription, renunciation, conversion or exchange of the securities; and
 - (iii) redemption or repayment of the securities.

E.03 A proxy form must be sent with the notice convening a meeting of holders of listed securities to each person entitled to vote at the meeting, and must comply with all requirements set out in the issuer's articles of association.

E.04 If a circular is issued to the holders of any particular class of security, the issuer must issue a copy or summary of that circular to the holders of all other listed securities.

E.05 The issuer must forward to the Authority and securities exchange copies of—

- (a) all circulars, notices, reports, announcements or other documents at the same time as they are issued; and
- (b) all resolutions passed by the issuer at any general meeting of holders of listed securities within ten days after the relevant the general meeting.

CO.F.00. Audit committee and corporate governance

F.01 Every issuer shall establish an audit committee and comply with guidelines on corporate governance issued by the Authority.

F.02 There shall be public disclosure in respect of any management or business agreements entered into between the issuer and its related companies, which may result in a conflict of interest situation.

F.03 Every person save a corporate director who is a director of a listed company shall not hold such position in more than five listed companies at any one time to ensure effective participation in the board and in the case where the corporate director has appointed an alternate director, the appointment of such alternate shall be restricted to

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three listed companies: Provided that the listed company whose directors hold more than the prescribed limit shall ensure compliance within six months of gazettelement of these Regulations.

F.04 Every person who is a Chairman of a listed company shall not hold such position in more than two listed companies at any one time, in order to ensure effective participation in the board; Provided that the listed company whose Chairman holds more than the prescribed limit shall ensure compliance within six months of gazettelement of these Regulations.

F.05 The chief financial officers and persons heading the accounting department of every issuer shall be members of the Institute of Certified Public Accountants established under the Accountants Act (Cap. 531).

F.06 Where the persons referred to in F.05 are members of other internationally recognized professional bodies and are yet to register as members of the Institute of Certified Public Accountants such persons shall register as members of the institute within a period of twelve months from the date of gazettelement of these Regulations, or from the date of appointment to such position, whichever is later.

F.07 The company secretary of every issuer shall be a member of the Institute of Certified Public Secretaries of Kenya established under the Certified Public Secretaries of Kenya Act (Cap. 534).

F.08 Every issuer shall disclose in its annual reports a statement of the directors as to whether the issuer is complying with the guidelines on corporate governance issued by the Authority:

Provided that where the issuer is not fully compliant with the guidelines, the directors shall indicate the steps being taken to adhere to full compliance.

F.09 The auditor of a listed company shall be a member of the Institute of Certified Public Accountants and shall comply with the International Standards of Auditing.

CO.G.00. Miscellaneous obligations

G.01 No further securities of the same class as securities already listed shall be issued or allotted to any person or listed, without the Authority's approval.

G.02 A copy of any contractual arrangement with a controlling shareholder must be made available for inspection by any person at the registered office of the issuer during normal business hours on each business day.

G.03 An issuer must ensure that appropriate transfer and registration arrangements for its listed securities are have been made and holders of the listed securities notified.

G.04 All directors of an issuer, other than the managing director must retire by rotation at least once in every three years. At least one-third of the directors shall be appointed as non-executive directors.

G.05 (1) An issuer shall disclose all material information and make a public announcement of—

- (a) any change of address of the registered office of the issuer or of any office at which the register of the holders of listed securities is kept;
- (b) any change in the directors, company secretary or auditors of the issuer;
- (c) any proposed significant alteration of the memorandum and articles of association of the issuer;
- (d) any application filed in a court of competent jurisdiction to wind up the issuer or any of its subsidiaries. Details of the suit and the probable outcome of the suit must be confidentially submitted to the Authority and the securities exchange; and

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- (e) the appointment or imminent appointment of receiver manager or liquidator of the issuer or any of its subsidiaries; and
- (f) any profit warning, where there is a material discrepancy between the projected earnings for the current financial year and the level of earnings in the previous financial year.

(2) For the purposes of subparagraph (1)(f), the expression “**material discrepancy**” in relation to projected earnings for a financial year means that such earnings are at least 25% lower than the level of earnings in the previous financial year.

(3) Unless otherwise stated, all public announcements which an issuer is required to make under these Regulations shall be made within twenty-four hours of the happening of the event.

G.06 An issuer shall obtain approval of shareholders and make a disclosure in the annual report, for any—

- (a) acquisition of shares of another company or any transaction resulting in such other company becoming a subsidiary or related company of the issuer;
- (b) sale of shares in another company resulting in that company ceasing to be a subsidiary of the issuer; or
- (c) substantial sale of assets involving 25% or more of the value of the total assets of the issuer,

and shall make a public announcement of the fact.

G.07 Where any agreement has been entered into in connection with any acquisition or realisation of assets or any transaction outside the ordinary course of business of the issuer and/or its subsidiaries, a copy each of the relevant agreement must be lodged with the Authority and securities exchange and be made available for inspection at the issuer's registered office.

SIXTH SCHEDULE

[Regulation 3(4).]

LISTING FEES

1. INITIAL LISTING FEES

MAIN INVESTMENT MARKET SEGMENT	ALTERNATIVE INVESTMENT MARKET SEGMENT	FIXED INCOME SECURITIES MARKET SEGMENT
0.06% of the value of the securities to be listed subject to a minimum of KShs. 200,000 and a maximum of K.Shs. 1,500,000.	0.06% of the value of the securities to be listed subject to a minimum of KShs. 100,000 and a maximum of K.Shs. 1,000,000.	0.0125% of the value of fixed income securities to be listed as follows—
		(i) Corporate bonds and other fixed income securities – a minimum of KShs. 100,000 and a maximum of KShs. 1,000,000.
		(ii) Treasury Bonds and other Government securities – a minimum of KShs. 100,000 and a maximum of KShs. 500,000.

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SIXTH SCHEDULE—*continued***2. ADDITIONAL LISTING FEES**

MAIN INVESTMENT MARKET SEGMENT	ALTERNATIVE INVESTMENT MARKET SEGMENT
0.1% of the nominal value of the additional securities to be listed subject to a minimum of KShs. 50,000 and a maximum of KShs. 500,000.	0.1% of the nominal value of the additional securities to be listed subject to a minimum of KShs. 25,000 and a maximum of KShs. 250,000.

The annual listing fee shall be payable upon the expiry of the twelve (12) month period following the initial listing fee. Where the period for which the first annual listing fee payable is less than twelve (12) months, the annual listing fee shall be prorated to December of that year.

3. ANNUAL LISTING FEES

Annual listing fees for companies whose shares are listed shall be based on daily average market capitalisation from January 1 to November 30 annually excluding the value of new or additional listing during the year. The annual listing fees for Fixed Income Securities shall be based on the total value outstanding as on November 30.

MAIN INVESTMENT MARKET SEGMENT	ALTERNATIVE INVESTMENT MARKET SEGMENT	FIXED INCOME SECURITIES MARKET SEGMENT
0.06% of the market capitalisation of the listed securities subject to a minimum of KShs. 200,000 and a maximum of KShs. 1,500,000.	0.06% of the market capitalisation of the listed securities subject to a minimum of KShs. 100,000 and a maximum of KShs. 1,000,000.	0.0125% of the market value of the fixed income securities outstanding listed as follows—
		(i) Corporate bonds and other fixed income securities - a minimum of KShs. 100,000 and a maximum of KShs. 1,000,000.
		(ii) Treasury Bonds and other Government securities - a minimum of KShs. 100,000 and a maximum of KShs. 2,500,000.

SEVENTH SCHEDULE

[Regulation 3 (4A), L.N. 61/2012, s. 19.]

LISTING FEE

Description	NSE	CDSC	CMA
Initial listing fee (Introduction)	0.03% of the value of the securities to be listed subject to a minimum of KShs.50,000 and a maximum of Kshs.250,000 (for SMEs listing securities worth 834m)	NA	NA
Additional listing fee	0.05% of the nominal value of the additional securities to be listed subject to a minimum of Kshs.25,000 and a maximum of KShs.125,000.	NA	NA

SEVENTH SCHEDULE—*continued*

Description	NSE	CDSC	CMA
Annual listing fees	0.015% of the market capitalization of the listed securities as at the 30th November subject to a minimum of Kshs.25,000 and a maximum of KShs.125,000.	0.010% of the market capitalization of the listed securities as at the 30 th November subject to a minimum of shs.15,000 and a maximum of KShs.83,333.	0.005% of the market capitalization of the listed securities as at the 30 th November subject to a minimum of KShs. 10,000 and a minimum of KShs. 41,667.

**CAPITAL MARKETS (LICENSING REQUIREMENTS) (GENERAL)
REGULATIONS, 2002**

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[Subsidiary]

**CAPITAL MARKETS (LICENSING REQUIREMENTS) (GENERAL)
REGULATIONS, 2002**

[L.N. 125/2002, L.N. 119/2004, L.N. 99/2007, L.N. 32/2008, L.N. 72/2009, L.N. 99/2009,
L.N. 189/2010, L.N. 190/2010, L.N. 88/2012.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Licensing Requirements) (General) Regulations, 2002.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” includes a reference to the Capital Markets Act and the Regulations and Guidelines made thereunder;

“**Authority**” has the meaning assigned to it in the Act;

“**close relation**” means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, son-in-law, grandchild or spouse of a grandchild;

“**Compensation Committee**” means the Investor Compensation Committee appointed under regulation 71;

“**Compensation Fund**” has the meaning assigned to it in section 2 of the Act;

“**custodian**” means a bank licensed under the Banking Act (Cap. 488) or a financial institution approved by the Authority to hold in custody funds, securities, financial instruments or documents of title to assets registered in the name of local investors, East African investors or foreign investors or of an investment portfolio;

“**demutualization**” means the separation of the ownership of an exchange from the right to trade on such exchange;

“**demutualized exchange**” means a securities exchange in which ownership and rights to trade are separate;

“**private transaction**” means a transfer of a listed security outside a securities exchange authorized by the Authority from one security holder to another whether or not it involves any consideration or change of beneficial interest or is otherwise authorized by the Authority under section 31 of the Act;

“**professional**” means a person giving an opinion in respect of listed securities or in relation to a public offer or listing of securities and includes—

- (a) any person responsible for the incorporation of a listed company;
- (b) an advocate, auditor, accountant, investment advisor or stockbroker, underwriter, valuer, engineer, actuary, analyst, economist, management consultant; and
- (c) other experts whose written opinion with respect to the assets, products or business affairs of the issuer appear in a prospectus or is produced to the Authority;

“**rights to trade**” means the rights of access to and the use of trading related facilities provided and maintained by a securities exchange which a securities exchange may grant a licensee of the Authority, subject to the rules of the securities exchange on admission of trading participants;

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“**securities laws**” includes the Capital Markets Act, the Central Depositories Act (No. 4 of 2000) and the Regulations and Guidelines made thereunder;

“**working capital**” means the difference between the current assets and current liabilities excluding clients’ accounts which shall not fall below twenty per cent of the prescribed minimum shareholders funds or three times the monthly operating costs whichever is higher.

[L.N. 88/2012, s. 2.]

PART II – SECURITIES EXCHANGE

3. Application for approval

(1) An application for grant of approval to operate as a securities exchange shall be submitted to the Authority in Form 1 set out in the First Schedule.

(2) The application under paragraph (1) shall be submitted together with—

- (a) the rules, memorandum and articles of association of the applicant which shall be in a form that is satisfactory to the Authority and restricts the applicant to the business of operating a securities exchange and services incidental thereto;
- (b) details of the trading system proposed to be adopted by the applicant;
- (c) the prescribed fees set out in the Second Schedule; and
- (d) such additional documents as may be required by the Authority.

[L.N. 88/2012, s. 3.]

4. Rules of the securities exchange

(1) The rules proposed to be adopted by an applicant for approval to operate as a securities exchange shall contain provisions on the—

- (a) admission to the listing, suspension or de-listing of securities by the securities exchange, through a procedure prescribed by the Authority;
- (b) conditions governing dealing in securities by its trading participants so as to ensure protection of the rights of investors;
- (c) prompt disclosure, in a manner that is fair to all investors, of material information of a price sensitive nature and information likely to affect the price of a security including fees on management contracts, to enable appraisal of an issue by investors;
- (d) protection of investors against abuse of confidential information, misleading information, fraud, deceit, and other adverse practices in the issuing and trading of securities;
- (e) prohibition of market manipulation in any form;
- (f) investigation into trading in securities and financial transactions of trading participants and for conducting surprise checks on such trading participants;
- (g) suspension of trading of any security for the protection of investors or for the conduct of orderly and fair trading;
- (h) the conduct of securities trading by trading participants and the manner in which information relating to transactions is to be maintained and reported to other trading participants and customers of the securities exchange;
- (i) segregation from other business accounts of trading participants, of customers’ funds and securities;
- (j) arbitration of disputes and provision for appeal to the Authority by trading participants, investors and listed companies;

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- (k) proper safe keeping of securities in its custody;
- (l) carrying out of the business of the securities exchange with due regard to interest of the investing public;
- (m) trading rights on a securities exchange;
- (n) admission of trading participants to the securities exchange, registration of representatives of trading participants with the securities exchange and to provide for different categories of trading participants, where appropriate, and the rights and obligations attaching to each category;
- (o) conduct of trading participants, their representatives, authorized clerks and dealers;
- (p) responsibility of trading participants for the actions of their employees and agents in their dealings with the public; and
- (q) listing of medium and large sized companies in the respective market segments such that investors have a range of investment opportunities in listed securities across all sectors of the economy.

(2) The provisions made under paragraph (1) shall conform to the provisions of the Act.

[L.N. 88/2012, s. 4.]

5. Membership of securities exchange

(1) Trading participants of a securities exchange shall be licensees of the Authority with rights to trade at an approved securities exchange.

(1A) The Authority may prescribe limits on the ownership of a securities exchange by its trading participants.

(2) A securities exchange may, in accordance with the procedures prescribed in its rules, admit as a trading participant, any person who has been licensed by the Authority to exercise rights to trade—

- (a) if that person satisfies any admission requirements of the securities exchange; and
- (b) on payment of admission fee approved by the Authority under section 29(2) of the Act,

and accord that person the applicable rights to the relevant category of admission:

Provided that, a securities exchange may assess an application for admission by a person seeking a licence from the Authority and issue a confirmation that that person shall be admitted upon securing a license from the Authority.

(3) A trading participant of a securities exchange or a director or a shareholder of a trading participant shall not be a director or hold beneficial interest either directly or indirectly in more than one trading participant of a securities exchange unless the trading participants has been exempted by the Authority on the basis of evidence of adequate internal controls to address conflict of interest.

(4) In case of a listed trading participant of a securities exchange, an interest of fifteen per cent or more of the voting shares held directly or indirectly shall be deemed to be a person's beneficial interest for purpose of these Regulations.

[L.N. 88/2012, s. 5.]

6. Chairman, directors and chief executive

(1) A securities exchange shall have a chief executive who shall be in charge of the day to day operations of the securities exchange and an administration of sufficient professional capability to carry out trading, clearing and compliance functions of its trading participants and listed companies.

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(2) No person shall be qualified for appointment as a chief executive of a securities exchange, unless such person has—

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

(3) A securities exchange shall provide in its rules and articles of association that—

- (a) there shall be a fixed term of office for its chairman and chief executive, which shall include a maximum term of office of two consecutive years for the chairman and four years renewable once for the chief executive;
- (b) a board of directors comprising of the chief executive of the securities exchange and at least one third independent and non-executive directors;
- (c) a maximum of two members of the board of directors who shall be elected from among or to represent the trading participants;
- (d) the independent and non-executive directors appointed under subparagraph (b) shall be persons who have knowledge and experience in investments, public service and corporate governance and shall represent the interests of investors and the public interest:

Provided that prior to making any such appointment the securities exchange shall submit the names of the persons proposed to be appointed as directors to the Authority for confirmation that the Authority has no objection to the proposed appointments;

- (e) two members of the board shall be elected by the shareholders of the securities exchange from nominees of companies listed on the securities exchange to represent the listed companies.

(4) Subject to paragraph (3)(c), (d) and (e), the other persons appointed to the board of directors shall be elected by the shareholders of the exchange in accordance with the Companies Act.

(5) Deleted by L.N. 88/2012, s. 6.

[L.N. 88/2012, s. 6.]

7. Requirements for approval of a securities exchange trading system

(1) A trading system to be adopted by a securities exchange shall be approved by the Authority before such system is implemented.

(2) The trading system referred to in paragraph (1) shall provide for—

- (a) a trading facility at which all bids to purchase and offers to sell are exposed to each other and at which members of the public are granted an opportunity to witness trading;
- (b) a transparent and efficient pricing mechanism which—
 - (i) displays the best offer and bid prices;
 - (ii) provides for automatic matching;
 - (iii) displays the highest and lowest prices, the latest transactions as well as the volume of securities traded;
 - (iv) has an audit trail and trace back mechanism for all transactions;
 - (v) has sufficient internal controls and security measures to ensure that only authorized persons have access;
 - (vi) provides for integration with a central depository system; and
 - (vii) maintains records of all transactions and retrieves such records as may be necessary.

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8. Submission of annual budget

(1) A securities exchange shall submit its annual budget to the Authority not later than thirty days before the commencement of its financial year.

(2) Any revisions to the budget shall be submitted to the Authority not later than fifteen days before the commencement of its financial year.

(3) The annual budget shall—

- (a) disclose details of revenue and expenditure as prescribed under these Regulations;
- (b) make provision for a minimum of twenty per cent of the total annual listing fees receivable each financial year to support the development of the securities exchange infrastructure and investor education programme.

9. Self-regulation

(1) Every securities exchange shall have—

- (a) a procedure and appropriate system of exercising self - regulation over its trading participants;
- (b) a code of conduct for its trading participants;
- (c) adequate trading surveillance and compliance capacity; and
- (d) a procedure for dispute resolution.

(2) A securities exchange shall implement a system of self regulation with respect to its trading participants and shall ensure the day to day management of trading, settlement, delivery and all other activities of its trading participants are in accordance with—

- (a) the rules of the securities exchange approved by the Authority; and
- (b) laws, regulations and guidelines relating to securities issued by the Authority.

(3) The rules of a securities exchange shall, where applicable, support the self-regulatory functions of the securities exchange and in particular shall be designed to—

- (a) promote investor protection;
- (b) promote fair treatment of its trading participants and any person who applies for admission as a trading participant;
- (c) exclude a person who is not fit and proper from being its trading participant or being appointed as its chief executive, director or officer;
- (d) promote proper regulation and supervision of its trading participants;
- (e) promote appropriate standards of conduct of its trading participants;
- (f) manage any conflict of interest which may arise between its interest and the interest of investors and the general public;
- (g) ensure that its trading participants and officers duly comply with the securities laws, regulations and guidelines issued by the Authority and where relevant, the rules of the securities exchange, or approved central depository;
- (h) require trading participants to report in a timely manner any breaches of applicable rules;
- (i) prevent the use of any information by its trading participants or officers which may result in such trading participants or officer making an unfair gain;

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- expel, suspend, discipline or sanction a trading participant if a trading participant contravenes securities laws, regulations and guidelines issued by the Authority or where relevant, the rules of the securities exchange, or an approved central depository;
- (j) require a trading participant to report any action, restriction or limitation imposed on its operations by another securities exchange, central depository or the Authority; and
 - (k) allow an aggrieved trading participant to appeal against any decision of the securities exchange acting in its capacity as a recognized self-regulatory organization.
- (4) An applicant shall, as a condition for approval to operate a securities exchange—
- (a) exercise self - regulatory responsibility over its trading participants; and
 - (b) put in place independent management of and budgetary structures for the commercial and regulatory functions of the securities exchange.

[L.N. 88/2012, s. 7.]

10. Records to be maintained

Every securities exchange shall for a period of seven years maintain and preserve the following records and documents, for a period of seven years—

- (a) minutes of the meeting of—
 - (i) its shareholders;
 - (ii) its board of directors; and
 - (iii) any standing committee or committees of its board of directors;
- (b) a register of trading participant members including the full names and physical addresses of all directors and shareholders of such trading participants;
- (c) a register of representatives, authorized clerks, dealers, authorized assistants and floor traders;
- (d) a record of securities transactions by sectors for each market segment;
- (e) a statistical information on market turnover and capitalization on a monthly basis for each market segment;
- (f) a register of—
 - (i) all listed securities including the names of issuers and number of securities listed by each issuer;
 - (ii) all substantial shareholders;
 - (iii) holders of notifiable interest under regulation 75;
- (g) records of receipts and disbursement of the investors compensation fund;
- (h) annual audited accounts of its trading participants;
- (i) annual reports of all listed companies;
- (j) records containing any trading limits, margin requirements or related financial and operational limits it imposes on its trading participants on a monthly basis;
- (k) financial records of all transactions of the securities exchange including receipts and payouts, cash and bank transactions which shall also be maintained in an electronic form including—
 - (i) ledgers;

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- (ii) journals; and
- (iii) bank statements and reconciliation accounts.

[L.N. 88/2012, s. 8.]

11. Deleted by L.N. 88/2012, s. 9.

12. Reporting obligations

(1) A securities exchange shall within four months after the end of each financial year make available to the Authority, and to the investors, a summary of information on companies listed at the securities exchange.

(2) The information referred to in paragraph (1) shall include the—

- (a) published accounts of companies listed on such securities exchange including balance sheet and profit and loss statements;
- (b) date of incorporation, date of listing, names of directors, share capital, number and value of shares issued, and any changes in the share capital;
- (c) details of securities transacted and the prices (high, low and mid-market) at which such securities have been transacted during the year; and
- (d) earnings per share, dividend per share, shareholding structure (institutional, individual and foreign investors), principal or controlling shareholders and total number of shareholders.

(3) A securities exchange shall maintain information in both print and electronic form, regarding each company listed at the securities exchange and such information shall include the—

- (a) name of the issuer and date of incorporation;
- (b) date of listing;
- (c) names of directors;
- (d) principal/controlling shareholders;
- (e) total number of shareholders;
- (f) authorized and paid-up share capital;
- (g) changes in authorized or paid-up share capital;
- (h) core and auxiliary line of business;
- (i) balance sheet and profit and loss accounts for the last five years;
- (j) volume and price movements (high and low) of the listed security; and
- (k) earnings per share and dividend per share.

(4) A securities exchange shall, by the last day of March in each year, furnish the Authority with a report of its activities during the preceding calendar year and such report shall contain information on—

- (a) changes in its rules and by-laws, if any;
- (b) changes in the membership of its board of directors;
- (c) composition and mandates of all the committees set up and changes (if any) in the membership of its existing ones;
- (d) admission, suspension or expulsion of trading participants;
- (e) disciplinary action against trading participants including appointment of statutory manager;
- (f) arbitration of disputes;
- (g) securities listed, suspended or de-listed;

- (h) market turnover and capitalization per sector; and
- (i) any other matters that the Authority may request.

(5) A securities exchange shall submit to the Authority, through electronic means, and make public a daily report on the securities transacted, the price movements on each security including low, high and average prices, and the volume of transactions in each security.

(6) A securities exchange shall furnish the Authority within thirty days after the end of each quarter, with a report of all securities transactions for each day, including private transactions, the value of each transaction, names of the parties for each private transaction and the holders of notifiable interest disclosed to the securities exchange under Part XI of these Regulations.

(7) (a) A financial statement of a securities exchange shall include the disclosures prescribed in the Third Schedule.

(b) The annual accounts of a securities exchange shall be audited by an independent auditor appointed by the board of directors, with the consent of the Authority and such auditor shall not be removed without the approval of the Authority.

(8) A securities exchange shall furnish the Authority with all documents and notices that it issues to its members in connection with the annual general meetings within ten days prior to the date of such meetings.

(9) Communication to investors shall be by way of publication in at least two daily newspapers of national circulation.

(10) A securities exchange shall immediately report to the Authority by telephone and in writing whenever—

- (a) there is a delay in the opening or closing of the securities exchange;
- (b) there is a default on settlement and delivery;
- (c) trading is to be suspended in any security;
- (d) there are incidences of violation of the Act or the securities exchange rules;
- (e) there is unusual activity in the market;
- (f) the securities exchange receives any non-public information that its chief executive believes could have a material effect on the market in general or on any specific securities; or
- (g) the Authority requests for any information.

[L.N. 88/2012, s. 10.]

13. Listing of securities by a securities exchange

(1) No securities exchange shall admit to listing a security which has not been approved for listing by Authority.

(2) A securities exchange shall admit to listing without any other conditions all securities approved by the Authority arising out of—

- (a) a public offer, on attainment of the total minimum subscription of shares as disclosed in the prospectus approved by the Authority and minimum number of shareholders prescribed for the respective market segment;
- (b) an introduction;
- (c) rights issues;
- (d) scrip dividend offer; or
- (e) capitalization of reserves.

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(3) A securities exchange shall provide in its listing rules and with respect to each market segment the procedure for admission to listing of securities approved for listing by the Authority.

[L.N. 32/2008, s. 2.]

PART III – STOCKBROKERS AND DEALERS**14. Application for licence**

An application for a licence to operate as a stockbroker or a dealer shall be submitted to the Authority in Form 1 set out in the First Schedule.

15. Specific requirements for approval

(1) The application under in regulation 14 shall be submitted together with—

- (a) the certificate of incorporation;
- (b) the memorandum and articles of association;
- (c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and audited accounts for the preceding two years (where applicable);
- (d) the prescribed fees set out in the Second Schedule;
- (e) a business plan containing the particulars on—
 - (i) the management structure;
 - (ii) the directors, including one or more executive directors, their qualifications, addresses and details of other directorships;
 - (iii) the shareholding structure which shall disclose whether any of the shareholders will have an executive role to oversee the day to day operations of the business;
 - (iv) the shareholding structure of a dealer;
 - (v) the evidence of paid up share capital of a minimum amount of fifty million shillings in the case of a stockbroker and twenty million shillings in the case of a dealer;
 - (vi) the qualifications, experience and expertise of the chief executive must be relevant to effectively manage or operate the business of a stockbroker or dealer;
 - (vii) the proposed management and qualifications of key personnel;
 - (viii) the financial projections for three years;
 - (ix) the proposed information technology and access to the trading network in compliance with the trading, clearing, delivery and settlement requirements of the securities exchange to which the applicant intends to be admitted as a trading participant under these Regulations;
 - (x) one bank reference;
 - (xi) two business references;
 - (xii) the proposed premises suitably located and equipped to provide satisfactory service to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such premises will be available;
 - (xiii) the staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available;
 - (xiv) the proposed independent auditor; and

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(xv) a declaration that no person is a director or holds beneficial interest either directly or indirectly in more than one trading participant of a securities exchange.

(2) Every person who is, or is to be, a director, chief executive, manager or floor dealer of a stockbroker or dealer shall be fit and proper to hold the particular position that he holds or is to hold.

(3) The applicant under paragraph (1) shall—

(a) lodge a security of one million, five hundred thousand shillings or such higher amount with a securities exchange or a central depository as the Authority may determine, taking into account the financial position and settlement record of the applicant; or

(b) provide a guarantee or a security to a securities exchange or a central depository in a form acceptable or approved by the Authority in respect of which it is a trading participant or has applied for admission as a trading participant.

(4) The eligibility of a dealer's licence shall be restricted to institutions committing funds for investment as principals in securities dealings.

(5) A stockbroker may be authorized undertake dealing operations through a subsidiary company.

(6) Deleted by L.N. 88/2012, s. 11.

(7) A stockbroker authorized to conduct dealing operations shall maintain separate records of all dealing operations by the subsidiary and the subsidiary shall be recognized as a client in the stockbroker's transaction records.

(8) All dealing transactions by the stockbroker's subsidiary shall be registered in the name of the subsidiary.

(9) A stockbroker authorized to conduct dealing operations shall have its licence endorsed by the Authority as authorized to conduct operations as dealer through a subsidiary.

(10) An application for a stockbroker or a dealer license shall be accompanied by a letter from the securities exchange stating that the applicant meets all the relevant requirements of that securities exchange and that the securities exchange would admit the applicant if licensed by the Authority.

[L.N. 99/2009, s. 2, L.N. 88/2012, s. 11.]

16. Stockbrokers' financial requirements

(1) The level of shareholders' funds (paid up share capital and reserves) for stock brokers shall not fall below fifty million shillings at any time during the license period.

(2) The minimum paid-up share capital shall always be unimpaired and shall not be advanced to the directors or associates of the stockbroker.

(3) The working capital shall not be below twenty per cent of the prescribed minimum shareholders funds or three times the average monthly operating costs whichever is higher.

(4) Unsecured advances, loans and other amounts to directors or associates shall in aggregate not exceed ten per cent of the prescribed minimum shareholders funds at any time provided that such loans are with respect to any amount in excess of the minimum paid-up capital.

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(5) The ratio of the stockbroker's bank overdraft to the paid-up capital shall not exceed twenty per cent at any time.

[L.N. 99/2009, s. 3, L.N. 88/2012, s. 12.]

17. Dealers' financial requirements and investment limits

(1) The level of shareholders funds (paid-up share capital and reserves) shall not be below twenty million shillings, at any time during the licence period.

(2) A dealer shall—

- (a) set aside investment capital of not less than twenty million shillings (except as provided under paragraph (3)) in cash or portfolio of listed securities, or such higher amount as may be prescribed by the Authority; and
- (b) have a working capital of an amount not less than twenty per cent of the paid-up capital and reserves or three times its monthly operating costs.

(3) Where a dealer is promoted by a stockbroker through a subsidiary, the minimum investment capital committed to dealing operations by the subsidiary shall not be less than five million shillings in cash or listed securities portfolio at market value or such higher amount as may be prescribed by the Authority.

(4) A dealer's borrowings except overdraft shall be for the purpose of investment in securities and such borrowings shall not exceed forty per cent of its shareholders funds, or market value of the listed securities portfolio held, whichever is higher.

(5) Unsecured advances, loans and other amounts to any directors or associates shall be made out of shareholders funds which are in excess of the prescribed minimum shareholders funds provided that such loans shall not exceed ten per cent of the shareholders funds.

(6) The ratio of the dealer's bank overdraft to the paid-up capital shall not exceed twenty per cent during the licence period.

(7) A dealer shall maintain an investment portfolio out of its investment capital equivalent to a minimum monthly average of fifty per cent in listed equities and the remainder in listed fixed income securities provided that within twelve months from the date of these Regulations, the investment of the minimum monthly average in listed equities shall be adjusted to sixty per cent.

(8) (a) At least an average of twenty-five per cent of the portfolio of securities held by a dealer shall be turned over every quarter and seventy-five per cent of the portfolio be turned over every twelve months.

(b) Every security held by a dealer shall be turned over at least once every eighteen months.

(9) For the purposes of this regulation "turnover" means the value of securities purchased or sold during the period.

18. Financial year

The financial year of stockbrokers and dealers shall end on the 31st of December in each year.

19. Records to be maintained

(1) A stockbroker and dealer shall maintain and preserve for a period of seven years, the following accounting documents—

- (a) journals or other records of original entry containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of

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cash and all debits and credits; the records shall show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;

- (b) ledgers, (or other records) reflecting all assets and liabilities, income, expense and capital accounts;
- (c) detailed records of nominee accounts;
- (d) all cheque books, bank statements, cancelled cheques and bank reconciliation accounts;
- (e) clients' accounts (or other records) itemizing separately each account of a client, all purchases, sales, receipts and deliveries of securities and all other debits and credits;
- (f) a memorandum of each client's order received for the purchase or sale of securities; the memorandum shall show orders in chronological sequence, the time of receipt, the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which the order was entered, the time of entry into the market for execution, the price at which the order was executed and, to the extent feasible, the time of execution or cancellation;
- (g) copies of confirmation of all purchases and sales, notices of all other debits and credits for securities and other items for the account of client;
- (h) records on all commissions earned on account of equities, bonds and others;
- (i) contract books or records, showing details of all contracts entered into with trading participants of a securities exchange and duplicates of memoranda of confirmation issued to such other trading participant; and
- (j) any other accounting documents as may be determined by the Authority.

(2) The accounting documents specified under paragraph (1) shall be subject to inspection from time to time and without notice, by the Authority or securities exchange of which the stockbroker or dealer is a trading participant.

(3) A stockbroker shall maintain and preserve for each person who becomes a client, records and accounts for a period of seven years containing information on—

- (a) where the client comes through an investor agent, in the agent sub-account and where the client has been attended to by the supervisor or employee of the stockbroker authorized to attend to clients in the stockbroker's account, the client's name, date of birth, address, nationality or citizenship, identification, written instructions of the client, price limit, duration of the instructions and date of order and the name and address of the investor agent (where applicable) and where the client is a company, certified copies of memorandum and articles of association and the certificate of incorporation;
- (b) where the stockbroker, or any of its agents has made any recommendations to the client to purchase or sell any security, the record of such client shall include the client's occupation, identification, investment objectives, other information concerning the client's financial situation and needs which the stockbroker or any of its agents considered in making the recommendation, and the signature and name of the agent who made the recommendation to the client and the date when any order was given to the stockbroker or its agent and any price limit given;

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- (c) a record or records with respect to each discretionary account including—
 - (i) the client's written authorization to the stockbroker to exercise discretionary power or authority in the client's account;
 - (ii) the reason given by the client for granting discretionary power or authority in his account; and
 - (iii) the written approval of the stockbroker's designated supervisor of each transaction in such account indicating the exact time and date of such approval;
- (d) a separate record for all complaints by clients and persons acting on behalf of clients; the complaints shall be filed alphabetically by clients' names and shall include copies of all materials relating to the complaint, and record of what action, if any has been taken by the stockbroker; copies of such materials and record of action taken shall be kept in the office through which the client's account is handled;
- (e) a separate record of all securities transactions by the stockbroker's or dealer's employees and directors in their own name or under nominees accounts;
- (f) a separate record of all securities transactions between the stockbroker or dealer, and all listed companies in which the directors of the stockbroker or dealer have an interest; and
- (g) such other records as the Authority shall determine from time to time.

(4) A stockbroker shall decline to take an order if, after reasonable inquiry, the client declines to furnish such items of information as required in paragraph (3)(a), (b) and (c) and a statement to that effect is placed in the records, provided, however, that the client's records shall state the client's name and address.

[L.N. 88/2012, s. 13.]

20. Client accounts

A stockbroker shall—

- (a) deposit clients' funds in one or more bank account(s), which account(s) shall contain only clients' funds and be clearly marked "clients' accounts". Such client accounts shall not be overdrawn for any reason;
- (b) maintain a separate record for each account showing the name and address of the bank where the account is maintained, the dates, amounts of deposits and withdrawals and also the exact amount of each client's beneficial interest in the account;
- (c) reconcile such accounts on a regular basis to ensure the amount indicated corresponds with the balances in the client account at any given time; and
- (d) ensure that clients' orders for payments made in advance shall be executed according to clients' instructions and in any event not later than one month from the date of receipt of the clients' funds. Orders not executed within one month for whatever reason shall be renewed by fresh instructions from the client.

21. Reporting obligations

(1) Every stockbroker and dealer shall submit to the Authority and to the securities exchange of which they are trading participants—

- (a) quarterly reports and accounts within fifteen days of the end of each calendar quarter;

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- (b) half yearly reports and accounts within thirty days of the end of each half year; and
- (c) audited annual accounts within three months following the end of the stockbroker and dealer's financial year;
- (d) a financial statement complying with the disclosures prescribed under the Fourth Schedule of these Regulations.

(2) Every stockbroker or dealer shall prepare monthly reports and accounts within fifteen days the end of each calendar month which shall be made available to the Authority at such times as the Authority may request.

[L.N. 99/2009, s. 4, L.N. 88/2012, s. 14.]

22. Conduct of stockbrokers and dealers

(1) Stockbrokers and dealers shall—

- (a) operate independently of any other stockbroker or dealer;
- (b) conduct the business efficiently, honestly, and fairly, with the integrity and professional skills appropriate to the nature and scale of activities;
- (c) have no formal or informal agreement with a trading participant of the same securities exchange whether through an association or not, relating to the stockbroker's or dealer's trading activity, personnel, commissions or any joint activity that is likely to undermine the competitiveness or fair trade practices and service to clients.

(2) Without prejudice to the generality of paragraph (1), in consideration whether a stockbroker or dealer is conducting or will conduct business efficiently, honestly and fairly, regard shall be made to the management and organizational structure, reporting principles and procedures, internal audit procedures, procedures for compliance with the securities laws and risk management policies which the stockbroker or dealer has adopted or proposes to adopt for its business.

[L.N. 88/2012, s. 15.]

22A. Conducting business through a stock broking agent

(1) A stockbroker may conduct business through a stockbroking agent provided the stockbroking agent has been contracted in writing to render such services.

(2) Every stockbroker shall forward to the Authority, on an annual basis, a register of any stockbroking agents contracted pursuant to paragraph (1) and shall notify the Authority of any amendment to the register of agents within five working days of such change.

(3) A stockbroker shall be responsible for conducting all necessary due diligence to establish the competence, fitness and propriety of any person so appointed as a stockbroking agent, having specific regard to the past experiences and conduct of any such person, in establishing his capacity to facilitate the purchase and sale of securities as an agent of the stockbroker in the best interests of investors.

(4) A stockbroker shall submit to the Authority for approval the standard form agency agreement they propose to enter into with their stockbroking agents and shall thereafter secure the approval of the Authority prior to amending such agreement.

(5) A stockbroker shall not appoint as its agent any person already appointed by another stockbroker as its agent:

Provided that a stockbroker who, at the commencement of this provision, has appointed an agent who acts for more than one stockbroker shall, within six months of the commencement, comply with the requirements of this provision.

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(6) A stockbroking agent shall not handle or deal with clients' funds.

(7) The stockbroker shall be responsible for ensuring that the stockbroking agent conducts his business efficiently, honestly and fairly with the integrity and professional skills appropriate to the nature and scale of activities and in accordance with the provisions of the Act and Regulations issued thereunder.

(8) In the event of any misconduct by the stockbroking agent, the stockbroker who appointed the stockbroking agent shall report the misconduct to the Authority within forty-eight hours of the occurrence of the misconduct.

[L.N. 99/2009, s. 5.]

23. Conduct of stockbrokers

(1) A stockbroker shall—

- (a) execute an order only where the client has made sufficient arrangements for funds or securities with the stockbroker;
- (b) only accept written orders and shall ensure that the client is not only capable of honouring the order before acting on the order, but has made arrangements with the stockbroker for fulfilment of its obligations arising from such order;
- (c) execute clients' orders in the chronological sequence of orders received and which have been so recorded in accordance with these Regulations and shall give priority to orders of clients over orders of any shareholder or employee of the stockbroker or related dealer subsidiary, whether directly or indirectly;
- (d) maintain a daily record of orders received from clients showing the name of each client, the specific order and time the order was given, and execute the same in order of receipt;
- (e) exercise due diligence and care at all times so as not to misinform or misdirect clients;
- (f) while accepting an order from a client, inform the client of all constituent parts of an order prior to executing the order and get the client to give a written declaration to confirm the same;
- (g) provide factual and accurate information to clients' through newsletters and advertisements;
- (h) not recommend to a client the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the stockbroker after reasonable examination of the client's financial records.

(2) An "order" for the purpose of this regulation, shall constitute written instructions by a client to a stockbroker as to the security name, quantity, price or price limits and duration or validity of instructions.

24. Prohibited dealings and associations

(1) No stockbroker or dealer shall—

- (a) create a false market in any listed security by way of any artificial device including but not limited to advising clients to buy or sell a particular security while selling or buying through its dealing or related party transactions, without disclosing that fact to the investors;

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- (b) establish a corner or trade where a corner has developed in a listed security;
- (c) negotiate on any issue relating to trading with any other person on the trading floor of the securities exchange;
- (d) be party to any trading and price manipulative scheme or device which may directly or indirectly influence or interfere with the market price formation and fair trading process with respect to any listed security;
- (e) make general recommendations to the public on particular securities through publications or statements; or
- (f) sell securities which are not registered in the name of the stockbrokers' client or central depository in the case of a depository environment.

(2) For the purposes of this regulation, “**a corner**” shall be deemed to arise when a single interest or group has acquired such control of any listed security that the same cannot be obtained except at prices or on terms dictated by such single interest or group.

25. Sale of securities

- (1) No stockbroker or dealer shall sell securities unless, at the time of the sale—
 - (a) the stockbroker or dealer has or, in the case of a stockbroker, its client has; or
 - (b) the stockbroker or dealer believes on reasonable grounds, that it has, or in the case of a stockbroker, its client has,

an existing exercisable and unconditional right to vest the securities in a purchaser of the securities.

(2) A person who, at any particular time, has an existing exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person.

(3) A right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of money.

- (4) For purposes of this Part, a person shall be deemed to sell securities where he—
 - (a) purports to sell securities;
 - (b) offers to sell securities;
 - (c) holds himself out as entitled to sell securities; or
 - (d) instructs a stockbroker to sell securities.

26. Code of conduct to be approved

(1) Any proposed code of conduct or agreements to self-regulate the operations of stockbrokers and dealers, shall be submitted to the Authority for prior approval and must be consistent with these Regulations.

(2) No code of conduct of any associations or agreements of stockbrokers or dealers whether in written form or not shall seek to restrict free negotiation or competition by trading participants with regard to commissions payable on any transactions as provided in the Fifth Schedule.

[L.N. 88/2012, s. 16.]

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27. Payment of transaction and Investor Compensation Fund fees

All stockbrokers and dealers shall pay to the Authority and to the securities exchange of which they are trading participants the fees prescribed as payable by every buyer and seller of a security and shall pay to the Investor Compensation Fund the fees prescribed as payable by each buying and selling stockbroker, or dealer within fifteen days following a transaction.

[L.N. 88/2012, s. 17.]

PART IV – INVESTMENT ADVISERS AND FUND MANAGERS**28. Application for licence**

(1) An application for a licence to operate as an investment adviser or fund manager shall be submitted to the Authority in duplicate in Form 1 set out in the First Schedule.

29. Specific requirements for approval

- (1) The application under regulation 28 shall be submitted together with—
- (a) certificate of incorporation;
 - (b) memorandum and articles of association;
 - (c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and the applicant's audited accounts for the preceding two years (where applicable);
 - (d) a business plan containing the particulars on—
 - (i) the management structure;
 - (ii) the directors, including one or more executive directors, their qualifications, addresses and details of other directorships;
 - (iii) the shareholding structure, disclosing whether any of the shareholders will have an executive role to oversee the day-to-day operations of the business;
 - (iv) the evidence of a minimum paid-up share capital of not less than two million five hundred thousand shillings for investment advisers and ten million shillings for fund managers;
 - (v) the qualifications, experience and expertise of the chief executive;
 - (vi) the proposed management and qualifications of key personnel;
 - (vii) the financial projections for three years;
 - (viii) the particulars of the proposed operating and information technology system;
 - (ix) one bank reference;
 - (x) two business references;
 - (xi) the proposed premises suitably located and equipped to provide satisfactory service to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such premises will be available;
 - (xii) the staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available;
 - (xiii) the proposed independent auditor;
 - (e) the fees prescribed in the Second Schedule.

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(2) Every person who is, or is to be, a director, chief executive or manager of an investment adviser or fund manager, shall be fit and proper to hold the particular position which he holds or is to hold.

(3) A person shall not carry on or hold out himself as carrying on the business of a fund manager of a registered venture capital company unless that person is a fund manager licensed by the Authority.

(4) An application for a licence under paragraph (3) shall be made to the Authority in writing and be accompanied by—

- (a) a detailed information on qualifications, experience and expertise of the directors, chief executive and senior investment in managing venture capital investments and private equity; and
- (b) information proving ability to provide technical and managerial expertise to eligible venture capital enterprises.

(5) The Authority shall publish the names of all fund managers it has licensed to manage registered venture capital companies in the Kenya, *Gazette*.

[L.N. 32/2008, s. 3.]

30. Financial requirements

(1) The level of shareholders funds (paid-up share capital and reserves) for investment advisers, shall not fall below two million five hundred thousand shillings at any time during the licence period.

(2) The level of shareholders funds (paid-up share capital and reserves) for fund managers, shall not fall below ten million shillings at any time during the licence period.

(3) The paid-up share capital of the investment adviser or fund manager shall always be unimpaired and shall not be advanced to the directors or associates of the investment adviser or fund manager.

(4) The working capital of an investment adviser or fund manager shall not fall below twenty per cent of the required minimum share capital or three times the average monthly operating costs, whichever is higher.

(5) Unsecured advances, loans and other amounts to directors or associates shall be made out of shareholders funds which are in excess of the prescribed minimum shareholders funds provided that such loans shall not exceed ten per cent of the shareholders funds at any time.

(6) The ratio of the investment adviser's or fund manager's bank overdraft to the paid-up capital shall not exceed twenty per cent, at any time.

(7) The size of the aggregate maximum value of all clients' portfolio managed under the investment adviser's licence as prescribed shall not exceed ten million shillings and any amount in excess of the prescribed aggregate limit shall be managed under the fund manager's licence.

31. Records to be maintained

(1) Every investment adviser and fund manager shall maintain and preserve for a period of seven years, the following records—

- (a) journals, including cash receipts and disbursement records and any other records or original entry, forming the basis of entries in any ledger;
- (b) general and auxiliary ledgers, or other comparable records reflecting assets, liabilities, reserves, capital, income and expense accounts;

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- (c) a record or memorandum of each order given by the investment adviser or fund manager for the purchase or sale of securities, or any instruction received by the investment adviser or fund manager from the client concerning the purchase, sale, receipt or delivery of a particular security and of any modification or cancellation or any such order or instruction, and the record shall—
 - (i) show the terms and conditions of the order, instruction, modification or cancellation;
 - (ii) identify the person connected with the investment adviser or fund manager who recommended the transaction to the client and the person who placed such order;
 - (iii) show the account for which the order was entered, the date of entry, and the stockbroker by or through whom the order was executed, where appropriate; and
 - (iv) show orders entered pursuant to the exercise of discretionary power on account of management of investment portfolios in which case a record of details of such contracts with clients, constituents of the portfolio, transaction fees agreed with the client and value of the portfolio shall be included;
- (d) all cheque books, bank statements, cancelled cheques and cash reconciliation of the investment adviser or fund manager;
- (e) all bills, statements or copies thereof, paid or unpaid relating to the business of the investment adviser or the fund manager;
- (f) originals of all written communication received from clients and copies of all written communication sent by the investment adviser or fund manager relating to—
 - (i) any recommendations made or proposed to be given;
 - (ii) any receipts, disbursement or delivery of funds or securities; and
 - (iii) the placing or execution of any order to purchase or sell any security; provided, that if the investment adviser or fund manager sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory services to more than ten persons, the investment adviser or fund manager shall not be required to keep a record of the names and addresses of the persons to whom it was sent except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser or fund manager shall retain a copy of such notice, circular or advertisement, a record or memorandum describing the list and the source thereof;
- (g) a list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (h) all evidence of granting of any discretionary authority by any client to the investment adviser, or copies thereof;
- (i) all written agreements or copies thereof entered into by the investment adviser or fund manager with any client or otherwise relating to the investment adviser's or fund manager's business;
- (j) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser or fund manager circulates or distributes, directly or indirectly, to ten or more persons, and if such notice, circular, advertisement, newspaper article,

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investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum from the investment adviser or fund manager (as the case may be) indicating the reasons thereof; all advertisements by the investment adviser or fund manager and all records, worksheets and calculations necessary to form the basis for performance data in such advertisements;

- (k) a record of every transaction in a security in which the investment adviser or fund manager or any of the investment adviser or fund manager's employees acquire any direct or indirect beneficial ownership; the record shall state the title and amount of the security involved, the date, whether the transaction was a purchase or sale or other acquisition or disposition, the price at which it was effected, and the name of the stockbroker with or through whom the transaction was effected; and
- (l) a copy of each written statement, the amendment or revision thereof, given or sent to any client or prospective client of such investment adviser or fund manager and a record of the dates that the same was given or offered to be given;
- (m) any other records as may be determined by the Authority.

(2) The records specified under paragraph (1) shall be subject to inspection from time to time and without notice, by the Authority.

(3) Each investment adviser and fund manager shall preserve and maintain clients' records of securities or funds and if required produce for inspection by the Authority such books, records and ledgers, or other accepted accounting and additional records as may be required by the Authority for a period of seven years and shall—

- (a) notify the Authority of the custodian appointed; and
- (b) segregate the securities of each client and mark such securities to identify the particular client having the beneficial interest therein.

32. Reporting obligations

(1) Every investment adviser or fund manager shall submit to the Authority—

- (a) quarterly management accounts and reports of the portfolio under its management within fifteen days of the end of each calendar quarter:

Provided that every investment adviser or fund manager shall prepare monthly reports of the portfolio under its management within fifteen days of the end of each calendar month, which shall be made available to the Authority at such times as the Authority may require;

- (b) half-yearly reports of the portfolio under its management within thirty days of the end of each half-year, including reports of its own financial performance;
- (c) annual reports of the total value of the portfolio under its management including the number of clients; and
- (d) audited annual accounts for its operations in the form prescribed in the Fourth Schedule within three months following the closure of the financial year.

(2) Notwithstanding the provisions of paragraph (1), the Authority may require such other form of financial statement as it may from time to time specify.

[L.N. 99/2009, s. 6.]

33. Conduct of investment advisers and fund managers

(1) No investment adviser or fund manager shall—

- (a) recommend to a client to whom investment, supervisory, management or consulting services are provided, the purchase or sale of any security

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without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser or fund manager after reasonable examination of the client's financial records;

- (b) place an order to purchase or sell a security for the account of a client without written authority to do so;
- (c) place an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client;
- (d) exercise any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client;
- (e) induce trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;
- (f) misrepresent to any client, or prospective client, its qualifications or misrepresent the nature of the advisory services being offered or fees to be charged for such service or omit to state a material fact necessary to make the statements regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;
- (g) provide a report or recommendation to any client prepared by someone other than the investment adviser without disclosing that fact;
- (h) fail to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or fund manager or any of the investment adviser's or fund manager's employees, which could reasonably be expected to impair the rendering of unbiased and objective advice, including—
 - (i) compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
 - (ii) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or fund manager or his employees;
- (i) guarantee a client that a specific result will be achieved arising from the advice which will be rendered except in the case of fixed income securities;
- (j) publish, circulate or distribute any advertisement which does not comply with the Act;
- (k) disclose the identity, affairs, or investment of any client to any third party unless required by law, court order or a regulatory agency to do so, or unless consented to by the client; and
- (l) enter into, extend or renew any investment advisory contract unless such contract is in writing and discloses in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the investment adviser or fund manager and that no assignment of such contract shall be made by the investment adviser or fund manager without the consent of the other party to the contract;

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- (m) fail to register all securities marketed and offered to clients by the investment adviser or fund manager or otherwise inform the client that the securities offered to them have not been registered with or approved by the Authority.

(2) Any information provided by investment advisers or fund managers to clients through newsletters and advertisements shall be factual and accurate.

(3) No investment adviser or fund manager shall loan money to a client unless the investment adviser or fund manager is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or fund manager.

(4) An investment adviser or fund manager may not contract or engage any advisory or management services on behalf of an investment portfolio without prior written approval of its clients. The investment adviser or fund manager shall remain liable hereunder—

- (a) for any act or omission of the sub-contracted investment adviser or fund manager;
- (b) the fees and expenses of any such person, which shall not be payable out of the fund of the portfolio investments; and
- (c) any expenses incurred by any such person which if incurred by the investment adviser or the fund manager would have been payable out of the fund of the investment portfolio.

(5) When accepting an order from a client the investment adviser or fund manager shall inform the client of all constituent parts of the service agreement prior to executing the order and get the client to give it a written declaration to confirm the same.

(6) The investment adviser or fund manager shall be fair and equitable in the event of any conflict of interest that may arise in the course of its duties.

34. Appointment of a custodian

(1) Every investment adviser and fund manager that manages discretionary funds shall appoint a custodian for the assets of the fund.

(2) A custodian of an investment portfolio may in relation to the fund manager or investment adviser be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act (Cap. 486) or be deemed by the Authority to be otherwise under control of substantially the same persons or consist substantially of the same shareholders, provided that the investment in a related company shall be limited to ten per cent of the total funds managed by the fund manager.

(3) The Authority may revoke the approval of a custodian if at any time thereafter the custodian ceases to satisfy the requirements of these Regulations.

35. Duties of a custodian

(1) A custodian shall render custodial services to the investment portfolio managed by the investment adviser or fund manager in accordance with the written service agreement between the custodian and the investment adviser or fund manager as the case may be and such service shall include—

- (a) taking into its custody or under its control all the property of the clients of the investment adviser or fund manager and hold it in trust for the clients in accordance with the provisions of the written service agreement provided that cash and registrable assets shall be registered in the name of or to the order of the clients by the custodian;
- (b) receiving and keeping in safe custody title documents, securities and cash amounts of the investment portfolio;

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- (c) opening an account in the name of each client for the exclusive benefit of such investment portfolio;
- (d) transferring, exchanging or delivering in the required form and manner securities held by the custodian upon receipt of proper instructions from the investment adviser or fund manager;
- (e) requiring from the investment adviser or fund manager as the case may be, such information as it deems necessary for the performance of its functions as a custodian;
- (f) promptly delivering to the investment adviser or fund manager or to such other persons as investment adviser or fund manager may authorize, copies of all notices, proxies, proxy soliciting materials received by the custodian in relation to the securities held in the fund account, all public information, financial reports and stockholder communications the custodian may receive from the issuers of securities and all other information the custodian may receive, as may be agreed between the custodian, investment adviser or fund manager;
- (g) exercising subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the investment adviser or fund manager;
- (h) exercising the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of property and in fulfilling obligations in the agreement;
- (i) where title to investments are recorded electronically, ensuring that entitlements of the clients of the investment adviser or fund manager are separately identified in the records of entitlement maintained by the custodian.

(2) A custodian shall in executing its duties under paragraph (1) exercise the degree of care expected of a prudent professional custodian for hire.

(3) A custodian discharging its contractual duties to an investment adviser or fund manager shall not contract agents to discharge those functions except where a portion of the investment portfolio is invested in offshore investments in which case the custodian may engage the services of an overseas sub-custodian approved by the investment adviser or fund manager as the case may be with notification of such appointment to the Authority.

(4) The agreement referred to in paragraph (1) between the custodian and the investment adviser or fund manager shall make provision on the computation of the fee in respect of custodial services which will be disclosed to the clients by the investment adviser or fund manager in the annual report.

36. Custodian's records and reports

(1) A custodian shall keep such records as may be necessary to ascertain—

- (a) the entire fund of the investment portfolio held by the custodian;
- (b) each transaction carried out by the custodian on behalf of the investment adviser or fund manager as the case may be.

(2) The records referred to in paragraph (1) shall be subject to inspection by the investment adviser or fund manager as the case may be or a duly authorized agent of the Authority within the premises of the custodian at any time during business hours.

(3) The custodian shall make available to the fund manager or investment adviser—

- (a) a written statement at agreed reporting dates which lists all assets of the investment adviser or fund manager's clients in the clients' account(s) together with a full account of all receipts and payments made and other actions taken by the custodian;

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- (b) an advice or notification of any transfers of property or securities to or from the investment adviser or fund managers clients' account(s) and indicating the securities acquired for the account(s), the identity of the party having physical possession of such securities; and
- (c) a copy of the most recent audited financial statements of the custodian prepared together with such information regarding the policies and procedures of the custodian as the investment manager or fund manager may request in connection with the agreement or the duties of the custodian under that agreement.

(4) The custodian shall prepare and submit to the Authority an annual report demonstrating how compliance with these Regulations and its service agreement have been achieved.

37. Retirement of a custodian

(1) A custodian shall not retire voluntarily except upon the appointment of a successor approved by the Authority.

(2) Where a custodian desires to retire or ceases to be registered as a custodian with the Authority, the investment adviser or the fund manager as the case may be may with the approval of the Authority appoint another eligible person to be a custodian in its place.

38. Removal of a custodian

(1) A custodian may be removed by the investment adviser or fund manager by notice in writing where—

- (a) the custodian goes into liquidation other than a voluntary liquidation for the purpose of reconstruction or amalgamation or where a statutory manager or a receiver is appointed over any of its assets;
- (b) the custodian ceases to be an authorized depository or ceases to carry on business as a bank or financial institution;
- (c) the custodian fails or neglects after reasonable notice from the investment adviser or fund manager, to carry out or satisfy any duty imposed on the custodian in accordance with the agreement; or
- (d) the directors of the investment adviser or fund manager as the case may be, by extraordinary resolution resolve that such notice be given, and the investment adviser or fund manager with the approval of the Authority appoints as custodian some other qualified authorized depository.

(2) On receipt of the notice referred to in paragraph (1) by the investment adviser or the fund manager, the service agreement between investment adviser or the fund manager as the case may be and the custodian shall be deemed to have been terminated.

(3) In the event of a termination of the service agreement as referred to in paragraph (2) or from the date of winding-up order issued by a court against the custodian, the custodian shall hand over, all assets, documents and funds including those from the bank account(s) of the investment adviser or fund manager held by such custodian to the custodian appointed in writing by investment adviser or fund manager (as the case may be) and approved by the Authority within thirty days from the date of such termination.

(4) The custodian shall submit to the Authority an audit report indicating the assets, liabilities and an inventory of the investment portfolio, securities and title documents of the assets which have been handed over, transferred and delivered to the appointed custodian within twenty days from the termination of the service agreement.

[Subsidiary]

PART V – INVESTMENT BANKS

39. Application for licence and specific requirements for approval

(1) An application for a licence to operate as an investment bank shall be submitted to the Authority in Form 1 set out in the First Schedule.

(2) The application referred to in paragraph (1) shall be submitted together with—

- (a) the certificate of incorporation;
- (b) the memorandum and articles of association;
- (c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and applicant's audited accounts for the preceding two years (where applicable);
- (d) a business plan containing the particulars on—
 - (i) management and shareholding structure of the investment bank;
 - (ii) directors, including their qualifications, addresses and details of other directorships;
 - (iii) evidence of paid up share capital of a minimum amount of two hundred and fifty million shillings;
 - (iv) qualifications, experience and expertise of the chief executive and dealers that must be relevant to effectively manage or operate the business of an investment bank;
 - (v) proposed operating systems including dealing infrastructure suitably located and equipped to provide satisfactory service to clients; and
 - (vi) staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available;
- (e) the fees prescribed in the Second Schedule;
- (f) the name of the proposed independent auditor.

(3) An Investment Bank which intends to be admitted as a trading participant at a securities exchange shall submit a letter from the securities exchange which the applicant is seeking admission as a trading participant confirming the admission of that applicant upon securing a license from the Authority.

[L.N. 99/2009, s. 7, L.N. 88/2012, s. 18.]

40. Authorized functions

An investment banks shall be a non-deposit taking institution and shall carry out all or any of the following functions—

- (a) offering advisory services on—
 - (i) public offering of securities;
 - (ii) corporate financial restructuring, takeover, mergers, acquisitions and privatization;
 - (iii) corporate financing, options including issuance of equity or debt securities or loan syndication;
- (b) engaging in the business of a stockbroker subject to regulation 42;
- (c) engaging in the business of a dealer;
- (d) promoting or arranging underwriting or issuance of securities;
- (e) promoting and acting as a fund manager of collective investment schemes;

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- (f) providing investment advisory services and contractual portfolio management.

41. Admission to a securities exchange

(1) A person licensed by the Authority as an investment bank shall be eligible to apply for admission as a trading participant with a securities exchange:

Provided that the licensed investment bank complies with the eligibility requirements of the admitting securities exchange.

[L.N. 88/2012, s. 19.]

42. Deleted by L.N. 88/2012, s. 20.**43. Conduct of investment banks**

An investment bank shall comply with the provisions on client accounts, records to be maintained, reporting obligations, conduct, prohibited dealings and associations, investment requirements and appointment of custodian, relating to stockbrokers, broking agents, dealers, investment advisers and fund managers and payment of transaction and investor compensation fees relating to stockbrokers, stockbroking agents and dealers as set out in these Regulations, where applicable.

[L.N. 99/2009, s. 8.]

44. Financial requirements

(1) The level of paid-up share capital shall not fall below two hundred and fifty million shillings at any time during the licence period and in addition, shareholders' funds (paid up share capital and Reserves) shall at no time fall below two hundred and fifty million shillings:

Provided that any investment bank whose paid-up share capital is below the required amount at the time of commencement of this paragraph shall comply by the 31st December 2010.

(2) The minimum paid-up share capital shall always be unimpaired and shall not be advanced to the directors or associates of the investment bank.

(3) The net working capital shall be three times the monthly operating expenses or twenty per cent of the share capital, whichever is higher.

(4) An investment bank shall not borrow at any one time in excess of forty per cent of its shareholders funds including any overdraft facilities and such borrowings shall be for investment in securities.

(5) Unsecured advances or loans to directors or associates shall be made out of shareholders funds which are in excess of the prescribed minimum shareholders funds provided that such loans shall not exceed ten per cent of the shareholders fund at any time.

[L.N. 99/2009, s. 9, L.N. 88/2012, s. 21.]

PART VI – AUTHORISED SECURITIES DEALERS**45. Application for licence**

(1) An application for a licence to operate as an authorized securities dealer shall be submitted to the Authority in Form 1 set out in the First Schedule.

(2) The applicant shall be a financial institution or a bank licensed under the Banking Act (Cap. 488) and shall demonstrate effective capacity and expertise in dealing in securities.

[Subsidiary]

(3) An authorized securities dealer who intends to be admitted as a trading participant at a securities exchange shall submit a letter from the securities exchange, which the applicant is seeking admission to as a trading participant, confirming that applicant shall be admitted into the securities exchange upon securing a license from the Authority.

[L.N. 88/2012, s. 22.]

46. Specific requirements for approval

The application under regulation 45 shall be submitted together with—

- (a) the certificate of incorporation;
- (b) the memorandum and articles of association;
- (c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and the applicant's audited accounts for the preceding two years (where applicable);
- (d) a business plan containing the particulars on—
 - (i) management and shareholding structure of the applicant;
 - (ii) directors, including their qualifications, addresses and details of other directorships;
 - (iii) evidence of financial capability to dedicate a minimum amount of two hundred million shillings for investments in fixed income securities every six months;
 - (iv) qualifications, experience and expertise of the chief dealer which must be relevant to effectively manage or operate the business of dealing in fixed income securities;
 - (v) the proposed operating system including dealing infrastructure suitably located and equipped to effectively carry out its operations;
- (e) the fees prescribed in the Second Schedule.

47. Investment obligation and restriction on transactions

(1) An authorized securities dealer shall commit to invest a minimum amount of two hundred million shillings in the Fixed Income Securities Market Segment turned over every six months either on sale or purchases.

(2) An authorized securities dealer shall only trade and deal in minimum lots of five million shillings, and any trades below this amount shall be transacted through stockbrokers.

48. Functions and membership on a securities exchange

(1) An authorized securities dealer shall be restricted to dealing in fixed income securities listed on the Fixed Income Securities Market Segment at a securities exchange and shall be required to—

- (a) act as market makers and dealers in such segment;
- (b) facilitate deepening of the Fixed Income Securities Market;
- (c) enhance trading and liquidity in the Fixed Income Securities Market; and
- (d) minimize counter party risk.

(2) A person licensed by the Authority as an authorized securities dealer shall be eligible to apply to be admitted as a trading participant with a securities exchange:

Provided that the authorized securities dealer meets the eligibility requirements of the admitting securities exchange.

[L.N. 88/2012, s. 23.]

49. Records of transactions

Every authorized securities dealer shall maintain a record of its daily dealing transactions which shall include particulars on—

- (a) type of security;
- (b) value of trade;
- (c) counter party; and
- (d) nature of account.

50. Report of dealing transactions

(1) Every authorized securities dealer shall submit to the Authority and to the securities exchange of which it is trading participants a quarterly, half-yearly and annual report of the dealing transactions.

(2) The report referred to in paragraph (1) shall include particulars on the—

- (i) type of securities;
- (ii) total value of securities traded in terms of sales and purchases during the quarter; and
- (iii) average yield of the total value of securities traded during the quarter.

[L.N. 88/2012, s. 24.]

PART VII – GENERAL REQUIREMENTS FOR LICENSING**51. Renewal of licence**

(1) An application for the renewal of a licence shall be submitted to the Authority in Form 1 set out in the First Schedule by the 30th of November of each year.

(2) The application under paragraph (1) shall be submitted together with—

- (a) the fees set out in the Second Schedule;
- (b) where the application is for the renewal of a licence, management accounts for the period up to 30th November of each year not later than the 15th December in the same year.

(3) Authorised securities dealers shall submit the annual accounts and report the dealings operations as may be required by the Authority.

(4) The audited accounts for each year shall be submitted to the Authority not later than the 31st day of March.

(4A) The financial year of every licensed person shall be the period of twelve months ending on the 31st December in each year:

Provided that where the financial year of a licensed person is different from that prescribed in this paragraph at the commencement of this paragraph, the licensed person shall comply therewith within twelve months of such commencement.

[L.N. 99/2009, s. 10.]

51A. Financial Statements

(1) All financial statements prepared by licensees shall be prepared in accordance with International Financial Reporting Standards.

(2) Collective investment schemes, stockbrokers, dealers, fund managers and investment banks shall publish in at least two daily newspapers of national circulation—

- (a) half-year unaudited financial statements within two months after the end of the first half of the financial year; and

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- (b) full-year audited financial statements within three months after the end of the financial year.

[L.N. 99/2009, s. 11.]

51B. Professional indemnity insurance

(1) Stockbrokers and investment banks shall obtain professional indemnity insurance to secure an amount not less than five times their daily average turnover.

(2) For the purposes of paragraph (1), the daily average turnover shall be calculated based on the firm's turnover for the previous year, where applicable, or such amount as the Authority may determine.

(3) Fund managers shall obtain professional indemnity insurance to secure such amount as the Authority may determine based on the portfolio under the management of the Fund Manager.

[L.N. 99/2009, s. 11.]

51C. Display of audited balance sheet

Every licensed stockbroker fund manager and investment bank shall display throughout the year in a conspicuous position in every office and branch in Kenya, copies of its last audited balance sheet and profit and loss statement which shall be in conformity with the minimum financial disclosure requirements prescribed from time to time by the Authority, and shall include a copy of the auditor's report together with full and correct names of all persons who are directors of the licensee.

[L.N. 99/2009, s. 11.]

52. Determination of suitability

In determining whether a person is fit and proper to hold any particular position, regard shall be had to—

- (a) his probity, competence and soundness of judgment in fulfilling the responsibilities of that position;
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;
- (c) whether the interests of customers, are or are likely to be in any way threatened by his holding that position, by virtue of past convictions or offences, involvement in irregularities, misappropriation of funds or manipulation of securities markets transactions;
- (d) has contravened the provision of any law designed for the protection of members of the public against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in transacting with marketable securities;
- (e) was a director of a brokerage firm that has been liquidated or is under liquidation or statutory management;
- (f) has taken part in any business practice that, in the opinion of the Authority, was fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;
- (g) has taken part or been associated with any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment;
- (h) whether he has been convicted of an economic crime under the Anti-Corruption and Economic Crimes Act (No. 3 of 2003).

[L.N. 99/2007, s. 2, L.N. 99/2009, s. 12.]

53. Key personnel of full and associate members

(1) All trading participants of a securities exchange shall register with the Authority all key personnel annually including any changes thereto.

(2) For the purposes of this regulation “**key personnel**” includes employees and directors of a trading participant who have direct dealings with clients and carry on trading activities on behalf of clients.

[L.N. 88/2012, s. 25.]

53A. Designation of compliance officer

Every licensed person shall, in writing, designate in writing a compliance officer to coordinate all compliance matters with the Authority.

[L.N. 99/2009, s. 13.]

53B. Change of shareholders, directors, etc.

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

(2) Where any person proposed to be appointed under paragraph (1) is found to be a former employee or otherwise connected with another licensee of the Authority, details of the reasons for their departure shall be forwarded in support of any request for no objection.

(3) Every licensee shall lodge with the Authority in every year, and update the same within five days of any change thereto, a list of all key personnel working with the licensee, which shall include the individual’s full name, national identity card number, job designation and description of responsibilities and, where they have worked with other licensees of the Authority, details of their former employers.

[L.N. 99/2009, s. 13.]

53C. Branch or new place of business

(1) A licensed person shall not open a branch or a new place of business in Kenya, or change the location of a branch or existing place of business, without the approval of the Authority.

(2) A licensed person shall not close any of its place of business in Kenya without first giving the Authority a three months’ written notice of its intention to do so or such shorter period of notice as the Authority may allow.

[L.N. 99/2009, s. 13.]

54. Alteration of memorandum or articles of association

Every licensed person shall submit to the Authority any alterations to its memorandum or articles of association within thirty days of passing the resolution approving such alteration.

54A. Change to capital structure

Every licensed person shall notify the Authority of any changes to its capital structure within five working days from the date of the change.

[L.N. 99/2009, s. 14.]

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55. Qualification of Secretary

No licensed person shall engage as a Secretary a person who is not qualified under the Institute of Certified Public Secretaries of Kenya Act (Cap. 534).

55A. Auditor

(1) A licensed or approved person shall not appoint or remove its auditor except with the prior written approval of the Authority at least one month prior to such appointment or removal.

(2) If the auditor of a licensed or approved person, in the course of the performance of his duties under the Act, is satisfied that —

- (a) there has been a serious breach of or non-compliance with the provisions of the Act or Regulations, made thereunder, guidelines or other stipulations of the Authority; or
- (b) a criminal offence involving fraud or other dishonesty has been committed by the licensed person or any of its key officers or employees; or
- (c) serious irregularities occurred which may jeopardize the security of investors or creditors of the licensed person; or
- (d) he is unable to confirm that the claims of investors and creditors of the licensed person are capable of being met out of the assets of the licensed person,

he shall immediately report the matter to the Authority.

(3) Where an auditor of a licensed or approved person fails to comply with the requirements of paragraph (2) above, the Authority shall disqualify him from appointment as an auditor of its licensees and approved persons.

(4) A duty to which an auditor of a licensed or approved person may be subject to shall not be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by it or opinion on a matter to which this regulation applies and which is relevant to any function of the Authority under this Act or Regulations made thereunder.

(5) This regulation shall apply to any matter of which an auditor becomes aware in his capacity as an auditor or in discharge of his duties under these Regulations and which relates to the business or affairs of the licensed or approved person or any associated persons.

(6) A person appointed as an auditor shall serve for a maximum period of four consecutive years.

(7) The Authority may arrange trilateral meetings with a licensed person and its auditor from time to time to discuss matters relevant to the Authority's supervisory responsibilities including relevant aspects of the licensed person's business, its accounting and control system and its annual accounts.

[L.N. 99/2009, s. 15.]

55B. Notice to the Authority by Auditor

(1) An auditor of a licensed or approved person shall forthwith give written notice to the Authority where he—

- (a) resigns from office;
- (b) does not seek to be appointed; or

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- (c) includes in his report or draft report on the licensed or approved person's accounts any qualification which did not appear in the accounts for the preceding financial year.

[L.N. 99/2009, s. 15.]

56. Marketing securities

No person shall market securities in Kenya, whether the securities have been issued in Kenya or not, through advertisement, solicitation, invitation or by other means in whatever form or manner with an aim of reaching the general public or a section thereof unless such a person is licensed under these Regulations.

PART VIII – TRANSACTIONS OF LISTED SECURITIES OUTSIDE A SECURITIES EXCHANGE**57. Nature of transaction**

An application to the Authority for approval of a private transaction shall be considered if the transaction is for the—

- (a) transfer to a close relation in the form of a gift;
- (b) settlement of a will or estate of a deceased person;
- (c) restructuring, mergers or acquisitions in a scheme which has been approved by the Authority; or
- (d) transfer of an exceptional nature of a listed security that the Authority considers to be proper and acceptable with respect to a strategic investor and serves the investor or public interest.

58. Brokerage commission

Where a private transaction is authorized, no brokerage commission shall be payable on the transaction, except a fee prescribed by the Authority.

59. Application for approval of a private transaction

(1) Where it is intended to effect a private transaction of a listed security under regulation 57(a) and (b) the stockbroker representing the proposed transferee shall assess, endorse and submit a written application with the required information and supporting documents to the securities exchange at which the security is listed stating the reasons the proposed transaction is eligible to be transferred in a private transaction.

(2) The securities exchange shall notify the stockbroker within seven days of receiving the application whether it objects to the private transaction or not, after examining and satisfying itself that the proposed transfer is eligible for consideration as a private transaction in accordance with these Regulations.

(3) In the event that the market value of the proposed private transaction of the individual or aggregate security—

- (a) is one hundred thousand shillings or less, the securities exchange shall approve and simultaneously notify the Authority that the application complies with regulation 57(a) and (b); or
- (b) exceeds one hundred thousand shillings, the securities exchange shall forward the application together with its recommendations to the Authority for approval.

60. Approval fee

The approval fee for any transaction of a listed securities outside a securities exchange shall be at the rate prescribed by the Authority.

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61. Private transactions under section 31(1A) of the Act

(1) With respect to an application for approval of a private transaction, falling under regulation 57(c) or (d) or section 31(1A)(ii) of the Act, the applicant shall submit to the Authority for approval a detailed draft information memorandum or a circular to be distributed to the shareholders containing information on—

- (a) the name and address of the applicant;
- (b) the date of incorporation;
- (c) the particulars of core activities, directors, management and major shareholders;
- (d) the details of any agreements entered or proposed to be entered into and the cost;
- (e) a statement by the financial adviser managing the transaction that to the best of its knowledge and belief the application constitutes full and true disclosure of all material facts about the offer and issuer and where appropriate it has satisfied itself that the profit forecasts have been stated by the directors after due and careful inquiry;
- (f) the details of any proposed merger, takeover, acquisitions, share, swap, reorganization or restructure scheme and the relevant shareholders and/or board resolutions;
- (g) a declaration by the directors of the applicant in the following form:
“This application has been approved by the directors of the company all of whom jointly and severally accept responsibility for the accuracy of the information given and confirm that after making all reasonable inquiries and to the best of their knowledge and belief, there are no facts the omission of which would make any statement herein misleading.”;
- (h) any other matters as may be requested by the Authority.

(2) The applicant shall make a public announcement of its intention to apply to the Authority for approval of the proposed transfer and reasons therein and a copy of the transfer form for the proposed transaction shall be submitted to the Authority together with the application.

PART IX – DISSEMINATION OF INFORMATION TO THE PUBLIC AND SHAREHOLDERS**62. Disqualification of professionals**

The Authority may—

- (a) disqualify any person from giving professional opinion on matters related to listed securities, public offer or issue of securities; or
- (b) otherwise penalize any professional who in the opinion of the Authority has given a professional opinion that is false or misleading or has omitted to give an opinion where such omission is likely to be misleading in the circumstances in which the professional opinion is given or omitted as the case may be.

63. Content of public communication and circular to shareholders

(1) All circulars to shareholders and the public including advertisements, offer documents and any other communication by listed companies, professionals and persons licensed under the Act shall be factual and statements made shall be for the purpose of—

- (a) assisting in the evaluation of a particular security, or type of securities;

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- (b) promoting the industry, the service offered or the desirability of investing in securities in general; or
- (c) providing shareholders or the public with accurate and adequate information about the listed company or securities transaction and market activity.

(2) No material fact or qualification may be omitted if such omission would cause a shareholders' circular, advertisement or offer document to be misleading in the context of other information presented to the shareholders, investors or the general public.

(3) In making a recommendation with respect to any security a licensed person, issuer or analyst shall—

- (a) disclose the price at the time of the recommendation and, if applicable, the fact that such licensed person or analyst makes a market in the securities recommended (where applicable);
- (b) recommend a buy or sell action and shall disclose the basic facts and assumptions in support of such recommendation and whether the licensed person or analyst or person associated to it owns more than a nominal amount of such securities;
- (c) highlight all risk factors that such licensed person or analyst has taken into consideration in the recommendation; and
- (d) state the source of the facts and the recommended time frame for the validity of assumptions.

(4) Any offer of a report, analysis including their updates or other service without any charge must be provided as such without any condition or obligation other than what is clearly described in the offer.

(5) No claim with respect to research or analysis, capacity or expertise under which the facilities are available, may be made beyond those in actual possession of the person making the claim.

(6) All statements made in a circular to shareholders and an advertisement directed to the general public shall be supported by facts the source of which shall be disclosed therein.

(7) All circulars, advertisements or offer of securities to shareholders of listed companies shall be submitted to the Authority for approval prior to distribution, provided that the Authority may require the inclusion of such additional information which in its opinion is relevant to the shareholders or investors.

(8) For the purposes of this regulation—

- (a) “**analyst**” includes business, economic, financial or any other analyst by whatever name who analyses and expresses opinions or recommendations about securities or public listed companies;
- (b) “**nominal**” in relation to a security means a value of ten thousand shillings or less.

PART X – THE INVESTOR COMPENSATION FUND

64. Contribution by licensees

(1) Every buying or selling stockbroker or dealer that is a trading participant of a securities exchange shall contribute to the Compensation Fund such amount as shall be prescribed from time to time by the Authority.

(2) All monies contributed to the Compensation Fund shall be credited to a bank account established by the Authority for that purpose.

[L.N. 88/2012, s. 27.]

[Subsidiary]

65. Management and audit of the Compensation Fund

(1) The Compensation Fund shall be managed by the Authority as a separate fund and disclosed as such in the Authority's annual balance sheet as an asset and liability.

(2) The Authority shall keep proper accounts and records of the Compensation Fund and in every financial year, prepare a statement of accounts showing the movement and financial position of the Fund in the Authority's annual report.

(3) The accounts referred to in paragraph (2) shall include the income and all sources of contribution to and expenses or disbursements of the Compensation Fund including the fees charged by the Authority for the management of the Fund and any investments of the Fund.

(4) The accounts and records of the Compensation Fund shall be audited by the auditor appointed by the Authority for the Authority's annual accounts.

66. Trustees of the Compensation Fund

Members of the Authority shall act as the trustees of the Compensation Fund and may appoint a committee of the Board to oversee its management.

67. Meetings of the Compensation Fund

A special meeting of the members of the Authority shall be convened by the Chief Executive of the Authority whenever the business of the Compensation Fund so requires and the Board of the Authority shall determine the procedure for such meetings.

68. Report to the Minister

The Authority shall include information relating to the Compensation Fund in its annual report to the Minister for the time being responsible for Finance.

69. Compensation of investors

Whenever an investor has suffered pecuniary loss due to the failure of a stockbroker, dealer or on investment bank carrying out stockbroking business or dealing, operations, to meet its contractual obligations, which loss has not been compensated—

- (a) from the bank guarantee or securities furnished by such licensed person to the securities exchange or central depository as the case may be of which such licensed person is a trading participant; or
- (b) from the Compensation Fund of the securities exchange of which such licensed person is a trading participant; or
- (c) from any payment made by a statutory manager appointed under section 33A(2)(a) of the Act,

(hereinafter referred to as "the net loss") the investor shall apply to the Authority for compensation from the Compensation Fund in cash or securities equal to the net loss.

[L.N. 88/2012, s. 28.]

70. Maximum compensation

(1) The net loss to an investor shall be subject to a maximum of fifty thousand shillings.

(2) The statutory manager shall recommend to the Authority the net loss that the investor may claim from the Compensation Fund.

[L.N. 72/2009, s. 2.]

71. Investor Compensation Committee

(1) The Authority shall establish an Investor Compensation Committee to deal with claims from investors.

(2) The Compensation Committee shall include the Chairman and the Chief Executive of the Nairobi Stock Exchange and any other persons who may be appointed by the Authority to be members of the Committee.

(3) The Compensation Committee shall, after examination of the evidence produced in support of a claim, make any recommendation to the Authority with respect to whether to allow or disallow such claim and, if the recommendation is to allow the claim, an assessment of the amount payable including any *pro rata* allocation of any such limit prescribed for every defaulting stockbroker or dealer or the size of the fraud, as applicable.

(4) While determining the amount to be paid in compensation to an Investor, the Compensation Committee shall take into account the total amount available in the Compensation Fund.

(5) The Authority shall give notice of its decision to the investors in writing or by other means of appropriate notification.

72. Notification of pecuniary loss

(1) Every investor who has suffered a pecuniary loss shall notify the statutory manager of the licensed person liable for the loss within sixty days of the appointment of the statutory manager.

(2) The statutory manager shall pay all valid claims within six months of its appointment.

73. Submission of claims

(1) The statutory manager shall submit to the Authority a list of investors to be compensated as well as the supporting documents.

(2) The Authority shall convene a meeting of the Compensation Committee within twenty-one days of receipt of submission of a claim by the statutory manager.

74. Payment of claims

(1) Where payment has been made out of the Compensation Fund on behalf of a licensed person, such licensed person shall be liable to the Compensation Fund for an amount equal to the payment made out of the Fund.

(2) In the event of liquidation of a licensed person, the liquidator shall pay the Compensation Fund any money paid by the Fund to investors on behalf of the insolvent person under these Regulations to the extent of such payment.

PART XI – DISCLOSURE OF INFORMATION**75. Disclosure of interest in shares**

(1) Where any person—

- (a) by his knowledge acquires a notifiable interest in shares in a listed company's relevant share capital, or ceases to be interested in such shares; or
- (b) becomes aware that he has acquired a notifiable interest in the relevant shares of a listed company or that he has ceased to be interested in such shares in which he was previously interested,

such person is under an obligation to notify the listed company of the interest which he has, or had in its shares.

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(2) Every listed company shall make a monthly report to the securities exchange giving particulars of—

- (a) all persons from whom the listed company has received a notification under paragraph (1);
- (b) all directors holding one per cent or more in the relevant share capital;
- (c) cumulative holding of the relevant share capital by directors.

(3) A person is taken to be interested in shares—

- (a) if he is an employee of the listed company;
- (b) if he is a director or chairman of the listed company;
- (c) in which his spouse, any infant child or step child of his is interested; or
- (d) if a body corporate is interested in them and—
 - (i) the body corporate or its directors are accustomed to act in accordance with his directions or instructions; or
 - (ii) the person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body corporate; or
 - (iii) the person is a director or a shareholder of the body corporate.

(4) The existence of the obligation in a particular case depends—

- (a) on circumstances obtaining before and after whatever is in that case the relevant time; and
- (b) in a case within paragraph (1)(b), the time at which the person became aware of the facts in question.

(5) In this regulation—

- (a) a **“director”** means a director of a listed company;
- (b) **“relevant share capital”** means the company’s issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company; and
- (c) a **“notifiable interest”** means three per cent or more of the relevant share capital of a listed company.

76. Furnishing of information to the Authority

(1) Every person notified by the Authority pursuant to section 13 of the Act shall provide any specified information in the form and content as required by the Authority, with regards to the information on orders, purchases, sales or trading and settlement of securities including documentation relating to such transactions and disclosure of beneficial ownership of securities and such information may be shared with other regulatory agencies for the sole purpose of ensuring compliance, enforcement and any other matters pursuant to a bilateral or multilateral memorandum of understanding.

(2) The information sought from any person under paragraph (1) shall be submitted to the Authority in a written form within the time specified by the Authority and such information shall include statements made under oath.

(3) Where information has been submitted to the Authority under paragraph (2), the Authority may seek to verify such information and the person in possession of such information and documentation shall avail it without obstruction to the authorized personnel of the Authority.

(4) The Authority shall enter into a memorandum of understanding pursuant to section 11(3)(q) of the Act either on a bilateral or a multilateral basis with other regulatory

[Subsidiary]

organizations or agencies on a reciprocal basis to facilitate exchange of information for the purposes of development of the capital markets and for enforcement and compliance with the laws and regulations of capital markets applicable in the jurisdictions party to the memorandum of understanding.

(5) Where the Authority does not have within its jurisdiction information or documents requested under a bilateral or multilateral memorandum of understanding the Authority shall seek to collaborate with other relevant agencies to obtain such information with a clear understanding with such other agencies that the information may be shared with other regulatory agencies pursuant to the memorandum of understanding.

(6) The information obtained under paragraph (1) and (5) shall be used by the Authority for regulatory purposes including enforcement and compliance and sharing with other regulatory agencies pursuant to the memorandum of understanding.

(7) The Authority may include information obtained under paragraph (1) and (5) in any report by the Authority for its internal regulatory purposes or exchange such information pursuant to the memorandum of understanding or publish such information pursuant to section 11(3)(k) of the Act.

77. Preservation of financial and other records

Every issuer of securities to the public or a section thereof approved by the Authority and every person licensed by the Authority, shall preserve all financial and other records whether such records are maintained in an electronic or manual form, relating to transactions conducted by the licensee or to the offer of securities by an issuer, including daily, weekly, monthly, quarterly and annual transactions and other relevant records including minutes of all meetings on account of such transactions and registers of securities, for a period of seven years.

78. Destruction of financial and other records

No person shall at any time within the prescribed period interfere, deface or destroy the records referred to in regulation 77, in any manner that will lead to the alteration of any facts or content therein including the date, amount and names of all persons party to the transactions whether such person is a licensee of the Authority; an issuer of securities to the public or a section thereof, an auditor of such licensee or issuer or any professional who is or will be involved directly or indirectly in the transactions.

PART XII – MISCELLANEOUS PROVISIONS

79. Deleted by L.N. 99/2007, s. 3.

80. Prevention of money laundering and other illicit activities

(1) Every licensed person shall obtain through a client information questionnaire details from a client or a potential client with respect to the following—

- (a) the identity of the client or a potential client supported by documentary evidence;
- (b) nature of business activities of the client or potential client;
- (c) origin and sources of funds used or to be used for investment in securities. Where the money or funds originate from outside Kenya a confirmation from the remitting entity of the nature of its business and of the source of the moneys or funds;
- (d) a written declaration by the client or potential client confirming—
 - (i) the accuracy of all information given under paragraphs (a) to (c); and

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- (ii) that the moneys or funds used for the investment in securities is not arising out of the proceeds of any money laundering or other illicit activities;
- (e) a licensed person shall maintain at least the following information in respect of their clients and shall ensure that they link each transaction to the beneficial owner—
 - (i) where the client is a natural person, any person on whose behalf the client is acting, whether as nominee, trustee or any other capacity;
 - (ii) where the client is a limited partnership, the name of the general partner (and where the general partner is a body corporate, the information as prescribed under item (iv) shall be maintained);
 - (iii) where the client is an unlimited partnership, the names of the other partners;
 - (iv) where the client is a body corporate, the name of all individuals who have a direct or indirect interest amounting to thirty per cent or more of the equity;
 - (v) where the client is a trust, the name of the settlers, trustees, protectors and principal named beneficiaries;
 - (vi) where the client is a legal arrangement other than a trust, the name of the owner or controller;
- (f) where the customer is a financial institution, such as a bank, insurance company, pension fund or collective investment fund and is conducting business collectively on behalf of a large number of underlying customers, and where the institution is subject to rules or regulations that require the financial institution to conduct customer due diligence, the licensee is permitted to rely on the financial institution to hold beneficial ownership information and need not hold that information itself.

(2) The client information under paragraph (1) shall be obtained by the licensed person every time a client places an investment order with the licensed person.

(3) The client information obtained under paragraph (1) and (2) shall be maintained by the licensed person as part of the records required under regulations 19, 31, 43 and 49.

(3A) The licensed person shall make such information available to the Authority on request and also to the central depository for the purpose of answering an enquiry made of it under Section 58 of the Central Depositories Act (No. 4 of 2000).

[L.N. 99/2009, s. 16.]

81. Amendment of L.N. 429/1992

The Capital Markets Authority Rules, 1992 are amended by deleting Parts II, III, IV, V, VI, VII, VIII, IX, X and XIII.

82. Revocation of L.N. 232/1994

The Capital Markets Authority (Amendment) Rules, 1994 are revoked.

83. Revocation of L.N. 428/1992

The Capital Markets Authority Regulations are revoked.

FIRST SCHEDULE

Form 1

[Regulations 3, 14, 28, 39, 45 & 51, L.N. 88/2012, s. 29.]

CAPITAL MARKETS (LICENCING REQUIREMENTS)
(GENERAL) REGULATIONS, 2002

APPLICATION FOR A LICENCE/RENEWAL OF LICENCE TO CONDUCT THE
BUSINESS OF A SECURITIES EXCHANGE, STOCKBROKER, DEALER, INVESTMENT
ADVISER, FUND MANAGER, INVESTMENT BANK OR AUTHORISED SECURITIES
DEALER

Application is made for a securities exchange/stockbroker/dealer/investment adviser/fund manager/investment bank/authorized securities dealer (tick as appropriate) licence/renewal of licence (*delete where inapplicable*) under the Act and the following statements are made in respect thereof:

Note—

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of company Limited
2. Registered office
3. Date of incorporation
4. Address
5. E-mail
6. Location, address and telephone number of principal office
7. Location, address and telephone number of branch offices
8. Details of capital structure:
 - (a) Nominal capital (KShs.)
 - (b) Number of shares
 - (c) Paid-up capital (KShs.)
9. Shareholders (*or investors in the case of a securities exchange*) (please attach a list)

Name	Address & telephone number	Number of shares held
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10 (a) Directors (please attach a list)

Name	Identity card / Passport number	Date of appointment	Date of birth	Permanent address & telephone number	Academic or professional qualification	Number of shares held in the company
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(b) Secretary

Name

Address

Institute of Certified Secretaries of Kenya Registration No.

Capital Markets

[Subsidiary]

FIRST SCHEDULE—continued

(c) Chief executive and other key personnel

Name	Identity card / Passport number	Date of appointment	Date of birth	Permanent address & telephone number	Academic or professional qualification	Number of shares held in the company

- 11. Particulars of other directorship(s) of the directors and secretary.
.....
- 12. Particulars of shares held by directors or secretary in other companies
.....
- 13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/No. If 'yes', give details
.....
- 14. Has any director, secretary or senior management of the applicant been a director of a company that has been:
 - (a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No. If Yes, give details.
.....
 - (b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No. If Yes, give details.
.....
 - (c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. If yes, give details.
.....
- 15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes/No. If 'yes', give details.
.....
- 16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes', give details.
.....
- 17 (1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities exchange? Yes/No. If 'yes', give details.
.....
- (2) Have any of the above persons been—
 - (a) refused admission as a trading participant of any securities organization? Yes/No. If 'yes', give details
.....
 - (b) expelled from or suspended from trading on any securities organization? Yes/No. If 'yes' give details
.....
 - (c) subjected to any other form of disciplinary action by any stock exchange? Yes/No. If 'yes', give details.
.....

FIRST SCHEDULE—continued

18. Business references:

Name	Address	Telephone number(s)	Occupation
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19. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience
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20. List the office facilities of the applicant

21. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority.

22. State securities exchange at which the applicant intends to seek admission as a trading participant

23. Any other additional information considered relevant to this application:

We (Director), (Director) and (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this day of 20.....

Signed:

..... (Director)

..... (Director)

..... (Secretary)

Note:

1. The following shall be submitted with the application for a licence:

- (a) memorandum and articles of association;
- (b) certificate of incorporation;
- (c) business plan complying with the requirements of regulation 15(1)(d) (stockbroker & dealer), regulation 29(1)(d) (investment adviser and fund manager), regulation 39(2)(d) (investment banks) regulation 46(d) (authorized securities dealers) of the Capital Markets Authority (Licensing Requirements) (General) Regulations;
- (d) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in the case of application of licence), management accounts up to the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);
- (e) a declaration by the directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of the application—
 - (i) the business of the company has, in their opinion, been satisfactory maintained;
 - (ii) there have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;
 - (iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;
 - (iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company of its subsidiaries.

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[Subsidiary]

FIRST SCHEDULE—*continued*

- (f) a copy of the bank guarantee to be lodged with the securities exchange or the central depository (where applicable);
- (g) a declaration by persons authorized as prescribed to accompany the application form;
- (h) an application fee of KShs. 2,500.

SECOND SCHEDULE

[Regulations 3, 15, 29, 39, 46, 51, L.N. 32/2008, s. 4, L.N. 190/2010.]

CAPITAL MARKETS AUTHORITY FEES STRUCTURE

As Approved by the Minister for Finance Pursuant to Section 36(1)(a) of the Capital Markets Act

PART I – APPROVAL AND ANNUAL FEE

[Sections 11, 23.]

(a) Securities Exchange Section 20(7) Capital Markets Act	annual fee	1% of the gross earnings payable, excluding the transaction fees
(b) Credit Rating Agency 200,000	approval fee	
(c) Central Depository Systems	approval and annual fee	200,000
(d) Registered Venture Capital Company	approval fee	250,000
(e) Fund of a registered Venture Capital Company	approval and annual fee (payable per fund)	250,000 (subject to a maximum annual fee of KSh. 500,000 payable any registered venture capital company)
(f) Collective Investment Schemes Section 30(3)(c) Capital Markets Act	approval and annual fee	150,000

PART II – LICENCE AND RENEWAL FEES

[Section 11.]

(a) Stockbroker or Dealer	100,000
(b) Investment Adviser	100,000
(c) Fund Manager	100,000
(d) Fund manager registered with Retirement Benefit Authority	50,000
(e) Authorized Depositories	100,000
(f) Authorized Securities Dealers	200,000
(g) Investment Banks	250,000

(Application fees for approvals, licence or renewal of all licences is KShs. 2,500)

PART III – OTHER FEES

[Section 11, L.N. 32/2008, s. 5, L.N. 99/2009, s. 1, L.N. 190/2010.]

(a) Issuer of securities to the public or a section of public <i>(percentage of the value of the issue)</i>	0.15%
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SECOND SCHEDULE—*continued*

(b) Approval of listing by introduction— (percentage of value of the issue)	0.25 subject to minimum fee of KShs. 50,000 and a maximum of KShs. 5,000,000.
(c) Issuer of Capitalization or rights issue (percentage of the value of the issue)	KShs. 50,000 or 0.25% whichever is higher
(d) Issuer of commercial paper and corporate bonds – approval and renewal (percentage of the value of the issue)	0.1%
(e) Approval of listing of Government Securities (percentage of the amount raised)	0.075%
(f) Market Development fees to support investor education and market infrastructure development:	
(i) amount payable by listed companies to the Authority (percentage of market capitalization as at November 30 of each year)	0.01% subject to a minimum fee of KShs. 50,000 and a maximum of KShs. 100,000 per year.
(ii) amount payable directly to the Authority by issuers with respect to listed fixed income securities, including the Government and corporate securities on the Fixed Income Market Segment of a securities exchange (percentage of the aggregate value of the listed securities as at November 30 of each year).	0.005% subject to a minimum fee of KShs. 100,000 per year and a maximum of KShs. 2.5 million
(g) Amount payable by each buyer and seller of the listed security:	
(i) shares 0.12% (percentage of consideration);	
(ii) fixed income securities 0.0015% (percentage of consideration).	
(h) Amount payable by each buying and selling stockbroker—	
(i) shares 0.01% (percentage of the consideration payable to the Investor Compensation Fund under section 18(2) of Capital Market Act);	
(ii) fixed income securities 0.004% (percentage of the consideration payable to the Investor Compensation Fund under section 18(2) of Capital Market Act).	
(i) Approval fee payable by the transferee for transactions of listed securities outside the securities exchange authorised under section 31(1A)(i) and (ii) as follows—	
(i) transfer to a close relation in the form of a gift or in settlement of an estate of a deceased person;	no charge
(ii) transfer, arising out of the re-organisation of the share capital of a listed company, that does not result in a change of beneficial interest in such share capital (percentage of the nominal value of the shares);	0.1%
(iii) any other transfer that results in a change of beneficial interest in the shares capital of a listed company, including any transfer under a take-over scheme, merger or acquisition, approved by the Authority (percentage of the market value of the shares).	0.5%

Capital Markets

[Subsidiary]

THIRD SCHEDULE

[Regulation 12(7).]

DISCLOSURE BY A SECURITIES EXCHANGE IN THE FINANCIAL STATEMENT

The accounts shall be prepared in accordance with the International Accounting Standards

1. The following shall be disclosed in the income statement—

- (a) Income—
 - (i) listing fees;
 - (ii) transaction fees;
 - (iii) finance income;
 - (iv) other income;
- (b) Expenditure—
 - (i) personnel costs including separate disclosure of consolidated pay, pension and gratuity;
 - (ii) staff training;
 - (iii) rent and maintenance;
 - (iv) investor education;
 - (v) directors' fees;
 - (vi) annual fees payable to Capital Markets Authority;
 - (vii) committee members' expenses;
 - (viii) audit fees;
 - (ix) depreciation;
 - (x) general administrative expenses;
 - (xi) legal and professional expenses;
 - (xii) others expenditure.

2. The following shall be disclosed in the balance sheet—

- (a) property, plant and equipment;
 - (b) motor vehicles;
 - (c) goodwill;
 - (d) investments;
 - (e) listing fees receivable;
 - (f) deferred tax;
 - (g) members fund;
 - (h) revenue reserves;
 - (i) compensation fund.
-

FOURTH SCHEDULE

[Regulations 21(1)(d), 32(1)(d), 43, 51.]

DISCLOSURES BY OTHER LICENSEES INCLUDING STOCKBROKERS, INVESTMENT ADVISERS, FUND MANAGERS, DEALERS AND INVESTMENT BANKS IN THE FINANCIAL STATEMENT

1. The following shall be disclosed in the income statement where applicable—

- (a) Income—
 - (i) stock brokerage commission;
 - (ii) consultancy income;
 - (iii) dealing income;
 - (iv) advisory income including restructuring, and corporate finance;
 - (v) asset management fees;
 - (vi) underwriting fees;
 - (vii) other services income;
 - (viii) finance income.
- (b) Expenditure—
 - (i) directors' emoluments;
 - (ii) staff costs;
 - (iii) rent and maintenance;
 - (iv) depreciation;
 - (v) audit fees;
 - (vi) administrative expenses;
 - (vii) finance expenses.

2. The following shall be disclosed in the balance sheet—

- (a) property, plant and equipment;
- (b) motor vehicles;
- (c) investments;
- (d) deposits and prepayments;
- (e) share capital;
- (f) revenue reserves;
- (g) directors' loans;
- (h) shareholders loans;
- (i) amounts due to clients.

FIFTH SCHEDULE

[Regulation 26, L.N. 119/2004, L.N. 189/2010, s. 2, L.N. 88/2012, s. 30.]

BROKERAGE COMMISSION AND FEES

1. For new issues

- (a) Fees—
 - (i) Sponsoring stockbrokers: Sponsoring fee as negotiated with the issuer.

Capital Markets

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FIFTH SCHEDULE—*continued*

(ii) The issuer shall pay a marketing fee not exceeding KSh. 25,000 each to all stockbrokers subject to the stockbroker placing securities of a minimum value of KSh. 250,000.

(b) Placing Commission—

(i) Stockbrokers: 1.5% of the value of the successful application subject to a minimum of KSh. 100.

(ii) Participating banks (as agents of the issuer): 1% of the value of successful applications.

2. For secondary trading

Consideration (Transaction Value)	Net Brokerage Commission %	Transaction Fees			Investor Compensation Fund Fee and Central Depository Guarantee Fund Fee	
		CMA %	NSE %	CDSC %	CMA INVESTOR COMPENSATION FUND %	CDSC GUARANTEE FUND %
Up to KSh. 100,000	1.78	0.12	0.12	0.06	0.01*	0.01*
Above KSh. 100,000	Open to negotiation subject to a maximum of 1.5%	0.12	0.12	0.06	0.01	0.01

* Stockbrokerage commission is net of contribution by the stockbroker of 0.02% to the Investor Compensation Fund.

Stockbrokerage commission shall be limited to KSh. 100 for all odd lots transactions up to KSh. 3,000 excluding statutory fees. Odd lots transaction in excess of KSh. 3,000 shall be charged a commission at the prescribed rate of 1.8% excluding statutory fees.

3. For debt instruments (secondary market)

	Net Brokerage Commission	Transaction Fee	
	%	NSE	CDSC
%	0.024%	0.0035%	0.002%
transaction			
value			

* The Investor Compensation Fund fee payable to the Authority is charged on the brokers commission, and does not, therefore, increase the cost of the investor.

* Stockbroker Commission is net of contribution by the stockbroker of 0.004% to the investor compensation fund.

CAPITAL MARKETS (TAKE-OVERS AND MERGERS) REGULATIONS, 2002

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation.
2. Interpretation.

PART II – TAKE-OVER PROCEDURE

3. Acquiring effective control.
4. Take-over notice and statement.
5. Exemptions.
6. Offeree's obligation.
7. Take-over offer.
8. Requirements for take over offer.
9. Offeree comments on the statement and take-over offer.
10. Independent adviser.
11. Requirements for an independent adviser.
12. Offer to dissenting shareholders.
13. Competing take-over offer.
14. Offer period.
15. Conditional offer.
16. Variation of take-over offer.
17. Withdrawal of take-over offer.
18. Closing of take-over offer.
19. Pro-rata acceptances.
20. Announcement of acceptances.

PART III – OBLIGATIONS OF OFFEROR IN RELATION TO OFFER

21. Identity of offeror.
22. Evidence of ability to implement the take-over offer.
23. Favourable deals.
24. Convertible securities.
25. Sales and disclosure by the offeror during the offer period.

PART IV – OBLIGATIONS OF OFFEREE IN RELATION TO OFFER

26. Information by offeree.
27. Frustrations of offers by the offeree.
28. Disclosure of dealings by offeree.
29. Transfer to the offeror.

PART V – GENERAL

30. False or misleading information.
31. Submission of information to the Authority.
32. Suspension of trading during take-over.

[Subsidiary]*Regulation*

33. Issuance of shares in a subsidiary.
34. Establishment of take-over committee.
35. Amendment of L.N. 429/1992.

SCHEDULES

- | | | |
|-----------------|---|---|
| FIRST SCHEDULE | – | INFORMATION REQUIRED TO BE INCLUDED IN THE OFFEROR'S STATEMENT |
| SECOND SCHEDULE | – | INFORMATION REQUIRED TO BE INCLUDED BY THE OFFEROR IN A TAKEOVER OFFER DOCUMENT |
| THIRD SCHEDULE | – | INFORMATION REQUIRED IN THE CIRCULAR ISSUED BY THE OFFEREE TO ITS SHAREHOLDERS |
| FOURTH SCHEDULE | – | INFORMATION AND STATEMENTS REQUIRED TO BE INCLUDED IN AN INDEPENDENT ADVISER'S CIRCULAR |
-

CAPITAL MARKETS (TAKE-OVERS AND MERGERS) REGULATIONS, 2002

[L.N. 126/2002.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Take-Overs and Mergers) Regulations, 2002 and shall be deemed to have come into operation on the 24th July, 2002.

2. Interpretation

(1) In these Regulations, unless the context otherwise requires—

“acquiring effective control” means the acquisition of shares in the offeree which together with shares if any, already held by the offeror or by any other person that is deemed to be associated or a company or by any other company that is deemed by virtue of being a related company to the offeror or by persons acting in concert with the offeror carry the right to exercise or control the exercise of not less than twenty-five percent of the votes attached to the ordinary shares of the offeree provided that such person already holding twenty five percent or more but less than fifty percent of the voting shares may acquire no more than five percent of the shares of a listed company in any one year;

“acting in concert” means persons who pursuant to a formal or informal agreement or understanding actively co-operate through the acquisition by any of them of shares having voting rights in a public listed company to obtain or consolidate control of that company;

“Board” has the meaning assigned to it in the Act;

“competing take-over offer” means an offer made by a person with respect to the offeree’s voting shares in response to an offer that has already been made and such other person shall be deemed to be the competing offeror.

“counter offer” means a take-over offer made by an offeree to an offeror;

“effective control” is where a person or a company makes an offer for the acquisition of effective control of an offeree which holds shares which together with shares, if any, already held by such person or an associate person or a company or by any other company that is deemed by virtue of being a related company or by persons acting in concert with such person carry the right to exercise or control the exercise of not less than twenty five percent of the votes attached to the ordinary shares of an offeree which shall be deemed to be a take-over and the provisions of these Regulations shall apply except where that person or associate person or related company or persons acting in concert with the person, already hold shares carrying more than ninety percent voting rights in the offeree;

“days” means calendar days excluding Saturdays, Sundays and public holidays;

“merger” means an arrangement whereby the assets of two or more companies become vested in or under the control of one company;

“offeror” in relation to a take-over scheme or a take-over offer means any person who acquires or agrees to acquire effective control in the offeree either directly or with any associated person or related company or any person acting in concert with the offeror but does not include a person who holds shares carrying more than ninety percent voting rights in the offeree;

[Subsidiary]

“**offeree**” in relation to a take-over scheme or a take-over offer means a listed company on a securities exchange with shares to which the scheme or offer relates;

“**offer period**” means the period commencing from the date the offeror sends an offeror’s statement under regulation 4 until—

- (a) the first closing date of the take-over offer; or
- (b) the date when the take-over offer becomes or is declared unconditional as to acceptances, lapses or is withdrawn, if this date is later than that referred to in paragraph (a).

“**press notice**” means to announce or publish information on the take-over through the print or electronic media;

“**related company**” means a company which is—

- (a) the holding company of another company;
- (b) a subsidiary of another company; or
- (c) a subsidiary of the holding company of another company,

And for purposes of ascertaining the relation, the first mentioned company and the other company shall be deemed to be related to each other;

“**reverse take-over offer**” means a situation where an offeror makes a take-over offer for the voting shares of an offeree by means of an exchange of shares such that if the take-over offer is accepted, the shareholders of the offeree would control the offeror;

“**take-over offer**” means a general offer to acquire all voting shares in the offeree company and includes a take-over scheme;

“**take-over scheme**” means a scheme involving the making of offers for acquisition by or on behalf of a person of—

- (a) all voting shares in the offeree;
- (b) such shares in any company which results in an offeror acquiring effective control in an offeree;
- (c) any shareholding of twenty five percent or more in a subsidiary of a listed company that has contributed fifty percent or more to the average annual turnover in the latest three financial years of the listed company preceding the acquisition; or
- (d) any acquisition deemed by the Authority to constitute a take-over scheme.

“**ultimate offeror**” includes a person—

- (a) in accordance with whose directions and instructions the proposed offeror or any person acting in concert with the proposed offeror is accustomed to act; or
- (b) having an interest in the proposed take-over offer pursuant to an agreement, arrangement or understanding with the proposed offeror.

PART II – TAKE-OVER PROCEDURE

3. Acquiring effective control

(1) No person shall make an offer to acquire shares or voting rights of a listed company which together with shares or voting rights if any held by such person or by persons acting in concert or by associated person or related company entitle such person to exercise effective control in the listed company without complying with the take-over procedure provided for under regulation 4.

(2) Where a person—

- (a) holds more than twenty five percent but less than fifty percent of the voting shares of a listed company, and who acquires in any one year more than five percent of the voting shares of such company; or
- (b) holds fifty percent or more of the voting shares of the listed company and who acquires additional voting shares in the listed company; or
- (c) acquires a company that holds effective control in the listed company or together with the shares already held by associated persons or related company or persons acting in concert with such person, will result in acquiring effective control of the listed company; or
- (d) acquires any shareholding of twenty five percent or more in a subsidiary of a listed company that has contributed fifty percent or more to the average annual turnover in the latest three financial years of the listed company preceding the acquisition, the person shall be presumed to have a firm intention to make a take-over of such listed company and shall be required to comply with the take-over procedures set out under regulation 4:

Provided that a company that is already in control of twenty five percent but less than fifty percent of the voting shares of the listed company may acquire upto five percent in any one year in such listed company upto a maximum of fifty percent.

4. Take-over notice and statement

(1) A company or person who intends or proposes to acquire effective control in a listed company shall not later than twenty four hours from the resolution of its board to acquire effective control in the company or not later twenty four hours prior to making a decision to acquire effective control in the company in the case of any other person announce the proposed offer by press notice and serve a notice of intention, in writing of the take-over scheme containing the particulars set out in paragraph (2), to the—

- (a) proposed offeree at it's registered office;
- (b) securities exchange at which the offeree's voting shares are listed;
- (c) Authority; and
- (d) the Commissioner of Monopolies and Prices appointed under the Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504), where the offeror is engaged in the same business as the offeree.

(2) The press notice referred to in paragraph (1) shall—

- (a) be made in at least two English language dailies of national circulation;
- (b) be made after the notice of intention has been served on the proposed offeree;
- (c) state that the person intends to acquire or has acquired effective control in the company and has at a stated date served a notice of intention to make a take-over offer to the company or has made an application to the Authority for exemption from the take-over requirements, in compliance with these Regulations; and
- (d) include the following information where applicable—
 - (i) the identity of the proposed offeror and all companies related to or persons associated or acting in concert with the proposed offeror;
 - (ii) the identity of the proposed offeree and the exchange at which its shares are listed;
 - (iii) whether the proposed offeror intends to make a take-over offer or apply to the Authority, for exemption from making a take-over offer;

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- (iv) the type and total number of voting shares of the offeree—
 - (aa) which have been acquired, held or controlled directly or indirectly by the proposed offeror or any related companies or any person associated or acting in concert with the proposed offeror;
 - (bb) in respect of which the proposed offeror or any related company or any person associated or acting in concert with the proposed offeror has received an irrevocable undertaking from other holders of voting shares to which the take-over relates to accept the take-over offer; and
 - (cc) in respect of which the proposed offeror or any related company or any person associated or acting in concert with the proposed offeror has an option to acquire;
- (v) where applicable, the details of any existing or proposed agreement, arrangement or understanding relating to voting shares referred to in paragraph (iv) between the proposed offeror or any related company or person associated or acting in concert with the proposed offeror and the holders of the voting shares to which the take-over relates; and
- (vi) the conditions of the take-over offer, including conditions relating to acceptances, listing and increase of capital.

(3) Where a person has acquired effective control in a listed company and has no intention of making a take-over offer, that person shall make a public announcement containing information that is specified in paragraph (2) including the broad reasons for exemption, immediately after having served the notice in writing to the parties specified in paragraph (1) and shall apply to the Authority for exemption from the take-over requirements under regulation 5.

(4) The offeror shall serve on the offeree within ten days from the date of the notice of intention, an offeror's statement of the take-over scheme containing the information specified in the First Schedule to these Regulations and such statement shall be approved by the Authority.

(5) Where a notice of an intention to make a take-over offer under paragraph (1) or an offeror's statement under paragraph (4) have been served upon the offeree, the proposed offeror shall not amend or withdraw the intention or the statement without the prior written consent of the Authority.

(6) The Authority shall on application of the offeror, permit the offeror at any time prior to the offeror serving the take-over document upon the offeree, to—

- (a) amend in writing any notice or statement lodged by the offeror pursuant to paragraphs (1) and (4); or
- (b) substitute in writing a fresh notice or statement for an earlier notice or statement lodged with the offeree pursuant to paragraphs (1) or (4) in such manner and subject to such terms as the offeror may consider as justified by the circumstances of the case and such notice or statement shall be approved by the Authority;

(7) For the purpose of paragraph (6), the computation of time shall be as from the date when the first written notice or offeror's statement is lodged by the proposed offeror.

5. Exemptions

(1) Subject to this regulation, the Authority may in writing grant an exemption from complying with the provisions of regulation 4 to any particular person or take-over offer or to any particular class, category, description of persons or take-over offers subject to such conditions as may be imposed by the Authority.

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(2) The granting of an exemption under paragraph (1) shall serve the wider interests of the shareholders and the public and such circumstances shall include—

- (a) an acquisition for the purpose of a strategic investment in a listed company that is tied up with management or any other technical support relevant to the business of such company;
- (b) a management buy-out involving a majority of the employees of the offeree;
- (c) a restructuring of the listed company's share capital including acquisition, amalgamation and any other scheme approved by the Authority;
- (d) an acquisition of a listed company in financial distress;
- (e) an acquisition of effective control arising out of disposal of pledged securities;
- (f) the maintenance of domestic shareholding for strategic reason(s); and
- (g) any other circumstances which in the opinion of the Authority serves public interest.

(3) Nothing in these Regulations shall require any person to comply with the take-over procedure provided under regulation 4 if such person at the commencement of these Regulations holds—

- (a) twenty five percent or more of the voting shares of a listed company; or
- (b) twenty five percent or more of the voting shares in an issuer applying for listing, at the date of listing whichever is later.

(4) The Authority shall make a public announcement through the print and electronic media of its decisions on the exemptions granted pursuant to this regulation.

6. Offeree's obligation

(1) Upon receiving the offeror's statement in accordance with regulation 4(4) the offeree shall inform the relevant securities exchange and the Authority and make an announcement by a press notice of the proposed take-over offer within twenty four hours of receipt of the offeror's statement.

(2) The press notice referred to in paragraph (1) shall be made in at least two English language dailies of national circulation and shall include all material information contained in the offeror's statement.

7. Take-over offer

(1) The offeror shall within fourteen days from the date of serving the offeror's statement pursuant to regulation 4(4) submit to the Authority, for approval, the take-over offer document in relation to the take-over offer which shall include the information contained in the Second Schedule and such other information that the Authority may require.

(2) The Authority shall approve the take-over offer document within thirty days where the document is in compliance with the requirements of these Regulations or within such other time as may be determined by the Authority provided that where the Authority has determined it is not possible to grant approval within thirty days, it shall advise the offeror of this fact.

(3) The take-over offer document approved by the Authority shall include a statement in the following words—

“Approval has been obtained from the Capital Markets Authority for the compliance with the requirements relating to the take-over offer document under the Capital Markets (Take-overs and Mergers) Regulations, 2002.

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As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made in this take-over offer document. Approval of this take-over offer is not to be taken as an indication of the merits of this offer or recommendation by the Authority to the offeree's shareholders".

(4) The take-over offer document shall be served by the offeror on the offeree within five days from the date of approval of the take-over offer document by the Authority.

(5) The offeree shall within fourteen days from the date of receipt of the approved take-over document circulate it to its shareholders to whom the take-over offer relates, together with the independent adviser's circular referred to in regulation 10.

8. Requirements for take-over offer

(1) The take-over offer shall be dated and shall unless varied under regulation 16, state that it will remain open for acceptance by the offeree for thirty days from the date of service of the take-over offer document by the offeror.

(2) The offer shall not be conditional upon the offeree approving or consenting to any payment or other benefit being made or being given to any director of the offeree or to any other person that is deemed to be related to the offeree, as compensation for loss of office or as consideration for, or in connection with, his retirement from the office.

(3) The offer shall state—

- (a) whether the offer is conditional upon acceptance of the offer under the take-over scheme, being received in respect of a minimum number of issued voting shares of the offeree and if so, the percentage;
- (b) where the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of such payment;
- (c) where the shares are to be acquired through a share swap, the proportion of the share swap and the period within which the offeree's shareholders shall receive the new shares;
- (d) whether the offeror is engaged in the same line of business as the offeree, and whether the offer is conditional upon receiving approval under the Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504) or other regulatory approval outside Kenya where the transaction involves companies incorporated outside Kenya;
- (e) whether the offer is conditional upon maintenance of a minimum percentage of share holding by the general public to satisfy the continuing eligibility requirements for listing; and
- (f) the circumstances that shall apply in the event the conditions in subparagraphs (a) to (e) are not fulfilled.

(4) Every take-over offer document shall contain the following words which shall be prominently displayed on the first page of the take-over offer document—

"If you are in any doubt about this offer, you should consult the independent adviser appointed by your board of directors, or your stockbroker, investment bank or other professional investment adviser".

9. Offeree comments on the statement and take-over offer

(1) Subject to the independent advice required under regulation 10 the Board of directors of the offeree shall within fourteen days after the receipt of the take-over offer document under regulation 7 issue a circular to the holders of voting shares in the offeree

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to which the take-over offer relates, indicating whether or not the board of directors of the offeree recommend to holders of the voting shares the acceptance of the take-over offer(s) made by the offeror under the take-over scheme

(2) The circular referred to in paragraph (1) shall include the information contained in the Third Schedule.

(3) The board of directors of the offeree shall disclose in the circular referred to in paragraph (1) to every holder of the voting rights to which the take-over offer relates all such information as the holders of such voting shares and their professional advisers would reasonably require or expect to find in such a circular or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in such action.

(4) Without prejudice to the generality of paragraph (3) the statement shall include, but is not limited to information on—

- (a) the offeror's stated intentions regarding the continuation of the business of the offeree;
- (b) the offeror's stated intentions regarding major changes to be introduced in the business, including plans to liquidate the offeree, sell its assets, re-deploy the fixed assets of the offeree or make any other major change in the structure of the offeree;
- (c) the offeror's stated long term commercial justification for the proposed take-over offer;
- (d) the offeror's stated intentions with regard to the continued employment of the board of directors, management and employees of the offeree and of its subsidiaries;
- (e) the reasonableness of the take-over offer, including, the reasonableness and accuracy of profit forecasts for the offeree, if such forecast is included by the offeror in the offer document; and
- (f) any other information relevant for the informed assessment of the holders of voting shares and their professional advisers.

10. Independent adviser

(1) The board of directors of the offeree shall appoint an independent adviser, on receipt of the offeror's statement under regulation 4(4) in relation to the take-over offer.

(2) The independent adviser appointed under paragraph (1) shall be an investment bank or a stockbroker licensed by the Authority.

(3) The substance of the independent adviser's advice must be made known to the holders of the class of the voting shares to which the take-over offer relates, in a circular by the offeree to its shareholders.

(4) The board of directors of the offeror shall appoint an independent adviser where the take-over offer being made is a reverse take-over or where the board of directors of the offeror is faced with a conflict of interest situation.

(5) The substance of any advice given to the board of directors of the offeror under paragraph (4) shall be made known to all the holders of voting shares of the offeror.

(6) In the case of a reverse take-over, the board of directors of the offeror shall obtain approval of the holders of voting shares of the offeror to which the reverse take-over relates prior to serving the take-over offer document to the offeree under regulation 7(4).

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(7) Where the offeror has convertible securities outstanding, the appointed independent adviser shall make known its advice to the holders of such securities, together with the views of the board of directors of the offeror or of the offeree, as the case may be, on the take-over offer or proposal.

(8) The independent adviser appointed by the Board of directors of the offeree shall send a circular to the board of directors of the offeree and the Authority prior to the circular being served on the offeree's holders of voting shares to which the take-over offer relates.

(9) The circular required to be sent by the board of directors of the offeree to the offeree shareholders under regulation 9 and the independent adviser's circular shall be posted to the relevant holders of voting shares within fourteen days from the date of the take-over offer document being served in accordance to regulation 7.

(10) The independent adviser shall disclose all such information in the independent adviser's circular as the holders of the voting shares of the offeror, the board of directors of the offeree and all holders of voting shares to which the take-over offer relates and their professional advisers would reasonably require or expect to be informed about, in an independent advice or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in such action.

(11) The information required to be disclosed under paragraph (10) shall be that which—

- (a) is within the knowledge of the Board of directors and of the independent adviser; and
- (b) the independent adviser would be able to obtain by making such enquiries as were reasonable in the circumstances.

(12) For the purposes of paragraph (11), a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence of which, an employee or agent of the person having duties or acting on behalf of the employer or principal was aware of at the time.

(13) Without prejudice to the generality of paragraph (11), an independent adviser shall include in the circular to the board of directors of the offeree and the offeree shareholders all the information and statements specified in the Fourth Schedule.

11. Requirements for an independent adviser

(1) No person shall be eligible to be appointed as an independent adviser under regulation 10 where such a person—

- (a) has an interest in ten percent or more of the voting shares of an offeror or offeree at the present time or at any time during the twelve months preceding the date of announcement of the offeror's intention of the take-over scheme;
- (b) has a substantial business relationship with the offeror or offeree at the material time or at any time during the twelve months preceding the date of announcement of the offeror's intention of the take-over scheme.
- (c) being a company, has a director on its board of directors who is also a director on the board of directors of the offeror if the offeror is a company or on the board of directors of the offeree, as the case may be;
- (d) is involved in financing the offer by the offeror;
- (e) is a substantial creditor of either the offeror or the offeree.
- (f) has a financial interest in the outcome of the take-over offer than that specified in paragraphs (a) to (d); or

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- (g) has been an adviser in planning or restructuring of the offeror or offeree including acquisitions, at any time during the period of twelve months preceding the date of announcement of the offeror's intention of the take-over scheme.
- (2) A person is deemed a "substantial creditor" if—
- (i) the loan extended represents more than ten percent of the loan outstanding in the offeror or the offeree; or
 - (ii) the loan extended to either the offeror or the offeree represents more than ten percent of the shareholders' funds of the person based on the latest audited accounts; or
 - (iii) the person is a lead banker in a syndicated loan extended to either the offeror or the offeree in the preceeding three years;

12. Offer to dissenting shareholders

Where a take-over results in the offeror acquiring ninety percent of the offeree - s voting shares, the offeror shall offer the remaining shareholders a consideration that is equal to the prevailing market price of the voting shares or the price offered to the other holders, whichever is higher and the provisions of the Companies Act (Cap. 486) shall apply.

13. Competing take-over offer

(1) Where a decision has been reached to make a competing take-over offer, all provisions in these Regulations relating to the take-over procedures shall apply *mutatis mutandis* except the notice period to the competing offer.

(2) The competing offeror shall serve a competing take-over offer document required under regulation 7(4) at least ten days prior to the closure of the offer period and this period shall also apply to revisions that may be made to the competing offer.

14. Offer period

An offeror must keep a take-over offer open for acceptances for a period of thirty days from the date the take-over offer document is first served in accordance with regulation 7(4) or such period as may be determined by the Authority.

15. Conditional offer

Where the offer is conditional upon acceptances in respect of a minimum percentage of shares being received, the offer shall specify a date not being a date later than thirty days from the date of service of the take-over offer or such later date as the Authority may in a competitive situation or in special circumstances allow as the latest date on which the offeror can declare the offer to have become free from that condition.

16. Variation of take-over offer

(1) An offeror may vary the terms and conditions of a take-over offer including increasing the consideration offered in relation to the whole or part thereof provided such variation shall be made at least five days prior to the closure of the offer period.

(2) The varied take-over offer document shall set out in an appropriate form particulars of such modification of the offeror's statements and information required under the Second Schedule as are necessary having regard to the variations.

(3) The offeror shall serve the varied take-over offer document on the offeree, the Authority and the securities exchange within twenty four hours of making the decision to vary the take-over offer, and simultaneously make a public announcement by press notice in at least two English language dailies of national circulation disclosing material variations to the offer.

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17. Withdrawal of take-over offer

(1) An offeror shall not withdraw a take-over offer without the prior written approval of the Authority.

(2) Where a take-over offer has been withdrawn the offeror and all related companies or all persons acting in concert or associated with the offeror shall not within twelve months from the date on which the take-over offer was withdrawn

- (a) make a take-over offer for the voting shares that had been the subject of the take-over offer that has been withdrawn; or
- (b) acquire any additional voting shares of the offeree other than as provided under regulation 3.

(3) The offeror and all related companies or persons acting in concert or associated with the offeror shall furnish the Authority with details of any acquisition by the offeror and related companies or persons acting in concert or associated with the offeror of any share of the offeree including any option to acquire any share in the offeree each month for a period of twelve months from the date on which the take-over offer was withdrawn.

(4) Withdrawal of a take-over offer may occur where—

- (a) the offeree shareholders have rejected the take-over offer;
- (b) the offeror has not obtained an approval under the Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504) or any other regulatory approval as may be required;
- (c) events, satisfactory to the Authority occur, rendering either the offeror or offeree or both incapable of fulfilling their obligations under the take-over offer; or
- (d) a counter offer is accepted by the offeror.

18. Closing of take-over offer

(1) A take-over offer shall be deemed to close on the last day of the offer period.

(2) A holder of the voting shares in the offeree may withdraw acceptance out of his own volition at any time before the closing of the offer.

19. Pro-rata acceptances

(1) Where an offeror receives acceptance by the offeree shareholders in excess of the total number of shares to which the take-over offer relates, the offeror shall undertake pro-rata acceptance.

(2) For the purposes of this regulation, “**pro-rata acceptance**” means an allocation of acceptance by the offeror in the proportion of the total number of shares accepted by each offeree shareholder in relation to the percentage upon which the offer was conditional.

20. Announcement of acceptances

(1) The offeror shall inform the Authority and the securities exchange within ten days of the closure of the offer and announce by way of press notice in at least two English language dailies of national circulation the total number of voting shares to which the take-over offer relates—

- (a) for which acceptances of the take-over offer have been received after having been served with the take-over offer document by the offeror to offeree shareholders in accordance with regulation 7(4);

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- (b) held by the offeror and all persons acting in concert with the offeror at the time of serving the offer document to the offeree shareholders in accordance with regulation 7(4);
- (c) acquired or agreed to be acquired during the offer period; and
- (d) the shareholding structure of the offeree subsequent to the take-over offer.

PART III – OBLIGATIONS OF OFFEROR IN RELATION TO OFFER

21. Identity of offeror

(1) No person shall initiate discussions or negotiations with any person in relation to a take-over offer without disclosing the identity of the—

- (a) proposed offeror and all related companies or persons acting in concert or associated with the proposed offeror;
- (b) ultimate offeror, where applicable.

22. Evidence of ability to implement the take-over offer

(1) A person who is required to make an announcement under regulation 20 shall ensure and the person's financial adviser shall be reasonably satisfied that—

- (a) the take-over offer would not fail due to insufficient financial capability of the offeror; and
- (b) every offeree shareholder who wishes to accept the take-over offer will be paid in full.

(2) A person who has no intention of making an offer in the nature of a take-over offer shall not give notice or publicly announce the intention to make a take-over offer.

(3) A person shall not make a take-over offer or give notice or publicly announce that it intends to make such an offer if it has no reasonable or probable grounds for believing that it will be able to perform its obligations if the offer is accepted.

23. Favourable deals

The offeror shall not enter into any agreement, arrangement or understanding to deal in or make purchases or sales of voting shares of the offeree, either during a take-over offer or when such a take-over offer is reasonably in contemplation by the offeror where the agreement, arrangement or understanding contain favourable conditions which are not being extended to all offeree shareholders.

24. Convertible securities

(1) Where a take-over offer is made for the voting shares of an offeree and the offeree has issued convertible securities, the offeror shall make a take-over offer to purchase the securities and shall make appropriate arrangements to ensure that the interests of holders of convertible securities are safeguarded.

(2) The offeror shall serve the take-over offer document to purchase the securities referred to in paragraph (1) to the holders of the convertible securities at the same time as when the take-over offer document is served on the offeree shareholders in accordance with regulation 7(4).

(3) The take-over offer to holders of convertible securities referred to in paragraph (1) may be affected by way of a take-over scheme approved at a meeting of the holders of the convertible securities.

(4) For the purposes of these Regulations, “**convertible securities**” of the offeree means securities that are convertible to ordinary shares of the offeree.

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25. Sales and disclosure by the offeror during the offer period

(1) The offeror shall not sell any voting shares to which the take-over offer relates during an offer period.

(2) A related company or a person associated or acting in concert with the offeror shall not sell any voting shares to which the take-over offer relates other than to the offeror.

(3) The following persons shall disclose the total number and price of all voting shares of the offeror and the offeree which are dealt in for their own account—

- (a) the offeror and all related companies or persons associated to or acting in concert with the offeror;
- (b) the chief executive, a director or an officer of the offeror who occupies or acts in a senior managerial position in the offeror, by whichever name called;
- (c) a person who is an associated person in relation to persons referred to in paragraphs (a) and (b); and
- (d) a person who is accustomed to act in accordance with directions or instructions of the persons referred to in paragraphs (a), (b) or (c).

(4) The disclosure under paragraph (3) shall be made to the relevant securities exchange where the securities of the offeror are listed and to the Authority, within twenty four hours of the transaction.

(5) All dealings in voting shares of the offeror and offeree made by an associated person for the account of investment clients who are not themselves associated persons shall be disclosed to the relevant securities exchange and the Authority, at such time and in such manner as is specified in paragraphs (3) and (4).

PART IV – OBLIGATIONS OF OFFEREE IN RELATION TO OFFER**26. Information by offeree**

An offeree shall provide the offeror with the following information—

- (a) a list and addresses of the offeree's holders of voting shares in the offeree to which the take-over offer relates;
- (b) published annual accounts and reports including the latest half-yearly results of the offeree and its subsidiaries; and
- (c) a copy of the competing offeror's statement where there is a competing offer.

27. Frustrations of offers by the offeree

(1) The offeree shall not after contact with the offeror or its agent or on receipt of the notice of intention of take-over offer under regulation 4(1), if the offeree has reason to believe that a *bona fide* take-over is imminent, or during the course of a take-over offer—

- (a) issue any authorized but un-issued shares of the offeree;
- (b) issue or grant options in respect of any un-issued shares of the offeree;
- (c) create or issue or permit the creation or subscription of any shares of the offeree;
- (d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of the offeree or of any of its subsidiary; or
- (e) enter into or allow contracts for or on behalf of the offeree to be entered into otherwise than in the ordinary course of business of the offeree.

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(2) Paragraph (1) shall not apply where a *bona fide* contract has been entered into prior to contact with the offeror or its agent or on receipt of the notice of intention of the take-over notice under regulation 4(1) which is not designed to frustrate a take-over offer or change the activity of the offeree.

28. Disclosure of dealings by offeree

(1) During the offer period the total number and price of all voting shares of the offeror and the offeree which are dealt in by the following persons shall be disclosed by them respectively—

- (a) the offeree;
- (b) substantial shareholders of the offeree;
- (c) any chief executive, a director of the offeree;
- (d) any officer of the offeree who occupies or acts in a senior managerial position in the offeree, by whatever name called;
- (e) a person who is an associated person in relation to persons referred to in paragraphs (a), (b), (c) and (d); and
- (f) a person who is accustomed to act in accordance with directions or instructions of the persons referred to in paragraph (a), (b), (c), (d) or (e).

(2) The disclosure under paragraph (1) shall be made to the relevant securities exchange, and the Authority within twenty four hours of the transaction, outside trading hours.

(3) All dealings of voting shares of the offeror or the offeree made by an associated person for the account of investment clients who are not themselves associated persons shall be disclosed to the relevant securities exchange and the Authority, as provided in paragraphs (1) and (2).

29. Transfer to the offeror

On completion of the take-over offer, the offeree shall ensure prompt transfer of the accepted voting shares to the offeror in the register of members maintained as required under the rules of the securities exchange or the Central Depositories Act (No. 4 of 2000), in the case of electronic transfer and registration.

PART V – GENERAL

30. False or misleading information

(1) No person shall—

- (a) provide or cause to be provided to the holders of voting shares or their professional advisers any document or information in a take-over offer that is false or misleading;
- (b) provide or cause to be provided to holders of voting shares or their professional advisers any document or information in a take-over offer in which there is a material omission; or
- (c) engage in conduct relating to a take-over offer that is misleading or deceptive or is likely to mislead or deceive holders of voting shares or their professional advisers.

(2) Where information or a document has been circulated or provided to holders of voting shares or their professional advisers and the person who provided the information or document, or engaged in the conduct becomes aware that the document or information was false or misleading or contains a material omission or the conduct in question was

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misleading or deceptive, the person shall immediately disclose the fact to the Authority and the relevant securities exchange and make an announcement by way of press notice in at least two English language dailies of national circulation containing such matters as are necessary to correct the false or misleading information omission, or conduct, as the case may be.

31. Submission of information to the Authority

A person involved in a take-over scheme, merger or compulsory acquisition, shall submit such information to the Authority as it may from time to time require.

32. Suspension of trading during take-over

In the event of a take-over the trading of shares of the security of the offeree shall not be suspended unless for the purpose of enabling the offeree to disclose information on the takeover offer or as may be directed by the Authority for the purpose of obtaining material information on the offer.

33. Issuance of shares in a subsidiary

(1) No issuance of shares of a subsidiary of a listed company comprising—

- (a) twenty five percent or more of the share capital of that subsidiary; or
- (b) ten percent or more of the share capital of the subsidiary, that has contributed to twenty five percent or more to the average turnover in the latest three financial years of the listed company (preceding the proposed issuance of shares), shall be made without full disclosure through an information circular to the shareholders of the listed company, of all relevant information relating to the transaction for which the shares are being issued subject to the prior approval of the issuance of such shares by the Authority.

(2) The information circular referred to in paragraph (1) shall be subject to prior approval by the Authority and shall comply with the requirements under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 (LN. 60/2002).

34. Establishment of take-over committee

(1) The Authority may establish a sub-committee of the Board that shall consist of the Board members and such other qualified persons as shall be appointed by the Authority, for the purpose of advising on the take-over on a case by case basis.

(2) Where a sub committee has been established under paragraph (1), the chief executive of the Nairobi Stock Exchange and the Commissioner of Monopolies and Prices appointed under the Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504) shall be invited to the sub committee meetings.

(3) The sub committee in exercise of its delegated responsibility may invite the offeror, the offeree, the independent adviser or any other person whose input is deemed necessary for the purposes of facilitating the take-over.

(4) The decision of the sub committee shall be subject to ratification by the Board.

35. Amendment of LN. 429/1992

The Capital Markets Rules are amended by deleting Part XIII.

FIRST SCHEDULE

[Rule 4.]

INFORMATION REQUIRED TO BE INCLUDED IN THE OFFEROR'S STATEMENT

1. The statement shall—

- (a) be dated and signed by two directors of the offeror;
- (b) specify the names, descriptions, addresses of all directors of the offeror;
- (c) contain a summary of the principal activities of the offeror company;
- (d) contain a list of major shareholders and subsidiaries of the offeror;
- (e) contain a summary of the latest audited financial statements including—
 - (i) balance sheet;
 - (ii) income statement;
 - (iii) statement of the changes in equity;
 - (iv) cash flow statement; and
 - (v) earnings per share (prior to the take-over offer and post take-over).
- (f) specify the number, description and amount of marketable securities in the offeree held by or on behalf of the offeror, or if none are so held contain a statement to that effect;

(2) Where the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be made to secure payment of the cash and, if there are no such arrangements a declaration shall be made in the statement to this effect.

(3) Where the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by a share swap, the statement shall contain details of the arrangements that have been, or will be made to transfer the shares and the proportion of the shares being swapped, and if there are no such arrangements, a declaration shall be made in the statement to this effect.

(4) The statement shall state whether—

- (a) it is proposed in connection with the take-over scheme that a payment or any other benefit shall be made or be given to any director of the offeree or of any company which is a related company to the offeree as a consideration for, or in connection with, his retirement from office and if so the particulars of the proposed payment or benefit;
- (b) there is any agreement or arrangement made between the offeror and any of the directors of the offeree in connection with or conditional upon the outcome of the scheme, and if so the particulars of such agreement or arrangement;
- (c) there has been within the knowledge of the offeror any material change in the financial position or prospects of the offeree since the date of the latest balance sheet laid before the offeree's general meeting and if so, the particulars of such change; and
- (d) there is an agreement or arrangement by which shares acquired by the offeror in pursuance of the scheme will or may be transferred to any other person, and if so—
 - (i) the names of the persons who are party to the agreement or arrangement and the number and description of the shares which will or may be so transferred; and

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- (ii) the number, if any, description and amount of shares of the offeree company held by or on behalf of each person, or if no such shares are so held, a statement to that effect.

(5) Paragraphs (6) and (7) shall apply where the consideration to be offered in exchange for shares of the offeree consists in whole or in part of marketable securities issued or to be issued by the offeror or by any company;

(6) Where the marketable securities are quoted or dealt in on a securities exchange, the statement shall state this fact and specify the securities exchange concerned and indicate—

- (a) the latest available market sale price prior to the date on which notice of the take-over scheme is given to the offeree;
- (b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales including the latest market sale price immediately prior to the public announcement;

(7) Where the securities are listed on more than one securities exchange, it shall be sufficient compliance with paragraph (6)(a) if information with respect to the securities is given in relation to the securities exchange at which there have been the greatest number of recorded dealings in the securities in the three months immediately preceding the date on which notice of the take-over scheme is served upon the offeree.

SECOND SCHEDULE

[Rule 7.]

**INFORMATION REQUIRED TO BE INCLUDED BY THE OFFEROR
IN A TAKEOVER OFFER DOCUMENT**

1. The offeror shall disclose in the offer document all such information as the offeree shareholders and their professional advisers would reasonably require.
2. The offeror shall state the following in the offer document—
 - (a) the identity of the ultimate offeror as required under regulation 21;
 - (b) information regarding the offeror including the names of its directors and shareholders who hold notifiable interest in the offeror and the extent of their holdings;
 - (c) whether the offeror has any intentions regarding the continuation of the business of the offeree and if so, stating the offeror's intentions;
 - (d) the offeror's stated intentions regarding major changes to be introduced in the business, or strengthening the financial position of the offeree, whether such plans include a merger, or liquidating the offeree, selling its assets or re-deploying its fixed assets or making any other major change in the structure of the offeree or its subsidiaries and if so, stating the offeror's intentions;
 - (e) whether there are any long term commercial justifications for the proposed take-over offer, and if so, stating the long term commercial justifications; and
 - (f) whether the offeror has any intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries and if so, stating the offeror's intentions.
3. Where the take-over offer is for cash, either in part or in whole, the offer must include a confirmation by a financial adviser of the offeror that the offeror has the financial capability to accept and carry out the take-over offer in full.

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4. In addition, the offer document should also include a statement that the offeror and the offeror's financial advisers are satisfied that—
- (a) the take-over offer would not fail due to insufficient financial capability of the offeror; and
 - (b) every shareholder who wishes to accept the take-over offer will be paid in full.
5. The offer document shall contain a statement as to whether—
- (a) any agreement, arrangement or understanding exists between the offeror or any person acting in concert with it and any of the directors, past directors, holders of voting shares or past holders of voting shares having any connection with or dependence upon the take-over offer, and full particulars of any such agreement, arrangement or understanding.
“past directors” or “past holders of voting shares” means such person who was during the period of six months immediately prior to the date of the written notice of the take-over offer, a director or a holder of the voting shares, as the case may be;
 - (b) any voting shares acquired in pursuance of the take-over offer will be transferred within a foreseeable period from the date of the offer document to any other person, together with the names of the parties to any such agreement, arrangement or understanding and the particulars of all securities in the offeree held by such persons, or a statement that no such securities are held; and
 - (c) any settlement of the consideration to which any holder is entitled under the take-over offer will be implemented in full in accordance with the terms of the take-over offer without regard to lien, right of set off, counter claim or other analogous rights to which the offeror may otherwise be or claim to be entitled as against the holder.
6. The offer document shall state as at the latest practicable date, the number of and percentage holding of voting shares and convertible securities (if any) which—
- (a) the offeror and directors of the offeror hold, directly or indirectly, in the offeree;
 - (b) persons associated or acting in concert with the offeror or related companies to the offeror hold directly or indirectly in the offeree together with the names of such persons acting in concert; and
 - (c) persons who, prior to the sending of the take-over offer document, have irrevocably committed themselves to accept the take-over offer hold directly or indirectly in the offeree together with the names of such persons.
7. In the event that there are no holdings of the nature required to be stated under paragraph (6) the offer document shall contain a statement to this effect.
8. The take-over offer document shall state the names and shareholdings of the ultimate shareholders, if any, and of the persons acting in concert with the offeror.
9. Where any party whose holdings are required to be disclosed has dealt in the voting shares in question during the period commencing six months prior to the beginning of the offer period and ending with the latest practicable date prior to the sending of the offer document, the details, including the number of shares, dates and prices, must be stated. If no such deals have been made this fact should be so stated.
10. The take-over offer document shall state, whether the emoluments of the offeror's directors shall be effected by the acquisition of the offeree, except in the case of an offeror making a cash offer only.

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11. The offeror shall state whether the offeree's securities shall continue to be listed at the securities exchange after the take-over offer has been successfully concluded.

12. The offer document shall contain particulars of all service contracts of any directors or proposed director of the offeror or any of its subsidiaries (unless expiring or determinable by the employing company without payment of compensation within twelve months) and where there are no such contracts, this fact should be so stated.

13. Where the contracts under paragraph (12) have been entered into or amended within six months of the date of the documents, the particulars of the contracts amended or replaced should be given and where there have been no new contracts or amendments this fact should be so stated.

THIRD SCHEDULE

[Rule9.]

**INFORMATION REQUIRED IN THE CIRCULAR ISSUED
BY THE OFFEREE TO ITS SHAREHOLDERS**

The circular shall state—

- (a) the number, description and amount of marketable securities in the offeree company held by or on behalf of each director of the offeree company, or in the case where no such securities are held, a statement to that effect;
- (b) in respect of each director of the offeree company by whom or on whose behalf shares to which the take-over scheme relates are held—
 - (i) whether the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of the shares; or
 - (ii) whether the director has decided not to accept such a take-over offer;
- (c) whether any marketable securities of the offeror company are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of the marketable securities so held;
- (d) whether it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or be given to any director of the offeree or of any other company related to the offeree as consideration, or in connection with, its retirement from office and if so, particulars of the proposed payment or benefit.
- (e) whether there is any other agreement or arrangement made between the director or the offeree and any other person in connection with or conditional upon the outcome of the take-over scheme and if so the particulars of such agreement or arrangement;
- (f) whether a director of the offeree has an direct or indirect interest in any contract entered into by the offeror and if so, the particulars of the nature and extent of such interest; and
- (g) whether there has been any material change in the financial position of the offeree since the date of the last balance sheet laid before the company in general meeting, and if so, the particulars of such change.

FOURTH SCHEDULE

[Rule 10.]

INFORMATION AND STATEMENTS REQUIRED TO BE INCLUDED IN AN
INDEPENDENT ADVISER'S CIRCULAR

1. An independent adviser's circular whether recommending acceptance or rejection of the take-over offer, must contain comments and advice on the—
 - (a) offeror's stated intentions regarding the continuation of the business of the offeree;
 - (b) offeror's stated intentions regarding any major changes to be introduced in the business, including any plans to liquidate the offeree, sell its assets, re-deploy its fixed assets or make any other major change in the structure of the offeree;
 - (c) offeror's stated long term commercial justification for the proposed take-over offer;
 - (d) offeror's stated intentions with regard to the continued employment of the employees of the offeree and of its subsidiaries; and
 - (e) reasonableness of the take-over offer, including the reasonableness and accuracy of profit forecasts for the offeree, if any, contained in the offer document.
2. The independent adviser's circular shall, in so far as is reasonable, contain comments on the—
 - (a) outlook, for the next twelve months, of the industry in which the offeree has its core or major business activities; and
 - (b) prospects, for the next twelve months, of the offeree in terms of financial performance as well as positioning in the industry including competitive advantage, threats and opportunities—
3. The independent adviser's circular shall also state—
 - (a) whether the offeree holds directly or indirectly, any voting shares or convertible securities in the offeror and if so, the number and percentage holding of such voting shares and convertible securities;
 - (b) whether the directors of the offeree hold, directly or indirectly any voting shares or convertible securities in the offeror or the offeree and if so, the number and percentage holding of such voting shares and convertible securities so held; and
 - (c) whether the directors of the offeree intend, in respect of their own beneficial holdings to accept or reject the take-over offer.
4. In the event that there are no holdings of the nature required to be stated under paragraph (3) the independent adviser's circular shall contain a statement to this effect.
5. The independent adviser's circular must also contain a statement from the directors of the offeree stating any other interest held by them in the offeror and in the offeree.
6. Where any party whose holdings are required to be disclosed pursuant to the Act has dealt in the voting shares in question during the period commencing six months prior to the beginning of the offer period and ending with the latest practicable date prior to the sending of the offer document, the details, including the number of shares, dates and prices, must be stated and where such deals have been made, this fact should be so stated.

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7. The independent adviser's circular shall contain particulars of all service contracts of any director or proposed director with the offeree or any of its subsidiaries (unless expiring or determinable by the employing company without payment of compensation within twelve months from the date of the offer document) and where there are no such contracts, this fact shall be so stated.

8. Where the service contracts referred to in paragraph (7) have been entered into or amended within six months of the date of the document, the particulars of the contracts or amendments shall be given and where there have been no new service contracts or amendments, this fact shall be so stated.

CAPITAL MARKETS (FOREIGN INVESTORS) REGULATIONS, 2002

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Shares reserved for local investors and participation by foreign investors.
 4. Register of shareholders.
 5. Declaration of investor status.
 6. Report by listed companies.
 7. Deposit of share certificates with an authorized depository.
 8. Report by authorized depository.
 9. Restrictions of shares issued outside Kenya.
 10. Transitional and saving provisions.
 - 11.
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-

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CAPITAL MARKETS (FOREIGN INVESTORS) REGULATIONS, 2002

[L.N. 134/2002, L.N. 98/2007, L.N. 28/2008.]

1. Citation

These Regulations may be cited as the Capital Markets (Foreign Investors) Regulations, 2002.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**authorized depository**” means a bank licensed under the Banking Act (Cap. 488) or a financial institution licensed by the Authority to hold in custody, funds, securities, financial instruments or documents of title to assets registered in the name of local investors, foreign investors or of an investment portfolio;

“**days**” means calendar days excluding Saturdays, Sundays and public holidays;

“**East African Community Partner State**” means States that are members of the East African Community;

“**East African investor**” *deleted by L.N. 98/2007, s. 2;*

“**free float**” means any shares in excess of the minimum reserved under regulation 3 (1) and (2) of these Regulations;

“**foreign investor**” means any person who is not a local investor;

“**issuer**” means a company or other legal entity incorporated or established under the laws of East African Community Partner States that offers securities to the public or a section thereof, whether or not such securities are the subject of an application for admission or have been admitted to listing;

“**institutional investor**” means a body corporate including a financial institution, collective investment scheme, fund manager, dealer or other body corporate whose ordinary business includes the management or investment of funds whether as principal or on behalf of clients;

“**listed company**” means an issuer any part of whose shares have been listed at a securities exchange;

“**local investor**” in relation to—

- (a) an individual, means a natural person who is a citizen of an East African Community Partner State;
- (b) a body corporate means a company incorporated under the Companies Act (Cap. 486) of Kenya or such other similar statute of an East African Community Partner State in which the citizen or the Government of an East African Community Partner State have beneficial interest in one hundred *per centum* of its ordinary shares for the time being or any other body corporate established or incorporated in an East African Community Partner State under the provisions of any written law;

“**official list**” means a list specifying all securities which have been admitted to listing on any of the market segments of a securities exchange;

“**public offer**” has the meaning assigned to it in regulation 5 of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 (L.N. 60/2002);

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“**reserve**” means any shares of an issuer or a listed company set aside for investment by local investors which are not available for investment by foreign investors except as provided under regulation 3(4) of these Regulations.

[L.N. 98/2007, s. 2, L.N. 28/2008, s. 2.]

3. Shares reserved for local investors and participation by foreign investors

(1) Every issuer or listed company shall reserve at least twenty-five per centum of its ordinary shares for investment by local investors in the issuer or listed company.

(2) In the case of—

- (a) ordinary shares of a listed company which have been listed, the shares to be reserved shall be the per centum of the ordinary shares already listed on the securities exchange;
- (b) ordinary shares of the issuer in respect of which the issuer is making a public offering and which is a subject of an application for listing, the shares to be reserved shall be the per centum of the ordinary shares being offered to the public.

(3) Any proportion of the voting shares of an issuer or listed company in excess of twenty-five per centum reserved for local investors, shall be a free float available for investment by foreign investors without any restrictions in the level of holdings except as provided under the Capital Markets (Take-overs and Mergers) Regulations, 2002 (L.N. 126/2002).

(4) Notwithstanding the provisions of paragraphs (1) and (2) where, in the case of public offering, the per centum reserved for local investors is not subscribed for in full by local investors, the issuer may with the prior written approval of the Authority, allot the shares so remaining to foreign investors.

[L.N. 98/2007, s. 3, L.N. 28/2008, s. 3.]

4. Register of shareholders

(1) A company shall maintain a register of shareholders of ordinary shares showing at all times the holdings thereof by—

- (a) foreign investors;
- (b) individual local investors; and
- (c) institutional local investors.

(2) Every listed company shall, within thirty days from the day these Regulations come into force provide the Authority with a status report with respect to the category of shareholders specified in subregulation (1) and subsequently, within ten days following the end of each month, furnish to the Authority and to the securities exchange on which its shares are listed, a report showing details of the holding of its ordinary shares according to the categories specified in subregulation (1).

[L.N. 98/2007, s. 4.]

5. Declaration of investor status

(1) A stockbroker shall—

- (a) on every application for the shares of an issuer; or
- (b) on the transfer of the shares of a listed company to an investor,

declare whether the applicant or the transferee, as the case may be, is a foreign investor, East African Community Partner States individual investor or East African Community Partner States institutional investors with supporting documentation evidencing such status.

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(2) No company Registrar shall effect any transfer of the ordinary shares of an issuer or of a listed company if such transfer would result in investment in the ordinary shares of such issuer or listed company by local investors to fall below the *per centum* specified in subregulations (1) and (2) of regulation 3 other than under the circumstances specified in subregulation (4) of regulation 3.

[L.N. 98/2007, s. 5.]

6. Report by listed companies

(1) In relation to subregulations (1) and (2) of regulation 3, a listed company shall immediately report to the securities exchange at which it is listed, all transactions that result in the *per centum* of ordinary shares held by foreign investors to reach seventy *per centum* or more specifying the *per centum* attained by each such transaction.

(2) A securities exchange shall publish a weekly report showing—

- (a) the number of shares of each listed company traded on during the week; and
- (b) listed companies in which foreign investors and East African investors hold seventy *per centum* or more indicating the percentage so held.

(3) A securities exchange shall submit to the Authority weekly and make available to the public at its principal place of business every report prepared under this regulation.

[L.N. 98/2007, s. 6, L.N. 28/2008, s. 5.]

7. Deposit of share certificates with an authorized depository

(1) A stockbroker shall deposit every share certificate registered in the name of a foreign investor with an authorised depository designated by the foreign investor.

(2) An authorised depository shall hold in its custody every share certificate deposited under subregulation (1) and the certificate shall remain so held unless shares are transferred to a local investor:

Provided that if the issuer's shares are immobilised or dematerialised, the shares shall be held by an authorised depository or a central depository agent.

[L.N. 98/2007, s. 7.]

8. Report by authorized depository

An authorised depository shall, in respect of each month, prepare a report showing the share certificates or statement of account of the shares in its custody pursuant to the provisions of regulation 7 and shall furnish such report to the Authority within ten days after the end of every month.

9. Restrictions of shares issued outside Kenya

No person shall, in Kenya, offer or cause to be offered to the public any shares or other capital market instrument as the Authority may specify, which are listed or to be listed outside Kenya except with the prior written approval and registration of such security by the Authority.

10. Transitional and saving provisions

(1) Nothing in these Regulations shall require a foreign investor or East African investor who, at the commencement of these Regulations, hold shares of an issuer in excess of the limits prescribed in these Regulations, to dispose of the excess shares.

(2) In the event that a foreign investor who holds shares in excess of the limits prescribed by these Regulations by virtue of the provisions of subregulation (1), resolves

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to dispose of any shares, no foreign investor shall be eligible to purchase such shares save to the extent that the aggregate of the shares of that issuer held by foreign investors or shall not exceed the limits prescribed in regulation 3.

(3) Nothing in these Regulations shall restrict the right of a foreign investor to acquire additional shares by way of a bonus or right or scrip dividend issue pursuant to the memorandum or articles of association or other regulations of a listed company or under the provisions of any other written law provided that in the event of a rights or scrip dividend issue, no foreign investor shall be eligible to acquire directly or indirectly additional shares as would result in the percentage reserved for local investors to fall below twenty-five *per centum*.

[L.N. 98/2007, s. 8.]

11. The Capital Markets Authority (Foreign Investors) (No. 2) Regulations, 1995 (L.N. 291/1995), are revoked.

12. The Capital Markets (Foreign Investors) (Amendment) Regulations, 2002 (L.N. 109/2002), are revoked.

CAPITAL MARKETS TRIBUNAL RULES, 2002

ARRANGEMENT OF RULES

Rule

1. Citation.
2. Interpretation.
3. Publication of address of Tribunal.
4. Form of appeal.
5. Statement of facts of appellant.
6. Service of memorandum.
7. Statement of defence.
8. Service.
9. Withdrawal of appeal.
10. No communications outside hearing.
11. Time and place of hearing.
12. Summoning and attendance of witnesses.
13. Assessors.
14. Representative to file a notice.
15. Hearing procedure.
16. Copies of documents admissible.
17. Tribunal may adopt civil procedure rules.
18. Extension of time limits.
19. Orders for costs.
20. Fees.
21. Transition.

SCHEDULE – FEES

[Subsidiary]

CAPITAL MARKETS TRIBUNAL RULES, 2002

[L.N. No. 179/2002.]

1. Citation

These Rules may be cited as the Capital Markets Tribunal Rules, 2002.

2. Interpretation

In these Rules—

“**Chairman**” means the chairman of the Tribunal;

“**Secretary**” means the secretary to the Tribunal;

“**Tribunal**” means the Capital Markets Tribunal established under section 35A of the Act.

3. Publication of address of Tribunal

The Secretary shall publish a notice in the *Gazette* of the address at which documents may be presented to, filed with or served on the Tribunal or the Secretary.

4. Form of appeal

(1) An appeal to the Tribunal shall be entered by presentation of a memorandum of appeal, with six copies thereof, together with the prescribed fee to the Secretary.

(2) The memorandum shall set out concisely, under distinct heads and numbered consecutively, the grounds of appeal without argument or narrative.

(3) The memorandum shall be signed by the appellant, if the appellant is an individual, or by a director and the chief executive, if the appellant is a corporation.

(4) The memorandum shall be presented within fifteen days after the date on which the decision appealed from was communicated to the appellant.

5. Statement of facts or appellant

Each copy of the memorandum of appeal shall be accompanied by a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to the documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed the original copy of the decision of the Authority on which the appeal is based, and each document or extract from a document referred to upon which the appellant proposes to rely as evidence at the hearing of the appeal.

6. Service of memorandum

Within seven days after the presentation of the memorandum of appeal to the Secretary, a copy thereof and the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Authority.

7. Statement of defence

(1) The Authority shall, within twenty-one days after service of the memorandum of appeal upon it, file with the Secretary a statement of defence signed by the chief executive of the Authority or a person authorized by him in writing and a statement of facts together with six copies thereof and the provisions of rule 5 shall apply *mutatis mutandis* to the statement of facts.

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(2) At the time of filing the statement of defence and the statement of facts under paragraph (1), the Authority shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) Where the Authority does not desire to file a statement of facts under this rule, the Authority shall forthwith give written notice to that effect to the Secretary and to the appellant and in that case the Authority shall be deemed at the hearing of the appeal to have admitted the facts set out in the statement of facts of the appellant.

8. Service

(1) The provisions of the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21) dealing with the service of a summons shall apply with respect to the serving of documents under these Rules as though those provisions formed part of these Rules.

(2) The Tribunal may, on the application of a party, direct that documents be served in a different manner than that provided for under paragraph (1).

9. Withdrawal of appeal

(1) The appellant may, at any time before the appeal is heard, withdraw the appeal by notice in writing to the Secretary.

(2) If an appeal is withdrawn the Tribunal shall make an order under section 35A(18) of the Act as to costs.

10. No communications outside hearing

No party to the appeal shall communicate, outside the hearing of the appeal, with the Chairman or any other member of the Tribunal other than the Secretary.

11. Time and place of hearing

(1) The Secretary shall within three days after receiving the memorandum of appeal under rule 4 notify the Chairman of the receipt thereof.

(2) The Chairman shall, after the documents of the parties are received, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal and the Secretary shall cause notice thereof to be served on the appellant and the Authority.

(3) The Secretary shall supply each member of the Tribunal with a copy of the notice of hearing and all documents received by the Secretary from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days notice of the time, date and place fixed for the hearing of the appeal.

12. Summoning and attendance of witnesses

The provisions of the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21) dealing with the summoning and attendance of witnesses shall apply with respect to the hearing of an appeal as though those provisions formed part of these Rules.

13. Assessors

(1) If in the opinion of the Chairman a matter arises in a hearing which calls for specialized knowledge, he may call upon any person who he considers to be possessed of such knowledge to sit with the Tribunal as an assessor to assist the Tribunal.

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(2) A person called upon to sit with the Tribunal under paragraph (1) shall be paid his reasonable expenses and a daily remuneration, the amount of which shall be decided by the Chairman.

14. Representative to file a notice

A person representing a party before the Tribunal shall file a notice of his appointment as the representative of the party and any subsequent change shall be notified by the filing of a notice of change of representative or a notice of intention to act in person as the case may be.

15. Hearing procedure

The following shall apply with respect to the hearing of an appeal—

- (a) the Authority shall be entitled to be represented;
- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence, but save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum of appeal and may not adduce evidence of facts or documents unless those facts have been referred to in, or copies of those documents have been annexed to, the statement of facts of the appellant;
- (c) at the conclusion of the statement and evidence on behalf of the appellant, the Authority may make submissions supported by relevant evidence, and the conditions of sub-paragraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Authority;
- (d) the appellant shall be entitled to reply but may not raise a new issue or argument;
- (e) the Chairman or a member of the Tribunal may at any stage of the hearing ask any questions to the parties or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party to the appeal may be cross-examined by the other party to the appeal and if so cross-examined may be re-examined;
- (g) the Tribunal may call and examine witnesses and a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary or desirable, on such terms as it may determine;
- (i) the Tribunal shall consider and reach its decision according to law;
- (j) the decision of the Tribunal shall be on the basis of a majority vote and shall be in writing, dated and signed by the Chairman and the members of the Tribunal who participated in the decision;
- (k) the Secretary shall record the proceedings of the Tribunal and include that record, together with a copy of the decision, in a document to be certified and signed by the Chairman as a true and correct record of the proceedings and decision;
- (l) the Secretary shall forward a certified copy of the document described in sub-paragraph (k) to each party;
- (m) a copy certified under sub-paragraph (k) shall be conclusive evidence of the decision and proceedings of the Tribunal.

16. Copies of documents admissible

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

17. Tribunal may adopt civil procedure rules

In matters of procedure not governed by these Rules or the Act, the Tribunal may adopt the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21).

18. Extension of time limits

The Chairman may, on application, extend the time appointed by these Rules for doing any act or taking any proceedings upon such terms and conditions, if any, as appear to the Chairman to be just and expedient.

19. Orders for costs

The Tribunal shall make an order under section 35A(18) of the Act as to costs on an appeal.

20. Fees

The fees set out in the Schedule are prescribed in respect of the matters described in the Schedule.

21. Transition

The following shall apply with respect to an appeal made before these Rules come into operation—

- (a) these Rules shall apply with necessary modifications and such modifications as the Chairman may direct;
- (b) nothing done before these Rules come into operation shall be ineffective only because it was not done in accordance with these Rules;
- (c) any applicable time limit under these Rules that would otherwise have commenced or expired shall be deemed not to have commenced or expired but shall be deemed to have commenced running upon the publication of these Rules; and
- (d) if anything was done before these Rules come into operation for which a fee would have been payable under these Rules if they had been in operation, that fee shall be payable within ten days after the publication of these Rules.

SCHEDULE

[Rule 20.]

FEES

	<i>Description</i>	<i>Fee (Shs.)</i>
1.	Presentation of a memorandum of appeal	10,000
2.	Filing of statement of defence by the Authority	2,500
3.	Filing of any other document	1,500

**CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES)
REGULATIONS, 2007**

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-

**CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES)
REGULATIONS, 2007**

[L.N. 183/2007.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Registered Venture Capital Companies) Regulations, 2007.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“affiliate” means any subsidiary or holding company of such registered venture capital company and any subsidiary of such holding company;

“captive fund” means a fund which draws all its investment capital from the parent company of the registered venture capital company holding that fund and invests such capital for the interests of that parent company, or a fund that has such other comparable structure acceptable to the Authority;

“close relation” means a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grandchild or spouse of a grandchild;

“day” means any calendar day excluding Saturdays, Sundays and public holidays;

“fund” means the pool of capital held by a registered venture capital company for investment in venture capital, in accordance with a specifically declared investment policy;

“fund manager” means a company that manages the funds and investments of a registered venture capital company;

“fund of funds” means a fund (as defined) that exclusively invests in other venture capital companies;

“Income Tax Rules” means the Income Tax (Venture Capital Company) Rules, 1997 (L.N. 103/1997);

“independent director” means a director who—

- (i) is not and has not been in the employment of the registered venture capital company in an executive capacity within the five year period preceding the date of application;
- (ii) is not associated to an adviser or consultant to the registered venture capital company or a member of the registered venture capital company's senior management or a significant customer or supplier to the registered venture capital company or with an entity that receives significant contributions from the registered venture capital company or a venture capital enterprise in which the registered venture capital company is invested or within a period of five years preceding the date of the application, has not had any business relationship with the registered venture capital company (other than service as a director);
- (iii) has no personal service contract(s) with any of the shareholders, directors, or members of the senior management of the registered venture capital company;

[Subsidiary]

- (iv) is not employed by a company at which an executive officer of the registered venture capital company serves as a director; or
- (v) is not a close relation of any person described above;

“independent fund” means a fund which draws its investment funds from investors generally and is independently invested and managed or a fund that has such other comparable structure acceptable to the Authority;

“mid-stage financing” means investment by a registered venture capital company in an eligible venture capital enterprise in the form of—

- (a) capital expenditure or working capital to support and promote commercialization of technology or product;
- (b) additional capital expenditure or working capital to increase production capacity, marketing or product development; or
- (c) funding for an eligible venture capital enterprise expecting to be listed on a stock exchange;

“registered venture capital company” means a venture capital company registered as such by the Authority;

“seed-capital financing” means financing provided by a registered venture capital company for the purpose of research, assessment and development of an initial concept or prototype for product development and initial marketing;

“semi-captive fund” means a fund which draws its investment capital from both the parent of the registered venture capital company holding it and other investors, but invests primarily in line with the interests of that parent or that has such other comparable structure acceptable to the Authority;

“small and medium size business” means a business enterprise which at the time of first investment by the registered venture capital company has assets with a market value or annual turnover of less than five hundred million shillings;

“start-up financing” means financing provided by a registered venture capital company for the purpose of commencing operations, production or implementation of a concept or prototype where a venture capital enterprise has completed the seed stage of development;

“subsidiary financing” means financing provided for the purchase by one registered venture capital company of the entire or part of the equity interests of another registered venture capital company in an eligible venture capital enterprise to allow for total or partial exit by the latter;

“substantial interest” means a cumulative of both direct and indirect holding of twelve and one half per cent or more in the equity of a venture capital enterprise;

“venture capital company” means a company incorporated under the Companies Act (Cap. 486) with the primary objective of providing substantial risk capital to small and medium size businesses in Kenya through equity, quasi-equity investments or other instruments whether convertible into equity or not as well as managerial or technical expertise to such business entities;

“venture capital enterprise” means a small or medium sized business entity incorporated under the Companies Act (Cap. 486) which is in need of venture capital investment for purposes of financing a new product or for expansion of the business entity.

PART II – ELIGIBILITY

3. Eligibility requirements

A venture capital company shall be entitled upon making an application to the Authority in the prescribed form and on payment of the prescribed fee to be registered under these Regulations as a registered venture company if it has—

- (a) been duly incorporated under the Companies Act (Cap. 486) as a company limited by shares;
- (b) as its principal object the provision of risk capital to small and medium size businesses in Kenya;
- (c) a minimum paid up share capital of one hundred million shillings;
- (d) a minimum fund of one hundred million shillings;
- (e) audited financial statements for the three years immediately preceding the date of application, the latest of which shall not be older than six months as at the date of application (where applicable);
- (f) a demonstrable track record as a venture capital company of at least three years or in the alternative, one or more of its directors shall have a demonstrable track record in the management of venture capital funds for a period of at least three years;
- (g) engaged a fund manager duly licensed by the Authority;
- (h) a Board of Directors of which at least one-third of the directors are independent directors;
- (i) appointed an auditor who is a member of the Institute of Certified Public Accountants of Kenya; and
- (j) appointed a Secretary who is a member of the Institute of Certified Public Secretaries of Kenya.

PART III – REGISTRATION

4. Application

An application for registration shall be made by a venture capital company in the prescribed form set out in the First Schedule and shall be accompanied by the following—

- (a) a certified copy of the applicant's certificate of incorporation or certificate of compliance;
- (b) a certified copy of the applicant's memorandum and articles of association;
- (c) a certified copy of the board resolution approving the application for registration;
- (d) details of the investment policy in respect of each fund to be operated by the applicant setting out the following particulars—
 - (i) investment objectives;
 - (ii) minimum and maximum investment amounts in any single enterprise;
 - (iii) investment rules, investment process (including minimum commitment and investment periods and procedures for draw down) and exposure limits to individual eligible venture capital enterprises;
 - (iv) preferred mode of divestiture from eligible venture capital enterprises;
 - (v) disclose a clear strategy for the diversification of investments in eligible venture capital enterprises;
 - (vi) policies on fees and charges;

[Subsidiary]

- (vii) profile of companies invested in (where applicable); and
- (viii) details of risk factors that are specific to the chosen investment sectors, or sectors intended to be invested in;
- (e) a letter of acceptance of the appointment from the fund manager in the prescribed Form set out in the Fourth Schedule;
- (f) the management agreement between the registered venture capital company and the fund manager containing the particulars required under regulation 10;
- (g) audited financial statements of the applicant for the last three financial years immediately preceding the date of application (where applicable), provided that where at the date of the application is—
 - (i) more than three months, but less than six months have lapsed since the end of the immediately preceding financial year in respect of which the latest audited financial statements relate, the applicant shall provide unaudited accounts for the first three months following the end of the financial year;
 - (ii) more than six months have lapsed since the end of the immediately preceding financial year in respect of which the audited financial statements relate, the applicant shall provide interim audited financial statements for the first six months following the end of the financial year;
 - (iii) more than nine months have elapsed since the end of the immediately preceding financial year in respect of which the latest audited financial statements relate, the applicant shall, in addition to the interim audited financial statements required under (ii) above, provide unaudited accounts for the three month period following the end of the six months to which the interim audited financial statements relate;
- (h) a declaration by the directors in the prescribed form set out in the Third Schedule;
- (i) declarations by each of the directors in respect of questions 18 to 24 of the First Schedule;
- (j) a bank reference from a commercial bank duly licensed under the Banking Act (Cap. 488) stating the length of its relationship with the applicant and containing a statement on the manner in which the applicant has managed its account(s) (where applicable);
- (k) business references from at least two companies in which the applicant has invested explaining the nature and duration of the investment(s) and the contribution applicant has made to the business of the company providing the reference (where applicable);
- (l) the prescribed application fee; and
- (m) any further information that the Authority may deem necessary to determine the application.

5. Certificate of registration

(1) The Authority may, on satisfying itself that an applicant meets the requirements for registration, register the applicant and issue a certificate of registration in the form set out in the Second Schedule.

(2) The certificate of registration issued under this regulation shall remain in force until it is revoked by the Authority.

6. Fees

(1) Upon registration, the registered venture capital company shall pay the prescribed approval fees in respect of itself and each of its funds.

(2) Every fund of the registered venture company shall pay the prescribed annual fee each year, provided that no annual fee shall be payable in the year of registration.

[Capital Markets (Licensing Requirements) (General) 2002.]

7. Letter of no objection

The registered venture capital company shall not change its shareholders, directors or fund manager unless it has received a written confirmation stating that the Authority has no objection to the proposed change.

PART IV – INVESTMENTS**8. Eligible venture capital enterprises**

(1) For purposes of these Regulations, investment in an eligible venture capital enterprise shall include investments in a company or person associated or acting in concert with an eligible venture capital enterprise.

(2) The eligible venture capital enterprises for purposes of these Regulations shall be enterprises whose primary business activity does not include any of the following—

- (a) trading in real property;
- (b) banking and financial services;
- (c) retail and wholesale trading services.

PART V – FUND MANAGERS**9. Approval of fund manager**

No person shall act or be appointed as a fund manager for the purposes of a registered venture capital company or any of its funds unless such person is duly approved by the Authority to manage venture capital funds.

10. Obligations of the fund manager

Notwithstanding the provisions of any management agreement, the fund manager shall—

- (a) ensure that a prudent investment policy is in place in respect of each fund;
- (b) ensure that all fund investments are carried out in accordance with the disclosed investment policy and in compliance with the Capital Markets Act and Regulations and all other applicable laws; and
- (c) notify the Authority immediately and in any event in writing within twenty-four hours of any event that results in less than seventy-five per cent of the investable funds of the registered venture capital company being invested in eligible venture capital enterprises.

11. Resignation of the fund manager

(1) A fund manager may resign by giving a written notice to the Board of Directors of the registered venture capital company and copied to the Authority stating the reasons for the resignation.

(2) The notice period shall be one month or such longer period as may have been stipulated in the management agreement.

[Subsidiary]

12. Removal of fund manager

A fund manager shall be removed—

- (a) immediately upon the suspension or revocation of his licence by the Authority; or
- (b) by one month's notice, or such longer period as may be stipulated in the management agreement, in writing by the Board of Directors of the registered venture capital company.

13. Hand-over to new fund manager

A fund manager shall within fourteen days of the date of resignation or removal deliver to the registered venture capital company and copy to the Authority all information and documents relating to its contractual duties including—

- (a) statements pertaining to all the funds under his management;
- (b) details of the investment portfolio and details of the cost of such investment and estimated yields;
- (c) statements relating to any incomplete transactions;
- (d) records required to be maintained by the fund manager;
- (e) duly executed transfer documents relating to any securities registered in the name of the fund manager as nominee for the registered venture capital company;
- (f) letters of resignation by the fund manager or persons appointed by the fund manager as nominee for the registered venture capital company from any directorships made pursuant to the management agreement; and
- (g) particulars of all contact persons for purposes of follow up of the investment portfolios.

14. Appointment of new fund manager

The Board of Directors of the registered venture shall within one month of the resignation or removal of the fund manager, appoint another fund manager and shall within seventy-two hours of the appointment forward to the Authority a certified copy of the fund manager's letter of consent to appointment in the prescribed form set out in Fourth Schedule and provide the Authority with a copy of the management agreement with the new fund manager.

PART VI – FUND RAISING**15. Prohibition on offers to the public**

A registered venture capital company shall not raise funds by way of offers to the public.

16. Filing of placement memorandum

A registered venture capital company shall file the placement memorandum with the Authority at least thirty days before publication.

17. Private placements

A registered venture capital company seeking to raise funds shall publish a placement memorandum which shall contain details on the terms and conditions on which funds are to be raised from investors.

18. Placement returns

A registered venture capital company shall make returns of the funds raised to the Authority within fourteen days of the close of the offer.

PART VII – CONTINUING REPORTING OBLIGATIONS

19. Records to be maintained by fund manager

(1) The fund manager shall keep books of account and maintain records that accurately reflect the affairs of the funds under its management.

(2) Every record shall be preserved for at least seven years after the completion of the transaction to which it relates.

20. Quarterly returns

Each fund manager shall within one month after the end of each quarter (including the last quarter of the financial year), file with the Authority a return that includes the following information—

- (a) details of any investments made by each fund under its management during the quarter, and the consideration paid for those investments; and
- (b) details of any disposals of investments during the quarter, and any profit derived or loss incurred from those disposals (including details of how that profit or loss was calculated).

21. Annual returns

(1) The directors of the registered venture capital company shall within three months of the end of the registered venture capital company's financial year, file with the Authority annual returns with the following information—

- (a) name and address of each shareholder (including details of any beneficial interests) of the registered venture capital company and details of their investment;
- (b) changes in shareholding in the financial year;
- (c) names and address of each director of the registered venture capital company;
- (d) changes in the Board of Directors of the registered venture capital company within the year; and
- (e) annual audited accounts of the registered venture capital company for that financial year.

(2) The returns shall be accompanied by a report of the fund manager in respect of each fund under the registered venture capital company detailing—

- (a) proposed changes in information specified under regulation 4 or the investment policy; and
- (b) particulars of investments in eligible venture capital enterprises by that fund as at the end of that year and any changes in the course of the year, including—
 - (i) the level of investment in each eligible venture capital enterprise and the return thereon; and
 - (ii) disposals of investments during that year including any profits derived or losses incurred from that disposal.

[Subsidiary]

22. Additional information

Notwithstanding the foregoing, the Authority may require such further information as it may deem necessary.

PART VIII – DEREGISTRATION

23. Deregistration

The Authority may deregister a registered venture capital company where—

- (a) the Board of Directors of the registered venture capital company requests in writing that the venture capital company be deregistered;
- (b) the registered venture capital company ceases to meet the requirements for registration or fails to comply with the Act;
- (c) any returns or other information filed by the registered venture capital company or fund manager are found to contain false or misleading information;
- (d) the registered venture capital company fails to take such corrective action in respect of a breach as indicated by the Authority within the time prescribed;
- (e) the Authority becomes aware of any facts or circumstances, which in the Authority's opinion, warrant deregistration of the registered venture capital company in the public interest.

24. Notification of Commissioner of Income Tax and publication

The Authority shall within five days of deregistration of a registered venture capital company notify the Commissioner of Income Tax and within thirty days publish the deregistration in the *Gazette*.

PART IX – MISCELLANEOUS

25. Transition provision

Any venture capital company registered prior to the commencement date of these Regulations shall within twelve months of the commencement of these Regulations comply with these Regulations.

26. Extension of transition period

The Authority may extend the period of compliance further for a period of not more than twelve months upon request of a venture capital company registered prior to the commencement of these Regulations.

27. Deregistration on expiry of transition period

Upon the expiry of the twelve months under regulation 25 or the extended period under regulation 26, as the case may be, the Authority may deregister any registered venture capital company that has not complied with these Regulations.

28. Prohibition on investing in related parties

A registered venture capital company shall not lend to, invest in, provide finance to, act as a guarantor to or otherwise be exposed to any of its directors, affiliate companies or companies in which any of its directors and/or their close relations hold a substantial interest.

29. Verification of source of funds

A registered venture capital company shall take all reasonable measures to verify the sources of its funds as well as its investments to ensure it is not used as a conduit for funds sourced from or to be applied to criminal or socially undesirable activities including but not limited to money laundering and corruption.

30. Disclosure of registration

A registered venture company shall ensure that it includes in its written communications a statement that it is registered by the Capital Markets Authority.

FIRST SCHEDULE

Form 1

(Rule 4)

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

APPLICATION FOR REGISTRATION AS A VENTURE CAPITAL COMPANY

Please attach annexure(s) where necessary. Any annexure(s) should be clearly identified.

- 1. Name of Applicant
2. Date of incorporation
3. Company Number
4. Physical and Postal Address of principal office
5. Registered Office
6. Telephone
7. Fax No.
8. E-mail Address
9. Details of capital structure:
(a) Nominal capital (KSh.)
(b) Number of shares of KSh. each
(c) Paid-up capital (KSh.)
(d) Number and broad description of funds
(e) Components (of each Fund):
(i) Equity
(ii) Shareholder Loans
(iii) Debt
(iv) Other (Explain)
10. Details of subsidiary and associate companies with the percentage of shareholding in each

Capital Markets

[Subsidiary]

FIRST SCHEDULE—continued

11. Details of holding and affiliated companies with percentage of shareholding of the holding company

.....
.....
.....

12. The nature of venture capital financing it is to undertake

- (i) seed capital financing ←
- (ii) start-up capital financing ←
- (iii) mid-stage financing ←
- (iv) subsidiary financing ←
- (v) fund of funds ←
- (vi) other ←

Tick as appropriate

If other, explain

.....
.....

13. Nature of funds to be operated

- Captive ←
- Semi-captive ←
- Independent fund ←
- Other ←

Tick as appropriate

If other, explain

.....
.....

14. Provide the following details in respect of each shareholder. In the case of corporate shareholders, provide the relevant details in respect of the ultimate beneficial owners of the issued shares. In respect of each individual copies of the national identify cards or passport shall be annexed.

Name

Previous names (if any)

Year and place of birth

Nationality and how acquired

Identification card number and date issued

Postal address and telephone number

Number of shares held in applicant

Shareholdings (directly or indirectly) in other companies

Directorships in other companies

.....

15. Provide the following details in respect of each Director and the Secretary. In respect of each individual copies of the national identify cards or passport shall be annexed.

Name

Previous names (if any)

Year and place of birth

Nationality and how acquired

FIRST SCHEDULE—continued

Identification card/passport number and date issued

Postal address and telephone number

Number of shares held in Applicant

Shareholdings (directly or indirectly) in other companies

.....

Directorships in companies

.....

Educational qualifications and year obtained

Professional qualifications and year obtained

Memberships of professional bodies

Employment/business record

Specific experience related to the provision of venture capital

.....

In case of Secretary: Institute of Certified Public Secretaries of Kenya Registration No.

..... Practising Certificate No.

16. Particulars of the auditor of the registered venture capital company

Name

Physical and postal address

Telephone

E-mail address

Fax No.

Institute of Certified Public Accountants of Kenya Registration Number

.....

Practising Certificate No.

Provide individual responses to the following questions in respect of each of the shareholders, directors and secretary:

17. Have you at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of creditors, in Kenya or elsewhere? If yes, give details ..

.....

.....

18. Have you been a director, shareholder or manager of a company that has been:

(a) denied any licence, approval or registration to carry out business in the financial sector in any jurisdiction, or had such licence withdrawn after it was made or any authorization revoked? Yes/No.

If yes, give details.

.....

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? If yes, give details .

.....

.....

(c) subjected to any form of disciplinary action, censure, warned as to future conduct or publicly criticized by any regulatory authority or professional body in any country with regard to competence, soundness of judgement or otherwise? If yes, give details

.....

.....

Capital Markets

[Subsidiary]

FIRST SCHEDULE—continued

19. Have you been involved in a violation of any law designed for protecting members of the public against financial loss due to dishonesty or incompetence? If yes, give details

.....

20. Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction

.....

21. Have you or any entity in which you are or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency (including tax authorities), professional association or other regulatory body? If yes, give details

.....

22. Are you and/or a person associated with you now the subject of any proceeding that could result in a 'yes' answer to the above questions (19), (20), (21) and (22)? If yes, give details

.....

23. (1) Are you a shareholder or director of a member company of any securities exchange?

If yes, give details

.....

(2) Have you been—

(a) refused membership of any securities organization? If yes, give details

.....

(b) expelled from or suspended from trading on or membership of any securities organization? If yes give details

.....

(c) subjected to any other form of disciplinary action by any stock exchange? If yes, give details

.....

We (Director), (Director)

and (Secretary) declare that all the information

given in this application form is complete and true.

Dated this day of, 20

Signed

..... (Director)

..... (Director)

..... (Secretary)

Capital Markets

[Subsidiary]

SECOND SCHEDULE

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

CERTIFICATE OF REGISTRATION OF A VENTURE CAPITAL COMPANY

REGISTRATION NO.

This is to certify that is a Registered Venture Capital Company. Given under the seal of the Capital Markets Authority this day of

Chairman

Chief Executive

THIRD SCHEDULE

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

REGISTERED VENTURE CAPITAL COMPANY DIRECTORS DECLARATION

The following declarations shall be submitted with this application form:

We, the undersigned, being all the Directors of Limited (the applicant herein) hereby declare as follows:

- 1. We have exercised all due diligence in relation to seeking this registration. We accept full responsibility for the accuracy of all information given to the Authority.
2. We confirm that after having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement or material omission which would render the information provided to be false or misleading to the Authority.
3. We have read and understood the Regulations and the provisions of the Act governing Registered Venture Capital Companies and undertake to ensure compliance with the same.

Dated this day of 20

Signed (Director)

..... (Director)

FOURTH SCHEDULE

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

STATEMENT OF CONSENT BY FUND MANAGER

..... Limited, being duly licensed by the Capital Markets Authority as a Fund Manager and approved to manage venture capital companies (Licence No. hereby accepts appointment as the Fund Manager of

Capital Markets

[Subsidiary]

FOURTH SCHEDULE—*continued*

Limited and undertakes to comply with the Capital Markets Act and Regulations in executing all functions and duties attached to this appointment.

We declare that we have undertaken all due diligence exercises in relation to the proposed investment policy and funds in respect of which this application is being filed.

We undertake to inform the Authority immediately it comes to our knowledge that the Applicant has breached or failed to comply with any requirements.

Signed

..... (Director)

..... (Director/Secretary)

CAPITAL MARKETS (ASSET BACKED SECURITIES) REGULATIONS, 2007

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-

CAPITAL MARKETS (ASSET BACKED SECURITIES) REGULATIONS, 2007

[L.N. 184/2007.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Asset Backed Securities) Regulations, 2007.

2. Application

(1) These Regulations shall apply to all offers of asset backed securities to the public or a section thereof in Kenya including issues by state corporations and other public bodies.

(2) The Rules and Regulations governing the issue, offer and listing of fixed income securities shall apply to asset backed securities to the extent that the same do not conflict with the provisions of these Regulations.

3. Interpretation

In these Regulations, unless the context otherwise requires—

“**adviser**” means a person appointed to arrange, package, place or market the application for issue, offer and listing of the asset backed securities;

“**allowable expenses**” includes trust fees, ongoing fees paid to rating agencies, servicing fees, origination fees, acquisition expenses, liquidation expenses, bank service charges, legal fees, audit fees and other direct charges incurred in the ordinary course of business, exclusive of organizational and offering expenses, conversion expenses and extraordinary expenses, all being deemed incidental expenses relating to the authorization and issue of asset backed securities offered for purchase by the general public for the purposes of the Income Tax Act (Cap. 470);

“**asset backed securities**” means securities—

- (a) that are issued as part of a securitization transaction in which assets are transferred to a third party that issues the securities; and
- (b) that are primarily serviced, with respect to both return of investment and return on investment, by cash flow from assets described in paragraph (a) above;

“**asset backed securities holder**” means the person whose name appears in the register of asset-backed securities holders;

“**Authority**” means the Capital Markets Authority established under section 5 of the Capital Markets Act (Cap. 458A);

“**Central Bank**” means the Central Bank of Kenya established by section 3 of the Central Bank of Kenya Act;

“**close relation**” means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, son-in-law, grand child or spouse of a grandchild;

“**Commissioner**” means the Commissioner of Insurance appointed under the Insurance Act (Cap. 487);

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“credit enhancement” means any arrangement including but not limited to insurance, letters of credit, lines of credit, collateralization, guarantees and other arrangements intended to decrease the credit risk on the asset backed securities;

“credit enhancer” means a person or entity that provides credit enhancement;

“credit rating” means an objective and independent opinion on the creditworthiness of the debt instrument to be issued based on relevant risk factors;

“day” means any calendar day excluding Saturdays, Sundays and public holidays;
[Cap. 491.]

“eligible assets” means assets which are the subject matter of the securitization transaction;

“independent director” means a director who—

- (i) is not and has not been employed by the originator in an executive capacity within the five year period preceding the date of application;
- (ii) is not a member of the issuer or originator’s senior management or a significant customer or supplier to the issuer or originator or is an entity that receives significant contributions from the issuer or originator; or within a period of five years immediately preceding the date of application has not had any business relationship with the issuer or originator (other than service as a director) for which the issuer has been required to make disclosure;
- (iii) has no personal service contract with any of the shareholders, directors or members of the senior management of the issuer or originator;
- (iv) is not employed by a company at which a director of the issuer or originator serves as a director;
- (v) is not a close relation of any person described above; or
- (vi) has not had any of the relationships described above with any affiliate of the issuer or originator;

“information memorandum” means any prospectus, document, notice, circular, advertisement, or other invitation in print or electronic form containing information in relation to an issue of asset backed securities and inviting offers from the public or a section of the public to subscribe for the purchase of asset backed securities;

“issuer” means an entity that seeks to offer or offers asset backed securities to the public or a section thereof;

“liquidation expenses” means the expenditures necessary to convert residual or non-performing eligible assets or any underlying collateral, into cash, including expenditures necessary to collect on credit enhancement;

“liquidity provider” means a person who provides funds to a servicing agent for the settlement of payments due to asset backed securities holders in accordance with the schedule of payments stipulated for the terms and conditions of asset backed securities to cover any short-term cashflow shortfalls;

“Minister” means the Minister for the time being responsible for matters relating to Finance;

“origination fees” means all fees, commissions or other considerations, paid by any party to any party in connection with the origination and sale of eligible assets to the issuer, but not including the purchase price of the eligible assets, initial fees paid to rating agencies and professional fees paid to advocates, valuers and similar professionals for providing routine professional services;

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“**originator**” means the entity that seeks to transfer its assets in a securitization transaction;

“**securitization transaction**” means an arrangement which involves the transfer of assets or risk to a special purpose vehicle where such transfer is funded by the issuance of securities to investors and payments to investors in respect of such debt securities are principally derived, directly or indirectly, from the cash flows of the transferred assets;

“**selling agent**” means the entity appointed to distribute or offer the asset backed securities to the public or a section thereof;

“**servicing agent**” means an entity appointed to manage collections on the assets underlying the asset backed securities and administering the cash flows of the asset pool;

“**transfer**”, means the transfer of legal and beneficial title to the assets that are the subject matter of a securitization transaction;

“**trustee**” means the person or institution appointed to enforce the rights of the asset backed securities holders pursuant to the securitization;

“**working hours**” means between 8.00 a.m. and 5.00 p.m. on any working day.

PART II – PARTIES TO SECURITIZATION

4. Eligibility to be originator

The originator shall be—

- (a) a public company incorporated or registered under the Companies Act (Cap. 486);
- (b) a statutory corporation, local authority or Government Ministry;
- (c) an entity established in Kenya under the provision of any written law; or
- (d) such other entity as may be approved by the Authority.

5. Purchase of asset backed securities by originator

(1) An originator may, subject to regulation 37, purchase no more than the cumulative sum of ten per cent at any time of the total value of any asset backed securities issued pursuant to a transfer of its own assets to the issuer unless otherwise permitted by the Authority.

(2) The restriction in paragraph (1) shall not apply to the holding of subordinated securities by the originator.

6. The issuer

(1) An issuer shall be a company incorporated under the Companies Act (Cap. 486) or be of such other form as may be approved by the Authority.

(2) An issuer shall unless otherwise approved by the Authority be a newly created entity with no pre-existing creditors or other claims against it other than formation expenses.

(3) At least one-third of the members of the Board of Directors of the issuer shall be independent directors.

7. Functions of the issuer

The objects of an issuer shall be to—

- (a) offer, issue and list asset backed securities;

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- (b) purchase eligible assets, enter into principle agreements required in connection to a securitization transaction; and
- (c) undertake any other matters incidental thereto.

8. No relation of issuer to originator

An issuer shall neither be marketed as a subsidiary or a company within the group of the originator nor shall the name of the issuer or the asset backed securities product imply any relation to the originator.

9. Dissolution of issuer

An issuer shall not be voluntarily wound up until the asset backed securities issued by the issuer are fully redeemed in accordance with the terms and conditions of the asset backed securities.

10. Voluntary winding-up of issuer

The written consent of the Board of Directors or governing body of the issuer and the Authority shall be sought before the commencement of any voluntary winding-up proceedings of the issuer.

11. Auditor of the issuer

An auditor appointed by an issuer shall be a member of the Institute of Certified Public Accountants of Kenya and shall comply with the international standards on auditing in conducting the audit.

12. Record keeper of the issuer

Where an issuer delegates the record keeping functions to another entity, the officer in charge of the other entity shall be a member of the Institute of Certified Public Secretaries of Kenya.

13. Appointment of servicing agent

An issuer shall appoint a servicing agent in accordance with these Regulations.

14. Eligibility for appointment

A servicing agent shall be independent of the issuer, but may be the originator in so far as the originator provides these services on an arms length basis and subject to market terms and conditions.

15. Records to be maintained by servicing agent

(1) A servicing agent shall keep such books of account, records and statements in the name of the issuer as may be necessary to give a complete record of—

- (a) all receipts and payments in respect to the eligible assets and asset backed securities;
- (b) the portfolio of eligible assets; and
- (c) every transaction carried out by the issuer.

(2) A servicing agent shall permit authorized agents of the authority to inspect such books of account, records and statements at any time during working hours.

16. Remittance of funds

A servicing agent shall, unless operating as the credit enhancer, be under no obligation to release any funds for the benefit of the asset backed securities holders unless or until it has received the same from the issuer.

17. Provision of liquidity by servicing agent

A servicing agent may operate as a liquidity provider to ensure that timely payments are made to the asset backed securities holders where there is a cash flow shortfall on a payment or repayment date in respect to the relevant asset backed securities.

18. Resignation of servicing agent

(1) A servicing agent who intends to resign shall give three months' notice in writing to the issuer and copy the notice to the Authority, stating such intention and the reasons for resignation.

(2) Notwithstanding the notice period stipulated in subregulation (1), the resignation shall not come into effect until a replacement has been duly appointed by the issuer.

19. Removal of servicing agent

An issuer who intends to terminate the appointment of a servicing agent shall inform the Authority of such intention at least three months prior to the termination and shall provide the Authority with the copy of the relevant notice and the reasons for termination.

20. Appointment of new servicing agent

An issuer shall appoint a new servicing agent at least thirty days before the expiry of the term of the outgoing servicing agent and ensure that there is adequate time for the handover and transfer of all information within itself in relation to its contractual duties to enable the incoming servicing agent to properly execute their duties.

21. Handover to new servicing agent

An outgoing servicing agent shall hand over to the incoming servicing agent all the books of account, documents and records that are required to be kept under these Regulations.

22. Liquidity provider

(1) A liquidity provider may decline to advance sums to an issuer unless it is certain that such amounts are recoverable and payable in full from the issuer *pari passu* or in priority to credit enhancers and asset backed securities holders.

(2) A liquidity provider shall not underwrite the credit risk of an issuer or otherwise operate as a credit enhancer unless appointed to act as a credit enhancer.

23. Appointment and role of trustee

An issuer shall appoint a trustee who shall—

- (a) be the trustee for the asset backed securities holders;
- (b) enforce the rights of the asset backed securities holders as against the issuer, credit enhancer or any other such person against whom the trustee and the asset backed securities holders have recourse; and
- (c) have such other duties and obligations as indicated by the terms and condition of its trust deed.

24. Rights of trustee

A trustee shall have all such rights as may accrue to the asset backed securities holders including but not limited to access to information on the performance, operation of the securitization transaction and the asset backed securities issued thereunder.

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PART III – ISSUE OF ASSET BACKED SECURITIES

25. Advisors

(1) An originator shall appoint an advisor from among duly licensed investment banks, stock brokers and investment advisers which advisor shall be responsible for liaising with the Authority on the offer, issue or listing of the asset backed securities.

(2) An originator may also appoint such other advisers as it deems necessary.

26. Form of application

(1) An application for approval for the offer, issue or listing of asset-backed securities shall be submitted to the Authority in the prescribed form.

(2) Compliance with the requirements set out in these Regulations does not guarantee an applicant's suitability which shall be determined by the Authority in consultation with the Mi

(3) The application to be submitted shall be accompanied by—

- (a) a term sheet setting out the salient terms and conditions of the proposed structure of the proposed securitization transaction including—
 - (i) name, date and place of incorporation, names and professions of directors, names and interests of shareholders and proposed structure of the issuer;
 - (ii) name, date and place of incorporation, names and professions of directors, names and interests of shareholders of the originator;
 - (iii) names and addresses of the transaction advisers;
 - (iv) securitization transaction overview;
 - (v) proposed arrangements for the transfer of eligible assets and nature of the eligible assets;
 - (vi) currency and principal amount of proposed issue;
 - (vii) tenor of proposed issue;
 - (viii) details of proposed credit enhancement and provision of liquidity by the liquidity provider (where applicable);
 - (ix) details of utilization of proceeds;
 - (x) indicative credit rating;
 - (xi) confirmation on whether the offer is to be listed and structure of issue; and
 - (xii) conditions precedent;
- (b) the following documents relating to the originator—
 - (i) resolution of the Board of Directors approving the transfer of eligible assets to the issuer; and
 - (ii) written consent from any existing secured creditor enjoying any security interest of any nature over the proposed eligible assets agreeing to wholly discharge their security in respect of the eligible assets to be transferred;
- (c) where the originator is a company incorporated under the Companies Act (Cap. 486) it shall submit a certified copy of its certificate of incorporation including any certificate of change of name and the memorandum and articles of association;

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- (d) the constitution documents relating to the issuer together with a written undertaking to comply with the requirements of these Regulations;
- (e) declarations from the originator, issuer and adviser confirming that they have taken all reasonable care in structuring the issue, preparing the information memorandum and developing all projections on performance;
- (f) a legal opinion confirming that the transferred eligible assets would not be available to the creditors, liquidators or receiver managers of the originator in the event of the bankruptcy, winding-up, insolvency or receivership of the originator;
- (g) all reports by any expert included or referred to in the information memorandum;
- (h) draft copies of material contracts (where applicable) including the credit enhancement agreement, proposed servicing agreement between the issuer and servicing agent and guarantee agreement where applicable;
- (i) duly executed declarations by the directors of the issuer in the form prescribed in the First Schedule;
- (j) where applicable, a letter of no objection from the relevant primary regulator of the originator;
- (k) a credit rating report of the proposed issue from an independent credit rating agency; and
- (l) the prescribed application fee.

27. Consultation with Minister

The Authority shall upon receipt of an application to issue or list asset backed securities inform the Minister of its decision to approve or reject the application at least fourteen days prior to communicating that decision to the Applicant.

28. Documents to be lodged and available for inspection

(1) The information memorandum and all required information relating to the proposed securitisation and asset backed securities shall be submitted to the Authority in a period of not less than twenty-eight days before the opening of the offer period and the Authority may require additional disclosures as it deems fit.

(2) All documents which are required to accompany the application and the documents referred to in the information memorandum shall be made available for inspection at the registered office of the issuer for the period which the asset backed securities are in issue, unless otherwise advised by the Authority.

29. Offer period

The offer period shall not exceed thirty days from the date of the opening of the offer unless the Authority approves otherwise.

30. Manner of subscription

Subscription for the issue of asset backed securities shall be made through one or more of the selling agents.

31. Subscription proceeds

(1) The subscription amount shall be deposited with the selling agent and all the proceeds shall be held in a separate trust account in the name and for the benefit of the issuer and shall be applied by the issuer for the purposes specified in the information memorandum immediately after the offer period is closed.

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(2) Notwithstanding subregulation (1) where the minimum subscription is not raised, the issuer shall refund the subscribers their subscription amount.

32. Investor Compensation Fund

The interest deemed to accrue on the subscription proceeds shall be paid into the Investor Compensation Fund in accordance with section 18 of the Act.

33. Allotment of securities

(1) The allotment of securities offered to the public shall be made in strict accordance with the allotment policy disclosed in the information memorandum.

(2) Notwithstanding subregulation (1) where the results of the subscription make such policy impractical, the allotment policy may be amended with the prior written approval of the Authority.

(3) Where the Authority approves amendment under subregulation (2), the issuer shall announce the fact of approval within twenty-four hours of the grant of the approval.

34. Publication of results of offer

The results of the allotment of a public offer shall be published after the Authority has received prior notification of not less than twenty-four hours.

PART IV – ASSETS TO BE SECURITIZED**35. Eligible assets**

The assets to be securitized for purposes of issuing asset backed securities shall be—

- (a) capable of generating a true and identifiable revenue stream that is projected to be sufficient to service the return of and return on investment as well as allowable expenses for the life of the asset backed securities;
- (b) free from any encumbrances or impediments to their free transfer and their transfer shall not constitute an event of default or acceleration trigger under any security agreement relating to the assets of the originator; and
- (c) transferred at fair value.

36. Right to transfer of assets

An originator shall have and demonstrate an unencumbered right to transfer all legal and beneficial interests in the eligible assets and the rights to the eligible asset.

37. Transfer of assets

(1) An originator shall transfer all its rights, titles, interests and obligations in the assets to the issuer and shall not retain any beneficial interest or liability.

(2) Where the eligible assets have declined to a level that renders the asset securitization transaction uneconomical to carry on, the originator may retain a first right of refusal to repurchase assets from an issuer at a fair value.

(3) The originator may repurchase assets from the issuer where the originator is under an obligation to do so under a securitization transaction when it has breached any conditions, representation or warranty in respect of the securitization transaction.

PART V – CREDIT RATING AND CREDIT ENHANCEMENT

38. Credit rating

All securitization transactions shall be rated by an independent credit rating agency approved and registered by the Authority.

39. Credit enhancement

(1) An issuer may seek credit enhancement of the issue, which enhancement may be in the form of—

- (a) over-collateralization;
- (b) a stand by letter of credit or line of credit issued by a bank or financial institution that is licensed by the Central Bank;
- (c) a guarantee by a bank or financial institution that is licensed by the Central Bank;
- (d) surety bond issued by an insurance company licensed by the Commissioner of Insurance other than the originator or its subsidiary, its parent company or the parent company;
- (e) an instrument issued by a bilateral or multilateral institution of which Kenya is a member;
- (f) issue of subordinated tranches;
- (g) an instrument issued by the Government of Kenya; or
- (h) such other instrument or mechanism from such other entity as may be approved by the Authority.

(2) Where the credit enhancement is to be provided by a bank, financial institution or insurance company licensed in Kenya, the credit enhancement shall only be provided with the prior written consent of the Central Bank in the case of a bank or financial institution or the Commissioner of Insurance in the case of an insurance company.

PART VI – LISTING, SUSPENSION OF DEALING AND DELISTING

40. Listing

Upon the approval and issue, the asset backed securities may be listed on the fixed income securities market segment at an approved securities exchange in Kenya.

41. Suspension or delisting to be approved by the Authority

No asset backed securities shall be suspended or delisted by a securities exchange without the prior written approval of the Authority.

42. Publication of suspension or delisting

Where an asset backed security has been suspended or delisted, the securities exchange shall within forty-eight hours publish such information in at least two local dailies of national circulation.

PART VII – FEES AND CHARGES

43. Fees

An issuer of asset backed securities approved to offer, issue or list shall pay the prescribed fees.

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FIRST SCHEDULE

INFORMATION MEMORANDUM

DISCLOSURE REQUIREMENTS FOR PUBLIC ISSUE OF ASSET BACKED
SECURITIES**1.1. Cover Page Disclosure and Declarations—**

Disclaimer Statement

The information memorandum shall contain on its front page the following prominent and legible disclaimer statements—

“As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus or information memorandums. Approval of the issue or listing by the Authority is not to be taken as an indication of the merits of the issuer, the originator or the asset backed securities.”

“The originator does not underwrite the issue of asset backed securities by the issuer and shall not make good any losses or otherwise guarantee the credit risk of the issuer.”

1.2. Declaration by directors

Declarations by directors of issuer:

1. We being the directors of the issuer namely accept responsibility for the information contained in this prospectus/information memorandum. To the best of our knowledge and belief we have taken all reasonable care to ensure that such is the case, the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.
2. That in their opinion the issuer does not have any debts, liabilities or other such claims as may increase the likelihood of the issuer being subjected to voluntary or involuntary winding-up or liquidation proceedings.
3. That they have taken all reasonable care as would be expected of competent professionals in structuring the transaction, preparing the information memorandum and developing all projections.

Declaration by directors of originator—

1. That in their opinion the originator is a going concern.

1.3. Resolutions statement

A statement of the originator’s board resolutions, shareholders approval where required and approval by existing debt holders where required.

A statement of the issuer’s board resolutions and shareholder approval of the issuer acknowledging and accepting the liabilities arising in accordance with the securitization transaction.

2.0. Offering and listing summary

A statement that the originator is incorporated or established in Kenya under the laws of Kenya together with the particulars of incorporation or establishment as the case may be.

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The name, registered or principal office of the issuer and a statement that it is set up for the sole purpose to issuing asset backed securities.

A statement that the issuer is incorporated or otherwise established in Kenya and is subject to Kenyan laws.

A summary description of the public offering or listing and of particulars dealt with in the document.

A statement that the Authority has approved the public offering and listing of the securities at the fixed income securities market segment of a securities exchange.

A statement that a copy of the prospectus or information memorandum has been delivered to the Registrar of Companies.

3.0. Identity of directors, advisors and auditors of the issuer

3.1. Directors and shareholders of the issuer

- (i) The full name, age, home or business address, nationality, professional experience and academic qualifications of the directors and other directorships.

The names of the shareholders and the number of shares owned by each of them as of the most recent practicable date.

- (ii) In cases where the issuer is constituted other than as a limited liability company—

the full name, age, home or business address, nationality, professional experience and academic qualifications of the members of the governing body.

3.2. Advisers

The names and addresses of the issuer's bankers, legal and financial advisers, auditors, reporting accountants and any other expert to whom a statement or report included in the information memorandum has been attributed.

The names and addresses of all the parties involved in the issue.

Where a statement or report attributed to a person as an expert is included in the information memorandum, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorized the contents of that part of the information memorandum, and has not withdrawn his consent.

4.0. Financial information and procedure for subscription and allotment

- (i) The amount to be raised through the issue and the tenure of the security.
- (ii) A statement that the application forms shall be submitted to the selling agent together with the subscription amount.
- (iii) A statement that the receipt signed and issued by the selling agent shall contain the name of the subscriber, the address, nationality, date of subscription, the number of securities subscribed and amount paid by the subscriber.
- (iv) The nominal amount of the securities together with the issue and redemption prices and nominal interest rate.
- (v) The historic cash flows (for the preceding five years, where applicable) and projected cash flows in respect of the eligible assets.
- (vi) An indication as to where potential material liquidity shortfalls may occur, the availability and details of any liquidity support and plans to cover potential shortfalls.

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- (vii) Information regarding the accumulation of surpluses in the issuer and an indication of the investment criteria for the investment of any liquidity surpluses.
- (viii) The order of priority of payments made by the issuer.
- (ix) Details of any other arrangements upon which payments of interest and principal to asset backed securities holders are dependent.
- (x) The nature, number and numbering of the debt securities and the denominations.
- (xi) The procedures for the allocation and the procedure to be applied in case of over subscription.
- (xii) Arrangements for the amortization of any substantial loan that may impact repayment, including detailed repayment schedule of both the principal and interest.
- (xiii) The date from which interest becomes payable and the due dates for interest as well as the final repayment date and any earlier repayment dates.
- (xiv) The allotment policy.
- (xv) The subscription procedure and process of facilitating subscription and payment.
- (xvi) The time limit on the validity of claims to interest and repayment of principal.
- (xvii) The period during which the offer will remain open.
- (xviii) State the method and time limits for delivery of securities (including provisional certificates, if applicable) to subscribers or purchases.
- (xix) Where applicable, a statement that the debt securities are dematerialized.
- (xx) State the manner in which results of the distribution of securities will be made public and when appropriate, the manner for refunding excess amounts paid by applicants.
- (xxi) A statement that the securities will be freely transferable.
- (xxii) A summary of the rights conferred upon the asset backed securities holders and particulars of the security (if any) thereof.

5.0. Details of the eligible assets

The originator shall disclose the following information regarding eligible assets and explanatory notes where applicable—

- (i) the legal jurisdiction where the eligible assets are located;
- (ii) the nature of and title of the eligible assets;
- (iii) the criteria for the selection of the eligible assets;
- (iv) the number and value of the eligible assets in the pool;
- (v) rights of recourse against the originator to the extent allowed in law, including a list of material representations and warranties given to the issuer relating to the eligible assets;
- (vi) rights to substitute the eligible assets and the qualifying criteria;
- (vii) the treatment of early amortization of the eligible assets;
- (viii) level of concentration of the obligors in the asset pool, identifying obligors that account for twenty-five per cent or more of the eligible asset value;
- (ix) where there is no concentration of obligors above twenty-five per cent, the general characteristics and descriptions of the obligors;
- (x) the payment methods and cash flows in respect of the eligible assets;
- (xi) the outstanding principal balance or anticipated collections over a definite period from the eligible assets;

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- (xii) the outstanding principal balance or anticipated collections over a definite period from the eligible assets as a percentage of the total amount of asset backed securities being offered;
- (xiii) the amount of eligible assets in default;
- (xiv) the amount of eligible assets in default as a percentage of the total amount of asset backed securities being offered and the amount of eligible assets in default as a percentage of the credit enhancement;
- (xv) explanatory notes where there is expected material difference between historic and projected cash flows and any actions being taken to correct the situation; and
- (xvi) a description of what constitutes a default.

6.0. Credit enhancement

- (i) A statement that the issue is credit enhanced.
- (ii) A description of the nature and scope of the guarantees, sureties and commitments intended to ensure that the asset backed securities will be duly serviced as regards both the repayment of the debt securities and the payment of interest.
- (iii) An explicit statement on and procedure for recourse by the asset backed securities holders or their duly appointed trustee to the credit enhancer.

7.0. Expenses of the issue

- (i) An itemized statement of the major categories of allowable expenses incurred in connection with the issue and to whom expenses are payable. If the amounts of any items are not known, estimates shall be given.
- (ii) Where estimates are used in (i) above the rationale for the estimates should be disclosed and the final schedule provided to the Authority once available.

8.0. Details of servicing agent

The name, address, description and significant business activities of the servicing agent or equivalent (if any) together with a summary of the servicing agent's responsibilities and a summary of the provisions relating to the appointment or removal of the servicing agent and alternative servicing agent and their details.

9.0. Legal opinion

A legal opinion confirming that the transferred eligible assets will not be available to the liquidator or receiver and manager of the originator in the event of liquidation or winding-up of the originator.

10.0. Reasons for the securitization transactions and use of proceeds

- (i) The directors of the originator shall state the purpose for which the securitization transaction is intended.
- (ii) The minimum amount which, in the opinion of the directors of the originator, must be raised by securitizing the eligible assets in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—
 - (a) the purchase price for the eligible assets, purchased or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (b) any preliminary expenses payable by the issuer, and any commission payable to any person in consideration for his agreeing to subscribe for,

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- or of his procuring or agreeing to procure subscriptions for or of his underwriting or guaranteeing any asset backed securities of the issuer;
- (c) the repayment of any monies borrowed in respect of any of the forgoing matters;
 - (d) any other material expenditure, stating the nature and purposes thereof and the estimated amount in each case; and
 - (e) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

11.0. Risk factors

Provide information on the risk factors headed "Risk factors" including financial, economic and sectoral risk factors as well as risks associated with or affecting the underlying eligible assets, the securitization transaction, the issuer, the asset backed securities to be issued and the credit enhancer.

12.0. Information available for inspection

A statement that for a period of not less than five working days before the date of the information memorandum until the final repayment date of the asset backed securities, the following documents shall be available for inspection at the registered office of the issuer or at the trustee's office—

- (a) the memorandum and articles of association of the originator and of the issuer or relevant documents of establishment where the issuer is not a company limited by shares;
- (b) copies of the agreement between the issuer and the servicing agent and liquidity provider where relevant;
- (c) copies of the agreement with credit enhancer;
- (d) the trust deed which is referred to in the information memorandum;
- (e) documents of conveyance of the eligible assets under the securitization transaction;
- (f) a statement of the originator's and issuer's board resolutions, shareholders approval and approval by existing debt holders where applicable;
- (g) all reports, letters, and other documents, valuations and statements by any expert any part of which is included or referred to in the information memorandum;
- (h) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, that may or may not be deemed to have an impact on the eligible assets;
- (i) any contractual arrangement with a controlling shareholder required to ensure that the issuer is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the originator or any other member of the group; and
- (j) a copy of any contractual arrangement with a controlling shareholder.

Where any of the documents listed above are not in the English language, translations into English must also be available for inspection.

13.0. Interest of experts

If any of the named experts owns an amount of shares in the originator or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the originator or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

Shareholding of one per cent or more in the originator shall be considered material.

14.0. Trustee

Details of trustees or of any other representation for the asset backed securities holders—

- (a) the name, function, description and head office of the trustee or other representative of the asset backed securities holders; and
- (b) the main terms of the document governing such trust arrangement and in particular the conditions under which a trustee may be replaced.

15.0. Credit enhancer

The names, addresses and descriptions of the persons underwriting the issue and where the credit enhancer is a company, the description must include—

- (i) the place and date of incorporation and registration number of the credit enhancer;
- (ii) the names of the directors of the credit enhancer;
- (iii) the name of the secretary of the credit enhancer;
- (iv) the bankers to the credit enhancer where applicable;
- (v) the authorized and issued share capital of the credit enhancer; and
- (vi) the credit rating of the credit enhancer.

Where not all of the issue is underwritten or guaranteed, a statement of the portion not covered shall be made.

SECOND SCHEDULE**CONTINUOUS REPORTING OBLIGATIONS****ASSET BACKED SECURITIES****A.01. Issuer**

An issuer must publish, by way of a cautionary announcement information, which could lead to material movements in the ruling price of its securities if at any time the necessary degree of confidentiality cannot be maintained, or that confidentiality has or may have been breached.

A.02. An issuer whose securities are listed on more than one securities exchange must ensure that equivalent information is made available within twenty-four hours to the market at all such securities exchange.

B.01. Annual financial statements

(1) Every issuer of asset backed securities to the public or section of the public shall prepare an annual report containing audited annual financial statements within four months of the close of its financial year.

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(2) A complete set of financial statements includes the following components—

- (a) balance sheet;
- (b) income statement;
- (c) a statement showing either
 - (i) all changes in equity; or
 - (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
- (d) cash flow statement; and
- (e) accounting policies and explanatory notes.

C0. Reporting requirements—**C.00. Quarterly, interim and annual reports and accounts**

C.01. An issuer should include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report—

- (a) a statement that the same accounting policies and methods of computation are followed in the interim financial statements as compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change;
- (b) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence;
- (c) the nature and amount of changes in estimates of amounts reported;
- (d) a brief report on any material developments including a quarterly report from the credit rating agency where applicable or where the asset backed securities are not rated, the trustee's assessment of the performance of the pool of assets securitized which report should also be made available for inspection by the public; and
- (e) an overview of events that are not necessarily material.

C.02. An issuer should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements.

C.03. The minimum disclosures in the quarterly, interim and annual financial statements of the issuer includes—

Income and Expenditure Account

Income

- 1. Cash collected
- 2. Interest received
- 3. Other incomes received
- 4. Surplus or deficit

Expenses

- 1. Allowable expenses

In cases where there is a deficit, a disclosure on how the shortfall was met is required.

Balance Sheet

Assets

1. Eligible assets (portion yet to mature)
2. Investments (Government securities)
3. Bank balance

Capital and Liabilities

1. Share capital
2. Surplus or deficit
3. Borrowings (asset backed securities outstanding)
4. Accrued interest

C.04. An issuer of asset backed securities should disclose the following if not disclosed elsewhere in information published with the financial statements—

- (a) the domicile and legal form of the issuer, its country of incorporation and the address of the registered office (or principal place of business, if different from the registered office);
- (b) a description of the nature of the issuer's operations and its principal activities.

C.05. An issuer of asset backed securities shall notify the Authority and the securities exchange of its annual results within twenty-four hours following approval by the issuer's directors.

C.06. An issuer of asset backed securities shall at the end of each calendar quarter, submit to the Authority and securities exchange the following information—

- (a) A register of asset backed security holders in the format prescribed below—
 - Investor's name
 - Date of purchase
 - Maturity date
 - Face value (KSh.)
 - Yield (% age)
 - Redeemed value (KSh.)
 - Outstanding balance (KSh.)
 - Banks
 - Insurance companies
 - Fund Managers
 - Investment advisers
 - Individuals
 - Others
 - Total.
- (b) A schedule of the obligations maturing in the next quarter against amounts already collected to date and amounts expected to be collected by the end of the next quarter and where there is material difference between the preceding quarter's collections and the anticipated collections in the next quarter, an explanation should be given.

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- (c) The following information regarding eligible assets—
- (i) the outstanding principal balance or anticipated collections over a definite period from the eligible assets;
 - (ii) the outstanding principal balance or anticipated collections over a definite period from the eligible assets as a percentage of the total amount of asset backed securities being offered;
 - (iii) an aging schedule of the receivables or assets being securitized for the last three years or less where they have been in existence for a shorter period;
 - (iv) a description of what constitutes a default;
 - (v) the amount of eligible assets in default;
 - (vi) the amount of eligible assets in default as a percentage of the total amount of asset backed securities being offered and the amount of eligible assets in default as a percentage of the credit enhancement;
 - (vii) the rate of interest of the asset backed securities, the interval of payment of interest and the entitlement period; and
 - (viii) explanatory notes where there is expected material difference between actual and projected cash flows and any actions being taken to correct the situation.
- (d) The name, address telephone number, registered office at which the register of the security holders is kept.

C.07. An issuer of asset backed securities shall provide the Authority and the securities exchange details of its asset backed security holders, which may be required by the Authority or the securities exchange.

An issuer shall submit interim reports to the Authority and publish extracts of the annual report in at least two daily newspapers of national circulation in Kenya.

D.00. Communication with asset backed security holders

D.01. An issuer shall ensure that at least in each securities exchange in which its securities are listed all the necessary facilities and information are available to enable holders of such securities exercise their rights. In particular it shall—

- (a) inform holders of securities of the holding of meetings which they are entitled to attend;
- (b) publish notices or distribute circulars giving information on—
 - (i) the allocation and payment of interest;
 - (ii) redemption or repayment of the securities.

D.02. An issuer must forward to the Authority and securities exchange at which the asset backed securities are listed copies of—

- (a) all circulars, notices, reports, announcements or other documents at the same time as they are issued; and
- (b) all resolutions passed by the issuer, where applicable, at any meeting of holders of listed securities within ten days after the relevant general meeting.

E.0. Credit rating renewals

E.01. An issuer of asset backed securities shall ensure that the credit rating of the issue is reviewed and updated every year from the date of the last credit rating report.

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E.02. A trustee shall ensure that each credit rating report is delivered to the Authority within seventy-two hours of the date of the report and the results of the same are published in two newspapers of national circulation within seven days of the date of the report.

F0. Corporate governance

F.01. There shall be public disclosure in respect of any management or business agreements entered into between the issuer and its related parties, which may result in a conflict of interest situation.

G.00. Miscellaneous obligations

G.01. 1. An issuer shall disclose and make a public announcement of all material information including but not limited to—

- (a) any change of address of the registered office of the issuer or of any office at which the register of the holders of listed securities is kept;
- (b) any change in the directors, registrar, servicing agent or auditors of the issuer;
- (c) any proposed significant alteration of the memorandum and articles of association of the issuer or the trust documents;
- (d) any application filed in a court of competent jurisdiction to wind-up the originator or issuer. Details of the suit and the probable outcome of the suit must be confidentially submitted to the Authority and the securities exchange where the asset backed securities are listed; and the appointment or imminent appointment of receiver or receiver and manager or liquidator of the originator or issuer; and
- (e) any “cash inflow” warning, where there is a material discrepancy between the projected cash inflows for the current financial year and the level of cash inflows in the previous financial year.

2. For the purposes of subparagraph (1)(e), the expression “**material discrepancy**” in relation to projected cash flows for a financial year means that such cash inflows are at least five per cent lower than the level of cash inflows in the previous financial year.

**CAPITAL MARKETS (CORPORATE GOVERNANCE) (MARKET
INTERMEDIARIES) REGULATIONS, 2011**

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SCHEDULE – PRESCRIBED CODE OF CONDUCT

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CAPITAL MARKETS (CORPORATE GOVERNANCE) (MARKET INTERMEDIARIES) REGULATIONS, 2011

[L.N. 144/2011.]

1. Citation

These Regulations may be cited as the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**board**” means the board of directors of the market intermediary;

“**close relation**” means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grand child or spouse of a grandchild;

“**management of a market intermediary**” means the persons who the Authority has been informed, in writing, are responsible for the day to day administration of a market intermediary;

“**market intermediary**” means a company licensed under Part IV of the Act;

“**independent non-executive director**” means a director who—

- (a) has not been employed by the market intermediary in an executive capacity within the last five years;
- (b) is not associated to an adviser, consultant to the market intermediary or a member of the market intermediary’s senior management or a significant client or supplier of the market intermediary or with a not-for-profit entity that receives significant contributions from the market intermediary; or within the last five years, has not had any business relationship with the market intermediary (other than service as a director) for which the market intermediary has been required to make disclosure;
- (c) does not have a contract of service with the market intermediary, or a member of the market intermediary’s senior management;
- (d) is not a close relation of an adviser, consultant to the market intermediary or a member of the market intermediary’s senior management or a significant client or supplier of the market intermediary; or
- (e) has not had any of the relationships described in paragraphs (a), (b), (c) and (d) with any affiliate of the market intermediary.

3. Directors

(1) The Board of a market intermediary shall be composed of—

- (a) a minimum of three directors of whom at least two shall be natural persons;
- (b) at least one independent non-executive director;
- (c) not more than one-third of the directors who are close relations of any director.

(2) A person shall not be a director in more than two market intermediaries unless the market intermediaries are subsidiaries or holding companies.

(3) A market intermediary shall not change the composition of its board without the prior written consent of the Authority.

4. Fit and proper requirements for appointment as director

A market intermediary shall not appoint a person to be a director unless that person—

- (a) is fit and proper to hold such position; and
- (b) is a certified director from an institution recognized by the Authority:

Provided that a market intermediary shall ensure that it has complied with this regulation within one year of the commencement of these Regulations.

5. Register of directors

A market intermediary shall keep a register of its directors and avail the register for inspection by the public, without any charge, at its registered office.

6. The Board

(1) A market intermediary shall have a board that shall lead, control and shall be collectively responsible for the conduct and governance of its securities business.

(2) The board shall provide leadership within a framework of prudent and effective control that facilitates risk assessment and management.

(3) The board shall ensure that the necessary financial and human resources are available to meet its objectives and review management performance.

(4) The chairman of the board shall not be appointed as the chief executive officer of a market intermediary, and the board shall specify the roles and responsibilities of the chairman and chief executive, in writing.

(5) The chairman of the board shall be a non-executive director.

7. Strategic direction and control

The board shall—

- (a) give strategic direction to a market intermediary;
- (b) ensure the integrity of a market intermediary's accounting and financial reporting systems, including the independent audit, and that the appropriate systems for risk management and financial and operational control are in place;
- (c) maintain control and monitor the management of a market intermediary in implementing its plans and strategies; and
- (d) ensure that the market intermediary complies with the Act and other relevant legislation.

8. The Board may adopt the code of conduct set out in the Schedule or develop a code of conduct for the directors, management and staff that addresses the issues specified in the code of conduct set out in the Schedule:

Provided that where the code of conduct developed by a market intermediary does not address all the issues specified or is inconsistent with the code of conduct set out in the Schedule, the code of conduct set out in the Schedule shall apply to the extent of the omission or inconsistency.

9. Board charter

(1) In order to discharge its responsibilities, the board shall prepare and write a charter that—

- (a) confirms its responsibility for the adoption of strategic plans, monitoring the operational performance, the determination of policy and processes that ensure that the integrity of the market intermediary's risk management and internal controls;

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- (b) reserves specific powers to itself and delegates other matters to the management of a market intermediary;
- (c) provides a corporate code of conduct that addresses conflict of interest, relating to directors and management, which shall be regularly reviewed and updated as necessary; and
- (d) identifies key risk areas, that require regular monitoring.

(2) The board may develop a code of conduct for the directors, management and staff that addresses all the issues set out in the code of conduct set out in the Schedule or adopt the code of conduct set out in the Schedule.

10. Accountability and responsibility

(1) The board shall be responsible and accountable for the performance and conduct of the business of the market intermediary.

(2) The board shall keep and maintain a schedule of the matters reserved for its decision and ensure that it directs and controls.

(3) The board shall not be discharged from its duties and responsibilities for matters of authority delegated to committees of the board or to the management of a market intermediary.

11. Board meetings

(1) The board shall meet at least once in every three calendar months to review the market intermediary's processes and procedures and the effectiveness of its internal systems of control.

(2) The board shall, at the beginning of each financial year, prepare an annual schedule of the meetings of the market intermediary.

12. Remuneration of directors

The remuneration of directors and the chief executive of a market intermediary shall be commensurate with the nature and size of operations of the market intermediary and the remuneration offered for similar positions in the market.

13. Committees

(1) The board shall establish an audit committee and such other committees, as it considers necessary and specify their terms of reference, in writing, including the reporting procedures and a written scope of authority.

(2) The audit committee shall, among others—

- (a) review regular internal audit reports prepared by the market intermediary's internal auditor for management and management's response to such reports;
- (b) review the market intermediary's periodical financial statements and any other financial reports or financial information, when necessary;
- (c) review with management and external auditors—
 - (i) the audited and unaudited financial statements of a market intermediary before they are released to the public;
 - (ii) the effectiveness of the documented risk management policy report for the assessment, monitoring and managing the possible risk exposure;

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- (d) review the effectiveness of the internal controls of the market intermediary and other matters affecting the financial performance and financial reporting of a market intermediary, including information technology security and control;
- (e) review the external auditors' proposed audit scope and approach;
- (f) monitor compliance of a market intermediary with its code of conduct and ethics;
- (g) consider the work plan of the market intermediary compliance activities;
- (h) regularly report to the board on the activities of the market intermediary, issues and related recommendations; and
- (i) institute and oversee special investigations, when necessary.

(3) The board may, refer to a relevant committee established under paragraph (1), any matter for consideration and determination.

(4) A decision of a committee shall not bind a market intermediary unless the decision has been to the presented board for consideration and ratification.

14. Corporate governance framework

(1) A market intermediary shall establish a corporate governance framework that provides—

- (a) strategic guidance of the market intermediary that promotes the effective monitoring of the management and accountability of the board; and
- (b) for availability and documentation of timely and accurate information relating to the market intermediary, including its financial structure, performance, ownership and governance.

(2) The board shall review its management, operations, accounts, major capital expenditure and corporate performance at least once in every three months.

(3) The board shall review its corporate governance structure annually.

(4) The board shall document the results of the reviews conducted under paragraphs (2) and (3).

15. Responsibilities of shareholders

(1) The shareholders of a market intermediary shall, jointly and severally, protect, preserve and actively exercise the authority over the institution in general meetings.

(2) The shareholders shall—

- (a) elect or appoint persons who are fit and proper, have the relevant experience and qualifications, and can provide effective leadership and guidance in the business of the market intermediary to the board of directors;
- (b) ensure that, the board is through general meetings and related forums, constantly held accountable and responsible for the efficient and effective governance of the market intermediary;
- (c) to utilise powers vested in general meetings to change the composition of a board of directors that does not perform to expectation or in accordance with the mandate of the market intermediary.

(3) The shareholders of a market intermediary shall ensure that the market intermediary applies to the Authority for approval for—

- (a) the transfer of existing shareholding in excess of five per centum of a market intermediary's share capital;

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- (b) the acquisition of more than five per centum of the share capital of a market intermediary where there is fresh capital injection, or from existing shareholders; and
- (c) any acquisition resulting in a person holding five per centum or more of the share capital.

(4) A market intermediary shall obtain the approvals required under paragraph (1), before the allotment of shares.

(5) A market intermediary shall not appoint a shareholder who holds more than twenty-five per centum shareholding in a market intermediary as an executive director of the market intermediary or to any senior management position in the market intermediary.

16. Appointment of employees

(1) The board shall formulate a policy for the appointment of employees, which shall be approved by the Authority.

(2) The board shall review the policy formulated under paragraph (1) at least once in every three years and submit any changes made to the policy to the Authority for approval.

17. Chief executive officer

(1) The chief executive officer of a market intermediary shall be responsible to the board for the day to day running of the market intermediary and shall—

- (a) implement the policies and the corporate strategy developed by the board;
- (b) identify and recommend to the board the employment of officers who are competent to manage the operations of the market intermediary;
- (c) co-ordinate the operations of the departments within the market intermediary;
- (d) establish and maintain efficient and adequate internal control systems for the management of the market intermediary;
- (e) design and implement management information systems necessary to facilitate efficient and effective communication within the market intermediary;
- (f) regularly appraise the board adequately on the operations of the market intermediary by presenting relevant board papers; and
- (g) ensure that the market intermediary complies with the Act and other relevant laws.

(2) A market intermediary 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.

18. Separation of employees' duties

(1) The management of a market intermediary shall maintain adequate separation of employee duties, particularly between—

- (a) those responsible for incurring commitment;
- (b) those responsible for making payments; and
- (c) those responsible for preparing accounts.

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(2) The market intermediary shall maintain such internal controls, functional lines, systems to restrict the flow of information between key departments or other demarcations as may be considered necessary.

19. Employees

(1) The board shall ensure that all employees are fit and proper for their roles, including having the necessary qualifications and experience for their responsibilities and that there is no evidence of lack of integrity or other matters likely to raise concerns over their probity and capacity in managing their own financial affairs or those of clients.

(2) The management of a market intermediary shall determine and document the experience and qualifications for each post and meet any relevant requirements of the Authority.

(3) The management shall ensure that all employees have and document an appropriate training programme based on the needs of the market intermediary and the requirements of the Authority.

20. Management of a market intermediary

(1) The management of a market intermediary shall operate and manage the market intermediary on a day-to-day basis.

(2) The management of a market intermediary shall—

- (a) implement and adhere to the policies, practices and standards developed by the board;
- (b) adhere to the systems established to facilitate efficient operations and communications;
- (c) adhere to the planning process that has been developed to facilitate achievement of targets and objectives;
- (d) promote human resource development and training and deal with other issues relating to staff;
- (e) comply with the code of conduct, the Act and any other relevant laws; and
- (f) keep and maintain record, and comply with all the reporting requirements.

(3) The management of a market intermediary shall ensure that—

- (a) each employee has a job description that defines his duties and responsibilities;
- (b) all employees familiarize themselves with and adhere to the code of conduct;
- (c) employees, collectively, have the necessary knowledge, skills, information and authority to establish, operate and monitor the system of internal controls;
- (d) the areas of discretion of each employee and the criteria governing the actions of each employee are adequately defined, and that each employee is subject to oversight by another employee and in the case of management, oversight by the board;
- (e) the ability of any employee to commit the market intermediary to expenditure, market positions or any other trading matter is sufficiently defined; and
- (f) there are adequate financial controls, including a requirement for dual signatures for material payments.

(4) Every intermediary shall report any change in its management as required under regulation 16(2).

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21. Finance officers and internal auditors

The chief finance officer or any other person who is responsible for the finance department of a market intermediary and the person responsible for the internal audit function, shall be required to be members of the Institute of Certified Public Accountants of Kenya (ICPAK).

22. Internal audit

(1) The market intermediary shall establish an effective internal audit function.

(2) The board shall formulate an internal audit charter to bring a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes and define the purpose, authority and responsibility of the internal audit function.

(3) The internal audit charter shall provide—

- (a) assurance that the management processes are adequate to identify and monitor significant risks;
- (b) confirmation of the effective operation of the established internal control system;
- (c) credible processes for feedback on risk management and assurance; and
- (d) objective confirmation that the board receives the right quality of assurance and information from management and that this information is reliable.

23. Internal auditor

The board shall appoint an internal auditor who shall—

- (a) not be the compliance officer and shall not be involved in any function that is being audited;
- (b) have sufficient authority to carry out his function as an internal auditor;
- (c) have direct access to the board;
- (d) subject to the oversight of the audit committee, develop an internal audit programme; and
- (e) submit quarterly reports to the audit committee.

24. Responsibility for risk management

(1) The board shall be responsible for the development and implementation of the process of risk assessment and management and shall regularly review the effectiveness of the process.

(2) The management of a market intermediary shall be accountable to the Board for the designing, implementing, monitoring and integration of the risk management process into the day-to-day business of the market intermediary.

(3) The risk assessment process developed under paragraph (2) shall, having regard to the size and nature of operations of a market intermediary, and the extent which the risks may impact on the business of the market intermediary, address—

- (a) compliance risks;
- (b) payment systems risks;
- (c) physical and operational risks;
- (d) human resource risks;
- (e) technology risks;
- (f) business continuity and disaster recovery;

- (g) credit and market risks;
- (h) reputational risks;
- (i) political risks; and
- (j) any other risks that the board considers may be relevant to its business.

(4) The board shall, in consultation with the management of a market intermediary, develop and document the risk management policies and processes designed to mitigate the risks to its business.

(5) The management of a market intermediary shall—

- (a) communicate the risk management policies to all employees;
- (b) maintain back up and contingency plans for dealing with eventualities relating to risks, including catastrophic information technology failure, the loss of records and the loss of access to their business premises;
- (c) make arrangements for business continuity in the event of the loss of key personnel through illness, resignation or otherwise; and
- (d) evaluate the contingencies plans on a regular basis.

(6) The board shall appoint a risk management officer to—

- (a) assist the board in the discharge of its duties relating to corporate accountability and risk management, assurance and reporting;
- (b) review and assess the integrity of the risk control systems and ensure that the risk policies and strategies are effectively managed;
- (c) define the nature, role, responsibility and authority of the risk management function of the market intermediary;
- (d) monitor external developments relating to the practice of corporate accountability and the reporting of associated risk, including emerging and prospective impact;
- (e) provide independent and objective oversight and review of the information presented by management on corporate accountability and specifically associated risk, taking account of risk concerns raised by management at the audit committee meetings on financial, business and strategic risk; and
- (f) obtain such external or other independent professional advice as he considers necessary to carry out his duties.

25. Annual review

The board shall, annually, review its risk management procedures and contingency plans, and document the results and conclusions of such reviews.

26. Information management system

The board shall develop and implement an information management system that provides information relating to its implementation, the effect of the board's policies and procedures, the realisation of risks, substantial market positions and the financial position of the market intermediary.

27. Responsibility for internal controls

(1) The board shall be responsible for the market intermediary's system of internal controls.

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(2) The board shall establish and monitor appropriate policies on internal controls and satisfy itself that the system is functioning effectively.

(3) The board shall develop procedure manuals to implement its policies and controls.

28. Role of management and employees

(1) The management of a market intermediary shall implement the board's policies on risk and internal controls.

(2) The management of a market intermediary shall identify and evaluate the risks, that the market intermediary is exposed to for the board's consideration by the board and design, operate and monitor a suitable system of internal control that implements the policies of the board.

(3) The employees shall be responsible for internal control as part of their accountability towards the achievement of the objectives of the market intermediary.

29. Periodical review of internal controls

(1) The management of a market intermediary shall be accountable to the board for monitoring the system of internal controls and reporting on such monitoring activities.

(2) The board shall periodically review and enquire, based on the information and assurances provided to it by management of a market intermediary, to determine the effectiveness of internal controls established by the management of a market intermediary.

(3) The board shall document the results and conclusions of its periodic reviews and actions taken thereon.

30. Compliance officer

(1) The board shall appoint a compliance officer who shall—

- (a) monitor compliance with the regulatory requirements prescribed by the Authority, and shall not be involved with any function that is the subject of compliance;
- (b) have sufficient authority to carry out such function;
- (c) have unfettered access to information;
- (d) have direct access to the board;
- (e) take necessary action to rectify any non-compliance;
- (f) report any non-compliance issues that cannot be rectified to the board;
- (g) report to the board any material breaches of the regulatory requirements; and
- (h) submit an annual corporate governance report to the board.

(2) The officer in charge of compliance may be held personally liable for the failure to ensure compliance by the market intermediary with the regulatory requirements of the Authority.

31. Receipt of client funds

A market intermediary shall establish and implement systems that ensure that all funds received on behalf of clients are deposited directly in the intermediary's client bank account to ensure employees avoid the receipt of cash.

32. Regulatory requirements

A market intermediary shall keep and maintain the all the records that are required to be kept under the Act and Regulations made thereunder.

33. Board records

The board shall keep and maintain a record of all the decisions of the board and all actions taken to comply with the regulatory requirements of the Authority.

34. Employee records

A market intermediary shall keep and maintain records relating to each of its employees demonstrating that it has effectively assessed all relevant qualification, experience, fitness and propriety. In particular an employee's records shall include—

- (a) his job application with copy of documentation verifying qualifications and experience;
- (b) his job description
- (c) his qualifications, experience and training
- (d) his remuneration;
- (e) any securities transaction undertaken with details of permission received;
- (f) any declaration of an existing or potential conflicts of interest made; and
- (g) details of all publicly traded listed securities owned.

35. Third party records

Where the market intermediary contracts with a third party to undertake any functions on its behalf, it shall maintain appropriate records, including—

- (a) the contract specifying the services to be provided;
- (b) details of the third party including its legal status, verification documents and all documentation necessary to establish its financial viability; and
- (c) details of the qualifications and experience of the employees to be engaged on the business of the market intermediary;

Provided that any delegation of a function shall not discharge the market intermediary from any responsibility for the proper execution of the delegated function.

36. Exemption or variation of applicability

(1) Subject to paragraphs (2) and (3), the Authority may, upon an application made in writing by a market intermediary, where it considers it appropriate in the special circumstances of the market intermediary, exempt from or vary the application of these regulations to the market intermediary:

Provided that in all circumstances where the Authority grants an exemption or a variation, it shall indicate the period for which the exemption or variation shall be valid.

(2) A market intermediary shall, in the application, provide the reasons for seeking an exemption or variation and shall specify any other alternative arrangements that it shall establish to comply with the regulatory requirements.

(3) A market intermediary shall, despite having made an application under paragraph (1), comply with the respective regulatory requirements until the Authority formally exempts it or varies the regulatory requirements, in writing.

(4) Where the Authority grants an exemption or variation under this regulation, it shall give the reasons for the grant, in writing, and shall publish the exemption or variation.

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(5) Any market intermediary that has obtained an exemption or variation under this regulation shall, immediately report to the Authority any change in its circumstances that may reasonably be of relevance in the determination of whether it should continue to enjoy the exemption or variation.

(6) The Authority may revoke or reverse any exemption or variation where it is satisfied that there has been a change in the circumstances that gave rise to the grant of the exemption.

(7) The Authority shall, for the purposes of determining the special circumstances of a market intermediary under this regulation, prescribe assessment criteria.

37. Remedial measures and administrative sanctions

(1) When a director or an officer is assessed and found not to be fit and proper to work for a market intermediary, the affected market intermediary shall—

- (a) be required to terminate the services of such a director or officer;
- (b) immediately put in place mechanisms to mitigate any loss or damage to clients, the business or the market as a whole resulting from such termination of services; and
- (c) inform the Authority of such a decision and actions being taken immediately.

(2) All directors of a market intermediary shall be liable jointly and severally to indemnify the market intermediary against any loss arising from contravention of any of the provisions of the Act or these regulations.

(3) A market intermediary that contravenes a requirement of these regulations commits a disciplinary offence that may lead to sanctions and/or penalties under the Act.

38. Transitional provision

A market intermediary that was licensed before the commencement of these Regulations shall comply with these Regulations within one year of the commencement of these Regulations.

SCHEDULE

[Rule 8.9.]

PRESCRIBED CODE OF CONDUCT**1. Conflict of Interest**

Directors, management and staff should not engage directly or indirectly in any business activity that competes or conflicts with the market intermediary's interest or those of its clients unless fully disclosed to the clients. These activities include, although are not necessarily limited to, the following—

- (a) **Outside Financial Interest:** Where directors, management or staff have a financial interest in a client, such an interest must be disclosed immediately to the management and the client. Thereafter, the affected director, member of management or employee should not be directly involved in the market intermediary's dealings with the client so long as the interest continues to exist.
- (b) **Other Business Interests:** It is considered a conflict of interest if an executive director, member of management or member of staff conducts business other than the market intermediary's business during office hours.

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Where the acquisition of any business interest or participation in any business activity outside the market intermediary and office hours demands excessive time and attention from the member of staff, thereby depriving the market intermediary of the employee's best efforts on the job, a conflict of interest is deemed to exist.

- (c) **Other Employment:** Before making any commitment, executive directors, management and employees are to discuss possible part-time employment or other business activities outside the market intermediary's working hours with their manager or departmental head. A written approval of the board of directors, chief executive, manager or departmental head respectively should be obtained before an executive director, member of management or employee embarks on part-time employment or other business activities. Approval should be granted only where the interest of the market intermediary will not be jeopardised.
- (d) **Corporate Directorship:** Employees, members of management and executive directors must not solicit corporate directorships. All such persons should not serve as a director of another corporation without approval of the board of directors. Those who hold directorships without such approval must seek approval immediately, if they wish to remain as directors of other corporations. However, such persons may act as directors of non-profit public service corporations, such as religious, educational, cultural, social, welfare, and philanthropic or charitable market intermediaries, subject to policy guidelines of the market intermediary.
- (e) **Trusteeships:** Directors, management and staff must not solicit appointments as executors, administrators or trustees of clients' estates. If such an appointment is made and the individual is a beneficiary of the estate, his signing authority for the estate's bank account or accounts must be approved by the board of directors, who will not unreasonably withhold such approval.

2. Misuse of Position

- (a) Directors, management and staff must not use the market intermediary's name or facilities for personal advantage in political, investment or retail purchasing transactions, or in similar types of activities. Such persons and their relatives must also not use their connection with the market intermediary to borrow from or become indebted to clients or prospective clients. The use of position to obtain preferential treatment, such as purchasing goods, shares and other securities, is prohibited.
- (b) Directors, management and staff must not solicit or otherwise accept inducements either directly or indirectly whether in cash or in kind in order to provide any favours to a client in the conduct of the business of the market intermediary to which they are entrusted either jointly or individually.
- (c) Further, directors, management and staff must not use the market intermediary's facilities and influence for speculating in securities, whether acting personally or on behalf of friends or relatives. Such misuse of position may be ground for dismissal and prosecution.
- (d) Directors, management and staff should also not engage in "back-scratching" exercises with employees and directors of other market intermediaries to provide mutually beneficial transactions in return for similar facilities, designed to circumvent these ethical guidelines.

3. Misuse of Information

- (a) Directors, management and staff should not deal in the securities of any company listed or pending listing on a stock exchange at any time when in possession of information, obtained by virtue of employment or connection

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with the market intermediary, which is not generally available to shareholders of that company and the public, and which, if it were so available, would likely bring a material change in the market price of the shares or other securities of the company concerned. "Insider dealing" as this is called, is a crime.

- (b) Directors, management and staff who possess insider information are also prohibited from influencing any other person to deal in the securities concerned or communicating such information to any other person, including other members of staff who do not require such information in discharging their duty.

4. Integrity of Records and Transactions

- (a) Accounting records and reports must be complete and accurate. Directors, management and staff should never make entries or allow entries to be made for any account, record or document of the market intermediary that are false and would obscure the true nature of the transaction, as well as to mislead the true authorization limits or approval authority of such transactions.
- (b) All records and computer files or programmes of the market intermediary, including personnel files, financial statements and client information must be accessed and used only for management purposes for which they were originally intended.

5. Confidentiality

- (a) Confidentiality of relations and dealings between the market intermediary and its clients is paramount in maintaining the market intermediary's reputation. Thus directors, management and staff must take precaution to protect the confidentiality of client information and transactions. No member of staff, management or director should during, or upon and after termination of employment with the market intermediary (except in the proper course of his duty and or with the market intermediary's written consent) divulge or make use of any secrets, copyright material, or any correspondence, accounts of the market intermediary or its clients. No member of staff, management or director shall in any way use information so obtained for financial gain.
- (b) Business and financial information about any client may be used or made available to third parties only with prior written consent of the client or in accordance with the arrangements for the proper interchange of information between market intermediaries about credit risks, or when disclosure is required by law.

6. Fair and Equitable Treatment

All business dealing on behalf of the market intermediary with the current potential clients, with other members of staff and with those who may have cause to rely upon the market intermediary, should be conducted fairly and equitably. Staff, management and directors must not be influenced by friendship or association, either in meeting a client's requirement, or in recommending that they be met.

Such decisions must be made on a strictly arms-length business basis. All preferential transactions with insiders or related interests should be avoided. If transacted, such dealings should be in full compliance with the law, judged on normal business criteria basis and fully documented and duly authorised by the Board of Directors or any other independent party.

7. Insider Loans

Directors, management and staff should not use their positions to further their personal interests. A market intermediary shall not in Kenya therefore—

- (a) grant or permit to be outstanding any unsecured advances in respect of any of its employees or their associates;

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- (b) grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured to any of its officers, significant shareholders or their associates;
 - (c) grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the market intermediary unless it is—
 - (i) approved by the full board of directors of the market intermediary upon being satisfied that it is viable;
 - (ii) is made in the normal course of business and on terms similar to those offered to ordinary clients of the market intermediary. The market intermediary shall notify the Authority of every such approval within seven days of the granting of the approval;
 - (d) grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance of the Act and the regulations made thereunder.
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**CAPITAL MARKETS (CONDUCT OF BUSINESS) (MARKET INTERMEDIARIES)
REGULATIONS, 2011**

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**CAPITAL MARKETS (CONDUCT OF BUSINESS) (MARKET INTERMEDIARIES)
REGULATIONS, 2011**

[L.N. 145/2011.]

1. Citation

These Regulations may be cited as the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**client bank account**” means a bank account established for the purposes of regulation 29;

“**client funds**” means money of any currency that, in the course of carrying on its regulated activity, a market intermediary holds or receives on behalf of a client, or owes a client;

“**financial year**” means the period of twelve months ending on the 31st December in each year;

“**market intermediary**” means a company holding a license issued under Part IV of the Act;

“**regulated activity**” means any activity that is controlled by the Act or any regulations made under the Act.

3. Standards of conduct

A market intermediary shall, when conducting a regulated activity, apply principles of best practice and, in particular—

- (a) observe a high standard of integrity and fair dealing;
- (b) act with due skill, care and diligence; and
- (c) observe high standards of market conduct.

4. Know your client

(1) A market intermediary shall seek sufficient information about the client and the client's circumstances to ensure that the services provided are consistent with those circumstances.

(2) Notwithstanding the generality of paragraph (1), a market intermediary—

- (a) shall, when recommending investments to a client or where it has discretion to act on behalf of a client, take and document reasonable steps to satisfy itself that the recommendation or discretionary action is suitable for the client, taking account of all the available alternatives;
- (b) shall not recommend, or where the market intermediary has discretion to act on behalf of a client, execute any sale or purchase that is unsuitable for the client;
- (c) shall not recommend, or where the market intermediary has discretion to act on behalf of a client, execute sales or purchases of a frequency that does not benefit the client regardless of the commission that the sales or purchases may produce; and

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- (d) may execute an order of a client without satisfying itself as to its suitability only where the client agreement makes clear that the client is acting without the advice of the market intermediary.

(3) A market intermediary shall take all reasonable steps to ensure that it does not give advice or effect a transaction, on behalf of a client, unless the advice or transaction is suitable for the client considering the facts disclosed by the client and any other relevant facts about the client that the market intermediary is or ought to reasonably be aware of.

5. Independence

Where a market intermediary is advising or acting on behalf of a client, it shall ensure that any claim it makes relating to its independence or impartiality includes any limitation that there may be on its capacity.

6. Fair and clear communications

A market intermediary shall ensure that any agreement, written communication, notification or information that it gives or sends to clients to whom it provides the service of a regulated activity is presented fairly and clearly.

7. Clients' understanding of risk

(1) A market intermediary shall not—

- (a) recommend a transaction to a client, or effect a transaction with or for him, unless it has taken all reasonable steps to enable the client to understand the risks involved;
- (b) knowingly mislead a client on any advantages or disadvantages of a contemplated transaction; or
- (c) promise a return unless such return is contractually guaranteed.

(2) A market intermediary shall give sufficient information to the client to ensure that the client's decisions are informed.

(3) A market intermediary shall, when making recommendations to a client, take all reasonable steps to satisfy itself that the client has a full understanding of—

- (a) the nature of the investment;
- (b) the fees and charges associated with the investment;
- (c) the risks of the investment;
- (d) the factors that are likely to affect the performance of the investment;
- (e) the terms and conditions of the investment;
- (f) the consequences of departing from the terms and conditions of the investment.

(4) Where a market intermediary—

- (a) after giving a client an explanation, in writing, is satisfied that the client understands the information required to be given under paragraph (3), the market intermediary shall retain a copy of such explanation in its records;
- (b) gives an explanation orally, it shall send a written note of the advice to the client, and retain a copy of the explanation in the client's file;
- (c) is of the opinion that an explanation is not required, because of the client's existing knowledge, it shall record the opinion and keep it in its records.

8. Charges

(1) A market intermediary shall charge its fees according to its agreement with the client, or in the manner prescribed by the Authority.

(2) A market intermediary shall, before providing the service of a regulated activity to a client, disclose to the client the basis for and its charges for the provision of the services and the nature and amount of any other remuneration payable by the client.

(3) A market intermediary shall provide a statement of fees or charges to a client, for each transaction or monthly for a client on whose behalf many transactions are undertaken.

(4) A market intermediary shall not take any fees or charges from any client's funds or liquidate client's securities for the purpose of recovering its fees or charges unless it is in accordance with the client agreement or in the manner prescribed by the Authority.

9. Clients' rights

(1) A market intermediary shall not, in any written communication or agreement, exclude or restrict—

- (a) any duty or liability to a client which it has under any law or under any regulations made by the Authority;
- (b) any other duty to act with skill, care and diligence that is owed to a client in connection with the provision to him of the service of a regulated activity;
- (c) any liability owed to a client for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of the service of a regulated activity.

(2) An exclusion or restriction prohibited by these Regulations shall be void and of no effect.

10. Cold calling

A market intermediary shall not, for the purposes of soliciting business relating to a regulated activity, make unsolicited telephone calls or attend at any property, unless it has established and monitors the implementation of operational and procedures to—

- (a) maintain a Do-Not-Call list of prospects that is updated whenever any contacted person requests not to be called again;
- (b) train staff on the use of the Do-Not-Call list;
- (c) limit the making of calls to between 8 a.m. and 5 p.m.;
- (d) oblige the callers to state their first and last names at the commencement of the call;
- (e) oblige the callers to state the firm's name and address and the fact that it is licensed by the Authority at the commencement of the call;
- (f) oblige the caller to provide a detailed overview of any product being marketed by the market intermediary prior to soliciting any offers;
- (g) record and avail copies of all recordings to the Authority for inspection.

11. Cessation of business

Where a market intermediary intends to withdraw from a regulated activity, it shall—

- (a) notify the Authority and each of its clients of its intention; and
- (b) ensure to the satisfaction of the Authority that any business that is outstanding is properly completed or transferred to another market intermediary.

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12. Conflict of interest

(1) A market intermediary shall—

- (a) identify and document the conflicts of interest that are likely to occur in the course of its regulated activity;
- (b) adopt and document appropriate policies to minimize those conflicts by identifying the instances where it would refuse to act and, where this is not necessary, making arrangements to minimize the risk of any loss to the client;
- (c) avoid any conflict of interest between itself and a client and where such a conflict exists, decline to act, or if it considers that the conflict can be managed, disclose it to the client and follow the policies developed to minimize damage to the client and to put the client's interests ahead of its own.

(2) A market intermediary shall not take advantage of information it obtained from providing services to a client for its own benefit or the benefit of its employees or the benefit of another client, and where such an eventuality is likely to occur, the market intermediary shall—

- (a) adopt and document procedures, including the erection of information barriers, barriers between information technology systems, physical barriers or even separate office locations, to minimize the possibility of information from one client being used for the benefit of another client, its employees or the market intermediary;
- (b) train employees in matters relating to the conflict of interest and the procedures developed to avoid them;
- (c) obtain undertakings from employees that they will not use information gained from the clients for their personal benefit.

(3) Where a market intermediary has a material interest in a transaction to be entered into with or for a client, or a relationship which gives rise to a conflict of interest, the market intermediary shall not, knowingly, advise, or exercise discretion, in relation to that transaction unless it has—

- (a) disclosed the material interest or relationship that may give rise to a conflict, as the case may be, to the client; or
- (b) taken reasonable steps to ensure that neither the material interest nor relationship would adversely affect the interests of the client.

(4) A market intermediary shall take reasonable steps to ensure that neither it nor any of its employees or agents offers or gives, or solicits or accepts, any inducement that is likely to conflict with any of the duties owed to clients.

13. Client agreement required

(1) A market intermediary shall not provide the service in respect of a regulated activity unless it has entered a written agreement with the client and the service is to be provided in accordance with the agreement.

(2) The client agreement shall set out the basis on which the market intermediary's services are provided, including—

- (a) essential information about the market intermediary, including its name, address and contact information;
- (b) the services to be provided;
- (c) the fees to be charged or the way the fees will be calculated;

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- (d) the nature or basis of commissions to be received by the market intermediary from third parties in relation to the services provided to the client;
 - (e) the obligations of the client, including the manner of giving instructions;
 - (f) the rights of the client, including—
 - (i) the right to receive the title for any securities purchased;
 - (ii) the right to receive a statement of all fees and charges;
 - (iii) the right to information on the remuneration received by the market intermediary from third parties for the services provided, in relation to the client;
 - (iv) the right to ask for information on the experience, qualifications and disciplinary history of the market intermediary;
 - (v) the right to receive interest on funds held by the market intermediary on the client's behalf;
 - (vi) the right to receive payment for securities sold within a specified period;
 - (vii) the right to see the market intermediary's conflict of interest policy;
 - (viii) the right to complain and to have that complaint dealt with fairly and promptly;
 - (g) the obligations of the market intermediary;
 - (h) the arrangements made for securing the titles to and for the custody of securities bought including through the use of nominee accounts and the use of a custodian, where appropriate;
 - (i) any conflicts of interest relating to the market intermediary;
 - (j) any connections the market intermediary has with third parties that could affect the services being provided, including a requirement that the market intermediary deals through certain third parties or recommend certain investment products;
 - (k) the fact that the market intermediary is regulated by the Authority; and
 - (l) any other terms and conditions of the agreement, including the notice to be given in respect of any changes to it or its termination.
- (3) A market intermediary and a client shall abide by the terms of the agreement.
- (4) A market intermediary shall keep the signed written agreement and give the client a copy.

14. Contract notes

- (1) A market intermediary shall, in respect of every contract for the purchase or sale of securities it has entered into, not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with paragraph (2) and where the market intermediary entered into a contract—
- (a) as agent, deliver the original contract note to the person on whose behalf it entered into the contract; or
 - (b) as principal, retain the contract note for itself.
- (2) The contract note shall state—
- (a) whether it is in respect of a purchase or sale of securities;
 - (b) whether a specific or limit price has been specified or whether the market rate should be applied in addition to the ultimate price per unit of the securities;

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- (c) the name and address of the market intermediary and the principal place at which it carries on its business;
- (d) that the market intermediary is acting as principal or agent, where it is so acting;
- (e) the name and address of the person, to whom the market intermediary is required to give the contract note and, where different, the name of the person for whom the transaction was undertaken;
- (f) the date of the contract, and the date on which the contract note is made;
- (g) the quantity and description of the securities that are the subject of the contract;
- (h) the rate or amount of commission payable in respect of the contract;
- (i) the amount of stamp duty, if any, payable in connection with the contract and, where applicable, in respect of the transfer;
- (j) the date of settlement; and
- (k) any other information as may be prescribed by the Authority to ensure that there shall be a complete audit trail in respect of the execution of client instructions and the settlement of market transactions.

15. Client confidentiality

(1) A market intermediary shall keep all information in its possession relating to a client, whether obtained from the client or third parties confidential.

(2) A market intermediary shall adopt and document policies and procedures designed to ensure that information obtained from clients and third parties is kept confidential and secure.

(3) The policies and procedures adopted shall include—

- (a) a requirement that employees undertake to maintain confidentiality, in their contract of employment;
- (b) how to determine the employees who may have access to confidential information;
- (c) procedures that effectively restrict access to confidential information by employees through the use of secure document management, storage systems and encryption protected information, within the market intermediary's Information Technology system; and
- (d) systems designed to safeguard the integrity of any electronic record or transaction recording system.

(4) Notwithstanding paragraph (1), a market intermediary may disclose information relating to a client to the Authority or an approved securities exchange, on request, or if it is ordered to do so by a court of competent jurisdiction.

16. Complaints procedure

(1) A market intermediary shall adopt, document and disclose to a client its procedures for the proper handling of complaints from clients and ensure that appropriate remedial action is taken on the complaints promptly.

(2) A market intermediary shall designate an officer to review and investigate all complaints lodged by clients and recommend appropriate remedial action to the management of the market intermediary.

(3) A market intermediary shall handle complaints in a fair, appropriate and timely manner, and shall inform the client of the outcome.

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(4) A market intermediary shall, depending on the nature of the complaint, provide where a complaint is justified, appropriate restitution and address the weaknesses in its internal systems that led to the action causing the complaint.

(5) A market intermediary shall document all the actions it has taken under the complaints procedure.

(6) The complaints procedure shall set out the process for dealing with complaints, including—

- (a) the apportionment of responsibility for the actions that led to the complaint, including to persons not specifically named in the complaint;
- (b) the timeframe for dealing with a complaint;
- (c) the timeframe within which to inform the complainant of progress in dealing with the complaint, which shall not be more than three months; and
- (d) the right to appeal to the chief executive of the market intermediary or another appropriately senior officer nominated by the chief executive, where the complaint cannot otherwise be resolved.

(7) A market intermediary shall immediately and in all events within twenty-four hours, inform the Authority of any complaint that is still unresolved, three months after it was received.

(8) A market intermediary shall maintain a record of complaints showing—

- (a) the client or any other person from whom a complaint was received;
- (b) the nature of the complaint;
- (c) the officer handling the complaint;
- (d) the officer against whom the complaint was made or who was responsible for the action that led to the complaint;
- (e) the progress in handling the complaint;
- (f) the way the complaint was resolved; and
- (g) the time it took to resolve the complaint.

(9) A market intermediary shall maintain a summary register of complaints.

17. Execution of client order

A market intermediary shall not execute an order unless the client has made sufficient arrangements for the necessary funds or securities.

18. Timely execution

A market intermediary shall execute client orders in the chronological sequence in which the orders were received and give priority to outstanding orders.

19. Best execution

A market intermediary shall deal for a client on the best terms available for the client.

20. Timely allocation

A market intermediary shall ensure that transactions it executes are allocated to the clients who gave the orders in a timely and equitable manner.

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21. Fair allocation

Where a market intermediary has aggregated an order for a client's transaction with an order for its own account transaction, or with an order for another client's transaction, the market intermediary shall in the subsequent allocation—

- (a) not give unfair preference to itself or to any of the clients; and
- (b) give priority to satisfying orders for client transactions, if all orders cannot be satisfied.

22. Off-market transactions

A market intermediary shall report all trade in securities dealt with otherwise than at a licensed securities exchange in such manner as may be prescribed by the Authority.

23. Front running

Where a market intermediary has a client order to execute, or where it intends to publish to clients a price-sensitive recommendation or research or analysis, it shall not knowingly effect an own account transaction in the securities concerned or in any related investment until the order has been executed or until the clients for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

24. Churning

A market intermediary shall not—

- (a) deal or arrange a deal in the exercise of discretion for any client; or
- (b) advise a client to deal,

if the dealing could in the circumstances be reasonably considered as too frequent or too large having regard to the trading activities, investment objectives, size and operations of such client.

25. Insider dealing

A market intermediary shall take reasonable steps to ascertain if any of its clients are insiders and maintain records that assist it to monitor insider dealing.

26. Prevention of money laundering, etc.

(1) A market intermediary shall, on each occasion that a client places an investment order with it, obtain from the client—

- (a) details relating to the origin and source of the money or funds used or to be used for the investment;
- (b) where the money or funds originate from outside Kenya, a confirmation from the remitting entity of the nature of the client's business and details relating to the source of the money or funds; and
- (c) a written declaration by the client confirming—
 - (i) the accuracy of all information given under subparagraph (a) or (b); and
 - (ii) that the money or funds used for the investment in securities does not arise from the proceeds of any money laundering or other illicit activities.

(2) A market intermediary shall keep and maintain the information obtained from a client under paragraph (1) as part of the records required under regulation 32.

27. Notification on compliance

(1) A market intermediary shall at all times comply with the Act, regulations made under the Act and with any other regulatory requirements prescribed by the Authority.

(2) A market intermediary shall cooperate with the Authority and give the Authority all the reasonable assistance it requires to discharge its functions under the Act.

(3) A market intermediary shall, immediately and in any event, within twenty-four hours inform the Authority of the occurrence of—

- (a) any event which could reasonably be expected to affect the Authority's assessment of its fitness and propriety or that of its management and staff;
- (b) a material breach of the regulatory requirements applicable to the market intermediary or a material change in any information provided in support of the licence application;
- (c) a reduction in working capital or financial resource to below one hundred and twenty per centum, of the specified minimum or a reduction of fifty per centum in the working capital or financial resource since the previous report to the Authority;
- (d) any concern of the market intermediary that it may not be able to meet its obligations to clients when they fall due;
- (e) any shortfall in the funds held in the client account below the total obligations to clients;
- (f) any inability to comply with any instruction or direction of the Authority;
- (g) any misstatement in any return previously submitted to the Authority;
- (h) any fraud on the market intermediary or by any of its employees;
- (i) any disciplinary action against any of its key personnel;
- (j) any investigation, finding or conviction relating to the market intermediary or any of the key personnel of the market intermediary by a law enforcement agency, regulatory authority, or professional association;
- (k) any civil claim against the market intermediary that exceeds twenty-five per centum of the minimum financial resource requirement of the market intermediary; and
- (l) any action against it that may lead to its insolvency.

(4) A market intermediary shall notify the Authority in not less than twenty-eight calendar days, before it—

- (a) changes its name, business name (if different), business address and nature of business of the market intermediary;
- (b) appoints a new chief executive, director or compliance officer;
- (c) appoints a new auditor;
- (d) decides to seek a licence from another regulatory authority in Kenya or abroad;
- (e) changes its financial year and its annual reporting date;
- (f) changes its capital structure substantially;
- (g) changes its ownership or substantial shareholding;
- (h) makes a substantial acquisition; or
- (i) decides to surrender its licence.

(5) A market intermediary shall keep records of all returns sent to and correspondence with the Authority.

[Subsidiary]**28. Clients' funds**

(1) A market intermediary shall hold its clients' funds in trust for and on behalf of the clients on behalf of whom the funds were received or are held according to their respective shares.

(2) Clients' funds shall not form part of the assets of the market intermediary for any purpose and shall not be available in any circumstances for payment of any debt of the market intermediary.

29. Segregation of clients' funds

(1) A market intermediary that receives or holds clients' funds shall open one or more client bank accounts.

(2) A market intermediary shall segregate its client bank accounts from any account holding funds belonging to the market intermediary.

(3) A market intermediary shall deposit into a client bank account all funds received on behalf of or from a client, upon receipt.

(4) A market intermediary shall keep records of—

- (a) all the amounts it has deposited into a client bank account held by the market intermediary, specifying the person on whose behalf the amounts are held and the dates on which they were deposited into the account;
- (b) all withdrawals from a client bank account, the dates of the withdrawals, and the names of the persons on whose behalf the withdrawals were made; and
- (c) any other particulars as may be prescribed by the Authority.

(5) A market intermediary shall on a daily basis reconcile its records showing the amounts held on behalf of each client in the client bank account and the aggregate of clients' money held in the client account or being held by third parties on behalf of clients.

(6) Where there is more than one client account, the market intermediary shall reconcile each client account separately as well as the aggregate position on all clients' accounts.

(7) The officer who is responsible for authorising payments into and out of the client accounts shall not carry out the reconciliation.

(8) A market intermediary shall obtain and maintain, in its records, written acknowledgement from the bank confirming that the clients' funds deposited with the bank are held in trust for the clients and are not available to offset any obligation of the market intermediary.

30. Accounting for and use of clients' funds

(1) A market intermediary shall promptly and accurately account for clients' funds and ensure that—

- (a) clients' funds and other funds are segregated;
- (b) it can at all times ascertain the amount of clients' funds standing to the credit of each client; and
- (c) funds held on behalf of a client are not used for the benefit of another client.

(2) A market intermediary shall not withdraw money deposited in a clients' bank account unless the money is required for the purposes of—

- (a) making a payment to, or in accordance with the written instructions of, a person entitled to the money;

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- (b) purchasing, margining, guaranteeing, securing, transferring, adjusting or settling dealing in securities effected by the market intermediary on the written instructions of a client;
- (c) defraying brokerage and other charges incurred in respect of dealings in securities effected by the market intermediary on the written instructions of a client; or
- (d) making a payment that is otherwise authorized by law.

31. Segregation of other client property

(1) All securities and other property held or received by a market intermediary on behalf of a client in connection with its regulated activity shall be segregated and accounted for separately.

(2) A market intermediary shall keep such books and accounts as are necessary to—

- (a) show all its dealings with a client's securities and other property held or received by it on behalf of a client; and
- (b) distinguish securities and other property it holds or has received on behalf of each client from its own securities and property and other securities and property held or received by the market intermediary.

(3) A market intermediary shall on monthly basis reconcile the records of assets held by the market intermediary on behalf of clients, both individually and in aggregate, and compare the reconciliation with the evidence of the title to the assets controlled by the market intermediary, as immobilized securities or those held in certificated form (if any).

(4) Where a market intermediary has appointed a custodian to hold the clients' assets, the market intermediary shall maintain records of all assets held by the custodian and reconcile the records on monthly basis, with the records of the market intermediary of the assets held on behalf of its clients both individually and collectively.

(5) A market intermediary shall keep safely all evidence of title to client assets.

(6) A market intermediary shall not dispose of client assets unless the client has instructed it, in writing.

(7) A market intermediary shall ensure that its internal systems and controls do not permit its officers to dispose of, pledge, lend or otherwise deal with client assets except in accordance with these Regulations.

32. Requirements in respect of accounting records

(1) A market intermediary shall keep proper accounts and records that show the transactions, effected on its behalf or on behalf of others and the financial position of its regulated activity.

(2) The records and accounts maintained under paragraph (1) shall—

- (a) disclose with reasonable accuracy, the financial position of a market intermediary at any given time;
- (b) enable a market intermediary to prepare a statement of financial position and a statement of comprehensive income at any given time; and
- (c) show whether a market intermediary is maintaining adequate financial resources to meet its business commitments and withstand the risks to which its business is exposed to.

[Subsidiary]

(3) Notwithstanding paragraph (1), the accounting records shall be complete, allow for an independent assessment of the matters in paragraph (1) and contain—

- (a) day to day entries of all sums of money received and expended by the market intermediary, and the matters in respect of which the receipt and expenditure took place;
- (b) a record of all the assets and liabilities of the market intermediary including any commitments or contingent liabilities;
- (c) day to day entries of all purchases and sales of securities by the market intermediary distinguishing those made by the market intermediary on its own account and those made on behalf of others;
- (d) day to day entries of the receipt and dispatch of documents of title, or documents evidencing title, to securities which are in the possession or control of the market intermediary;
- (e) day to day entries of—
 - (i) clients' funds paid into or out of a client bank account maintained for the purposes of these regulations;
 - (ii) receipts and payments of clients' funds that are not paid into or out of a client bank account, identifying the persons to whom each receipt or payment relates;
- (f) a record of—
 - (i) the aggregate balances on client bank accounts;
 - (ii) individual client balances allocated against the names of the client;
 - (iii) sufficient information to explain the market intermediary's dealings with each client bank account, including the time and date;
 - (iv) the time, date and complete particulars of instructions received from and trades executed for clients, including details of short positions;
 - (v) complete particulars of the market intermediary's orders and trades, including time and date;
- (g) details of any credit extended or loans made in respect of margin or otherwise; and
- (h) details of all securities that are—
 - (i) the property of the market intermediary, showing who holds them and if held otherwise than by the market intermediary, details on whether they are held as collateral against loans or advances; and
 - (ii) not the property of the market intermediary, for which the market intermediary is accountable, showing by who or for whom they are held and distinguishing those which are deposited with a third party as security for loans or advances made to the market intermediary or any related person, for any other purpose;
- (i) any other particulars required from time to time by the Authority or the securities exchange to be contained in the accounting records of a market intermediary.

33. Records to be up to date

(1) A market intermediary shall ensure that its records are updated on a daily basis.

(2) A market intermediary shall establish procedures that facilitate its compliance with its financial resource, client asset and working capital requirements.

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(3) Notwithstanding the generality of paragraph (2) a market intermediary shall establish procedures for—

- (a) daily reconciliations of funds held in the client accounts;
- (b) daily calculations of the working capital and financial resource; and
- (c) the maintenance of a record of daily calculations and reconciliations.

34. Audit trail

(1) A market intermediary shall record the information that is required to be recorded by these Regulations in a way that identifies all transactions and allows for the tracing of transactions, from the initiation of the order to its final settlement.

(2) A market intermediary shall file, index, cross-reference or arrange its records in a manner that permits prompt access to any particular record.

35. Conformity with accounting standards

A market intermediary shall keep its accounting records in accordance with the International Financial Reporting Standards.

36. Retention of records

A market intermediary shall preserve the accounting records kept under regulation 32 for seven years from the date on which they are made.

37. Inspection of records

The Authority or any person authorized by the Authority may, at reasonable times and during the period which accounting records kept under regulation 32 are required to be preserved, require a market intermediary to produce, the accounting records for purposes of inspection.

38. Imposition of additional requirements by securities exchange or self regulating organizations

(1) A securities exchange or other self regulatory organization may impose additional obligations or requirements that it considers necessary on market intermediaries that are members of the exchange or the self regulatory organization.

(2) Notwithstanding the generality of paragraph (1), a securities exchange or self regulatory organization may impose additional obligations or requirements relating to—

- (a) the keeping of accounts, books and records;
- (b) periodic financial reporting to the securities exchange or self regulatory organization in the form and manner required by the securities exchange or self regulatory organization;
- (c) the audit of accounts;
- (d) the information to be given in audit reports; or
- (e) spot order checks.

39. Preparation of annual financial statements

A market intermediary shall, at the end of its financial year, prepare in accordance with International Financial Reporting Standards annual financial statements that consist of—

- (a) a statement of financial position, that gives a true and fair view of the state of affairs of the market intermediary, as at the last day of the financial year; and

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- (b) a statement of comprehensive income, that gives a true and fair view of the market intermediary's profit or loss for the financial year.

40. Power to require returns

(1) The Authority may, by a notice in writing, require a market intermediary to submit to it such periodic returns as it may specify.

(2) The Authority may, in addition to any periodic returns required under paragraph (1), by a notice in writing, require a market intermediary to generally or in a particular case or class of cases, submit to the Authority such exceptional returns as it may specify.

41. Submission of annual financial statements

(1) A market intermediary shall submit to the Authority, within three months after the end of each financial year, its auditor's report together with—

- (a) its annual financial statements; and
- (b) a written confirmation that it has complied with these Regulations and any other additional requirements of the Authority.

(2) Where an auditor's report on a market intermediary is qualified on grounds of the auditor's uncertainty on the completeness or accuracy of the accounting records, the report shall, when it is being submitted by the market intermediary to the Authority, be accompanied by a written statement signed by two directors stating whether—

- (a) all the accounting records of the market intermediary were made available to the auditor for the purposes of its audit;
- (b) all transactions undertaken by the market intermediary were properly reflected and recorded in its accounting records; and
- (c) all the other records of the market intermediary and related information were made available to the auditor.

42. Appointment of external auditor

(1) A market intermediary shall appoint an external auditor and issue him with an engagement letter, that sets out his powers and duties, and is signed by both the market intermediary and the external auditor.

(2) The market intermediary shall retain a copy of the engagement letter issued under paragraph (1).

(3) A market intermediary shall, within seven days of appointing an auditor notify the Authority of the appointment, in writing.

(4) A market intermediary shall, ensure that it rotates its external auditor at least once in every seven years.

43. Powers and duties of auditors

(1) An auditor appointed under regulation 42—

- (a) shall have access at all reasonable times to the accounting records, other records and documents relating to the business of a market intermediary; and
- (b) may request the market intermediary to provide such information or explanations that he considers necessary for the performance of its duties.

(2) An external auditor shall before preparing a report for the purposes of these Regulations, carry out an examination that will enable him to determine whether—

- (a) the annual financial statements of the market intermediary were prepared in accordance with these Regulations;

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- (b) in the case of the statement of the financial position, a true and fair view of the financial state of affairs of the market intermediary was given as at the end of the financial year;
- (c) in the case of the statement of comprehensive income, a true and fair view of the profit or loss of the market intermediary was given for the financial year;
- (d) the market intermediary kept proper accounting records throughout the financial year;
- (e) the market intermediary kept clients' funds and other client's assets properly segregated as is required under these Regulations;
- (f) the statement of financial position and the statement of comprehensive income are in agreement with the market intermediary's accounting records;
- (g) he has obtained all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of its audit;
- (h) the market intermediary has maintained throughout the financial year systems adequate to enable him to identify documents of title, or documents evidencing title, to securities title in safekeeping for the market intermediary's clients in accordance with these Regulations; and
- (i) the market intermediary complied with these Regulations throughout the financial year.

(3) An external auditor shall, after carrying out examination, submit a report on the annual financial statements of the market intermediary to the Authority.

44. Contents of auditor's report

(1) The external auditor shall state whether the annual financial statements of the market intermediary have been audited in accordance with the International Standards on Auditing, in his report.

(2) The external auditor shall state his opinion on the matters that he is required to determine under regulation 43 (2).

45. Qualified reports

(1) Where the external auditor forms the opinion that a market intermediary has not complied with any provision of these Regulations relating to the keeping of accounts, financial records and preparation of financial statements, the external auditor shall state the opinion in his report and specify the provisions that have not been met.

(2) Where the external auditor did not obtain all the information and explanations that, to the best of its knowledge and belief, are necessary for the purposes of its audit, it shall state the fact in its report.

(3) Where the external auditor is not able to form an opinion on whether a market intermediary has not complied with any provision of these Regulations relating to the keeping of accounts, financial records and preparation of financial statements, it shall state so in its report and give the reasons for not being able to form an opinion.

46. Resignation or removal of auditors

(1) Where an auditor resigns or is removed by a market intermediary, the market intermediary shall, within seven days of the resignation or removal of the external auditor notify the Authority of the resignation or removal.

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(2) The notice submitted to the Authority under paragraph (1) shall be accompanied by—

- (a) a statement signed by the auditor to the effect that there are no circumstances connected with its resignation or removal which the auditor considers should be brought to the attention of the Authority; or
- (b) a statement signed by the auditor highlighting any circumstances as are mentioned in (a).

(3) Where a market intermediary fails to re-appoint an external auditor at the end of his term of office, the market intermediary shall be deemed to have removed that auditor.

47. Remedial measures and administrative sanctions

(1) Where a market intermediary contravenes any provision of the Act or these Regulations—

- (a) the officers of the market intermediary shall be jointly and severally liable to indemnify the market intermediary against any loss arising from the contravention; and
- (b) the market intermediary shall be liable to the sanctions or penalties prescribed in the Act.

48. Transition

Any market intermediary licensed prior to the commencement of these Regulations shall comply with these Regulations within one year of such commencement.

**CAPITAL MARKETS (DEMUTUALIZATION OF THE NAIROBI SECURITIES
EXCHANGE LIMITED) REGULATIONS, 2012**

ARRANGEMENT OF REGULATIONS

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[Subsidiary]

**CAPITAL MARKETS (DEMUTUALIZATION OF THE NAIROBI SECURITIES
EXCHANGE LIMITED) REGULATIONS, 2012**

[L.N. 87/2012.]

1. Citation

These Regulations may be cited as the Capital Markets (Demutualization of the Nairobi Securities Exchange) Regulations, 2012.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**company limited by guarantee**” has the meaning assigned to it under the Companies Act (Cap. 486);

“**company limited by shares**” has the meaning assigned to it under the Companies Act (Cap. 486);

“**demutualization**” means the separation of the ownership of the Exchange from the right to trade on such Exchange;

“**demutualization application**” means the application made under regulation 4;

“**demutualized exchange**” means the Exchange following the completion of demutualization;

“**Exchange**” means the Nairobi Securities Exchange Limited registered under the Companies Act (Cap. 486) as a company limited by guarantee;

“**member**” means a person who is a member of the Exchange in accordance with its constitutive documents and rules;

“**re-registration**” means the re-registration of the Exchange from a company limited by guarantee to a company limited by shares in accordance with section 18 of the Companies Act (Cap. 486);

“**rights**” means all rights, powers, privileges and immunities, whether present or future, actual or contingent or prospective, and whether enforceable in Kenya or elsewhere;

“**Transitional board of directors**” means the board of the demutualized exchange pending the appointment of a board in accordance with these Regulations.

3. Condition for demutualization

The Exchange shall not be considered to be a demutualized entity unless it has obtained a written approval of the authority in accordance with these Regulations.

4. Application for demutualization

(1) The Exchange shall make an application to the Authority for approval to operate as a demutualized entity.

(2) An application under paragraph (1) shall be accompanied by the following documents and information—

- (a) a valuation report of the Exchange;
- (b) the proposed authorized and paid-up share capital of the demutualized exchange with the number of shares to be issued;
- (c) the names of members of the Exchange proposed to be the initial shareholders of the demutualized exchange and the number of shares to be allotted to each shareholder;

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- (d) the number of shares to be allotted to and held directly or indirectly by the Government of Kenya and the CMA Investor Compensation Fund in the public interest being at least twenty per cent of the total shareholding;
- (e) the proposed memorandum and articles of association of the demutualized exchange;
- (f) the names of the Transitional board of directors;
- (g) the proposed time within which the board of the demutualised Exchange shall be appointed;
- (h) the proposed names of directors of the demutualized exchange to be appointed at the first general meeting following the re-registration of the Exchange;
- (i) the proposed plan for the independent management of the commercial and regulatory functions of the demutualized exchange and timelines for implementation of necessary structures to ensure the functional separation of commercial and regulatory functions;
- (j) a detailed five year business development plan for the demutualized exchange together with the capital expenditure estimates and the sources of finance for the five year period;
- (k) the manner in which the rights and liabilities of the existing members of the Exchange shall be treated in the demutualization;
- (l) the procedure for the allocation of shares to the shareholders identified under subparagraphs (c) and (d);
- (m) a written declaration that demutualization shall not affect any rights and obligations of the Exchange or render defective any legal proceedings by or against the Exchange;
- (n) the proposed timelines for the completion of operational manuals to guide the self-regulatory functions of the demutualized exchange detailing the scope of regulatory functions to be performed by the demutualized exchange;
- (o) the proposed rules of the demutualized exchange; and
- (p) the last audited financial statements of the Exchange.

(3) The Authority may, in writing, require the Exchange to provide any additional information which the Authority may require.

5. Procedure by Authority upon receiving application

(1) The Authority may, if it considers necessary and in the interest of the capital markets, direct the Exchange to make appropriate amendments to the documents and information submitted under regulation 4.

(2) Where the Exchange does not comply with the requirements of regulation 4 or a directive under paragraph (1), the Authority shall—

- (a) give the Exchange an opportunity to be heard; and
- (b) make a decision and communicate the decision, as the case may be, recommending the appropriate measures that for the Exchange may take in order to comply.

(3) Upon the receipt of all the information submitted under regulation 4, subject to any amendments under subparagraph (1), the Authority may approve the demutualization application with or without conditions and specify the term within which the entity shall stand demutualized:

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Provided that the Authority may, upon the application of the Exchange, vary the term specified in the approval.

6. Resolutions of the demutualized exchange

The Exchange shall, within thirty days of obtaining approval or on such period as the Authority may approve in writing, ensure that—

- (a) the Exchange is re-registered as a company limited by shares under section 18 of the Companies Act (Cap. 486); and
- (b) it adopts the following resolutions, in addition to any other resolutions as may be required under regulation 5(3)—
 - (i) a special resolution approving the memorandum and articles of association of the demutualized exchange;
 - (ii) a resolution on the proposed allotment of shares to the initial shareholders of the demutualized exchange;
 - (iii) subject to regulation 5(3), a resolution appointing the directors as the board of the demutualized exchange; and
 - (iv) a resolution on the approved paid up share capital.

7. Demutualization

The Exchange shall, subject to the fulfillment of any conditions attaching thereto, stand demutualized upon the expiry of the period specified in the approval of the Authority in accordance with regulation 5(3).

8. Reduction in shareholdings

The trading participants who are shareholders of the Exchange shall with effect from the date of demutualization reduce their cumulative shareholding in the demutualized exchange to not more than forty per cent within three years.

9. Implementation of self-regulatory functions

The demutualized exchange shall, within one year of an approval being granted implement the plan submitted under regulation 4(2)(h).
