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THE CAPITAL MARKETS ACT

CAP. 485A

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Capital Markets Act

Cap. 485A

Legislation as at 15 December 1989

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CAPITAL MARKETS ACT

CAP. 485A

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Assented to on 13 December 1989

Commenced on 15 December 1989

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

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Capital Markets Authority Act, 1989.

2. Interpretation

In this Act, unless the context otherwise requires—

"**agent**" in relation to a dealer, includes a person who is, or has at any time been, a banker of the dealer;

"**Authority**" means the Capital Markets Authority established by section 5;

"**broker**" means a person who carries on the business of buying or selling of securities as an agent for investors in return for a commission;

"**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;

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

"**Compensation Fund**" means the Investor Compensation Fund established by section 18;

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

"**dealer's representative**" means a person, by whatever name described, in the direct employment of or acting for, or by arrangement with a dealer, who performs for the dealer any of the functions of a dealer (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise; and includes any director or officer of a body corporate who performs for the body corporate any of those functions;

"**dealing in securities**" means making or offering to make with any person, or including 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;

"**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;

"**investment adviser**" means a person who—

(a) carries on business of advising others concerning securities;

(b) issues or promulgates analyses or reports concerning securities;

(c) pursuant to a contract or arrangement with a client undertakes on behalf of the client the management of a portfolio of securities for the purpose of investment;

"**licence**" means—

(a) a broker's or a dealer's licence;

(b) an investment adviser's licence; or

(c) a representative's licence; or

(d) any other licence granted under this Act;

"**licensed person**" means a person or body corporate holding a licence under this Act;

"**member**" means a person who is recognized as a member of a securities exchange;

"**mutual fund**" means any person who is, or holds himself out as being engaged, or proposes to be engaged, in the business of investing, reinvesting, or trading in securities and which is offering for sale or has outstanding any redeemable shares of which he is the issuer;

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

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

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

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

"**representative**" means a representative of any person licensed by the Authority;

"**securities**" mean—

(a) debentures, stocks or bonds issued or proposed to be issued by a government;

(b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate;

(c) any right, warrant, option or futures in respect of any debenture, stock, shares, bonds, notes or in respect of commodities;

(d) 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 (No. 9 of 1989);

"**securities exchange**" means a stock exchange or an approved securities organization;

"**share**" means a share in the share capital of a body corporate and includes stock except where a distinction between stock and shares is express or implied;

"**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;

"**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 a unit trust registered or required to be registered under the Unit Trusts Act (Cap. 521).

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 sub-section (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, who in his opinion, have experience and expertise in legal, financial, business or administrative matters;

(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 hold office for a period of three years and shall be eligible for re-appointment.

(5) Any member appointed under paragraph (b) of subsection (3) shall cease to hold office if—

(a) he delivers to the Minister a written resignation of his appointment;

(b) on the advice of the Authority, the Minister removes him from office on the grounds that he is incapacitated by mental or physical illness or is otherwise unable or unfit to discharge the functions of a member or is unable to continue as a member;

(c) he has been absent from three consecutive meetings of the Authority without leave or good cause;

(d) he is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(e) he is sentenced by a court to imprisonment for a term of six months or more; or

(f) he is convicted of an offence involving dishonesty, fraud or moral turpitude.

(6) In the event of vacation of office by any member appointed under paragraph (b) of subsection (3) the Minister may appoint another person to hold office for the 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 (other than public officers in receipt of a salary) shall be paid such remuneration and allowances out of the general fund of the Authority as may be determined by the Minister.

6. Meetings and procedures of the Authority

(1) The chairman of the Authority shall convene meetings at least once each month whenever it is necessary to carry on the business of the Authority and Whenever he receives a written request signed by at least two members; and in the absence of the chairman, meetings shall be convened by the chief executive and the members present shall elect one of their member to preside as chairman.

(2) The quorum for any meeting of the Authority shall be half of its members and the Authority may, subject to the requirement for a quorum, regulate the procedure in regard to meetings of the Authority and the transaction of business at such meetings.

(3) 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.

(4) 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.

(5) 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.

(6) 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 judgement, 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.

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) 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.

8. Appointment of chief executive of the Authority

(1) The Minister shall appoint a chief executive of the Authority whose conditions and terms of employment including remuneration shall be determined by the Minister.

(2) 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.

(3) The Minister may remove from office the chief executive appointed under subsection (1).

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 in good faith is done or purported to be done by such person, on the direction of the Authority or in the performance or intended performance of any duty or in the exercise of any power under this Act or the regulations made thereunder.

(2) Any expenses incurred by any person referred to in subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under the Act or on the direction of the Authority shall, if the court holds that such act

was done in good faith, be paid out of the general fund of the Authority, unless such expenses are recovered by him in such suit or prosecution.

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 enterprise;

(b) the creation, maintenance and regulation, through implementation of a system in which the market participants are self-regulatory to the maximum practicable extent, of a market in which securities can be issued and traded in an orderly, fair and efficient manner;

(c) the protection of investor interests;

(d) the operation 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.

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

(a) to advise the Minister on all aspects of the development and operation of capital markets;

(b) to implement policies and programmes of the Government with respect to the capital markets;

(c) to employ such officers and servants as may be necessary for the purpose of carrying out the work of the Authority;

(d) to frame rules on all matters within the jurisdiction of the Authority under this Act;

(e) to establish conditions for, and in consultation with the Minister, approve an entity to operate as a securities exchange, and ensure the proper conduct of such business;

(f) to grant a licence to any person to operate as—

(i) a broker, dealer, or investment adviser, or a representative of any of the foregoing and ensure the proper conduct of any such business;

(ii) a unit trust, a mutual fund, or a representative of a unit trust or a mutual fund, after consultation with the Minister, and ensure the proper conduct of any such business;

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

(h) to give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are traded on an approved securities exchange;

(i) to conduct inspection of the activities, books and records of any person which the Authority has approved, and persons to which the Authority has granted a licence;

(j) to publish findings of malfeasance by any person which the Authority has approved or to which it has granted a licence or any public company the securities of which are traded on an approved securities exchange;

(k) to suspend or cancel the listing of any securities or the trading of any securities, for the protection of investors;

(l) to grant compensation to any investor who suffers pecuniary loss resulting from the failure of a licensed broker or dealer to meet his contractual obligations;

(m) to have recourse against any person, the actions or inactions of which, have resulted in a payment from the Compensation Fund;

(n) to act as an appellate body for appeals from securities exchange actions by aggrieved parties;

(o) to require information to be provided in the prescribed form;

(p) to regulate and oversee the issue and subsequent trading both in primary and secondary markets of capital market instruments; and

(q) to 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.

12. Power of Authority to make rules

(1) Without prejudice to the generality of the powers conferred by section 11, the Authority shall formulate such rules as may be required for the purpose of ensuring orderly and fair trading in capital market instruments and protection of investors, and in particular, rules to regulate—

(a) listing of securities on a securities exchange;

(b) disclosures about securities transactions by—

(i) brokers and dealers;

(ii) persons who acquire or dispose of securities; and

(iii) a securities exchange;

(c) proper maintenance of books, records, accounts and audits by all persons approved or licensed by the Authority and regular reporting by such persons to the Authority of their affairs; and

(d) the operations of any other bodies corporate or persons dealing with capital market instruments.

(2) All rules formulated by the Authority shall take into account and be consistent with the objective of promoting and maintaining an effective and efficient securities market.

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.

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 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.

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 broker or dealer to meet his contractual obligations.

(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 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; and

(e) 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.

Part III – PROVISIONS RELATING TO SECURITIES EXCHANGES

19. Approval of securities exchange required

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

(2) Notwithstanding the requirement of subsection (1) any person who immediately before the commencement of this Act was carrying on business as a stock exchange shall be entitled to carry on such business without approval under this Act for a period of six months from such commencement provided that prior to the expiration of that period an application is made and approval granted under this Act.

(3) During the period referred to in subsection (2), the stock exchange shall be subject to all provisions of this Act except the requirement of subsection (1).

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 incorporated under the Companies Act, or such other association as may be approved by the Authority; or

(b) that the applicant meets the conditions set out in rules issued by the Authority.

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 exchange as—

(a) a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule;

(b) a proposal establishing or changing a fee or other charge; or

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

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

Provided that the Authority may summarily abrogate such exchange rules within thirty days of their implementation and require that the rules undergo the procedure prescribed in subsection (3) except that the summary abrogation shall not affect the validity of the rules while in force nor is it 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 member or a listed company, it shall within seven days give notice to the Authority in writing, giving particulars including the name of the person, the reason for and nature of the action taken.

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

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

Part IV – SECURITIES INDUSTRY LICENCES

23. Licences required

(1) No person shall carry on a business as a broker, dealer, investment advisor, unit trust, mutual fund or a representative of any of the foregoing, or hold himself out as carrying on such a business unless he is a holder of a valid licence issued under this Act.

(2) Notwithstanding subsection (1), any person who immediately before the commencement of this Act was carrying on a business that requires a licence under this Act shall be able to carry on such business without a licence under this Act for a period of six months from such commencement and if prior to the expiration of that period an application is made for a licence under this Act, until the licence is granted or finally refused or the application is withdrawn.

(3) During the period of six months referred to in subsection (2), any such person shall be subject to all provisions of this Act except the requirement under subsection (1).

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 one year after the date of issue thereof.

(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.

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) cancel, suspend or impose, restrictions or limitations on the licence granted to the person.

26. Revocation of licence

(1) The Authority may revoke a licence if it is satisfied that the licensed 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.

(2) In a case to which subsection (1) applies, the Authority, may instead of revoking a licence suspend the licence for a specific period or impose conditions or restrictions on the licence.

(3) The Authority shall not revoke or suspend or impose conditions or restrictions on a licence under subsection (1) or (2) without first giving such person an opportunity to be heard.

27. Register of licence holders

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.

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 in the prescribed form.

29. Licencing of brokers and dealers

(1) In granting licences as a broker or dealer to a body corporate, the Authority shall satisfy itself—

(a) that the applicant company is a member of a securities exchange approved under the Act;

(b) that the applicant is a company incorporated under the Companies Act:

(c) that the directors of the applicant company—

(i) have never been declared bankrupt;

(ii) have never been directors of a company that has been denied a licence as a broker or dealer;

(iii) have never been a company or a director of a company whose licence as a broker or dealer had been revoked by the appropriate authority;

(d) that at least one director and at least one employee who will be the chief employee of the applicant company, have satisfied such minimum entry requirements and have passed such examinations as may be prescribed.

(e) that the applicant company has lodged security in such sum as may be determined by the Authority or an equivalent bank guarantee with the securities exchange of which it is a member.

(2) In granting a licence as a broker or dealer to an individual, the Authority shall satisfy itself that the applicant—

(a) is a citizen of Kenya;

(b) is of sound financial standing;

(c) is a member of a securities exchange approved under this Act;

(d) has satisfied such minimum entry requirements and passed such examinations as may be prescribed; and

(e) has lodged security in such sum as may be determined by the Authority, or an equivalent bank guarantee with the securities exchange of which he is a member.

30. Exempt dealers

The following specified persons shall be exempt dealers—

(a) a person who carries on a business of dealing in securities only through the holder of a dealers licence for his own account;

(b) any person acting in the capacity of a manager or trustee under a unit trust scheme;

(c) any bank as defined in the Banking Act;

(d) an investment advisor whose dealing in securities is solely incidental to his carrying on the business of managing a portfolio of securities on behalf of a client; or

(e) any other person that the Minister may by regulation exempt, consistent with the objective of promoting the development of orderly, fair and efficient capital markets.

Part V – SECURITIES TRANSACTIONS AND REGISTERS

31. Transactions in securities

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

(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 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.

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) 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 – MISCELLANEOUS PROVISIONS

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 the 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 as is mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, he shall not deal in those securities if—

(a) he has obtained the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is himself precluded by subsection (1) or (2) 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 those subsections 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 subsections (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.

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

(a) trading in those securities is permitted on any securities exchange; and

(b) he knows, or has reason to believe, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.

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

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

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

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

(c) the information was not so communicated and such advice was not so given.

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

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

(a) he is an officer of that body corporate or of a related body corporate;

(b) he is a substantial shareholder in that body corporate or in a related body corporate, or

(c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsection (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 broker'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 conviction—

(i) in the case of a person being a body corporate, to a fine not exceeding one million and five hundred thousand shillings;

(ii) in the case of any other person, including a director or officer of a body corporate, to a fine not exceeding 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 person being a body corporate, to a fine not exceeding three 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 one 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.

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 for the purpose of this Act any information or any returns the contents of which is, 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 two hundred and fifty thousand shillings or to both.

(3) In addition to the penalties provided for elsewhere in this Act, any person guilty of an offence under this Act shall be liable to pay compensation to any person, who in a transaction for the purchase or sale of securities, entered into with the first mentioned person or with a person acting on his behalf, suffers loss, by reason of the difference between the price at which securities were transacted and the price at which they would likely have occurred if the offence had not been committed.

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

(a) the amount of the loss sustained by the person claiming the compensation; or

(b) in the event the harm has been on the market as a whole, the liability shall be the amount of illegal gains received or the loss averted as a result of the illegal action as 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.

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—

(a) refusing to grant a licence;

(b) imposing limitations or restrictions on a licence;

(c) cancelling or suspending a licence;

(d) refusing to admit a security to the official list of a securities exchange;

(e) suspending trading of a security on a securities exchange; or

(f) requiring the removal of a security from the official list of a securities exchange,

may appeal to the Minister 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 Minister may require the Authority to show cause for its action and may affirm or, after affording the Authority an opportunity of being heard, set aside the Authority's decision.

36. Power to make regulations

(1) The Minister may make regulations in respect of matters required by the Act to be prescribed or in respect of which regulations are authorized to be made.

(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 fiscal 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.