

**THE CAPITAL MARKETS AUTHORITY (AMENDMENT)
ACT, 2000**

No. 3 of 2000

Date of Assent: 1st August, 2000

Date of Commencement: 22nd August, 2000

**An Act of Parliament to amend the Capital Markets
Authority Act**

ENACTED by the Parliament of Kenya as follows :-

- | | |
|---|--------------------------------------|
| 1. This Act may be cited as the Capital Markets Authority (Amendment) Act, 2000. | Short title. |
| 2. The long title to the Capital Markets Authority Act, in this Act referred to as "the principal Act", is amended by inserting a comma and the word "regulating" immediately after the word "promoting". | Amendment of long title to Cap. 485A |
| 3. Section 1 of the principal Act is amended by deleting the word "Authority". | Amendment of section 1 of Cap. 485A |
| 4. Section 2 of the principal Act is amended - | Amendment of section 2 of Cap. 485A. |
| (a) by repealing the definitions of "dealer's representative" and "licence"; | |
| (b) by repealing the definitions of "agent", "investment adviser", "licensed person", "mutual fund" "representative", "securities", "securities exchange", "share" and "unit trust" and substituting therefor the following new definitions - | |
| <p align="center">"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;</p> | |

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

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

within the intent of this definition;
but the expression does not
include -

- (a) a bank as defined in
section 2 of the Banking
(Cap.488) Act;
- (b) a company or association
(Cap.487) registered under Part III of
the Insurance Act;
- (c) an advocate, accountant or
certified public secretary in
practice whose carrying
on of that business is solely
incidental to the practice of
his profession;
- (d) a trust corporation within
(Cap. 167) the meaning of the Trustee
Act;
- (e) a dealer or his employee
whose carrying on of that
business is solely incidental
to the conduct of his
business of dealing in
securities; or
- (f) a person who is the
proprietor of a newspaper
and holder of a permit
issued under the Books and
(Cap.111) Newspapers Act, where -

- (i) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
- (ii) the advice is given or the analyses or reports are issued or promulgated only through that newspaper;
- (iii) that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports; and
- (iv) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as

a newspaper proprietor;

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

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

- (a) the assets of the scheme belong beneficially to and are managed by or on behalf of the body corporate;
- (b) the investments of the participants are represented by shares of that body corporate;
- (c) the body corporate is 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

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

"securities" means -

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

Cap.488

"securities exchange" means a market, exchange, securities organisation or other place at which securities are offered for

sale, purchase or exchange, including any clearing, settlement or transfer services connected therewith;

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

"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.

- (c) in the definition of "broker", by deleting therefrom the word "broker" and substituting therefor the word "stockbroker";
- (d) by inserting the following new definitions in their proper alphabetical sequence -

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

"Board" means the Board of the Authority constituted under section 5;

"collective investment scheme" means includes an investment company, a unit trust, a mutual fund or other scheme which is incorporated or organised under the laws of Kenya which –

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

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

- (i) a body corporate incorporated under any law in Kenya relating to building societies, co-operative societies, retirement benefit schemes, credit unions or friendly societies;
- (ii) an arrangement where each of the holders of the shares is a body corporate in the same group as the promoter;
- (iii) an arrangement where each of the holders of the share is a

bona fide employee, former employee, wife, husband, widow, widower, child, stepchild of the employee or former employee of the directors or shareholders of a body corporate in the same group as the promoter;

(iv) arrangements where the receipt of contributions from the holders of shares in the collective investment scheme constitutes the acceptance of deposits in the course of a business which is a deposit-taking business for the purposes of the Banking Act;

(v) contracts of insurance;

(vi) occupational pension schemes;

"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;

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

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

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

"investment 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, take-overs, 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 in which the rights of participants are represented by shares of that company, which shares the company ensures can be sold by the shareholders on a securities exchange at a price related to the net assets of the scheme; ~ Cap.486

"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;

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

"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.

Amendment of
section 5 of
Cap.485A.

5. Section 5 of the principal Act is amended -

- (a) in subsection 3, by deleting the words "who, in his opinion, have experience and expertise in legal, financial, business or administrative matters", appearing at the end of paragraph (b);
- (b) by deleting subsection (4) and substituting therefor the following new subsections -
 - (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.
- (c) in subsection (8), by deleting the words "other than public officers in receipt of a salary".

Amendment
of section 6
of Cap.485A.

6. Section 6 of the principal Act is amended -

- (a) by deleting subsections (1) and (2) and substituting therefor the following new subsections -

(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.

(b) by inserting the following new subsection immediately after subsection (2) -

(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.

(c) by renumbering subsections (3),(4),(5) and (6) as (4), (5), (6) and (7) respectively.

7. Section 7 of the principal Act is amended by renumbering the existing subsection (2) as subsection (3), and inserting the following new subsection -

Amendment of
section 7 of
Cap.485A.

(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.

8. The principal Act is amended by repealing section 8 and replacing it with the following new section -

Replacement of
section 8 of
Cap.485A.

Appointment of
chief executive
of the Authority.

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

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

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

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

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

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

9. The principal Act is amended by repealing section 11 and replacing it with the following new section -

Replacement of
section 11 of
Cap.485A.

Objectives of
the Authority.

11.(1) The principal objectives of the Authority shall be -

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

in which the market participants are self regulatory to the maximum practicable extent;

- (d) the protection of investor interests;
- (e) the operation of a compensation fund to protect investors from financial loss arising from the failure of a 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;
- (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;
- (e) to grant a licence to any person to operate as a stockbroker, dealer or investment adviser, fund manager, investment bank or authorized securities dealer,

and ensure the proper conduct of that business;

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

- (j) conduct inspection of the activities, books and records of any persons approved or licensed by the Authority;
- (k) publish findings of malfeasance by any persons approved or licensed by the Authority, or any public company the securities of which are traded on a securities exchange;
- (l) suspend or cancel the listing of any securities or the trading of any securities for the protection of investors;
- (m) appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or public company the securities of which are traded on an approved securities exchange, if such action is deemed to be in the interest of the investors, at the expense of such collective investment scheme or company;
- (n) grant compensation to any investor who suffers pecuniary loss resulting from the failure of a 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 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 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.

Replacement of
section 12 of
Cap. 485A.

10. The principal Act is amended by repealing section 12 and replacing it with the following new section -

Power of
Authority to
issue rules,
regulations
and guidelines.

12.(1) Without prejudice to the generality of the powers conferred by section 11, the Authority 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;
- (c) proper maintenance of books, records, accounts and audits by all persons approved or licensed by the Authority and regular reporting by such persons to the Authority of their affairs;
- (d) the operations of any other bodies corporate or persons dealing with capital market instruments;
- (e) the procedure for the participation of foreign investors in the stock market;
- (f) collective investment schemes;
- (g) registered venture capital funds;
- (h) credit rating agencies;

- (i) the issue, transfer, clearing and settlement of securities;
- (j) securities clearing and settlement or depository organisations;
- (k) fund managers;
- (l) investment banks; and
- (m) authorized securities dealers.

(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

11. Subsection (2) of section 14 of the principal Act is amended in paragraph (a) by inserting the words "or such public company" immediately before the words "or any other person".

Amendment
section 14 of
Cap. 485A.

12. Section 18 of the principal Act is amended-

Amendment of
section 18 of
Cap. 485A.

- (a) in subsection (1), by deleting the word "broker" and substituting therefor the word "stockbroker";
- (b) in subsection (2) by inserting in paragraph (b) immediately after the word "under" the words "this Act as fines or penalties or under".
- (c) in subsection (2), by renumbering paragraph (e) as paragraph (f) and inserting the following new paragraph (e) -

- (e) interest deemed to accrue on the proceeds of a public issue or offer for sale of shares of a company listed or to be listed on an approved securities exchange, between the closing date and the date of dispatch of shares certificates or refund

cheques, to be determined at the rate prescribed by the Authority.

Replacement of section 19 of Cap.485A. **13.** The principal Act is amended by repealing section 19 and replacing it with the following new section -

Approval of securities exchange required.

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

Amendment of section 20 of Cap. 485A.

14. Section 20 of the principal Act is amended by-

- (a) by deleting the semi-colon at the end of subsection 2(a) and inserting the words "or as may be prescribed by the authority"
- (b) by inserting the following new subsections immediately after subsection 5 -
 - (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.

15. The principal Act is amended by repealing section 23 and replacing it with the following new section -

Replacement of section 23 of Cap.485A.

Licenses required. **23.**(1) No person shall carry on business as a securities exchange, stockbroker, dealer, investment adviser, fund manager, investment bank, authorized securities dealer, authorised 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 registered venture capital fund, collective investment scheme, central depository or credit rating agency unless he is approved as such by the Authority.

(3) A person approved by the Authority to carry out any business required by this Act to be approved shall comply with all requirements of the Authority and pay an annual fee to the Authority at such rate as the Authority may prescribe.

(4) Nothing in this section shall be construed as limiting the powers of the Authority to approve or license any other person operating in any other capacity which has a direct impact on the attainment of the objectives of this Act.

Amendment of
section 24 of
Cap.485A.

16. Section 24 of the principal Act is amended in subsection (6) by deleting the words "one year after the date of issue thereof" and substituting therefor the words "on the thirty-first day of December in each year".

Amendment of
section 25 of
Cap.485A.

17. Subsection (4) of section 25 of the principal Act is amended in subparagraph (ii) by deleting the word "cancel".

Amendment of
section 26 of
Cap.485A.

18. Section 26 of the principal Act is amended -

- (a) in subsection (1), by inserting the words "or approval", immediately after the word "licensed";
- (b) by inserting the following proviso at the end of subsection (1) -

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.

- (c) by deleting subsection (2) and substituting therefor the following new subsection -

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

- (d) by deleting subsection (3).

Amendment of
section 27 of
Cap.485A.

19. Section 27 of the principal Act is amended by renumbering the existing provision as subsection (2) and inserting the following new subsection (1) -

- (1) The Authority shall -
- (a) before the thirtieth day of April in each year, cause the names and addresses of all persons licensed during the previous 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.

20. The principal Act is amended in section 28 by deleting the words "in the prescribed form".

Amendment of section 28 of Cap.485A.

21. The principal Act is amended by repealing section 29 and replacing it with the following new section-

Replacement of section 29 of Cap.485A.

Licensing requirements.

29.(1) Before granting any licence or approval, the Authority shall satisfy itself -

- (a) that the applicant is a company incorporated under the Companies Act, with such minimum share capital as the Authority may prescribe or is duly constituted as a collective investment scheme;
- (b) that none of the directors of the applicant company-

- (i) has been declared bankrupt;
 - (ii) has been a director of a company that has been denied any licence or approval under this Act or equivalent legislation in any other jurisdiction;
 - (iii) has been a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority;
- (c) that at least one director and at least one employee who is the chief executive of the applicant company, have satisfied such minimum qualification requirements as may be prescribed;
- (d) in the case of a stockbroker, dealer or other person prescribed by the Authority that the applicant company has lodged security in such sum as may be determined by the Authority or an equivalent bank guarantee or bond with the

securities exchange of which it is a member or with the Authority or other person approved by the Authority as the case may be;

- (e) that the applicant has the necessary administrative capacity to carry on business for which the licence is required;
- (f) in the case of an application for a stockbroker's licence, that the applicant shall carry on business solely on the applicant's own behalf;
- (g) in the case of an application for a dealer's licence, that the applicant shall carry on business solely on the applicant's own behalf;
- (h) that none of the persons engaged or to be engaged in the position of executive director or other senior capacity –
 - (i) has previously been involved in the management or administration of an institution offering financial services whose licence has been revoked owing to any

failure on the part of the management; or

- (ii) has taken part in or been associated with any such business practices as would, or have, cast doubt on his competence or soundness of judgement.

(2) A licensed stockbroker or dealer may, on fulfilment of all requirements and payment of the admission fee approved by the Authority, be admitted as a member of a securities exchange.

(3) A stockbroker or dealer whose licence is not renewed under section 25, or whose licence is revoked under section 26 shall forthwith cease to be a member of the securities exchange.

Replacement
section 30 of
Cap.485A.

22. The principal Act is amended by repealing section 30 and replacing it with the following new section -

Procedure for
collective
investment
schemes.

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

(2) The promoters of a collective investment ~~scheme~~ that is proposed to be formed, ~~may~~ apply to the Authority for consent to register a collective investment

scheme upon complying with the requirements prescribed under this Act.

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

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

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

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

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

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

(7) During the period referred to in 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.

23 The principal Act is amended by inserting the following new section immediately after section 30 -

Insertion of
section 22A in
Cap. 485A.

Publication of
information
memorandum.

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

(2) Every information memorandum shall comply with such

requirements as may be prescribed by the Authority:

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

Cap.490

Amendment of
section 3 of
Cap.485A.

24. Section 31 of the principal Act is amended by deleting subsection (1) and inserting the following new subsections -

(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 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; or

(ii) it would be in the interest of the holders of ordinary shares of the company having regard to the prevailing conditions and all factors which are relevant in the circumstances to so authorise.

25. The principal Act is amended by deleting the words "MISCELLANEOUS PROVISIONS" appearing in the heading of Part VI and substituting therefor the words: "INSIDER TRADING"

Amendment of
Part VI of Cap
485A.

26. The principal Act is amended by inserting the following new section under Part VI immediately before section 33.

Insertion of
section 32A
in Cap. 485A.

Prohibition
against use of
unpublished
insider
information.

32A. (1) No insider shall -

- (a) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange on the basis of any unpublished price sensitive information; or
- (b) communicate any unpublished price sensitive information to any person, with or without his request for such information, except as required in the ordinary course of business or under any law; or
- (c) counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.

(2) Any insider, who deals in securities or communicates any information or consults any person dealing in securities in contravention of

the provisions of subsection (1) shall be guilty of insider trading.

Replacement of
section 33 of
Cap. 485A.

27. The principal Act is amended by repealing section 33 and replacing it with the following new section.

Insider trading
prohibited.

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

one of them and securities of the other.

(3) Where a person is in possession of any 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 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 the 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 purposes 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 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 purposes 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 completing 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.

28. The principal Act is amended by inserting the heading "PART VII - MISCELLANEOUS PROVISIONS" immediately after section 33.

Insertion of heading of Part in Cap. 485.

No. 3**Capital Markets Authority (Amendment)****2000**

insertion of
section 33A
in Cap. 485A.

29. The principal Act is amended by inserting the following new sections immediately after section 33 -

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

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

- (a) if a person's licence or approval is suspended under subsection (1) of section 26;
- (b) if a petition is filed, or a resolution proposed, for the winding up of a licensed person or if any receiver or receiver manager or similar officer is appointed in respect of the licensed person or in respect of all or any part of its assets;
- (c) if the Authority discovers (whether on an inspection or otherwise) or becomes aware of any fact or circumstance which, in the opinion of the Authority, warrants the exercise of the relevant power in the interests of investors:

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

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

- (a) appoint any competent person or persons (in this Act referred to as "a statutory manager") to assume the management, control and conduct of the affairs and business of a licensed person to exercise all the powers of a licensed person to the exclusion of its board of directors, including the use of its corporate seal;
- (b) remove any officer or employee of the licensed person who, in the opinion of the Authority, has caused or contributed to any contravention of any provision of this Act or any regulations made thereunder or to any deterioration in the financial stability of the licensed person or has been guilty of conduct detrimental to the interests of investors;
- (c) appoint a competent person familiar with the business of the licensed person to its

board of directors to hold office as a director who shall not be capable of being removed from office without the approval of the Authority other than by order of the High Court: -

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

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

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

of the licensed persons' customers or investors.

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

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

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

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

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

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

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

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

Prohibited
conduct to
be reported.

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

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

30. Section 34 of the principal Act is amended -

Amendment of
section 34 of
Cap. 485A.

(a) in section (1) by deleting paragraph (b) and substituting the following new paragraph -

“(b) furnishes or publishes for the purpose of this Act or in connection with an

issuer whose securities are listed or quoted to be listed on a securities exchange, or issued or to be issued to the public or a collective investment scheme, any information or return the contents of which are to his knowledge untrue or incorrect, or misleading because of material omissions; or”

- (b) in subsection (2) by deleting the words “two hundred and fifty thousand” and substituting therefor the words “one million and five hundred thousand”.

Amendment of
section 35 of
Cap. 485A.

31. Section 35 of the principal Act is amended -

- (a) in subsection (1) -
- (i) by deleting the word “cancelling” in paragraph (c) and substituting therefor the words “suspending or revoking”;
- (ii) by deleting the word “Minister” and substituting therefor the words “Capital Markets Tribunal”.
- (b) in subsection (2), by deleting the word “Minister” and substituting therefor the words “Capital Markets Tribunal”.

Insertion of
section 35 A
in Cap.485A.

32. The principal Act is amended by inserting the following new section immediately after section 35 -

Establishment
of the Capital
Markets
Tribunal.

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

- (a) a chairman who at the time of his appointment shall be an advocate of not less than seven years standing;
- (b) one lawyer having at least seven years experience in the commercial and corporate sector;
- (c) one accountant who shall have been in practice for a period of not less than seven years; 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 in commercial law.

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

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

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

chairman of the Tribunal shall be deemed to be issued by the Tribunal.

(10) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may admit to be heard on behalf of such party.

(11) The Tribunal shall sit at such times and in such places as it may appoint.

(12) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(13) Except as expressly provided in this Act or any rules made thereunder, the Tribunal shall regulate its own procedure.

(14) For the purposes of hearing and determining any cause or matter under this Act, the chairman and two members of the Tribunal shall form a quorum.

(15) A member of the Tribunal who has an interest in any matter which is the subject of the proceedings of the Tribunal shall not take part in those proceedings.

(16) Upon any appeal, the Tribunal may -

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority or any of its committees in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including an order, for costs, as it may deem just.

(17) Upon any appeal to the Tribunal under this section the *status quo* of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

(18) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be paid in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(19) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.

(20) Every certificate issued under subsection (19) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

(21) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto; and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

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

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

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

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

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

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

Replacement of
section 36 in
Cap. 485A.

33. The principal Act is amended by repealing section 36 and replacing it with the following new section-

Regulations.

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

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

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

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

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

Insertion of
sections 37 and
38 in Cap.485A.

34. The principal Act is amended by inserting the following new sections -

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

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

35. The principal Act is amended by inserting the following new section immediately after section 38 -

Insertion of
section 39 in
Cap. 485A.

Exemption from
Cap. 446. **39.** The provisions of the State Corporations Act shall not apply to the Authority.

36. The Unit Trusts Act is repealed.

Repeal of
Cap. 521.