

SPECIAL ISSUE

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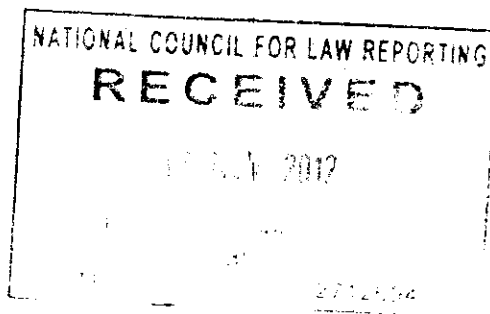
KENYA GAZETTE SUPPLEMENT

ACTS, 2012

NAIROBI, 26th October, 2012

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THE CAPITAL MARKETS (AMENDMENT) ACT

No. 35 of 2012

Date of Assent: 11th October, 2012

Date of Commencement: 26th October, 2012

AN ACT of Parliament to amend the Capital Markets Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows –

1. This Act may be cited as the Capital Markets (Amendment) Act, 2012.

Short title.

2. Section 8 of the Capital Markets Act in this Act referred to as the “principal Act” is amended by deleting subsection (1) and inserting the following new subsection –

Amendment to section 8 of Cap. 485A.

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

3. Section 12 of the principal Act is amended –

Amendment to section 12 of Cap.485A.

(a) in subsection (1) by deleting the words “the Authority in consultation with”;

(b) in subsection 2 –

(i) by deleting the words “by the Authority” and substituting therefor the words “under subsection (1)”;

(ii) by deleting paragraph (c).

Amendment to
section 13 of
Cap.485A.

4. Section 13 of the principal Act is amended by deleting subsection (3) and inserting the following new subsections –

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

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

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

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

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

- (a) it is desirable or expedient that the assistance requested should be provided in the interest of the public; or
- (b) the assistance shall assist the regulatory body in the discharge and performance of its functions.

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

- (a) pay the Authority any of the costs and expenses incurred in providing the assistance; and
- (b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a similar request for assistance from Kenya.

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

5. The principal Act is amended by inserting the following new section immediately after section 13A –

Insertion of section
13B of Cap.485A.

Authority may
investigate.

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

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

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

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

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

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

Insertion of section
24A of Cap.485A.

6. The principal Act is amended by inserting the following new section immediately after section 24 –

Criteria for
suitability.

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

- (a) financial status or solvency of the person;
- (b) educational or other qualifications or experience of the person, having regard to the nature of the functions which, if the application is granted, the person shall perform;
- (c) status of any other licence or approval granted to the person by any financial sector regulator;
- (d) ability of the person to carry on the regulated activity competently, honestly and fairly; and
- (e) reputation, character, financial integrity and reliability –
 - (i) in the case of a natural person, of that individual;
 - or

- (ii) in the case of a company, of the company, chairperson, directors, chief executive, management and all other personnel including all duly appointed agents, and any substantial shareholder of the company.

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

- (a) take into account whether the person —

- (i) has contravened the provision of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty, incompetence, or malpractice by persons engaged in transacting with marketable securities;

- (ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
- (iii) has taken part in any business practice which, in the opinion of the Authority, was fraudulent prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the person's methods of conducting business; or
- (iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that person; or
- (v) has acted in such a manner as to cast doubt on the person's competence and soundness of judgment;

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

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

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

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

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

- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
- (d) have regard to the state of affairs of any other business which the person carries on or purports to carry on.

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

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

Amendment to
section 29 of
Cap.485A.

7. Section 29 of the principal Act is amended in subsection (1) by deleting paragraphs (b) and (h).