

SPECIAL ISSUE

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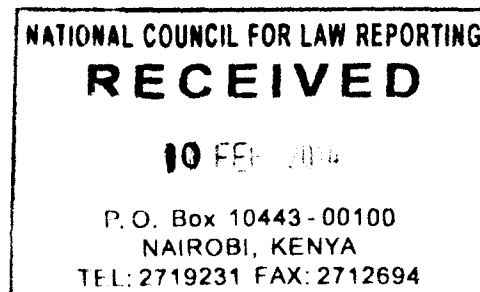
KENYA GAZETTE SUPPLEMENT

ACTS, 2013

NAIROBI, 27th December, 2013

CONTENT

Act—	PAGE
The Capital Markets (Amendment) Act, 2013	1351



THE CAPITAL MARKETS (AMENDMENT) ACT, 2013**No. 48 of 2013***Date of Assent: 24th December, 2013**Date of Commencement: 10th January, 2014***An Act of Parliament to amend the Capital Markets Act and
for connected purposes****ENACTED** by the Parliament of Kenya, as follows –

Short title. **1.** This Act may be cited as the Capital Markets (Amendment) Act, 2013.

Amendment
of section 2
of Cap.
485A. **2.** Section 2 of the Capital Markets Act, in this Act referred to as the “principal Act”, is amended -

(a) by deleting the definition of the word “agent” and substituting therefor the following new definition-

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

(b) in the definition of “collective investment scheme” by—

(i) deleting the words “which is incorporated or organized under the laws of Kenya” appearing immediately after the words “other scheme” and substituting therefor the words “whether or not established or organized in Kenya”;

(ii) deleting the phrase “occupational pension scheme” and replacing it with “retirement benefits scheme” in item (vi);

(c) in the definition of the word “dealer” by inserting the words “except exchange-traded derivatives contracts” immediately after the word “securities”;

(d) in the definition of the expression “dealing in securities” by inserting the words “except in exchange-traded derivatives contracts”—

(i) immediately after the word “securities” appearing in paragraph (a); and

- (ii) immediately after the word “securities” appearing in paragraph (b);
- (e) by deleting the definition of “derivatives dealer”;
- (f) by deleting the definition of “futures contract” and substituting therefor the following new definition-

“exchange-traded derivatives contract” means an agreement to buy or sell a particular security or other financial instrument or commodity for delivery or settlement in the future, at a price that is agreed upon when the contract is made, which obligates each party to the contract to fulfill the contract at the specified price and that may be settled by delivery, cash or offset at a derivatives exchange duly licensed by the Authority;
- (g) in the definition of “information memorandum” by inserting the words “and includes a short-form prospectus, a shelf prospectus, information notice, an offering memorandum in respect of asset backed securities and a supplementary prospectus” immediately after the word “public” appearing at the end of the definition;
- (h) in the definition of “investment adviser”, by deleting the phrase “by rules or regulations, determine” appearing in paragraph (5) and substituting therefor the word “prescribe”;
- (i) in the definition of the expression “over the counter” by inserting the words “except in exchange-traded derivatives contracts” immediately after the word “securities” ;
- (j) in the definition of the word “quotation” by–
 - (i) inserting the words “or a derivatives exchange” immediately after the words “securities exchange”; and
 - (ii) inserting the words “or a derivatives market” immediately after the words “securities market” wherever it occurs;
- (k) by deleting the definition of the word “securities” and substituting therefor the following new definition-

“securities” means –

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

but does not include –

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

- (l) by deleting the definition of “securities exchange” and substituting therefor the following new definition-

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

- (m) in the definition of “trading participant”, by deleting the phrase “licensee of the Authority” and substituting therefor the words “licensed person”;

- (n) by inserting the following new definitions in their proper alphabetical sequence-

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

“derivatives market” means a place at which, or a facility, whether electronic or otherwise, by means of which offers or invitations to sell, purchase or exchange-traded derivative contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange-traded derivative contracts, whether through that place, facility or otherwise, but

does not include—

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

“exchange-traded derivative contracts” means standardized type of securities or financial instruments which derive their value from the value of underlying assets, indices, or interest rates that are transacted on a licensed derivatives exchange;

“expert” in respect of a matter or an opinion, means a person whose profession, occupation, religious standing, expertise or reputation gives authority to a statement made by that person in relation to that matter or opinion;

“futures broker” means a body corporate admitted into the membership of a derivatives exchange and duly licensed by the Authority to engage in the business of trading in exchange-traded derivatives contracts as an agent for investors in return for a commission and on its own account;

“futures member” means a person admitted to the membership of a futures exchange in accordance with the Regulations made under the Act and rules of that derivatives exchange but does not denote a shareholder or an equity holder of that derivatives exchange;

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

“sophisticated investor” means—

- (a) a person who is licensed under this Act;
- (b) an authorized scheme or a collective investment scheme;
- (c) a bank, a subsidiary of a bank, insurance company, co-operative society, statutory fund, pension or retirement fund; or
- (d) an individual, company, partnership, association or a trustee on behalf of a trust which, either alone or with any associates on a joint account subscribes for

securities with an issue price as the Authority may prescribe from time to time;

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

Repeal and replacement of section 3 of Cap. 485A.

3. The principal Act is amended by repealing section 3 and substituting therefor the following new section-

Meaning of the term associate. **3.** For the purpose of this Act-

“associate”, in relation to –

(a) an individual, means –

- (i) a spouse, son, adopted son, step-son, son-in-law, daughter, adopted daughter, step-daughter, daughter-in-law, father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister or step-sister, sister-in-law, grand child or spouse of a grandchild; of that individual;
- (ii) any company in which that individual is a director or secretary, has a controlling interest or is the controlling interest;
- (iii) any company in which that individual, or any of the persons specified in subparagraph (i), has control of twenty per cent or more of the voting power on appointments to the board of directors or entitlement to dividends in the company, whether such control is exercised individually or jointly;

(iv) any employee of that individual; or

(b) a company, means another company in which the first mentioned company has control of not less than twenty *percent* of the voting power in that company,

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

Amendments to section 8

4. Section 8 of the principal Act is amended in subsection (3) by

2013

Capital Markets (Amendment)

No. 48

- (a) deleting the words “recommend to the President” and substituting therefor the word, “appoint”; and
- (b) deleting the words “for appointment” appearing immediately after the word “section”.

of Cap.
485A.

5. Section 10 of the principal Act is amended in subsection (1) by inserting the words “guidelines or notices” immediately after the word “regulations”.

Amendments
to section 10
of Cap.
485A.

6. Section 11 of the principal Act is amended—

Amendments
to section 11
of Cap.
485A.

- (a) in subsection (1) (b) by inserting the words “and derivatives market” immediately after the words “securities market” wherever they occur;
- (b) in subsection (3), by—
 - (i) inserting the words “or exchange-traded derivatives contracts” immediately after the word “securities” wherever it occurs in paragraph (cc) (iv);
 - (ii) deleting paragraph (d) and substituting therefor the following new paragraph—
 - (d) to issue guidelines and notices on all matters within the jurisdiction of the Authority under this Act;
 - (iii) inserting the words “derivatives broker” immediately after the word “stockbroker” appearing in paragraph (e);
 - (iv) inserting the words “derivatives exchange” immediately after the words “securities exchange” appearing in paragraph (f);
 - (v) inserting the following new paragraph immediately after paragraph (f)—
 - (ff) recognize any person duly licensed by a prescribed foreign authority to carry on any licensed activity in Kenya which requires a license or an approval under this Act;
 - (vi) inserting the words “or exchange-traded derivatives contracts” immediately after the words “securities” and inserting the words “derivatives exchange” immediately after the

- words “securities exchange” appearing in paragraph (p);
- (vii) deleting the word “rules” and substituting therefor the word “notices” in paragraph (v).

Amendments
to section 12
of Cap.
485A.

7. Section 12 of the principal Act is amended -

- (a) by deleting the words “Power of the Authority to issue rules, regulations and guidelines” appearing in the side note and substituting therefor the words “Power of the Minister to issue rules and regulations”;

(b) in subsection (1) by-

- (i) deleting the introductory paragraph and substituting therefor the following new paragraph—

“(1) The Minister shall formulate such rules and regulations as may be required to regulate—”;

- (ii) inserting the words “derivatives brokers” immediately after the word “stockbrokers” appearing in paragraph (b)(i);

- (iii) inserting the words “or exchange-traded derivatives contracts” immediately after the word “securities” appearing in paragraph (b)(ii); and

- (iv) inserting the words “or a derivatives exchange” immediately after the words “or a futures exchange” appearing in paragraph (b)(iii);

- (v) inserting the following new paragraph immediately after paragraph (h) -

(hh) the issue and subsequent trading in Kenya, of offers approved outside Kenya;

- (vi) inserting the following new paragraphs immediately after paragraph (n)—

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

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

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

(c) in subsection (2) by deleting the words "rules, regulations and guidelines" and substituting therefor the words "rules and regulations".

8. The principal Act is amended by adding the following new section immediately after section 12-

Insertion of
section 12A
in Cap.
485A.

Authority to issue
guidelines and
notices.

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

(a) for the regulation of capital markets activities and products subject to the assessment of the extent to which they appropriately cater for-

(i) efficient, orderly and fair operation of the segment, product or intermediaries;

(ii) adequate provisions for risk management and controls on market misfeasance;

(iii) the proper protection of investor interests and appropriate level of disclosure; and

(iv) a facilitative environment for transparent operations;

(b) the standards to be adhered to by regulated persons in the conduct of their business;

(c) the attainment of any objectives of the

Authority;

- (d) any matter relating to any power, duty or function conferred or imposed on the Authority under this Act or any other legislation administered by the Authority;
- (e) the supervision of persons licensed by a prescribed foreign regulatory authority; and
- (f) the operation of any provision of this Act or any other legislation vesting responsibility in the Authority.

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

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

Amendments
to section 18
of Cap.
485A.

9. Section 18 of the principal Act is amended -

- (a) in subsection (2) by deleting paragraph (ee); and
- (b) in subsection (3) by deleting the word “Authority” and substituting therefor the words “Investor Compensation Fund Board” wherever it occurs.

Amendments
to section 19
of Cap.
485A.

10. Section 19 of the principal Act is amended by inserting the words-

- (a) “or a derivatives exchange” immediately after the words “securities exchange” appearing in the first line;
- (b) “or a derivatives market” immediately after the words “securities market”; and
- (c) “or a derivatives exchange” immediately after the words “securities exchange” appearing in the third line.

Amendments
to section 20

11. Section 20 of the principal Act is amended—

- (a) in subsection (1) by inserting the words “or derivatives exchange” immediately after the words “securities exchange”;
- (b) in subsection (2) by—
- (i) inserting the words “or derivatives exchange” immediately after the words “securities exchange”; and
 - (ii) inserting the following new paragraph immediately after paragraph (b)-
- (c) the applicant has made and adopted rules in compliance with the Act and any Regulations made thereunder;
- (c) in subsection (4) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”;
- (d) in subsection (5) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”;
- (e) in subsection (6) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”;
- (f) in subsection (7) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”; and
- (g) in subsection (8) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”.

of Cap.
485A.

12. Section 21 of the principal Act is amended-

- (a) in subsection (1) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”;
- (b) in subsection (2) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”;
- (c) in subsection (3) by inserting the words “or a

Amendments
to section 21
of Cap.
485A.

derivatives exchange” immediately after the words “securities exchange” wherever they occur;

- (d) in subsection (6) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”.

Insertion of new sections 21A, 21B and 21C in Cap. 485A.

13. The principal Act is amended by inserting the following new sections immediately after section 21 —

Securities exchange to make rules.

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

Submission of rules to Authority.

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

Authority may abrogate rules.

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

Amendments to section 22 of Cap. 485A.

14. Section 22 of the principal Act is amended-

- (a) in subsection (1) by inserting the words “or a derivatives exchange” immediately after the words “securities exchange”;
- (b) in subsection (2) by inserting the words “or derivatives exchange” immediately after the words “securities exchange” wherever they occur; and
- (c) in subsection (3) by inserting the words “or a derivatives exchange fails to act against a futures member” immediately after the words “a listed company”;

Insertion of sections 22A, 22B, 22C, 22D, and 22E in Cap. 485A.

15. The principal Act is amended by adding the following new sections immediately after section 22-

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

Directions to a securities exchange and a futures exchange.

- (a) to ensure-
 - (i) the fair, transparent and efficient operation of a securities market or derivatives market;
 - (ii) the fair, transparent and effective clearing and settlement of transactions in exchange-traded derivatives contracts or securities transactions;
 - (iii) the integrity and proper management of systemic risks in securities markets or derivatives market; or
 - (iv) a fair and proper governance structure of the securities exchange or derivatives exchange;
- (b) in the interest of the public; or
- (c) for the protection of the interests of investors.

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

- (a) the clearing or settlement of securities or exchange-traded derivatives contracts and the making of adjustments to contractual obligations arising out of those securities transactions or exchange-traded derivatives contracts;
- (b) the trading or the termination of trading on or through the facilities of that securities exchange or derivatives exchange;
- (c) the manner in which a securities exchange carries on its business, including the reporting of off-market trades by trading participants of the securities exchange; or

- (d) any other matter that the Authority may consider necessary for the effective administration of this Act.

Powers of the Authority to intervene in the operations of securities and futures exchanges.

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

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

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

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

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

- (a) terminating trading on a securities market or a derivatives market or trading of a specific security or a exchange-traded derivatives contract;
- (b) suspending trading on a securities market or derivatives market or trading of a specific security;

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

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

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

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

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

Futures contract to be approved by the Authority.

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

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

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

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

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

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

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

Fixing of position
and trading limits
in futures contracts.

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

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

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

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

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

Default process of a clearing house to take precedence over laws of insolvency.
No. 4 of 2000.

22E. The provisions in respect of a default process and the precedence of the default process over the laws of insolvency in relation to a central depository under the Central Depositories Act shall apply to a clearing house of a securities or a derivatives exchange.

Amendments to section 23 of Cap. 485A.

16. Section 23 of the principal Act is amended-

- (a) in subsection (1) by-
 - (i) inserting the words “derivatives broker, REIT manager, trustee” immediately after the word “stockbroker”;
 - (ii) deleting the word “derivatives dealer” appearing immediately after the words “investment bank”;
- (b) in subsection (2) by inserting the words “or derivatives exchange” immediately after the words “securities exchange”.

Amendments to section 24 of Cap. 485A.

17. Section 24 of the principal Act is amended-

- (a) in subsection (5) by deleting the words “or renew” appearing immediately after the word “grant”;
- (b) by deleting subsection (6); and
- (c) by deleting subsection (7) and substituting therefor the following new subsection-

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

Repeal of section 25 of Cap. 485A.

18. The principal Act is amended by repealing section 25.

Amendments to section 25A of Cap. 485A.

19. Section 25A of the Principal Act is amended by—

- (a) inserting the words, “rules, guidelines, notices or directions” immediately after the word “regulations” appearing in the

introductory paragraph of subsection (1);

- (b) deleting the words “in such amounts as may be prescribed” appearing immediately after the word “penalties” in subsection (1)(a)(vi) and substituting therefor the words “not exceeding ten million shillings”;
- (c) deleting the words “as such amounts as may be prescribed” appearing immediately after the word “penalties” in subsection (1)(b)(iv) and substituting therefor the words “not exceeding five million shillings”;
- (d) inserting the following new subsections immediately after subsection (4)—

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

(6) The financial penalties with respect to—

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

20. The principal Act is amended by repealing section 26 and substituting therefor the following new sections—

Repeal and
replacement
of section 26
of Cap.
485A.

Suspension or
revocation of a
licence.

26. (1) The Authority may suspend or revoke a license, for such period or until the occurrence of such

event as the Authority may specify, if a licensed person—

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

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

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

(3) The Authority shall, at the expiry of the suspension period specified under subsection (2), lift

the suspension or revoke the license, as the Authority considers appropriate.

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

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

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

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

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

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

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

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

- (a) require the licensed person to transfer to its client, records relating to client property or the affairs of the client held at any time for the client, in such manner, as the Authority may specify in the notice; or
- (b) permit the licensed person, subject to such conditions as the Authority may specify in the notice, to-

Effect of revocation
of a licence

- (i) in case of a restriction or suspension, carry on the essential business operations for the protection of the interests of clients during the period of restriction or suspension; or
- (ii) in case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation.

Amendments
to section 27
of Cap.
485A.

21. Section 27 of the principal Act is amended in subsection (1) by –

- (a) deleting the words “during the current year” appearing in paragraph (a); and
- (b) inserting the words “suspension or” immediately before the word “revocation” and inserting the words “suspended or” immediately before the words “revoked” appearing in paragraph (b).

Amendments
to section 29
of Cap.
485A.

22. Section 29 of the principal Act is amended -

- (a) in subsection (1) by deleting the words “derivatives dealer licenses” appearing in paragraph (gg) and substituting therefor the words “derivatives broker licences”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection –
 - (2) A securities exchange or a derivatives exchange shall admit an applicant for a stockbroker, dealer or derivatives broker license if the applicant—
 - (a) fulfils all the requirements imposed by the Authority and the relevant securities exchange, derivatives exchange or any self-regulatory organization; and
 - (b) pays an admission fee which has been approved by the Authority.
- (c) in subsection (3) by deleting the words “a derivatives dealer” and substituting therefor the words “a derivatives broker;” and
- (d) by deleting subsections (4), (5) and (6) and substituting therefor the following new subsections-

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

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

Provided that the provisions of this subsection shall not apply—

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

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

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

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

(6) The Authority shall, in determining whether a person has direct or indirect control or beneficial entitlement for the purposes of subsection (4) and (5), have regard to whether that person is an associate or party to any contract, arrangement or understanding between persons that may allow for control to be exercised directly or indirectly in relation to the company.

(e) in subsection (7) by inserting the following new paragraphs immediately after paragraph (c)—

(d) derivatives broker;

(e) such other class of licensee as may be prescribed by the Authority by notice in the Gazette.

Amendments
to section 30
of Cap.
485A.

23. Section 30 of the principal Act is amended in subsection (10) by inserting the words “rules, guidelines or notices” immediately after the word “regulations”.

Insertion of
Part IVA and
IVB in Cap.
485A.

24. The principal Act is amended by inserting the following new Parts immediately after Part IV—

PART IVA—PUBLIC OFFERS OF SECURITIES

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

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

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

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

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

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

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

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

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

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

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

- (a) restricted to sophisticated investors; or
- (b) directly communicated to a prescribed category and number of persons,
submit a short-form prospectus to the Authority for approval.

Restricted public offers.

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

- (a) in respect of a restricted public offer of securities—
 - (i) where the minimum amount which may be paid under the offer of securities is not less than such amount as the Authority may prescribe from time to time; or

Filing of information notice.

(ii) where the securities are denominated in such an amount as the Authority may prescribe from time to time;

(b) in the case of any issue or offer exempted from issuing a prospectus or a short-form prospectus, except in respect of asset-backed securities.

Criminal liability for a defective prospectus.

30D.(1) A person who –

(a) makes a false, misleading or deceptive statement in a prospectus; or

(b) omits information or a statement from a prospectus which is required under this Act to be included,

commits an offence and shall be liable on conviction–

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

(ii) in the case of a company, to a fine not exceeding thirty million shillings;

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

(a) the statement was immaterial; or

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

Compensation for false or misleading prospectus.

30E. (1) This section applies to–

(a) an issuer of securities to which a prospectus relates;

(b) where the issuer is a body corporate,–

(i) each person who is a director of that body corporate at the time when the prospectus is published; and

- (ii) each person who has given his consent to be named and is so named in the prospectus as a director or has agreed to become a director of that body corporate either immediately or at a future time;
- (c) each person who accepts, and is stated in the prospectus or supplementary prospectus as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;
- (d) the offeror of the securities, where the offeror is not the issuer;
- (e) where the offeror is a body corporate, but is not the issuer and is not making the offer in association with the issuer, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published; and
- (f) each person not falling within paragraphs (a) to (e) who has authorized the contents of, or of any part of, the prospectus or supplementary prospectus.

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

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

- (a) under subsection (1)(a) or (b), unless the issuer has made or authorized the offer in relation to which the prospectus or supplementary prospectus is published; or
- (b) under subsection (1)(b), (c), (e) or (f), if such prospectus or supplementary prospectus is published without his or her knowledge or

consent and on becoming aware of its publication, he or she gives reasonable notice to the public and to the Authority that the prospectus or supplementary prospectus was published without his knowledge or consent.

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

Disclosure obligations.

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

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

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

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

Power of the Authority to issue directions to issuers.

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

- (a) it is desirable to protect members, other than holders of securities or investors in asset backed securities or other listed securities;
- (b) a listed company is in breach of its listing agreement;

- (c) a listed company is contravening, has contravened or is about to contravene any provision or requirement under this Act;
- (d) a listed company has failed to comply with any provision of or requirement under this Act or rules of its listing exchange;
- (e) a listed company has furnished the Authority with false, inaccurate or misleading information;
- (f) there is a breach of the listing agreement in respect of any other securities;
- (g) an issuer or other obligated party has furnished the Authority with false, inaccurate or misleading information; or
- (h) an issuer or offeror has contravened or is about to contravene a provision of this Act,
 - issue directions to an issuer or offeror of an approved offer or in the case of other listed securities to the responsible or relevant party—
 - (i) to cease and desist from the breach;
 - (ii) to do or not to do any matter as specified; or
 - (iii) with regard to any other matter that the Authority may consider necessary.

PART IVB –ASSET BACKED SECURITIES

Interpretation.

30H. For the purposes of the Part-

“asset backed securities” means –

- (a) any securities including promissory notes but does not include shares or entitlements under a collective investment scheme;
- (b) any rights or interests, debentures or certificates evidencing the legal, equitable or beneficial interest or entitlement of its holder to a share of the assets of a special purpose

- vehicle or to entitlement to payment from such assets where payments or distributions of capital, income, principal or interest to investors accrue principally from the assets of the special purpose vehicle as a consequence of the establishment or operation of a securitization transaction; and
- (c) any other right, interest, instrument of security or class of securities prescribed to be asset backed securities;

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

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

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

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

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

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

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

“offering memorandum” means any a notice, circular, material, advertisement, publication or other invitation offering for subscription or purchase of any asset backed securities in restricted or limited restricted offers;

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

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

- (a) any originator or seller of the assets of the securitisation trust;
- (b) any professional investor;
- (c) a bank;
- (d) an insurance company;
- (e) a pension fund or a retirement benefit fund;
- (f) a corporation or authority which meets the asset tests for a professional investor;

- (g) the Central Bank;
- (h) the Government; and
- (i) any other person prescribed to be a qualified investor;

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

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

“securitisation arranger” means a person, who is appointed by the trustee under section 30O from amongst persons who are not employees of the originator or seller or who are acting solely in the capacity of a legal adviser or the auditor of the originator or the seller or who sponsor or assist in-

- (a) the formation of a securitisation trust;
- (b) the preparation of the structure of a securitisation transaction;
- (c) its financial or cash flow models; or
- (d) a prospectus or an offering memorandum in asset backed securities;

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

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

- (a) sale;
- (b) transfer or assignment of assets;

- (c) appointment of a trustee;
- (d) establishment of a trust;
- (e) appointment of a servicer; or
- (f) entering into all or any arrangements, necessary or desirable to provide any structural or credit support or manage risks or other arrangements to operate or give effect to the securitisation transaction or issue or offer of asset backed securities;

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

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

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

- (a) the day to day administration functions of the cash flow of the securitised assets;
- (b) the ongoing relationship with any obligor;
- (c) the provision of service to obligors;
- (d) cash management;
- (e) collection and remission of funds to the trustee; or
- (f) the conduct such other activities as are specified in the transaction documents,

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

“special purpose vehicle” means a securitisation trust established in accordance with a trust deed subject

to the laws under which asset backed securities are issued;

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

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

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

Restrictions on issues, offers etc. of asset backed securities.

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

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

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

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

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

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

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

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

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

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

Form of asset backed securities to be offered.

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

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

Nature of assets that may be sold, transferred or assigned.

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

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

Origination of assets for sale, transfer or assignment.

- (a) the direct origination of the assets into the securitisation trust, or

- (b) the sale, transfer or assignment of the assets to the trustee to be held under the terms of the securitisation trust in a manner which constitutes a true sale according to the laws of Kenya in relation to the particular type of asset, the laws governing the transaction or the jurisdiction or location of the assets.
- (2) Assets may be transferred to a securitisation trust by more than one seller or originator:

Provided that-

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

Trustees.

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

(2) A trustee shall -

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

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

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

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

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

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

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

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

Appointment
and liability
of
securitisation
manager.

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

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

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

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

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

Securitisation arranger. **300.** (1) A trustee may appoint a securitisation arranger in accordance with the transaction documentation.

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

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

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

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

(3) Where-

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

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

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

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

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

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

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

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

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

Classification of
issues or offers of
asset backed
securities.

securities:

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

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

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

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

(8) The Authority may make regulations prescribing the-

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

Conversion of
restricted or
unrestricted offers.

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

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

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

2013

Capital Markets (Amendment)

No. 48

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

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

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

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

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

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

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

- (a) include any statement made in or any representation or warranty included in any prospectus or offering memorandum, transaction document or made to any credit rating agency in connection with the rating of any asset backed securities or the review of such a rating and includes any omission; and

Content of the prospectus, offering memorandum or information notice.

Secondary sales or transfer of asset backed securities.

Obligations applicable to restricted offers.

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

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

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

(4) The powers of the Authority to –

(c) make an application to court in case of unfair prejudice under section 33C; or

(d) require production of records and documents under section 33D;

(e) issue a direction under section 30G,

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

Obligation to
conduct due
diligence.

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

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

- (a) made such inquiries that were reasonable in the circumstances; and
- (b) believed, on reasonable grounds, that the statement, representation, warranty or omission was not misleading, deceptive or material.

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

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

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

Rating requirement and obligations of credit rating agencies.

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

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

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

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

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

General disclosure obligations.

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

Trustee to file a summary of transferred assets.

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

- (a) a summary of the assets transferred which discloses the nature and the number of assets transferred;
- (b) details of the consideration for sale, transfer or assignment;
- (c) details of the nature of the sale, transfer or assignment; and
- (d) such other information as the Authority may prescribe.

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

Securitisation requirements.

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

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

- (a) the application for approval to issue or offer asset backed securities;
- (b) the inclusion or exclusion from the definition of assets;
- (c) obtaining prior consent of another regulator, if required, in respect of the sale, transfer or assignment of assets or the participation in a

securitisation transaction;

- (d) the form or structure of a special purpose vehicle and documentation requirements;
- (e) the classification of issues or offers with respect to unrestricted, restricted or limited restricted issues or offers and the requirements in respect of each classification;
- (f) the conversion of issues or offers from one classification to another;
- (g) the issue of orders to stop a proposed issue or a restricted offer of asset backed securities;
- (h) the nature of assets that may be originated into a securitisation trust or be sold, transferred or assigned to a trust based on the type or characteristics of the asset or the specific transaction;
- (i) the preparation of reports, accounts and financial statements;
- (j) rating requirements;
- (k) the obligations and liabilities of credit rating agencies;
- (l) the registration of details of transfer of assets;
- (m) the content of the prospectus or offering memorandum as the case may be to be published in connection with the issue or offer of asset backed securities and the requirements for supporting data and verification;
- (n) the initial, continuing and ongoing disclosure, audit and compliance statements and provision of data on the performance of assets;
- (o) civil liability regimes for offering memoranda and prospectus;

- (p) the filing of reports and information;
- (q) access to reports and information, inspection, copying and fees payable in relation thereto;
- (r) the appointment, removal, liability and regulation of a securitisation arranger, an originator, a seller, a servicer, a trustee, a securitisation manager, an auditor and any other party involved in or associated with the promotion, management or operation of a securitisation transaction or proposed securitization;
- (s) the imposition of economic sanctions and the issuing of prohibition orders in respect of parties associated with a securitisation transaction;
- (t) the rights of investors in asset backed securities and requirements for trust deeds and transaction documents including the powers and obligations of trustees, the holding of meetings and voting rights and the obligations of other parties;
- (u) fees payable in respect of making an application, the filing, lodging or inspection of any documents or reports filed or lodged with the Authority and in respect of the provision of copies of such documents and reports;
- (v) listing on a securities exchange;
- (w) the provision of data, including pricing on post issuance trading;
- (x) takeover offers in respect of listed asset backed securities; and
- (y) advertisements,.

Deletion of
section 30A
of Cap.
485A.

25. The principal Act is amended by deleting section 30A.

2013

Capital Markets (Amendment)

No. 48

26. Section 31 of the principal Act is amended by inserting the following new subsection immediately after section (7) -

Amendment
to section 31
of Cap.
485A.

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

27. The principal Act is amended by repealing Part VI and substituting therefor the following new Part-

Insertion of
new Part
VIA in Cap.
485A.

**PART VI- INSIDER TRADING AND OTHER MARKET
ABUSES**

Application.

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

(2) For the purposes of this Part, -

(f) securities are “price-affected securities” in relation to inside information if the information is likely to, if made public, materially affect the price of the securities;

(g) information shall be treated as relating to an issuer of securities where it may affect the business prospects of the company;

(h) “insider” means a person in possession of inside information.

Insider trading.

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

(a) encourages another person, whether or not that other person knows it, to deal in securities or their derivatives which are price-affected securities in relation to the information in the possession of the insider, knowing or having reasonable cause to believe that the trading would take place; or

(b) discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another

person.

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

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

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

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

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

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

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

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

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

Penalty for insider trading.

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

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

Market manipulation.

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

commits an offence.

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

False trading and
market rigging.

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

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

commits an offence.

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

- (a) enters into or carries out, directly or indirectly, any transaction for the sale or

purchase of securities which does not involve a change in the beneficial ownership of the securities, or offers to do so; or

- (b) offers to sell securities at a price which is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make an offer to buy the same or substantially the same number of securities.

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

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

commits an offence.

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

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

Fraudulently inducing trading in securities.

Use of manipulative devices.

commits an offence.

False or misleading statements inducing securities transactions.

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

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

commits an offence.

Liability to pay damages.

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

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

Penalty for insider trading and market abuse.

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

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

million shillings and payment of twice the amount of the gain made or loss avoided.

28. Section 33A of The principal Act is amended-

- (a) in subsection (3) by deleting the word “six” and substituting therefor the word “twelve”;
- (b) in the proviso appearing at the end of subsection (5B) by deleting the word “six” and substituting therefor the word “twelve”; and
- (c) in subsection (6) by deleting the words “and all interested parties” and substituting therefore the words “the shareholders of the licensed person which has been placed under statutory management and any other person whom the Authority may direct in writing”.

Amendments
to section
33A of Cap.
485A.

29. The principal Act is amended by deleting section 33C and substituting therefor the following new sections—

Amendments
to section
33C of Cap.
485A.

Remedy for unfair
prejudice

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

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

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

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

- (b) restraining the carrying out of the act or conduct;
- (c) requiring the company to bring in its name,

proceedings against the persons on such terms as the Court may impose;

- (d) appointing a receiver or manager for the whole or part of the property or business of the company and may specify the powers and duties of the receiver or manager;
- (e) imposing such conditions as the Court may consider fit whether for regulating the conduct of the affairs of the company in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the capital of the company or otherwise.

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

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

(4) A company shall not, where an order under

this section has the effect of altering its constitution, without the leave of the Court, make any further alteration to the constitution which is inconsistent with the order.

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

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

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

- (i) the business of a listed company, an entity whose securities have been offered to the public or the activities or operations of any special purpose vehicle or the arrangements in respect of any securitisation transaction involving listed asset backed securities has been or is being conducted —
 - (A) with the intent to defraud its creditors, creditors of another person or creditors of any securitisation trust, special purpose vehicle or investors in any listed securities for a fraudulent or unlawful purpose;
 - (B) in a manner prejudicial to any of its members or to investors in any listed securities;

Powers of the Authority to demand for production of records and documents.

(C) by a company, an entity or a special purpose vehicle which was formed for a fraudulent or unlawful purpose; or

(D) by persons who have, in relation to the formation, management or operation of the company, entity or special purpose vehicle been found guilty by a Court for fraud, misfeasance or other misconduct towards the company, entity or special purpose vehicle, its members or the investors in any listed securities; or

(ii) the members of a company or investors in a listed or publicly offered securities have not been given all the information relating to its affairs that they might reasonably expect,

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

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

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

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

(a) take copies or extracts;

(b) demand an explanation from that person, or any other person who is a present or past officer of the company, or is or was at any time employed by the company or other

relevant person; or

- (a) require, if the records or documents are not produced, the person who was required to produce them to give an explanation for failing to produce the records or documents.

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

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

Winding up.

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

Cap. 486

30. Section 34 of the principal Act is amended by deleting subsections (2), (3), (4) and (5).

Amendment
of section 34
of Cap.
485A.

31. The principal Act is amended by repealing section 34A and substituting therefor the following new sections –

Amendments
to section
34A of Cap.
485A.

Offences and
penalties.

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

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

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

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

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

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

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

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

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

(6) The discretion conferred on the Authority to levy financial penalties or to impose any other sanctions under this Act may be exercised separately or cumulatively, and the imposition of such penalties or

sanctions shall not, in any circumstance, prejudice the right to any other legal proceedings that may be vested in the Authority.

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

32. The principal Act is amended by adding the following new section immediately after section 34A-

Insertion of section 34B in Cap. 485A.

Compounding of offences.

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

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

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

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

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

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

Compensation Fund.

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

Amendments
to section 36
of Cap.
485A.

33. Section 36 of the principal Act is amended by-

- (a) deleting the word “Regulations” appearing in the side note and substituting therefor the word “Directions and submission of reports”;
- (b) deleting subsection (1); and
- (c) renumbering subsections (2), (3) and (4) as subsection (1), (2) and (3) respectively.

Insertion of
new section
36A in Cap.
485A.

34. The principal Act is amended by inserting the following new sections immediately after section 36—

Exemption of
existing securities
exchange.

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

- (a) have an issued and paid up share capital of a minimum of five hundred million shillings only;
- (b) make arrangements for the efficient and effective clearing and settlement of transactions effected through the exchange and its clearing house, and for the management of settlement risk;
- (c) implement an effective and reliable infrastructure to facilitate the trading of derivatives listed on the exchange;
- (d) formulate rules for the listing of derivatives

contracts, for trading, clearing and settlement on the exchange and its clearing house, and for dispute resolution and for compensation of investors, and will have submitted these for approval by the Authority.

(2) At the end of the period referred to in subsection (1), a securities exchange shall be required to comply with all the requirements governing a derivatives exchange.

(3) During the period referred to in subsection (1), and notwithstanding any other provisions of this Act and any regulations made thereunder, all trading participants who are or who become trading participants of such exchange shall be entitled to be derivatives brokers subject only to complying with the licensing requirements for a trading participant subsisting on the date this section comes into force.

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