CHAPTER 485A

CAPITAL MARKETS ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

CAPITAL MARKETS AUTHORITY RULES, 1992

ARRANGEMENTS OF RULES

CAPITAL MARKETS AUTHORITY RULES, 1992

[L.N. 429/1992, L.N. 286/1996, L.N. 60/2002, L.N. 87/2002, L.N. 125/2002.]

PART I – PRELIMINARY

1. Citation

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

PART II – RULES RELATING TO SECURITIES EXCHANGE

2. to 8. *Repealed by L.N. 125/2002, r. 81.*

PART III – LISTING RULES

9. *Repealed by L.N. 125/2002, r. 81.*

PART IV – KEEPING OF BOOKS AND RECORDS BY BROKERS AND DEALERS

10. to13. *Repealed by L.N. 125/2002, r. 81.*

PART V —

14. to 15. *Repealed by L.N. 125/2002, r. 81.*

PART VI – INVESTMENT ADVISERS

17. to 19. *Repealed by L.N. 125/2002, r. 81.*

PART VII – PRIVATE TRANSACTIONS

20. & 21. *Repealed by L.N. 125/2002, r. 81.*

PART VIII – PUBLIC COMMUNICATION

22. *Repealed by L.N. 125/2002, r. 81.*

PART IX – INVESTORS COMPENSATION FUND

23. to 26. *Repealed by L.N. 125/2002, r. 81.*

PART X – SHAREHOLDERS COMPLAINTS

27. & 28. *Repealed by L.N. 125/2002, r. 81.*

PARTS XI – PRIMARY ISSUE DISCLOSURE

29. to 40. *Repealed by L.N. 60/2002, r. 24.*

PARTS XII – TAKE OVERS AND MERGERS

42. to 53. *Repealed by L.N. 60/2002, r. 24.*

PART XIII – BLOCK SALES

54. to 57. *Repealed by L.N. 125/2002, r. 81.*

SCHEDULE

[Rule 42.]

TAKE-OVER OFFERS

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

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shall state that, except in so far as it and all other take-over offers made under the take-over scheme may be totally withdrawn and every person released from any obligation incurred thereunder, it will remain open for acceptance by the offeree for at least twenty-one days from the date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

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

(3) The offer shall state—

(a) whether or not the offer is conditional upon acceptance of offers made under the take-over scheme being received in respect of a minimum percentage of share and, if so, that percentage;

(b) if the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of payment; and

(c) if the shares are to be acquired for a consideration other than cash, the period within which the offeree will receive that consideration.

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

(a) a date not being a date later than sixty days after the date of the despatch of the offer or such later date as the registrar may in a competitive situation or in special circumstances allow as the latest date on which the offeror company can declare the offer to have become free from that condition; and

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

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

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

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

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

2. (1) The statement shall—

(a) specify the names, descriptions addresses of all the directors of the offeror company;

(b) contain a summary of the principal activities of the offeror company;

(c) specify the number and description and amount of marketable securities in the offeree company held by or on behalf of the offeror company, or if none are so held contain a statement to that effect;

(d) if the shares are to be acquired for a consideration which consists of shares or debentures in the offeror company or in a company which is by virtue of paragraph 42(4) deemed to be related to the offeror company—

(i) set out the reports which, if the statement were a prospectus issued on the date on which notice of the take-over scheme is given to the offeree company, would be required to be set out in it under paragraph 19 in Part II of the Third Schedule of the Companies Act (Cap. 486) and Part XII of these Rules;

(ii) specify details of any alterations in the capital structure of the offeror company or of any subsidiary of the offeror company during the period of five years immediately preceding the date on which notice of the take-over scheme is given to the offeree company and particulars of the source of any increase in capital;

(e) if the shares are to be acquired for a consideration other than wholly in cash or other than for a consideration such as is referred to in sub-paragraph (d) contain such information and details as to the consideration as the Registrar requires.

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

(3) If the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be, made to secure payment of the cash consideration and, if no such arrangements have been or will be made, shall contain a statement to that effect.

(4) The statement shall set out—

(a) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any company which is by paragraph 42(4) deemed to be related to the offeree company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and if so, particulars of the proposed payment or benefit in respect of each such director;

(b) whether or not there is any other agreement or arrangement made between the offeror company and any of the directors of the offeree company in connection with or conditional upon the outcome of the scheme, and, if so, particulars of any such agreement or arrangement;

(c) whether or not there has been within the knowledge of the offeror company any material change in the financial position or prospects of the offeree company since the date of the last balance sheet laid before the offeree company in general meeting, and, if so, particulars of any such change; and

(d) whether or not there is any agreement or arrangement whereby any shares acquired by the offeror company in pursuance of the scheme will or may be transferred to any other person, and, if so—

(i) the names of the persons who are a party to the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred; and

(ii) the number, if any, and description and amount of shares of the offeree company held by or on behalf of each of these persons, or if no such shares are so held, a statement to that effect.

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

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

(a) the latest available market sale price prior to the date on which notice of the take-over scheme is given to the offeree company;

(b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales; and

(c) where the take-over scheme has been the subject of a public announcement in a newspaper or by any other means, the latest market sale price immediately prior to the public announcement.

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

(8) Where the take-over scheme relates to securities which are not quoted or dealt in on a securities exchange, the statement shall contain all the information which the offeror company may have as to the number, amount and price at which the securities have been sold in three months immediately preceding the date on which notice of the scheme is given to the offeree company and, if the offeror company has no such information, a statement to that effect.

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

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

(2) The statement shall set out—

(a) the number, description and amount of marketable securities in the offeree company held by or on behalf of each director of the offeree company or, in the case of a director where none are so held, that fact;

(b) in respect of each such director of the offeree company by whom, or on whose behalf, shares to which the take-over scheme relates are held—

(i) whether or not the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of those shares; or

(ii) that the director has not decided whether he will accept such a take-over offer;

(c) whether or not any marketable securities of the offeror company are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of the marketable securities so held;

(d) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any other company which is by virtue of paragraph 42(4) deemed to be related to that company as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit;

(e) whether or not there is any other agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;

(f) whether or not any director of the offeree company has any direct or indirect interest in any contract entered into by the offeror company and, if so, particulars of the nature and extent of such interest;

(g) if the shares to which the scheme relates are not quoted or dealt in on a stock exchange all the information which the offeree company may have as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which notice of the take-over scheme was given to the offeree company; and

(h) whether or not there has been any material change in the financial position of the offeree company since the date of the last balance sheet laid before the company in general meeting and, if so, particulars of such change.

CAPITAL MARKETS AUTHORITY COLLECTIVE INVESTMENT SCHEMES REGULATIONS, 2001

ARRANGEMENT OF REGULATIONS

[Subsidiary]

CAPITAL MARKETS (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2001

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

PART I – PRELIMINARY

1. Citation

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

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Capital Markets Act;

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

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

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

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

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

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

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

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

"shillings" means shillings in the currency of the Republic of Kenya;

"trust" means a trust within the meaning of the Trustee Act (Cap. 167);

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

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

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

"working day" excludes Saturday, Sunday and public holidays.

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

3. Application for consent

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

(a) the prescribed application fee;

(b) the documents specified in Regulation 4; and

(c) such other documents that may be required by the Authority.

4. Documents to accompany application

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

(a) draft incorporation documents of the collective investment scheme;

(b) memorandum and articles of association of the promoter;

(c) memorandum and articles of association of the proposed fund manager;

(d) business plan;

(e) one bank reference; and

(f) two professional or business references.

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

5. Application for registration of a collective investment scheme

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

(a) the incorporation documents;

(b) the information memorandum;

(c) audited reports for the preceding 3 years of the proposed fund manager, where applicable;

(d) audited reports for the preceding 3 years of the proposed trustee;

(e) audited reports for the preceding 3 years of the proposed custodian;

(f) a letter of consent to act as a fund manager;

(g) a letter of consent to act as a trustee;

(h) a letter of consent to act as a custodian; and

(i) the prescribed registration fee.

6. Notification of registration

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

7. Form of certificate

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

PART III – INCORPORATION DOCUMENTS
OF A COLLECTIVE INVESTMENT SCHEME

8. Requirements of incorporation documents

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

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

9. Alteration of incorporation documents

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

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

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

10. Alterations subject to approval of the Authority

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

(a) is necessary to enable compliance with fiscal, statutory or other official requirements; or

(b) does not materially prejudice holders' interests, does not to any material extent release the trustee, custodian, fund manager or the board of directors, their agents or associates from any liability to holders and does not materially increase the costs payable from the collective investment scheme portfolio concerned; or

(c) is necessary to correct a manifest error.

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

11. Inspection of incorporation documents

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

PART IV – COLLECTIVE INVESTMENT SCHEME INFORMATION MEMORANDUM

12. Collective Investment scheme to issue information memorandum

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

13. Requirements of information memorandum

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

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

(3) Where performance data or estimated yields are included in an information memorandum, advertisement or any other invitation to the public to invest in the collective

investment scheme, the Authority may require justification of the calculations resulting in such performance data or estimated yields.

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

14. Revision of information memorandum

(1) An information memorandum shall be—

(a) reviewed and revised at least once in every six months to take account of any change or new matter, other than a matter which reasonably appears to the fund manager to be insignificant;

(b) revised immediately upon the occurrence of any material change in the matters stated therein or upon the occurrence of any new material information which ought to be disclosed therein.

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

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

PART V – MANAGEMENT OF A COLLECTIVE INVESTMENT SCHEME

Fund Manager

15. Obligation to appoint a fund manager

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

16. Management of a collective investment scheme

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

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

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

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

17. Duties of a fund manager

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

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

(a) advising the trustee or board of directors, as the case may be, on the asset classes which are available for investment;

(b) formulating a prudent investment policy;

(c) investing the scheme's assets in accordance with the scheme's investment policy;

(d) reinvesting any income of the scheme fund which is not required for immediate payments;

(e) instructing the custodian to transfer, exchange, deliver in the required form and manner the scheme assets held by such custodian;

(f) ensuring that the shares or units in the collective investment scheme are priced in accordance with the information memorandum, the rules of the collective investment scheme and these Regulations;

(g) not selling any shares otherwise than on the terms and at a price calculated in accordance with the provisions of the information memorandum, rules of the collective investment scheme or these Regulations;

(h) rectifying any breach of matters arising under paragraph (f) or (g) provided that where the breach relates to incorrect pricing of shares or to the late payment in respect of the issue or redemption of shares, rectification shall, unless the trustee or board of directors, as the case may be, otherwise directs, extend to the reimbursement or payment or arranging the reimbursement or payment of money by the fund manager to the holders or former holders, by the fund manager to the scheme, or by the scheme to the fund manager;

(i) purchasing at the request of a holder, any shares held by such holder on the terms and at a price calculated in accordance with the provisions hereof;

(j) publishing daily the price of shares in at least two daily newspapers of national circulation, published in the English language:

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

(k) preparing and timeously dispatching all cheques, warrants, notices, accounts, summaries, declarations, offers and statements required under the provisions of the information memorandum, rules of the collective investment scheme or these Regulations, to be issued, served or sent and signing and executing all certificates and all transfers of securities;

(l) making available for inspection to the trustee or board of directors or any approved auditor appointed by the trustee or directors, the records and the books of account of the fund manager giving to the trustee or board of directors or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the fund manager, its properties and its affairs;

(m) making available or ensuring that there is made available to the trustee or board of directors such details as the trustee or board of directors may require with respect to all matters relating to the collective investment scheme; and

(n) being fair and equitable in the event of any conflict of interest that may arise in the course of its duties.

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

Provided that—

(a) the fund manager shall remain liable for any act or omission of the sub-contracted fund manager;

(b) the fees and expenses of any such persons shall be payable by the fund manager and shall not be payable out of the collective investment scheme portfolio;

(c) any expenses incurred by any such persons which, if incurred by the fund manager would have been payable out of the collective investment scheme portfolio, may be paid out of the collective investment scheme portfolio to the fund manager by way of reimbursement; and

(d) any such appointment or termination of appointment shall be notified in writing to all holders.

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

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

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

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

18. Records to be maintained by a fund manager

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

(a) keep and maintain a record of all minutes, statements of accounts and resolutions in respect of the scheme's investment portfolio;

(b) keep or cause to be kept proper books of accounts and records in which shall be entered all transactions effected by the fund manager for the account of the collective investment scheme and permit the trustee or board of directors from time to time on demand to examine and take copies of or extracts from any such books and records;

(c) maintain a daily record of shares held by the fund manager, including the type of such shares acquired or disposed of, and of the balance of any acquisitions and disposals; and

(d) keep and maintain a daily record of the shares of the scheme which are held, issued, redeemed, exchanged, and the valuation of the collective investment scheme portfolio including particulars given in Regulation 69, required upon completion of a valuation.

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

19. Fund manager's reports

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

(a) a valuation of the scheme fund and of all the investments representing the same, including the details of the cost of such investments and their estimated yields;

(b) a report reviewing the investment activity and performance of the investment portfolios comprising the scheme fund since the last report date and containing the fund manager's proposals for the investment of the scheme fund during the period; and

(c) a record of all investment transactions during the previous period.

(2) The fund manager of a collective investment scheme shall once every year provide every holder and the Authority with audited accounts and such other statements as may be necessary in relation to the operations of that scheme during the period which ended

not more than three months before the date on which such accounts or statements are submitted, and in regard to its position as at the end of that period, including—

(a) the fund manager's capital resources actually employed or immediately available for employment for the purposes of the scheme;

(b) in respect of the collective investment scheme portfolio, the total market value of each of the several securities included in the collective investment scheme portfolio, and the value of each of those securities expressed—

(i) as a percentage of the total market value of the collective investment scheme portfolio;

(ii) as a percentage of the total amount of securities of that class issued by the concern in which the investment is held; and

(iii) indicating the percentage of such securities in relation to the investment guidelines specified in Regulation 78(2);

(c) the amount of dividends and interest and any other income for distribution which have accrued to the underlying securities comprised in the collective investment scheme portfolio, indicating the classes of income and the amount derived from each class, and how the income has been or is intended to be allocated;

(d) the amount of proceeds of capital gains, rights and bonus issues and any other accruals and receipts of a capital nature which have been or are to be invested in the scheme for the benefit of the holders, indicating the classes thereof and the amount derived from each class, but excluding amounts derived from the sale of shares;

(e) the total amount derived from the sale of shares, indicating the total amount paid in respect of compulsory charges, and the total amount paid in respect of the repurchase of shares;

(f) the fund manager's income derived from all sources in the operation of the scheme, indicating the sources and the amount derived from each source, and its net profit or loss derived from such operation;

(g) a review of the fluctuations in the selling and repurchase prices per share during the period in question including the highest and lowest selling prices and the highest and lowest repurchase price.

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

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

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

20. Liability of a fund manager

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

(2) In the absence of fraud or negligence by the fund manager, the fund manager shall not incur any liability by reason of any matter or thing done or suffered or omitted by it in

good faith under the provisions of the, incorporation documents, information memorandum, rules of the collective investment scheme or these Regulations.

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

21. Remuneration of a fund manager

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

(a) the initial charge referred to in Regulation 65(1); or

(b) any charge disclosed in the information memorandum.

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

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

22. Removal of a fund manager

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

(a) if a court of competent jurisdiction orders liquidation of the fund manager (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the trustee, board of directors, as the case may be, and the Authority); or

(b) if a receiver is appointed for the undertaking of the fund manager's assets or any part thereof; or

(c) if for good and sufficient reason the trustee or board of directors, as the case may be, is of the opinion and so states in writing to the Authority that a change of fund manager is desirable in the interest of the holders.

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

(a) if an extra-ordinary resolution is passed by the holders removing the fund manager; or

(b) if the holders of three quarters majority in value of the shares in existence (excluding shares held or deemed to be held by the fund manager or by any associate of the fund manager) request in writing to the trustee or board of directors as the case may be, that the fund manager be removed.

23. Resignation of a fund manager

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

24. Service of notice and handing over

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

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

(a) hand over, transfer and deliver to a fund manager, appointed in writing by the trustee or board of directors and licensed by the Authority to succeed the outgoing fund manager, all information within itself in relation to its contractual duties to the scheme including—

(i) statements pertaining to the entire scheme fund;

(ii) investment portfolio including details of the cost of such investments and estimated yields;

(iii) statements pertaining to all incomplete transactions; and

(iv) any other information as may reasonably be required by the scheme;

(b) hand over, transfer and deliver all records of accounts required to be maintained by a fund manager under Regulation 18, as may be reasonably required by the incoming fund manager:

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

Trustee

25. Obligation to appoint a trustee

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

26. Eligibility for appointment of a trustee

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

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

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

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

27. Duties and obligations of a trustee

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

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

(a) ensure that the custodian takes into custody all the collective investment scheme portfolio and holds it in trust for the holders in accordance with these Regulations;

(b) take all steps and execute all documents which are necessary to secure acquisitions or disposals properly made by the fund manager in accordance with the trust deed, incorporation documents and these Regulations;

(c) collect any income due to be paid to the scheme and/or claim any repayment of tax and direct any income received in trust for the holders to the custodian in accordance with these Regulations or the trust deed;

(d) keep such records as are necessary—

(i) to enable it to comply with these Regulations; and

(ii) to demonstrate that such compliance has been achieved;

(e) execute all documents as are necessary and take all steps to ensure that instructions properly given to it by the fund manager as to the exercise of rights (including voting rights) attaching to the ownership of collective investment scheme portfolio are carried out;

(f) exercise any right of voting conferred by any of the collective investment scheme portfolio which is in shares in other collective investment schemes managed or otherwise operated by the fund manager;

(g) execute and deliver to the fund manager or its nominee upon the written request of the fund manager from time to time such powers of attorney or proxies as the fund manager may reasonably require, in such name or names as the fund manager may request, authorising such attorneys and proxies to vote consent or otherwise act in respect of all or any part of the collective investment scheme portfolio;

(h) forward to the fund manager and the custodian without delay all notices of meetings, reports, circulars, proxy solicitations and other documents of a like nature received by it as registered holder of any investment;

(i) ensure that the collective investment scheme is managed by the fund manager in accordance with the agreement of service with the fund manager, these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme;

(j) issue a report to be included in the annual report of the collective investment scheme on whether in the opinion of the trustee, the fund manager has in all material respects managed the scheme in accordance with the provisions of these Regulations, incorporation documents, the information memorandum and the rules of the collective investment scheme, and if the fund manager has not done so, the respect in which it has not done so and the steps which the trustee has taken in respect thereof;

(k) ensure that decisions about the constituents of the collective investment scheme portfolio do not exceed the powers conferred on the fund manager; and

(l) ensure that the fund manager maintains sufficient records and adopts such procedures and methods for calculation of prices at which shares are issued and redeemed to ensure that those prices are within the limits prescribed by these Regulations, the incorporation documents, the information memorandum and the rules of the collective investment scheme:

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

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

28. No delegation of duties of a trustee

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

(a) any function of oversight in respect of the fund manager; or

(b) any function of custody or control of the collective investment scheme portfolio.

29. Resignation of a trustee

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

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

30. Removal of a trustee

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

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

(b) a manager or a receiver is appointed over any of its assets; or

(c) the trustee ceases to carry on business as a bank or financial institution.

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

(a) the trustee fails or neglects after reasonable notice from the fund manager to carry out or satisfy any duty imposed on the trustee in accordance with the trust deed, the incorporation documents, the information memorandum, the rules of the collective investment scheme or these Regulations; or

(b) the holders, by extraordinary resolution resolve that such notice be given.

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

31. Matters to be provided for in the trust deed

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

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

(a) appointment of a custodian;

(b) the issue of a receipt evidencing the purchase of the shares of the collective investment scheme;

(c) the issue of a certificate of entitlement to the holders within thirty days specifying shares held by each holder and showing the transactions in the holder's account during the preceding month, and that such certificate shall be *prima facie* evidence of the title of the holder to the units or shares;

(d) authentication of every share certificate by the trustee, provided that before it is issued by the fund manager to the purchaser, the trustee shall not countersign any share certificate unless it has received from the fund manager a full account of the cash proceeds of the issue of that certificate or securities to the required value, together with all documents necessary to effect transfer thereof;

(e) the funds of the collective investment scheme to be deposited in the trust account(s) with the custodian approved by the Authority and the securities of the collective investment scheme be kept with such custodian;

(f) that—

(i) any funds for investment accruing from the issue of shares;

(ii) dividends, interest or any other income accruing on underlying securities;

(iii) the proceeds of capital gains, rights or bonus issues; and

(iv) any funds received by the fund manager from the realization of underlying securities,

be accounted for in full to the trustee by the fund manager and the custodian and deposited in the trust account(s);

(g) that the proceeds of capital gains, rights and bonus issues be vested in the collective investment scheme for the benefit of the holders;

(h) all transactions of the collective investment scheme portfolio be individually reported to the trustee by the fund manager by the next working day following such transaction;

(i) the obligation of the fund manager to repurchase, subject to such terms and conditions as may in terms of the trust deed apply, any number of shares offered to it, on such basis as may be prescribed in the trust deed;

(j) that the specific method of calculation of the value of the collective investment scheme portfolio and of the share value at which holders shall transact their holdings with the collective investment scheme, should be acceptable to the Authority including the specific time of the day the week or date of the month and time for taking the valuation of securities, and the particulars relating to valuation given in Part VI of these Regulations;

(k) the fee charged by the fund manager (which shall be the only monies payable to the fund manager annually) be disclosed in the financial reports of the collective investment scheme;

(l) the accounts and financial records of a collective investment scheme be maintained in a system and manner acceptable to the Authority;

(m) the fees payable to the trustee and the custodian of the collective investment scheme portfolio be disclosed in the financial reports of the collective investment scheme; and

(n) amendment of the trust deed be in accordance with the provisions of the trust deed, these Regulations, the incorporation documents, the information memorandum and with the prior approval of the Authority.

(3) Every such trust deed shall further prescribe—

(a) the investment policy to be followed in respect of the scheme concerned;

(b) the manner in which the selling price of shares is to be calculated;

(c) the terms and conditions on which the fund manager will repurchase shares and the manner in which repurchase price is to be calculated;

(d) the manner in which shares can be transferred from one holder to another;

(e) if applicable, the manner in which additional shares are to be calculated;

(f) the manner in which the yield from shares is to be calculated; and

(g) the manner in which the initial charge and other charges are to be calculated.

(4) The Authority may authorize any—

(a) inclusion in the trust deed or the information memorandum as the case may be of any provision that in its opinion is deemed to be consistent with international market practices; or

(b) omission from the trust deed or the information memorandum as the case may be of any information whose inclusion would otherwise be required under these Regulations if in the opinion of the Authority such information would be inconsistent with the international market practices or would be inappropriate

to the nature of the collective investment scheme or would not be in the best interest of the holders.

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

(a) unless the consent thereto of the holders and the Authority has been obtained in the manner prescribed in the trust deed; or

(b) the Authority is satisfied that any such alteration, rescission or addition does not contain anything inconsistent with the provisions of the Act or with sound financial principles.

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

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

32. Remuneration of trustee

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

Custodian

33. Obligation to appoint a custodian

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

34. Eligibility for appointment of a custodian

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

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

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

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

35. Duties of a custodian

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

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

(b) to receive and keep in safe custody title documents, securities and cash amounts of the collective investment scheme;

(c) to open an account in the name of the collective investment scheme for the exclusive benefit of such collective investment scheme;

(d) to transfer exchange or deliver in the required form and manner securities held by the custodian upon receipt of proper instructions from the fund manager, trustee or board of directors, as the case may be;

(e) to require from the fund manager, board of directors or trustee, such information as it deems necessary for the performance of its functions as a custodian of the collective investment scheme;

(f) to promptly deliver to the trustee or fund manager or to such other persons as the fund manager or trustee may authorize, copies of all notices, proxies, proxy soliciting materials received by the custodian in relation to the securities held in the collective investment scheme portfolio, all public information, financial reports and stockholder communications the custodian may receive from the issuers of securities and all other information the custodian may receive, as may be agreed between the custodian trustee or fund manager, as the case may be from time to time;

(g) to exercise subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the fund manager or the trustee as the case may be;

(h) to exercise the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of the collective investment scheme portfolio and in fulfilling obligations in the agreement;

(i) where title to investments are recorded electronically, to ensure that entitlements are separately identified from those of the fund manager or the trustee, as the case may be, of the collective investment scheme in the records of the person maintaining records of entitlement;

(j) to attend general meetings of the holders and be heard at any general meeting on matters which concern it as custodian:

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

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

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

36. Records to be maintained by a custodian

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

(a) the entire fund of the collective investment scheme portfolio held by the custodian; and

(b) each and every transaction carried out by the custodian on behalf of the collective investment scheme,

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

37. Reports by a custodian

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

(a) a written statement at agreed reporting dates which lists all assets of the scheme in the scheme account(s) together with a full account of all receipts and payments made and other actions taken by the custodian;

(b) advice or notification of any transfers of collective investment scheme portfolio or securities to or from the scheme account(s) indicating the securities acquired for the account(s) and the identity of the party having physical possession of such securities;

(c) a copy of the most recent audited financial statements of the custodian prepared together with such information regarding the policies and procedures of the custodian as the fund manager, trustee or board of directors may request in connection with the agreement or the duties of the custodian under that agreement; and

(d) provide a report annually to the Authority demonstrating that compliance with these Regulations the incorporation documents, the information memorandum and the rules of the collective investment scheme, has been achieved.

38. Resignation of a custodian

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

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

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

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

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

39. Removal of a custodian

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

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

(b) a statutory manager or a receiver is appointed over any of its assets; or

(c) the custodian ceases to carry on business as a bank or financial institution.

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

(a) the custodian fails or neglects after reasonable notice from the fund manager, trustee or board of directors as the case may be, to carry out or satisfy any duty imposed on the custodian in accordance with the agreement; or

(b) the holders, by extra ordinary resolution resolve that such notice be given, and the fund manager appoint as custodian some other qualified institution with the approval of the Authority.

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

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

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

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

Umbrella Schemes and Investment Companies

40. Meaning of umbrella scheme

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

41. Minimum requirements for umbrella schemes

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

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

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

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

42. Allocation of costs for umbrella schemes

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

43. Reports

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

44. Special provisions relating to investment companies

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

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

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

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

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

PART VI – PRICING, VALUATION AND DEALING OF SHARES

Initial Offer

45. Application

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

46. Compliance with incorporation documents

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

47. Period of initial offer

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

48. Creation of shares during initial offer

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

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

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

(a) create shares or instruct the trustee (in the case of a unit trust), at the beginning of the next business day, to create shares in the scheme in such number at least as will enable the fund manager immediately to fulfil that obligation, whether from the shares so created or from other shares; or

(b) proceed as follows—

(i) pay to the custodian or trustee (in any case where the purchaser has sent a remittance) on the day of receipt of the remittance or on the next business day, the total amount (or the total amount less the total of the fund manager’s preliminary charge, if any, in respect of those shares); and

(ii) as soon as the period of the initial offer has come to an end, create shares or in the case of a unit trust, instruct the trustee to create shares in the scheme in such number at least as will enable the fund manager to fulfil his obligation to issue shares whether from the units so created or from other shares.

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

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

49. Initial price

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

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

50. Determination of selling and repurchase price

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

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

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

51. Pricing of additional shares

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

52. Valuation point for selling price

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

53. Valuation point for repurchase price

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

54. Allowance for service charge

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

55. Determination of repurchase price

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

56. Calculation of net asset value per share

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

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

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

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

Redemption and Cancellation of Shares

57. Cancellation of shares

(1) Where the fund manager wishes that shares be cancelled, it shall cancel such shares and in the case of a unit trust, instruct the trustee to cancel such shares; and any instruction given by the fund manager shall state, in relation to each type of shares to be cancelled, the number to be cancelled, expressed either as a number of shares or as an amount in value or as a combination of the two:

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

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

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

(a) to the person who was the holder of those shares; or

(b) in accordance with the relevant provisions of the information memorandum, trust deed and incorporation documents.

58. Repurchase price

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

59. Timing of instructions to create or cancel units

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

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

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

(a) instructions must be given by reference to the price next to be calculated; and

(b) the trustee shall create or cancel the units only after the next valuation point has been reached.

60. Dealing

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

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

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

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

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

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

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

(a) number or value of the shares sought to be issued or redeemed is less than any number or value stated in the information memorandum as the minimum number or value to be purchased or held or redeemed;

(b) fund manager believes on reasonable grounds that the number or value of shares sought to be issued would lead to the holding by any one person or by any one person and any other person appearing to the fund manager to be acting in concert with that person of more shares than any number stated in the information memorandum as the maximum number to be purchased or held; or

(c) fund manager has reasonable grounds, having regard to the interests of all the holders relating to the circumstances of the person concerned, for refusing to issue units to or redeeming shares from such person.

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

62. Restrictions on issued shares in an investment company

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

63. Issue price parameters

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

(a) the relevant creation price; and

(b) the current initial charge.

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

64. Redemption price parameters

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

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

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

65. Charges on Issue

(1) If the trust deed or the information memorandum so permits, the issue price may include an initial charge which may be expressed either as a fixed amount or calculated as a percentage of the creation price and such initial charge shall not exceed the amount stated in the information memorandum as the current initial charge.

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

66. Charges on redemption or cancellation

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

Provided that—

(a) the amount or percentage may be expressed as diminishing over the time during which the holder has held the shares, but may not be expressed as liable to vary in any other respects;

(b) where the fund manager is permitted to make a deduction, the amount shall not exceed the amount that would be derived by applying the rate or method prescribed in the information memorandum at the date on which the relevant shares were issued;

(c) where the trust deed or information memorandum of a scheme, whenever executed, is modified so as to include the provision on fund manager's charge on redemption the modification shall be expressed so as to apply only to shares issued after the date on which the modification takes effect; and

(d) the fund manager shall not rely on the introduction of the charge on redemption or increase in the rate or method of the charge, unless—

(i) the fund manager has obtained approval to the introduction or increase of the charge from the trustee or board of directors, as the case may be and thereafter has given a notice in writing of introduction or increase of the charge on redemption and of the date of its commencement to all persons who ought reasonably to be known to the fund manager to have made an arrangement for the purchase of shares at regular intervals;

(ii) the fund manager has revised the information memorandum in accordance with these Regulations and incorporation documents and to reflect the new charge, rate or method and the date of its commencement; and

(iii) ninety days have elapsed since the revised information memorandum became available.

67. Dilution Levy

(1) The fund manager shall have the power to require either or both of—

(a) the payment of a dilution levy in respect of the issue or sale of shares or any class of shares; and

(b) the deduction of a dilution levy in respect of the redemption or the cancellation of shares or any class of shares.

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

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

68. Payment on Redemption

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

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

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

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

(a) any redemption charge permitted under Regulation 66;

(b) any withholding taxes or other taxes to be deducted; and

(c) any dilution levy permitted under Regulation 67.

69. Notification of price to trustee or custodian

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

(a) the creation price;

(b) the repurchase price;

(c) the maximum issue price;

(d) the minimum repurchase price; together, in the case of an umbrella fund; and

(e) the maximum issue price for shares in any part on an exchange of shares.

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

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

70. Publication of price

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

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

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

Valuation

71. General

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

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

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

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

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

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

Income

72. Annual income allocation date

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

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

73. Annual allocation of income

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

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

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

(4) The calculation of the available income shall be as follows—

(a) take the aggregate of the income of a collective investment scheme portfolio received or receivable for the account of the collective investment scheme in respect of the period;

(b) deduct the charges and expenses of the collective investment scheme paid or payable out of the income of the collective investment scheme portfolio in respect of the period;

(c) add the fund manager's best estimate of any relief from tax on such charges and expenses;

(d) make such other adjustments as the fund manager considers appropriate (in the case of subparagraph (i) and (ii), after consulting the auditors) in relation to—

(i) taxation;

(ii) the proportion of the price received or paid for shares that is related to income (taking account of any provisions in the incorporation documents relating to equalisation);

(iii) potential income which is unlikely to be received until twelve months after the income allocation date;

(iv) income which should not be accounted for on an accrual basis because of lack of information about how it accrues;

(v) any transfer between income and capital account; and

(vi) any other adjustments that the fund manager considers appropriate after consulting the auditors;

(e) on or before the annual income allocation date, the fund manager shall allocate the available income to the shares of each class in issue taking account of the provision of its incorporation documents relating to the proportion of available income attributable to each class in the case of an umbrella scheme.

74. Annual allocation to accumulation shares

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

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

75. Annual distribution to holders of income shares

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

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

(a) deduct any amounts previously allocated by way of interim allocation of income in respect of that annual accounting period; and

(b) deduct and carry forward in the income account such amount as shall be necessary to adjust that allocation of income to the nearest one hundredth of a cent (or the equivalent amount in the base currency) per income share or such lesser fraction as the trustee or board of directors, as the case may be, from time to time determine.

76. Interim allocation of income

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

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

(b) specifies a date as the interim income allocation date in relation to that interim accounting period.

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

(a) the interim accounting period in question and all previous interim accounting periods in the same annual accounting period taken together, were the annual accounting period;

(b) the interim income allocation date were the annual income allocation date; and

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

77. Income equalisation

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

PART VII – INVESTMENT, BORROWING, LENDING

78. Broad investment guidelines

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

(a) be consistent with the objectives of the scheme;

(b) be transferable;

(c) have a ready price or value; and

(d) have adequate proof of title or ownership to allow proper custodial arrangements to be made.

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

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

(b) securities issued by the Government of Kenya – 80%;

(c) immovable property – 25%;

(d) other collective investment schemes including umbrella schemes – 25%;

(e) any other security not listed on a securities exchange in Kenya – 25%;

(f) off-shore investments – 10%:

Provided that—

(a) no limits shall apply to investment of the collective investment scheme portfolio in an interest bearing account, product or financial instrument of or issued by a bank or financial institution as defined by the Banking Act (Cap. 488); or and insurance company as defined in the Insurance Act (Cap. 487);

(b) the book value of an investment in an interest bearing account, financial product or instrument of or issued by any single bank or financial institution or insurance company or a combination of any such investment in a single bank, financial institution or insurance company shall not in aggregate exceed 25% of the collective investment scheme portfolio and net asset value;

(c) the book value of a collective investment scheme's holding of securities relating to any single issuer shall not exceed twenty-five per cent of the collective investment scheme's properties net asset value; and

(d) a collective investment scheme established for the investment of retirement benefits schemes shall comply with the investment guidelines prescribed under the Retirement Benefits Act (No. 3 of 1997);

(e) sub-regulation 78(2)(c) and (e) shall not apply to a collective investment scheme established as an investment company.

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

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

79. Restriction on borrowing and lending

No collective investment scheme shall—

(a) lend all or any part of the collective investment scheme portfolio; or

(b) assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person.

80. Investment and borrowing powers for umbrella schemes

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

Advertisements and Public Announcements

81. Advertising only for approved schemes

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

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

82. General contents

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

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

(3) Advertisements shall include a warning statement that—

(a) the price of shares, and the income therefrom if the collective investment scheme pays dividends may go down as well as up; and

(b) investors are reminded that in certain specified circumstances their right to redeem their shares may be suspended.

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

83. General and extra-ordinary meetings

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

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

(3) A requisition shall—

(a) state the objects of the meeting;

(b) be dated;

(c) be signed by holders who, at that date, are registered as the holders of shares representing not less than one-tenth in value of all of the shares in the collective investment scheme then in issue;

(d) be deposited at the head office of the collective investment scheme.

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

84. Notice of meetings

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

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

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

85. Quorum

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

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

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

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

86. Resolutions

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

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

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

87. Voting rights

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

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

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

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

88. Proxies

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

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

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

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

89. Holders to be notified

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

90. Special resolutions required for amendments to incorporation documents

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

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

(a) the instrument of incorporation provides for amendment to be made in such manner; and

(b) the amendment is required solely—

(i) to implement any change in the law, including a change brought by an amendment of these Regulations; or

(ii) as a direct consequence of any such change; or

(iii) to change the name of the collective investment scheme; or

(iv) to remove from the incorporation documents obsolete provisions; or

(v) to make any other change to the instrument of incorporation which the board of directors consider does not involve any holder or potential holder in any material prejudice; and

(c) it would not introduce or affect any provision relating to the descriptions of the transferable securities in which the collective investment scheme portfolio may be invested unless it is required solely to reflect the introduction of a new sub-fund.

91. Service of notices and other documents

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

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

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

Accounts and Audit

92. Obligation to appoint an auditor

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

93. Qualifications of an auditor

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

94. Independence

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

95. Accounting period

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

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

96. Audit of annual report

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

PART VIII – AMALGAMATION AND RECONSTRUCTION

97. General

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

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

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

(b) the whole of that collective investment scheme portfolio becomes the collective investment scheme portfolio of two or more regulated collective investment schemes; or

(c) the whole of that collective investment scheme portfolio becomes the first collective investment scheme portfolio of a regulated collective investment scheme.

98. Amalgamation and reconstruction

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

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

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

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

(a) is not likely to result in any material prejudice to the interests of the holders of the collective investment scheme; and

(b) is consistent with the objectives of the collective investment scheme or its sub-fund.

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

Suspension and Resumption of Dealings in Shares

99. Suspension and resumption of dealings in shares

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

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

(a) inform the Authority of the suspension, stating the reason for its action; and

(b) forthwith give written confirmation of the suspension and the reasons for it to the Authority.

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

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

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

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

Winding-up of Collective Investment Schemes

100. When a collective investment scheme may be wound up

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

(a) unless and until effect may be given in accordance with the provisions relating to winding up given in the Companies Act (Cap. 486), to a proposal to wind up the affairs of a company otherwise than by the court, and provided that the Authority shall have first exercised its powers to intervene in the management of the collective investment scheme before an application is made to court for winding up of the collective investment scheme;

(b) unless a statement has been prepared and sent or delivered to the Authority in accordance with paragraphs (3)(a), (4) and (5) and received by the Authority prior to satisfaction of the condition in subregulation (1)(a).

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

(3) On or before a notice is given to the Authority in the event of a proposal to wind up the affairs of the collective investment scheme otherwise than by the court, the trustee or board of directors shall commence to make a full enquiry into the collective investment scheme's affairs so as to ascertain whether the scheme will be able to meet all its liabilities

(which include contingent and prospective liabilities) and the fund manager shall prepare a statement, which shall reflect the results of such enquiry, and either—

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

(b) state that such confirmation cannot be given.

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

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

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

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

101. Consequences of commencement of winding up

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

(2) Immediately following the effective time—

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

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

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

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

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

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

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

(b) if the fund manager has not previously notified the holders of the proposal to wind up, give written notice of the commencement of the winding up to the holders.

102. Manner of winding up

(1) The fund manager shall, as soon as practicable after the effective time cause the collective investment scheme portfolio to be utilized and the liabilities of the collective investment scheme to be met out of the proceeds.

(2) The fund manager shall give instructions to the custodian as to how such proceeds (until utilized to meet liabilities or make distributions to holders) shall be held and such instructions shall be with a view to the prudent protection of the creditors and holders against loss.

(3) Provided there are sufficient liquid funds available after making adequate provision for the expenses of the winding up and the discharge of the liabilities of the collective investment scheme remaining to be discharged, the fund manager may arrange to make one or more interim distributions out of such funds to the holders proportionately to the right to participate in collective investment scheme portfolio attached to their respective shares as at the effective time.

(4) When the fund manager has caused all the collective investment scheme portfolio to be realized and all of the liabilities of the collective investment scheme known to the fund manager to be met, the fund manager shall make a final distribution, on or prior to the date on which the final account is sent to the holders in accordance with Regulation 103, of the balance remaining (net of a provision for any further expenses of the collective investment scheme) to the holders in the same proportions as provided in sub-regulation (3).

(5) Sub-regulations (1) to (4) are subject to the terms of any scheme of amalgamation or reconstruction sanctioned by an extraordinary resolution of the collective investment scheme passed on or before the effective time.

103. Final account

(1) As soon as the collective investment scheme's affairs are fully wound up including distribution or provision for distribution in accordance with Regulation 102(3), the fund manager shall prepare an account of the winding up showing how it has been conducted and how the collective investment scheme portfolio has been disposed of and the account shall, following its approval by the trustee or board of directors as the case may be, be signed on their behalf by the fund manager and the trustee or at least one other director as the case may be and the account once signed, shall be the 'final account' for the purposes of these Regulations.

(2) The final account shall state the date on which the collective investment scheme's affairs were fully wound up and the date stated shall be regarded as the final day of the accounting period of the scheme then running of the "final accounting period".

(3) The collective investment scheme's auditor shall make a report in respect of the final account, which shall state the auditor's opinion as to whether the final account has been properly prepared for the purpose of sub-regulation (1).

(4) Within two months of the end of the final accounting period, the fund manager shall send a copy of the final account and the auditor's report on it to the Authority, and to each person who was a holder (or the first named joint holders) immediately before the final accounting period.

104. Duty to ascertain liabilities

(1) The fund manager shall have a duty to use all reasonable endeavours to ensure that all the liabilities of the collective investment scheme are discharged prior to the completion of the winding up.

(2) The duty in sub-regulation (1) relates to all liabilities of the scheme of which—

(a) the fund manager is, or becomes, aware prior to the completion of the winding up; or

(b) the fund manager would have become aware of prior to the completion of the winding-up had it used all reasonable endeavours to ascertain the liabilities of the collective investment scheme.

(3) If the fund manager rejects any claim against the collective investment scheme in whole or part, the fund manager shall forthwith send to the claimant written notice of its reasons for doing so.

(4) If after the effective time the fund manager becomes of the opinion that the collective investment scheme will be unable to meet all its liabilities within twelve months of the date of the statement provided under sub-regulation (3)(a) of Regulation 100—

(a) the fund manager shall notify the trustee or board of directors as the case may be immediately; and

(b) the trustee or board of directors as the case may be shall forthwith present a petition or cause the collective investment scheme to present a petition for the winding up in accordance with the provisions in the Companies Act (Cap. 486).

105. Accounts and reports

(1) While a collective investment scheme is being wound up—

(a) the annual and half-yearly accounting periods shall continue to run;

(b) the provisions about annual and interim allocation of income shall continue to apply; and

(c) annual and half-yearly reports shall continue to be required.

(2) The fund manager need not send to each holder a copy of any report relating to an accounting period or half-yearly accounting period which began after the effective time, if the trustee or board of directors of the collective investment scheme as the case may be, after consulting the Authority, are satisfied that the interests of the holders are not such as to require the report to be sent to the holders, but a copy of the report shall be sent or supplied free of charge to any holder requesting the same.

106. Liability of a fund manager

(1) The fund manager shall be personally liable to meet any liability of a collective investment scheme wound up under these Regulations (whether or not the collective investment scheme has been dissolved) that was not discharged prior to the completion of the winding up, except to the extent that the fund manager can show that it has complied with Regulation 104.

(2) If the proceeds of the realization of the assets attributable, or allocated to a particular sub fund of an umbrella scheme are insufficient to meet the liabilities attributable or allocated to that sub-fund, the fund manager shall pay to the scheme for the account of that sub-fund the amount of the deficit, except and to the extent that the fund manager can show that the deficit did not arise as a result of any failure by the fund manager to comply with these Regulations.

(3) The obligations of the fund manager under this regulation shall not affect any other obligation of the fund manager under these Regulations or the general law.

107. Additional provisions applicable to umbrella schemes

(1) Liabilities of an umbrella scheme attributable, or allocated in accordance with Regulation 42 to a particular sub-fund shall be met out of the scheme collective investment scheme portfolio attributable or allocated to such sub-fund.

(2) In this Part—

(a) references to shares are references to shares of the class(es) related to the sub-fund to be terminated;

(b) references to holders are references to holders of such shares;

(c) references to a resolution or extraordinary resolution are references to such resolution passed at a meeting of holders of shares of the class or classes referred to in paragraph (a);

(d) references to collective investment scheme portfolio are references to collective investment scheme portfolio allocated or attributable to the sub-fund to be terminated; and

(e) references to liabilities are references to liabilities of the company allocated or attributable to the sub-fund to be terminated.

108. Capital Markets Tribunal

Any dispute or difference which may arise between the holders, fund manager, trustee or the board of directors as the case may be, custodian and the other or others shall be referred to as the Capital Markets Tribunal established under section 35A of the Act.

.

PART IX – EMPLOYEE SHARE OWNERSHIP PLANS (ESOPS)

109. Approval of and registration with the Authority

(1) A listed company may set up an employee share owner-ship plan (hereinafter referred to as ESOP) to enable its employees own shares of the listed company subject to approval of the Authority.

(2) Every ESOP shall be registered with the Authority.

110. ESOP Unit Trust

An Employee Share Ownership Plan shall be structured as a unit trust (the ESOP Unit Trust).

111. Requirements for ESOPS

An ESOP Unit Trust shall comply with the following requirements—

(a) application and registration for an ESOP Unit Trust shall be accompanied with the following information and documents—
  (i) proposed trust deed and scheme rules;
  (ii) names of the proposed trustees;
  (iii) board of directors resolution approving the establishment of ESOP Unit Trust and the appointment of the proposed trustees;
  (iv) shareholders' approval for the establishment of the ESOP Unit Trust and the terms of the trust deed (where already obtained); and
  (v) any other information that the Authority may require.

(b) every trust deed to an ESOP Unit Trust shall include the following particulars—
  (i) parties to the trust deed;
  (ii) interpretation of terms used in the trust deed;
  (iii) declaration of trust;
  (iv) appointment and removal procedures for trustees;
  (v) procedure for creation and issuance of units;
  (vi) method of pricing and valuation of units;
  (vii) procedure for repurchase of units;
  (viii) procedure for income distribution;
  (ix) apportionment of unit holders' entitlements in respect of dividends, rights and capitalization issues;
  (x) company's and trustees covenants;
  (xi) restrictions on the trustees;
  (xii) trustees fees and charges;
  (xiii) liability of the trustees;
  (xiv) register of unit holders and records of trust fund charges and commissions;
  (xv) audit and periodic reports;
  (xvi) procedures for winding up;
  (xvii) applicable law;
  (xviii) procedure for variation of trust deed;
  (xix) procedure for settlement of disputes.

(c) Every ESOP Unit Trust shall have scheme rules which shall include the following—
  (i) eligibility for membership;

(ii) procedure for saving and/or acquisition and repurchase of units;

(iii) maximum individual holding;

(iv) employee rights in respect to units;

(v) pricing and valuation of units;

(vi) in case of an options scheme there shall be a procedure for granting options, maximum limit, executive rights in respect to units and entitlement in the event of reconstruction or winding up.

112. Investment parameters

An ESOP Unit Trust shall acquire or purchase shares of the listed company from time to time as may required by the rules of the ESOP:

Provided that an ESOP Unit Trust shall not acquire or purchase any securities other than the shares of the listed company for which it is established.

113. Minimum number of trustees

There shall be at least three trustees of ESOP Unit Trust save that a trust corporation may act as sole trustee of an ESOP Unit Trust.

114. Creation of units

The trustees of an ESOP Unit Trust shall hold the certificates representing the shares of the listed company in the trustees' names and create corresponding units in the same denominations as the listed company shares purchased by the trustees to be allotted and issued the employee entitled thereto under the ESOP.

115. Certificate of entitlement to holders

The trustees shall issue to every employee entitled to the units under the ESOP a certificate of entitlement representing the number of units owned by the employee in the ESOP Unit Trust within thirty days of receiving the company's certificate of entitlement against which such units were issued and maintain a register of all unit holders.

116. Rights on the certificate of entitlement

The certificates representing the units owned by employees shall not be transferable nor traded at any securities exchange but the units represented therein may, at the option of the unit holder be pledged or repurchased by the trustees for cash.

117. Price of units

The rules of the ESOP shall prescribe the price at which an ESOP Unit Trust shall allot the units to the employee, the price at which the trustees shall repurchase units and the liability for incidental expenses but such repurchase shall reflect the latest traded price of the company's shares at the securities exchange.

118. Surrender of certificates by employee

On termination of employment of an employee, the employee shall surrender all certificates representing the units held by such employee in an ESOP Unit Trust to the trustees at such time as prescribed by the ESOP rules.

119. Redemption or transfer

At the option of the employee, the trustees shall upon receipt of the surrendered certificates, either—

(a) transfer in a private transaction in accordance with the prescribed procedure for private transactions, to the name of the employee, the number of shares of the listed company corresponding in value to the units represented in the surrendered share certificate and cause the employee's name to be registered as the owner of such shares in the register of the listed company; or

(b) re-purchase the surrendered units.

120. Exchange of units not permitted

Save as provided in these Regulations, the trust deed of an ESOP Unit Trust shall not permit the exchange of units of an ESOP Unit Trust with shares of the listed company.

121. Audit

The trustees of an ESOP Unit Trust shall cause an audit of the ESOP to be carried out once every year by qualified persons and shall submit a copy of the auditor's report to the unit holders and the Authority within sixty days of the completion of the audit.

122. Winding up

An ESOP Unit Trust may be varied or wound up in accordance with its rules but three months' notice of intention to wind up an ESOP Unit Trust shall be given to the unit holders and the Authority.

123. Disclosures

Every listed company shall disclose any options granted to employees under the ESOP and disclose the total value of the ESOP (including the number of shares purchased from the exchange and the number of units created and issued under the ESOP) in its annual report.

Special Interest Collective Investment Schemes

124. Definition

For the purposes of these Regulations, a special interest collective investment scheme means a collective investment scheme established by a promoter for the purposes of facilitating investment by a special group of individuals with a common interest in a listed company and may include farmers, distributors, supplier, among others.

125. Approval and registration with the Authority

(1) A promoter may set up a special interest collective investment scheme for the purposes of investing in the securities of a specified listed company subject to the approval of the Authority.

(2) Every special interest collective investment scheme shall be registered with the Authority.

126. Special interest unit trust

A special interest collective investment scheme shall be structured as a unit trust and the promoter shall notify the listed company upon approval and registration with the Authority.

127. Requirements for special interest unit trust

A special interest collective investment scheme shall comply with the following requirements—

(a) application and registration for a special interest unit trust shall be accompanied with the following information and documents—

(i) proposed trust deed and scheme rules;

(ii) names of the proposed trustees;

(iii) board of directors or promoter resolution approving the establishment of a special interest collective investment scheme and the appointment of the proposed trustees;

(iv) holders approval for the establishment of the special interest collective investment scheme and the terms of the trust deed (where already obtained); and

(v) any other information that the Authority may require.

(b) every trust deed to a special interest collective investment scheme shall include the following particulars—

(i) parties to the trust deed;

(ii) interpretation of terms used in the trust deed;

(iii) declaration of trust;

(iv) appointment and removal procedures for trustees;

(v) procedure for creation and issuance of units;

(vi) method of pricing and valuation of units;

(vii) procedure for repurchase of units;

(viii) procedure for income distribution;

(ix) apportionment of unit holders' entitlements in respect of dividends, rights and capitalisation issues;

(x) trustees covenants;

(xi) restrictions on trustees;

(xii) trustees fees and charges;

(xiii) liability of the trustees;

(xiv) register of holders and records of trust fund charges and commissions;

(xv) audit and periodic reports;

(xvi) procedures for winding-up;

(xvii) procedure for variation of trust deed; and

(xviii) procedure for settlement of disputes.

(c) every special interest collective investment scheme shall have scheme rules which shall include the following—

(i) eligibility of membership;

(ii) procedure for saving and/or acquisition and repurchase of units;

(iii) maximum individual holding;

(iv) holders rights in respect of units;

(v) pricing and valuation of units; and

(vi) entitlement to holders in the event of reconstruction or winding up.

128. Investment parameters

A special interest collective investment scheme shall acquire or purchase shares of the listed company from time to time as may be required by the rules of the scheme:

Provided that a special interest collective investment scheme shall not acquire or purchase any securities other than the shares of the listed company for which it is established.

129. Minimum number of trustees

There shall be at least three trustees of a special interest collective investment scheme.

130. Creation of units

The trustees of a special interest collective investment scheme shall hold the certificates representing the shares of the listed company in the trustees' names and create corresponding units in the same denominations as the listed company's shares purchased by the trustees to be allotted and issued to the holder entitled thereto under the special interest collective investment scheme.

131. Certificate of entitlement to holders

The trustees shall issue to every holder entitled to the units under the special interest collective investment scheme a certificate of entitlement representing the number of units owned by the holder in the special interest collective investment scheme within thirty days of receiving the company's certificate of entitlement against which such units were issued and maintain a register of all unit holders.

132. Rights on the certificate of entitlement

The certificates representing the interest of a holder shall not be transferable nor traded at any securities exchange but the units represented therein may, at the option of the holder be pledged or repurchased by the trustees for cash.

133. Price of units

The rules of the special interest collective investment scheme shall prescribe the price at which that unit trust shall allot units to the holders or potential holders, the price at which the trustees shall re-purchase units and the liability for incidental expenses but such re-purchase shall reflect the latest or previous day's traded price of the company's shares at the securities exchange.

134. Redemption or transfer

At the option of the holder, the holder shall surrender the certificates to the trustee who shall upon receipt of the surrendered certificates either—

(a) transfer in a private transaction in accordance with the prescribed procedure for private transactions to the name of the holder, the number of shares of the listed company corresponding in value to the units represented in the surrendered share certificate and cause the holder's name to be registered as the owner of such shares in the register of listed company; or

(b) re-purchase the surrendered units.

135. Exchange of units not permitted

Save as provided in these Regulations, the trust deed of a special interest collective investment scheme shall not permit the exchange of units of the scheme with shares of the listed company.

136. Audit

The trustees of a special interest collective investment scheme shall cause an audit of the scheme to be carried out once every year by qualified persons and shall submit a copy of the auditor's report to the holders and the Authority within sixty days of the completion the audit.

137. Winding up

A special interest collective investment scheme may be varied or wound up in accordance with its rules but three month's notice of intention to wind up the scheme shall be given to the holders and the Authority.

138. Disclosures

Every listed company shall disclose any special interest collective investment scheme which has an acquired or is to acquire shares, the number of shares purchased from the exchange and the aggregate holding of the scheme in the listed company in its annual report.

FIRST SCHEDULE

FORM 1 [Reg. 5.]

CAPITAL MARKETS ACT

[Cap. 485A]

APPLICATION TO REGISTER A COLLECTIVE INVESTMENT SCHEME

(1) Promoter:	State name and address of the fund.
(2) Constitution:	(a) State the legal form of the collective investment scheme— (i) mutual fund; (ii) unit trust; (iii) investment company. (b) State the name of the country or jurisdiction where the collective investment scheme is constituted. (c) State the title of the law under which the collective investment scheme is or is to be constituted. (d) State certificate of incorporation.
(3) Key Officers:	(a) State name, address, place of birth and citizenship of: (i) directors; (ii) chief executive.
(4) References:	Give two personal references and a bank reference of the key officers.
(5) Functionaries:	State names, addresses and business activities of each of the collective investment scheme's— (a) fund manager: (b) administrators: (c) investment advisers: (d) custodians; and (e) Trustees.
(6) Prior Registration:	State if the collective investment scheme is now or has been registered, licensed, recognized or authorized under any law or regulations relating to mutual funds, collective investment schemes/fields or securities in any country or jurisdiction.
(7) Refusal or Disciplinary Measures:	Has the collective investment scheme, any of its officers, managers, administrators, investment advisers or custodians been the subject of— (a) refusal of an application for registration, licence, recognition or authorization; or (b) suspension, cancellation or revocation of registration, licence, recognition or authorization, by any authority in any country or jurisdiction? YES/NO. If yes, provide details.

.

(8) Civil Proceedings:	Has a judgment been rendered or any suit, action or proceedings pending against any officer of the collective investment scheme or of any of its functionaries listed in question (5) above, in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation or similar conduct? YES/ NO If yes, provide details.
(9) Offences:	Has any key officer of the collective investment scheme or any of its functionaries listed in question (5) above been or is being charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings relating to fraud or theft arising out of dealing in mutual funds, collective investment schemes/funds or securities? If so, provide details.
(10) Bankruptcy:	Has any key officer or the collective investment scheme or of any of its functionaries listed in question 5 above been— (a) declared bankrupt or been party to bankruptcy or insolvency proceedings? (b) subject to proceedings (elating to winding-up, dissolution or creditors' arrangements; or (c) subject to proceedings relating to receivership or creditors' compromise; in any country or jurisdiction? If so, provide details.

AFFIDAVIT

I ..... as a director of ..... Limited, the promoter of the proposed collective investment scheme, do depose and say that I, have read and understood the questions in this application form and hereby certify under oath that the foregoing answers and statements are true, correct and complete to the best of my knowledge, information and belief.

Sworn before me
.....
Commissioner of Oaths

Name and
Signature of
Deponent

at the city of .....

this ..... day ..... 20 .....

FORM 2 [Reg. 7.]

CAPITAL MARKETS ACT

[Cap. 485A]

CERTIFICATE OF REGISTRATION

The CAPITAL MARKETS AUTHORITY herby certifies that .... has this day been registered as a unit trust/mutual fund/investment company* under the provisions of section 30(4) of the Capital Markets Act (Cap. 485A) of the Laws of Kenya).

Dated the ..... day of ..... 20 .....

SEALED with the common
seal of the Capital Markets
Authority in the presence of:

....
Chairman *Chief Executive*

*Delete as necessary

SECOND SCHEDULE

[Regulation 8(1).]

THE INCORPORATION DOCUMENTS

1. Particulars of the Promoters;

2. Information Memorandum;

3. Trust Deed;

4. Management Agreement;

5. Custody Agreement;

6. Rules of the Scheme.

THIRD SCHEDULE

[Regulation 31.]

TRUST DEED

PART I – THE TRUST

1. Interpretation – definition of terms used in the Trust Deed

2. The constitution of the collective investment scheme

A statement of the name, address and registered office of the collective investment scheme. If the collective investment scheme is to terminate after the expiration of a particular period, a statement to that effect.

3. Declaration of trust

A declaration that, subject to the provisions of the deed and all rules of the collective investment scheme for the time being in force, the collective investment scheme portfolio (other than sums standing to the credit of the distribution account) is held by the trustee on trust for the holders of the shares *pari passu* according to the number of shares held by each holder, and the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance with these Regulations.

4. Objects of the trust

5. Trust Deed to be binding and authoritative

A statement that the deed is binding on each holder as if he had been a party to it and is bound by its provisions and authorizes and requires the trustee and the fund manager to do the things required or permitted of them by the terms of the deed.

6. The investment policy and authorized investments

The categories in which the funds of the collective investment scheme may invest as well as the investment and borrowing restrictions.

7. Valuation of the collective investment scheme portfolio

8. Restricted economic or geographical objectives

If there are to be any restrictions on the geographic areas or economic sectors in which investment of capital of the collective investment scheme portfolio may be made, a statement of what they are.

9. Holder's liability to pay

A provision that a holder is not liable to make any further payment after he has paid the purchase price of his shares and that no further liability can be imposed on him in respect of the shares which he holds.

10. Certificates

A provision requiring the fund manager or the trustee to issue certificates representing shares to holders whose names are entered on the register.

A provision authorizing the trustee to charge a fee for issuing any document recording or for amending an entry on the register otherwise than on the issue or sale of shares.

PART II – THE FUND MANAGER

11. Appointment of a Fund Manager

A declaration that the scheme will at all times be managed and administered by a fund manager licensed by the Capital Markets Authority.

12. Fund Manager's capital

A provision that the fund manager shall at all times maintain a paid-up share capital as prescribed by the Authority.

13. Duties of a Fund Manager

A description of duties to be carried out by the fund manager.

14. Fund Manager's preliminary charge

A statement authorizing the fund manager to make a preliminary charge to be included in the issue price of a share, specifying a maximum to that charge expressed either as a fixed amount in the base currency or as a percentage of the creation price of a share.

15. Fund Manager's periodic charge

A statement authorizing the fund manager to make a periodic charge payable out of the income of the collective investment scheme portfolio and a statement that provides for the charge to be expressed as annual percentage (to be specified in the information memorandum) of the value of the collective investment scheme portfolio (and the statement may provide for the addition to the charge of value added tax, if any, payable thereon), specifying the accrual intervals and how the charge is to be paid, and the maximum charge expressed as an annual percentage of the value of the collective investment scheme portfolio.

16. Fund Manager's remuneration

A provision that expressly details the fund manager's entitlement by way of remuneration for its services and to cover its expenses in performing its obligations under this Deed.

17. Reports by Fund Manager to Trustee

A provision that expressly requires the fund manager to make periodic reports to the trustee, board of directors and the Authority.

18. Fund Manager's powers

A provision detailing the powers and discretions of the Fund Manager.

19. Documents to be prepared by the Fund Manager

A provision detailing the documents to be prepared for signature and execution by the trustee.

20. Retirement, Substitution, Suspension or Liquidation of Fund Manager

Provisions on the circumstances under which the fund manager may retire, be replaced or suspended.

21. Removal of the Fund Manager

Provisions on the circumstances under which the fund manager may be suspended.

PART III – TRUSTEE

22. Appointment of Trustee

A provision setting out the name, address and the terms and conditions of service for the trustees.

23. Trustee's share capital

24. Role, powers, duties and obligations of trustee

25. Registration and retention of securities by the trustee

26. Legal proceedings by or against the trustee

27. Trustee's remuneration

A statement authorizing any payments to the trustee by way of remuneration for his services to be paid (in whole or in part) out of the collective investment scheme portfolio and specifying the basis on which that remuneration is to be determined and how it should accrue and be paid.

28. Retirement and appointment of new trustee

Provisions on the circumstances under which the trustee may retire or be replaced.

29. Removal of trustee

Provisions on the circumstances under which the trustee may be removed.

PART IV – CUSTODIAN

30. Appointment of custodian by trustee

31. Duties of a custodian

32. Records to be maintained by a custodian

33. Reports by a custodian

34. Retirement of a custodian

35. Removal of a custodian

PART V – UNIT PORTFOLIO

36. Issue and purchase of units

37. The creation of units

38. The cancellation of units

39. The redemption of units

PART VI – MUTUAL FUNDS

40. Issue and purchase of shares

41. Cancellation of shares

42. Redemption of shares

PART VII – VALUATION

43. Details on the method used for valuation of units or shares

PART VIII – MEETINGS

44. Notice of meetings

45. Quorum for a meeting

46. Voting rights

47. Proxies

48. Resolutions

49. Amendments to incorporation documents

PART IX – SUSPENSION AND TERMINATION

50. Winding up of a unit trust or mutual fund

51. Manner of winding up

52. Manner in which collective investment scheme portfolio to be dealt with on liquidation of fund manager

53. Termination of a sub-fund of an umbrella company

PART X – OTHER MATTERS TO BE PROVIDED FOR IN THE TRUST DEED

54. Every trust deed of a unit trust shall prescribe the rules for the administration of the unit trust concerned and shall *inter alia* contain provisions to the following effect namely that—

(a) the trustee shall, subject to the terms of the trust, hold the underlying securities in trust for the unit holders;

(b) certificates shall be issued to unit holders within seven days of any purchase;

(c) the trustee shall countersign, graphically or otherwise, every certificate before it is delivered by the fund manager to a purchaser;

(d) the trustee shall not so countersign any certificate unless it has received from the fund manager a full account of the cash proceeds of the issue of that certificate or securities to the required value, together with all documents necessary to effect transfer thereof;

(e) the monies of the unit trust shall be kept in a trust account at a licensed bank;

(f) (i) any monies for investments accruing from the issue of securities;

(ii) dividends, interest or any other income accruing on underlying securities;

(iii) the proceeds of capital gains, rights or bonus issues; and

(iv) any money received by the unit trust fund manager from the realization of underlying securities,

shall be accounted for in full to the trustee and deposited in a trust account or accounts;

(g) the securities of the unit trust shall be kept with a custodian approved by the Authority;

(h) the proceeds of capital gains, rights and bonus issues shall be invested in the unit trust scheme concerned for the benefit of the unit holders;

(i) all transactions of the unit trust collective investment scheme portfolio shall be individually reported to the trustee by the fund manager within two weeks of such transaction;

(j) the funds of the unit trust shall be invested on accordance with the investment limits prescribed by the Authority;

(k) it shall be incumbent upon the fund manager to repurchase, subject to such terms and conditions as may in terms of the trust deed apply, any number of units offered to it;

(l) the specific method of calculations of the value of the unit trust and of the unit at which unit holders shall transact their holdings with the unit trust shall be acceptable to the Authority;

(m) the specific date of the week or month and time for taking valuation of securities;

(n) the valuation of securities be at the last stock exchange transaction prices at or prior to that time and date;

(o) the unit value shall be the market valuation of all monies and properties of the funds of the unit trust divided by units outstanding at that time; and

(p) the initial charge, which shall be the only deductible charge from unit values in transaction with unit holders be stated;

(q) the fee charge by the fund manager which shall be the only monies payable to the fund manager shall be stated and shall be an annual fee;

(r) the accounts and financial records of the unit trust shall be maintained in a system acceptable to the Authority;

(s) the fees payable to the trustee and the custodian of the collective investment scheme portfolio shall be stated; and

(t) the trust deed may be amended in the manner prescribed in the trust deed.

55. Every such trust deed shall further prescribe—

(a) the investment policy to be followed in respect of the scheme concerned;

(b) the manner in which the selling price of units is to be calculated;

(c) the terms and conditions on which the fund manager will repurchase units and the manner in which the repurchase price is to be calculated;

(d) if applicable, the manner in which additional units for sale to the public are to be created;

(e) the manner in which the yield from units is to be calculated;

(f) the manner in which the initial charge and the service charge are to be determined;

(g) the manner in which units are to be cancelled.

PART XI – CERTAIN VOID PROVISIONS OF TRUST DEED, AND AMENDMENTS TO TRUST DEED

56. Any provision in a trust deed relating to the unit trust which is inconsistent with any provision of the Capital Markets Act or these Regulations shall be void.

57. The parties to a trust deed may be a supplemental deed alter or rescind any provisions of such trust deed or add further provisions thereto, but no alterations or rescission of or addition to any trust deed shall be valid—

(a) unless the consent thereto of unit holders has been obtained in the manner prescribed in the trust deed:

Provided that if the trustee is satisfied that any such alienation, rescission or addition is required only to enable the provision of the trust deed to be given effect to more conveniently or economically or otherwise to benefit the unit holders, will not prejudice the interests of the unit holders and does not alter the fundamental provisions or objects of the trust deed or operate to release the trustee or the unit trust fund manager from any responsibility to the unit holders, such consent may be dispensed with; or

(b) unless the Authority is satisfied that any such alteration, rescission or addition does not contain anything inconsistent with the provisions of the Capital Markets Act or with sound financial principles.

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

FOURTH SCHEDULE

[Regulation 12.]

PARTICULARS OF INFORMATION MEMORANDUM

(NOTE: This list is not intended to be exhaustive. The board of directors of the scheme or the fund manager or trustee, as the case may be are obliged to disclose any information which may be necessary for investors to make an informed judgment.)

1. Prominent statement

Prominent statement on the period for which the prospectus is valid.

2. Disclaimer

The following statement shall be contained on the front cover of the prospectus—

"Permission has been granted by the Capital Markets Authority to offer to the public the securities which are the subject of this issue. As a matter of policy, the Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus".

3. The Collective Investment Scheme

State—

(a) the name of the collective investment scheme;

(b) that the collective investment scheme is a unit trust or a mutual fund; or

(c) where the duration of the collective investment scheme is not unlimited, when it may terminate;

(d) that the holders are not liable for the debts of the collective investment scheme;

(e) particulars of registration of the collective investment scheme;

(f) the address of its head office and its branch office;

(g) the address of the place in Kenya for service on the collective investment scheme of notices or other documents required or authorized to be served on it if different from (f);

(h) the date of the licence granted by the Authority to operate as a collective investment scheme;

(i) the base currency for the collective investment scheme;

(j) the maximum and minimum sizes of the collective investment scheme's capital;

(k) the circumstances in which the collective investment scheme may be wound up under the rules of the collective investment scheme and a summary of the procedure for, and the rights of the holders under, such a winding up; and

(l) in the case of an investment company, the fact that the minimum subscription value of Kenya shillings 25 million must be attained during the offer period and what would occur if the expected amount is not received during the initial offer.

4. Investment Objectives and Policy

(1) Give sufficient information to enable a shareholder to ascertain—

(a) the investment objectives (e.g. capital growth or income) of the collective investment scheme or of each sub-fund of an umbrella scheme;

(b) the collective investment scheme's investment policy for achieving investment objectives referred to under (a) including the general nature of the portfolio and any intended specialization (e.g. economic sector, geographical area or type of investment);

(c) the extent (if any) to which the policy under (b) does not envisage remaining fully invested at all times; and

(d) any restrictions in the range of transferable securities in which investment may be made, including restrictions in the extent to which the collective investment scheme may invest in any category of investment, indicating (where appropriate) where the restrictions are tighter than those imposed by the Regulations.

(2) Where all or part of the remuneration of the fund manager is to be treated as a capital charge, it must be made clear that the investment objectives of the collective investment scheme are to treat the generation of income as a higher priority than capital growth or as the case may be, to place equal emphasis on the generation of income and on capital growth and that (in either case) this may accordingly constrain capital growth.

(3) List any individual eligible securities markets through which the collective investment scheme may invest or deal.

(4) State the extent (as a per centage of the total) to which the collective investment scheme intends to invest its assets in any one security or sector and whether or not it has done so.

(5) State the policy in relation to the exercise of borrowing powers by the collective investment scheme.

(6) In the case of a collective investment scheme, which may invest in other collective investment schemes state the extent to which the collective investment scheme portfolio may be invested in the shares of collective investment schemes, which are managed by the fund manager or by an associate of the fund manager.

5. Distributions

State—

(a) the date on which the collective investment scheme's annual accounting period is to be in each year;

(b) if there are interim accounting periods, what they are and the policy in relation to interim distributions (whether interim distribution will be made and if so, the policy on smoothing of income distributions within an annual accounting period);

(c) the date or dates in each year on or before which payment or accumulation of income is to be made or take place;

(d) if applicable, the policy on payment of income equalisation;

(e) how distributable income is determined; and

(f) if applicable, that unclaimed distributions may be forfeited and summarize the relevant provisions of the instrument of incorporation.

6. The characteristics of shares in the collective investment scheme

State—

(a) where there is more than one class of shares in issue or available for issue, the names of such classes, the rights attached to each class in so far as they vary from the rights attached to other classes;

(b) how holders may exercise their voting rights and what these are; and

(c) what the method is for conversion between shares of different classes; and

(d) in what circumstances, if any, a mandatory redemption, cancellation or conversion of shares from one class to another may be required.

7. The Fund Manager

State the following particulars of the fund manager—

(a) name;

(b) the nature of corporate form;

(c) the date of incorporation;

(d) the address of registered office;

(e) the address of head office if different from (d);

(f) if it is a subsidiary, the name and place of incorporation of ultimate holding company;

(g) the amount of issued share capital and how much of it is paid up;

(h) the date of licence with the Authority to operate as fund manager;

(i) whether the fund manager is in any capacity in relation to any other regulated collective investment schemes and if so the names of the schemes and the nature of the capacity in relation to those schemes; and

(j) a summary of the material provisions of the contract between the collective investment scheme and the fund manager which may be relevant to the holders including provisions relating to terminations, compensation on termination and indemnity.

8. Other directors of the collective investment scheme

State—

(a) the names and positions of the directors in the collective investment scheme;

(b) the main business activities of each of the directors (other than those connected with the business of the collective investment scheme);

(c) the manner, amount and calculation of the remuneration of directors;

(d) in summary form, the main terms of each contract of service between the collective investment scheme and a director; and

(e) if the director is a body corporate in a group of which any other corporate director of the collective investment scheme is a member, a statement of that fact.

9. The Trustee

State the following particulars of the trustee—

(a) name and address;

(b) date and place of its incorporation;

(c) if it is a subsidiary, the name of its ultimate holding company and the date and place of its incorporation;

(d) the address of its registered office (if different from (a));

(e) the address of its head office if that is different from (a) and (d); and

(f) a description of its principal business activity.

10. The Custodian

State the following particulars of the custodian—

(a) name and address;

(b) the date of incorporation;

(c) if it is a subsidiary, the name of its ultimate holding company and its place of incorporation;

(d) the address of its registered office (if different from (a));

(e) the address of its head office (if different from (a) and (d));

(f) a description of its principal business activity; and

(g) a summary of the material provisions of the contract between the collective investment scheme and the custodian, which may be relevant to holders including provisions relating to the remuneration of the custodian.

11. The Auditor

State the name and address of the auditor of the collective investment scheme.

12. The Register of Holders

State the address in Kenya where the register of the holders is kept and can be inspected by the holders.

13. Payments to the Fund Manager

State the payments that may be made to the fund manager out of the collective investment scheme portfolio whether by way of remuneration for its services or reimbursement of expenses. For each category of remuneration, specify—

(a) the current amounts of such remuneration;

(b) how will it be calculated and accrue and when it will be paid;

(c) if notice is to be given to holders of the fund manager's intention to introduce a new category of remuneration for its services or to increase any amount currently charged, particulars of that increase and when it will take place;

(d) whether all or part of the remuneration is to be treated as a capital charge—

(i) that fact; and

(ii) the actual or maximum amount of the charge which may be so treated; and

(iii) if notice has been given to holders of an intention to propose an increase in the maximum amount of that charge at a meeting of holders and particulars of that proposal.

14. Other Payments out of the Collective Investment Scheme Portfolio

Provide details of—

(a) any liability of the collective investment scheme to reimburse costs incurred by any of its directors, its custodian or any third party;

(b) any remuneration payable by the collective investment scheme to any third party; and

(c) the types of other charges and expenses that may be taken out of the collective investment scheme portfolio.

15. Movable and immovable property

Give an estimate of any expenses likely to be incurred by the collective investment scheme in respect of movable and immovable property in which the collective investment scheme has an interest.

16. Sale and redemption of shares

State—

(a) the dealing days and times in the dealing day on which the fund manager will be available to receive requests for the issue and redemption of shares;

(b) the procedures for effecting the sale and redemption of shares and the settlement of transactions;

(c) whether certificates will be issued in respect of registered shares;

(d) the steps required to be taken by a holder in redeeming shares before he can receive the proceeds;

(e) the circumstances in which the redemption of shares may be suspended;

(f) the days and time on which recalculation of the price will commence;

(g) the amounts of the following minima (if they apply) for each type of share in the collective investment scheme—

.

(i) the minimum number of shares which any one person may hold;

(ii) the minimum value of shares which any one person may hold;

(iii) the minimum number of shares which may be the subject of any one transaction of shares or redemption;

(iv) the minimum value of shares which may be subject of any one transaction of sale or redemption;

(h) the circumstances in which the fund manager may arrange for, and the procedure for, a cancellation of shares;

(i) in which local newspaper the most recent price will be published and how often the prices will be published;

(j) the time period for the custodian to pay the repurchase price of the shares to the holder.

17. Valuation of the collective investment scheme portfolio

State—

(a) how frequently and at what time of the day the collective investment scheme portfolio will be valued for the purpose of determining the price at which shares in the collective investment scheme may be purchased from or redeemed by the fund manager and a description of any circumstances in which the collective investment scheme portfolio may be specially valued;

(b) the basis on which the collective investment scheme portfolio will be valued; and

(c) how the price of the shares of each class will be determined.

18. Dilution levy

State—

(a) what is meant by dilution and by dilution levy; and

(b) the fund manager's policy on imposing a dilution levy.

19. Forward and historic pricing

(1) Disclose the fund manager's normal basis of dealing.

(2) Disclose the basis of the management fee and the service charge.

20. Initial charge

If the fund manager makes a preliminary charge state—

(a) the current amount or rate of the initial charge; and

(b) if notice has been given to holders of the fund manager's intention to introduce a initial charge or to increase the rate or amount currently charged, particulars of that introduction or increase and when it will take effect.

21. Redemption charge

If the fund manager may make a redemption charge, state—

(a) the amount of that charge, or if it is a variable, the rate or method of arriving at it;

(b) if the amount, rate or method has been changed, that the details of any previous amount, rate or method may be obtained from the fund manager on request;

(c) if notice has been given to holders of the fund manager's intention to introduce a redemption charge or to propose a change in the rate or amount or method which is adverse to the holders, particulars of that proposal; and

(d) how the order in which shares acquired at different times by a holder shall be determined insofar as necessary for the purposes of the imposition of the redemption charge.

22. General information

State—

(a) when annual and half yearly reports will be published;

(b) the address at which copies of instruments of incorporation, any amending instrument and most recent annual and half yearly reports may be inspected and from which, copies may be obtained.

23. Umbrella collective investment scheme

(a) State, in the case of an umbrella collective investment scheme—

(i) whether or not a shareholder is entitled to exchange shares in one sub-fund for shares in any other sub-fund;

(ii) whether or not an exchange of shares in one sub fund for shares in any other sub-fund is treated as a redemption and a sale and will be subject to taxation on capital gains or withholding tax, as the case may be;

(iii) subject to (i) and (ii), that in no circumstances will a holder who exchanges shares in one sub-fund for shares in any other sub-fund be given a right by law to withdraw from or cancel that transaction;

(iv) what charges, if any, may be made on exchanging shares in one sub-fund for shares in another sub-fund;

(v) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of the collective investment scheme portfolio, which are not attributable to any particular sub-fund;

(vi) in respect of each sub fund, the currency in which the collective investment scheme portfolio allocated to it will be valued and the price of shares calculated and payments made, if this currency is not the base currency of the umbrella collective investment scheme; and

(vii) if there are shares in respect of less than two sub funds in issue the effect of regulation 42.

(b) In the application of this Schedule to an umbrella scheme, information required—

(i) shall state in relation to each sub fund where the information for any sub fund differs from that for any other;

(ii) shall state for the collective scheme as a whole but only where the information is relevant to the collective investment scheme as a whole;

(iii) shall contain a statement to the effect that the sub funds of an umbrella scheme are not “ring fenced” and the event of an umbrella scheme being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may have to be met out of the assets attributable to other sub-funds.

24. Marketing outside Kenya

(List other countries in which marketing and selling of collective investment shares will occur.)

An information memorandum which is prepared for the purpose of marketing shares in States outside Kenya shall state the following—

(a) that all formalities and requirements of such country have been fulfilled;

(b) what special arrangements have been made—

(i) for paying in that country amounts distributable to holders residing in that country;

(ii) for redeeming in that country the shares of holders resident in that country;

(iii) for inspecting and obtaining copies in that country of the instrument of incorporation and the amendments thereto, of the prospectus and of the annual and half yearly reports; and

(iv) for making public the prices of shares of each class;

(c) how the collective investment scheme will publish in that country the following information that—

(i) annual and half yearly reports are available for inspection;

(ii) a distribution has been declared;

(iii) amendments have been made to the incorporation documents;

(iv) the information memorandum has been revised or that changes have been made to the arrangements under paragraph (a).

The information memorandum will state that the shares are to be marketed in that country.

25. Additional information

State any other material information which is within the knowledge of the fund manager or which the fund manager would have obtained by making of reasonable inquiries—

(a) which investors and their advisers would reasonably require and reasonably expect to find in an information memorandum to enable them to make an informed judgment about the merits of investing in the collective investment scheme and the extent and characteristics of the risks accepted by so participating;

(b) including a statement of any risk factors in the collective investment scheme that may reasonably be regarded as presenting for reasonably prudent investors of moderate means;

(c) in the case of an investment company, information on whether there is a minimum subscription value which must be raised during the limited offer period.

FIFTH SCHEDULE

[Regulation 96.]

INTERIM AND ANNUAL REPORTS

Except as stated the following matters shall be set out in every annual and half-yearly report of a collective investment scheme.

PART I – REPORT OF THE TRUSTEE OR BOARD OF DIRECTORS/FUND MANAGER (AS THE CASE MAY BE)

1. The names and addresses of the following—

(a) the fund manager;

(b) the Trustee;

(c) the custodian; and

(d) the Auditor.

2. The names of all the directors.

3. A statement that—

(a) the collective investment scheme is an approved collective investment scheme within the meaning of the Capital Markets Act; and

(b) the holders are not liable for the debts of the collective investment scheme.

4. A statement on the nature of the funds in the collective investment scheme (i.e. price index funds, securities funds, money market funds, etc.) or an umbrella scheme, as the case may be.

5. The investment objectives of the collective investment scheme.

6. The collective investment scheme's policy for achieving that objective.

7. A review of the collective investment scheme's investment activities during the period to which the report relates.

8. Particulars of any significant change in the information memorandum made since the date of the last report.

9. Particulars of any significant change in the incorporation documents since the date of the last report.

10. A statement of any sub-division or consolidation of shares which has been effected during the period to which the report relates.

11. Any other significant information which would enable shareholders to make an informed judgment on the development of the activities of the collective investment scheme during this period and the results of those activities as at the end of that period.

12. In the case of a report relating to an umbrella scheme—

(a) information required under the above paragraphs shall be given in respect of each sub-fund if it would vary from that given in respect of the umbrella scheme as a whole and paragraph 4 shall apply as if it required a statement in respect of each sub-fund; and

(b) the report shall contain statements to the effect that—

(i) there are and/or as the case may be, in the future there may be, other sub funds of that umbrella collective investment scheme; and

(ii) a sub-fund is not a legal entity, if the assets attributable to any sub-fund were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other sub-funds of the umbrella scheme.

PART II – COMPARATIVE TABLE

1. A performance record over the last 5 calendar years, or if the collective investment scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing—

(a) the highest and the lowest price of a share of each class in issue during each of those years; and

(b) the net income distributed for a share of each class during each of those years, taking account of any sub-division or consolidation of shares that occurred during that period.

2. As at the end of each of the last three annual accounting periods (or all of the collective investment scheme's accounting periods, if less than three) the total value of the collective investment scheme portfolio at the end of each of those years and the price for a share of each class and the number of shares of each class in issue at the end of each of those years.

3. If in the period covered by the table—

(a) the collective investment scheme has been subject of any event (such as an amalgamation or reconstruction but excluding any issue or cancellation

of shares for cash) having a material effect of the size of the collective investment scheme; or

(b) there have been changes in the investment objectives of the collective investment scheme,

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

4. In the case of an umbrella scheme paragraphs 1 to 3 shall not apply and the information required under each of paragraphs 1 to 3 shall instead be given in respect of each sub-fund of the umbrella scheme.

PART III – REPORT OF THE CUSTODIAN

The report of the custodian to the holders for any annual accounting period shall contain statements—

(a) which may be in summary form, describing the duties of the custodian under regulation 35 and in respect of the safekeeping of the collective investment scheme portfolio;

(b) to the effect of whether—

(i) the issue, sale, redemption and cancellation, and calculation of the price of the collective investment scheme's shares and the application of the collective investment scheme's income have been carried out in accordance with these Regulations; and

(ii) the investment and borrowing powers and restrictions applicable to the collective investment scheme in accordance with these Regulations and the documents of incorporation have been exceeded.

PART IV – REPORT OF THE AUDITOR

[Regulation 96.]

5. The report of the auditor to the shareholders in respect of the accounts of the collective investment scheme shall state—

(a) whether in the auditor's opinion, the accounts have been properly prepared in accordance with these Regulations;

(b) whether, in the auditor's opinion, the accounts give a true and fair view of the net income and the net gains or losses on the collective investment scheme portfolio for the annual accounting period in question and the financial position of the collective investment scheme or the sub-fund as at the end of that period;

(c) if the auditor is of the opinion that proper accounting records for the collective investment scheme have not been kept or that the accounts are not in agreement with those records, that fact; and

(d) if the auditor has not been given all the information and explanation which, to the best of his knowledge and belief, are necessary for the purpose of his audit, that fact; and

(f) if the auditor is of the opinion that the information given in the report of the directors for that period is inconsistent with the accounts, that fact.

GUIDELINES ON THE APPROVAL AND REGISTRATION OF CREDIT RATING AGENCIES

[G.N. 8512/2001.]

SCHEDULE

1. Introduction

The Capital Markets Authority is seeking to promote the establishment of credit rating agencies as part of measures aimed at building an active corporate securities debt market and impetus to deepening of the domestic capital markets.

These are guidelines on the requirements for approval and registration of credit rating agencies in Kenya.

1.1 Credit Rating:

Credit rating is an objective and independent opinion on the general creditworthiness of an issuer of a debt instrument, and its ability to meet its obligations in a timely manner over the life of the financial instrument based on relevant risk factors including the ability of the issuer to generate cash in the future. Ratings rank the debt issue within a consistent framework to compare risk among the different debt instruments in the market and assign a risk grade.

As it pertains to assessment of future likely positions on the basis of both quantitative and qualitative judgment and past performance, credit rating is necessarily subjective. The goal of the rating process is to arrive at a reasoned judgment on credit risk not through a set formula but rather through a careful review and analysis of the critical issues surrounding a specific debt and the issuer. This in particular includes the ability of the management to sustain in future, cash generation in the face of adverse changes in the business and economic environment. A rating is therefore an informed opinion of future outcome based on known qualitative and quantitative factors.

A rating does not constitute a recommendation to purchase, sell or hold a particular security. In addition, a rating does not comment on the suitability of an investment for a particular investor.

The objective of a credit rating is to provide independent, high quality, impartial, value-added quantitative and qualitative review as well as analytical information on the risk profile assessment of issuers of financial instruments.

It therefore serves to promote confidence in the capital markets and enhance transparency by facilitating investors' awareness on underlying risks of an issuer or issued financial instrument through assignment of ratings.

2. Core Professional Capacity

2.1 The applicant must make evident its capacity to perform the role of a rating agency.

2.2 The applicant must have a background and experience as well as professional expertise to provide the service of a rating agency.

2.3 The applicant must either be in the process of appointing or have appointed professionals including economic, financial and research analysts, and other relevant quantitative and qualitative analysts who have the relevant background in the rating business.

3. Objectivity and Independence

3.1. The applicant must demonstrate its independence and objectivity.

3.2. The applicant must not be associated directly or indirectly with group(s) who have conflicting interests in the area of the rating business.

3.3. The applicant must also demonstrate that it has a proven rating methodology.

3.4. The rating process must have sufficient internal checks and balances to safeguard objectivity in particular where qualitative judgment also plays an important role in the rating process.

3.5. The rating process must be based on quantitative and qualitative review of facts and must not rely in hearsay or rumours to downgrade or upgrade a particular issuer or issued financial instrument.

4. Ownership

4.1 In order to ensure independence and objectivity, the applicant must be a body corporate with a preponderance of an institutional shareholding of repute.

4.2 The shareholders, board of directors, management and professional analytical staff should be persons of impeccable character.

4.3 The applicant should partly be owned by an internationally recognized rating agency or have a contractual arrangement with an internationally recognized rating agency that provides technical and strategic support drawn from international experience.

4.4 For purposes of this guidelines, an internationally recognized agency shall be a rating agency which has been in the business of providing credit ratings for debt securities or any securities of interest to investors, which obligates the issuer to pay back the principal amount raised in more than two markets for at least five years.

4.5 The ownership structure or association and capital level shall not be the only basis or criteria of determining the independence and integrity of a rating agency.

5. Capital Requirements

The applicant shall have a stable financial base with a minimum paid up capital of KSh. 12 million (or the equivalent in US dollars).

6. Disclosure of Information by Rating Agency

The rating agency must disclose to the Authority, issuers and the general public the following—

(a) General fee structure or any change thereof;

(b) downgrades of ratings;

(c) disclosure of ratings of commercial paper or corporate bonds as applicable.

7. Confidentiality

The rating agency must have a system of maintaining on a confidential basis the information supplied strictly for the purpose of rating by issuers in order to safeguard and promote confidence in the rating process.

8. Documents to Accompany the Application for Approval and Registration of a Credit Agency in Kenya

An application for approval and registration should be made to the Capital Markets Authority accompanied by the following—

(a) certificate of Incorporation, Memorandum and Articles of Association;

(b) business plan (to include resumes of the top management staff, management structure, brief on the rating methodology, rating grades, fee structure);

(c) a sample of a standard agreement between the rating agency and its clients;

(d) draft sample “letter of requests” for rating accompanied by a draft of the “information requirements for rating securities”.

GUIDELINES ON CORPORATE GOVERNANCE PRACTICES BY PUBLIC LISTED COMPANIES IN KENYA

[G.N. 3362/2002.]

SCHEDULE

1. Introduction

1.1 The Capital Markets Authority (the Authority) has developed these guidelines for good corporate governance practices by public listed companies in Kenya in response to the growing importance of governance issues both in emerging and developing economies and for promoting growth in domestic and regional capital markets. It is also in recognition of the role of good governance in corporate performance, capital formation and maximization of shareholders value as well as protection of investors' rights.

1.2 Corporate governance, for the purpose of these guidelines is defined as the process and structure used to direct and manage business affairs of the company towards enhancing prosperity and corporate accounting with the ultimate objective of realising shareholders long-term value while taking into account the interest of other stakeholders.

1.3 These guidelines have been developed taking into account the work which has been undertaken extensively by several jurisdictions through many task forces and committees including but not limited to the United Kingdom, Malaysia, South Africa, Organization for Economic Cooperation and Development (OECD) and the Commonwealth Association for Corporate Governance.

The Authority has also supported development of a code of best practice for corporate governance in Kenya issued by the Private Sector Corporate Governance Trust, Kenya, whose efforts have also been useful in the development of these guidelines and are supplementary thereto.

1.4 The objective of these guidelines is to strengthen corporate governance practices by public listed companies in Kenya and to promote the standards of self-regulation so as to bring the level of governance in line with international trends.

1.5 The Authority, in developing these guidelines has adopted both a prescriptive and a non-prescriptive approach in order to provide for flexibility and innovative dynamism to corporate governance practices by public listed companies.

1.6 Good corporate governance practices must be nurtured and encouraged to evolve as a matter of best practice but certain aspects of operation in a body corporate must of necessity require minimum standards of good governance. In this regard the Authority expects the directors of every public listed company to undertake or commit themselves to adopt good corporate governance practices as part of their continuing listing obligations.

1.7 It is important that the extent of compliance with these guidelines should form an essential part of disclosure obligations in the corporate annual reports. It is equally important the extent of non-compliance be also disclosed.

1.8 Every public listed company shall disclose, on an annual basis, in its annual report, a statement of the directors as to whether the company is complying with these guidelines on corporate governance with effect from the financial year ending during 2002, as prescribed under the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002.

1.9 All issuers of fixed income securities or debt instruments through the capital markets such as bonds and commercial paper shall also comply with these guidelines. The issuer of the fixed income securities or debt instrument shall disclose in the information memorandum the extent of compliance with these guidelines.

1.10 Where the company or Issuer is not fully compliant with these guidelines, the Issuer shall identify the reasons for non-compliance and indicate the steps being taken to become compliant.

1.11 Whilst these guidelines have been developed for public listed companies and issuers of fixed income securities and debt instruments in Kenya's capital market, companies in the private sector are also encouraged to practice good corporate governance.

2. Principles of Good Corporate Governance Practices

There are a number of principles that are essential for good corporate governance practices of which the following have been identified as representing critical foundation and virtues of good corporate governance practices:

2.1 *Directors*

Every public listed company should be headed by an effective board to offer strategic guidance, lead and control the company and be accountable to its shareholders.

2.1.1 *The Board and Board committees*

(i) the Board should establish relevant committees and delegate specific mandates to such committees as may be necessary.

(ii) the Board shall specifically establish an audit and nominating committee.

2.1.2 *Directors' Remuneration*

(i) the directors' remuneration should be sufficient to attract and retain directors to run the company effectively and should be approved by shareholders.

(ii) the executive directors remuneration should be competitively structured and linked to performance.

(iii) the non-executive directors' remunerations should be competitive in line with remuneration for other directors in competing sectors.

Companies should establish a formal and transparent procedure for remuneration of directors, which should be approved by the shareholders.

2.1.3 *Supply and Disclosure of Information*

(i) the board should be supplied with relevant, accurate and timely information to enable the board discharge its duties.

(ii) every board should annually disclose in its annual report, its policies for remuneration including incentives for the board and senior management, particularly the following—

(a) quantum and component of remuneration for directors including non executive directors on a consolidated basis in the following categories—

(aa) executive directors' fees;

(bb) executive directors' emoluments;

(cc) non-executive directors' fees;

(dd) non-executive directors' emoluments;

(b) a list of ten major shareholders of the Company;

(c) share options and other forms of executive compensation that have to be made or have been made during the course of the financial year; and

(d) aggregate directors' loans.

2.1.4 *Board balance*

The Board should compose of a balance of executive directors and non-executive directors (including at least one third independent and non-executive directors) of diverse skills or expertise in order to ensure that no individual or small group of individuals can dominate the board's decision-making processes.

2.1.4.1 **"Independent Director"** means a director who—

(i) has not been employed by the Company in an executive capacity within the last five years;

(ii) is not associated to an adviser or consultant to the Company or a member of the Company's senior management or a significant customer or supplier of the Company or with a not-for-profit entity that receives significant contributions from the Company; or within the last five years, has not had any business relationship with the Company (other than service as a director) for which the Company has been required to make disclosure;

(iii) has no personal service contract(s) with the Company, or a member of the Company's senior management;

(iv) is not employed by a public listed company at which an executive officer of the Company serves as a director;

(v) is not a member of the immediate family of any person described above; or

(vi) has not had any of the relationships described above with any affiliate of the Company.

2.1.4.2 **"Non-executive Director"** means a director who is not involved in the administrative or managerial operations of the Company.

2.1.5 *Appointments to the Board*

There should be a formal and transparent procedure in the appointment of directors to the board and all persons offering themselves for appointment, as directors should disclose any potential area of conflict that may undermine their position or service as director.

2.1.6 *Multiple Directorships*

Every person save a corporate director who is a director of a listed company shall not hold such position in more than five public listed companies at any one time to ensure effective participation in the board and in the case where the corporate director has appointed an alternate director, the appointment of such alternate shall be restricted to three public listed companies, at any one time, subject to the requirements under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

2.1.7 *Re-election of Directors*

(i) all directors except the managing director should be required to submit themselves for re-election at regular intervals or at least every three years.

(ii) executive directors should have a fixed service contract not exceeding five years with a provision to renew subject to—

(a) regular performance appraisal; and

(b) shareholders approval.

(iii) disclosure should be made to the shareholders at the annual general meeting and in the annual reports of all directors approaching their seventieth (70th) birthday that respective year.

2.1.8 *Resignation of Directors*

Resignation by a serving director should be disclosed in the annual report together with the details of the circumstances necessitating the resignation.

2.2 *Role of Chairman and Chief Executive*

2.2.1 There should be a clear separation of the role and responsibilities of the chairman and chief executive, which will ensure a balance of power of

authority and provide for checks and balances such that no one individual has unfettered powers of decision making. Where such roles are combined a rationale for the same should be disclosed to the shareholders in the annual report of the Company.

2.2.2 Every person who is a Chairperson of a public listed company shall not hold such position in more than two public listed companies at any one time, in order to ensure effective participation in the board, subject to the requirements under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

2.3 *Shareholders*

2.3.1 *Approval of Major Decisions by Shareholders*

There should be shareholders participation in major decisions of the Company. The Board should therefore provide the shareholders with information on matters that include but are not limited to major disposal of the Company's assets, restructuring, takeovers, mergers, acquisitions or reorganisation.

2.3.2 *Annual General Meetings*

(i) the board should provide to all its shareholders sufficient and timely information concerning the date, location and agenda of the general meeting as well as full and timely information regarding issues to be decided during the general meeting;

(ii) the board should make shareholders' expenses and convenience primary criteria when selecting venue and location of annual general meetings; and

(iii) the directors should provide sufficient time for shareholders questions on matters pertaining to the Company's performance and seek to explain to the shareholders' their concern.

2.4 *Accountability and Audit*

2.4.1 *Annual reports and Accounts*

The board should present an objective and understandable assessment of the Company's operating position and prospects. The board should ensure that accounts are presented in line with International Accounting Standards.

2.4.2 *Internal Control*

The board should maintain a sound system of internal control to safeguard the shareholders investments and assets.

2.4.3 *Independent Auditors*

The board should establish a formal and transparent arrangement for shareholders to effect the appointment of independent auditors at each annual general meeting.

2.4.4 *Relationship with Auditors*

The board should establish a formal and transparent arrangement for maintaining a professional interaction with the Company's auditors.

2.5 *General*

2.5.1 *Public Disclosure*

There shall be public disclosure in respect of any management or business agreements entered into between the Company and its related companies, which may result in a conflict of interest.

2.5.2 *Chief Financial Officers of Public Listed Companies*

(i) The Chief Financial Officers and persons heading the accounting department of every issuer shall be members of the Institute of

Certified Public Accountants established under the Accountants Act (Cap. 531).

(ii) where the persons referred to in paragraph (i) are members of other internationally recognized professional bodies and are yet to register as members of the Institute of Certified Public Accountants such persons shall register as members of the Institute within a period of twelve months from the date of appointment to such position, subject to requirements under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

2.5.3 *Company Secretaries of Public Listed Companies*

The Company Secretary of every public listed company shall be a member of the Institute of Certified Public Secretaries of Kenya established under the Certified Public Secretaries of Kenya Act (Cap. 534).

2.5.4 *Auditors of Public Listed Companies*

The auditor of a public listed company shall be a member of the Institute of Certified Public Accountants and shall comply with the International Auditing Standards.

3. Recommended Best Practices in Corporate Governance by Public listed Companies

The adoption of international standards in corporate governance best practices is essential for public companies in Kenya in order to maximize shareholders value through effective and efficient management of corporate resources. As a matter of best practice, every public listed company should endeavour to achieve the following:

3.1 *Best Practices Relating to the Board of Directors*

3.1.1 *The Role and Responsibilities of the Board of Directors*

The board of Directors should assume a primary responsibility of fostering the long-term business of the corporation consistent with their fiduciary responsibility to the shareholders. The board of directors should accord sufficient time to their functions and act on a fully informed basis while treating all shareholders fairly, in the discharge of the following responsibilities, among others—

(i) define the company's mission, its strategy, goals, risk policy plans and objectives including approval of its annual budgets;

(ii) oversee the corporate management and operations, management accounts, major capital expenditures and review corporate performance and strategies at least on a quarterly basis;

(iii) identify the corporate business opportunities as well as principal risks in its operating environment including the implementation of appropriate measures to manage such risks or anticipated changes impacting on the corporate business;

(iv) development of appropriate staffing and remuneration policy including the appointment of chief executive and the senior staff, particularly the finance director, operations director and the company secretary as may be applicable;

(v) review on a regular basis the adequacy and integrity of the Company's internal control, acquisition and divestitures and management information systems including compliance with applicable laws, regulations, rules and guidelines; and

(vi) establish and implement a system that provides necessary information to the shareholders including shareholder communication policy for the Company;

(vii) monitor the effectiveness of the corporate governance practices under which the Company operates and propose revisions as may be required from time to time;

(viii) take into consideration the interests of the Company's stakeholders in its decision making process.

3.1.2 *A balanced Board Constitutes an Effective Board*

(i) the board of directors of every listed company should reflect a balance between independent, non-executive directors and executive directors.

(ii) the independent and non-executive directors should form at least one-third of the membership of the board.

(iii) the structure of the board should also comprise a number of directors, which fairly reflects the Company's shareholding structure. The Board composition should not be biased towards representation by a substantial shareholder but should reflect the Company's broad shareholding structure. The composition of the board should also provide a mechanism for representation of the minority shareholders without undermining the collective responsibility of the directors.

(iv) A substantial shareholder, for the purpose of these guidelines is a person who holds not less than fifteen per cent of the voting shares of a listed company and has the ability to exercise a majority voting for the election of the directors.

(v) In circumstances where there is no major shareholder but there is a substantial shareholder the board should exercise judgment determining the representation on the board of such shareholder and of the other shareholders that effectively reflects the shareholding structure of the Company.

(vi) The board should disclose in its annual report whether independent and non-executive directors constitute one third of the board and if it satisfies the representation of the minority shareholders.

(vii) The size of the board should not be too large to undermine an inter-active discussion during board meetings or too small such that the inclusion of a wider expertise and skills to improve the effectiveness of the board is compromised.

(viii) the board should monitor and manage potential conflict of interest at management, Board and shareholder levels.

3.1.3 *Appointment and Qualifications of Directors*

(i) the board of every public listed company should appoint a nominating committee consisting mainly of independent and non-executive directors with the responsibility of proposing new nominees for the board and for assessing the performance and effectiveness of directors in the Company.

(ii) the nominating committee should consider only persons of calibre, credibility and who have the necessary skills and expertise to exercise independent judgment on issues that are necessary to promote the Company's objectives and performance in its area of business.

(iii) the nominating committee should also consider candidates for directorship proposed by the chief executive and shareholders.

(iv) the board, through the nominating committee, should on an annual basis review its required mix of skills and expertise that the executive directors as well as independent and non-executive directors bring to the Board and make disclosure of the same in the annual report.

(v) the Board should also implement a process of assessing the effectiveness of the board as a whole, the committees of the Board, as well as of each individual director and such task should be assigned to the nominating committee.

(vi) newly appointed directors should be provided with necessary orientation in the area of the Company's business in order to enhance their effectiveness in the Board.

(vii) the nominating committee should recommend to the board candidates for directorship to be filled by the shareholders as the responsibility of nominating rests on the full board, after considering the recommendations of the nominating committee.

(viii) The process of the appointment of directors should be sensitive to gender representation, national outlook and should not be perceived to represent single or narrow community interest.

(ix) No person shall be a director in more than five public listed companies at any one time in order to ensure effective participation in the board.

3.1.4 *Remuneration of the directors*

(i) The Board of Directors of every listed company should appoint a remuneration committee or assign a mandate to a nominating committee consisting mainly of independent and non-executive directors to recommend to the board the remuneration of the executive directors and the structure of their compensation package.

(ii) The determination of the remuneration for the non-executive and independent directors should be a matter for the whole board.

(iii) The remuneration of the executive director should include an element that is linked to corporate performance including a share option scheme so as to ensure the maximization of the shareholders' value.

(iv) The consolidated total remuneration of the directors should be disclosed to the shareholders in the annual report specifying the following categories—

(a) total remuneration for executive directors;

(b) total fees for non-executive and independent directors.

3.2 *Best Practices Relating to the Position of Chairman and Chief Executive*

(i) Every public listed company should as a matter of best practice separate the role of the chairman and chief executive in order to ensure a balance of power and authority and provide for checks and balances.

(ii) Where the role of the chairman and the chief executive is combined, there should be a clear rationale and justification which must—

(a) be for a limited period;

(b) be approved by the shareholders;

(c) include measures that have been implemented to ensure that no one individual has unfettered powers of decision in the Company; and

(d) include plan for separation of the role where such combined role is deemed necessary for a limited period during the restructuring or change process.

(iii) Chairmanship of a public listed company should be held by an independent and non-executive director.

(iv) No person shall be a chairman in more than two public listed companies at any one time in order to ensure effective participation in the board.

(v) Every public listed company should also have a clear succession plan for its chairman and chief executive in order to avoid unplanned and sudden departures, which could undermine the company's and shareholders' interest.

(vi) The chief executive should be responsible for implementing the Board corporate decision and there should be a clear flow of information between management and the board in order to facilitate both quantitative and qualitative evaluation and appraisal of the company's performance.

(vii) The chairman of the board should undertake a primary responsibility for organizing information necessary for the board to deal with and for providing necessary information to the directors on a timely basis.

(viii) The chief executive is obliged to provide such necessary information to the board in the discharge of the board's business.

3.3 *Best practices relating to the rights of the shareholders*

The essence of good corporate governance practices is to promote and protect shareholders' rights—

(i) a board of a public listed company should ensure equitable terms of shareholders including the minority and foreign shareholders.

(ii) all shareholders should receive relevant information on the company's performance through distribution of regular annual reports and accounts, half-yearly results and quarterly results as a matter of best practice.

(iii) the shareholders should receive a secure method of transfer and registration of ownership as well as a certificate or statement evidencing such ownership in the case of a central depository environment.

(iv) every shareholder shall have a right to participate and vote at the general shareholders meeting including the election of directors.

(v) every shareholder shall be entitled to ask questions, seek clarification on the Company's performance as reflected in the annual reports and accounts or in any matter that may be relevant to the Company's performance or promotion of shareholders' interests and to receive explanation by the directors and/or management.

(vi) every shareholder shall be entitled to distributed profit in form of dividend and other rights for bonus shares, script dividend or rights issue, as applicable and in the proportion of its shareholding in the Company.

(vii) the board should maintain an effective communication policy that enables both management and the board to communicate effectively with its shareholders, stakeholders and the public in general.

(viii) the annual report and accounts to the shareholders must include highlights of the operation of the Company and financial performance.

(ix) all shareholders should be encouraged, to participate in the annual general meetings and to exercise their votes.

(x) Institutional investors are particularly encouraged to make direct contact with the Company's senior management and board members to discuss performance and corporate governance matters as well as vote during the annual general meetings of the Company.

(xi) companies, as a matter of best practice, are encouraged to organize regular investor briefings and in particular when the half-yearly and annual results are declared or as may be necessary to explain their performance and promote interaction with investors.

(xii) every public listed company should encourage the establishment and use of the Company's website by shareholders to ease communication and interaction among shareholders and the Company.

(xiii) every public listed company should encourage and facilitate the establishment of a Shareholders' Association to promote dialogue between the Company and the shareholders. The Association should play an important role in promoting good corporate governance and actively encourage all

shareholders to participate in the annual general meeting of the Company or assign necessary voting proxy.

(xiv) Shareholders while exercising their right of participation and voting during annual general meetings of the Company should not act in a disrespective manner as such action may undermine the Company's interest.

3.4 *Best Practices Relating to the Conduct at Annual General Meetings*

The Board of a public listed company should ensure that shareholders' right of full participation at annual general meetings are protected by giving shareholders—

(i) sufficient information on voting rules or procedures;

(ii) the opportunity to quiz management;

(iii) the opportunity to place items on the agenda at annual general meetings;

(iv) the opportunity to vote *in absentia*;

(v) sufficient information to enable them to consider the costs and benefits of their votes.

3.5 *Best Practices Relating to Accountability and the Role of Audit Committees*

As a matter of best practice, the constitution of audit committees represents an important step towards promoting good corporate governance. The following shall represent the recommended best practice relating to the role and constitution of audit committees by public listed companies:

3.5.1 *The Audit Committee*

The board shall establish an audit committee of at least three independent and non-executive directors who shall report to the board, with written terms of reference, which deal clearly with its authority and duties. The chairman of the audit committee should be an independent and non-executive director. The board should disclose in its annual report whether it has an audit committee and the mandate of such committee.

3.5.2 *Attributes of Audit Committee Members*

Important attributes of committee members should include—

(i) broad business knowledge relevant to the Company's business;

(ii) keen awareness of the interests of the investing public and familiarity with basic accounting principles; and

(iii) objectivity in carrying out their mandate and no conflict of interest.

3.5.3 *Duties of Audit Committees*

Audit Committees should have adequate resources and authority to discharge their responsibilities. The members of the audit committee shall—

(i) be informed, vigilant and effective overseers of the financial reporting process and the Company's internal controls;

(ii) review and make recommendations on management programs established to monitor compliance with the code of conduct;

(iii) consider the appointment of the external auditor, the audit fee and any questions of resignation or dismissal of the external auditor;

(iv) discuss with the external auditor before the audit commences, the nature and scope of the audit, and ensure co-ordination where more than one audits firm is involved;

(v) review management's evaluation of factors related to the independence of the Company's external auditor. Both the audit committee and management should assist the external auditor in preserving its independence;

(vi) review the quarterly, half-yearly and year-end financial statements of the Company, focusing particularly on—

(a) any changes in accounting policies and practices;

(b) significant adjustments arising from the audit;

(c) the going concern assumption; and

(d) compliance with International Accounting Standards and other legal requirements;

(vii) discuss problems and reservations arising from the interim and final audits, and any matter the external auditor may wish to discuss (in the absence of management where necessary);

(viii) review any communication between external auditor(s) and management;

(ix) consider any related party transactions that may arise within the company or group;

(x) consider the major findings of internal investigations and management's response;

(xi) have explicit authority to investigate any matter within its terms of reference, the resources that it needs to do so and full access to information;

(xii) obtain external professional advice and to invite outsiders with relevant experience to attend, if necessary; and

(xiii) consider other issues as defined by the Board including regular review of the capacity of the internal audit function.

3.5.4 *Audit Committee and Internal Audit Functions*

The Board should establish an internal audit function. The internal audit function should be independent of the activities they audit and should be performed with impartiality, proficiency and due care. The Audit Committee should determine the remitting of the internal audit function and in particular—

(i) review of the adequacy, scope, functions and resources of the internal audit function, and ensure that it has the necessary authority to carry out its work;

(ii) review the internal audit program and results of the internal audit process and where necessary ensure that appropriate action is taken on the recommendations of the internal audit function;

(iii) review any appraisal or assessment of the performance of members of the internal audit function;

(iv) approve any appointment or termination of senior staff members of the internal audit function;

(v) ensure that the internal audit function is independent of the activities of the company and is performed with impartiality, proficiency and due professional care;

(vi) determine the effectiveness of the internal audit function; and

(vii) be informed of resignations of internal audit staff members and provide the resigning staff members an opportunity to submit reasons for resigning.

3.5.5 *Participation in the Meetings of Audit Committees*

(i) the finance director, the head of internal audit (where such a function exists) and a representative of the external auditors shall normally attend meetings of the audit committee while other board members may attend meetings upon the invitation by the audit committee.

(ii) at least once a year the committee shall meet with the external auditors without executive Board members present.

(iii) the audit committee should meet regularly, with adequate notice of the issues to be discussed and should record its conclusions.

(iv) the board should disclose in an informative way, details of the activities of audit committees, the number of audit committee meetings held in a year and details of attendance of each audit committee member at such meetings.

4. The Capital Markets Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya (G.N. 369/2002) are revoked.

CAPITAL MARKETS (SECURITIES) (PUBLIC OFFERS, LISTING AND DISCLOSURES) REGULATIONS, 2002

ARRANGEMENT OF REGULATIONS

.

CAPITAL MARKETS (SECURITIES) (PUBLIC OFFERS, LISTING AND DISCLOSURES) REGULATIONS, 2002

[L.N. 60/2002, L.N. 30/2008, L.N. 101/2009, L.N. 61/2012, L. N. 113/2013, L.N 36/2016, L.N 95/2019.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Alternative Investment Market Segment" means a market segment for which securities of issuers that satisfy the eligibility requirements prescribed under regulation 7(1)(b) are listed;

"days" means calendar days excluding Saturdays, Sundays and public holidays;

"Directors Induction Program" means a training programme, approved by the Securities Exchange in consultation with the Authority, covering issues relating to directors responsibility in listed entities including corporate governance, regulatory compliance and accountability;

"East African Partner State regulator" means the regulator in an East African Community member state charged with the supervision of the capital markets; and

"Executive Director" means a member of a board who also serves as a manager of a company;

"Fixed Income Securities Market Segment" means a market segment for which fixed income securities of issuers that satisfy the eligibility requirements prescribed under regulation 7(1)(c) are listed, and include Government and corporate securities;

"Growth Enterprise Market Segment" means a market segment where issues that satisfy the eligibility requirements prescribed under Regulation (7)(1)(c), are listed;

"IAS" means International Accounting Standards;

"independent director" means a member of a board of directors who—

(a) does not have a material or pecuniary relationship with the company or related persons;

(b) is compensated through sitting fees or allowances; and;

(c) does not own shares in the company;

Provided that after nine years of continuous services he or she ceases to be an independent director and assumes the position of a non-executive director;

"introduction" means the listing of securities that are listed on another securities exchange or that are publicly held other than as a result of an immediately preceding public offer;

"issuer" in relation to any securities, means the person by whom securities have been issued or are to be issued and shall include a company or other legal entity that offers securities to the public or a section thereof in Kenya, whether or not such securities are subject of an application for admission or have been admitted to listing;

"listing" means admission of a security to the official list of a securities exchange; and the terms **"list"** and **"listed"** shall be construed accordingly;

"listing statement" means an information document prepared in connection with a listing on the Growth Enterprise Market Segment and does not constitute an information memorandum or prospectus unless specifically provided;

"Main Investment Market Segment" means a market segment for which securities of issuers that satisfy the eligibility requirements prescribed under regulation 7(1)(a) are listed;

"material information" means any information that may affect the price of an issuer's securities or influence investment decisions and includes information on—

(a) a merger, acquisition or joint venture;

(b) a block split or stock dividend;

(c) earnings and dividends of an unusual nature;

(d) the acquisition or loss of a significant contract;

(e) a significant new product or discovery;

(f) a change in control or significant change in management;

(g) a call of securities for redemption;

(h) the public or private sale of a significant amount of additional securities;

(i) the purchase or sale of a significant asset;

(j) a significant labour dispute;

(k) a significant law suit against the issuer;

(l) establishment of a programme to make purchases of the issuer's own shares;

(m) a tender offer for another issuer's securities;

(n) significant alteration of the memorandum and articles of association of the issuer; or

(o) any other peculiar circumstances that may prevail with respect to the issuer or the relevant industry;

"market segment" means a separate segment of the official list established by a securities exchange, with the approval of the Authority, with respect to listings of securities for which specific eligibility and disclosure requirements are prescribed;

"Nominated Advisor" means a registered person appointed to undertake the responsibilities set out under regulation 10A;

"non-executive director" means a member of a board of a company who can own shares in the company but—

(a) is not part of the management team or affiliated with the company in any way; and

(b) is not an employee of the company.

"offer period" means a period not exceeding ten working days, or such longer period as the Authority may approve, during which an offer for subscription or sale of securities to the public remains open;

"official list" means a list specifying all securities which have been admitted to listing on any of the market segments of a securities exchange;

"regional fixed income securities" means fixed income securities issued under regulation 7(1)(d);

"Registrar" has the meaning as assigned to it in section 2 of the Companies Act (Cap. 486);

"related company" means a holding company, a subsidiary of another company or a subsidiary of the holding company of another company;

"supplementary prospectus" means the prospectus referred to in regulation 13.

[L.N. 30/2008, s. 2, L.N. 61/2012, s. 2, L.N. 113/2013, s. 2, L.N 36/2016, r. 2.]

PART II – ELIGIBILITY, DISCLOSURE AND GENERAL REQUIREMENTS FOR PUBLIC OFFERS

3. Application

(1) These Regulations shall apply to all offers of securities to the public in Kenya whether or not the issuer is seeking a listing on any securities exchange in Kenya.

(2) The Authority shall be the competent authority to grant approval for all public listing of securities on any securities exchange in Kenya.

(2A) A Securities Exchange may approve the listing of a security on a Growth Enterprise Market Segment if—

(i) that security is not offered to the public; and

(ii) the listing is by way of introduction.

(3) A securities exchange shall list all securities approved for listing by the Authority upon being satisfied that the issuer has—

(a) obtained a letter of approval from the Authority for the listing of securities confirming that the issuer has satisfied the eligibility requirements prescribed under regulation 7(1) and the disclosure requirements prescribed under regulation 10 (1) with respect to the market segment in which the securities are to be listed; and

(b) attained the—

(i) total minimum subscription of shares as disclosed in the approved prospectus by the Authority in respect of public offering and listing of securities;

(ii) minimum shareholders prescribed for the respective market segment under regulation 7(1)(a) and (b); and

(c) with respect to additional issue and listing of securities of the same class as those already listed, obtained a letter of approval from the Authority confirming that the issuer satisfied the requirements for additional issues prescribed under regulation 11.

(4) Every issuer of securities approved for listing by the Authority at a securities exchange shall pay the listing fees prescribed under the Sixth Schedule, to the securities exchange at which its securities are listed.

(4A) An issuer of securities approved for listing by a securities exchange shall pay the listing fees as set out in the Seventh Schedule.

(5) Every person whose securities have been approved by the Authority for a public offer or listing shall state that fact on all announcements of the public offer or listing.

(6) A person whose securities have been approved by a Securities Exchange for listing shall state that fact on all announcements of the listing.

[L.N. 30/2008, s. 3, L.N. 61/2012, s. 3.]

4. Meaning of "offer of securities"

A person is to be regarded as offering securities if, as principal—

(a) he makes an offer which, if accepted, would give rise to a contract for the issue or sale of the securities by him or by another person with whom he has made arrangements for the issue or sale of the securities; or

(b) he invites a person to make such an offer,

but not otherwise and, except where the context otherwise requires, **"offer"** and **"offeror"** shall be construed accordingly.

5. Meaning of "offer to the public"

(1) A person offers securities to the public in Kenya if, to the extent that the offer is made to persons in Kenya, it is made to the public and for this purpose, an offer which is

made to any section of the public, whether selected as members or debenture holders of a body corporate, or as clients of the person making the offer, or in any other manner, is to be regarded as made to the public; and the terms **"public offer"** and **"public offering"** shall be construed accordingly.

(2) An issuer applying for a listing shall be bound by all the obligations arising in respect of a public offer of securities in so far as the obligations apply.

(3) An issuer applying for a listing on the Growth Enterprise Market Segment shall be bound by all the obligations arising in respect of listing in such market.

[L.N. 30/2008, s. 4, L.N. 61/2012, s. 4.]

5A. Appointment of transaction advisor

(1) Any company proposing to offer its securities to the public or a section of the public shall appoint a transaction advisor.

(2) A transaction advisor appointed under paragraph (1) shall be responsible for ensuring that the offer of securities is made in accordance with the provisions of the Act and regulations issued thereunder.

(3) A person shall not be eligible for appointment as a transaction advisor unless such person is licensed as an investment bank or is approved by the Authority to act as a transaction advisor for the particular offer of securities.

[L.N. 101/2009, s. 2.]

6. Issuer to publish prospectus

(1) When securities are to be offered to the public, or a section of the public in Kenya the issuer shall publish an Information Memorandum by making it available to the public or the section of the public, free of charge at an address in Kenya, during the offer period or for such period prior to Listing as prescribed by the Authority.

(2) The issuer shall, before the time of publication of the prospectus, obtain approval of the Authority that the information memorandum with these Regulations and shall deliver a copy thereof to the Registrar for registration.

(3) With respect to initial offers to the public, the prospectus shall include—

(a) an accountant's report confirming compliance by the issuer of the financial disclosures prescribed under regulation 10(1); and

(b) a legal opinion which shall include but not be limited to the following—

(i) whether all licences and consents required to perform the business or proposed business of the issuer have been duly obtained;

(ii) the validity of evidence of ownership of land, plant and equipment and other important and relevant assets of the issuer;

(iii) any agreements or contracts with respect to the proposed issue of securities, including, where applicable but not limited to, underwriting contracts, agreements or contracts with any securities exchange, registrar and trustees of bonds, debentures or other credit securities;

(iv) any material litigation, prosecution or other civil or criminal legal action in which the issuer or any of its director is involved;

(v) whether the existing capital of the issuer and any proposed changes thereto is in conformity with applicable laws and has received all necessary authorizations; and

(vi) any other material items with regard to the legal status of the issuer and the proposed issue:

Provided that where by reasons of exceptional circumstances acceptable to the Authority and disclosed in the prospectus, the issuer is not able to obtain a legal opinion, the directors of the issuer will be required individually and severally to declare and give an undertaking on the matters stated in regulation 6(3)(b)(i) to (vi), and such declaration and undertaking shall be included in the prospectus.

(4) The prospectus shall be published in the English language and shall be in black and white except for the issuer's logo.

(5) No person shall offer any securities to the public through an electronic form, unless on the basis of a prospectus approved by the Authority.

(6) Any person offering securities through an electronic form which has been approved by the Authority shall state in the prospectus whether the application for subscription of such securities may be made in an electronic form and in that regard, the procedure and process of facilitating subscription and payment shall be disclosed in the prospectus.

(7) An issuer may distribute a prospectus to prospective investors through electronic form provided such prospectus shall be in the form and content as approved by the Authority.

(8) Where securities are offered through an electronic form the results of the subscription including the allocation process shall be posted on the issuer's website which shall disclose the broad classification of the allottees into individuals, local institutional investors and foreign investors.

(9) Allotment of securities offered to the public shall be made on the basis of the allotment policy disclosed in the prospectus unless the results of the subscription make such policy impractical and in such a case an amendment of the allotment policy shall be made with the approval of the Authority:

Provided where such amendment has been approved by the Authority the issuer shall announce the fact within twenty-four hours of the grant of approval.

(9A) When developing an allocation policy, an issuer or offeror shall ensure that the policy reserves at least forty per centum of the ordinary shares that are subject to an initial public offering and subsequent listing for investment by local investors.

(9B) Where the per centum reserved for local investors is not fully subscribed for by local investors, the issuer or offeror may, with the prior written approval of the Authority allocate the shares remaining to foreign investors.

(10) No person shall publish the results of the allotment of the public offer without notifying the Authority of the results at least twenty four hours prior to the date on which the allotment results are to be released to the public.

[L.N. 30/2008, s. 5.]

6A. Issuing on growth Enterprise Market Segment

(1) A person who intends to issue securities on a Growth Enterprise Market Segment shall publish a listing statement by making it available to the public or to a section of the public, free of charge at an address in Kenya, for such period prior to listing as prescribed by the Securities Exchange.

(2) The issuer shall, before the time of publication of the listing statement, obtain approval of the Securities Exchange that the listing statement complies with these Regulations.

(3) A Securities Exchange shall, at least seven days prior to granting any approval of a listing statement, submit to the Authority a copy of the listing statement it is considering for approval with a confirmation that the listing statement is in compliance with these Regulations.

[L.N. 61/2012, s. 5.]

6B. Book building

A person proposing to offer its securities to the public or a section of the public may use a book building process to determine the price for the offer of securities in accordance with the requirements set out in the Eighth Schedule to these Regulations.

{L.N. 113/2013, s. 3.]

7. Eligibility to issue securities

(1) No person shall be eligible to issue securities to the public or list at a securities exchange, unless—

(a) with respect to securities to be listed on the Main Investment Market Segment, the issuer complies with the eligibility requirements prescribed in Part A of the First Schedule;

(b) with respect to securities to be listed on the Alternative Investment Market Segment, the issuer complies with the eligibility requirements prescribed in Part B of the First Schedule;

(bb) with respect to securities to be listed on the Growth Enterprise Market Segment, the issuer complies with the eligibility requirements as set out in Part C of the first Schedule;

(c) with respect to securities to be listed on the Fixed Income Securities Market Segment, the issuer complies with the eligibility requirements prescribed in the Second Schedule;

(d) with respect to regional fixed income securities to be issued within the East African Community, the issuer complies with the eligibility requirements as set out in Part B of the Second Schedule.

(2) Any person who does not receive the minimum number of subscriptions in a public offering shall not be eligible to make another public offering before the expiry of one year from the date of approval of the previous public offering.

[L.N. 30/2008, s. 6, L.N. 61/2012, s. 6, L.N. 113/2013, s. 4.]

8. Issuers not seeking listing

(1) An issuer who does not wish to list on any market segment of a securities exchange shall comply with the eligibility and disclosure requirements prescribed for the Alternative Investment Market Segment in the case of an offer of shares to the public or for the Fixed Income Securities Market Segment in the case of an offer of debt securities or other fixed income security to the public.

(2) An issuer who has made a public offer in accordance with subsection (1), may, after the expiry of not less than one year since the securities in question ceased to be the subject of an offer to the public list those securities by introduction.

[L.N. 30/2008, s. 7.]

9. Transfer to other market segment

(1) An issuer whose shares are listed on the any market segment of a Securities Exchange shall not be eligible to transfer such securities to the other market segment before the expiry of one year from the date of listing on the first mentioned market segment.

(2) A transfer of shares from or to the any market segment of a Securities Exchange shall be subject to the approval of the Authority and compliance with the eligibility and disclosure requirements prescribed under these Regulations.

[L.N. 61/2012, s. 7.]

10. Disclosure requirement for public issues

(1) The form and content of a prospectus or listing statement shall comply with—

(a) Part A of the Third Schedule where the issuer seeks to list in the Main Investment Market Segment;

(b) Part B of the Third Schedule where the issuer seeks to list in the Alternative Investment Market Segment;

(c) Part C of the Third Schedule where the issuer seeks to list in the Fixed Income Securities Market Segment;

(cc) Part CC of the Third Schedule where the issuer seeks to list on the Growth Enterprises Market Segment; and

(d) Part D of the Third Schedule where the issuer seeks to list on any segment of the market by way of introduction.

(1A) Notwithstanding paragraph (1), the Authority may prescribe different disclosure requirements for entities listed on a foreign securities exchange recognised by the Authority that are seeking to list on a securities exchange in Kenya.

(2) Every prospectus or listing statement shall—

(a) contain the following statement on its front page—

"As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus or listing statement, as the case may be. Approval of the issue and/or listing is not to be taken as an indication of the merits of the issuer or of the securities"; and

(b) state the allotment procedure to be applied in case of an over subscription for the securities to be issued pursuant to the prospectus.

[L.N. 30/2008, s. 8, L.N. 61/2012, s. 8, L. N. 95/2019, r. 2.]

10A. Nominated Advisors

(1) An issuer seeking to be listed on the Growth Enterprise Market Segment shall appoint a Nominated Adviser by a written contract and shall ensure that it has a Nominated Advisor at all times.

(2) The Securities Exchange shall suspend an issuer from trading if the issuer, at any time, ceases to have a duly appointed Nominated Advisor.

(3) A Nominated Advisor shall—

(a) advise and guide an issuer on the application of listing requirements of Growth Enterprise Market Segment;

(b) manage the submission of the listing statement and all other documentation to the Securities Exchange and ensure its completeness and correctness before submission;

(c) confirm to the Securities Exchange that—

(i) the issuer complies with all the conditions for listing as set out in the listing requirements for the Growth Enterprise Market Segment;

(ii) the information contained in the listing statement is accurate and complete in all material aspects;

(iii) there are no other matters, the omission of which would make any statement in the listing statement false or misleading;

(iv) statements of fact and opinion expressed by the directors in the listing statement have been arrived at after due and careful consideration on the part of the directors founded on fair and reasonable bases and assumptions; and

(v) the directors of the applicant have made sufficient enquiries to enable them give the confirmations set out in the responsibility statement contained in the listing statement;

(d) satisfy itself on the credentials of the reporting accountants, auditors, competent persons, valuers, providers of opinions and any other party responsible for a listing statement as required under paragraph A.02 of Part CC of the Third Schedule;

(e) satisfy itself, prior to submitting any documentation which requires approval by the Securities Exchange, that to the best of its knowledge and belief, having made due and careful enquiry of the issuer and its advisers—

(i) it is in compliance with the eligibility and disclosure requirements for listing on the Growth Enterprise Market Segment; and

(ii) there are no material matters, other than those disclosed in writing to the Securities Exchange, which should be taken into account by the Securities Exchange in considering the application;

(f) provide the Securities Exchange with any information or explanation known to it in such form and within such time as the Securities Exchange may reasonably require for the purposes of verifying whether the Nominated Advisor or the issuer have complied with the listing requirements;

(g) advise the Securities Exchange immediately if it is aware or have reason to suspect that any of its clients have or may have breached the listing requirements;

(h) submit all documents to the Securities Exchange and ensure that where such documents or any announcements are required, that they are in compliance with the continuous listing obligations;

(i) take all reasonable steps to brief all new appointments to the board of directors of the issuer as to the nature of their responsibilities under the listing requirements, other applicable regulation and the general nature of their obligations in relation to shareholders and shall ensure that—

(i) at least one third of the directors of the issuer have completed the Directors Induction Programme (DIP) prior to listing and the remainder complete the same within six months after the listing; and

(ii) all new appointments to the board of directors of the issuer complete the DIP within six months of appointment;

(j) review with the issuer, prior to publication, all periodic financial information announcements, and any other documentation to ensure that the directors of the issuer, after due and careful consideration, understand the importance of accurately disclosing all material information to shareholders and the market;

(k) ensure that at least one of its authorised representatives attends all board audit committee meetings of the issuer in an advisory capacity to ensure that the issuer conducts its meetings in compliance with the listing requirements and any applicable regulations; and

(l) carry out any activities relating to company for which it is the Nominated Advisor as may be requested by the Securities Exchange, from time to time.

(4) A Nominated Adviser shall, in the discharge of its responsibilities under these Regulations, observe due care and skill and ensure, at all times, that its conduct or judgment does not impair the integrity and reputation of the Growth Enterprise Market Segment.

[L.N. 61/2012, s. 9.]

11. Disclosure requirements for additional issues

An issuer whose securities are listed at a securities exchange shall not issue, or authorize its registrar to issue or register, by way of capitalization, scrip dividend, right issue or additional shares of the class listed, to a greater amount than the number hitherto authorized for listing except in accordance with the disclosure requirements for additional listing prescribed in the Fourth Schedule.

12. General duty of disclosure in prospectus

(1) In addition to the information required to be disclosed by virtue of these Regulations, a prospectus or information memorandum or a listing statement shall, subject to these Regulations, contain all such information as investors would reasonably require, and reasonably expect to find therein, for the purpose of making an informed assessment of—

(a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and

(b) the rights attaching to those securities.

(2) The information to be included by virtue of these Regulations shall be such information as is referred to in paragraph (1) which is within the knowledge of any person responsible for the prospectus, or which it would be reasonable for him to obtain by making enquiries.

(3) In determining what information is required to be included in a prospectus by virtue of these Regulations, regard shall be had to the nature of the securities and of the offeror of the securities.

(4) The Authority may require additional information to be included in a prospectus if, in its opinion, it deems it in the interests of investors to be in a prospectus, supplementary prospectus or information memorandum.

(5) A Securities Exchange may require additional information to be included in a listing statement if, in its opinion, it is in the interest of investors to be in a listing statement.

[L.N. 61/2012, s. 10.]

13. Supplementary prospectus

(1) Where a prospectus has been approved under these Regulations in respect of a public offer of securities and, at any time between the opening date and the closing date while an agreement in respect of those securities can be entered into in pursuance of that public offer—

(a) there is a significant change affecting any matter contained in the prospectus the inclusion of which was required by these Regulations; or

(b) a significant new matter arises the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared; or

(c) there is a significant inaccuracy in the prospectus,

the offeror shall, of its own motion, with prior consent of the Authority, or if required by the Authority, publish a supplementary prospectus containing particulars of the change or new matter or, in the case of an inaccuracy, correct it and deliver the supplementary prospectus to the Registrar for registration.

(2) In paragraph (1), the word **"significant"** means significant for the purpose of making an informed assessment of the matters mentioned in these Regulations.

(3) Where a supplementary prospectus has been approved in respect of a public offer of securities, the preceding paragraphs of these Regulations shall have effect as if any reference to a prospectus were a reference to the prospectus originally registered and that supplementary prospectus, taken together.

(4) The provisions of regulation 6 shall apply to a supplementary prospectus.

13A. Supplementary listing statement

(1) Where a listing statement has been approved under these Regulations, and at any time between the date of the listing statement and the date of listing of the relevant securities—

(a) there is a significant change affecting any matter contained in the listing statement the inclusion of which was required by these regulations;

(b) a significant new matter arises the disclosure of which would have been required if it had arisen when the listing statement was prepared; or

(c) there is a significant inaccuracy in the listing statement, the issuer shall, on its own motion, with prior consent of the Securities Exchange, or if required by the Securities Exchange, publish a supplementary listing statement containing particulars of the change or new matter or in the case of inaccuracy, correct it.

(2) For the purposes of this regulation, **"significant"** means material change for the purposes of making an informed assessment of the matters mentioned in these Regulations.

[L.N. 61/2012, s. 11.]

14 Power of Authority to extend, re-open or cancel

Where, in the opinion of the Authority, circumstances have occurred or new information has emerged that fundamentally alters the basis of approval of a public offer before the allotment date or date of listing in the case of an introduction which renders the information memorandum inadequate, the Authority may require the issuer—

(a) to issue a supplementary prospectus disclosing such additional information; or

(b) extend the offer to allow investors to make an informed decision in light of the new disclosure; or

(c) re-open the offer for such period as shall be determined by the Authority to allow investors either to re-confirm their applications for subscription or withdraw their applications; or

(d) cancel the offer.

[L.N. 30/2008, s. 9.]

15. Exceptions

The Authority may authorise the omission from a prospectus or supplementary prospectus of information whose inclusion would otherwise be required by these Regulations if the Authority considers that the disclosure of that information would be prejudicial to the interest of the offer or but does not prejudice the interest of investors.

15A. Listing statement exceptions

The Securities Exchange may, in consultation with the Authority, authorize the omission from a listing statement, information whose inclusion would otherwise be required by these Regulations if the Securities Exchange considers that the disclosure of that information would be prejudicial to the interests of the issuer but does not prejudice the interests of investors.

[L.N. 61/2012, s. 12.]

16. Advertisements, etc., in connection with offer of securities

(1) An advertisement, notice, poster or documents including a bridge prospectus announcing a public offer or listing of securities for which a prospectus or a listing statement is or will be required under these Regulations shall not be issued to or caused to be issued to the public in Kenya unless it states that a prospectus or a listing statement is or will be published, as the case may be, and gives an address in Kenya from which it can be obtained or will be obtainable.

(2) The advertisements, notices, posters or documents referred to in paragraph (1) shall be submitted to the Authority or Securities Exchange in the case of listing on the Growth Enterprise Market Segment not later than forty-eight hours prior to publication, and the Authority or the Securities Exchange may require such amendments thereto as it may consider necessary.

(3) Every application form for subscription of the securities offered in a prospectus shall state, in a conspicuous position, where the prospectus may be obtained, and the issuer shall disclose to the Authority the number of copies of the prospectus printed.

(4) Every issuer shall publish a bridge prospectus in at least two daily newspapers of national circulation and such prospectus shall disclose basic information on the issuer, including—

(a) a summary of balance sheet and profit and loss accounts for the three years immediately preceding the issue;

(b) the broad shareholding structure prior to the issue and the anticipated structure after the issue;

(c) important highlights of the issue; and

(d) any other information on the issue considered essential by the issuer.

[L.N. 30/2008, s. 10, L.N. 61/2012, s. 13.]

17. Persons responsible for prospectus

(1) Subject to paragraphs (2) and (3), the persons who, for the purposes of these Regulations are responsible for a prospectus or a supplementary prospectus or a listing statement or a supplementary statement are—

(a) the issuer of the securities to which the prospectus or supplementary prospectus or a listing statement or a supplementary statement relates;

(b) where the issuer is a body corporate, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus or a listing statement or a supplementary statement or a listing statement or a supplementary statement is published;

(c) where the issuer is a body corporate, each person who has given his consent to be named and is so named in the prospectus or supplementary prospectus as a director or as having agreed to become a director of that body corporate either immediately or at a future time;

(d) each person who accepts, and is stated in the prospectus or supplementary prospectus or a listing statement or a supplementary statement as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;

(e) the offer or of the securities, where the offer or is not the issuer;

(f) where the offer or is a body corporate, but is not the issuer and is not making the offer in association with the issuer, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus or a listing statement or a supplementary statement is published; and

(g) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the prospectus or supplementary prospectus or a listing statement or a supplementary statement.

(2) Notwithstanding the provisions of paragraph (1), a person shall not be responsible for a prospectus or a supplementary prospectus or a listing statement or a supplementary statement—

(a) under paragraph (1)(a), (b) or (c), unless the issuer has made or authorized the offer in relation to which the prospectus or supplementary prospectus or a listing statement or a supplementary statement is published; or

(b) under paragraph (1) (b), if such prospectus or supplementary prospectus or a listing statement or a supplementary statement is published without his knowledge or consent and on becoming aware of its publication, he forthwith gives reasonable notice to the public and to the Authority that the prospectus or supplementary prospectus was published without his knowledge or consent.

(3) Where a person has accepted responsibility for, or authorised, only part of the contents of any prospectus or supplementary prospectus or a listing statement or a supplementary statement, he shall be responsible under paragraph (1)(d) or (g) only for that part and only if it is included or substantially included in the form and context to which he has agreed.

[L.N. 61/2012, s. 14.]

18. Underwriting requirements

(1) Every issuer shall seek professional financial advice to determine whether or not underwriting of the public offer of securities is deemed necessary and any underwriting arrangement shall be subject to the prior approval of the Authority.

(2) Where the underwriter is a person related or associated to the issuer, the underwriter shall undertake to the Authority to dispose of any share arising from the underwriting agreement within a period predetermined by the issuer and approved by the Authority.

(3) The Authority may extend the period referred to in paragraph (2) if satisfied that such extension would be in the best interest of the holders of ordinary shares of the company, having regard to the prevailing market conditions and any other factors that are relevant in the circumstances.

(4) Where the Authority extends the period referred to in paragraph (2) in accordance with paragraph (3), the issuer shall make a public announcement disclosing the period of such extension, any conditions attached to the extension and the circumstances necessitating the extension, in at least two daily newspapers of wide circulation.

PART III – CONTINUING OBLIGATIONS AND MISCELLANEOUS PROVISIONS

19. Continuing obligations

(1) Every issuer whose securities have been offered to the public or listed shall comply with the continuing obligations specified in the Fifth Schedule with respect to the relevant market segment.

(2) In relation to the continuing obligation to disclose information, an issuer shall make immediate public disclosure of information which might reasonably be expected to have a material effect on market activity in and prices of, its securities.

(3) The information required to be disclosed under these Regulations shall be disclosed within twenty-four hours of the event, simultaneously to the Authority, the securities exchange at which the issuer's securities are listed, if applicable, and to the public during non-trading hours of the relevant market segment.

(4) The announcement shall state whether the consent of the Authority or the securities exchange or other person is necessary and where necessary, the issuer shall apply for such consent within seven days of the announcement.

(5) An issuer who fails to comply with any continuing obligation within the prescribed time shall be liable to pay a penalty at the rate prescribed by the Authority.

[L.N. 61/2012, s. 15.]

20. Exceptions

(1) These Regulations shall not apply to—

(a) securities issued by or on behalf of the Government of Kenya or a body corporate established under any written law in Kenya other than the Companies Act (Cap. 486); and

(b) private offers.

(2) In considering the issue and listing of securities by a body corporate falling under subparagraph (a) of paragraph (1), the Authority shall take into account the issuer's ability to meet all financial obligations arising out of the issue and approve the issue subject to such conditions as may be necessary for the protection of investors or the public interest.

21. Meaning of private offers

(1) For purposes of these Regulations, an offer of securities shall be regarded as private offer and accordingly shall be deemed not to be an offer to the public in Kenya if, to the extent that the offer is made to persons in Kenya under the following conditions—

(a) the securities are offered to not more than one hundred persons;

(b) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;

(c) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;

(d) the securities are offered in connection with a *bona fide* invitation to enter into an underwriting agreement with respect to them;

(e) the securities are of a private company and are offered by that company to—

(i) members or employees of the company;

(ii) members of the families of any such members or employees; or

(iii) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;

(f) the minimum subscription for securities per applicant is not less than Kenya Shillings one hundred thousand (Kshs. 100,000);

(g) the securities result from the conversion of convertible securities and a prospectus relating to the convertible securities was approved by the Authority and published in accordance with these Regulations;

(h) the securities of a listed company are offered in connection with a take-over scheme approved by the Authority; or

(i) the securities are not freely transferable.

(2) For the purposes of paragraph (e)(ii) the members of a person's family are the person's husband or wife, widow or widower and children (including stepchildren) and their descendants, and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself or herself, or any of those relatives.

22. Suspension and de-listing

(1) No security shall be suspended or de-listed by a securities exchange without the prior approval of the Authority.

(2) The Authority may require a securities exchange to suspend a listed security where—

(a) a decision has been made or is imminent that will lead to the placing of the issuer of such securities under statutory management, receivership, liquidation or voluntary winding-up;

(b) there is a significant restructuring involving the listed securities such as in the process of acquisition, mergers or takeovers; or

(c) a recommendation has been made by the directors to the shareholders to have the securities suspended and where the holders of such securities through a special resolution at which a minimum of 75% of such security holders are represented without objection to the proposed suspension from at least 10% of the holders of securities resolve to have the securities suspended.

(3) The suspension of securities shall be subject to such time as predetermined by the Authority.

(4) The Authority may require a securities exchange to de-list a security where—

(a) the issuer of such securities has been placed under statutory management, receivership or liquidation or voluntary winding-up;

(b) as a result of restructuring involving the listed securities, the issuer ceases to exist; or

(c) a recommendation has been made by the directors to the shareholders to have the securities de-listed and where the share holders of such securities through a special resolution at which a minimum of 75% of such security holders are represented without objection to the proposed withdrawal from at least 10% of the holders of securities resolve to have the securities de-listed.

(5) Notwithstanding the provisions of paragraphs (2) and (4), the Authority may require the suspension or de-listing of an issuer in any other circumstances, which in the opinion of the Authority, serves to protect the interest of the investors.

(6) Where a security has been suspended or de-listed, the securities exchange shall publish such information in at least two local English dailies of national circulation.

23. Revocation of L.N. 13/2002

The Capital Markets (Securities) (Public Offers and Listing Requirements) Regulations, 2002 are revoked.

24. Amendment of L.N. 429/1992

The Capital Markets Rules, 1992 are amended by deleting Parts XI and XII.

25. Amendment of L.N. 428/1992

The Capital Markets Authority Regulations, 1992 are amended by deleting Part VIII.

FIRST SCHEDULE

[Rule 7(1)(a) and (b), L.N. 30/2008, s. 11. 61/2012. s. 16, L.N. 36/2016, r. 3.]

ELIGIBILITY REQUIREMENTS FOR PUBLIC OFFERING OF SHARES AND LISTING

	PART A	PART B	PART C
Requirement	*Criteria for the Main Investment Market segment*	*Criteria for the Alternative Investment Market segment*	*Criteria for Growth Enterprise Market segment* .
Incorporation Status	The issuer to be listed shall be a public company limited by shares and registered under the Companies Act (Cap. 486 of the Laws of Kenya).	The issuer to be listed shall be a public company limited by shares and registered under the companies Act (Cap. 486 of the Laws of Kenya).	The issuer to be listed shall be a public company limited by shares and registered under the Companies Act (Cap. 486 of the Laws of Kenya).
Size: Share capital	The issuer shall have a minimum authorized issued and fully paid up ordinary share capital of fifty million shillings.	The issuer shall have a minimum authorized issued and fully paid up ordinary share capital of twenty million shillings.	The issuer shall have a minimum authorized and fully paid up ordinary share capital of ten million shillings; and . The issuer must have not less than one hundred thousand shares in issue.
Net assets	Net assets immediately before the public offering or listing of shares should not be less than one hundred million shillings.	Net assets immediately before the public offering or listing of shares should not be less than twenty million shillings.	
Free transferability of shares	Shares to be listed shall be freely transferable and not subject to any	Shares to be listed shall be freely transferable and not subject to any	Shares to be listed shall be freely transferable and not subject to any

.

	restrictions on marketability or any preemptive rights.	restrictions on marketability or any preemptive rights.	restrictions on marketability or any preemptive rights.
Availability and reliability of financial records	The issuer shall have audited financial statements complying with International Financial Reporting Standards (IFRS) for an accounting period ending on a date not more than four months prior to the proposed date of the offer or listing for issuers whose securities are not listed at the securities exchange, and six months for issuers whose securities are listed at the securities exchange. .The Issuer must have prepared financial statements for the latest accounting period on a going concern basis and the audit report must not contain any emphasis of matter or qualification in this regard.	The issuer shall have audited financial statements complying with International Financial Reporting Standards (IFRS) for an accounting period ending on a date not more than four months prior to the proposed date of the offer or listing for issuer whose securities are not listed at the securities exchange, and six months for issuers whose securities are listed at the securities exchange. .The Issuer must have prepared financial statements for the latest accounting period on a going concern basis and the audit report must not contain any emphasis of matter or qualification in this regard.	
Competence and suitability of directors and management	At the date of the application, the issuer must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity. . As at the date of the application and for a period of at least two years prior to the date of the application, no director of the issuer shall have– . –any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for director	At the date of the application, the issuer must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity. . As at the date of the application and for a period of at least two years prior to the date of the application, no director of the issuer shall have– . –any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director	The issuer shall have a board of at least five directors, comprising of executive and non executive members, with a majority non executive directors who, together with the independent directors shall comprise at least one third of the total number of board members. . As at the date of the application and for a period of at least two years prior to the date of the application, no director of the issuer shall have— .

	(for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); . –any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceeding, or any other offence or action either within or outside Kenya; or . –been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction that permanently or temporarily prohibits such director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction. . The issuer must have suitable senior management with relevant experience for at least one year prior to the listing, none of whom shall have committed any serious offence in any jurisdiction that may be considered inappropriate for the management of a listed company. . The issuer shall ensure continued	(for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); . –any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceeding, or any other offence or action either within or outside Kenya; or . –been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction that permanently or temporarily prohibits such director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction. . The issuer must have suitable senior management with relevant experience for at least one year prior to the listing, none of whom shall have committed any serious offence in any jurisdiction that may be considered inappropriate for the management of a listed company. . The issuer shall ensure continued	(i) any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for individuals), or any winding-up petition pending or threatened against it (for corporate bodies); . (ii) any criminal proceedings in which the director was convicted of fraud or any criminal offence, nor be named the subject of pending criminal proceeding, or any other offence or action either within or outside Kenya; or . (iii) been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction that permanently or temporarily prohibits such director from acting as an investment adviser or as a director or employee of a stockbroker, dealer, or any financial service institution or engaging in any type of business practice or activity in that jurisdiction. . The directors and senior management of an applicant must collectively have appropriate expertise and experience for the governance and management of the applicant and its business. .

	retention of suitably qualified management during listing and no change of management for a period of twelve months following the listing other than for reason of a serious offence that may be considered to affect the integrity or be inappropriate for management of a listed company. . The issuer shall have a board comprising of executive directors with a majority of non-executive directors and at least one third of the total number being independent directors.	retention of suitably qualified management during listing and no change of management for a period of twelve months following the listing other than for reason of a serious offence that may be considered to affect the integrity or be inappropriate for management of a listed company. . The issuer shall have a board of directors comprising a balance of executive and non-executive members, with a majority of non-executive directors who, together with the independent directors shall comprise at least one third of the total number of board members.	Details of such expertise and experience must be disclosed in any listing particulars prepared by the applicant. "appropriate expertise and experience shall mean at least one year experience in the applicant's business, or where the applicant has no previous record, experience in similar line of business". . One third of the directors must have completed the Directors induction Programme (DIP) prior to listing and the remainder must complete the same within six months after listing. . The issuer shall ensure continued retention of qualified management during listing and no change of management for a period of twelve months following the listing other than for reason of a serious offence that may be considered to affect the integrity or be inappropriate for management of a listed company.
Track record, profitability and future prospects	The issuer must have declared profits after tax attributable to shareholders in at least three of the last five completed accounting periods to the date of the offer. . For purposes of listing by introduction by issuers listed on a foreign securities	The issuer must have been in existence in the same line of business for a minimum of two years one of which should reflect a profit with good growth potential. . For purposes of listing by introduction by issuers listed on a foreign securities	

	exchange, the issuer must have been listed for a minimum of two years.	exchange, the issuer must have been listed for a minimum of two years	
Dividend policy	The issuer must have a clear future dividend policy.	The issuer must have a clear future dividend policy.	
Solvency and adequacy of working capital	The issuer should not be insolvent. . The issuer should have adequate working capital	The issuer should not be insolvent. . The issuer should have adequate working capital	The issuer should not be insolvent. . The issuer should have adequate working capital. . The Directors of the Issuer shall give an opinion on the adequacy of working capital for at least twelve months immediately following the share offering, and the auditors of the issuer shall confirm in writing the adequacy of that capital.
Share ownership structure	Following the public share offering or immediately prior to listing in the case of an introduction, at least twenty five per centum of the shares must be held by not less than one thousand shareholders excluding employees of the issuer. . In the case of a listing by introduction, the issuer shall ensure that the existing shareholders, associated persons or such other group of controlling shareholders who have influence over management shall give an undertaking not to sell their shareholding before the expiry of a period of twenty four months following listing and	Following the public share offering or immediately prior to listing in the case of an introduction, at least twenty per centum of the shares must be held by not less than one hundred shareholders excluding employees of the issuer or family members of the controlling shareholders. . No investor shall hold more than three per centum of the twenty per centum shareholding. . The issuer must ensure that the existing shareholders, associated persons or such other group of controlling shareholders who have influence over management shall	The Issuer must ensure at least fifteen per cent of the issued shares (excluding those held by a controlling shareholder or people associated or acting in concert with him; or the Company's Senior Managers) are available for trade by the public. . An issuer shall cease to be eligible for listing upon the expiry of three months of the listing date, if the securities available for trade by the public are held by less than twenty five shareholders (excluding those held by a controlling shareholder or people associated or acting in concert with him, or the Company's Senior Managers.)

	such undertaking shall be disclosed in the Information Memorandum.	give an undertaking to the Authority not to sell their shareholding before the expiry of a period of twenty four months following listing and such undertaking shall be disclosed in the information Memorandum.	. The issuer must ensure that the existing shareholders, associated persons or such other group of controlling shareholders who have influence over management shall give an undertaking in terms agreeable to the Authority and the Securities Exchange restricting the sale of part or the whole of their shareholding before the expiry of a period of twenty four months following listing and such undertaking shall be disclosed in the listing statement.
Certificate of comfort	If the issuer is listed in a securities exchange outside Kenya or is licensed by any regulator the Authority shall obtain a certificate of no objection from that foreign securities exchange and from the relevant regulators.	If the issuer is listed in a securities exchange outside Kenya or is licensed by any regulator the Authority shall obtain a certificate of no objection from that foreign securities exchange and the relevant regulators.	
Listed Shares to be immobilized			All issued shares must be deposited at a central depository established under the Central Depositories Act, 2000 (No. 4 of 2000).
Nominated Advisor			The issuer must appoint a Nominated Advisor in terms of a written contract and must ensure that it has a Nominated Advisor at all times.

.

SECOND SCHEDULE

[Rule 7(1)(c), L.N. 30/2008, r. 12, L.N. 113/2013, r. 5.]

PART A – ELIGIBILITY REQUIREMENTS FOR PUBLIC OFFERING OF FIXED INCOME SECURITIES AND LISTING ON THE FIXED INCOME SECURITIES MARKET SEGMENT

Incorporation Status	The issuer to be listed shall be a body corporate.
Size: Share Capital and Net Assets of Issuer	The issuer shall have minimum issued and fully paid up share capital of fifty million shillings and net assets of one hundred million shillings before the public offering or listing of the securities.
Listing and transferability of securities	All fixed income securities offered to the public or a section thereof except for commercial papers shall be listed and shall be freely transferable and not subject to any restrictions on marketability or pre-emptive rights. Commercial papers are not transferable or to be listed at a securities exchange.
Availability and reliability of financial records	The issuer other than the Government of Kenya issuing Treasury Bonds or other Government securities, must have audited financial statements complying with International Financial Reporting Standards (IFRS) for an accounting period ending on a date not more than four months prior to the proposed date of the offer. . The Issuer must have prepared financial statements for the latest accounting period on a going concern basis and the audit report must not contain any emphasis of matter or qualification in this regard. . At the date of the application, the issuer must not be in breach of any of its loan covenants particularly in regard to the maximum debt capacity.
Directors and senior management	In the case of issuers whose securities are listed at a securities exchange in Kenya but where not more than six months have elapsed since the end of the financial year, un-audited financial statements covering the period preceding the six months must be included in or appended to the Information Memorandum. . As at the date of the application and for a period of at least two years prior to the date of the application, no director of the issuer shall have– – any petition under bankruptcy or insolvency laws in any jurisdiction pending or threatened against the director (for

	individuals), or any winding-up petition pending or threatened against it (for corporate bodies); –any criminal proceedings in which the director was convicted of fraud or any criminal offence, or be named subject of pending criminal proceeding, or any other offence or action either within or outside Kenya; or – been the subject of any ruling of a court of competent jurisdiction or any governmental body in any jurisdiction, that permanently or temporarily prohibits such director from acting as an investment adviser or as a director or employee of a stockbroker, dealer or any financial institution or engaging in any type or business practice or activity in that jurisdiction. The issuer must have suitable senior management with relevant experience for at least one year prior to the listing, none of whom shall have committed any serious offence that may be considered inappropriate for the management of a listed company. At least one third of the issuer's board of directors shall be non-executive directors.
Certificate of comfort	If the issuer is licenced to operate by any regulator in any country the Authority shall obtain a certificate of no objection from the relevant regulators. Where there is a guarantor, the consent of its regulator shall be obtained by the Authority. Where there is a guarantor; the guarantor shall provide the Authority with a financial capability statement duly certified by its auditors.
Profitable historic track record and future prospects	The issuer must have declared profits after tax attributable to shareholders in at least two of the last three financial periods preceding the application for the issue.
Guarantee requirements	Where the issuer does not satisfy the requirements it may seek a credit enhancement to have the securities it seeks to issue guaranteed. The guarantor may only be a bank or an insurance company or any other institution with necessary financial capacity acceptable to the Authority and a copy of the guarantee document shall be subject to approval of and be submitted to the Authority with the information memorandum.

.

Debt ratios	Total indebtedness, including the new issue of fixed income securities shall not exceed four hundred per centum of the company's net worth (or gearing ratio of 4:1) as at the latest balance sheet. The funds from operations to total debt for the three trading periods preceding the issue shall be maintained at a weighted average of forty per centum or more. The conditions as provided must be maintained as long as the fixed income securities remain outstanding.
Size of the issue	The minimum size of the issue shall be fifty million shillings. The minimum issue lot size shall be: i. One hundred thousand for corporate bonds and preference shares or such higher amount as may be required by the Authority; and ii. One million shillings for commercial paper.
Minimum size for listing	For an issuer to maintain listing of its fixed income security, the minimum size of the fixed income security listed shall be fifty million shillings except in the case of redemption.
Renewal date	Every issuer of commercial paper shall apply for renewal at least three months before the expiry of the approved period of twelve months from the date of approval.

PART B

[Rule 7(1)(d).]

I. REQUIREMENTS FOR ISSUANCE OF REGIONAL FIXED INCOME SECURITIES

ELIGIBILITY TO ISSUE

Eligibility to issue	An offer of fixed income securities approved for issue in more than one jurisdiction in East African Community shall be considered as a regional offer of fixed income securities and shall comply with the relevant regulations, rules or guidelines attaching to issuers of securities to the public in any jurisdiction in which the issue has been made.
Approval entity	The issuer shall elect a primary jurisdiction in which the issuer shall lodge the prospectus. The issuer shall simultaneously submit the prospectus to the regulators of other jurisdictions which the issuer proposes to raise capital for approval. The procedure for approval is as set out in item II of this Part.

	ISSUER
Issuer	The issuer shall be an entity incorporated or registered as a foreign entity in all jurisdictions where the offer is to be made.
Incorporation status	Where the issuer is not a company, then the issuer shall be duly established under a written law or recognized under an international treaty.
Share Capital	The minimum paid-up share capital shall be the local currency equivalent of United States of America dollars 850,000.
Net Assets	The net assets shall be the local currency equivalent of United States of America dollars 1,700,000. All sovereign borrowers, quasi-sovereign borrowers and treaty organizations are exempted from the share capital and net assets requirements.
Profitability	An issuer, other than a special purpose vehicle, shall be required to have reported profits in at least two of the previous three years preceding the offer. Provided that— – the regulatory authorities shall retain the discretion to grant a waiver in circumstances where decline in profitability is not considered to be a consequence of the fundamentals of the company.
Exemption of SPVs	A special purpose vehicle without a track record may raise capital and such special purpose vehicle shall be subjected to disclosure requirements on performance projections, risk factors and mitigations and on the availability of financial information to assess any projections made. An issuer that is an SPV shall be eligible for approval to make offers to institutional or sophisticated investors but not unrestricted offers to the public.
	ISSUE
Issue size	The minimum size of a regional fixed income security issue shall be the local currency equivalent of United States of America dollars 850,000.
Denomination of Offer and application of funds outside the jurisdiction where funds are raised	An issuer may raise funds in any jurisdiction in the region without restriction on the jurisdiction where proceeds are to be used subject to disclosure of that fact in the information memorandum and subject to obtaining the necessary exemptions on exchange controls, if required. An issuer shall determine the currency or currencies for the issue.
Credit Enhancement	An issuer may secure credit enhancement: Provided that where credit enhancement is to be provided, the following requirements shall apply— — In the case of a guarantee— – the guarantor shall be a bank, duly licensed non-bank financial institution, or recognized international financial institution; – a letter of no objection shall be provided by the credit enhancer's primary regulator (other than in the case of an international financial institution); – the guarantor shall be required to have a valid credit rating. The Authority may prescribe any conditions or information requirements applicable to any other form of credit enhancement.

Additional offers	Notwithstanding that an issuer has made a regional fixed income security offer, the issuer, may, at any time, raise an additional amount in any one or more jurisdictions in accordance with a further pricing supplement updating the disclosures in the regional information memorandum. In all events, where a green shoe option is available, it shall be made to all countries where the offer has been made available.
	FINANCIAL DISCLOSURE REQUIREMENTS
Financial Statement Disclosure	Where an issuer has a track record, the following financial statements complying with International Financial Reporting Standards for the three years preceding the offer shall be required— – Audited accounts not more than six months old at the time of the offer; – Where the audited accounts are more than six months old they shall be supported by management accounts; – Management accounts shall be prepared to a date within one month of the date of the offer.
Financial Ratios	The financial ratios requirements applicable to national fixed income securities offers shall not be applicable to regional fixed income securities offers.
Cash flow projection	An issuer shall provide *proforma* financial statements which cover a period of not less than three years from the date of issue or where the fixed income security has a shorter maturity period, the life of that fixed income security.
Disclaimer statement	All prospectuses for regional offers of fixed income securities shall contain the following statement on the front page— "As a matter of policy, the approving regulators assume no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus. Approval of the issue or listing is not an indication of the merits of the issuer or of the securities".
Listing	Listing shall be mandatory for all regional offers of securities which are to be offered to the public or a section of the public— Provided that this requirement shall not apply to offers targeted at institutional, sophisticated or professional investors. An issuer who is not eligible for listing may be approved to issue its securities to sophisticated, institutional or professional investors and the securities may be approved for trade on regulated Over the Counter (OTC) markets. "An institutional", "a sophisticated" or "a professional" investor means for the purposes of regional fixed income securities— (a) any person licensed under any securities legislation applicable in the East African Community region; (b) any authorized or a recognized scheme by any securities legislation applicable in the East African Community region; (c) an individual, either alone or with any of his associates on a joint account, having proven liquid assets in excess of an amount as may be prescribed from time to time, or its equivalent in any foreign currency; (d) any company or partnership having proven liquid assets in excess of an amount as may be prescribed from time to time, or its equivalent in any foreign currency.
Trading, clearing and settlement	An issuer of regional fixed income securities shall comply with the requirements relating to trading, clearing and settlement on any exchange on which its securities are traded or in line with the rules for the relevant OTC market as well as those of any central depository through which its securities are cleared and settled.

Credit Ratings	An issuer of regional fixed income securities shall maintain a valid credit rating for so long as the issue remains outstanding: Provided that where an issuer has no track record or where the debt is to be funded from revenue from a specific project or designated cash flows, then the credit rating shall be in respect of the project or performance projections. Only a credit rating agency with a publicly available Code of Conduct guiding its ratings practices and which is in compliance with International Organization for Securities Commissions (IOSCO) Code of Conduct Fundamentals for Credit Rating Agencies (CRA) shall be eligible to provide credit rating reports: Provided further that a credit rating agency which complies with the IOSCO CRA code shall not be required to be registered in any East African Community jurisdiction to be eligible to provide credit rating reports. All Information Memoranda for regional offers of fixed income securities shall include a cautionary statement with words to the effect that— "A credit rating is not a recommendation to apply for the securities on offer or an assurance of performance of the offer or the issue and investors should exercise due diligence and use the rating only as one of the considerations in making their investment decision."
Professional Parties	An issuer of regional fixed income securities shall in respect of any issue of securities comply with the following requirements relating to professional parties. *Transaction Arranger, Sponsoring Stockbroker or Placing Agent*: Appoint a transaction arranger, placing agent or a sponsoring stockbroker who shall be a corporate body licensed to carry out such function by at least one East African Community Partner State regulator and has affiliates in all regional jurisdictions where the security will be issued. *Accountant's report* Appoint a reporting accountant for the issue who shall be in compliance with all the requirements of their professional bodies. The reporting accountant shall be a firm registered in any East Africa Community country with affiliates in all East African Community countries. *Legal Opinion* Appoint a legal adviser who shall be in compliance with all the requirements of their professional bodies. The legal advisers shall be a firm registered in any East African Community country with affiliates in all East African Community countries. *Paying and Receiving Bank* Appoint paying and receiving banks which shall be banks licensed in the East African Community countries where funds are being raised. The issuer shall determine the number of receiving banks.
Continuous disclosure obligations	An issuer of a regional fixed income security shall be required to comply with the continuous disclosure obligations applicable to offers of fixed income securities in all jurisdictions in which it has raised capital from the public. Where the regional fixed income security is listed on one or more securities exchanges or is traded on any regulated market within the East African Community region, it shall comply with the continuous obligations imposed by that securities exchange or market. The issuer is obliged to avail to investors in all jurisdictions in which the issuer has raised capital, all relevant information for proper appraisal of the financial position of the issuer in an effective and timely manner.

	The matters subject to continuous reporting includes— – updates on rating reports; – interim financial reporting; – audited financial reports.
Penalties	An issuer who fails to comply with the continuous disclosure obligations including failure to provide any required information to all investors simultaneously, is liable for breach of the continuous reporting obligations in any jurisdiction in which such omission occurs and the applicable sanctions shall apply.
Dispute resolution	The law in force in the jurisdiction where a cause of action arises shall apply in case of a dispute between an investor and an intermediary or between an issuer and an intermediary. The information memorandum shall specify the applicable law and mode of dispute resolution where a dispute involves the issuer and an investor.
Payment of evaluation fees	Evaluation fees shall be paid at the time of application to the primary regulator. It shall be the duty of the primary regulator to transfer to the other regulators their share of the evaluation fees paid. In the event of a rejection, the issuer shall forfeit twenty five per cent of the evaluation fee paid.

II. INFORMATION MEMORANDUM APPROVAL PROCEDURE FOR ISSUANCE OF REGIONAL FIXED INCOME SECURITIES

1. The issuer shall submit, for approval, a draft information memorandum accompanied by an evaluation fee to all East African Partner State regulators in which it intends to raise capital indicating the jurisdiction that the issuer desires to be the primary approving jurisdiction (primary regulator).
2. Where an application has been lodged that is incomplete or unmeritorious *ab initio* as a regional fixed income security, the primary regulator shall have the discretion to reject the application in whole and inform the other regulators of such rejection and the reasons thereof. In the event of a rejection and the issuer wishes to proceed with the issuance, the issuer shall be required to lodge the application afresh in all jurisdictions and be liable to pay any application costs attaching thereto.
3. Each regulator shall apply the eligibility and disclosure requirements for issuance of regional fixed income securities for purposes of assessing the application.
4. In the event that any regulator seeks to interpret the applicability of any provision of the eligibility and disclosure requirements, that regulator shall officially communicate with all other regulators to determine the manner in which that matter will be addressed and the majority opinion shall prevail.
5. Where a regulator has communicated with the other regulators in accordance with paragraph 4, the regulators consulted shall revert within five working days of the receipt of communication and the final position shall be communicated to the issuer within ten days and copied to all regulators.
6. The other regulators shall submit any comments on the information memorandum to the primary regulator for consolidation for communication to the issuer. Where the primary regulator proposes to exclude certain matters from communication to the issuer, it shall communicate its intention to the other regulators, which action shall be subject to the timelines for communication under paragraph 5.
7. The primary regulator shall, upon completion of its review, submit the same for consideration and approval by its relevant authority in accordance with its applicable procedures for approval of offers to the public:

Provided that the submission shall not be made later than five working days following the receipt of the complying document from the issuer.

8. In the event of an approval, the primary regulator shall issue a letter to all other regulators communicating its approval and confirming that the issue complies with the regional criteria.

9. In the event of the grant of an approval of the issue, the primary regulator shall provide a copy of the letter of approval and details of any conditions imposed on that approval to all the other regulators. This approval will not be communicated to the issuer pending circulation and determination by the other regulators.

10. Upon receipt of a copy of the approval letter from the primary regulator, every regulator which is in receipt of the information memorandum shall submit the final Information Memorandum together with the primary regulator's approval letter to their respective authorities for consideration and determination:

Provided that such submission shall not be made later than five working days following the receipt of the primary regulators decision as per the approval timetable set out in item III of this Part.

11. In the event that approval is declined, the primary regulator shall provide a copy of the reasons for such decision to all other regulators for their consideration. The primary regulator shall specify where the approval has been withheld for reasons other than those in the criteria set down for regional issues. Where a rejection occurs for reasons other than failure to comply with the regional guidelines, the other regulators shall retain full statutory discretion to approve or reject the application placed before it notwithstanding any approval or rejection by the primary regulator.

12. For the purposes of coordination, the approving regulators shall engage with any listing exchange in their jurisdiction to ensure compliance by the issuer with any reporting and disclosure obligations issued by the regulator and the securities exchange.

13. In so far the issuer has raised capital in a particular jurisdiction, the relevant regulator shall be responsible for the supervision of that issuer in respect of that issue.

14. Where an imbalance in information disclosure occurs, the regulators shall coordinate any action with any relevant securities exchanges or trading platforms on which the securities in question are traded to mitigate the negative impacts of such information asymmetry on investors.

15. Any changes or interpretations made to this Schedule or the Approval Procedure shall be published by all the jurisdictions.

III. APPROVAL TIMETABLE

T: Complying application lodged with all the regulators.

T +10 All comments from regulators lodged with the primary regulator.

T +15: All areas for consultation for interpretation resolved.

T+ All issues communicated to the issuer.

Y (date issuer reverts with complying documents) + 10: Primary regulator board determination (primary board may approve with conditions) and issues letter of comfort.

Y +15: All other regulator’s board determination (decisions may be conditional indicating matters to be addressed).

Y +17: Communication of regulator’s decision to issuer.

"day" means a business day.

THIRD SCHEDULE

[Rule 7(1)(d), L.N. 30/2008, r. 13, L.N. 61/2012, r. 17, Regulation 10(a).]

PART A – MAIN INVESTMENT MARKET SEGMENT
DISCLOSURE REQUIREMENTS FOR PUBLIC OFFERINGS

ID.A.00. Identity of directors, senior management and advisers (i.e. persons responsible for the information disclosed)

A.01 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.02

A.02 A declaration in the following form—

The directors of [the issuer], whose names appear on page [ ] of the prospectus, accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.03 The names, addresses and qualifications of the auditors who have audited the issuer's annual accounts in accordance with IAS for the last three financial years.

A.04 If auditors have resigned, have been removed or have not been re-appointed during the last three financial years and have deposited a statement with the issuer of circumstances which they believe should be brought to the attention of members and creditors of the issuer, details of such matters must be disclosed.

A.05 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the prospectus has been attributed.

ID.B.00. Offer statistics and expected timetable

B.01

(1) A statement that the Authority has approved the public offering and listing of the shares on the Main Investment Market Segment of a securities exchange.

(2) Cautionary statement of the Authority.

B.02 A statement that a copy of the prospectus has been delivered to the Registrar.

B.03 If the offer is by more than one method, for each method of offering, state the total amount of the issue, including the expected issue price or the method of determining the price and the number of securities expected to be issued.

B.04 For each public offering, and separately for each group of targeted potential investors, state the following information to the extent applicable—

(a) the period during which the offer will be open, and where and to whom purchase or subscription applications shall be addressed. Describe whether the purchase period may be extended or shortened, and the manner and duration of possible extensions or possible early closure or shortening of the period. Describe the manner in which the latter shall be made public. If the exact dates are not known when the documents are first filed or distributed to the public, describe arrangement for announcing final or definitive date or period;

(b) method and time limits for paying up securities;

(c) method and time limits for delivery of securities (including provisional certificates, if applicable) to subscribers or purchasers;

(d) in case of pre-emptive purchase rights, the procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised; and

(e) a full description of the manner in which results of the distribution of securities are to be made public, and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest is to be paid).

ID.C.00. Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last five years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under that legislation.

C.05 A description of the issuer's principal objects and reference to the clause(s) of the memorandum of association in which they are described.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not less than five working days from the date of the prospectus or for the duration of any offer to which the prospectus relates, if longer, at a named place as the Authority may agree, the following documents (or copies thereof), where applicable, could be inspected—

(a) the memorandum and articles of association of the issuer;

(b) any trust deed of the issuer or of its subsidiary companies which is referred to in the prospectus;

(c) each document mentioned in paragraphs C.18 (material contracts) and E.11 (directors' service contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(d) copies of service agreements with managers or secretary/ies; underwriting, vendors' and promoters' agreements entered into during the last two financial years;

(e) in the case of an issue of shares in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a take over offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual accounts (as appropriate);

(f) the latest competent person's report, in the case of a mineral company;

(g) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;

(h) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the prospectus;

(i) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountants' report pursuant to paragraph G.04 and giving the reasons therefor; and

(j) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the five financial years preceding the publication of the prospectus, including, in the case of a company incorporated in Kenya, all notes, reports or information required by the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.18 (material contracts), a translation of a summary of such document may be made available for inspection, if the Authority so requires.

C.09 The amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 Where the issuer has authorised but un-issued capital or is committed to increase the capital, an indication of—

(a) the amount of such authorised capital or capital increase and, where appropriate, the duration of the authorisation;

(b) the categories of persons having preferential subscription rights for such additional portions of capital; and

(c) the terms and arrangements for the share issue corresponding to such portions.

C.11 If the issuer has shares not representing capital—

(a) the number and main characteristics of such shares;

(b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and

(c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

C.12 A summary of the provisions of the issuer's memorandum and articles of association regarding changes in the capital and in the respective rights of the various classes of securities.

C.13 A summary of the changes during the three preceding years in the amount of the issued capital of the issuer and, if material, the capital of any member of the group and/or the number and classes of securities which it is composed. Intra-group issues by partly owned subsidiaries and changes in the capital structure of subsidiaries which have remained wholly owned throughout the period may be disregarded. Such summary must also state the price and terms granted and (if not already fully paid) the dates when any instalments are in arrears. If any asset has been acquired or is to be acquired out of the proceeds of the issue, its value must be stated. If there are no such issues, an appropriate negative statement must be made.

C.14 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer.

C.15 Details of any change in controlling shareholder(s) as a result of the issue.

C.16 The history of any change in the controlling shareholder(s) and trading objectives of the issuer and its subsidiaries during the previous two financial years. A statement of the new trading objectives and the manner in which the new objects will be implemented. If the issuer or the group, as the case may be, carries on widely differing operations, a statement showing the contributions of such respective differing statement showing the contributions of such respective differing operations to its trading results. The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar.

C.17 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name of and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.18 A summary of the principal contents of—

(a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years

immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last two years in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and

(b) any contractual arrangement with a controlling shareholder required to ensure that the company is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.19 If any contract referred to in paragraph C.18 relates to the acquisition of securities in an unlisted subsidiary, or associate company, where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associate companies, or its subsidiaries is interested and to what extent.

C.20 Details of the name of any promoter of any member of the group and the amount of any cash, securities or benefits paid, issued or given within the three years immediately preceding the date of publication of the prospectus, or proposed to be paid, issued or given to any such promoter in his capacity as a promoter and the consideration for such payment, issue or benefit. Where the interest of such promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such promoter's interest in the partnership, company, syndicate or other association.

C.21 A statement of all sums paid or agreed to be paid within the three years immediately preceding the date of publication of the prospectus, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the issuer.

C.22 Where securities are issued in connection with any merger, division of a company, takeover offer, acquisition of an undertaking's assets and liabilities or transfer of assets—

(a) a statement of the aggregate value of the consideration for the transaction and how it was or is to be satisfied;

(b) if the total emoluments receivable by the directors of the issuer will be varied in consequence of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect; and

(c) if the business of the issuer or any of its subsidiaries or any part thereof is managed or is proposed to be managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

C.23 A description of the group's principal activities, stating the main categories of products sold and/or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.24 For the business(es) described in paragraph C.23 above, the degree of any government protection and of any investment encouragement law affecting the business(es).

C.25 Information on any significant new products and/or activities.

C.26 A breakdown of net turnover during the last five financial years by categories of activity and into geographical markets in so far as such categories and markets differ substantially from one another, taking account of the manner in which the sale of products and the provision of services falling within the group's ordinary activities are organised.

C.27 The location, size and tenure of the group's principal establishments and summary information about land or buildings owned or leased. Any establishment which accounts for more than 10% of net turnover or production shall be considered a principal establishment.

C.28 Details of any material changes in the businesses of the issuer during the past five years.

C.29 Where the information given pursuant to paragraphs C.23 to C.28 has been influenced by exceptional factors, that fact must be mentioned.

C.30 Summary of information on the extent to which the group is dependent, if at all, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes, where such factors are of fundamental importance to the group's business or profitability.

C.31 Particulars of royalties payable or items of a similar nature in respect of the issuer and any of its subsidiaries.

C.32 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous nine months) a significant effect on the group's financial position or an appropriate negative statement.

C.33 Information on any interruptions in the group's business which may have or have had during the recent past (covering at least the previous nine months) a significant effect on the group's financial position.

C.34 A description, with figures, of the main investments made, including interests such as shares, debt securities, etc., in other undertakings over the last five financial years and during the current financial year.

C.35 Information concerning the principal investments (including new plant, factories and research and development) during the current financial year being made, with the exception of interests being acquired in other undertakings, including—

(a) the geographical distribution of these investments; and

(b) the method of financing such investments.

C.36 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuer's directors have already made firm commitments.

C.37 Information concerning policy on the research and development of new products and processes over the past three financial years, where significant.

C.38 The basis for any statements made by the issuer regarding its competitive position shall be disclosed.

ID.D.00. Operating and financial review and prospectus (the recent development and prospects of the group)

D.01 Unless otherwise approved by the Authority in exceptional circumstances—

(a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular;

(i) the most significant recent trends in production, sales, stocks and the state of the order book; and

(ii) recent trends in costs and selling prices; and

(b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry and make an offering speculative or on high risk in a section headed "Risk Factors".

D.03 Describe the—

(a) extent to which the financial statements disclose material changes in net revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or service;

(b) impact of inflation if material – if the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and discussion of the impact of the hyperinflation on the issuer's business shall be disclosed;

(c) impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by the currency borrowing and other hedging instruments; and

(d) impact of any governmental factors that have materially affected or could materially affect, directly or indirectly, the issuer's operations or investments by the host country shareholders.

D.04 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out. There must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.05 The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00. Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

(a) directors, alternate and proposed directors of the issuer and each of its subsidiaries including details of other directorships;

(b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and

(c) founders, if the issuer has been established as a family business or in existence for fewer than five years and the nature of family relationship; if any

(d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty-four months following the issue and listing of the security or appropriate negative statement.

E.02 A description of other relevant business interests and activities of every such person as is mentioned in paragraph E.01 and, if required by the Authority particulars of any former forename or surname of such persons.

E.03 In the case of a foreign issuer, information similar to that described in E.01 and E.02 above, relative to the local management, if any. Where the Authority considers the parent

company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.04 The total aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by any member of the group during the last two completed financial years under any description whatsoever.

E.05 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 3% of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the prospectus, or if there has been no such change, disclosure of that fact.

E.06 All relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and their nature or conditions or significant to the business of the group, and which were effected by the issuer during—

(a) the current or immediately preceding financial year; or

(b) an earlier financial year and remain in any respect outstanding or unperformed;

or an appropriate negative statement.

E.07 The total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.

E.08 Details of any schemes for involving the staff in the capital of any member of the group.

E.09 Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments which occurred during the past financial and particulars of waivers in force at the date of the prospectus.

E.10 An estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the listing prospectus.

E.11 Details of existing or proposed directors' service contracts (excluding contracts previously made available for inspection in accordance with paragraph C.07 and not subsequently varied); such details to include the matters specified in paragraphs (a) to (g) below or an appropriate negative statement—

(a) the name of the employing company;

(b) the date of the contract, the unexpired term and details of any notice periods;

(c) full particulars of the director's remuneration including salary and other benefits;

(d) any commission or profit sharing arrangements;

(e) any provision for compensation payable upon early termination of the contract;

(f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract; and

(g) details relating to restrictions prohibiting the director, or any person acting on his behalf or connected to him, from any dealing in securities of the company during a close period or at a time when the director is in possession of unpublished price sensitive information in relation to those securities.

E.12 A summary of the provisions of the memorandum and articles of association of the issuer with regards to—

(a) any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested;

(b) any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; and

(c) retirement or non-retirement of directors under an age limit.

E.13 Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in E.01 above, was selected as a director or member of senior management.

E.14 The average numbers of employees and changes therein over the last five financial years (if such changes are material), with, if possible, a breakdown of persons employed by main categories of activity.

E.15 Details relating to the issuer's audit committee, remuneration committee and nomination committee including the names of committee members and a summary of the terms of reference under which the committees operate.

ID.F.00. Major shareholders and related party transactions

F.01 The following information shall be provided regarding the issuer's major shareholders, which means shareholders that are the beneficial owners of at least 3% or more of each class of the issuer's voting securities—

(a) provide the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major shareholders;

(b) disclose any significant change in the percentage ownership held by any major shareholders during the past three years; and

(c) indicate whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of shareholders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by any other corporation(s), foreign government or any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in 10% or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide the information required on (a) and (b) below for the period since the beginning of the issuer's preceding five financial years up to the date of the prospectus, with respect to transactions or loans between the issuer and—

(a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;

(b) associates;

(c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;

(d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer,

including directors and senior management of the issuer and close members of such individuals' families; and

(e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the issuer and enterprises that have a number of key management in common with the issuer. Shareholders beneficially owning a 10% interest in the voting power of the issuer are presumed to have a significant influence on the issuer including—

(i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiary(ies) was a party; and

(ii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above.

The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan, the transaction in which it was incurred, and the interest rate on the loan.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the prospectus, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of the prospectus, and has not withdrawn his consent.

F.09 If any of the named experts employed on a contingent basis, owns an amount of shares in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

ID.G.00. Financial information

G.01 A statement that the annual accounts of the issuer for the of the last five financial years have been audited. If audit reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and the reasons given.

G.02 A statement of what other information in the prospectus has been audited by the auditors.

G.03 Financial information as required by paragraphs G.14 and G.15 set out in the form of a comparative table together with any subsequent interim financial statements if available.

G.04 Financial information as required by paragraphs G.14 and G.15 set out in the form of an accountant's report.

G.05 If applicable, an accountant's report, as set out in paragraphs G.14 and G.15 on the asset which is the subject of the transaction.

G.06

(1) If the issuer prepares consolidated annual accounts only, it must include those accounts in the prospectus in accordance with paragraph G.03 or G.04.

(2) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the prospectus in accordance with paragraph G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts with the approval of the Authority and such accounts shall be available for inspection in accordance with paragraph C.07.

G.07

(1) Where the issuer includes its annual accounts in the prospectus, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last five financial years.

(2) Where the issuer includes consolidated annual accounts in the prospectus, it must state the consolidated profit or loss per share for each of the last five financial years; this information must appear in addition to that provided in accordance with (1) above where the issuer also includes its own annual accounts in the prospectus.

G.08 If, in the course of the last five financial years, the number of shares in the issuer has changed as a result, for example, of an increase in or reduction or reorganisation of capital, the profit or loss per share referred to in paragraph G.07 must be adjusted to make them comparable; in that event the basis of adjustment used must be disclosed.

G.09 Particulars of the—

(a) dividend policy to be adopted;

(b) *pro-forma* balance sheet prior to and immediately after the proposed issue of securities; and

(c) effect of the proposed issue of securities on the net asset value per share.

The above particulars must be prepared and presented in accordance with IAS. If the issuer is a holding company, the information must be prepared in consolidated form.

G.10 The amount of the total dividends, the dividend per share and the dividend cover for each of the last three financial years, adjusted, if necessary, to make it comparable in accordance with paragraph G.08.

G.11

(1) Where not more than nine months have elapsed since the end of the financial year to which the last published annual accounts relate, an interim audited financial statement covering at least the first six months following the end of that financial year must be included in or appended to the prospectus. Where not more than six months have elapsed since the end of the financial year, un-audited financial statements covering the period preceding the six months shall be included in the prospectus of the issuer whose securities are already listed at a securities exchange.

(2) Where the issuer prepares consolidated annual accounts, the interim financial statements must either be consolidated statements or include a statement that, in the opinion of the issuer's directors, the interim financial statements enable investors to make an informed assessment of the results and activities of the group for the period.

G.12 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.13 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.14 A table showing the changes in financial position of the group over each of the last five financial years in the form of a cash-flow statement.

G.15 (1) Information in respect of the matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses—

(a) the name and address of the registered office;

(b) the field of activity;

(c) the proportion of capital held;

(d) the issued capital;

(e) the reserves;

(f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;

(g) the value at which the issuer shows in its accounts the interest held;

(h) any amount still to be paid up on shares held;

(i) the amount of dividends received in the course of the last financial year in respect of shares held; and

(j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 20% of the capital and reserves of the issuer or if that interest accounts for at least 20% of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 20% of the consolidated net assets or at least 20% of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or, with the exception of (1)(i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the Authority, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

G.16 The name, registered office and proportion of capital held in respect of each undertaking not failing to be disclosed under paragraph G.15(1) or (2) in which the issuer holds at least 20% of the capital. These details may be omitted when they are of negligible importance for the purpose of enabling investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or group and of the rights attaching to the securities for which application is made.

G.17 When the prospectus includes consolidated annual accounts, disclosure—

(a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with IAS);

(b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.15; and

(c) for each of the undertakings referred to in (b) above—

(i) the total proportion of third-party interests, if annual accounts are wholly consolidated; or

(ii) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis.

G.18 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

G.19 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the prospectus) of the following, if material—

(a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;

(b) the circumstances, if applicable, under which the borrowing powers have been exceeded during the past three years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;

(c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but un-issued, and term loans, distinguishing between loans guaranteed, unguaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;

(d) all off-balance sheet financing by the issuer and any of its subsidiaries;

(e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases;

(f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or

(g) how the borrowings required to be disclosed under paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities described in (1) above. As a general rule, no account shall be taken of liabilities or guarantees between undertakings within the same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

(a) the names of the lenders if not debenture holders;

(b) the amount, terms and conditions of repayment or renewal;

(c) the rates of interest payable on each item;

(d) details of the security, if any;

(e) details of conversion rights; and

(f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed.

(4) If the issuer prepares consolidated annual accounts, the principles laid down in paragraph G.06 apply to the information set out in this paragraph G.19.

G.20 Details of material loans by the issuer or by any of its subsidiaries stating—

(a) the date of the loan;

(b) to whom made;

(c) the rate of interest;

(d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;

(e) the period of the loan;

(f) the security held;

(g) the value of such security and the method of valuation;

(h) if the loan is unsecured, the reasons therefor; and

(i) if the loan was made to another company, the names and addresses of the directors of such company.

G.21 Details as described in paragraph G.20 above of loans made or security furnished by the issuer or by any of its subsidiaries for the benefit of any director or manager or any associate of any director or manager.

G.22 Disclose how the loans receivable arose, stating whether they arose from the sale of assets by the issuer or any of its subsidiaries.

G.23 A statement that in the opinion of the directors, the issued capital of the issuer (including the amount to be raised in pursuance of this issue) is adequate for the purposes of the business of the issuer and of its subsidiaries for the foreseeable future, and if the directors are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the issuer and its subsidiaries are to be financed. The statement should be supported by a report from the issuer's auditor, reporting accountant, investment banker, sponsoring stockbroker or other adviser acceptable to the Authority.

G.24 The foreseeable future should normally be construed as the nine months subsequent to the date of the publication of the prospectus.

G.25 The following information regarding the acquisition, within the last five years, or proposed acquisition by the issuer or any of its subsidiaries, of any securities in or the business undertaking of any other company or business enterprise or any immovable property or other property in the nature of a fixed asset (collectively called "the property") or any option to acquire such property shall be disclosed—

(a) the date of any such acquisition or proposed acquisitions;

(b) the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;

(c) details of the valuation of the property;

(d) any goodwill paid and how such goodwill was or is to be accounted for;

(e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;

(f) the nature of title or interest acquired or to be acquired; and

(g) details regarding the vendors as described in paragraph I.01.

G.26 The following details regarding any property disposed of during the past five years, or to be disposed of, by the issuer, or any of its subsidiaries—

(a) the dates of any such disposal or proposed disposal;

(b) the consideration received, detailing that settled by the receipt of securities or cash or by any other means and detailing how any outstanding consideration is to be settled;

(c) details of the valuation of the property; and

(d) the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial shareholders of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

G.27 Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the mean exchange rate designated by the Central Bank of Kenya for this purpose, if any—

(a) at the latest practicable date;

(b) the high and low exchange rates for each month during the preceding twelve months; and

(c) for the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period,

calculated by using the average of the exchange rates on the last day of each month during the period.

ID.H.00. The offer and listing

H.01 An indication whether or not all the shares have been marketed or are available in whole or in part to the public in conjunction with the application.

H.02 A statement of the resolutions, authorisations and approvals by virtue of which the shares have been or will be created and/or issued.

H.03 The nature and amount of the issue.

H.04 The number of shares which have been or will be created and/or issued, if predetermined.

H.05 (1) A summary of the rights attaching to the shares for which application is made, and in particular the extent of the voting rights, entitlement to share in the profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one class of shares of the issuer in issue, like details must be given for each class.

(2) If the rights evidenced by the securities being offered or listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities qualification and its effect on the rights evidenced by the securities to be listed or offered.

H.06 The time limit (if any) after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates.

H.07 A statement regarding tax on the income from the shares withheld at source—

(a) in the country of origin; and

(b) in Kenya.

H.08 Arrangements for transfer of the shares and (where permitted) any restrictions on their free transferability (for example, provisions requiring transfers to be approved).

H.09 The fixed date(s) (if any) on which entitlement to dividends arises.

H.10 Other securities exchanges (if any) where admission to listing is being or will be sought.

H.11 The names and addresses of the issuer's Registrar and paying agent(s) for the shares in any other country where admission to listing has taken place.

H.12 The following information must be given concerning the terms and conditions of the issue of the securities whether through a public or private placing with respect to the listing at a securities exchange where such issue or placing is being effected at the same time as the listing or has been effected within the three months preceding admission—

(a) a statement of any right of pre-emption of shareholders exercisable in respect of the shares or of the disapplication of such right (and where applicable, a statement of the reasons for the disapplication of such right; in such cases, the directors' justification of the issue price where the issue is for cash; if the disapplication of the right of pre-emption is intended to benefit specific persons, the identity of those persons);

(b) the total amounts which have been or are being issued or placed and the number of shares offered, where applicable by category;

(c) if a public or private issue or placing has been or is being made simultaneously on the markets of two or more countries and if a tranche has been or is being reserved for any of these, details of any such tranche including—

(i) the issue price or offer or placing price, stating the nominal value or, in its absence, the accounting par value or the amount to be capitalised;

(ii) the issue premium and the amount of any expenses specifically charged to any subscriber or purchaser; and

(iii) the methods of payment of the price, particularly as regards the paying-up of shares which are not fully paid;

(d) the procedure for the exercise of any right of pre-emption, transferability of subscription rights and treatment of subscription rights not exercised;

(e) the period during which the issue or offer remained open or will remain open after publication of the prospectus, and the names of the receiving agents;

(f) the names, addresses and descriptions of the persons underwriting or guaranteeing the issue and where the underwriter is a company, the description must include—

(i) the place and date of incorporation and registered number of the company;

(ii) the names of the directors of the company;

(iii) the name of the secretary of the company;

(iv) the bankers to the company; and

(v) the authorised and issued share capital of the company;

(g) where not all of the issue has been or is being underwritten or guaranteed, a statement of the portion not covered;

(h) a statement or estimate of the overall amount and/or of the amount per share of the charges relating to the issue payable by the issuer, stating the total remuneration of the financial intermediaries, including the underwriting commission, margin, guarantee commission placing or selling agent's commission; and

(i) the estimated net proceeds accruing to the issuer from the issue and the intended application of such proceeds. If the capital offered is more than the amount of the minimum subscription referred to in paragraph H.13 below, the reasons for the difference between the capital offered and the said minimum subscription.

H.13 The minimum amount which, in the opinion of the directors, must be raised by the issue of the securities in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—

(a) the purchase price of any property, as referred to in paragraph G.25, purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) any preliminary expenses payable by the issuer, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting any securities of the issuer;

(c) the repayment of any monies borrowed in respect of any of the foregoing matters;

(d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each of such purposes;

(e) any other material expenditure, stating the nature and purpose thereof and the estimated amount in each case;

(f) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided; and

(g) if the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the issuer or associates, disclose the person from whom they will be acquired and how the cost to the issuer will be determined.

H.14 A description of the shares for which application is made and, in particular, the number of shares and nominal value per share or, in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.

H.15 If shares are to be marketed and no such shares have previously been sold to the public, a statement of the number of shares made available to the market (if any) and of their nominal value, or, if they have no nominal value, of their accounting par value, or a statement of the total nominal value and, where applicable, a statement of the minimum offer price.

H.16 The securities exchange at which the shares will be listed and the dates on which the shares will be admitted to listing and on which dealings will commence.

H.17 The names of the securities exchanges (if any) on which shares of the same class are already listed.

H.18 If during the period covered by the last financial year and the current financial year, there has occurred any public takeover offer by a third party in respect of the issuer's shares, or any public takeover offer by the issuer in respect of another company's shares, a statement to that effect and a statement of the price or exchange terms attaching to any such offers and the outcome thereof.

H.19 Where the shares for which application is being made are shares of a class which is already listed, information regarding the price history of the securities to be offered or listed shall be disclosed as indicated from (a) to (c) below. This information shall be given with respect to the market price at the securities exchange at which the securities are listed in Kenya and the principal trading market outside Kenya. If significant trading suspensions occurred in the prior three years, the issuer shall disclose—

(a) for the five most recent full financial years, the annual high and low market prices;

(b) for the two most recent full financial years and any subsequent period, the high and low market prices for each full financial quarter; and

(c) for the most recent six months, the high and low market prices for each month.

H.20 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.21 To the extent known to the issuer, indicate whether major shareholders, directors or members of the issuer's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe for more than 5% of the offering.

H.22 Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for any of these, indicate any such tranche.

H.23 If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the issuer or its subsidiaries, provide details of these and any other preferential allocation arrangements.

H.24 Indicate whether the amount of the offering could be increased by the issuer or vendor by the exercise of a "greenshoe" option subject to a maximum of 15% of the securities offered in the prospectus in case of over subscription of securities.

H.25 Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of stockbrokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities and identify the stockbroker(s) or dealer(s) that will participate in the offering stating the amount to be offered through each.

H.26 If the securities are to be offered in connection with the writing of exchange-traded call options where applicable, (in the case of issuers listed, in securities exchange(s) outside Kenya) describe briefly such transactions.

H.27 Where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons.

H.28 Disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

H.29 In the case of a subscription offering to existing shareholders, disclose the amount and per centage of immediate dilution if they do not subscribe to the new offering.

H.30 The following information on expenses shall be provided—

(a) the total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the issuer shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share;

(b) an itemised statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered and by whom the expenses are payable, if other than the issuer.

The following expenses shall be disclosed separately—

(i) advertisement;

(ii) printing of prospectus;

(iii) approval and listing fees;

(iv) brokerage commissions;

(v) financial advisory fees;

(vi) legal fees; and

(vii) underwriting fees.

If any of the securities are to be offered for the account of a selling shareholder, indicate the portion of such expenses to be borne by such shareholder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given; and

(c) a statement or estimate of the overall amount, per centage and amount per share of the charges relating to the issue payable by the issuer, stating the total remuneration of the intermediaries, including the underwriting commission or margin, guarantee commission, placing or selling agent's commission.

H.31 Disclose the minimum amount which in the opinion of the directors must be raised through the issue of securities in the form of total subscriptions in shares and value.

ID.I.00. Vendors

I.01 The names and addresses of the vendors of any assets purchased or acquired by the issuer or any subsidiary company during the five years preceding the publication of the prospectus or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid or payable to each vendor, and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them if within the preceding five financial years. Where the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of the company, if required by the Authority. Where this information is unobtainable, the reasons therefore are to be stated.

I.02 State whether or not the vendors have given any indemnities, guarantees or warranties.

I.03 State whether the vendors agreements preclude the vendors from carrying on business in competition with the issuer or any of its subsidiaries, or impose any other restriction on the vendor, and disclose details of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.

I.04 State how any liability for accrued taxation, or any apportionment, thereof to the date of acquisition, will be settled in terms of the vendors' agreements.

I.05 Where securities are purchased in a subsidiary company, a reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in companies other than subsidiary companies, a statement as to how the value of the securities was arrived at.

I.06 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

I.07 The amount of any cash or securities paid or benefit given within five preceding years or proposed to be paid or given to any promoter not being a director, and the consideration for such payment or benefit.

I.08 State whether the assets acquired have been transferred into the name of the issuer or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

PART B – ALTERNATIVE INVESTMENT MARKET SEGMENT
DISCLOSURE REQUIREMENTS FOR PUBLIC OFFERINGS

[Regulation 10(b).]

ID.A.00. Identity of directors, senior management and advisers (i.e. persons responsible for the information disclosed)

A.01 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.02.

A.02 A declaration in the following form—

> The directors of [the issuer], whose names appear on page [ ], of the prospectus accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.03 The names, addresses and qualifications of the auditors who have audited the issuer's annual accounts in accordance with IAS for the last two financial years.

A.04 If auditors have resigned, have been removed or have not been re-appointed during the last two financial years and have deposited a statement with the issuer of circumstances which they believe should be brought to the attention of members and creditors of the issuer, details of such matters must be disclosed.

A.05 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the prospectus has been attributed.

ID.B.00. Offer statistics and expected timetable

B.01

(1) A statement that the Authority has approved the public offering and listing of the shares on the Alternative Investment Market Segment of a securities exchange.

(2) Cautionary statement of the Authority.

B.02 A statement that a copy of the prospectus has been delivered to the Registrar.

B.03 If the offer is by more than one method, for each method of offering state the total amount of the issue, including the expected issue price or the method of determining the price and the number of securities expected to be issued.

B.04 For each public offering, and separately for each group of targeted potential investors, state the following information to the extent applicable—

(a) the period during which the offer will be open, and where and to whom purchase or subscription applications shall be addressed. Describe whether the purchase period may be extended or shortened, and the manner and duration of possible extensions or possible early closure or shortening of the period. Describe the manner in which the latter shall be made public. If the exact dates are not known when the documents are first filed or distributed to the public, describe arrangement for announcing final or definitive date or period;

(b) method and time limits for paying up securities;

(c) method and time limits for delivery of securities (including provisional certificates, if applicable) to subscribers or purchasers;

(d) in case of pre-emptive purchase rights, the procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised; and

(e) a full description of the manner in which results of the distribution of securities are to be made public, and when appropriate, the manner for refunding excess amounts paid by applicants (including whether interest is to be paid).

ID.C.00. Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last two years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under that legislation.

C.05 A description of the issuer's principal objects and reference to the clause(s) of the memorandum of association in which they are described.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not less than five working days from the date of the prospectus or for the duration of any offer to which the prospectus relates, if longer, at a named place as the Authority may agree, the following documents (or copies thereof), where applicable, could be inspected—

(a) the memorandum and articles of association of the issuer;

(b) any trust deed of the issuer or of its subsidiary companies which is referred to in the prospectus;

(c) each document mentioned in paragraphs C.18 (material contracts) and E.10 (directors' service contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(d) copies of service agreements with managers or secretary/ries, underwriting, vendors' and promoters' agreements entered into during the last two financial years;

(e) in the case of an issue of shares in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a takeover offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations,

together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual accounts (as appropriate);

(f) the latest competent person's report, in the case of a mineral company;

(g) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;

(h) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the prospectus;

(i) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountant's report pursuant to paragraph G.04 and giving the reasons therefor; and

(j) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years (three years, if the issuer has been in existence for such a period) preceding the publication of the prospectus, including, in the case of a company incorporated in Kenya, all notes, reports or information required by the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.18 (material contracts), a translation of a summary of such document may be made available for inspection, if the Authority so requires.

C.09 The amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 Where the issuer has authorised but un-issued capital or is committed to increase the capital, an indication of—

(a) the amount of such authorised capital or capital increase and, where appropriate, the duration of the authorisation;

(b) the categories of persons having preferential subscription rights for such additional portions of capital; and

(c) the terms and arrangements for the share issue corresponding to such portions.

C.11 If the issuer has shares not representing capital—

(a) the number and main characteristics of such shares;

(b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and

(c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

C.12 A summary of the provisions of the issuer's memorandum and articles of association regarding changes in the capital and in the respective rights of the various classes of securities.

C.13 A summary of the changes during the two preceding financial years in the amount of the issued capital of the issuer and, if material, the capital of any member of the group and/or the number and classes of securities of which it is composed. Intra-group issues by partly owned subsidiaries and changes in the capital structure of subsidiaries which have remained wholly owned throughout the period may be disregarded. Such summary must also state the price and terms granted and (if not already fully paid) the dates when any instalments are in arrears. If any asset has been acquired or is to be acquired out of the

proceeds of the issue, its value must be stated. If there are no such issues, an appropriate negative statement must be made.

C.14 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer.

C.15 Details of any change in controlling shareholder(s) as a result of the issue.

C.16 The history of any change in the controlling shareholder(s) and trading objectives of the issuer and its subsidiaries during the previous two financial years. A statement of the new trading objectives and the manner in which the new objectives will be implemented. If the issuer or the group, as the case may be, carries on widely differing operations, a statement showing the contributions of such respective differing operations to its trading results. The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar.

C.17 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.18 A summary of the principal contents of—

(a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last two years in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and

(b) any contractual arrangement with a controlling shareholder required to ensure that the company is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.19 If any contract referred to in paragraph C.18 relates to the acquisition of securities in an unlisted subsidiary, or associate company where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associate companies, or its subsidiaries is interested and to what extent.

C.20 Details of the name of any promoter of any member of the group and the amount of any cash, securities or benefits paid, issued or given within the two years immediately preceding the date of publication of the prospectus, or proposed to be paid, issued or given to any such promoter in his capacity as a promoter and the consideration for such payment, issue or benefit. Where the interest of such promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such promoter's interest in the partnership, company, syndicate or other association.

C.21 A statement of all sums paid or agreed to be paid within the two years immediately preceding the date of publication of the prospectus, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the issuer.

C.22 Where securities are issued in connection with any merger, division of a company, take-over offer, acquisition of an undertaking's assets and liabilities or transfer of assets—

(a) a statement of the aggregate value of the consideration for the transaction and how it was or is to be satisfied;

(b) if the total emoluments receivable by the directors of the issuer will be varied in consequence of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect; and

(c) if the business of the issuer or any of its subsidiaries or any part thereof is managed or is proposed to be managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

C.23 A description of the group's principal activities, stating the main categories of products sold and/or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.24 For the business(es) described in paragraph C.23 above, the degree of any government protection and of any investment encouragement law affecting the business(es).

C.25 Information on any significant new products and/or activities.

C.26 A breakdown of net turnover during the last two financial years (three where available) by categories of activity and into geographical markets in so far as such categories and markets differ substantially from one another, taking account of the manner in which the sale of products and the provision of services falling within the group's ordinary activities are organised.

C.27 Particulars of royalties payable or items of a similar nature in respect of the issuer and any of its subsidiaries.

C.28 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous four months) a significant effect on the group's financial position or an appropriate negative statement.

C.29 Information on any interruptions in the group's business which may have or have had during the recent past (covering at least the previous four months) a significant effect on the group's financial position.

C.30 A description, with figures, of the main investments made, including interests such as shares, debt securities, etc., in other undertakings over the last two financial years and during the current financial year.

C.31 Information concerning the principal investments (including new plant, factories and research and development) during the current financial year being made, with the exception of interests being acquired in other undertakings, including—

(a) the geographical distribution of these investments; and

(b) the method of financing such investments.

C.32 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuers directors have already made firm commitments.

C.33 Information concerning policy on the research and development of new products and processes over the past two financial years, where significant.

C.34 The basis for any statements made by the company regarding its competitive position shall be disclosed.

ID.D.00. Operating and financial review and prospectus (the recent development and prospects of the group)

D.01 Unless otherwise approved by the Authority in exceptional circumstances—

(a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular—

(i) the most significant recent trends in production, sales and stocks and the state of the order book; and

(ii) recent trends in costs and selling prices; and

(b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry and make an offering speculative or on high risk in a section headed "Risk Factors".

D.03 Describe the—

(a) extent to which the financial statements disclose material changes in net revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services;

(b) impact of inflation if material – if the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a history of the annual rate of inflation covering the period, and discussion of the impact of the hyperinflation on the issuer's business shall be disclosed;

(c) impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by the currency borrowing and other hedging instruments; and

(d) impact of any material governmental factors that have materially affected or could materially affect, directly or indirectly the issuer's operations or investments by the host country shareholders.

D.04 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out. There must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.05 The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00. Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

(a) directors, alternate and proposed directors of the issuer and each of its subsidiaries, including details of other directorships; and

(b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and

(c) founders, if the issuer has been established as a family business or has been in existence for fewer than five years and the nature of family relationship, if any; and

(d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty-four months following the issue and listing of the security or appropriate negative statement.

E.02 A description of other relevant business interests and activities of every such person as is mentioned in paragraph E.01 and, if required by the Authority particulars of any former forename or surname of such persons.

E.03 In the case of a foreign issuer, information similar to that described in E.01 and E.02 above, relative to the local management if any. Where the Authority considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.04 The total aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by any member of the group during the last two completed financial years under any description whatsoever.

E.05 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 3% of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the prospectus, or if there has been no such change, disclosure of that fact.

E.06 All relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during—

(a) the current or immediately preceding financial year; or

(b) an earlier financial year and remain in any respect outstanding or unperformed,

or an appropriate negative statement.

E.07 The total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.

E.08 Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments in force at the date of the prospectus.

E.09 An estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the prospectus.

E.10 Details of existing or proposed directors' service contracts (excluding contracts previously made available for inspection in accordance with paragraph C.07 and not subsequently varied); such details to include the matters specified in paragraphs (a) to (g) below or an appropriate negative statement—

(a) the name of the employing company;

(b) the date of the contract, the un-expired term and details of any notice periods;

(c) full particulars of the director's remuneration including salary and other benefits;

(d) any commission or profit sharing arrangements;

(e) any provision for compensation payable upon early termination of the contract;

(f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract; and

(g) details relating to restrictions prohibiting the director, or any person acting on his behalf or connected to him, from any dealing in securities of the company during a close period or at a time when the director is in possession of unpublished price sensitive information in relation to those securities.

E.11 A summary of the provisions of the memorandum and articles of association of the issuer with regards to—

(a) any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested;

(b) any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; and

(c) retirement or non-retirement of directors under an age limit.

E.12 Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person, referred to in E.01 above, was selected as a director or member of senior management.

E.13 Details relating to the issuer's audit, remuneration and nomination committees including the names of committee members and a summary of the terms of reference under which the committees operate.

ID.F.00. Major shareholders and related party transactions

F.01 The following information shall be provided regarding the issuer's major shareholders, which means shareholders that are the beneficial owners of at least 3% or more of each class of the issuer's voting securities—

(a) provide the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as at the most recent practicable date, or an appropriate negative statement if there are no major shareholders;

(b) disclose any significant change in the percentage ownership held by any major shareholders during the past three financial years; and

(c) indicate whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of shareholders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by any other corporation(s), foreign government or other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 Insofar as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in 10% or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide information required on (a) and (b) below for the period since the beginning of the issuer's preceding two financial years (three where available) up to the date of the prospectus, with respect to transactions or loans between the issuer and—

(a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;

(b) associates;

(c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;

(d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individual's families; and

(e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the issuer and enterprises that have a number of key management in common with the issuer. Shareholders beneficially owing a 10% interest in the voting power of the issuer are presumed to have a significant influence on the issuer including—

(i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiary(ies) was a party; and

(ii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above.

The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan, the transaction in which it was incurred, and the interest rate on the loan.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the prospectus, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of prospectus, and has not withdrawn his consent.

F.09 If any of the named experts employed on a contingent basis, owns an amount of shares in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

ID.G.00. Financial information

G.01 A statement that the annual accounts of the issuer for the last two financial years (three where available) have been audited. If audited reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and reasons given.

G.02 A statement of what other information in the prospectus has been audited by the auditors.

G.03 Financial information as required by paragraphs G.14 and G.15 set out in the form of a comparative table together with any subsequent interim financial statements if available.

G.04 Financial information as required by paragraphs G.14 and G.15 set out in the form of an accountants' report.

G.05 If applicable, an accountant's report, as set out in paragraphs G.14 and G.15 on the asset which is the subject of the transaction.

G.06

(1) If the issuer prepares consolidated annual accounts only, it must include those accounts in the prospectus in accordance with paragraph G.03 or G.04.

(2) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the prospectus in accordance with paragraph

G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts with the approval of the Authority and such accounts shall be available for inspection in accordance with paragraph C. 07.

G.07

(1) Where the issuer includes its annual accounts in the prospectus, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last two financial years.

(2) Where the issuer includes consolidated annual accounts in the prospectus, it must state the consolidated profit or loss per share for each of the last two financial years; this information must appear in addition to that provided in accordance with (1) above where the issuer also includes its own annual accounts in the prospectus.

G.08 If, in the course of the last two financial years, the number of shares in the issuer has changed as a result, for example, of an increase in or reduction or reorganisation of capital, the profit or loss per share referred to in paragraph G.07 must be adjusted to make them comparable; in that event the basis of adjustment used must be disclosed.

G.09 Particulars of—

(a) the dividend policy to be adopted;

(b) the *pro-forma* balance sheet prior to and immediately after the proposed issue of securities; and

(c) the effect of the proposed issue of securities on the net asset value per share,

The above particulars must be prepared and presented in accordance with IAS. If the issuer is a holding company, the information must be prepared in consolidated form.

G.10 The amount of the total dividends, the dividend per share and the dividend cover for each of the last two financial years, adjusted, if necessary, to make it comparable in accordance with paragraph G.08.

G.11

(1) Where not more than nine months have elapsed since the end of the financial year to which the last published annual accounts relate, an interim audited financial statement covering at least the first six months following the end of that financial year must be included in or appended to the prospectus. Where not more than six months have elapsed since the end of the financial year, un-audited financial statements covering the period preceding the six months shall be included in the prospectus of the issuer whose securities are currently listed at a securities exchange.

(2) Where the issuer prepares consolidated annual accounts, the interim financial statement must either be consolidated statements or include a statement that, in the opinion of the issuer's directors, the interim financial statements enable investors to make an informed assessment of the results and activities of the group for the period.

G.12 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.13 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.14 A table showing the changes in financial position of the group over each of the last two financial years (three where available) in the form of a cash flow statement.

G.15 (1) Information in respect of the matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long-term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses—

(a) the name and address of the registered office;

(b) the field of activity;

(c) the proportion of capital held;

(d) the issued capital;

(e) the reserves;

(f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;

(g) the value at which the issuer shows in its accounts the interest held;

(h) any amount still to be paid up on shares held;

(i) the amount of dividends received in the course of the last financial year in respect of shares held; and

(j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 20% of the capital and reserves of the issuer or if that interest accounts for at least 20% of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 20% of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or, with the exception of (1) (i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the Authority the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

G.16 The name, registered office and proportion of capital held in respect of each undertaking not failing to be disclosed under paragraph G.15(1) or (2) in which the issuer holds at least 20% of the capital. These details may be omitted when they are of negligible importance for the purpose of enabling investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or group and of the rights attaching to the securities for which application is made.

G.17 When the prospectus includes consolidated annual accounts, disclosure—

(a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with IAS);

(b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.15; and

(c) for each of the undertakings referred to in (b) above;

(i) the total proportion of third-party interests, if annual accounts are wholly consolidated; or

(ii) the proportion of the consolidation calculated on the basis of interest, if consolidation has been effected on a pro rata basis.

G.18 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

G.19 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the prospectus) of the following, if material—

(a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;

(b) the circumstances, if applicable, if the borrowing powers have been exceeded during the past two years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;

(c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but un issued, and term loans, distinguishing between loans guaranteed, un guaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;

(d) all off-balance sheet financing by the issuer and any of its subsidiaries;

(e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, un guaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases;

(f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or

(g) how the borrowings required to be disclosed by paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities described in (1) above. As a general rule, no account should be taken of liabilities or guarantees between undertakings within the same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

(a) the names of the lenders if not debenture holders;

(b) the amount, terms and conditions of repayment or renewal;

(c) the rates of interest payable on each item;

(d) details of the security, if any;

(e) details of conversion rights; and

(f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed.

(4) If the issuer prepares consolidated annual accounts, the principles laid down in paragraph G.06 apply to the information set out in this paragraph G.19.

G.20 Details of material loans by the issuer or by any of its subsidiaries stating—

(a) the date of the loan;

(b) to whom made;

(c) the rate of interest;

(d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;

(e) the period of the loan;

(f) the security held;

(g) the value of such security and the method of valuation;

(h) if the loan is unsecured, the reasons therefor; and

(i) if the loan was made to another company, the names and addresses of the directors of such company.

G.21 Details as described in paragraph G.20 above of loans made or security furnished by the issuer or by any of its subsidiaries for the benefit of any director or manager or any associate of any director or manager.

G.22 Disclose how the loans receivable arose, stating whether they arose from the sale of assets by the issuer or any of its subsidiaries.

G.23 A statement that in the opinion of the directors, the issued capital of the issuer (including the amount to be raised in pursuance of this issue) is adequate for the purposes of the business of the issuer and of its subsidiaries for the foreseeable future, and if the directors are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the issuer and its subsidiaries are, to be financed.

G.24 The statement should be supported by a report from the issuer's auditor, reporting accountant, investment banker, sponsoring stockbroker or other adviser acceptable to the Authority.

The foreseeable future should normally be construed as the nine months subsequent to the date of the publication of the prospectus.

G.25 The following information regarding the acquisition, within the last two financial years, or proposed acquisition by the issuer or any of its subsidiaries, of any securities in or the business undertaking of any other company or business enterprise or any immovable property or other property in the nature of a fixed asset (collectively called "the property") or any option to acquire such property shall be disclosed—

(a) the date of any such acquisition or proposed acquisitions;

(b) the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;

(c) details of the valuation of the property;

(d) any goodwill paid and how such goodwill was or is to be accounted for;

(e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;

(f) the nature of title or interest acquired or to be acquired;

(g) details regarding the vendors as described in paragraph I.01.

G.26 The following details regarding any property disposed of during the past two years (three where available), or to be disposed of, by the issuer, or any of its subsidiaries—

(a) the dates of any such disposal or proposed disposal;

(b) the consideration received, detailing that settled by the receipt of securities or cash or by any other means and detailing how any outstanding consideration is to be settled;

(c) details of the valuation of the property; and

(d) the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial shareholders of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

G.27 Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between

the financial reporting currency and Kenya shillings should be provided, using the exchange rate designated by the Central Bank of Kenya for this purpose, if any—

(a) at the latest practicable date;

(b) the high and low exchange rates for each month during the preceding twelve months; and

(c) for the two most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

ID.H.00. The offer and listing

H.01 An indication whether or not all the shares have been marketed or are available in whole or in part to the public in conjunction with the application.

H.02 A statement of the resolutions, authorisations and approvals by virtue of which the shares have been or will be created and/or issued.

H.03 The nature and amount of the issue.

H.04 The number of shares which have been or will be created and/or issued, if predetermined.

H.05

(1) A summary of the rights attaching to the shares for which application is made, and in particular the extent of the voting rights, entitlement to share in the profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one class of shares of the issuer in issue, like details must be given for each class.

(2) If the rights evidenced by the securities being offered or listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed or offered.

H.06 The time limit (if any) after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates.

H.07 A statement regarding tax on the income from the shares withheld at source—

(a) in the country of origin; and

(b) in Kenya.

H.08 Arrangements for transfer of the shares and (where permitted) any restrictions on their free transferability (for example, provisions requiring transfers to be approved).

H.09 The fixed date(s) (if any) on which entitlement to dividends arises.

H.10 Other securities exchanges (if any) where admission to listing to being or will be sought.

H.11 The names and addresses of the issuer's Registrar and paying agent(s) for the shares in any other country where admission to listing has taken place.

H.12 The following information must be given concerning the terms and conditions of the issue of securities whether through a public or private placing with respect to the listing at a securities exchange where such issue or placing is being effected at the same time as the listing or has been effected within the three months preceding admission—

(a) a statement of any right of pre-emption of shareholders exercisable in respect of the shares or of the disapplication of such right (and where applicable, a statement of the reasons for the disapplication of such right; in such cases, the directors' justification of the issue price where the issue is for cash; if the disapplication of the right of pre-emption is intended to benefit specific persons, the identity of those persons);

(b) the total amounts which have been or are being issued or placed and the number of shares offered, where applicable by category;

(c) if a public or private issue or placing has been or is being made simultaneously on the markets of two or more countries and if a tranche has been or is being reserved for any of these, details of any such tranche including—

(i) the issue price or offer or placing price, stating the nominal value or, in its absence, the accounting par value or the amount to be capitalised;

(ii) the issue premium and the amount of any expenses specifically charged to any subscriber or purchaser; and

(iii) the methods of payment of the price, particularly as regards the paying-up of shares which are not fully paid;

(d) the procedure for the exercise of any right of pre-emption, transferability of subscription rights and treatment of subscription rights not exercised;

(e) the period during which the issue or offer remained open or will remain open after publication of the prospectus, and the names of the receiving agents;

(f) the names, addresses and descriptions of the persons underwriting or guaranteeing the issue and where the underwriter is a company, the description must include—

(i) the place and date of incorporation and registered number of the company;

(ii) the names of the directors of the company;

(iii) the name of the secretary of the company;

(iv) the bankers to the company; and

(v) the authorised and issued share capital of the company;

(g) where not all of the issue has been or is being underwritten or guaranteed, a statement of the portion not covered;

(h) a statement or estimate of the overall amount and/or of the amount per share of the charges relating to the issue payable by the issuer, stating the total remuneration of the financial intermediaries, including the underwriting commission or margin, guarantee commission, placing or selling agent's commission; and

(i) the estimated net proceeds accruing to the issuer from the issue and the intended application of such proceeds. If the capital offered is more than the amount of the minimum subscription referred to in paragraph H.13 below, the reasons for the difference between the capital offered and the said minimum subscription.

H.13 The minimum amount which, in the opinion of the directors, must be raised by the issue of the securities in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—

(a) the purchase price of any property, as referred to in paragraph G.25, purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) any preliminary expenses payable by the issuer, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting any securities of the issuer;

(c) the repayment of any moneys borrowed in respect of any of the foregoing matters;

(d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;

(e) any other material expenditure, stating the nature and purpose(s) thereof and the estimated amount in each case;

(f) the amount(s) to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided; and

(g) if the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the issuer or associates, disclose the person from whom they will be acquired and how the cost to the issuer will be determined.

H.14 A description of the shares for which application is made and, in particular, the number of shares and nominal value per share in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.

H.15 If shares are to be marketed and no such shares have previously been sold to the public, a statement of the number of shares made available to the market (if any) and of their nominal value, or, if they have no nominal value, of their accounting par value, or a statement of the total nominal value and, where applicable, a statement of the minimum offer price.

H.16 The securities exchange at which the shares are to be listed and the dates on which the shares will be admitted to listing and on which dealings will commence.

H.17 The names of the securities exchanges (if any) on which shares of the same class are already listed.

H.18 If during the period covered by the last financial year and the current financial year, there has occurred any public takeover offer by a third party in respect of the issuer's shares, or any public takeover offer by the issuer in respect of another company's shares, a statement to that effect and a statement of the price or exchange terms attaching to any such offers and the outcome thereof.

H.19 Where the shares for which application is being made are shares of a class which is already listed, information regarding the price history of the securities to be offered or listed shall be disclosed as indicated from (a) to (c) below. This information shall be given with respect to the market price at the securities exchange at which the securities are listed in Kenya and the principal trading market outside Kenya. If significant trading suspensions occurred in the prior two years, the issuer shall disclose—

(a) for the two most recent full financial years, the annual high and low market prices;

(b) for the one most recent full financial year, and any subsequent period, the high and low market prices for each full financial quarter; and

(c) for the most recent six months, the high and low market prices for each month.

H.20 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.21 To the extent known to the issuer, indicate whether major shareholders, directors or members of the issuer's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe for more than 5% of the offering.

H.22 Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for any of these, indicate any such tranche.

H.23 If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the issuer or its subsidiaries, provide details of these and any other preferential allocation arrangements.

H.24 Indicate whether the amount of the offering could be increased by the issuer or vendor by the exercise of a "greenshoe" option subject to a maximum of 15% of the securities offered in the prospectus in case of over subscription of the securities.

H.25 Indicate the amount, and outline briefly the plan of distribution of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of stockbrokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities and identify the stockbroker(s) or dealer(s) that will participate in the offering stating the amount to be offered through each.

H.26 If the securities are to be offered in connection with the writing of exchange-traded call options where applicable in the case of an issuer whose securities are listed at a securities exchange outside Kenya, describe briefly such transactions.

H.27 Where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons.

H.28 Disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

H.29 In the case of a subscription offering to existing shareholders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.

H.30 The following information on expenses shall be provided—

(a) the total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the issuer shall be disclosed, as well as the per centage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share;

(b) an itemised statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered and by whom the expenses are payable, if other than the issuer;

The following expenses shall be disclosed separately—

(i) advertisement;

(ii) printing of prospectus;

(iii) approval and listing fees;

(iv) brokerage commissions;

(v) financial advisory fees;

(vi) legal fees; and

(vii) underwriting fees.

If any of the securities are to be offered for the account of a selling shareholder, indicate the portion of such expenses to be borne by such shareholder. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given; and

(c) a statement or estimate of the overall amount, per centage and amount per share of the charges relating to the issue payable by the issuer, stating the total remuneration of the intermediaries, including the underwriting commission or margin, guarantee commission, placing or selling agent's commission.

H.31 Disclose the minimum amount which in the opinion of the directors must be raised through the issue of securities in form of total subscriptions in shares and value.

[Subsidiary]

ID.I.00. Vendors

I.01 The names and addresses of the vendors of any assets purchased or acquired by the issuer or any subsidiary company during the two years preceding the publication of the prospectus or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid or payable to each vendor, and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them if within the preceding two years. Where the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of the company if required by the Authority. Where this information is unobtainable, the reasons therefor are to be stated.

I.02 State whether or not the vendors have given any indemnities, guarantees or warranties.

I.03 State whether the vendors agreements preclude the vendors from carrying on business in competition with the issuer or any of its subsidiaries, or impose any other restriction on the vendor, and disclose of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.

I.04 State how any liability for accrued taxation, or any apportionment thereof to the date of acquisition, will be settled in terms of the vendors' agreements.

I.05 Where securities are purchased in a subsidiary company, a reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in companies other than subsidiary companies, a statement as to how the value of the securities was arrived at.

I.06 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

I.07 The amount of any cash or securities paid or benefit given within two preceding years or proposed to be paid or given to any promoter not being a director, and the consideration for such payment or benefit.

I.08 State whether the assets acquired have been transferred into the name of the issuer or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

PART C – FIXED INCOME SECURITIES MARKET SEGMENT DISCLOSURE REQUIREMENTS FOR PUBLIC ISSUES

[Regulation 10(c).]

ID.A.00. Identity of directors, senior management and advisers (i.e. persons responsible for the information disclosed)

A.01 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.02.

A.02 A declaration in the following form—

> The directors of [the issuer], whose names appear on page [ ] of the prospectus, accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.03 The names, addresses and qualifications of the auditors who have audited the issuer's annual accounts in accordance with IAS for the last two financial years.

A.04 If auditors have resigned, have been removed or have not been re-appointed during the last two financial years and have deposited a statement with the issuer of

circumstances which they believe should be brought to the attention of members and creditors of the issuer, details of such matters must be disclosed.

A.05 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the prospectus has been attributed.

ID.B.00. Offer statistics and expected timetable

(1) A statement that the Authority has approved the public offering and listing of the securities at the Fixed Income Securities Market Segment of a securities exchange.

(2) Cautionary statement of the Authority.

B.02 A statement that a copy of the prospectus has been delivered to the Registrar.

ID.C.00. Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last three years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under that legislation.

C.05 A description of the issuer's principal objects and reference to the clause(s) of the memorandum of association in which they are described.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not less than five working days from the date of the information memorandum or for the duration of any offer to which the information memorandum relates, if longer, at a named place as the Authority may approve, where the following documents or copies thereof (where applicable) could be inspected—

(a) the memorandum and articles of association of the issuer;

(b) any trust deed of the issuer or of its subsidiary undertakings which is referred to in the information memorandum;

(c) each document mentioned in paragraphs C.12 (material contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(d) copies of service agreements with managers or secretary/ies, underwriting, vendors' and promoters' agreements entered into during the last two financial years;

(e) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;

(f) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the prospectus;

(g) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountants' report included pursuant to paragraph G.04 and giving the reasons therefor; and

(h) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the prospectus, including, in the case of a company incorporated in Kenya, all notes, reports or information required by the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.12 (material contracts), a translation of a summary of such document may be made available for inspection, if the Authority so requires.

C.09 The amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement, which may lead to their adopting a common policy in respect of the issuer.

C.11 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuers position within it stating, where the issuer is a subsidiary undertaking, the name of and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.12 A summary of the principal contents of—

(a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last two years in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and

(b) any contractual arrangement with a controlling shareholder required to ensure that the issuer is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.13 If any contract referred to in paragraph C.12 relates to the acquisition of securities in an unlisted subsidiary, or associated company, where all securities in the issuer have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associated companies, or its subsidiaries is interested and to what extent.

C.14 A description of the group's principal activities, stating the main categories of products sold and/or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.15 Details of any material changes in the businesses of the issuer during the past five years.

C.16 Where the information given pursuant to paragraphs C.14 to C.15 has been influenced by exceptional factors, that fact must be mentioned.

C.17 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous four months) a significant effect on the group's financial position or an appropriate negative statement.

C.18 Information on any interruptions in the group's business, which may have or have had during the recent past (covering at least the previous four months) a significant effect on the group' financial position.

C.19 Information concerning the principal investments (including new plant, factories and research and development) being made during the current financial year, with the exception of interests being acquired in other undertakings, including—

(a) the geographical distribution of these investments; and

(b) the method of financing such investments.

C.20 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuer's directors have already made firm commitments.

C.21 Information concerning policy on the research and development of new products and processes over the past three financial years, where significant.

C.22 The basis for any statements made by the issuer regarding it competitive position shall be disclosed.

ID.D.00. Operating and financial review and prospectus (the recent development and prospects of the group)

D.01 Unless otherwise approved by the Authority in exceptional circumstances—

(a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular—

(i) the most significant recent trends in production, sales and stock and the state of the order book; and

(ii) recent trends in costs and selling prices; and

(b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry and make an offering speculative or on high risk in a section headed "Risk Factors".

D.03 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out; there must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.04 The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00. Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

(a) directors, alternate and proposed directors of the issuer and each of its material subsidiaries including details of other directorships;

(b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and

(c) founders, if the issuer has been established as a family business or in existence for fewer than five years and the nature of family relationship; if any

(d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty-four months following the issue and listing of the security or appropriate negative statement.

E.02 In the case of a foreign issuer, information similar to that described in E.01, relative to the local management, if any. Where the Authority considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.03 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 3% of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the prospectus, or if there has been no such change, disclosure of that fact.

ID.F.00. Major shareholders and related party transactions

F.01 The following information shall be provided regarding the issuer's major shareholders, which means shareholders that are the beneficial owners of at least 3% or more of the issuer's voting securities—

(a) provide the names of the major shareholders, and the number of shares and the per centage of outstanding shares of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major shareholders;

(b) disclose any significant change in the per centage ownership held by any major shareholders during the past three financial years; and

(c) indicate whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of shareholders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by another corporation(s), by any foreign government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in 10% or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide information required on (a) and (b) below for the period since the beginning of the issuer's preceding five financial years up to the date of the information memorandum, with respect to transactions or loans between the issuer and—

(a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under intermediaries, control or are controlled by, or are under common control with, the issuer;

(b) associates;

(c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;

(d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individuals' families; and

(e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such

a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the issuer and enterprises that have a number of key management in common with the issuer. Shareholders beneficially owning a 10% interest in the voting power of the issuer are presumed to have a significant influence on the issuer, including—

(i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiaries was a party; and

(ii) the information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, nature of the costs, the transaction(s) in which it was incurred and the interest rate on such transaction(s);

(iii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiary(ies) to or for the benefit of any of the persons listed above.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the information memorandum, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of the information memorandum, and has not withdrawn his consent.

F.09 If any of the named experts was employed on a contingent basis, owns an amount of shares in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

ID.G.00. Financial information

G.01 A statement that the annual accounts of the issuer for the last three financial years have been audited. If audit reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and the reasons given.

G.02 A statement of what other information in the prospectus has been audited by the auditors.

G.03 Financial information as required by paragraphs G.09 to G.11 set out in the form of a comparative table together with any subsequent interim financial statements if available.

G.04 Financial information as required by paragraphs G.09 to G.11 set out in the form of an accountant's report.

G.05 If applicable, an accountant's report, as set out in paragraphs G.09 to G.11 n the asset which is the subject of the transaction.

G.06

(a) If the issuer prepares consolidated annual accounts only, it must include those accounts in the prospectus in accordance with paragraph G.03 or G.04.

(b) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the prospectus in accordance with paragraph G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts, with the approval of the Authority.

G.07

(a) Where the issuer includes its own annual accounts in the prospectus, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last five financial years.

(b) Where the issuer includes consolidated annual accounts in the prospectus, it must state the consolidated profit or loss per share for each of the last five financial years; this information must appear in addition to that provided in accordance with (a) above where the issuer also includes its own annual accounts in the prospectus.

G.08 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.09 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.10 A table showing the changes in financial position of the group over each of the last three financial years in the form of a cash flow statement.

G.11 The accountant's report shall disclose a pro-forma balance sheet, profit and loss account and a cash flow projection for the next twelve months following the issue and the following ratios for the last three financial years immediately preceding the issue—

(a) earnings before interest and taxes interest cover;

(b) funds from operations to total debt per centage;

(c) free cash flow to total debt per centage;

(d) total free cash flow to short-term debt obligations;

(e) not profit margin;

(f) post-tax return (before financing on capital employed);

(g) long term debt to capital employed; and

(h) total debt to equity.

G.12 Where the prospectus includes consolidated annual accounts, disclosures are required—

(a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with IAS);

(b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.15; and

(c) for each of the undertakings referred to in (b) above—

(i) the total proportion of third party interests, if annual accounts are wholly consolidated; or

(ii) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis.

G.13 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the prospectus) of the following, if material—

(a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;

(b) the circumstances, if applicable, if the borrowing powers have been exceeded during the past two years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;

(c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but un-issued, and term loans, distinguishing between loans guaranteed, unguaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;

(d) all off-balance sheet financing by the issuer and any of its subsidiaries;

(e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire-purchase commitments and obligations under finance leases;

(f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or

(g) how the borrowings required to be disclosed by paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital; borrowings, indebtedness and contingent liabilities described in (1) above; as a general rule, no account should be taken of liabilities or guarantees between undertakings within the same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

(a) the names of the lenders, if not debenture holders;

(b) the amount, terms and conditions of repayment or renewal;

(c) the rates of interest payable on each item;

(d) details of the security, if any;

(e) details of conversion rights;

(f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed; and

(g) if the issuer prepares consolidated annual accounts, the principles laid down in paragraph G.06 apply to the information set out in this paragraph G.13.

G.14 Details of material loans by the issuer or by any of its subsidiaries stating—

(a) the date of the loan;

(b) to whom made;

(c) the rate of interest;

(d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;

(e) the period of the loan;

(f) the security held;

(g) the value of such security and the method of valuation;

(h) if the loan is unsecured, the reasons therefor; and

(i) if the loan was made to another company, the names and addresses of the directors of such company.

G.15 (1) Information in respect to matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long-term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits or losses—

(a) the name and address of the registered office;

(b) field of activity;

(c) the proportion of capital held;

(d) the issued capital;

(e) the reserves;

(f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;

(g) the value at which the issuer shows in its accounts the interest held;

(h) any amount still to be paid up on shares held;

(i) the amount of dividends received in the course of the last financial year in respect of shares held; and

(j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 20% of the capital and reserves of the issuer or if that interest accounts for at least 20% of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 20% of the consolidate net assets or at least 20% of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts, or, with the exception of (1)(i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the Authority, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of securities in question.

G.16 A statement by the directors of the issuer that in their opinion the working capital available to the group is sufficient for the group's present requirements, or, if not, how it is proposed to provide the additional working capital thought by the directors of the issuer to be necessary. The working capital statement should be prepared on the group, as enlarged by the acquisition of assets.

G.17 Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the mean exchange rate designated by the Central Bank of Kenya for this purpose, if any—

(a) at the latest practicable date;

(b) the high and low exchange rates for each month during the preceding twelve months;

(c) for the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period; and

(d) if the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets will be acquired from affiliates of the issuer or associates, disclose the person from whom they will be acquired and how the cost to the issuer will be determined.

FI.H.00. The debt securities for which application is being made

H.01 A statement that application has been made to the Authority for the securities to be listed (if applicable) in the Fixed Income Securities Market Segment, setting out the relevant debt securities.

H.02 A statement whether or not all the debt securities have been marketed or are available in whole or in part to the public in conjunction with the application.

H.03 A statement that a copy of the information memorandum or prospectus, as the case may be, has been delivered to the Registrar.

H.04 The nominal amount of the debt securities and if this amount is not fixed, a statement to that effect must be made.

H.05 The nature, number and numbering of the debt securities and the denominations.

H.06 Except in the case of continuous issues of short-term debt securities, the issue and redemption prices and nominal interest rate. If several interest rates or variable interest rates are provided for, an indication of the conditions for changes in the rate.

H.07 The procedures for the allocation of any other advantages and the method of calculating such advantages.

H.08 A statement regarding tax on the income from the debt securities withheld at source—

(a) in the country of origin (if applicable); and

(b) in Kenya.

H.09 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.10 Arrangements for the amortisation of the loan, including the repayment procedures.

H.11 The names and addresses of the issuer's Registrar and paying agent(s) for the securities in any other country where the securities listing (if applicable) has taken place.

H.12 The currency of the loan and any currency option; if the loan is denominated in units of account, the contractual status of such units.

H.13 The final repayment date and any earlier repayment dates.

H.14 The date from which interest becomes payable and the due dates for interest.

H.15 The time limit on the validity of claims to interest and repayment of principal.

H.16 The procedures and time limits for delivery of the debt securities, and a statement as to whether temporary documents of title will be issued.

H.17 Except in the case of continuous issues in respect of short-term securities, a statement of yield. The method whereby that yield is calculated must be described in summary form.

H.18 A statement of the resolutions, authorisations and approvals by virtue of which the debt securities have been or will be created and/or issued.

H.19 The nature and amount of the issue.

H.20 The number of debt securities which have been or will be created and/or issued.

H.21 The nature and scope of the guarantees, sureties and commitments intended to ensure that the loan will be duly serviced as regards both the repayment of the debt securities and the payment of interest.

H.22 Details of trustees or of any other representation for the body of debt security holders.

(1) The name, function, description and head office of the trustee or other representative of the debt security holders; and

(2) the main terms of the document governing such trusteeship or representation and in particular the conditions under which such trustee or representative may be replaced.

H.24 A summary of clauses subordinating the loan to other debts of the issuer already contracted or to be contracted.

H.25 A statement of the legislation under which the debt securities have been created and the courts competent in the event of litigation.

H.26 A statement whether the debt securities are in registered or certificate form or where dematerialised a statement of account to be issued.

H.27 Details of any arrangements for transfer of the securities and any restrictions on the free transferability of the debt securities.

H.28 Other securities exchanges (if any) where listing is being or will be sought.

H.29 (1) The names, addresses and descriptions of the persons underwriting or guaranteeing the issue, and—

(a) where the underwriter is a company, the description must include—

(i) the place and date of incorporation and registered number of the issuer;

(ii) the names of the directors of the company;

(iii) the name of the secretary of the company;

(iv) the bankers to the company where applicable; and

(v) the authorised and issued share capital of the company;

(b)

(i) where the issue is fully or partially guaranteed, the guarantor shall assume the responsibility and redemption obligation under the issue and in that regard, shall satisfy the Authority of its financial capacity to guarantee the issue;

(ii) where the guarantor is a bank or an insurance company licensed to operate in Kenya, the consent of the Central Bank of Kenya or the Commissioner of Insurance, as the case may be, will be required.

(2) Where not all of the issue is underwritten or guaranteed, a statement of the portion not covered shall be made.

H.30 If a public or private offer or placing has been or is being made simultaneously on the markets of two or more countries and if a tranche has been or is being reserved for certain of these, details of any such tranche.

H.31 The names of the securities exchanges (if any) on which debt securities of the same class are already listed.

H.32 If debt securities of the same class have not yet been listed but are dealt in on one or more other regulated, regularly operating, recognised, open markets, an indication of such markets.

H.33 If an issue is being effected at the same time as listing or has been effected within the three months preceding such listing the following information must be given—

(a) the procedure for the exercise of any right of pre-emption; the negotiability of subscription rights, the treatment of subscription rights not exercised and—

(i) the issue price or offer or placing price, stating the nominal value or, in its absence, the accounting par value or the amount to be capitalised;

(ii) the issue premium or discount and the amount of any expenses specifically charged to the subscriber or purchaser; and

(iii) the methods of payment of the price, particularly as regards the paying-up of securities which are not fully paid;

(b) except in the case of continuous debt security issues, the period during which the issue or offer remained open or will remain open and any possibility of early closure;

(c) the methods of and time limits for delivery of the securities and a statement as to whether temporary documents of title have been or will be issued;

(d) the names of the receiving agents;

(e) a statement, where necessary, that the subscriptions may be reduced and a statement of the relative facts where it is the intention, in the event of over subscription, to extend a preference on allotment to any particular company or group such as employees and pension funds;

(f) except in the case of continuous debt security issues, the estimated net proceeds of the loan. If the capital offered is more than the amount of the minimum subscription referred to in paragraph H.34, the reason for the difference between the capital offered and the said minimum subscription;

(g) the purpose of the issue and intended application of its proceeds.

H.34 The minimum amount which, in the opinion of the directors, must be raised by the issue of the securities in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—

(a) the purchase price of any property, purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) any preliminary expenses payable by the issuer, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting or guaranteeing any securities of the issuer;

(c) the repayment of any moneys borrowed in respect of any of the forgoing matters;

(d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;

(e) any other material expenditure, stating the nature and purposes thereof and the estimated amount in each case; and

(f) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

H.35 A summary of the rights conferred upon the holders of the debt securities and particulars of the security (if any) therefor.

H.36 Where debt securities are issued by way of conversion or replacement of debt securities previously issued, a statement of all material difference between the security for the old debt securities and the security for the new debt securities, or, if appropriate, a statement that the security for the new debt securities is identical with all security for the old debt securities.

H.37 Particulars of the profits cover for interest (if fixed), and of the net tangible assets.

H.38 Where the debt securities for which application is being made are offered by way of rights or open offer to the holders of an existing listed security, the following information must be given—

(a) (i) the pro rata entitlement;

(ii) the last date on which transfers were or will be accepted for registration for registration for participation in the issue;

(iii) how the securities rank for interest;

(iv) the nature of the document of title and its proposed date of issue;

(b) in the case of a rights issue or open offer, how debt securities not taken up will be dealt with and the time in which the offer may be accepted;

(c) a statement pointing out possible tax implications for non-residents.

H.39 In respect of convertible debt securities, information concerning the nature of the shares offered by way of conversion, exchange or for subscription and the rights attaching thereto.

H.40 In respect of convertible debt securities, the conditions of and procedures for conversion, exchange or subscription and details of the circumstances in which they may be amended.

H.41 Where the debt securities for which application is being made are debt securities of a class which is already listed, being offered by way of rights or open offer, a table of

market values for the securities of the class to which the rights issue or offer relates for the first dealing day in each of the six months before the date of the particulars, for the last dealing day before the announcement of the rights issue or offer and (if different) the latest practicable date prior to publication of the particulars.

H.42 Where an issuer seeks to raise additional capital amounting to twenty per cent or more of the aggregate value of its listed fixed income securities such issuer shall obtain prior approval of the holders of such listed fixed income securities and the Authority.

PART CC – GROWTH ENTERPRISES MARKET SEGMENT DISCLOSURE REQUIREMENTS

[Rule 10(1)(cc), L.N. 61/2012, r. 17.]

ID.A.00 Identity of directors, senior management and advisors (i.e persons responsible for the information disclosed)

A.01 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.02.

A.02 A declaration in the following form—

> The directors of the issuer, whose names appear on page [ ], of the listing statement accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.03 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the listing statement has been attributed.

ID.B.00 Offer statistics and expected timetable

(1) A statement that the Securities Exchange has approved listing of the shares on the Growth Enterprise Market Segment of the securities exchange.

(2) Cautionary statement of the Exchange.

B.02 The proposed listing price and the basis of determining the price.

B.03 The total amount of the securities to be listed.

ID.C.00 Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last two years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal form which it has adopted under that legislation.

C.05 A description of the issuer's principal objects and reference to the clause(s) of the memorandum of association in which they are described.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not less than five working days from the date of the listing statement, at a named place as the Securities Exchange may agree, the following documents (or copies thereof), where applicable, could be inspected—

(a) the memorandum and articles of association of the issuer;

(b) any trust deed of the issuer or of its subsidiary companies which is referred to in the listing statement;

(c) each document mentioned in paragraphs C.18 (material contracts) and E.10 (directors' service contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(d) copies of service agreements with managers or secretary/ies, underwriting, vendors' and promoters' agreements entered into during the last two financial years;

(e) in the case of an issue of shares in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a takeover offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual accounts (as appropriate);

(f) the latest competent person's report, in the case of a mineral company;

(g) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;

(h) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the listing statement;

(i) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountants' report in accordance with paragraph G.04 and giving the reasons therefor; and

(j) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for at least one year (two years, if the issuer has been in existence for such a period) preceding the publication of the listing statement, including, in the case of a company incorporated in Kenya, all notes, reports or information required under the Companies Ac (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.18 (material contracts), a translation of a summary of such document may be made available for inspection, if the securities exchange so requires.

C.09 The amount of the issuer's authorized and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 Where the issuer has authorized but un issued capital or is committed to increase the capital, an indication of—

(a) the amount of such authorized capital or capital increase and, where appropriate, the duration of the authorization;

(b) the categories of persons having preferential subscription rights for such additional portions of capital; and

(c) the terms and arrangements for the share issue corresponding to such portions.

C.11 If the issuer has shares not representing capital—

(a) the number and main characteristics of such shares;

(b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and

(c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

C.12 A summary of the provisions of the issuer's memorandum and articles of association regarding changes in the capital and in the respective rights of the various classes of securities.

C.13 If an issuer has been in operation, a summary of the changes during the preceding one financial year in the amount of the issued capital of the issuer and, if material, the capital of any member of the group or the number and classes of securities of which it is composed. Intra group issues by partly owned subsidiaries and changes in the capital structure of subsidiaries which have remained wholly owned throughout the period may be disregarded. Such summary must also state the price and terms granted and (if not already fully paid) the dates when any installments are in arrears. If any asset has been acquired or is to be acquired out of the proceeds of the issue, its value must be stated. If there are no such issues, an appropriate negative statement must be made.

C.14 The names of the persons so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons.

For these purposes, **joint control** means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer.

C.15 Details of any change in controlling shareholder(s) as a result of the issue.

C.16 The history of any change in the controlling shareholder(s) and trading objectives of the issuer and its subsidiaries during the previous financial year.

A statement of the new trading objectives and the manner in which the new objectives will be implemented. If the issuer or the group, as the case may be, carries on widely differing operations, a statement showing the contributions of such respective differing operations to its trading results.

The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar.

C.17 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.18 A summary of the principal contents of—

(a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the year immediately preceding the publication of the listing statement, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last year in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and

(b) any contractual arrangement with a controlling shareholder required to ensure that the company is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.19 If any contract referred to in paragraph C.18 relates to the acquisition of securities in an unlisted subsidiary, or associate company where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associate companies, or its subsidiaries is interested and to what extent.

C.20 Details of the name of any promoter of any member of the group and the amount of any cash, securities or benefits paid, issued or given within the year immediately preceding the date of publication of the listing statement, or proposed to be paid, issued or given to any

such promoter in his capacity as a promoter and the consideration for such payment, issue or benefit. Where the interest of such promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such promoter's interest in the partnership, company, syndicate or other association.

C.21 A statement of all sums paid or agreed to be paid within the year immediately preceding the date of publication of the listing statement, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the issuer.

C.22 Where securities are issued in connection with any merger, division of a company, takeover offer, acquisition of an undertaking's assets and liabilities or transfer of assets—

(a) a statement of the aggregate value of the consideration for the transaction and how it was or is to be satisfied;

(b) If the total emoluments receivable by the directors of the issuer will be varied in consequence of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect; and

(c) if the business of the issuer or any of its subsidiaries or any part thereof is managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

C.23 A description of the group's principal activities, stating the main category of products sold or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.24 For the business(es) described in paragraph C.23 above, the degree of any government protection and of any investment encouragement law affecting the business(es).

C.25 Information on any significant new products or activities.

C.26 Particulars of royalties payable or items of a similar nature in respect of the issuer and any of its subsidiaries.

C.27 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous four months) a significant effect on the group's financial position or an appropriate negative statement.

C.28 Information on any interruptions in the group's business which may have or have had during the recent past (covering at least the previous four months) a significant effect on the group's financial position.

C.29 A description, with figures, of the main investments made, including interests such as shares, debt securities etc., in other undertakings over the last financial year and during the current financial year.

C.30 Information concerning the principal investments (including new plant, factories and research and development) during the current financial year being made, with the exception of interests being acquired in other undertakings, including—

(a) the geographical distribution of these investments; and

(b) the method of financing such investments.

C.31 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuers directors have already made firm commitments.

C.32 Information concerning policy on the research and development of new products and processes over the past two financial years, where significant.

C.33 The basis for any statements made by the company regarding its competitive position shall be disclosed.

ID.D.00 Operating and financial review and listing statements (the recent development and prospects of the group)

D.01 Unless otherwise approved by a securities exchange in exceptional circumstances and with the approval of the Authority:

If the issuer had declared annual accounts in the past—

(a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, if the issuer has published annual accounts in the past, and in particular—

(i) the most significant recent trends in production, sales and stocks and the state of the order book; and

(ii) recent trends in costs and selling prices; and

(b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the listing statement and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry and make an offering speculative or on high risk in a section headed "Risk Factors".

D.03 Describe the—

(a) extent to which the financial statements disclose material changes in net revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services;

(b) impact of inflation if material - if the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a history of the annual rate of inflation covering the period, and discussion of the impact of the hyperinflation on the issuer's business shall be disclosed;

(c) impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by the currency borrowing and other hedging instruments; and

(d) impact of any material governmental factors that have materially affected or could materially affect, directly or indirectly the issuer's operations or investments by the host country shareholders.

D.04 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out. There must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.05 The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00 Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

(a) directors, alternate and proposed directors of the issuer and each of its subsidiaries, including details of other directorships;

(b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and

(c) founders, if the issuer has been established as a family business or has been in existence for fewer than five years and the nature of family relationship, if any; and

(d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty four months following the issue and listing of the security or appropriate negative statement.

E.02 A description of other relevant business interests and activities of every such person as is mentioned in paragraph E.01 and, if required by the securities exchange particulars of any former forename or surname of such persons.

E.03 In the case of a foreign issuer, information similar to that described in E.01 and E.02 above, relative to the local management if any. Where the securities exchange considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.04 The total aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by any member of the group during the last completed financial year under any description whatsoever.

E.05 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of 5% of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the listing statement, or if there has been no such change, disclosure of that fact.

E.06 All relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during—

(a) the current or immediately preceding financial year; or

(b) an earlier financial year and remain in any respect outstanding or unperformed; or

(c) an appropriate negative statement.

E.07 The total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.

E.08 Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments in force at the date of the listing statement.

E.09 An estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the listing statement.

E.10 Details of existing or proposed directors' service contracts (excluding contracts previously made available for inspection in accordance with paragraph C.07 and not subsequently varied); such details to include the matters specified in paragraphs (a) to (g) below or an appropriate negative statement—

(a) the name of the employing company;

(b) the date of the contract, the un-expired term and details of any notice periods;

(c) full particulars of the director's remuneration including salary and other benefits;

(d) any commission or profit sharing arrangements;

(e) any provision for compensation payable upon early termination of the contract;

(f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract; and

(g) details relating to restrictions prohibiting the director, or any person acting on his behalf or connected to him, from any dealing in securities of the company during a close period or at a time when the director is in possession of unpublished price sensitive information in relation to those securities.

E.11 A summary of the provisions of the constitution documents of the issuer regarding—

(a) any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested;

(b) any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; and

(c) retirement or non-retirement of directors under an age limit.

E.12 Any arrangement or understanding with major security holders, customers, suppliers or others, pursuant to which any person referred to in E.01 above, was selected as a director or member of senior management.

E.13 Details relating to the issuer's audit committee, remuneration committee and nomination committee including the names of committee members and a summary of the terms of reference under which the committees operate.

ID.F.00 Major shareholders and related party transactions

F.01 The following information shall be provided regarding the issuer's major security holders„ which means security holders that are the beneficial owners of at least three per cent or more of each class of the issuer's voting securities—

(a) provide the names of the major security holders, and the number of securities and the percentage of outstanding securities of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major security holders;

(b) disclose any significant change in the per centage ownership held by any major security holders during the past year; and

(c) indicate whether the issuer's major security holders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of security holders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by any other corporation, foreign government or any other natural or legal person severally or jointly, and, if so, give the name of such controlling corporation, government or other person, and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in 3% per cent or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide the information required on (a) and (b) below for the period since the beginning of the issuer's preceding five financial years up to the date of the Information Memorandum, with respect to transactions or loans between the issuer and—

(a) enterprises that directly of indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;

(b) associates;

(c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;

(d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individuals' families; and

(e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major security holders of the issuer and enterprises that have a number of key management in common with the issuer. Shareholders beneficially owning a 3% interest in the voting power of the issuer are presumed to have a significant influence on the issuer including—

(i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiary(ies) was a party; and

(ii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above.

The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan, the transaction in which it was incurred, and the interest rate on the loan.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the listing statement, a statement that it is included, in the form and context in which it is included, with the written the form and context in which it is included, with the written consent of that person, who has authorized the contents of that part of the listing statement, and has not withdrawn his consent.

F.09 If any of the named experts employed on a contingent basis, owns an amount of securities in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the listing, provide a brief description of the nature and terms of such contingency or interest.

F.10 Provide a copy of the share register to the securities exchange.

ID.G.00 Financial information

G.01 Financial information as required by paragraphs G.11 and G.12 set out in the form of an accountants' report.

G.02 If applicable, an accountants' report, as set out in paragraphs G.11 and G.12 on the asset which is the subject of the transaction.

G.03

(1) If the issuer prepares consolidated annual accounts only, it must include those accounts in the listing statement in accordance with paragraph G.01.

(2) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the listing statement in accordance with paragraph G.03 or G.04. However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts with the approval of the securities exchange and such accounts shall be available for inspection in accordance with paragraph C. 07.

G.04

(1) Where the issuer includes its annual accounts in the listing statement, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last one financial year.

(2) Where the issuer includes consolidated annual accounts in the listing statement, it must state the consolidated profit or loss per share for each of the preceeding financial year; this information must appear in addition to that provided in accordance with (1) above where the issuer also includes its own annual accounts in the listing statement.

G.05 If, in the course of the preceding financial year, the number of shares in the issuer has changed as a result, for example, of an increase in or reduction or re-organisation of capital, the profit or loss per share referred to in paragraph G.07 must be adjusted to make them comparable; in that event the basis of adjustment used must be disclosed.

G.06 Particulars of the dividend policy to be adopted—

(a) the dividend policy to be adopted;

(b) the *pro-forma* balance sheet prior to and immediately after the proposed issue of securities;

(c) the effect of the proposed issue of securities on the net asset value per share.

The above particulars must be prepared and presented in accordance with IAS. If the issuer is a holding company, the information must be prepared in a consolidated form.

G.07 The amount of the total dividends, the dividend per share and the dividend cover for each of the last financial year, adjusted, if necessary, to make it comparable in accordance with paragraph G.05.

G.09 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.10 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.11 A table showing the changes in financial position of the group over each of the last one financial year in the form of a cash-flow statement.

G.12 (1) Information in respect of the matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses—

(a) the name and address of the registered office;

(b) the field of activity;

(c) the proportion of capital held;

(d) the issued capital;

(e) the reserves;

(f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;

(g) the value at which the issuer shows in its accounts the interest held;

(h) any amount still to be paid up on securities held;

(i) the amount of dividends received in the course of the last financial year in respect of shares held; and

(j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 20% of the capital and reserves of the issuer or if that interest accounts for at least twenty per cent of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least twenty per cent of the consolidated net assets or at least twenty per cent of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or, with the exception of 1(i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the securities exchange, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

G.13 The name, registered office and proportion of capital held in respect of each undertaking not failing to be disclosed under paragraph G.12(1) or (2) in which the issuer holds at least twenty per centum of the capital. These details may be omitted when they are of negligible importance for the purpose of enabling investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or group and of the rights attaching to the securities to be listed.

G.14 When the listing statement includes consolidated annual accounts, disclosure—

(a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with International Financial Reporting Standards (IFRS);

(b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.12; and

(c) for each of the undertakings referred to in (b) above—

(i) the total proportion of third-party interests, if annual accounts are wholly consolidated; or

(ii) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a *pro rata* basis.

G.15 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

G.16 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more

than fourteen days prior to the date of publication of the listing statement of the following, if material—

(a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;

(b) the circumstances, if applicable, under which the borrowing powers have been exceeded during the past three years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;

(c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but unissued, and term loans, distinguishing between loans guaranteed, un-guaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;

(d) all off-balance sheet financing by the issuer and any of its subsidiaries;

(e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, un-guaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases;

(f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or

(g) how the borrowings required to be disclosed under paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities described in (1) above; As a general rule, no account shall be taken of liabilities or guarantees between undertakings within same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

(a) the names of the lenders if not debenture holders;

(b) the amount, terms and conditions of repayment or renewal;

(c) the rates of interest payable on each item;

(d) details of the security, if any;

(e) details of conversion rights; and

(f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed.

(4) The principles set out in paragraph G.06 shall apply where the issuer prepares consolidated annual accounts under this paragraph.

G.17 Details of material loans by the issuer or by any of its subsidiaries stating—

(a) the date of the loan;

(b) to whom made;

(c) the rate of interest;

(d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;

(e) the period of the loan;

(f) the security held;

(g) the value of such security and the method of valuation;

(h) if the loan is unsecured, the reasons therefor; and

(i) if the loan was made to another company, the names and addresses of the directors of such company.

G.18 Details as described in paragraph G.17 above of loans made or security furnished by the issuer or by any of its subsidiaries for the benefit of any director or manager or any associate of any director or manager.

G.19 Disclose how the loans receivable arose, stating whether they arose from the sale of assets by the issuer or any of its subsidiaries.

G.20 A statement that in the opinion of the directors, the issued capital of the issuer is adequate for the purposes of the business of the issuer and of its subsidiaries for the foreseeable future, and if the directors are of the opinion that it is inadequate; the extent of the inadequacy and the manner in which and the sources from which the issuer and its subsidiaries are to be financed. The statement should be supported by a report from the issuer's auditor, reporting accountant, investment banker, sponsoring stockbroker or other adviser acceptable to the Authority.

The foreseeable future should normally be construed as the nine months subsequent to the date of the publication of the listing statement.

G.21 The issuer shall make the following information regarding the acquisition, within the last year, or proposed acquisition by the issuer or any of its subsidiaries, of any securities in or the business undertaking of any other company or business enterprise or any immovable property or other property in the nature of a fixed asset (collectively called "the property") or any option to acquire such property shall be disclosed—

(a) the date of any such acquisition or proposed acquisitions;

(b) the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;

(c) details of the valuation of the property;

(d) any goodwill paid and how such goodwill was or is to be accounted for;

(e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;

(f) the nature of title or interest acquired or to be acquired; and

(g) details regarding the vendors as described in paragraph I.O.

G.22 The following details regarding any property disposed of during the past year, or to be disposed of, by the issuer, or any of its subsidiaries—

(a) the dates of any such disposal or proposed disposal;

(b) the consideration received, detailing that settled by the receipt of securities or cash or by any other means and detailing how any outstanding consideration is to be settled;

(c) details of the valuation of the property; and

(d) the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial shareholders of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the mean exchange rate designated by the Central Bank of Kenya for this purpose, if any—

(a) at the latest practicable date;

(b) the high and low exchange rates for each month during the preceding twelve months; and

(c) for the most recent financial year and any subsequent interim period for which financial statements are presented, the average rates for each period,

calculated by using the average of the exchange rates on the last day of each month during the period.

ID.H.00 The listing

H.01 A statement of the resolutions, authorizations and approvals by virtue of which the securities are to be listed.

H.02 The nature and amount of the securities to be listed.

H.03 (1) A summary of the rights attaching to the securities, and in particular the extent of the voting rights, entitlement to share in the profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one class of shares of the issuer in issue, like details must be given for each class.

(2) If the rights evidenced by the securities being listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed.

(3) The time limit (if any) after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates.

H.04 A statement regarding tax on the income from the shares withheld at source—

(a) in the country of origin; and

(b) in Kenya.

H.05 The fixed date(s) (if any) on which entitlement to dividends arises.

H.06 Details of any other securities exchanges (if any) where admission to listing is being or will be sought.

H.07 The following information must be given concerning the terms and conditions of the listing at a securities exchange where such listing is being effected at the same time as the subject listing or has been effected within the three months preceding application of the subject listing—

(a) if the listing has been or is being made simultaneously on the markets of two or more countries—

(i) the listing price, stating the nominal value or, in its absence, the accounting par value; and

(ii) the share premium;

(b) the period during which the listing statement will be available prior to the admission to listing and the names of the agents where the listing statement may be accessed;

(c) a statement or estimate of the overall amount of the charges relating to the listing payable by the issuer, stating the total remuneration of the financial intermediaries

H.9 A description of the securities for which application is made and, in particular, the number of securities and nominal value per security or, in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.

H.10 The securities exchange at which the securities will be listed and the dates on which the securities will be admitted to listing and on which dealings will commence.

H.11 The names of the securities exchanges (if any) on which securities of the same class are already listed.

H.12 If during the period covered by the last financial year and the current financial year, there has occurred any public takeover offer by a third party in respect of the issuer's shares, or any public takeover offer by the issuer in respect of another company's shares, a statement to that effect and a statement of the price or exchange terms attaching to any such offers and the outcome thereof.

H.13 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.14 Where there is a substantial disparity between the listing price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison between that offer price and the listing price.

H.15 Disclose the amount and percentage of immediate dilution resulting from the listing, computed as the difference between the listing price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

H.16 The following information on expenses shall be provided—

(a) the total amount of the discounts or commissions agreed upon by the financial intermediaries and the issuer shall be disclosed, as well as the per centage such commissions represent of the total amount of the listing costs per share;

(b) an itemised statement of the major categories of expenses incurred in connection with the listing and by whom the expenses are payable, if other that the issuer. The following expenses shall be disclosed separately—

(i) advertisement;

(ii) printing of listing statement;

(iii) approval and listing fees;

(iv) financial advisory fees; and

(v) the legal fees;

The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given; and

(c) a statement or estimate of the overall amount, per centage and amount per share of the charges relating to the listing are payable by the issuer, stating the total remuneration of the intermediaries.

ID.I.00 Vendors

I.01 The names and addresses of the vendors of any assets purchased or acquired by the issuer or any subsidiary company during the year preceding the publication of the Information Memorandum or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid or payable to each vendor, and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them if within the preceding five financial years. Where the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of the company, if required by the Authority. Where this information is unobtainable, the reasons therefor are to be stated.

I.02 State whether or not the vendors have given any indemnities, guarantees or warranties.

I.03 State whether the vendors' agreements preclude the vendors from carrying on business in competition with the issuer or any of its subsidiaries, or impose any other restriction on the vendor, and disclose details of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.

I.04 State how any liability for accrued taxation, or any apportionment, thereof to the date of acquisition, will be settled in terms of the vendors' agreements.

I.05 Where securities are purchased in a subsidiary company, reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in companies other than subsidiary companies, a statement as to how the value of the securities was arrived at.

I.06 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or

other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

I.07 The amount of any cash or securities paid or benefit given within the preceding year or proposed to be paid or given to any promoter not being a director, and the consideration for such payment or benefit.

I.08 State whether the assets acquired have been transferred into the name of the issuer or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

PART D – DISCLOSURE REQUIREMENTS FOR LISTING BY INTRODUCTION

[Regulation 10(1)(d), L.N. 30/2008, r. 13.]

ID.A.00. Directors and advisors

A.01 A declaration in the following form:

The directors of [the issuer], whose names appear on page [ ] of the Information Memorandum, accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

A.02 The name, home or business address and function of each of the persons giving the declaration set out in paragraph A.01

A.03 The names, addresses and qualifications of the auditors who have audited the issuer's annual accounts in accordance with International Financial Reporting Standards (IFRS) for the last three financial years.

A.04 If auditors have resigned, have been removed or have not been re-appointed during the last three financial years and have deposited a statement with the issuer of circumstances which they believe should be brought to the attention of members and creditors of the issuer, details of such matters must be disclosed.

A.05 The names and addresses of the issuer's bankers, legal advisers, sponsors, reporting accountants and any other expert to whom a statement or report included in the Information Memorandum has been attributed.

ID.B.00. Listing Statistics

B.01 (1) A statement that the Authority has approved the listing of the securities on the relevant market segment of a securities exchange.

(2) Cautionary statement of the Authority.

B.02 A statement that a copy of the Information Memorandum has been delivered to the Registrar.

B.03 The proposed listing price and the basis of determining the price.

B.04 The total amount of the securities to be listed.

ID.C.00. Information on the issuer

C.01 The name, registered office and, if different, head office of the issuer. If the issuer has changed its name within the last five years, the old name must be printed in bold type under the new name.

C.02 The country of incorporation of the issuer.

C.03 The date of incorporation and the length of life of the issuer, except where indefinite.

C.04 The legislation under which the issuer operates and the legal from which it has adopted under that legislation.

C.05 A description of the issuer's principal objects with reference to its constitution documents.

C.06 The place and date of registration of the issuer and its registration number.

C.07 A statement that for a period of not more than fourteen days before the date of listing and until fourteen days after the date of listing, at a named place as the Authority may agree, the following documents (or copies thereof), where applicable, could be inspected—

(a) the Information Memorandum;

(b) the constitution documents of the issuer;

(c) any trust deed of the issuer or of its subsidiary undertakings which is referred to in the Information Memorandum;

(d) each document mentioned in paragraphs C.17 (material contracts) and E.11 (directors' service contracts) or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;

(e) copies of service agreements with managers or secretary/ies; underwriting, vendors' and promoters' agreements entered into during the last two financial years;

(f) in the case of a listing in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, or a takeover offer, or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, together, where appropriate, with any opening balance sheet, if the issuer has not prepared its own or consolidated annual accounts (as appropriate);

(g) the latest competent person's report, in the case of a mineral company;

(h) the latest certified appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;

(i) all reports, letters, and other documents, balance sheets, valuations and statements by any expert any part of which is included or referred to in the Information Memorandum;

(j) written statements signed by the auditors or accountants setting out the adjustments made by them in arriving at the figures shown in any accountants' report pursuant to paragraph G.04 and giving the reasons therefore; and

(k) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the five financial years preceding the publication of the Information Memorandum, including, in the case of a company incorporated in Kenya, all notes, reports or information required by the Companies Act (Cap. 486).

C.08 Where any of the documents listed in paragraph C.07 are not in the English language, translations into English must also be available for inspection. In the case of any document mentioned in paragraph C.17 (material contracts), a translation of a summary of such document may be made available for inspection, if the Authority so requires.

C.09 The amount of the issuer's authorised and issued capital, the number and classes of the shares of which it is composed with details of their principal characteristics. If any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

C.10 Where the issuer has authorised but un-issued capital or is committed to increase the capital, an indication of—

(a) the amount of such authorised capital or capital increase and, where appropriate, the duration of the authorisation;

(b) the categories of persons having preferential subscription rights for such additional portions of capital; and

(c) the terms and arrangements for the share issue corresponding to such portions.

C.11 If the issuer has shares not representing capital—

(a) the number and main characteristics of such shares;

(b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and

(c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

C.12 A summary of the provisions of the issuer's constitution documents regarding the respective rights of the various classes of securities.

C.13 A summary of the changes during the three preceding years in the amount of the issued capital of the issuer and, if material, the capital of any member of the group and/or the number and classes of securities of which it is composed. Intra group issues by partly owned subsidiaries and changes in the capital structure of subsidiaries which have remained wholly owned throughout the period may be disregarded. Such summary must also state the price and terms granted and (if not already fully paid) the dates when any instalments are in arrears.

C.14 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer.

C.15 The history of any change in the controlling shareholder(s) and trading objectives of the issuer and its subsidiaries during the previous two financial years. A statement of the new trading objectives and the manner in which the new objects will be implemented. If the issuer or the group, as the case may be, carries on widely differing operations, a statement showing the contributions of such respective differing operations to its trading results. The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Registrar.

C.16 If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name of and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.

C.17 A summary of the principal contents of—

(a) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the Information Memorandum, including particulars of dates, parties, terms and conditions, any consideration passing to or from the issuer or any other member of the group, unless such contracts have been available for inspection in the last two years in which case it will be sufficient to refer to them collectively as being available for inspection in accordance with paragraph C.07; and

(b) any contractual arrangement with a controlling shareholder required to ensure that the company is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the issuer or any other member of the group.

C.18 If any contract referred to in paragraph C.17 relates to the acquisition of securities in an unlisted subsidiary, or associate company, where all securities in the company have not been acquired, state the reason why 100% of the shareholding was not acquired, and whether anyone associated with the controlling shareholder(s) of the issuer, or associate companies, or its subsidiaries is interested and to what extent.

C.19 Details of the name of any promoter of any member of the group and the amount of any cash, securities or benefits paid, issued or given within the three years immediately preceding the date of publication of the Information Memorandum, or proposed to be paid, issued or given to any such promoter in his capacity as a promoter and the consideration for such payment, issue or benefit. Where the interest of such promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature

and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such promoter's interest in the partnership, company, syndicate or other association.

C.20 A statement of all sums paid or agreed to be paid within the three years immediately preceding the date of publication of the Information Memorandum, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is director, or to any partnership, syndicate or other association of which he is a member, in cash or securities or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the issuer.

C.21 Where securities are listed in connection with any merger, division of a company, takeover offer, acquisition of an undertaking's assets and liabilities or transfer of assets—

(a) a statement of the aggregate value of the consideration for the transaction and how it was or is to be satisfied;

(b) if the total emoluments receivable by the directors of the issuer will be varied in consequence of the transaction, full particulars of the variation; if there will be no variation, a statement to that effect; and

(c) if the business of the issuer or any of its subsidiaries or any part thereof is managed or is proposed to be managed by a third party under a contract or arrangement, the name and address (or the address of its registered office, if a company) of such third party and a description of the business so managed or to be managed and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

C.22 A description of the group's principal activities, stating the main categories of products sold and/or services performed. Where the issuer or its subsidiaries carries on or proposes to carry on two or more businesses which are material having regard to the profits or losses, assets employed or to be employed, or any other factor, information as to the relative importance of each such business.

C.23 For the business described in paragraph C.22 above, the degree of any government protection and of any investment encouragement law affecting the business.

C.24 Information on any significant new products and/or activities.

C.25 A breakdown of net turnover during the last five financial years by categories of activity and into geographical markets in so far as such categories and markets differ substantially from one another, taking account of the manner in which the sale of products and the provision of services falling within the group's ordinary activities are organised.

C.26 The location, size and tenure of the group's principal establishments and summary information about land or buildings owned or leased. Any establishment which accounts for more than ten per centum of net turnover or production shall be considered a principal establishment.

C.27 Details of any material changes in the business of the issuer during the past five years.

C.28 Where the information given pursuant to paragraphs C.22 to C.27 has been influenced by exceptional factors, that fact must be mentioned.

C.29 Summary of information on the extent to which the group is dependent, if at all, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes, where such factors are of fundamental importance to the group's business or profitability.

C.30 Particulars of royalties payable or items of a similar nature in respect of the issuer and any of its subsidiaries.

C.31 Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have

or have had in the recent past (covering at least the previous nine months) a significant effect on the group's financial position or an appropriate negative statement.

C.32 Information on any interruptions in the group's business which may have or have had during the recent past (covering at least the previous nine months) a significant effect on the group's financial position.

C.33 A description, with figures, of the main investments made, including interests such as shares, debt securities etc., in other undertakings over the last five financial years and during the current financial year.

C.34 Information concerning the principal investments (including new plant, factories and research and development) during the current financial year being made, with the exception of interests being acquired in other undertaking, including—

(a) the geographical distribution of these investments; and

(b) the method of financing such investments.

C.35 Information concerning the group's principal future investments (including new plant, factories, and research and development, if any), with the exception of interests to be acquired in other undertakings, on which the issuer's directors have already made firm commitments.

C.36 Information concerning policy on the research and development of new products and processes over the past three financial years, where significant.

C.37 The basis for any statements made by the issuer regarding its competitive position shall be disclosed.

ID.D.00. Operating and financial review (the recent development and prospects of the group)

D.01 Unless otherwise approved by the Authority in exceptional circumstances—

(a) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate, and in particular—

(i) the most significant recent trends in production, sales, stocks and the state of the order book; and

(ii) recent trends in costs and selling prices; and

(b) information on the group's prospects for at least the current financial year. Such information must relate to the financial and trading prospects of the group together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the Information Memorandum and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits.

D.02 Provide information on the risk factors that are specific to the issuer or its industry in a section headed "Risk Factors" and highlight those that make the security speculative or high risk.

D.03 Describe—

(a) the extent to which the financial statements disclose material changes in net revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or service;

(b) the impact of inflation if material - if the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and discussion of the impact of the hyperinflation on the issuer's business shall be disclosed;

(c) the impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by the currency borrowing and other hedging instruments; and

(d) the impact of any governmental factors that have materially affected or could materially affect, directly or indirectly, the issuer's operations or investments by the host country shareholders.

D.04 Where a profit forecast or estimate appears, the principal assumptions upon which the issuer has based its forecast or estimate must be stated. Where so required, the forecast or estimate must be examined and reported on by the reporting accountants or auditors and their report must be set out. There must also be set out a report from the sponsor confirming that the forecast has been made after due and careful enquiry by the directors.

D.05 The opinion of the directors, stating the grounds therefore, as to the prospects of the business of the issuer and of its subsidiaries and of any subsidiary or business undertaking to be acquired, together with any material information which may be relevant thereto.

ID.E.00. Directors and employees

E.01 The full name, age (or date of birth) home or business address, nationality and function in the group of each of the following persons and an indication of the principal activities performed by them outside the group where these are significant with respect to the group—

(a) directors, alternate and proposed directors of the issuer and each of its subsidiaries including details of other directorships;

(b) the senior management of the issuer including the chief executive, board secretary and finance director, with details of professional qualifications and period of employment with the issuer for each such person; and

(c) founders, if the issuer has been established as a family business or in existence for fewer than five years and the nature of family relationship, if any;

(d) detailed disclosure of chief executive or other senior management changes planned or expected during twenty four months following the listing of the security or appropriate negative statement.

E.02 A description of other relevant business interests and activities of every such person as is mentioned in paragraph E.01 and, if required by the Authority particulars of any former forename or surname of such persons.

E.03 In the case of a foreign issuer, information similar to that described in E.01 and E.02 above, relative to the local management, if any. Where the Authority considers the parent company is not adequately represented on the directorate of its subsidiaries, an explanation is required.

E.04 The total aggregate of the remuneration paid and benefits in kind granted to the directors of the issuer by any member of the group during the last two completed financial years under any description whatsoever.

E.05 A statement showing the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interests of each director holding in excess of three per centum of the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement. The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of publication of the Information Memorandum, or if there has been no such change, disclosure of that fact.

E.06 All relevant particulars regarding the nature and extent of any interests of directors of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during—

(a) the current or immediately preceding financial year; or

(b) an earlier financial year and remain in any respect outstanding or unperformed;

or an appropriate negative statement.

E.07 The total of any outstanding loans granted by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.

E.08 Details of any schemes for involving the staff in the capital of any member of the group.

E.09 Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments which occurred during the past financial year and particulars of waivers in force at the date of the Information Memorandum.

E.10 An estimate of the amounts payable to directors of the issuer, including proposed directors, by any member of the group for the current financial year under the arrangements in force at the date of the listing Information Memorandum.

E.11 Details of existing or proposed directors' service contracts (excluding contracts previously made available for inspection in accordance with paragraph C.07 and not subsequently varied); such details to include the matters specified in paragraph (a) to (g) below or an appropriate negative statement—

(a) the name of the employing company;

(b) the date of the contract, the unexpired term and details of any notice periods;

(c) full particulars of the director's remuneration including salary and other benefits;

(d) any commission or profit sharing arrangements;

(e) any provision for compensation payable upon early termination of the contract;

(f) details of any other arrangements which are necessary to enable investors to estimate the possible liability of the company upon early termination of the contract; and

(g) details relating to restrictions prohibiting the director, or any person acting on his behalf or connected to him, from any dealing in securities of the company during a close period or at a time when the Director is in possession of unpublished price sensitive information in relation to those securities.

E.12 A summary of the provisions of the constitution documents of the issuer regarding—

(a) any power enabling a director to vote on a proposal, arrangement, or contract in which he is materially interested;

(b) any power enabling the directors, in the absence of an independent quorum, to vote remuneration (including pension or other benefits) to themselves or any members of their body; and

(c) retirement or non-retirement of directors under an age limit.

E.13 Any arrangement or understanding with major security holders, customers, suppliers or others, pursuant to which any person referred to in E.01 above, was selected as a director or member of senior management.

E.14 The average numbers of employees and changes therein over the last five financial years (if such changes are material), with, if possible, a breakdown of persons employed by main categories of activity.

E.15 Details relating to the issuer's audit committee, remuneration committee and nomination committee including the names of committee members and a summary of the terms of reference under which the committees operate.

ID.F.00. Major security holders and related party transactions

F.01 The following information shall be provided regarding the issuer's major security holders, which means security holders that are the beneficial owners of at least three per centum or more of each class of the issuer's voting securities—

(a) provide the names of the major security holders, and the number of securities and the percentage of outstanding securities of each class owned by each of them as of the most recent practicable date, or an appropriate negative statement if there are no major security holders;

(b) disclose any significant change in the per centage ownership held by any major security holders during the past three years; and

(c) indicate whether the issuer's major security holders have different voting rights, or an appropriate negative statement.

F.02 Information shall be provided as to the portion of each class of securities held in Kenya and the number of security holders in Kenya.

F.03 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by any other corporation, foreign government or any other natural or legal person severally or jointly, and, if so, give the name of such controlling corporation, government or other person, and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.

F.04 Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.

F.05 In so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, is interested in ten per centum or more of the issuer's capital, together with the amount of each such person's interest.

F.06 Provide the information required on (a) and (b) below for the period since the beginning of the issuer's preceding five financial years up to the date of the Information Memorandum, with respect to transactions or loans between the issuer and—

(a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the issuer;

(b) associates;

(c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence over the issuer, and close members of any such individual's family;

(d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of the issuer and close members of such individuals' families; and

(e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major security holders of the issuer and enterprises that have a number of key management in common with the issuer. Security holders beneficially owning a ten per centum interest in the voting power of the issuer are presumed to have a significant influence on the issuer including—

(i) the nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiary(ies) was a party; and

(ii) the amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above.

The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan, the transaction in which it was incurred, and the interest rate on the loan.

F.07 Full information of any material inter-company finance.

F.08 Where a statement or report attributed to a person as an expert is included in the Information Memorandum, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of the Information Memorandum, and has not withdrawn his consent.

F.09 If any of the named experts employed on a contingent basis, owns an amount of securities in the issuer or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the issuer or that depends on the success of the listing, provide a brief description of the nature and terms of such contingency or interest.

F.10 Provide a copy of the share register to the Authority.

ID.G.00. Financial information

G.01 A statement that the annual accounts of the issuer for the last five financial years have been audited. If audit reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and the reasons given.

G.02 A statement of what other information in the Information Memorandum has been audited by the auditors.

G.03 Financial information as required by paragraphs G.14 and G.15 set out in the form of a comparative table together with any subsequent interim financial statements if available.

G.04 Financial information as required by paragraphs G.14 and G.15 set out in the form of an accountants' report.

G.05 If applicable, an accountants' report, as set out in paragraphs G.14 and G.15 on the asset which is the subject of the transaction.

G.06 (1) If the issuer prepares consolidated annual accounts only, it must include those accounts in the Information Memorandum in accordance with paragraph G.03 or G.04.

(2) If the issuer prepares both own and consolidated annual accounts, it must include both sets of accounts in the Information Memorandum in accordance with paragraph G.03 or G.04 However, the issuer may exclude its own accounts on condition that they do not provide any significant additional information to that contained in the consolidated accounts with the approval of the Authority and such accounts shall be available for inspection in accordance with paragraph C.07.

G.07 (1) Where the issuer includes its annual accounts in the Information Memorandum, it must state the profit or loss per share arising out of the issuer's ordinary activities, after tax for each of the last five financial years.

(2) Where the issuer includes consolidated annual accounts in the Information Memorandum, it must state the consolidated profit or loss per share for each of the last five financial years; this information must appear in addition to that provided in accordance with (1) above where the issuer also includes its own annual accounts in the Information Memorandum.

G.08 If, in the course of the last five financial years, the number of shares in the issuer has changed as a result, for example, of an increase in or reduction or reorganisation of capital, the profit or loss per share referred to in paragraph G.07 must be adjusted to make them comparable; in that event the basis of adjustment used must be disclosed.

G.09 Particulars of the dividend policy to be adopted.

G.10 The amount of the total dividends, the dividend per share and the dividend cover for each of the last two financial years, adjusted, if necessary, to make it comparable in accordance with paragraph G.08.

G.11 A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.

G.12 If the issuer's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the group, more detailed and/or additional information must be given. In the case of issuers incorporated in a country where issuers are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter may be sufficient.

G.13 A table showing the changes in financial position of the group over each of the last five financial years in the form of a cash-flow statement.

G.14 (1) Information in respect of the matters listed below relating to each undertaking in which the issuer holds (directly or indirectly) on a long term basis an interest in the capital that is likely to have a significant effect on the assessment of the issuer's own assets and liabilities, financial position or profits and losses—

(a) the name and address of the registered office;

(b) the field of activity;

(c) the proportion of capital held;

(d) the issued capital;

(e) the reserves;

(f) the profit or loss arising out of ordinary activities, after tax, for the last financial year;

(g) the value at which the issuer shows in its accounts the interest held;

(h) any amount still to be paid up on securities held;

(i) the amount of dividends received in the course of the last financial year in respect of shares held; and

(j) the amount of the debts owed to and by the issuer with regard to the undertaking.

(2) The items of information listed in (1) above must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least twenty per centum of the capital and reserves of the issuer or if that interest accounts for at least twenty per centum of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least twenty per centum of the consolidated net assets or at least twenty per centum of the consolidated net profit or loss of the group.

(3) The information required by (1)(e) and (f) above may be omitted where the undertaking in which a participating interest is held does not publish annual accounts.

(4) The information required by (1)(d) to (j) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or, with the exception of 1(i) and (j) above, if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the Authority, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

G.15 The name, registered office and proportion of capital held in respect of each undertaking not disclosed under paragraph G.15(1) or (2) in which the issuer holds at least twenty per centum of the capital. These details may be omitted when they are of negligible importance for the purpose of enabling investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer or group and of the rights attaching to the securities to be listed.

G.16 When the Information Memorandum includes consolidated annual accounts, disclosure—

(a) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with International Financial Reporting Standards (IFRS));

(b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings of which details are required in paragraph G.15; and

(c) for each of the undertakings referred to in (b) above—

(i) the total proportion of third-party interests, if annual accounts are wholly consolidated; or

(ii) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis.

G.17 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

G.18 (1) Details on a consolidated basis as at the most recent practicable date (which must be stated and which in the absence of exceptional circumstances must not be more than fourteen days prior to the date of publication of the Information Memorandum) of the following, if material—

(a) the borrowing powers of the issuer and its subsidiaries exercisable by the directors and the manner in which such borrowing powers may be varied;

(b) the circumstances, if applicable, under which the borrowing powers have been exceeded during the past three years. Any exchange control or other restrictions on the borrowing powers of the issuer or any of its subsidiaries;

(c) the total amount of any loan capital outstanding in all members of the group, and loan capital created but un-issued, and term loans, distinguishing between loans guaranteed, un-guaranteed, secured (whether the security is provided by the issuer or by third parties), and unsecured;

(d) all off-balance sheet financing by the issuer and any of its subsidiaries;

(e) the total amount of all other borrowings and indebtedness in the nature of borrowing of the group, distinguishing between guaranteed, un-guaranteed, secured and unsecured borrowings and debts, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases;

(f) the total amount of any material commitments, lease payments and contingent liabilities or guarantees of the group; or

(g) how the borrowings required to be disclosed under paragraphs (c) to (f) above arose, stating whether they arose from the purchase of assets by the issuer or any of its subsidiaries.

(2) An appropriate negative statement must be given in each case where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities described in (1) above; As a general rule, no account shall be taken of liabilities or guarantees between undertakings within the same group, a statement to that effect being made if necessary.

(3) For each item identified in (1) above, where applicable—

(a) the names of the lenders if not debenture holders;

(b) the amount, terms and conditions of repayment or renewal;

(c) the rates of interest payable on each item;

(d) details of the security, if any;

(e) details of conversion rights; and

(f) where the issuer or any of its subsidiaries has debts which are repayable within twelve months, state how the payments are to be financed.

(4) If the issuer prepares consolidated annual accounts, the principles laid down in paragraph G.06 apply to the information set out in this paragraph G.18.

G.19 Details of material loans by the issuer or by any of its subsidiaries stating—

(a) the date of the loan;

(b) to whom made;

(c) the rate of interest;

(d) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;

(e) the period of the loan;

(f) the security held;

(g) the value of such security and the method of valuation;

(h) if the loan is unsecured, the reasons therefor; and

(i) if the loan was made to another company, the names and addresses of the directors of such company.

G.20 Details as described in paragraph G.19 above of loans made or security furnished by the issuer or by any of its subsidiaries for the benefit of any director or manager or any associate of any director or manager.

G.21 Disclose how the loans receivable arose, stating whether they arose from the sale of assets by the issuer or any of its subsidiaries.

G.22 A statement that in the opinion of the directors, the issued capital of the issuer is adequate for the purposes of the business of the issuer and of its subsidiaries for the foreseeable future, and if the directors are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the issuer and its subsidiaries are to be financed. The statement should be supported by a report from the issuer's auditor, reporting accountant, investment banker, sponsoring stockbroker or other adviser acceptable to the Authority.

The foreseeable future should normally be construed as the nine months subsequent to the date of the publication of the Information Memorandum.

G.23 The following information regarding the acquisition, within the last five years, or proposed acquisition by the issuer or any of its subsidiaries, of any securities in or the business undertaking of any other company or business enterprise or any immovable property or other property in the nature of a fixed asset (collectively called "the property") or any option to acquire such property shall be disclosed—

(a) the date of any such acquisition or proposed acquisitions;

(b) the consideration, detailing that settled by the issue of securities, the payment of cash or by any other means, and detailing how any outstanding consideration is to be settled;

(c) details of the valuation of the property;

(d) any goodwill paid and how such goodwill was or is to be accounted for;

(e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;

(f) the nature of title or interest acquired or to be acquired;

(g) details regarding the vendors as described in paragraph I.01; and

G.24 The following details regarding any property disposed of during the past five years, or to be disposed of, by the issuer, or any of its subsidiaries—

(a) the dates of any such disposal or proposed disposal;

(b) the consideration received, detailing that settled by the receipt of securities or cash or by any other means and detailing how any outstanding consideration is to be settled;

(c) details of the valuation of the property; and

(d) the names and addresses of the purchasers of assets sold. If any purchaser was a company, the names and addresses of the beneficial security holders of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

G.25 Where the financial statements provided under paragraphs G.01 to G.05 are prepared in a currency other than Kenya shillings, disclosure of the exchange rate between the financial reporting currency and Kenya shillings should be provided, using the mean exchange rate designated by the Central Bank of Kenya for this purpose, if any—

(a) at the latest practicable date;

(b) the high and low exchange rates for each month during the preceding twelve months; and

(c) for the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

ID.H.00. Particulars of the listing

H.01 A statement of the resolutions, authorisations and approvals by virtue of which the securities are to be listed.

H.02 The nature and amount of the securities to be listed.

H.03 (1) A summary of the rights attaching to the securities, and in particular the extent of the voting rights, entitlement to share in the profits and, in the event of liquidation, in any surplus and any other special rights. Where there is or is to be more than one class of shares of the issuer in issue, like details must be given for each class.

(2) If the rights evidenced by the securities being listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed.

(3) The time limit (if any) after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates.

H.04 A statement regarding tax on the income from the securities withheld at source—

(a) in the country of origin; and

(b) in Kenya.

H.05 The fixed date(s) (if any) on which entitlement to dividends arises.

H.06 Details of any other securities exchanges (if any) where admission to listing is being or will be sought.

H.07 The names and addresses of the issuer's registrar and paying agent(s) for the shares in any other country where admission to listing has taken place.

H.08 The following information must be given concerning the terms and conditions of the listing at a securities exchange where such listing is being effected at the same time as the subject listing or has been effected within the three months preceding application of the subject listing—

(a) if the listing has been or is being made simultaneously on the markets of two or more countries—

(i) the listing price, stating the nominal value or, in its absence, the accounting par value; and

(ii) the share premium;

(b) the period during which the Information Memorandum will be available prior to the admission to listing and the names of the agents where the Information Memorandum may be accessed;

(c) a statement or estimate of the overall amount of the charges relating to the listing payable by the issuer, stating the total remuneration of the financial intermediaries.

H.9 A description of the securities for which application is made and, in particular, the number of securities and nominal value per security or, in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.

H.10 The securities exchange at which the securities will be listed and the dates on which the securities will be admitted to listing and on which dealings will commence.

H.11 The names of the securities exchanges (if any) on which securities of the same class are already listed.

H.12 If during the period covered by the last financial year and the current financial year, there has occurred any public takeover offer by a third party in respect of the issuer's shares, or any public takeover offer by the issuer in respect of another company's shares, a statement to that effect and a statement of the price or exchange terms attaching to any such offers and the outcome thereof.

H.13 A statement whether the issuer assumes responsibility for the withholding of tax at source.

H.14 Where there is a substantial disparity between the listing price and the effective cash cost to directors or senior management, or affiliated persons, of securities acquired by them in transactions during the past five years, or which they have the right to acquire, include a comparison between that offer price and the listing price.

H.15 Disclose the amount and per centage of immediate dilution resulting from the listing, computed as the difference between the listing price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date.

H.16 The following information on expenses shall be provided—

(a) the total amount of the discounts or commissions agreed upon by the financial intermediaries and the issuer shall be disclosed, as well as the per centage such commissions represent of the total amount of the listing costs per share;

(b) an itemised statement of the major categories of expenses incurred in connection with the listing and by whom the expenses are payable, if other than the issuer. The following expenses shall be disclosed separately—

(i) advertisement;

(ii) printing of Information Memorandum;

(iii) approval and listing fees;

(iv) financial advisory fees; and

(v) legal fees;

the information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given; and

(c) a statement or estimate of the overall amount, percentage and amount per share of the charges relating to the listing are payable by the issuer, stating the total remuneration of the intermediaries.

[Subsidiary]

ID.I.00. Vendors

I.01 The names and addresses of the vendors of any assets purchased or acquired by the issuer or any subsidiary company during the five years preceding the publication of the Information Memorandum or proposed to be purchased, or acquired, on capital account and the amount paid or payable in cash or securities to the vendor, and where there is more than one separate vendor, the amount so paid or payable to each vendor, and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them if within the preceding five financial years. Where the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of the company, if required by the Authority. Where this information is unobtainable, the reasons therefor are to be stated.

I.02 State whether or not the vendors have given any indemnities, guarantees or warranties.

I.03 State whether the vendors' agreements preclude the vendors from carrying on business in competition with the issuer or any of its subsidiaries, or impose any other restriction on the vendor, and disclose details of any cash or other payment regarding restraint of trade and the nature of such restraint of trade.

I.04 State how any liability for accrued taxation, or any apportionment, thereof to the date of acquisition, will be settled in terms of the vendors' agreements.

I.05 Where securities are purchased in a subsidiary company, a reconciliation between the amounts paid for the securities and the value of the net assets of that company. Where securities are purchased in companies other than subsidiary companies, a statement as to how the value of the securities was arrived at.

I.06 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, the names of any such promoter or director, and the nature and extent of his interest. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.

I.07 The amount of any cash or securities paid or benefit given within five preceding years or proposed to be paid or given to any promoter not being a director, and the consideration for such payment or benefit.

I.08 State whether the assets acquired have been transferred into the name of the issuer or any of its subsidiary companies and whether or not the assets have been ceded or pledged.

FOURTH SCHEDULE

[Regulation 11.]

DISCLOSURE REQUIREMENTS FOR ADDITIONAL ISSUES (RIGHTS, SCRIP DIVIDEND, CAPITALIZATION ISSUES AND OPEN OFFERS)

1. An issuer of securities to the public must ensure equality of treatment for all holders of such securities of the same class in respect of all rights attaching to such securities.

2. An issuer proposing to issue shares for cash may first offer those shares to existing shareholders in proportion to their existing holdings. Only to the extent that the securities are not taken up by such persons under the offer, may they then be issued for cash to others or otherwise than in the proportion to their existing holdings.

3. An issuer shall not issue shares which confer a controlling interest without prior approval of shareholders in general meeting through a special resolution.

4. An issuer intending to make an additional issue should make an announcement within twenty-four hours from the Board's resolution to recommend the additional issue to the shareholders and such announcement shall state that the issue is subject to the approval of the shareholders and the Authority.

5. (1) Where an issuer obtains a general approval from the shareholders to issue shares for purposes of acquisition and authorizes directors to issue such shares for that purpose, the directors shall disclose to the shareholders and the general public any acquisition involving such shares in which an existing shareholder has an interest, or where the shareholding percentage or structure of the existing shareholding will change as a result of such acquisition.

(2) Where as a result of such acquisition a shareholder by virtue of shares arising out of the acquisition is in a position to exercise control of an issuer, such acquisition shall only be carried out with a special resolution of the shareholders in general meeting notwithstanding the existence of the general provisions.

6. Where an issuer which has listed shares has received notification from its parent company that the parent company proposes to participate in future issues of shares by the issuer not made to existing shareholders in proportion to their existing holdings (in order to maintain its per centage shareholding in the issuer), such participation shall first be authorised by the shareholders in general meeting by special resolution and such authority shall be valid for a period of twelve months unless renewed by shareholders at another general meeting.

7. An issuer must obtain the consent of shareholders before any subsidiary company of the issuer makes any issue of shares for cash or transfer of existing shares of such subsidiary company so as to materially dilute the issuer's per centage interest in the shares of that subsidiary company. For the purposes of this paragraph and paragraph 5(1) above, a subsidiary company which represents 25% or more of the aggregate of the share capital and reserves or profits (after deducting all charges except taxation and excluding extraordinary items) of the group will be regarded as a major subsidiary company.

8. The obligation to obtain the consent of shareholders set out in paragraph 7 does not apply if the subsidiary company is itself listed and so must comply with paragraph 6. In such a case, the issuer must ensure that its equity interest in the subsidiary company is not materially diluted through any new cash issue or transfer of shares by such subsidiary company. In the case of rights issue, if the issuer does not propose to take up its rights, an arrangement must be made for the rights to be offered to its shareholders so that they can avoid a material dilution in their per centage equity interest.

9. In a rights issue or open offer an issuer need not comply with paragraph (8) above with respect to—

(a) securities representing fractional entitlements; or

(b) securities which the directors of the issuer consider necessary or expedient to exclude from the offer on account of either legal problems under the laws

of any territory or the requirements of a regulatory body, provided that the Authority's consent is obtained.

10. In relation to a rights issue in which shareholders are given the right to participate in proportion to the amount of existing shares, such rights shall allow for renunciability in part or in whole in favour of a third party at the option of the entitled shareholders.

11. In relation to rights issues the issuer shall fix the closing date for the receipt of applications for and acceptance of the new shares not later than thirty days after the books closing date.

12. An issuer shall issue to the persons entitled to a rights issue within ten days after a books closing date—

(a) letter of entitlement of rights; and

(b) provisional letter of allotment incorporating—

(i) form of acceptance;

(ii) request for splits;

(iii) form of renunciation; and

(iv) excess shares application form.

13. Except in the case of a rights issue to shareholders, no director of an issuer shall be given preferential allotment directly or indirectly in an issue of shares or other securities with rights of conversion to shares unless shareholders in general meeting have approved of the specific allotment to be made to such director.

The notice of meeting shall state—

(a) the number of securities to be so allotted;

(b) the precise terms and conditions of the issue; and

(c) that such directors shall abstain from exercising any voting rights.

14. When shareholders are offered a specific entitlement in a new issue of shares, such entitlement must be on pro rata basis with no restrictions placed on the number of shares to be held before entitlements accrue.

15. Once the basis of the entitlement is declared the issuer shall not make any subsequent alterations to such entitlements.

16. (1) Where the shares for which application is being made are offered by way of rights, open offer or otherwise or allotted by way of capitalization of reserves or undistributed profits or scrip dividend to the existing shareholders, the application shall be lodged with the Authority at least ten days prior to the date of books closure.

(2) The Authority shall be at liberty to impose such conditions as it deems fit for the protection of existing shareholders and potential investors in approving the application.

(3) Where the shareholders resolutions have not been obtained, the Authority may approve the application subject to the approval of the shareholders.

17. (1) The issuer's application shall state—

(a) the applicant's name and date, place and number of incorporation;

(b) the dates of resolutions passed by its board of directors and shareholders (where already obtained) furnish certified copies as required under the Companies Act (Cap. 486), authorizing the issue of new shares, and if there were any proceedings of a court of law involved, the date and outcome of such proceedings;

(c) designation or title of each class of shares proposed for additional listing and its amount, par value and whether fully paid;

(d) the number of additional shares to be listed;

(e) the effective date on which the additional shares are to be fully qualified for admission to trading;

(f) the exchange at which the applicant's shares are listed;

(g) purpose of issuance;

(h) the names of the persons responsible for the application;

(i) number of shares authorized by the articles and number of shares issued and fully paid;

(j) where applicable, the number of un-issued shares of each class of security reserved for issuance for any purpose, and purpose for which they are reserved;

(k) a brief description of the rights attached to the shares with regard to voting, dividends, liquidation proceeds, pre-emption in future capital increases or any other special circumstances;

(l) the date with effect from which the additional shares will qualify for dividend, whether dividend will be paid in full, and the circumstances relevant to the time limitation on the right to dividend;

(m) the nature of the document of title (if any) and its proposed date of issue;

(n) how any fractions will be treated;

(o) details regarding the proposed listing of the letters of allocation, the subsequent listing of the new shares and the amount payable in respect of listing fees;

(p) details regarding the letters of allocation such as—

(i) acceptance;

(ii) renunciation;

(iii) splitting; and

(iv) mode of payment;

(q) in the case of a rights or scrip dividend issue or open offer—

(i) how shares not taken up will be dealt with and the time in which the offer may be accepted;

(ii) whether or not the documents of title (if any) are renounceable; and

(iii) a statement in bold and uppercase, on the front page, drawing shareholders' attention to the type of election to be made (i.e. whether shareholders will receive either cash or scrip if they fail to make the election).

Where the shares for which application is being made are shares of a class which is already listed, being offered by way of rights or open offer, a table of high and low traded market values for the securities of the class to which the rights issue or offer relates for the first dealing day in each of the six months before the date of the information memorandum and for the last dealing day before the announcement of the rights issue or offer and (if different) the latest practicable date prior to publication of the information memorandum;

(r) a statement pointing out possible tax implications for non-residents.

(2) The issuer's application shall be endorsed with the following declaration under the signature of two directors or one director and the secretary—

"We hereby declare that all information stated in this application and the statements contained in the report are correct, and neither the board of directors' minutes, audit reports or any other internal documents contain information which could distort the interpretation of the report.".

18. An issuer shall issue to the persons entitled to a rights issue within ten days after a books closing date—

(a) letter of entitlement of rights; and

(b) provisional letter of allotment incorporating—

(i) form of acceptance;

(ii) request for splits;

(iii) form of renunciation; and

(iv) excess shares application form.

19. An issuer shall not close its register to determine shareholders' entitlement to participate in a rights, scrip dividend or capitalization issue or open offer until one week after the information memorandum to shareholders has been approved by the Authority.

20. All schemes involving the issue of shares or other securities (including options) to employees shall comply with the registration and approval procedures for employee share ownership schemes prescribed in the Capital Markets (Collective Investment Schemes) Regulations, 2001.

21. The issuer shall in the case of rights or scrip dividend issue—

(a) show a timetable in respect of the following events—

(i) books closure date to determine rights entitlement;

(ii) last day for splitting;

(iii) last day for exercise or rights;

(iv) last day for renunciation of rights;

(v) last day for application for additional shares; and

(b) state—

(i) the rights new issue ratio, date and basis of determining the price of new issue shares;

(ii) the expected net proceeds and its application;

(iii) if any underwriting agreement exists, a copy of such agreement shall be submitted to the Authority;

(iv) the names and addresses of the auditors who have audited the accounts of the issuer during the preceding three years; and

(v) the names and addresses of the stockbrokers sponsoring the application for admission to listing.

22. An application for rights issue shall be accompanied by the following—

(a) information about the management of the applicant;

(b) a statement on any important development(s) affecting the applicant or its business since the latest annual report of the applicant;

(c) if the applicant's securities have been suspended, provide details of the same;

(d) if the shares to be listed are to be issued in connection with the acquisition of a controlling interest in, or of all the assets subject to a liability of another company and that company's profit and loss accounts to the date of the last balance sheet supplemented by the latest available interim statements;

(e) one copy of each contract, plan or agreement pursuant to which the shares applied are to be issued;

(f) if the shares applied for are to be issued in acquisition of an equity interest in another company, or properties or other assets, one copy of any engineering, geological or appraisal report, which may have been obtained in connection with the proposed acquisition;

(g) one copy each of all letters of approval from the relevant government authorities; and

(h) a statement or estimate of the cost involved in the application divided into—

(i) brokerage expenses;

(ii) approval and listing fees;

(iii) printing;

(iv) advertising;

(v) professional fees (legal, auditors, valuers); and

(vi) other costs.

23. The issuer shall state in tabular form, for each issue or series of funded or long-term debt of the issuer and its subsidiary companies, the following—

(a) full title (including interest rate and maturity date);

(b) amount authorized by the debt instrument;

(c) amount issued to-date;

(d) amount redeemed;

(e) amount outstanding;

(f) issue price;

(g) date of payment of interest; and

(h) date and terms of redemption.

24. The issuer shall, in the case of acquisitions, state—

(a) whether the shares applied for are to be issued as a total or part of the consideration for the acquisition of—

(i) a controlling interest in, or the major part of the business and assets of, another company; or

(ii) specific assets or properties;

(b) names of parties involved in the acquisition and the date of contract entered into;

(c) the transaction, and the assets or business to be acquired, in sufficient detail to indicate the relative value thereof in relation to the consideration to be paid;

(d) the principle followed and factors considered in determining the consideration to be paid in the acquisition, and the persons making the determination and their relationship to the applicant;

(e) why the management of the issuer regards the acquisition as a favourable one from its point of view; and

(f) whether or not any officer, director or major shareholder of the issuer (or a related company of the issuer) has any direct or indirect beneficial interest in the assets to be acquired or the consideration to be paid and, if such interest does exist, describe it.

25. If the controlling interest in, or the major part of the business and assets of another company is being acquired, the issuer shall state briefly the history and business of that other company and furnish the financial statements of that other company.

26. If any engineering, geological or appraisal reports, were obtained in connection with the proposed acquisition the issuer shall include appropriate excerpts from such reports.

27. If the shares applied for are in respect of bonus shares capitalized from reserves the issuer shall—

(a) identify the reserves from which the bonus shares are to be capitalized;

(b) show a three year schedule of the movements in the relevant reserve accounts; and

(c) where any of the reserves were created following a revaluation of the assets of the issuer, submit a copy of the relevant appraisal report, and a certificate from the issuer's auditors that the reserves are sufficient to cover the capitalisation.

28. The issuer shall—

(a) make a declaration that the annual accounts have been audited; and

(b) furnish a statement from the issuer's auditor stating all circumstances regarding the additional listing known to the auditor, which could influence the evaluation by investors of the assets, liabilities, financial position, results and prospectus are included in the report.

29. Where an issuer considers it necessary to make underwriting arrangements for the rights issue, details of such underwriting arrangements shall be subject to the approval of the Authority.

30. Disclosure of underwriting agreement, costs, details of the underwriter and relationship (if any) of the underwriter to the issuer or any if its directors shall be made.

FIFTH SCHEDULE

[Regulation 19, L.N. 101/2009, s. 3, L,N, 61/2012, s. 18, L.N. 36/2016, L. N. 95/2019.]

CONTINUING OBLIGATIONS

General continuing obligations

A.01 Information to be disclosed shall include but not be restricted to any major development in the issuer's sphere of activity or expectation of performance which is not public knowledge which may—

(a) by virtue of the effect of such development on its assets and liabilities or financial position or on the general course of its business, lead to substantial movement in the price of its securities; or

(b) in the case of an issuer of debt securities, by virtue of the effect of those developments on its assets and liabilities or financial position or on the general course of its business, lead to substantial movement in the price of its securities, or significantly affect its ability to meet its commitments.

A.02 An issuer may give information in strict confidence to its advisers and to persons with whom it is negotiating with a view to effecting a transaction or raising finance. These persons may include prospective underwriters of an issue of securities, providers of funds or loans or the places of the balance of a rights issue not taken up by shareholders. In such cases, the issuer must advise, preferably in writing, the recipients of such information that it is confidential.

A.03 Information required by and provided in confidence to, and for the purposes of a government department, the Central Bank of Kenya, the Authority, or any other statutory or regulatory body need not be published.

A.04 Where the information relates to a proposal by the issuer which is subject to negotiations with employees or trade union representatives, the issuer may defer publication of the information until such time as an agreement has been reached as to the implementation of the proposal.

A.05 Where it is proposed to announce at any meeting of holders of an issuer's listed securities, information which might lead to substantial movement in their price, arrangements must be made for publication of that information to the securities exchange and the market so that the announcement at the meeting is made no earlier than the time at which the information is published to the market and forwarded to the Authority.

A.06 An issuer must publish, by way of a cautionary announcement, information which could lead to material movements in the ruling price of its securities if at any time the

necessary degree of confidentiality cannot be maintained, or that confidentiality has or may have been breached.

A.07 An issuer whose securities are listed on more than one securities exchange must ensure that equivalent information is made available at the same time to the market at all such securities exchange.

A.08 The board of every issuer shall develop structures in order to—

(a) independently verify and safeguard the integrity of financial reporting; and

(b) ensure the truthful and factual presentation of the company's financial position.

A.09 The board shall state in the company's annual report it's responsibility for preparing the annual report and accounts, which shall include a statement by the auditor on the auditor's reporting responsibilities.

CO.B.00. Disclosure of periodic financial information – Dividends and interest

B.01 (1) Announcements of dividends and/or interest payments on issued securities should be notified to the securities exchange, the Authority and the holders of the relevant security within twenty four hours following the Board's resolution in the case of an interim dividend or recommendation in the case of a final dividend, by means of a press announcement. The resolution must be at least twenty one days prior to the closing date of the register and shall contain at least the following information—

(a) the closing date for determination of entitlements;

(b) the date on which the dividend or interest will be paid; and

(c) the cash amount that will be paid for the dividend or interest.

(2) Where the shareholders at the annual general meeting do not approve a dividend recommended by the Board, this fact shall be announced by the Board by means of a notice within twenty four hours following the annual general meeting.

B.02 Dividends declared by an issuer shall be paid out within ninety days of the date of the books closure in case of interim dividends, and ninety days of approval of the shareholders in the case of the final dividend.

B.03 Notification of non-declaration of dividends or payment of interest must be published either in the interim or quarterly report, the annual financial statements or by way of a press announcement or where the issuer is listed on the Growth Enterprise Market Segment, on the issuer's website.

B.04 An issuer declaring a final dividend prior to the publication of the annual financial statements or quarterly report must ensure that the dividend notice given to shareholders contains a statement of the ascertained or estimated consolidated profits before taxation of the issuer and its subsidiaries for the year, and also particulars of any amounts appropriated from accumulated profits, revenue and reserves of past years, or other special sources subject to the approval of the Authority, to provide wholly or partly for the dividend.

B.05 An issuer whose securities are listed shall announce any intention to fix a books closing date and the reason thereof, stating the books closure date, which shall be at least twenty one days after the date of notification to the securities exchange at which the securities are listed, in the case of an interim dividend, and in the case of a final dividend, the closure date shall be subject to the approval of the shareholders at the annual general meeting. The announcement shall include, the address of the share registry at which documents will be accepted for registration.

B.06 Interim and quarterly reports

(1) In this Part the terms—

"interim report" means half-year financial reports to be issued within sixty days of the interim balance date;

"final report" means annual/year end financial report;

"quarterly report" means a financial report, other than a interim or final report, covering a period of three months issued in the course of a financial year on a best practice basis.

(2) All interim reports shall be prepared in accordance with the relevant provisions of the International Financial Reporting Standards (IFRS).

(3) All issuers who have adopted a quarterly reporting practice shall, except in the case of a report issued pursuant to paragraph B.18, continue to issue reports on a quarterly basis in order to maintain consistency.

B.07 Every issuer of securities issued to the public approved by the Authority whether or not such securities are listed, shall prepare and publish an interim report within sixty days of the respective interim reporting date. An interim financial report shall include at a minimum the following components—

(a) condensed balance sheet;

(b) condensed income statement;

(c) condensed statement showing either—

(i) all changes in equity; or

(ii) changes in equity other than those arising from capital transactions with owners and distributions to owners (statement of recognised gains and losses);

(d) condensed cash flow statement; and

(e) selected explanatory notes.

B.08 If an issuer publishes a set of condensed financial statements in its interim financial report, those condensed statements should include, at a minimum, each of the headings and subtotals that were included in its most recent annual financial statements and the selected explanatory notes. Additional line items or notes should be included if their omission would make the condensed interim financial statements misleading.

B.09 Basic and diluted earnings per share should be presented on the face of an income statement, complete or condensed, for an interim period.

B.10 An issuer should include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report—

(a) a statement that the same accounting policies and methods of computation are followed in the interim financial statements as compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change;

(b) explanatory comments about the seasonality or cyclicality of interim operations;

(c) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence; and

(d) the nature and amount of changes in estimates of amounts reported.

The information should normally be reported on a financial year-to-date basis. However, the issuer should also disclose any events or transactions that are material to an understanding of the current interim period.

B.11 Interim reports should include interim financial statements (condensed or complete) for periods as follows—

(a) balance sheet as of the end of the current interim period and a comparative balance sheet as of the end of the immediately preceding financial year;

(b) income statements for the current interim period and cumulatively for the current financial year to date, with comparative income statements for the

comparable interim periods (current and year-to-date) of the immediately preceding financial year;

(c) a statement showing changes in equity cumulatively for the current financial year to date, with a comparative statement for the comparable year-to-date period of the immediately preceding financial year; and

(d) cash flow statement cumulatively for the current financial year to date, with a comparative statement for the comparable year-to-date period of the immediately preceding financial year.

B.12 If an estimate of an amount reported in an interim period is changed significantly during the financial year and a separate financial report is not published for that interim period, the nature and amount of that change in estimate should be disclosed in a note to the annual financial statements for that financial year.

B.13 An issuer should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements. However, the frequency of an issuer's reporting (annual, half-yearly, or quarterly) should not affect the measurement of its annual results. To achieve that objective, measurements for interim reporting purposes should be made on a year-to-date basis.

B.14 Revenues that are received seasonally, cyclically, or occasionally within a financial year should not be anticipated or deferred as of an interim date if anticipation or deferral would not be appropriate at the end of the issuer's financial year.

B.15 Costs that are incurred unevenly during an issuer's financial year should be anticipated or deferred for interim reporting purposes if, and only if, it is also appropriate to anticipate or defer that type of cost at the end of the financial year.

B.16 The measurement procedures to be followed in an interim financial report should be designed to ensure that the resulting information is reliable and that all material financial information that is relevant to an understanding of the financial position or performance of the enterprise is appropriately disclosed. While measurements in both annual and interim financial reports are often based on reasonable estimates, the preparation of interim financial reports generally will require a greater use of estimation methods than annual financial reports.

B.17 A change in accounting policy, other than one for which the transition is specified by a new IAS, should be reflected by—

(a) restating the financial statements of prior interim periods of the current financial year and the comparable interim periods of prior financial years, if the issuer follows the benchmark treatment under IAS 8; or

(b) restating the financial statements of prior interim periods of the current financial year, if the issuer follows the allowed alternative treatment under IAS 8. In this case, comparable interim periods of prior financial years are not restated.

B.18 Any announcement made by the issuer in respect of—

(a) a dividend;

(b) a capitalisation or rights issue;

(c) the closing of the books;

(d) a capital return; or

(e) sales or turnover,

shall be issued so as to coincide with the release of the annual, interim or quarterly financial statement.

B.19 An issuer of securities listed at a securities exchange in Kenya shall publish an interim report within two months of the end of the interim period in the financial year and

shall notify the securities exchange and the Authority. Where an issuer has subsidiaries, the said report shall be based on the group accounts.

B.19A. Arrangers of commercial papers and corporate bonds shall submit quarterly returns in the prescribed form by the 10th day of the month following the end of the quarter.

Annual Financial Statements

B.20 (1) Every issuer of securities to the public whether listed or not shall prepare an annual report containing audited annual financial statements within four months of the close of its financial year.

(2) A complete set of financial statements includes the following components—

(a) balance sheet;

(b) income statement;

(c) a statement showing either—

(i) all changes in equity; or

(ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;

(d) cash flow statement; and

(e) accounting policies and explanatory notes.

B.21 Directors should select and apply accounting policies so that the financial statements comply with all the requirements of each applicable IAS and interpretation of the Standing Interpretations Committee of IAS. Where there is no specific requirement, directors should develop policies to ensure that the financial statements provide information that is—

(a) relevant to the decision-making needs of users; and

(b) reliable in that they—

(i) represent accurately the results and financial position of the issuer;

(ii) reflect the economic substance of events and transactions and not merely the legal form;

(iii) are neutral, that is free from bias;

(iv) are prudent; and

(v) are complete in all material respects.

B.22 The presentation and classification of items in the financial statements should be retained from one period to the next unless—

(a) a significant change in the nature of the operations of the issuer or a review of its financial statement presentation demonstrates that the change will result in a more appropriate presentation of events or transactions; or

(b) a change in presentation is required by an IAS or an interpretation of the Standing Interpretations Committee of the IAS.

B.23 Each component of the financial statements should be clearly identified. In addition, the following information should be prominently displayed, and repeated when it is necessary for a proper understanding of the information presented—

(a) the name of the issuer or other means of identification;

(b) whether the financial statements cover an individual company or a group;

(c) the balance sheet date or the period covered by the financial statements, whichever is appropriate to the related component of the financial statements;

(d) the reporting currency; and

(e) the level of precision used in the presentation of figures in the financial statements.

The period covered by financial statements should be no less than twelve months.

B.24 As a minimum, the face of the balance sheet should include line items which present the following amounts—

(a) property, plant and equipment;
(b) intangible assets;
(c) financial assets (excluding amounts shown under (d), (f) and (g));
(d) investments accounted for using the equity method;
(e) inventories;
(f) trade and other receivables;
(g) cash and cash equivalents;
(h) trade and other payables;
(i) tax liabilities and assets as required by IAS 12 – Income Taxes;
(j) provisions;
(k) non-current interest-bearing liabilities;
(l) minority interest;
(m) issued capital and reserves; and
(n) unclaimed dividends since the adoption of the IAS.

B.25 An issuer should disclose the following either on the face of the balance sheet or in the notes—

(a) for each class of share capital—
  (i) the number of shares authorised;
  (ii) the number of shares issued and fully paid, and issued but not fully paid;
  (iii) par value per share, or that the shares have no par value;
  (iv) a reconciliation of the number of shares outstanding at the beginning and at the end of the year;
  (v) the rights, preference and restrictions attaching to that class including restrictions on the distribution of dividends and the repayment of capital;
  (vi) shares of the issuer held by related companies of the issuer; and
  (vii) shares reserved for issuance under options and sales contracts, including the terms and amounts;
(b) a description of the nature and purpose of each reserve within owner's equity; and
(c) when dividends have been proposed but not formally approved for payment, the amount included (or not included) in liabilities.

B.26 As a minimum, the face of the income statement should include line items which present the following amounts—

(a) revenue;
(b) the results of operating activities;
(c) finance costs;
(d) share of profits and losses of associates and joint ventures accounted for using the equity method;
(e) tax expense;
(f) profit or loss from ordinary activities;
(g) extraordinary items;
(h) minority interest; and
(i) net profit or loss for the period.

B.27 (1) An issuer should present, as a separate component of its financial statements, a statement showing—

(a) the net profit or loss for the period;

(b) each item of income and expense, gain or loss which, is recognised directly in equity, and the total of these items; and

(c) the cumulative effect of changes in accounting policy and the correction of fundamental errors dealt with under the benchmark treatments in IAS 8.

(2) In addition, an issuer should present, either within this statement or in the notes—

(a) capital transactions with owners and distributions to owners;

(b) the balance of accumulated profit or loss at the beginning of the period and at the balance sheet date, and the movements for the period; and

(c) a reconciliation between the carrying amount of each class of equity capital, share premium and each reserve at the beginning and the end of the period, separately disclosing each movement.

B.28 An issuer should disclose the following if not disclosed elsewhere in information published with the financial statements—

(a) the domicile and legal form of the issuer, its country of incorporation and the address of the registered office (or principal place of business, if different from the registered office);

(b) a description of the nature of the issuer's operations and its principal activities;

(c) the name of the parent company and the ultimate parent company of the group; and

(d) either the number of employees at the end of the period or the average for the period covered by the financial statements.

B.29 Every issuer shall notify the Authority, the securities exchange and the media of its annual results within twenty-four hours following approval of the issuer's directors for submission to shareholders.

B.30 Every issuer shall, within six months after the end of each financial year and at least twenty-one clear days (including weekends and public holidays) before the date of the annual general meeting, distribute to all shareholders and holders of its debt securities—

(a) a notice of annual general meeting and annual financial statements for the relevant financial year; and

(b) the auditors report on the issuer's financial statements.

B.31 Where an issuer has subsidiaries, its annual audited accounts shall be prepared in consolidated form in accordance with the Companies Act (Cap. 486) and the relevant IAS. There shall be set out as separate items in every issuer's annual report—

(a) the amount of turnover and investments and other income excluding extraordinary items, together with comparative figures for the previous year;

(b) a statement of source and application of funds with comparative figures for the previous year;

(c) a statement as at end of the financial year, showing the interest of each director of the issuer in the stated capital of the issuer, its subsidiary or in an associated company, appearing in the register maintained under the provisions of the Companies Act (Cap. 486);

(d) particulars of material contracts involving directors' interests, either still subsisting at the end of the financial year or, if not then subsisting, entered into since the end of the previous financial year, providing—

(i) the names of the lender and the borrower;

(ii) the relationship between the borrower and the director (if the director is not the borrower);

(iii) the amount of the loan;

(iv) the interest rate;

(v) the terms as to payment of interest and repayment of principle; and

(vi) the security provided.

B.32 In respect of land and buildings, whether freehold or leasehold, to show as a note to the accounts a brief description of each of the major properties together with an indication as to the location of the properties concerned.

B.33 In the case where a valuation has been conducted on the fixed assets of the issuer and/or its subsidiaries, a copy of the valuation report shall be made available for inspection at the issuer's registered office. Fixed assets of the issuer must be re-valued as regularly as possible but in any case at least once in ten years.

CO.C.00. Notifications relating to capital

C.01 An issuer must make a public announcement and notify the securities exchange and the Authority of the following information relating to its capital—

(a) alterations to capital structure

any proposed change in its capital structure including the structure of its debt securities.

(b) new issues of debt securities

where a company has debt securities, any new issues of debt securities, and in particular any guarantee or security in respect thereof.

(c) changes of rights attaching to securities

any change(s), in the rights attaching to any class of securities, in loan terms (or in the rate of interest carried by a debt security) or to any securities which are convertible.

(d) basis of allotment

the basis of allotment of securities offered generally to the public for cash and open offers to shareholders.

(e) issues affecting conversion rights

the effect, if any, of any issue of further securities on the terms of the exercise of rights under options, warrants and convertible securities.

(f) results of new issues

the results of any new issue of securities or of a public offering of existing securities.

CO.D.00. Shareholding

D.01 An issuer shall at the end of each calendar quarter, disclose to the securities exchange every person who holds or acquires 3% or more or in the case of an issuer listed on the Growth Enterprise Market Segment, 5% or more of the issuer's ordinary shares, and shall publish in its annual report the following information on the its shareholding—

(a) distribution of shareholders—

Shareholding (No. of shares)	No. of shareholders	No. of shares held	% Shareholding
less that 500			
500 — 5,000			
5,001—10,000			
10,001—100,000			
100,001—1,000,000			
above 1,000,000			

(b) names of the ten largest shareholders and the number of shares in which they have an interest as shown in the issuer's register of members;

(c) distribution schedule of each class of shares other than ordinary shares, setting out the number of holders in the categories set out in sub paragraph (a) above;

(d) name and address of the company secretary;

(e) address and telephone number of the registered office; and

(f) address of each office at which register of securities is kept.

D.01A. Where an issuer is listed in the Growth Enterprise Market Segment, the disclosure in paragraph D.01 shall include a report on a consolidated basis of the quantity and characteristics of the company's securities directly or indirectly held by the Controlling Shareholder, and the senior managers, and the report on the evolution of the volume of securities held by them.

D.02 An issuer shall inform the Authority and the securities exchange in writing without delay if it becomes aware that the proportion of its securities in the hands of the public has fallen below the minimum prescribed in these Regulations.

D.03 An issuer shall provide the Authority and the securities exchange details of its shareholders which may be required by the Authority or the securities exchange.

CO.E.00. Communication with shareholders

E.01 Any meeting of shareholders (other than an adjourned meeting) shall be called by a twenty-one day notice in writing. All notices convening meetings shall specify the place, date, hour and agenda of the meeting. If the conventional meeting place is changed, full justification for the change must be given. The place chosen must be convenient to the general body of shareholders.

E.02 An issuer shall ensure that at least in each securities exchange in which its securities are listed all the necessary facilities and information are available to enable holders of such securities exercise their rights. In particular it shall—

(a) inform holders of securities of the holding of meetings which they are entitled to attend;

(b) enable them to exercise their right to vote, where applicable; and

(c) publish notices or distribute circulars giving information on—

(i) the allocation and payment of dividends and interest;

(ii) the issue of new securities, including arrangements for the allotment, subscription, renunciation, conversion or exchange of the securities; and

(iii) redemption or repayment of the securities.

E.03 A proxy form must be sent with the notice convening a meeting of holders of listed securities to each person entitled to vote at the meeting, and must comply with all requirements set out in the issuer's articles of association.

E.04 If a circular is issued to the holders of any particular class of security, the issuer must issue a copy or summary of that circular to the holders of all other listed securities.

E.05 The issuer must forward to the Authority and securities exchange copies of—

(a) all circulars, notices, reports, announcements or other documents at the same time as they are issued; and

(b) all resolutions passed by the issuer at any general meeting of holders of listed securities within ten days after the relevant the general meeting.

CO.F.00. Corporate Governance

F.01 (1) Every issuer shall comply with the corporate governance requirements stipulated in this Part.

(2) Every issuer shall disclose in its annual report, a statement of the directors as to whether the issuer is applying the recommended corporate governance practices stipulated in the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 issued by the Authority:

Provided that where the issuer has not fully applied there recommended corporate governance practices, the directors shall indicate the steps being taken to ensure the application of such practices.

F.02 (1) Every company shall be headed by a board which shall offer strategic guidance, leadership and control of the company.

(2) Notwithstanding paragraph (1), the board shall —

(a) have an appropriate balance of skills, experience, independence and knowledge of the company to enable the board to operate effectively;

(b) have transparent and documented procedures for the appointment of successive boards to ensure smooth transition;

(c) establish separate functions for itself and the management;

(d) establish policies to ensure that directors of the board are independent;

(e) develop a Code of Ethics and Conduct and ensure that the Code is complied with;

(f) establish, periodically review and publicize the board charter on the company's website;

(g) ensure the company complies with all applicable laws and standards; and

(h) be accountable to the company's shareholders.

(3) A person offering himself for appointment as a director of the board shall disclose any real, potential or perceived conflict of interest that may undermine the office of director.

(4) The board of an issuer shall on an annual basis, evaluate its performance, the performance of its chairperson, the chief executive officer and the company secretary.

F.03 The board of every issuer shall —

(a) establish relevant committees to discharge its mandate including internal audit, risk management, remuneration, board nominations, finance, investments and governance;

(b) formulate the terms of reference, duties and authority of each committee;

(c) ensure that the committees are constituted with directors who have the necessary skills and expertise to handle the responsibilities allocated to the committees;

(d) appoint chairpersons of the committees;

(e) determine the procedure and process within which the committees may be allowed to engage independent professional advice at the company's expense; and

(f) review the effectiveness and performance of the committees on an annual basis.

F.04 (1) A nomination committee established pursuant to paragraph F.03 shall consist of at least three independent directors.

(2) The chairperson of the nomination committee shall be an independent director.

(3) The nomination committee shall —

(a) recommend to the board, candidates for the office of director to be considered for appointment by shareholders;

(b) assess the performance and effectiveness of the directors of the company.

F.05 (1) An audit committee established pursuant to paragraph F.03 shall consist of at least three independent directors.

(2) The chairperson of the audit committee shall be an independent director.

(3) The board shall ensure that at least one of the members of the audit committee holds a professional qualification in audit or accounting and be in good standing with the applicable professional body.

F.06 There shall be public disclosure in respect of any management or business agreements entered into between the issuer and its related companies, which may result in a conflict of interest situation.

F.07 (1) Every person except a corporate director who is a director of a public listed company shall not hold such position in more than three public listed companies at any one time and in the case where the corporate director has appointed an alternate director, the appointment of such alternate shall be restricted to two public listed companies:

Provided that the public listed company whose directors hold more than the prescribed limit, shall comply with these regulations within six months of gazettement.

(2) An executive director of a public listed company shall not hold such position in more than two public listed companies at any one time.

F.08 (1) The chairperson of a public listed company shall be independent.

(2) A chairperson of a public listed company shall not hold such position in more than two public listed companies at any one time:

Provided that the public listed company whose chairperson holds more than the prescribed limit shall comply with these Regulations within six months of gazettement.

(3) The roles of chairperson and chief executive officer shall not be exercised by the same person.

(4) Every public listed company shall have a succession plan for its chairperson, chief executive office and employees.

F.09 (1) The qualification and procedure for nomination and appointment of alternate board directors shall be the same as that required in the appointment of a substantive board director.

(2) A principal director whether a body corporate or a natural person shall have only one alternate director.

(3) A body corporate shall not be nominated as an alternate director.

(4) An alternate director shall not be appointed as a member of the audit committee.

F.10 The chief financial officers and persons heading the accounting department of every issuer shall be members of the Institute of Certified Public Accountants established under the Accountants Act (Cap. 531).

F.11 Where the persons referred to in subparagraph F.10 are members of other internationally recognized professional bodies and are yet to register as members of the Institute of Certified Public Accountants, such persons shall register as members of the Institute within a period of twelve months from the date of gazettement of these Regulations, or from the date of appointment to such position, whichever is later.

F.12 The board of every issuer shall be assisted by a company secretary who shall be a member of the Institute of Certified Public Secretaries of Kenya established under the Certified Public Secretaries of Kenya Act Cap. 534.

F.13 Every issuer shall establish formal and transparent policies and procedures, which shall be approved by shareholders for —

(a) remuneration;

(b) effective communication with stakeholders;

(c) corporate disclosure policies and procedures;

(d) dispute resolution for internal and external disputes; and

(e) ensuring attraction and retention of board members.

F.14 The board of an issuer shall—

(a) facilitate the effective exercise of the rights of shareholders;

(b) ensure that there is equitable treatment of all holders of the same class of issued shares; and

(c) ensure that the shareholders appoint independent auditors at each Annual General Meeting.

F.15 The board of an issuer shall—

(a) establish and review on a regular basis, the adequacy and integrity of the company's internal control systems for acquisitions and divestitures and management of information systems including compliance with applicable laws, regulations, rules and guidelines;

(b) set out its responsibility for internal control in the board charter;

(c) ensure the effectiveness of the company's risk management and internal control practices on an annual basis..

F.16 The editor of a listed company shall be a member of the Institute of Certified Public Accountants and shall comply with the International Standards of Auditing.

The board of an issuer shall protect, enhance and invest in the well-being of the economy, society and the environment.

CO.G.00. Miscellaneous obligations

G.01 No further securities of the same class as securities already listed shall be issued or allotted to any person or listed, without the Authority's approval.

G.02 A copy of any contractual arrangement with a controlling shareholder must be made available for inspection by any person at the registered office of the issuer during normal business hours on each business day.

G.03 An issuer must ensure that appropriate transfer and registration arrangements for its listed securities are have been made and holders of the listed securities notified.

G.04 All directors of an issuer, other than the managing director must retire by rotation at least once in every three years. At least one third of the directors shall be appointed as non-executive directors.

G.05 (1) An issuer shall disclose all material information and make a public announcement of—

(a) any change of address of the registered office of the issuer or of any office at which the register of the holders of listed securities is kept;

(b) any change in the directors, company secretary or auditors of the issuer;

(c) any proposed significant alteration of the memorandum and articles of association of the issuer;

(d) any application filed in a court of competent jurisdiction to wind up the issuer or any of its subsidiaries. Details of the suit and the probable outcome of the suit must be confidentially submitted to the Authority and the securities exchange; and

(e) the appointment or imminent appointment of receiver manager or liquidator of the issuer or any of its subsidiaries; and

(f) any profit warning, where there is a material discrepancy between the projected earnings for the current financial year and the level of earnings in the previous financial year.

(g) such other information as the Authority may require to be published.

(2) For the purposes of subparagraph (1)(f), the expression **"material discrepancy"** in relation to projected earnings for a financial year means that such earnings are at least 25% lower than the level of earnings in the previous financial year.

(3) Unless otherwise stated, all public announcements which an issuer is required to make under these Regulations shall be made within twenty four hours of the happening of the event.

G.06 An issuer shall obtain approval of shareholders and make a disclosure in the annual report, for any—

(a) acquisition of shares of another company or any transaction resulting in such other company becoming a subsidiary or related company of the issuer;

(b) sale of shares in another company resulting in that company ceasing to be a subsidiary of the issuer; or

(c) substantial sale of assets involving 25% or more of the value of the total assets of the issuer,

and shall make a public announcement of the fact.

G.07 Where any agreement has been entered into in connection with any acquisition or realisation of assets or any transaction outside the ordinary course of business of the issuer and/or its subsidiaries, a copy each of the relevant agreement must be lodged with the Authority and securities exchange and be made available for inspection at the issuer's registered office.

SIXTH SCHEDULE

[Regulation 3(4).]

LISTING FEES

1. INITIAL LISTING FEES

MAIN INVESTMENT MARKET SEGMENT	ALTERNATIVE INVESTMENT MARKET SEGMENT	FIXED INCOME SECURITIES MARKET SEGMENT .
0.06% of the value of the securities to be listed subject to a minimum of KShs. 200,000 and a maximum of K.Shs. 1,500,000.	0.06% of the value of the securities to be listed subject to a minimum of KShs. 100,000 and a maximum of K.Shs. 1,000,000. .	0.0125% of the value of fixed income securities to be listed as follows—
		(i) Corporate bonds and other fixed income securities – a minimum of KShs. 100,000 and a maximum of KShs. 1,000,000. .
		(ii) Treasury Bonds and other Government securities – a minimum of KShs. 100,000 and a maximum of KShs. 500,000. .

.

2. ADDITIONAL LISTING FEES

MAIN INVESTMENT MARKET SEGMENT	ALTERNATIVE INVESTMENT MARKET SEGMENT .
0.1% of the nominal value of the additional securities to be listed subject to a minimum of KShs. 50,000 and a maximum of KShs. 500,000.	0.1% of the nominal value of the additional securities to be listed subject to a minimum of KShs. 25,000 and a maximum of KShs. 250,000.

The annual listing fee shall be payable upon the expiry of the twelve (12) month period following the initial listing fee. Where the period for which the first annual listing fee payable is less than twelve (12) months, the annual listing fee shall be prorated to December of that year.

3. ANNUAL LISTING FEES

Annual listing fees for companies whose shares are listed shall be based on daily average market capitalisation from January 1 to November 30 annually excluding the value of new or additional listing during the year. The annual listing fees for Fixed Income Securities shall be based on the total value outstanding as on November 30.

MAIN INVESTMENT MARKET SEGMENT	ALTERNATIVE INVESTMENT MARKET SEGMENT	FIXED INCOME SECURITIES MARKET SEGMENT .
0.06% of the market capitalisation of the listed securities subject to a minimum of KShs. 200,000 and a maximum of KShs. 1,500,000.	0.06% of the market capitalisation of the listed securities subject to a minimum of KShs. 100,000 and a maximum of KShs. 1,000,000.	0.0125% of the market value of the fixed income securities outstanding listed as follows —
		(i) Corporate bonds and other fixed income securities - a minimum of KShs. 100,000 and a maximum of KShs. 1,000,000.
		(ii) Treasury Bonds and other Government securities - a minimum of KShs. 100,000 and a maximum of KShs. 2,500,000.

SEVENTH SCHEDULE

[Regulation 3 (4A), L.N. 61/2012, r. 19.]

LISTING FEE

Description	NSE	CDSC .	CMA .
Initial listing fee (Introduction)	0.03% of the value of the securities to be listed subject to a minimum of KShs.50,000 and a maximum of Kshs.250,000 (for SMEs listing securities worth 834m)	NA	NA
Additional listing fee	0.05% of the nominal value of the additional securities to be listed subject to a minimum of Kshs.25,000 and a maximum of KShs.125,000.	NA	NA
Annual listing fees	0.015% of the market capitalization of the capitalization of the listed securities as at the 30th November subject to a minimum of Kshs.25,000 and a maximum KShs.125,000.	0.010% of the market capitalization of the listed securities as at the 30th November subject to a minimum of shs.15,000 and a maximum of KShs.83,333.	0.005% of the market capitalization of the listed securities as at the 30th November subject to a minimum of KShs. 10,000 and a minimum of KShs. 41,667.

EIGHTH SCHEDULE

[Regulation 6B, L.N. 113/2013, r. 6.]

REQUIREMENTS FOR OFFER OF SECURITIES USING A BOOK BUILDING PROCESS

PART I – PRELIMINARY

1. **"Book building"**means a process undertaken by which a demand for the securities proposed to be issued by an issuer is elicited and built up and the price of such securities is assessed for the determination of the quantum of such securities to be issued;

"Book building portion" refers to the pool of securities that will be available for offer and allotment to the participating entities through the book-building process and which have been segregated from the securities to be offered at a fixed price;

"Book runner"refers to the primary coordinator of the book building process in debt and equity offers;

"Participating entity"means a professional investor as prescribed by the Authority;

"Regulations" means the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

.

PART II – BOOK BUILDING PROCESS

2. Book building portion

The portion of securities offered to the public that are to be available for the book-building process shall be identified as the "book building portion" in the information memorandum.

3. Fixed price portion

The balance of securities constituting the offer to the public, excluding the book building portion, shall be separately identified as "fixed price portion" in the information memorandum.

4. Approval of the information memorandum

A complying information memorandum shall be lodged with and approved by the Authority prior to the opening of the book building process and shall disclose, in addition to all other requirements—

(1) the size of the issue and the amounts to be raised through the book building and fixed price portions;

(2) the criteria for bid consideration and selection in the book building process;

(3) the duration of the book building period;

(4) the method and process of bidding;

(5) the names and addresses of the book runner or syndicate members operating the bidding terminals for submitting bids:

Provided the information memorandum shall be approved pending inclusion of the price of the offer and the quantum of securities to be issued.

5. Appointment of the book runner

The book runner shall be nominated by the issuer from amongst persons who are qualified to act as transaction advisers and shall be identified as such in the information memorandum.

6. Circulation of the information memorandum

The information memorandum approved by the Authority shall be circulated by the book runner to the participating entities inviting offers for the securities in respect of the book building portion.

7. Records of orders on book building portion

The book runner on receipt of the orders shall maintain a record of all the participating entities' names and the number of securities ordered and the price at which the participating entity is offering to subscribe to securities under the book building process.

8. Determination of the offer price

At the close of the book building period and following a review of the orders received in accordance with the criteria disclosed in the information memorandum, the book runner and the issuer shall determine the price at which the securities shall be offered to the public.

9. Price for the offer shall be the same

The issue price for the book building portion and fixed price portion categories shall be the same.

10. Issuer to ensure adequate arrangements are made to secure payment

The issuer and book runner shall ensure that adequate arrangements for funds are made by all participating entities to support any offers lodged during the book building process. The nature of the arrangement required of participating entities shall be disclosed in the information memorandum.

11. Allotment for the book building portion category

The information memorandum shall indicate one date of allotment which shall be deemed date of allotment for the both the book building and fixed price portions.

12. Responsibility of the book runner

The book runner shall have primary responsibility for the book building process.

13. Securities to be offered through book building

An issuer may offer up to one hundred per cent of the offer securities through a book building process subject, where appropriate, to compliance with eligibility requirements relating to listing.

14. Indication of floor price or price band

The information memorandum may prescribe a floor price or an indicative price band for the book building process and shall give the basis for the determination of the same.

15. Determination of the number of securities to be offered

On establishment of the offer price, the quantum of securities to be offered shall be determined based on the issue size divided by the price which has been determined.

16. No participation incentives

No incentive, whether in cash or kind, shall be paid to investors to participate in the book building process or the offer of securities.

17. Communication of allocation to participating entities

On determination of entitlements in the book building process the number of securities which each participating entity is to be allocated shall be communicated to the respective participating entity within 24 hours and a return on all allocations shall be made to the Authority within the same period.

18. Registration of the final information memorandum with the Registrar of Companies

The information memorandum containing all disclosures required under these regulations including the price and the number of securities offered shall be registered with the Registrar of Companies.

PART III – ADDITIONAL DISCLOSURES

19. Additional disclosures

The following additional disclosure requirements shall be made in the information memorandum—

(1) The particulars of syndicate members of the book runner where more than one book runner is appointed.

Provided that the rights, obligations and responsibilities of each shall be defined in a binding agreement.

(2) The following statement shall be given under the basis for issue price—

"The issue price has been determined by the issuer in consultation with the book runner, on the basis of assessment of demand from the participating entities for the offered securities by way of book-building."

(3) The following accounting ratios shall be given under the basis for issue price for each of the accounting periods for which the financial information is given where applicable—

(a) Earning per share, pre-issue, for the last five years, as adjusted for changes in capital.

(b) Price earning ratio (P/E), pre-issue and comparison thereof with industry P/E where available.

(c) Average return on net-worth in the last five years.

(d) Net-Asset value per share based on last balance sheet.

(4) The accounting ratios disclosed in the information memorandum shall be calculated after giving effect to the consequent increase of capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital shall be exercised.

PART V – PROCEDURE FOR BIDDING

20. Procedure for bidding

The method and process of lodging of offers during the book building process shall be subject to the following—

(1) Bidding during the book building period shall be open for at least 3 days.

(2) Bidding shall be conducted on an electronically linked transparent system of computer terminals.

Provided that the Authority may, in writing, authorize bidding to be conducted otherwise than on an electronic system on a case by case basis.

(3) The syndicate members shall ensure that at least one electronically linked computer terminal is available for purposes of bidding at all locations where bids may be submitted.

(4) All locations where bids may be lodged shall be specified in the information memorandum.

(5) Investors shall place their bids only through the syndicate members who shall be responsible for ensuring that bids are only accepted from participating entities.

(6) The investors shall have the right to revise their bids in line with the procedure to be prescribed in the information memorandum.

Provided that where the Authority has authorized bidding to be conducted otherwise than on an electronic facility, investors shall not have rights to revise their bids.

(7) Bidding form—

(a) There shall be a standard bidding form to ensure uniformity in bidding and accuracy of information.

(b) The bidding form shall contain information about the investor, the price and the number of securities that the investor wishes to bid for.

(c) All bidding forms shall be serially numbered.

(d) The bidding form shall be dated and time stamped prior to being issued in duplicate and signed by the investor and countersigned by the syndicate member, with one form retained by the investor and the other by the book runner or the syndicate member.

(8) At the end of each day of the bidding period the demand shall be displayed graphically on the computer terminals for the information of the syndicate members as well as the investors and a record maintained by the book runner.

PART VI – ALLOCATION AND ALLOTMENT PROCEDURE

21. Allocation in case of under subscription

In case of an under subscription in any category, the undersubscribed portion may be allocated to the bidders in the other categories in accordance with the allocation policy disclosed in the information memorandum.

22. Allocation criteria to be disclosed

The allocation of securities to investors under the book building portion shall be determined by the issuer and the book runner in accordance with criteria explicitly set out in the information memorandum.

23. Period of fixed price offer

Following the book building process—

(1) The offer period for the fixed price portion, shall open within 5 working days from the date of closure of bidding; and

(2) The fixed price offer shall remain open for a period of at least 10 working days.

24. Investors eligible to make application in fixed price offer

The investors who have participated in the book building process shall not be barred from participating in the fixed price portion of the offer.

PART VII – MAINTENANCE OF BOOKS AND RECORDS

25. Separate collection accounts

The issuer shall open two different accounts for collection of application moneys, one for the book building portion and the other for the fixed price portion category.

26. Book runner to maintain the result of the allocation process

A final book of demand showing the result of the allocation process shall be maintained by the book runner.

27. Records to be maintained

The book runner, any syndicate member, participating entities and other intermediaries involved in the book building process shall maintain adequate records on the book building process.

28. Authority's power to inspect records

The Authority shall have the power to inspect the records, books and documents relating to the book building process.

CAPITAL MARKETS (LICENSING REQUIREMENTS) (GENERAL) REGULATIONS, 2002

ARRANGEMENT OF REGULATIONS

.

CAPITAL MARKETS (LICENSING REQUIREMENTS) (GENERAL) REGULATIONS, 2002

[L.N. 125/2002, L.N. 119/2004, L.N. 99/2007, L.N. 32/2008, L.N. 72/2009, L.N. 99/2009, L.N. 189/2010, L.N. 190/2010, L.N. 88/2012, L.N. 112/2013, L.N. 35/2016.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Licensing Requirements) (General) Regulations, 2002.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" includes a reference to the Capital Markets Act and the Regulations and Guidelines made thereunder;

"Authority" has the meaning assigned to it in the Act;

"close relation" means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, son-in-law, grandchild or spouse of a grandchild;

"Compensation Committee" means the Investor Compensation Committee appointed under regulation 71;

"Compensation Fund" has the meaning assigned to it in section 2 of the Act;

"custodian" means a bank licensed under the Banking Act (Cap. 488) or a financial institution approved by the Authority to hold in custody funds, securities, financial instruments or documents of title to assets registered in the name of local investors, East African investors or foreign investors or of an investment portfolio;

"demutualization" means the separation of the ownership of an exchange from the right to trade on such exchange;

"demutualized exchange" means a securities exchange in which ownership and rights to trade are separate;

"liquid capital" in relation to a licensed entity, means the amount which the liquid assets of a licensed entity exceed its liabilities, as may be prescribed by the Authority;

"private transaction" means a transfer of a listed security outside a securities exchange authorized by the Authority from one security holder to another whether or not it involves any consideration or change of beneficial interest or is otherwise authorized by the Authority under section 31 of the Act;

"professional" means a person giving an opinion in respect of listed securities or in relation to a public offer or listing of securities and includes—

(a) any person responsible for the incorporation of a listed company;

(b) an advocate, auditor, accountant, investment advisor or stockbroker, underwriter, valuer, engineer, actuary, analyst, economist, management consultant; and

(c) other experts whose written opinion with respect to the assets, products or business affairs of the issuer appear in a prospectus or is produced to the Authority;

"rights to trade" means the rights of access to and the use of trading related facilities provided and maintained by a securities exchange which a securities exchange may grant a licensee of the Authority, subject to the rules of the securities exchange on admission of trading participants;

"securities laws" includes the Capital Markets Act, the Central Depositories Act (No. 4 of 2000) and the Regulations and Guidelines made thereunder;

"working capital" means the difference between the current assets and current liabilities excluding clients' accounts which shall not fall below twenty per cent of the prescribed minimum shareholders funds or three times the monthly operating costs whichever is higher.

[L.N. 88/2012, s. 2, L.N. 112/2013, s. 2.]

PART II – SECURITIES EXCHANGE

3. Application for approval

(1) An application for grant of approval to operate as a securities exchange shall be submitted to the Authority in Form 1 set out in the First Schedule.

(2) The application under paragraph (1) shall be submitted together with—

(a) the rules, memorandum and articles of association of the applicant which shall be in a form that is satisfactory to the Authority and restricts the applicant to the business of operating a securities exchange and services incidental thereto;

(b) details of the trading system proposed to be adopted by the applicant;

(c) the prescribed fees set out in the Second Schedule; and

(d) such additional documents as may be required by the Authority.

[L.N. 88/2012, s. 3.]

4. Rules of the securities exchange

(1) The rules proposed to be adopted by an applicant for approval to operate as a securities exchange shall contain provisions on the—

(a) admission to the listing, suspension or de-listing of securities by the securities exchange, through a procedure prescribed by the Authority;

(b) conditions governing dealing in securities by its trading participants so as to ensure protection of the rights of investors;

(c) prompt disclosure, in a manner that is fair to all investors, of material information of a price sensitive nature and information likely to affect the price of a security including fees on management contracts, to enable appraisal of an issue by investors;

(d) protection of investors against abuse of confidential information, misleading information, fraud, deceit, and other adverse practices in the issuing and trading of securities;

(e) prohibition of market manipulation in any form;

(f) investigation into trading in securities and financial transactions of trading participants and for conducting surprise checks on such trading participants;

(g) suspension of trading of any security for the protection of investors or for the conduct of orderly and fair trading;

(h) the conduct of securities trading by trading participants and the manner in which information relating to transactions is to be maintained and reported to other trading participants and customers of the securities exchange;

(i) segregation from other business accounts of trading participants, of customers' funds and securities;

(j) arbitration of disputes and provision for appeal to the Authority by trading participants, investors and listed companies;

(k) proper safe keeping of securities in its custody;

(l) carrying out of the business of the securities exchange with due regard to interest of the investing public;

(m) trading rights on a securities exchange;

(n) admission of trading participants to the securities exchange, registration of representatives of trading participants with the securities exchange and to provide for different categories of trading participants, where appropriate, and the rights and obligations attaching to each category;

(o) conduct of trading participants, their representatives, authorized clerks and dealers;

(p) responsibility of trading participants for the actions of their employees and agents in their dealings with the public; and

(q) listing of medium and large sized companies in the respective market segments such that investors have a range of investment opportunities in listed securities across all sectors of the economy.

(2) The provisions made under paragraph (1) shall conform to the provisions of the Act.

[L.N. 88/2012, s. 4.]

5. Membership of securities exchange

(1) Trading participants of a securities exchange shall be licensees of the Authority with rights to trade at an approved securities exchange.

(1A) The Authority may prescribe limits on the ownership of a securities exchange by its trading participants.

(2) A securities exchange may, in accordance with the procedures prescribed in its rules, admit as a trading participant, any person who has been licensed by the Authority to exercise rights to trade—

(a) if that person satisfies any admission requirements of the securities exchange; and

(b) on payment of admission fee approved by the Authority under section 29(2) of the Act,

and accord that person the applicable rights to the relevant category of admission:

Provided that, a securities exchange may assess an application for admission by a person seeking a licence from the Authority and issue a confirmation that that person shall be admitted upon securing a license from the Authority.

(3) A trading participant of a securities exchange or a director or a shareholder of a trading participant shall not be a director or hold beneficial interest either directly or indirectly in more than one trading participant of a securities exchange unless the trading participants has been exempted by the Authority on the basis of evidence of adequate internal controls to address conflict of interest.

(4) In case of a listed trading participant of a securities exchange, an interest of fifteen per cent or more of the voting shares held directly or indirectly shall be deemed to be a person's beneficial interest for purpose of these Regulations.

[L.N. 88/2012, s. 5.]

6. Chairman, directors and chief executive

(1) A securities exchange shall have a chief executive who shall be in charge of the day to day operations of the securities exchange and an administration of sufficient professional capability to carry out trading, clearing and compliance functions of its trading participants and listed companies.

(2) No person shall be qualified for appointment as a chief executive of a securities exchange, unless such person has—

(a) at least ten years' experience at a senior management level in matters relating to law, finance, accounting, economics, banking or insurance; and

(b) expertise in matters relating to money, capital markets or finance.

(3) A securities exchange shall provide in its rules and articles of association that—

(a) there shall be a fixed term of office for its chairman and chief executive, which shall include a maximum term of office of two consecutive years for the chairman and four years renewable once for the chief executive;

(b) a board of directors comprising of the chief executive of the securities exchange and at least one third independent and non-executive directors;

(c) a maximum of two members of the board of directors who shall be elected from among or to represent the trading participants;

(d) the independent and non-executive directors appointed under subparagraph (b) shall be persons who have knowledge and experience in investments, public service and corporate governance and shall represent the interests of investors and the public interest:

Provided that prior to making any such appointment the securities exchange shall submit the names of the persons proposed to be appointed as directors to the Authority for confirmation that the Authority has no objection to the proposed appointments;

(e) two members of the board shall be elected by the shareholders of the securities exchange from nominees of companies listed on the securities exchange to represent the listed companies.

(4) Subject to paragraph (3)(c), (d) and (e), the other persons appointed to the board of directors shall be elected by the shareholders of the exchange in accordance with the Companies Act.

(5) *Deleted by L.N. 88/2012, s. 6.*

[L.N. 88/2012, s. 6.]

7. Requirements for approval of a securities exchange trading system

(1) A trading system to be adopted by a securities exchange shall be approved by the Authority before such system is implemented.

(2) The trading system referred to in paragraph (1) shall provide for—

(a) a trading facility at which all bids to purchase and offers to sell are exposed to each other and at which members of the public are granted an opportunity to witness trading;

(b) a transparent and efficient pricing mechanism which—

(i) displays the best offer and bid prices;

(ii) provides for automatic matching;

(iii) displays the highest and lowest prices, the latest transactions as well as the volume of securities traded;

(iv) has an audit trail and trace back mechanism for all transactions;

(v) has sufficient internal controls and security measures to ensure that only authorized persons have access;

(vi) provides for integration with a central depository system; and

(vii) maintains records of all transactions and retrieves such records as may be necessary.

8. Submission of annual budget

(1) A securities exchange shall submit its annual budget to the Authority not later than thirty days before the commencement of its financial year.

(2) Any revisions to the budget shall be submitted to the Authority not later than fifteen days before the commencement of its financial year.

(3) The annual budget shall—

(a) disclose details of revenue and expenditure as prescribed under these Regulations;

(b) make provision for a minimum of twenty per cent of the total annual listing fees receivable each financial year to support the development of the securities exchange infrastructure and investor education programme.

9. Self-regulation

(1) Every securities exchange shall have—

(a) a procedure and appropriate system of exercising self - regulation over its trading participants;

(b) a code of conduct for its trading participants;

(c) adequate trading surveillance and compliance capacity; and

(d) a procedure for dispute resolution.

(2) A securities exchange shall implement a system of self regulation with respect to its trading participants and shall ensure the day to day management of trading, settlement, delivery and all other activities of its trading participants are in accordance with—

(a) the rules of the securities exchange approved by the Authority; and

(b) laws, regulations and guidelines relating to securities issued by the Authority.

(3) The rules of a securities exchange shall, where applicable, support the self-regulatory functions of the securities exchange and in particular shall be designed to—

(a) promote investor protection;

(b) promote fair treatment of its trading participants and any person who applies for admission as a trading participant;

(c) exclude a person who is not fit and proper from being its trading participant or being appointed as its chief executive, director or officer;

(d) promote proper regulation and supervision of its trading participants;

(e) promote appropriate standards of conduct of its trading participants;

(f) manage any conflict of interest which may arise between its interest and the interest of investors and the general public;

(g) ensure that its trading participants and officers duly comply with the securities laws, regulations and guidelines issued by the Authority and where relevant, the rules of the securities exchange, or approved central depository;

(h) require trading participants to report in a timely manner any breaches of applicable rules;

(i) prevent the use of any information by its trading participants or officers which may result in such trading participants or officer making an unfair gain;

expel , suspend, discipline or sanction a trading participant if a trading participant contravenes securities laws, regulations and guidelines issued by the Authority or where relevant, the rules of the securities exchange, or an approved central depository;

(j) require a trading participant to report any action, restriction or limitation imposed on its operations by another securities exchange, central depository or the Authority; and

(k) allow an aggrieved trading participant to appeal against any decision of the securities exchange acting in its capacity as a recognized self-regulatory organization.

(4) An applicant shall, as a condition for approval to operate a securities exchange—

(a) exercise self-regulatory responsibility over its trading participants; and

(b) put in place independent management of and budgetary structures for the commercial and regulatory functions of the securities exchange.

[L.N. 88/2012, s. 7.]

10. Records to be maintained

Every securities exchange shall for a period of seven years maintain and preserve the following records and documents, for a period of seven years—

(a) minutes of the meeting of—
  (i) its shareholders;
  (ii) its board of directors; and
  (iii) any standing committee or committees of its board of directors;

(b) a register of trading participant members including the full names and physical addresses of all directors and shareholders of such trading participants;

(c) a register of representatives, authorized clerks, dealers, authorized assistants and floor traders;

(d) a record of securities transactions by sectors for each market segment;

(e) a statistical information on market turnover and capitalization on a monthly basis for each market segment;

(f) a register of—
  (i) all listed securities including the names of issuers and number of securities listed by each issuer;
  (ii) all substantial shareholders;
  (iii) holders of notifiable interest under regulation 75;

(g) records of receipts and disbursement of the investors compensation fund;

(h) annual audited accounts of its trading participants;

(i) annual reports of all listed companies;

(j) records containing any trading limits, margin requirements or related financial and operational limits it imposes on its trading participants on a monthly basis;

(k) financial records of all transactions of the securities exchange including receipts and payouts, cash and bank transactions which shall also be maintained in an electronic form including—
  (i) ledgers;
  (ii) journals; and
  (iii) bank statements and reconciliation accounts.

[L.N. 88/2012, s. 8.]

11. *Deleted by L.N. 88/2012, r. 9.*

12. Reporting obligations

(1) A securities exchange shall within four months after the end of each financial year make available to the Authority, and to the investors, a summary of information on companies listed at the securities exchange.

(2) The information referred to in paragraph (1) shall include the—

(a) published accounts of companies listed on such securities exchange including balance sheet and profit and loss statements;

(b) date of incorporation, date of listing, names of directors, share capital, number and value of shares issued, and any changes in the share capital;

(c) details of securities transacted and the prices (high, low and mid-market) at which such securities have been transacted during the year; and

(d) earnings per share, dividend per share, shareholding structure (institutional, individual and foreign investors), principal or controlling shareholders and total number of shareholders.

(3) A securities exchange shall maintain information in both print and electronic form, regarding each company listed at the securities exchange and such information shall include the—

(a) name of the issuer and date of incorporation;

(b) date of listing;

(c) names of directors;

(d) principal/controlling shareholders;

(e) total number of shareholders;

(f) authorized and paid-up share capital;

(g) changes in authorized or paid-up share capital;

(h) core and auxiliary line of business;

(i) balance sheet and profit and loss accounts for the last five years;

(j) volume and price movements (high and low) of the listed security; and

(k) earnings per share and dividend per share.

(4) A securities exchange shall, by the last day of March in each year, furnish the Authority with a report of its activities during the preceding calendar year and such report shall contain information on—

(a) changes in its rules and by-laws, if any;

(b) changes in the membership of its board of directors;

(c) composition and mandates of all the committees set up and changes (if any) in the membership of its existing ones;

(d) admission, suspension or expulsion of trading participants;

(e) disciplinary action against trading participants including appointment of statutory manager;

(f) arbitration of disputes;

(g) securities listed, suspended or de-listed;

(h) market turnover and capitalization per sector; and

(i) any other matters that the Authority may request.

(5) A securities exchange shall submit to the Authority, through electronic means, and make public a daily report on the securities transacted, the price movements on each security including low, high and average prices, and the volume of transactions in each security.

(6) A securities exchange shall furnish the Authority within thirty days after the end of each quarter, with a report of all securities transactions for each day, including private transactions, the value of each transaction, names of the parties for each private transaction and the holders of notifiable interest disclosed to the securities exchange under Part XI of these Regulations.

(7)

(a) A financial statement of a securities exchange shall include the disclosures prescribed in the Third Schedule.

(b) The annual accounts of a securities exchange shall be audited by an independent auditor appointed by the board of directors, with the consent of the Authority and such auditor shall not be removed without the approval of the Authority.

(8) A securities exchange shall furnish the Authority with all documents and notices that it issues to its members in connection with the annual general meetings within ten days prior to the date of such meetings.

(9) Communication to investors shall be by way of publication in at least two daily newspapers of national circulation.

(10) A securities exchange shall immediately report to the Authority by telephone and in writing whenever—

(a) there is a delay in the opening or closing of the securities exchange;

(b) there is a default on settlement and delivery;

(c) trading is to be suspended in any security;

(d) there are incidences of violation of the Act or the securities exchange rules;

(e) there is unusual activity in the market;

(f) the securities exchange receives any non-public information that its chief executive believes could have a material effect on the market in general or on any specific securities; or

(g) the Authority requests for any information.

[L.N. 88/2012, s. 10.]

13. Listing of securities by a securities exchange

(1) No securities exchange shall admit to listing a security which has not been approved for listing by Authority.

(2) A securities exchange shall admit to listing without any other conditions all securities approved by the Authority arising out of—

(a) a public offer, on attainment of the total minimum subscription of shares as disclosed in the prospectus approved by the Authority and minimum number of shareholders prescribed for the respective market segment;

(b) an introduction;

(c) rights issues;

(d) scrip dividend offer; or

(e) capitalization of reserves.

(3) A securities exchange shall provide in its listing rules and with respect to each market segment the procedure for admission to listing of securities approved for listing by the Authority.

[L.N. 32/2008, s. 2.]

PART III – STOCKBROKERS AND DEALERS

14. Application for licence

An application for a licence to operate as a stockbroker or a dealer shall be submitted to the Authority in Form 1 set out in the First Schedule.

15. Specific requirements for approval

(1) The application under in regulation 14 shall be submitted together with—

(a) the certificate of incorporation;

(b) the memorandum and articles of association;

(c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and audited accounts for the preceding two years (where applicable);

(d) the prescribed fees set out in the Second Schedule;

(e) a business plan containing the particulars on—

(i) the management structure;

(ii) the directors, including one or more executive directors, their qualifications, addresses and details of other directorships;

(iii) the shareholding structure which shall disclose whether any of the shareholders will have an executive role to oversee the day to day operations of the business;

(iv) the shareholding structure of a dealer;

(v) the evidence of paid up share capital of a minimum amount of fifty million shillings in the case of a stockbroker and twenty million shillings in the case of a dealer;

(vi) the qualifications, experience and expertise of the chief executive must be relevant to effectively manage or operate the business of a stockbroker or dealer;

(vii) the proposed management and qualifications of key personnel;

(viii) the financial projections for three years;

(ix) the proposed information technology and access to the trading network in compliance with the trading, clearing, delivery and settlement requirements of the securities exchange to which the applicant intends to be admitted as a trading participant under these Regulations;

(x) one bank reference;

(xi) two business references;

(xii) the proposed premises suitably located and equipped to provide satisfactory service to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such premises will be available;

(xiii) the staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available;

(xiv) the proposed independent auditor; and

(xv) a declaration that no person is a director or holds beneficial interest either directly or indirectly in more than one trading participant of a securities exchange.

(2) Every person who is, or is to be, a director, chief executive, manager or floor dealer of a stockbroker or dealer shall be fit and proper to hold the particular position that he holds or is to hold.

(3) The applicant under paragraph (1) shall—

(a) lodge a security of one million, five hundred thousand shillings or such higher amount with a securities exchange or a central depository as the Authority may determine, taking into account the financial position and settlement record of the applicant; or

(b) provide a guarantee or a security to a securities exchange or a central depository in a form acceptable or approved by the Authority in respect of which it is a trading participant or has applied for admission as a trading participant.

(4) The eligibility of a dealer's licence shall be restricted to institutions committing funds for investment as principals in securities dealings.

(5) A stockbroker may be authorized undertake dealing operations through a subsidiary company.

(6) *Deleted by L.N. 88/2012, s. 11.*

(7) A stockbroker authorized to conduct dealing operations shall maintain separate records of all dealing operations by the subsidiary and the subsidiary shall be recognized as a client in the stockbroker's transaction records.

(8) All dealing transactions by the stockbroker's subsidiary shall be registered in the name of the subsidiary.

(9) A stockbroker authorized to conduct dealing operations shall have its licence endorsed by the Authority as authorized to conduct operations as dealer through a subsidiary.

(10) An application for a stockbroker or a dealer license shall be accompanied by a letter from the securities exchange stating that the applicant meets all the relevant requirements of that securities exchange and that the securities exchange would admit the applicant if licensed by the Authority.

[L.N. 99/2009, s. 2, L.N. 88/2012, s. 11.]

16. Stockbrokers' financial requirements

(1) The level of shareholders' funds (paid up share capital and reserves) for stock brokers shall not fall below fifty million shillings at any time during the license period.

(2) The minimum paid-up share capital shall always be unimpaired and shall not be advanced to the directors or associates of the stockbroker.

(3) A stock broker shall maintain a liquid capital of thirty million shillings or eight per cent of is total liabilities, whichever is higher.

(4) *Deleted by L.N. 112/2013, s. 3.*

(5) *Deleted by L.N. 112/2013, s. 3.*

[L.N. 99/2009, s. 3, L.N. 88/2012, s. 12, L.N. 112/2013, s. 3.]

17. Dealers' financial requirements and investment limits

(1) The level of shareholders funds (paid-up share capital and reserves) shall not be below twenty million shillings, at any time during the licence period.

(2) A dealer shall—

(a) set aside investment capital of not less than twenty million shillings (except as provided under paragraph (3)) in cash or portfolio of listed securities, or such higher amount as may be prescribed by the Authority; and

(b) *deleted by L.N. 112/2013, s. 4.*

(3) Where a dealer is promoted by a stockbroker through a subsidiary, the minimum investment capital committed to dealing operations by the subsidiary shall not be less than five million shillings in cash or listed securities portfolio at market value or such higher amount as may be prescribed by the Authority.

(4) A dealer shall maintain a liquid capital of thirty million shillings or eight per cent of its total liabilities, whichever is higher.

(5) *Deleted by L.N. 112/2013, s. 4.*

(6) *Deleted by L.N. 112/2013, s. 4.*

(7) A dealer shall maintain an investment portfolio out of it's investment capital equivalent to a minimum monthly average of fifty per cent in listed equities and the remainder in listed fixed income securities provided that within twelve months from the date of these Regulations, the investment of the minimum monthly average in listed equities shall be adjusted to sixty per cent.

(8)

(a) At least an average of twenty-five per cent of the portfolio of securities held by a dealer shall be turned over every quarter and seventy-five per cent of the portfolio be turned over every twelve months.

(b) Every security held by a dealer shall be turned over at least once every eighteen months.

(9) For the purposes of this regulation **"turnover"** means the value of securities purchased or sold during the period.

18. Financial year

The financial year of stockbrokers and dealers shall end on the 31st of December in each year.

[L.N. 112/2013, s. 4.]

19. Records to be maintained

(1) A stockbroker and dealer shall maintain and preserve for a period of seven years, the following accounting documents—

(a) journals or other records of original entry containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all debits and credits; the records shall show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;

(b) ledgers, (or other records) reflecting all assets and liabilities, income, expense and capital accounts;

(c) detailed records of nominee accounts;

(d) all cheque books, bank statements, cancelled cheques and bank reconciliation accounts;

(e) clients' accounts (or other records) itemizing separately each account of a client, all purchases, sales, receipts and deliveries of securities and all other debits and credits;

(f) a memorandum of each client's order received for the purchase or sale of securities; the memorandum shall show orders in chronological sequence, the time of receipt, the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which the order was entered, the time of entry into the market for execution, the price at which the order was executed and, to the extent feasible, the time of execution or cancellation;

(g) copies of confirmation of all purchases and sales, notices of all other debits and credits for securities and other items for the account of client;

(h) records on all commissions earned on account of equities, bonds and others;

(i) contract books or records, showing details of all contracts entered into with trading participants of a securities exchange and duplicates of memoranda of confirmation issued to such other trading participant; and

(j) any other accounting documents as may be determined by the Authority.

(2) The accounting documents specified under paragraph (1) shall be subject to inspection from time to time and without notice, by the Authority or securities exchange of which the stockbroker or dealer is a trading participant.

(3) A stockbroker shall maintain and preserve for each person who becomes a client, records and accounts for a period of seven years containing information on—

(a) where the client comes through an investor agent, in the agent sub-account and where the client has been attended to by the supervisor or employee of the stockbroker authorized to attend to clients in the stockbroker's account, the client's name, date of birth, address, nationality or citizenship, identification, written instructions of the client, price limit, duration of the instructions and date of order and the name and address of the investor agent (where applicable) and where the client is a company, certified copies of memorandum and articles of association and the certificate of incorporation;

(b) where the stockbroker, or any of its agents has made any recommendations to the client to purchase or sell any security, the record of such client shall

include the client's occupation, identification, investment objectives, other information concerning the client's financial situation and needs which the stockbroker or any of its agents considered in making the recommendation, and the signature and name of the agent who made the recommendation to the client and the date when any order was given to the stockbroker or its agent and any price limit given;

(c) a record or records with respect to each discretionary account including—

(i) the client's written authorization to the stockbroker to exercise discretionary power or authority in the client's account;

(ii) the reason given by the client for granting discretionary power or authority in his account; and

(iii) the written approval of the stockbroker's designated supervisor of each transaction in such account indicating the exact time and date of such approval;

(d) a separate record for all complaints by clients and persons acting on behalf of clients; the complaints shall be filed alphabetically by clients' names and shall include copies of all materials relating to the complaint, and record of what action, if any has been taken by the stockbroker; copies of such materials and record of action taken shall be kept in the office through which the client's account is handled;

(e) a separate record of all securities transactions by the stockbroker's or dealer's employees and directors in their own name or under nominees accounts;

(f) a separate record of all securities transactions between the stockbroker or dealer, and all listed companies in which the directors of the stockbroker or dealer have an interest; and

(g) such other records as the Authority shall determine from time to time.

(4) A stockbroker shall decline to take an order if, after reasonable inquiry, the client declines to furnish such items of information as required in paragraph (3)(a), (b) and (c) and a statement to that effect is placed in the records, provided, however, that the client's records shall state the client's name and address.

[L.N. 88/2012, s. 13.]

20. Client accounts

A stockbroker shall—

(a) deposit clients' funds in one or more bank account(s), which account(s) shall contain only clients' funds and be clearly marked "clients' accounts". Such client accounts shall not be overdrawn for any reason;

(b) maintain a separate record for each account showing the name and address of the bank where the account is maintained, the dates, amounts of deposits and withdrawals and also the exact amount of each client's beneficial interest in the account;

(c) reconcile such accounts on a regular basis to ensure the amount indicated corresponds with the balances in the client account at any given time; and

(d) ensure that clients' orders for payments made in advance shall be executed according to clients' instructions and in any event not later that one month from the date of receipt of the clients' funds. Orders not executed within one month for whatever reason shall be renewed by fresh instructions from the client.

21. Reporting obligations

(1) Every stockbroker and dealer shall submit to the Authority and to the securities exchange of which they are trading participants—

(a) quarterly reports and accounts within fifteen days of the end of each calendar quarter;

(b) half yearly reports and accounts within thirty days of the end of each half year; and

(c) audited annual accounts within three months following the end of the stockbroker and dealer's financial year;

(d) a financial statement complying with the disclosures prescribed under the Fourth Schedule of these Regulations.

(2) Every stockbroker or dealer shall prepare monthly reports and accounts within fifteen days the end of each calendar month which shall be made available to the Authority at such times as the Authority may request.

[L.N. 99/2009, s. 4, L.N. 88/2012, s. 14.]

22. Conduct of stockbrokers and dealers

(1) Stockbrokers and dealers shall—

(a) operate independently of any other stockbroker or dealer;

(b) conduct the business efficiently, honestly, and fairly, with the integrity and professional skills appropriate to the nature and scale of activities;

(c) have no formal or informal agreement with a trading participant of the same securities exchange whether through an association or not, relating to the stockbroker's or dealer's trading activity, personnel, commissions or any joint activity that is likely to undermine the competitiveness or fair trade practices and service to clients.

(2) Without prejudice to the generality of paragraph (1), in consideration whether a stockbroker or dealer is conducting or will conduct business efficiently, honestly and fairly, regard shall be made to the management and organizational structure, reporting principles and procedures, internal audit procedures, procedures for compliance with the securities laws and risk management policies which the stockbroker or dealer has adopted or proposes to adopt for its business.

[L.N. 88/2012, s. 15.]

22A. Conducting business through a stock broking agent

(1) A stockbroker may conduct business through a stockbroking agent provided the stockbroking agent has been contracted in writing to render such services.

(2) Every stockbroker shall forward to the Authority, on an annual basis, a register of any stockbroking agents contracted pursuant to paragraph (1) and shall notify the Authority of any amendment to the register of agents within five working days of such change.

(3) A stockbroker shall be responsible for conducting all necessary due diligence to establish the competence, fitness and propriety of any person so appointed as a stockbroking agent, having specific regard to the past experiences and conduct of any such person, in establishing his capacity to facilitate the purchase and sale of securities as an agent of the stockbroker in the best interests of investors.

(4) A stockbroker shall submit to the Authority for approval the standard form agency agreement they propose to enter into with their stockbroking agents and shall thereafter secure the approval of the Authority prior to amending such agreement.

(5) A stockbroker shall not appoint as its agent any person already appointed by another stockbroker as its agent:

Provided that a stockbroker who, at the commencement of this provision, has appointed an agent who acts for more than one stockbroker shall, within six months of the commencement, comply with the requirements of this provision.

(6) A stockbroking agent shall not handle or deal with clients' funds.

(7) The stockbroker shall be responsible for ensuring that the stockbroking agent conducts his business efficiently, honestly and fairly with the integrity and professional skills

appropriate to the nature and scale of activities and in accordance with the provisions of the Act and Regulations issued thereunder.

(8) In the event of any misconduct by the stockbroking agent, the stockbroker who appointed the stockbroking agent shall report the misconduct to the Authority within forty-eight hours of the occurrence of the misconduct.

[L.N. 99/2009, s. 5.]

23. Conduct of stockbrokers

(1) A stockbroker shall—

(a) execute an order only where the client has made sufficient arrangements for funds or securities with the stockbroker;

(b) only accept written orders and shall ensure that the client is not only capable of honouring the order before acting on the order, but has made arrangements with the stockbroker for fulfilment of its obligations arising from such order;

(c) execute clients' orders in the chronological sequence of orders received and which have been so recorded in accordance with these Regulations and shall give priority to orders of clients over orders of any shareholder or employee of the stockbroker or related dealer subsidiary, whether directly or indirectly;

(d) maintain a daily record of orders received from clients showing the name of each client, the specific order and time the order was given, and execute the same in order of receipt;

(e) exercise due diligence and care at all times so as not to misinform or misdirect clients;

(f) while accepting an order from a client, inform the client of all constituent parts of an order prior to executing the order and get the client to give a written declaration to confirm the same;

(g) provide factual and accurate information to clients' through newsletters and advertisements;

(h) not recommend to a client the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the stockbroker after reasonable examination of the client's financial records.

(2) An **"order"** for the purpose of this regulation, shall constitute written instructions by a client to a stockbroker as to the security name, quantity, price or price limits and duration or validity of instructions.

24. Prohibited dealings and associations

(1) No stockbroker or dealer shall—

(a) create a false market in any listed security by way of any artificial device including but not limited to advising clients to buy or sell a particular security while selling or buying through its dealing or related party transactions, without disclosing that fact to the investors;

(b) establish a corner or trade where a corner has developed in a listed security;

(c) negotiate on any issue relating to trading with any other person on the trading floor of the securities exchange;

(d) be party to any trading and price manipulative scheme or device which may directly or indirectly influence or interfere with the market price formation and fair trading process with respect to any listed security;

(e) make general recommendations to the public on particular securities through publications or statements; or

(f) sell securities which are not registered in the name of the stockbrokers' client or central depository in the case of a depository environment.

(2) For the purposes of this regulation, **"a corner"** shall be deemed to arise when a single interest or group has acquired such control of any listed security that the same cannot be obtained except at prices or on terms dictated by such single interest or group.

25. Sale of securities

(1) No stockbroker or dealer shall sell securities unless, at the time of the sale—

(a) the stockbroker or dealer has or, in the case of a stockbroker, its client has; or

(b) the stockbroker or dealer believes on reasonable grounds, that it has, or in the case of a stockbroker, its client has,

an existing exercisable and unconditional right to vest the securities in a purchaser of the securities.

(2) A person who, at any particular time, has an existing exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person.

(3) A right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of money.

(4) For purposes of this Part, a person shall be deemed to sell securities where he—

(a) purports to sell securities;

(b) offers to sell securities;

(c) holds himself out as entitled to sell securities; or

(d) instructs a stockbroker to sell securities.

26. Code of conduct to be approved

(1) Any proposed code of conduct or agreements to self-regulate the operations of stockbrokers and dealers, shall be submitted to the Authority for prior approval and must be consistent with these Regulations.

(2) No code of conduct of any associations or agreements of stockbrokers or dealers whether in written form or not shall seek to restrict free negotiation or competition by trading participants with regard to commissions payable on any transactions as provided in the Fifth Schedule.

[L.N. 88/2012, s. 16.]

27. Payment of transaction and Investor Compensation Fund fees

All stockbrokers and dealers shall pay to the Authority and to the securities exchange of which they are trading participants the fees prescribed as payable by every buyer and seller of a security and shall pay to the Investor Compensation Fund the fees prescribed as payable by each buying and selling stockbroker, or dealer within fifteen days following a transaction.

[L.N. 88/2012, s. 17.]

PART IV – INVESTMENT ADVISERS AND FUND MANAGERS

28. Application for licence

(1) An application for a licence to operate as an investment adviser or fund manager shall be submitted to the Authority in duplicate in Form 1 set out in the First Schedule.

29. Specific requirements for approval

(1) The application under regulation 28 shall be submitted together with—

(a) certificate of incorporation;

(b) memorandum and articles of association;

(c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and the applicant's audited accounts for the preceding two years (where applicable);

(d) a business plan containing the particulars on—

(i) the management structure;

(ii) the directors, including one or more executive directors, their qualifications, addresses and details of other directorships;

(iii) the shareholding structure, disclosing whether any of the shareholders will have an executive role to oversee the day-to-day operations of the business;

(iv) the evidence of a minimum paid-up share capital of not less than two million five hundred thousand shillings for investment advisers and ten million shillings for fund managers;

(v) the qualifications, experience and expertise of the chief executive;

(vi) the proposed management and qualifications of key personnel;

(vii) the financial projections for three years;

(viii) the particulars of the proposed operating and information technology system;

(ix) one bank reference;

(x) two business references;

(xi) the proposed premises suitably located and equipped to provide satisfactory service to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such premises will be available;

(xii) the staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available;

(xiii) the proposed independent auditor;

(e) the fees prescribed in the Second Schedule.

(2) Every person who is, or is to be, a director, chief executive or manager of an investment adviser or fund manager, shall be fit and proper to hold the particular position which he holds or is to hold.

(3) A person shall not carry on or hold out himself as carrying on the business of a fund manager of a registered venture capital company unless that person is a fund manager licensed by the Authority.

(4) An application for a licence under paragraph (3) shall be made to the Authority in writing and be accompanied by—

(a) a detailed information on qualifications, experience and expertise of the directors, chief executive and senior investment in managing venture capital investments and private equity; and

(b) information proving ability to provide technical and managerial expertise to eligible venture capital enterprises.

(5) The Authority shall publish the names of all fund managers it has licensed to manage registered venture capital companies in the Kenya *Gazette*.

[L.N. 32/2008, s. 3.]

30. Financial requirements

(1) The level of shareholders funds (paid-up share capital and reserves) for investment advisers, shall not fall below two million five hundred thousand shillings at any time during the licence period.

(2) The level of shareholders funds (paid-up share capital and reserves) for fund managers, shall not fall below ten million shillings at any time during the licence period.

(3) The paid-up share capital of the investment adviser or fund manager shall always be unimpaired and shall not be advanced to the directors or associates of the investment adviser or fund manager.

(4) An investment adviser shall maintain a liquid capital of one million shillings or eight per cent of its total liabilities, whichever is higher, and a fund manager shall maintain a liquid capital of five million shillings or eight per cent of its total liabilities, whichever is higher.

(5) *Deleted by L.N. 112/2013, s. 5.*

(6) *Deleted by L.N. 112/2013, s. 5.*

(7) The size of the aggregate maximum value of all clients' portfolio managed under the investment adviser's licence as prescribed shall not exceed ten million shillings and any amount in excess of the prescribed aggregate limit shall be managed under the fund manager's licence.

[L.N. 112/2013, s. 5.]

31. Records to be maintained

(1) Every investment adviser and fund manager shall maintain and preserve for a period of seven years, the following records—

(a) journals, including cash receipts and disbursement records and any other records or original entry, forming the basis of entries in any ledger;

(b) general and auxiliary ledgers, or other comparable records reflecting assets, liabilities, reserves, capital, income and expense accounts;

(c) a record or memorandum of each order given by the investment adviser or fund manager for the purchase or sale of securities, or any instruction received by the investment adviser or fund manager from the client concerning the purchase, sale, receipt or delivery of a particular security and of any modification or cancellation or any such order or instruction, and the record shall—

(i) show the terms and conditions of the order, instruction, modification or cancellation;

(ii) identify the person connected with the investment adviser or fund manager who recommended the transaction to the client and the person who placed such order;

(iii) show the account for which the order was entered, the date of entry, and the stockbroker by or through whom the order was executed, where appropriate; and

(iv) show orders entered pursuant to the exercise of discretionary power on account of management of investment portfolios in which case a record of details of such contracts with clients, constituents of the portfolio, transaction fees agreed with the client and value of the portfolio shall be included;

(d) all cheque books, bank statements, cancelled cheques and cash reconciliation of the investment adviser or fund manager;

(e) all bills, statements or copies thereof, paid or unpaid relating to the business of the investment adviser or the fund manager;

(f) originals of all written communication received from clients and copies of all written communication sent by the investment adviser or fund manager relating to—

(i) any recommendations made or proposed to be given;

(ii) any receipts, disbursement or delivery of funds or securities; and

(iii) the placing or execution of any order to purchase or sell any security; provided, that if the investment adviser or fund manager sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory services to more than ten persons, the investment adviser or fund manager shall not be required to keep a record of the names and addresses of the persons to whom it was sent except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser or fund manager shall retain a copy of such notice, circular or advertisement, a record or memorandum describing the list and the source thereof;

(g) a list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;

(h) all evidence of granting of any discretionary authority by any client to the investment adviser, or copies thereof;

(i) all written agreements or copies thereof entered into by the investment adviser or fund manager with any client or otherwise relating to the investment adviser's or fund manager's business;

(j) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser or fund manager circulates or distributes, directly or indirectly, to ten or more persons, and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum from the investment adviser or fund manager (as the case may be) indicating the reasons thereof; all advertisements by the investment adviser or fund manager and all records, worksheets and calculations necessary to form the basis for performance data in such advertisements;

(k) a record of every transaction in a security in which the investment adviser or fund manager or any of the investment adviser or fund manager's employees acquire any direct or indirect beneficial ownership; the record shall state the title and amount of the security involved, the date, whether the transaction was a purchase or sale or other acquisition or disposition, the price at which it was effected, and the name of the stockbroker with or though whom the transaction was effected; and

(l) a copy of each written statement, the amendment or revision thereof, given or sent to any client or prospective client of such investment adviser or fund manager and a record of the dates that the same was given or offered to be given;

(m) any other records as may be determined by the Authority.

(2) The records specified under paragraph (1) shall be subject to inspection from time to time and without notice, by the Authority.

(3) Each investment adviser and fund manager shall preserve and maintain clients' records of securities or funds and if required produce for inspection by the Authority such books, records and ledgers, or other accepted accounting and additional records as may be required by the Authority for a period of seven years and shall—

(a) notify the Authority of the custodian appointed; and

(b) segregate the securities of each client and mark such securities to identify the particular client having the beneficial interest therein.

32. Reporting obligations

(1) Every investment adviser or fund manager shall submit to the Authority—

(a) quarterly management accounts and reports of the portfolio under its management within fifteen days of the end of each calendar quarter:

Provided that every investment adviser or fund manager shall prepare monthly reports of the portfolio under its management within fifteen days of the end of each calendar month, which shall be made available to the Authority at such times as the Authority may require;

(b) half-yearly reports of the portfolio under its management within thirty days of the end of each half-year, including reports of its own financial performance;

(c) annual reports of the total value of the portfolio under its management including the number of clients; and

(d) audited annual accounts for its operations in the form prescribed in the Fourth Schedule within three months following the closure of the financial year.

(2) Notwithstanding the provisions of paragraph (1), the Authority may require such other form of financial statement as it may from time to time specify.

[L.N. 99/2009, s. 6.]

33. Conduct of investment advisers and fund managers

(1) No investment adviser or fund manager shall—

(a) recommend to a client to whom investment, supervisory, management or consulting services are provided, the purchase or sale of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser or fund manager after reasonable examination of the client's financial records;

(b) place an order to purchase or sell a security for the account of a client without written authority to do so;

(c) place an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client;

(d) exercise any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client;

(e) induce trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;

(f) misrepresent to any client, or prospective client, its qualifications or misrepresent the nature of the advisory services being offered or fees to be charged for such service or omit to state a material fact necessary to make the statements regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

(g) provide a report or recommendation to any client prepared by someone other than the investment adviser without disclosing that fact;

(h) fail to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or fund manager or any of the investment adviser's or fund manager's employees, which could reasonably be expected to impair the rendering of unbiased and objective advice, including—

(i) compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

(ii) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or fund manager or his employees;

(i) guarantee a client that a specific result will be achieved arising from the advice which will be rendered except in the case of fixed income securities;

(j) publish, circulate or distribute any advertisement which does not comply with the Act;

(k) disclose the identity, affairs, or investment of any client to any third party unless required by law, court order or a regulatory agency to do so, or unless consented to by the client; and

(l) enter into, extend or renew any investment advisory contract unless such contract is in writing and discloses in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the investment adviser or fund manager and that no assignment of such contract shall be made by the investment adviser or fund manager without the consent of the other party to the contract;

(m) fail to register all securities marketed and offered to clients by the investment adviser or fund manager or otherwise inform the client that the securities offered to them have not been registered with or approved by the Authority.

(2) Any information provided by investment advisers or fund managers to clients through newsletters and advertisements shall be factual and accurate.

(3) No investment adviser or fund manager shall loan money to a client unless the investment adviser or fund manager is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or fund manager.

(4) An investment adviser or fund manager may not contract or engage any advisory or management services on behalf of an investment portfolio without prior written approval of its clients. The investment adviser or fund manager shall remain liable hereunder—

(a) for any act or omission of the sub-contracted investment adviser or fund manager;

(b) the fees and expenses of any such person, which shall not be payable out of the fund of the portfolio investments; and

(c) any expenses incurred by any such person which if incurred by the investment adviser or the fund manager would have been payable out of the fund of the investment portfolio.

(5) When accepting an order from a client the investment adviser or fund manager shall inform the client of all constituent parts of the service agreement prior to executing the order and get the client to give it a written declaration to confirm the same.

(6) The investment adviser or fund manager shall be fair and equitable in the event of any conflict of interest that may arise in the course of its duties.

34. Appointment of a custodian

(1) Every investment adviser and fund manager that manages discretionary funds shall appoint a custodian for the assets of the fund.

(2) A custodian of an investment portfolio may in relation to the fund manager or investment adviser be a holding company or a subsidiary company within the meaning of the terms as defined in section 154 of the Companies Act (Cap. 486) or be deemed by the Authority to be otherwise under control of substantially the same persons or consist

substantially of the same shareholders, provided that the investment in a related company shall be limited to ten per cent of the total funds managed by the fund manager.

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

35. Duties of a custodian

(1) A custodian shall render custodial services to the investment portfolio managed by the investment adviser or fund manager in accordance with the written service agreement between the custodian and the investment adviser or fund manager as the case may be and such service shall include—

(a) taking into its custody or under its control all the property of the clients of the investment adviser or fund manager and hold it in trust for the clients in accordance with the provisions of the written service agreement provided that cash and registrable assets shall be registered in the name of or to the order of the clients by the custodian;

(b) receiving and keeping in safe custody title documents, securities and cash amounts of the investment portfolio;

(c) opening an account in the name of each client for the exclusive benefit of such investment portfolio;

(d) transferring, exchanging or delivering in the required form and manner securities held by the custodian upon receipt of proper instructions from the investment adviser or fund manager;

(e) requiring from the investment adviser or fund manager as the case may be, such information as it deems necessary for the performance of its functions as a custodian;

(f) promptly delivering to the investment adviser or fund manager or to such other persons as investment adviser or fund manager may authorize, copies of all notices, proxies, proxy soliciting materials received by the custodian in relation to the securities held in the fund account, all public information, financial reports and stockholder communications the custodian may receive from the issuers of securities and all other information the custodian may receive, as may be agreed between the custodian, investment adviser or fund manager;

(g) exercising subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the investment adviser or fund manager;

(h) exercising the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of property and in fulfilling obligations in the agreement;

(i) where title to investments are recorded electronically, ensuring that entitlements of the clients of the investment adviser or fund manager are separately identified in the records of entitlement maintained by the custodian.

(2) A custodian shall in executing its duties under paragraph (1) exercise the degree of care expected of a prudent professional custodian for hire.

(3) A custodian discharging its contractual duties to an investment adviser or fund manager shall not contract agents to discharge those functions except where a portion of the investment portfolio is invested in offshore investments in which case the custodian may engage the services of an overseas sub-custodian approved by the investment adviser or fund manager as the case may be with notification of such appointment to the Authority.

(4) The agreement referred to in paragraph (1) between the custodian and the investment adviser or fund manager shall make provision on the computation of the fee in respect of custodial services which will be disclosed to the clients by the investment adviser or fund manager in the annual report.

36. Custodian's records and reports

(1) A custodian shall keep such records as may be necessary to ascertain—

(a) the entire fund of the investment portfolio held by the custodian;

(b) each transaction carried out by the custodian on behalf of the investment adviser or fund manager as the case may be.

(2) The records referred to in paragraph (1) shall be subject to inspection by the investment adviser or fund manager as the case may be or a duly authorized agent of the Authority within the premises of the custodian at any time during business hours.

(3) The custodian shall make available to the fund manager or investment adviser—

(a) a written statement at agreed reporting dates which lists all assets of the investment adviser or fund manager's clients in the clients' account(s) together with a full account of all receipts and payments made and other actions taken by the custodian;

(b) an advice or notification of any transfers of property or securities to or from the investment adviser or fund managers clients' account(s) and indicating the securities acquired for the account(s), the identity of the party having physical possession of such securities; and

(c) a copy of the most recent audited financial statements of the custodian prepared together with such information regarding the policies and procedures of the custodian as the investment manager or fund manager may request in connection with the agreement or the duties of the custodian under that agreement.

(4) The custodian shall prepare and submit to the Authority an annual report demonstrating how compliance with these Regulations and its service agreement have been achieved.

37. Retirement of a custodian

(1) A custodian shall not retire voluntarily except upon the appointment of a successor approved by the Authority.

(2) Where a custodian desires to retire or ceases to be registered as a custodian with the Authority, the investment adviser or the fund manager as the case may be may with the approval of the Authority appoint another eligible person to be a custodian in its place.

38. Removal of a custodian

(1) A custodian may be removed by the investment adviser of fund manager by notice in writing where—

(a) the custodian goes into liquidation other than a voluntary liquidation for the purpose of reconstruction or amalgamation or where a statutory manager or a receiver is appointed over any of its assets;

(b) the custodian ceases to be an authorized depository or ceases to carry on business as a bank or financial institution;

(c) the custodian fails or neglects after reasonable notice from the investment adviser or fund manager, to carry out or satisfy any duty imposed on the custodian in accordance with the agreement; or

(d) the directors of the investment adviser or fund manager as the case may be, by extraordinary resolution resolve that such notice be given, and the investment adviser or fund manager with the approval of the Authority appoints as custodian some other qualified authorized depository.

(2) On receipt of the notice referred to in paragraph (1) by the investment adviser or the fund manager, the service agreement between investment adviser or the fund manager as the case may be and the custodian shall be deemed to have been terminated.

(3) In the event of a termination of the service agreement as referred to in paragraph (2) or from the date of winding-up order issued by a court against the custodian, the custodian

shall hand over, all assets, documents and funds including those from the bank account(s) of the investment adviser or fund manager held by such custodian to the custodian appointed in writing by investment adviser or fund manager (as the case may be) and approved by the Authority within thirty days from the date of such termination.

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

PART V – INVESTMENT BANKS

39. Application for licence and specific requirements for approval

(1) An application for a licence to operate as an investment bank shall be submitted to the Authority in Form 1 set out in the First Schedule.

(2) The application referred to in paragraph (1) shall be submitted together with—

(a) the certificate of incorporation;

(b) the memorandum and articles of association;

(c) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and applicant's audited accounts for the preceding two years (where applicable);

(d) a business plan containing the particulars on—

(i) management and shareholding structure of the investment bank;

(ii) directors, including their qualifications, addresses and details of other directorships;

(iii) evidence of paid up share capital of a minimum amount of two hundred and fifty million shillings;

(iv) qualifications, experience and expertise of the chief executive and dealers that must be relevant to effectively manage or operate the business of an investment bank;

(v) proposed operating systems including dealing infrastructure suitably located and equipped to provide satisfactory service to clients; and

(vi) staff capable of providing professional services to clients in the field of activity to which the licence relates or evidence acceptable to the Authority that such staff will be available;

(e) the fees prescribed in the Second Schedule;

(f) the name of the proposed independent auditor.

(3) An Investment Bank which intends to be admitted as a trading participant at a securities exchange shall submit a letter from the securities exchange which the applicant is seeking admission as a trading participant confirming the admission of that applicant upon securing a license from the Authority.

[L.N. 99/2009, s. 7, L.N. 88/2012, s. 18.]

40. Authorized functions

An investment banks shall be a non-deposit taking institution and shall carry out all or any of the following functions—

(a) offering advisory services on—

(i) public offering of securities;

(ii) corporate financial restructuring, takeover, mergers, acquisitions and privatization;

(iii) corporate financing, options including issuance of equity or debt securities or loan syndication;

(b) engaging in the business of a stockbroker subject to regulation 42;

(c) engaging in the business of a dealer;

(d) promoting or arranging underwriting or issuance of securities;

(e) promoting and acting as a fund manager of collective investment schemes;

(f) providing investment advisory services and contractual portfolio management.

41. Admission to a securities exchange

(1) A person licensed by the Authority as an investment bank shall be eligible to apply for admission as a trading participant with a securities exchange:

Provided that the licensed investment bank complies with the eligibility requirements of the admitting securities exchange.

[L.N. 88/2012, s. 19.]

42. *Deleted by L.N. 88/2012, s. 20.*

43. Conduct of investment banks

An investment bank shall comply with the provisions on client accounts, records to be maintained, reporting obligations, conduct, prohibited dealings and associations, investment requirements and appointment of custodian, relating to stockbrokers, broking agents, dealers, investment advisers and fund managers and payment of transaction and investor compensation fees relating to stockbrokers, stockbroking agents and dealers as set out in these Regulations, where applicable.

[L.N. 99/2009, s. 8.]

44. Financial requirements

(1) The level of paid-up share capital shall not fall below two hundred and fifty million shillings at any time during the licence period and in addition, shareholders' funds (paid up share capital and Reserves) shall at no time fall below two hundred and fifty million shillings:

Provided that any investment bank whose paid-up share capital is below the required amount at the time of commencement of this paragraph shall comply by the 31st December 2010.

(2) The minimum paid-up share capital shall always be unimpaired and shall not be advanced to the directors or associates of the investment bank.

(3) *Deleted by L.N. 112/2013, s. 6*.

(4) An investment bank shall maintain a liquid capital of thirty million or eight per cent of its total liabilities, whichever is higher.

(5) *Deleted by L.N. 112/2013, s. 6*.

[L.N. 99/2009, s. 9, L.N. 88/2012, s. 21, L.N. 112/2013, s. 6.]

PART VI – AUTHORISED SECURITIES DEALERS

45. Application for licence

(1) An application for a licence to operate as an authorized securities dealer shall be submitted to the Authority in Form 1 set out in the First Schedule.

(2) An applicant shall be—

(a) a bank licensed under the Banking Act (Cap. 488);

(b) an investment bank or a fund manager;

(c) an insurance company licensed under the Insurance Act (Cap. 487); or

(d) any other person who meets the requirements of this Part and approved by the Authority,

and who shall demonstrate effective capacity and expertise in dealing in securities.

(3) An applicant under paragraph (2) shall demonstrate effective capacity and expertise in dealing in securities.

(4) An authorized securities dealer who intends to be admitted as a trading participant at a securities exchange shall submit a letter from the securities exchange, which the applicant is seeking admission to as a trading participant, confirming that applicant shall be admitted into the securities exchange upon securing a license from the Authority.

[L.N. 88/2012, s. 22, L.N. 112/2013, s. 7.]

46. Specific requirements for approval

The application under regulation 45 shall be submitted together with—

(a) the certificate of incorporation;

(b) the memorandum and articles of association;

(c) evidence of the minimum paid up share capital prescribed by the Authority;

(d) evidence of the minimum financial resources and financial capability prescribed by the Authority;

(e) a statement of the un-audited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and the applicant's audited accounts for the preceding two years (where applicable);

(f) a business plan containing the particulars on—

(i) management and shareholding structure of the applicant;

(ii) directors, including their qualifications, addresses and details of other directorships;

(iii) *Deleted by L.N. 112/2013, s. 8.*

(iv) qualifications, experience and expertise of the chief dealer which must be relevant to effectively manage or operate the business of dealing in fixed income securities;

(v) the proposed operating system including dealing infrastructure suitably located and equipped to effectively carry out its operations;

(g) the fees prescribed in the Second Schedule.

[L.N. 112/2013, s. 8.]

47. *Deleted by L.N. 112/2013, s. 9*.

48. Functions and membership on a securities exchange

(1) An authorized securities dealer shall be—

(a) restricted to dealing in fixed income securities whether listed on an approved exchange or not;

(b) entitled to trade on behalf of others as well as on their own account in such segment; and

(c) required to implement necessary operational, trading and settlement procedures and systems necessary to minimize settlement and counter party risk and manage conflicts of interest.

(2) A person licensed by the Authority as an authorized securities dealer shall be eligible to apply to be admitted as a trading participant with a securities exchange:

Provided that the authorized securities dealer meets the eligibility requirements of the admitting securities exchange.

(3) An authorized securities dealer shall comply with the provisions on client accounts, conduct of business, prohibited dealings and associations and investment requirements and appointment of custodian relating to stockbrokers, stockbroking agents, dealers, investment advisers and fund managers and payment of transaction and investor compensation fees relating to stockbrokers and dealers as set out in these Regulations, where applicable.

[L.N. 88/2012, s. 23, L.N. 112/2013, s. 10.]

49. Records of transactions

In addition to the requirements specified under regulation 48(3) every authorized securities dealer shall maintain a record of its daily dealing transactions which shall include particulars on—

(a) type of security;

(b) value of trade;

(c) counter party; and

(d) nature of account.

[L.N. 112/2013, s. 11.]

50. Report of dealing transactions

(1) Every authorised securities dealer shall, in respect of all its transactions in securities, whether or not such securities are traded on an approved exchange, submit to the Authority—

(a) monthly reports and accounts within fifteen days of the end of each calender month;

(b) quarterly reports and accounts within fifteen days of the end of each calendar quarter;

(c) half yearly reports and accounts within thirty days of the end of each year;

(d) audited annual accounts within three months following the end of the authorized securities dealer financial year; and

(e) a financial statement complying with the disclosures prescribed under the Fourth Schedule of these Regulations.

(2) The Authority may require such other form of financial statement as it may from time to time specify.

(3) The reports referred to in paragraph (1) shall include particulars on the—

(a) type of securities;

(b) total value of securities traded in terms of sales and purchases during the relevant period; and

(c) average yield of the total value of securities traded during the relevant period.

[L.N. 112/2013, s. 12.]

PART VII – GENERAL REQUIREMENTS FOR LICENSING

51. Renewal of licence

(1) An application for the renewal of a licence shall be submitted to the Authority in Form 1 set out in the First Schedule by the 30th of November of each year.

(2) The application under paragraph (1) shall be submitted together with—

(a) the fees set out in the Second Schedule;

(b) where the application is for the renewal of a licence, management accounts for the period up to 30th November of each year not later than the 15th December in the same year.

(3) Authorised securities dealers shall submit the annual accounts and report the dealings operations as may be required by the Authority.

(4) The audited accounts for each year shall be submitted to the Authority not later than the 31st day of March.

(4A) The financial year of every licensed person shall be the period of twelve months ending on the 31st December in each year:

Provided that where the financial year of a licensed person is different from that prescribed in this paragraph at the commencement of this paragraph, the licensed person shall comply therewith within twelve months of such commencement.

[L.N. 99/2009, s. 10.]

51A. Financial Statements

(1) All financial statements prepared by licensees shall be prepared in accordance with International Financial Reporting Standards.

(2) Collective investment schemes, stockbrokers, dealers, fund managers and investment banks shall publish in at least two daily newspapers of national circulation—

(a) half-year unaudited financial statements within two months after the end of the first half of the financial year; and

(b) full-year audited financial statements within three months after the end of the financial year.

[L.N. 99/2009, s. 11.]

51B. Professional indemnity insurance

(1) Stockbrokers and investment banks shall obtain professional indemnity insurance to secure an amount not less than five times their daily average turnover.

(2) For the purposes of paragraph (1), the daily average turnover shall be calculated based on the firm's turnover for the previous year, where applicable, or such amount as the Authority may determine.

(3) Fund managers shall obtain professional indemnity insurance to secure such amount as the Authority may determine based on the portfolio under the management of the Fund Manager.

[L.N. 99/2009, s. 11.]

51C. Display of audited balance sheet

Every licensed stockbroker fund manager and investment bank shall display throughout the year in a conspicuous position in every office and branch in Kenya, copies of its last audited balance sheet and profit and loss statement which shall be in conformity with the minimum financial disclosure requirements prescribed from time to time by the Authority, and shall include a copy of the auditor's report together with full and correct names of all persons who are directors of the licensee.

[L.N. 99/2009, s. 11.]

52. Determination of suitability

In determining whether a person is fit and proper to hold any particular position, regard shall be had to—

(a) his probity, competence and soundness of judgment in fulfilling the responsibilities of that position;

(b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;

(c) whether the interests of customers, are or are likely to be in any way threatened by his holding that position, by virtue of past convictions or offences, involvement in irregularities, misappropriation of funds or manipulation of securities markets transactions;

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

(e) was a director of a brokerage firm that has been liquidated or is under liquidation or statutory management;

(f) has taken part in any business practice that, in the opinion of the Authority, was fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;

(g) has taken part or been associated with any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment;

(h) whether he has been convicted of an economic crime under the Anti-Corruption and Economic Crimes Act (No. 3 of 2003).

[L.N. 99/2007, s. 2, L.N. 99/2009, s. 12.]

53. Key personnel of full and associate members

(1) All trading participants of a securities exchange shall register with the Authority all key personnel annually including any changes thereto.

(2) For the purposes of this regulation **"key personnel"** includes employees and directors of a trading participant who have direct dealings with clients and carry on trading activities on behalf of clients.

[L.N. 88/2012, s. 25.]

53A. Designation of compliance officer

Every licensed person shall, in writing, designate in writing a compliance officer to coordinate all compliance matters with the Authority.

[L.N. 99/2009, s. 13.]

53B. Change of shareholders, directors, etc

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

(2) Where any person proposed to be appointed under paragraph (1) is found to be a former employee or otherwise connected with another licensee of the Authority, details of the reasons for their departure shall be forwarded in support of any request for no objection.

(3) Every licensee shall lodge with the Authority in every year, and update the same within five days of any change thereto, a list of all key personnel working with the licensee, which shall include the individual's full name, national identity card number, job designation and description of responsibilities and, where they have worked with other licencees of the Authority, details of their former employers.

[L.N. 99/2009, s. 13.]

53C. Branch or new place of business

(1) A licensed person shall not open a branch or a new place of business in Kenya, or change the location of a branch or existing place of business, without the approval of the Authority.

(2) A licensed person shall not close any of its place of business in Kenya without first giving the Authority a three months' written notice of its intention to do so or such shorter period of notice as the Authority may allow.

[L.N. 99/2009, s. 13.]

54. Alteration of memorandum or articles of association

Every licensed person shall submit to the Authority any alterations to its memorandum or articles of association within thirty days of passing the resolution approving such alteration.

54A. Change to capital structure

Every licensed person shall notify the Authority of any changes to its capital structure within five working days from the date of the change.

[L.N. 99/2009, s. 14.]

55. Qualification of Secretary

No licensed person shall engage as a Secretary a person who is not qualified under the Institute of Certified Public Secretaries of Kenya Act (Cap. 534).

55A. Auditor

(1) A licensed or approved person shall not appoint or remove its auditor except with the prior written approval of the Authority at least one month prior to such appointment or removal.

(2) If the auditor of a licensed or approved person, in the course of the performance of his duties under the Act, is satisfied that—

(a) there has been a serious breach of or non-compliance with the provisions of the Act or Regulations, made thereunder, guidelines or other stipulations of the Authority; or

(b) a criminal offence involving fraud or other dishonesty has been committed by the licensed person or any of its key officers or employees; or

(c) serious irregularities occurred which may jeopardize the security of investors or creditors of the licensed person; or

(d) he is unable to confirm that the claims of investors and creditors of the licensed person are capable of being met out of the assets of the licensed person,

he shall immediately report the matter to the Authority.

(3) Where an auditor of a licensed or approved person fails to comply with the requirements of paragraph (2) above, the Authority shall disqualify him from appointment as an auditor of its licensees and approved persons.

(4) A duty to which an auditor of a licensed or approved person may be subject to shall not be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by it or opinion on a matter to which this regulation applies and which is relevant to any function of the Authority under this Act or Regulations made thereunder.

(5) This regulation shall apply to any matter of which an auditor becomes aware in his capacity as an auditor or in discharge of his duties under these Regulations and which relates to the business or affairs of the licensed or approved person or any associated persons.

(6) A person appointed as an auditor shall serve for a maximum period of four consecutive years.

(7) The Authority may arrange trilateral meetings with a licensed person and its auditor from time to time to discuss matters relevant to the Authority's supervisory responsibilities including relevant aspects of the licensed person's business, its accounting and control system and its annual accounts.

[L.N. 99/2009, s. 15.]

55B. Notice to the Authority by Auditor

(1) An auditor of a licensed or approved person shall forthwith give written notice to the Authority where he—

(a) resigns from office;

(b) does not seek to be appointed; or

(c) includes in his report or draft report on the licensed or approved person's accounts any qualification which did not appear in the accounts for the preceding financial year.

[L.N. 99/2009, s. 15.]

56. Marketing securities

No person shall market securities in Kenya, whether the securities have been issued in Kenya or not, through advertisement, solicitation, invitation or by other means in whatever form or manner with an aim of reaching the general public or a section thereof unless such a person is licensed under these Regulations.

PART VIII – TRANSACTIONS OF LISTED SECURITIES OUTSIDE A SECURITIES EXCHANGE

57. Nature of transaction

An application to the Authority for approval of a private transaction shall be considered if the transaction is for the—

(a) transfer to a close relation in the form of a gift;

(b) settlement of a will or estate of a deceased person;

(c) restructuring, mergers or acquisitions in a scheme which has been approved by the Authority;

(d) transfer of an exceptional nature of a listed security that the Authority considers to be proper and acceptable with respect to a strategic investor and serves the investor or public interest; or

(e) transfer not resulting in any change in beneficial ownership otherwise than for purposes of regulation 57(c), (d) or section 31(1A)(ii) of the Act.

[L.N. 112/2013, s. 13.]

58. Brokerage commission

Where a private transaction is authorized, no brokerage commission shall be payable on the transaction, except a fee prescribed by the Authority—

Provided that a private transfer under regulation 57(a) shall be subject to the prevailing prescribed brokerage commission.

[L.N. 112/2013, s. 14.]

59. Application for approval of a private transfer

(1) Where it is intended to effect a private transaction of a listed security under regulation 57(a), (b) and (e), a stockbroker representing the proposed transferee shall assess, endorse and submit a written application with the required information and supporting documents—

(a) in the case of certificated securities, to the securities exchange where the security is listed, and

(b) in the case of immobilized securities, to the central depository at which the security is immobilized,

stating reasons why the proposed transaction is eligible to be transferred in a private transaction.

(2) Where an application is made under regulation 57(a) or (b), the securities exchange or a central depository, as the case may be, shall notify the stockbroker within seven days of receiving the application whether the securities exchange or the central depository objects to the private transaction or not, after examining and satisfying itself that the proposed transfer is eligible for consideration as a private transaction in accordance with these Regulations.

(3) The securities exchange or a central depository, as the case may be, shall, upon determination of any application made under regulation 57(a) or (b), approve and simultaneously notify the Authority that the application complies with regulation 57(a) or (b).

(4) The securities exchange or the central depository shall, upon receipt of an application made under regulation 57(e), forward the application together with its recommendations to the Authority for approval.

(5) The securities exchange and the central depository shall jointly submit to the Authority, guidelines for approval in respect of the processing requirements of a private transfer under regulation 57(a) and (b).

(6) The guidelines stipulated under subparagraph (5) 3 shall apply to all stockbrokers.

[L.N. 112/2013, s. 15.]

60. Approval fee

The approval fee for any transaction of a listed securities outside a securities exchange shall be at the rate prescribed by the Authority.

61. Private transactions under section 31(1A) of the Act

(1) With respect to an application for approval of a private transaction, falling under regulation 57(c) or (d) or section 31(1A)(ii) of the Act, the applicant shall submit to the Authority for approval a detailed draft information memorandum or a circular to be distributed to the shareholders containing information on—

(a) the name and address of the applicant;

(b) the date of incorporation;

(c) the particulars of core activities, directors, management and major shareholders;

(d) the details of any agreements entered or proposed to be entered into and the cost;

(e) a statement by the financial adviser managing the transaction that to the best of its knowledge and belief the application constitutes full and true disclosure of all material facts about the offer and issuer and where appropriate it has satisfied itself that the profit forecasts have been stated by the directors after due and careful inquiry;

(f) the details of any proposed merger, takeover, acquisitions, share, swap, reorganization or restructure scheme and the relevant shareholders and/or board resolutions;

(g) a declaration by the directors of the applicant in the following form:

"This application has been approved by the directors of the company all of whom jointly and severally accept responsibility for the accuracy of the information given and confirm that after making all reasonable inquiries and to the best of their knowledge and belief, there are no facts the omission of which would make any statement herein misleading.";

(h) any other matters as may be requested by the Authority.

(2) The applicant shall make a public announcement of its intention to apply to the Authority for approval of the proposed transfer and reasons therein and a copy of the transfer form for the proposed transaction shall be submitted to the Authority together with the application.

PART IX – DISSEMINATION OF INFORMATION TO THE PUBLIC AND SHAREHOLDERS

62. Disqualification of professionals

The Authority may—

(a) disqualify any person from giving professional opinion on matters related to listed securities, public offer or issue of securities; or

(b) otherwise penalize any professional who in the opinion of the Authority has given a professional opinion that is false or misleading or has omitted to give

an opinion where such omission is likely to be misleading in the circumstances in which the professional opinion is given or omitted as the case may be.

63. Content of public communication and circular to shareholders

(1) All circulars to shareholders and the public including advertisements, offer documents and any other communication by listed companies, professionals and persons licensed under the Act shall be factual and statements made shall be for the purpose of—

(a) assisting in the evaluation of a particular security, or type of securities;

(b) promoting the industry, the service offered or the desirability of investing in securities in general; or

(c) providing shareholders or the public with accurate and adequate information about the listed company or securities transaction and market activity.

(2) No material fact or qualification may be omitted if such omission would cause a shareholders' circular, advertisement or offer document to be misleading in the context of other information presented to the shareholders, investors or the general public.

(3) In making a recommendation with respect to any security a licensed person, issuer or analyst shall—

(a) disclose the price at the time of the recommendation and, if applicable, the fact that such licensed person or analyst makes a market in the securities recommended (where applicable);

(b) recommend a buy or sell action and shall disclose the basic facts and assumptions in support of such recommendation and whether the licensed person or analyst or person associated to it owns more than a nominal amount of such securities;

(c) highlight all risk factors that such licensed person or analyst has taken into consideration in the recommendation; and

(d) state the source of the facts and the recommended time frame for the validity of assumptions.

(4) Any offer of a report, analysis including their updates or other service without any charge must be provided as such without any condition or obligation other than what is clearly described in the offer.

(5) No claim with respect to research or analysis, capacity or expertise under which the facilities are available, may be made beyond those in actual possession of the person making the claim.

(6) All statements made in a circular to shareholders and an advertisement directed to the general public shall be supported by facts the source of which shall be disclosed therein.

(7) All circulars, advertisements or offer of securities to shareholders of listed companies shall be submitted to the Authority for approval prior to distribution, provided that the Authority may require the inclusion of such additional information which in its opinion is relevant to the shareholders or investors.

(8) For the purposes of this regulation—

(a) **"analyst"** includes business, economic, financial or any other analyst by whatever name who analyses and expresses opinions or recommendations about securities or public listed companies;

(b) **"nominal"** in relation to a security means a value of ten thousand shillings or less.

PART X – THE INVESTOR COMPENSATION FUND

64. Contribution by licensees

(1) Every buying or selling stockbroker or dealer that is a trading participant of a securities exchange shall contribute to the Compensation Fund such amount as shall be prescribed from time to time by the Authority.

(2) All monies contributed to the Compensation Fund shall be credited to a bank account established by the Authority for that purpose.

[L.N. 88/2012, s. 27.]

65. Management and audit of the Compensation Fund

(1) The Compensation Fund shall be managed by the Authority as a separate fund and disclosed as such in the Authority's annual balance sheet as an asset and liability.

(2) The Authority shall keep proper accounts and records of the Compensation Fund and in every financial year, prepare a statement of accounts showing the movement and financial position of the Fund in the Authority's annual report.

(3) The accounts referred to in paragraph (2) shall include the income and all sources of contribution to and expenses or disbursements of the Compensation Fund including the fees charged by the Authority for the management of the Fund and any investments of the Fund.

(4) The accounts and records of the Compensation Fund shall be audited by the auditor appointed by the Authority for the Authority's annual accounts.

66. Trustees of the Compensation Fund

Members of the Authority shall act as the trustees of the Compensation Fund and may appoint a committee of the Board to oversee its management.

67. Meetings of the Compensation Fund

A special meeting of the members of the Authority shall be convened by the Chief Executive of the Authority whenever the business of the Compensation Fund so requires and the Board of the Authority shall determine the procedure for such meetings.

68. Report to the Minister

The Authority shall include information relating to the Compensation Fund in its annual report to the Minister for the time being responsible for Finance.

69. Compensation of investors

Whenever an investor has suffered pecuniary loss due to the failure of a stockbroker, dealer or on investment bank carrying out stockbroking business or dealing, operations, to meet its contractual obligations, which loss has not been compensated—

(a) from the bank guarantee or securities furnished by such licensed person to the securities exchange or central depository as the case may be of which such licensed person is a trading participant; or

(b) from the Compensation Fund of the securities exchange of which such licensed person is a trading participant; or

(c) from any payment made by a statutory manager appointed under section 33A(2)(a) of the Act,

(hereinafter referred to as "the net loss") the investor shall apply to the Authority for compensation from the Compensation Fund in cash or securities equal to the net loss.

[L.N. 88/2012, s. 28.]

70. Maximum compensation

(1) The net loss to an investor shall be subject to a maximum of fifty thousand shillings.

(2) The statutory manager shall recommend to the Authority the net loss that the investor may claim from the Compensation Fund.

[L.N. 72/2009, s. 2.]

71. Investor Compensation Committee

(1) The Authority shall establish an Investor Compensation Committee to deal with claims from investors.

(2) The Compensation Committee shall include the Chairman and the Chief Executive of the Nairobi Stock Exchange and any other persons who may be appointed by the Authority to be members of the Committee.

(3) The Compensation Committee shall, after examination of the evidence produced in support of a claim, make any recommendation to the Authority with respect to whether to allow or disallow such claim and, if the recommendation is to allow the claim, an assessment of the amount payable including any *pro rata* allocation of any such limit prescribed for every defaulting stockbroker or dealer or the size of the fraud, as applicable.

(4) While determining the amount to be paid in compensation to an Investor, the Compensation Committee shall take into account the total amount available in the Compensation Fund.

(5) The Authority shall give notice of its decision to the investors in writing or by other means of appropriate notification.

72. Notification of pecuniary loss

(1) Every investor who has suffered a pecuniary loss shall notify the statutory manager of the licensed person liable for the loss within sixty days of the appointment of the statutory manager.

(2) The statutory manager shall pay all valid claims within six months of its appointment.

73. Submission of claims

(1) The statutory manager shall submit to the Authority a list of investors to be compensated as well as the supporting documents.

(2) The Authority shall convene a meeting of the Compensation Committee within twenty-one days of receipt of submission of a claim by the statutory manager.

74. Payment of claims

(1) Where payment has been made out of the Compensation Fund on behalf of a licensed person, such licensed person shall be liable to the Compensation Fund for an amount equal to the payment made out of the Fund.

(2) In the event of liquidation of a licensed person, the liquidator shall pay the Compensation Fund any money paid by the Fund to investors on behalf of the insolvent person under these Regulations to the extent of such payment.

PART XI – DISCLOSURE OF INFORMATION

75. Disclosure of interest in shares

(1) Where any person—

(a) by his knowledge acquires a notifiable interest in shares in a listed company's relevant share capital, or ceases to be interested in such shares; or

(b) becomes aware that he has acquired a notifiable interest in the relevant shares of a listed company or that he has ceased to be interested in such shares in which he was previously interested,

such person is under an obligation to notify the listed company of the interest which he has, or had in its shares.

(2) Every listed company shall make a monthly report to the securities exchange giving particulars of—

(a) all persons from whom the listed company has received a notification under paragraph (1);

(b) all directors holding one per cent or more in the relevant share capital;

(c) cumulative holding of the relevant share capital by directors.

(3) A person is taken to be interested in shares—

(a) if he is an employee of the listed company;

(b) if he is a director or chairman of the listed company;

(c) in which his spouse, any infant child or step child of his is interested; or

(d) if a body corporate is interested in them and—

(i) the body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(ii) the person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body corporate; or

(iii) the person is a director or a shareholder of the body corporate.

(4) The existence of the obligation in a particular case depends—

(a) on circumstances obtaining before and after whatever is in that case the relevant time; and

(b) in a case within paragraph (1)(b), the time at which the person became aware of the facts in question.

(5) In this regulation—

(a) a **"director"** means a director of a listed company;

(b) **"relevant share capital"** means the company's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company; and

(c) a **"notifiable interest"** means three per cent or more of the relevant share capital of a listed company.

76. Furnishing of information to the Authority

(1) Every person notified by the Authority pursuant to section 13 of the Act shall provide any specified information in the form and content as required by the Authority, with regards to the information on orders, purchases, sales or trading and settlement of securities including documentation relating to such transactions and disclosure of beneficial ownership of securities and such information may be shared with other regulatory agencies for the sole purpose of ensuring compliance, enforcement and any other matters pursuant to a bilateral or multilateral memorandum of understanding.

(2) The information sought from any person under paragraph (1) shall be submitted to the Authority in a written form within the time specified by the Authority and such information shall include statements made under oath.

(3) Where information has been submitted to the Authority under paragraph (2), the Authority may seek to verify such information and the person in possession of such information and documentation shall avail it without obstruction to the authorized personnel of the Authority.

(4) The Authority shall enter into a memorandum of understanding pursuant to section 11(3)(q) of the Act either on a bilateral or a multilateral basis with other regulatory organizations or agencies on a reciprocal basis to facilitate exchange of information for the purposes of development of the capital markets and for enforcement and compliance with the laws and regulations of capital markets applicable in the jurisdictions party to the memorandum of understanding.

(5) Where the Authority does not have within its jurisdiction information or documents requested under a bilateral or multilateral memorandum of understanding the Authority shall seek to collaborate with other relevant agencies to obtain such information with a clear understanding with such other agencies that the information may be shared with other regulatory agencies pursuant to the memorandum of understanding.

(6) The information obtained under paragraph (1) and (5) shall be used by the Authority for regulatory purposes including enforcement and compliance and sharing with other regulatory agencies pursuant to the memorandum of understanding.

(7) The Authority may include information obtained under paragraph (1) and (5) in any report by the Authority for its internal regulatory purposes or exchange such information

pursuant to the memorandum of understanding or publish such information pursuant to section 11(3)(k) of the Act.

77. Preservation of financial and other records

Every issuer of securities to the public or a section thereof approved by the Authority and every person licensed by the Authority, shall preserve all financial and other records whether such records are maintained in an electronic or manual form, relating to transactions conducted by the licensee or to the offer of securities by an issuer, including daily, weekly, monthly, quarterly and annual transactions and other relevant records including minutes of all meetings on account of such transactions and registers of securities, for a period of seven years.

78. Destruction of financial and other records

No person shall at any time within the prescribed period interfere, deface or destroy the records referred to in regulation 77, in any manner that will lead to the alteration of any facts or content therein including the date, amount and names of all persons party to the transactions whether such person is a licensee of the Authority; an issuer of securities to the public or a section thereof, an auditor of such licensee or issuer or any professional who is or will be involved directly or indirectly in the transactions.

PART XII – MISCELLANEOUS PROVISIONS

79. *Deleted by L.N. 99/2007, s. 3.*

80. Prevention of money laundering and other illicit activities

(1) Every licensed person shall obtain through a client information questionnaire details from a client or a potential client with respect to the following—

(a) the identity of the client or a potential client supported by documentary evidence;

(b) nature of business activities of the client or potential client;

(c) origin and sources of funds used or to be used for investment in securities. Where the money or funds originate from outside Kenya a confirmation from the remitting entity of the nature of its business and of the source of the moneys or funds;

(d) a written declaration by the client or potential client confirming—

(i) the accuracy of all information given under paragraphs (a) to (c); and

(ii) that the moneys or funds used for the investment in securities is not arising out of the proceeds of any money laundering or other illicit activities;

(e) a licensed person shall maintain at least the following information in respect of their clients and shall ensure that they link each transaction to the beneficial owner—

(i) where the client is a natural person, any person on whose behalf the client is acting, whether as nominee, trustee or any other capacity;

(ii) where the client is a limited partnership, the name of the general partner (and where the general partner is a body corporate, the information as prescribed under item (iv) shall be maintained);

(iii) where the client is an unlimited partnership, the names of the other partners;

(iv) where the client is a body corporate, the name of all individuals who have a direct or indirect interest amounting to thirty per cent or more of the equity;

(v) where the client is a trust, the name of the settlers, trustees, protectors and principal named beneficiaries;

(vi) where the client is a legal arrangement other than a trust, the name of the owner or controller;

(f) where the customer is a financial institution, such as a bank, insurance company, pension fund or collective investment fund and is conducting business collectively on behalf of a large number of underlying customers, and where the institution is subject to rules or regulations that require the financial institution to conduct customer due diligence, the licensee is permitted to rely on the financial institution to hold beneficial ownership information and need not hold that information itself.

(2) The client information under paragraph (1) shall be obtained by the licensed person every time a client places an investment order with the licensed person.

(3) The client information obtained under paragraph (1) and (2) shall be maintained by the licensed person as part of the records required under regulations 19, 31, 43 and 49.

(3A) The licensed person shall make such information available to the Authority on request and also to the central depository for the purpose of answering an enquiry made of it under Section 58 of the Central Depositories Act (No. 4 of 2000).

[L.N. 99/2009, s. 16.]

81. Amendment of L.N. 429/1992

The Capital Markets Authority Rules, 1992 are amended by deleting Parts II, III, IV, V, VI, VII, VIII, IX, X and XIII.

82. Revocation of L.N. 232/1994

The Capital Markets Authority (Amendment) Rules, 1994 are revoked.

83. Revocation of L.N. 428/1992

The Capital Markets Authority Regulations are revoked.

FIRST SCHEDULE

FORM 1

[Regulations 3, 14, 28, 39, 45 & 51, L.N. 88/2012, s. 29.]

CAPITAL MARKETS (LICENCING REQUIREMENTS) (GENERAL) REGULATIONS, 2002

APPLICATION FOR A LICENCE/RENEWAL OF LICENCE TO CONDUCT THE BUSINESS OF A SECURITIES EXCHANGE, STOCKBROKER, DEALER, INVESTMENT ADVISER, FUND MANAGER, INVESTMENT BANK OR AUTHORISED SECURITIES DEALER

Application is made for a securities exchange/stockbroker/dealer/investment adviser/fund manager/investment bank/authorized securities dealer (tick as appropriate) licence/renewal of licence (*delete where inapplicable*) under the Act and the following statements are made in respect thereof:

Note—

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of company ..... Limited
2. Registered office .....
3. Date of incorporation .....
4. Address .....
5. E-mail .....
6. Location, address and telephone number of principal office .....
   .....
7. Location, address and telephone number of branch offices .....
   .....
8. Details of capital structure:
   (a) Nominal capital (KShs.) .....
   (b) Number of shares .....
   (c) Paid-up capital (KShs.) .....
9. Shareholders (*or investors in the case of a securities exchange*) (please attach a list)

Name	Address & telephone number	Number of shares held

10 (a) Directors (please attach a list)

Name	Identity card / Passport number	Date of appointment	Date of birth	Permanent address & telephone number	Academic or professional qualification	Number of shares held in the company

(b) Secretary

Name .....

Address .....

Institute of Certified Secretaries of Kenya Registration No. .....

FIRST SCHEDULE—*continued*

(c) Chief executive and other key personnel

Name	Identity card / Passport number	Date of appointment	Date of birth	Permanent address &telephone number	Academic or professional qualification	Number of shares held in the company

11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/No. If 'yes', give details

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No. If Yes, give details.

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No. If Yes, give details.

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. If yes, give details.

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes/No. If 'yes', give details.

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes,', give details.

.....

17 (1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities exchange? Yes/No. If 'yes', give details.

.....

(2) Have any of the above persons been—

(a) refused admission as a trading participant of any securities organization? Yes/No. If 'yes', give details

.....

(b) expelled from or suspended from trading on any securities organization? Yes/No. If 'yes' give details

.....

(c) subjected to any other form of disciplinary action by any stock exchange? Yes/No. If 'yes', give details.

.....

FIRST SCHEDULE—*continued*

18. Business references:

Name	Address	Telephone number(s)	Occupation

19. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience

20. List the office facilities of the applicant

.....

21. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority.

.....

22. State securities exchange at which the applicant intends to seek admission as a trading participant

.....

23. Any other additional information considered relevant to this application:

.....

We ..... (Director), ... (Director)

and ..... (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this ..... day of ..... 20.....

Signed:

..... (Director)

..... (Director)

..... (Secretary)

Note:

1. *The following shall be submitted with the application for a licence:*
   - *(a) memorandum and articles of association;*
   - *(b) certificate of incorporation;*
   - *(c) business plan complying with the requirements of regulation 15(1)(d) (stockbroker & dealer), regulation 29(1)(d) (investment adviser and fund manager), regulation 39(2)(d) (investment banks) regulation 46(d) (authorized securities dealers) of the Capital Markets Authority (Licensing Requirements) (General) Regulations;*
   - *(d) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in the case of application of licence), management accounts up to the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);*
   - *(e) a declaration by the directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of the application—*
     - *(i) the business of the company has, in their opinion, been satisfactory maintained;*
     - *(ii) there have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;*
     - *(iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;*
     - *(iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company of its subsidiaries.*

FIRST SCHEDULE—*continued*

(f) a copy of the bank guarantee to be lodged with the securities exchange or the central depository (where applicable);

(g) a declaration by persons authorized as prescribed to accompany the application form;

(h) an application fee of KShs. 2,500.

SECOND SCHEDULE

[Section 11, L.N. 32/2008, r. 5, L.N. 99/2009, r. 1, L.N. 190/2010, L.N. 112/2013, r. 16, L.N. 35/2016, r. 2.]

THE CAPITAL MARKETS AUTHORITY FEES STRUCTURE

As Approved by the Minister for Finance Pursuant to Section 36(1)(a) of the Capital Markets Act

PART I – APPROVAL AND ANNUAL FEE

[Sections 11(3)(d)(ii) & 23(3) of the Act).]

(a) Securities Exchange Section 20(7) Capital Markets Act	annual fee	1% of the gross earnings payable, excluding the transaction fees
(b) Credit Rating Agency 200,000	approval fee	
(c) Central Depository Systems	approval and annual fee	200,000
(d) Registered Venture Capital Company	approval fee	250,000
(e) Fund of a registered Venture Capital Company	approval and annual fee (payable per fund)	250,000 (subject to a maximum annual fee of 500,000 payable any registered venture capital company)
(f) Collective Investment Schemes Section 30(3)(c) Capital Markets Act fee	approval and annual	150,000

PART II – LICENCE AND RENEWAL FEES

[Section 11.]

(a) Stockbroker or Dealer	100,000
(b) Investment Adviser	100,000
(c) Fund Manager	100,000
(d) Fund manager registered with Retirement Benefit Authority	50,000
(e) Authorized Depositories	100,000
(f) Authorized Securities Dealers	200,000
(g) Investment Banks	250,000

Application fees for approvals, licence or renewal of all licences is Kshs. 2,500)

PART III – OTHER FEES

[Section 11(3)(d)(ii) of the Act.]

(a) *Issuer of securities to the public or a section of public* *(percentage of the value of issue subject to a maximum fee of Kshs. 30 million.*)		0.15%
(b) Approval of listing by introduction— *(percentage of value of the issue)*		0.25 subject to a maximum of KShs. 5,000,000. .
(c) Issuer of Capitalization or rights issue *(percentage of the value of the issue)*		KShs. 50,000 or 0.25% whichever is higher subject to a maximum fee of Kshs. 30 million. .
(d) Issuer of commercial paper and corporate bonds - approval and renewal (*percentage of the value of the issue*)		0.1% subject to a maximum of Kshs. 30 million.
(dd) Issuer of regional fixed income securities – each East African Partner State regulator approving the issue shall receive an equal share of the evaluation fee of 0.1% of the value of the offer subject to a maximum of the local currency equivalent to United States of America dollars 200,000 and a minimum of the local currency equivalent to United States of America dollars 20,000.		
(e) Approval of listing of Government Securities *(percentage of the amount raised subject to a maximum of Kshs. 50 million.)*		0.075%
(f) Market Development fees to support investor education and market infrastructure development:		
(i) amount payable by listed companies to the Authority (percentage of market capitalization as at November 30 of each year)		0.01% subject to a minimum fee of KShs. 50.000 and a maximum of KShs. 100,000 per year. .
(ii) amount payable directly to the Authority by issuers with respect to listed fixed income securities, including the Government and corporate securities on the Fixed Income Market Segment of a securities exchange (percentage of the aggregate value of the listed securities as at November 30 of each year).		0.005% subject to a minimum fee of KShs. 100,000 per year and a maximum of KShs. 2.5 million
(g) Amount payable by each buyer and seller of the listed security: (i) shares 0.12% (percentage of consideration); (ii) fixed income securities 0.0015% (percentage of consideration).		

.

(h) Amount payable by each buying and selling stockbroker– (i) shares 0.01% (percentage of the consideration payable to the Investor Compensation Fund under section 18(2) of Capital Market Act); (ii) fixed income securities 0.004% (percentage of the consideration payable to the Investor Compensation Fund under section 18(2) of Capital Market Act).		
(i) Approval fee payable by the transferee for transactions of listed securities outside the securities exchange authorized under section 31(1A)(i) and (ii) as follows–		
(i) Transfer in settlement of an estate of a deceased person or a transfer not resulting in a change in beneficial ownership otherwise than for purposes of (ii) and (iii) below:		Ksh. 1,500 per application (including an application relating to a portfolio of securities), provided that where the total value of securities in the application is below Ksh.10,000, no fee shall be payable.
(ii) transfer, arising out of the re-organisation of the share capital of a listed company, that does not result in a change of beneficial interest in such share capital *(percentage of the nominal value of the shares),* Subject to a maximum of Ksh. 100,000.		. 0.1%
(iii) any other transfer that results in a change of beneficial interest in the shares capital of a listed company, including any transfer under a take-over scheme, merger or acquisition, approved by the Authority *(percentage of the market value of the shares)*.		0.5%

THIRD SCHEDULE

[Regulation 12(7).]

DISCLOSURE BY A SECURITIES EXCHANGE IN THE FINANCIAL STATEMENT

The accounts shall be prepared in accordance with the International Accounting Standards

1. The following shall be disclosed in the income statement—

(a) Income—

(i) listing fees;

(ii) transaction fees;

(iii) finance income;

(iv) other income;

(b) Expenditure—

.

(i) personnel costs including separate disclosure of consolidated pay, pension and gratuity;
(ii) staff training;
(iii) rent and maintenance;
(iv) investor education;
(v) directors' fees;
(vi) annual fees payable to Capital Markets Authority;
(vii) committee members' expenses;
(viii) audit fees;
(ix) depreciation;
(x) general administrative expenses;
(xi) legal and professional expenses;
(xii) others expenditure.

2. The following shall be disclosed in the balance sheet—
(a) property, plant and equipment;
(b) motor vehicles;
(c) goodwill;
(d) investments;
(e) listing fees receivable;
(f) deferred tax;
(g) members fund;
(h) revenue reserves;
(i) compensation fund.

FOURTH SCHEDULE

[Regulations 21(1)(d), 32(1)(d), 43 & 51.]

DISCLOSURES BY OTHER LICENSEES INCLUDING STOCKBROKERS, INVESTMENT ADVISERS, FUND MANAGERS, DEALERS AND INVESTMENT BANKS IN THE FINANCIAL STATEMENT

1. The following shall be disclosed in the income statement where applicable—
(a) Income—
(i) stock brokerage commission;
(ii) consultancy income;
(iii) dealing income;
(iv) advisory income including restructuring, and corporate finance;
(v) asset management fees;
(vi) underwriting fees;
(vii) other services income;
(viii) finance income.
(b) Expenditure—
(i) directors' emoluments;
(ii) staff costs;
(iii) rent and maintenance;
(iv) depreciation;
(v) audit fees;

(vi) administrative expenses;

(vii) finance expenses.

2. The following shall be disclosed in the balance sheet—

(a) property, plant and equipment;

(b) motor vehicles;

(c) investments;

(d) deposits and prepayments;

(e) share capital;

(f) revenue reserves;

(g) directors' loans;

(h) shareholders loans;

(i) amounts due to clients.

FIFTH SCHEDULE

[Regulation 26, L.N. 119/2004, L.N. 189/2010, s. 2, L.N. 88/2012, r. 30, L. N. 112/2013, r. 17, L.N. 35/2016, r. 3.]

BROKERAGE COMMISSION AND FEES

1. For new issues

(a) Fees—

(i) Sponsoring stockbrokers: Sponsoring fee as negotiated with the issuer.

(ii) The issuer shall pay a marketing fee not exceeding KSh. 25,000 each to all stockbrokers subject to the stockbroker placing securities of a minimum value of KSh. 250,000.

(b) Placing Commission—

(i) Stockbrokers: 1.5% of the value of the successful application subject to a minimum of KSh. 100.

(ii) Participating banks (as agents of the issuer): 1% of the value of successful applications.

2. FOR SECONDARY TRADING

Consider-ation (Transaction Value)	Net Brokerage Commission %	Transaction Fee			Investor Compensation Fund Fee and Central Depository Guarantee Fund Fee		Maximum Total Cost to Investor %
		NSE %	CMA %	CDSC %	CDSC Guarantee Fund %	CMA Investor Compensation Fund %	
Upto Kshs 100,000	1.76*	2	0.12	0.08	0.01*	0.01*	2.10
Above Kshs 100,000	Open to negotiation subject to a maximum of 1.36%	2	0.12	0.08	0.01*	0.01*	1.70

1. * Stockbrokerage commission is net of contribution by the stockbroker or investment bank of 0.02% to the CMA Investor Compensation Fund and CDSC Guarantee Fund Fee.

2. Stockbrokerage commission shall be limited to Kshs 100 for all odd lots transactions up to Kshs 3000 excluding statutory fees. Odd lots transactions in excess of Kshs. 3000 shall be charged a commission at the prescribed rate of 1.76% excluding statutory fees.

3. For debt instruments (secondary market)

	Net Brokerage Commission	Transaction fee	
	%	NSE	CDSC
%	0.024%	0.0035%	0.002%
transaction			
value			

Market intermediaries trading in the secondary market (stockbrokers, investment banks and authorized securities dealers) Commission is net of contribution by the stockbroker of 0.004% to the investor compensation fund.

CAPITAL MARKETS (TAKE-OVERS AND MERGERS) REGULATIONS, 2002

ARRANGEMENT OF REGULATIONS

SCHEDULES

[Subsidiary]

CAPITAL MARKETS (TAKE-OVERS AND MERGERS) REGULATIONS, 2002

[L.N. 126/2002.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Take-Overs and Mergers) Regulations, 2002 and shall be deemed to have come into operation on the 24th July, 2002.

2. Interpretation

(1) In these Regulations, unless the context otherwise requires—

"acquiring effective control" means the acquisition of shares in the offeree which together with shares if any, already held by the offeror or by any other person that is deemed to be associated or a company or by any other company that is deemed by virtue of being a related company to the offeror or by persons acting in concert with the offeror carry the right to exercise or control the exercise of not less than twenty-five per cent of the votes attached to the ordinary shares of the offeree provided that such person already holding twenty five per cent or more but less than fifty per cent of the voting shares may acquire no more than five per cent of the shares of a listed company in any one year;

"acting in concert" means persons who pursuant to a formal or informal agreement or understanding actively co-operate through the acquisition by any of them of shares having voting rights in a public listed company to obtain or consolidate control of that company;

"Board" has the meaning assigned to it in the Act;

"competing take-over offer" means an offer made by a person with respect to the offeree's voting shares in response to an offer that has already been made and such other person shall be deemed to be the competing offeror.

"counter offer" means a take-over offer made by an offeree to an offeror;

"effective control" is where a person or a company makes an offer for the acquisition of effective control of an offeree which holds shares which together with shares, if any, already held by such person or an associate person or a company or by any other company that is deemed by virtue of being a related company or by persons acting in concert with such person carry the right to exercise or control the exercise of not less than twenty five per cent of the votes attached to the ordinary shares of an offeree which shall be deemed to be a take-over and the provisions of these Regulations shall apply except where that person or associate person or related company or persons acting in concert with the person, already hold shares carrying more than ninety per cent voting rights in the offeree;

"days" means calendar days excluding Saturdays, Sundays and public holidays;

"merger" means an arrangement whereby the assets of two or more companies become vested in or under the control of one company;

"offeror" in relation to a take-over scheme or a take-over offer means any person who acquires or agrees to acquire effective control in the offeree either directly or with any associated person or related company or any person acting in concert with the offeror but does not include a person who holds shares carrying more than ninety per cent voting rights in the offeree;

"offeree" in relation to a take-over scheme or a take-over offer means a listed company on a securities exchange with shares to which the scheme or offer relates;

"offer period" means the period commencing from the date the offeror sends an offeror's statement under regulation 4 until—

(a) the first closing date of the take-over offer; or

(b) the date when the take-over offer becomes or is declared unconditional as to acceptances, lapses or is withdrawn, if this date is later than that referred to in paragraph (a).

"press notice" means to announce or publish information on the take-over through the print or electronic media;

"related company" means a company which is—

(a) the holding company of another company;

(b) a subsidiary of another company; or

(c) a subsidiary of the holding company of another company,

And for purposes of ascertaining the relation, the first mentioned company and the other company shall be deemed to be related to each other;

"reverse take-over offer" means a situation where an offeror makes a take-over offer for the voting shares of an offeree by means of an exchange of shares such that if the take-over offer is accepted, the shareholders of the offeree would control the offeror;

"take-over offer" means a general offer to acquire all voting shares in the offeree company and includes a take-over scheme;

"take-over scheme" means a scheme involving the making of offers for acquisition by or on behalf of a person of—

(a) all voting shares in the offeree;

(b) such shares in any company which results in an offeror acquiring effective control in an offeree;

(c) any shareholding of twenty five per cent or more in a subsidiary of a listed company that has contributed fifty per cent or more to the average annual turnover in the latest three financial years of the listed company preceding the acquisition; or

(d) any acquisition deemed by the Authority to constitute a take-over scheme.

"ultimate offeror" includes a person—

(a) in accordance with whose directions and instructions the proposed offeror or any person acting in concert with the proposed offeror is accustomed to act; or

(b) having an interest in the proposed take-over offer pursuant to an agreement, arrangement or understanding with the proposed offeror.

PART II – TAKE-OVER PROCEDURE

3. Acquiring effective control

(1) No person shall make an offer to acquire shares or voting rights of a listed company which together with shares or voting rights if any held by such person or by persons acting in concert or by associated person or related company entitle such person to exercise effective control in the listed company without complying with the take-over procedure provided for under regulation 4.

(2) Where a person—

(a) holds more than twenty five per cent but less than fifty per cent of the voting shares of a listed company, and who acquires in any one year more than five per cent of the voting shares of such company; or

(b) holds fifty per cent or more of the voting shares of the listed company and who acquires additional voting shares in the listed company; or

(c) acquires a company that holds effective control in the listed company or together with the shares already held by associated persons or related company or persons acting in concert with such person, will result in acquiring effective control of the listed company; or

(d) acquires any shareholding of twenty five per cent or more in a subsidiary of a listed company that has contributed fifty per cent or more to the average annual turnover in the latest three financial years of the listed company preceding the acquisition, the person shall be presumed to have a firm intention to make a take-over of such listed company and shall be required to comply with the take-over procedures set out under regulation 4:

Provided that a company that is already in control of twenty five per cent but less than fifty per cent of the voting shares of the listed company may acquire upto five percent in any one year in such listed company upto a maximum of fifty percent.

4. Take-over notice and statement

(1) A company or person who intends or proposes to acquire effective control in a listed company shall not later than twenty four hours from the resolution of its board to acquire effective control in the company or not later twenty four hours prior to making a decision to acquire effective control in the company in the case of any other person announce the proposed offer by press notice and serve a notice of intention, in writing of the take-over scheme containing the particulars set out in paragraph (2), to the—

(a) proposed offeree at it's registered office;

(b) securities exchange at which the offeree's voting shares are listed;

(c) Authority; and

(d) the Commissioner of Monopolies and Prices appointed under the Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504), where the offeror is engaged in the same business as the offeree.

(2) The press notice referred to in paragraph (1) shall—

(a) be made in at least two English language dailies of national circulation;

(b) be made after the notice of intention has been served on the proposed offeree;

(c) state that the person intends to acquire or has acquired effective control in the company and has at a stated date served a notice of intention to make a take-over offer to the company or has made an application to the Authority for exemption from the take-over requirements, in compliance with these Regulations; and

(d) include the following information where applicable—

(i) the identity of the proposed offeror and all companies related to or persons associated or acting in concert with the proposed offeror;

(ii) the identity of the proposed offeree and the exchange at which its shares are listed;

(iii) whether the proposed offeror intends to make a take-over offer or apply to the Authority, for exemption from making a take-over offer;

(iv) the type and total number of voting shares of the offeree—

(aa) which have been acquired, held or controlled directly or indirectly by the proposed offeror or any related companies or any person associated or acting in concert with the proposed offeror;

(bb) in respect of which the proposed offeror or any related company or any person associated or acting in concert with the proposed offeror has received an irrevocable undertaking from other holders of voting shares to which the take-over relates to accept the take-over offer; and

(cc) in respect of which the proposed offeror or any related company or any person associated or acting in concert with the proposed offeror has an option to acquire;

(v) where applicable, the details of any existing or proposed agreement, arrangement or understanding relating to voting shares referred to in paragraph (iv) between the proposed offeror or any related company or person associated or acting in concert with the proposed offeror and the holders of the voting shares to which the take-over relates; and

(vi) the conditions of the take-over offer, including conditions relating to acceptances, listing and increase of capital.

(3) Where a person has acquired effective control in a listed company and has no intention of making a take-over offer, that person shall make a public announcement containing information that is specified in paragraph (2) including the broad reasons for exemption, immediately after having served the notice in writing to the parties specified in paragraph (1) and shall apply to the Authority for exemption from the take-over requirements under regulation 5.

(4) The offeror shall serve on the offeree within ten days from the date of the notice of intention, an offeror's statement of the take-over scheme containing the information specified in the First Schedule to these Regulations and such statement shall be approved by the Authority.

(5) Where a notice of an intention to make a take-over offer under paragraph (1) or an offeror's statement under paragraph (4) have been served upon the offeree, the proposed offeror shall not amend or withdraw the intention or the statement without the prior written consent of the Authority.

(6) The Authority shall on application of the offeror, permit the offeror at any time prior to the offeror serving the take-over document upon the offeree, to—

(a) amend in writing any notice or statement lodged by the offeror pursuant to paragraphs (1) and (4); or

(b) substitute in writing a fresh notice or statement for an earlier notice or statement lodged with the offeree pursuant to paragraphs (1) or (4) in such manner and subject to such terms as the offeror may consider as justified by the circumstances of the case and such notice or statement shall be approved by the Authority;

(7) For the purpose of paragraph (6), the computation of time shall be as from the date when the first written notice or offeror's statement is lodged by the proposed offeror.

5. Exemptions

(1) Subject to this regulation, the Authority may in writing grant an exemption from complying with the provisions of regulation 4 to any particular person or take-over offer or to any particular class, category, description of persons or take-over offers subject to such conditions as may be imposed by the Authority.

(2) The granting of an exemption under paragraph (1) shall serve the wider interests of the shareholders and the public and such circumstances shall include—

(a) an acquisition for the purpose of a strategic investment in a listed company that is tied up with management or any other technical support relevant to the business of such company;

(b) a management buy-out involving a majority of the employees of the offeree;

(c) a restructuring of the listed company's share capital including acquisition, amalgamation and any other scheme approved by the Authority;

(d) an acquisition of a listed company in financial distress;

(e) an acquisition of effective control arising out of disposal of pledged securities;

(f) the maintenance of domestic shareholding for strategic reason(s); and

(g) any other circumstances which in the opinion of the Authority serves public interest.

(3) Nothing in these Regulations shall require any person to comply with the take-over procedure provided under regulation 4 if such person at the commencement of these Regulations holds—

(a) twenty five per cent or more of the voting shares of a listed company; or

(b) twenty five per cent or more of the voting shares in an issuer applying for listing, at the date of listing whichever is later.

(4) The Authority shall make a public announcement through the print and electronic media of its decisions on the exemptions granted pursuant to this regulation.

6. Offeree's obligation

(1) Upon receiving the offeror's statement in accordance with regulation 4(4) the offeree shall inform the relevant securities exchange and the Authority and make an announcement by a press notice of the proposed take-over offer within twenty four hours of receipt of the offeror's statement.

(2) The press notice referred to in paragraph (1) shall be made in at least two English language dailies of national circulation and shall include all material information contained in the offeror's statement.

7. Take-over offer

(1) The offeror shall within fourteen days from the date of serving the offeror's statement pursuant to regulation 4(4) submit to the Authority, for approval, the take-over offer document in relation to the take-over offer which shall include the information contained in the Second Schedule and such other information that the Authority may require.

(2) The Authority shall approve the take-over offer document within thirty days where the document is in compliance with the requirements of these Regulations or within such other time as may be determined by the Authority provided that where the Authority has determined it is not possible to grant approval within thirty days, it shall advice the offeror of this fact.

(3) The take-over offer document approved by the Authority shall include a statement in the following words—

> "Approval has been obtained from the Capital Markets Authority for the compliance with the requirements relating to the take-over offer document under the Capital Markets (Take-overs and Mergers) Regulations, 2002.
>
> As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made in this take-over offer document. Approval of this take-over offer is not to be taken as an indication of the merits of this offer or recommendation by the Authority to the offeree's shareholders".

(4) The take-over offer document shall be served by the offeror on the offeree within five days from the date of approval of the take-over offer document by the Authority.

(5) The offeree shall within fourteen days from the date of receipt of the approved take-over document circulate it to its shareholders to whom the take-over offer relates, together with the independent adviser's circular referred to in regulation 10.

8. Requirements for take-over offer

(1) The take-over offer shall be dated and shall unless varied under regulation 16, state that it will remain open for acceptance by the offeree for thirty days from the date of service of the take-over offer document by the offeror.

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

(3) The offer shall state—

(a) whether the offer is conditional upon acceptance of the offer under the take-over scheme, being received in respect of a minimum number of issued voting shares of the offeree and if so, the percentage;

(b) where the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of such payment;

(c) where the shares are to be acquired through a share swap, the proportion of the share swap and the period within which the offeree's shareholders shall receive the new shares;

(d) whether the offeror is engaged in the same line of business as the offeree, and whether the offer is conditional upon receiving approval under the Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504) or other regulatory approval outside Kenya where the transaction involves companies incorporated outside Kenya;

(e) whether the offer is conditional upon maintenance of a minimum per centage of share holding by the general public to satisfy the continuing eligibility requirements for listing; and

(f) the circumstances that shall apply in the event the conditions in subparagraphs (a) to (e) are not fulfilled.

(4) Every take-over offer document shall contain the following words which shall be prominently displayed on the first page of the take-over offer document—

"If you are in any doubt about this offer, you should consult the independent adviser appointed by your board of directors, or your stockbroker, investment bank or other professional investment adviser".

9. Offeree comments on the statement and take-over offer

(1) Subject to the independent advice required under regulation 10 the Board of directors of the offeree shall within fourteen days after the receipt of the take-over offer document under regulation 7 issue a circular to the holders of voting shares in the offeree to which the take-over offer relates, indicating whether or not the board of directors of the offeree recommend to holders of the voting shares the acceptance of the take-over offer(s) made by the offeror under the take-over scheme

(2) The circular referred to in paragraph (1) shall include the information contained in the Third Schedule.

(3) The board of directors of the offeree shall disclose in the circular referred to in paragraph (1) to every holder of the voting rights to which the take-over offer relates all such information as the holders of such voting shares and their professional advisers would reasonably require or expect to find in such a circular or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in such action.

(4) Without prejudice to the generality of paragraph (3) the statement shall include, but is not limited to information on—

(a) the offeror's stated intentions regarding the continuation of the business of the offeree;

(b) the offeror's stated intentions regarding major changes to be introduced in the business, including plans to liquidate the offeree, sell its assets, re-deploy the fixed assets of the offeree or make any other major change in the structure of the offeree;

(c) the offeror's stated long term commercial justification for the proposed take-over offer;

(d) the offeror's stated intentions with regard to the continued employment of the board of directors, management and employees of the offeree and of its subsidiaries;

(e) the reasonableness of the take-over offer, including, the reasonableness and accuracy of profit forecasts for the offeree, if such forecast is included by the offeror in the offer document; and

(f) any other information relevant for the informed assessment of the holders of voting shares and their professional advisers.

10. Independent adviser

(1) The board of directors of the offeree shall appoint an independent adviser, on receipt of the offeror's statement under regulation 4(4) in relation to the take-over offer.

(2) The independent adviser appointed under paragraph (1) shall be an investment bank or a stockbroker licensed by the Authority.

(3) The substance of the independent adviser's advice must be made known to the holders of the class of the voting shares to which the take-over offer relates, in a circular by the offeree to its shareholders.

(4) The board of directors of the offeror shall appoint an independent adviser where the take-over offer being made is a reverse take-over or where the board of directors of the offeror is faced with a conflict of interest situation.

(5) The substance of any advice given to the board of directors of the offeror under paragraph (4) shall be made known to all the holders of voting shares of the offeror.

(6) In the case of a reverse take-over, the board of directors of the offeror shall obtain approval of the holders of voting shares of the offeror to which the reverse take-over relates prior to serving the take-over offer document to the offeree under regulation 7(4).

(7) Where the offeror has convertible securities outstanding, the appointed independent adviser shall make known its advice to the holders of such securities, together with the views of the board of directors of the offeror or of the offeree, as the case may be, on the take-over offer or proposal.

(8) The independent adviser appointed by the Board of directors of the offeree shall send a circular to the board of directors of the offeree and the Authority prior to the circular being served on the offeree's holders of voting shares to which the take-over offer relates.

(9) The circular required to be sent by the board of directors of the offeree to the offeree shareholders under regulation 9 and the independent adviser's circular shall be posted to the relevant holders of voting shares within fourteen days from the date of the take-over offer document being served in accordance to regulation 7.

(10) The independent adviser shall disclose all such information in the independent adviser's circular as the holders of the voting shares of the offeror, the board of directors of the offeree and all holders of voting shares to which the take-over offer relates and their professional advisers would reasonably require or expect to be informed about, in an independent advice or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in such action.

(11) The information required to be disclosed under paragraph (10) shall be that which—

(a) is within the knowledge of the Board of directors and of the independent adviser; and

(b) the independent adviser would be able to obtain by making such enquiries as were reasonable in the circumstances.

(12) For the purposes of paragraph (11), a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence of which, an employee or agent of the person having duties or acting on behalf of the employer or principal was aware of at the time.

(13) Without prejudice to the generality of paragraph (11), an independent adviser shall include in the circular to the board of directors of the offeree and the offeree shareholders all the information and statements specified in the Fourth Schedule.

11. Requirements for an independent adviser

(1) No person shall be eligible to be appointed as an independent adviser under regulation 10 where such a person—

(a) has an interest in ten per cent or more of the voting shares of an offeror or offeree at the present time or at any time during the twelve months preceding the date of announcement of the offeror's intention of the take-over scheme;

(b) has a substantial business relationship with the offeror or offeree at the material time or at any time during the twelve months preceding the date of announcement of the offeror's intention of the take-over scheme.

(c) being a company, has a director on its board of directors who is also a director on the board of directors of the offeror if the offeror is a company or on the board of directors of the offeree, as the case may be;

(d) is involved in financing the offer by the offeror;

(e) is a substantial creditor of either the offeror or the offeree.

(f) has a financial interest in the outcome of the take-over offer than that specified in paragraphs (a) to (d); or

(g) has been an adviser in planning or restructuring of the offeror or offeree including acquisitions, at any time during the period of twelve months preceding the date of announcement of the offeror's intention of the take-over scheme.

(2) A person is deemed a "substantial creditor" if—

(i) the loan extended represents more than ten per cent of the loan outstanding in the offeror or the offeree; or

(ii) the loan extended to either the offeror or the offeree represents more than ten per cent of the shareholders' funds of the person based on the latest audited accounts; or

(iii) the person is a lead banker in a syndicated loan extended to either the offeror or the offeree in the preceeding three years;

12. Offer to dissenting shareholders

Where a take-over results in the offeror acquiring ninety per cent of the offeree's voting shares, the offeror shall offer the remaining shareholders a consideration that is equal to the prevailing market price of the voting shares or the price offered to the other holders, whichever is higher and the provisions of the Companies Act (Cap. 486) shall apply.

13. Competing take-over offer

(1) Where a decision has been reached to make a competing take-over offer, all provisions in these Regulations relating to the take-over procedures shall apply *mutatis mutandis* except the notice period to the competing offer.

(2) The competing offeror shall serve a competing take-over offer document required under regulation 7(4) at least ten days prior to the closure of the offer period and this period shall also apply to revisions that may be made to the competing offer.

14. Offer period

An offeror must keep a take-over offer open for acceptances for a period of thirty days from the date the take-over offer document is first served in accordance with regulation 7(4) or such period as may be determined by the Authority.

15. Conditional offer

Where the offer is conditional upon acceptances in respect of a minimum per centage of shares being received, the offer shall specify a date not being a date later than thirty days from the date of service of the take-over offer or such later date as the Authority may in a

competitive situation or in special circumstances allow as the latest date on which the offeror can declare the offer to have become free from that condition.

16. Variation of take-over offer

(1) An offeror may vary the terms and conditions of a take-over offer including increasing the consideration offered in relation to the whole or part thereof provided such variation shall be made at least five days prior to the closure of the offer period.

(2) The varied take-over offer document shall set out in an appropriate form particulars of such modification of the offeror's statements and information required under the Second Schedule as are necessary having regard to the variations.

(3) The offeror shall serve the varied take-over offer document on the offeree, the Authority and the securities exchange within twenty four hours of making the decision to vary the take-over offer, and simultaneously make a public announcement by press notice in at least two English language dailies of national circulation disclosing material variations to the offer.

17. Withdrawal of take-over offer

(1) An offeror shall not withdraw a take-over offer without the prior written approval of the Authority.

(2) Where a take-over offer has been withdrawn the offeror and all related companies or all persons acting in concert or associated with the offeror shall not within twelve months from the date on which the take-over offer was withdrawn

(a) make a take-over offer for the voting shares that had been the subject of the take-over offer that has been withdrawn; or

(b) acquire any additional voting shares of the offeree other than as provided under regulation 3.

(3) The offeror and all related companies or persons acting in concert or associated with the offeror shall furnish the Authority with details of any acquisition by the offeror and related companies or persons acting in concert or associated with the offeror of any share of the offeree including any option to acquire any share in the offeree each month for a period of twelve months from the date on which the take-over offer was withdrawn.

(4) Withdrawal of a take-over offer may occur where—

(a) the offeree shareholders have rejected the take-over offer;

(b) the offeror has not obtained an approval under the Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504) or any other regulatory approval as may be required;

(c) events, satisfactory to the Authority occur, rendering either the offeror or offeree or both incapable of fulfilling their obligations under the take-over offer; or

(d) a counter offer is accepted by the offeror.

18. Closing of take-over offer

(1) A take-over offer shall be deemed to close on the last day of the offer period.

(2) A holder of the voting shares in the offeree may withdraw acceptance out of his own volition at any time before the closing of the offer.

19. Pro-rata acceptances

(1) Where an offeror receives acceptance by the offeree shareholders in excess of the total number of shares to which the take-over offer relates, the offeror shall undertake pro-rata acceptance.

(2) For the purposes of this regulation, **"pro-rata acceptance"** means an allocation of acceptance by the offeror in the proportion of the total number of shares accepted by each offeree shareholder in relation to the per centage upon which the offer was conditional.

20. Announcement of acceptances

(1) The offeror shall inform the Authority and the securities exchange within ten days of the closure of the offer and announce by way of press notice in at least two English language dailies of national circulation the total number of voting shares to which the take-over offer relates—

(a) for which acceptances of the take-over offer have been received after having been served with the take-over offer document by the offeror to offeree shareholders in accordance with regulation 7(4);

(b) held by the offeror and all persons acting in concert with the offeror at the time of serving the offer document to the offeree shareholders in accordance with regulation 7(4);

(c) acquired or agreed to be acquired during the offer period; and

(d) the shareholding structure of the offeree subsequent to the take-over offer.

PART III – OBLIGATIONS OF OFFEROR IN RELATION TO OFFER

21. Identity of offeror

(1) No person shall initiate discussions or negotiations with any person in relation to a take-over offer without disclosing the identity of the—

(a) proposed offeror and all related companies or persons acting in concert or associated with the proposed offeror;

(b) ultimate offeror, where applicable.

22. Evidence of ability to implement the take-over offer

(1) A person who is required to make an announcement under regulation 20 shall ensure and the person's financial adviser shall be reasonably satisfied that—

(a) the take-over offer would not fail due to insufficient financial capability of the offeror; and

(b) every offeree shareholder who wishes to accept the take-over offer will be paid in full.

(2) A person who has no intention of making an offer in the nature of a take-over offer shall not give notice or publicly announce the intention to make a take-over offer.

(3) A person shall not make a take-over offer or give notice or publicly announce that it intends to make such an offer if it has no reasonable or probable grounds for believing that it will be able to perform its obligations if the offer is accepted.

23. Favourable deals

The offeror shall not enter into any agreement, arrangement or understanding to deal in or make purchases or sales of voting shares of the offeree, either during a take-over offer or when such a take-over offer is reasonably in contemplation by the offeror where the agreement, arrangement or understanding contain favourable conditions which are not being extended to all offeree shareholders.

24. Convertible securities

(1) Where a take-over offer is made for the voting shares of an offeree and the offeree has issued convertible securities, the offeror shall make a take-over offer to purchase the securities and shall make appropriate arrangements to ensure that the interests of holders of convertible securities are safeguarded.

(2) The offeror shall serve the take-over offer document to purchase the securities referred to in paragraph (1) to the holders of the convertible securities at the same time as when the take-over offer document is served on the offeree shareholders in accordance with regulation 7(4).

(3) The take-over offer to holders of convertible securities referred to in paragraph (1) may be affected by way of a take-over scheme approved at a meeting of the holders of the convertible securities.

(4) For the purposes of these Regulations, **"convertible securities"** of the offeree means securities that are convertible to ordinary shares of the offeree.

25. Sales and disclosure by the offeror during the offer period

(1) The offeror shall not sell any voting shares to which the take-over offer relates during an offer period.

(2) A related company or a person associated or acting in concert with the offeror shall not sell any voting shares to which the take-over offer relates other than to the offeror.

(3) The following persons shall disclose the total number and price of all voting shares of the offeror and the offeree which are dealt in for their own account—

(a) the offeror and all related companies or persons associated to or acting in concert with the offeror;

(b) the chief executive, a director or an officer of the offeror who occupies or acts in a senior managerial position in the offeror, by whichever name called;

(c) a person who is an associated person in relation to persons referred to in paragraphs (a) and (b); and

(d) a person who is accustomed to act in accordance with directions or instructions of the persons referred to in paragraphs (a), (b) or (c).

(4) The disclosure under paragraph (3) shall be made to the relevant securities exchange where the securities of the offeror are listed and to the Authority, within twenty four hours of the transaction.

(5) All dealings in voting shares of the offeror and offeree made by an associated person for the account of investment clients who are not themselves associated persons shall be disclosed to the relevant securities exchange and the Authority, at such time and in such manner as is specified in paragraphs (3) and (4).

PART IV – OBLIGATIONS OF OFFEREE IN RELATION TO OFFER

26. Information by offeree

An offeree shall provide the offeror with the following information—

(a) a list and addresses of the offeree's holders of voting shares in the offeree to which the take-over offer relates;

(b) published annual accounts and reports including the latest half-yearly results of the offeree and its subsidiaries; and

(c) a copy of the competing offeror's statement where there is a competing offer.

27. Frustrations of offers by the offeree

(1) The offeree shall not after contact with the offeror or its agent or on receipt of the notice of intention of take-over offer under regulation 4(1), if the offeree has reason to believe that a *bona fide* take-over is imminent, or during the course of a take-over offer—

(a) issue any authorized but un-issued shares of the offeree;

(b) issue or grant options in respect of any un-issued shares of the offeree;

(c) create or issue or permit the creation or subscription of any shares of the offeree;

(d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of the offeree or of any of it's subsidiary; or

(e) enter into or allow contracts for or on behalf of the offeree to be entered into otherwise than in the ordinary course of business of the offeree.

(2) Paragraph (1) shall not apply where a *bona fide* contract has been entered into prior to contact with the offeror or its agent or on receipt of the notice of intention of the take-over

notice under regulation 4(1) which is not designed to frustrate a take-over offer or change the activity of the offeree.

28. Disclosure of dealings by offeree

(1) During the offer period the total number and price of all voting shares of the offeror and the offeree which are dealt in by the following persons shall be disclosed by them respectively—

(a) the offeree;

(b) substantial shareholders of the offeree;

(c) any chief executive, a director of the offeree;

(d) any officer of the offeree who occupies or acts in a senior managerial position in the offeree, by whatever name called;

(e) a person who is an associated person in relation to persons referred to in paragraphs (a), (b), (c) and (d); and

(f) a person who is accustomed to act in accordance with directions or instructions of the persons referred to in paragraph (a), (b), (c), (d) or (e).

(2) The disclosure under paragraph (1) shall be made to the relevant securities exchange, and the Authority within twenty four hours of the transaction, outside trading hours.

(3) All dealings of voting shares of the offeror or the offeree made by an associated person for the account of investment clients who are not themselves associated persons shall be disclosed to the relevant securities exchange and the Authority, as provided in paragraphs (1) and (2).

29. Transfer to the offeror

On completion of the take-over offer, the offeree shall ensure prompt transfer of the accepted voting shares to the offeror in the register of members maintained as required under the rules of the securities exchange or the Central Depositories Act (No. 4 of 2000), in the case of electronic transfer and registration.

PART V – GENERAL

30. False or misleading information

(1) No person shall—

(a) provide or cause to be provided to the holders of voting shares or their professional advisers any document or information in a take-over offer that is false or misleading;

(b) provide or cause to be provided to holders of voting shares or their professional advisers any document or information in a take-over offer in which there is a material omission; or

(c) engage in conduct relating to a take-over offer that is misleading or deceptive or is likely to mislead or deceive holders of voting shares or their professional advisers.

(2) Where information or a document has been circulated or provided to holders of voting shares or their professional advisers and the person who provided the information or document, or engaged in the conduct becomes aware that the document or information was false or misleading or contains a material omission or the conduct in question was misleading or deceptive, the person shall immediately disclose the fact to the Authority and the relevant securities exchange and make an announcement by way of press notice in at least two English language dailies of national circulation containing such matters as are necessary to correct the false or misleading information omission, or conduct, as the case may be.

31. Submission of information to the Authority

A person involved in a take-over scheme, merger or compulsory acquisition, shall submit such information to the Authority as it may from time to time require.

32. Suspension of trading during take-over

In the event of a take-over the trading of shares of the security of the offeree shall not be suspended unless for the purpose of enabling the offeree to disclose information on the takeover offer or as may be directed by the Authority for the purpose of obtaining material information on the offer.

33. Issuance of shares in a subsidiary

(1) No issuance of shares of a subsidiary of a listed company comprising—

(a) twenty five per cent or more of the share capital of that subsidiary; or

(b) ten per cent or more of the share capital of the subsidiary, that has contributed to twenty five per cent or more to the average turnover in the latest three financial years of the listed company (preceding the proposed issuance of shares), shall be made without full disclosure through an information circular to the shareholders of the listed company, of all relevant information relating to the transaction for which the shares are being issued subject to the prior approval of the issuance of such shares by the Authority.

(2) The information circular referred to in paragraph (1) shall be subject to prior approval by the Authority and shall comply with the requirements under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 (LN. 60/2002).

34. Establishment of take-over committee

(1) The Authority may establish a sub-committee of the Board that shall consist of the Board members and such other qualified persons as shall be appointed by the Authority, for the purpose of advising on the take-over on a case by case basis.

(2) Where a sub committee has been established under paragraph (1), the chief executive of the Nairobi Stock Exchange and the Commissioner of Monopolies and Prices appointed under the Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504) shall be invited to the sub committee meetings.

(3) The sub committee in exercise of its delegated responsibility may invite the offeror, the offeree, the independent adviser or any other person whose input is deemed necessary for the purposes of facilitating the take-over.

(4) The decision of the sub committee shall be subject to ratification by the Board.

35. Amendment of LN. 429/1992

The Capital Markets Rules are amended by deleting Part XIII.

FIRST SCHEDULE

[Rule 4.]

INFORMATION REQUIRED TO BE INCLUDED IN THE OFFEROR'S STATEMENT

1. The statement shall—

(a) be dated and signed by two directors of the offeror;

(b) specify the names, descriptions, addresses of all directors of the offeror;

(c) contain a summary of the principal activities of the offeror company;

(d) contain a list of major shareholders and subsidiaries of the offeror;

(e) contain a summary of the latest audited financial statements including—

(i) balance sheet;

(ii) income statement;

(iii) statement of the changes in equity;

(iv) cash flow statement; and

(v) earnings per share (prior to the take-over offer and post take-over).

(f) specify the number, description and amount of marketable securities in the offeree held by or on behalf of the offeror, or if none are so held contain a statement to that effect;

(2) Where the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be made to secure payment of the cash and, if there are no such arrangements a declaration shall be made in the statement to this effect.

(3) Where the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by a share swap, the statement shall contain details of the arrangements that have been, or will be made to transfer the shares and the proportion of the shares being swapped, and if there are no such arrangements, a declaration shall be made in the statement to this effect.

(4) The statement shall state whether—

(a) it is proposed in connection with the take-over scheme that a payment or any other benefit shall be made or be given to any director of the offeree or of any company which is a related company to the offeree as a consideration for, or in connection with, his retirement from office and if so the particulars of the proposed payment or benefit;

(b) there is any agreement or arrangement made between the offeror and any of the directors of the offeree in connection with or conditional upon the outcome of the scheme, and if so the particulars of such agreement or arrangement;

(c) there has been within the knowledge of the offeror any material change in the financial position or prospects of the offeree since the date of the latest balance sheet laid before the offeree's general meeting and if so, the particulars of such change; and

(d) there is an agreement or arrangement by which shares acquired by the offeror in pursuance of the scheme will or may be transferred to any other person, and if so—

(i) the names of the persons who are party to the agreement or arrangement and the number and description of the shares which will or may be so transferred; and

(ii) the number, if any, description and amount of shares of the offeree company held by or on behalf of each person, or if no such shares are so held, a statement to that effect.

(5) Paragraphs (6) and (7) shall apply where the consideration to be offered in exchange for shares of the offeree consists in whole or in part of marketable securities issued or to be issued by the offeror or by any company;

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

(a) the latest available market sale price prior to the date on which notice of the take-over scheme is given to the offeree;

(b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales including the latest market sale price immediately prior to the public announcement;

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

SECOND SCHEDULE

[Rule 7.]

INFORMATION REQUIRED TO BE INCLUDED BY THE OFFEROR IN A TAKEOVER OFFER DOCUMENT

1. The offeror shall disclose in the offer document all such information as the offeree shareholders and their professional advisers would reasonably require.

2. The offeror shall state the following in the offer document—

(a) the identity of the ultimate offeror as required under regulation 21;

(b) information regarding the offeror including the names of its directors and shareholders who hold notifiable interest in the offeror and the extent of their holdings;

(c) whether the offeror has any intentions regarding the continuation of the business of the offeree and if so, stating the offeror's intentions;

(d) the offeror's stated intentions regarding major changes to be introduced in the business, or strengthening the financial position of the offeree, whether such plans include a merger, or liquidating the offeree, selling its assets or re-deploying its fixed assets or making any other major change in the structure of the offeree or its subsidiaries and if so, stating the offeror's intentions;

(e) whether there are any long term commercial justifications for the proposed take-over offer, and if so, stating the long term commercial justifications; and

(f) whether the offeror has any intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries and if so, stating the offeror's intentions.

3. Where the take-over offer is for cash, either in part or in whole, the offer must include a confirmation by a financial adviser of the offeror that the offeror has the financial capability to accept and carry out the take-over offer in full.

4. In addition, the offer document should also include a statement that the offeror and the offeror's financial advisers are satisfied that—

(a) the take-over offer would not fail due to insufficient financial capability of the offeror; and

(b) every shareholder who wishes to accept the take-over offer will be paid in full.

5. The offer document shall contain a statement as to whether—

(a) any agreement, arrangement or understanding exists between the offeror or any person acting in concert with it and any of the directors, past directors, holders of voting shares or past holders of voting shares having any connection with or dependence upon the take-over offer, and full particulars of any such agreement, arrangement or understanding.

"past directors" or **"past holders of voting shares"** means such person who was during the period of six months immediately prior to the date of the written notice of the take-over offer, a director or a holder of the voting shares, as the case may be;

(b) any voting shares acquired in pursuance of the take-over offer will be transferred within a foreseeable period from the date of the offer document to any other person, together with the names of the parties to any such agreement, arrangement or understanding and the particulars of all securities in the offeree held by such persons, or a statement that no such securities are held; and

(c) any settlement of the consideration to which any holder is entitled under the take-over offer will be implemented in full in accordance with the terms of the take-over offer without regard to lien, right of set off, counter claim or other analogous rights to which the offeror may otherwise be or claim to be entitled as against the holder.

6. The offer document shall state as at the latest practicable date, the number of and per centage holding of voting shares and convertible securities (if any) which—

(a) the offeror and directors of the offeror hold, directly or indirectly, in the offeree;

(b) persons associated or acting in concert with the offeror or related companies to the offeror hold directly or indirectly in the offeree together with the names of such persons acting in concert; and

(c) persons who, prior to the sending of the take-over offer document, have irrevocably committed themselves to accept the take-over offer hold directly or indirectly in the offeree together with the names of such persons.

7. In the event that there are no holdings of the nature required to be stated under paragraph (6) the offer document shall contain a statement to this effect.

8. The take-over offer document shall state the names and shareholdings of the ultimate shareholders, if any, and of the persons acting in concert with the offeror.

9. Where any party whose holdings are required to be disclosed has dealt in the voting shares in question during the period commencing six months prior to the beginning of the offer period and ending with the latest practicable date prior to the sending of the offer document, the details, including the number of shares, dates and prices, must be stated. If no such deals have been made this fact should be so stated.

10. The take-over offer document shall state, whether the emoluments of the offeror's directors shall be effected by the acquisition of the offeree, except in the case of an offeror making a cash offer only.

11. The offeror shall state whether the offeree's securities shall continue to be listed at the securities exchange after the take-over offer has been successfully concluded.

12. The offer document shall contain particulars of all service contracts of any directors or proposed director of the offeror or any of its subsidiaries (unless expiring or determinable by the employing company without payment of compensation within twelve months) and where there are no such contracts, this fact should be so stated.

13. Where the contracts under paragraph (12) have been entered into or amended within six months of the date of the documents, the particulars of the contracts amended or replaced

should be given and where there have been no new contracts or amendments this fact should be so stated.

THIRD SCHEDULE

[Rule 9.]

INFORMATION REQUIRED IN THE CIRCULAR ISSUED BY THE OFFEREE TO ITS SHAREHOLDERS

The circular shall state—

(a) the number, description and amount of marketable securities in the offeree company held by or on behalf of each director of the offeree company, or in the case where no such securities are held, a statement to that effect;

(b) in respect of each director of the offeree company by whom or on whose behalf shares to which the take-over scheme relates are held—

(i) whether the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of the shares; or

(ii) whether the director has decided not to accept such a take-over offer;

(c) whether any marketable securities of the offeror company are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of the marketable securities so held;

(d) whether it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or be given to any director of the offeree or of any other company related to the offeree as consideration, or in connection with, its retirement from office and if so, particulars of the proposed payment or benefit.

(e) whether there is any other agreement or arrangement made between the director or the offeree and any other person in connection with or conditional upon the outcome of the take-over scheme and if so the particulars of such agreement or arrangement;

(f) whether a director of the offeree has an direct or indirect interest in any contract entered into by the offeror and if so, the particulars of the nature and extent of such interest; and

(g) whether there has been any material change in the financial position of the offeree since the date of the last balance sheet laid before the company in general meeting, and if so, the particulars of such change.

FOURTH SCHEDULE

[Rule 10.]

INFORMATION AND STATEMENTS REQUIRED TO BE INCLUDED IN AN INDEPENDENT ADVISER'S CIRCULAR

1. An independent adviser's circular whether recommending acceptance or rejection of the take-over offer, must contain comments and advice on the—

(a) offeror's stated intentions regarding the continuation of the business of the offeree;

(b) offeror's stated intentions regarding any major changes to be introduced in the business, including any plans to liquidate the offeree, sell its assets, re-deploy its fixed assets or make any other major change in the structure of the offeree;

(c) offeror's stated long term commercial justification for the proposed take-over offer;

(d) offeror's stated intentions with regard to the continued employment of the employees of the offeree and of its subsidiaries; and

(e) reasonableness of the take-over offer, including the reasonableness and accuracy of profit forecasts for the offeree, if any, contained in the offer document.

2. The independent adviser's circular shall, in so far as is reasonable, contain comments on the—

(a) outlook, for the next twelve months, of the industry in which the offeree has its core or major business activities; and

(b) prospects, for the next twelve months, of the offeree in terms of financial performance as well as positioning in the industry including competitive advantage, threats and opportunities—

3. The independent adviser's circular shall also state—

(a) whether the offeree holds directly or indirectly, any voting shares or convertible securities in the offeror and if so, the number and per centage holding of such voting shares and convertible securities;

(b) whether the directors of the offeree hold, directly or indirectly any voting shares or convertible securities in the offeror or the offeree and if so, the number and per centage holding of such voting shares and convertible securities so held; and

(c) whether the directors of the offeree intend, in respect of their own beneficial holdings to accept or reject the take-over offer.

4. In the event that there are no holdings of the nature required to be stated under paragraph (3) the independent adviser's circular shall contain a statement to this effect.

5. The independent adviser's circular must also contain a statement from the directors of the offeree stating any other interest held by them in the offeror and in the offeree.

6. Where any party whose holdings are required to be disclosed pursuant to the Act has dealt in the voting shares in question during the period commencing six months prior to the beginning of the offer period and ending with the latest practicable date prior to the sending of the offer document, the details, including the number of shares, dates and prices, must be stated and where such deals have been made, this fact should be so stated.

7. The independent adviser's circular shall contain particulars of all service contracts of any director or proposed director with the offeree or any of its subsidiaries (unless expiring or determinable by the employing company without payment of compensation within twelve months from the date of the offer document) and where there are no such contracts, this fact shall be so stated.

8. Where the service contracts referred to in paragraph (7) have been entered into or amended within six months of the date of the document, the particulars of the contracts or amendments shall be given and where there have been no new service contracts or amendments, this fact shall be so stated.

CAPITAL MARKETS (FOREIGN INVESTORS) REGULATIONS, 2002

ARRANGEMENT OF REGULATIONS

Regulation

CAPITAL MARKETS (FOREIGN INVESTORS) REGULATIONS, 2002

[L.N. 134/2002, L.N. 98/2007, L.N. 28/2008, L.N. 113/2015.]

1. Citation

These Regulations may be cited as the Capital Markets (Foreign Investors) Regulations, 2002.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"authorized depository" means a bank licensed under the Banking Act (Cap. 488) or a financial institution licensed by the Authority to hold in custody, funds, securities, financial instruments or documents of title to assets registered in the name of local investors, foreign investors or of an investment portfolio;

"Cabinet Secretary" means the Cabinet Secretary responsible for the National Treasury;

"days" means calendar days excluding Saturdays, Sundays and public holidays;

"East African Community Partner State" means States that are members of the East African Community;

"East African investor" *deleted by L.N. 98/2007, r. 2*;

"foreign investor" means any person who is not a local investor;

"free float" *deleted by L.N. 113/2015, r. 2(a);*

"issuer" means a company or other legal entity incorporated or established under the laws of East African Community Partner States that offers securities to the public or a section thereof, whether or not such securities are the subject of an application for admission or have been admitted to listing;

"institutional investor" means a body corporate including a financial institution, collective investment scheme, fund manager, dealer or other body corporate whose ordinary business includes the management or investment of funds whether as principal or on behalf of clients;

"listed company" means an issuer any part of whose shares have been listed at a securities exchange;

"local investor" in relation to—

(a) an individual, means a natural person who is a citizen of an East African Community Partner State;

(b) A body corporate means a company or any other body corporate established or incorporated under the Companies Act or under the provisions of any written law of an East African Community Partner State in which the citizens or the government of an East African Community Partner State have beneficial interests in one hundred per centum (100%) of its ordinary shares;

"official list" means a list specifying all securities which have been admitted to listing on any of the market segments of a securities exchange;

"public offer" has the meaning assigned to it in regulation 5 of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 (L.N. 60/2002);

"reserve" *deleted by L.N. 113/2015, r. 2(c);*.

[L.N. 98/2007, s. r, L.N. 28/2008, r. 2, L.N. 113/2016, r. 2.]

3. Participation by foreign investors

(1) Any proportion of the voting shares of an issuer after an initial public offering shall be available for investment by foreign investors without any restrictions in the level of holdings except as provided under the Capital Markets (Take over and Mergers) Regulations, 2002.

(2) Notwithstanding Regulation 3(1), the Cabinet Secretary may by notice in the gazette, prescribe a maximum foreign shareholding in an issuer or listed company.

(3) The Cabinet Secretary may only exercise the powers under paragraph 3(2) where —

(a) in a privatization transaction, the government or its agency is divesting its shares to the public; or

(b) some level of local ownership in a strategic industry or sector in the country is to be maintained; or it is in national interest.

[L.N. 98/2007, r. 3, L.N. 28/2008, r. 3, L.N. 113/2015, r. 3.]

4. Register of shareholders

(1) A company shall maintain a register of shareholders of ordinary shares showing at all times the holdings thereof by—

(a) foreign investors;

(b) individual local investors; and

(c) institutional local investors.

(2) Every listed company shall, within thirty days from the day these Regulations come into force provide the Authority with a status report with respect to the category of shareholders specified in subregulation (1) and subsequently, within ten days following the end of each month, furnish to the Authority and to the securities exchange on which its shares are listed, a report showing details of the holding of its ordinary shares according to the categories specified in subregulation (1).

[L.N. 98/2007, s. 4, L.N. 28/2008, s. 4]

5. Declaration of investor status

(1) A stockbroker shall—

(a) on every application for the shares of an issuer; or

(b) on the transfer of the shares of a listed company to an investor,

declare whether the applicant or the transferee, as the case may be, is a foreign investor, individual local investor or institutional local investors with supporting documentation evidencing such status.

(2) No company registrar shall effect any transfer of the ordinary shares of an issuer or of a listed company if such transfer would result in investment in the ordinary shares of such issuer or listed company by local investors to fall below the per centum specified in regulation 3(2)

[L.N. 98/2007, s. 5, L.N 113/2015, s. 4.]

6. Report by listed companies

(1) A listed company shall immediately report to the securities exchange at which it is listed, once the per centum of ordinary shares held by foreign investors reach the prescribed foreign shareholding under regulation 3(2);

(2) A securities exchange shall publish a weekly report showing—

(a) the number of shares of each listed company traded on during the week; and

(b) the percentage shareholding by foreign investors in listed companies prescribed by the Cabinet Secretary under regulation 3(2).

(3) A securities exchange shall submit to the Authority weekly and make available to the public at its principal place of business every report prepared under this regulation.

[L.N. 98/2007, s. 6, L.N. 28/2008, s. 5, L.N. 113/2015, s. 5.]

7. Deposit of share certificates with an authorized depository

(1) A stockbroker shall deposit every share certificate registered in the name of a foreign investor with an authorised depository designated by the foreign investor.

(2) An authorised depository shall hold in its custody every share certificate deposited under subregulation (1) and the certificate shall remain so held unless shares are transferred to a local investor:

Provided that if the issuer's shares are immobilised or dematerialised, the shares shall be held by an authorised depository or a central depository agent.

[L.N. 98/2007, s. 7.]

8. Report by authorized depository

An authorised depository shall, in respect of each month, prepare a report showing the share certificates or statement of account of the shares in its custody pursuant to the provisions of regulation 7 and shall furnish such report to the Authority within ten days after the end of every month.

9. Restrictions of shares issued outside Kenya

No person shall, in Kenya, offer or cause to be offered to the public any shares or other capital market instrument as the Authority may specify, which are listed or to be listed outside Kenya except with the prior written approval and registration of such security by the Authority.

10. Transitional and saving provisions

(1) Nothing in these Regulations shall require a foreign investor or East African investor who, at the commencement of these Regulations, hold shares of an issuer in excess of the limits prescribed in these Regulations, to dispose of the excess shares.

(2) In the event that a foreign investor who holds shares in excess of the limits prescribed by these Regulations by virtue of the provisions of subregulation (1), resolves to dispose of any shares, no foreign investor shall be eligible to purchase such shares save to the extent that the aggregate of the shares of that issuer held by foreign investors or shall not exceed the limits prescribed in regulation 3.

(3) Nothing in these Regulations shall restrict the right of a foreign investor to acquire additional shares by way of a bonus or right or scrip dividend issue pursuant to the memorandum or articles of association or other regulations of a listed company or under the provisions of any other written law provided that in the event of a rights or scrip dividend issue, no foreign investor shall be eligible to acquire directly or indirectly additional shares as would result in exceeding the percentage shareholding by foreign investors in listed companies prescribed by the Cabinet Secretary under regulation 3(2).

[L.N. 98/2007, s. 8, L.N. 113/2015, s. 5.]

11. Revocation of L.N. 291/1995

The Capital Markets Authority (Foreign Investors) (No. 2) Regulations, 1995 (L.N. 291/1995), are revoked.

12. Revocation of L.N. 109/2002

The Capital Markets (Foreign Investors) (Amendment) Regulations, 2002 (L.N. 109/2002), are revoked.

CAPITAL MARKETS TRIBUNAL RULES, 2002

ARRANGEMENT OF RULES

CAPITAL MARKETS TRIBUNAL RULES, 2002

[L.N. 179/2002.]

1. Citation

These Rules may be cited as the Capital Markets Tribunal Rules, 2002.

2. Interpretation

In these Rules—

"Chairman" means the chairman of the Tribunal;

"Secretary" means the secretary to the Tribunal;

"Tribunal" means the Capital Markets Tribunal established under section 35A of the Act.

3. Publication of address of Tribunal

The Secretary shall publish a notice in the *Gazette* of the address at which documents may be presented to, filed with or served on the Tribunal or the Secretary.

4. Form of appeal

(1) An appeal to the Tribunal shall be entered by presentation of a memorandum of appeal, with six copies thereof, together with the prescribed fee to the Secretary.

(2) The memorandum shall set out concisely, under distinct heads and numbered consecutively, the grounds of appeal without argument or narrative.

(3) The memorandum shall be signed by the appellant, if the appellant is an individual, or by a director and the chief executive, if the appellant is a corporation.

(4) The memorandum shall be presented within fifteen days after the date on which the decision appealed from was communicated to the appellant.

5. Statement of facts or appellant

Each copy of the memorandum of appeal shall be accompanied by a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to the documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed the original copy of the decision of the Authority on which the appeal is based, and each document or extract from a document referred to upon which the appellant proposes to rely as evidence at the hearing of the appeal.

6. Service of memorandum

Within seven days after the presentation of the memorandum of appeal to the Secretary, a copy thereof and the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Authority.

7. Statement of defence

(1) The Authority shall, within twenty-one days after service of the memorandum of appeal upon it, file with the Secretary a statement of defence signed by the chief executive of the Authority or a person authorized by him in writing and a statement of facts together with six copies thereof and the provisions of rule 5 shall apply *mutatis mutandis* to the statement of facts.

(2) At the time of filing the statement of defence and the statement of facts under paragraph (1), the Authority shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) Where the Authority does not desire to file a statement of facts under this rule, the Authority shall forthwith give written notice to that effect to the Secretary and to the appellant and in that case the Authority shall be deemed at the hearing of the appeal to have admitted the facts set out in the statement of facts of the appellant.

8. Service

(1) The provisions of the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21) dealing with the service of a summons shall apply with respect to the serving of documents under these Rules as though those provisions formed part of these Rules.

(2) The Tribunal may, on the application of a party, direct that documents be served in a different manner than that provided for under paragraph (1).

9. Withdrawal of appeal

(1) The appellant may, at any time before the appeal is heard, withdraw the appeal by notice in writing to the Secretary.

(2) If an appeal is withdrawn the Tribunal shall make an order under section 35A(18) of the Act as to costs.

10. No communications outside hearing

No party to the appeal shall communicate, outside the hearing of the appeal, with the Chairman or any other member of the Tribunal other than the Secretary.

11. Time and place of hearing

(1) The Secretary shall within three days after receiving the memorandum of appeal under rule 4 notify the Chairman of the receipt thereof.

(2) The Chairman shall, after the documents of the parties are received, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal and the Secretary shall cause notice thereof to be served on the appellant and the Authority.

(3) The Secretary shall supply each member of the Tribunal with a copy of the notice of hearing and all documents received by the Secretary from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days notice of the time, date and place fixed for the hearing of the appeal.

12. Summoning and attendance of witnesses

The provisions of the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21) dealing with the summoning and attendance of witnesses shall apply with respect to the hearing of an appeal as though those provisions formed part of these Rules.

13. Assessors

(1) If in the opinion of the Chairman a matter arises in a hearing which calls for specialized knowledge, he may call upon any person who he considers to be possessed of such knowledge to sit with the Tribunal as an assessor to assist the Tribunal.

(2) A person called upon to sit with the Tribunal under paragraph (1) shall be paid his reasonable expenses and a daily remuneration, the amount of which shall be decided by the Chairman.

14. Representative to file a notice

A person representing a party before the Tribunal shall file a notice of his appointment as the representative of the party and any subsequent change shall be notified by the filing of a notice of change of representative or a notice of intention to act in person as the case may be.

15. Hearing procedure

The following shall apply with respect to the hearing of an appeal—

(a) the Authority shall be entitled to be represented;

(b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence, but save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum of appeal and may not adduce evidence of facts or documents unless those facts have been referred to in, or copies of those documents have been annexed to, the statement of facts of the appellant;

(c) at the conclusion of the statement and evidence on behalf of the appellant, the Authority may make submissions supported by relevant evidence, and the conditions of sub-paragraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Authority;

(d) the appellant shall be entitled to reply but may not raise a new issue or argument;

(e) the Chairman or a member of the Tribunal may at any stage of the hearing ask any questions to the parties or a witness examined at the hearing, which he considers necessary to the determination of the appeal;

(f) a witness called and examined by either party to the appeal may be cross-examined by the other party to the appeal and if so cross-examined may be re-examined;

(g) the Tribunal may call and examine witnesses and a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;

(h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary or desirable, on such terms as it may determine;

(i) the Tribunal shall consider and reach its decision according to law;

(j) the decision of the Tribunal shall be on the basis of a majority vote and shall be in writing, dated and signed by the Chairman and the members of the Tribunal who participated in the decision;

(k) the Secretary shall record the proceedings of the Tribunal and include that record, together with a copy of the decision, in a document to be certified and signed by the Chairman as a true and correct record of the proceedings and decision;

(l) the Secretary shall forward a certified copy of the document described in sub-paragraph (k) to each party;

(m) a copy certified under sub-paragraph (k) shall be conclusive evidence of the decision and proceedings of the Tribunal.

16. Copies of documents admissible

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

17. Tribunal may adopt civil procedure rules

In matters of procedure not governed by these Rules or the Act, the Tribunal may adopt the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21).

18. Extension of time limits

The Chairman may, on application, extend the time `appointed by these Rules for doing any act or taking any proceedings upon such terms and conditions, if any, as appear to the Chairman to be just and expedient.

19. Orders for costs

The Tribunal shall make an order under section 35A(18) of the Act as to costs on an appeal.

20. Fees

The fees set out in the Schedule are prescribed in respect of the matters described in the Schedule.

21. Transition

The following shall apply with respect to an appeal made before these Rules come into operation—

(a) these Rules shall apply with necessary modifications and such modifications as the Chairman may direct;

(b) nothing done before these Rules come into operation shall be ineffective only because it was not done in accordance with these Rules;

(c) any applicable time limit under these Rules that would otherwise have commenced or expired shall be deemed not to have commenced or expired but shall be deemed to have commenced running upon the publication of these Rules; and

(d) if anything was done before these Rules come into operation for which a fee would have been payable under these Rules if they had been in operation, that fee shall be payable within ten days after the publication of these Rules.

SCHEDULE

[Rule 20.]

FEES

	Description	*Fee (Shs.)*
1.	Presentation of a memorandum of appeal	10,000
2.	Filing of statement of defence by the Authority	2,500
3.	Filing of any other document	1,500

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

ARRANGEMENT OF REGULATIONS

.

SCHEDULES

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

[L.N. 183/2007.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Registered Venture Capital Companies) Regulations, 2007.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"affiliate" means any subsidiary or holding company of such registered venture capital company and any subsidiary of such holding company;

"captive fund" means a fund which draws all its investment capital from the parent company of the registered venture capital company holding that fund and invests such capital for the interests of that parent company, or a fund that has such other comparable structure acceptable to the Authority;

"close relation" means a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grandchild or spouse of a grandchild;

"day" means any calendar day excluding Saturdays, Sundays and public holidays;

"fund" means the pool of capital held by a registered venture capital company for investment in venture capital, in accordance with a specifically declared investment policy;

"fund manager" means a company that manages the funds and investments of a registered venture capital company;

"fund of funds" means a fund (as defined) that exclusively invests in other venture capital companies;

"Income Tax Rules" means the Income Tax (Venture Capital Company) Rules, 1997 (L.N. 103/1997);

"independent director" means a director who—

(i) is not and has not been in the employment of the registered venture capital company in an executive capacity within the five year period preceding the date of application;

(ii) is not associated to an adviser or consultant to the registered venture capital company or a member of the registered venture capital company's senior management or a significant customer or supplier to the registered venture capital company or with an entity that receives significant contributions from the registered venture capital company or a venture capital enterprise in which the registered venture capital company is invested or within a period of five years preceding the date of the application, has not had any business relationship with the registered venture capital company (other than service as a director);

(iii) has no personal service contract(s) with any of the shareholders, directors, or members of the senior management of the registered venture capital company;

(iv) is not employed by a company at which an executive officer of the registered venture capital company serves as a director; or

(v) is not a close relation of any person described above;

"independent fund" means a fund which draws its investment funds from investors generally and is independently invested and managed or a fund that has such other comparable structure acceptable to the Authority;

"mid-stage financing" means investment by a registered venture capital company in an eligible venture capital enterprise in the form of—

(a) capital expenditure or working capital to support and promote commercialization of technology or product;

(b) additional capital expenditure or working capital to increase production capacity, marketing or product development; or

(c) funding for an eligible venture capital enterprise expecting to be listed on a stock exchange;

"registered venture capital company" means a venture capital company registered as such by the Authority;

"seed-capital financing" means financing provided by a registered venture capital company for the purpose of research, assessment and development of an initial concept or prototype for product development and initial marketing;

"semi-captive fund" means a fund which draws its investment capital from both the parent of the registered venture capital company holding it and other investors, but invests primarily in line with the interests of that parent or that has such other comparable structure acceptable to the Authority;

"small and medium size business" means a business enterprise which at the time of first investment by the registered venture capital company has assets with a market value or annual turnover of less than five hundred million shillings;

"start-up financing" means financing provided by a registered venture capital company for the purpose of commencing operations, production or implementation of a concept or prototype where a venture capital enterprise has completed the seed stage of development;

"subsidiary financing" means financing provided for the purchase by one registered venture capital company of the entire or part of the equity interests of another registered venture capital company in an eligible venture capital enterprise to allow for total or partial exit by the latter;

"substantial interest" means a cumulative of both direct and indirect holding of twelve and one half per cent or more in the equity of a venture capital enterprise;

"venture capital company" means a company incorporated under the Companies Act (Cap. 486) with the primary objective of providing substantial risk capital to small and medium size businesses in Kenya through equity, quasi-equity investments or other instruments whether convertible into equity or not as well as managerial or technical expertise to such business entities;

"venture capital enterprise" means a small or medium sized business entity incorporated under the Companies Act (Cap. 486) which is in need of venture capital investment for purposes of financing a new product or for expansion of the business entity.

PART II – ELIGIBILITY

3. Eligibility requirements

A venture capital company shall be entitled upon making an application to the Authority in the prescribed form and on payment of the prescribed fee to be registered under these Regulations as a registered venture company if it has—

(a) been duly incorporated under the Companies Act (Cap. 486) as a company limited by shares;

(b) as its principal object the provision of risk capital to small and medium size businesses in Kenya;

(c) a minimum paid up share capital of one hundred million shillings;

(d) a minimum fund of one hundred million shillings;

(e) audited financial statements for the three years immediately preceding the date of application, the latest of which shall not be older than six months as at the date of application (where applicable);

(f) a demonstrable track record as a venture capital company of at least three years or in the alternative, one or more of its directors shall have a demonstrable track record in the management of venture capital funds for a period of at least three years;

(g) engaged a fund manager duly licensed by the Authority;

(h) a Board of Directors of which at least one-third of the directors are independent directors;

(i) appointed an auditor who is a member of the Institute of Certified Public Accountants of Kenya; and

(j) appointed a Secretary who is a member of the Institute of Certified Public Secretaries of Kenya.

PART III – REGISTRATION

4. Application

An application for registration shall be made by a venture capital company in the prescribed form set out in the First Schedule and shall be accompanied by the following—

(a) a certified copy of the applicant's certificate of incorporation or certificate of compliance;

(b) a certified copy of the applicant's memorandum and articles of association;

(c) a certified copy of the board resolution approving the application for registration;

(d) details of the investment policy in respect of each fund to be operated by the applicant setting out the following particulars—

(i) investment objectives;

(ii) minimum and maximum investment amounts in any single enterprise;

(iii) investment rules, investment process (including minimum commitment and investment periods and procedures for draw down) and exposure limits to individual eligible venture capital enterprises;

(iv) preferred mode of divestiture from eligible venture capital enterprises;

(v) disclose a clear strategy for the diversification of investments in eligible venture capital enterprises;

(vi) policies on fees and charges;

(vii) profile of companies invested in (where applicable); and

(viii) details of risk factors that are specific to the chosen investment sectors, or sectors intended to be invested in;

(e) a letter of acceptance of the appointment from the fund manager in the prescribed Form set out in the Fourth Schedule;

(f) the management agreement between the registered venture capital company and the fund manager containing the particulars required under regulation 10;

(g) audited financial statements of the applicant for the last three financial years immediately preceding the date of application (where applicable), provided that where at the date of the application is—

(i) more than three months, but less than six months have lapsed since the end of the immediately preceding financial year in respect of which the latest audited financial statements relate, the applicant shall provide unaudited accounts for the first three months following the end of the financial year;

(ii) more than six months have lapsed since the end of the immediately preceding financial year in respect of which the audited financial statements relate, the applicant shall provide interim audited financial statements for the first six months following the end of the financial year;

(iii) more than nine months have elapsed since the end of the immediately preceding financial year in respect of which the latest audited financial statements relate, the applicant shall, in addition to the interim audited financial statements required under (ii) above, provide unaudited accounts for the three month period following the end of the six months to which the interim audited financial statements relate;

(h) a declaration by the directors in the prescribed form set out in the Third Schedule;

(i) declarations by each of the directors in respect of questions 18 to 24 of the First Schedule;

(j) a bank reference from a commercial bank duly licensed under the Banking Act (Cap. 488) stating the length of its relationship with the applicant and containing a statement on the manner in which the applicant has managed its account(s) (where applicable);

(k) business references from at least two companies in which the applicant has invested explaining the nature and duration of the investment(s) and the contribution applicant has made to the business of the company providing the reference (where applicable);

(l) the prescribed application fee; and

(m) any further information that the Authority may deem necessary to determine the application.

5. Certificate of registration

(1) The Authority may, on satisfying itself that an applicant meets the requirements for registration, register the applicant and issue a certificate of registration in the form set out in the Second Schedule.

(2) The certificate of registration issued under this regulation shall remain in force until it is revoked by the Authority.

6. Fees

(1) Upon registration, the registered venture capital company shall pay the prescribed approval fees in respect of itself and each of its funds.

(2) Every fund of the registered venture company shall pay the prescribed annual fee each year, provided that no annual fee shall be payable in the year of registration.

[Capital Markets (Licensing Requirements) (General) 2002.]

7. Letter of no objection

The registered venture capital company shall not change its shareholders, directors or fund manager unless it has received a written confirmation stating that the Authority has no objection to the proposed change.

PART IV – INVESTMENTS

8. Eligible venture capital enterprises

(1) For purposes of these Regulations, investment in an eligible venture capital enterprise shall include investments in a company or person associated or acting in concert with an eligible venture capital enterprise.

(2) The eligible venture capital enterprises for purposes of these Regulations shall be enterprises whose primary business activity does not include any of the following—

(a) trading in real property;

(b) banking and financial services;

(c) retail and wholesale trading services.

PART V – FUND MANAGERS

9. Approval of fund manager

No person shall act or be appointed as a fund manager for the purposes of a registered venture capital company or any of its funds unless such person is duly approved by the Authority to manage venture capital funds.

10. Obligations of the fund manager

Notwithstanding the provisions of any management agreement, the fund manager shall—

(a) ensure that a prudent investment policy is in place in respect of each fund;

(b) ensure that all fund investments are carried out in accordance with the disclosed investment policy and in compliance with the Capital Markets Act and Regulations and all other applicable laws; and

(c) notify the Authority immediately and in any event in writing within twenty-four hours of any event that results in less than seventy-five per cent of the investable funds of the registered venture capital company being invested in eligible venture capital enterprises.

11. Resignation of the fund manager

(1) A fund manager may resign by giving a written notice to the Board of Directors of the registered venture capital company and copied to the Authority stating the reasons for the resignation.

(2) The notice period shall be one month or such longer period as may have been stipulated in the management agreement.

12. Removal of fund manager

A fund manager shall be removed—

(a) immediately upon the suspension or revocation of his licence by the Authority; or

(b) by one month's notice, or such longer period as may be stipulated in the management agreement, in writing by the Board of Directors of the registered venture capital company.

13. Hand-over to new fund manager

A fund manager shall within fourteen days of the date of resignation or removal deliver to the registered venture capital company and copy to the Authority all information and documents relating to its contractual duties including—

(a) statements pertaining to all the funds under his management;

(b) details of the investment portfolio and details of the cost of such investment and estimated yields;

(c) statements relating to any incomplete transactions;

(d) records required to be maintained by the fund manager;

(e) duly executed transfer documents relating to any securities registered in the name of the fund manager as nominee for the registered venture capital company;

(f) letters of resignation by the fund manager or persons appointed by the fund manager as nominee for the registered venture capital company from any directorships made pursuant to the management agreement; and

(g) particulars of all contact persons for purposes of follow up of the investment portfolios.

14. Appointment of new fund manager

The Board of Directors of the registered venture shall within one month of the resignation or removal of the fund manager, appoint another fund manager and shall within seventy-two hours of the appointment forward to the Authority a certified copy of the fund manager's letter of consent to appointment in the prescribed form set out in Fourth Schedule and provide the Authority with a copy of the management agreement with the new fund manager.

PART VI – FUND RAISING

15. Prohibition on offers to the public

A registered venture capital company shall not raise funds by way of offers to the public.

16. Filing of placement memorandum

A registered venture capital company shall file the placement memorandum with the Authority at least thirty days before publication.

17. Private placements

A registered venture capital company seeking to raise funds shall publish a placement memorandum which shall contain details on the terms and conditions on which funds are to be raised from investors.

18. Placement returns

A registered venture capital company shall make returns of the funds raised to the Authority within fourteen days of the close of the offer.

PART VII – CONTINUING REPORTING OBLIGATIONS

19. Records to be maintained by fund manager

(1) The fund manager shall keep books of account and maintain records that accurately reflect the affairs of the funds under its management.

(2) Every record shall be preserved for at least seven years after the completion of the transaction to which it relates.

20. Quarterly returns

Each fund manager shall within one month after the end of each quarter (including the last quarter of the financial year), file with the Authority a return that includes the following information—

(a) details of any investments made by each fund under its management during the quarter, and the consideration paid for those investments; and

(b) details of any disposals of investments during the quarter, and any profit derived or loss incurred from those disposals (including details of how that profit or loss was calculated).

21. Annual returns

(1) The directors of the registered venture capital company shall within three months of the end of the registered venture capital company's financial year, file with the Authority annual returns with the following information—

(a) name and address of each shareholder (including details of any beneficial interests) of the registered venture capital company and details of their investment;

(b) changes in shareholding in the financial year;

(c) names and address of each director of the registered venture capital company;

(d) changes in the Board of Directors of the registered venture capital company within the year; and

(e) annual audited accounts of the registered venture capital company for that financial year.

(2) The returns shall be accompanied by a report of the fund manager in respect of each fund under the registered venture capital company detailing—

(a) proposed changes in information specified under regulation 4 or the investment policy; and

(b) particulars of investments in eligible venture capital enterprises by that fund as at the end of that year and any changes in the course of the year, including—

(i) the level of investment in each eligible venture capital enterprise and the return thereon; and

(ii) disposals of investments during that year including any profits derived or losses incurred from that disposal.

22. Additional information

Notwithstanding the foregoing, the Authority may require such further information as it may deem necessary.

PART VIII – DEREGISTRATION

23. Deregistration

The Authority may deregister a registered venture capital company where—

(a) the Board of Directors of the registered venture capital company requests in writing that the venture capital company be deregistered;

(b) the registered venture capital company ceases to meet the requirements for registration or fails to comply with the Act;

(c) any returns or other information filed by the registered venture capital company or fund manager are found to contain false or misleading information;

(d) the registered venture capital company fails to take such corrective action in respect of a breach as indicated by the Authority within the time prescribed;

(e) the Authority becomes aware of any facts or circumstances, which in the Authority's opinion, warrant deregistration of the registered venture capital company in the public interest.

24. Notification of Commissioner of Income Tax and publication

The Authority shall within five days of deregistration of a registered venture capital company notify the Commissioner of Income Tax and within thirty days publish the deregistration in the *Gazette*.

PART IX – MISCELLANEOUS

25. Transition provision

Any venture capital company registered prior to the commencement date of these Regulations shall within twelve months of the commencement of these Regulations comply with these Regulations.

26. Extension of transition period

The Authority may extend the period of compliance further for a period of not more than twelve months upon request of a venture capital company registered prior to the commencement of these Regulations.

27. Deregistration on expiry of transition period

Upon the expiry of the twelve months under regulation 25 or the extended period under regulation 26, as the case may be, the Authority may deregister any registered venture capital company that has not complied with these Regulations.

28. Prohibition on investing in related parties

A registered venture capital company shall not lend to, invest in, provide finance to, act as a guarantor to or otherwise be exposed to any of its directors, affiliate companies or companies in which any of its directors and/or their close relations hold a substantial interest.

29. Verification of source of funds

A registered venture capital company shall take all reasonable measures to verify the sources of its funds as well as its investments to ensure it is not used as a conduit for funds sourced from or to be applied to criminal or socially undesirable activities including but not limited to money laundering and corruption.

30. Disclosure of registration

A registered venture company shall ensure that it includes in its written communications a statement that it is registered by the Capital Markets Authority.

FIRST SCHEDULE

FORM 1 **(Rule 4)**

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

APPLICATION FOR REGISTRATION AS A VENTURE CAPITAL COMPANY

Please attach annexure(s) where necessary. Any annexure(s) should be clearly identified.

1. Name of Applicant .....
2. Date of incorporation .....
3. Company Number .....
4. Physical and Postal Address of principal office .....
   .....
5. Registered Office .....
6. Telephone .....
7. Fax No. .....
8. E-mail Address .....
9. Details of capital structure:
   (a) Nominal capital (KSh.) .....
   (b) Number of shares ..... of KSh. ..... each
   (c) Paid-up capital (KSh.) .....
   (d) Number and broad description of funds
   .....
   (e) Components (of each Fund):
      (i) Equity .....
      (ii) Shareholder Loans .....
      (iii) Debt .....
      (iv) Other (Explain) .....
      .....
10. Details of subsidiary and associate companies with the percentage of shareholding in each
    .....
    .....
    .....
    .....

FIRST SCHEDULE—*continued*

11. Details of holding and affiliated companies with percentage of shareholding of the holding company

.....

.....

.....

.....

12. The nature of venture capital financing it is to undertake

(i) seed capital financing ←
(ii) start-up capital financing ←
(iii) mid-stage financing ←
(iv) subsidiary financing ←
(v) fund of funds ←
(vi) other ←

Tick as appropriate

If other, explain

.....

.....

13. Nature of funds to be operated

Captive ←
Semi-captive ←
Independent fund ←
Other ←

Tick as appropriate

If other, explain

.....

.....

14. Provide the following details in respect of each shareholder. In the case of corporate shareholders, provide the relevant details in respect of the ultimate beneficial owners of the issued shares. In respect of each individual copies of the national identify cards or passport shall be annexed.

Name .....

Previous names (if any) .....

Year and place of birth .....

Nationality and how acquired .....

Identification card number and date issued .....

Postal address and telephone number .....

Number of shares held in applicant .....

Shareholdings (directly or indirectly) in other companies .....

Directorships in other companies .....

.....

15. Provide the following details in respect of each Director and the Secretary. In respect of each individual copies of the national identify cards or passport shall be annexed.

Name .....

Previous names (if any) .....

Year and place of birth .....

Nationality and how acquired .....

FIRST SCHEDULE—*continued*

Identification card/passport number and date issued .....

Postal address and telephone number .....

Number of shares held in Applicant .....

Shareholdings (directly or indirectly) in other companies .....

.....

Directorships in companies .....

.....

Educational qualifications and year obtained .....

Professional qualifications and year obtained .....

Memberships of professional bodies .....

Employment/business record .....

Specific experience related to the provision of venture capital .....

.....

In case of Secretary: Institute of Certified Public Secretaries of Kenya Registration No. .....

..... Practising Certificate No. .....

16. Particulars of the auditor of the registered venture capital company

Name .....

Physical and postal address .....

Telephone .....

E-mail address .....

Fax No. .....

Institute of Certified Public Accountants of Kenya Registration Number .....

.....

Practising Certificate No. .....

Provide individual responses to the following questions in respect of each of the shareholders, directors and secretary:

17. Have you at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of creditors, in Kenya or elsewhere? If yes, give details ..

.....

.....

18. Have you been a director, shareholder or manager of a company that has been:

(a) denied any licence, approval or registration to carry out business in the financial sector in any jurisdiction, or had such licence withdrawn after it was made or any authorization revoked? Yes/No. .....

If yes, give details. .....

.....

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? If yes, give details .

.....

.....

(c) subjected to any form of disciplinary action, censure, warned as to future conduct or publicly criticized by any regulatory authority or professional body in any country with regard to competence, soundness of judgement or otherwise? If yes, give details .....

.....

.....

FIRST SCHEDULE—*continued*

19. Have you been involved in a violation of any law designed for protecting members of the public against financial loss due to dishonesty or incompetence? If yes, give details .....

.....

.....

20. Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction .....

.....

.....

21. Have you or any entity in which you are or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency (including tax authorities), professional association or other regulatory body? If yes, give details .....

.....

.....

22. Are you and/or a person associated with you now the subject of any proceeding that could result in a 'yes' answer to the above questions (19), (20), (21) and (22)? If yes, give details .....

.....

.....

23. (1) Are you a shareholder or director of a member company of any securities exchange?

If yes, give details .....

.....

.....

(2) Have you been—

(a) refused membership of any securities organization? If yes, give details .....

.....

.....

(b) expelled from or suspended from trading on or membership of any securities organization? If yes give details .....

.....

.....

(c) subjected to any other form of disciplinary action by any stock exchange? If yes, give details .....

.....

.....

We ..... (Director), ... (Director)

and..... (Secretary) declare that all the information given in this application form is complete and true.

Dated this ..... day of ..... ,20.....

Signed

..... (Director)

..... (Director)

..... (Secretary)

SECOND SCHEDULE

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

CERTIFICATE OF REGISTRATION OF A VENTURE CAPITAL COMPANY

REGISTRATION NO. .....

This is to certify that ..... is a Registered Venture Capital Company.

Given under the seal of the Capital Markets Authority this ..... day of .....

....

Chairman *Chief Executive*

THIRD SCHEDULE

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS, 2007

REGISTERED VENTURE CAPITAL COMPANY DIRECTORS DECLARATION

The following declarations shall be submitted with this application form:

We, the undersigned, being all the Directors of .....

Limited (the applicant herein) hereby declare as follows:

1. We have exercised all due diligence in relation to seeking this registration. We accept full responsibility for the accuracy of all information given to the Authority.
2. We confirm that after having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement or material omission which would render the information provided to be false or misleading to the Authority.
3. We have read and understood the Regulations and the provisions of the Act governing Registered Venture Capital Companies and undertake to ensure compliance with the same.

Dated this ..... day of ..... 20 .....

Signed ..... (Director)

..... (Director)

FOURTH SCHEDULE

CAPITAL MARKETS (REGISTERED VENTURE CAPITAL COMPANIES) REGULATIONS 2007

STATEMENT OF CONSENT BY FUND MANAGER

…….....…….. Limited, being duly licensed by the Capital Markets Authority as a Fund Manager and approved to manage Venture Capital Companies (Licence No ……) hereby accepts appointment as the Fund Manager of ……..… Limited and undertakes to comply with the Capital Markets Act and Regulations in executing all functions and duties attached to this appointment.

We declare that we have undertaken all due diligence exercises in relation to the proposed investment policy and funds in respect of which this application is being filed.

We undertake to inform the Authority immediately it comes to our knowledge that the Applicant has breached or failed to comply with any requirements.

Signed:

……..…..…..……) Director

…….....……) Director/Secretary

CAPITAL MARKETS (ASSET BACKED SECURITIES) REGULATIONS, 2007

ARRANGEMENT OF REGULATIONS

[Subsidiary]

CAPITAL MARKETS (ASSET BACKED SECURITIES) REGULATIONS, 2007

[L.N. 184/2007.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Asset Backed Securities) Regulations, 2007.

2. Application

(1) These Regulations shall apply to all offers of asset backed securities to the public or a section thereof in Kenya including issues by state corporations and other public bodies.

(2) The Rules and Regulations governing the issue, offer and listing of fixed income securities shall apply to asset backed securities to the extent that the same do not conflict with the provisions of these Regulations.

3. Interpretation

In these Regulations, unless the context otherwise requires—

"adviser" means a person appointed to arrange, package, place or market the application for issue, offer and listing of the asset backed securities;

"allowable expenses" includes trust fees, ongoing fees paid to rating agencies, servicing fees, origination fees, acquisition expenses, liquidation expenses, bank service charges, legal fees, audit fees and other direct charges incurred in the ordinary course of business, exclusive of organizational and offering expenses, conversion expenses and extraordinary expenses, all being deemed incidental expenses relating to the authorization and issue of asset backed securities offered for purchase by the general public for the purposes of the Income Tax Act (Cap. 470);

"asset backed securities" means securities—

(a) that are issued as part of a securitization transaction in which assets are transferred to a third party that issues the securities; and

(b) that are primarily serviced, with respect to both return of investment and return on investment, by cash flow from assets described in paragraph (a) above;

"asset backed securities holder" means the person whose name appears in the register of asset-backed securities holders;

"Authority" means the Capital Markets Authority established under section 5 of the Capital Markets Act (Cap. 458A);

"Central Bank" means the Central Bank of Kenya established by section 3 of the Central Bank of Kenya Act (Cap. 491);

"close relation" means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, son-in-law, grand child or spouse of a grandchild;

"Commissioner" means the Commissioner of Insurance appointed under the Insurance Act (Cap. 487);

"credit enhancement" means any arrangement including but not limited to insurance, letters of credit, lines of credit, collateralization, guarantees and other arrangements intended to decrease the credit risk on the asset backed securities;

"credit enhancer" means a person or entity that provides credit enhancement;

"credit rating" means an objective and independent opinion on the creditworthiness of the debt instrument to be issued based on relevant risk factors;

"day" means any calendar day excluding Saturdays, Sundays and public holidays;

"eligible assets" means assets which are the subject matter of the securitization transaction;

"independent director" means a director who—

(i) is not and has not been employed by the originator in an executive capacity within the five year period preceding the date of application;

(ii) is not a member of the issuer or originator's senior management or a significant customer or supplier to the issuer or originator or is an entity that receives significant contributions from the issuer or originator; or within a period of five years immediately preceding the date of application has not had any business relationship with the issuer or originator (other than service as a director) for which the issuer has been required to make disclosure;

(iii) has no personal service contract with any of the shareholders, directors or members of the senior management of the issuer or originator;

(iv) is not employed by a company at which a director of the issuer or originator serves as a director;

(v) is not a close relation of any person described above; or

(vi) has not had any of the relationships described above with any affiliate of the issuer or originator;

"information memorandum" means any prospectus, document, notice, circular, advertisement, or other invitation in print or electronic form containing information in relation to an issue of asset backed securities and inviting offers from the public or a section of the public to subscribe for the purchase of asset backed securities;

"issuer" means an entity that seeks to offer or offers asset backed securities to the public or a section thereof;

"liquidation expenses" means the expenditures necessary to convert residual or non-performing eligible assets or any underlying collateral, into cash, including expenditures necessary to collect on credit enhancement;

"liquidity provider" means a person who provides funds to a servicing agent for the settlement of payments due to asset backed securities holders in accordance with the schedule of payments stipulated for the terms and conditions of asset backed securities to cover any short-term cashflow shortfalls;

"Minister" means the Minister for the time being responsible for matters relating to Finance;

"origination fees" means all fees, commissions or other considerations, paid by any party to any party in connection with the origination and sale of eligible assets to the issuer, but not including the purchase price of the eligible assets, initial fees paid to rating agencies and professional fees paid to advocates, valuers and similar professionals for providing routine professional services;

"originator" means the entity that seeks to transfer its assets in a securitization transaction;

"securitization transaction" means an arrangement which involves the transfer of assets or risk to a special purpose vehicle where such transfer is funded by the issuance of securities to investors and payments to investors in respect of such debt securities are principally derived, directly or indirectly, from the cash flows of the transferred assets;

"selling agent" means the entity appointed to distribute or offer the asset backed securities to the public or a section thereof;

"servicing agent" means an entity appointed to manage collections on the assets underlying the asset backed securities and administering the cash flows of the asset pool;

"transfer", means the transfer of legal and beneficial title to the assets that are the subject matter of a securitization transaction;

"trustee" means the person or institution appointed to enforce the rights of the asset backed securities holders pursuant to the securitization;

"working hours" means between 8.00 a.m. and 5.00 p.m. on any working day.

PART II – PARTIES TO SECURITIZATION

4. Eligibility to be originator

The originator shall be—

(a) a public company incorporated or registered under the Companies Act (Cap. 486);

(b) a statutory corporation, local authority or Government Ministry;

(c) an entity established in Kenya under the provision of any written law; or

(d) such other entity as may be approved by the Authority.

5. Purchase of asset backed securities by originator

(1) An originator may, subject to regulation 37, purchase no more than the cumulative sum of ten per cent at any time of the total value of any asset backed securities issued pursuant to a transfer of its own assets to the issuer unless otherwise permitted by the Authority.

(2) The restriction in paragraph (1) shall not apply to the holding of subordinated securities by the originator.

6. The issuer

(1) An issuer shall be a company incorporated under the Companies Act (Cap. 486) or be of such other form as may be approved by the Authority.

(2) An issuer shall unless otherwise approved by the Authority be a newly created entity with no pre-existing creditors or other claims against it other than formation expenses.

(3) At least one-third of the members of the Board of Directors of the issuer shall be independent directors.

7. Functions of the issuer

The objects of an issuer shall be to—

(a) offer, issue and list asset backed securities;

(b) purchase eligible assets, enter into principle agreements required in connection to a securitization transaction; and

(c) undertake any other matters incidental thereto.

8. No relation of issuer to originator

An issuer shall neither be marketed as a subsidiary or a company within the group of the originator nor shall the name of the issuer or the asset backed securities product imply any relation to the originator.

9. Dissolution of issuer

An issuer shall not be voluntarily wound up until the asset backed securities issued by the issuer are fully redeemed in accordance with the terms and conditions of the asset backed securities.

10. Voluntary winding-up of issuer

The written consent of the Board of Directors or governing body of the issuer and the Authority shall be sought before the commencement of any voluntary winding-up proceedings of the issuer.

11. Auditor of the issuer

An auditor appointed by an issuer shall be a member of the Institute of Certified Public Accountants of Kenya and shall comply with the international standards on auditing in conducting the audit.

12. Record keeper of the issuer

Where an issuer delegates the record keeping functions to another entity, the officer in charge of the other entity shall be a member of the Institute of Certified Public Secretaries of Kenya.

13. Appointment of servicing agent

An issuer shall appoint a servicing agent in accordance with these Regulations.

14. Eligibility for appointment

A servicing agent shall be independent of the issuer, but may be the originator in so far as the originator provides these services on an arms length basis and subject to market terms and conditions.

15. Records to be maintained by servicing agent

(1) A servicing agent shall keep such books of account, records and statements in the name of the issuer as may be necessary to give a complete record of—

(a) all receipts and payments in respect to the eligible assets and asset backed securities;

(b) the portfolio of eligible assets; and

(c) every transaction carried out by the issuer.

(2) A servicing agent shall permit authorized agents of the authority to inspect such books of account, records and statements at any time during working hours.

16. Remittance of funds

A servicing agent shall, unless operating as the credit enhancer, be under no obligation to release any funds for the benefit of the asset backed securities holders unless or until it has received the same from the issuer.

17. Provision of liquidity by servicing agent

A servicing agent may operate as a liquidity provider to ensure that timely payments are made to the asset backed securities holders where there is a cash flow shortfall on a payment or repayment date in respect to the relevant asset backed securities.

18. Resignation of servicing agent

(1) A servicing agent who intends to resign shall give three months' notice in writing to the issuer and copy the notice to the Authority, stating such intention and the reasons for resignation.

(2) Notwithstanding the notice period stipulated in subregulation (1), the resignation shall not come into effect until a replacement has been duly appointed by the issuer.

19. Removal of servicing agent

An issuer who intends to terminate the appointment of a servicing agent shall inform the Authority of such intention at least three months prior to the termination and shall provide the Authority with the copy of the relevant notice and the reasons for termination.

20. Appointment of new servicing agent

An issuer shall appoint a new servicing agent at least thirty days before the expiry of the term of the outgoing servicing agent and ensure that there is adequate time for the handover and transfer of all information within itself in relation to its contractual duties to enable the incoming servicing agent to properly execute their duties.

21. Handover to new servicing agent

An outgoing servicing agent shall hand over to the incoming servicing agent all the books of account, documents and records that are required to be kept under these Regulations.

22. Liquidity provider

(1) A liquidity provider may decline to advance sums to an issuer unless it is certain that such amounts are recoverable and payable in full from the issuer *pari passu* or in priority to credit enhancers and asset backed securities holders.

(2) A liquidity provider shall not underwrite the credit risk of an issuer or otherwise operate as a credit enhancer unless appointed to act as a credit enhancer.

23. Appointment and role of trustee

An issuer shall appoint a trustee who shall—

(a) be the trustee for the asset backed securities holders;

(b) enforce the rights of the asset backed securities holders as against the issuer, credit enhancer or any other such person against whom the trustee and the asset backed securities holders have recourse; and

(c) have such other duties and obligations as indicated by the terms and condition of its trust deed.

24. Rights of trustee

A trustee shall have all such rights as may accrue to the asset backed securities holders including but not limited to access to information on the performance, operation of the securitization transaction and the asset backed securities issued thereunder.

PART III – ISSUE OF ASSET BACKED SECURITIES

25. Advisors

(1) An originator shall appoint an advisor from among duly licensed investment banks, stock brokers and investment advisers which advisor shall be responsible for liaising with the Authority on the offer, issue or listing of the asset backed securities.

(2) An originator may also appoint such other advisers as it deems necessary.

26. Form of application

(1) An application for approval for the offer, issue or listing of asset-backed securities shall be submitted to the Authority in the prescribed form.

(2) Compliance with the requirements set out in these Regulations does not guarantee an applicant's suitability which shall be determined by the Authority in consultation with the Mi

(3) The application to be submitted shall be accompanied by—

(a) a term sheet setting out the salient terms and conditions of the proposed structure of the proposed securitization transaction including—

(i) name, date and place of incorporation, names and professions of directors, names and interests of shareholders and proposed structure of the issuer;

(ii) name, date and place of incorporation, names and professions of directors, names and interests of shareholders of the originator;

(iii) names and addresses of the transaction advisers;

(iv) securitization transaction overview;

(v) proposed arrangements for the transfer of eligible assets and nature of the eligible assets;

(vi) currency and principal amount of proposed issue;

(vii) tenor of proposed issue;

(viii) details of proposed credit enhancement and provision of liquidity by the liquidity provider (where applicable);

(ix) details of utilization of proceeds;

(x) indicative credit rating;

(xi) confirmation on whether the offer is to be listed and structure of issue; and

(xii) conditions precedent;

(b) the following documents relating to the originator—

(i) resolution of the Board of Directors approving the transfer of eligible assets to the issuer; and

(ii) written consent from any existing secured creditor enjoying any security interest of any nature over the proposed eligible assets agreeing to wholly discharge their security in respect of the eligible assets to be transferred;

(c) where the originator is a company incorporated under the Companies Act (Cap. 486) it shall submit a certified copy of its certificate of incorporation including any certificate of change of name and the memorandum and articles of association;

(d) the constitution documents relating to the issuer together with a written undertaking to comply with the requirements of these Regulations;

(e) declarations from the originator, issuer and adviser confirming that they have taken all reasonable care in structuring the issue, preparing the information memorandum and developing all projections on performance;

(f) a legal opinion confirming that the transferred eligible assets would not be available to the creditors, liquidators or receiver managers of the originator in the event of the bankruptcy, winding-up, insolvency or receivership of the originator;

(g) all reports by any expert included or referred to in the information memorandum;

(h) draft copies of material contracts (where applicable) including the credit enhancement agreement, proposed servicing agreement between the issuer and servicing agent and guarantee agreement where applicable;

(i) duly executed declarations by the directors of the issuer in the form prescribed in the First Schedule;

(j) where applicable, a letter of no objection from the relevant primary regulator of the originator;

(k) a credit rating report of the proposed issue from an independent credit rating agency; and

(l) the prescribed application fee.

27. Consultation with Minister

The Authority shall upon receipt of an application to issue or list asset backed securities inform the Minister of its decision to approve or reject the application at least fourteen days prior to communicating that decision to the Applicant.

28. Documents to be lodged and available for inspection

(1) The information memorandum and all required information relating to the proposed securitisation and asset backed securities shall be submitted to the Authority in a period of not less than twenty-eight days before the opening of the offer period and the Authority may require additional disclosures as it deems fit.

(2) All documents which are required to accompany the application and the documents referred to in the information memorandum shall be made available for inspection at the registered office of the issuer for the period which the asset backed securities are in issue, unless otherwise advised by the Authority.

29. Offer period

The offer period shall not exceed thirty days from the date of the opening of the offer unless the Authority approves otherwise.

30. Manner of subscription

Subscription for the issue of asset backed securities shall be made through one or more of the selling agents.

31. Subscription proceeds

(1) The subscription amount shall be deposited with the selling agent and all the proceeds shall be held in a separate trust account in the name and for the benefit of the issuer and shall be applied by the issuer for the purposes specified in the information memorandum immediately after the offer period is closed.

(2) Notwithstanding subregulation (1) where the minimum subscription is not raised, the issuer shall refund the subscribers their subscription amount.

32. Investor Compensation Fund

The interest deemed to accrue on the subscription proceeds shall be paid into the Investor Compensation Fund in accordance with section 18 of the Act.

33. Allotment of securities

(1) The allotment of securities offered to the public shall be made in strict accordance with the allotment policy disclosed in the information memorandum.

(2) Notwithstanding subregulation (1) where the results of the subscription make such policy impractical, the allotment policy may be amended with the prior written approval of the Authority.

(3) Where the Authority approves amendment under subregulation (2), the issuer shall announce the fact of approval within twenty-four hours of the grant of the approval.

34. Publication of results of offer

The results of the allotment of a public offer shall be published after the Authority has received prior notification of not less than twenty-four hours.

PART IV – ASSETS TO BE SECURITIZED

35. Eligible assets

The assets to be securitized for purposes of issuing asset backed securities shall be—

(a) capable of generating a true and identifiable revenue stream that is projected to be sufficient to service the return of and return on investment as well as allowable expenses for the life of the asset backed securities;

(b) free from any encumbrances or impediments to their free transfer and their transfer shall not constitute an event of default or acceleration trigger under any security agreement relating to the assets of the originator; and

(c) transferred at fair value.

36. Right to transfer of assets

An originator shall have and demonstrate an unencumbered right to transfer all legal and beneficial interests in the eligible assets and the rights to the eligible asset.

37. Transfer of assets

(1) An originator shall transfer all its rights, titles, interests and obligations in the assets to the issuer and shall not retain any beneficial interest or liability.

(2) Where the eligible assets have declined to a level that renders the asset securitization transaction uneconomical to carry on, the originator may retain a first right of refusal to repurchase assets from an issuer at a fair value.

(3) The originator may repurchase assets from the issuer where the originator is under an obligation to do so under a securitization transaction when it has breached any conditions, representation or warranty in respect of the securitization transaction.

PART V – CREDIT RATING AND CREDIT ENHANCEMENT

38. Credit rating

All securitization transactions shall be rated by an independent credit rating agency approved and registered by the Authority.

39. Credit enhancement

(1) An issuer may seek credit enhancement of the issue, which enhancement may be in the form of—

(a) over-collateralization;

(b) a stand by letter of credit or line of credit issued by a bank or financial institution that is licensed by the Central Bank;

(c) a guarantee by a bank or financial institution that is licensed by the Central Bank;

(d) surety bond issued by an insurance company licensed by the Commissioner of Insurance other than the originator or its subsidiary, its parent company or the parent company;

(e) an instrument issued by a bilateral or multilateral institution of which Kenya is a member;

(f) issue of subordinated tranches;

(g) an instrument issued by the Government of Kenya; or

(h) such other instrument or mechanism from such other entity as may be approved by the Authority.

(2) Where the credit enhancement is to be provided by a bank, financial institution or insurance company licensed in Kenya, the credit enhancement shall only be provided with the prior written consent of the Central Bank in the case of a bank or financial institution or the Commissioner of Insurance in the case of an insurance company.

PART VI – LISTING, SUSPENSION OF DEALING AND DELISTING

40. Listing

Upon the approval and issue, the asset backed securities may be listed on the fixed income securities market segment at an approved securities exchange in Kenya.

41. Suspension or delisting to be approved by the Authority

No asset backed securities shall be suspended or delisted by a securities exchange without the prior written approval of the Authority.

42. Publication of suspension or delisting

Where an asset backed security has been suspended or delisted, the securities exchange shall within forty-eight hours publish such information in at least two local dailies of national circulation.

PART VII – FEES AND CHARGES

43. Fees

An issuer of asset backed securities approved to offer, issue or list shall pay the prescribed fees.

SCHEDULE ONE

INFORMATION MEMORANDUM

DISCLOSURE REQUIREMENTS FOR PUBLIC ISSUE OF ASSET BACKED SECURITIES

Cover Page Disclosure and Declarations:

1.1 Disclaimer Statement

The information memorandum shall contain on its front page the following prominent and legible disclaimer statements.

"As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus or information memorandums. Approval of the issue or listing by the Authority is not to be taken as an indication of the merits of the issuer, the originator or the asset backed securities"

"The originator does not underwrite the issue of asset backed securities by the issuer and shall not make good any losses or otherwise guarantee the credit risk of the issuer".

1.2 Declaration by directors

Declarations by directors of issuer

1. We …… being the directors of the issuer namely: …… accept responsibility for the information contained in this prospectus/information memorandum. To the best of our knowledge and belief we have taken all reasonable care to ensure that such is the case, the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

2. That in their opinion the issuer does not have any debts, liabilities or other such claims as may increase the likelihood of the issuer being subjected to voluntary or involuntarily winding up or liquidation proceedings

3. That they have taken all reasonable care as would be expected of competent professionals in structuring the transaction, preparing the information memorandum and developing all projections

Declaration by directors of originator

1. That is their opinion the originator is a going concern

1.3 Resolutions statement

A statement of the originator's board resolutions, shareholders approval where required and approval by existing debt holders where required.

A statement of the issuer's board resolutions and shareholders approval of the issuer acknowledging and accepting the liabilities arising in accordance with the securization transaction.

2.0 Offering and Listing Summary

A statement that the originator is incorporated or established in Kenya under the laws of Kenya together with the particulars of incorporation or establishment as the case may be.

The name, registered or principal officer of the issuer and a statement that is set up for the sole purpose to issuing asset backed securities.

A statement that the issuer is incorporated or otherwise established in Kenya and is subject to Kenyan laws.

A summary description of the public offering or listing and of particulars dealt with in the document.

A statement that the Authority has approved the public offering and listing of the securities at the fixed income securities market segment of a securities exchange.

A statement that a copy of the prospectus or information memorandum has been delivered to the Registrar of Companies.

3.0 Identity of directors, advisors and auditors of the Issuer.

3.1 (i) Directors and shareholders of the issuer

The full name, age, home or business address, nationality, professional experience and academic qualifications of the directors and other directorships;

The names of the shareholders and the number of shares owned by each of them as of the most recent practicable date;

(ii) In cases where the issuer is constituted other than as a limited liability company

The full name, age, home or business address, nationality, professional experience and academic qualifications of the members of the governing body

3.2 Advisers

The names and addresses of the issuer's bankers, legal and financial advisers, auditors, reporting accountants and any other expert to whom a statement or report included in the information memorandum has been attributed.

The names and addresses of all the parties involved in the issue.

Where a statement or report attributed to a person as an expert is included in the information memorandum, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorized the contents of that part of the information memorandum, and has not withdrawn his consent.

4.0 Financial information and procedure for subscription and allotment

(i) The amount to be raised through the issue and the tenure of the security.

(ii) A statement that the application forms shall be submitted to the selling agent together with the subscription amount.

(iii) A statement that the receipt signed and issued by the selling agent shall contain the name of the subscriber, the address, nationality, date of subscription, the number of securities subscribed and amount paid by the subscriber.

(iv) The nominal amount of the securities together with the issue and redemption prices and nominal interest rate.

(v) The historic cash flows (for the preceding five years, where applicable) and projected cash flows in respect of the eligible assets.

(vi) An indication as to, where potential material liquidity shortfalls may occur, the availability and details of any liquidity support and plans to cover potential shortfalls.

(vii) Information regarding the accumulation of surpluses in the Issuer and an indication of the investment criteria for the investment of any liquidity surpluses in the Issuer and an indication of the investment criteria for the investment of any liquidity surpluses.

(viii) The order of priority of payments made by the issuer.

(ix) Details of any other arrangements upon which payments of interest and principal to asset backed securities holders are dependent.

x. The nature, number and numbering of the debt securities and the denominations.

xi. The procedures for the allocation and the procedure to be applied in case of over subscription.

(xii) Arrangements for the amortization of any substantial loan tat may impact repayment, including detailed repayment schedule of both the principal and interest.

(xiii) The date from which interest becomes payable and the due dates for interest as well as the final repayment date and any earlier repayment dates.

(xiv) The allotment policy.

(xv) The subscription procedure and process of facilitating subscription and payment.

(xvi) The time limit on the validity of claims to interest and repayment of principal.

(xvii) The period during which the offer will remain open.

(xviii) State the method and time limits for delivery of securities (including provisional certificates, if applicable) to subscribers or purchases.

(xix) Where applicable, a statement that the debt securities are dematerialized.

(xx) State the manner in which results of the distribution of securities will be made public and when appropriate, the manner for refunding excess amounts paid by applicants.

(xxi) A statement that the securities will be freely transferable.

(xxii) A summary of the rights conferred upon the asset backed securities holders and particulars of the security (if any) thereof.

5.0 Details of the eligible assets

The originator shall disclose the following information regarding eligible assets and explanatory notes where applicable–

i. the legal jurisdiction where the eligible assets are located;

ii. the nature and title of the eligible assets;

iii. the criteria for the selection of the eligible assets;

iv. the number and value of the eligible assets in the pool;

v. rights of recourse against the originator to the extent allowed in law, including a list of material representations and warranties given to the Issuer relating to the eligible assets;

vi. rights to substitute the eligible assets and the qualifying criteria;

vii. the treatment of early amortization of the eligible assets.

viii. level of concentration of the obligors in the asset pool, identifying obligors that account for twenty five percent or more of the eligible asset value;

ix. where there is no concentration obligors above twenty five percent, the general characteristics and descriptions of the obligors.

x. the payment methods and cash flows in respect of the eligible assets;

xi. the outstanding principal balance or anticipated collections over a definite period from the eligible assets;

xii. the outstanding principal balance or anticipated collections over a definite period from the eligible assets as a percentage of the total amount of asset backed securities being offered;

xiii. the amount of eligible assets in default;

xiv. the amount of eligible assets in default as a percentage of the total amount of asset backed securities being offered and the amount of eligible assets in default as a percentage of the credit enhancement;

xv. explanatory notes where there is expected material difference between historic and projected cash flows and any actions being taken to correct the situation; and

xvi. a description of what constitutes a default.

6.0 Credit enhancement

(i) A statement that the issue is credit enhanced.

(ii) A description of the nature and scope of the guarantees, sureties and commitments intended to ensure that the asset backed securities will be duly serviced as regards both the repayment of the debt securities and the payment of interest.

(iii) An explicit statement on and procedure for recourse by the asset backed securities holders or their duly appointed trustee to the credit enhancer.

7.0 Expenses of the issue

(i) An itemized statement of the major categories of allowable expenses incurred in connection with the issue and to whom expenses are payable. If the amounts of any items are not known, estimates shall be given.

(ii) Where estimates are used in (i) above the rationale for the estimates should be disclosed and the final schedule provided to the Authority once available.

8.0 Details of servicing agent

The name, address, description and significant business activities of the servicing agent or equivalent, (if any), together with a summary of the servicing agent's responsibilities and a summary of the provisions relating to the appointment or removal of the servicing agent and alternative servicing agent and their details.

9.0 Legal opinion

A legal opinion confirming that the transferred eligible assets will not be available to the liquidator or receiver and manager of the originator in the event of liquidation or winding up of the originator.

10.0 Reasons for the securitization transactions and use of proceeds

(i) The directors of the originator shall state the purpose for which the securization transaction is intended.

(ii) The minimum amount which, in the opinion of the directors of the originator, must be raised by securitizing the eligible assets in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters:

(a) the purchase price for the eligible assets, purchased or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) any preliminary expenses payable by the Issuer, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to

procure subscriptions for or of his underwriting or guaranteeing any asset backed securities of the issuer.

(c) the repayment of any moneys borrowed in respect of any of the foregoing matters;

(d) any other material expenditure, stating the nature and purposes thereof and the estimated amount in each case; and

(e) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

11.0 Risk factors

Provide information on the risk factors headed “Risk factors” including financial, economic and sect oral risk factors as well as risks associated with or affecting the underlying eligible assets, the securitization transaction, the issuer, the asset backed securities to be issued and the credit enhancer.

12.0 Information available for inspection

A statement that for a period of not less than five working days before the date of the information memorandum until the final repayment date of the asset backed securities, the following documents shall be available for inspection at the registered officer of the issuer or at the trustee’s office.

(a) the memorandum and articles of association of the originator and of the issuer or relevant documents of establishment where issuer is not a company limited by shares;

(b) copies of the agreement between the issuer and the servicing agent and liquidity provider where relevant;

(c) copies of the agreement the credit enhancer;

(d) the trust deed which is referred to in the information memorandum;

(e) documents of conveyance of the eligible assets under the securitization transaction;

(f) a statement of the originator’s and issuer’s board resolutions, shareholders approval and approval by existing debt holders where applicable;

(g) all reports, letters and other documents, valuations and statements by an expert of any art of which is included or referred to in the information memorandum;

(h) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within two years immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, that may or may be deemed to have an impact on the eligible assets;

(i) any contractual arrangement with a controlling shareholder required to ensure that the issuer is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of date, terms and conditions and any consideration passing to or from the originator or any other member of the group; and

(j) a copy of any contractual arrangement with a controlling shareholder

Where any of the documents listed above are not in the English language, translations into English must also be available for inspection.

13.0 Interest of experts

If any of the named experts owns an amount of shares in the originator or its subsidiaries which is material to that person, or has a material, direct or indirect economic interest in the originator or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

Shareholding of one person or more in the originator shall be considered material.

14.0 Trustee

Details of trustees or of any other representation for the asset backed securities holders.

(a) The name, function, description and head office of the trustee or other representative of the asset backed securities holders; and

(b) The main terms of the documents governing such trust arrangement and in particular the conditions under which a trustee or may be replaced.

15.0 Credit enhancer

The names, addresses and descriptions of the persons underwriting the issue and where the enhancer is a company, the description must include—

(i) the place and date of incorporation and registration number of the credit enhancer;
(ii) the names of the directors of the credit enhancer;
(iii) the name of the secretary of the credit enhancer
(iv) the bankers to the credit enhancer where applicable;
(v) the authorized and issued share capital of the credit enhancer; and
(vi) the credit rating of the credit enhancer.

Where not all of the issue is underwritten or guaranteed, a statement of the portion not covered shall be made.

SECOND SCHEDULE

ASSET BACKED SECURITIES
CONTINUOUS REPORTING OBLIGATIONS

A.01. Issuer

An issuer must publish, by way of a cautionary announcement information, which could lead to material movements in the ruling price of its securities if at any time the necessary degree of confidentiality cannot be maintained, or that confidentiality has or may have been breached.

A.02. An issuer whose securities are listed on more than one securities exchange must ensure that equivalent information is made available within twenty-four hours to the market at all such securities exchange.

B.01. Annual financial statements

(1) Every issuer of asset backed securities to the public or section of the public shall prepare an annual report containing audited annual financial statements within four months of the close of its financial year.

(2) A complete set of financial statements includes the following components—

(a) balance sheet;
(b) income statement;
(c) a statement showing either
  (i) all changes in equity; or
  (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
(d) cash flow statement; and
(e) accounting policies and explanatory notes.

C0. Reporting requirements—

C.00. Quarterly, interim and annual reports and accounts

C.01. An issuer should include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report—

(a) a statement that the same accounting policies and methods of computation are followed in the interim financial statements as compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change;

(b) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence;

(c) the nature and amount of changes in estimates of amounts reported;

(d) a brief report on any material developments including a quarterly report from the credit rating agency where applicable or where the asset backed securities are not rated, the trustee's assessment of the performance of the pool of assets securitized which report should also be made available for inspection by the public; and

(e) an overview of events that are not necessarily material.

C.02. An issuer should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements.

C.03. The minimum disclosures in the quarterly, interim and annual financial statements of the issuer includes—

Income and Expenditure Account

Income

1. Cash collected
2. Interest received
3. Other incomes received
4. Surplus or deficit

Expenses

1. Allowable expenses

In cases where there is a deficit, a disclosure on how the shortfall was met is required.

Balance Sheet

Assets

1. Eligible assets (portion yet to mature)
2. Investments (Government securities)
3. Bank balance

Capital and Liabilities

1. Share capital
2. Surplus or deficit
3. Borrowings (asset backed securities outstanding)
4. Accrued interest

C.04. An issuer of asset backed securities should disclose the following if not disclosed elsewhere in information published with the financial statements—

(a) the domicile and legal form of the issuer, its country of incorporation and the address of the registered office (or principal place of business, if different from the registered office);

(b) a description of the nature of the issuer's operations and its principal activities.

C.05. An issuer of asset backed securities shall notify the Authority and the securities exchange of its annual results within twenty-four hours following approval by the issuer's directors.

C.06. An issuer of asset backed securities shall at the end of each calendar quarter, submit to the Authority and securities exchange the following information—

(a) A register of asset backed security holders in the format prescribed below—

Investor 's name

Date of purchase

Maturity date

Face value (KSh.)

Yield (% age)

Redeemed value (KSh.)

Outstanding balance (KSh.)

Banks

Insurance companies

Fund Managers

Investment advisers

Individuals

Others

Total.

(b) A schedule of the obligations maturing in the next quarter against amounts already collected to date and amounts expected to be collected by the end of the next quarter and where there is material difference between the preceding quarter's collections and the anticipated collections in the next quarter, an explanation should be given.

(c) The following information regarding eligible assets—

(i) the outstanding principal balance or anticipated collections over a definite period from the eligible assets;

(ii) the outstanding principal balance or anticipated collections over a definite period from the eligible assets as a per centage of the total amount of asset backed securities being offered;

(iii) an aging schedule of the receivables or assets being securitized for the last three years or less where they have been in existence for a shorter period;

(iv) a description of what constitutes a default;

(v) the amount of eligible assets in default;

(vi) the amount of eligible assets in default as a per centage of the total amount of asset backed securities being offered and the amount of eligible assets in default as a per centage of the credit enhancement;

(vii) the rate of interest of the asset backed securities, the interval of payment of interest and the entitlement period; and

(viii) explanatory notes where there is expected material difference between actual and projected cash flows and any actions being taken to correct the situation.

(d) The name, address telephone number, registered office at which the register of the security holders is kept.

C.07. An issuer of asset backed securities shall provide the Authority and the securities exchange details of its asset backed security holders, which may be required by the Authority or the securities exchange.

An issuer shall submit interim reports to the Authority and publish extracts of the annual report in at least two daily newspapers of national circulation in Kenya.

D.00. Communication with asset backed security holders

D.01. An issuer shall ensure that at least in each securities exchange in which its securities are listed all the necessary facilities and information are available to enable holders of such securities exercise their rights. In particular it shall—

(a) inform holders of securities of the holding of meetings which they are entitled to attend;

(b) publish notices or distribute circulars giving information on—

(i) the allocation and payment of interest;

(ii) redemption or repayment of the securities.

D.02. An issuer must forward to the Authority and securities exchange at which the asset backed securities are listed copies of—

(a) all circulars, notices, reports, announcements or other documents at the same time as they are issued; and

(b) all resolutions passed by the issuer, where applicable, at any meeting of holders of listed securities within ten days after the relevant general meeting.

E.0. Credit rating renewals

E.01. An issuer of asset backed securities shall ensure that the credit rating of the issue is reviewed and updated every year from the date of the last credit rating report.

E.02. A trustee shall ensure that each credit rating report is delivered to the Authority within seventy-two hours of the date of the report and the results of the same are published in two newspapers of national circulation within seven days of the date of the report.

F0. Corporate governance

F.01. There shall be public disclosure in respect of any management or business agreements entered into between the issuer and its related parties, which may result in a conflict of interest situation.

G.00. Miscellaneous obligations

1. An issuer shall disclose and make a public announcement of all material information including but not limited to—

(a) any change of address of the registered office of the issuer or of any office at which the register of the holders of listed securities is kept;

(b) any change in the directors, registrar, servicing agent or auditors of the issuer;

(c) any proposed significant alteration of the memorandum and articles of association of the issuer or the trust documents;

(d) any application filed in a court of competent jurisdiction to wind-up the originator or issuer. Details of the suit and the probable outcome of the suit must be confidentially submitted to the Authority and the securities exchange

where the asset backed securities are listed; and the appointment or imminent appointment of receiver or receiver and manager or liquidator of the originator or issuer; and

(e) any "cash inflow" warning, where there is a material discrepancy between the projected cash inflows for the current financial year and the level of cash inflows in the previous financial year.

2. For the purposes of subparagraph (1)(e), the expression **"material discrepancy"** in relation to projected cash flows for a financial year means that such cash inflows are at least five per cent lower than the level of cash inflows in the previous financial year.

CAPITAL MARKETS (CORPORATE GOVERNANCE) (MARKET INTERMEDIARIES) REGULATIONS, 2011

ARRANGEMENT OF REGULATIONS

Regulation

[Subsidiary]

CAPITAL MARKETS (CORPORATE GOVERNANCE) (MARKET INTERMEDIARIES) REGULATIONS, 2011

[L.N. 144/2011, L.N. 115/2013.]

1. Citation

These Regulations may be cited as the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"board" means the board of directors of the market intermediary;

"close relation" means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grand child or spouse of a grandchild;

"management of a market intermediary" means the persons who the Authority has been informed, in writing, are responsible for the day to day administration of a market intermediary;

"market intermediary" means a company licensed under Part IV of the Act;

"independent non-executive director" means a director who—

(a) has not been employed by the market intermediary in an executive capacity within the last five years;

(b) is not associated to an adviser, consultant to the market intermediary or a member of the market intermediary's senior management or a significant client or supplier of the market intermediary or with a not-for-profit entity that receives significant contributions from the market intermediary; or within the last five years, has not had any business relationship with the market intermediary (other than service as a director) for which the market intermediary has been required to make disclosure;

(c) does not have a contract of service with the market intermediary, or a member of the market intermediary's senior management;

(d) is not a close relation of an adviser, consultant to the market intermediary or a member of the market intermediary's senior management or a significant client or supplier of the market intermediary; or

(e) has not had any of the relationships described in paragraphs (a), (b), (c) and (d) with any affiliate of the market intermediary.

3. Directors

(1) The Board of a market intermediary shall be composed of—

(a) a minimum of three directors of whom at least two shall be natural persons;

(b) at least one third independent non-executive director;

(c) not more than one-third of the directors who are close relations of any director.

(2) A person shall not be a director in more than two market intermediaries unless the market intermediaries are subsidiaries or holding companies.

(3) A market intermediary shall not change the composition of its board without the prior written consent of the Authority.

[L.N. 115/2013, s. 2.]

4. Fit and proper requirements for appointment as director

A market intermediary shall not appoint a person to be a director unless that person—

(a) is fit and proper to hold such position; and

(b) has undergone a relevant training on corporate governance:

Provided that a market intermediary shall ensure that any person appointed as a director undergoes corporate governance training within six months of appointment.

[L.N. 115/2013, s. 3.]

5. Register of directors

A market intermediary shall keep a register of its directors and avail the register for inspection by the public, without any charge, at its registered office.

6. The Board

(1) A market intermediary shall have a board that shall lead, control and shall be collectively responsible for the conduct and governance of its securities business.

(2) The board shall provide leadership within a framework of prudent and effective control that facilitates risk assessment and management.

(3) The board shall ensure that the necessary financial and human resources are available to meet its objectives and review management performance.

(4) The chairman of the board shall not be appointed as the chief executive officer of a market intermediary, and the board shall specify the roles and responsibilities of the chairman and chief executive, in writing.

(5) The chairman of the board shall be a non-executive director.

7. Strategic direction and control

The board shall—

(a) give strategic direction to a market intermediary;

(b) ensure the integrity of a market intermediary's accounting and financial reporting systems, including the independent audit, and that the appropriate systems for risk management and financial and operational control are in place;

(c) maintain control and monitor the management of a market intermediary in implementing its plans and strategies; and

(d) ensure that the market intermediary complies with the Act and other relevant legislation.

8.

The Board may adopt the code of conduct set out in the Schedule or develop a code of conduct for the directors, management and staff that addresses the issues specified in the code of conduct set out in the Schedule:

Provided that where the code of conduct developed by a market intermediary does not address all the issues specified or is inconsistent with the code of conduct set out in the Schedule, the code of conduct set out in the Schedule shall apply to the extent of the omission or inconsistency.

9. Board charter

(1) In order to discharge its responsibilities, the board shall prepare and write a charter that—

(a) confirms its responsibility for the adoption of strategic plans, monitoring the operational performance, the determination of policy and processes that ensure that the integrity of the market intermediary's risk management and internal controls;

(b) reserves specific powers to itself and delegates other matters to the management of a market intermediary;

(c) provides a corporate code of conduct that addresses conflict of interest, relating to directors and management, which shall be regularly reviewed and updated as necessary; and

(d) identifies key risk areas, that require regular monitoring.

(2) The board may develop a code of conduct for the directors, management and staff that addresses all the issues set out in the code of conduct set out in the Schedule or adopt the code of conduct set out in the Schedule.

10. Accountability and responsibility

(1) The board shall be responsible and accountable for the performance and conduct of the business of the market intermediary.

(2) The board shall keep and maintain a schedule of the matters reserved for its decision and ensure that it directs and controls.

(3) The board shall not be discharged from its duties and responsibilities for matters of authority delegated to committees of the board or to the management of a market intermediary.

11. Board meetings

(1) The board shall meet at least once in every three calendar months to review the market intermediary's processes and procedures and the effectiveness of its internal systems of control.

(2) The board shall, at the beginning of each financial year, prepare an annual schedule of the meetings of the market intermediary.

12. Remuneration of directors

The remuneration of directors and the chief executive of a market intermediary shall be commensurate with the nature and size of operations of the market intermediary and the remuneration offered for similar positions in the market.

13. Committees

(1) The board shall establish an audit committee and such other committees, as it considers necessary and specify their terms of reference, in writing, including the reporting procedures and a written scope of authority.

(2) The audit committee shall, among others—

(a) review regular internal audit reports prepared by the market intermediary's internal auditor for management and management's response to such reports;

(b) review the market intermediary's periodical financial statements and any other financial reports or financial information, when necessary;

(c) review with management and external auditors—

(i) the audited and unaudited financial statements of a market intermediary before they are released to the public;

(ii) the effectiveness of the documented risk management policy report for the assessment, monitoring and managing the possible risk exposure;

(d) review the effectiveness of the internal controls of the market intermediary and other matters affecting the financial performance and financial reporting of a market intermediary, including information technology security and control;

(e) review the external auditors' proposed audit scope and approach;

(f) monitor compliance of a market intermediary with its code of conduct and ethics;

(g) consider the work plan of the market intermediary compliance activities;

(h) regularly report to the board on the activities of the market intermediary, issues and related recommendations; and

(i) institute and oversee special investigations, when necessary.

(3) The board may, refer to a relevant committee established under paragraph (1), any matter for consideration and determination.

(4) A decision of a committee shall not bind a market intermediary unless the decision has been to the presented board for consideration and ratification.

{L.N. 115/2013, s. 4.]

14. Corporate governance framework

(1) A market intermediary shall establish a corporate governance framework that provides—

(a) strategic guidance of the market intermediary that promotes the effective monitoring of the management and accountability of the board; and

(b) for availability and documentation of timely and accurate information relating to the market intermediary, including its financial structure, performance, ownership and governance.

(2) The board shall review its management, operations, accounts, major capital expenditure and corporate performance at least once in every three months.

(3) The board shall review its corporate governance structure annually.

(4) The board shall document the results of the reviews conducted under paragraphs (2) and (3).

15. Responsibilities of shareholders

(1) The shareholders of a market intermediary shall, jointly and severally, protect, preserve and actively exercise the authority over the institution in general meetings.

(2) The shareholders shall—

(a) elect or appoint persons who are fit and proper, have the relevant experience and qualifications, and can provide effective leadership and guidance in the business of the market intermediary to the board of directors;

(b) ensure that, the board is through general meetings and related forums, constantly held accountable and responsible for the efficient and effective governance of the market intermediary;

(c) to utilise powers vested in general meetings to change the composition of a board of directors that does not perform to expectation or in accordance with the mandate of the market intermediary.

(3) The shareholders of a market intermediary shall ensure that the market intermediary applies to the Authority for approval of any acquisition or transfer if the acquisition or transfer results to a person being entitled to exercise control of over five per cent or more of the share capital of that intermediary.

(4) A market intermediary shall obtain the approvals required under paragraph (1), before the allotment of shares.

(5) A market intermediary shall not appoint a shareholder who holds more than twenty-five per centum shareholding in a market intermediary as an executive director of the market intermediary or to any senior management position in the market intermediary.

{L.N. 115/2013, s. 5.]

16. Appointment of employees

(1) The board shall formulate a policy for the appointment of employees, which shall be approved by the Authority.

(2) The board shall review the policy formulated under paragraph (1) at least once in every three years and submit any changes made to the policy to the Authority for approval.

17. Chief executive officer

(1) The chief executive officer of a market intermediary shall be responsible to the board for the day to day running of the market intermediary and shall—

(a) implement the policies and the corporate strategy developed by the board;

(b) identify and recommend to the board the employment of officers who are competent to manage the operations of the market intermediary;

(c) co-ordinate the operations of the departments within the market intermediary;

(d) establish and maintain efficient and adequate internal control systems for the management of the market intermediary;

(e) design and implement management information systems necessary to facilitate efficient and effective communication within the market intermediary;

(f) regularly appraise the board adequately on the operations of the market intermediary; and

(g) ensure that the market intermediary complies with the Act and other relevant laws.

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

[L.N. 115/2013, s. 6.]

18. Separation of employees' duties

(1) The management of a market intermediary shall maintain adequate separation of employee duties, particularly between—

(a) those responsible for incurring commitment;

(b) those responsible for making payments; and

(c) those responsible for preparing accounts.

(2) The market intermediary shall maintain such internal controls, functional lines, systems to restrict the flow of information between key departments or other demarcations as may be considered necessary.

19. Employees

(1) The board shall ensure that all employees are fit and proper for their roles, including having the necessary qualifications and experience for their responsibilities and that there is no evidence of lack of integrity or other matters likely to raise concerns over their probity and capacity in managing their own financial affairs or those of clients.

(2) The management of a market intermediary shall determine and document the experience and qualifications for each post and meet any relevant requirements of the Authority.

(3) The management shall ensure that all employees have and document an appropriate training programme based on the needs of the market intermediary and the requirements of the Authority.

20. Management of a market intermediary

(1) The management of a market intermediary shall operate and manage the market intermediary on a day-to-day basis.

(2) The management of a market intermediary shall—

(a) implement and adhere to the policies, practices and standards developed by the board;

(b) adhere to the systems established to facilitate efficient operations and communications;

(c) adhere to the planning process that has been developed to facilitate achievement of targets and objectives;

(d) promote human resource development and training and deal with other issues relating to staff;

(e) comply with the code of conduct, the Act and any other relevant laws; and

(f) keep and maintain record, and comply with all the reporting requirements.

(3) The management of a market intermediary shall ensure that—

(a) each employee has a job description that defines his duties and responsibilities;

(b) all employees familiarize themselves with and adhere to the code of conduct;

(c) employees, collectively, have the necessary knowledge, skills, information and authority to establish, operate and monitor the system of internal controls;

(d) the areas of discretion of each employee and the criteria governing the actions of each employee are adequately defined, and that each employee is subject to oversight by another employee and in the case of management, oversight by the board;

(e) the ability of any employee to commit the market intermediary to expenditure, market positions or any other trading matter is sufficiently defined; and

(f) there are adequate financial controls, including a requirement for dual signatures for material payments.

(4) Every intermediary shall report any change in its management as required under regulation 17(2).

[L.N. 115/3013, s. 7.]

21. Finance officers and internal auditors

The chief finance officer or any other person who is responsible for the finance department of a market intermediary and the person responsible for the internal audit function, shall be required to be members of the Institute of Certified Public Accountants of Kenya (ICPAK).

22. Internal audit

(1) The market intermediary shall establish an effective internal audit function.

(2) The board shall formulate an internal audit charter to bring a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes and define the purpose, authority and responsibility of the internal audit function.

(3) The internal audit charter shall provide—

(a) assurance that the management processes are adequate to identify and monitor significant risks;

(b) confirmation of the effective operation of the established internal control system;

(c) credible processes for feedback on risk management and assurance; and

(d) objective confirmation that the board receives the right quality of assurance and information from management and that this information is reliable.

23. Internal auditor

The board shall appoint an internal auditor who shall—

(a) not be the compliance officer and shall not be involved in any function that is being audited;

(b) have sufficient authority to carry out his function as an internal auditor;

(c) have direct access to the board;

(d) subject to the oversight of the audit committee, develop an internal audit programme; and

(e) submit quarterly reports to the audit committee.

24. Responsibility for risk management

(1) The board shall be responsible for the development and implementation of the process of risk assessment and management and shall regularly review the effectiveness of the process.

(2) The management of a market intermediary shall be accountable to the Board for the designing, implementing, monitoring and integration of the risk management process into the day-to-day business of the market intermediary.

(3) The risk assessment process developed under paragraph (2) shall, having regard to the size and nature of operations of a market intermediary, and the extent which the risks may impact on the business of the market intermediary, address—

(a) compliance risks;

(b) payment systems risks;

(c) physical and operational risks;

(d) human resource risks;

(e) technology risks;

(f) business continuity and disaster recovery;

(g) credit and market risks;

(h) reputational risks;

(i) political risks; and

(j) any other risks that the board considers may be relevant to its business.

(4) The board shall, in consultation with the management of a market intermediary, develop and document the risk management policies and processes designed to mitigate the risks to its business.

(5) The management of a market intermediary shall—

(a) communicate the risk management policies to all employees;

(b) maintain back up and contingency plans for dealing with eventualities relating to risks, including catastrophic information technology failure, the loss of records and the loss of access to their business premises;

(c) make arrangements for business continuity in the event of the loss of key personnel through illness, resignation or otherwise; and

(d) evaluate the contingencies plans on a regular basis.

(6) The board shall appoint a risk management officer to—

(a) assist the board in the discharge of its duties relating to corporate accountability and risk management, assurance and reporting;

(b) review and assess the integrity of the risk control systems and ensure that the risk policies and strategies are effectively managed;

(c) define the nature, role, responsibility and authority of the risk management function of the market intermediary;

(d) monitor external developments relating to the practice of corporate accountability and the reporting of associated risk, including emerging and prospective impact;

(e) provide independent and objective oversight and review of the information presented by management on corporate accountability and specifically associated risk, taking account of risk concerns raised by management at the audit committee meetings on financial, business and strategic risk; and

(f) obtain such external or other independent professional advice as he considers necessary to carry out his duties.

25. Annual review

The board shall, annually, review its risk management procedures and contingency plans, and document the results and conclusions of such reviews.

26. Information management system

The board shall develop and implement an information management system that provides information relating to its implementation, the effect of the board's policies and procedures, the realisation of risks, substantial market positions and the financial position of the market intermediary.

27. Responsibility for internal controls

(1) The board shall be responsible for the market intermediary's system of internal controls.

(2) The board shall establish and monitor appropriate policies on internal controls and satisfy itself that the system is functioning effectively.

(3) The board shall develop procedure manuals to implement its policies and controls.

28. Role of management and employees

(1) The management of a market intermediary shall implement the board's policies on risk and internal controls.

(2) The management of a market intermediary shall identify and evaluate the risks, that the market intermediary is exposed to for the board's consideration by the board and design, operate and monitor a suitable system of internal control that implements the policies of the board.

(3) The employees shall be responsible for internal control as part of their accountability towards the achievement of the objectives of the market intermediary.

29. Periodical review of internal controls

(1) The management of a market intermediary shall be accountable to the board for monitoring the system of internal controls and reporting on such monitoring activities.

(2) The board shall periodically review and enquire, based on the information and assurances provided to it by management of a market intermediary, to determine the effectiveness of internal controls established by the management of a market intermediary.

(3) The board shall document the results and conclusions of its periodic reviews and actions taken thereon.

30. Compliance officer

(1) The board shall appoint a compliance officer who shall—

(a) monitor compliance with the regulatory requirements prescribed by the Authority, and shall not be involved with any function that is the subject of compliance;

(b) have sufficient authority to carry out such function;

(c) have unfettered access to information;

(d) have direct access to the board;

(e) take necessary action to rectify any non-compliance;

(f) report any non-compliance issues that cannot be rectified to the board;

(g) report to the board any material breaches of the regulatory requirements; and

(h) submit an annual corporate governance report to the board.

(2) The officer in charge of compliance may be held personally liable for the failure to ensure compliance by the market intermediary with the regulatory requirements of the Authority.

31. Receipt of client funds

A market intermediary shall establish and implement systems that ensure that all funds received on behalf of clients are deposited directly in the intermediary's client bank account to ensure employees avoid the receipt of cash.

32. Regulatory requirements

A market intermediary shall keep and maintain the all the records that are required to be kept under the Act and Regulations made thereunder.

33. Board records

The board shall keep and maintain a record of all the decisions of the board and all actions taken to comply with the regulatory requirements of the Authority.

34. Employee records

A market intermediary shall keep and maintain records relating to each of its employees demonstrating that it has effectively assessed all relevant qualification, experience, fitness and propriety. In particular an employee's records shall include—

(a) his job application with copy of documentation verifying qualifications and experience;

(b) his job description;

(c) his qualifications, experience and training;

(d) his remuneration;

(e) any securities transaction undertaken with details of permission received;

(f) any declaration of an existing or potential conflicts of interest made; and

(g) details of all publicly traded listed securities owned.

35. Third party records

Where the market intermediary contracts with a third party to undertake any functions on its behalf, it shall maintain appropriate records, including—

(a) the contract specifying the services to be provided;

(b) details of the third party including its legal status, verification documents and all documentation necessary to establish its financial viability; and

(c) details of the qualifications and experience of the employees to be engaged on the business of the market intermediary:

Provided that any delegation of a function shall not discharge the market intermediary from any responsibility for the proper execution of the delegated function.

36. Exemption or variation of applicability

(1) Subject to paragraphs (2) and (3), the Authority may, upon an application made in writing by a market intermediary, where it considers it appropriate in the special circumstances of the market intermediary, exempt from or vary the application of regulations 13, 15(5), 18, 21, 22, 23, 24 (6) and 30 to the market intermediary:

Provided that in all circumstances where the Authority grants an exemption or a variation, it shall indicate the period for which the exemption or variation shall be valid.

(2) A market intermediary shall, in the application, provide the reasons for seeking an exemption or variation and shall specify any other alternative arrangements that it shall establish to comply with the regulatory requirements.

(3) A market intermediary shall, despite having made an application under paragraph (1), comply with the respective regulatory requirements until the Authority formally exempts it or varies the regulatory requirements, in writing.

(4) Where the Authority grants an exemption or variation under this regulation, it shall give the reasons for the grant, in writing, and shall publish the exemption or variation.

(5) Any market intermediary that has obtained an exemption or variation under this regulation shall, immediately report to the Authority any change in its circumstances that may reasonably be of relevance in the determination of whether it should continue to enjoy the exemption or variation.

(6) The Authority may revoke or reverse any exemption or variation where it is satisfied that there has been a change in the circumstances that gave rise to the grant of the exemption.

(7) The Authority shall, for the purposes of determining the special circumstances of a market intermediary under this regulation, prescribe assessment criteria.

[L.N. 115/2013, s. 8.]

37. Remedial measures and administrative sanctions

(1) When a director or an officer is assessed and found not to be fit and proper to work for a market intermediary, the affected market intermediary shall—

(a) be required to terminate the services of such a director or officer;

(b) immediately put in place mechanisms to mitigate any loss or damage to clients, the business or the market as a whole resulting from such termination of services; and

(c) inform the Authority of such a decision and actions being taken immediately.

(2) All directors of a market intermediary shall be liable jointly and severally to indemnify the market intermediary against any loss arising from contravention of any of the provisions of the Act or these regulations.

(3) A market intermediary that contravenes a requirement of these regulations commits a disciplinary offence that may lead to sanctions and/or penalties under the Act.

38. Transitional provision

A market intermediary that was licensed before the commencement of these Regulations shall comply with these Regulations within one year of the commencement of these Regulations.

SCHEDULE

[Rule 8, 9.]

PRESCRIBED CODE OF CONDUCT

1. Conflict of Interest

Directors, management and staff should not engage directly or indirectly in any business activity that competes or conflicts with the market intermediary's interest or those of its clients unless fully disclosed to the clients. These activities include, although are not necessarily limited to, the following—

(a) Outside Financial Interest: Where directors, management or staff have a financial interest in a client, such an interest must be disclosed immediately to the management and the client. Thereafter, the affected director, member of management or employee should not be directly involved in the market intermediary's dealings with the client so long as the interest continues to exist.

(b) Other Business Interests: It is considered a conflict of interest if an executive director, member of management or member of staff conducts business other than the market intermediary's business during office hours.

Where the acquisition of any business interest or participation in any business activity outside the market intermediary and office hours demands excessive time and attention from the member of staff, thereby depriving the market intermediary of the employee's best efforts on the job, a conflict of interest is deemed to exist.

(c) Other Employment: Before making any commitment, executive directors, management and employees are to discuss possible part-time employment or other business activities outside the market intermediary's working hours with their manager or departmental head. A written approval of the board of directors, chief executive, manager or departmental head respectively should be obtained before an executive director, member of management or employee embarks on part-time employment or other business activities. Approval should be granted only where the interest of the market intermediary will not be jeopardised.

(d) Corporate Directorship: Employees, members of management and executive directors must not solicit corporate directorships. All such persons should not serve as a director of another corporation without approval of the board of directors. Those who hold directorships without such approval must seek approval immediately, if they wish to remain as directors of other corporations. However, such persons may act as directors of non-profit public service corporations, such as religious, educational, cultural, social, welfare, and philanthropic or charitable market intermediaries, subject to policy guidelines of the market intermediary.

(e) Trusteeships: Directors, management and staff must not solicit appointments as executors, administrators or trustees of clients' estates. If such an appointment is made and the individual is a beneficiary of the estate, his signing authority for the estate's bank account or accounts must be approved by the board of directors, who will not unreasonably withhold such approval.

2. Misuse of Position

(a) Directors, management and staff must not use the market intermediary's name or facilities for personal advantage in political, investment or retail purchasing transactions, or in similar types of activities. Such persons and their relatives must also not use their connection with the market intermediary to borrow from or become indebted to clients or prospective clients. The use of position to obtain preferential treatment, such as purchasing goods, shares and other securities, is prohibited.

(b) Directors, management and staff must not solicit or otherwise accept inducements either directly or indirectly whether in cash or in kind in order to provide any favours to a client in the conduct of the business of the market intermediary to which they are entrusted either jointly or individually.

(c) Further, directors, management and staff must not use the market intermediary's facilities and influence for speculating in securities, whether acting personally or on behalf of friends or relatives. Such misuse of position may be ground for dismissal and prosecution.

(d) Directors, management and staff should also not engage in "back-scratching" exercises with employees and directors of other market intermediaries to provide mutually beneficial transactions in return for similar facilities, designed to circumvent these ethical guidelines.

3. Misuse of Information

(a) Directors, management and staff should not deal in the securities of any company listed or pending listing on a stock exchange at any time when in possession of information, obtained by virtue of employment or connection with the market intermediary, which is not generally available to shareholders of that company and the public, and which, if it were so available, would likely bring a material change in the market price of the shares or other securities of the company concerned. "Insider dealing" as this is called, is a crime.

(b) Directors, management and staff who possess insider information are also prohibited from influencing any other person to deal in the securities concerned or communicating such information to any other person, including other members of staff who do not require such information in discharging their duty.

4. Integrity of Records and Transactions

(a) Accounting records and reports must be complete and accurate. Directors, management and staff should never make entries or allow entries to be made for any account, record or document of the market intermediary that are false and would obscure the true nature of the transaction, as well as to mislead the true authorization limits or approval authority of such transactions.

(b) All records and computer files or programmes of the market intermediary, including personnel files, financial statements and client information must be accessed and used only for management purposes for which they were originally intended.

5. Confidentiality

(a) Confidentiality of relations and dealings between the market intermediary and its clients is paramount in maintaining the market intermediary's reputation. Thus directors, management and staff must take precaution to protect the confidentiality of client information and transactions. No member of staff, management or director should during, or upon and after termination of employment with the market intermediary (except in the proper course of his duty and or with the market intermediary's written consent) divulge or make use of any secrets, copyright material, or any correspondence, accounts of the market intermediary or its clients. No member of staff, management or director shall in any way use information so obtained for financial gain.

(b) Business and financial information about any client may be used or made available to third parties only with prior written consent of the client or in accordance with the arrangements for the proper interchange of information between market intermediaries about credit risks, or when disclosure is required by law.

6. Fair and Equitable Treatment

All business dealing on behalf of the market intermediary with the current potential clients, with other members of staff and with those who may have cause to rely upon the market intermediary, should be conducted fairly and equitably. Staff, management and directors must not be influenced by friendship or association, either in meeting a client's requirement, or in recommending that they be met.

Such decisions must be made on a strictly arms-length business basis. All preferential transactions with insiders or related interests should be avoided. If transacted, such dealings should be in full compliance with the law, judged on normal business criteria basis and fully documented and duly authorised by the Board of Directors or any other independent party.

7. Insider Loans

Directors, management and staff should not use their positions to further their personal interests. A market intermediary shall not in Kenya therefore—

(a) grant or permit to be outstanding any unsecured advances in respect of any of its employees or their associates;

(b) grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured to any of its officers, significant shareholders or their associates;

(c) grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the market intermediary unless it is—

(i) approved by the full board of directors of the market intermediary upon being satisfied that it is viable;

(ii) is made in the normal course of business and on terms similar to those offered to ordinary clients of the market intermediary. The market intermediary shall notify the Authority of every such approval within seven days of the granting of the approval;

(d) grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance of the Act and the regulations made thereunder.

CAPITAL MARKETS (CONDUCT OF BUSINESS) (MARKET INTERMEDIARIES) REGULATIONS, 2011

ARRANGEMENT OF REGULATIONS

Regulation

[Subsidiary]

CAPITAL MARKETS (CONDUCT OF BUSINESS) (MARKET INTERMEDIARIES) REGULATIONS, 2011

[L.N. 145/2011, L.N. 105/2013.]

1. Citation

These Regulations may be cited as the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"client bank account" means a bank account established for the purposes of regulation 29;

"client funds" means money of any currency that, in the course of carrying on its regulated activity, a market intermediary holds or receives on behalf of a client, or owes a client;

"financial year" means the period of twelve months ending on the 31st December in each year;

"market intermediary" means a company holding a license issued under Part IV of the Act;

"regulated activity" means any activity that is controlled by the Act or any regulations made under the Act.

3. Standards of conduct

A market intermediary shall, when conducting a regulated activity, apply principles of best practice and, in particular—

(a) observe a high standard of integrity and fair dealing;

(b) act with due skill, care and diligence; and

(c) observe high standards of market conduct.

4. Know your client

(1) A market intermediary shall seek sufficient information about the client and the client's circumstances to ensure that the services provided are consistent with those circumstances.

(2) Notwithstanding the generality of paragraph (1), a market intermediary—

(a) shall, when recommending investments to a client or where it has discretion to act on behalf of a client, take and document reasonable steps to satisfy itself that the recommendation or discretionary action is suitable for the client, taking account of all the available alternatives;

(b) shall not recommend, or where the market intermediary has discretion to act on behalf of a client, execute any sale or purchase that is unsuitable for the client;

(c) shall not recommend, or where the market intermediary has discretion to act on behalf of a client, execute sales or purchases of a frequency that does not benefit the client regardless of the commission that the sales or purchases may produce; and

(d) may execute an order of a client without satisfying itself as to its suitability only where the client agreement makes clear that the client is acting without the advice of the market intermediary.

(3) A market intermediary shall take all reasonable steps to ensure that it does not give advice or effect a transaction, on behalf of a client, unless the advice or transaction is suitable for the client considering the facts disclosed by the client and any other relevant facts about the client that the market intermediary is or ought to reasonably be aware of.

5. Independence

Where a market intermediary is advising or acting on behalf of a client, it shall ensure that any claim it makes relating to its independence or impartiality includes any limitation that there may be on its capacity.

6. Fair and clear communications

A market intermediary shall ensure that any agreement, written communication, notification or information that it gives or sends to clients to whom it provides the service of a regulated activity is presented fairly and clearly.

7. Clients' understanding of risk

(1) A market intermediary shall not—

(a) recommend a transaction to a client, or effect a transaction with or for him, unless it has taken all reasonable steps to enable the client to understand the risks involved;

(b) knowingly mislead a client on any advantages or disadvantages of a contemplated transaction; or

(c) promise a return unless such return is contractually guaranteed.

(2) A market intermediary shall give sufficient information to the client to ensure that the client's decisions are informed.

(3) A market intermediary shall, when making recommendations to a client, take all reasonable steps to satisfy itself that the client has a full understanding of—

(a) the nature of the investment;

(b) the fees and charges associated with the investment;

(c) the risks of the investment;

(d) the factors that are likely to affect the performance of the investment;

(e) the terms and conditions of the investment;

(f) the consequences of departing from the terms and conditions of the investment.

(4) Where a market intermediary—

(a) after giving a client an explanation, in writing, is satisfied that the client understands the information required to be given under paragraph (3), the market intermediary shall retain a copy of such explanation in its records;

(b) gives an explanation orally, it shall send a written note of the advice to the client, and retain a copy of the explanation in the client's file;

(c) is of the opinion that an explanation is not required, because of the client's existing knowledge, it shall record the opinion and keep it in its records.

8. Charges

(1) A market intermediary shall charge it's fees according to it's agreement with the client, or in the manner prescribed by the Authority.

(2) A market intermediary shall, before providing the service of a regulated activity to a client, disclose to the client the basis for and its charges for the provision of the services and the nature and amount of any other remuneration payable by the client.

(3) A market intermediary shall provide a statement of fees or charges to a client, for each transaction or monthly for a client on whose behalf many transactions are undertaken.

(4) A market intermediary shall not take any fees or charges from any client's funds or liquidate client's securities for the purpose of recovering its fees or charges unless it is in accordance with the client agreement or in the manner prescribed by the Authority.

9. Clients' rights

(1) A market intermediary shall not, in any written communication or agreement, exclude or restrict—

(a) any duty or liability to a client which it has under any law or under any regulations made by the Authority;

(b) any other duty to act with skill, care and diligence that is owed to a client in connection with the provision to him of the service of a regulated activity;

(c) any liability owed to a client for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of the service of a regulated activity.

(2) An exclusion or restriction prohibited by these Regulations shall be void and of no effect.

10. Cold calling

A market intermediary shall not, for the purposes of soliciting business relating to a regulated activity, make unsolicited telephone calls or attend at any property, unless it has established and monitors the implementation of operational and procedures to—

(a) maintain a Do-Not-Call list of prospects that is updated whenever any contacted person requests not to be called again;

(b) train staff on the use of the Do-Not-Call list;

(c) limit the making of calls to between 8 a.m. and 5 p.m;

(d) oblige the callers to state their first and last names at the commencement of the call;

(e) oblige the callers to state the firm's name and address and the fact that it is licensed by the Authority at the commencement of the call;

(f) oblige the caller to provide a detailed overview of any product being marketed by the market intermediary prior to soliciting any offers;

(g) record and avail copies of all recordings to the Authority for inspection.

11. Cessation of business

Where a market intermediary intends to withdraw from a regulated activity, it shall—

(a) notify the Authority and each of its clients of its intention; and

(b) ensure to the satisfaction of the Authority that any business that is outstanding is properly completed or transferred to another market intermediary.

12. Conflict of interest

(1) A market intermediary shall—

(a) identify and document the conflicts of interest that are likely to occur in the course of its regulated activity;

(b) adopt and document appropriate policies to minimize those conflicts by identifying the instances where it would refuse to act and, where this is not necessary, making arrangements to minimize the risk of any loss to the client;

(c) avoid any conflict of interest between itself and a client and where such a conflict exists, decline to act, or if it considers that the conflict can be managed, disclose it to the client and follow the policies developed to minimize damage to the client and to put the client's interests ahead of its own.

(2) A market intermediary shall not take advantage of information it obtained from providing services to a client for its own benefit or the benefit of its employees or the benefit of another client, and where such an eventuality is likely to occur, the market intermediary shall—

(a) adopt and document procedures, including the erection of information barriers, barriers between information technology systems, physical barriers

or even separate office locations, to minimize the possibility of information from one client being used for the benefit of another client, its employees or the market intermediary;

(b) train employees in matters relating to the conflict of interest and the procedures developed to avoid them;

(c) obtain undertakings from employees that they will not use information gained from the clients for their personal benefit.

(3) Where a market intermediary has a material interest in a transaction to be entered into with or for a client, or a relationship which gives rise to a conflict of interest, the market intermediary shall not, knowingly, advise, or exercise discretion, in relation to that transaction unless it has—

(a) disclosed the material interest or relationship that may give rise to a conflict, as the case may be, to the client; or

(b) taken reasonable steps to ensure that neither the material interest nor relationship would adversely affect the interests of the client.

(4) A market intermediary shall take reasonable steps to ensure that neither it nor any of its employees or agents offers or gives, or solicits or accepts, any inducement that is likely to conflict with any of the duties owed to clients.

13. Client agreement required

(1) A market intermediary shall not provide the service in respect of a regulated activity unless it has entered a written agreement with the client and the service is to be provided in accordance with the agreement.

(2) The client agreement shall set out the basis on which the market intermediary's services are provided, including—

(a) essential information about the market intermediary, including its name, address and contact information;

(b) the services to be provided;

(c) the fees to be charged or the way the fees will be calculated;

(d) the nature or basis of commissions to be received by the market intermediary from third parties in relation to the services provided to the client;

(e) the obligations of the client, including the manner of giving instructions;

(f) the rights of the client, including—

(i) the right to receive the title for any securities purchased;

(ii) the right to receive a statement of all fees and charges;

(iii) the right to information on the remuneration received by the market intermediary from third parties for the services provided, in relation to the client;

(iv) the right to ask for information on the experience, qualifications and disciplinary history of the market intermediary;

(v) the right to receive interest on funds held by the market intermediary on the client's behalf;

(vi) the right to receive payment for securities sold within a specified period;

(vii) the right to see the market intermediary's conflict of interest policy;

(viii) the right to complain and to have that complaint dealt with fairly and promptly;

(g) the obligations of the market intermediary;

(h) the arrangements made for securing the titles to and for the custody of securities bought including through the use of nominee accounts and the use of a custodian, where appropriate;

(i) any conflicts of interest relating to the market intermediary;

(j) any connections the market intermediary has with third parties that could affect the services being provided, including a requirement that the market intermediary deals through certain third parties or recommend certain investment products;

(k) the fact that the market intermediary is regulated by the Authority; and

(l) any other terms and conditions of the agreement, including the notice to be given in respect of any changes to it or its termination.

(3) A market intermediary and a client shall abide by the terms of the agreement.

(4) A market intermediary shall keep the signed written agreement and give the client a copy.

14. Contract notes

(1) A market intermediary shall, in respect of every contract for the purchase or sale of securities it has entered into, not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with paragraph (2) and where the market intermediary entered into a contract—

(a) as agent, deliver the original contract note to the person on whose behalf it entered into the contract; or

(b) as principal, retain the contract note for itself.

(2) The contract note shall state—

(a) whether it is in respect of a purchase or sale of securities;

(b) whether a specific or limit price has been specified or whether the market rate should be applied in addition to the ultimate price per unit of the securities;

(c) the name and address of the market intermediary and the principal place at which it carries on its business;

(d) that the market intermediary is acting as principal or agent, where it is so acting;

(e) the name and address of the person, to whom the market intermediary is required to give the contract note and, where different, the name of the person for whom the transaction was undertaken;

(f) the date of the contract, and the date on which the contract note is made;

(g) the quantity and description of the securities that are the subject of the contract;

(h) the rate or amount of commission payable in respect of the contract;

(i) the amount of stamp duty, if any, payable in connection with the contract and, where applicable, in respect of the transfer;

(j) the date of settlement; and

(k) any other information as may be prescribed by the Authority to ensure that there shall be a complete audit trail in respect of the execution of client instructions and the settlement of market transactions.

15. Client confidentiality

(1) A market intermediary shall keep all information in its possession relating to a client, whether obtained from the client or third parties confidential.

(2) A market intermediary shall adopt and document policies and procedures designed to ensure that information obtained from clients and third parties is kept confidential and secure.

(3) The policies and procedures adopted shall include—

(a) a requirement that employees undertake to maintain confidentiality, in their contract of employment;

(b) how to determine the employees who may have access to confidential information;

(c) procedures that effectively restrict access to confidential information by employees through the use of secure document management, storage systems and encryption protected information, within the market intermediary's Information Technology system; and

(d) systems designed to safeguard the integrity of any electronic record or transaction recording system.

(4) Notwithstanding paragraph (1), a market intermediary may disclose information relating to a client to the Authority or an approved securities exchange, on request, or if it is ordered to do so by a court of competent jurisdiction.

16. Complaints procedure

(1) A market intermediary shall adopt, document and disclose to a client its procedures for the proper handling of complaints from clients and ensure that appropriate remedial action is taken on the complaints promptly.

(2) A market intermediary shall designate an officer to review and investigate all complaints lodged by clients and recommend appropriate remedial action to the management of the market intermediary.

(3) A market intermediary shall handle complaints in a fair, appropriate and timely manner, and shall inform the client of the outcome.

(4) A market intermediary shall, depending on the nature of the complaint, provide where a complaint is justified, appropriate restitution and address the weaknesses in its internal systems that led to the action causing the complaint.

(5) A market intermediary shall document all the actions it has taken under the complaints procedure.

(6) The complaints procedure shall set out the process for dealing with complaints, including—

(a) the apportionment of responsibility for the actions that led to the complaint, including to persons not specifically named in the complaint;

(b) the timeframe for dealing with a complaint;

(c) the timeframe within which to inform the complainant of progress in dealing with the complaint, which shall not be more than three months; and

(d) the right to appeal to the chief executive of the market intermediary or another appropriately senior officer nominated by the chief executive, where the complaint cannot otherwise be resolved.

(7) A market intermediary shall immediately and in all events within twenty-four hours, inform the Authority of any complaint that is still unresolved, three months after it was received.

(8) A market intermediary shall maintain a record of complaints showing—

(a) the client or any other person from whom a complaint was received;

(b) the nature of the complaint;

(c) the officer handling the complaint;

(d) the officer against whom the complaint was made or who was responsible for the action that led to the complaint;

(e) the progress in handling the complaint;

(f) the way the complaint was resolved; and

(g) the time it took to resolve the complaint.

(9) A market intermediary shall maintain a summary register of complaints.

17. Execution of client order

A market intermediary shall not execute an order unless the client has made sufficient arrangements for the necessary funds or securities.

18. Timely execution

A market intermediary shall execute client orders in the chronological sequence in which the orders were received and give priority to outstanding orders.

19. Best execution

A market intermediary shall deal for a client on the best terms available for the client.

20. Timely allocation

A market intermediary shall ensure that transactions it executes are allocated to the clients who gave the orders in a timely and equitable manner.

21. Fair allocation

Where a market intermediary has aggregated an order for a client's transaction with an order for its own account transaction, or with an order for another client's transaction, the market intermediary shall in the subsequent allocation—

(a) not give unfair preference to itself or to any of the clients; and

(b) give priority to satisfying orders for client transactions, if all orders cannot be satisfied.

22. Off-market transactions

A market intermediary shall report all trade in securities dealt with otherwise than at a licensed securities exchange in such manner as may be prescribed by the Authority.

23. Front running

Where a market intermediary has a client order to execute, or where it intends to publish to clients a price-sensitive recommendation or research or analysis, it shall not knowingly effect an own account transaction in the securities concerned or in any related investment until the order has been executed or until the clients for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

24. Churning

A market intermediary shall not—

(a) deal or arrange a deal in the exercise of discretion for any client; or

(b) advise a client to deal,

if the dealing could in the circumstances be reasonably considered as too frequent or too large having regard to the trading activities, investment objectives, size and operations of such client.

25. Insider dealing

A market intermediary shall take reasonable steps to ascertain if any of its clients are insiders and maintain records that assist it to monitor insider dealing.

26. Prevention of money laundering, etc

(1) A market intermediary shall, on each occasion that a client places an investment order with it, obtain from the client—

(a) details relating to the origin and source of the money or funds used or to be used for the investment;

(b) where the money or funds originate from outside Kenya, a confirmation from the remitting entity of the nature of the client's business and details relating to the source of the money or funds; and

(c) a written declaration by the client confirming—

(i) the accuracy of all information given under subparagraph (a) or (b); and

(ii) that the money or funds used for the investment in securities does not arise from the proceeds of any money laundering or other illicit activities.

(2) A market intermediary shall keep and maintain the information obtained from a client under paragraph (1) as part of the records required under regulation 32.

27. Notification on compliance

(1) A market intermediary shall at all times comply with the Act, regulations made under the Act and with any other regulatory requirements prescribed by the Authority.

(2) A market intermediary shall cooperate with the Authority and give the Authority all the reasonable assistance it requires to discharge its functions under the Act.

(3) A market intermediary shall, immediately and in any event, within twenty-four hours inform the Authority of the occurrence of—

(a) any event which could reasonably be expected to affect the Authority's assessment of its fitness and propriety or that of its management and staff;

(b) a material breach of the regulatory requirements applicable to the market intermediary or a material change in any information provided in support of the licence application;

(c) a reduction in working capital or financial resource to below one hundred and twenty per centum, of the specified minimum or a reduction of fifty per centum in the working capital or financial resource since the previous report to the Authority;

(d) any concern of the market intermediary that it may not be able to meet its obligations to clients when they fall due;

(e) any shortfall in the funds held in the client account below the total obligations to clients;

(f) any inability to comply with any instruction or direction of the Authority;

(g) any misstatement in any return previously submitted to the Authority;

(h) any fraud on the market intermediary or by any of its employees;

(i) any disciplinary action against any of its key personnel;

(j) any investigation, finding or conviction relating to the market intermediary or any of the key personnel of the market intermediary by a law enforcement agency, regulatory authority, or professional association;

(k) any civil claim against the market intermediary that exceeds twenty-five per centum of the minimum financial resource requirement of the market intermediary; and

(l) any action against it that may lead to its insolvency.

(4) A market intermediary shall notify the Authority in not less than twenty-eight calendar days, before it—

(a) changes its name, business name (if different), business address and nature of business of the market intermediary;

(b) appoints a new chief executive, director or compliance officer;

(c) appoints a new internal auditor;

(d) decides to seek a licence from another regulatory authority in Kenya or abroad;

(e) *deleted by L.N. 105/2013, r. 2.;*

(f) changes its capital structure substantially;

(g) changes its ownership or substantial shareholding;

(h) makes a substantial acquisition; or

(i) decides to surrender its licence.

(5) A market intermediary shall keep records of all returns sent to and correspondence with the Authority.

[L.N. 105/2013, s. 2.]

28. Clients' funds

(1) A market intermediary shall hold its clients' funds in trust for and on behalf of the clients on behalf of whom the funds were received or are held according to their respective shares.

(2) Clients' funds shall not form part of the assets of the market intermediary for any purpose and shall not be available in any circumstances for payment of any debt of the market intermediary.

29. Segregation of clients' funds

(1) A market intermediary that receives or holds clients' funds shall open one or more client bank accounts.

(2) A market intermediary shall segregate its client bank accounts from any account holding funds belonging to the market intermediary.

(3) A market intermediary shall deposit into a client bank account all funds received on behalf of or from a client, upon receipt.

(4) A market intermediary shall keep records of—

(a) all the amounts it has deposited into a client bank account held by the market intermediary, specifying the person on whose behalf the amounts are held and the dates on which they were deposited into the account;

(b) all withdrawals from a client bank account, the dates of the withdrawals, and the names of the persons on whose behalf the withdrawals were made; and

(c) any other particulars as may be prescribed by the Authority.

(5) A market intermediary shall on a daily basis reconcile its records showing the amounts held on behalf of each client in the client bank account and the aggregate of clients' money held in the client account or being held by third parties on behalf of clients.

(6) Where there is more than one client account, the market intermediary shall reconcile each client account separately as well as the aggregate position on all clients' accounts.

(7) The officer who is responsible for authorising payments into and out of the client accounts shall not carry out the reconciliation.

(8) A market intermediary shall obtain and maintain, in its records, written acknowledgement from the bank confirming that the clients' funds deposited with the bank are held in trust for the clients and are not available to offset any obligation of the market intermediary.

30. Accounting for and use of clients' funds

(1) A market intermediary shall promptly and accurately account for clients' funds and ensure that—

(a) clients' funds and other funds are segregated;

(b) the amount of clients funds standing to the credit of each client can be ascertained, at all times, by the Authority or any other party;

(c) funds held on behalf of a client are not used for the benefit of another client.

(2) A market intermediary shall not withdraw money deposited in a clients' bank account unless the money is required for the purposes of—

(a) making a payment to, or in accordance with the written instructions of, a person entitled to the money;

(b) purchasing, margining, guaranteeing, securing, transferring, adjusting or settling dealing in securities effected by the market intermediary on the written instructions of a client;

(c) defraying brokerage and other charges incurred in respect of dealings in securities effected by the market intermediary on the written instructions of a client; or

(d) making a payment that is otherwise authorized by law.

[L.N. 105/2013, s. 3.]

31. Segregation of other client property

(1) All securities and other property held or received by a market intermediary on behalf of a client in connection with its regulated activity shall be segregated and accounted for separately.

(2) A market intermediary shall keep such books and accounts as are necessary to—

(a) show all its dealings with a client's securities and other property held or received by it on behalf of a client; and

(b) distinguish securities and other property it holds or has received on behalf of each client from its own securities and property and other securities and property held or received by the market intermediary.

(3) A market intermediary shall on monthly basis reconcile the records of assets held by the market intermediary on behalf of clients, both individually and in aggregate, and compare the reconciliation with the evidence of the title to the assets controlled by the market intermediary, as immobilized securities or those held in certificated form (if any).

(4) Where a market intermediary has appointed a custodian to hold the clients' assets, the market intermediary shall maintain records of all assets held by the custodian and reconcile the records on monthly basis, with the records of the market intermediary of the assets held on behalf of its clients both individually and collectively.

(5) A market intermediary shall keep safely all evidence of title to client assets.

(6) A market intermediary shall not dispose of client assets unless the client has instructed it, in writing.

(7) A market intermediary shall ensure that its internal systems and controls do not permit its officers to dispose of, pledge, lend or otherwise deal with client assets except in accordance with these Regulations.

32. Requirements in respect of accounting records

(1) A market intermediary shall keep proper accounts and records that show the transactions, effected on its behalf or on behalf of others and the financial position of its regulated activity.

(2) The records and accounts maintained under paragraph (1) shall—

(a) disclose with reasonable accuracy, the financial position of a market intermediary at any given time;

(b) enable a market intermediary to prepare a statement of financial position and a statement of comprehensive income at any given time; and

(c) show whether a market intermediary is maintaining adequate financial resources to meet its business commitments and withstand the risks to which its business is exposed to.

(3) Notwithstanding paragraph (1), the accounting records shall be complete, allow for an independent assessment of the matters in paragraph (1) and contain—

(a) day to day entries of all sums of money received and expended by the market intermediary, and the matters in respect of which the receipt and expenditure took place;

(b) a record of all the assets and liabilities of the market intermediary including any commitments or contingent liabilities;

(c) day to day entries of all purchases and sales of securities by the market intermediary distinguishing those made by the market intermediary on its own account and those made on behalf of others;

(d) day to day entries of the receipt and dispatch of documents of title, or documents evidencing title, to securities which are in the possession or control of the market intermediary;

(e) day to day entries of—

(i) clients' funds paid into or out of a client bank account maintained for the purposes of these regulations;

(ii) receipts and payments of clients' funds that are not paid into or out of a client bank account, identifying the persons to whom each receipt or payment relates;

(f) a record of—

(i) the aggregate balances on client bank accounts;

(ii) individual client balances allocated against the names of the client;

(iii) sufficient information to explain the market intermediary's dealings with each client bank account, including the time and date;

(iv) the time, date and complete particulars of instructions received from and trades executed for clients, including details of short positions;

(v) complete particulars of the market intermediary's orders and trades, including time and date;

(g) details of any credit extended or loans made in respect of margin or otherwise; and

(h) details of all securities that are—

(i) the property of the market intermediary, showing who holds them and if held otherwise than by the market intermediary, details on whether they are held as collateral against loans or advances; and

(ii) not the property of the market intermediary, for which the market intermediary is accountable, showing by who or for whom they are held and distinguishing those which are deposited with a third party as security for loans or advances made to the market intermediary or any related person, for any other purpose;

(i) any other particulars required from time to time by the Authority or the securities exchange to be contained in the accounting records of a market intermediary.

33. Records to be up to date

(1) A market intermediary shall ensure that its records are updated on a daily basis.

(2) A market intermediary shall establish procedures that facilitate its compliance with its financial resource, client asset and working capital requirements.

(3) Notwithstanding the generality of paragraph (2) a market intermediary shall establish procedures for—

(a) daily reconciliations of funds held in the client accounts;

(b) daily calculations of the working capital and financial resource; and

(c) the maintenance of a record of daily calculations and reconciliations.

34. Audit trail

(1) A market intermediary shall record the information that is required to be recorded by these Regulations in a way that identifies all transactions and allows for the tracing of transactions, from the initiation of the order to its final settlement.

(2) A market intermediary shall file, index, cross-reference or arrange its records in a manner that permits prompt access to any particular record.

35. Conformity with accounting standards

A market intermediary shall keep its accounting records in accordance with the International Financial Reporting Standards.

36. Retention of records

A market intermediary shall preserve the accounting records kept under regulation 32 for seven years from the date on which they are made.

37. Inspection of records

The Authority or any person authorized by the Authority may, at reasonable times and during the period which accounting records kept under regulation 32 are required to be preserved, require a market intermediary to produce, the accounting records for purposes of inspection.

38. Imposition of additional requirements by securities exchange or self regulating organizations

(1) A securities exchange or other self regulatory organization may impose additional obligations or requirements that it considers necessary on market intermediaries that are members of the exchange or the self regulatory organization.

(2) Notwithstanding the generality of paragraph (1), a securities exchange or self regulatory organization may impose additional obligations or requirements relating to—

(a) the keeping of accounts, books and records;

(b) periodic financial reporting to the securities exchange or self regulatory organization in the form and manner required by the securities exchange or self regulatory organization;

(c) the audit of accounts;

(d) the information to be given in audit reports; or

(e) spot order checks.

39. Preparation of annual financial statements

A market intermediary shall, at the end of its financial year, prepare in accordance with International Financial Reporting Standards annual financial statements that consist of—

(a) a statement of financial position, that gives a true and fair view of the state of affairs of the market intermediary, as at the last day of the financial year;

(b) a statement of comprehensive income, that gives a true and fair view of the market intermediary's profit or loss for the financial year;

(c) a statement of changes in owners' equity;

(d) a statement of cash flows;

(e) a description of the accounting policies which the market intermediary has applied and adopted while preparing the financial statements; and

(f) notes on financial statements explaining the various items that appear in the financial statements under this Regulation.

L.N. 105/2013, s. 4.]

40. Power to require returns

(1) The Authority may, by a notice in writing, require a market intermediary to submit to it such periodic returns as it may specify.

(2) The Authority may, in addition to any periodic returns required under paragraph (1), by a notice in writing, require a market intermediary to generally or in a particular case or class of cases, submit to the Authority such exceptional returns as it may specify.

41. Submission of annual financial statements

(1) A market intermediary shall submit to the Authority, within three months after the end of each financial year, its auditor's report together with—

(a) its annual financial statements; and

(b) a written confirmation that it has complied with these Regulations and any other additional requirements of the Authority.

(2) Where an auditor's report on a market intermediary is qualified on grounds of the auditor's uncertainty on the completeness or accuracy of the accounting records, the report shall, when it is being submitted by the market intermediary to the Authority, be accompanied by a written statement signed by two directors stating whether—

(a) all the accounting records of the market intermediary were made available to the auditor for the purposes of its audit;

(b) all transactions undertaken by the market intermediary were properly reflected and recorded in its accounting records; and

(c) all the other records of the market intermediary and related information were made available to the auditor.

42. Appointment of external auditor

(1) A market intermediary shall appoint an external auditor and issue him with an engagement letter, that sets out his powers and duties, and is signed by both the market intermediary and the external auditor.

(2) The market intermediary shall retain a copy of the engagement letter issued under paragraph (1).

(3) A market intermediary shall not appoint or remove an auditor except with prior approval of the Authority at least one month prior to such appointment or removal.

(4) A person appointed as an auditor under this Regulation shall serve for a maximum period of four consecutive years.

[L.N. 105/2013, s. 5.]

43. Powers and duties of auditors

(1) An auditor appointed under regulation 42—

(a) shall have access at all reasonable times to the accounting records, other records and documents relating to the business of a market intermediary; and

(b) may request the market intermediary to provide such information or explanations that he considers necessary for the performance of its duties.

(2) An external auditor shall before preparing a report for the purposes of these Regulations, carry out an examination that will enable him to determine whether—

(a) the annual financial statements of the market intermediary were prepared in accordance with these Regulations;

(b) in the case of the statement of the financial position, a true and fair view of the financial state of affairs of the market intermediary was given as at the end of the financial year;

(c) in the case of the statement of comprehensive income, a true and fair view of the profit or loss of the market intermediary was given for the financial year;

(d) the market intermediary kept proper accounting records throughout the financial year;

(e) the market intermediary kept clients' funds and other client's assets properly segregated as is required under these Regulations;

(f) the statement of financial position and the statement of comprehensive income are in agreement with the market intermediary's accounting records;

(g) he has obtained all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of its audit;

(h) the market intermediary has maintained throughout the financial year systems adequate to enable him to identify documents of title, or documents evidencing title, to securities title in safekeeping for the market intermediary's clients in accordance with these Regulations; and

(i) the market intermediary complied with these Regulations throughout the financial year.

(3) An external auditor shall, after carrying out examination, submit a report on the annual financial statements of the market intermediary to the Authority.

44. Contents of auditor's report

(1) The external auditor shall state whether the annual financial statements of the market intermediary have been audited in accordance with the International Standards on Auditing, in his report.

(2) The external auditor shall state his opinion on the matters that he is required to determine under regulation 43 (2).

45. Qualified reports

(1) Where the external auditor forms the opinion that a market intermediary has not complied with any provision of these Regulations relating to the keeping of accounts, financial records and preparation of financial statements, the external auditor shall state the opinion in his report and specify the provisions that have not been met.

(2) Where the external auditor did not obtain all the information and explanations that, to the best of its knowledge and belief, are necessary for the purposes of its audit, it shall state the fact in its report.

(3) Where the external auditor is not able to form an opinion on whether a market intermediary has not complied with any provision of these Regulations relating to the keeping of accounts, financial records and preparation of financial statements, it shall state so in its report and give the reasons for not being able to form an opinion.

46. *Deleted by L.N. 105/2013, r. 6.*

47. Remedial measures and administrative sanctions

(1) Where a market intermediary contravenes any provision of the Act or these Regulations—

(a) the officers of the market intermediary shall be jointly and severally liable to indemnify the market intermediary against any loss arising from the contravention; and

(b) the market intermediary shall be liable to the sanctions or penalties prescribed in the Act.

48. Transition

Any market intermediary licensed prior to the commencement of these Regulations shall comply with these Regulations within one year of such commencement.

CAPITAL MARKETS (DEMUTUALIZATION OF THE NAIROBI SECURITIES EXCHANGE LIMITED) REGULATIONS, 2012

ARRANGEMENT OF REGULATIONS

Regulation

CAPITAL MARKETS (DEMUTUALIZATION OF THE NAIROBI SECURITIES EXCHANGE LIMITED) REGULATIONS, 2012

[L.N. 87/2012, L.N. 104/2013, L.N. 79/2014.]

1. Citation

These Regulations may be cited as the Capital Markets (Demutualization of the Nairobi Securities Exchange) Regulations, 2012.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"company limited by guarantee" has the meaning assigned to it under the Companies Act (Cap. 486);

"company limited by shares" has the meaning assigned to it under the Companies Act (Cap. 486);

"demutualization" means the separation of the ownership of the Exchange from the right to trade on such Exchange;

"demutualization application" means the application made under regulation 4;

"demutualized exchange" means the Exchange following the completion of demutualization;

"Exchange" means the Nairobi Securities Exchange Limited registered under the Companies Act (Cap. 486) as a company limited by guarantee;

"member" means a person who is a member of the Exchange in accordance with its constitutive documents and rules;

"re-registration" means the re-registration of the Exchange from a company limited by guarantee to a company limited by shares in accordance with section 18 of the Companies Act (Cap. 486);

"rights" means all rights, powers, privileges and immunities, whether present or future, actual or contingent or prospective, and whether enforceable in Kenya or elsewhere;

"Transitional board of directors" means the board of the demutualized exchange pending the appointment of a board in accordance with these Regulations.

3. Condition for demutualization

The Exchange shall not be considered to be a demutualized entity unless it has obtained a written approval of the authority in accordance with these Regulations.

4. Application for demutualization

(1) The Exchange shall make an application to the Authority for approval to operate as a demutualized entity.

(2) An application under paragraph (1) shall be accompanied by the following documents and information—

(a) a valuation report of the Exchange;

(b) the proposed authorized and paid-up share capital of the demutualized exchange with the number of shares to be issued;

(c) the names of members of the Exchange proposed to be the initial shareholders of the demutualized exchange and the number of shares to be allotted to each shareholder;

(d) the number of shares to be allotted to and held directly or indirectly in the public interest by—

(i) the Government at least five per cent; and

(ii) Capital Markets Investor Compensation Fund at least five per cent;

(e) the proposed memorandum and articles of association of the demutualized exchange;

(f) the names of the Transitional board of directors;

(g) the proposed time within which the board of the demutualised Exchange shall be appointed;

(h) the proposed names of directors of the demutualized exchange to be appointed at the first general meeting following the re-registration of the Exchange;

(i) the proposed plan for the independent management of the commercial and regulatory functions of the demutualized exchange and timelines for implementation of necessary structures to ensure the functional separation of commercial and regulatory functions;

(j) a detailed five year business development plan for the demutualized exchange together with the capital expenditure estimates and the sources of finance for the five year period;

(k) the manner in which the rights and liabilities of the existing members of the Exchange shall be treated in the demutualization;

(l) the procedure for the allocation of shares to the shareholders identified under subparagraphs (c) and (d);

(m) a written declaration that demutualization shall not affect any rights and obligations of the Exchange or render defective any legal proceedings by or against the Exchange;

(n) the proposed timelines for the completion of operational manuals to guide the self-regulatory functions of the demutualized exchange detailing the scope of regulatory functions to be performed by the demutualized exchange;

(o) the proposed rules of the demutualized exchange; and

(p) the last audited financial statements of the Exchange.

(3) The Authority may, in writing, require the Exchange to provide any additional information which the Authority may require.

[L.N. 104/2013, r. 2, L.N. 79/2014, r. 2.]

5. Procedure by Authority upon receiving application

(1) The Authority may, if it considers necessary and in the interest of the capital markets, direct the Exchange to make appropriate amendments to the documents and information submitted under regulation 4.

(2) Where the Exchange does not comply with the requirements of regulation 4 or a directive under paragraph (1), the Authority shall—

(a) give the Exchange an opportunity to be heard; and

(b) make a decision and communicate the decision, as the case may be, recommending the appropriate measures that for the Exchange may take in order to comply.

(3) Upon the receipt of all the information submitted under regulation 4, subject to any amendments under subparagraph (1), the Authority may approve the demutualization application with or without conditions and specify the term within which the entity shall stand demutualized:

Provided that the Authority may, upon the application of the Exchange, vary the term specified in the approval.

6. Resolutions of the demutualized exchange

The Exchange shall, within thirty days of obtaining approval or on such period as the Authority may approve in writing, ensure that—

(a) the Exchange is re-registered as a company limited by shares under section 18 of the Companies Act (Cap. 486); and

(b) it adopts the following resolutions, in addition to any other resolutions as may be required under regulation 5(3)—

(i) a special resolution approving the memorandum and articles of association of the demutualized exchange;

(ii) a resolution on the proposed allotment of shares to the initial shareholders of the demutualized exchange;

(iii) subject to regulation 5(3), a resolution appointing the directors as the board of the demutualized exchange; and

(iv) a resolution on the approved paid up share capital.

7. Demutualization

The Exchange shall, subject to the fulfillment of any conditions attaching thereto, stand demutualized upon the expiry of the period specified in the approval of the Authority in accordance with regulation 5(3).

8. Reduction in shareholdings

The trading participants who are shareholders of the Exchange shall with effect from the date of demutualization reduce their cumulative shareholding in the demutualized exchange to not more than forty per cent within three years.

9. Implementation of self-regulatory functions

The demutualized exchange shall, within one year of an approval being granted implement the plan submitted under regulation 4(2)(h).

CAPITAL MARKETS (FUTURES EXCHANGES) (LICENSING REQUIREMENTS) REGULATIONS, 2013

[L.N. 108/2013.]

Repealed by L.N. 37/2016, r. 79.

CAPITAL MARKETS (REAL ESTATE INVESTMENT TRUSTS) (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2013

ARRANGEMENT OF REGULATIONS

.

.

SCHEDULES

CAPITAL MARKETS (REAL ESTATE INVESTMENT TRUSTS) (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2013

[L.N. 116/2013.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Real Estate Investment Trusts) (Collective Investment Scheme) Regulations, 2013.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Capital Markets Act (Cap. 485A);

"Authority" means the Capital Markets Authority established under section 5 of the Act;

"borrowing" means any financing arrangement in the nature of a debt, whether secured or unsecured, and includes the equivalent under *Shariah* law;

"closed ended fund" means a fund or trust in which–

(a) a person invests by subscribing for an issue of REIT securities or by acquiring REIT securities in a secondary market;

(b) the value of the investment fluctuates over time as determined by market price for the REIT securities;

(c) the number of the REIT securities issued remains constant over time except where a new issue of REIT securities is made or there is a reduction in the capital of the fund initiated by the trustee or as a consequence of termination or winding up of the trust; and

(d) the REIT securities holder, except where there is a reduction in the capital of the fund initiated by the trustee or as a consequence of termination or winding up of the trust–

(i) is not entitled to require the trustee to redeem the REIT securities; and

(ii) may only exit the investment in the REIT securities by selling the units in a secondary market;

"compliance officer" means a person designated as such under regulation 53A of the Capital Markets (Licensing Requirements) (General) Regulations, 2002 (L.N. 125/2002) and whose responsibilities and powers are specified under regulation 30 of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011 (L.N. 144/2011);

"connected person" or **"connected party"** in relation to a real estate investment trust scheme includes–

(a) a REIT manager;

(b) a valuer appointed to undertake a valuation of the scheme;

(c) the trustee;

(d) a substantial holder of REIT securities in the scheme;

(e) a director, a senior executive or an officer of any person under paragraph (a), (b) or (c);

(f) an associate of any person under paragraph (d) and (e);

(g) a controlling entity, a holding company, a subsidiary or an associated company of any person under paragraph (a) to (d);

"D-REIT" means a development and construction real estate investment trust which complies with the requirements of these Regulations;

"D-REIT scheme" means a development and construction real estate investment trust scheme authorized as such by the Authority under regulation 18;

"eligible investments" means the assets and other investments specified under regulation 65 in respect of an I-REIT and regulation 76 in respect of a D-REIT in which the trustee may invest;

"eligible real estate" in respect of real estate situate in Kenya means only real estate where the form of tenure which applies to the land is–

(a) freehold and includes the shares in any management company and any common management company established in respect of the freehold title that have been or are transferred or acquired by the trustee at the same time; or

(b) leasehold in respect of which either a certificate of title or a certificate of lease has been issued or is a long-term lease, as defined in the Land Act, 2012 (No. 6 of 2012) which has a registered separate title number and where, in the case of each leasehold title—

(i) as at the latter of the date on which the leasehold is transferred to or acquired by the trustee, investee company or trustee of the investee trust and the date on which the scheme is authorized by the Authority, the leasehold has an unexpired residual term of at least twenty five years; and

(ii) the shares in the management company and any common management company established in respect of the leasehold have been or are transferred or acquired by the trustee at the same time; or

(c) issued under the Sectional properties Act (No. 21 of 1987)–

(i) as at the date on which it is transferred to or acquired by the trustee, investee company or trustee of the investee trust and the date on which the scheme is authorized by the Authority, there is an unexpired residual term of at least twenty five years; and

(ii) a Corporation has been constituted under section 17 of the Sectional Properties Act in respect of the sectional plan registered under that Act;

"exempted real estate investment trust" means –

(a) a collective investment scheme authorized by the Authority other than a real estate investment trust scheme;

(b) a scheme that is prescribed by the Authority not to be a real estate investment trust scheme; or

(c) a trust, scheme, syndicate or arrangement which—

(i) does not involve an issue or offer to the public or a section of the public which complies with the conditions for a private offer as prescribed by the Authority and in respect of which the issuer which has not sought authorization under these Regulations as a real estate investment trust scheme;

(ii) is limited to members of a family group;

(iii) is a charitable trust; or

(iv) is established as a consequence of a disposition under a will or other testamentary instrument; and

(d) does not include –

(i) a statutory fund maintained under any law for the regulation of insurance in Kenya;

(ii) any pension or retirement fund established under or regulated by the laws of Kenya;

(iii) an arrangement regulated in Kenya by the law of partnership; or

(iv) a scheme which is operated as a co-operative and regulated under the laws of Kenya;

"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;

"free float" means REIT securities issued, offered or held by persons who are not connected with or associated with the promoter or the REIT manager;

"fund" means all contributions of money or money's worth or other income or assets of a real estate investment trust from time to time including money borrowed or raised by the trustee for the purpose of the scheme and includes all amounts due and any rights of a manager, or of a trustee to institute an action against any person and the rights of the beneficiaries of the trust to institute an action against any party including a trustee;

"IFRS" means the International Financial Reporting Standards issued from time to time by the International Accounting Standards Board as adopted in Kenya;

"I-REIT" means an income real estate investment trust authorized as such by the Authority under these Regulations;

"income real estate investment trust scheme"or **"I-REIT scheme"** means a real estate investment trust scheme authorized as such by the Authority under these Regulations;

"independent auditor" means a person who—

(a) is qualified and registered as an auditor by the Institute of Certified Public Accountants of Kenya;

(b) holds a valid practicing certificate;

(c) is not an auditor of the trustee, promoter or the REIT manager;

(d) is not a director, officer, employee, shareholder or a partner of a person specified under paragraph (c); and

(e) is qualified for appointment as an auditor of a REIT under the Act or these Regulations;

"initial offer" means the first offer or issue of REIT securities made to persons other than to the promoter or to parties connected to the promoter or the REIT manager;

"investor" means a holder of REIT securities who is a beneficiary under a trust deed;

"initial public offering" in relation to REIT securities means the first unrestricted offering of I-REIT securities which are to be listed on an approved securities exchange;

"investee company" means a company which meets the requirements of regulation 65 in respect of an I-REIT and regulation 76 in respect of a D-REIT;

"investee trust" means a trust which meets the requirements of regulation 65 in respect of an I-REIT and regulation 76 in respect of a D-REIT;

"issuer" means—

(a) in relation to the first issue of REIT securities made after the authorization of the real estate investment trust scheme, the promoter; and

(b) in relation to any subsequent issue or offer of REIT securities or in the case of a conversion as provided for under Regulation 86, the REIT manager at the time of issue,

but does not include the trustee;

"lease" includes sub-lease;

"listed" in relation to REIT securities, means REIT securities which are traded on an approved securities exchange in Kenya or any other exchange approved by the Authority;

"lock in period" means a period, if any, in which the promoter is required to retain an investment in REIT securities;

"MER" means the management expense ratio of the sum of fees and recoverable expenses of the real estate investment to the average value of the fund calculated on a daily basis—

$$\frac{\text{Fees of the fund + Recovered expenses of the fund}}{\text{Average value of the fund calculated on a daily basis}} \times 100$$

where–

Fees =	all outgoing fees deducted or deductible directly from the fund in respect of the period covered by the management expense ratio, expressed as a fixed amount, calculated on a daily basis and includes any management fee, the annual trustee fee and any other fees deducted or deductible directly from the fund;
Recoverable expenses=	all expenses recovered from or charged to the fund as a result of the expenses incurred by the operation of the fund expressed as a fixed amount but should not include expenses that would otherwise have been incurred by an individual investor, for example taxes; and
Average value of the REIT securities =	the Net Asset Value of the trust, including net income value, less expenses on an accrued basis, for the period covered by the management expense ratio, calculated on a daily basis;

"net asset value" means the value of all assets of the fund less the value of all liabilities of the trust, including trustee and management fees, as at the day the calculation is made;

"net asset value per unit" or means the net asset value divided by the number of units of REIT securities issued and not redeemed on the day the calculation is made;

"offering memorandum" means any notice, circular, material or advertisement, publication or other invitation issuing or offering for subscription, sale or purchase of any REIT security to a professional investor and includes a conversion offering memorandum or supplemental offering memorandum;

"offeror" means a person who makes an offer of REIT securities and includes the issuer where the issuer makes the offer or requests or authorizes another person to make the offer but does not include the trustee;

"open ended fund" means, subject to any limits on redemption that might be included in the scheme documents, a fund in which a person may invest from time to time by acquiring REIT securities and may dispose of the investment by having the REIT securities redeemed by the trustee and where the value of the investment and the redemption price per unit is determined by the net asset value per unit as calculated from time to time in accordance with the scheme documents and where the size of the fund may expand or contract as investors acquire or dispose REIT securities;

"partial ownership" when used in connection with or in respect of land or real estate includes, any title or ownership or right or purported right to occupy or use land or real estate which is in the form of a co-tenancy as defined under the Land Act, 2012 (No. 6 of 2012), or where the ownership is in a partnership, a co-operative or other form of co-ownership whether formal or informal including by way of ownership of a share in a

company which is not wholly owned and controlled or of a unit in a trust which is not wholly owned pursuant to a licence or easement or other form of joint or co-ownership but does not include–

(a) ownership of shares in a common management company where the share is held as a consequence of the holding of a freehold or leasehold title;

(b) a right in respect of common property arising out of a leasehold held under the Sectional Properties Act;

(c) a right under a lease, or licence of easement that arises as a consequence of the holding of freehold or leasehold title or which is established, for the benefit of that freehold or leasehold title or relates to plant and equipment or the use of a utility or infrastructure or natural resource for use in connection with the freehold or leasehold title; or

(d) where the assets are held jointly in the name of the trustee and a secondary disposition trustee;

"periodic reports" means–

(a) such reports as may be required to be prepared from time to time under the Act or these Regulations; and

(b) any other continuous disclosures which are required to be made in connection with or in relation to a real estate investment trust scheme;

"professional investor" means—

(a) any person licensed under the Act;

(b) an authorized scheme or collective investment scheme;

(c) a bank or subsidiary of a bank, insurance company, cooperative, statutory fund, pension or retirement fund; or

(d) a person including a company, partnership, association or a trustee on behalf of a trust which, either alone, or with any associates on a joint account subscribes for REIT securities with an issue price equal to at least five million shillings;

"promoter" means a person who–

(a) acts as a promoter;

(b) is nominated in the application for authorization to act as a promoter,

of a real estate investment trust or a real estate investment trust scheme but does not include an underwriter of an issue or offer of REIT securities who is paid a commission without otherwise taking part in the formation, establishment or organization of the real estate investment trust or scheme;

"property manager" means a person appointed as such under regulation 55;

"project manager certifier" means a person appointed as such under regulation 63;

"prospectus" means any notice, circular, material or advertisement, publication or other invitation issuing or offering for subscription, sale or purchase of any REIT security which is capable of being accepted by any person who is not a professional investor and includes a supplemental prospectus or a conversion prospectus;

"real estate" means land and includes—

(a) all things which are a natural part of the land or growing on the land;

(b) attachments above and below the land;

(c) things which are fixtures or are developed, installed or constructed on the land including buildings and site improvements;

(d) improvements and permanent building, plant and equipment or attachment including plumbing, heating and cooling systems, electrical wiring and built-in items including elevators which may be used in connection with the land; and

(e) all rights and interests attaching to the land;

"real estate investment trust" means a trust established in Kenya for investment in real estate but does not include an exempted real estate investment trust;

"REIT assets" or **"scheme assets"** includes all assets of the REIT fund;

"real estate investment trust scheme" or **"REIT scheme"** means an arrangement made or established for the purpose of collective investment by persons in real estate for the purpose of earning profits or income from real estate as beneficiaries of a trust which is divided into units in which—

(a) persons contribute money or money's worth as consideration to acquire rights or interests to gain the benefits from pooling of funds and the investment in real estate;

(b) the persons investing do not have the day-to-day control over the management of the assets of the real estate investment trust; and

(c) the assets are managed by an entity,

and includes such other arrangements as may be prescribed by the Authority to be a real estate investment trust scheme but does not include an exempted real estate investment trust;

"register" means the register of REIT securities holders maintained by the trustee under regulation 50;

"REIT" means a real estate investment trust;

"REIT securities" means units in a trust which is a real estate investment trust or a real estate investment trust scheme;

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

"restricted offer" means an issue or an offer made to professional investors;

"secondary disposition trustee" means an additional trustee appointed by the Authority, the scheme documents or the trustee as a joint trustee with limited powers pursuant to Regulation 44;

"securities" means any instrument defined as such under the Act and includes REIT securities;

"scheme" means a real estate investment trust scheme;

"scheme documents" include—

(a) the prospectus and offering memorandum, and includes any conversion or supplementary prospectus or offering memorandum;

(b) the trust deed and any amending, supplemental or replacement trust deed;

(c) any document appointing a REIT manager or setting out the terms of appointment and the role or obligations of a REIT manager;

(d) any document appointing a property manager, project manager certifier or structural engineer or setting out the terms of appointment, the role or obligations of such persons;

(e) any document described in paragraph (b), (c) or (d) relating to an investee trust; and

(f) the Memorandum and Articles of Association of any investee company and any shareholders' agreement including any amending, supplemental or replacement Memorandum and Articles of Association or shareholder's agreement;

"*Shariah* adviser" means a person appointed as such under regulation 122;

"special resolution" means a resolution passed by a majority of not less than three-fourths of such holders of REIT securities being entitled to do so, vote in person or where proxies are permitted by proxy, at a general meeting of holders of REIT securities of which at least twenty one days written notice specifying the intention to propose the special resolution has been given;

"substantial holder of REIT securities" means a person who holds fifteen percent or more of the issued REIT securities in a scheme, where for the purposes of calculating the fifteen percent, in addition to any REIT securities held by the holder, that person is also considered to be the holder of any REIT securities held by–

(a) an associate of a holder who is an individual; or

(b) a director, senior executive, officer, controlling entity, holding company, subsidiary or associated company of the holder, if the holder is an entity;

"structural engineer's report" means the report prepared and submitted to the REIT manager and trustees under regulation 62;

"total asset value" or **"TAV"** means the value of all assets of the fund based on the most recent valuation;

"transaction adviser" means a person appointed as such under regulation 32 and licensed under the Act;

"trust" means a trust established under the laws of Kenya;

"trust deed", in relation to a real estate investment trust scheme, means the trust deed or other document which establishes or sets out the terms of the trust and includes—

(a) any instrument that varies the terms of the trust or affects the powers or functions of the trustee or any manager appointed in respect of the trust; and

(b) any instrument that varies the rights of beneficiaries under the trust including the REIT securities holders;

"trustee" means a person appointed under the trust deed as a trustee of the real estate investment trust and any investee trust and includes any successor but shall not include, except where expressly stated, a secondary disposition trustee;

"unit" means a REIT security being any undivided share, right, interest or entitlement in the assets of the real estate investment trust which is classified as a security under the Act;

"unrestricted offer" means any issue or offer which is not a restricted offer;

"valuation report" in respect of a real estate investment trust scheme, means a report made by a valuer;

"valuer" for the purposes REIT securities, means a person appointed as a valuer under these Regulations to prepare or who is required to prepare a valuation report.

PART II – ESTABLISHMENT OF A REAL ESTATE INVESTMENT TRUST SCHEME

3. Scheme to comply with these Regulations

(1) A person who intends to establish a trust, a scheme, an arrangement or any form of collective investment scheme as a real estate investment trust scheme shall not refer or call such trust, scheme, arrangement or collective investment scheme a real estate investment trust scheme unless the trust, scheme, arrangement or collect investment scheme—

(a) is declared, under regulation 18, to be an authorized scheme; and

(b) complies with the requirements of the Act and these Regulations.

4. Requirement for prior consent

(1) Where a promoter any person who is or proposes to vest in, sell, assign or transfer real estate to a real estate investment trust is regulated by another body or authority, that promoter or person shall obtain the consent of the body or authority prior to submitting an application for authorization as a real estate investment scheme to the Authority.

(2) A breach of paragraph (1) shall not operate to void any transaction entered into or prevent the trustee from pursuing any remedies the trustee may have against any other person but shall prevent any action by the other promoter or other party against the trustee for non-performance of any contract entered into in contravention of this provision.

5. Structure of a real estate investment trust

A real estate investment trust scheme shall—

(a) be structured as an unincorporated common law trust which is divided into units;

(b) be established under a trust deed which sets out the matters specified in the First Schedule;

(c) have a trustee who is independent of the REIT manager and the promoter and satisfies the requirements of these Regulations; and

(d) have a REIT manager and a trustee who are licensed persons and satisfy the requirements of these Regulations.

6. Term of the trust

(1) The trust deed shall specify the term of the trust which term shall not exceed the maximum period specified under the law relating to perpetuities or any other written law.

(2) A real estate investment trust scheme shall not extend beyond the term of the trust.

7. Assets of the scheme

(1) All assets of the real estate investment trust scheme shall—

(a) be held in the name and under the control of the trustee for the benefit of REIT securities holders as the beneficiaries of the trust in accordance with the terms of the trust deed;

(b) only be invested in eligible investments; and

(c) be segregated from the assets and liabilities of the trustee and not constitute the assets of the trustee in the event of—

(i) a claim by the creditors of the trustee;

(ii) the insolvency, winding up, takeover, restructure or amalgamation of the trustee;

(iii) the winding up of the scheme;

(iv) the dissolution of the scheme; or

(v) the amalgamation or restructure of the scheme.

(2) A trustee may, subject to the provisions of these Regulations and the terms of the trust deed, enter into borrowing arrangements for the purpose only of fulfilling the objectives of the trust and may pledge or otherwise give security over the assets of the trust scheme to secure such borrowing.

8. Types of real estate investment trust schemes

A real estate investment trust scheme may, be structured as a D-REIT or an I-REIT in accordance with these Regulations.

9. Status of the fund and redemption of units

(1) A D-REIT may be structured as an open ended or a closed ended fund and may be converted from one status to the other in accordance with regulation 86.

(2) An I-REIT which is the subject of an unrestricted offer may only be structured as a closed ended fund and the REIT securities of an unrestricted I-REIT shall be listed.

(3) An I-REIT which is the subject of a restricted offer may be structured as either an open ended or a closed ended fund and may be converted from one status to the other in accordance with regulation 86.

(4) An I-REIT which is the subject of a restricted offer may, subject to these Regulations, be converted to a closed fund and may be converted to an unrestricted offer.

(5) Where a REIT is structured as an open ended fund, the scheme documents shall set out the entitlement of the holders of the REIT securities to require the trustee to redeem the REIT securities, including the procedure and limits on the holder being able to seek redemption and the method of valuation and pricing of issues and redemptions.

(6) Nothing in these Regulations shall be construed to restrict the trustee from offering to acquire units from holders of a D-REIT or an I-REIT on a voluntary basis or from issuing additional units from time to time in accordance with these Regulations.

10. Objectives of a D-REIT

The objectives of a D-REIT and the powers of the trustee of a D-REIT, as specified in the trust deed, shall be limited to—

(a) the acquisition of eligible real estate, investment in eligible investments and the undertaking of real estate development and construction projects including—

(i) housing projects involving–

(A) the provision of buy to let housing;

(B) tenant purchase schemes and arrangements;

(C) development of to let housing for sale;

(D) development of to hold and let housing;

(E) development of for sale housing; or

(F) any combination of subparagraphs (A) to (E) or any other form of provision of shelter, housing or accommodation;

(ii) commercial and other real estate related development and construction projects;

(b) marketing and sale of real estate;

(c) retention and management of the real estate assets of the trust with the objective of earning income from the assets;

(d) the undertaking of incidental or connected activities and activities related to the assets of the trust; and

(e) such other activities as may be specified under these Regulations.

11. Objectives of an I-REIT

The objectives of an I-REIT and the powers of the trustee of an I-REIT, as specified in the trust deed, shall be limited to—

(a) the acquisition, for long-term investment, of income generating eligible real estate and eligible investments including housing, commercial and other real estate;

(b) marketing and sale of real estate assets;

(c) retention and management of the real estate assets of the trust with the objective of earning income from the assets;

(d) undertaking incidental and connected activities and activities related to the assets of the trust;

(e) undertaking of such development and construction activities as may be specified under these Regulations; and

(f) such other activities as are specified under these Regulations.

12. Restriction on provision of loans or mortgages by REITS

(1) A D-REIT or an I-REIT shall not engage in the provision of mortgages or any other form of lending or debt finance.

(2) Despite paragraph (1) a D-REIT may, where the D-REIT has developed or constructed housing or other real estate assets, provide—

(a) a mortgage;

(b) other forms of secured loan;

(c) secured finance; or

(d) any form of lending or finance through a progressive purchase mechanism,

for the purpose of assisting a tenant or purchaser to acquire a housing from the D-REIT.

(3) A D-REIT that provides finance to a purchaser and subsequently converts to an I-REIT, may, as an I-REIT, continue to hold such loans or mortgages as assets but shall not engage in additional lending or provision of mortgages.

13. Reference to D-REIT and I-REIT to include a reference to the trustee

A reference in these Regulations to a real estate investment trust, a real estate investment trust scheme, a D-REIT or an I-REIT shall, where the regulation imposes a restriction on the powers of, or an obligation on, or requires, empowers or authorizes the real estate investment trust, real estate investment trust scheme, D-REIT or I-REIT to undertake any act or thing, include a reference to the trustee of the REIT and, where the context so permits, a reference to the REIT manager.

PART III – AUTHORIZATION OF REAL ESTATE INVESTMENT TRUST SCHEMES

14. Restriction on offer and promotion

(1) A person shall not offer or issue REIT securities to any person unless the offer or issue complies with these Regulations.

(2) A person shall not—

(a) issue or cause to be issued an advertisement—

(i) inviting a person to become or offer to become an investor or a holder of REIT securities; or

(ii) containing information which may lead directly or indirectly to a person becoming or offering to become a participant in a scheme; or

(b) advise or procure a person to become or offer to become an investor or a holder of REIT securities;

unless the REIT securities are for a scheme that has been declared to be an authorized scheme by the Authority under regulation 18.

(3) The provisions of this regulation and regulation 15 shall not apply to an offer or issue to the promoter or any person connected with the promoter or to the procuring of such person to become a holder of REIT securities.

15. Prohibited activities before an authorization

A person shall not issue REIT securities in a real estate investment trust or in connection with a real estate investment trust scheme unless that person applies to the Authority for, and obtains an authorization for the issue of REIT securities.

16. Application for authorization

(1) A promoter and the trustee shall submit a joint application in Form I prescribed in the Second Schedule, to the Authority for the authorization of a real estate investment trust scheme.

(2) An application made under paragraph (1) shall—

(a) contain the information specified in Form I in the Second Schedule; and

(b) specify if the application is for the authorization of the scheme as an I-REIT or a D-REIT.

17. Procedure for application

(1) A promoter and trustee shall, in making an application under regulation 16, submit to the Authority—

(a) the prescribed application fee;

(b) a draft trust deed or the trust deed;

(c) a draft prospectus or an offering memorandum;

(d) an agreement or draft management services agreement with the REIT manager;

(e) an agreement or draft agreement with the property manager;

(f) an agreement or draft agreement with the project manager certifier;

(g) certified copies of any other scheme documents and material contracts;

(h) certified copies of valuation reports of properties vested in or to be vested in, acquired or transferred or to be acquired or transferred to the trustee as assets of the trust;

(i) reports of experts and consents of experts for inclusion;

(j) a legal opinion in respect of–

(i) the title, encumbrances, terms of contracts and status of registration of the real estate and other assets vested in or set out in the prospectus or offering memorandum that are to be vested in, acquired or transferred to the trustee as assets of the trust; and

(ii) the compliance of the trust deed with these Regulations;

(k) the contract with and certified copy of the report of the structural engineer;

(l) if it is proposed that the REIT be authorized as an Islamic REIT, a copy of the *Shariah* advisor's report;

(m) audited financial statements of the REIT manager for the financial year immediately preceding the application for authorization;

(n) audited financial statements of the trustee for the financial year immediately preceding the application for authorization; and

(o) such other documents as the Authority may prescribe from time to time.

(2) The Authority may require the applicant to furnish it with such additional information, verification and copies of any additional documentation as the Authority may consider necessary.

18. Authorization of a scheme

(1) The Authority may, upon considering an application and determining that the scheme does not have a name that is undesirable or misleading, declare a real estate investment trust scheme to be an authorized scheme under these Regulations and issue to it, an authorization certificate in Form 2 of the Third Schedule.

(2) The Authority may, in authorizing a scheme under paragraph (1), impose such conditions as it may consider necessary.

(3) An order made under paragraph (1) shall not—

(a) be construed as a recommendation as to the merits of a real estate investment trust scheme; or

(b) render the Authority liable for any action in damages suffered by any person as a consequence of the authorization.

19. Liability of the trustee, REIT manager or auditor

(1) Subject to regulations 25, 26, 44, and 48, any provision in the scheme documents of a real estate investment trust scheme which exempts or purports to exempt a REIT manager, a trustee including a secondary disposition trustee or an auditor from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the real estate investment trust scheme is void:

Provided that any trustee, in undertaking any borrowing or financing arrangement, shall be entitled to limit its liability for any borrowing within the scope of its authority, to the assets of the fund.

(2) Despite any provision in the scheme documents, a trustee including a secondary disposition trustee, a REIT manager or an auditor shall be liable for any loss, damage or depreciation in the market value of the securities or other assets in which the scheme assets arc invested where such loss, damage or deprecation arises from—

(a) in the case of the trustee or the REIT manager, a breach of their fiduciary duties or obligations;

(b) failure to exercise due care and diligence in the discharge of their functions;

(c) negligence whether professional or otherwise; or

(d) wilful default by the trustee, secondary disposition trustee, REIT manager or auditor or their agents, employees or associates.

20. Revocation of authorization

(1) The Authority may, on its own initiative or at the request of the trustee, revoke an order for the authorization of a real estate investment trust scheme under regulation 18(1).

(2) The Authority shall not revoke an order under paragraph (1) unless it has given the trustee, the REIT manager and any REIT securities holder an opportunity to be heard and the Authority has reason to believe that—

(a) there has been a breach of a condition or the scheme has failed to satisfy a requirement for the grant of an authorization;

(b) it is undesirable in the interests of the REIT securities holders or potential REIT securities holders that the scheme should continue as an authorized scheme;

(c) any proposal to restructure the scheme including changing the trustee or the REIT manager would not adequately protect the interests of the REIT securities holders; or

(d) the trustee or REIT manager has—

(i) furnished the Authority with false, inaccurate or misleading information; or

(ii) contravened a provision of, or failed to satisfy a requirement imposed under the Act or these Regulations.

(3) In revoking an authorization under paragraph (1), the Authority shall take into consideration any matter relating to the scheme, the trustee, the REIT manager or an officer or controller of the trustee or REIT manager or any director of, person employed by, or associated with the trustee or REIT manager in relation to the scheme.

(4) The Authority shall, in revoking an authorization under paragraph (1)—

(a) issue to the trustee and the REIT manager a written notice of its intention to revoke the authorization; and

(b) give the trustee and the REIT manager an opportunity to be heard either in person or through submissions.

(5) A notice issued under paragraph (4)(a) shall specify—

(i) the reasons for which the Authority proposes to revoke the authorization; and

(ii) the particulars of the rights conferred under paragraph (4)(b); and

(iii) require the trustee to submit a copy of the notice to the REIT securities holders.

21. Winding up of a real estate investment trust scheme

(1) The Authority may, where it revokes an authorization under regulation 20, apply to the Court for the appointment of a person to wind up the real estate investment trust scheme.

(2) Where the Authority has made an application under paragraph (1), it shall—

(a) give a written notice of the application to the trustee and the REIT manager; and

(b) inform the REIT securities holders of the application.

(3) This regulation shall apply subject to any orders of the Court under regulation 23.

22. Termination of a real estate trust scheme by the promoter, trustee or REIT Manager

(1) The trustee shall, where it initiates the revocation of an authorization under regulation 20(1), apply to the Authority for the termination of the real estate investment trust scheme.

(2) The trustee shall submit, together with the application under paragraph (1), a plan for winding up the scheme.

(3) The Authority shall approve a plan for winding up submitted to it under paragraph (2) if the Authority is satisfied that the interests of the REIT securities holders are properly protected.

(4) This regulation shall apply subject to any orders that may be made by the Court under regulation 23.

23. Power of the court in winding up of a real estate investment trust scheme

(1) The trustee, the REIT manager or any REIT securities holder may make an application to Court for an order to wind-up the operations of an authorized scheme.

(2) Prior to making an application under paragraph (1), the trustee or REIT manager shall give the Authority and REIT security holders notice of the application and the grounds for making the application.

(3) The Authority, the trustee, the REIT manager and any REIT securities holder shall, where an application is made under paragraph (1), be entitled to be heard by the Court on the application.

(4) The Court may make an order under paragraph (1) for the winding up of an authorized scheme if the Court is satisfied that—

(a) the scheme is being operated in contravention of the Act, these Regulations or the scheme documents;

(b) it is in the interest of the REIT securities holders or in the public interest to terminate the scheme; or

(c) it is just and equitable to make the order.

24. Restriction on the issue or offer of REIT securities

(1) For the purposes of these Regulations, a person who invites another person—

(a) to enter into an agreement for or with the view to subscribing for or otherwise acquiring or underwriting the issue or offer of any REIT securities; or

(b) to make an offer under subparagraph (a),

shall be considered to be issuing or offering REIT securities.

(2) A person shall not—

(a) make an offer of or issue REIT securities or other securities in respect of a real estate investment trust or a real estate investment trust scheme—

(i) otherwise than in accordance with the Act, these Regulations and with a prospectus or an offering memorandum that contains the

information set out in the Fourth Schedule and has been approved by the Authority; and

(ii) in respect of a real estate investment trust scheme which has been authorized by the Authority either as a D-REIT or an I-REIT;

(b) act as an agent in the sale, issue or offer of REIT securities unless that person is licensed by the Authority and complies with these Regulations; or

(c) act as a promoter of a real estate investment trust scheme or a real estate investment trust except in accordance with the Act and these Regulations.

(3) The provisions of paragraph (2) shall not apply to—

(a) an offer of REIT securities to a promoter of a scheme or to connected persons;

(b) an agreement entered into by a promoter or connected person to acquire REIT securities in exchange for or part exchange of the transfer of real estate into a proposed scheme; or

(c) an offer or issue of REIT securities to the promoter or connected person which are subject to the restriction that the securities cannot be subsequently transferred by the promoter except as a consequence of the winding up or death of the promoter, or where made pursuant to regulation 27(4) or regulation 29(5).

25. Obligations of a promoter in an initial offer or issue of REITs securities

(1) A promoter shall be deemed to be the offeror or issuer of the initial offer or issue of REIT securities to a person who is not the promoter or connected with the promoter and shall have continuing liability for—

(a) any covenants and warranties contained in the prospectus or offering memorandum;

(b) any misleading or deceptive statements made in any prospectus or offering memorandum; or

(c) any omission from the prospectus or offering memorandum.

(2) Despite the provisions of regulation 16 and the role played by the trustee in the issue of REIT securities, the trustee shall not be considered to be the issuer and its liability shall be limited to—

(a) covenants and warranties made by the trustee; and

(b) misleading and deceptive statements made by, and included in the prospectus or offering memorandum with the approval of the trustee in its capacity as an expert.

26. Obligations of a REIT manager in a subsequent offer or issue of REITs securities

(1) A person who is a REIT manager at the time of any subsequent issue or offer of REIT securities made after the initial offer or issue shall be deemed to be the issuer or offeror of any subsequent issue or offer and shall have continuing liability for—

(a) any covenants or warranties;

(b) misleading or deceptive statements in the prospectus or offering memorandum; or

(c) omissions from the prospectus or offering memorandum,

made or issued by it whilst that person was the REIT manager notwithstanding that that REIT manager subsequently ceases to be the REIT manager.

(2) The liability of the trustee in the case of any subsequent offer shall be limited to liability to—

(a) covenants and warranties made by the trustee; and

(b) misleading and deceptive statements made in respect of—

(i) the trustee that have been included in the prospectus or offering memorandum with its approval in its capacity as an expert; and

(ii) those which is aware of or should have been aware of as a consequence of its role as trustee of the scheme.

PART IV – OFFERS IN RESPECT OF A D-REIT

27. Offers in respect of a D-REIT

(1) An offer or an issue of REIT securities in a D-REIT shall only—

(a) be made as a restricted offer to professional investors;

(b) be offered in minimum subscription or offer parcels of five million shillings; and

(c) subject to these Regulations, shall only be transferred to a party to whom the REIT securities could have been issued or offered.

(2) A D-REIT shall have a minimum of seven investors.

(3) The minimum value of the initial assets of real estate investment trust in a D-REIT shall be one hundred million shillings.

(4) A minimum of twenty-five percent of the total REIT securities in the trust by value shall be free float:

Provided that this provision shall not apply where additional REIT securities are issued to—

(a) the promoter;

(b) the REIT manager; or

(c) parties associated or connected with either of them,

for the funding of an unscheduled cost overrun on a development or construction, in circumstances where such REIT securities during the time that they are held by the promoter, REIT manager or a connected person or associated party shall not be entitled to voting rights in respect of such additional REIT securities but may be entitled to participate in any distribution in respect of such REIT securities.

(5) Subject to the exception under paragraph (4), a minimum free float of twenty five percent of the REIT securities on issue at any time shall be held by investors who are not connected persons or associated with the promoter or the REIT manager.

(6) The trustee shall not register any issue or transfer of a REIT security if the trustee has reasonable grounds to believe that the issue or transfer would result in a breach of this provision in relation to the minimum requirements for the free float.

(7) The trustee may, in registering or declining to register an issue or a transfer under paragraph (6), rely on a certification issued by the subscriber or transferee that he or she is not a connected person or associated with the promoter or the REIT manager.

28. Listing of D-REIT securities

REIT securities in a D-REIT, if listed, shall only be listed on a market segment of a securities exchange approved by the Authority which limits—

(a) trading to a restricted minimum parcel size of five million shillings; and

(b) investors who may trade on such market segment of the securities exchange to those to whom an offer of the D-REIT securities could have been made.

PART V – OFFERS IN RESPECT OF AN I-REIT

29. Offers in respect of an I-REIT

(1) An offer or an issue of REIT securities in an I-REIT shall be made either as—

(a) a restricted offer to professional investors in accordance with an offering memorandum; or

(b) an unrestricted offer in accordance with a prospectus.

(2) REIT securities in an I-REIT may be offered as a restricted offer in minimum subscription or offer parcels of five million shillings and may, subject to these Regulations, only be transferred to a party to whom they could have been issued or offered.

(3) An I-REIT shall, subject to any greater number as may be required by the listing rules of a securities exchange, have a minimum of seven investors.

(4) The minimum value of the initial assets of a real estate investment trust in an I-REIT shall be three hundred million shillings.

(5) A minimum of twenty five percent of the total of REIT securities in the trust by value shall be free float:

Provided that this provision shall not apply where additional REIT securities are issued to—

(a) the promoter;

(b) the REIT manager; or

(c) any party associated or connected with either of them,

for the funding of an unscheduled cost overrun on a development or construction, provided that such REIT securities during the time that they are held by the promoter, REIT manager or a connected person or associated party shall not be entitled to voting rights in respect of such additional REIT securities but may be entitled to participate in any distribution in respect of such REIT securities.

(6) Subject to the exception under paragraph (5), a minimum of twenty five percent of the REIT securities on issue at any time shall be free float.

(7) The trustee shall not register any issue or transfer of a REIT security if the trustee believes that the issue or transfer would result in non-compliance with the free float requirements.

(8) The trustee may, in registering or declining to register an issue or a transfer under paragraph (7), rely on a certification given by the subscriber or transferee that that person is not a connected person or associated with the promoter or the REIT manager.

30. Listing of securities of an I-REIT

Where an issue or an offer of REIT securities in an I-REIT is made as an—

(a) unrestricted offer, it shall be listed on a market segment of a securities exchange approved by the Authority; or

(b) a restricted offer, if listed, shall only be listed on a market segment of a securities exchange authorized by the Authority which limits—

(i) trading to a restricted minimum parcel size of five million shillings; and

(ii) investors who may trade on such market segment of a securities exchange to those to whom an offer of the securities could have been made.

PART VI – PROVISIONS APPLYING TO OFFERS OF BOTH D-REITS AND I-REITS

31. Exceptions to limitations on transfers in case of a restricted issue or offer

(1) The restrictions on transfers in a D-REIT or an I-REIT shall not operate to restrict—

(a) a transfer as a consequence of death or insolvency or other *in specie* transfer; or

(b) prevent the trustee from registering a transfer:

Provided that evidence is submitted together with the request for transfer which sufficiently establishes that the transferee is either a professional investor or a person to whom an exemption applies.

32. Appointment of a transaction adviser

A person who proposes to make an offer or list REIT securities shall appoint a transaction adviser for the purpose of ensuring that the offer or listing is made in accordance with the provisions of these Regulations and the Act.

33. Appointment of a Registrar

(1) An issuer shall, where an offer of REIT Securities is to be listed, appoint a note registrar for the offer and listing of the REIT securities.

(2) A registrar appointed under paragraph (1) shall comply with such requirements as may be prescribed by the Authority.

34. Publication of a prospectus or an offering memorandum

(1) An issuer or an offeror shall, in the case of an offer which is—

(a) an unrestricted offer, publish a prospectus by making it available to the public, free of charge, at an address in Kenya, from the time that the securities are first offered until the end of the period during which the offer remains open; and

(b) a restricted offer, prepare an offering memorandum and make it available to prospective investors.

(2) A person shall not publish or circulate a prospectus or an offering memorandum unless the—

(a) the real estate investment trust scheme has been authorized by the Authority; and

(b) the prospectus or offering memorandum, as the case may be, has been approved by the Authority.

(3) Any restriction imposed by these Regulations shall not operate to prevent the issue or offer of REIT securities to a promoter or a connected person or any such person entering into an agreement to acquire REIT securities in exchange for or part exchange for the vesting or transfer of real estate into a proposed real estate investment trust scheme.

(4) A person shall not issue, without the prior written approval of the Authority, an advertisement announcing an issue or offer of REIT securities unless a prospectus has been published and the advertisement specifies an address in Kenya from which the prospectus can be obtained.

(5) Where a real estate investment trust scheme intends to convert the scheme pursuant to regulation 85 and 86, the REIT manager shall prepare and submit a conversion offering memorandum or a conversion prospectus as the case may be for approval by the Authority.

(6) The Authority shall not be liable for any action in damages suffered by any person as a result of any prospectus or offering memorandum approved by the Authority.

35. Expert statement

(1) A prospectus or an offering memorandum shall not include a statement purporting to be made by an expert if the expert is or has been, engaged or interested in the formation or promotion of the real estate investment trust scheme or the offer of the REIT securities or in the management of the promoter or the REIT manager or is a person connected with the promoter, the trustee or the REIT manager.

(2) A prospectus or an offering memorandum which includes or is based on a statement made by an expert shall not be issued unless-—

(a) the expert has given, and has not withdrawn, before the issue of the prospectus or offering memorandum, a written consent to the issue of the prospectus or offering memorandum and the inclusion of the statement in the form and context in which it is included; and

(b) there is a statement in the prospectus or offering memorandum that the expert has given and has not withdrawn the consent.

36. Disclosure of financial structuring

(1) Any measure proposed in the offering memorandum or subsequently introduced in the funding, structuring, management or operation of the REIT by way of structuring or financial structuring including—

(a) the deferral of the REIT manager's fees;

(b) the use of two classes of REIT securities one class of which is entitled, for a limited period, to no or a lower yield than other classes of REIT securities;

(c) inclusion of tenancies with above market rents or minimum rental; or

(d) guarantees from the issuer or a connected person,

which is designed to or have the effect of improving the natural or unstructured yield or distribution levels in any financial year by more than five percent above those that would otherwise result from the net income generated from the assets of the fund without the adoption of such measures—

(i) the prospectus or offering memorandum shall specifically disclose and clearly set out the measures;

(ii) the implications of the absence of, the removal or expiry of such measures on yield, cash flows, distributions and the risk profile of the REIT in the short and longer term shall be simply and clearly identified; and

(iii) a sensitivity table shall be included in the prospectus or offering memorandum which demonstrates the impact of the measures.

(2) Where the measures under paragraph (1) are introduced subsequent to the issue of any prospectus or offering memorandum, the measures shall be clearly identified and their impact reported as part of the continuing disclosure reporting under regulation 42 and in subsequent half yearly and annual reports under regulation 101.

37. Approval of prospectus or offering memorandum

(1) The Authority may approve a prospectus or offering memorandum if the prospectus or offering memorandum—

(a) has been signed by—

(i) the issuer;

(ii) the REIT manager and the trustee;

(iii) an expert or other person who consents to the inclusion of a statements made by him or her or to undertake the roles attributed to him or her including, but not limited to the property manager; any project manager certifier; valuer and the structural engineer;

(b) contains all information which investors and their professional advisers would reasonably require, for the purposes of making an informed assessment of the—

(i) assets, liabilities, financial position, profits, losses and prospects of the REIT scheme and the REIT securities; and

(ii) rights attaching to those securities;

(c) contains such information and particulars specified in the Fourth Schedule; and

(d) complies with such other requirements imposed under the Act and these Regulations.

(2) The Authority may, in approving a prospectus or offering memorandum under paragraph (1) impose such conditions or restrictions as it may consider necessary.

(3) An issuer shall, in seeking the approval of a supplemental prospectus or supplemental offering memorandum by the Authority, ensure that such prospectus or offering memorandum meets requirements specified under paragraph (1) and the

requirements under the Fourth Schedule relating to a supplemental prospectus or supplemental offering memorandum.

(4) A REIT manager shall, in seeking for the approval of a conversion prospectus by the Authority pursuant to regulation 86, ensure that the conversion prospectus meets the requirements of paragraph (1) and the requirements specified under the Fourth Schedule relating to a conversion prospectus.

(5) The Authority may require the applicant, whenever approval is sought under this regulation to furnish such additional information, verification and copies of additional documentation as it considers necessary.

(6) A prospectus or offering memorandum approved by the Authority shall be valid for a period of six months.

(7) The Authority shall not be liable for any action in damages suffered by any person as a consequence of the Authority approving any prospectus or offering memorandum relating to the scheme.

(8) The approval of a prospectus or an offering memorandum by the Authority shall not operate to waive, relieve or diminish the obligation of any person to make a disclosure or provide a defence to any action under these Regulations or any other law.

38. Liability for a defective prospectus or an offering memorandum

(1) A person shall not—

(a) make a false, misleading or deceptive statement in a prospectus or an offering memorandum; or

(b) omit information or a statement from a prospectus or an offering memorandum which these Regulations requires to be included.

(2) A person who contravenes the provision of paragraph (1), commits an offence.

39. Remedy for unfair prejudice or conduct of a scheme

(1) The Authority may issue a direction if it reasonably believes that the affairs of the scheme are being or have been conducted—

(a) in a manner prejudicial to the interests of—

(i) the REIT securities holders;

(ii) investors in the securities market; or

(iii) some part of REIT securities holders or investors; or

(b) contrary to these Regulations or any other written law.

(2) The Authority may, in issuing a direction under paragraph (1)—

(a) restrain the carrying out of the act or the conduct;

(b) require the removal and replacement of the trustee or the REIT manager;

(c) require the trustee to initiate proceedings in Court, in the name of the trustee for the benefit of REIT securities holders, against any person on such terms as the Authority considers fit;

(d) impose such conditions on the operations or conduct of affairs of the scheme in future as it may consider necessary;

(e) specify the manner in which—

(i) REIT securities of any REIT securities holder in the scheme may be purchased; and

(ii) the REIT securities may be redeemed.

(3) The Authority may, in addition to any direction issued under paragraph (1), apply to Court for an order of appointment of a receiver or manager to wind up the operations of the scheme.

(4) The Court may, upon considering an application under paragraph (2), make an order—

(a) requiring the appointment of a receiver or manager for the whole or part of the assets of the scheme;

(b) specifying the powers and duties of the receiver or manager;

(c) for compensation; and

(d) for the recovery of assets.

(5) A real estate investment trust scheme shall not, where a direction or an order under this regulation has the effect of altering its trust deed or to the scheme documents, without the approval of the Authority, make any alteration or any addition to the trust deed or any scheme documents which is inconsistent with the direction or the order.

40. Compensation for false or misleading prospectus or offering memorandum

(1) This regulation applies—

(a) to an issuer of REIT securities to which a prospectus or offering memorandum relates;

(b) where the issuer is a body corporate—

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

(ii) to each person who has consented to be named and is so named in the prospectus or offering memorandum as a director or has agreed to become a director of that body corporate either immediately or at a future time;

(c) to each person who accepts, and is stated in the prospectus or offering memorandum as accepting responsibility for, or any part of, the prospectus or offering memorandum;

(d) to the offeror of REIT securities, where the offeror is not the issuer;

(e) where the offeror is a body corporate, but is not the issuer and does not making the offer in association with the issuer, to each person who is a director of that body corporate at the time when the prospectus or offering memorandum is published; and

(f) to each person who does not fall within paragraphs (a) to (e) and who has authorized the contents of, or of any part of the prospectus or offering memorandum or any expert who has consented to the inclusion of its report or opinion in the prospectus or offering memorandum.

(2) A person to whom paragraph (1) applies shall be jointly and severally liable to pay compensation to any person who acquires any of the REIT securities in reliance on the prospectus or offering memorandum, including acquisition in the secondary market, to which the prospectus or offering memorandum relates, and suffers loss as a result of—

(a) any untrue or misleading statement in the prospectus or offering memorandum; or

(b) the omission of any matter required by the Act or these Regulations to be included in the prospectus or offering memorandum.

(3) Despite the provisions of paragraph (2), a person shall not be responsible for statements or warranties included in a prospectus or an information memorandum or scheme document—

(a) under paragraph (1)(a), (b) or (c), unless the issuer has made or authorized the offer in relation to which the prospectus memorandum is published; or

(b) under paragraph (1)(b), (c), (e) or (f), if such statement is included or the prospectus or offering memorandum is published without his knowledge or consent and on becoming aware of its publication, that person gives reasonable notice to the public and to the Authority that the statement was

included or prospectus or information memorandum was published without the knowledge or consent of that person.

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

41. Obligation to conduct due diligence

(1) An issuer or offeror, a transaction adviser and any person who is—

(a) appointed or proposed to be appointed as a REIT manager;

(b) involved in or connected with the issue or offer of REIT securities or the issue of a supplemental offering memorandum or supplemental prospectus or conversion prospectus or conversion offering memorandum; or

(c) named as an expert in the prospectus or offering memorandum;

shall conduct an independent verification and due diligence of all statements made by or attributed to him or her which he or she has consented to its inclusion in the prospectus or offering memorandum and in respect of any covenants or warranties provided by it which are included, with his or her consent, in the prospectus or offering memorandum or in any scheme document associated or the issue or offer of the REIT securities.

(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, covenant or warranty in a scheme document if that person proves that, prior to making such statement, omission, representation or warranty, that person—

(a) made all inquiries, if any, 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.

42. Continuing disclosure obligations of trustee and REIT manager

(1) A trustee and the REIT manager of a real estate investment trust scheme whose securities have been issued in accordance with an approved offer, shall keep the Authority; REIT securities holders, any listing exchange and, in the case of an unrestricted REIT scheme, the general public informed by way of a public announcement, as soon as may reasonably be practicable, but in any event not later than the end of the next working day, of any information which the trustee or the REIT manager becomes aware of relating to the real estate investment trust, the REIT scheme, its assets or the REIT manager which—

(a) is necessary to enable holders of REIT securities or potential investors appraise—

(i) the financial position, performance and the state of corporate governance of the real estate investment trust, the scheme or the REIT manager; or

(ii) the valuation of any asset of the real estate investment trust;

(b) is necessary to avoid the establishment of a false market in the REIT securities; or

(c) might reasonably be expected to materially affect market activity in the price of the REIT securities.

(2) The REIT Manager shall inform the trustee of any information which is not within the knowledge and control of the trustee and which requires disclosure so as to enable the trustee to fulfil its obligations under paragraph (1).

(3) Without prejudice to paragraph (2), the trustee shall ensure that the REIT manager has in place a mechanism for updating information on a regular basis and shall obtain, if necessary, updated information from any property manager, project manager certifier, valuer, structural engineer or the auditor, and any *Shariah* adviser, who shall, if requested by

the REIT manager or the trustee, provide all the necessary information to enable the trustee and the REIT manager to fulfil their obligations under paragraph (1).

(4) The obligation to supply information under paragraph (2) shall be in addition to the obligation to provide periodic reports under regulation 101 and the requirements of any listing exchange.

(5) Without prejudice to paragraph (2), the trustee and the REIT manager shall comply with a request for further information by the Authority.

PART VII – APPOINTMENT, REMOVAL AND OBLIGATIONS OF A TRUSTEE

43. Trustee to be licensed by the Authority

(1) The trust deed for every real estate investment trust that applies for authorization as a scheme shall comply with the requirements of the First Schedule and provide for the appointment of a trustee to act as a trustee of a real estate investment trust.

(2) A person who intends to act as a trustee in respect of—

(a) a real estate investment trust scheme for which an authorization is required; or

(b) any real estate investment trust,

shall apply to the Authority to be licensed as such in accordance with regulation 125.

44. Eligibility for appointment as a trustee

(1) A trustee shall be a company or a corporation incorporated or formed or established in Kenya which is—

(a) a bank;

(b) a subsidiary of a bank; or

(c) such other company or corporation as the Authority may license if the Authority is satisfied that the company or corporation has sufficient financial, technical and operational resources and experience necessary to enable it effectively conduct its business and carry out its obligations as a trustee of a real estate investment trust and real estate investment trust scheme.

(2) A trustee shall—

(a) be independent of the promoter, the REIT manager and any property manager, valuer or project manager certifier of the real estate investment trust scheme;

(b) be licensed by the Authority as a REIT trustee;

(c) be independently audited; and

(d) have a minimum issued and paid-up capital and non-distributable capital reserves of at least one hundred million shillings.

(3) Where the appointed trustee is the sole trustee and is not a trust corporation as defined under the Trustee Act (Cap. 167) the Authority may, at the request of the trustee and if required for the purposes of issuing a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for the sale of land as provided for under section 15 of the Trustee Act, appoint the REIT manager as a secondary disposition trustee for the purposes of enabling compliance with section 15 and with powers limited to those necessary to allow execution of documents and undertake any other matters for the purpose of compliance with section 15 of the Trustee Act.

(4) Where the Authority appoints a person as a secondary disposition trustee under paragraph (3), that person may, if necessary, be registered as the co-owner as a second trustee and at the request of the trustee may execute any documentation as a second trustee.

(5) The Authority may appoint the REIT manager to perform the limited role as a secondary disposition trustee despite the fact that the REIT manager is not eligible to be appointed as a trustee and is not licenced as a trustee.

(6) In appointing the REIT manager under paragraph (5), the Authority may limit the powers of the secondary disposition trustee and impose such conditions as it may consider necessary.

45. Powers, obligations and duties of a trustee and any secondary disposition trustee

(1) The trustee shall, despite being the sole trustee, to the extent permissible by law have power to issue a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for the sale of land.

(2) The scheme documents may specify the obligations and general duties of a trustee which shall be consistent with the provisions of the Act, these Regulations and any other written law.

(3) The trustee and the employees or officers of the trustee who undertake or supervise the carrying out of the role and functions of the trustee shall—

(a) perform their duties in accordance with the terms of the trust deed, the scheme documents and these Regulations;

(b) act honestly and in a fiduciary capacity as trustee in the best interests of the REIT securities holders as beneficiaries of the real estate investment trust;

(c) fulfil the obligations and duties set out in the scheme documents in conformity with these Regulations;

(d) act in accordance with any other written law applicable to trustees;

(e) maintain the custody of, hold and protect all the assets of the real estate investment trust, ensure they are held in the name of and registered, where required, in the name of the trustee and if required in the name of any secondary disposition trustee;

(f) ensure that all the necessary filings and registrations are recorded, undertaken and maintained;

(g) protect the interests of the real estate investment trust in any asset;

(h) ensure that the assets are—

(i) clearly identified as the assets of the trust and the scheme; and

(ii) held separately from any other assets of the trustee and of any secondary disposition trustee and any other trust, scheme or person;

(i) appoint the REIT manager and, if necessary to protect the interests of beneficiaries, remove the REIT manager and appoint a substitute REIT manager;

(j) act as the REIT manager on a temporary basis in any period where there is no other REIT manager until a new REIT manager is appointed;

(k) supervise the activities of the REIT manager to ensure that they comply with the terms of the scheme documents, the Act and these Regulations;

(l) not delegate to the REIT manager except if appointed by the Authority as a secondary disposition trustee or to any other person not being an officer or employee of the trustee any function of or involving—

(i) the supervision of the REIT manager; or

(ii) the custody or control of the assets of the scheme;

(m) ensure that–

(i) the fund and the assets of the scheme are invested in accordance with the terms of the trust deed, the Act and these Regulations;

(ii) the income of the scheme is applied in accordance with the terms of the scheme documents:

(iii) the assets of the real estate investment trust which are insurable are insured and valued as required by the scheme documents, the Act and these Regulations;

(iv) all payments and distributions made out of the assets of the scheme are made in accordance with the terms of the scheme documents, the Act and these Regulations; and

(v) any borrowing limitations set out in the scheme documents, the Act and these Regulations are complied with;

(n) act in the best interests of the beneficiaries and where there is a conflict between the interests of the trustee and those of any beneficiary, give priority and preference to the interest of the beneficiary;

(o) not make use of confidential information acquired when acting as the trustee to gain an improper advantage for itself or for another person or to cause detriment to a beneficiary.

(4) Where a trustee or secondary disposition trustee contravenes an obligation imposed on it by the scheme documents, the Act or these Regulations, any person who—

(a) has been involved materially in;

(b) participated materially in; or

(c) authorized,

such contravention shall also be considered to have contravened these Regulations.

46. Instructions from a REIT manager

The trustee shall carry out the instructions of the REIT manager unless the trustee has reasonable cause to believe that compliance with such instructions would cause it to breach a duty imposed on it under the scheme documents, the law relating to trustees, the Act or these Regulations.

47. Change of address of the trustee

A trustee shall, at least twenty eight days before changing its address, registered office or permanent place of business in Kenya, notify the Authority and the REIT securities holders of such change.

48. Liability of a trustee

(1) In addition to any obligation imposed under regulation 19 or the scheme documents the trustee, shall be liable to the holders of REIT securities as a fiduciary; and to the REIT manager for any loss suffered by them during its period as trustee or as a result of—

(a) any failure by the trustee to perform its obligations; or

(b) the trustee's improper performance of its obligations.

49. Exemption from taking action in respect of REIT assets

(1) The trustee may refrain from taking any action in respect of the assets of the real estate investment trust or on behalf of the REIT securities holders if the trustee is unable to access sufficient funds to pay the costs and expenses of taking such action:

Provided that—

(a) the trustee has called a meeting of the beneficiaries or a class of beneficiaries;

(b) the meeting called under subparagraph (a) has failed to pass a resolution to provide the funds necessary to conduct the action or to provide the necessary funds within thirty days of the passing of such resolution; and

(c) the trustee had given prior notice of the meeting to the Authority.

50. Register of REIT securities holders

(1) The trustee shall prepare and maintain a register of REIT securities holders of the scheme in a manner approved by the Authority.

(2) The trustee may, with the prior written approval of the Authority, appoint another person to prepare and maintain the register on behalf of the trustee.

(3) The register shall be conclusive evidence as to the persons entitled to the REIT securities, registered in their name.

51. Voluntary Resignation of trustee

(1) The scheme documents may provide for the retirement of a trustee in accordance with the Act and these Regulations.

(2) A trustee shall not resign as trustee unless another person eligible to be appointed a trustee has been appointed to act in place of the trustee.

(3) Where the trustee intends to resign, it shall give at least a three months notice in writing to the Authority, the REIT manager and the REIT securities holders of its intention to resign and shall set out in such notice its reasons for wanting to resign.

(4) The REIT manager shall, in consultation with the trustee and within two months of receipt of the notice under paragraph (3)—

(a) enter into negotiations with alternative parties who are eligible to be appointed as trustee; and

(b) call a meeting, at the expense of the trustee, of REIT securities holders for the purpose of considering and passing a special resolution in respect of any recommendation and appointing a new trustee.

(5) The REIT manager shall issue a notice to the REIT securities holders and the trustee calling for a meeting under paragraph (4)(b) which shall include—

(a) the consent in writing of any proposed trustee or trustees, if a choice of more than one is to be provided, to accept an appointment and to execute the trust deed;

(b) the terms of the appointment including fees;

(c) a copy of the supplemental deed; and

(d) the approval of the Authority to any appointment.

(6) Where the REIT manager is unable to find a replacement trustee or the REIT securities holders fail to consent to the appointment of any proposed replacement trustee then before the expiry of the period specified in the notice given in paragraph (3) the trustee may—

(a) inform the Authority, the REIT manager and the REIT securities holders of its intention to make an application to the Court for the appointment as replacement trustee of a person who is eligible for appointment under regulation 44; and

(b) at the expense of the trustee make such application.

(7) The appointment of a new trustee shall take effect in the case of a trustee appointed by—

(a) the REIT securities holders from the date of execution by the new trustee of a supplemental trust deed and date of the completion of the transfer or vesting in the new trustee of all of the assets of the trust; or

(b) the Court, from the date specified by the Court.

(8) All costs and expenses incurred in the resignation, change and replacement of the trustee including those of the REIT manager shall be the responsibility of the trustee.

(9) Where there is a conflict between the provisions of this regulation and the scheme documents on the limit of the trustee's right to resign or right to action that a replacement trustee or REIT securities holders may have against the trustee, the provisions of the scheme documents shall prevail.

52. Removal and replacement of a trustee

(1) The scheme documents shall provide for the removal and replacement of the trustee in accordance with the Act and these Regulations.

(2) The Authority shall, except where the Court makes an order for the removal of a trustee, approve the removal and replacement of the trustee.

(3) The REIT securities holders may, by way of a special resolution, approve the removal and replacement of the trustee where the removal and replacement of the trustee is not pursuant to an order of the Court or approval of the Authority.

(4) The REIT manager shall convene a meeting of the REIT securities holders within one month of—

(a) a court of competent jurisdiction making an order for the liquidation of the trustee, except a voluntary liquidation for the purpose of reconstruction or amalgamation under a scheme approved by the Authority;

(b) a manager or a receiver being appointed over any of the assets of the trustee; or

(c) the trustee ceasing to be eligible for appointment under regulation 44.

(5) A meeting convened under paragraph (4) shall consider a recommendation by the REIT manager for the appointment of a replacement trustee or for the making of an application by the REIT manager to the Court for the appointment of a replacement trustee.

(6) The REIT manager shall, in convening a meeting under paragraph (4), issue a notice to the REIT securities holders notifying them of the meeting.

(7) A notice issued under paragraph (6) shall include—

(a) where a recommendation is for the appointment of a replacement trustee—

(i) the consent in writing of the proposed trustee to accept the appointment and execute the supplemental trust deed;

(ii) the terms of the appointment including fees;

(iii) the approval of the Authority to the appointment of a new trustee; and

(iv) the supplemental trust deed; or

(b) an alternative recommendation, in the event that a replacement cannot be found or is not approved by a special resolution at the meeting of REIT security holders and an application is made by the REIT manager to the Court for the appointment of the proposed replacement or temporary trustee.

(8) Where the REIT securities holders fail to approve a recommendation under paragraph (5), the REIT manager shall—

(a) inform the Authority of the decision of the REIT securities holders; and

(b) as soon as possible, make an application to the Court for the appointment of a person eligible for appointment under regulation 44 as a replacement or temporary trustee.

(9) A REIT manager may, with the approval of the Authority remove a trustee where—

(a) the trustee fails or neglects after reasonable notice from the REIT manager or the Authority to carry out its duties under the scheme documents or these Regulations; or

(b) the trustee repeatedly breaches the provisions of the Act, these Regulations or the scheme documents; and

(c) the REIT securities holders, by ordinary resolution resolve—

(i) a notice be issued to the trustee for his removal; and

(ii) approve the appointment of a replacement trustee; or

(iii) approve the making of an application to the Court for the appointment of a replacement trustee or temporary trustee; or

(d) in any other circumstances if the REIT securities holders, by special resolution resolve that such notice be given.

(10) A REIT manager shall not remove a trustee under paragraph (9) unless he has issued to the trustee, a three months notice in writing of the intention to remove the trustee.

(11) Where the trustee is removed and replaced under this regulation the REIT manager shall be entitled to recover any costs or expenses of or related to the appointment of the replacement trustee including the costs of convening any meetings and of any application to the Court from assets of the trust and the replacement trustee shall be entitled to make a claim against the replaced trustee for recovery of such costs and expenses.

(12) The appointment of a replacement trustee shall take effect—

(a) in the case of a trustee appointed by the REIT securities holders from the date of execution by the new trustee of a supplemental trust deed and date of the completion of the transfer or vesting in the new trustee of all of the assets of the trust; or

(b) in the case of a trustee appointed pursuant to an order by the Court, from the date specified by the Court.

(13) Where a trustee ceases to be a trustee under this regulation and the appointment of a replacement trustee takes effect, it shall—

(a) make available to the replacement trustee, all books, records, reports, information and data including access to software and source code which is within the possession or control of the trustee relating to the activities of the scheme or the assets of the trusts; and

(b) execute such notices to tenants, assignments and novations of contracts as may be required.

53. Notification of contraventions

The trustee shall, in addition to preparing any periodic reports required under the Act, these Regulations or any listing rule, notify the Authority, in writing—

(a) immediately upon becoming aware of any matter or failure, act or omission by the REIT manager or any other party involved in a real estate investment trust scheme, which constitutes a breach of any of the provisions of the Act, these Regulations or the scheme documents; and

(b) of any steps taken by the trustee or which the trustee proposes to take to rectify the breach as soon as is reasonably practicable.

PART VIII – APPOINTMENT, REMOVAL AND OBLIGATIONS OF A REIT MANAGER

54. Authorization of a scheme as a self-managed scheme

(1) The scheme documents shall provide for the appointment, resignation and removal of the REIT manager.

(2) The Authority may, on the application of the trustee, authorize a scheme to be self-managed by a company which is wholly owned and controlled by the trustee and is an eligible asset of the real estate investment trust.

(3) In considering whether to authorize a scheme to be self-managed the Authority shall take into consideration—

(a) the type, objectives, history and performance of the real estate investment trust and the number and type of REIT securities holders;

(b) the proposed terms of appointment;

(c) the resources including, human, systems and financial resources that will be available to the company;

(d) the experience of the directors and senior management of the company;

(e) the experience and history of performance of the trustee and the resources available to it;

(f) the potential conflicts of interest and the powers of the trustee and of REIT securities holders to—

(i) remove the company as REIT manager;

(ii) appoint the directors of the company;

(iii) limit the conflicts of interest including the remuneration of directors and employees of the company;

(iv) limit the risks to the fund and to the unit holders including the availability of insurance in respect of negligent acts by the company as REIT manager or its directors; and

(v) other factors that the Authority considers relevant in the interests of REIT securities holders; and

(g) the amendments proposed to the trust deed and the scheme documents !o recognise the scheme as a self-managed scheme.

(4) Where the Authority authorizes self-management of a scheme through a wholly owned company the provisions of these Regulations shall, except where expressly provided for, apply to the REIT manager notwithstanding that it is a company that is wholly owned.

(5) An approval by the Authority for a scheme to be self-managed shall be conditional upon the trustee and the REIT securities holders approving the appointment and terms of the appointment of the company.

(6) A REIT manager shall not manage more than one real estate investment trust scheme unless it has applied for and obtained the approval of the Authority.

55. Appointment of a REIT manager

(1) Every REIT manager shall be appointed by the trustee with the prior approval of the Authority.

(2) The REIT manager shall—

(a) be a company incorporated in Kenya;

(b) have a minimum paid up capital of ten million shillings;

(c) be independently audited; and

(d) have key personnel with experience and skills to—

(i) manage the scheme; and

(ii) implement the objectives of the scheme and to enable it to undertake the role of and duties as REIT manager; or

(e) demonstrate that it has access to and shall appoint from time to time, when required, persons having the required skills to enable it to implement the objectives of the scheme and to undertake the role of and duties as REIT manager;

(3) A company shall not operate as a REIT manager of a real estate investment trust scheme or any real estate investment trust unless it is licensed by the Authority as a REIT manager under regulation 125.

(4) Where a REIT manager is associated with the promoter, the board of directors of the REIT manager shall be comprised of at least two independent directors one of whom shall be appointed as the chairperson.

(5) Where a real estate trust investment scheme is, with the approval of the Authority, self-managed, the directors of the REIT manager shall be appointed by and may be removed by the trustee.

(6) A REIT manager may, with the approval of the trustee, appoint a property manager and such other agents as it considers necessary and delegate its functions in relation to the investment to such appointees.

(7) A REIT manager shall—

(a) be responsible for the actions of any property manager; and

(b) supervise the property manager to ensure that the property manager complies with the terms of scheme documents, the Act and these Regulations.

56. Duties of a REIT manager

(1) The scheme documents shall set out the obligations and duties of the REIT manager in accordance with these Regulations.

(2) The REIT manager shall, subject to the terms of the scheme documents and any directions in writing received from the trustee—

(a) acquire, manage, maintain and dispose assets of the scheme and where authorized by the scheme documents conduct development and construction activities—

(i) in accordance with the provisions of the scheme documents, these Regulations and the law applicable to trusts; and

(ii) to give effect to the objectives of the scheme;

(b) take all reasonable steps and exercise due diligence to ensure that the assets of the scheme are invested in accordance with the scheme documents;

(c) while acting in the capacity as a fiduciary on behalf of the REIT securities holders–

(i) exercise the degree of care and diligence that a reasonable and skilled person would exercise in the position of a management company;

(ii) act in the best interests of the REIT securities holders and where there is a conflict between the interests of the REIT securities holders and that of the REIT manager, give priority to the interests of REIT securities holders;

(iii) observe high standards of integrity and fair dealing in managing the fund to the best and exclusive interests of the REIT securities holders;

(iv) not use information acquired in his capacity as REIT manager to gain an unfair advantage for itself or other persons, or to the detriment of the REIT securities holders;

(v) ensure that the property of the fund is clearly identified and held separately from the assets of the REIT manager or any other person; and

(vi) establish and maintain risk management systems and controls and ensure that it has adequate resources and systems, including suitably qualified and equipped human resources to fulfil the functions and obligations of a REIT manager;

(d) account to the trustee and the REIT securities holders for any loss suffered by the scheme as a result of failure by the REIT manager, any director of the REIT manager, any officer, employee or agent appointed by the REIT manager to exercise the required standard of care and diligence necessary to operate and manage the fund;

(e) maintain on behalf of the trustee, proper accounting records and other record to enable an accurate view of the fund to be formed;

(f) prepare accounts in accordance with regulation 101;

(g) provide all assistance necessary to enable an audit of the accounts prepared under subparagraph (f) to be carried out in accordance with Regulation 97;

(h) take all reasonable steps and exercise due diligence to assist and ensure that the assets of the trust are valued as required under regulation 113;

(i) obtain tenants and manage tenancy arrangements;

(j) carry out or cause to be carried out all property management functions in compliance with Estate Agents Act (Cap. 533);

(k) obtain quotations for insurance of the assets of the trust and make recommendations to the trustee;

(l) prepare budgets for capital works and maintenance of the assets of the trust;

(m) recommend to the trustee for approval, the budgets for capital works and maintenance prepared under subparagraph (l);

(n) implement approved budgets, capital works and maintenance programmes;

(o) prepare budgets and work programmes, negotiate contracts for recommendation to the trustee for approval in relation to the development and construction works including the appointment of contractors and professional and expert advisors;

(p) implement any budgets, work programmes and contracts approved by the trustee in relation to development and construction works, update budgets and work, programmes as required and recommend changes to the trustee;

(q) prepare and submit to the trustee recommendations on distributions;

(r) undertake all calculations including calculations of net asset values and ratios required to comply with the terms of the scheme documents and these Regulations;

(s) arrange and recommend to the trustee for approval any borrowings or other financing arrangements and the entering into of any risk management products or strategies;

(t) make recommendations to the trustee and manage repayment and compliance with the terms of any borrowing arrangement under subparagraph (r);

(u) in the case of an unlisted trust, take all reasonable steps and exercise due diligence to ensure that the REIT securities are correctly priced and the provisions of the scheme documents on redemption are complied with;

(v) prepare and lodge with the Authority, and circulate to the trustee and REIT securities holders, periodic reports as required under the Regulations;

(w) in the case of an unrestricted issue l-REIT, ensure that the scheme documents are made available for inspection by the public, free of charge, at all times during official working hours and make copies of such documents available upon the payment of a reasonable fee; and

(x) in the case of a D-REIT, ensure that the scheme documents are available to any REIT securities holder or person who is potentially qualified to be a REIT securities holder.

(3) A REIT manager shall, in the performance of its duties, act in the best interests of REIT securities holders as beneficiaries of the real estate investment trust and take reasonable care to protect those interests.

57. Restrictions on activities of a REIT manager

(1) A REIT manager shall not, in relation to a scheme for which it is the REIT manager, engage in any activity other than the management of that scheme.

(2) A REIT manager shall, if the REIT manager intends to act for more than one scheme, apply to the Authority for an approval.

(3) The Authority shall, in considering an application under subparagraph (2), take into consideration—

(a) the resources, skills and experience of the REIT manager;

(b) the performance of the REIT manager and of the scheme; and

(c) potential conflicts or interests that may arise as a result of the company acting as a REIT manager in relation to more than one scheme.

(4) An approval by the Authority for REIT manager to manage more than one scheme shall be conditional upon the trustee and the REIT securities-holders of each scheme approving the appointment and the terms of the appointment.

58. Connected party transactions

(1) A REIT manager shall conduct all transactions at an arm's length and in an open and transparent manner.

(2) A REIT manager shall not act or conduct transactions in a manner that would result in unnecessary, cost or risk to the fund; and

(3) A REIT manager that intends to conduct a transaction with a connected person shall comply with regulation 118.

59. Change of address

Where a REIT manager intends to change its address, registered office or permanent place of business, it shall notify the Authority and the REIT securities holders at least twenty eight days before such change.

60. Trustee requests to a REIT manager

A REIT manager shall—

(a) at the request of the trustee, supply to the trustee such information concerning the administration of the fund and of the real estate investment trust and the scheme as the trustee may reasonably require;

(b) comply with any lawful directions issued by the trustee for the purposes of satisfying requirements of paragraph (a);

(c) prepare and make available on a timely basis, any additional information as may be required from time to time by the Authority, auditor, property manager, project manager certifier or the trustee;

(d) grant to the trustee and any auditor access to the books of accounts and records of the REIT manager, the trust, the scheme or the fund; and

(e) submit to the trustee on a timely basis, such information as may be necessary to ensure that the continuing disclosure obligations under these Regulations are complied with.

61. Removal and replacement of a REIT manager

(1) The Authority shall, except where the removal is ordered by the Court, approve any removal and replacement of a REIT manager including the appointment of a replacement REIT manager where the REIT manager resigns or is not reappointed by the trustee.

(2) The trustee shall convene a meeting of REIT securities holders for purposes of approving the removal of the REIT manager and the appointment of a replacement REIT manager if—

(a) the Court makes an order for the liquidation of the REIT manager, except a voluntary liquidation for the purpose of reconstruction or amalgamation under a scheme approved by the Authority;

(b) a manager or a receiver is appointed over any of the assets of the REIT manager;

(c) the REIT manager ceases to be eligible for appointment under regulation 55;

(d) the REIT manager is in repeated breach the provisions of the Act, these Regulations or the scheme documents; or

(e) the trustee is of the opinion that the replacement of the REIT manager is in the interests of the REIT securities holders or is necessary to protect the assets of the trust.

(3) The REIT manager shall bear the costs and expenses incurred in the replacement of the REIT manager under this Regulation.

(4) The resignation of a REIT manager shall not take effect until a replacement is appointed by the trustee and the appointment is approved by the Authority.

(5) Where a company ceases to be a REIT manager and the appointment of a replacement REIT manager takes effect, it shall—

(a) make available to the trustee and to the replacement REIT manager, all books, records, reports, information and data including access to software and source code which is within the possession or control of that REIT manager relating to the activities of the scheme or the assets of the trusts; and

(b) execute such notices to tenants, assignments and novations of contracts as may be required by the trustee.

PART IX – APPOINTMENT AND ROLE OF STRUCTURAL ENGINEER AND THE PROJECT MANAGER CERTIFIER

62. Appointment and role of the structural engineer

(1) A trustee shall, in consultation with the REIT manager, appoint a structural engineer and have access at all times to the services of a structural engineer in relation to the REIT.

(2) The trustee shall appoint the structural engineer under paragraph (1) prior to—

(a) an application being made for authorization of the scheme;

(b) the issue of a prospectus or an offering memorandum;

(c) the entering into any binding contract or a contract that can only be terminated on the payment of a penalty, for the acquisition or disposal of any additional properties by the trustee; and

(d) any initial public offering.

(3) The structural engineer shall ensure that the state of repair of the specific real estate property, including the services, systems and material plant and equipment, is independently assessed, latent defects identified and that these factors are—

(a) taken into consideration in any valuation; and

(b) disclosed in any prospectus or offering memorandum.

(4) The structural engineer shall, in the performance of his duties under paragraph (3)—

(a) conduct an appraisal of a specific real estate property which is proposed to be acquired; and

(b) prepare and submit to the REIT manager and the trustee a report on—

(i) the state of repair of the proposed property, services, systems and material plant and equipment;

(ii) any latent defects and the cost, if any, which is likely to be incurred in remedying such defects or in bringing the property to a reasonable state of repair; and

(iii) any limitation in the engineer's ability to make a full assessment and whether additional professional assessment, input or reports are required.

(5) The structural engineer shall, in performing his duties, be independent of, and shall not be subject to the direction or control of—

(a) the REIT manager and any property manager;

(b) the project manager certifier;

(c) the trustee;

(d) any valuer appointed to conduct a valuation in respect of a specific property; or

(e) any person from whom the I-REIT has or is proposing to acquire real estate assets.

(6) The REIT manager shall—

(a) make available a copy of any report of the structural engineer to the property manager, project manager certifier, and to the valuer; and

(b) ensure the details of the report are included in any prospectus or offering memorandum and where appropriate, disclosed as part of the continuing disclosure obligation under these Regulations.

63. Appointment and role of project manager certifier

(1) The trustee of a D-REIT shall, in consultation with the REIT manager, appoint a project manager certifier prior to entering into any binding contract or a contract that can only be terminated on the payment of a penalty and which is relates to the development and construction.

(2) The trustee of an I-REIT shall, in consultation with the REIT manager, where any construction or development activity specified under regulation 65 or 70 forms part of the activities of an I-REIT, appoint a project manager certifier prior to entering into any binding contracts or a contract that can only be terminated on the payment of a penalty which relate to or are connected with development and construction.

(3) The project manager certifier appointed under paragraph (1) shall report to the trustee and provide copies of all reports to the REIT manager.

(4) The project manager certifier shall be—

(a) a company incorporated in Kenya; or

(b) a person residing in Kenya; and

(c) have in place an appropriate level of professional indemnity insurance.

(5) The trustee shall not appoint a person or company as a project manager certifier unless that person, or if a company, its key personnel one of whom shall be nominated as the person responsible to the trustee for the work undertaken is a member of—

(i) the Institution of Surveyors of Kenya;

(ii) the Architectural Association of Kenya;

(iii) the Institute of Quantity Surveyors of Kenya;

(iv) the Institution of Construction and Project Managers of Kenya; or

(v) an international body recognised by an institution under subparagraph (i) to (iv).

(6) The project manager certifier shall, in the performance of his or its duties under this Regulation, be independent of, and not subject to the direction or control of—

(i) the REIT manager and any property manager;

(ii) the structural engineer;

(iii) the trustee;

(iv) any valuer appointed to conduct a valuation in respect of a specific property; and

(v) any person from whom the I-REIT may acquire real estate assets.

(7) The project manager certifier shall have the requisite project management and quantity surveying skills and expertise to enable the project manager certifier to—

(a) monitor and report to the trustee and the REIT manager on the progress of the development or construction work being planned or undertaken;

(b) report on the cost of work undertaken or to be undertaken to complete the development or construction;

(c) monitor and report on the cost of scheduled plant and equipment to be acquired; and

(d) ensure that the costs under subparagraph (c) are included in the development or construction works budget.

(8) The trustee may, with the consent of the lender to the REIT, appoint, as a project manager certifier, a person who is qualified to be appointed as such despite the fact that the person is also acting in a similar role for the lender to the REIT or in respect of the financing of development and construction works being undertaken by the REIT:

Provided that such person shall report directly to the trustee and the REIT manager and shall not be subject to any obligation or duty of confidentiality to the other party that has not been waived as could result in a conflict.

(9) The project manager certifier shall monitor and submit a report to the trustee and the REIT manager on a monthly basis on—

(a) whether or not the work has been completed in accordance with the budget, project plan and payment schedule or any variations prepared by the REIT manager and approved by the trustee;

(b) whether scheduled payments should be disbursed by the trustee to meet the work undertaken, costs of or connected with the development or construction;

(c) the costs of any proposed variation of scheduled works or proposed acquisition of plant and equipment, and

(d) the estimate of the cost and time required to complete the development and construction work relative to the budget and project plan.

(10) The trustee shall disburse funds as requested by the REIT manager and recommended by the project manager certifier—

(a) where such payments—

(i) are in accordance with the budget, project plan and payment schedule approved by the trustee; or

(ii) are varied and approved by a meeting of the REIT securities holders where the total cost of variation is more than fifteen percent of the budgeted costs; or

(b) where the trustee is—

(i) of the opinion that disbursement is necessary to protect the assets of the fund and the interests of REIT securities holders; and

(ii) satisfied with the action which the REIT manager proposes to implement to rectify any problem.

PART X – SPECIFIC REQUIREMENTS FOR I-REITS

64. Investments and objectives of an I-REIT

The investments of an I-REIT scheme shall—

(a) comply with the provisions of the Act and these Regulations; and

(b) be relevant, appropriate and consistent with the investment objectives of the real estate investment trust and scheme as set out in the prospectus or offering memorandum and other scheme documents.

65. Eligible investments for an I-REIT and income requirements

(1) The trustee of an I-REIT may, subject to any limitations which may be specified in the scheme documents and if requested by the REIT manager—

(a) invest directly in eligible real estate in accordance with these Regulations;

(b) invest in eligible real estate assets through investment in an investee company incorporated in Kenya which directly owns the eligible real estate and which is wholly beneficially owned and controlled by the trustee in its capacity as the trustee of the I-REIT where—

(i) the I-REIT trustee has the absolute power at any time to appoint and, without incurring any liability, to remove the directors;

(ii) the trustee of the I-REIT, the company, the directors and the shareholders have entered into a shareholders agreement;

(iii) the REIT manager of the I-REIT is appointed as the manager of the investments of the investee company;

(iv) the Memorandum and Articles of Association of the investee company and the terms of the shareholders agreement limit the objectives of the investee company and the powers of the company and directors and impose the same obligations on the company, its directors and the manager of the trust as if the investee company was an I-REIT and an authorized scheme under these Regulations and was subject to the same obligations and restrictions as are imposed by these Regulations;

(v) the provisions of these Regulations on the carrying out of a valuation, reporting and audit apply to the investee company as if the investee company was an I-REIT and an authorized scheme under these Regulations;

(vi) the investee company invests directly in the eligible real estate and is recorded on the certificate of title or certificate of lease or register as the sole owner;

(c) invest in eligible real estate assets through an investee trust in which the trustee of the I-REIT in its capacity as trustee is the sole beneficiary and has absolute control of voting and right to appoint and remove the trustee of the investee trust and where—

(i) the investee trust is formed under the laws of Kenya as an unincorporated common law trust;

(ii) the I-REIT trustee is also the trustee of the investee trust;

(iii) the REIT manager of the I-REIT is also the manager of the investee trust;

(iv) the terms of the trust deed for the investee trust limit the objectives of the investee trust, the trustee's powers and impose the same obligations on the trustee and the manager of the trust as if the investee trust was an I-REIT and an authorized scheme under these Regulations and subject to the same obligations and restrictions as are imposed under these Regulations;

(v) the provisions of these Regulations on the carrying out of a valuation, reporting and audit apply to the investee trust as if the investee trust was an I-REIT and an authorized scheme under these Regulations;

(vi) the trustee as trustee for the investee trust invests directly in the eligible real estate and is recorded on the certificate of title or certificate of lease or register as the sole owner;

(d) invest in cash, deposits, bonds, securities and money market instruments;

(e) invest in a wholly beneficially owned and controlled company subsidiary which conducts real estate related activities; and

(f) invest in other income producing assets including shares in property companies incorporated in Kenya whose principal business is real estate related or REIT securities in other Kenyan I-REITS:

Provided that the shares or REIT securities are listed on an approved securities exchange.

(2) The requirement for the appointment of a sole trustee shall not be applicable where a secondary disposition trustee is appointed.

(3) The trustee and the REIT manager shall only invest in accordance with these Regulations.

(4) The promoter of an I-REIT and the REIT manager shall propose and specify, in the prospectus or offering memorandum, at least one real estate asset that is already vested in or proposed to be acquired and vested in the trust and for which all legal registration requirements will have been completed within one hundred and eighty days of the closing of the initial offer.

(5) Where—

(a) the promoter, trustee and REIT manager fail to comply with the requirements of paragraph (4) during the intervening period from the close of the initial offer or issue referred to in paragraph (4); and

(b) the registration requirements are not complete and the proposed real estate asset are not vested in the trust,

the funds raised by the initial offer and issue of REIT securities shall only be invested in bank deposits or other liquid investments with a duration not exceeding one hundred and eighty days.

(6) An I-REIT shall invest, within two years of the date of its authorization as a real estate investment trust scheme, at least seventy five percent of the total net asset value in income producing real estate.

(7) The trustee and the REIT manager shall, in complying with the requirements under paragraph (6), ensure that the real estate acquired or to be acquired as an asset of the I-REIT is—

(a) rented on a commercial basis to commercial rent paying tenants;

(b) has good prospects for future net rental income and is competitively located as evidenced by market studies;

(c) free from encumbrances at the time of acquisition except for any charges entered into by the trustee as authorized by the trust deed, the Act and these Regulations; and

(d) in a good state of repair or if requiring redevelopment or capital expenditure, this has been factored into the purchase price as reflected in the–

(i) valuation obtained prior to the acquisition;

(ii) the budget prepared by the REIT manager; and

(iii) disclosures in the report of the structural engineer obtained on the condition of the real estate to be acquired.

(8) Despite paragraph (7), an I-REIT may acquire a real estate which is not fully rented at the time of acquisition where—

(a) the REIT manager reasonably believes that there is good potential to secure tenants within a reasonable period of time at a commercial rate;

(b) any capital expenditure required to be incurred to enhance the real estate and secure tenants would not materially affect the level of distributions or the yield to REIT securities holders; and

(c) the REIT manager has provided a certification for the purposes of paragraph (a) and (b) to the trustee prior to the acquisition.

(9) The trustee and the REIT manager shall, where the real estate acquired is leasehold, ensure that—

(a) at the time of entering into the lease, the lease has a remaining term of at least twenty five years;

(b) prior to entering into the lease, a certificate by a structural engineer has been obtained in respect of the real estate;

(c) the real estate has been valued as a leasehold; and

(d) the documentation to record the lease or transfer of lease is lodged for registration.

(10) Where a real estate asset is disposed by the trustee of an I-REIT or a new issue of REIT securities has been made, such disposal or acquisition shall not constitute a breach of obligations under paragraph (6) if within a period of one year from the completion of the disposal or from the issue of REIT securities, the trustee on behalf of the I-REIT and at the request of the REIT manager either acquires additional or substitute real estate assets or makes an additional distribution to REIT securities holders so as to reduce its total assets.

(11) Subject to paragraph (12), the trustee of an I-REIT and the REIT manager shall ensure that investments in cash, deposits, bonds and money market instruments are spread across a number of issuers, securities and instruments to ensure that not more than five percent of the total asset value is exposed to any one issuer or institution or to members of the same group.

(12) The restriction under paragraph (11) shall not apply to deposits, bonds or securities issued by or guaranteed by the Government or to deposits with a banking institution licensed in Kenya.

(13) Failure by the trustee and the REIT manager to spread the investments in accordance with paragraph (11) shall not, where the limit is exceeded but rectified within a period of thirty days from the day on which the limit was exceeded, constitute a breach.

(14) The REIT manager may subject to the terms of the trust deed and where not specifically authorized by the trust deed, with the consent of the REIT securities holders request that the trustee of an I-REIT invest up to a maximum of ten percent of the total asset value in a wholly owned and controlled company of the REIT manager carrying out real estate related activities including—

(a) property management;

(b) REIT management;

(c) property maintenance or design or the provision of services to tenants or to the I-REIT;

but shall not include the provision of mortgages or finance.

(15) For the purpose of determining the level of the investment that can be made under this regulation, the percentage shall be calculated by reference to the amount of the proposed investment and the total asset value at the date on which the investment is made.

66. Consequences of failure to invest in real estate within one hundred and eighty days

(1) Where an investment in real estate has not been completed in accordance with regulation 65(4) within one hundred and eighty days, the trustee shall, within fourteen days after the expiry of the period for investment refund in full all monies paid into the fund by investors in the REIT securities together with any interest or earnings on the amount subscribed and without any deductions except the amounts required by law in respect of interest or other income.

(2) Failure to complete the nominated investment in real estate shall not constitute an offence but failure to refund monies within the specified period shall constitute an offence on the part of the promoter, the trustee and the REIT manager.

67. Acquisition and disposal or real estate and price

(1) The trustee of an I-REIT shall not—

(a) acquire a real estate at a price which exceeds the price in the valuation report by more than ten percent unless the acquisition is approved by a special resolution of the REIT securities holders; or

(b) dispose of a real estate at a price lower than ninety percent of the value assessed in the valuation report unless the disposal is approved by a special resolution of the REIT securities holders.

(2) Except where the disposal of an asset is for the purpose of terminating or winding up an I-REIT, the trustee shall not enter into a contract for the disposal of an asset where such

disposal would exceed fifty percent of the total asset value, unless it has been approved by an ordinary resolution of REIT securities holders.

(3) A REIT manager shall not recommend and the trustee of an I-REIT shall not enter into a binding contract or a contract which may only be terminated on the payment of penalties in connection with a transaction to which paragraph 1(a) or (b) unless the trustee has obtained the approval of the REIT securities holders in accordance with paragraph (1).

68. Partial ownership of properties

(1) Interests in a real estate acquired as an asset by the trustee of an I-REIT including where the investment by the REIT is held through its investment in investee companies or investee trusts shall—

(a) not consist of partial ownership of real estate assets; and

(b) in the case of a real estate which is on freehold land, be wholly owned and controlled, from the time of acquisition, by the trustee who shall exercise all rights, interests and benefits normally enjoyed by an owner without interference.

(2) In the case of a real estate asset which is on leasehold land, the trustee shall, from the time of entering into the lease, have the sole rights, interests or benefits normally enjoyed by a lessee subject to the terms of the lease and the rights of the lessor.

(3) The provisions of paragraphs (1) and (2) shall not apply to assets acquired through the purchase of shares in a property company or REIT securities of other I-REITS permitted under these Regulations and which are not investee companies or investee trusts.

(4) Total investments by an I-REIT in shares in property company shares or REIT securities of other I-REITS which are not investee companies or investee trusts shall not in total exceed ten percent of the total asset value where the percentage is calculated based on the value of the investment and the total net asset value as at the time of acquisition of the shares or REIT securities.

69. I-REIT income requirement

(1) An I-REIT shall in each financial year alter the second anniversary of its authorization, earn at least seventy percent of its income from rent, licence fees or access or usage rights or other income streams of a similar nature generated by eligible investments in income producing real estate.

(2) Any profits or capital gains from the sale of real estate shall be excluded in determining the income under paragraph (1).

(3) An I-REIT shall not be in breach of the income requirements under paragraph (1) if the I-REIT disposes off a real estate asset that has been an asset of the real estate investment trust for at least three years and—

(a) reinvests the funds received from disposal of the income producing real estate assets within a period of two years from the completion of the disposition; or

(b) makes a distribution to REIT securities holders to reduce its assets.

70. Real estate construction and development activities by an I-REIT

The trustee of an I-REIT may, on the recommendation of the REIT manager and subject to any limitations in its scheme documents and meeting the requirements of these Regulations, acquire a real estate under construction, vacant land for development or carry out construction on vacant land acquired for the purposes of development:

Provided that:

(a) the total acquisition value of all the land on which the construction is to be undertaken by the trust together with the cost of the construction on that land and the acquisition of real estate under construction at any time does not exceed fifteen percent of the total asset value;

(b) the total value at acquisition, cost of vacant land held for development and construction by the I-REIT and the value of real estate which is not producing a commercial income at any time does not exceed ten percent of total asset value;

(c) vacant land acquired for the purpose of development by the I-REIT shall only be held for a maximum period of three years at the conclusion of which it shall be developed and generate commercial income or sold;

(d) income from other assets are sufficient to ensure that the earnings of the fund per unit during the construction or development period are not substantially diluted as shall be, determined by the Authority;

(e) the contract for any acquisition of property under construction is subject to the completion of the building and for an agreed fixed price;

(f) the REIT manager reasonably believes that the prospects for obtaining tenants for any property being constructed or developed at a commercial rent are good; and

(g) development contracts are carried out on the best available terms and at arm's length transactions.

71. Maximum level of borrowing by an I-REIT

(1) The trustee may, subject to any restriction or lesser limit imposed under the scheme documents, enter into a borrowing arrangement—

(a) on the initiative of the trustee, where such borrowing is required to preserve the value of the assets of the trust and is in the best interests of the REIT securities holders; or

(b) if requested to do so by the REIT manager to give effect to the objectives of the scheme, to acquire real estate assets or to undertake capital expenditure or refinance an existing borrowing.

(2) The trustee may provide security over the assets of the trust to secure the borrowings under paragraph (1).

(3) Despite paragraphs (1) and (2), the trustee shall ensure that any borrowing or provision of security is not prejudicial to the interests of the REIT securities holders.

(4) The total borrowings entered into by the trustee on behalf of an I-REIT or by any investee company or investee trust shall not exceed, in aggregate, at the time the liability is incurred, thirty five percent of the total asset value:

Provided that the limit of the total borrowing shall not operate to prevent the rolling over or refinancing of any debt and the amount rolled over or refinanced is not more than the amount originally borrowed.

(5) Despite paragraph (4), the trustee may, on its own initiative or on the recommendation of the REIT manager and with the approval of REIT securities holders by way of an ordinary resolution, borrow up to a maximum of forty percent of the total asset value for a temporary purpose for a term not exceeding six months.

(6) Failure by the trustee to comply with the borrowing limitation set out in the scheme documents or this regulation shall not constitute an offence.

(7) Despite paragraph (6) and where the trustee exceeds the borrowing limits specified in this regulation—

(a) the I-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;

(b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and

(c) the Authority may revoke the authorisation issued to the REIT under regulation 18.

72. Distribution requirements of an I-REIT

(1) The REIT manager shall only recommend and the trustee may only make distributions to REIT securities holders from realized gains, realized income or from cash held in the fund which is surplus to the investment requirements of the trust.

(2) A trustee of an I-REIT shall, on the recommendation of the REIT manager, subject to a higher minimum being specified in the scheme documents and to the provisions (of these Regulations, distribute, within four months after the end of each financial year, a minimum of eighty percent of the net after tax income, if any, of the fund from sources other than from realized capital gains on the disposal of real estate assets.

(3) Net after tax income under paragraph (2) shall be calculated in accordance with the IFRS and tax standards applying in Kenya based on the assumption that, for calculation purposes only, the REIT is subject to the general income tax provisions applicable generally to trusts and the REIT is entitled to similar deductions and allowances, including depreciation.

(4) The trustee shall make the distribution of income on the basis proposed by the REIT manager after the trustee has taken into consideration the—

(a) income for the period;

(b) total returns for the period;

(c) liabilities and financial obligations;

(d) cash flow available for distribution;

(e) need to preserve and maintain the condition of the assets of the real estate investment trust and scheme and to provide for asset replacement;

(f) stability and sustainability of distribution of income;

(g) investment objective of the I-REIT;

(h) distribution policy of the I-REIT; and

(i) requirements of the scheme documents.

(5) The trustee may, where the distribution is proposed other than on an annual basis based on audited financial accounts, require an audit to be undertaken for the purpose of determining the matters to be considered under paragraph (4) or paragraph (10).

(6) Where the trustee is of the opinion that the level of distribution recommended by the REIT manager is not in the interests of REIT securities holders, the trustee shall call a meeting of REIT securities holders for the purposes of approving, by way of ordinary resolution, a lower distribution.

(7) The REIT manager shall, where it recommends a distribution lower than eighty percent, submit to the trustee a statement of—

(a) the reasons for proposing a lower distribution; and

(b) when that minimum distribution level of eighty percent is likely to be restored.

(8) Failure by trustee to distribute the income under this regulation as a consequence of the REIT manager not proposing or REIT securities holders not voting to receive a distribution which is below eighty percent, shall not constitute in a breach of these Regulations.

(9) Despite paragraph (8) and where the trustee fails to distribute income under this regulation—

(a) the I-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;

(b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and

(c) the Authority may revoke the authorization issued by it under these Regulations.

(10) The REIT manager may propose and the trustee may pay a distribution in excess of the current income where the REIT manager, after consultation with the trustee, certifies on reasonable grounds that—

(a) immediately after making such distribution, the I-REIT shall be able to pay, out of the assets of the fund, the liabilities incurred on behalf of the trust as and when they fall due and the projected liabilities for at least the next year; and

(b) the payment will not adversely affect the capacity to maintain and preserve the assets.

(11) The REIT manager shall—

(a) disclose to the trustee, the basis of calculation of the distribution of income proposed under paragraph (10); and

(b) report such proposal as part of the continuing disclosure requirements under these Regulations.

(12) Nothing in these Regulations shall be construed as preventing the proposal or making of distributions, or the trust deed from providing for the making of distributions more than once as in each financial year.

73. Distribution of realized capital gains by an I-REIT

(1) A REIT manager or trustee on the recommendation of the REIT manager may, and subject to the provisions of the scheme documents, distribute realized capital gains.

(2) Any realized capital gains may be retained and invested in income producing real estate:

Provided that any realized capital gains which have not been invested within a period of two years from the date of realization shall be distributed to REIT securities holders within two months of the second year of such realization.

(3) Failure by the trustee to make the minimum distribution specified in paragraph (2) shall not constitute an offence.

(4) Despite paragraph (3), where the trustee or REIT manager fails to make a distribution under paragraph (2)—

(a) the I-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;

(b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and

(c) the Authority may revoke the authorization issued by it under these Regulations.

74. Minimum retained investment by the promoter and lock-in period

(1) A promoter of an I-REIT who sells or transfers any real estate or proposes to transfer or sell any real estate to the trustee of the I-REIT within a period one year of the establishment of the I–REIT shall maintain an investment in the I-REIT of at least twenty percent of the net asset value as at the date of the initial offer of REIT securities in the I-REIT for the first year from the latter of the close of the offer or, if the issue is to be listed, from the date of the first listing of the REIT securities and the date of transfer of the real estate to the I-REIT:

Provided that where a D-REIT converts to an I-REIT such restriction shall not apply where the requirements of regulation 84 have been or are being complied with.

(2) The REIT securities held by the promoter shall not be sold or transferred during the lock in period except where the transfer is as a result of the death or insolvency of the promoter.

(3) The promoter may, after the—

(a) first year of the close or listing, reduce its holding to a minimum of ten percent; and

(b) second anniversary of the close or listing, reduce its holdings to zero percent.

(4) The trustee shall not register any transfer by the promoter if the transfer would result in the holding of REIT securities by the promoter below the minimum level which the promoter is required to retain in the relevant period.

PART XI – SPECIFIC REQUIREMENTS FOR D-REITS

75. Investments and objectives of a D-REIT

The investments of a D-REIT scheme shall be relevant, appropriate and consistent with the investment objectives of the real estate investment trust and scheme as set out in the offering memorandum and the scheme documents.

76. Eligible investments for a D-REIT

(1) The trustee of a D-REIT may, subject to any limitations specified in the scheme documents and if requested by the REIT manager—

(a) invest directly in eligible real estate in accordance with these Regulations;

(b) invest in eligible real estate assets through investment in an investee company incorporated in Kenya which directly owns the eligible real estate and which is wholly beneficially owned and controlled by the trustee in its capacity as the trustee of the D-REIT where—

(i) the D-REIT trustee has the absolute power at any time to appoint and, without incurring any liability, to remove the directors;

(ii) the trustee of the REIT, the company, the directors and the shareholders have entered into a shareholders agreement;

(iii) the REIT manager of the D-REIT is appointed as the manager of the investments of the investee company;

(iv) the Memorandum and Articles of Association of the investee company and the terms of the shareholders agreement limit the objectives of the investee company and the powers of the company and directors and impose the same obligations on the company, its directors and the manager of the trust as if the investee company was a D-REIT and an authorized scheme under the Act and these Regulations and was subject to the same obligations and restrictions as are imposed by these Regulations;

(v) the provisions of these Regulations on the carrying out of a valuation, reporting and audit apply to the investee company as if the investee company was a D-REIT and an authorized scheme under these Regulations;

(vi) the investee company invests directly in the eligible real estate and is recorded on the certificate of title or certificate of lease or register as the sole owner;

(c) invest in eligible real estate assets through an investee trust in which the trustee of the D-REIT in its capacity as trustee is the sole beneficiary and has absolute control of voting and right to appoint and remove the trustee of the investee trust and where—

(i) the investee trust is formed under the laws of Kenya as an unincorporated common law trust;

(ii) the D-REIT trustee is also the trustee of the investee trust;

(iii) the REIT manager of the D-REIT is also the manager of the investee trust;

(iv) the terms of the trust deed for the investee trust limit the objectives of the investee trust, the trustee's powers and impose the same obligations on the trustee and the manager of the trust as if the investee trust was a D-REIT and an authorized scheme under these

Regulations and subject to the same obligations and restrictions as are imposed under these Regulations;

(v) the provisions of these Regulations on the carrying out of a valuation, reporting and audit apply to the investee trust as if the investee trust was a D-REIT and an authorized scheme under the Act and these Regulations;

(vi) the trustee as trustee for the investee trust invests directly in the eligible real estate and is recorded on the certificate of title or certificate of lease or register as the sole owner.

(d) invest in cash, deposits, bonds or securities and money market instruments;

(e) invest in a wholly beneficially owned and controlled company which conducts real estate related activities; and

(f) invest in income producing assets including shares in property companies incorporated in Kenya whose principal business is real estate related or REIT securities in other Kenyan real estate investment trust schemes.

(2) The requirement for the appointment of a sole trustee shall not be applicable where a secondary disposition trustee is appointed.

(3) The trustee and the REIT manager shall only invest in accordance these Regulations.

(4) The promoter of a D-REIT and the REIT manager shall—

(a) propose and specify, in the offering memorandum, at least one real estate asset that is already vested in or proposed to be acquired and vested in the trust and for which all legal registration requirements will have been completed within one hundred and eighty days of the closing of' the initial offer;

(b) specify in the offering memorandum, the initial development or construction project which the D-REIT proposes to undertake; and

(c) include a timetable, budget and a project plan for the initial development or construction the D-REIT proposes to undertake.

(5) Where—

(a) the promoter and REIT manager fail to comply with the requirements of paragraph (4)(a) during the intervening period from the close of the initial offer or issue referred to in paragraph (4)(a); and

(b) the registration requirements are not complete and the proposed real estate asset are not vested in the trust,

the funds raised by the initial offer and issue of REIT securities shall only be invested in bank deposits or other liquid investments with a duration not exceeding one hundred and eighty days.

(6) A D-REIT shall, within one year of the date of its authorization, invest at least thirty percent of the total asset value directly in—

(a) development and construction projects; or

(b) income producing real estate which the D-REIT has developed or constructed.

(7) A D-REIT shall not be in breach of paragraph (6) if the D-REIT disposes the real estate asset and within one year of such disposal, the D–REIT—

(a) acquires a substitute real estate asset; or

(b) makes a further distribution to REIT securities holders so as to reduce its assets.

(8) The trustee and the REIT manager shall, for the purposes of giving effect to the requirement for investment predominantly in development and construction projects for either sale, retention or leasing as income producing property, ensure that the real estate acquired or to be acquired as an asset of the D-REIT—

(a) can be developed in the manner and for the proposed use;

(b) is free from encumbrances at the time of acquisition except for any charges entered into by the trustee as authorized by the trust deed and these Regulations; and

(c) has reasonable prospects when the development or construction is completed for sale for a profit or for leasing as income producing real estate.

(9) The trustee and the REIT manager shall, where the real estate acquired is leasehold, ensure that—

(a) at the time of entering into the lease, the lease has a remaining term of at least twenty five years;

(b) the real estate has been valued as leasehold; and

(c) the lease is lodged for registration.

(10) Subject to paragraph (11), the trustee and the REIT manager shall ensure that investments in cash, deposits, bonds, securities and money market instruments shall be spread across a number of issuers, securities and instruments so that not more than five percent of the total asset value is exposed to any one issuer or institution or to members of the same group.

(11) The restriction under paragraph (10) shall not apply to deposits, bonds or securities issued by, or guaranteed by the Government of Kenya or to deposits with a banking institution licensed in Kenya.

(12) Failure by the trustee and the REIT manager to spread the investments in accordance with paragraph (10) shall not, where the limit is exceeded but rectified within a period of thirty days from the day on which the limit was exceeded, constitute a breach.

(13) Subject to the terms of the trust deed, the REIT manager may, with the consent of the REIT securities holders, request that the trustee of a D-REIT invest up to a maximum of ten percent of the total asset value in a wholly owned and controlled company carrying out real estate related activities including—

(a) property management;

(b) REIT management;

(c) property maintenance or design; or

(d) the provision of services to tenants or to the D-REIT;

but shall not include the provision of mortgages or finance except to the extent that the D-REIT is authorized by these Regulations to provide mortgages or finance.

(14) For the purposes of determining the level of the investment which can be made under this regulation, the percentage shall be calculated by reference to the amount of the proposed investment and the value of the total asset value at the date that the investment is made.

77. Consequences of failure to invest in real estate within one hundred and eighty days

(1) Where an investment in real estate has not been completed of the period specified under regulation 76, the trustee shall call a meeting of the REIT securities holders within twenty eight days of the expiry of the period for investment for the purpose of—

(a) considering the report by the REIT manager on the reason for the delay in completion;

(b) the implications for the holders of investment in the D-REIT;

(c) determining, by special resolution whether—

(i) the period for registration should be extended and the period of extension; or

(ii) all monies paid into the fund together with any interest or earnings should be refunded within fourteen days of the date of the meeting; and

(iii) what other action should be taken by the trustee or REIT manager.

(2) Failure by the trustee to—

(a) complete the proposed investment in real estate shall not constitute an offence; or

(b) call the required meeting or to refund monies within the specified period shall constitute an offence on the part of the promoter, the trustee and the REIT manager.

78. Acquisition and disposal of a real estate and price

(1) A D-REIT shall not—

(a) acquire real estate at a price which exceeds the price in the valuation report by more than ten percent unless the acquisition is approved by REIT securities holders; or

(b) dispose real estate at a price lower than ninety percent of the value assessed in the valuation report unless the disposal is approved by REIT securities holders.

(2) Except where the disposal of an asset is for the purpose of terminating or winding up of a D-REIT, the trustee shall not enter into a contract for the disposal of an asset where such disposal exceed fifty percent of the total asset value, unless it has been approved by an ordinary resolution of REIT securities holders.

(3) A REIT manager shall not recommend and the trustee of a D-REIT shall not enter into a contract or a contract which may only be terminated on the payment of penalties in connection with a transaction to which paragraph 1(a) or (b) unless the trustee has obtained the approval of the REIT securities holders in accordance with paragraph (1).

(4) Any contract entered into under paragraph (3) shall be based on a valuation report.

79. Partial ownership of real estate

(1) Interests in real estate acquired as assets of a D-REIT shall—

(a) not consist of partial ownership of real estate assets;

(b) in the case of a real estate which is on freehold land, be wholly owned and controlled, from the time of acquisition, by the trustee who shall exercise all rights, interests and benefits normally enjoyed by an owner without interference.

(2) In the case of real estate which is on leasehold land, then from the time of the commencement of the lease entered into by the trustee on behalf of the scheme, the trustee shall have sole rights, interests or benefits normally enjoyed by a lessee, subject only to the terms of the lease and the rights of' the lessor.

(3) The provisions of paragraphs (1) and (2) shall not apply to assets acquired through the purchase of shares in a property company or REIT securities permitted under these Regulations and which are not investee companies or investee trusts.

(4) The limitation on partial ownership of' real estate shall not apply to a D-REIT in the case of real estate which the D-REIT—

(a) has developed and constructed and sold part of the interest in the completed project to another person; or

(b) has partial ownership—

(i) as a consequence of the D-REIT entering into a term or instalment sale or other transaction of a similar nature; or

(ii) where in connection with an acquisition or sale, sub-division of the real estate is in progress.

(5) The total investments by a D-REIT in property company shares or REIT securities which are not in investee companies or investee trusts shall not, in total, exceed ten percent of the total asset value where the percentage is calculated based on the value of the investment and the total net asset value at the time of' acquisition of the shares or REIT securities.

80. Construction and development activities by a D-REIT

The trustee of a D-REIT may, subject to any limitations in the scheme documents and on the recommendation of the REIT manager acquire—

(a) vacant land for development;

(b) real estate under construction; or

(c) land for redevelopment; and

enter into contracts for or carry out development and construction.

81. Maximum levels of borrowings by a D-REIT

(1) The trustee of a D-REIT may, subject to any restriction or lesser limit imposed under the scheme documents, borrow or enter into financing arrangements—

(a) on its own initiative where such borrowing is required to preserve the value of the assets of the trust and is in the best interests of the REIT securities holders; or

(b) if requested to do so by the REIT manager,

to give effect to the objectives of the scheme to acquire real estate assets, to undertake development and construction, to undertake capital expenditure or to refinance any existing borrowing.

(2) The trustee may provide security over the assets of the real estate investment trust and scheme to secure the borrowings under paragraph (1).

(3) Borrowings entered into by the trustee on behalf of a D-REIT or by any investee company or investee trust shall not exceed, in aggregate, at the time the liability is incurred, sixty percent of the total asset value:

Provided that the limit in borrowings shall not operate to prevent the rolling over or refinancing of any debt where the amount rolled over or refinanced is not more than the amount originally borrowed, and

(4) Despite paragraph (3), the trustee may, with the approval of REIT securities holders by way of an ordinary resolution borrow or enter into a financing arrangement up to a maximum of seventy five percent of the total asset value, for a temporary purpose for a term not exceeding six months.

(5) Failure by the trustee to comply with the borrowing limitation under this regulation shall not constitute an offence.

(6) Despite paragraph (5) and where the trustee exceeds the borrowing limits specified in this regulation—

(a) D-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;

(b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and

(c) the Authority may revoke the authorization issued to the REIT under regulation 18.

82. Distribution requirements of a D-REIT

(1) The trustee shall make the distributions of income upon the recommendations of the REIT manager and in accordance with the scheme documents.

(2) In making distributions under paragraph (1), the trustee shall take into consideration the—

(a) income for the period;

(b) total returns for the period;

(c) liabilities and financial obligations;

(d) cash flow available for distribution;

(e) need to preserve and maintain the condition of the assets of the fund and to provide for asset replacement;

(f) stability and sustainability of distribution of income;

(g) investment objective of the D-REIT;

(h) distribution policy of the D-REIT; and

(i) requirements of the scheme documents.

(3) The trustee may where the distribution is proposed other than on an annual basis based on audited financial accounts require an audit to be undertaken for the purpose of determining the matters to be considered paragraph (3) and paragraph (5).

(4) Where the trustee is of the opinion that the level of distribution recommended by the REIT manager is not in the interests of REIT securities holders, the trustee shall call a meeting of REIT securities holders to approve, by way of ordinary resolution, a lower distribution.

(5) A REIT manager may propose and the trustee may make distributions in excess of the current income where the REIT manager, upon consultation with the trustee, certifies, on reasonable grounds that—

(a) immediately after the making of such distribution the D-REIT shall be able to pay from the assets of the fund, the liabilities incurred on behalf of the trust as and when they fall due and the projected liabilities for at least the next year; and

(b) the payment shall not adversely affect the capacity to maintain and preserve the assets of the REIT.

(6) The REIT manager shall, if the REIT manager proposes payment of distributions in excess of the current income—

(a) disclose to the trustee the basis of the calculation of the distribution proposed under paragraph (5); and

(b) report such proposal as part of the continuing disclosure requirements under these Regulations.

83. Distribution of realized capital gains by a D-REIT

(1) Subject to the scheme documents, the REIT manager may recommend to the trustee on and the trustee may distribute any realized capital gains.

(2) Any capital gains may be retained and invested in new acquisitions or development and construction or buy to rent housing income producing real estate:

Provided that any realized capital gains which have not been invested within a period of two years from the date of realization shall be distributed to REIT securities holders within two months of the second year of such realization.

(3) Where the trustee fails to make the distribution under paragraph (2)—

(a) the D-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;

(b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and

(c) the Authority may revoke the authorization issued to it under these Regulations.

84. Minimum retained investment by the promoter and lock-in period

(1) A promoter who sells or transfers any real estate or proposes to transfer or sell any real estate to the trustee of the D-REIT within a period one year of the establishment of the D-REIT shall, subject to any requirements in the scheme documents requiring a higher level of investment, maintain an investment, of at least ten percent of the net asset value for two years from the close of initial the offer or if the issue is to be listed from the date of first listing of the REIT securities.

(2) The REIT securities held by the promoter shall not be sold or transferred during the lock in period except where the transfer is as a result of the death or insolvency of the promoter.

(3) A promoter may, after the second anniversary of the close of the initial offer or issue, reduce its holding to zero percent.

(4) The trustee shall not register any transfer by the promoter, if the transfer results in the promoter holding REIT securities which are below the minimum level the promoter is required to retain during the lock in period.

PART XII – CONVERSIONS OF REITs

85. Requirements for conversion

(1) A REIT manager of a D-REIT may apply to the Authority to convert the D-REIT into an I-REIT.

(2) The REIT manager shall not make an application under paragraph (1) unless—

(a) a conversion prospectus or offering memorandum, which meets the requirements for an I-REIT, is submitted to and approved by the Authority and distributed to existing REIT securities holders prior to the holding of the meeting of REIT securities holders under paragraph (b);

(b) the proposed conversion has been approved by the trustee and by a special resolution passed at a meeting of REIT securities holders held not more than six months prior to the proposed conversion date;

(c) the scheme documents have been amended to comply with the requirements of an I-REIT;

(d) the REIT manager demonstrates to the Authority that the D-REIT shall, upon conversion, be able to meet the eligible asset requirements for an I-REIT; and

(e) the REIT manager demonstrates to the Authority that at least fifty percent of the total value of the real estate assets of the fund are—

(i) subject to long-term leases; or

(ii) where the nature of the real estate asset is such that long term leases are not the norm, the real estate assets have been income producing for at least six months.

(3) Regulation 17 shall apply to the application for conversion as if the application was for the authorization as an I-REIT.

86. Conversion from an open to a closed REIT or from a restricted to an unrestricted REIT

(1) Except where the scheme documents provide otherwise a REIT Manager may make an application to the authority for the conversion of—

(a) an open ended fund restricted issue REIT to a closed ended fund;

(b) a closed ended fund restricted issue REIT to an open an ended fund; and

(c) a restricted issue I-REIT or offer scheme to an unrestricted I-REIT.

(2) A REIT manager shall not make an application for conversion under paragraph (1) unless—

(a) the conversion has been approved by the trustee and by a special resolution passed at a meeting of REIT securities holders held not more than six months prior to the proposed conversion date;

(b) the scheme documents have been amended to comply with the requirements of the Act and these Regulations as regards the type of fund or REIT to which it is proposed to convert;

(c) a conversion offering memorandum or prospectus, which meets the requirements of these Regulations as regards the type of fund or REIT to which it is proposed to convert, is filed with and approved by the Authority and distributed to existing REIT securities holders prior to the holding of the meeting of REIT securities holders to consider the resolution to approve the conversion.

(3) Regulation 17 and 37 shall apply to the application for conversion under paragraph (1) as if the application was for an authorization as a real estate investment trust scheme and for approval of a prospectus or offering memorandum respectively.

PART XIII – ADVERTISING

87. Advertising

(1) A REIT manager shall not issue or cause to be issued any advertisement for or in connection with the scheme unless the contents of the advertisement have been approved by the trustee and the Authority.

(2) For the purposes of paragraphs (1), "advertisement" shall not include any publication of the issue, sale, repurchase or redemption prices of REIT securities.

(3) An advertisement in respect of a real estate investment trust scheme shall set out a summary of the rights of the REIT securities holder as provided for in the scheme documents include a warning statement that—

(a) the price and value of REIT securities and the income from REIT securities, may fluctuate;

(b) the REIT securities holder in a restricted offer REIT may have limited or no rights to redemption and in certain circumstances the right of a REIT securities holder to redeem the REIT securities may be suspended; and

(c) if the REIT securities are those of a unrestricted offer I-REIT, a statement that the security holder is not entitled to require the trustee to redeem their REIT securities compulsorily and their exit would in ordinary circumstances be through sale on an exchange at a price determined by the market which may not reflect the net asset value per unit.

(4) A warning statement under paragraph (3) shall be printed in the same font size as the other text in the advertisement.

88. Inclusion of performance data

(1) The Authority may require a REIT manager to submit to it, a justification of the calculation, if performance data or estimated yield is quoted in—

(a) a report;

(b) an advertisement; or

(c) any other invitation to the public to invest in a real estate investment trust scheme.

(2) A forecast of the performance of the real estate investment trust scheme shall not be included in any advertisement or in any prospectus or offering memorandum.

(3) For the purposes of this regulation, the publication of a prospective yield shall not constitute a forecast of performance.

PART XIV – ALTERATION OF SCHEME DOCUMENTS

89. Alterations to REITS documentation

(1) A person shall not alter the scheme documents of a scheme except—

(a) by a special resolution of REIT securities holders; and

(b) with the prior approval of the Authority.

(2) Despite paragraph (1), the REIT manager and the trustee may alter the scheme documents without consulting the REIT securities holders where the trustee certifies, in writing, in respect of each proposed alteration that in the opinion of the trustee, the proposed alteration—

(a) is necessary to enable compliance with fiscal or other statutory or official requirements;

(b) does not materially prejudice the interests of the REIT securities holders;

(c) does not, to any material extent, release the trustee, the REIT manager or any other person from any liability to REIT securities holders;

(d) does not increase the costs and charges payable from the assets of the real estate investment trust; or

(e) is necessary to correct a manifest error.

PART XV – FEES AND TERMS OF THE TRUSTEE
THE REIT MANAGER AND OTHER PARTIES

90. Remuneration of the trustee

(1) The trustee shall be remunerated by an annual fee charged to the fund which may be paid in instalments during the course of the year.

(2) The trustee shall be entitled to first priority for the payment of the fees and expenses out of the fund.

(3) The scheme documents shall provide for the payment of fees in accordance with these Regulations.

91. Remuneration of a REIT manager

The REIT manager of a REIT may be remunerated—

(a) by way of an annual fee charged to the fund;

(b) through an issue of REIT securities in the REIT;

(c) by way of a profit share from—

(i) the sale of the real estate in the case of a D-REIT;

(ii) increase in net earnings of the REIT or achievement of earnings above a minimum specified hurdle rate; or

(iii) the realization of value on the conversion to an I-REIT or listing; or

(d) by a combination of paragraphs (a) to (c).

92. Deferment of fees payable to a REIT manager

A REIT manager may defer some or all the fees payable to it:

Provided that:

(a) the fees shall be deferred at the rate otherwise payable;

(b) no interest shall be payable in respect of any deferred payment, and the effect or potential effect of such deferral on returns, distributions and performance of the scheme shall be clearly disclosed in any prospectus or offering memorandum and in the reports prepared under regulation 101; and

(c) in the case of an unrestricted offer I-REIT the deferral shall not exceed a period of three years.

93. Basis for remuneration of trustee and REIT manager

(1) The basis of calculating the fees and the fees payable from time to time shall be specified in the—

(a) scheme documents; and

(b) reports prepared from time to time.

(2) The fees payable to the REIT manager and the trustee shall, despite the provisions of the scheme documents, be fair, reasonable and based on the—

(a) roles, duties and responsibilities of the REIT manager or the trustee;

(b) interests of the REIT securities holders;

(c) nature of the real estate investment trust;

(d) extent of the services provided by the REIT manager or trustee;

(e) size and composition of the assets of the fund;

(f) success, in the case of a REIT manager, in meeting the investment objectives; and

(g) need to protect, in the case of a trustee, the interests of REIT securities holders.

(3) Where the trustee is of the opinion that any proposed material increase in fees or change in the method of calculating the fees charged by the REIT manager is not fair and reasonable, the trustee shall convene a meeting of the REIT securities holders.

(4) The trustee shall, at a meeting convened under paragraph (3), require the REIT manager to justify any increase in fee charged by the REIT manager or the basis of calculation.

(5) The REIT manager shall not, where the trustee calls a meeting under paragraph (3), effect an increase or change the basis of calculating its fees unless agreed to by an ordinary resolution of the REIT securities holders.

(6) Despite any provision in the scheme documents, a REIT manager which is removed or dismissed for cause shall not be entitled to—

(a) any additional fee other than that otherwise payable on an annual or accrued basis up until the time of the removal or dismissal; or

(b) claim any penalty in respect of the dismissal, removal or otherwise ceasing to act.

94. Term of the REIT manager of an I-REIT and prohibition on penalties

(1) A REIT manager shall be appointed for a term of three years but may be reappointed for subsequent terms each not exceeding three years.

(2) An appointment or reappointment under paragraph (1) shall be subject to approval by an ordinary resolution of REIT securities holders.

(3) A REIT manager shall not be paid additional fees or penalty as a consequence of the REIT manager not being reappointed.

(4) For the purposes of paragraph (3), a fee which is payable—

(a) upon the REIT manager ceasing to act as such; or

(b) at a higher rate than otherwise payable including where it has been deferred and whether payable in cash, by way of a profit share or other means;

shall be deemed to be a penalty and void.

95. Recoverable expenses

(1) The right of the trustee or the REIT manager to deduct fees together with—

(a) a reasonable estimate of the recoverable expenses to be incurred; and

(b) details of the estimated management expense ratio,

for the first two years following authorization of the real estate investment trust scheme from the date of the prospectus or offering memorandum shall be set out in the prospectus or offering memorandum.

(2) The REIT manager shall, subject to the provisions of the scheme documents, be entitled, in addition to any fee payable, to recover and pay out of or charge to the fund, expenses or an appropriate apportionment thereof, directly related and necessary in operating and administering the real estate investment trust which may include—

(a) the costs and expenses incurred in—
  (i) carrying out any capital works or authorized development or construction including the appointment of professional advisers; or
  (ii) letting, maintaining, refurbishing of, developing, acquiring, investing, incurring income from or disposal of assets;
  (iii) providing services in relation to the assets of the fund, including electricity, water, cleaning and security services, or services of a similar nature;
  (iv) the modification of the scheme documents other than for the benefit of the REIT manager or the trustee:
  (v) any meeting of REIT securities holders other than those convened for the benefit of the REIT manager or the trustee;
  (vi) the insurance and maintenance of the real estate and other assets belonging to the fund;
  (vii) the leasing and letting out of properties or otherwise earning income from the assets and related expenses;

(b) general taxes and other duties, levies or charges on the fund but not taxes levied on the trustee or REIT manager in their personal capacities;

(c) fees and other expenses properly incurred—
  (i) by the auditor appointed for the fund;
  (ii) by any project manager certifier appointed for the real estate investment trust or in respect of a particular project;
  (iii) by the structural engineer appointed for the real estate investment trust or in respect of a particular project;
  (iv) for the valuation of any investment or proposed investment or asset of the fund by an independent valuer for the benefit of the fund;
  (v) in defending claims against the fund; or
  (vi) in respect of any asset or investment or proposed investment of the fund;

(d) initial and ongoing listing expenses; and

(e) legal, accounting and the standard underwriting fees and expenses incurred in—
  (i) arranging borrowing or other financing arrangements by the trustee on behalf of the real estate investment trust; or
  (ii) the issuing of additional REIT securities but not the costs or expenses ordinarily associated with the redemption of REIT securities in an open ended fund or the issue of new or replacement REIT securities in such a fund.

(3) The overheads and costs of services expected to be provided by a REIT manager in its capacity as REIT manager shall not be charged to the fund.

(4) The trustee and the auditor shall review all expenses charged to the fund and only allow such expenses which they reasonably determine are legitimate and in accordance with standard arm's length commercial rates generally prevailing in Kenya.

(5) The trustee in addition to payment of its fees shall be entitled to reimbursement by the fund, of any costs and expenses reasonably incurred in the performance of its duties and responsibilities as a trustee including defending of the assets of the fund and the interests of the REIT securities holders.

PART XVI – MAINTENANCE OF BOOKS, ACCOUNTS AND RECORDS

96. Maintenance of books, accounts and records

(1) The trustee and REIT manager shall cause to be kept proper books, records and accounts in respect of the fund, the scheme and the real estate investment trust in accordance with the law and IFRS.

(2) The books, records and accounts kept under paragraph (1) shall—

(a) adequately account for the assets and liabilities of the real estate investment trust or incurred by the trustee or the REIT manager in relation to or in connection with real estate investment trust and the scheme; and

(b) contain sufficient information on all contracts and transactions entered into by the trustee or the REIT manager in relation to or in connection with the real estate investment trust and the scheme.

PART XVII – APPOINTMENT AND REMOVAL OF AN AUDITOR AND AUDIT OF ACCOUNTS

97. Appointment of an auditor and audit of accounts

(1) The trustee shall appoint an independent auditor to audit, at least annually, the accounts and financial statements of the real estate investment trust and the scheme.

(2) The auditor shall report on whether the trustee and the REIT manager have complied with these Regulations.

(3) The Authority may appoint an auditor to carry out an audit required under these Regulations where—

(a) the Authority is of the opinion that the auditor appointed by the trustee under paragraph (1) is not suitable; or

(b) the trustee has failed to appoint an auditor.

(4) The Authority may, if it is of the opinion that a special audit is necessary in the interests of the holders of REIT securities, appoint an auditor to conduct an audit.

(5) An auditor appointed under paragraph (2) and (3), shall be remunerated out of the assets of the real estate investment trust.

98. Removal of an auditor

(1) An auditor appointed under regulation 97 may be removed by the trustee—

(a) on its own instance; or

(b) at the request of the REIT securities holders by way of ordinary resolution passed at a meeting.

(2) The trustee shall, where an auditor is removed under paragraph (1) appoint another auditor in its place in accordance with these Regulations.

99. Notification to the Authority

The trustee shall—

(a) notify the Authority and the REIT manager within seven days of the removal or appointment of an auditor; and

(b) provide such information as the Authority may require, as to the circumstances of any removal or replacement.

100. Co-operation with the Auditor

The trustee, REIT manager, valuer, any property manager, any property manager certifier, structural engineer, legal or other adviser or party appointed in relation to the real estate investment trust scheme or by the REIT manager or in respect of a transaction entered into or proposed to be entered into shall—

(a) provide such assistance as the auditor may reasonably require to discharge its duties;

(b) allow the auditor, at all reasonable times, access to premises, documents, records, data and information including, access to software and systems;

(c) not interfere with the ability of the auditor to discharge its duties;

(d) not provide false or misleading information to the auditor;

(e) report to the auditor, any matter which may significantly affect the financial position of the real estate investment trust, scheme or the fund or the conduct of the audit;

(f) waive and not claim any right to confidentiality or to privilege, including legal professional privilege, in respect of any information, advice, documents or data provided to or prepared for or on behalf of the trustee or the REIT manager which has been paid for out of the assets of the fund or was obtained for the purposes of inclusion in any prospectus or offering memorandum; and

(g) take all reasonable steps to ensure that an employee or person appointed by it complies with the same requirements.

PART XVIII – PREPARATION OF PERIODIC REPORTS AND ACCOUNTS BY THE REIT MANAGER AND TRUSTEE

101. Preparation of semi-annual and annual reports

(1) A REIT Manager shall prepare or cause to be prepared on behalf of, and present to the trustee for the trustee's consideration, semi-annual and annual reports for the scheme including the accounts for the real estate investment trust during such periods.

(2) The reports prepared under paragraph (1) shall—

(a) be submitted to the trustee for approval;

(b) provide all the information necessary to enable the holders of REIT securities and potential investors to evaluate the performance of the real estate investment trust scheme; and

(c) be prepared in accordance with IFRS, the Act and these Regulations.

(3) The reports prepared under paragraph (1) shall contain the information specified under the Fifth Schedule and such other information as the Authority may require and shall include—

(a) in the case of—

(i) an annual report, audited financial statements certified by both the trustee and the REIT manager to be true and correct; and

(ii) semi-annual report, financial statements which may be audited but shall be certified by both the trustee and the REIT manager to be true and correct;

(b) the auditor's report for annual statements which shall include a compliance report; and

(c) a report of the *Shariah* adviser, where applicable.

(4) Any certification by the trustee and REIT manager shall be signed by the compliance officer of the trustee and in the case of the REIT manager, by the chief executive officer and at least one non-executive director.

102. Failure to prepare reports

(1) Where the REIT manager fails to prepare or cause the preparation of accounts and reports as required under the Act or these Regulations, the trustee shall, without relieving the REIT manager of any obligation—

(a) advise the Authority of the failure of the REIT manager; and

(b) cause the accounts and reports, other than the REIT manager's report, to be prepared as soon as possible at the expense of the REIT manager.

(2) The REIT Manager, any property manager, and any other person appointed by the REIT manager or the trustee in connection with the real estate investment trust scheme or any person whose fees or costs have been paid out of the fund or are recoverable from the fund, shall provide the trustee and any person appointed by the trustee to prepare the reports and accounts with such information, assistance and access to information and data as the trustee or the person appointed by the trustee may require.

103. Submission of reports to the Authority and REIT securities holders

(1) A REIT manager shall, in consultation with the trustee—

(a) submit to the Authority, a copy of—

(i) the first half financial year reports and accounts within thirty days of the end of the half year; and

(ii) the annual report and the audited accounts within three months of the end of the financial year;

(b) provide such other information, statements, books, records or other particulars as the Authority may require; and

(c) in the case of an unrestricted I-REIT publish in at least two daily newspapers of national circulation—

(i) the first half financial year and accounts within thirty days of the end of the first half of the financial year; and

(ii) the annual report and audited accounts within three months of the end of the financial year.

(2) The REIT manager shall send to every REIT securities holder, free of charge, a copy of—

(a) the first half financial year reports and accounts within thirty days of the end of the half year; and

(b) the annual report and the audited accounts within three months of the end of the financial year.

104. Distribution recommendations and statements

The REIT Manager shall, whenever a distribution, including any interim distribution is made, circulate to the Authority and to the REIT securities holders a notice of distribution and a statement authorized by the trustee which statement shall include details of—

(a) the source and nature of the distribution;

(b) the total returns of the real estate investment trust and scheme from income or capital gains;

(c) in the case of an I-REIT the percentage income distributed as calculated in accordance with Regulation 72 and if less than eighty percent the reasons why the proposed distribution is less than eighty percent; and

(d) the net asset value per unit prior to, and subsequent to, the making of the distribution.

PART XIX – NOTIFICATIONS AND REPORTING TO THE AUTHORITY

105. Notification and compliance report by the trustee

The trustee shall, in addition to any other requirement for notification under the Act or these Regulations, notify the Authority, within seven days of—

(a) its becoming aware of any failure, act or omission by the trustee, REIT manager, property manager including any person appointed by the REIT manager, the valuer or project manager certifier which constitutes or may constitute a breach of any provisions of the Act, these Regulations or the scheme documents and any steps taken by the trustee to rectify the breach as soon as possible;

(b) the appointment, removal or retirement of the—

(i) REIT manager;

(ii) auditor;

(iii) valuer;

(iv) project manager certifier;

(v) structural engineer; or

(vi) *Shariah* adviser;

(c) amendments to the trust deed;

(d) appointment or changes to the compliance officer of the trustee;

(e) amendments to any REIT manager agreement or other scheme document;

(f) acquisition or disposal of any real estate assets;

(g) any resolution passed to wind up the real estate investment trust;

(h) any resolution proposed to remove the trustee or the REIT manager; and

(i) the completion of the termination or winding up of the real estate investment trust.

106. Notification and compliance report by the REIT Manager

The REIT manager shall, in addition to any other requirement for notification under these Regulations, notify the trustee and the Authority, within seven days of—

(a) appointment or changes to the compliance officer of the REIT manager;

(b) appointment, removal or retirement of—

(i) the chief executive officer of the REIT manager; or

(ii) a director of the REIT manager; and

(c) its becoming aware of any failure, act or omission of the trustee, REIT manager including any person appointed by the REIT manager, any property manager, valuer, project manager certifier which constitutes or may constitute a breach of the provisions of the Act, these Regulations or the scheme documents and the steps taken by the REIT manager or any other party to rectify the breach as soon as possible.

107. Notification and compliance report by the auditor

An auditor shall, in addition to any other requirement for notification under the Act or these Regulations, notify the trustee and the Authority within seven days of becoming aware of any failure, act or omission of the trustee, REIT manager, including any person appointed by the REIT manager, any property manager, valuer, project manager certifier which constitutes or may constitute a breach of any provision of the Act, these Regulations or the scheme documents and the steps taken by the auditor or which the auditor has recommended be taken to rectify the breach as soon as possible.

108. Availability of reports

The Authority shall make available, for public inspection as soon as possible after filing, all the reports, notifications and continuing disclosure documents submitted to the Authority which relate to a real estate investment trust or scheme.

PART XX – ACQUISITION AND DISPOSAL OF ASSETS

109. Acquisition from promoter and connected parties

A trustee may, subject to compliance with the Act and these Regulations and any listing requirements, if authorized by the scheme documents, acquire or dispose real estate and related assets of the real estate investment trust from or to—

(a) the promoter of the scheme; or

(b) other connected persons or connected parties.

110. Additional acquisitions

(1) Upon the initial issue or offer of REIT securities to persons other than the promoter or persons connected with the promoter, the REIT manager shall, where there is an intention to acquire or dispose any real estate assets and prior to entering into any binding contract or any agreement that can only be terminated on the payment of consideration or of a penalty, obtain and submit to the trustee—

(a) a report from a structural engineer on the condition of the real estate assets, which report shall be made available to each valuer prior to the conduct of any valuation;

(b) a valuation report; and

(c) if the total consideration for the proposed acquisition from or disposal to a person who is not the promoter or connected person represents more than fifteen percent of the latest published net asset value, the approval by way of an ordinary resolution passed in a general meeting, of the holders of REIT securities; or

(d) if the total consideration for proposed acquisition from or disposal transaction to the promoter or a connected person represents more than five percent of the latest published net asset value of the trust, the approval by way of an ordinary resolution, passed in a general meeting of the holders of the REIT securities.

(2) Where, as part of the initial offer of REIT securities, it is proposed to acquire or dispose of any real estate assets, then prior to entering into any binding contract or any agreement that can only be terminated on the payment of consideration or of a penalty, the REIT manager shall comply with the requirements of paragraphs 1(a) and 1(b) above but shall not be required to comply with paragraphs 1(c) or 1(d).

PART XXI – APPOINTMENT OF A VALUER AND VALUATION OF ASSETS

111. Appointment of a valuer

(1) The trustee shall, in consultation with the REIT manager—

(a) prior to making an application to the Authority for authorization of a scheme, appoint a valuer to value the real estate assets which have been vested in the trust or acquired or are proposed to be acquired by trustee;

(b) ensure that, where necessary, an additional, alternative or substitute valuer is appointed on a timely basis in the event of—

(i) the retirement, removal or the valuer otherwise ceasing to act;

(ii) the valuer not being qualified to act; or

(iii) an additional valuation report being required; and

(c) where the real estate investment trust has assets which are not real estate assets and which are not in the form of cash, bank deposits or listed securities,

appoint a suitably qualified specialist independent professional valuer to undertake the valuation of those assets.

(2) The valuer shall be appointed for a term of not more than three years and, except with the prior approval of the Authority, shall not be reappointed as valuer of the scheme at the conclusion of such term or until the lapse of three years from the date of expiry of any prior term.

(3) The trustee shall, in consultation with the REIT Manager and where—

(a) for any reason, or in respect of any acquisition or disposal or a specific transaction, the valuer ceases to be independent; or

(b) the trustee is of the opinion that, given the nature of the asset the valuer does not have the required skills,

appoint another valuer for the specific purpose of conducting the required valuation.

(4) A person qualifies to be appointed as a valuer of real estate assets if that person—

(a) is registered and licensed as a valuer under the Valuers Act (Cap. 532);

(b) is independent and does not have a conflict of interest;

(c) provides real estate and other property valuation services on a regular basis;

(d) carries on business of valuation of real estate in Kenya;

(e) has been a member of the Institution of Surveyors, in good standing, for a period of at least of five years; and

(f) has in place and maintains professional liability insurance to cover its obligations.

(5) Where a specialist valuer is appointed in respect of assets other than real estate, only the provisions of paragraph (4)(a) and (f) shall apply to that valuer.

(6) A valuation report prepared by a valuer under these Regulations shall be addressed to the trustee and expressed to be for the benefit of the trustee as trustee of the real estate investment trust and the REIT securities holders as beneficiaries of the real estate investment trust.

(7) A trustee shall not appoint a valuer in respect of more than one scheme that is managed by the same REIT manager.

(8) A valuer shall not be considered to be independent under paragraph (4)(b) if—

(a) that valuer falls within the definition of a connected person;

(b) the valuer or its partners, directors, officers or key personnel hold REIT securities in the scheme;

(c) the valuer has financial, professional or other interests that could affect the ability of the valuer to render unbiased professional services to the trustee in relation to the scheme or its assets including any assets that it consider acquiring; or

(d) in the case of a valuation that is conducted in connection with the disposition, acquisition or proposed disposition or acquisition of an asset, the valuer has, within the two years immediately prior to the date of the valuation, undertaken or been retained to provide a valuation for the counterparty or proposed counterparty to the disposal or acquisition.

(9) A valuer shall—

(a) include in any valuation undertaken by that valuer, a declaration as to its independence and evidence of its up to-date professional liability insurance; and

(b) on request, submit to the trustee a declaration and evidence of the up to-date of insurance for inclusion in any periodic report that the trustee is required to prepare.

(10) A valuer shall inform the trustee immediately if the valuer becomes aware of any potential conflict or event that would cause the valuer to cease being independent, or cease to satisfy the requirements of this Regulation generally or in respect of a particular or proposed valuation, disposition or acquisition.

(11) Where any valuer appointed under this regulation—

(a) ceases to be independent or qualified for appointment, the valuer shall retire and the trustee shall, in consultation with the REIT manager, within a period of thirty days, appoint a new valuer; or

(b) ceases to be independent in respect of a particular or proposed disposition or acquisition or notifies the trustee that it does not satisfy the requirements of these Regulations, the trustee shall, in consultation with the REIT manager, appoint an alternative valuer to act in respect of that particular transaction and any subsequent valuations required in relation to that particular asset.

112. Obligations of a valuer

A valuer shall—

(a) not hold REIT securities in an investment scheme for which it has been appointed to act as valuer;

(b) comply with the provisions of the Act and these Regulations;

(c) immediately advise the trustee and the REIT manager if a conflict of interest arises or if it ceases to be independent or qualified for appointment generally or in relation to a specific valuation;

(d) ensure that its opinion and valuation are objective and independent of its business or commercial relationships; and

(e) immediately inform the trustee and the REIT manager of any circumstance or factors which come to the knowledge of the valuer which may reasonably affect the accuracy of the last valuation report prepared in respect of any asset.

113. Basis for valuation and conduct of valuation

(1) The trustee shall cause a valuation of the real estate assets of the trust to be conducted and ensure that other assets of the trust are appropriately valued—

(a) prior to acquisition or disposal of any asset;

(b) prior to the issue or offer of any REIT securities except where the issue or offer is made to the promoter or to connected persons;

(c) on an annual basis or shorter period as may be necessary to enable the trustee and or the REIT manager to prepare the reports required to be prepared under the Act or these Regulations or to fulfil its obligations as trustee;

(d) upon the request of the auditor or REIT securities holders; and

(e) at any other time, if the trustee, the REIT manager or the auditor is of the opinion that it is desirable in the interests of the REIT securities holders that a valuation be conducted or that there has been a material change that may result in the current valuation being out-dated.

(2) A valuer shall conduct a full valuation of all the real estate assets —

(a) based on a full physical inspection of all sites and inspection of all buildings, any facilities erected thereon and connected plant and equipment at least once every three years; and

(b) based, in each other year, on a desk top review unless the valuer is of the opinion that a full physical inspection is necessary or is requested by the trustee to conduct a full physical inspection.

(3) The trustee and the REIT manager shall, where the assets of the scheme involve—

(a) land or real estate under development or construction; or

(b) a contract to acquire assets under construction;

ensure that—

(i) a project manager certifier prepares an assessment report; and

(ii) they obtain any structural engineer's report that is required to be obtained,

and avail the reports to the valuer prior to the completion of the valuation.

(4) An assessment report made under paragraph (3) by the project manager certifier shall include—

(a) the estimate of the cost to complete the development or construction;

(b) the costs incurred to date in the development or construction;

(c) the progress against the original and any revised schedule, contract or project plan; and

(d) a comparison of the costs incurred against the original and any amended budgets.

(5) A valuer may take into consideration, the assessment or reports submitted to the valuer under paragraph (3) in its valuation and shall disclose the details of the assessment or report and include comments on the impact, if any, the assessment or report has on the valuation.

(6) Unless a specialist valuer is appointed, a REIT manager shall value cash, bank deposits, bonds, other assets of a similar type and listed securities on a daily basis and submit to the trustee at the conclusion of each working day details of such valuations so as to enable the trustee to fulfil its obligations under these Regulations.

(7) Where—

(a) the trustee, at the request of the REIT manager, proposes to issue new REIT securities for subscription; or

(b) where redemption is required or permitted, the trustee proposes to redeem REIT securities; and

(c) the assets were valued more than six months prior to the proposed issue or redemption,

then a desk top valuation, not involving a full physical inspection, shall be conducted by the valuer prior to the issue or redemption:

Provided that the REIT manager and the valuer certifies to the trustee that they are not aware of any fact or condition that would have resulted in values of the real estate assets changing materially.

(8) Valuations shall be conducted on the basis and in accordance with the procedures and methodologies set out in the Sixth Schedule as well as the valuation standards published and adopted by the Institution of Surveyors of Kenya and the Valuers Registration Board.

114. Fees and remuneration of a valuer

(1) Subject to paragraph (3) and to compliance with any law relating to valuation fees, a valuer shall be paid a pre-determined annual fee.

(2) Except where required by any law the fees payable under paragraph (1) shall not be contingent upon the valuation of the assets as determined by the valuer.

(3) Where as a consequence of the operation of these Regulations, an additional or alternative valuer is appointed to undertake a specific valuation, a fixed fee for conducting the required valuation shall, subject to any law, be agreed prior to appointment of the valuer and such fee shall not be contingent upon the valuation of the assets as determined by the valuer.

(4) The trustee and the REIT manager shall not charge a separate or additional fee in respect of the carrying out of a valuation.

115. Removal of a valuer

(1) The trustee shall remove a valuer if—

(a) the valuer ceases to be qualified under regulation 111 other than where a valuer has a conflict or is otherwise not qualified only in respect of a particular acquisition or disposition and an alternative valuer has been appointed for the purpose of undertaking such valuation;

(b) the valuer goes into liquidation, becomes bankrupt or a receiver or administrator is appointed over the assets of the valuer;

(c) the trustee, on its own initiative or following a request from the REIT manager, is of the opinion that it is desirable in the interests of the REIT securities holders;

(d) the REIT securities holders pass an ordinary resolution for the removal of the valuer; or

(e) the valuer has contravened any provisions of the scheme documents, the Act or these Regulations.

(2) The REIT securities holders shall not pass a resolution for the removal of the valuer under paragraph (1)(d) unless—

(a) it has issued to the Authority, a notice of at least seven days of the intention to hold the meeting;

(b) the valuer has been given the opportunity to be present at the meeting and to be heard either orally or through written submissions; and

(c) takes into consideration, the recommendations of the trustee and the REIT manager.

116. Retirement of a valuer

(1) A valuer shall retire—

(a) if the valuer ceases to be qualified except where a valuer has a conflict of interest or is otherwise not qualified in respect of a particular acquisition or disposition and an alternative valuer has been appointed for the purpose of undertaking such valuation; or

(b) as provided for in the scheme documents.

(2) The valuer shall, if the valuer retires before the end of a three year term, provide the Authority with the reasons for his retirement.

117. Power of the Authority to require a valuation

(1) The Authority may, if it considers it necessary, appoint a valuer to carry out a valuation of any assets of a scheme.

(2) A valuation carried out under paragraph (1) shall be final and binding.

(3) The trustee, REIT manager, property manager, property certifier and valuer including any former valuer or other party acting for them or appointed in connection with the scheme, shall provide such documents, information and assistance to the Authority and any valuer appointed by the Authority to enable that valuer undertake its role in a professional manner.

(4) Any fees, expenses or costs incurred by the Authority in appointing a valuer under this regulation shall be paid by the trustee out of the assets of the real estate investment trust.

PART XXII – CONNECTED PARTY TRANSACTIONS

118. Connected party transactions

(1) For the purposes of this Part, a **"connected party transaction"** means a transaction entered into or proposed to be entered into between the trustee or the REIT manager on behalf of the real estate investment trust and a connected person.

(2) If the REIT manager manages more than one scheme and a transaction or proposed transaction involves two or more schemes managed by the REIT manager, then such transactions shall be deemed to be connected party transactions for each of the schemes.

(3) A transaction carried out on behalf of the trust by the trustee, the REIT manager or any party appointed by the trustee or the REIT Manager shall be—

(a) carried out at arm's length;

(b) consistent with the stated objectives and strategy of the scheme;

(c) in the best interests of the REIT securities holders; and

(d) properly disclosed to the REIT securities holders.

(4) Where the transaction carried out under paragraph (3) involves real estate, the real estate shall be valued by a valuer in accordance with the requirements of the Act and these Regulations.

(5) Where any monies are deposited with or borrowed from any connected party being a party authorized to accept deposits and to make loans, then the interest to be paid on the deposit, shall not be less than that currently applying to deposits of a similar amount and on similar terms and the rate of interest charged on borrowings shall be not greater than that applying to a transaction of a similar amount and on similar terms.

(5) All connected party transactions shall be conducted on terms no less favourable than standard commercial terms and shall be subject to the prior approval of the trustee and where required by the Act or these Regulations by the REIT securities holders.

(6) Where goods or services, other than those for which a fee is charged by the trustee under regulation 90 or by the REIT manager under regulation 91, are to be contracted with a connected party then, unless the goods and services are to be provided pursuant to a transparent open bidding process, if the proposed cost of the goods and services when aggregated with all other transactions conducted with connected persons relating to the provision of goods and services in the immediately preceding twelve months exceeds or would exceed fifteen percent of the amount spent on connected party provided goods and services, then such a contract shall not be entered into or approved by the trustee unless it has first been approved by—

(a) an ordinary resolution passed by the REIT securities holders at a duly convened meeting, at which

(b) no person connected with the person with whom it is proposed to enter into the contract shall be entitled to vote.

(7) Details of all connected party transactions and the value of such transactions on an aggregated basis shall be disclosed in the next published semi-annual or annual report of the real estate investment trust.

PART XXIII – DOCUMENTS TO BE AVAILABLE FOR INSPECTION BY REIT SECURITIES HOLDERS

119. Documents to be availed for inspection

The Trustee and the REIT Manager shall make available, at their principal place of business, the following documents for inspection by REIT securities holders, any prospective investor, free charge during the ordinary business hours, of the trustee and the REIT manager—

(a) the trust deed and any supplemental deeds of the real estate investment trust;

(b) the first prospectus or offering memorandum issued and any supplemental, replacement or subsequent prospectus or offering memorandum, including a conversion prospectus or conversion offering memorandum;

(c) the latest annual and semi-annual reports;

(d) every material contract or document referred to in any prospectus or offering memorandum;

(e) all reports, letters or other documents, valuations and statements by any expert or where any part of such is extracted or referred to in any prospectus or offering memorandum the complete version of such document and the consent given by such experts for inclusion in the prospectus or offering memorandum;

(f) copies of any valuation reports undertaken in the previous three years together with assessments or reports by any project manager certifier or structural engineer;

(g) the audited accounts and any semi-annual unaudited accounts for the real estate investment trust for the past three financial years or if established for a period of less than three years, then for the period since establishment;

(h) the audited accounts for the trustee and the REIT Manager for the past three financial years or if established less than three financial years, then for the period since establishment;

(i) copies of minutes of all the meetings of REIT securities holders; and

(j) the register of REIT securities holders.

PART XXIV – ISSUE OF ADDITIONAL REIT SECURITIES

120. Issue of additional REIT securities

(1) Except where otherwise authorized by the Act or these Regulations, all new or additional issues of REIT securities shall be offered to existing holders on a *pro rata* basis to their existing holdings and shall only be offered or issued to other persons to the extent that they have previously been offered on no less attractive terms to and not been taken up by existing holders.

(2) Subject to the provisions of the Act and these Regulations relating to acquisitions and valuations, this regulation shall not apply to issues—

(a) to a connected person or an independent third party in full or part payment for the acquisition of real estate assets:

Provided that the aggregate number of REIT securities issued in the previous twelve months, other than on a *pro rata* basis, does not exceed twenty percent of the number of REIT securities on issue at the commencement of that period;

(b) which have been approved by an ordinary resolution passed by the REIT securities holders at a duly convened meeting, and at that meeting no person being a connected person with the person to whom it is proposed to issue the REIT securities shall be entitled to vote; or

(c) which are made pursuant to regulation 27 or 29 to fund a cost overrun.

PART XXV – MEETINGS OF REIT SECURITIES HOLDERS

121. Meetings of REIT securities holders

(1) The scheme documents shall provide for the calling of meetings of the REIT securities holders, voting and procedures for the conduct of meetings.

(2) T'he provisions contained in the scheme documents shall—

(a) include the matters set out in the Seventh Schedule;

(b) be read in addition to the rights set out in the Act and in these Regulations to call meetings; and

(c) not conflict with the provisions of the Act or these Regulations.

(3) Where the approval of the REIT securities holders is required, the—

(a) the promoter and any connected person shall not vote at a general meeting on the resolution if the proposed transaction involves the promoter or any connected person;

(b) details of the proposed transaction together with any connection to the promoter shall be disclosed;

(c) a full copy of the valuation report shall be provided to all REIT securities holders at the time when the notice of the meeting is issued; and

(d) the Authority shall receive prior notification of the intended proposal to seek REIT securities holders approval prior to the circulation of any notice.

PART XXVI – ISLAMIC REITS

122. Islamic REITS

(1) Where it is proposed that REIT securities be issued in respect of a real estate investment trust scheme which is to be offered or in any way represented as an Islamic REIT or Islamic securities, then in addition to complying with the provisions of the Act and these Regulations the trustee shall —

(a) prior to any offer or issue being made, appoint a *Shariah* adviser to assess the compliance status of the REIT scheme and in the event of the resignation, retirement or termination of such adviser, the trustee shall ensure that a substitute *Shariah* adviser is appointed as soon as is practicable;

(b) in appointing a *Shariah* adviser, comply with the requirements on any law in Kenya and the views of any Kenyan regulatory authority and may take account of the views of any party whose views are influential or accepted as determining or ruling on *Shariah* principles applicable in Kenya; and

(c) together with the REIT Manager, ensure that the *Shariah* adviser establishes and updates from time to time *Shariah* guidelines for the assistance of the trustee and the REIT manager and conducts *Shariah* compliant assessments —

(i) of the terms of the scheme documents and of the REIT securities;

(ii) on any real estate asset prior to acquisition or disposition;

(iii) of the tenants and changes in tenancy arrangements to ensure that only permissible activities and businesses are conducted by the tenants or if some non-permissible activities are conducted, then the level of such activities falls below the acceptable maximum and by how much;

(iv) on the method and terms of any borrowing or financing to be entered into in respect of the trust;

(v) of any insurance contracts and the parties with whom such contracts or arrangements are entered into; and

(vi) of the proposed method and terms of investment in any eligible assets.

(2) The *Shariah* adviser shall, in addition to any other periodical report required to be prepared under regulation 101 and matters to be included in semi-annual and annual reports, prepare and submit to the trustee a report confirming compliance with *Shariah* principles.

(3) In the case of an Islamic REIT the trustee shall request a report from the *Shariah* adviser confirming that any acquisition or disposal shall not affect the compliance of the Islamic REIT with *Shariah* principles.

(4) The trustee and REIT manager shall consult the *Shariah* adviser whenever required and put in place a reporting mechanism and procedures to ensure that the continuing disclosure obligations under regulation 42 are complied with as regards the compliance of an Islamic REIT and Islamic REIT securities with *Shariah* principles

(5) For the purpose of these Regulations a *Shariah* adviser shall be deemed to be an expert who by virtue of his occupation, religious standing, expertise or reputation combined with his understanding of the Kenyan financial sector, capital markets and *Shariah* requirements as regards finance is accepted by the Authority from time to time as

being competent to provide an authoritative statement on the compliance of a real estate investment trust scheme with *Shariah* law.

PART XXVII – TAKE-OVER AND MERGERS OF REITS

123. Application of the Capital Markets (Take-Overs and Mergers) Regulations

Where a scheme is an unrestricted listed I-REIT then the provisions of the Capital Markets (Take-Overs and Mergers) Regulations, 2002 shall apply to a scheme as if the I-REIT was a listed public company with such modifications as may be necessary.

PART XXVIII – LICENSING OF TRUSTEE AND REIT MANAGER

124. Application for a licence by a trustee and a REIT Manager

An application for a licence to operate as a REIT manager or as a trustee of a real estate investment trust scheme shall be submitted to the Authority in duplicate in Form 3 set out in the Eighth Schedule.

125. Specific requirements for licensing as a trustee of a REIT manager

(1) An applicant under regulation 124 shall submit the application together with—

(a) its certificate of incorporation;

(b) its memorandum and articles of association;

(c) a statement of the unaudited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and the applicant's audited accounts for the preceding two years, or, in the case of entities which, at the time of application, have been in existence for less than six months from the date of their incorporation, submit an opening balance sheet and an auditor's certification of the share capital of the company;

(d) a business plan containing the particulars on—

(i) the management structure;

(ii) the directors, including one or more executive directors, their qualifications, addresses and details of other directorships;

(iii) the shareholding structure, disclosing whether any of the shareholders will have an executive role to oversee the day-to-day operations of the business;

(iv) the evidence of a minimum paid-up share capital of not less than ten million shillings in the case of the REIT managers and not less than one hundred million shillings in the case of the trustees;

(v) the qualifications, experience and expertise of the chief executive;

(vi) the proposed management and qualifications of key personnel demonstrating capacity to undertake the designated role or access to such skills and experience;

(vii) the financial projections for three years for the trustee and the REIT manager in respect of their businesses;

(viii) the particulars of the proposed operating and information technology system to be utilized in connection with the scheme;

(ix) one bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant;

(x) two business references;

(xi) the proposed premises suitably located and equipped to provide satisfactory service to REIT securities holders or evidence acceptable to the Authority that such premises will be available;

(xii) the staff capable of providing professional services or evidence acceptable to the Authority that such staff will be available;

(xiii) the independent auditor of or proposed for the trustee or the REIT manager; and

(e) the fees prescribed in the Eighth Schedule.

(2) Every person who is, or is to be, a director, chief executive officer or manager of a REIT manager or a trustee, shall be fit and proper to hold the particular position which he holds or is to hold.

(3) Where the applicant is a bank or an insurance company, it shall obtain and submit to the Authority a no objection letter from its primary regulator.

126. Financial requirements for a trustee and REIT manager

(1) The level of shareholders' funds (paid up share capital and reserves) for REIT managers or a trustee, shall not fall below ten million shillings in the case of the REIT Managers and not less than one hundred million shillings in the case of the trustees at any time during the licence period.

(2) The paid up share capital of the REIT manager or a trustee shall at all times be unimpaired and shall not be advanced to the directors or associates of the REIT manager or the trustee as the case maybe.

(3) A Trustee and a REIT manager shall maintain a liquid capital of five million shillings or eight percent of its total liabilities, whichever is higher.

(4) Unsecured advances, loans and other amounts to directors or associates of a REIT manager or trustee shall be made out of shareholders' funds which are in excess of the prescribed minimum shareholders' funds provided that such loans shall not exceed ten percent of the shareholders' funds at any time.

(5) The ratio of the REIT manager's or trustee's borrowings to the paid-up capital shall not exceed twenty percent, at any time.

(6) Where a trustee is a bank licensed under the Banking Act (Cap. 488) or an insurance company licensed under the Insurance Act (Cap. 487), it shall be considered to be in compliance with these financial requirements as long as it holds a valid licence issued by either the Central Bank of Kenya or the Insurance Regulatory Authority.

127. Records to be maintained by trustee and REIT manager

(1) Every REIT manager or trustee shall, where applicable, maintain and preserve for a period of seven years or such later period as is specified from the date of sale or disposal, in the case of the sale or disposal of the asset and from the date of the termination or maturity of the transaction in the case of a borrowing or financing arrangement or risk management transaction, the following records—

(a) journals, including cash receipts and disbursement records and any other records or original entry, forming the basis of entries in any ledger in respect of the REIT manager or the trustee's business and in respect of the REIT maintain indefinitely;

(b) general and auxiliary ledgers, or other comparable records reflecting assets, liabilities, reserves, capital, income and expense accounts in respect of the REIT manager or the business of the trustee and in respect of the REIT maintain indefinitely;

(c) a record or memorandum of each request, direction or instruction given by the REIT manager or the trustee for the purchase or sale of real estate assets or REIT securities, as the case may be, or any other asset or investment, or any request, direction or instruction received by REIT manager from the trustee or REIT securities holders concerning the purchase, sale, receipt or delivery of a particular real estate asset or REIT securities of other asset or investment, as the case maybe, and of any modification or cancellation or any such order or instruction, and the record shall—

(i) specify the date and terms and conditions of the request, direction, instruction, modification or cancellation;

(ii) identify the person connected with the REIT manager who recommended the transaction to the trustee, as the case maybe;

(iii) all valuation reports requested or obtained which shall be maintained indefinitely;

(d) all cheque books, bank statements, cancelled cheques and cash reconciliations of the REIT manager or the trustee;

(e) all bills, statements or copies thereof, paid or unpaid relating to the business of the REIT manager or trustee;

(f) a record or memorandum of all requests, directions or instructions by the REIT manager or the trustee and of any meeting of REIT securities holders to enter into any borrowing or financing arrangement or risk management arrangement together with details of any comparative quotes obtained in respect of such transactions which shall be maintained indefinitely;

(g) originals of all written communication received from REIT securities holders or trustee, as the case may be, copies of resolutions put to or passed by meetings or REIT securities holders and copies of all written communication sent by the REIT manager or trustee relating to—

(i) any recommendations made or proposed to be made; including to a meeting of the REIT securities holders;

(ii) any receipts, disbursement or delivery of funds, real estate assets, REIT securities or other assets; and

(iii) the placing or execution of any request, direction or instruction to purchase or sell any real estate asset, REIT securities or other asset or investment;

Provided, that if the REIT manager sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory services to more than ten persons, the REIT manager shall not be required to keep a record of the names and addresses of the persons to whom it was sent except that if such notice, circular or advertisement is distributed to persons named on any list, the REIT manager shall retain a copy of such notice, circular or advertisement, a record or memorandum describing the list and the source thereof;

(h) all written agreements or copies thereof entered into by the REIT manager with any trustee or REIT securities holder or otherwise relating to the business of the REIT manager or the operation of the REIT or the conduct of the REIT managers activities in respect of the REIT which should be retained indefinitely;

(i) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of REIT securities, which the REIT manager circulates or distributes, directly or indirectly, to ten or more persons, and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum from the REIT manager indicating the reasons thereof;

(j) all advertisements by the REIT manager and all records, worksheets and calculations necessary to form the basis for performance data in an advertisement under paragraph (i);

(k) a record of every transaction in REIT securities in which the REIT manager or trustee or any employee of the REIT manager or trustee acquire any direct or indirect beneficial ownership; specifying the title and amount of the security involved, the date, whether the transaction was a purchase or sale or other acquisition or disposition, the price at which it was effected, and the name of the stockbroker with or through whom the transaction was effected;

(l) a copy of each written statement, the amendment or revision thereof, given or sent to any REIT securities holder or prospective REIT securities holder of such REIT manager and a record of the dates that the same was given or offered to be given; and

(m) any other records as may be determined by the Authority.

(2) The records specified under paragraph (1) shall be subject to inspection from time to time and without notice, by the trustee, where are required to be maintained by the REIT manager, or the Authority.

(3) A REIT manager shall preserve and maintain the records of the REIT securities holders' of REIT securities or funds and if required produce for inspection by the Authority such books, records and ledgers, or other accepted accounting and additional records as may be required by the Authority for a period of seven years.

128. Conduct of REIT manager and trustee

(1) A trustee and REIT manager shall comply with the Act and Regulations and failure to do so may constitute a ground for the revocation by the Authority of a licence to operate as a trustee or REIT manager.

(2) A trustee or REIT manager shall not —

(a) guarantee a REIT securities holder that a specific result will be achieved arising from the advice which will be rendered; or

(b) publish, circulate or distribute any advertisement which does not comply with the Act.

(3) Any information provided by a REIT manager or the trustee to REIT securities holders through reports, newsletters and advertisements shall be factual and accurate.

(4) A REIT manager or trustee shall not lend money to a REIT securities holder unless the REIT manager or the trustee is a financial institution engaged in the business of loaning funds or the loan is made by the trustee on behalf of the D-REIT pursuant to regulation 12.

129. Reporting by REIT manager and trustee

(1) All financial statements prepared by a REIT manager and a trustee as a licensee shall be prepared in accordance with IFRS and every trustee or REIT manager shall, in addition to complying with the reporting obligations in respect of the real estate investment trust, submit to the Authority—

(a) half yearly reports of its own financial performance within thirty days of the end of each half-year; and

(b) audited annual accounts for its operations within three months following the closure of the financial year, in the form as may be prescribed from time to time.

(2) Despite the provisions of paragraph (1), the Authority may require such other form of reporting as it may from time to time specify.

130. Application of the Capital Markets (Licensing Requirements)(General) Regulations, 2002

Regulation 51 to 55B of the Capital Markets (Licensing Requirements) (General) Regulations, 2002, shall apply to a trustee or REIT manager licenced under these Regulations as if the trustee or REIT manager was licenced under the Capital Markets (Licensing Requirements) (General) Regulations, 2002, and with such modifications as may be necessary.

PART XXIX – APPLICATION OF THE CAPITAL MARKETS (CORPORATE GOVERNANCE) (MARKET INTERMEDIARIES) REGULATIONS 2011

131. Application to trustees and REIT managers

The Capital Markets (Corporate Governance) (Market Intermediaries) Regulations shall apply to trustees of REITs and REIT managers as market intermediaries with such modifications as shall be necessary.

PART XXX – APPLICATION OF THE CAPITAL MARKETS (SECURITIES) (PUBLIC OFFERS, LISTING AND DISCLOSURE REGULATIONS, 2002

132. Application of The Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002

(1) The provisions of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 ("the Public Offers Regulations") shall apply to offers, listing and disclosure in relation to REIT securities with such modifications as shall be necessary.

(2) Real estate investment trust schemes shall constitute the real estate investment trust segment of the official list and shall comply with the eligibility and disclosure requirements prescribed by the Authority for that market segment.

(3) Where there is a conflict between the provisions of these Regulations and the Public Offers Regulations, these Regulations shall prevail.

PART XXXI – FEES

133. Fees applicable to applications, approvals, other filings and to transactions

The fees set out in the Ninth Schedule shall, where not provided for in the Act, apply to a real estate investment trust.

FIRST SCHEDULE

[Reg. 5.]

CONTENTS OF TRUST DEED

In addition to the requirements of the Act and these Regulations, a trust deed shall include a list of definitions or glossary of terms, a table of contents and contain the following information—

1. ESTABLISHMENT OF THE TRUST AND VESTING OF PROPERTY
   - (a) The trust deed shall be expressly stated to be binding on the promoter, any trustee, any REIT manager and all REIT securities holders and investors in REIT Securities and any party to the real estate investment trust and any scheme to which it relates that is authorized by the Authority as if each such party had been a party to the trust deed.
   - (b) The trust deed shall be subject to the provisions of the Act and the Regulations and specifically state that, to the extent that provisions of the trust deed conflict with those of the Act or the Regulations, then the provisions of the Act or Regulations shall prevail.
   - (c) The trust deed shall provide for –
     - (a) the creation of the trust;
     - (b) the name of the trust;
     - (c) the duration of the trust (subject to the law on perpetuities);
     - (d) a declaration of trust and or initial vesting of assets in the trustee by the promoter as settlor of the trust to constitute the fund to be held on trust for the beneficiaries;

(e) the terms of the trust;
(f) a statement that the REIT has been authorized by the Authority;
(g) particulars of the type of trust; and
(h) the trust deed and any other scheme documents to be governed by the laws of Kenya.

2. APPOINTMENT OF TRUSTEE AND DUTY OF TRUSTEE

The trust deed shall include—

(a) an agreement by the trustee upon establishment of the trust to act as trustee of the real estate investment trust subject to the terms of the deed, the Act and these Regulations;
(b) a clear and unqualified statement of the trustee's fiduciary role and obligations to the REIT securities holders of REIT securities as beneficiaries of the trust and its discretions; and
(c) an acknowledgement by the trustee that it is bound by the terms of the trust deed, the Act and the Regulations.

3. REQUIREMENT FOR SEGREGATION OF ASSETS AND ACKNOWLEDGEMENT THAT THE TRUSTEE HAS NO CLAIM ON THE ASSETS

The trust deed shall include an acknowledgement by the trustee of its fiduciary obligations—

(a) to hold the assets of the trust in a manner which ensure that these are segregated from the assets of the trustee and from the assets of any other trusts administered by the trustee;
(b) to clearly identify those assets which are held on trust for the REIT securities holders as beneficiaries of the real estate investment trust;
(c) not to charge or pledge or deal with any asset of the trust except in a manner authorized by the trust deed, the Act and the Regulations; and
(d) to ensure that the accounts of the trustee do not include any assets of the trust.

4. THE REIT SECURITIES HOLDERS OF REIT SECURITIES AS BENEFICIARIES

The trust deed shall provide for the trust to be constituted as a REIT securities trust and provide for—

(a) the beneficial interest in the trust to be divided into units called REIT securities;
(b) the classes of REIT securities and the rights attaching to each class;
(c) subject to any rights, obligations or restrictions attaching to any particular REIT securities that each of the REIT securities confer a right to an equal undivided interest or share in the assets of the trust as a whole, subject to liabilities, and does not confer an interest in a particular asset;
(d) the limiting of the issue or offer of REIT securities to persons other than the trustee or parties connected with the promoter:
    (i) until the trust has been authorized as a real estate investment trust scheme, and
    (ii) pursuant to the issue of a prospectus or offering memorandum.
(e) the trustee to issue REIT securities and to register REIT securities in the name of the beneficiary;
(f) provide that the liabilities of REIT securities holders, as investors in REIT securities, are limited to the assets of the trust, and include a clear and prominent statement explaining that the trust deed and the scheme documents:
    (i) are binding on the REIT securities holders as if each REIT securities holder had been a party to the trust deed; and

(ii) that the trust deed, the scheme documents, the Act and Regulations provide the trustee and REIT manager with a range of discretions and powers and authorize and require the trustee and the REIT manager to comply with the trust deed.

5. INITIAL ROLE OF PROMOTER AND OBLIGATIONS

The trust deed shall set out the role of the promoter and the ongoing relationship with the trust including—

(a) the basis of payment or remuneration for the assets vested, acquired, transferred to or to be vested, transferred to or acquired by the trustee on behalf of the trust;

(b) the promoter's ongoing role and any relationship with the REIT manager including any arrangement to offer future real estate acquisitions to the trustee and any involvement in development or construction or management of the real estate assets of the trust;

(c) any leasing arrangement entered into or proposed to be entered into by the promoter or any connected person and the trustee;

(d) any obligation by the promoter to defer its entitlements or to provide income support;

(e) any lending or financing arrangement entered into or proposed to be entered into by the promoter or any connected person and the trustee; and

(f) the lock up period attaching to any REIT securities issued or offered to the promoter including in exchange for or in part exchange for assets vested in, transferred to or acquired by the trustee or to be vested in, transferred to or acquired by the trustee.

6. PROMOTER'S COVENANTS

The trust deed shall contain, as a minimum, the following covenants setting out the obligation by the promoter for the benefit of each the REIT securities holders as beneficiaries (including past and future REIT securities holders), the REIT manager and any subsequent trustee or REIT manager to—

(a) comply with the Act, Regulations and terms of the trust deed and scheme documents to which it is a party;

(b) pay the fees, expenses and costs of the trustee associated with the establishment of the trust, the authorization of the scheme; the preparation, approval and issue of any offering memorandum or prospectus including the obtaining of valuations and other expert reports and associated with the listing of the REIT securities;

(c) if the scheme is to be listed, to use its best endeavours and to provide any required information or support to achieve the listing of the REIT securities in the scheme, and

(d) to assist and provide any required information or support required by the trustee, REIT manager or any valuer or auditor or other party appointed by the trustee or REIT manager for the purposes of undertaking their roles in connection with the trust or the assets of the trust or in fulfilling their obligations under trust deed, the Act or Regulations.

7. APPOINTMENT OF REIT MANAGER AND DUTIES OF REIT MANAGER

(a) The trust deed shall provide for the appointment by the trustee of a qualified REIT manager appointed under the terms of the Act and these Regulations.

(b) The REIT manager is appointed as a contractor and is not the agent of the trustee.

(c) The REIT manager shall be appointed in a fiduciary capacity to fulfil the role of REIT manager as set out in the Act, the Regulations and the trust deed and to fulfil the objectives of the trust.

(d) The trust deed shall set out in detail the role of and functions to be undertaken by the REIT Manager so that the roles of the REIT manager and the trustee are clearly delineated.

(e) The REIT manager shall provide instructions to the trustee to implement the objectives of the trust and may appoint a property manager as its agent and other parties as agents of the REIT manager to assist it in undertaking its functions as REIT manager.

(f) The REIT manager shall be liable for any acts or omissions of its agents.

(g) No provision shall be included in the trust deed which exempts or purports to exempt a REIT manager from liability for any failure by it to exercise due care and diligence in the discharge of their functions in respect of the real estate investment scheme.

8. APPOINTMENT, RETIREMENT, REMOVAL AND REPLACEMENT OF REIT MANAGER

The trust deed shall contain provisions for the appointment, removal and retirement of the REIT manager which reflect the requirements of the Act and the Regulations.

9. OBJECTIVES OF THE REAL ESTATE INVESTMENT TRUST AND ELIGIBLE ASSETS

(a) The trust deed shall set out–

(a) the purpose and objectives of the trust;

(b) the discretions of the trustee and the REIT manager in giving effect to the stated objectives, and

(c) authorized investments and eligible real estate assets in which the trustee can invest.

(b) The trust deed shall identify the initial real estate assets that have been or are to be vested in acquired by or transferred to the trustee on behalf of the trust and set out clearly the implications of the failure to acquire assets within the period of time required by the scheme documents, the Act or Regulations.

(c) It shall also set out the requirements of the Act and Regulations as regarding eligible assets, requirements for minimum investment in real estate, etc., and for the generation of income and provide appropriate powers to address these requirements and the implications of non-compliance.

10. TRUSTEE'S POWERS

(a) The trust deed shall set out in detail the powers of the trustee and clearly delineate between the obligations of the trustee and the REIT manager.

(b) The powers of the trustee may be limited to it acting in accordance with the directions of the REIT manager provided that the directions are –

(i) in accordance with the terms of the trust deed and any prospectus or offering memorandum;

(ii) the provisions of the Act or these Regulations and the law relating to trusts and trustees, and

(iii) in the trustee's opinion are in the best interests of the REIT securities holders.

(c) Any provision included in the trust deed which exempts or purports to exempt a trustee from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the real estate investment scheme is void.

(d) The trust deed may provide for the trustee to delegate to an agent or officer or employee provided that the trustee remains personally liable for the fraud, negligence or default of its delegates and for the costs, fees and expenses of any delegate.

(e) The trustee shall also have power to appoint valuers, lawyers, accountants and other professionals for the purpose of permitting the trustee to carry out its duties and perform its obligations and to charge the fees, cost and expenses of such as an expense to the trust.

11. TRUSTEE'S BORROWING CAPACITY AND ABILITY TO CHARGE TRUST ASSETS AS SECURITY AND RIGHT TO INDEMNITY

(a) The trust deed shall set out the limits of the trustee's capacity to borrow and charge the trust assets as security which comply with the provisions of the Act and Regulations.

(b) The trustee shall be entitled to limit its exposure or liability for any borrowing to the assets of the trust and subject to the provisions of the Act, Regulations and the laws relating to trusts and trustees shall be entitled to be indemnified out of the assets of the trust for all losses, expenses, fees and charges incurred in the performance of its duties and obligations.

12. TRUSTEE'S COVENANTS

The trust deed in addition to providing for the usual fiduciary obligations of a trustee shall contain, as a minimum, the following covenants by the trustee for the benefit of each of the REIT securities holders as beneficiaries, including past and future REIT securities holders, the REIT manager and any subsequent trustee or REIT manager to —

(a) act continuously as the trustee until the trust terminates, the trustee retires or is removed in accordance with the trust deed;

(b) act at all times in the best interests of the REIT securities holders as beneficiaries, to act honestly, prudently and in good faith in the performance of its duties and the exercise of discretions and to exercise all due care, skill, diligence and vigilance in carrying out its functions and duties as a trustee and in safeguarding the rights and interests of the REIT securities holders;

(c) take custody and control of all assets of the trust and to hold such assets on trust for the REIT securities holders;

(d) open a separate trust account or accounts in the name of the trustee and designating the real estate investment trust to which it relates, appoint authorized signatories and ensure that the trust accounts are only used for the purposes of the trust and as provided for by the scheme documents;

(e) take all necessary steps to ensure that the assets of the trust are adequately protected and insured in the name of the trustee;

(f) comply with the Act, Regulations and terms of the trust deed and scheme documents to which it is a party;

(g) ensure that the scheme has appointed at all times a suitably authorized REIT manager and in any interim period act itself in the capacity as the REIT manager;

(h) actively monitor the administration of the assets of the fund and the performance by the REIT manager to ensure compliance with the Act,

Regulations and the scheme documents to which it is a party and that the interests of REIT securities holders are being upheld;

(i) monitor the activities of the REIT manager to guard against the REIT manager using its position to gain directly, or indirectly an advantage for itself or another person or to cause detriment to the interests of REIT securities holders;

(j) make when due all authorized payments, including distributions, required by the scheme documents or requested to be made by the REIT manager in accordance with the terms of the scheme documents;

(k) cause to be kept proper books of account and records for all investments and assets of the trust, liabilities or charges incurred (including taxes and imposts), and of transactions entered into by the trustee or the REIT manager and distributions made;

(l) ensure that reports and accounts are prepared as required by the Act and Regulations and circulated to REIT securities holders and filed with the Authority;

(m) appoint auditors and ensure that audits are undertaken as required by the Act and the Regulations and as necessary to protect the interests of REIT securities holders;

(n) appoint valuers as required and to take all reasonable steps to ensure that the assets of the trust are correctly valued and are valued as required by the Act, the Regulations and the trust deed;

(o) ensure that at all times through proper, adequate and diligent supervision the fund and the scheme are managed and administered by the REIT manager in accordance with the objectives of the trust, the trust deed, the Act and the Regulations;

(p) notify the Authority as required by the trust deed, the Act and the Regulations and where appropriate to protect the interests of REIT securities holders to call a meeting of REIT securities holders and take such other steps as are necessary to protect the interests of REIT securities holders if it becomes aware of a breach (including by the trustee) of the trust deed, the Act or the Regulations of any other matter that could properly be regarded by a trustee as not being in the interests of REIT securities holders;

(q) convene or cause the trustee to convene meetings of REIT securities holders whenever required by the Act, the Regulations or the trust deed;

(r) ensure that the offer, issue, sale or purchase or repurchase, creation, redemption or cancellation of REIT securities is in accordance with the terms of the trust deed, the Act and the Regulations;

(s) not enter into any contract, agreement or arrangement which is in conflict with or purports to override any term or obligation of the trust deed, the Act or Regulations, and

(t) to the extent not specified above, where the Act or Regulations impose a specific requirement, obligation or duty on the trustee then this will be reflected in the trust deed by way of a specific covenant by the trustee.

13. APPOINTMENT, RETIREMENT, REMOVAL AND REPLACEMENT OF TRUSTEE

The trust deed shall include provisions which accord with the Act and Regulations for –

(a) the appointment of the initial trustee and for successor trustees;

(b) the retirement of the trustee;

(c) vesting of the assets of the trust in a successor trustee and the transfer of all books, accounts, documents, reports and records including access to all required software and electronic records;

(d) preserving the rights, obligations and liabilities and any causes of action by or against an outgoing trustee which arose or accrued before the retirement or removal of the outgoing trustee, and

(e) requiring any outgoing or prior trustee to assist and join in any subsequent action by a trustee or the Authority on behalf of REIT securities holders against any party.

14. REIT MANAGER'S COVENANTS

The trust deed shall, in addition to providing for the usual obligations of a REIT manager to implement and give effect to a real estate investment trust of the designated type, contain, as a minimum, the following covenants by the REIT manager for the benefit of each the REIT securities holders as beneficiaries, including past and future REIT securities holders, the trustee and any subsequent REIT manager to—

(a) conduct its business and role as the REIT manager in a proper diligent and efficient manner to implement the objectives of the trust in the exclusive, and best, interest of REIT securities holders and in compliance with the terms of the scheme documents, the Act and the Regulations;

(b) act with due care, skill and diligence in managing the fund and the trust and to effectively employ the resources and procedures necessary for the proper exercise or its duties and role and to achieve the objectives and performance of the scheme;

(c) comply with the Act, Regulations and terms of the trust deed and scheme documents to which it is a party;

(d) acquire, invest in, manage, lease and dispose of assets as authorized in the trust deed and in accordance with the stated objectives of the trust to achieve optimum returns for REITS securities holders;

(e) conduct any construction and development activities in an efficient manner within terms of the objectives of the trust and the risk profile established for the trust;

(f) take all necessary steps to ensure that the assets of the trust are adequately protected and insured in the name of the trustee and segregated;

(g) not to enter into or recommend to or otherwise cause the trustee to enter into contracts on behalf of the trust unless the transactions are authorized by the trust deed, are for the purposes of operating a real estate investment trust, and do not contravene the Act and the Regulations and are in the best interests of the REIT securities holders;

(h) ensure that all payments or monies collected on behalf of the trustee are paid as soon as possible, and in any event no later than the next business day into the trust's designated bank account in the name of the trustee and that payments are only requested to be made from such bank account in accordance with the trust deed, the Act and Regulations;

(i) ensure that all payments required to be made by the trust, including distributions, are requested from the trustee and are made when payment is due;

(j) prepare recommendations as to distributions and draft distribution statements when required by the Act;

(k) ensure that assets are correctly valued and are valued in time and as required by the trust deed, the Act and the Regulations;

(l) not exercise any voting rights that the REIT manager may hold in respect of REIT securities in the trust except if authorized by the Act or the Regulations and to avoid conflicts of interest;

(m) prepare and maintain proper accounting records in respect of the REIT manager and deliver a copy to the trustee and to prepare on behalf of the trust reports and accounts for submission to the trustee;

(n) facilitate and assist in the audit of the accounts and provide access to all accounts, records, documents and reports, access to employees and whatever assistance is required for the preparation of reports and accounts for the trust and their audit;

(o) notify the Authority as required by the trust deed, the Act and the Regulations and where appropriate to protect the interests of REIT securities holders to call a meeting of REIT securities holders and take such other steps as are necessary to protect the interests of REIT securities holders if it becomes aware of a breach, including by the trustee, of the trust deed, the Act or the Regulations of any other matter that could properly be regarded by a trustee as not being in the interests of REIT securities holders;

(p) ensure that the offer, issue, sale or purchase or repurchase, creation, redemption or cancellation of REIT securities is in accordance with the terms of the trust deed, the Act and the Regulations and that in respect of an unlisted trust that the REIT securities of the trust are correctly priced;

(q) not to make improper use of information or knowledge gained in its capacity as a REIT manager or to use its position as REIT manager to gain an improper advantage for itself or another party or to gain a direct or indirect advantage for itself or another person or to otherwise cause detriment to REIT securities holders;

(r) convene or cause the trustee to convene meetings of REIT securities holders whenever required by the Act, the Regulations or the trust deed;

(s) not enter into any contract, agreement or arrangement which is in conflict with or purports to override any term or obligation of the trust deed, the Act or Regulations, and

(t) to the extent not specified above, where the Act of Regulations impose a specific requirement, obligation or duty on the REIT manager then this will be reflected in the trust deed by way of a specific covenant by the REIT manager.

15. JOINT COVENANTS OF TRUSTEE, PROMOTER AND REIT MANAGER

The trust deed shall, as a minimum, contain the following joint covenants by the trustee and REIT Manager for the benefit of each of the REIT securities holders as beneficiaries (including past and future REIT securities holders), the trustee and the REIT manager and any subsequent trustee or REIT manager to–

(a) comply with and implement the requirements of the trust deed, the Act and the Regulations and to undertake their roles and act in the best interests of the REIT securities holders to fulfil the objectives of the trust deed;

(b) if the trust is to be listed then to ensure that at all times each of the trustee and the REIT manager individually and jointly use their best endeavours to list and to maintain the listing of the scheme on the designated exchange; and

(c) comply with the connected persons obligations of the trust deed, the Act and Regulations to avoid any conflict of interest and ensure that neither the REIT securities holders nor the trust are disadvantaged by any transactions entered into.

16. INCOME AND CAPITAL GAINS ENTITLEMENTS AND DISTRIBUTIONS

The trust deed shall set out full particulars of–

(a) the distribution policy of the scheme;

(b) the entitlements of various classes of REIT securities holders to distributions of income, profits, capital gains or capital or from other sources;

(c) the REIT manager and trustees obligations under the Act and the Regulations in relation to distributions and-

(i) the discretion to vary distribution from the minimum specified under the Regulations; and

(ii) the implications of not making a minimum distribution.

17. INITIAL ISSUE OF REIT SECURITIES

In relation to the type of REIT and whether or not the REIT securities are to be listed the, trust deed shall include provisions that accord with the Act and the Regulations in relation to–

(a) the issue of REIT securities;

(b) issue of certificates and registration;

(c) circumstances in which repurchase or redemption may be required or sought and the REIT securities holder's rights, including any period in which repurchase or redemption cannot be sought or the trustee's or REIT manager's right to defer or suspend repurchase or redemption; and

(d) for unlisted REIT securities full particulars of pricing policy including, basis of calculation and regularity of' re-pricing.

18. NEW ISSUES OF REIT SECURITIES

In relation to the type of REIT and whether or not the REIT securities are to be listed, the trust deed shall include provisions that accord with the Act and the Regulations in relation to the–

(a) powers and procedures to be adopted to issue new REIT securities;

(b) entitlement of existing REIT securities holders to participate in any new issue; and

(c) pricing of any new issue.

19. RIGHT TO REDEMPTION OF UNITS OF REIT SECURITIES

(a) The trust deed shall clearly set out whether or not the holder of REIT securities has any right to request the trustee through the REIT manager to redeem it's holding of REIT securities in whole or in part.

(b) Where there is no right to request redemption, this fact shall also be stated in bold type and include a caution that the REIT securities' holders are not entitled to seek redemption.

(c) Where there is no ability to seek redemption then the trust deed should clearly set out the –

(i) terms on which redemption can be sought including, deferral periods, preconditions or trigger events, number, notice periods and redemption dates;

(ii) process and procedure for seeking redemption;

(iii) manner in which units are to be valued and the redemption price is to be calculated, and

(iv) the ability of the trustee or the REIT manager to limit, suspend or cancel redemptions.

20. APPOINTMENT OF VALUERS AND VALUATION OF ASSETS

The trust deed shall clearly set out, in accordance with the Act and Regulations–

(a) the requirements to appoint valuers and the obligations to conduct valuations in accordance with the minimum requirements of the Act and Regulations;

(b) the trustee and REIT manager's powers and obligations in relation to the appointment of valuers and the conduct of valuations; and

(c) a requirement for the trustee to have discretion to conduct a valuation in the interest of REIT securities holders, and specifically address the requirements in the case of connected person transactions.

21. TRUSTEE'S COSTS, FEES AND EXPENSES

The trust deed shall clearly set out, in accordance with the Act and Regulations the–

(a) trustee's entitlement to fees and to receive reimbursement or charge expenses and costs to the trust;

(b) method of calculation of the trustee's fees and basis of payment;

(c) entitlement of the trustee to be paid fees, costs and expenses in priority to any other payment;

(d) trustee's entitlement to an indemnity for fees, costs and expenses; and

(e) the entitlement of the trustee, to refrain from taking any action if there are insufficient funds in the trust to pay the trustees costs and expenses of taking such action and the REIT securities holders at a meeting of REIT securities holders called by the trustee fail to agree to pay the trustee's costs and expenses.

22. REIT MANAGER'S COSTS, FEES AND EXPENSES

The trust deed shall clearly set out, in accordance with the Act and Regulations the–

(a) REIT manager's entitlement to fees and to receive reimbursement or charge expenses and costs to the trust;

(b) costs and expenses that the REIT manager is entitled to recover and those which are included within its fee or which it is not entitled to recover from the trust;

(c) method of calculation of the REIT manager's fees and basis of payment;

(d) priority, if any, accorded to the payment of the REIT manager's fees, costs and expenses;

(e) entitlement or obligation of the REIT manager to defer or suspend receipt of fees; and

(f) any entitlement to an indemnity for fees, costs and expenses.

23. AMENDMENTS TO SCHEME DOCUMENTS

Set out the processes and procedures to be adopted in order for amendments to be made to scheme documents.

24. CONNECTED PERSON TRANSACTIONS

The trust deed shall set out in detail the powers and obligations of the trustee and the REIT manager, subject to the requirements of the Act and Regulations, to enter into transactions with connected persons and the processes and procedures to be adopted including, the requirement to call a meeting of REIT securities holders, the voting arrangements and the limits imposed on the ability of connected persons which are also REIT securities holders or connected persons to vote at such a meeting.

25. MEETINGS OF REIT SECURITIES HOLDERS

The trust deed shall set out the—

(a) obligations to convene an annual meeting of REIT securities holders and the rights of the REIT securities holders at such meetings; and

(b) obligations, processes and procedures for the calling of meetings by the Authority, trustee, REIT manager and REIT securities holders;

(c) the trust deed shall reflect the requirements of the Act and Regulations and incorporate as a minimum the rights, obligations and entitlements set out in the Regulations.

26. TRANSFERS AND RESTRICTIONS ON TRANSFERS

The trust deed shall include the processes and procedures for transfers which reflect the type of REIT and whether or not the REIT securities are to be listed, the trust deed shall include provisions that accord with the Act and the Regulations in relation to –

(a) rights to transfer units;

(b) the trustee's obligation to register a transfer; and

(c) restrictions on transfer, requirements for evidence of qualification and the trustee's obligation and powers not to register a transfer.

27. POSSIBLE FUTURE CONVERSION FROM D-REIT TO I-REIT OR ISSUE OF PROSPECTUS TO PERMIT ISSUE OR OFFER.

(a) Where the REIT is a D-REIT the trust deed may include provisions relating to the rights or obligations of the REIT manager to request the trustee to exercise the conversion rights contained in the Act and Regulations.

(b) Where provision is made for conversion, then the trust deed shall set out the processes and procedures to be adopted and the rights of REIT securities holders.

28. TERMINATION AND WINDING UP OF THE TRUST

The trust deed shall contain detailed provisions in relation to the termination and winding up of the trust which reflect the provisions of the Act and Regulations and the laws relating to trusts and include details of the —

(a) circumstances in which the trust may be terminated or wound up;

(b) rights of REIT securities holders to call for termination or winding up;

(c) requirement for calling of meetings and voting rights;

(d) distribution of the assets and priority of distribution; and

(e) payment of expenses and provision of indemnities.

SECOND SCHEDULE

FORM 1 [Regulation 16(1).]

THE CAPITAL MARKETS ACT
(Cap. 485A)

THE CAPITAL MARKETS (REAL ESTATE INVESTMENT TRUSTS) (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2012

APPLICATION FORM

AUTHORIZATION AS A REAL ESTATE INVESTMENT TRUST SCHEME

An application for authorization of a REIT scheme shall be submitted jointly by the promoter and the trustee. (*The material submitted shall be in two indexed binders. The pages of all documents submitted shall be numbered and a check list provided which cross references the relevant requirement of the Act, the Regulations and the applicable Schedule addressed)*.

Please include the information listed below (*separate sheets may be attached where necessary)*:

1. Name of the REIT.
2. State whether:
    a. authorization is being sought as a D-REIT or an I-REIT
    b. the REIT is structured as an open ended or closed ended fund), and
    c. the REIT is to be an I-REIT it is to be the subject of a restricted offer (Regulation 10).
3. Set out in summary form the objectives of the REIT.
4. Set out the name, telephone number, facsimile email address and registered office of the following parties and where a party is yet to be appointed, give details of the party proposed for appointment –
    (a) promoter or issuer, including directors and CEO;
    (b) transaction adviser;
    (c) trustee, including the directors, CEO and the designated representative/ compliance officer;
    (d) REIT Manager, including directors, CEO and the designated representative/compliance officer;
    (e) Property Manager, if any;
    (f) Structural Engineer;
    (g) Project manager certifier, if any;
    (h) Auditor and any reporting accountant;
    (i) The valuer;
    (j) *Shariah* advisor, if any;
    (k) legal adviser.
5. Please attach the following in support of the application—
    (a) Prior consents and approvals where these are required by the Act or the Regulations;
    (b) The Trust Deed or draft Trust Deed (*please see the First Schedule for the contents of a Trust Deed*);
    (c) a draft prospectus or an offering memorandum;
    (d) Management services agreement with the REIT manager or the proposed agreement;
    (e) Agreements with property manager or the proposed agreement;
    (f) Agreements with property manager certifier or the proposed agreement;

(g) Certified copies of valuations of real estate vested in, acquired, transferred or to be vested in, acquired or transferred to the REIT;

(h) Signed and dated legal opinion on the title of the real estate vested in, transferred or to be vested in, acquired or transferred to the REIT;

(i) Certified copy of the report of the structural engineer;

(j) Audited financial statements of the REIT manager for the financial year immediately preceding the application for authorization;

(k) Audited financial statements report of the trustee for the financial year immediately preceding the application for authorization;

(l) Consents of experts to inclusion;

(m) Certified copies of any other scheme documents and material contracts;

(n) In the case of an Islamic REIT a certificate of compliance with *Shariah* principles by the *Shariah* adviser; and

(o) the prescribed application fee.

DATED AT ..... THIS ..... DAY OF..... 20 .....

SIGNED BY:

1. _____
PROMOTER

2. _____
TRUSTEE

The application should be accompanied by the following directors' declaration:

AFFIDAVIT

We ..... as directors of ..... Limited and ..... Limited, being the promoter and trustee respectively of the proposed REIT scheme, do depose and say that we have read and understood the requirements of this application form and hereby certify under oath that the foregoing answers, statements and annexures thereto are true and correct to the best of our knowledge, information and belief.

SWORN at ..... this day of ..... 20 ..... BY:

1. _____
1st Deponent

2. _____
2nd Deponent

BEFORE ME:

COMMISSIONER FOR OATHS

FORM 2 [Regulation 18(1).]

THE CAPITAL MARKETS ACT
(Cap. 485A)

AUTHORISATION CERTIFICATE

The CAPITAL MARKETS AUTHORITY hereby certifies that

.....

.....

has received authorization as a Real Estate Investment Trust Scheme under the provisions of the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2012 issued under Section 12 of the Capital Markets Act (Cap 485A of the Laws of Kenya).

CONDITIONS:

.....

.....

Dated this ..... day of ..... 20 .....

.....

SEALED with the common
seal of the Capital Markets
Authority in the presence of:

....
Chairman Chief Executive

NB: *Please note that the above authorization should not be construed as a recommendation as to the merits of the above scheme and the Authority shall not be liable for any action as a result of this authorization.*

FOURTH SCHEDULE

[Regulation 24.]

CONTENTS OF PROSPECTUS OR OFFERING MEMORANDUM

1. APPLICATION

The provisions of this Schedule apply to all issues and offers of REIT securities which fall under the Act or the Regulations and apply irrespective of whether the issue or offer is made pursuant to a prospectus or an offering memorandum.

The assets to be included in real estate investment trust scheme and the activities of the scheme may vary significantly. Consequently there is a need for flexibility in what is required to be disclosed. It is, however, the obligation of the issuer, the trustee and experts whose reports are contained or summarised in the prospectus or offering memorandum to ensure that there is full, adequate and proper disclosure to potential investors and REIT securities holders and that the structure of the transaction and the terms of all the scheme documents comply with the Act and the Regulations.

2. CONSIDERATION OF TYPE AND FINANCIAL EDUCATION OF POTENTIAL INVESTORS

In preparing the prospectus or offering memorandum consideration shall also be given to the type and level of financial education of the persons to whom the issue or

offer is to be made; the level of disclosure required; the language used, and the level of explanation provided.

3. POWER OF AUTHORITY TO GRANT EXEMPTIONS OR VARIATIONS

The Authority may grant exemptions or permit variations from the requirements of this Schedule where it is of the opinion that such exemption or variation is required given the particular nature of the assets or the activities of the real estate investment trust or scheme or to address the conversion of a D-REIT to an I-REIT or to permit a restricted I-REIT to be listed provided that such exemption or variation would not disadvantage REIT securities holders or potential investors in REIT securities.

Authority may require inclusion of additional information or material or the omission of information or material or other changes be made to a prospectus or offering memorandum and may impose conditions on its approval.

4. REFERENCE TO ASSETS OF A REIT

A reference in this Schedule to assets being assets of the REIT means assets vested, acquired, transferred or held or to be held by the trustee under the terms of the trust deed for investors in REIT securities as REIT securities holders and as beneficiaries of the real estate investment trust.

5. MINIMUM REQUIREMENTS

The Schedule sets out minimum requirements for matters to be included in a prospectus or offering memorandum. The requirements do not reduce or in any way impact on the overriding obligations to provide disclosure as provided for in the Act, the Regulations and the law of Kenya.

PART 1

GENERAL REQUIREMENTS, ISSUER AND PARTIES RESPONSIBLE

1. The Schedule include at the beginning of the document a—
    a. Glossary of defined terms and abbreviations;
    b. Table of Contents;
    c. Whether the REIT is a D-REIT or an I-REIT or issued in connection with a D-REIT converting to an I-REIT or a restricted I-REIT becoming unrestricted, etc;
    d. A clear statement of the persons to whom the offer is made or to whom the issue of REIT securities can be made and of the qualifications, if any, to be met in order for a person to invest;
    e. The objectives of the REIT;
    f. Summary of the number, price and class of REIT securities being issued or offered and the rights attaching thereto;
    g. Summary of the transaction, REIT securities and key risks with a cross reference to the pages of the prospectus or offering memorandum which includes a warning in bold type-face that this is only a Summary and investors should read and understand the whole prospectus or offering memorandum;
    h. Statement as to whether or not the REIT securities are to be listed or not and whether or not a REIT securities holder can seek redemption, the conditions attached to seeking redemption and include a prominent warning to investors in bold type-face in relation to the potential liquidity of the investment in REIT securities;
    i. The ongoing role, if any, of the promoter or other issuer and investment in the REIT;
    j. Structure diagram which summarises the parties, relationship, roles of parties and cash flows;

k. A statement as to any financial structuring mechanisms utilised or incorporated in the trust structure and the potential impact on performance and on future distributions;

l. Summarise the obligations of the trustee and REIT manager under the Act and the Regulations including eligible investments, source of income and minimum distributions and the impact on the taxation of the REIT or on distributions if these requirements are not complied with.

2. All pages shall be consecutively numbered and a type-face of not less than Times New Roman 10 points used.

3. The names, addresses and telephone numbers and email contacts of the promoter or other issuer or offeror, of each person associated with the issue or offer, the prospectus or offering memorandum or any part thereof, and their functions and shall include–

(a) The Promoter or other issuer or offeror responsible for the issue and the offer and where a company or corporation the directors of such a person;

(b) The transaction adviser;

(c) The trustee and the trustee's directors, compliance officer and other key personnel;

(d) The REIT manager and the REIT manager's directors, compliance officer and other key personnel;

(e) Any property manager appointed or to be appointed by the REIT manager;

(f) The structural engineer;

(g) Any project manager certifier;

(h) The valuer appointed by the trustee;

(i) The auditor appointed by the trustee;

(j) The reporting accountant, if any, not the auditor;

(k) The REIT securities registrar;

(l) The legal adviser appointed by the trustee;

(m) Other experts and advisers whose names appear in the prospectus or offering memorandum or who have been appointed;

(n) For an Islamic REIT details of the *Shariah* advisor.

4. In all cases the prospectus or offering memorandum shall contain on the cover and in a prominent position in the document the words:

"In making your investment decision to invest in REIT Securities you should be aware that there is very limited, if any, recourse to the assets of the issuer or the trustee.

Your investment in REIT securities and as a REIT securities holder in the REIT is as an equity investor. Distributions and return of capital is not guaranteed and are entirely dependent on the performance of the assets of the real estate investment trust.

Your rights in most cases will be limited solely to the assets of the real estate investment trust.

If the trustee is authorized to borrow on behalf of the trust then your rights to distributions and to the assets will rank after the payments to lenders.

The trustee, REIT manager and other parties are also entitled to receive payment of fees and expenses ahead of payments to REIT securities holders who invest in REIT securities."

5. The date of publication of the prospectus or offering memorandum and the period for which the offer is open and how applications can be made. A statement that no REIT securities can be issued based on this prospectus or offering memorandum wore than six months after the stated date of the publication of the prospectus or offering memorandum.

6. A statement that the scheme has been authorized by the Authority but that authorization by the Authority is not a recommendation or a statement by the Authority in relation to the suitability of the REIT for investment or as to the risks AND that the Authority has no liability.
7. A statement that the prospectus or offering memorandum has been approved by the Authority and the limitation on the liability of the Authority but that approval by the Authority is not a recommendation or a statement by the Authority in relation to the suitability of the REIT for investment or as to the risks AND that the Authority has no liability.
8. Include a statement in the following words:

"If you are in any doubt about the contents of this document or the nature or the transaction or investment or the risks attached to the investment then you should consult a person licensed under The Capital Markets Act who specialises in advising on investments in or acquisitions of securities, including REIT securities in schemes."

9. For an Islamic scheme the following statement shall also be included:

The [.....] real estate investment trust scheme has been certified as being *Shariah* compliant by the *Shariah* Adviser appointed to the scheme."

10. A statement as to the full accountability for liability for statements and misrepresentations included in the prospectus or offering memorandum and omissions by the promoter, issuer and the liability of other parties and experts for statements made by them and inclusions, misrepresentations and omissions.
11. Include a statement, signed by each of, the directors of the issuer or offeror, the transaction adviser and the legal adviser appointed by the trustee to act on behalf of REIT securities holders that–
    a. the prospectus, offering memorandum and the scheme documents comply with the Act and the Regulations, and
    b. in the case of the issuer and the directors of the issuer that they, collectively and individually, and having made all reasonable enquiries confirm to the best of their knowledge and belief, that there are no false or misleading statements or omissions of other facts which would make any statement in the prospectus or offering memorandum false or misleading.

PART 2

THE STRUCTURE OF THE TRANSACTION, THE TRUST, THE FUND, SCHEME & NATURE OF THE REIT SECURITIES BEING ISSUED OR OFFERED & OBJECTIVES

1. An explanation of the nature of the investment being offered as REIT securities in the form of units in a trust established as a real estate investment trust and an authorized real estate investment trust scheme authorized by the Authority, including–
    (a) an explanation of the nature of a trust and the respective roles of the trustee and the REIT manager;
    (b) detail of the REIT securities being issued or offered, their class and the rights attached thereto and restrictions on the persons to whom an issue or an offer can be made;
    (c) details of any restrictions on the transferability of REIT securities;
    (d) the term of the trust;
    (e) whether the trust is to be open or closed and the implications;
    (f) listing and redemption rights and entitlements;
    (g) the classification as either a D-REIT or an I-REIT or as a D-REIT converting to an I-REIT or a restricted I-REIT converting to an unrestricted I-REIT;
    (h) the objectives of the trust and of the scheme;
    (i) whether the REIT is an Islamic REIT;

(j) a brief description of the investment strategy of the REIT manager to meet the objectives of the fund and the scheme;

(k) the number and price of the REIT securities being issued or offered;

(l) the use to be made of the proceeds of the issue or offer;

(m) how an application for REIT securities can be made and the closing date for applications;

(n) the costs, fees and charges associated with the establishment of the REIT and the scheme and by whom these are to be paid.

2. Include details of the requirements for continuing as an authorized real estate investment trust scheme and the requirements including those relating to investment in eligible assets, income and distribution of the Act and Regulations and the taxation implications for the scheme and on distributions for failure to comply.

PART 3

ELIGIBLE ASSETS OF THE TRUST AND PROPOSED ACTIVITIES OF THE SCHEME

1. Include a summary of the eligible or permitted assets of the specific REIT including restrictions and the focus and objectives of the fund and the scheme. These must comply with the Act and the Regulations but may impose additional restrictions on the sectors or type of assets that the trustee is authorized to invest in and the activities of the scheme, including the trustee's power to borrow and the level of development and construction activities that an I-REIT may engage in.
2. Detail the assets vested in the Trust, when and from whom acquired or transferred and the price paid and if not in cash the consideration paid, including by way of issue of REIT securities or otherwise.
3. Include details of the real estate assets that it is proposed to invest in and/or the initial development and construction activities that it is initially proposed to engage in. These shall be supported by–
   (a) valuations and structural engineer's reports to be summarised in the prospectus or offering memorandum;
   (b) full copies of the valuations and reports shall be included in the list of documents available for inspection; and
   (c) summarized details of the legal opinion in relation to transfer or acquisition of the real estate and the title shall be included in the prospectus or offering memorandum with full copies available for inspection.
4. Detail the strategy of the REIT manager in implementing the objectives.
5. Where the REIT is a D-REIT detail–
   (a) the development and construction activities to be undertaken and the budget and estimates for undertaking such activities;
   (b) consents and approvals to be obtained and the time frame for such;
   (c) the time frame over which the total development and construction activities are intended to be conducted;
   (d) the REIT manager's strategy as to sale or lease of the completed properties or a combination of both and the time frame until it is anticipated that cash flows will be generated;
   (e) include details of any foreign exchange exposure, for example, as regards the acquisition of any plant or equipment or building materials; and
   (f) include details of any structural engineer's report or of a quantity surveyor or of any project manager.
6. Details of permitted non-real estate assets and restrictions on investment and REIT manager's strategy as regards such investment.
7. Risk management strategies to be employed by the REIT manager.
8. If the REIT is an I-REIT but proposes undertaking development and construction activities within the limit provided for in the Act and Regulations detail the

development and construction activities to be undertaken, consents and approvals required, and the budget and estimates for undertaking such activities and the time frame over which such activities shall be conducted and the time frame until it is anticipated that cash flows will be generated and the potential impact of delays or cost increases on the performance of the scheme and on distributions and the exposure, if any, to foreign exchange risk.

9. Include details of the level of borrowings and the assumed terms and interest rates.
10. Include details of the limitations contained in the Act and Regulations depending on the classification of the REIT, on borrowing levels and on the REIT manager's strategy on borrowings and level of gearing of the assets of the REIT.
11. Include a statement that material changes can only be made to the objectives and eligible assets of the REIT if authorized by the Act and the Regulations and approved by the REIT securities holders.
12. An Islamic REIT shall also include details of the *Shariah* compliance process adopted to ensure compliance and the limits imposed.

PART 4

THE REIT MANAGER AND ANY PROPERTY MANAGER

1. Provide details of the REIT manager including, of directors and key personnel and their experience in the management of property, and resources and experience in the conduct of development and construction activities.
2. Outline the role of the REIT manager and its obligations as a fiduciary to REIT securities holders.
3. Detail how the REIT manager proposes to fulfil its role and obligations and appointments of agents, including a property manager or structural engineer or project manager, or delegations it has made or it proposes to make.
4. Policy on the making of recommendations to the trustee of distributions and the implications of a lower than the prescribed minimum distribution being made.
5. Include details of any property manager and its experience and of the fees to be paid to any property manager by the REIT manager.
6. Include as an Appendix the last audited accounts of the REIT manager and any property manager.
7. Include details of the term of the appointment, rights to reappointment, rights to resign and the rights to remove the REIT manager and its rights to fees and to payment or reimbursement of expenses.
8. Include a statement as to the REIT manager's prior or any ongoing association with the promoter, issuer or any other party associated with the REIT or the real estate assets transferred or to be acquired and its ongoing connections or roles.

PART 5

THE TRUSTEE

1. Details of the trustee including directors, name of its chief executive officer and of the compliance officer.
2. Include details of the trustee's experience, resources and its other key personnel.
3. Include a description of the trustee's role, duties, responsibilities and obligations as a fiduciary and its powers.
4. Disclose the trustee's powers to recommend a lower distribution and the implications of a lower than the prescribed minimum distribution being made.
5. Disclose any potentially conflicting or competing roles and detail any current, pending or threatened litigation against the trustee which might materially affect the resources or financial capacity of the trustee to fulfil its role or responsibilities as the trustee of the REIT.
6. Include as an Appendix the last audited accounts of the trustee.

PART 6

KEY TERMS OF THE TRUST DEED AND SCHEME DOCUMENTS

1. A summary of the key aspects of the trust deed shall be included. This summary shall as a minimum include details of (where the required details have been disclosed elsewhere in the document then a cross reference may be included in this Part)–
   (a) The trustee's, REIT manager's, valuers', auditor's and structural engineer's and any project manager's roles, responsibilities and obligations.
   (b) The liabilities of the trustee and REIT manager and the invalidity of any purported limitation on fiduciary liability.
   (c) The powers of the trustee and REIT manager.
   (d) The requirement to appoint and provisions relating to the removal, retirement or replacement of–
      (i) the trustee;
      (ii) the REIT manager;
      (iii) an auditor;
      (iv) valuers;
      (v) structural engineers; and
      (vi) project manager.
   (e) The obligation to conduct valuations and frequency of valuations.
   (f) The obligation to call meetings and the rights of REIT securities holders to call meetings and receive reports and financial statements.
   (g) Rights of REIT securities holders, including limitations of those rights and decisions or actions requiring the approval of REIT securities holders.
   (h) Requirements for listing, if any.
   (i) Rights and limits on the ability to call for or to obtain redemption of REIT securities.
   (j) Circumstances in which connected persons are not permitted to exercise voting rights in respect of REIT securities held by them.
   (k) Maximum fees and charges permitted by the trust deed and payable by investors either directly or indirectly or out of the assets of the trust.
   (l) Permitted expenses, costs and charges payable out of or reimbursable from the assets of the fund.
   (m) The termination or winding up of the trust and scheme.
   (n) Where the REIT is an Islamic REIT the requirements relating to maintenance of status and the role of the *Shariah* Adviser and provision of statements of compliance and the obligations of the trustee, REIT manager and any property manager to ensure that the REIT remains *Shariah* compliant including, as regards investment in real estate and non-real estate assets, renting of premises only for permissible uses and within acceptable limits, financing through Shariah compliant Islamic instruments and through effecting insurance of the assets with Takaful schemes.
2. Shall include a summary of the material terms of other scheme documents including any documents appointing or governing the relationship with the REIT manager or any other party or adviser or underwriter.

.

PART 7

THE ASSETS, VALUATIONS & BASIS OF VALUATION & HISTORIC INFORMATION ON THE INCOME & EXPENSES ASSOCIATED WITH THE ASSETS

1. Included shall be full details of the real estate and other assets vested or to be vested in acquired or transferred to the REIT within the first year and the proposed dates of vesting, transfer or acquisition.
2. The implications, under Regulation 66 or 77, of the failure to invest within one hundred and eighty days should clearly be set out.
3. The details required will vary significantly depending on the nature of the assets and the real estate sector. For example, the considerations for investment in office buildings will be largely determined by the market for office accommodation and the state of the economy, this contrasts with real estate investments in, for example, residential housing, hospitals, hotels, retail shopping malls, factories or storage or ports or other sectors. In each case the key drivers will vary and the information disclosed will need to be adapted. By way of an example only the prospectus or offering memorandum shall include–
    (a) Title particulars of real estate.
    (b) Details of any encumbrances, easements or restrictions on use.
    (c) Confirmation that the REIT owns or will own on completion of the vesting, transfer or acquisition the whole of each real estate asset or if not detail extent and confirm compliance with the requirements of the Act and Regulations.
    (d) Description of any buildings or fixtures erected on any land together including age, with details of the structural engineer's report on the real estate, including details of monies which the structural engineer estimates need to be spent on the real estate assets in order to being them to a reasonable state of repair together with estimates of ongoing maintenance requirements for and costs.
    (e) Photographs may be included but these shall be not more than six months old.
    (f) Details of the price for which the property was acquired or the value of the consideration and the terms of any vesting, transfer or acquisition or proposed, including the issue of REIT securities and the basis on which the price paid or consideration provided was determined.
    (g) A full copy of the structural engineer's report shall be included in the documents available for inspection.
    (h) Details of current usage and permitted usage for each property and lettable area or other relevant metric.
    (i) If the real estate vested in or to be acquired by or transferred to the REIT is currently leased then, details of –
        (i) existing and contracted tenancies including, area tenanted, number of leases, term for each lease, an expiry profile for leases as a whole, gross rental income and concentrations, details of rent reviews and occupancy rates for prior three years (where applicable);
        (ii) historic vacancy factors;
        (iii) the levels of rent relative to the current market;
        (iv) revenues received for the past three years where available;
        (v) rents in arrears or written off;
        (vi) the operating costs including, maintenance;
        (vii) provision of depreciation, amortization of assets or for replacement of capital; and
        (viii) profit before and after tax.

(j) Where the transaction involves a sale and lease back or there is a lease to the promoter or other connected party then details of the basis of ascertaining the rental and an estimate from the principal valuer of the market rent.

(k) If the real estate vested in or to be acquired by or transferred to the REIT is not currently leased is proposed to be leased then details of the estimated gross rental and terms and an estimate from the principal valuer of the market rent and an estimate of the time required and fees, costs and expenses estimated to be incurred in order to lease the real estate.

(l) In the case of real estate being acquired or transferred-

(i) the stage of acquisition or transfer;

(ii) from whom it is being acquired or transferred;

(iii) conditions and terms of the acquisition or transfer including price or other consideration;

(iv) scheduled date for completion;

(v) details of the valuations.

4. Where a REIT is a D-REIT or is an I-REIT that proposes to undertake development and construction activities then the prospectus or offering memorandum shall include–

(a) Details of the real estate on which the development or construction is to be undertaken including as applicable the details required in 1, above;

(b) Details of the price for which the property was acquired or the value of the consideration and the terms of any vesting, transfer or acquisition or proposed, including the issue of REIT securities and the basis on which the price paid or consideration provided was determined;

(c) Details of the project including intended usage of the real estate on completion and the property manager's strategy for marketing the real estate or acquiring tenants;

(d) A detailed description of the development or construction to be undertaken and of any report or estimates by the project manager;

(e) Details of approvals and consents required and the time frame for obtaining;

(f) A budget, work plan and time-frame to undertake the development and construction together with details of all consents and approval required and costings;

(g) An assessment from the structural engineer and the project manager as appropriate as to whether or not it considers the budget and costings for the development and/or construction are reasonable;

(h) An assessment by the REIT manager of the market to sell or lease up the real estate when completed together with any expert assessments of the market.

5. A table reflecting the objectives and classification of the REIT that sets out the key assumptions underlying any projections included in the prospectus or information memorandum and a sensitivity analysis of the impact on income, earnings, profits and distributions to implement the assumptions including–

(a) Failure to let up to assumed level within the scheduled time;

(b) Failure to achieve assumed rents;

(c) Cost over runs for development and construction;

(d) Time overruns for development and construction;

(e) Changes in interest rates;

(f) The impact of any financial structuring;

(g) Any other material factors.

6. Details of the valuations obtained in respect of the real estate and other assets vested in or proposed to be acquired by or transferred to the REIT including basis of valuation.
7. The date of each valuation and the basis of valuation.
8. Policy in relation to revaluations and requirements of the Act and Regulations for revaluations.
9. Where the trust deed authorizes the trustee of the REIT to invest in non-real estate assets detail the investments in which the trustee is authorized to invest, the investment strategy and trading policy that the REIT manager proposes to adopt and the timing of valuations and basis of valuation.
10. Where the REIT is an Islamic REIT the prospectus or offering memorandum shall include details of the assessment by the *Shariah* Adviser of the real estate vested in the REIT or to be acquired or transferred to the REIT together with a list of non-permissible activities and tenancies and detail the REIT manager's strategy to comply with *Shariah* requirements including as regards financing of the REIT through *Shariah* compliant Islamic instruments, the investment of monies not invested in real-estate and the insurance of the assets through Takaful schemes.

PART 8

APPOINTMENT & ROLE OF STRUCTURAL ENGINEER & PROJECT MANAGER CERTIFIER

1. Details of the structural engineer including details of experience, resources and key personnel.
2. Include a description of the structural engineer's role, duties, responsibilities and obligations.
3. Disclose any potentially conflicting interests or competing roles.
4. Details of the appointment of any project manager certifier including, details of experience, resources and key personnel.
5. Include a description of the project manager certifier's role, duties, responsibilities and obligations.
6. Disclose any potentially conflicting interests or competing roles.

PART 11

THE ROLE OF THE PROMOTER OR ISSUER & ONGOING RELATIONSHIP & HOLDINGS OF REIT SECURITIES, INCLUDING LOCK-UP PERIODS

1. Provide details of the promoter or issuer.
2. Include details of any property vested or to be transferred or acquired by the REIT and details of the price paid in cash or REIT securities or other consideration or of value attributed.
3. Include a summary of the requirements under the Act or Regulations for the promoter to maintain an investment in REIT securities in the REIT.
4. Include details of the percentage and value of REIT securities held or to be issued to the promoter and obligations as regards retention and lock up periods.
5. Provide details of the ongoing relationship of the promoter or of persons connected with the promoter with the REIT and proposed roles, including any option or right of first refusal to acquire real estate assets.
6. Details of the promoter's capacity, if any, to fund overruns and to receive additional REIT securities as a consequence. Unless the promoter has undertaken to fund any cost overruns then it should be clearly stated in bold type that the promoter may but has no obligation to fund cost overruns.

PART 12

CONNECTED PARTY TRANSACTIONS

1. Include details of any existing relationships and potential conflict of interest situations together with the steps taken to address such conflicts or potential conflicts and any proposed connected party transactions including roles to be undertaken by connected persons, e.g. as REIT manager.
2. Detail the processes to be adopted to address potential conflicts of interest and in particular conflicts with connected persons.
3. Detail the rights of the REIT securities holders to vote on proposed connected person transactions.

PART 13

KEY DATA & MARKET

1. Key information shall be included on the real estate market in which the REIT proposes to invest.
2. The data that is relevant will vary significantly depending on the sector of proposed investment and classification of the REIT and the activities in which it proposes to involve. Data might include but not be limited to, brief information on the following and references to–
    (a) Relevant details on supply and demand in the market for real estate in specified locations.
    (b) Price trends.
    (c) Rental property supply and demand in specified locations.
    (d) Rent trends.
    (e) Impact of the economy on demand for real estate, real estate prices and rents.
    (f) Key drivers of the income from the sector being invested in or on capital gains or profits from sale.
    (g) Government policies and their impact.
3. Where the REIT is an Islamic REIT the information shall take account of any limits or special requirements resulting from the need to maintain *Shariah* compliance.

PART 14

DETAILS OF ANY FINANCIAL STRUCTURING INCORPORATED OR TO BE INCORPORATED IN THE SCHEME & POTENTIAL IMPACT ON PERFORMANCE OF SCHEME AND FUTURE DISTRIBUTIONS

Provide as required by the Act and Regulations details of any financial structuring as required by Regulation 36.

PART 15

RISKS

1. The prospectus or offering memorandum shall contain information on the risk factors relating to investment in REIT securities. The risks disclosed shall include the risks–
    (a) generally of investment in REIT securities;
    (b) associated with the particular REIT given its structure, classification and objectives and strategy; and
    (c) specifically associated with the investment portfolio or assets of this REIT and its objectives and proposed activities.
2. Risks, where possible, shall be listed based on potential severity and impact.
3. Where appropriate and possible a sensitivity table or other method for quantifying the risk and its potential impact shall be included.

4. For major risks any mitigating factors or risk management mechanisms employed or proposed by the REIT manager shall be disclosed.
5. Disclaimers included shall not be so wide as to cause the disclosure of the risks to be of little or no benefit to investors in REIT securities.

PART 16

TRUSTEE'S POWER TO BORROW ON BEHALF OF THE TRUST & CHARGE OR PLEDGE ASSETS AS SECURITY

Provide details of–

(a) the trustee's powers under the trust deed to borrow or raise finance for the purposes of the trust and to provide security for such borrowing by charging or pledging the assets of the REIT;

(b) the limits contained in the Act or Regulations on the trustee's powers;

(c) circumstances, if any, in which REIT securities holder may be required to vote to approve a borrowing by the trustee;

(d) the implications of the trustee exceeding the limits in the Act or Regulations or the limits set out in the trust deed.

PART 17

EXPERTS OPINIONS AND LEGAL OPINIONS

1. The prospectus or offering memorandum shall include a summary of any opinions obtained from experts or upon which the promoter or issuer has placed reliance for statements made in the prospectus or offering memorandum and the reports shall be included in the list of documents available for inspection.
2. Details of the legal opinion obtained by the trustee in relation to the title of any real estate asset vested in or to be acquired by or transferred to the REIT, compliance with the Act and Regulations and in respect of any other matters required by the trust deed, the scheme documents, the Act or Regulations.
3. Where a prospectus or offering memorandum contains a summary of or excerpt from an expert's report, the complete report of which is included as an additional document available for inspection then there shall also be included a statement from that expert stating whether or not the report was prepared for inclusion in the prospectus or offering memorandum and whether or not the summary or excerpt accurately reflects their opinion and is relevant in the context in which it is used.
4. All experts' reports shall be signed by the expert and dated not more than ninety days prior to the date of publication of the prospectus or offering memorandum. Reports may be updated by the expert confirming that the opinion is unchanged and is still relevant.
5. Experts' opinions that include disclaimers that are so wide that the report is of little or no value to potential investors in REIT securities may be misleading and shall not be included.

PART 18

FEES, COSTS AND EXPENSES

1. Include details of all fees, costs and expenses payable in respect of the issue or offer of the REIT securities including underwriting fees and amounts reimbursable to any party, the manner of calculation together with details of who is responsible for the payment of such.
2. Provide details of all fees, costs and expenses payable by the trustee out of the assets of the trust and the manner of their calculation.
3. Include a statement of the estimated MER of the REIT.
4. Provide details of the limits imposed by the Act or Regulations on the charging of fees or the reimbursement of expenses.

PART 19

DISTRIBUTION POLICY AND FACTORS DETERMINING DISTRIBUTION

1. Provide details of the distribution policy set out in the trust deed.
2. Include a statement of the requirements under the Act or Regulations to make distributions and of the impact of the failure to make minimum distributions.
3. Detail the powers and obligations of the REIT manager and the trustee with respect to distributions and any requirements for a vote of REIT securities holders.

PART 20

TAXATION, DISCRETION AS REGARDS DISTRIBUTIONS & IMPLICATIONS FOR TAXATION TREATMENT OF THE REIT AND DISTRIBUTIONS

1. Provide details of the taxation treatment of the income, trading profit, capital gains and profit of the REIT and of the taxation of distributions including withholding tax obligations.
2. Provide details of any expert opinion obtained and addressed to the trustee for the benefit of the investors in REIT securities to support the conclusions set out in 1, above. The full opinion shall be included in list of additional documents available for inspection.
3. Provide details of the circumstances in which such taxation treatment could vary and in particular of the implications of failure to comply with specific provisions of the Act or the Regulations.

PART 21

TRANSFERABILITY OF REIT SECURITIES, LISTING AND REDEMPTION

Given the nature of the assets in which REITs invest the ability of the REIT manager to provide for redemptions is in most circumstances extremely limited and redemption may not be available or only available after the happening of specified trigger events.

1. Include details of any restriction on the transferability of the REIT securities.
2. Include details of the intention to list the REIT securities on a securities exchange and the persons who can trade on such an exchange.
3. Where there is no right to request redemption then this fact should also be stated in bold type and include a caution that the REIT securities' holders are not entitled to seek redemption.
4. Where redemption is provided for then include an explanation of how the REIT manager and the trustee are to fund redemptions and their powers to limit or freeze redemptions.
5. Where there is an ability to seek redemption then the trust deed should clearly set out the–
    (a) terms on which redemption can be sought including, deferral periods, preconditions or trigger events, number, notice periods and redemption dates;
    (b) process and procedure for seeking redemption;
    (c) manner in which units are to be valued and the redemption price is to be calculated; and
    (d) the ability of the trustee or the REIT manager to limit, suspend or cancel redemptions.
6. Where REIT securities are not to be listed then a prominent warning in bold type-face shall be included warning that the investment has limited, if any, liquidity and drawing attention to the rights to redemption, if any, or the lack thereof.

PART 22

ACCOUNTS AND PRO FORMA ACCOUNTS AND FINANCIAL STATEMENTS

1. All pro forma accounts and the pro forma financial statements included shall be identified as being pro forma only and to be clearly labeled in bold type-face as having been included for illustrative purposes only and being based on a number of assumptions which may or may not eventuate.
2. A statement shall be included that the pro forma accounts and balance sheet have been prepared in accordance with IFRS.
3. Where forecasts are included based on assumptions then in addition to the assumptions being clearly identified and highlighted a sensitivity table or tables shall be included to indicate the implications of changes in the key assumptions or variables.
4. Any accounts or financial statements of the trustee or REIT manager should be clearly labeled as such and a statement included in bold type that the investor in REIT securities only has recourse to the assets of the real estate investment trust and not to the assets of the trustee or the REIT manager.

A. *For newly formed I-REIT with income producing properties*

1. Where a newly formed REIT has property vested in it or real estate assets have or are to be acquired or transferred to the REIT which assets have had an income stream then the prospectus or offering memorandum shall include by way of illustration only pro forma financial statements prepared on the assumption that the REIT had been in existence for the three years immediately preceding the date of the prospectus or offering memorandum or if the real estate assets had not been income producing for three years then for such lesser period.
2. The pro forma financial statements shall–
    a. be clearly identified as pro forma accounts prepared for illustrative purposes only;
    b. be prepared based on IFRS and show the income and all outgoings and expenses of the real estate assets including, maintenance, capital works and depreciation or capital allowances or permissible allocations to reserves or sinking funds for the replacement of capital assets and include estimates for fees and expenses that would have been payable for, for example, trustee's fees, REIT manager's fees, valuation costs and audit costs if the real estate assets had been assets of the REIT during that period. Allowance shall also be made for the any costs of the establishment of the REIT and for acquisition costs if these are to be borne by the REIT;
    c. clearly identify variations to take account of REIT specific fees, charges, expenses and other adjustments.
3. Provision shall be made in the pro forma accounts for the payment of the minimum distribution provided for in the Act or Regulations.
4. Where the I-REIT proposes to undertake any development or construction activities within the first year after the date of the prospectus or offering memorandum then the impact of such activities on returns shall be illustrated through adjustments made to the last year of the pro forma accounts. These adjustments and the underlying assumptions on which they are based shall be clearly identified.
5. The objective of the pro forma accounts is to illustrate the returns that would have been received if the real estate had been assets of the REIT for that period and an analysis of the performance of the assets shall be included.

B. *For a newly formed I-REIT with real estate assets a substantial proportion of which have not previously been income producing*

1. Pro forma accounts, for illustrative purposes only, based on forecasts for the next full year of operation shall be included.

2. These shall be based on the reasonable expectations of the promoter and REIT manager and there shall be clear identification and differentiation of:–
    a. Known information based, for example, on leases entered into, and existing contracts and finance charges;
    b. Assumed income and costs charges, expenditure and provisions for e.g. depreciation etc. any proposed development and construction costs and expenses including allowances for over runs, and
    c. The underlying assumptions on which income or expenses are based shall be clearly stated.
3. Provision shall be made in the pro forma accounts for the payment of the minimum distribution provided for in the Act or Regulations.

C. *For a newly formed D-REIT with real estate assets in a development and construction phase a substantial proportion of which have not previously been income producing*

1. Include pro forma accounts, for illustrative purposes only, based on forecasts for the next full year of operation.
2. These shall be based on the contracted work, known liabilities and commitments, budgets and work plans for the period and the reasonable expectations of the promoter and REIT manager and there shall be clear identification and differentiation of–
    (a) known information based, for example, on leases entered into, and existing contracts and finance charges;
    (b) assumed development and construction costs and expenses including allowances for over runs, any income and costs charges, expenditure and provisions for e.g. depreciation etc.; and
    (c) the underlying assumptions on which costs income or expenses are based shall be clearly stated.

D. *For a D-REIT converting to an I-REIT or a restricted I-REIT which proposes to become unrestricted*

1. Include, for illustrative purposes only, a pro forma accounts based on the three years prior audited financial statements prepared by the trustee in respect of the REIT, adjusted only to take account of the additional costs, if any, that would have been incurred if the REIT had been an I-REIT or an unrestricted I-REIT for the period.
2. Provision shall be made in the pro forma accounts for the payment of the minimum distribution, if any, provided for in the Act or Regulations.

E. *Pro forma Financial Statements for all classifications of REITs*

1. Include, for illustrative purposes only, a pro forma balance sheet as at the projected date of the closing of the issue or offer and adjusted for, as appropriate–
    (a) vesting of assets and proposed contracted acquisitions;
    (b) proceeds from the issue of REIT securities and proposed use of funds;
    (c) borrowings contracted or proposed to be entered into on closing;
    (d) contracted development and construction activities;
    (e) other contractual obligations;
    (f) requirements for minimum distributions, if any, provided for in the Act or Regulations; and
    (g) costs of acquisitions and the issue.
2. All adjustments and underlying assumptions shall be clearly identified and highlighted.
3. The pro forma balance sheet shall be accompanied by a reporting accountant's or auditor's letter confirming that it has been prepared as a pro forma balance sheet in accordance with IFRS and the accounting policies recommended by the REIT manager and adopted by the trustee on behalf of the REIT.

PART 23

MEETINGS, REPORTS AND ACCOUNTS & REIT SECURITIES HOLDER'S RIGHTS

1. The prospectus or offering memorandum shall include in summary form details of –
   (a) requirements for meetings and the rights or REIT securities holders to require the calling of meetings;
   (b) provisions as to notice required for meetings and procedures and voting and the voting level required to pass ordinary and special resolutions;
   (c) list those matters which require a special resolution;
   (d) list those matters which are required to be put to a vote of REIT securities holders;
   (e) REIT securities holder's right to receive reports and financial statements;
   (f) include a brief statement of the key rights of REIT securities holders.
2. Where any matters required to be disclosed in this Part have been included in another Part then they may be addressed in this part by the inclusion of a cross-reference.

PART 24

ADDITIONAL INFORMATION

1. The prospectus or offering memorandum shall disclose any additional information relevant to a potential investor in REIT securities where the failure to include could constitute an omission or lead to information contained being misleading.
2. In particular there shall be full disclosure of all material contracts (including contracts not reduced to writing).

PART 25

CONSENTS

1. The prospectus or offering memorandum shall include a statement of consent from all relevant parties and from all parties named in the document consent in to their being named in the document in the form and context in which it appears together with the statement that they have not subsequently withdrawn their consent.
2. Signed copies of consents, dated not more than thirty days prior to the date of publication of the prospectus or offering memorandum shall be included in the list of documents available for inspection.

PART 26

DOCUMENTS AND ADDITIONAL DOCUMENTS AVAILABLE FOR INSPECTION

1. The prospectus or offering memorandum shall contain a statement that for a period of not less than three years from the date of the approval of the prospectus or offering memorandum by the Authority copies of the documents listed in the prospectus or offering memorandum shall be available for inspection at the registered office of the trustee or such other address as the Authority may approve and subsequently shall be made available by the trustee for inspection for a period of eight years from the date of approval of the prospectus on the giving of fourteen days' notice in writing to the trustee.
2. Documents shall include –
   (a) the trust deed and any supplemental deeds;
   (b) each contract disclosed in the prospectus or offering memorandum (including agreements with the REIT manager or any loan or funding agreements), and in the case of a contract not reduced to writing, a memorandum setting out the parties, date and full particulars;
   (c) all valuation reports obtained in respect of the real estate assets;
   (d) structural engineer reports;
   (e) any reports by any project manager certifier;
   (f) legal opinions;

(g) expert reports;

(h) where applicable the audited annual and semi-annual or interim reports and financial statements for the trust for whichever is the later of the three years prior to the date of approval of the prospectus or offering memorandum or from the date of formation of the trust;

(i) audited financial statements for the trustee and REIT manager for whichever is the later of the three years prior to the date of approval of the prospectus or offering memorandum or from the date of formation of the entity;

(j) all reports, letters, opinions or other documents and statements by any expert, any part of which is extracted in or summarized in or referred to in the prospectus or offering memorandum and where an extract or summary is included the corresponding full report shall be made available for inspection;

(k) signed and dated consents given by any experts and copies of any withdrawals of consents;

(l) underwriting agreements;

(m) any letters with any parties whether enforceable or not; and

(n) copies of any court orders or other documents relating to court actions commenced against the trustee or the REIT manager in the previous three years relating respectively, to the conduct of their duties as a trustee or REIT manager.

PART 27

ADDITIONAL MATERIAL TO BE INCLUDED
WHERE A D-REIT IS CONVERTING TO AN I-REIT

Where a prospectus or offering memorandum is being issued as part of the process of conversion of a D-REIT to an I-REIT then the prospectus or offering memorandum shall include –

(a) details of amendments or amendments proposed to be made to the trust deed;

(b) all information that would have been required to be included in the prospectus or offering memorandum for an I-REIT including current experts' reports;

(c) details of the audited annual and semi-annual or interim reports and financial statements for the trust for whichever is the later of, the three years prior to the date of the prospectus or offering memorandum, or from the date of approval of the D-REIT;

(d) valuation reports for the later of the three years prior to the date of the prospectus or offering memorandum or from the date of approval of the D-REIT;

(e) compliance reports for the later of the three years prior to the date of the prospectus or offering memorandum or from the date of approval of the D-REIT;

(f) details of amendments proposed to the trust deed;

(g) details of all distributions made since the establishment of the D-REIT, the percentage distributed and the source of the distribution;

(h) details of the taxation treatment of the D-REIT and of distributions made;

(i) details of the periodic trustee compliance reports for the previous three years;

(j) details of any legal action or proceeding commenced against or by the trustee or the REIT manager in the previous three years or which is current or has not been settled;

(k) details of any action taken by the Authority or any other government body or authority in respect of the scheme, the trustee or the REIT manager or any auditor, valuer or structural engineer of the REIT.

PART 28

ADDITIONAL INFORMATION TO BE INCLUDED WHERE A RESTRICTED I-REIT IS CONVERTING INTO AN UNRESTRICTED I-REIT TO BE LISTED AND NOT SUBJECT TO RESTRICTIONS

Where a prospectus or offering memorandum is being issued as part of the process of conversion of a restricted I-REIT to a listed unrestricted I-REIT not subject to restrictions then the prospectus shall include, all information that would have been required to be included in the prospectus for an I-REIT with unrestricted listing including–

(a) current experts reports;

(b) details of the amendments made or to be made to the trust deed;

(c) details of the audited annual and semi-annual or interim reports and financial statements for the trust for whichever is the later of, the three years prior to the date of the prospectus or offering memorandum, or from the date of the original approval as an I-REIT;

(d) valuation reports for the later of the three years prior to the date of the prospectus or offering memorandum or from the date of the original approval as an I-REIT;

(e) compliance reports for the Eater of the three years prior to the date of the prospectus or offering memorandum or from the date of the original approval as an I-REIT;

(f) details of amendments proposed to the trust deed;

(g) details of all distributions made since the establishment of the I-REIT the percentage distributed and the source of the distribution;

(h) details of the taxation treatment of the I-REIT and of distributions made;

(i) details of the periodic trustee compliance reports for the previous three years;

(j) details of any legal action or proceeding commenced against or by the trustee or the REIT manager in the previous three years or which is current or has not been settled;

(k) details of any action taken by the Authority or any other government body or authority in respect of the scheme, the trustee or the REIT manager or any auditor, valuer or structural engineer of the REIT.

PART 29

APPLICATION FOR REIT SECURITIES & APPLICATION FORM

1. The prospectus or offering memorandum shall set out details on how to apply for REIT securities and to complete the application and include an Application Form.

2. The prospectus or offering memorandum shall specify the minimum number and value of REIT securities that can be applied for and detail the process to determine allocation and the discretions, if any, vested in the issuer including, to –

   (a) determine the number of REIT securities to be issued or allocated to any applicant;

   (b) to extend the closing date for the issue or offer; or

   (c) to withdraw the offer in the event that a minimum subscription is not reached.

3. Where the offering memorandum relates to a D-REIT or an issue or offer in respect of a restricted I-REIT then both the offering memorandum and the Application Form shall set out the requirements for an investor to qualify as a professional investor to whom the REIT securities may be issued or offered and contain a warning that the REIT securities can only be transferred to another qualified investor.

4. The prospectus or an offering memorandum shall state that applications for REIT securities can only be made on the Application Form attached to the prospectus or offering memorandum.

5. An offering memorandum shall comply with the Act and Regulations and any other laws of Kenya relating to the issue or offer of securities to professional investors or to any other person.

FIFTH SCHEDULE

[Regulation 101(3).]

CONTENTS OF SEMI-ANNUAL REPORT, ANNUAL REPORT AND FINANCIAL STATEMENTS

1. MINIMUM STANDARDS

(a) The semi-annual and annual report and financial statements for a real estate investment trust scheme must include all of the information required by this Schedule; comply with the provisions of the Act and the Regulations and of any listing exchange.

(b) The financial statements shall include, as a minimum, Statement of Financial Position (Balance Sheet), a Statement of Comprehensive Income (Profit and Loss), a Statement in Change in Equity and a Cash Flow Statement (Source and Use of Funds) as well as a description of the accounting policies used and the relevant notes to the financial statements and a report on other legal requirements.

(c) The requirements of this Schedule represent the minimum content required to be included in the reports of a real estate investment trust scheme. Compliance with the schedule does not remove or reduce the obligations of the trustee or the REIT manager, auditor or any other party under the laws of Kenya.

(d) Information may be included by way of tables, charts or graphs where this assists in understanding.

(e) Only photographs of assets actually owned by the REIT as at the date of the report may be included and should provide a fair representation of the state of repair and/ or stage of completion of the asset.

(f) Where the reports of any experts, including valuers, or summaries of their reports are included then the report should also contain a letter of consent signed by the expert to the inclusion of the report or the summary in the report.

(g) References in this Schedule to a REIT, D-REIT or I-REIT shall where the context permits also include a reference to an investee company or investee trust of the REIT, D-REIT or I-REIT as the case may be and the requirement to disclose or include information shall extend to the investee company or investee trust.

2. COMPLIANCE WITH ACCOUNTING STANDARDS

In addition to meeting the requirements of this Schedule all reports and financial statements shall be prepared under and comply with the International Financial Reporting Standards and the International Auditing Standards or such other the accounting standards and auditing standards as are applying in Kenya from time to time.

3. GENERAL REAL ESTATE INVESTMENT TRUST SCHEME INFORMATION

The report shall include –

(a) a table of contents and glossary of terms used in the reports;

(b) the name of the real estate investment trust scheme;

(c) the date of authorization of the scheme, the duration of the real estate investment trust and the type of scheme;

(d) if the fund is an open fund, details of any restriction on applications for redemption;

(e) date of any conversion from a D-REIT to an I-REIT or from a restricted I-REIT to an unrestricted I-REIT or conversion from an open to a closed fund or closed to open;

(f) a statement of the number and type of units outstanding as at the balance date of the report and of the balance date for the financial statements;

(g) information on whether the scheme is listed and details of the listing including, if trading is restricted;

(h) a statement of any restriction on the transferability of units;

(i) the scheme's objectives as at the balance date of the report and any changes since the date of the last report;

(j) a structure diagram of the REIT which summarises the parties, relationship, roles of parties and material cash flows;

(k) brief summary of the real estate assets (including development and construction projects) and other assets and purchase or sales contracts and of any material development or construction contracts entered into in the period covered by the report;

(l) a statement as to whether or not the scheme has complied with Regulation 66 or Regulation 77 as regards the making completion of investment in at least one real estate asset within one hundred and eighty days and if not the action taken in accordance with the Regulations;

(m) a brief statement of borrowings and financial arrangements entered into by the trustee on behalf of the scheme entered into in the period covered by the report and the outstanding as at the date of the report together with a calculation made pursuant to Regulation 71 or 81 on the gearing as at the date of the report;

(n) table summarising distributions made for the lesser of 5 years or since the establishment of the scheme, the dates of such distributions and for each distribution the percentage of net, after tax, income distributed as provided for in the Regulations. The following is provided *by way of example* but will need to be adapted to the type of REIT, its assets and sources of income and the requirements under taxation legislation or of the Kenyan Revenue Authority, if any, from time-to-time.

SOURCES OF DISTRIBUTION**	20XX KShs	20XX - KShs
Rental income	.	
For D-REIT or I-REIT converted from D-REIT Interest or similar income from provision of finance to purchases of developed real estate etc		. . . .
Dividend income, including from wholly owned & controlled company	. .	
Distributions from other REIT scheme/s or collective investment schemes by source for each scheme		. . .
Realised capital gains (less losses) sales of real estate	. .	
Other realized capital gains (less losses)		.
Other income	.	
SUBTOTAL		
LESS**	. .	
Expenses & permitted deductions or transfers		. .
Taxation	.	
TOTAL POTENTIAL DISTRIBUTABLE INCOME		. .
Distribution per unit in KShs	.	
Distribution as a % and compliance with Regulation 71, if an I-REIT		. .
** In additional items may be to be included to reflect the particular REIT's situation and/ or to reflect e.g. unrealized losses brought forward or distributions made from previous year's realized gains or unrealized gains.	. . . . .	

(o) If the REIT is listed a graph which plots the unit price on at least a monthly basis for the lesser of the previous 5 years or the period since first listing.

4. DETAILS OF PARTIES

The report must include–

1. Names, addresses, registered office, telephone and facsimile number of persons (including partnerships) who have provided services during the relevant period and prior financial year and the dates of appointment, retirement, resignation or replacement of such persons, including the–
    (a) promoter;
    (b) trustee and compliance officer;
    (c) registrar;
    (d) REIT manager and compliance officer, and of directors of the REIT manager during the period covered by the report, including–
        (i) their qualifications and identifying the independent directors and setting out dates of appointment and resignation, if applicable; and
        (ii) include details of any committees established by the board and their functions;
    (e) property manager, if any;
    (f) project manager certifier, if any;
    (g) structural engineer;
    (h) valuer and any other valuers;
    (i) legal advisers;
    (j) auditors; and
    (k) other experts appointed under the trust.
2. Concise details of any relationship or transaction which results in any parties being connected persons for the purposes of the Act or Regulations.

5. UNITS OF REIT SECURITIES ISSUED, OUTSTANDING AND HOLDINGS

The report must include—

1. Details of number, price at which units were issued or redeemed and the total value of units of REIT securities issued or redeemed during the period covered by the report.
2. Classes and number of units by class outstanding as at the balance date and the date of the report.
3. A table with a breakdown of REIT securities holdings, by class, as follows –

No. of REIT securities holders	*Level of holding*	*Total holdings*	*%*
	Less than 100	.	
	100 to 1,000		.
	1,001 to 10,000	.	
	10,001 to 100,000		.
	100,001 to less than 5% of number of units on issue as at the balance date of the financial statements included in the report	. . . . .	
	Names of REIT securities holders and connected persons with holdings of 5% and above of number of units on issue as at the balance date of the financial statements included in the report		. . . .

.

Promoter's holdings as per Regulations 74 and 84			. .
Free float As required by Regulation 27 and 29		. .	

4. Where any units have been redeemed during the period covered by the report then provide by month details of the number of units redeemed by bands, and the price applicable.

6. REIT MANAGER'S REPORT

The report shall include–

1. The report should include a concise statement explaining the REIT manager's responsibility for preparing the report and the financial statements and include a statement signed by the Chairman and an independent director of the REIT manager stating that the reports and financial statements have been prepared in accordance with the accounting standards currently applying in Kenya and comply with the Act and Regulations and where the REIT is listed with the requirements of the listing exchange.
2. Where the report is an annual report and the audited results for the financial year differ by more than 10% from any profit estimate, forecast or projection previously made or issued in respect of the scheme for the relevant period the REIT manager should include an explanation for the difference.

The assets and performance of the Real Estate Investment Trust Scheme

The report should contain a report by the REIT manager on the operational aspects of the scheme and in particular should provide as regards –

A. Assets

1. Break-up of eligible assets by class (e.g. real estate, development and construction, cash, investment in wholly owned and controlled, companies, investee companies and investee trusts, investment in other securities) and include–
    (a) the most recent valuations for each class of asset and date of valuation; and
    (b) details of any assets that do not qualify as eligible assets under the Act or Regulations;
    (c) where appropriate, tables, graphs or charts illustrating change over time and trends; and
    (d) a table, dependent on the type of REIT, which includes the following information:

I-REIT Eligible Investments (Assets) Regulation 65	*Regulation & Max-imum Limit %*	*Regulation & Minimum Limit %*	*Limit in Scheme Document %*	*% as at Balance Date*	*Highest % Level During Reporting Period*	*Date of Most Recent Valuation/s & Reference to Page of Report Detailing Valuation*
If the REIT is an Islamic REIT percentage of Shariah compliant total. If not 100% then for each category set	. . . .		. . . .		. . . .	

out below specify % that is *Shariah* compliant.	.		.		.	
All direct eligible real estate (a) Freehold (b) Leasehold	. . . .		. . . .		. . . .	
All indirect eligible real estate (a)Freehold held through investee companies or investee trusts (b)Leasehold held through investee companies or investee trusts	. . . .		. . . .		. . . .	
Income producing real estate Regulation 65(5) Minimum of 75% of TAV within 2 years of authorization	. . . . .		. . . . .		. . . . .	
Land and cost of construction Regulation 70 Maximum 15% TAV	. . . .		. . . .		. . . .	
Vacant Land at acquisition cost & real estate not producing commercial return Regulation 70 Maximum 10% of TVA	. . . . . .		. . . . . .		. . . . . .	
Cash, deposits,bonds and money market instruments Regulation 65(9) Maximum 5% to single issuer, institution or members of group	. . . .		. . . .		. . . .	
Wholly owned and controlled company which conducts real estate activities Regulation 65(10) Maximum of 10% TAV with REIT securities holder consent	. . . .		. . . .		. . . .	
Income producing assets including listed shares in Kenyan property companies and units in Kenyan I- REITS. Regulation 68(2) Maximum 10% of value of investment and TAV at time of acquisition	. . . .		. . . .		. . . .	

For an I-REIT that has converted from a D-REIT Mortgages or other secured loans etc.; authorized under Regulation 12 provided to purchasers of real estate developed or constructed Regulation 12						
Other assets (eligible) include description						
Other assets (not eligible) include description						

.

D-REIT Eligible Investments (Assets) Regulation 76	*Regulation & Limit % .*	*Limit % in Scheme Document*	*Level % as at Financial Statement Balance Date*	*Highest % Level During Reporting Period*	*Date of Most Recent Valuation/s & Reference to Page of Report Detailing Valuation*
If the REIT is an Islamic REIT percentage of Shariah compliant total. If not 100% then for each category set out below specify % that is Shariah compliant.					
All direct eligible real estate (Regulation 2) (a) Freehold (b) Leasehold					
All indirect eligible real estate (Regulation 2) (a) Freehold held through investee companies or investee trusts (b)Leasehold held through investee companies or investee trusts					
Development & construction projects Regulation 76(4) within one year of date of authorization minimum of 30% TAV in this or income producing or a combination					
Mortgages or other secured loans etc.;					

authorized under Regulation 12 provided to purchasers of real estate developed or constructed	. . . . .		. . . . .		
Vacant Land	.		.		
Cash, deposits, bonds and money market instruments Regulation 76(8) Maximum 5% to single issuer, institution or members of group	. . . .		. . . .		
Wholly owned and controlled company conducting real estate activities. Regulation 76(9) Maximum of 10% TAV with REIT securities holder consent	. . . .		. . . .		
Income producing assets including shares in Kenyan property companies and units in Kenyan REITS. Regulation 79(3) Maximum 10% of value of investment and TAV at time of acquisition	. . . .		. . . .		
Other assets (eligible) include description	. .		. .		
Other assets (not eligible) include description	. . .		. . .		

2. Concise details of each real estate asset owned or contracted for purchase or sale, including–

(a) name and address of each real estate asset and whether or not in the course of development or construction;

(b) date of acquisition, acquisition price and cost of any material renovations of redevelopments (not in the nature of ongoing maintenance and replacement of capital plant or equipment), most recent valuation and date of valuation;

(c) description, property and type and age of each real estate asset;

(d) title details and details of encumbrances or any limits or conditions on the title;

(e) details of any competing claims made in respect of any title or real estate asset;

(f) in the case of a leasehold, the tenure of leasehold, remaining term, rental or other fee payable and remediation terms on exit, rights, if any, to purchase or seek new term on expiry and conditions, conditions on transfer of lease;

(g) net lettable area or other determinant of income (e.g. acres for plantation or forest, tons processed, passengers or landings) of, existing use,

occupancy rates over time, historic let up (vacancy) period and number of parking spaces of other relevant assets;

(h) brief particulars of tenancies or other usage rights (e.g. hotel number of occupied room nights and average room rate), major tenants and areas occupied (which may be by band where multiple small tenancies), tenancy/lease periods, average lease term, lease up incentives, etc. which in the case of multiple small tenancies may also be in bands;

(i) include tables or charts which illustrate tenancy expiry pattern for all existing leases and historic rental income trends and projected income based on current leases;

(j) date of acquisition and price, cost of any material improvements, construction of development works and latest valuation of the property including the date of valuation and name of the valuers and the net book value of the property;

(k) in the case of an Islamic REIT also include details of any non-Shariah compliant assets, including values and percentages and details of compliance.

3. Where there have been acquisitions or disposals during the period–

(a) identity of the seller or purchaser;

(b) details of the property acquired as per (1) above;

(c) for disposals date of disposal, price of disposal, market value, date of latest valuation, name of valuers and profit or loss on disposal after taking into account improvements, and development and construction; and

(d) the anticipated impact of the acquisition or disposal on earnings.

4. Where the acquisition or disposal transaction involves a connected person then in addition to the information required to be disclosed in (1) and (2) above the report shall also contain–

(a) details of the relationship giving rise to the application of the connected person provisions;

(b) where REIT securities holders' approval to the transactions was required to be obtained then details of date of meeting, resolution, attendees and votes cast.

5. Where the REIT has conducted any development or construction activities then also include details of–

(a) the development or construction including nature of development or construction;

(b) the original budget and work plan and costings for the development or construction including, details of approvals required;

(c) progress to date against budget, work plan, costings and obtaining of approvals and details of any variations;

(d) impact of changes on performance, projected returns and on distributions include tables, graphs or charts, where appropriate, to illustrate trends.

6. Where the REIT has entered into any contractual arrangements to commence any development or construction activities within the six month period after the balance sheet date then include details to the extent that they are available of–

(a) the development or construction proposed, including nature of development or construction;

(b) total budget and proposed work plan, including scheduled completion date;

(c) required approvals and status of obtaining of approvals;

(d) projected impact on projected returns and distributions.

7. Where a REIT is a D-REIT developing real estate for sale then in addition to meeting the requirements of 1-4 above the report shall also include details of the–

(a) the initial proposed marketing and projected sales schedule;

(b) profit and loss on sales;

(c) monthly holding costs of completed but unsold properties;

(d) where properties developed or constructed have been sold on a tenant purchase or other arrangement which involves the provision of finance to the purchaser or term payment then provide details of the terms provided and the payments by the purchaser or tenant as against scheduled payments including levels of arrears, costs of arrears and action taken to correct the position;

(e) impact of tenant purchase arrangements, term payment or financing of purchases on performance, projected returns and on distributions, include tables, graphs or charts, where appropriate, to illustrate trends.

8. Include details of investment in any wholly owned and controlled company carrying out real estate related activities.

9. Details of other non-direct real estate assets–

(a) type;

(b) date of acquisition;

(c) percentage of each asset class as a percentage of total assets;

(d) income or returns on each asset class;

(e) last valuation, valuer/s and date of valuation and basis of valuation;

(f) where the asset consists of shares in a wholly owned and controlled company provide details of the company's business activities, assets, income and liabilities (including borrowings from any source) and of any loans, guarantees, indemnities or other support provided to the company;

(g) for an Islamic REIT also include details of any non-Shariah compliant assets, including values and percentages and details of compliance.

B. *Details of Valuations*

Summaries of the any valuations obtained, included updating of prior valuations, should be included in the report together with a statement that copies of full valuation reports are available for inspection free of charge at the offices of the REIT manager and the hours in which reports may be inspected.

C. *Performance of scheme*

The report shall include the following –

1. Information from the REIT manager relating to the performance of the scheme over the period covered, achievement of the scheme's objectives, the market outlook and key aspects or identified risks likely to impact on the future performance of the scheme and the capacity to fulfil the scheme's objectives.

2. Explanation of maintenance costs and major capital works undertaken in the period and comparison with scheduled or budgeted maintenance or capital works.

3. A comparative table covering at least the last 5 financial years or if established for less than 5 years then since establishment, or from authorization of the scheme if shorter, showing for the end of each financial year or half year as appropriate–

(a) Total Asset Value;

(b) Net Asset Value ex distribution;

(c) Net Asset Value per unit ex distribution;

(d) highest and lowest net asset value per unit ex distribution;

(e) the number of units outstanding;

(f) distribution per unit (interim and final) and the date of distributions;

(g) distributions relative to the requirements of the trust deed and minimum distribution provided for in the Act and Regulations;

(h) the distribution yield based on net asset value and where the REIT is listed on the NSE the yield based on the value of a unit as at the close of trade on the last trading day of the period;

(i) the MER together with an explanation of any changes in the MER.

4. Average annual total return for the scheme measured over–

(a) one year, or since inception if shorter;

(b) three years; and

(c) five years.

5. Include details of any material litigation and potential impact.

6. Any events or circumstances which is likely to impact on the future performance (e.g. increase in outgoings, reduction in rents overall, increased competition for tenants, changes in regulations, end of significant tenancy and no certainty of replacement tenant to take over, requirement for refurbishment or unscheduled or unbudgeted maintenance or capital works, cost of development or construction or delay in completion, delay in achieving sales, increases or decreases in interest rates).

7. Include where appropriate a sensitivity table illustrating the impact on performance and potential distributions of changes in key variables.

D. *Use of proceeds of new issue*

Include a brief statement of the use of funds raised from a new issue of units. This usage report should be updated in subsequent reports.

E. *Connected party transactions*

Include –

a. details of the transaction or relationship giving rise to the application of the connected person provisions;

b. details, including value nature of service or goods provided etc; for all connected party transactions; and

c. where REIT securities holders approval to the transactions was required to be obtained then details of date of meeting, resolution, attendees and votes cast.

F. *Compliance with income tests under Regulations or scheme documents*

Depending on the type of REIT and the provisions of the scheme documents include a summary of the requirements as regards income tests provided under Regulation 69 or the scheme documents and—

a. whether the REIT is in compliance with the requirements;

b. the reasons for any non-compliance and the action taken to rectify the position; and

c. the implications or potential implications for the REIT and REIT securities holders of non-compliance.

G. *Distributions*

The report shall include —

1. Statement as to requirements, policy or objectives included in the scheme documents, including updated statement, in relation to distribution policy.

2. Statement as to requirements of the scheme documents, the Act and Regulations in relation to distributions on–

(a) whether the REIT is in compliance with the requirements;

(b) the reasons for non-compliance if applicable and the action taken to rectify the position, including action by the trustee and a vote of REIT securities holders; and

(c) the implications or potential implications for the scheme, the REIT and REIT securities holders of non-compliance.

3. Include a table setting out details of all distributions paid and declared distributions, date of distributions, source from which any distribution has, or declared distribution, is to be paid, and whether or not in respect of each period requirements of the Act or Regulations or of any other law in relation to taxation treatment as a REIT have been met and *include by way of example subject to the divisions required to reflect the taxation treatment of distributions:*

SOURCES OF DISTRIBUTION**	20XX KShs	20XX- KShs
Rental income	.	
For D-REIT or I-REIT converted from D-REIT Interest or similar income from provision of finance to purchases of developed real estate etc		. . . .
Dividend income, including from wholly owned & controlled company	. .	
Distributions from other REIT scheme/s or collective investment schemes by source for each scheme		. . .
Realised capital gains (less losses) sales of real estate	. .	
Other realized capital gains (less losses)		. .
Other income	.	
SUBTOTAL		
LESS**	. .	
Expenses & permitted deductions or transfers		. .
Taxation	.	
TOTAL POTENTIAL DISTRIBUTABLE INCOME		. .
Distribution per unit in KShs	.	
Distribution as a % of net after tax income and compliance with Regulations		. .
** In additional items may be included to reflect the particular REIT's situation and/ or to reflect e.g. unrealized losses brought forward or distributions made from previous year's realized gains or unrealized gains.	. . . . .	

4. Details of date of any meeting, resolution, attendees and votes cast in relation to the level, if any, of distributions.

H. *Borrowing Levels & Compliance with Covenants*

The report shall include —

1. Details of borrowings or other financing arrangements, maturity profile and average cost of funds together with a graph or chart illustrating the maturity profile and average cost of funds.

2. For an Islamic REIT also include details of any non-Shariah compliant borrowings or financing arrangements, including values and percentages and details of compliance.
3. Summaries of financial covenants (e.g. debt service cover ratio) included in any loan or financing arrangement documentation together with cover ratios and include a table, graph or chart illustrating changes over time and trends.
4. A sensitivity table should be included illustrating the impact of changes in key assumptions of inputs.
5. Details of any connected party transactions and:
   (a) details of the transaction or relationship giving rise to the application of the connected person provisions;
   (b) where REIT securities holders' approval to the transactions was required to be obtained then details of date of meeting, resolution, attendees and votes cast.
6. Details of the limits on borrowings etc; included in the Trust Deed and of compliance with these provisions and the limits on borrowing etc; imposed by the Act and Regulations over time. Details should include:
   (a) Whether the REIT is in compliance with the requirements;
   (b) Instances of non-compliance including, period of non-compliance;
   (c) The reasons for non-compliance if applicable with scheme documents and Regulations and the action taken to rectify the position, and
   (d) Approvals or consents obtained including details of date of meeting, resolution, attendees and votes cast;
   (e) The implications or potential implications of non-compliance by the REIT and REIT securities holders.

I. *Sensitivity Analysis & Impact of any Financial Structuring*

1. Provide details of any measures adopted or proposed which would constitute financial structuring under the Regulations, the implications of the absence, removal or expiry of such on yield, cash flows, distribution or risk profile of the REIT and the assumptions underlying the calculations.
2. Include a sensitivity table.

J. *Notifications and compliance reports*

1. The REIT manager's report should include details of–
   (a) Any matter arising during the period which has been, or should have been, notified to the Authority pursuant to the Regulations;
   (b) Any failures by the REIT manager, trustee or any other party to comply with the provisions of the scheme documents, the Act or the Regulations and action taken to remedy the failure;
   (c) Any action taken by the REIT manager or which the trustee was requested to take during the period to protect assets of the trust or the interests of REIT securities holders; and
   (d) An update of any matters reported in prior periods and action taken to rectify.
2. The report may also include the REIT manager's comments on trustee's report, performance of the trustee or of any other person or other material matter.

7. *Trustee's Report*

1. The trustee's report should confirm all matters relating to the title particulars of real estate properties and other assets of the fund and include details of —

(a) Any appointment of a secondary disposition trustee together with details of purpose of the appointment and of any documents executed by the secondary disposition trustee;

(b) Any matter arising during the period which has been, or should have been, notified to the Authority pursuant to the Regulations;

(c) Any failures by the trustee to comply with the provisions of the scheme documents, the Act or the Regulations and action taken to remedy the failure;

(d) Any failures by the REIT manager or any other person to comply with the provisions of the scheme documents, the Act or the Regulations and action taken to remedy the failure;

(e) Any action taken by the trustee during the period to protect assets of the trust or the interests of REIT securities holders; and

(f) Meetings of REIT securities holders convened by the trustee, resolutions put and the outcome of voting.

2. The report should contain a summary of the meetings of REIT securities holders called or held during the relevant period, a summary of the purpose of the meeting, resolutions put to the REIT securities holders and of attendees and votes cast.

3. The report should state whether the trustee is of the opinion that the REIT manager has managed the scheme in accordance with the provisions of the scheme documents, the Act and these Regulations and if the trustee is of the opinion that the REIT manager has not done so then–

(a) identify the shortcomings of failures to comply;

(b) outline the impact of the shortcomings or failures; and

(c) detail the action that the trustee has taken to address the shortcomings and/or prevent reoccurrence.

4. The report may also include comments by the trustee on REIT manager's report, performance of the REIT manager or of any other person or other material matter.

5. The Trustee's Report should be signed by the trustee.

8. *Auditor's Report*

1. An annual report should be accompanied by an auditor's report addressed to and for the benefit of the trustee in its capacity as the legal owner and trustee for the REIT securities holders and REIT securities holders as beneficial owners.

2. The report shall include–

(a) a compliance report as required by the Regulations;

(b) calculations of percentages required by the Regulations together with a statement as to whether the limits set out in the Regulation have not been complied with throughout the reporting period and if not should include details of the non-compliance and whether the non-compliance has been rectified as at the balance sheet date or the date of the report —

(i) minimum number of REIT securities holders;

(ii) minimum free float;

(iii) minimum promoter investment and retention;

(iv) eligible investments;

(v) minimum income generation;

(vi) maximum gearing;

(vii) minimum distributions;

(c) Verification of the MER calculation;

(d) Verification of the sources of distribution made to REIT securities holders.

3. The auditor's report should include the auditor's opinion on the financial statements and be signed by the auditor. Where the auditor's report is qualified details of the qualification should be noted clearly and prominently in the report.

9. *Shariah Adviser's Report (if applicable)*

1. The *Shariah* adviser's report should include a statement as to –

(a) whether or not the scheme has been operated and managed in accordance with *Shariah* principles and the specific principles established for the fund;

(b) if not, then the steps, if any, taken or proposed to be taken to address the situation and/or prevent reoccurrence of non-compliance;

(c) whether in the Shariah adviser's' opinion recognising the stage of development of the *Shariah* financial products and capital markets in Kenya additional steps could, or can, be taken to comply with *Shariah* principles;

(d) any other matters which the *Shariah* advisor considers relevant to compliance with *Shariah* principles; and

(e) whether the scheme and the investments comply with any *Shariah* rules, guidelines or regulations issued by the Authority.

2. The *Shariah* Adviser's report should be signed by the *Shariah* Adviser.

10. *Meetings of REIT securities holders*

The report should contain a summary of the meetings of REIT securities holders called or held during the relevant period, a summary of the purpose of the meeting, resolutions put to the REIT securities holders and of attendees and votes cast.

11. *Financial statements*

1. The financial statements should give a true and fair view of the financial position, financial performance and cash flows and be prepared in accordance with the Act, these Regulations, the law and accounting standards applying in Kenya from time-to-time.

2. A clear statement should be included as to whether or not the financial statements are audited.

3. Where the financial statements are unaudited then there should be a statement signed by the Directors of the REIT manager and the compliance officer stating that the financial statements have been prepared to give a true and fair view of the financial position, financial performance and cash flows and be prepared in accordance with the Act, these Regulations, the law and accounting standards applying in Kenya from time-to-time.

4. In addition to any other contents the financial statements should include in the –

(a) Statement of Financial Position:

(i) Net asset value of the fund;

(ii) Number of issued units by class if more than one;

(iii) Net asset value per unit (ex-distribution, where applicable);

(iv) Net assets/liabilities attributable to REIT securities holders;

(v) Net asset value at book value of each unit as at the Statement of Financial Position date; and

(vi) If not included in the Statement of Financial Position then, by way of Notes, the carrying amounts of investments, as applicable, should be categorised as follows–

(A) Real estate, with break up by class (e.g. housing, office, industrial Etc.);

(B) Real-estate related assets;

(C) Development and construction assets;

(D) Non real estate assets;

(E) Other real estate investment trusts;

(F) Cash, deposits, fixed income and other debt securities;

(G) Any other investments with material items disclosed separately, and

(H) Total eligible investments and eligible investments as a percentage of total assets as at the Statement of Financial Position date;

(I) Details of non- approved investments in the case of a *Shariah* scheme.

(vii) Liabilities should include details of contingencies including construction contracts, acquisition contracts and hedging arrangements or derivatives;

(viii) If not included in the Statement of Financial Position then, by way of Notes, details of borrowings or other financing arrangements including –

(A) Total borrowings or financing arrangements as at the Statement of Financial Position date as a percentage of total asset value;

(B) Borrowings of any wholly owned or controlled company; and

(C) Any guaranteed borrowings or financing arrangements;

(D) Details of non-approved borrowings or financing arrangements in the case of a *Shariah* scheme;

(b) Statement of Comprehensive Income–

(i) Fees, charges, reimbursements and expenses paid to the REIT manager or any property manager appointed by the REIT manager, with each type of charge shown separately;

(ii) Fees, charges, reimbursements and expenses paid to the trustee with each type of charge shown separately;

(iii) Fees, charges, reimbursements and expenses paid to the property manager certifier with each type of charge shown separately;

(iv) Fees, charges, reimbursements and expenses paid to the structural engineer with each type of charge shown separately;

(v) Fees, charges, reimbursements and expenses paid to the valuers with each type of charge shown separately;

(vi) A calculation of MER and in the case of audited financial statements the auditor's verification of the calculation;

(vii) Details of non-approved income or payments in the case of a *Shariah* scheme;

.

(viii) Payments, if any, made to charitable bodies in the case of *Shariah* funds, the basis of calculation and the names of the funds;

(ix) Sources and nature of income;

(x) For I-REITs, the percentage of income for the financial year from rent or income streams of a similar nature calculated as provided for in the Regulations;

(xi) Total amount available for distribution and distribution per unit, interim and final;

(xii) Net income after tax to be shown separately as to realized and unrealised income.

c. Statement of changes in fund balance.

d. Statement of cash flows.

e. Notes to Financial Statements.

If not already shown then, as Notes –

(A) Accounting policy adopted in respect of the trust as an accounting entity;

(B) Income basis adopted;

(C) Movements in number of units on issue including, units issued, cancelled or redeemed, if applicable by class or type;

(D) All costs of or associated with redemption of units or issuance of new units and of listing;

(E) Number of units and value of units held, legally or beneficially, by the promoter, the REIT manager and connected parties and movements in holdings during the financial year;

(F) Details of taxes paid or payable by the REIT and a breakdown;

(G) Details of any taxes paid by the REIT as a consequence of not compliance with the Act or Regulations;

(H) Details of taxes withheld in respect of distributions paid or payable.

SIXTH SCHEDULE

[Regulation 113(8).]

VALUATIONS

1. INDUSTRY STANDARDS

Subject to the provisions of the Act, the Regulations and the requirements of this Schedule all valuations will be conducted in accordance with the standards and ethical code published and adopted by the Institution of Surveyors of Kenya and the Valuers Registration Board.

A valuation summary prepared in accordance with this schedule may be included in any prospectus or offering memorandum but full copy of the valuation report must be retained and made be available for inspection by any REIT securities holders, potential or past investors in REIT securities and the Authority. No claim of confidentiality can be made in respect of a valuation report issued to the trustee or promoter of a REIT.

2. VALUER'S DETAILS, SIGNING, DATING, CERTIFICATION AND AUTHENTICATION

1. The report should set out prominently: the name(s), address(es), qualifications [and registration number(s)] and where applicable her/his organization.
2. All valuation reports shall be signed by the valuer and dated and where the valuer is employed by a company, corporation or other body including a government organisation, department or authority shall also be signed by a director and the CEO of the company or corporation or the head of the organization, authority or department.

A. *To whom the report must be addressed*

1. All valuation reports must be addressed to the trustee and be expressed to be for the benefit of the trustee as trustee and all REIT securities holders in any real estate investment scheme or real estate investment trust in which the property is or becomes an asset.
2. Where a valuation was obtained prior to the appointment of the trustee or is in respect of property already vested in the REIT then the valuation shall be refreshed and reissued and addressed to the trustee. In refreshing and reissuing a valuation the valuer must expressly consider and address the currency of its prior opinion and of the data, information, capitalisation a discount rates utilised and other considerations and assumptions.

B. *Opinion of value and disclaimers*

1. The valuer must express an opinion in the report as to the value in words as well as figures.
2. Disclaimers, waivers and limitations on the valuer's opinion should not be so wide as to deprive the trustee, or REIT securities holders or other parties relying on the valuation for the benefit of the valuation.

C. *Basis of valuation*

The basis of the valuation is to be market value.

D. *Compliance with the Act and Regulations*

All reports and the conduct of valuations shall comply with the requirements of the Act and the Regulations, including the requirement for physical inspection.

E. *Valuation approach and method of valuation - General Principles*

1. Valuations should be conducted using wherever possible at least two valuation methods in accordance with the valuation standards published or adopted by the Institution of Surveyors of Kenya and the valuers Registration Board for the valuation of real estate.
2. The valuation achieved under each valuation method shall be disclosed in the valuation report.

3. The valuer shall determine and use the most appropriate valuation based on the type of property, availability of relevant data, accuracy of data, relevancy, and other factors considered by the valuer to be relevant.
4. The valuer shall include in its report a rationale for reconciling the values derived under the different methods and include a comparison by way of a table.
5. In the case of an I-REIT the assumption will be that, unless the valuer for the reasons set out in its report believes that the method is inappropriate in the circumstances, one method of valuation will be the income comparison method.
6. Valuations for assets other than real estate will reflect the industry practice to valuation of such assets and may require the involvement of a specialist valuer.

F. *Valuation approach and method of valuation*

1. The general approaches for the valuation of real estate currently include–
    a. Comparison approach;
    b. Cost approach; and
    c. Income capitalisation approach.
2. The valuation report shall include an explanation of the valuation methods adopted and their appropriateness to the particular assets and the circumstances of the valuation.
3. In applying the methods of valuation the valuer must ensure that the following are considered and disclosed in any valuation report —
    1. Comparison Method
        i. Appropriate and adequate comparables;
        ii. Details of the comparables including, identification and descriptions of the property(ies), date of sale, tenure and details of title, land and/or lettable areas, purchase price, breakdown of land and building values, names of vendor and purchaser, terms and conditions of sale (where available), current use, planning and zoning details and restrictions on use if any, details of any casements, tenancies;
        iii. Adjustments, if any, made by the valuer to ensure comparability so far as possible.
    2. Cost Approach
        i. The actual construction or tender cost, if available;
        ii. The cost and rates adopted for buildings structures and other improvements;
        iii. Adjustments made to reflect depreciation and obsolesce;
        iv. Adjustments, if any, made by the valuer to ensure comparability so far as possible; and
        v. Depreciation rates adopted and their bases;
        vi. A caution should be included as to the appropriateness of use of the cost method in that costs may not reflect value.
    3. Income Capitalisation Approach

    i. Investment method

        (A) Gross income and suitability of income used in the valuation where projected income is market derived;
        (B) Actual outgoings and other operating expenses where available for the past three years, projections should be supported and market derived;
        (C) Adequacy of maintenance and whether any major capital expenditure or increased maintenance is likely to be incurred in the next two years;

(D) In the case of tenanted properties, schedules of existing tenancies, including names of tenants, term of tenancy (including options), rentals, services charges and obligation to contribute to outgoings;

(E) In the case of tenanted properties, any connection of the tenant with the vendor or owner should be disclosed together with a comment as to whether the rentals and terms of the tenancy reflect the market;

(F) In the case of tenanted properties, analysis of comparable data on rentals, incentives for tenants, outgoings, vacancies and capitalization rates and comparison with the property being valued; and

(G) Market evidence to support the capitalisation and discount rates utilized which reflect the risk of the business, sector and location and other factors.

ii. Residual method

(A) The approved or submitted [development] plan together with details of approvals and consents obtained or applied for in relation to the development;

(B) Consideration should be given to the reasonableness of the gross development value, timing of the development and construction period, in addition the valuer should liaise with the structural engineer and any project manager and if considered appropriate obtain additional expert input as to the cost of undertaking the development, and to obtain necessary and current market information;

(C) The complexity of the development and construction and terms of the building contracts and prior performance of the builder on similar contracts particularly as regards cost overruns, disputes and timing for completion should be taken into account together with the potential impact on cash flows;

(D) Market information to support projected supply, including supply in the pipeline or approved developments, rates of absorption and projected rents or sales prices and potential impact on input costs;

(E) Past sales and performance of the REIT or the REIT manager or property manager in achieving sales for similar developments should be considered; and

(F) The discount rate adopted must be market derived.

iii. Profits method

(A) Detailed workings showing an estimation of the annual revenue from the assets being acquired, operating expense, overheads and adjustments for depreciation and capital expenses;

(B) Consideration should be given as to the adequacy of the level of maintenance; remaining useful life, obsolesce and provision for replacement of the assets;

(C) Where the REIT is acquiring a business or entity rather than simply an asset then the valuer should also take account of any potential liabilities that may be assumed by the REIT in acquiring the business or entity including unpaid taxation liabilities, pension and other potential employee liabilities. Any potential liability should be disclosed and highlighted in the report and if relevant the valuer should obtain expert input prior to completing the report; and

(D) Market evidence to support the capitalisation rates utilised which reflect the risk of the business, sector and location and other factors.

iv. Discounted cash flow method

(A) Detailed workings showing estimation of cash flows and the basis of estimation including comparison with market and supply and demand estimates, and

(B) Market evidence to support the capitalisation and discount rates utilised which reflect the risk of the business, sector and location and other factors.

v. Other methods

(A) An explanation of the method and rationale used;

(B) All data used must be substantiated by reference to market evidence.

G. *Minimum contents of valuation report*

1. *General principles*

a. All valuation reports must be clear and not misleading and must disclose all material information and ensure that information disclosed is accurate and adequate. Where there is an inability to obtain accurate or adequate data then this fact must be clearly disclosed and a caution included.

b. The report should clearly set out the analytical process, data and information used to arrive at the valuation.

c. Where the valuation deviates from best practice then the reasons for this and the possible implications on the valuation should be disclosed.

2. *Contents of Report*

a. All valuation reports must be addressed to the trustee and be expressed to be for the benefit of any and all REIT securities holders in any real estate investment scheme or real estate investment trust in which the property is or becomes an asset;

b. Details of the instructions provided to the valuer, including any special conditions whether in writing or oral, should be clearly disclosed;

c. The purpose of the valuation should be stated;

d. The property(ies) should be clearly identified by reference to title particulars including, [lot number, title number] and postal address;

e. The report should be dated;

f. The basis of valuation and methods used, including a description of the method and comment on its appropriateness to the property and limitations or issues arising, where possible two methods should be included;

g. The extent of and dates of inspection should be included together with the name of the person who conducted the inspection;

h. The tenure or type of title together with the interest to be valued;

i. Any encumbrances, easements or other rights or claims or restrictions on use;

j. Zoning and approved uses and restrictions and building and planning consents and approvals (copies of which should be attached);

k. A detailed description of the property including:

i. Location and accessibility and include a plan;

ii. Age, description, condition and state of repair of buildings and other plant, equipment, fixtures and fittings or moveable property included in the valuation;

iii. Approvals of buildings, use and compliance as well as disclosure of any breaches of laws, regulations or conditions relating to the property or other assets;

iv. Details of any recent material upgrading, refurbishing or renovations;

v. Details of the neighbourhood and surrounding developments, availability of communications, services and utilities;

vi. Details relevant to the sector and type of property, for example, for:

(A) offices details of lettable space, comment on facilities, services, access and access to transport, parking, air-conditioning, standard of fit out and comparative suitability for purpose and market position;

(B) factories details of factory buildings including e.g. design, construction, height, span, access to services, plant and equipment, location relative to access roads, railways ports etc.; and suitability for a range of activities or whether designed for specialist use only;

(C) residential accommodation, type and sector of market, number of rooms, standard of finish, access to and connection to services, access to transport and schools, any limits on rental that can be charged or requirements to provide access to particular group of tenants or other limits on use or ability to sell;

(D) other types or classifications of properties (for example, hospitals, warehouses, logistics, shopping centres, special purpose buildings, extractive industries such as quarries) information relevant to their attractiveness for their intended purpose, state of condition, comparison with norm for sector and location and competitiveness compliance for zoning and use and limits on changes and other factors that might influence value;

(E) problems or issues, for example, encroachments, site stability, swampy or hill side, squatters, height restrictions, set-backs, flooding, noise and other detrimental aspects.

vii. Details of prior registered dealings with the property for the past three years (or longer if the valuer considers relevant) including, date of dealing and if acquisition date of acquisition, cost of acquisition, expenditure subsequent to acquisition; parties involved in the transaction, use at the time of the transaction;

viii. Photographs of properties, including comparative properties and of the location may be included;

ix. Current market conditions and the possible impact of micro and macro-economic conditions and the impact of possible changes should be considered;

x. The sources of information should be disclosed together with the opinions of experts.

H. *Use of experts*

1. The valuer may with the agreement of the trustee and the REIT manager engage experts to provide specific input to assist it with the preparation of a valuation. The appointment of experts and all reports of experts must state the purpose for which they were prepared, comply with the Act and Regulations.

2. Where the valuation is to be included in a prospectus or offering memorandum then the expert must be named as an expert in that document and appropriate consents obtained.

3. The reports of experts in addition to being addressed to the valuer must also be addressed to the trustee and be expressed to be for the benefit of

any and all REIT securities holders in any real estate investment scheme or real estate investment trust in which the property is or becomes an asset.

I. *Valuation summary*

1. A valuation summary which is a condensed form of the valuation report, prepared for the specific purpose, may be included in a prospectus or offering document or any other document provided to REIT securities holders or any listing body.
2. The valuation summary must clearly state that it is "a summary only of the valuation report which is available for inspection at the offices of the trustee and *[include other designated addresses or on the internet address, if any]*.
3. The summary must be clear, signed and dated and contain adequate and accurate information and not be misleading to REIT securities holders or potential investors in REIT securities or to their advisers.

J. *Significant or material changes*

Where a valuer has prepared a report or valuation summary and the valuer becomes aware of any significant or material changes affecting the valuation opinion, report or valuation summary at any time prior to:

a. the issue of the prospectus or offering memorandum;
b. the issue of REIT securities pursuant to the prospectus or offering memorandum; or
c. REIT securities holders voting on any resolution for which the report was prepared,

then the valuer must notify the trustee, the REIT manager and the Authority of the fact and the impact or potential impact on his report and opinion on value and shall withdraw his report and consent.

K. *Appendices*

Maps, plans, detailed workings, expert's opinions, market studies, photographs and additional details may be included as Appendices.

SEVENTH SCHEDULE

[Regulation 121(2)(a).]

MEETING OF HOLDERS OF REIT SECURITIES

1. GENERAL

In addition to provisions for meetings of REIT Security holders provided for in the scheme documents, the trustee and the REIT manager shall convene—

(a) an annual meeting of REIT securities holders to be held at least fourteen days and not more than twenty eight days after the date of circulation of the annual report;
(b) whenever required by the Act, these Regulations or the scheme documents;
(c) whenever the Trustee or the REIT manager determines that a meeting is desirable;
(d) where directed to do so by the Authority where the Authority is of the opinion that the calling of a meeting is desirable; or
(e) upon receiving a written request that a meeting be called for the propose specified in the request by not less than fifty REIT securities holders who holds not less than ten percent of the voting REIT securities in the real estate investment trust.

2. NOTICE OF MEETINGS

1. At least a notice of fourteen days shall be given to the Authority, the auditor and each holder of REIT Securities of all meetings.
2. The notice of the meeting shall include:

(a) copies of any reports to be considered or which provide the foundation for any resolution and a copy of any resolution proposed to be put at the meeting;

(b) where the meeting is convened pursuant to a request of holders of REIT Securities or the Authority, then a copy of the request and the terms of any resolution proposed and of all reports or valuations that are required to be prepared or provided to holders;

(c) where the meeting is convened as a consequence of a direction received from the Authority a copy of the direction and the terms of any resolution proposed; and

(d) a statement that a REIT securities holder is entitled to attend the meeting in person or by executing the notice of appointment attached to the notice calling the meeting is entitled to appoint a proxy who need not be a REIT securities holder.

3. CHAIRMAN AND QUORUM

1. Where the meeting is convened by the Trustee or the REIT Manager then the meeting shall be chaired by a representative of the Trustee.
2. Where the meeting is convened at the request of holders of REIT Securities or the direction of the Authority then the meeting shall be chaired by a person elected by holders of the REIT Securities present at the meeting of if no such appointment is made then by the nominee of the Trustee.
3. The quorum of a meeting of holders of REIT Securities shall be five (5) REIT securities holders present in person or by proxy except in the case of a meeting to pass a special resolution in such case the quorum shall be a minimum of five REIT securities holders present in person or by proxy representing the holders of at least twenty five percent of the REIT securities issued at the date of the calling of the meeting.
4. In the event that there is no quorum for any meeting, then the meeting shall be adjourned to a date determined by the Trustee which shall not be more than fourteen days from the date of the adjourned meeting. A notice of the adjourned meeting shall be given to all the holders of REIT Securities, the auditor and the Authority.
5. In the event that there is no quorum for any adjourned meeting, then the meeting may proceed notwithstanding the lack of a quorum.

   The REIT Manager or the holdings of REIT securities by the REIT Manager or any party connected to them shall not be included for the purposes of determining whether a quorum is present irrespective of by whom the meeting was convened or the matter before the meeting.

4. RESOLUTIONS

Except where a Special resolution is required by or permitted by the Act, these Regulations of the scheme documents, all resolutions may be passed by a simple majority and a copy of all resolutions passed at any meeting shall he filed with the Authority.

5. VOTING RIGHTS

1. The rights of any REIT securities holder to vote at any meeting are subject to any provision of the Act or these Regulations which limit the capacity of the REIT securities holder to vote on any resolution or to any restrictions on voting by the promoter, REIT Manager, REIT property manager, auditor or valuer or any party connected to them in the Act, these Regulations or the scheme documents.
2. On any matter in respect of which a vote is taken, then any REIT securities holder present in person or by proxy shall be entitled to one vote on a show of hands.
3. A poll may be demanded on any vote or be required by the Chairman of the meeting. In the case of a poll then–

   (a) votes may be given either personally or by proxy; and

(b) every REIT securities holder shall have one vote for each vote held by the REIT securities holder.

6. ADJOURNMENT AND MINUTES

1. The Chairman may adjourn any meeting at which a quorum is present with the consent of the meeting and must adjourn if directed by the meeting.

2. The Trustee shall be responsible for ensuring that–

a) minutes are prepared within seven days for all meetings of REIT securities holders and that the minutes record the proceedings and all resolutions put to the meeting and the results of any votes and that the minutes are presented to the Chairman for signing;

b) any minutes presented to the Chairman shall be signed within seven days of presentation and recorded in the minute book and a signed copy provided to REIT Manager provided that–

(i) if the Chairman is not satisfied that the minutes prepared are correct and on request, these are not corrected by the Trustee, then the Chairman shall be responsible for amending the draft minutes and signing a corrected copy which shall be recorded in the Minute book; and

(ii) a signed copy of the corrected minutes are forwarded to the Trustee, the REIT Manager and the Authority.

EIGHTH SCHEDULE

[Regulation 125.]

FORM 3

FORM FOR APPLICATION FOR LICENCE AS REIT TRUSTEE OR REIT MANAGER

THE CAPITAL MARKETS ACT
(Cap. 485A)

THE CAPITAL MARKETS (REAL ESTATE INVESTMENT TRUSTS)
(COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2012

APPLICATION FORM

APPLICATION FOR A LICENCE/RENEWAL OF LICENCE TO
CONDUCT THE BUSINESS OF A REIT MANAGER OR REIT TRUSTEE

Application is made for a REIT Manager/REIT Trustee (tick as appropriate) licence/*renewal of licence(delete where inapplicable*) under the Capital Markets (Collective Investment Schemes) (Real Estate Investment Trusts) Regulations, 2012 and the following statements are made in respect thereof:

Note–

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.
Information provided should be as at the date of the application or renewal.

1. Name of company ..... Limited
2. Registered office .....
3. Date of incorporation .....
4. Address .....
5. E-mail .....
6. Location, address and telephone number of principal office

.....

7. Location, address and telephone number of branch offices

.....

8. Details of capital structure:
   (a) Nominal capital (Kshs.) .....
   (b) Number of shares .....
   (c) Paid-up capital (Kshs) .....
9. Shareholders (please attach a list)

Name	Address & telephone number	Number of shares Held

10. (a) Directors (please attach a list)

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic or Professional qualification	Number of shares held in the company

(b) Secretary

Name .....

Address .....

Institute of Certified Secretaries of Kenya Registration No. .....

(c) Chief executive and other key personnel

Name	*Identity Card/ Passport number*	*Date of Appointment*	*Date of birth*	*Permanent address and telephone number*	*Academic or Professional qualification*	*Number of shares held in the company*
			.			

11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If yes', give details .....

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:
   (a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.
   If Yes, give details.
   .....
   .....
   (b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No.
   If Yes, give details.
   .....
   .....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No.
If Yes, give details.
.....
.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No.
If yes', give details

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No.
If yes', give details

.....

17. (1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities exchange? Yes/ No.
If yes', give details

.....

(2) Have any of the above persons been —

(a) refused membership of any securities organization? Yes / No. If 'yes', give details .....
.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details
.....
.....

(c) subjected to any other form of disciplinary action by any stock/securities exchange? Yes/No. If 'yes', give details.
.....
.....

18. Business references:

Name	Address	Telephone number (s)	Occupation

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name.	Post	Qualifications	Experience

21. List the office facilities of the applicant

.....
.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority

.....

23. Any other additional information considered relevant to this application:

.....

We ..... (Director), ... (Director) and ..... (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this ..... day of ..... 20 .....

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

1. The following shall be submitted with the application for a licence —

(a) memorandum and articles of association;

(b) certificate of incorporation;

(c) business plan complying with the requirements of regulation 126(1)(d) of the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2012;

(d) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in the case of application of licence), management accounts upto the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);

(e) a declaration by the directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of the application –

(i) the business of the company has, in their opinion, been satisfactorily maintained;

(ii) there have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;

(iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;

(iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries;

(f) a declaration by persons authorized as prescribed to accompany the application form;

(g) an application fee of Kshs. 2,500.

NINTH SCHEDULE

[Regulation 134.]

THE CAPITAL MARKETS AUTHORITY FEES STRUCTURE AS APPROVED BY THE MINISTER FOR FINANCE PURSUANT TO SECTION 36(1)(a) OF THE CAPITAL MARKETS ACT

PART I - APPLICATION, AUTHORIZATION OF SCHEME, APPROVAL OF PROSPECTUS OF OFFERING MEMORANDUM, CONVERSION AND ANNUAL FEES

	Fee *Kshs or percent*
(a) Application fee or application renewal fee for authorization of real estate investment trust scheme	2,500
(b) Application fee for REIT conversion	2,500
(c) Authorization or annual fee of real estate investment trust scheme	150,000
(d) Approval fee of Prospectus	0.15% of value of offer of REIT securities subject to a maximum of 10,000,000
(e) Approval fee of Offering Memorandum	0.0375% of value of offer of REIT securities subject to a maximum of 2,500,000
(f) Approval fee for conversion of a D-REIT to an unrestricted I-REIT	0.1125% of value of offer of securities and a maximum of 7,500,000
(g) Approval fee for conversion of a D-REIT to a restricted I-REIT	150,000
(h) Approval fee for conversion from restricted I-REIT to unrestricted I-REIT	0.1125% of value of offer of securities and a maximum of 7,500,000
(i) Approval fee for conversion from unrestricted I-REIT to restricted I-REIT	150,000
(j) Public inspection of documents	1,500

PART II —TRUSTEE AND REIT MANAGER LICENCE AND RENEWAL FEES

License and renewal fees	*Fee* *Kshs or percentage* .
(a) Trustee for a REIT .	200,000
(b) REIT Manager	100,000

CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, REGULATIONS, 2015

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulations

.

CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015

[L.N. 37/2016.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Derivatives Markets) Regulations, 2015.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Capital Markets Act (Cap. 485A) and any rules and regulations made thereunder;

"associate" has the meaning assigned to it under section 3 of the Act;

"Authority" has the meaning assigned to it under section 2 of the Act;

"board" means the board of directors of a derivatives exchange;

"clearing bank" means a bank, as defined under section 2 of the Banking Act (Cap. 488), which is designated or appointed by a derivatives exchange to provide banking and other facilities to a—

(a) derivatives exchange;

(b) the clearing house of an exchange; and

(c) brokers of an exchange;

to facilitate the maintenance of a segregated account and clearing and settlement functions; "clearing house" means a settlement system by which the claims and liabilities of derivatives brokers and their clients in respect of different derivatives contracts confirmed by the exchange are received, adjusted, settled and paid;

"client" means a person who is registered with a derivatives broker and has executed an agreement with the derivatives broker;

"client assets" means —

(a) money received or retained by, or any other property deposited with a derivatives broker in the course of the derivatives broker's business;

(b) any money or other property accruing from (a);

for which that derivatives broker has to account to a client;

"client funds" means money of any currency which a derivatives broker—

(a) receives or deposits with a clearing house of a derivatives exchange on behalf of a client; or

(b) owes to a client;

"client group account" means a bank account established and maintained by a derivatives broker for the purposes of regulation 65;

"corner" in relation to derivatives markets means acquisition of enough of a particular commodity or financial instrument or to hold a significant commodity or securities position sufficient to be able to manipulate its price;

"defaulter" means a derivatives broker who is the subject of any default proceedings instituted under these Regulations;

"demutualization" means the separation of ownership of an exchange from the right to trade on such exchange;

"demutualized exchange" means a derivatives exchange in which ownership and rights to trade are separate;

"derivatives broker" means a body corporate admitted to the membership of a derivatives exchange and by the Authority to engage in the business of trading in derivatives contracts as an agent for investors in return for a commission and on its own account;

"derivatives exchange" has the meaning assigned to it under section 2 of the Act;

"derivatives member" means a person admitted to the membership of a derivatives exchange in accordance with these Regulations and the rules of the derivatives exchange but does not refer to a shareholder or an equity holder of the derivatives exchange;

"derivatives contract" means a standardized type of securities or financial instruments which derives its value from the value of underlying assets, indices, or interest rates that are transacted on a derivatives exchange;

"derivatives market" has the meaning assigned to it under section 2 of the Act;

"financial year" means the period of twelve months ending on the thirty first December in each year;

"investor protection fund" means a fund established under regulation 31;

"key personnel" has the meaning assigned to it under the Act;

"liquid net worth" means the aggregate value of paid-up equity share capital plus free reserves excluding statutory funds, benefit funds, and reserves created out of revaluation reduced by the investments in businesses, whether related or unrelated, aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off;

"margin" means a deposit or payment made to create, vary or maintain a position in the derivatives contract, and includes market to market, regular and additional margins or such other margins, which may be specified by the derivatives exchange from time to time;

"market charge" means a charge, whether fixed or floating, granted in favour of a clearing house of a derivatives exchange—

(a) over any property which is held by or deposited with the clearing house of a derivatives exchange; and

(b) for the purpose of securing liabilities arising directly in connection with the clearing house of a derivatives exchange, ensuring the settlement of a market contract;

and where a charge is granted partly for the purpose of a market charge and partly for other purposes, the charge for the purposes of these Regulations is a market charge in so far as it has effect for the specified purpose;

"market collateral" means any property which is held by or deposited with a clearing house for the purpose of securing liabilities arising directly in connection with the clearing house, ensuring the settlement of a market contract and where any collateral is granted partly for the purpose of a market collateral and partly for other purposes, the collateral for the purposes of these Regulations is a market collateral in so far it has been provided for that specified purpose;

"market contract" means—

(a) a contract entered into by a clearing house with a derivatives broker under a novation—

(i) which is subject to the clearing and settlement rules of the clearing house;

(ii) for the purpose of clearing and settling of transactions using the clearing facility; and

(iii) which is subject to the rules of the clearing house of a derivatives exchange whether before or after default proceedings have commenced; or

(b) a transaction which is being cleared or settled through the clearing house, whether or not a novation is to take place;

"netting" means the determination of net payment or delivery obligations by setting off, adjusting obligations or claims arising out of buying and selling of derivatives contracts, discontinuation of business, dissolution, winding-up or insolvency or such other circumstances as may be specified in the rules of the derivatives exchange;

"net worth" means paid up capital and free reserves and other securities approved by the derivatives exchange from time to time, but does not include fixed assets, pledged securities, value of member's card, unlisted securities, bad deliveries, debts or advances overdue for more than three months or debts or advances given to the associate persons of the trading member or derivatives broker, prepaid expenses, losses, intangible assets and value of marketable securities less a haircut specified by the derivatives exchange and approved by the Authority;

"net capital balance" means the excess of current assets which includes cash at bank, trade receivables at book value less overdue for more than fourteen days, investments in listed securities and Government of Kenya bonds at market value less a haircut specified by the derivatives exchange and approved by the Authority, over current liabilities which include trade payables at book value, other liabilities as classified under International Financial Reporting Standards and contingent liabilities as classified under International Financial Reporting Standards;

"novation" means the act of a clearing house of becoming the legal counter-party to both parties of every trade;

"public interest director" means an independent director, representing the interest of investors in a derivatives market and who does not have any association with that derivatives market, either directly or indirectly;

"regulatory department" means a department of a derivatives exchange which is entrusted with regulatory powers and duties and such other departments as may be specified by the Authority;

"record" means all documentary and electronic materials created, generated, sent, communicated, received, or stored, regardless of physical form or characteristics;

"risk management" means the method of assessing, measuring and controlling risk using appropriate methods including statistical techniques;

"settlement" means the discharge of the rights and liabilities of the parties to the derivatives contract, whether by performance, compromise or otherwise;

"settlement guarantee fund" means a fund established and maintained by a derivatives exchange to strengthen the financial integrity of settlement by the derivatives exchange and used in a manner specified by the rules of the derivatives exchange;

" trading in derivative contracts" means making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view of purchasing or selling a derivatives contract; and

"tick size" means the minimum change in price of a derivative contract up or down.

PART II – LICENSING REQUIREMENTS AND DUTIES OF A DERIVATIVES EXCHANGE

3. Obligation to obtain a licence

A person shall not establish, run, conduct, organize or assist in establishing, running, conducting or organizing a derivatives exchange unless that person has obtained a license from the Authority:

Provided that a securities exchange, which has been operating under the Act at the commencement of these Regulations and is desirous of running a derivatives market, shall apply to the Authority for an additional license for listing derivatives contracts under these Regulations and all the provisions of these Regulations shall apply to such securities exchange.

4. Application for license

(1) A person who intends to establish a derivatives exchange shall submit an application for licensing to the Authority in the Form set out in the First Schedule.

(2) An application under subregulation (1) shall be accompanied by—

(a) the copies of memorandum and articles of association and rules governing the operations of the exchange, which —

(i) are in a form satisfactory to the Authority; and

(ii) restrict the applicant to the business of operating a derivatives market and services incidental thereto;

(b) details of trading, clearing and settlement systems proposed to be adopted by the applicant;

(c) the prescribed licensing fees set out in the Second Schedule;

(d) satisfactory bank references;

(e) a business feasibility plan evaluated by an entity with a proven track record and expertise in derivatives or derivatives market development, establishment or management; and

(f) such additional documents as the Authority may require.

5. Consideration for grant of license

In order to be entitled to apply for a licence under Regulation 4, an applicant shall be required to—

(a) be a company limited by shares;

(b) be demutualized;

(c) have a minimum authorized, issued and paid up equity share capital of one billion Kenya Shillings;

(d) satisfy requirements relating to ownership and governance structure specified in these Regulations;

(e) have its directors and shareholders who hold or intend to hold shares, determined as fit and proper persons as prescribed under section 24A of the Act;

(f) satisfy the minimum liquid net-worth requirements specified in these Regulations;

(g) have a minimum of one hundred million Kenya Shillings in the settlement guarantee fund before the commencement of trading;

(h) satisfy requirements relating to financial capacity, functional expertise and infrastructure;

(i) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience; and

(j) comply with any other conditions as may be specified by the Authority.

6. Rules of the exchange

(1) An applicant seeking approval to operate a derivatives exchange shall establish and adopt derivatives exchange rules.

(2) The rules adopted under subregulation (1) shall contain provisions on—

(a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the statutory committees of the board;

(b) the powers of the chief executive officer including in emergency situations;

(c) the granting of trading rights and non-transferable memberships of the derivatives exchange;

(d) general obligations of the derivatives brokers who are its derivatives members;

(e) specifications of the minimum parameters to be disclosed in respect of derivatives contracts to be listed with prior approval of the Authority;

(f) the clearing and settlement of all trades in derivatives contracts by the clearing house of the derivatives exchange where the clearing house is wholly owned by the exchange or is its subsidiary;

(g) the performance of novation, netting and guarantee settlement of trades;

(h) complete segregation of business accounts of brokers from that of their clients and between different clients;

(i) trading including validation of orders on the derivatives exchange;

(j) the suspension of trading of any derivatives contract for the protection of investors or for the conduct of orderly and fair trading;

(k) investigation into the trading practices and financial transactions of derivatives brokers and their clients;

(l) the clearing house and designated clearing banks of the derivatives exchange;

(m) the margining regime, daily marking to market of all open positions and variation margin call to derivatives brokers and their clients;

(n) the methodology for determining the daily and final settlement prices;

(o) deliveries through the clearing house and obligations of the brokers;

(p) the closing out of derivatives contracts in case of non-compliance with the rules of the derivatives exchange;

(q) the mandatory maintenance of a settlement guarantee fund including provisions for pay in, pay out and topping up;

(r) the mandatory maintenance of an investor protection fund including provisions for pay in, pay out and topping up;

(s) the declaration of an event of default and disposal of defaulter's assets under lien or pledge;

(t) the arbitration of disputes and provision for appeal to the Authority by derivatives brokers and investors; and

(u) any other provisions specified by the Authority.

7. Trading system

(1) A proposed derivatives exchange shall deploy a trading system which shall be approved by the Authority before such system is implemented.

(2) The trading system deployed under subregulation (1) shall—

(a) be integrated with a clearing and settlement system;

(b) have an online screen-based trading system for providing direct market access up to the client level via the internet;

(c) be capable of establishing connectivity with brokers and their clients;

(d) have the necessary infrastructure to ensure timely clearing and settlement of trades;

(e) have an adequate risk management mechanism including a pre trade check performed by the trading system;

(f) be capable of providing real time risk management and market surveillance tools for monitoring of trading activities of all brokers and their clients on a real time basis;

(g) provide brokers and their clients a facility for accessing both the daily transactions and financial reports including ledgers;

(h) have a facility to disseminate information about trades, quantities and quotes in real time to at least one information vending network which is accessible to investors in Kenya and internationally;

(i) have adequate systems capacity supported by a business continuity plan including a disaster recovery site;

(j) be established and maintained in a way as to ensure that it is secure and maintains the confidentiality of data; and

(k) have any other features and functionalities specified by the Authority.

8. Grant of provisional approval

(1) The Authority may, if satisfied that the applicant has demonstrated that it is capable of complying with the requirements under regulations 4, 5, 6 and 7, grant the applicant a provisional license to operate a derivatives exchange.

(2) The provisional license granted under subregulation (1) shall be valid for a period of six months:

Provided that the Authority may, upon sufficient cause shown by the applicant, extend the validity of the provisional license for a further period not exceeding three months.

9. Power to make inquiries and call for information

The Authority may, before and after granting a provisional license to an applicant for a derivatives exchange license, make inquiries and require such further information or document to be furnished, as the Authority may consider necessary.

10. Grant of licence

(1) The Authority may, after the expiry of the period for which the provisional license had been granted under regulation 8 and if the Authority is satisfied that the applicant has complied with regulations 4, 5, 6, 7 and any other relevant requirements under the Act, grant a license to the applicant to operate a derivatives exchange.

(2) A derivatives exchange shall comply with such other conditions as the Authority may impose from time to time, including conditions with regard to—

(a) the nature of derivatives contracts to be dealt with by that derivatives exchange; and

(b) approval by the Authority of all derivatives contracts to be listed by that derivatives exchange.

11. Period of license

A license granted under regulation 10 shall remain valid unless suspended or revoked by the Authority.

12. Regulatory fee

A derivatives exchange shall pay a regulatory fee as set out in the Second Schedule or as may be imposed by the Authority from time to time.

13. Revocation of license

(1) The Authority may, by notice in writing, revoke a derivatives exchange license granted under these Regulations with effect from the date specified in the notice if the derivatives exchange—

(a) ceases to comply with the eligibility conditions specified under regulations 5, 6 and 7;

(b) ceases to operate a derivatives market that it has been to operate under regulation 10;

(c) is being wound up;

(d) fails to comply with any requirement of the Act or these Regulations;

(e) fails to comply with a direction of the Authority;

(f) fails to provide the Authority with information required by the Authority;

(g) provides false or misleading information;

(h) is operating in a manner detrimental to the public interest; or

(i) requests the Authority to do so.

(2) For the purposes of subsection (1), a derivatives exchange shall be deemed to have ceased to operate its derivatives market if the derivatives exchange has ceased to operate its derivatives market for more than thirty days unless the derivatives exchange has obtained prior written approval of the Authority to do so.

(3) The Authority may, by notice served under subregulation (1), allow the derivatives exchange to continue, on or after the date on which the revocation is to take effect, to carry on such activities affected by the revocation as the Authority may specify in the notice for the purpose of—

(a) closing down the operations of the derivatives exchange; or

(b) protecting the interests of the public.

(4) The Authority shall not, except where responding to a request under subregulation (1) (i), revoke a derivatives exchange license without giving the derivatives exchange an opportunity to be heard.

(5) Where the Authority revokes the license of a derivatives exchange, the Authority shall publish a notice of that revocation in at least two newspapers of nationwide circulation in Kenya.

14. Effect of revocation

A revocation of license under regulation 13 shall not operate so as to—

avoid or affect any agreement, transaction or arrangement entered into on the derivatives market operated by the derivatives exchange where the agreement, transaction or arrangement was entered into before the revocation of the license; or

(a) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Net worth of a Derivatives Exchange

15. Net worth requirements

(1) A derivatives exchange shall maintain, at all times, liquid net worth amounts of a type acceptable to the Authority, which shall be adequate in relation to the nature, size and complexity of the business of that derivatives exchange to ensure that there is no significant risk that liabilities may not be met as they fall due.

(2) The minimum liquid networth capital requirement for a derivatives exchange shall be—

(a) an amount equal to one half of the estimated gross operating costs of the derivatives exchange for the next twelve-month period; or

(b) such other liquid networth amount as may be prescribed by the Authority.

(3) A derivatives exchange shall have systems and controls to enable the derivatives exchange to determine and monitor whether its liquid networth is sufficient for the purposes of subregulation (1) and the minimum liquid net worth requirement for the purposes of subregulation (2).

(4) A derivatives exchange shall submit to the Authority an audited liquid networth certificate from the auditor on a quarterly basis within thirty days after the end of every quarter.

Ownership of a Derivatives Exchange

16. General conditions

(1) Save as otherwise provided for in these Regulations, the shareholding or voting rights of any person in a derivatives exchange shall, at all times, not exceed the limits specified in this Part.

(2) The shareholding as specified in this Part shall include any instrument owned or controlled, directly or indirectly, which provides for entitlement to equity or rights over equity at any future date.

17. Shareholding in a derivatives exchange

(1) At least fifteen percent of the paid up equity share capital of a derivatives exchange shall be held by a Kenyan entity.

(2) No individual or corporate person shall—

(a) control or be beneficially entitled directly or indirectly, to more than twenty five percent of the issued share capital or voting rights of a derivatives exchange;

(b) be entitled to appoint more than twenty-five per cent of a board; or

(c) be entitled to receive more than twenty-five percent of the aggregate dividends to be paid in any given financial year.

(3) Where an applicant under subregulation (2) is an individual and does not meet the requirements of this regulation, that individual shall be required to comply with the requirements of this regulation within five years from the date of issue of a license to operate a derivatives exchange.

(4) Subregulation (2) shall not apply where the ownership structure of a corporate shareholder is sufficiently diverse and no single person holds or controls more than twenty-five percent of its shares, votes, directorship appointments or dividend.

18. Eligibility for acquiring or holding shares

(1) A person shall not, directly or indirectly, acquire or hold five per cent or more of the equity shares of a derivatives exchange unless that person has been certified by the Authority as fit and proper.

(2) A person who, directly or indirectly, either individually or collectively with other persons, plans to acquire equity shares such that the shareholding of that person exceeds five percent of the paid up equity share capital of a derivatives exchange, shall seek approval of the Authority at least fifteen days prior to the proposed date of acquisition.

(3) A person who holds more than five percent of the paid up equity share capital in a derivatives exchange, shall file a declaration within fifteen days of the end of every financial year to the derivatives exchange, as the case may be, that person complies with the fit and proper criteria provided in the Act.

(4) Any person who—

(a) holds five per cent or more of the equity shares of a derivatives exchange; and

(b) does not in the opinion of the Authority, fulfill the fit and proper criteria as set out under the Act—

(i) shall cease to exercise any voting rights immediately upon the derivatives exchange being notified in writing by the Authority, that the shareholder does not fulfill the fit and proper criteria as set under the Act; and

(ii) reduce the holding of equity shares to less than five per cent of the share capital of the derivatives exchange within twelve months, or such longer period as the Authority may determine.

19. Disclosure of shareholding

(1) Without prejudice to any provision of these Regulations, a derivatives exchange shall disclose to the Authority, in the format specified by the Authority, the shareholding pattern of the derivatives exchange on a quarterly basis within fifteen days from the end of each quarter.

(2) The disclosure under subregulation (1) shall include—

(a) the names of the ten largest shareholders and the number and percentage of shares held by each of them;

(b) the names of the shareholders falling under regulations 17 and 18 who acquire shares in that quarter.

(3) A derivatives exchange shall at all times monitor and ensure compliance with this Part.

20. Record keeping

A derivatives exchange shall, in addition to the requirements under any other laws, retain and preserve all the books, registers, minutes of the board meetings and other documents for a period of not less than seven years.

Governance of a Derivatives Exchange

21. Composition of the board

(1) The board of a derivatives exchange shall comprise of—

(a) shareholder directors;

(b) at least one third public interest directors; and

(c) a chief executive officer:

Provided that the chief executive officer of a derivatives exchange shall not be the chief executive officer of a subsidiary of a derivatives exchange.

(2) A derivatives broker who is a derivatives member or an associate or an agent of that derivatives broker shall not be a member of the board of any derivatives exchange.

(3) At least one public interest director shall be present in the meetings of the board to constitute the quorum.

22. Conditions of appointment of directors

(1) A derivatives exchange shall submit for approval by the Authority, the names of proposed directors for appointment to the board of a derivatives exchange thirty days prior to their appointment or re-appointment.

(2) A public interest director appointed under subregulation (1) shall serve for a fixed term of three years and shall be eligible for reappointment for one further term.

23. Appointment of chief executive officer

(1) A derivatives exchange may change its chief executive with the prior written consent of the Authority and in accordance with any conditions that may be imposed by the Authority.

(2) A derivatives exchange shall, subject to the guidelines issued by the Authority from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the appointment of the chief executive officer.

(3) The tenure under any contract for the chief executive officer of a derivatives exchange shall not be less than three years and not exceeding five years:

Provided that the tenure of office of the chief executive of a derivatives exchange may be renewed for one further term.

(4) No person shall be appointed as the chief executive officer of a derivatives exchange if the person is—

(a) a shareholder or an associate of a shareholder of any derivatives exchange; or

(b) a shareholder or an associate of a derivatives broker.

(5) The board of a derivatives exchange may, with the prior approval of the Authority, terminate the appointment of its chief executive officer—

(a) if the chief executive officer fails to comply with the articles of association of the derivatives exchange; or

to give effect to the directions, guidelines and other orders issued by the Authority, under the Act or these Regulations.

(6) The Authority may on its own motion, terminate the appointment of a chief executive officer of a derivatives exchange if the Authority considers it to be in the public interest:

Provided that the Authority shall not terminate such services without giving the chief executive officer a reasonable opportunity of being heard.

24. Code of conduct for directors and key personnel

(1) Every director of a derivatives exchange shall abide by the Code of Conduct set out in Part A of the Third Schedule.

(2) Every director and key personnel of a derivatives exchange shall abide by the Code of Ethics set out in Part B of the Third Schedule.

(3) Every director and key personnel of a derivatives exchange and its clearing house shall be fit and proper persons as prescribed under section 24A of the Act.

(4) The Authority may, if a director of a derivatives exchange fails to abide by these Regulations, the Code of Conduct or the Code of Ethics or in case of any conflict of interest, either upon a reference from the derivatives exchange or on its own motion, take appropriate action including removing or terminating the appointment of any director, after providing that director a reasonable opportunity of being heard.

25. Compensation and tenure of key personnel

(1) A derivatives exchange shall establish a compensation committee comprising of a majority of public interest directors.

(2) The compensation committee established under subregulation (1) shall—

(a) be chaired by a public interest director; and

(b) establish a compensation policy for all employees of the derivatives exchange.

(3) The compensation policy under subregulation (2) (b) shall be subject to the approval of the Authority.

(4) The compensation given to the key personnel shall be disclosed in the annual report of the derivatives exchange.

(5) The tenure of key personnel, other than a director, shall be for a fixed period, or as may be determined by the derivatives exchange compensation committee.

26. Segregation of regulatory departments

A derivatives exchange shall separate the regulatory department from other departments in the manner set out in Part C of the Third Schedule.

27. Oversight committees

(1) A derivatives exchange shall establish independent oversight committees of the board.

(2) The committees established under subregulation (1) shall—

(a) be chaired by a public interest director; and

(b) address the conflicts of interest in respect of—

(i) the regulation of futures brokers who are derivatives members;

(ii) derivatives contracts design; and

(iii) trading and surveillance functions.

(3) A head of department handling the matters referred to in subregulation (2)(b) shall report directly to the respective committee and to the chief executive officer.

(4) Any action of a derivatives exchange against a head of a regulatory department specified under subregulation (2) (b) shall be subject to an appeal to the respective committee, within such period as the board may determine.

28. Advisory Committee

(1) The board of a derivatives exchange shall establish an advisory committee mandated to advise the board on non-regulatory and operational matters including product design, technology, charges and levies.

(2) The advisory committee established under subregulation (1) shall comprise of the derivatives brokers who are members of a derivatives exchange.

(3) The chairperson of the board and the chief executive officer shall be permanent invitees to every meeting of the advisory committee.

(4) The advisory committee shall meet at least four times a year but a period of three months shall not elapse between the date of one meeting and the next meeting.

(5) The recommendations of the advisory committee shall be tabled at the meeting of the board of the derivatives exchange for consideration and appropriate decision of the board, and such recommendations along with the decision of the board on the same, shall be disclosed on the website of the derivatives exchange.

(6) A derivatives member shall not be a member of any other committee of the derivatives exchange.

29. Risk management Committee

(1) A derivatives exchange shall establish a risk management committee comprising of directors and independent external experts.

(2) The risk management committee established under subregulation (1), shall —

(a) report to the board;

(b) formulate a detailed risk management policy which shall be approved by the board;

(c) monitor the implementation of the risk management policy; and

(d) keep the Authority and the board informed on the implementation of policy and any deviation.

(3) The head of the risk management department shall—

(a) be responsible for implementation of the risk management policy; and

(b) report to the risk management committee and to the chief executive officer of the derivatives exchange.

30. Appointment of compliance officer

(1) A derivatives exchange shall appoint a compliance officer from amongst its employees.

(2) A compliance officer appointed under subregulation (1) shall be responsible for —

(a) monitoring compliance by the derivatives exchange with its articles of association, rules, these Regulations, the Act, any guidelines or directions issued thereunder; and

(b) the redress of investors' grievances.

(3) The compliance officer shall, immediately and independently, report to the Authority, the lack of compliance with any provision stated in subregulation (2).

31. Establishment of an investor protection fund

(1) A derivatives exchange shall establish an investor protection fund which—

(a) is separate from the board of a derivatives exchange;

(b) comprises of contributions by derivatives brokers and derivatives exchanges; and

(c) is intended to satisfy the claims of clients against derivatives brokers.

(2) The fund referred to subregulation (1) shall be managed by trustees appointed and holding office under a trust deed drawn by the board of a derivatives exchange.

32. Disclosure and corporate governance norms

A derivatives exchange shall comply with the disclosure requirements and corporate governance norms applicable to listed companies where no specific provisions have been made under these Regulations.

33. Transfer of penalties

(1) A derivatives exchange may levy penalties for breach of these Regulations.

(2) All penalties levied under subregulation (1) shall be credited to the investor protection fund established by the derivatives exchange.

Duties of a Derivatives Exchange

34. Duties of Derivatives exchange

(1) A derivatives exchange shall ensure—

(a) a fair, efficient and transparent market in derivatives contracts that are traded on its derivatives market; and

(b) that risks associated with the business and operations of that derivatives exchange are managed in a prudent manner.

(2) A derivatives exchange, in discharging its duty under subregulation (1), shall—

(a) act in the interest of the public; and

(b) ensure that the interest of the public prevails where it conflicts with the interest of the derivatives exchange, derivatives brokers who are its members, shareholders or the management.

(3) A derivatives exchange shall operate its facilities in accordance with the rules approved by the Authority.

(4) A derivatives exchange shall regulate the operations, standards of practice and business conduct of derivatives brokers who are its members and representatives or other employees of those derivatives brokers in accordance with the rules, policies, procedures and practices of the derivatives exchange.

(5) A derivatives exchange shall formulate and implement appropriate procedures for ensuring that the derivatives brokers who are its members and representatives or other employees of those derivatives brokers comply with the rules of the derivatives exchange.

(6) A derivatives exchange shall preserve confidentiality with regard to all information in its possession concerning derivatives brokers who are its members and their clients, except that such information may be disclosed by the derivatives exchange when required in writing to do so by the Authority or if the derivatives exchange is ordered to do so by a court of law.

(7) A derivatives exchange shall immediately notify the Authority, if the derivatives exchange becomes aware—

(a) that any derivatives broker who is a member of the derivatives exchange is unable to comply with any rules of the derivatives exchange or any financial resources requirements; or

(b) of a financial irregularity or other matter which, in the opinion of the derivatives exchange, may indicate that the financial standing or integrity of a derivatives

broker, who is its member, is in question, or that a derivatives broker, who is its member, may not be able to meet its legal obligations.

35. Facilities to be maintained by a Derivatives exchange

A derivatives exchange shall at all times provide and maintain—

(a) adequate and properly equipped premises;

(b) competent and trained personnel to effectively discharge the functions of a securities exchange; and

(c) an automated trading system which meets the requirements under regulation 7 and pre-approved by the Authority for the conduct of its business.

36. Derivatives exchange to assist Authority

(1) A derivatives exchange shall provide such assistance to the Authority as the Authority may require for the performance of the exchange to functions and duties of the Authority.

(2) Any assistance provided under subregulation (1) may include—

(a) the furnishing of returns and the provision of books and other information relating to the business of the derivatives exchange;

(b) information in respect of trading in derivatives contracts; or

(c) such other specified information as the Authority may require for the proper administration of its functions under the Act.

Self-Regulatory Organization

37. Self-Regulation

A derivatives exchange shall have—

(a) a procedure and appropriate system of exercising self-regulation over its derivatives members;

(b) a code of conduct for its derivatives members;

(c) adequate trading surveillance and compliance capacity; and

(d) a procedure for dispute resolution.

38. Derivatives Exchange to oversee its members

A derivatives exchange shall, as a condition for a license to operate a derivatives market, implement a system of self-regulation with respect to derivatives brokers, who are its derivatives members, shall ensure the day to day management of trading, clearings settlement, delivery and all other activities of derivatives brokers, who are its derivatives members, are in accordance with—

(a) the rules of the derivatives exchange approved by the Authority; and

(b) laws, regulations and guidelines relating to derivatives contracts issued by the Authority.

Accounts and Audit

39. Account and audit

(1) A derivatives exchange shall keep proper books of account and records of income and expenditure, assets and liabilities and all other transactions of the derivatives exchange.

(2) The derivatives exchange shall, as soon as practicable after the end of each financial year, prepare a statement of accounts of the derivatives exchange for the financial year, including a statement of comprehensive income and a statement of financial position.

(3) The derivatives exchange shall submit the statement of accounts prepared under subregulation (2) to its auditors for audit.

(4) The auditors shall prepare a report on the accounts and submit the report to the derivatives exchange.

(5) A derivatives exchange shall, immediately upon receipt of the auditor's report referred to under subregulation (4), send a copy of the report and a copy of the statement of accounts to the Authority.

(6) The auditors' report shall include—

(a) the opinion of the auditor, whether the statement of comprehensive income for the financial year to which the report relates gives a true and fair view of the surplus or deficit of the derivatives exchange; and

(b) a statement whether, in the opinion of the auditor, the statement of financial position for the financial year gives a true and fair view of the derivatives exchange financial affairs at the end of that financial year.

(7) Every derivatives exchange and any employee or agent of a derivatives exchange, shall on demand by an audit firm —

(a) provide any information; and

(b) produce for inspection any books, vouchers and other records;

that the audit firm may consider necessary for the performance of its duties.

40. The Authority may appoint an auditor

The Authority may, where the Authority is satisfied that it is the public interest to do so, appoint an auditor, in writing, at the expense of the derivatives exchange, to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the derivatives exchange.

41. Annual report

(1) A derivatives exchange shall, within four months after the end of its financial year, submit to the Authority an annual report.

(2) The annual report submitted under subregulation (1) shall include—

(a) a description of the activities undertaken by the derivatives exchange in that financial year;

(b) the resources, including financial, technological and human resources, that the derivatives exchange had available and used, in order to ensure compliance with its obligations and, in particular, the obligation of the derivatives exchange to ensure that the derivatives market operates in a fair, efficient and transparent manner;

(c) an analysis of the extent to which the derivatives exchange considers that the activities undertaken, and resources used have resulted in full compliance with all of the obligations of the derivatives exchange under these Regulations and the rules of the derivatives exchange;

(d) the audit report as required under these Regulations; and

(e) any other information and statements as the Authority may specify.

PART III — CLEARING HOUSE OF A DERIVATIVES EXCHANGE

42. Clearing house of a derivatives exchange

A derivatives exchange shall have a clearing house which may be —

(a) managed and operated as a department of the derivatives exchange;

(b) a wholly-owned subsidiary of the derivatives exchange;

(d) an associate of the derivatives exchange; or

(d) a third party contracted company.

43. Duties of a clearing house of a derivatives exchange

(1) A clearing house shall ensure that—

(a) in so far as reasonably practicable, there is orderly, fair and expeditious clearing and settlement arrangements for any transactions in derivatives contracts, cleared or settled through its facilities; and

(b) the risks associated with its business and operations are managed in a prudent manner.

(2) In discharging its duty under subregulation (1), a clearinghouse shall—

(a) act in the interest of the public; and

(b) ensure that where the interest of the public conflicts with its interest, the interest of the public prevails.

(3) A clearing house shall—

(a) operate its facilities in accordance with the established clearing rules;

(b) formulate and implement appropriate procedures to ensure that derivatives brokers comply with its rules;

(c) ensure confidentiality of any information in its possession concerning its derivatives brokers and their clients, subject to disclosure of such information when required in writing to do so by the Authority, the derivatives exchange or if it is ordered by Court to do so; and

(d) have efficient procedures and arrangements to address investor complaints.

(4) A clearing house shall immediately notify the Authority if it becomes aware—

(a) that any of its derivatives brokers is unable to comply with any rule of the clearing house or the derivatives exchange; and

(b) of a financial irregularity or other matter which in the opinion of the clearing house may indicate that—

(i) the financial standing or integrity of a derivatives broker is in question; or

(ii) a derivatives broker may not be able to meet its legal obligations.

(5) A clearing house shall, for the conduct of its business, provide and maintain at all times—

(a) equate and properly equipped premises;

(b) competent personnel;

(c) automated systems with adequate capacity and facilities to meet contingencies or emergencies,

(d) security arrangements; and

(e) technical support for the conduct of its business.

44. Clearing and settlement rules of a derivatives exchange

(1) A derivatives exchange shall make rules for its clearing house.

(2) Where a clearing house is a distinct entity from a derivatives exchange, the clearing house shall make its own rules.

(3 The rules made under subregulations (1) or (2) shall be subject to the approval of the Authority and shall provide for—

(a) registration of derivatives contracts;

(b) settlement of transactions involving derivatives contracts;

(c) guarantee to its derivatives brokers the settlement of derivatives contracts;

(d) types of margins to be applied on all open positions;

(e) periodic marking to market of all open positions;

(f) determining the daily settlement price and the final settlement price;

(g) setting up a settlement guarantee fund;

(h) setting up an investor protection fund; and

(i) the procedure of expulsion, suspension or disciplining of a derivatives broker who contravenes the clearing and settlement rules of the derivatives exchange.

(4) In addition to the requirements of subregulations (1) and (2), the rules of a derivatives exchange and its clearing house shall also include default provisions, which shall provide for the procedure which a derivatives exchange may undertake in instituting default proceedings or taking any other action against a derivatives broker who has failed, appears to be unable, or is likely to become unable to meet its obligations for all unsettled or open market contracts to which the derivatives broker is a party.

(5) The default provisions shall in particular—

(a) enable the settlement of all derivatives contracts;

(b) provide, for the purposes of paragraph (a), for payment by or to a derivatives broker, a sum of money in relation to each contract if that is required after taking into account all the rights and liabilities of the derivatives broker under or in respect of the derivatives contract concerned;

(c) enable all sums of money payable by or to the derivatives broker as determined in accordance with paragraph (b), to be aggregated or set-off so as to produce a net sum, if any, payable by or to the derivatives broker;

(d) provide that, if any net sum referred to in paragraph (c) is payable by the derivatives broker the net sum to be set-off against all property of the derivatives broker which is either subject to a market charge or which has been provided as a market collateral or set-off against the proceeds of the realization of such property so as to produce a further net sum, if any, payable by or to the derivatives broker;

(e) provide that, if any net sum referred to in paragraph (c) is payable to the derivatives broker, all property of the derivatives broker which is either subject to a market charge or which has been provided as a market collateral shall cease to be subject to the market charge but without prejudice to any other form of charge to which it may be subject or to be market collateral but without prejudice to its provision as any other form of collateral, as the case maybe; and

(f) provide for the certification by the clearing house of any net sum referred to in r paragraph (c) payable to the derivatives broker, or of any further net sum referred to in paragraph (d) payable by or to the derivatives broker, as the case may be, or if there is no such sum, the certification by the clearing house of that fact.

(6) Where a clearing house takes default proceedings against a defaulter, all subsequent action taken under the rules of the clearing house for settlement of market contracts to which the defaulter is a party, shall be treated as taken under the default proceedings.

(7) The rules of a clearing house of a derivatives exchange shall apply to the employees of its derivatives brokers.

(8) The derivatives brokers of a clearing house shall ensure that its employees comply with the rules of the clearing house.

45. Ranking of default proceedings of clearing house in insolvency

(1) Where property is subject to a market charge or has been provided as a market collateral, no execution or other legal process for the enforcement of a judgment or an order may be commenced or continued, and no distress may be levied, against the property by a person seeking to enforce any interest in or security over the property, except with the consent of the clearing house concerned.

(2) Where a person is not entitled, by virtue of this regulation, to enforce judgment or an order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

46. Derivatives broker to be party to certain transactions as principal

(1) For the purposes of these Regulations, where a derivatives broker—

(a) enters into any transaction, including a market contract with a clearing house of a derivatives exchange; and

(b) is likely to be a party to that transaction as an agent, notwithstanding any other law, as between the clearing house and any other person, including the derivatives broker and the person who is his principal in respect of that transaction, the derivatives broker shall for all purposes, including any action, claim or demand, either civil or criminal, be deemed not to be a party to that transaction as agent but as principal.

(2) For the purposes of these Regulations, where—

(a) two or more derivatives brokers enter into any transaction; and

(b) any such derivatives broker is likely to be a party to that transaction as agent,

notwithstanding any other law, any such derivatives broker to whom this regulation applies shall for all purposes, including an action, claim or demand, either civil or criminal, except as between that derivatives broker and the person who is its principal in respect of that transaction shall be deemed not to be a party to the transaction as an agent but as a principal.

47. Property deposited with a clearing house

(1) Subject to regulation 44, where a derivatives broker deposits any property with a clearing house as market collateral in accordance with the clearing and settlement rules of a derivatives exchange, then, notwithstanding any other law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person shall lie, or shall be commenced or allowed against the derivatives exchange or its nominees.

(2) The operation of subregulation (1) shall be subject to any modifications and exclusions provided in the clearing and settlement rules of the derivatives exchange.

48. Preservation of rights etc

These Regulations, except to the extent where they expressly provide for, shall not operate to limit, restrict or otherwise affect—

(a) any right, title, interest, privilege, obligation or liability of a person;

(b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

PART IV— APPROVAL OF DERIVATIVES CONTRACT

49. Transactions that may be conducted on a derivatives exchange

(1) The Authority shall, by notice, prescribe transactions which may be conducted on a derivatives market.

(2) The transactions prescribed under subregulation (1) shall only be dealings in derivatives contracts or other financial products.

50. Approval of derivatives contracts

(1) Every derivatives contract shall be approved by the Authority prior to becoming eligible for listing on a derivatives exchange.

(2) A derivatives exchange shall submit an application for approval of a derivatives contract to the Authority.

(3) Each application for approval of a derivatives contract shall include the following information—

(a) size of the contract;

(b) tick size;

(c) duration of the contract;

(d) mode of final settlement;

(e) grade and quality of the underlying asset, if applicable;

(f) position limits at the derivatives broker and client levels; and

(g) any other information which the Authority may consider necessary.

(4) Upon receipt of an application under subregulation (2), the Authority may, if it is satisfied that the application fulfills the requirements under subregulation (3), approve the derivatives contract for listing on the derivatives exchange.

(5) If after the approval of the derivatives contract, the Authority finds the application or operationalization of the approved derivatives contract deficient in any material respect or that the derivatives exchange has failed to comply with any of the prescribed conditions or requirements or that the continued listing of the derivatives contract would not be in the public interest, the Authority may—

(a) direct the derivatives exchange to correct the deficiency;

(b) direct the derivatives exchange to comply with the prescribed condition or requirement within the specified time;

(c) amend the specification of any derivatives contract; or

(d) revoke the derivatives contract.

(6) An application submitted under subregulation (2) shall not be refused and an approval of a derivatives contract shall not be revoked unless the derivatives exchange has been given the opportunity of being heard.

PART V — LICENSING OF DERIVATIVES BROKERS

51. Obligation to seek a license

A person shall not carry on or purport to carry on business as a derivatives broker unless that person is licensed as a derivatives broker by the Authority.

52. Licensing of a derivatives broker

(1) A person who intends to operate as a derivatives broker shall submit an application for a license to operate as such to the Authority in Form 2 as set out in the Fourth Schedule.

(2) An application under subregulation (1) shall be accompanied by—

(a) the prescribed fees as set out in the Fifth Schedule;

(b) the documents, information and declarations specified under regulation 52; and

(c) a letter from the derivatives exchange stating that the applicant meets all the relevant requirements of that derivatives exchange and that the derivatives exchange will admit the applicant if licensed by the Authority.

53. Consideration for grant of license

(1) An applicant seeking a license under regulation 51 shall be required to—

(a) be a company limited by shares;

(b) have a chief executive who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in commodities, commodity derivatives contracts or other securities;

(c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;

(d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and

(e) have a minimum net capital and minimum net worth as determined by the derivatives exchange and approved by the Authority from time to time.

(2) Where an applicant is a market intermediary of another securities exchange in addition to the derivatives exchange, the applicant shall provide an undertaking that it shall allocate a prescribed percentage of the net capital balance to support its activities at the derivatives exchange.

(3) The net capital required under regulation (3) shall—

(a) not be less than the minimum required net capital balance at the derivatives exchange;

(b) be kept segregated; and

(c) be maintained at all times.

(4) A shareholder, a director and key personnel of the applicant shall be persons who have not defaulted in payment of dues at a clearing house.

54. Furnishing of information, clarifications, etc

(1) The Authority may, in considering an application made under regulation 51, require an applicant to furnish such further information regarding any previous dealings in securities, commodities and any other related matter as the Authority may consider necessary.

(2) An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

55. Grant of license

(1) The Authority, shall, within thirty days from the date of application, grant a licence to an applicant, if the Authority is satisfied that the applicant is eligible to be licensed derivatives broker.

(2) The Authority shall duly inform the derivatives exchange and the applicant of the grant of a licence under subregulation (1).

(3) A licence granted under subregulation (1) shall remain valid unless suspended or revoked.

(4) The, Authority shall not refuse to grant a licence without first giving the applicant an opportunity of being heard.

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a licence, the Authority shall communicate the decision to the applicant and the derivatives exchange within fourteen days of the hearing, stating the grounds for refusal.

(6) An applicant aggrieved by the decision of the Authority under subregulation (5) may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

56. Annual license fees

A derivatives broker shall pay an annual licence fee as set out in the Fifth Schedule.

57. Suspension of a license

(1) Where the Authority is satisfied that—

(a) a derivatives broker has failed to comply with any conditions subject to which the licence was granted under these Regulations;

(b) a derivatives broker has failed to comply with the Act, these Regulations or any directions made or given thereunder;

(c) a derivatives broker has contravened the rules of the derivatives exchange;

(d) a derivatives broker has failed to adhere to any requirement of the code of conduct as laid down under these Regulations;

(e) a derivatives broker has failed to comply with the directives of the Authority in respect of business conduct, dealings with clients and financial prudence;

(f) a derivatives broker has failed to furnish any information relating to the transactions of the derivatives broker in derivatives contracts as may be required by the Authority;

(g) a derivatives broker has failed to submit periodical returns as required by the Authority;

(h) a derivatives broker has furnished the Authority or the derivatives exchange with wrong or false information;

(i) a derivatives broker has failed to settle an investor complaint where such complaint has been adjudicated by a securities exchange, a derivatives exchange, a committee of an exchange or the Authority;

(j) a derivatives broker has not co-operated in any enquiry or inspection conducted by the Authority;

(k) a derivatives broker has indulged in market manipulation, price rigging or cornering activities at a derivatives exchange;

(l) a derivatives broker has experienced or is experiencing financial position deterioration to such an extent that the Authority is of the opinion that the continuance of the derivatives broker in the business of dealing in derivatives contracts is no longer in the interest of investors;

(m) a derivatives broker has been suspended by a securities exchange or a derivatives exchange; or

(n) a derivatives broker has failed to pay the annual fees; or

(o) it is necessary in the public interest to do so,

the Authority may, by order in writing, suspend the licence of a derivatives broker for such period as may be specified in the order or take such administrative action as it may consider necessary.

(2) The Authority shall, before issuing an order of suspension or other administrative action under subregulation (1), give a derivatives broker an opportunity to be heard.

58. Revocation of a license

(1) The Authority may, by order in writing, revoke the licence of a derivatives broker where it is satisfied that—

(a) the reasons for suspension of a licence under regulation 56 continue during the period of such suspension;

(b) a derivatives broker whose licence has been suspended—

(i) is engaging or has engaged in insider trading, market manipulation or any other unfair practice or market abuse;

(ii) has been found guilty of fraud or convicted of a criminal offence;

(iii) has not complied with a directive of the Authority; or

(c) the membership of that derivatives broker has been cancelled by a derivatives exchange or another securities exchange; or

(d) it is necessary for the protection of investors.

(2) The Authority shall, before issuing an order of revocation under subregulation (1), give a derivatives broker an opportunity to be heard.

59. Automatic revocation of a license

(1) A licence granted under regulation 54 shall automatically be revoked if the derivatives broker—

(a) ceases to be a trading member of a derivatives exchange;

(b) is declared a defaulter by a securities exchange or a derivatives exchange and is not re-admitted to membership within a period of six months from such declaration;

(c) surrenders its membership in all derivatives exchanges where it is a member;

(d) is declared insolvent by a court of law;

(e) voluntarily surrenders the license to the Authority; or

(f) is wound up by a court order.

60. Appeal against suspension or revocation of licence

A derivatives broker aggrieved by the decision of the Authority to suspend or revoke its licence may, within fifteen days of being notified of the decision of the Authority, appeal to the Capital Markets Tribunal.

61. Derivatives broker to clear liabilities

Despite a suspension or revocation of a licence under regulations 56, 57 or 58, a derivatives broker shall be responsible for clearing all its outstanding obligations up to the date on which that derivatives broker has been operating as such.

62. Continuing obligations

(1) A derivatives broker shall, as a condition of continued admission as a derivatives broker, provide to the Authority through the derivatives exchange a certified copy of—

(a) the net capital balance;

(b) net worth statements; and

(c) a report of the auditor;

in a form that may be prescribed by the Authority from time to time, on a quarterly basis within thirty days of the end of the quarter.

PART IV — CONDUCT OF BUSINESS OF DERIVATIVES

63. Standards of conduct

The provision of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011 (L.N. 144/2011) and the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011 (L.N. 145/2011) shall apply to derivatives brokers.

64. Systems audit

A derivatives broker shall undergo a periodic system audit in accordance with the directions issued by the Authority from time from time.

65. Risk disclosure statements

A derivatives broker shall not open a derivatives trading account for a client unless the derivatives broker has—

(a) furnished the client with a separate written risk disclosure statement which shall be in such form and contain such information as may be prescribed by the derivatives exchange and approved by the Authority; and

(b) received an acknowledgement from the client signed and dated by the client confirming that the client has received and understood the nature and contents of the risk disclosure statement.

66. Segregation of clients' funds

(1) A derivatives broker shall maintain strict segregation between its own funds and each individual clients' funds without any co-mingling between—

(a) it's own funds and clients' funds; and

(b) individual clients' funds.

(2) A derivatives broker shall establish a Client Group Account with the designated clearing bank of the derivatives exchange of which that derivatives broker is a derivatives member.

(3) A derivatives broker shall ensure that all deposits and withdrawals on behalf of clients are only made through the Client Group Account established under subregulation (2).

(4) A derivatives broker shall only accept a deposit towards initial margins, special margins, delivery margins, variation margins or fees by way of—

(a) a cheque;

(b) a bank draft; or

(c) online bank transfer or via mobile banking transfer from a client designated account.

(5) A derivatives broker shall immediately deposit any deposits under subregulation (4) in the Client Group Account maintained by the derivatives broker with the derivatives exchange designated clearing bank for onward transfer and credit to each individual clients' account at the clearing house of the derivatives exchange.

(6) Any withdrawals requested by a client shall be processed by transferring funds from the individual clients' account maintained at the clearinghouse of the derivatives exchange to the Client Group Account maintained by the derivatives broker at the designated clearing bank of a derivatives exchange.

(7) A withdrawal under subregulation (6) shall be settled either by a cheque drawn on the Client Group Account of the derivatives broker, by online bank transfer or by mobile banking transfer, to a designated client account, from the same account maintained at the designated clearing bank of a derivatives exchange.

(8) A derivatives broker shall undertake and complete reconciliation on a daily basis between—

(a) the Client Group Account maintained at the designated clearing bank of a derivatives exchange;

(b) the Client Group Account at the clearing house of a derivatives exchange; and

(c) individual clients' account maintained at the clearing house of a derivatives exchange.

(9) A derivatives broker shall not accept cash from or pay cash to a client for a transaction under these Regulations.

(10) A derivatives broker shall maintain a record of transactions with the banks including clients deposits and withdrawals from the client group account maintained with the derivatives exchange designated clearing bank.

PART VII — INSPECTION

67. The right of the Authority to inspect

(1) The Authority may appoint one or more persons as inspecting officers to undertake inspection of the books of accounts and other records of a derivatives broker, where there is need to—

(a) establish that the books of accounts and other records are being maintained in the manner required;

(b) ensure that the provisions of the Act are being complied with;

(c) investigate into the complaints received from investors, other derivatives brokers or any other person on any matter having a bearing on the activities of the derivatives broker; and

(d) investigate on its own motion, in the interest of derivatives business or the interest of investors, into the affairs of a derivatives broker.

68. Procedure for inspection

(1) The Authority shall, before undertaking an inspection under regulation 66, give the derivatives broker a reasonable notice of the intention to undertake an inspection.

(2) Notwithstanding subregulation (1), the Authority may direct, in writing, that an inspection of a derivatives broker be carried out without notice to the derivatives broker, if

the Authority is satisfied that it is in the interest of the investors or in the public interest that no such notice should be given.

(3) The inspecting officers appointed under regulation 66, shall have the power to undertake the inspection of the derivatives broker as directed by the Authority and that derivatives broker is bound to discharge its obligation as provided under regulation 68.

69. Obligations of derivatives broker who is under inspection

(1) An inspecting officer may require a shareholder, director, officer or an employee of the derivatives broker under inspection to produce, such books, accounts and other documents in his or her custody or control and furnish the inspecting officer with the statements and information relating to the transactions in derivatives market within such time as the inspecting officer may require.

(2) A derivatives broker shall—

(a) allow the inspecting officer reasonable access to the premises occupied by the derivatives broker or by any other person acting on behalf of the derivatives broker;

(b) extend reasonable facilities to the inspecting officer to examine any books, records, documents and computer data in the possession of the derivatives broker or any other person; and

(c) provide copies of documents or other materials which, in the opinion of the inspecting officer, are relevant.

(3) An inspecting officer shall, in the course of inspection, be entitled to examine or record statements of any shareholder, director, partner, proprietor or employee of a derivatives broker under inspection.

(4) A director, an officer or an employee of the derivatives broker under investigation shall give to the inspecting officer any assistance in connection with the inspection which the derivatives broker may reasonably be expected to give.

70. Action on inspection report

The Authority may, after considering an inspection report, take such action as provided for under the Act.

71. Appointment of an auditor

(1) The Authority may, in the interest of investors, appoint a qualified auditor to audit the books of accounts or to investigate any affairs of a derivatives broker at the cost of that derivatives broker.

(2) Any shareholder, director, officer or employee of the derivatives broker which is being audited or investigated shall produce, to the auditor, such books, accounts and other documents in his or her custody or control and furnish the auditor with the statements and information relating to the transactions in derivatives market within such time as the auditor may require.

(2) A derivatives broker shall—

(a) allow the auditor reasonable access to the premises occupied by the derivatives broker or by any other person acting on behalf of the derivatives broker;

(b) extend reasonable facilities to the auditor to examine any books, records, documents and computer data in the possession of the derivatives broker or any other person; and

(c) provide copies of documents or other materials which, in the opinion of the auditor, are relevant.

(4) An auditor shall, in the course of an audit or investigation, be entitled to examine or record statements of any member, director, partner, proprietor or employee of a derivatives broker under audit or investigation.

(5) A director, an officer or an employee of the derivatives broker under audit or investigation shall give the auditor all assistance in connection with the audit or investigation which the derivatives broker may reasonably be expected to give.

PART VIII — MARKET OFFENCES

72. False trading

(1) A person who creates, causes to be created, or does anything that is calculated to create a false or a misleading appearance of trading activity in a derivatives market, commits an offense.

(2) Without limiting the generality of subregulation (1), a false or a misleading appearance of trading activity is created if a person executes or holds himself or herself out as having executed an order for the purchase or sale in a derivatives market, without having effected a bona fide purchase or sale in accordance with the regulations, rules and practices of the derivatives market.

73. Bucketing

A person who directly or indirectly takes the opposite side of a client's order into a derivatives broker's own account or into an account in which a derivatives broker has an interest, without open and competitive execution of the order on the derivatives exchange, commits an offense.

74. Manipulation of price of a Derivatives contract and cornering

(1) A person who directly or indirectly—

(a) manipulates or attempts to manipulate the price of—

(i) a derivatives contract that may be traded on a derivatives market;

(ii) any commodity which is the underlying of a derivatives contract; or

(b) corners, or attempts to comer, any commodity which is the underlying of a derivatives contract, commits an offence.

75. Employment of fraudulent or deceptive devices, etc

(1) A person who, directly or indirectly, in connection with any transaction with any other person involving trading in a derivatives contract—

(a) employs any device, scheme or artifice to defraud that person;

(b) engages in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that person; or

(c) makes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, misleading,

commits an offence.

76. Fraudulently inducing trading in derivatives contracts

(1) A person who directly or indirectly, induces or attempts to induce another person to trade in a derivatives contract by—

(a) making or publishing any statement, promise or forecast that is false, misleading or deceptive;

(b) concealing material facts; or

(c) recording or storing in, or by means of, any mechanical, electronic or other device, information that is false or misleading in a material fact particularly to induce or attempt to induce that person to trade in a derivatives contract,

commits an offence.

77. Trading of derivatives contracts off-exchange is illegal

A derivatives broker shall ensure that any derivatives business that the derivatives broker conducts in relation to derivatives contracts shall be concluded on or through the facilities of a derivatives exchange as may be provided by the rules of the derivatives exchange.

78. Penalty

A person who is found guilty of an offence under this Part shall be liable to the penalty as specified under section 34A of the Act in addition to any action for damages in respect of the loss occasioned.

PART IX — GENERAL PROVISIONS

79. Repeal of L.N. 108/2013

The Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations, 2013 are repealed.

80. Savings

An exchange which was licensed under the Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations, 2013 (L.N. 108/2013) and repealed by these Regulations shall continue to operate as if it is licensed under these Regulations and shall be required to comply with these Regulations.

FIRST SCHEDULE

Form 1 [Reg. 4(1).]

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015

APPLICATION FORM FOR A LICENSE TO CONDUCT
THE BUSINESS OF A DERIVATIVES EXCHANGE

Application is made for a derivatives exchange license under the Act and the following are made in respect thereof:

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.
Information provided should be as at the date of application or renewal.

1. Name of the Company ..... Limited

2. Registered office.....

3. Date of incorporation .....

4. Address.....

5. E-mail. .....

6. Location, address and telephone number of principal office .....

.....

7. Location, address and telephone number of branch offices .....

.....

.....

8. Details of capital structure: .....

(a) Nominal/authorized capital (Kshs.) .....

(b) Number of shares .....

(c) Paid-up capital (Kshs.).....

9. Shareholders (please attach list)

Name	Address and telephone number	Number of shares held
. .		

10. (a) Directors (please attach a list)

Name	Identity card/ Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or profess-ional qualification	Number of shares held in the company
				. .		

(b) Secretary

Name.....

Address....., ..., ...

Institute of Certified Secretaries of Kenya Registration No.....

(c) Chief Executive Officers and other key personnel

Name	Identity card/ Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company
. .						

11. Particulars of other directorship (s) of the directors and secretary.....

.....

.....

.....

12. Particulars of shares held by the directors and secretary in other companies

.....

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No.
If" Yes", give details .....

.....

.....

.....

14. Has any director, secretary or key personnel of the applicant been a director of a company that has been:

(a) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No

If Yes, give details .....

.....

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No.

If Yes, give details .....

.....

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. if Yes, give details .....

.....

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details .....

.....

.....

16. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a "yes" answer to question 15? Yes/No. If "yes" give details .....

.....

.....

17. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, derivatives exchange or commodities exchange? Yes/No. If "yes" give details.

.....

.....

(2) have any of the above persons been—

(a) refused admission as a member of any securities organization? Yes/No. if Yes, give details .....

.....

(b) expelled from or suspended from trading on any securities organization? Yes/No if Yes, give details ....

.....

(c) subjected to any other form of disciplinary action by any stock exchange? Yes/No if Yes, give details .....

.....

18. Business references:

Name	Address	Telephone number(s)	Occupation
. .			

19. Profile of the chief executive officer and key personnel in the applicant company

.....

.....

20. List of office facilities of the applicant .....

.....

21. Any other additional information considered relevant to this applicant .....

.....

We ..... (Director) ..... (Director)

and ..... (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this..... day of ..... 20 .....

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

1. The following shall be submitted with the application for a license:

(a) memorandum and articles of association;

(b) certificate of incorporation;

(c) feasibility plan complying with regulation 4 (2)(e);

(d) rules of the proposed derivatives exchange containing provisions in compliance with the matters detailed under regulation 3;

(e) details of the proposed trading system complying with the requirements of regulation 7;

(f) statements of the unaudited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in case of application of license);

(g) a declaration by directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of application—

(i) the business of the company has, in their opinion, been satisfactorily maintained;

(ii) they have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;

(iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;

(iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries;

(h) a declaration by persons authorized as prescribed to accompany the application form; and

(i) application fee.

SECOND SCHEDULE

[Reg. 4(2)) (c) &12.]

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015

LICENSING AND ANNUAL FEES FOR DERIVATIVES EXCHANGES

Application fees.....Kshs. 2,500.00

Licensing fees.....Kshs. 2,500,000.00

Annual regulatory fees.....Kshs. 2,500,000.00

THIRD SCHEDULE

PART A

[Reg. 24(1).]

i. Meetings and minutes.

Every director of the derivatives exchange shall—

(a) not participate in discussions on any subject matter in which any conflict of interest exists or arises, whether pecuniary or otherwise, and in such cases the same shall be disclosed and recorded in the minutes of the meeting;

(b) not encourage the circulation of agenda papers during the meeting, unless circumstances so require;

(c) offer their comments on the draft minutes and ensure that the same are incorporated in the final minutes;

(d) insist on the minutes of the previous meeting being placed for approval in subsequent meeting;

(e) endeavor to have the date of next meeting fixed at each board meeting in consultation with other members of the board;

(f) endeavor to ensure that in case all the items of the agenda of a meeting were not covered for want of time, the next meeting is held within fifteen days for considering the remaining items.

(d) with respect to the conditions under which securities may be listed for trading in the market;

(e) with respect to the conditions under which an application for the delisting of securities from the securities exchange may be allowed;

(f) with respect to the conditions under which the listing of particular security may be revoked;

(g) with respect to the conditions governing dealing in securities by its members so as to ensure protection of the rights of investors;

(h) with respect to timely and accurate disclosure of all material information necessary for investors to make informed investment decisions;

(i) with respect to the protection of investors in securities, from misleading, fraud, deceit and other adverse practices in the issuing and trading of securities and from the abuse of privileged information not yet made available to the general public;

(j) with respect to prohibition of securities market manipulation in any from;

(k) for investigation into trading in securities and financial transaction of brokers and dealers and for conducting surprise checks on such members;

(l) for suspension of trading of any given security for the protection of investors or for the conduct of orderly and fair trading;

.

(m) with respect to conduct of securities trading by brokers and leaders and manner in which information relating to transactions is to be maintained and reported to other members and customers;

(n) for ensuring that customers funds and securities are segregated from other business accounts of members;

(o) for ensuring fair representation of persons in the selection of its governing body and administration of its affairs to include representatives of listed companies, investors and general public not associated with any broker or dealer;

(p) for arbitration of disputes and provision for appeal to the authority for aggrieved members, investors and listed companies;

(q) for efficient settlement of securities transactions;

(r) for proper safe keeping of securities in its custody;

ii. Code of Conduct for the public interest directors.

(a) In addition to the conditions stated in paragraph (i), public interest directors of the derivatives exchange shall, endeavor to attend all the board meetings and they shall be liable to vacate office if they remain absent for three consecutive meetings of the board or do not attend seventy five percent of the total meetings of the board in a calendar year.

(b) Public interest directors shall meet separately, at least once in six months to exchange views on critical issues.

iii. Strategic planning.

Every director of the derivatives exchange shall—

(a) participate in the formulation and execution of strategies in the best interest of the Derivatives exchange and contribute towards pro-active decision making at the board level;

(b) give benefit of their experience and expertise to the Derivatives exchange and provide assistance in strategic planning and execution of decisions.

iv. Regulatory compliances.

Every director of the derivatives exchange shall—

(a) endeavor to ensure that the derivatives exchange abides by all the provisions of the Act and regulations framed thereunder and the circulars, directions issued by the Authority from time to time;

(b) endeavor compliance at all levels so that the regulatory system does not suffer any breaches;

(c) endeavor to ensure that the derivatives exchange takes steps commensurate to honour the time limit stipulated by Authority for corrective action;

(d) not support any decision in the meeting of the board which may adversely affect the interest of investors and shall report forthwith any such decision to the Authority.

v. General responsibility.

Every director of the derivatives exchange shall—

(a) place priority for redressing investor grievances and encouraging fair trade practice so that the derivatives exchange becomes an engine for the growth of the derivatives market;

(b) endeavour to analyze and administer the derivatives exchange issues with professional competence, fairness, impartiality, efficiency and effectiveness;

(c) submit the necessary disclosures/statement of dealings in derivatives contracts as required by the derivatives exchange from time to time as per their rules or articles of association;

(d) unless otherwise required by law, maintain confidentiality and shall not divulge/disclose any information obtained in the discharge of their duty and no such information shall be used for personal gains;

(e) maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of their duties in order to inspire public confidence and shall not engage in acts discreditable to their responsibilities;

(f) perform their duties in an independent and objective manner and avoid activities that may impair, or may appear to impair, their independence or objectivity or official duties;

(g) perform their duties with a positive attitude and constructively support open communication, creativity, dedication, and compassion;

(h) not engage in any act involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation or any other act prejudicial to the administration of the derivatives exchange.

PART — B

[Reg. 24(2).]

Code of Ethics for directors and key personnel of Derivatives Exchange

The 'Code of Ethics' for directors and key personnel of the derivatives exchange, is aimed at improving the professional and ethical standards in the functioning of derivatives exchange thereby creating better investor confidence in the integrity of the derivatives market.

i. Objectives and underlying principles.

The Code of Ethics for directors and key personnel of the derivatives exchange seeks to establish a minimum level of business/ professional ethics to be followed by these directors and key personnel, towards establishing a fair and transparent marketplace. The Code of Ethics is based on the following fundamental principles:

(a) fairness and transparency in dealing with matters relating to the derivatives exchange and the investors;

(b) Compliance with all laws/ rules/ regulations laid down by regulatory agencies/ derivatives exchange;

(c) Exercising due diligence in the performance of duties; and

(d) Avoidance of conflict of interest between self-interest of directors/key management personnel and interests of derivatives exchange and investors.

ii. Ethics committee.

For overseeing implementation of this Code, an ethics committee shall be constituted by every Derivatives exchange under the respective board.

iii. General standards.

(a) Directors and key personnel shall endeavor to promote greater awareness and understanding of ethical responsibilities;

(b) Directors and key personnel, in the conduct of their business shall observe high standards of commercial honor and just and equitable principles of trade;

(c) The conduct of directors and key personnel in business life should be exemplary which will set a standard for other members of the derivatives exchange;

(d) Directors and key personnel shall not use their position to give/get favors to/from the executive or administrative staff of the derivatives exchange, technology or service providers and vendors of the Derivatives exchange;

(e) Directors and key personnel shall not commit any act which will put the reputation of the derivatives exchange, in jeopardy; and

(f) Directors, committee members and key personnel of the derivatives exchange, should comply with all rules and regulations applicable to the derivatives market.

iv. Disclosure of dealings in Derivatives Contracts by key personnel of the Derivatives Exchange.

Key personnel of the Derivatives exchange shall disclose on a periodic basis as determined by the laws, regulations, guidelines, rules relating to the Derivatives markets (which could be monthly), all their dealings in Derivatives contracts, directly or indirectly, to the board/ ethics committee/ Compliance Officer.

vi. Avoidance of conflict of interest.

(a) No director of the board or member of any committee of the Derivatives exchange participate in any decision making/adjudication in respect of any person /matter in which he is in any way, directly or indirectly, concerned or interested.

(b) Whether there is any conflict of interest or not in a matter, should be decided by the board.

vii. Role of the Chairperson and directors in the day to day functioning of the Derivatives exchange or clearing corporation.

(a) The chairperson and directors shall not interfere in the day to day functioning of the Derivatives exchange and shall limit their role to decision making on policy issues and to issues as the board may decide;

(b) The chairperson and directors shall abstain from influencing the employees of the Derivatives exchange in conducting their day to day activities; and

(c) The chairperson and directors shall not be directly involved in the function of appointment and promotion of employees unless specifically so decided by the board.

viii. Access to information.

(a) Directors shall call for information only as part of specific committees or as may be authorized by the board.

(b) There shall be prescribed channels through which information shall move and further there shall be audit trail of the same. Any retrieval of confidential documents/ information shall be properly recorded.

(c) All such information, especially which is non-public and price sensitive, shall be kept confidential and not be used for any personal consideration/ gain.

(d) Any information relating to the business/operations of the Derivatives exchange, which may come to the knowledge of directors/ key personnel during performance of their duties shall be held in strict confidence, shall not be divulged to any third party and shall not be used in any manner except for the performance of their duties.

ix. Misuse of position.

Directors/ committee members shall not use their position to obtain business or any pecuniary benefit in the organization for themselves or family members.

X. Ethics committee to lay down procedures.

(a) The ethics committee shall lay down procedures for the implementation of the code and prescribe reporting formats for the disclosures required under the code.

(b) The compliance officer shall execute the requirements laid down by the ethics committee.

While the objective of this Code is to enhance the level of market integrity and investor confidence, it is emphasized that a written code of ethics may not completely guarantee adherence to high ethical standards. This can be accomplished only if directors and key personnel of the Derivatives exchange commit themselves to the task of enhancing the · fairness and integrity of the system in letter and spirit.

PART – C

[Reg. 26.]

Measures to ensure segregation of regulatory departments

In order to ensure the segregation of regulatory departments, every Derivatives exchange shall adopt a "Chinese Wall" policy which separates the regulatory departments of the Derivatives exchange from the other departments. The employees in the regulatory departments shall not communicate any information concerning regulatory activity to any one in other departments. The employees in regulatory areas may be physically segregated from employees in other departments including with respect to access controls. In exceptional circumstances employees from other departments may be given confidential information on "need to know" basis, under intimation to the compliance officer

FOURTH SCHEDULE

FORM 2 [Reg. 52(1).]

APPLICATION FORM FOR LICENCE AS DERIVATIVES BROKER

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (DERIVATIVES MARKETS) REGULATIONS, 2015

APPLICATION FORM

APPLICATION FOR A LICENCE TO CONDUCT
THE BUSINESS OF A DERIVATIVES BROKER

Application is made for a derivatives broker licence under The Capital Markets (Derivatives Business) Regulations, 2015 and the following statements are made in respect thereof:

Note —

If space is insufficient to provide details, please attach annexure(s). Any annexure(s)should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of company ..... Limited

2. Registered office .....

3. Date of incorporation .....

4. Address .....

5. E-mail .....

6. Location, address and telephone number of principal office .....

7. Location, address and telephone number of branch offices .....

8. Details of capital structure:

   (a) Nominal capital (Kshs.) .....
   (b) Number of shares .....
   (c) Paid-up capital (Kshs) .....

9. Shareholders (please attach a list)

Name	Address & telephone number	Number of shares Held

10. (a) Directors (please attach a list)

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic Or Professional qualification	Number of shares held in the company

(b) Secretary

Name .....

Address .....

Institute of Certified Secretaries of Kenya Registration No. .....

(c) Chief executive and other key personnel

.

[Subsidiary]

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic Or Professional qualification	Number of shares held in the company

11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere?
Yes/ No. If 'yes', give details

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give details.

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No. If Yes, give details.

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details. Yes/ No. If yes, give details.

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes I No. If 'yes', give details.

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes,' give details.

.....

17.

(1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities exchange? Yes/ No.

If 'yes', give details

.....

(2) Have any of the above persons been —

(a) refused membership of any securities organization? Yes I No. If 'yes', give details.

.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details.

.....

(c) subjected to any other form of disciplinary action by any stock/securities exchange? Yes/No. If 'yes', give details.

.....

.

18. Business references:

Name	Address	Telephone number(s)	Occupation

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience
. .			

21. List the office facilities of the applicant

.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority .

.....

23 Any other additional information considered relevant to this application:

.....

We ..... (Director), ... (Director) and ..... (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this ..... day of ..... 20 .....

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

1. The following shall be submitted with the application for a licence:

(a) memorandum and articles of association.

(b) certificate of incorporation;

(c) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years or an auditor's certificate in case of a newly established entities (in the case of application of licence), management accounts up to the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);

(d) a declaration by the directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of the application —

(i) the business of the company has, in their opinion, been satisfactorily maintained;

(ii) there have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;

(iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;

(iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries.

(e) a declaration by persons authorized as prescribed to accompany the application form;

(f) an application fee of Kshs. 2,500.

FIFTH SCHEDULE

[Regs. 52(2)(a) & 56.]

DERIVATIVES BROKER LICENCE FEES

	Kshs
(a) Licensing fees	50,000
(b) Annual fees	50,000

CAPITAL MARKETS (NAIROBI SECURITIES EXCHANGE LIMITED SHAREHOLDING) REGULATIONS, 2016

[L.N. 74/2016.]

1. Citation

These Regulations may be cited as the Capital Markets (Nairobi Securities Exchange Limited Shareholding) Regulations, 2016.

2. Interpretation

In these Regulations unless the context otherwise requires—

"acting in concert" means persons who pursuant to a formal or informal agreement or understanding actively co-operate through the acquisition by any of them of shares in a public listed company to obtain or consolidate control of that company;

"Exchange" means the Nairobi Securities Exchange Limited;

"private company" has the meaning assigned to it under the Companies Act (No. 17 of 2015);

"public company" has the meaning assigned to it under the Companies Act (No. 17 of 2015); and

"trading participant" means a licensed person with rights to trade at the Exchange.

3. Restriction on Shareholding

(1) An individual or private company shall not, at any time, directly or indirectly, either individually or together with persons acting in concert hold more than five percent of the equity share capital of the Exchange.

(2) A public company shall not, at any time, directly or indirectly, either individually or with persons acting in concert, hold more than ten percent of the equity share capital of the Exchange.

(3) The trading participants shall not, at any time, directly or indirectly, cumulatively hold more than forty percent of the total equity shareholding of the Exchange.

4. Approval to exceed limit

(1) A person may apply to the Authority to waive the ownership restrictions under Regulation 3 (1) or 3 (2).

(2) The Authority may grant the waiver if—

(a) it is satisfied that such waiver is in the interest of the public or of the Exchange; and

(b) it certifies the applicant to be fit and proper.

(3) A person granted waiver under sub-regulation (2) shall file a declaration within fifteen days of the end of every financial year to the Authority and the Exchange that he has complied with the fit and proper criteria provided in the Act.

(4) A person who—

(a) holds five per cent or more of the equity shares of the Exchange; and

(b) the Authority has determined that that person does not fulfill the fit and proper criteria as set out under the Act, shall—

(i) cease to exercise all his voting rights immediately upon the Exchange being notified by the Authority, in writing, that the shareholder does not fulfill the fit and proper criteria as set under the Act; and

(ii) reduce the holding of equity shares to less than five per cent of the share capital of the Exchange within twelve months, or such longer period as the Authority may determine.

5. Exemption

The provisions of Regulation 17 and 18 of the Capital Markets (Derivatives Markets) Regulations (L.N. 37 of 2016) shall not apply to the Exchange.

6. Transitional provisions

Any person holding equity shares in the Exchange in excess of the limits specified in these Regulations at the commencement of these Regulations shall reduce his shareholding within six months to ensure compliance with these Regulations or apply for exemption in accordance with Regulation 4.

[Subsidiary]

CAPITAL MARKETS (ONLINE FOREIGN EXCHANGE TRADING) REGULATIONS, 2017

[L.N. 226/2017.]

PART 1 – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Online Foreign Exchange Trading) Regulations, 2017.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"binary options" means an option which involves making a bet on the price movement of an underlying asset in the near future for a fixed amount;

"client" means a person who is registered with an online foreign exchange broker or money manager and has executed an agreement with the online forex broker or money manager for dealing through such online foreign exchange broker or money manager in foreign exchange transactions;

"client account" means a bank account established and maintained by an online foreign exchange broker for the purposes of regulation 23;

"client funds" means money of any currency which a client deposits in a client account or which the online foreign exchange broker owes to a client and includes any other property deposited with an online foreign exchange broker in the course of its business for which that broker is liable to account to its client and any money or other property accruing therefrom;

"cornering activity" in relation to foreign exchange means use of currency held in significant amounts to be able to manipulate its price;

"leverage" means the ratio of the market price of an agreed multiple of contracts to the agreed margin where margin is the deposit or payment made to create, vary or maintain a position of the contracts;

"money manager" means an entity licensed by the Authority to engage in the business of managing the online foreign exchange portfolio of an individual or institutional investor in return for a fee based on a percentage of assets under management;

"dealing online foreign exchange broker" means an entity licensed by the Authority to engage in the business of online foreign exchange trading as principal and market maker;

"online foreign exchange trading" means the internet-based trading of foreign exchange and includes trading in contracts for difference based on a foreign underlying asset;

"online foreign exchange trading platform" means an internet-based trading system through which foreign exchange trading is conducted; and

"non-dealing online foreign exchange broker" means an entity licensed by the Authority that acts as a link between the foreign exchange market and a client in return for a commission or mark-up in spreads and does not engage in market making activities.

PART II — LICENSING OF ONLINE FOREIGN EXCHANGE BROKERS AND MONEY MANAGERS

3. Obligation to seek a licence

(1) A person shall not carry on or purport to carry on business as a dealing online foreign exchange broker, non-dealing online foreign exchange broker or a money manager unless that person has been granted the relevant licence by the Authority.

(2) A person who carries on or purports to carry on business as a dealing online foreign exchange broker, non-dealing online foreign exchange broker or a money manager without the relevant licence commits an offence.

4. Application for a licence

(1) A person who intends to operate as a dealing online foreign exchange broker, non-dealing online foreign exchange broker or money manager, shall apply to the Authority for a licence in Form 1 as set out in the First Schedule.

(2) An application under paragraph (1) shall be accompanied by—

(a) the documents, information and declarations specified in regulation 5;

(b) in the case of an application for a dealing online foreign exchange broker or a non-dealing online foreign exchange broker licence, a letter from a recognized online foreign exchange trading platform stating that the applicant meets all the relevant requirements of that platform and that the platform will admit the applicant if licensed by the Authority;

(c) in the case of a money manager, an agreement with an online foreign exchange broker who is licensed by the Authority;

(d) client on-boarding policies;

(e) business plans;

(f) individual risk assessments;

(g) Anti-Money Laundering and know your client checks;

(h) product sensitization framework including client appropriateness assessment;

(i) internal dispute resolution mechanisms to be adopted to resolve customer complaints and disputes;

(j) all relevant service level agreements with other online foreign exchange market service providers, where applicable; and

(k) the fees as set out in the Second Schedule.

5. Eligibility for a licence

(1) An applicant for a licence under regulation 4 shall be eligible for a licence if the applicant—

(a) is a company incorporated in Kenya and limited by shares;

(b) has a chief executive officer who—

(i) is a fit and proper person in accordance with section 24A of the Act;

(ii) has experience of not less than five years in the business of buying, selling, managing, or dealing in foreign exchange, foreign exchange futures or futures contracts; and

(iii) is a member of a professional body;

(c) has the necessary infrastructure including office space, equipment and staff, to effectively discharge its activities;

(d) in the case of a dealing online foreign exchange broker, has a person in charge of trading with at least three years' experience in foreign exchange trading, demonstrated ability to perform and in possession of certification from

the Association Cambiste Internationale-Financial Markets Association or its equivalent;

(e) has, as its directors, substantial shareholders and key personnel, persons who are fit and proper in accordance with section 24A of the Act;

(f) has a minimum paid up capital, which shall not be impaired, of—

(i) fifty million shillings, in the case of a dealing online foreign exchange broker;

(ii) thirty million shillings, in the case of a non-dealing foreign exchange broker; or

(iii) ten million shillings, in the case of a money manager; and

(g) undertakes to maintain at all times, liquid capital of—

(i) thirty million shillings or eight per cent of total liabilities whichever is higher in the case of a dealing or a non-dealing foreign exchange broker; or

(ii) five million shillings or eight per cent of total liabilities whichever is higher; in the case of a money manager;

(2) In addition to the eligibility criteria set out in paragraph (1), an applicant shall not be eligible for a licence if the applicant has not complied with the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011 (L.N 144/2011).

6. Furnishing of information, clarifications, etc

The Authority may, when considering an application made under regulation 4—

(a) require an applicant to furnish such additional information or clarifications regarding any previous dealings in foreign exchange, securities, commodities and any other matter connected thereto; or

(b) request an applicant or its key personnel to appear before the Authority to make personal representations.

7. Grant of licence

(1) The Authority shall grant a licence to an applicant if the Authority is satisfied that the applicant meets the eligibility criteria and the requirements set out in regulations 4 and 5 and inform the applicant in writing of the grant.

(2) Where the eligibility criteria are not met, the Authority shall not refuse to grant a license without giving the applicant an opportunity of being heard.

(3) Where, after hearing the applicant, the Authority determines that a licence should not be granted, the Authority shall communicate, in writing, the decision to the applicant within fourteen days of the decision, stating the grounds for refusal.

(4) An applicant aggrieved by the decision of the Authority under paragraph (3) may appeal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

8. Validity of licence

A licence granted under regulation 7(1) shall be valid unless suspended or revoked.

9. Annual license fees

A dealing or non-dealing online foreign exchange broker or money manager shall pay the relevant annual licence fee set out in the Second Schedule.

10. Suspension of a license

The Authority may, after giving an applicant an opportunity to be heard, by order, in writing, suspend the license of an online foreign exchange broker or money manager for such period as the Authority may specify in the order or take such administrative action as

it considers appropriate where the Authority is satisfied that a dealing or non-dealing online foreign exchange broker or money manager has—

(a) failed to comply with any conditions subject to which the license was granted under these Regulations;

(b) failed to comply with any requirement of the Act or these Regulations or directions made or given thereunder;

(c) failed to adhere to any standard of conduct set out in these Regulations;

(d) failed to comply with the directives of the Authority in respect of business conduct, dealings with clients and financial prudence;

(e) failed to furnish any information relating to its transactions as may be required by the Authority;

(f) failed to submit periodical returns as required by the Authority;

(g) furnished the Authority with wrong or false information;

(h) failed to settle an investor complaint where such complaint had been adjudicated by the Authority;

(i) not co-operated in any enquiry or inspection conducted by the Authority;

(j) engaged in price manipulation, rigging, insider trading or cornering activities or any unlawful activities in foreign exchange transactions and all related products;

(k) experienced or is experiencing financial position deterioration to an extent that the Authority is of the opinion that the continuance of the online foreign exchange broker or money manager in the business of foreign exchange trading is no longer in the interest of investors;

(l) failed to pay the annual fees;

(m) failed to utilize its licence within one year after grant of its licence or has ceased from conducting the licensed business for a period of more than thirty days unless it has obtained the approval of the Authority to do so; or

(n) conducted its activities in a manner that is detrimental to the public interest.

11. Revocation of a license

The Authority may, after giving the applicant an opportunity to be heard, by order, in writing, revoke the licence of a dealing or non-dealing online foreign exchange broker or money manager where the Authority is satisfied that—

(a) the reasons for the suspension of a licence under regulation 10 have continued during the period of suspension;

(b) a dealing or non-dealing online foreign exchange broker or money manager—

(i) has engaged or is engaging in insider trading, market manipulation or any other unfair practice or market abuse;

(ii) has been found guilty of fraud or convicted of a criminal offence; or

(iii) has not complied with the directives of the Authority or;

(c) it is necessary for the protection of investors.

12. Automatic revocation of a license

(1) A licence granted under regulation 7 shall automatically be revoked if the dealing or non-dealing online foreign exchange broker or money manager—

(a) is declared insolvent by a court of law;

(b) voluntarily surrenders the license to the Authority; or

(c) is wound up by a court order.

13. Appeal against suspension or revocation of licence

A dealing or non-dealing online foreign exchange broker or money manager aggrieved by the decision of the Authority to suspend or revoke its license may, within fifteen days of being notified of the suspension or revocation by the Authority, appeal to the Capital Markets Tribunal.

14. Online foreign exchange broker or money manager to clear liabilities

Despite a suspension or revocation of a license under regulations 10, 11 or 12, a dealing or non-dealing online foreign exchange broker or money manager shall be responsible for clearing all its outstanding obligations up to the date of the revocation or suspension of the license.

15. Continuing obligations

(1) As a condition of continued licensing as a dealing or non-dealing online foreign exchange broker or money manager, respectively, an online foreign exchange broker or money manager shall, within fifteen days of the end of every month, submit to the Authority, in the form prescribed by the Authority, a certified copy of—

(a) the details of any customer complaints and resolution status;

(b) evidence of daily reconciliations;

(c) for the money-manager, reports on the total funds under management;

(d) a full set of monthly management accounts; and

(e) risk-based capital adequacy returns.

(2) In addition to the documents required under paragraph (1), the Authority may require an online foreign exchange broker or a money manager to provide such other documents as the Authority may consider necessary.

(3) An online foreign exchange broker or a money manager shall, on a monthly basis or at such other intervals as the Authority may specify, submit to the Authority a summary of traded volumes per currency, in the prescribed form.

PART III — THE CONDUCT OF ONLINE FOREIGN EXCHANGE BUSINESS

16. Standards of conduct

(1) An online foreign exchange broker may—

(a) open clients' accounts;

(b) provide a trading platform;

(c) provide access to market information that the clients may utilize in formulating their strategies;

(d) monitor traders' positions; or

(e) provide end-of-day reports.

(2) A dealing online foreign exchange broker may trade as principal and market maker.

(3) A money manager shall—

(a) choose and manage investments prudently for his or her clients;

(b) develop an appropriate investment strategy;

(c) take positions in the market to meet the investment goals of the client;

(d) undertake financial analysis; and

(e) monitor foreign exchange portfolio investments on behalf of the client.

(4) An online foreign exchange broker shall not offer for trading—

(a) currency pairs involving the Kenya shilling ; and

(b) binary options.

(5) An online foreign exchange broker or a money manager, in the conduct of foreign exchange business, shall, at all times, act in accordance with the principles of best practice and, in particular, shall—

(a) observe a high standards of integrity and fair dealing:

(b) act with due skill, care and diligence;

(c) observe high standards of market conduct;

(d) seek from clients information about their circumstances and investment objectives which might be reasonably expected to be relevant in enabling the online foreign exchange broker or money manager to fulfill their responsibilities to the clients;

(e) take reasonable steps to give every client any information needed to enable the client to make a balanced and informed investment decision, in a comprehensible form;

(f) avoid any conflict of interest with clients and, where such a conflict unavoidably arises, ensure fair treatment of the client by complete disclosure or by declining to act while always ensuring the interests of the online foreign exchange broker or money manager are never unfairly placed above those of the client;

(g) maintain adequate financial resources to meet the foreign exchange business commitments and withstand the risks to which the business is subject;

(h) in the case of an online foreign exchange broker ensure that all clients' funds are held in a bank licensed under the Banking Act (Cap. 488);

(i) in the case of an online foreign exchange broker, keep clients' funds segregated from its own funds and ensure that at no point shall the clients' funds be used for margining, hedging or as company assets, including where the company becomes insolvent;

(j) apply stringent governance and risk-management procedures throughout the business including adoption of risk-management procedures to deal with stop losses, no negative accounts, double lock limited risk accounts, margin call and close out procedures;

(k) comply with the Proceeds of Crime and Anti Money Laundering Act, 2009 (No. 9 of 2009) and Prevention of Terrorism Act, 2012 (No. 30 of 2012);

(l) organize and control internal affairs in a responsible manner and clearly separate its front office and back office functions;

(m) have efficient procedures and arrangements for addressing complaints by clients;

(n) have adequate arrangements to ensure that all staff employed by the online forex broker or money manager are suitable, adequately trained and properly supervised, and subjected to well-defined compliance procedures;

(o) adopt and enforce written procedures with regards to communications with the public;

(p) deal with the Authority in an open and co-operative manner and keep the Authority informed of anything concerning the online forex broker or money manager that might reasonably be expected to be disclosed to the Authority; and

(q) comply with the requirements of these Regulations and shall inform the Authority immediately and in any case not later than twenty four hours in case of non-compliance.

17. Professional indemnity

An online foreign exchange broker shall determine and obtain adequate professional indemnity insurance for its key personnel.

18. Agreement between online forex broker and money manager

(1) A money manager shall enter into an agreement, in writing, with an online foreign exchange broker that shall clearly set out the scope of activities that the money manager may undertake.

(2) The agreement referred to in paragraph (1) shall have detailed provisions that include—

(a) clear duties, responsibilities and performance of the money manager;

(b) an undertaking by the money manager to disclose conflict or potential of interest to the online forex broker as soon as practical after becoming aware of the conflict;

(c) the responsibility of the online forex broker to monitor the money managers conduct and to ensure compliance with the terms and conditions of the agreement;

(d) obligations of the money manager including—

(i) compliance with laws;

(ii) conduct of marketing activities; and

(iii) termination procedures;

(e) the terms of remuneration of the money manager; and

(f) the notices between the online forex broker and the money manager; and dispute resolution mechanisms.

19. Leverage ratio

(1) An online foreign exchange broker may provide leverage, not exceeding four hundred times that of the client's deposit, for foreign exchange trading in a currency pair between any currency pair or underlying assets to its client.

(2) The Authority may, by circular, revise the leverage ratio provided in paragraph (1) from time to time as may be necessary to stabilize volatility in global and local currencies or for investor protection.

20. Systems audit

An online foreign exchange broker or money manager shall establish risk-management mechanisms, systems and procedures to ensure that the online foreign exchange trading platform provider is credible and that any risks associated with the platform are addressed in a timely manner.

21. Maintenance of books of accounts, records, etc

(1) An online foreign exchange broker or a money manager shall prepare and maintain books of accounts and other documents which shall disclose a true, accurate and up to date position of the business in electronic or manual form.

(2) The books of accounts, documents and records prepared and maintained under paragraph (1) shall include—

(a) journals or other comparable records;

(b) cash books and any other books of original entry that form the basis of entries into any ledger, including books that contain daily records of all orders for purchase or sale of foreign exchange, all purchases and sales of foreign exchange and all other debits and credits;

(c) ledgers or other comparable records reflecting asset, liability, reserve, capital, income and expense accounts;

(d) ledgers or other comparable records reflecting foreign exchange bought or sold, of which the delivery is delayed;

(e) records of all balances of all ledger accounts in the form of trial balances to be prepared at least once at the end of the six months of every year of account; and

(f) records of transactions with the banks including clients' deposits and withdrawals from the client group account maintained with a licensed bank.

(4) The books of accounts and other documents prepared and maintained under these Regulations shall be preserved for a minimum period of seven years.

22. Risk disclosure statements

An online foreign exchange broker shall not open a foreign exchange trading account for a client unless the broker has—

(a) furnished the client with a separate written risk disclosure statement;

(b) received an acknowledgement, signed and dated by the client, confirming that the client has received the risk disclosure statement and understood the nature and contents of the risk disclosure statement; and

(c) executed a written agreement with the client at the commencement of the relationship.

23. Segregation of clients' funds

(1) An online foreign exchange broker shall—

(a) maintain strict segregation between its own funds and every individual client's funds without any co-mingling between own funds and clients' funds;

(b) open a segregated clients' account with a bank licensed under the Banking Act; and

(c) ensure that all deposits and withdrawals by the clients are only made through the individual client's accounts established under paragraph (b).

(2) An online foreign exchange broker shall undertake daily reconciliations between the clients' account maintained at the designated bank and individual clients' account ledgers maintained by the broker or money manager.

(3) An online foreign exchange broker shall not accept cash from, or pay cash to, a client for any transaction under these Regulations.

24. Handling of clients funds by money manager

A money manager—

(a) shall not receive client's money; and

(b) shall only have trading rights access to the funds deposited by the client directly to the client's online trading account through the online foreign exchange broker.

25. Business conduct regulation

(1) An online foreign exchange broker or a money manager and the associates of online foreign exchange brokers or money managers shall observe high standards of commercial honour and uphold just and equitable principles of trade in the conduct of its foreign exchange business.

(2) An online foreign exchange broker or a money manager shall, in the conduct of foreign exchange business comply with the respective practices and standards relating to the conduct of the foreign exchange business for which it is licensed specified in these Regulations.

(3) An online foreign exchange broker or a money manager shall comply with the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011 (L.N. 145/2011) to the extent applicable including—

(a) advertisement by or on behalf of an online foreign exchange broker or money manager;

(b) the disclosure to a client of the financial risks in respect of trading forex recommended by the online foreign exchange broker or money manager to a client;

(c) the avoidance of any conflict of interest between the online foreign exchange broker or money manager and a client;

(d) recommendations made by an online foreign exchange broker or money manager;

(e) submission of annual audited accounts; and

(f) any other matter relating to the practices and standards of conduct required of an online foreign exchange broker or money manager in conducting foreign exchange business for which it is licensed.

(4) An online foreign exchange broker or a money manager shall submit to the Authority reports and accounts on monthly, quarterly, semi-annual basis and on such other intervals as the Authority may request.

(5) An online foreign exchange broker or a money manager shall prepare and submit to the Authority an annual report demonstrating how compliance with these Regulations was achieved in the year that the report relates to.

26. Compliance officer

(1) An online foreign exchange broker or money manager shall appoint a compliance officer who shall be responsible for-

(a) monitoring the compliance by the online foreign exchange broker or money manager with the Act, rules, regulations, notifications, guidelines or instructions issued by the Authority; and

(b) handling investors' grievances.

(2) A compliance officer appointed under paragraph (1) shall be accredited by the Chartered Institute of Securities and Investments or in accordance with such other competency standard as the Authority may prescribe.

(3) An online foreign exchange broker or a money manager shall furnish the Authority with the details and qualifications of the compliance officer within two weeks of the appointment of the compliance officer.

(4) A compliance officer shall, immediately and independently, report to the Authority any non-compliance by the foreign exchange broker or money manager that may be observed by the compliance officer.

(5) The compliance officer may be held personally liable for the failure to ensure proper compliance by the online foreign exchange broker with the regulatory requirements of the Authority.

27. Money laundering reporting officer

(1) A dealing or non-dealing online foreign exchange broker or money manager shall appoint a money laundering reporting officer who shall be responsible for—

(a) reporting to the Financial Reporting Centre, any transaction or activity that he has reason to believe is suspicious;

(b) being informed of all suspicious activities available to the licensee and take action on suspicious disclosures as soon as practical so as not to delay the reporting of such disclosures;

(c) creating awareness to all the employees on the ant-money laundering laws as well as the audit systems adopted;

(d) ensuring that persons are screened before being hired as employees; and

(e) any other responsibility that may be imposed by any written law.

(2) A money laundering reporting officer may also be the compliance officer required under regulation 26.

PART V — INSPECTION

28. The right of the Authority to inspect

The Authority or any person authorized by the Authority may inspect the books of accounts, other records documents and systems of an online foreign exchange broker or money manager, where there is need to—

(a) establish that the books of accounts and other books are being maintained in the manner required;

(b) ensure that the provisions of the Act, regulations and rules made thereunder are being complied with;

(c) investigate any complaints received from investors, other online foreign exchange brokers or money managers, or any other person on any matter having a bearing on the activities of the online foreign exchange broker or money manager; and

(d) investigate, on its own motion, in the interest of online foreign exchange business or the interest of investors, into the affairs of an online foreign exchange broker or money manager.

29. Procedure for inspection

(1) The Authority shall, before undertaking an inspection under regulation 32, give the online foreign exchange broker or money manager a reasonable notice of the Authority's intention to do so.

(2) Notwithstanding paragraph (1), the Authority may direct, in writing, that an inspection of an online foreign exchange broker or a money manager be carried out without notice to the online foreign exchange broker or money manager if the Authority is satisfied that it is in the interest of the investors or in the public interest that such notice should not be given.

(3) The inspecting officers or any other person authorized by the Authority shall have the power to inspect the online foreign exchange broker or money manager in the manner directed by the Authority.

30. Obligations of online forex broker or money manager under inspection

(1) An inspecting officer may require a shareholder, director, an officer or an employee of an online foreign exchange broker or a money manager which is being inspected to produce, such books, accounts and other documents in his or her custody or control and furnish the inspecting officer with the statements and information relating to foreign exchange transactions within such time as the inspecting officer may require.

(2) An online foreign exchange broker or money manager shall—

(a) allow the inspecting officer reasonable access to the premises occupied by the online foreign exchange broker or money manager by any other person acting on behalf of the online foreign exchange broker or money manager;

(b) extend reasonable facilities to the inspecting officer to examine any books, records, documents and computer data in the possession of the online foreign exchange broker, money manager or any other person; and

(c) provide copies of documents or other materials which, in the opinion of the inspecting officer, are relevant.

(3) An inspecting officer shall, in the course of inspection, be entitled to examine or record statements of any shareholder, director, partner, proprietor or employee of an online forex broker or money manager under inspection.

(4) A director, an officer or an employee of the online foreign exchange broker or money manager under investigation shall give to the inspecting officer all assistance in connection with the inspection which the online foreign exchange broker or money manager may reasonably be expected to give.

31. Action on inspection report

The Authority may, after considering an inspection report, take the appropriate action provided for under the Act.

32. Appointment of an auditor

(1) The Authority may, in the interest of investors, appoint a qualified auditor to audit the books of accounts or investigate any affairs of an online foreign exchange broker or a money manager.

(2) The Authority may direct that the costs associated with the investigation of the affairs of an online foreign exchange broker or money manager under paragraph (1) shall be borne by the online foreign exchange broker or money manager.

(3) A shareholder, director, officer or employee of the online foreign exchange broker or money manager which is being audited or investigated shall produce, to the auditor, such books, accounts and other documents in his or her custody or control and furnish the auditor with such statements and information relating to foreign exchange transactions within the time as the auditor may require.

(4) An online foreign exchange broker or a money manager shall—

(a) allow the auditor reasonable access to the premises occupied by the online foreign exchange broker, money manager or by any other person acting on behalf of the online foreign exchange broker or money manager;

(b) extend reasonable facilities to the auditor for the examination of any books, records, documents and computer data in the possession of the online foreign exchange broker, money manager or any other person; and

(c) provide copies of documents or other materials which are, in the opinion of the auditor, relevant.

(5) An auditor shall, in the course of an audit or investigation, be entitled to examine or record statements of any member, director, partner, proprietor or employee of an online foreign exchange broker or a money manager under audit or investigation.

(6) A director, an officer or an employee of the online foreign exchange broker or a money manager under audit or investigation shall give the auditor all assistance which the licensee may reasonably be expected to give in connection with the audit or investigation.

(7) The auditor shall have a right to request for bank statements from the bank at which the online foreign exchange broker or money manager maintains its office account and in the case of an online foreign exchange broker, the client account.

PART VI — OFFENCES AND PENALTY

33. Prohibited conduct

(1) An online foreign exchange broker or money manager shall not engage in any foreign exchange transaction that is prohibited by any written law.

(2) An online forex broker, a money manager or an associate of an online foreign exchange broker or money manager that is engaging in any foreign exchange transaction shall not—

(a) cheat, defraud or deceive, or attempt to cheat, defraud or deceive any person;

(b) willfully make or cause to be made a false report, or willfully enter or cause to be entered a false record in or in connection with any foreign exchange transaction;

(c) disseminate, or cause to be disseminated, false or misleading information, or acknowledge inaccurate report, that affects or tends to affect the price of any foreign currency;

(d) engage in manipulative acts or practices regarding the price of any foreign currency or foreign exchange transaction;

(e) willfully submit materially false or misleading information to the Authority or its agents with respect to foreign currency transactions; or

(f) embezzle, steal or knowingly convert any money, securities or other property received or accruing to any person or in connection with foreign exchange transactions.

(3) A person who engages in any conduct that is prohibited under paragraphs (1) or (2) commits an offence.

34. Penalty

A person who is convicted of an offence under these Penalty Regulations shall be liable to such penalty as specified under sections 25A and 34A of the Act and any additional action for damages in respect of the loss occasioned by the commission of the offence.

FIRST SCHEDULE

FORM 1 [Reg. 4(1).]

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (ONLINE FOREIGN EXCHANGE TRADING) REGULATIONS, 2017

APPLICATION FOR A LICENCE TO CONDUCT THE BUSINESS OF AN ONLINE FOREIGN EXCHANGE BROKER/MONEY MANAGER

Application is made for an online forex broker/money manager licence under the Capital Markets (Online Foreign Exchange Trading) Regulations, 2017 and the following statements are made in respect thereof:

Note:

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of company ..... Limited

2. Registered office .....

3. Date of incorporation .....

4. Address .....

5. E-mail .....

6. Location, address and telephone number of principal office .....

.....

7. Location, address and telephone number of branch offices .....
.....

8. Details of capital structure:

(a) Nominal capital (KSh.) .....

(b) Number of shares .....

(c) Paid-up capital (KSh.) .....

9. Shareholders (please attach a list)

Name	*Address and telephone number*	*Number of shares held*
	.	

10 (a) Directors (please attach a list)

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address and telephone number	Academic or Professional qualification	Number of shares held in the company
.						

(b) Secretary

Name .....

Address .....

Institute of Certified Secretaries of Kenya Registration No. .....

(c) Chief executive and other key personnel

Name	*Identity Card/ Passport number*	*Date of Appointment*	*Date of birth*	*Permanent address and telephone number*	*Academic or Professional qualification*	*Number of shares held in the company*
			.			

11 . Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No.
If 'yes', give details

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.
If Yes, give details.

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the relevant authority? Yes/No. If Yes, give details.

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No.

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No.

If 'yes', give details.

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No.

If 'yes,', give details.

.....

17. (1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities or derivatives exchange or any over the counter platform? Yes/ No.

If 'yes', give details.

.....

(2) Have any of the above persons been—

(a) refused membership of any securities or derivatives organization? Yes / No.
If 'yes' give details
.....

(b) expelled from or suspended from trading on or membership of any securities or derivatives organization or any over the counter platform? Yes/No.
If 'yes' give details
.....

(c) subjected to any other form of disciplinary action by any stock/securities or derivatives exchange? Yes/No.
If 'yes' give details
.....

18. Business references:

Name	*Address*	*Telephone number(s)*	*Occupation*
	.		

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name	*Post*	*Qualifications*	*Experience*
	.	.	

21 . List the office facilities of the applicant

.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority

.....

23. Any other additional information considered relevant to this application:

.....

We ..... (Director), ...

(Director) and ..... (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this ..... day of ..... 20 .....

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

1. The following shall be submitted with the application for a licence:

(a) memorandum and articles of association

(b) certificate of incorporation;

(c) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years or an auditor's certificate in case of a newly established entities (in the case of application of licence), management accounts up to the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);

(d) a declaration by the directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of the application—

(i) the business of the company has, in their opinion, been satisfactorily maintained;

(ii) there have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;

(iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;

(iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries.

(e) a declaration by persons authorized as prescribed to accompany the application form;

(f) an application fee of Kshs. 10,000.

SECOND SCHEDULE

[Reg. 4(g) & 10.]

ONLINE FOREIGN EXCHANGE BROKER/MONEY MANAGER LICENCE FEES

	Kshs.
(a) Application fees for licence	2,500
(b) Annual fees	
(i) Dealing broker	250,000
(ii) Non-dealing broker	100,000
(iii) Money manager	100,000

CAPITAL MARKETS (SECURITIES LENDING, BORROWING AND SHORT-SELLING) REGULATIONS, 2017

[L.N. 295/2017.]

PART I – PRELIMINARY

1. Citation

These regulations may be cited as the Capital Markets (Securities Lending, Borrowing and Short-selling) Regulations, 2017.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"lending agent" means a third party who is not a party to a securities lending agreement but who provides support services to securities lenders including the monitoring of loans, the negotiation of lending fees or rebate rates, and the management of collateral;

"lending agreement" means a written securities lending contract executed by both the securities lender and borrower;

"lending fee" means a fee charged by a securities lender to the borrower for the loan of securities under these regulations;

"margin" means the minimum amount of collateral required in a securities lending transaction above the value of the loaned securities as specified in the lending agreement;

"primary regulator" means the regulatory agency primarily responsible for regulating the business of the person;

"rebate rate" means part of the interest earned by the collateral held by the securities lender that is remitted to the borrower where the collateral is in the form of cash;

"regulated person" has the meaning assigned to it under the Act and includes pension funds, insurance companies, investment funds, exchange-traded funds and commercial banks;

"securities lending" means the temporary transfer of securities from a lender to a borrower with the concurrent written agreement to return the securities either on demand or at a future date;

"short position" means the net investment position in a security in which the security has been borrowed and sold but not yet replaced; and

"short sale" means any sale of a security which the seller does not own at the time of the sale.

PART II –SECURITIES LENDING AND BORROWING

3. Securities lending and borrowing transactions

(1) A securities lending and borrowing transaction shall be carried out in accordance with these regulations.

(2) The Authority may exempt a sell buy-back or any facility that is similar to a securities lending or borrowing transaction as contemplated under these regulations.

(3) A person shall apply in writing to the Authority to exempt a sell buy-back or a facility that is similar to a securities lending transaction from the application of these regulations.

(4) An application under subregulation (3) shall state the reasons for which the exemption is being applied for.

(5) The Authority shall consider the application under subregulation (3) and make a decision within twenty-one days of receiving the application.

4. Criteria for identifying securities to be lent or borrowed

The Authority shall prescribe the criteria for the identification of securities that may be lent under these regulations.

5. Persons to undertake securities lending and borrowing

(1) A securities lending and borrowing transaction shall be carried out by —

(a) a regulated person; or

(b) any other person specified for that purpose by the Authority.

(2) A regulated person or a person specified by the Authority in accordance with subregulation (1) shall comply with —

(a) these regulations;

(b) any additional requirements that may be imposed by the Authority; and

(c) any other requirements that may be imposed by its primary regulator.

(3) A regulated person may act as an intermediary for a securities borrower or lender:

Provided that the intermediary shall disclose any potential or actual conflicts of interest in relation to his or her role in the securities lending or borrowing transaction to the borrower or lender as the case may be.

6. Securities lending and borrowing agreement

(1) The lender and borrower in a securities lending and borrowing transaction shall enter into a lending agreement before undertaking the securities lending and borrowing transaction.

(2) A lending agreement shall include —

(a) detailed identification of the lender;

(b) detailed identification of the borrower;

(c) the securities to be lent;

(d) the number of the securities to be lent;

(e) the agreed value of the securities to be lent for the purposes of the transaction;

(f) the term of the transaction;

(g) the method of calculating the lending fee or rebate and the payment schedule of the lending fee or rebate as the case may be;

(h) the nature and value of the collateral;

(i) the full transfer of the title and interest in the securities to be lent;

(j) the full transfer of the title and interest in the collateral to be provided;

(k) the methodology for the revaluation of the collateral;

(l) the person who shall be responsible for the revaluation of the collateral;

(m) the margin attached to the securities lending and borrowing transaction, if any;

(n) the nature and consequences of default or other failures in relation to the terms of the lending agreement;

(o) the exercise of voting rights associated with the securities to be lent;

(p) the exercise of voting rights associated with the collateral to be provided where the collateral is a type of security that has voting rights associated with it; and

(q) the procedure for recalling or returning the lent securities.

7. Reporting of transactions

(1) A securities lending and borrowing transaction shall not be registered as a sale or purchase on a traded market.

(2) A market intermediary who carries out a securities lending and borrowing transaction shall, once in every month or in any frequency that may be determined by the Authority, submit to the Authority a report of securities lending and borrowing transactions the market intermediary has carried out in the period under review.

(3) The Authority may require each regulated person to report the net securities lending and borrowing position of each security held by the regulated person on a regular basis.

8. Collateral for securities lending and borrowing transactions

(1) A borrower in a securities lending and borrowing transaction shall provide the lender with collateral of at least one hundred per centum of the value of the borrowed securities.

(2) The lender in a securities lending and borrowing transaction may require the borrower to provide an additional margin on the collateral provided under subregulation (1).

(3) The quality of the collateral required in a securities lending or borrowing transaction may include—

(a) cash in Kenya shillings;

(b) Government securities; or

(c) any other type of security that may be specified by the Authority.

(4) The lent securities and the collateral shall be revalued daily and the amount of the collateral held in relation to the lent securities shall be adjusted in relation to the revaluation.

(5) Where it is not possible to revalue the lent securities daily, the securities may be revalued on a weekly basis or more frequently as may be required by the Authority and the collateral held in relation to the securities shall be adjusted in relation to the revaluation.

9. Other use of collateral

(1) The collateral provided by the borrower in a securities lending and borrowing transaction may be used by the lender as follows—

(a) in the case of cash, it may be deposited in an interest bearing account;

(b) in the case of Government securities, it may be used in overnight repo transactions; or

(c) in any other case, it may be used as the Authority may prescribe.

(2) The primary regulator of the borrower or lender may also impose additional restrictions on the use of the collateral held by a lender of securities.

(3) The lender in a securities lending and borrowing transaction may appoint, in writing, a lending agent to manage the collateral provided by the borrower and shall specify, at the time of appointment, the uses to which the collateral may be put by the agent.

10. Rights and obligations of the lender

(1) The lender in a securities lending and borrowing transaction shall continue to enjoy the economic benefits associated with the securities he or she has lent to the borrower during the period when the securities have been lent including dividends or interest.

(2) The lender in a securities lending and borrowing transaction shall be entitled to a lending fee from the borrower for lending the securities.

11. Rights and obligations of the borrower

A borrower in a securities lending and borrowing transaction shall—

(a) have full legal title of the securities he or she has borrowed;

(b) where the collateral provided is in the form of securities, continue to receive all economic benefits associated with the securities given as collateral including dividends or interest; and

(c) pay the securities lender such amount as may be needed to ensure that the collateral provided remains sufficient at all times.

PART III –SHORT-SELLING OF SECURITIES

12. Short-selling

(1) The short-selling of securities shall be carried out in accordance with these regulations.

(2) A seller may enter into a short-selling transaction if the seller provides documentary evidence that shows that he or she has—

(a) entered into an agreement to borrow the securities to cover the short sale;

(b) reasonable grounds to believe that the securities will otherwise be delivered to him or her in time to cover the short sale; and

(c) entered into an arrangement with another party under which that party has confirmed in writing that it will have the securities and will deliver them in time to cover the short sale.

(3) A person who contravenes the provisions of subregulation (2) commits an offence and shall be liable, on conviction, to the penalty specified under the Act.

13. Securities permitted in short sales

(1) The Authority shall prescribe the criteria to identify securities that may be subject to short sales.

(2) Any prevalidation requirements or obligations applicable to securities transactions shall not apply to short-selling transactions.

14. Persons permitted to undertake short-selling

(1) Short-selling transactions shall only be carried out by regulated persons or any other person specified by the Authority,

(2) Each regulated person who intends to engage in a short-selling transaction shall comply with these regulations, any additional requirements imposed by the Authority and any other requirements imposed by the regulated person's primary regulator.

15. Requirements for short-selling

(1) A seller who engages in a short-selling transaction shall, when submitting an order, declare to the exchange or, if acting through a market intermediary, to that intermediary, that it is a short sale.

(2) Each short sale shall be carried out in the same trading environment as normal purchases or sales of securities.

(3) A securities exchange or a trading platform shall, for the purposes of facilitating short-selling transactions, formulate rules to provide for buying in.

(4) Despite the generality of subregulation (3), each short sale of securities shall be identified as a short sale by the selling broker under the rules of the exchanges or trading platforms contemplated in subregulation (3).

(5) For the purposes of this regulation, "buying in" means the buying of securities effected by a securities exchange which a seller has failed to deliver on the day fixed for settlement.

16. Reporting of and limits on short positions

(1) A participant in an exchange or trading platform who holds a short position in a security of five per centum or more of the total amount of the security in issue shall report this position immediately to the relevant exchange or trading platform and the Authority.

(2) The Authority may revise the limit prescribed in subregulation (1) and may prescribe different limits for different categories of securities.

(3) A short position in any security by a participant and related persons shall not exceed ten per centum of the total amount of the security in issue.

(4) The Authority may revise the limit prescribed under subregulation (3), and may prescribe different limits for different categories of securities, or prescribe the limits of short positions that specific participants or types of participants may hold.

17. Suspension or price control

(1) The Authority may suspend the short sales of a security or impose controls on the prices that may be input on short sales of a security —

(a) where the price movements of the security meet the conditions set out in the relevant rules of a regulated securities exchange or other infrastructure provider for the imposition of price controls or suspension of trading;

(b) where the short sales of the security have been temporarily prohibited under the rules of a regulated securities exchange;

(c) where the short sales of the security that is trading in Kenya have been prohibited in another jurisdiction or have been made subject to price controls as a result of concerns about market order; or

(d) to maintain or restore the fair, efficient and transparent trading in the security.

(2) The Authority shall review suspensions of shorts sales or impositions of price controls on short sales under subregulation (1) at least once a week.

(3) Where the Authority has reviewed a suspension of a short sale or the imposition of price controls on a short sale under subregulation (2), it may —

(a) maintain the suspension or the price control;

(b) lift the suspension; or

(c) remove the price control.

18. General penalty

A person who contravenes any provision of these regulations for which a specific penalty is not provided shall be subject to sanctions by the Authority as specified under the Act.

19. Matters to be prescribed by the Authority

Any matter required to be prescribed or specified by the Authority shall be prescribed or specified by the Authority by way of a circular.

THE CAPITAL MARKETS (DERIVATIVES MARKETS) (FEES) REGULATIONS, 2019

[L.N. 127/2019.]

1. Citation

These Regulations may be cited as the Capital Markets (Derivatives Markets) (Fees) Regulations, 2019.

2. Fees

The fees charged for exchange traded derivatives transactions on a derivatives exchange shall be as specified in the Schedule.

SCHEDULE

Product	*Fee component*	*Fee Band*	*Maximum Fee (per value of contract)*
Equity Index Futures Contract	Exchange Fees	N/A	0.02%
	Clearing Member Fees	0%-100% of Exchange Fees	0.02%
	Trading Member Fees	0%-400% of Exchange Fees	0.08%
	Investor Protection Fund	N/A	0.01%
	Statutory Fee	N/A	0.01%
	Total Contract Fees		0.14%
Single Stock Futures Contract	Exchange Fees	N/A	0.025%
	Clearing Member Fees	0%-100% of Exchange Fees	0.025%
	Trading Member Fees	0%-400% of Exchange Fees	0.10%
	Investor Protection Fund	N/A	0.01%
	Statutory Fee	N/A	0.01%
	Total Contract Fees		0.017%

CAPITAL MARKETS (COFFEE EXCHANGE) REGULATIONS, REGULATIONS, 2020

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

.

CAPITAL MARKETS (COFFEE EXCHANGE) REGULATIONS, 2020

[L.N. 40/2020.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Coffee Exchange) Regulations, 2020.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Capital Markets Act (Cap. 485A);

"auction"means the auction system under which clean coffee is offered for sale at a coffee exchange and includes the place at which, or a facility by means of which, whether electronic or otherwise, offers or invitations to sell, buy or exchange coffee contracts are regularly made on a centralized basis, but does not include—

(a) the office or facilities of a coffee buyer or service provider; or

(b) or the office or facilities of a clearing house;

"auction levy" means such fee per sixty-kilogram bag of coffee or other less volume of coffee sold at a coffee exchange, payable by millers, roasters and buyers;

"Authority" means the Capital Markets Authority established under section 5 of the Act;

"bid" means an offer to pay a particular amount of money for a given lot of clean coffee being offered for sale at a coffee exchange;

"broker" means a person cleared by the exchange and licensed by the Authority, who may be appointed by a coffee grower or an association of coffee growers in accordance with the Crops (Coffee) (General) Regulations, 2019 to sell their coffee on their behalf through the Exchange;

"coffee buyer" means an incorporated company licensed under the Crops (Coffee) (General) Regulations, 2019 (L. N. 102/2019) to buy clean coffee at the exchange for export, local sale or value addition or to import clean coffee for secondary processing in Kenya;

"clean coffee" means coffee bean or dried seed of the coffee plant separated from non-food tissues of the coffee fruit where the silver skin is reduced to the maximum possible extent;

"clearing house" means an entity approved by the Authority, and recognized as a clearing institution on behalf of a coffee exchange, providing the services of clearing and settlement of transactions and guaranteeing settlement on behalf of the exchange;

"clearing and settlement" means the procedure by which a clearing house acts as an intermediary between a buyer and seller for exchange traded transactions in order to reconcile orders between transacting parties and ensure the physical or financial settlement of the transaction;

"coffee exchange" means a company incorporated under the Companies Act, 2015 (No. 17 of 2015) and licensed by the Authority as an exchange for trading in clean coffee;

"coffee miller"means a person licensed under the Crops (Coffee) (General) Regulations, 2019 to conduct the business of coffee milling;

"coffee roaster" means a person licensed by the respective county government to buy clean coffee under the Crops (Coffee) (General) Regulations, 2019 for value addition for local sale;

"coffee sales proceeds" means monetary consideration received at the direct settlement system in exchange for clean coffee sold at an exchange or, where applicable, through direct sales;

"coffee sample" means a small quantity of coffee, drawn out of a coffee lot to be a representative of that lot of coffee for purposes of display, testing, quality analysis, archiving, marketing or other legal purpose;

"coffee warrant" means an instrument prepared by the warehouseman of which the person named therein, or the last endorsee thereof, shall for all purposes be deemed to be the owner of the coffee to which it relates;

"collateral manager" means a person qualified under the Crops (Coffee) (General) Regulations, 2019 and appointed by the warehouseman or any other person who has an interest in coffee stored in a warehouse with the intention of monitoring or taking custody of the coffee;

"commodity" means clean coffee;

"direct settlement system" means a banking facility provided by commercial banks regulated by the Central Bank of Kenya for clearing and settlement of coffee proceeds;

"electronic warehouse receipt" means an authorized, verifiable and transferable warehouse receipt that has been generated, sent, received or stored by electronic, optical or similar means, conferring legal title to the depositor for commodities received in a licensed warehouse accredited by the Agriculture Food Authority;

"grower" means any person who cultivates coffee in Kenya and may for purposes of licensing under the Crops (Coffee) (General) Regulations, 2019 and includes co-operative societies, unions, associations and estates;

"grower miller" means a grower licensed under the Crops (Coffee) (General), 2019 Regulations, who mills own parchment or *buni* or its members' coffee and includes a co-operative society, unions. association, estate or any other legal entity comprised of growers;

"lot" means a saleable quantity of coffee specified in the sales catalogue designated for bidding;

"marketing of coffee" means identification of competitive prices and facilitation of transactions relating to sale of coffee;

"net warrant weight" means the net weight of coffee at the point of sale per lot after allowing for all required samples;

"no bid" means a lot that has not attracted any bids at the auction;

"out-turn number" means a reference number assigned by a coffee miller to a coffee consignment delivered to a mill;

"prompt date" means a date specified in the sales catalogue and shall not be more than five working days from the date of the sale on which coffee sales proceeds are to be received by the grower through and from the buyer through the clearing house;

"service provider" means a person who may have contractual dealings with the coffee growers and shall include cooperative societies, millers, warehousemen, transporters and financiers;

"settlement account" means an account in the direct settlement system into which all coffee sales proceeds sold at the exchange are paid;

"reserve price" means the price set as the minimum price before the auction by a miller in consultation with the grower;

"sample deposit fee" means an amount of money payable in advance to an exchange, by buyers or roasters as security for collecting offer samples at an exchange, this being such an amount as may be determined by that exchange from time to time;

"sample fee" means the price payable to an exchange by a buyer or a roaster for the offer sample collected at the sample room, based on the average price of coffee traded at that exchange in the month that the sample was collected;

"sample room" means the physical space provided by an exchange for reception, display and distribution of coffee samples;

"settlement bank" means a bank as defined under section 2 of the Banking Act, approved by the Authority to facilitate the maintenance of a segregated account and to establish and operate a direct system for settlement and payment of coffee sales proceeds to growers

"sweepings" means the balance of coffee samples in the exchange sample room and spillages collected from millers' milling activities for sale at the exchange and the proceeds paid to growers on pro-rata basis;

"sales catalogue" means a standard document prepared by a miller or a broker in consultation with the exchange for sale of clean coffee at the exchange;

"sale" means the offering of clean coffee for sale;

"trading floor" means the physical and electronic space and all the facilities including items, equipment, records and assets provided by or belonging to or in use by an exchange for purposes of coffee auction;

"warehouse" means any building, structure or other protected enclosure duly licensed by the relevant authority to be used for the storage or conditioning of coffee for the purposes of trading at an exchange and is specifically designed to guarantee quantity, quality and safety of the coffee;

"warehouse inspector" means a person empowered by the relevant authority to inspect warehouses and coffee kept therein to ensure that the warehouse operator complies with the law and the conditions of the operator's licence;

"warehouseman" means a person duly licensed by the Agriculture and Food Authority to engage in the business of operating a warehouse for receiving, storing, shipping or handling coffee for the purposes of trading at an exchange; and

"warehouse receipt" means a receipt issued by a licensed warehouseman in respect of coffee stored or handled in a licensed warehouse for the purposes of trading at an exchange, certifying that the specified coffee is of the stated quantity and quality and is located at the specified location, and includes an electronic warehouse receipt.

3. Object, purpose and application

The purpose of these Regulations is to —

(a) to give effect to section 12(1) of the Capital Markets Act;

(b) provide for the establishment and regulation of coffee exchanges;

(c) provide for the licensing of coffee brokers;

(d) provide for the establishment and operationalization of direct settlement system for expedited and transparent payment of coffee sales proceeds;

(e) provide for the promotion and maintenance of an efficient coffee exchange;

(f) give directives, principles and conditions for trading of clean coffee at an exchange;

(g) ensure the trading is conducted in a secure, stable and transparent manner in an environment of fair competition; and

(h) provide for the protection of the interests of the grower, the buyer and other stakeholders at an exchange.

PART II – COFFEE EXCHANGE

4. Regulation of coffee exchanges

(1) A person shall not carry on the business of a coffee exchange unless he has applied for approval and licensed as a coffee exchange by the Authority in such manner as the Authority may provide.

(2) An application under paragraph (1) shall be made in Form A as set out in the First Schedule and accompanied by —

(a) the copies of memorandum and articles of association, certificate of incorporation, and rules governing the operations of the exchange, which —

(i) are in a form satisfactory to the Authority; and

(ii) restrict the applicant to the business of operating a coffee commodity market and services incidental thereto;

(b) details of trading, clearing and settlement systems proposed to be adopted by the applicant;

(c) he application fees set out in the Second Schedule;

(d) satisfactory bank references;

(e) a business feasibility plan evaluated by an entity with a proven track record and expertise; and

(f) any such additional documents as the Authority may require.

(3) In order to be entitled to apply for a licence under regulation 3, an applicant shall, unless otherwise expressly exempted by the Authority, be required to —

(a) be demutualized;

(b) have a minimum authorized, issued and paid up equity share capital to support initial infrastructural investments and three years' operating capital;

(c) satisfy requirements relating to ownership and governance structure specified in these Regulations;

(d) have its directors and shareholders who hold or intend to hold share, determined as fit and proper persons as provided under section 24A of the Act;

(e) satisfy the Authority on the exchange's financial capacity. functional expertise and infrastructure;

(f) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience; and

(g) comply with any other conditions as may be specified by the Authority.

5. Rules and obligations of a coffee exchange

(1) an applicant seeking approval to operate as a coffee exchange shall develop its rules, which shall provide for—

(a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the committees of the board;

(b) the appointment of directors and a fair representation of persons in the selection of members of the board and administration of its affairs including the professions relevant to coffee industry;

(c) he powers of the chief executive officer including in emergency situations;

(d) the qualifications for membership;

(e) the exclusion from membership of persons who do not meet the minimum criteria on integrity;

(f) the expulsion, suspension or disciplinary action against members for conduct inconsistent with just and equitable principles relating to trading in coffee, or for a contravention of the rules of the coffee exchange;

(g) specify qualifications for applicants for membership and provisions for accepting applicants as trading participants, imposing conduct and other requirements on them;

(h) provide for the governance of the conduct activity of participants, including their responsibility to act with integrity and in the interests of maintaining a proper market, paying such fees and charges as may be applicable and abiding by the rules of the clearing house;

(i) prohibit market abuse practices;

(j) provide mechanisms for effectively investigating breaches of the rules, enforcing the rules and providing for appeals;

(k) make default provisions for the taking of proceedings or other action if a clearing member has failed, or appears to be unable, or likely to become unable, to meet his obligations for any unsettled or open market contracts to which he is a party;

(l) specify qualifications for trading membership, imposing conduct and other requirements on them and, where appropriate, for the procedure for their removal as trading members;

(m) he making of reports to the Authority by the exchange whenever it rejects any application for membership, where it suspends or expels a member or where it suspends trading;

(n) procedures for developing warrants and receipts to be traded on the exchange;

(o) the terms and conditions under which coffee or contracts may be traded;

(p) an audit system relating to proprietary trading by members;

(q) the standard coffee grades that may be traded by members and the terms and conditions governing trading by members;

(r) fair and properly supervised trading practices;

(s) measures to prevent market abuse in its coffee market;

(t) preventing the excessive use of credit by way of initial or maintenance margin in respect of the purchase or carrying of any coffee;

(u) the recording and publishing of details of trading, clearing and settlement;

(v) dues, fees and other charges levied by the exchange and its other sources of revenue;

(w) internal procedures to ensure the proper handling of complaints and to ensure that any appropriate remedial action on those complaints is promptly taken;

(x) the resolution of disputes and provision for appeal;

(y) the carrying on the business of the coffee exchange generally, including the development of a regional exchange, with due regard to the interests and protection of growers and investors; and

(z) any other provisions specified by the Authority.

(2) The rules established and adopted by the exchange under paragraph (1) shall be approved by the Authority before being applied by the exchange.

(3) The rules of a coffee exchange shall apply to the officers of the exchange, members and employees of the members of the exchange and the member shall be responsible to ensure their employees' compliance with the rules.

(4) The Authority may require a coffee exchange to comply with such additional requirements as may be imposed on a commodities exchange under any written law.

.

6. Systems, staffing and record keeping

coffee exchange shall —

(a) provide and maintain a transparent and an efficient system for coffee trading;

(b) ensure that it has employed qualified staff for the undertaking of its activities;

(c) ensure that it has in place proper and adequate infrastructure in terms of office space, equipment and software to enable it undertake its activities;

(d) ensure the proper training of its staff in activities related to its activities;

(e) accord reasonable access to the auction of all persons licensed under the Crops (Coffee) (General) Regulations, 2019 to trade;

(f) maintain a data base for records of coffee sales at the auction floor and other related trade activities;

(g) comply with the regulatory requirements of the Authority;

(h) comply with the directives of the Authority;

(i) establish a linkage between the direct settlement system provider and licensed coffee warehouses to facilitate release of coffee to coffee buyers or roasters upon payment;

(j) establish a direct link between its systems and software and the Authority; and

(k) disseminate market information for every coffee auction and an analysis of performance on a daily, weekly and monthly basis.

PART III – COFFEE BROKERS

7. Obligation to seek a licence

A person shall not carry on or purport to carry on business as a coffee broker unless that person is licensed by the Authority.

8. Licensing of coffee brokers

(1) A person who intends to operate as a coffee broker shall submit an application to the Authority for a licence to operate as such in Form B as set out in the First Schedule

(2) An application under paragraph (1) shall be accompanied by—

(a) the fees as set out in the Second Schedule;

(b) the documents, information and declarations specified under regulation 9; and

(c) a letter from the coffee exchange stating that the applicant meets all the relevant requirements of that exchange and that the exchange will admit the applicant if licensed by the Authority

9. Consideration for grant of licence

(1) An applicant seeking a licence under regulation 8 shall be required to —

(a) be a company limited by shares;

(b) have a chief executive officer who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in coffee, commodities or other securities;

(c) have the necessary infrastructure including office space. equipment and trained staff to effectively discharge its activities;

(d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and

(e) have a minimum net capital and minimum net worth as determined by the coffee exchange and approved by the Authority from time to time.

10. Furnishing of information, clarifications etc

(1) The Authority may, in considering an application made under regulation 8, require an applicant to furnish such further information regarding any previous dealings in securities, commodities and any other related matter as the Authority may consider necessary.

(2) An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

11. Grant of licence

(1) The Authority, shall, within thirty days from the date of application, grant a licence to an applicant, if the Authority is satisfied that the applicant is eligible to be licensed as a coffee broker.

(2) The Authority shall duly inform the coffee exchange and the applicant of the grant of a licence under paragraph (1).

(3) A licence granted under paragraph (1) shall remain valid until suspended or revoked.

(4) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity to be heard.

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a licence, the Authority shall communicate the decision to the applicant and the coffee exchange within fourteen days of the hearing, stating the grounds for refusal

(6) An applicant aggrieved by the decision of the Authority under paragraph (5) may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

12. Annual licence fees

A coffee broker shall pay an annual licence fee as set out in the Second Schedule.

13. Suspension of a licence

(1) Where the Authority is satisfied that a coffee broker has —

(a) failed to comply with the Act, these Regulation or any directions made or given thereunder;

(b) failed to comply with any conditions subject to which the licence was granted under these Regulations;

(c) contravened the rules of the coffee exchange;

(d) failed to adhere to any requirement of the code of conduct laid down under these Regulations or other laws;

(e) failed to comply with the directives of the Authority in respect of business conduct, dealings with clients and financial prudence;

(f) failed to furnish any information relating to transactions of the coffee broker as may be required by the Authority;

(g) failed to submit periodical returns as required by the Authority;

(h) furnished the Authority or the exchange with wrong or false information;

(i) failed to settle an investor complaint where such complaint has been adjudicated by the exchange, a committee of the exchange, the Authority, the Capital Markets Tribunal, or a court of law;

(j) not co-operated in any enquiry or inspection conducted by the Authority;

(k) experienced or is experiencing financial position deterioration to such an extent that the Authority is of the opinion that the continuance of the coffee broker in the business is no longer in the interest of investors;

(m) been suspended by the exchange; or

(n) failed to pay the annual fees; or it is necessary in the public interest to do so,

the Authority may, by an order in writing, suspend the licence of a coffee broker for such period as may be specified in the order or take such administrative action as it may consider necessary.

(2) The Authority shall, before issuing an order of suspension or other administrative action under paragraph (1), give a coffee broker an opportunity to be heard.

14. Revocation of a licence

(1) The Authority may, by order in writing, revoke the licence of a coffee broker where it is satisfied that—

(a) he reasons for suspension of a licence under regulation 13 continue during the period of such suspension;

(b) a coffee broker whose licence has been suspended —

(i) is engaging or has engaged in insider trading, market manipulation or any other unfair practice or market abuse;

(ii) has been found guilty of fraud or convicted of a criminal offence;

(iii) has been found guilty of fraud or convicted of a criminal offence;

(c) the membership of that coffee broker has been cancelled by a coffee exchange or another securities exchange; or

(d) it is necessary for the protection of investors.

(2) The Authority shall, before issuing an order of revocation under paragraph (1), give the coffee broker an opportunity to be heard.

15. Automatic revocation of a licence

(1) A licence granted under regulation 11 shall automatically be revoked if the coffee broker —

(a) ceases to be a trading member of a coffee exchange;

(b) is declared a defaulter by a securities exchange or a coffee exchange and is not re-admitted to membership within a period of six months from such declaration;

(c) surrenders its membership in all coffee exchanges where it is a member;

(d) is declared insolvent by a court of law;

(e) voluntarily surrenders the licence to the Authority; or

(f) is wound up by a court order.

16. Appeal against suspension or revocation of licence

A coffee broker aggrieved by the decision of the Authority to suspend or revoke its licence may, within fifteen days of being notified of the decision of the Authority, appeal to the Capital Markets Tribunal.

17. Coffee broker to clear liabilities

Despite a suspension or revocation of a licence, a coffee broker shall be responsible for clearing all its outstanding obligations up to the date on which that coffee broker has been operating as such.

18. Continuing obligations

A coffee broker shall, as a condition of continued admission as a coffee broker, provide to the Authority through the coffee exchange a certified copy of —

(a) the net capital balance;

(b) net worth statements; and

(c) a report of the auditor,

in a form that may be recommended by the Authority from time to time, on a quarterly basis within thirty days of the end of the quarter.

PART IV – COFFEE SAMPLING

19. Central sample room

(1) An exchange shall maintain a central sample room where samples of coffees to be offered for sale shall be held for distribution to buyers and roasters, and for display and archiving.

(2) An exchange shall maintain an on-line portal in which information on coffee samples, quality and quantity of coffee on offer at the exchange will be accessible to intending buyers and interested persons.

20. Sample deposit

(1) Every buyer and roaster operating at an exchange shall be required to deposit such amount of money as determined by the exchange from time to time, as security for collecting offer samples at the exchange.

(2) An exchange shall operate a coffee sample deposit account in a bank to be determined by the exchange in which all the sample deposits paid by buyers and roasters shall be deposited.

(3) Interest earned or accruing from such deposits shall form part of the earnings of the exchange and provided further, that the only permitted drawings from this account shall be—

(a) sample fees netted off against samples collected by buyers and roasters;

(b) refunds to buyers and roasters ceasing to trade; and

(c) such interest earned or accruing from the sample deposit account.

(4) A buyers or roaster who fail to pay the raised sample fees invoices within the due dates shall be suspended by the exchange from further collection of samples until such top ups are made.

(5)) Any refunds under paragraph (3) (b) shall be made without interest and net of any indebtedness by the buyer or roaster to the exchange.

(6) No interest shall accrue to the benefit of the buyers or roasters in respect of the sample deposit.

21. Offer sample

An offer sample out of a lot of coffee presented for sale at an exchange shall be availed by the exchange to licensed buyers and roasters prior to the auction.

22. Sample fee

Every buyer or roaster shall within fourteen days of receipt of an invoice from an exchange pay a sample fee in respect of all the selling samples collected.

23. Recovery of sample fee

A buyer or roaster shall be given a fourteen days' notice to pay the outstanding sample fee and in default thereof, the fees shall be recovered from the sample deposit provided that all buyers and roasters shall maintain a minimum sample deposit balance of an amount to be determined by the exchange.

24. Deduction and remission of sample fee

An exchange shall deduct the sample fee invoiced from the forfeited sample deposit.

25. Representative samples

(1) A miller or an appointed broker shall deliver to the sample room, representative samples out of a lot of coffee being offered for sale at an exchange in such quantities as may be determined from time to time by the exchange.

(2) The samples delivered by the millers or appointed brokers to the sample room shall be in accordance with the prevailing procedures as determined by the exchange from time to time.

26. Reference sample

(1) A reference sample of coffee shall be drawn from each lot and retained by an exchange for archival storage, for at least six months from the date of the sale for verification in case of a dispute:

(2) Notwithstanding paragraph (1), where a dispute exceeds six months, an analysis of the sample shall be done by an expert and the quality report submitted to the exchange.

27. Buying sample

A buying sample of coffee shall be drawn from each lot of coffee purchased at the auction to be availed to the buyer or roaster who has purchased the lot for verification.

28. Display sample

A display sample shall be drawn for display in the sample room.

29. Sample records

The exchange shall maintain records relating to —

(a) receipt of coffee samples from the millers;

(b) distribution of coffee samples to buyers, roasters and the exchange; and

(c) release of sweepings to the millers or other agent of the growers on a lot prorated basis for sale.

30. Sale of sweepings to benefit growers

Proceeds of sale for sweepings shall be remitted to growers through the direct settlement system provider on a prorated basis and shall have unique codes.

31. Submission of sample returns

(1) A miller or broker shall submit returns to an exchange and the Coffee Directorate on remission of monies received from samples and sweepings to the growers.

(2) An exchange shall make weekly, monthly, biannual and annual auction returns to the Coffee Directorate.

(3) An exchange shall prepare monthly reports on its performance and forward the same to the Coffee Directorate, buyers, roasters, millers, growers or growers' representatives and other interested parties.

32. Resolution of disputes

(1) In the event of a dispute arising out of coffee traded at an exchange and at the request by a complainant made to the exchange or the licensing authority, a random representative sample shall be redrawn from the lot or consignment in dispute for comparison with the reference sample.

(2) The instructions to draw each sample shall be lodged at the exchange or the licensing authority which shall in turn instruct the licensed warehouseman to allow redrawing of samples by the aggrieved party and any interested party may witness the exercise.

(3) In the event of a marked difference between the reference sample and the redrawn sample, additional samples shall be drawn from each bag in the lot and such individual sample together with the bag from which it has been drawn shall be referenced accordingly.

(4) In the event that the dispute is unresolved by the exchange or the licensing authority, it shall be referred to the Capital Markets Tribunal established under the Capital Markets Act.

PART V – TRADING AT THE AUCTION FLOOR

33. Participation at the trading floor

(1) Only licensed persons under these Regulations and other relevant laws shall participate on the trading floor of a coffee exchange.

(2) The participants on the trading floor shall be required to pay to the exchange the applicable auction levy.

34. Holding of auctions at the Exchange

(1) The exchange shall, in consultation with millers or appointed brokers, as the case may be, set the volumes, lot sizes, dates and times for holding of coffee auctions.

(2) Notwithstanding paragraph (1) provided that no suspension or cancellation of any auction shall be done without notification to the Authority.

35. Sales catalogue

(1) A sales catalogue shall be prepared by the grower miller or an appointed broker in accordance with the Third Schedule.

(2) The exchange shall, in consultation with grower millers or appointed brokers as the case may be, determine the order of the sales catalogues for every sale and the exchange shall ensure that reasonable access to the auction is given to all persons licensed to trade under the Crops (Coffee) (General) Regulations, 2019.

(3) A draft of the sales catalogue of each grower miller or broker shall be made available to buyers and roasters in accordance with the prevailing procedures of an exchange.

(4) In the event that the dispute is unresolved by the exchange or the licensing authority, it shall be referred to the Capital Markets Tribunal established under the Capital Markets Act. The final sales catalogue shall be made available to the exchange by the grower miller or broker in accordance with the prevailing procedures of an exchange.

36. Disclosure of bulked coffee

A miller shall disclose to the broker and the exchange, details of all bulked coffees and justify its basis.

37. Conditions of auction sales

Trading at the auction shall be in US Dollars or any other currency as may be determined by the exchange with the approval of the Authority.

38. Process of trading at the exchange

(1) The process of trading at the exchange shall be in accordance with these Regulations and shall comprise the following—

(a) a miller shall deposit clean and graded coffee at a designated licensed warehouse, and where the clean coffee is a bulk, the respective coffee growers and the proportions of their coffee will be stated in writing;

(b) the coffee shall meet defined quality standards for commodity trading at the exchange at which the coffee will be offered for sale;

(c) the warehouseman shall issue a coffee warrant as set out in the Fourth Schedule or transferable warehouse receipts as the case may be, stating the quantity and quality of the coffee deposited and ensure traceability of the coffee;

(d) the warehouseman shall guarantee delivery of the coffee described in the coffee warrant or warehouse receipt as the case may be, and in the event of loss or failure of delivery, the warehouseman shall be liable;

(e) a coffee warrant or warehouse receipt as the case may be, issued shall be transferred to a new holder who is entitled to take delivery of the coffee upon presentation of the coffee warrant or warehouse receipt at the warehouse;

(f) when the owner of coffee deposited in a warehouse decides to trade and is acting through a broker, the owner shall contact the broker and give authority to sell;

(g) for purposes of sale, the miller shall input the details of the coffee warrant or warehouse receipt as the case may be, into the central registry of the exchange at which coffee will be offered for sale;

(h) the collateral manager, where applicable, shall confirm that the warehouse receipt as the case may be, is valid by inspecting and auditing underlying commodities in warehouse;

(i) upon verification, details in the central registry shall be confirmed into the central order book ready for trading;

(j) once the sale of coffee is complete, successful bidders shall be invoiced by the miller or broker and payments of the proceeds shall be effected through direct settlement system net of contract and any statutory charges;

(k) upon confirmation of payment by the direct settlement system provider and endorsement by the exchange, title to coffee shall be transferred to the buyer by changing ownership details in the coffee warrant or warehouse receipt, as the case may be, at the central registry; and

(l) new owners will thereafter be at liberty to take delivery of the coffee.

(2) The grower or the grower's agent shall set the reserve price for each lot in the sales catalogue.

(3) An exchange shall not disclose the reserve price to a buyer, roaster or any other party whatsoever provided such reserve prices shall be disclosed to the Authority when requested.

(4) In the event that the highest bid for any lot is equal to or higher than the reserve price it shall be confirmed.

(5) Where the bid has not been confirmed, the miller or other agent of the grower shall disclose the reserve price at the trading floor.

(6) Where the disclosure of the reserve price does not attract any competitive offers, the coffee shall be withdrawn and re-offered for sale at a subsequent auction.

(7) A "No-Bid" lot shall be re-offered for sale at a subsequent auction.

(8) All trading in coffee shall be concluded at the trading floor.

39. Withdrawal of a lot

(1) A miller or broker may, by written communication to an exchange, made at least three working days prior to the date of sale, withdraw a lot that was destined for sale and such written communication shall also state the reasons for withdrawal.

(2) The exchange shall communicate the withdrawal in writing to all buyers and roasters at least two working days prior to the date of sale.

(3) Samples of lots withdrawn shall not be compensated.

40. Prompt date

(1) The prompt date shall be specified on the sales catalogue and shall be not more than five working days following the date of the sale.

(2) All coffees shall be paid for within the prompt date against an invoice presented by the miller.

PART VI – SETTLEMENT OF SALES PROCEEDS

41. Direct settlement system

(1) A direct settlement system shall be established by a licensed commercial bank competitively selected by an exchange subject to approval from the Authority and managed by that exchange.

(2) The requirements for the operation of the direct settlement system shall be as set out in the Fifth Schedule.

(3) The proceeds of the sale of coffee at the auction shall be remitted by a coffee buyer or roaster through a direct settlement system for onward settlement to the service providers and net payment to the grower.

(4) A coffee grower or the grower's authorized representatives, shall after the commencement of these Regulations, supply through the coffee exchange all the necessary particulars of the grower to the appointed financial institution providing the direct settlement system to the grower, for purposes of initiating the settlement system.

(5) The grower or the grower's authorized representatives shall also through the coffee exchange lodge with the financial institution providing the direct settlement system, any relevant contracts of service for which payment will be due from the grower, and any other document showing outstanding liabilities payable by the grower, for purposes of settlement through the system.

(6) The grower or the grower's authorized representatives shall ensure that the information provided under paragraphs (4) and (5) above is correct and relevant and they shall be liable for any loss or other consequences resulting from any incorrect information given to the commercial bank, through the coffee exchange, providing the settlement system.

(7) A coffee exchange shall indemnify the grower's authorized representatives in the event that it provides incorrect information different from the one submitted by grower's authorized representatives for onward transmission to the commercial bank providing the settlement system.

(8) The miller or broker shall generate invoices for coffee sold at an exchange and send a copy to the buyer or roaster and the exchange shall send the transaction file to the direct settlement system provider to validate the information supplied by the miller.

(9) The commercial bank operating the direct settlement system and the exchange where coffee is offered for sale, shall maintain records of all trade transactions.

(10) The commercial bank in which the direct settlement system is housed shall make the operations of the direct settlement system electronically accessible to interested parties or their authorized representatives.

(11) The commercial bank operating the direct settlement system shall prepare monthly and annual reports on its operations for submission to the exchange and the exchange shall make the reports accessible to interested parties.

(12) For purposes of payment by the direct settlement system, a service provider shall supply authenticated documents in support of any claim not later than three months of that service provided that such claims are supported with prior agreements between the growers and such service providers and lodged with the direct settlement service provider through the coffee exchange.

(13) The commercial bank operating the direct settlement system shall be responsible for provision of clearing, delivery and settlement services of proceeds from coffee traded at the exchange.

(14) The operations of the direct settlement system shall be in accordance with laws relating to banking and finance and any laws governing the exchange.

(15) The commercial bank operating a direct settlement system shall be responsible for—

(a) settling trading accounts;

(b) collecting and maintaining margin monies;

(d) reporting trading data;

(e) maintaining a database for trading activities;

(f) receiving millers' invoices for processing; and

(g) authenticating the millers' invoices against the transaction file.

(16) The direct settlement system of payment of coffee proceeds shall be put in place by the exchange within a period not exceeding twelve months upon the commencement of these Regulations.

42. Settlement of bank charges

(1) Any bank charges incurred by the buyer or roaster upon making payment shall be settled by the buyer or roaster, whilst those incurred by the miller upon receipt of coffee sale proceeds shall be deducted directly by the clearing house into which the proceeds have been paid.

(2) A buyer or roaster who will not have settled his payments in full by the set deadline as per rules or operations of the exchange shall be considered a defaulter.

(3) In the event of default by a buyer or roaster to pay by the set deadline, the bank shall immediately issue a notification of the outstanding payments and the interest rates chargeable to the defaulter with a copy to the miller and the exchange and the buyer or roaster shall be automatically suspended from participating on the trading floor until the buyer or roaster pays the outstanding amounts in full and the interest.

(4) The interest on the outstanding payments shall accrue effective from the day following the prompt date at the prevailing commercial bank lending rate at the settlement bank in USD.

(5) If the defaulter does not pay the outstanding amounts together with interest thereon within five working days from the prompt date, the defaulter shall be liable to pay a penalty and the coffee shall be re-offered for sale at a subsequent auction.

(6) In the event that after reselling the coffee, any shortfall in value from the original bid occurs, the miller shall notify the Authority and the exchange of the shortfall, all accrued interest and any other related expenses and losses for the purpose of recovery of the entire amounts from the defaulter or from the performance bond of the defaulter.

(7) A buyer, roaster or miller who fails to pay any outstanding obligations to the exchange or to a grower shall be suspended by the exchange with notice to the Authority.

(8) The exchange shall lift a suspension upon settlement of outstanding obligations.

(9) The exchange shall report any buyer, miller or roaster who has defaulted more than twice within a period of six months, to the relevant authority for suspension or cancelation of the license.

43. Dispute relating to coffee trade

(1) Where a dispute arises in regard to coffee quality, a claim may be brought within sixty days of sale.

(2)) The claim shall be based on samples drawn and sealed by a licensed certified warehouse in the original storage location.

(3) In the event of a quality difference between the offer and buying samples, and the actual coffee lot, the buyer or roaster shall make an immediate claim to the miller or appointed broker within three working days and reference may be made to the reference samples.

(4) Where the actual coffee lot does not conform to the buying sample, the parties may, by mutual consent, negotiate a settlement which may include compensation for opportunity cost of funds involved payable by the person who is responsible for the coffee quality difference.

(5) The parties shall be at liberty by mutual consent to agree to a settlement that may also include sorting, bulking, price adjustment or refund.

(6) Incorrect information on the packaging material used for a specific lot shall give the right to a buyer or roaster to charge the miller for all the costs of re-bagging.

(7) In the event that the dispute remains unresolved, it shall be referred to the exchange or the licensing authority.

(8) In the event that an aggrieved party is dissatisfied with the decision of the exchange or the licensing authority, the party shall have the right of appeal to the Capital Markets Tribunal established under the Capital Markets Act.

44. Disputes relating to coffee weight loss

(1) licensed warehouseman shall be responsible for any weight loss which shall be the difference between the weight indicated in the coffee warrant or the warehouse receipt as the case may be, and the weight indicated in the weight note provided to the buyer or roaster at the time of release of coffee.

(2) The weight loss claim will be limited to a period of thirty days from the date of the sale and shall be presented by the buyer or roaster to a licensed warehouseman except when such a claim on weight loss is within the acceptable tolerance levels as determined by the exchange from time to time.

(4) In the event that an aggrieved party is dissatisfied with the decision of the exchange, the party shall refer the matter to the Authority for resolution, failing which the Authority shall put in motion the arbitration process.

PART VII – GENERAL PROVISIONS

45. Assumption of risk

Prior to payment of the purchase price by the buyer, the property in the coffee shall remain in the grower and it shall be upon the warehouseman to ensure that the coffee is insured at all times prior to receipt of payment and release of the coffee.

46. Accounts and Audit

(1) An exchange shall cause proper books of accounts to be kept with respect to —

(a) all sums received and expended by the exchange and matters in respect to which the receipt and expenditure took place;

(b) all sales and purchase of goods by the exchange; and

(c) the assets and liabilities of the exchange.

(2) The exchange shall prepare an annual report containing audited financial statements within four months of the close of the financial year.

(3) A complete set of financial statements includes the following components —

(a) balance sheet;

(b) income statement;

(c) a statement showing either —

(i) all changes in equity; or

(ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;

(d) cash flow statement; and

(e) accounting policies and explanatory notes.

47. Operating capital of an exchange

An exchange shall comply with the minimum operating capital requirements covering twelve months of its operating costs.

48. Appeal

(1) Any person aggrieved by an act or omission of an exchange may within thirty days after being notified of such act, omission or decision, appeal to the Authority.

(2) Where an applicant is dissatisfied with the decision of the Authority in sub regulation (1), the applicant may seek judicial recourse within thirty days of the decision.

49. Declaration of stocks

(1) All licensed buyers, roasters and millers shall be required to declare held stocks to an exchange to facilitate scheduling of coffee auctions.

(2) Coffee offered and sold at an exchange shall not be re-offered at any other exchange.

50. Certificate of purchase

(1) An exchange shall, after every sale of coffee, issue to the purchaser a certificate of purchase in such form, and containing such details of the coffee purchased, as the Authority may prescribe.

(2) A person shall not alter any certificate or other document issued or prepared for the purposes of these Regulations.

(3) A licensed buyer or other person exporting any coffee shall, within fourteen days of the export of that coffee, submit to the exchange a copy of the relevant certificate of origin or certificate of reexport, as the case may be, stamped by the Commissioner of Customs and Excise, together with a non-negotiable bill of lading relating to the coffee.

51. Exemptions

Nothing in these Regulations shall apply to the export or dispatch of any coffee when the coffee concerned —

(a) consists only of a sample or a parcel not exceeding twenty kilograms in weight; or

(b) is fully ground or processed coffee for consumption on ships, aero planes or other international carriers.

52. Approval from the Authority

A coffee exchange carrying on trading in coffee shall, within twelve months of commencement of these Regulations seek the approval and licence from the Authority in compliance with these Regulations.

53. Transitional provisions

A person carrying on trading at a coffee exchange prior to the commencement of these Regulations, shall be required to make an application to the Authority for licensing within twelve months after the commencement of these Regulations.

FIRST SCHEDULE

FORMS

(r.4(4)

Form A

(r.4)

APPLICATION FORM FOR A LICENSE TO CONDUCT
THE BUSINESS OF A COFFEE EXCHANGE

Note

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of application

1. Name of the Company ..... Limited

2. Registered office .....

3. Date of incorporation .....

4. Address .....

5. E-mail .....

6. Location, address and telephone number of principal office .....

.....

7. Location, address and telephone number of branch offices .....

.....

8. Details of capital structure:

(a) Nominal authorized capital (KSh.) .....

(b) Number of shares .....

(c) Paid-up capital (KSh.).....

9. Shareholders (please attach list)

Name	Address and telephone number	Number of shares held
	.	

10. (a) Directors (please attach a list)

Name	Identity card/ Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company
.		.		.		.

(b) Secretary

Name .....

Address .....

Institute of Certified Secretaries of Kenya Registration

No .....

(c) Chief Executive Officers and other key personnel

Name	Identity card/ Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company
.		.		.		.

11. Particulars of other directorship (s) of the directors and secretary .....

.....

.....

12. Particulars of shares held by the directors and secretary in other companies

.....

.....

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If "Yes", give details

.....

14. Has any director, secretary or key personnel of the applicant been a director of a company that has been:

(a) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No If Yes, give details…

.....

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No. If Yes, give details .....……

.....

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. if Yes, give details…… .....

.....

.....

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details……

.....

.....

.....

16. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a "yes" answer to question 15? Yes/No. If "yes" give details…...

.....

.....

17. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, futures exchange or commodities exchange? Yes/No. If "yes" give details.

.....

(2) have any of the above persons been—

(a) refused admission as a futures member of any securities organization? Yes/No. if Yes, give details

.....

.....

(b) expelled from or suspended from trading on any securities organization? Yes/No if Yes, give details

.....

.....

.....

subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No if Yes, give details …….....

.....

.....

18. Business references:

Name	Address	Telephone number(s)	Occupation
.		.	

19. Profile of the chief executive officer and key personnel in the applicant company

.....

20. List of office facilities of the applicant

.....

.....

.....

21. Any other additional information considered relevant to this applicant

.....

.....

We…… (Director)……..……. (Director)

and……(Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this……..day of……..……..20….

Signed:

……) Director

……) Director

……) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).

FORM B

APPLICATION FOR A LICENSE TO CONDUCT
THE BUSINESS OF A COFFEE BROKER

Note

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of the Company ..... Limited

2. Registered office .....

3. Date of incorporation .....

4. Address .....

5. E-mail .....

6. Location, address and telephone number of principal office .....

.....

7. Location, address and telephone number of branch offices .....

.....

8. Details of capital structure:

(a) Nominal authorized capital (KSh.) .....

(b) Number of shares .....

(c) Paid-up capital (KSh.).....

9. Shareholders (please attach list)

Name

Address and telephone number

Number of shares held

10. (a) Directors (please attach a list)

Name

Identity card/Passport number

Date of appointment

Date of Birth

Permanent address and telephone number

Academic or professional qualification

Number of shares held in the company

(b) Secretary

Name .....

Address .....

Institute of Certified Secretaries of Kenya Registration No .....

(c) Chief Executive Officers and other key personnel

Name

Identity card/Passport number

Date of appointment

Date of Birth

Permanent address and telephone number

Academic or professional qualification

Number of shares held in the company

11. Particulars of other directorship (s) of the directors and secretary .....

.....

.....

12. Particulars of shares held by the directors and secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If "Yes", give details

.....

14. Has any director, secretary or key personnel of the applicant been a director of a company that has been:

(a) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No

If Yes, give details

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No. If Yes, give details .....

.....

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. if Yes, give details…… .....

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details……

.....

.....

.....

16. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a "yes" answer to question 15? Yes/No. If "yes" give details…...

.....

.....

17. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, futures exchange or commodities exchange? Yes/No. If "yes" give details.

.....

(2) have any of the above persons been—

(a) refused membership of any securities organization? Yes / No. If 'yes', give details

.....

.....

(b) refused membership of any securities organization? Yes / No. If 'yes', give details expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details

.....

.....

.....

(c) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No if Yes, give details …….....

.....

.....

18. Business references:

Name

Address

Telephone number(s)

Occupation

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name Post

Post Qualifications

Experience

21. List the office facilities of the applicant

.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a license from the Capital Markets Authority

.....

23. Any other additional information considered relevant to this application:

We…… (Director)……..…….. (Director)

and…….(Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this……..day of……..……..20….

Signed:

……) Director

……) Director

……) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).

SECOND SCHEDULE

[Rules 4, 8]

APPLICATION, LICENSING AND ANNUAL REGULATORY FEES FOR COFFEE EXCHANGES AND COFFEE BROKERS

Coffee Exchanges

Application fees	KSh. 10,000
Annual regulatory fees	KSh. 2,500.000

Coffee Brokers

Application fees	KSh. 10,000
Annual regulatory fees	KSh. 50,000

THIRD SCHEDULE

(Rule . 35 (1))

SALES CATALOGUE

1. The sales catalogue shall be prepared by a grower miller, or an appointed broker in consultation with a commercial miller, in accordance with the Coffee General Regulations and these Regulations, and forwarded to the Exchange.

2. The details to be included in the sales catalogue shall include —

(a) The name of the grower;
(b) The name of the miller;
(c) Name of broker, if any;
(d) Sale number;
(e) Day, date and time of the auction;

(f) The place of the auction shall be at the exchange;

(g) Total number of bags of coffee to be offered for sale;

(h) Name of the warehouse where the coffee is stored;

(i) The prompt date being the date on or before which proceeds are payable to the direct settlement system provider managed by the exchange;

(j) Terms and conditions of sale;

(k) The date on which rent charges in respect of purchased coffee shall be due from the buyers to warehousemen at which the coffee is stored;

(l) The net weights as per warehouse weights (and unless otherwise stated coffee shall be packed in bags of 60 kg net, tare weight 1.1 Kgs but bids shall be on the basis of 50 Kgs), the bags used shall conform to the international coffee packaging standards;

(m) Lot numbers arranged serially per miller or appointed broker for all coffee offered for sale;

(n) The out-turn Number shown against each lot number and the registered distinguishing mark of the grower miller (whether Bulk, E/Bulk, P/Bulk, T/ Bulk; Spillage, or sweepings) and out-turn Number arising from operations of grower/miller;

(o) Grade of the coffee;

(p) Number of bags in the lot (a saleable lot shall not be less than ten bags);

(q) Net weight of coffee in kilograms respectively;

(r) Adequate space for inserting big prices by buyers.

3. The sales catalogue shall be prepared weekly or as frequently as the Authority may determine in consultation with a grower or his agent.

4. The saleable lots in the special auction dedicated to local roasters may comprise less than ten bags.

FOURTH SCHEDULE

(Rule . 38, (1)(c))

COFFEE WARRANT

NAME OF WAREHOUSEMAN

Entered by .....on the account of the lot of coffee DULY Deliverable to ..... or assigns by endorsement hereon.

Coffee season and out-turn no.	Mark and code	Grade	Number of bags	Net weight of pockets (kgs)	Total net weight (kgs)
.					

This Coffee is lying at .....warehouse awaiting instruction and collection.

This warrant is valid only if signed by any two of category A or any one of category A and one of category B signing jointly

Category A	Category B
Chief Finance Officer	Finance Manager
Head of supply Chain	Legal Manager-Regional Co Secretary ager
Head of Middle Office	Sea Exports Man

NAME OF WAREHOUSE

-SIGNATURES

Rent Commences: .....

Rates:

Warehouse handling: .....

Storage: .....

Warrant fee:.....

CONDITIONS

1. A warrant is issued in respect of each consignment.

2. A warrant is issued in respect of each consignment. All deficiencies or losses on or damage to goods must whenever possible be notified in writing to ..... ("the Company") prior to removal of the goods from the Company premises so as to afford an opportunity for checking by the Company, and in all cases where such notification is not possible, such deficiencies, losses or damage must be notified to the Company in writing within two days of the removal from the premises of the Company of the goods concerned if this condition be not complied with, the Company will in no case accept liabilities whatsoever for such deficiencies, losses or damages however caused.

3. Every warrant is transferable by endorsement and entitles the person named herein, or the last endorsee therefore named in the endorsement, to the goods specified therein, and the goods so specified shall for all purposes he deemed to be his property.

4. Upon lodging a warrant duly endorsed, the person there under entitled to the goods may transfer or obtain possession of the goods subject to the payment of all charges.

5. The contents of one warrant may be divided into others for smaller quantities at the will of the person entitled to the goods subject to the payment of all appropriate charges.

6. If a warrant is lost, written notice must at once be given to the Company. In such a case, before delivery of goods can be made, the loss of the warrant must be advertised in the Official Gazette and a copy of such publication containing the advertisement together with a guarantee signed by the applicant and countersigned by a bank approved by the Company to identify the Company against losses, claims, or damages, must be lodge with the Company in no circumstances will duplicate warrants be issued.

7. The Company takes all reasonable measures to protect goods against loss or damage but does not accept liabilities for—

(a) Loss or damage, arising otherwise than through the Company's negligence

(b) Loss, damage or deficiency cause by or contributed to any of the following causes; Whether such loss, damage or deficiency be also in part caused by or contributed to by a neglect, wrongful act or default of the Company, it's servant or (agents or other persons for whose acts the Company might apart from this clause be liable:

(i) Vermin;

(ii) Frail, unsuitable, insufficient or defective packing;

(iii) Strikes, combinations or lock-outs of any person in the employ of the Company or in the service of others;

(iv) Improper, insufficient, indistinct or erroneous marking or addressing of goods or packages;

(v) Fire;

(vi) Civil commotion;

(vii) Earthquake ;

(viii) Loss of weight or damage in consequence of atmospheric conditions of humidity due to heat, damp or drought, or howsoever caused.

8. his warrant, if referring to coffee bulked-:

(a) The Company accepts no financial liability under any circumstances for the even mix of the bulk, but undertakes to re-bulk free of charge provide that:

(i) The person first entitled under the warrant shall lodge the claim within seven days of receiving the warrant; and

(ii) The person first entitled under warrant shall satisfy the Company that rebuilding is necessary or advisable, the Company being prepared to accept the advice of an Arbitrator.

(b) The Company guarantees that the component coffees of the bulk are exactly those instructed by mark and quantity.

(c) The Company does not accept liability in respect of any divergence of the bulk from the expected resultant quality by reason of a variation in quality of one or more components of the bulk. The bonus of proof of the use of coffee other than the stipulated components shall rest upon the instructing dealer and in the event of such proof the Company agrees to submit to the normal quality arbitration under the Arbitration Regulations of the Kenya Coffee Traders Association as shall be amended from time to time.

9. his warrant is subject to the condition that the Company shall have a general as well as a particular lien on the goods specified therein in respect of any monies owing to the Company by the person first or subsequently entitled under the warrant.

10. The acceptance of this warrant in the first place and subsequent presentation of this warrant implies implicit acceptance of the conditions enumerated above.

Deliver to ..... on payment of all charges

Signed..... Date..... 20 .....

Deliver to ..... on payment of all charges

Signed ..... Date ..... 20 .....

Deliver to ..... on payment of all charges

Signed ..... Date ..... 20 .....

FIFTH SCHEDULE

(Rule . 41 (2))

PART A —CRITERIA FOR SELECTION OF DIRECT SETTLEMENT SYSTEM PROVIDER

1. Request for expression of interest by the exchange.

2. Licensed commercial Banks.

3. Past experience in the management of centralized processing and settlement system for commodities.

4. Demonstrate capacity to expedite settlement and direct payment of coffee proceeds to coffee growers and service providers.

5. Demonstrate the network to reach out to all coffee growing and other areas.

6. Demonstrate an ICT infrastructure for information gathering, processing, dissemination and archiving.

7. Past experience in handling proceeds of agricultural commodities.

8. Demonstrate understanding and willingness to comply with government regulations.

9. Be approved by the Authority.

10. Be connected to the national payments system.

PART B —REQUIREMENTS FOR COMMENCEMENT OF DIRECT SETTLEMENT SYSTEM ARRANGEMENTS AND OPERATIONS

1. The Authority may, on application made to it by the exchange, approve in writing the commencement of the direct settlement system operations if it is satisfied that the direct

settlement system provider has adequate systems and safeguards for the issuance and transference of coffee warrants or Electronic Warehouse Receipts as the case may be and to prevent manipulation of records and transactions and it complies with the requirements specified in these Regulations and other relevant law.

2. In considering an application made under paragraph 1 above, the Authority shall take into account all matters which are relevant for the efficient and orderly functioning of the direct settlement system and in particular whether the —

(a) The mode of operation of the direct settlement system has been approved by the Exchange;

(b) The systems provider has systems to open and maintain separate accounts in the name of each coffee grower whose coffee is traded;

(c) Any changes in Depositors' account are supported by electronic instructions or any other mode of instructions received from the Clearing House and the designated Warehouses;

(d) The direct settlement system has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its internal accounting controls and systems;

(e) The direct settlement system provider has a system to reconcile records of every depositor on a daily basis;

(f) Automatic data processing systems of the direct settlement system are protected against unauthorized access, alteration, destruction, disclosure or dissemination of records and data;

(g) network through which electronic means of communications are established between the direct settlement system provider, the Clearing House, licensed Warehouses is secure against unauthorized entry or access;

(h) The direct settlement system provider has established standard transmission and encryption formats for electronic communications of data between the direct settlement system, the Clearing House, the exchange, licensed Warehouses;

(i) The direct settlement system provider has established adequate procedures and facilities to ensure that its records are protected against loss or destruction and arrangements have been made for maintaining back up facilities at a location different from that of the direct settlement system;

(j) Physical or electronic access to the premises, facilities, automatic data processing systems, data storage sites and facilities including back up sites and access to the electronic data communication network connecting the direct settlement system, the Clearing House, licensed Warehouses is controlled, monitored and recorded;

(k) The direct settlement system has an operations manual explaining all aspects of its functioning, including the interface and method of transmission of information between the direct settlement system provider , the Clearing House, the exchange, licensed Warehouses;

(l) The direct settlement system has, either through the Exchange or otherwise, made adequate arrangements including insurance for indemnifying the Depositors for any loss that may be caused to such Depositors by the wrongful act, negligence or default of the direct settlement system provider or any of its employee and agents

(m) The direct settlement system provider has a mechanism in place to ensure that the interest of Depositors are adequately protected and to register the transfer of coffee warrants or Electronic Warehouse Receipts as the case may be, in the name of the transferee only after the system provider is satisfied that payment for such transfer has been made;

(n) The out-turn Number shown against each lot number and the registered distinguishing mark of the grower miller (whether Bulk, E/Bulk, P/Bulk, T/Bulk; Spillage, or sweepings) and out-turn Number arising from operations of grower/miller; The direct settlement system provider has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its controls, systems, procedures and safeguards; and

(o) The direct settlement system provider has adequate mechanisms to ensure that the integrity of the automatic data processing systems is maintained at all times and all precautions necessary to ensure that the records are not lost, destroyed or tampered with and in the event of loss or destruction, ensure that sufficient back up of records is available at all times at a different place.

PART C— RECORDS TO BE MAINTAINED BY A COFFEE EXCHANGE AND INFORMATION SHARING ARRANGEMENTS WITH A DIRECT SETTLEMENT SYSTEM PROVIDER

1. The exchange shall maintain and avail to the direct settlement system provider the following records and documents relating to coffee sold at a coffee exchange —

(a) records of every coffee warrant or warehouse receipt received, or created and the Delivery Notices issued and any cancellations thereof;

(b) names of transferors, transferees, and the dates of transfer of the coffee warrant or warehouse receipts as the case may be;

(c) records of requests received from and sent to the designated warehouses and clearing house; and

(d) details of the buyers or roasters.

2. The coffee exchange shall, when required to do so, disclose to the Authority the place where the records and documents are maintained.

3. The coffee exchange shall preserve records and documents for a minimum period of 10 (ten) years.

4. External monitoring, review, evaluation of systems/controls and reports to the Authority.

The coffee exchange shall, when required to do so, disclose to the Authority the place where the records and documents are maintained. A coffee exchange shall cause an inspection of its controls, systems, procedures and safeguards to be carried out annually and forward a copy of the report to the Authority.

5. Inspection

1. The Authority may undertake inspection of the books of accounts, records, documents and infrastructure, systems and procedures, or may investigate the affairs of a Coffee Exchange in relation to the direct settlement system provider, the Clearing House or Designated Warehouses, for any of the following purposes —

(a) to ensure that the books of account are being maintained by the Exchange and its members in the manner specified in these Regulations;

(b) to look into the complaints received from millers, buyers and roasters;

(c) to ascertain whether the systems, procedures and safeguards being followed by the Exchange, the direct settlement system provider, Clearing House and Designated Warehouses, or their agents are adequate to enable the direct settlement system to carry out its purpose; and

(d) to ensure that the affairs of the Exchange in relation to the direct settlement system provider are being conducted in a manner which are in the interest of the coffee growers, millers, buyers, roasters and the public.

2. The Authority shall give the Exchange and its members, as the case may be, not less than 10 (ten) days' notice before ordering or conducting an inspection or investigation.

3. Notwithstanding anything contained in paragraph 2 of this Article, where the Authority is satisfied that in the interest of growers, millers, buyers and roasters no such notice should be given, it may, by an order in writing direct that such inspection be taken up without such notice.

D —APPLICATION BY A COMMERCIAL BANK FOR SELECTION BY THE EXCHANGE TO PROVIDE DIRECT SETTLEMENT FUNCTIONS FOR COFFEE SALES PROCEEDS

1. A Bank shall submit an application to the exchange with the approval of the Authority for appointment as a direct settlement system provider for receipt and disbursement of coffee proceeds, which must include in the application a showing that it complies with the requirements and conditions set forth by the exchange and also demonstrate that it will continue to comply with the said requirements.

2. The Bank shall make an application for appointment through a selection process established by the exchange (and further approval by the Authority) which must include the following —

(a) the particulars of the applicant's proposed affiliation with the exchange; The particulars include:

(i) Name and Registered Address/Physical Location/Head Office of the bank;

(ii) Names of the Board of Directors of the bank;

(iii) Copy of the banking/regulator license and confirmation of current licensing status;

(iv) Number of branches including their location;

(v) Credit rating of the bank;

(vi) Names and Designation of key contact personnel of the bank;

(vii) Details of the banks Auditors;

(viii) Undertaking to comply with the rules of the Exchange and applicable regulations;

(ix) Commitment to pay exchange membership fee;

(x) Evidence of adequate risk management framework;

(xi) KYC (know your customer)/AML (anti-money laundering) management processes;

(xii) Plans to deploy ICT systems to support the exchange; and

(xiii) Evidence of technical staff capacity to run Direct Settlement System.

(b) a representation by the Bank that it will operate in accordance with the definition of a direct settlement system relating to settlement of coffee transactions at the exchange as set out by the exchange;

(c) a demonstration of how the Bank is able to satisfy each of the requirements for a direct settlement system specified under the Regulations;

(d) any agreements entered into or to be entered into with the exchange or otherwise, that will enable the Bank to comply with the requirements specified under Regulations. The agreements must identify the services that the Bank will provide as a direct settlement system provider. If a submitted agreement is a draft, the application must include evidence that will demonstrate that such services will be provided as soon as exchange operations require;

(e) descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply with the requirements specified in these Regulations ; and

(f) where the applicant with sufficient particularity identifies information in the application it deems confidential, a request for confidential treatment and with evidence to support such request.

3. Except as provided for under these Regulations, the Exchange shall consider the application for recognition as a Bank within 7 (seven) working days of the filing of the application. The Exchange may in consultation with the Authority approve or deny an application or if deemed appropriate, select the applicant Bank subject to conditions to be specified. If the Exchange notifies the applicant Bank the application is incomplete and specifies the deficiencies in the application, the process date will be stayed until the application is resubmitted in a complete form.

4. The Exchange may grant temporary appointment to the Bank on an expedited basis to give room for the bank to meet full criteria. The temporary appointment under this subrule may be subject to conditions and an expiry date as the Exchange may stipulate.

5. An applicant Bank shall apply for permanent selection status when conditions of its selection are met and before the expiry of the temporary selection

6. . If the Exchange denies an application by a Bank, it shall specify the grounds for the denial. In the event of a refusal to select a Bank, any person that has made an application for selection shall be afforded an opportunity for a hearing on the record before the Authority, with the right to appeal an adverse decision after such hearing to the High Court.

7. The Exchange in consultation with the Authority is authorized to suspend for a period not to exceed 30 days or to revoke the selection of a Bank on a showing that —

(a) The Bank is not enforcing or has not enforced its operations, standards, procedures and rules made a condition of its selection as a direct settlement system provider.

(b) The Bank, or any director, officer, agent, or employee of such Bank, is violating or has violated any of the provisions of these Regulations or any of the directives, or orders of the Exchange or the Authority.

8. In the event of a denial of selection or suspension or revocation in accordance with these Regulations, any person that has made an application for selection as a direct settlement system provider whose selection has been suspended or revoked shall be afforded an opportunity for a hearing on the record before the Authority, with the right to appeal an adverse decision after such hearing to the High Court.

9. The testimony and evidence taken or submitted before the Exchange or the Authority, duly filed as per these Regulations as part of the record, shall be considered by the High Court as evidence in the case.

10. The High Court may affirm or set aside the order of the Authority and the Exchange or may direct it to modify its order. However, no such order of the Authority shall be modified or set aside by the High Court unless it is shown by the applicant Bank that the order of the Authority is unsupported by the weight of the evidence or was issued without the appropriate notice and a reasonable opportunity for a hearing

11. An application may be withdrawn by filing with the exchange such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the exchange or the Authority based upon action, activities, or events occurring during the time the application was pending with the exchange or the Authority.

12. If an applicant Bank or financial institution proposes to make—

(a) any amendment to its constitution which has an impact on its function as a provider of a direct settlement system;

(b) any business rules that have an impact on its function as a direct settlement system provider ; or

(c) any amendments to its existing business rules having impact on its function as a direct settlement system provider, the Bank shall, as soon as practicable, give a written notice to the exchange.

13. The notice shall—

(a) set out the text of the proposed amendment;

(b) state the date on which the amendment are proposed to be put into force; and

(c) contain an explanation of the purpose of the proposed amendment.

14. The exchange shall, within 30 (thirty) days or such longer period as may be agreed between the exchange and the Bank after the receipt, notify the Bank in writing of its decision on the proposed amendment or the proposed business rules, as the case may be.

15. Where the exchange does not approve any proposed amendment or business rule, the notice to the Bank shall identify or specify it.

16. In addition to the power conferred upon the exchange, the exchange may in consultation with the Authority and by notice in writing to the Bank, amend the Bank's constitution or any of its business rules relating to the clearing and settlement system for payment of coffee proceeds.

17. A notice by the exchange to the Bank —

(a) may contain provisions as to the manner in which the amendments made by the exchange shall take effect; and

(b) shall state when the amendments shall take effect, specifying a period for the Bank to make a response.

18. A Bank shall comply with a notice given to it under these Regulations once the stipulated period expires.

19. Where it is shown that a Bank, any director, officer, agent, or employee of a Bank has failed to comply with, observe, enforce or give effect to these Regulations and conditions of its selection, or that the Bank, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of these Regulations or any of the orders of the exchange, the exchange may take one or more of the following actions —

(a) direct the Bank to suspend the business of such Bank as it relates to the exchange. A direction under this Rule shall only be after a written notice, specifying the grounds for the action, served upon the Board or the CEO of the Bank not less than 7 (seven) working days before such proposed action and a hearing on the record;

(b) require the Bank, any director, officer, agent, or employee of the Bank to act in a particular manner to enforce or comply with, as the case may be, with these Regulations or other directives of the Authority;

(c) reprimand the Bank or individual concerned; and

(d) require the Bank, director, officer, agent or employee concerned to take such steps as the Authority may direct to remedy or mitigate the effect of such breach.

20. The Authority shall give the Bank, director, officer, agent or employee thereof, notice of not less than fifteen working days, of its intention to take any of the actions under these Regulations and the notice shall specify the grounds for the action taken.

21. A recognized Bank may terminate its recognition by filing such a request with the exchange. Termination of selection shall not affect any action taken or to be taken by the exchange based upon action, activities, or events occurring during the time the application was pending with the exchange or the Authority.

22. A Bank shall (through the exchange) receive from growers or the growers' authorized representatives all the relevant particulars of the growers and the growers' service providers, maintain these records and submit the same to the exchange and the Authority regularly as follows —

(a) The Bank shall submit a report to the exchange showing transactions matched and approved for settlement by it; and

(b) Each selected Bank which receives funds belonging to growers, shall monthly submit to the exchange a report showing separately for each grower or service provider, the dates when such funds were received, the identity of the depositor, the dates such funds were debited, withdrawn or disposed of otherwise, together with the facts and circumstances of such debit, withdrawal or disposition, including the authorization thereof.

23. The Bank shall prepare and avail to the grower through the exchange, a comprehensive sales statement to account for each coffee lot sold through the exchange and paid for through the Bank.

CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

ARRANGEMENT OF REGULATIONS

CAPITAL MARKETS (COMMODITY MARKETS) REGULATIONS, 2020

[L.N. 41/2020.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Capital Markets (Commodity Markets) Regulations, 2020.

2. Interpretation

In these Regulations, unless the context otherwise requires —

"Act" means the Capital Markets Act (Cap. 485A);

"Authority" means the Capital Markets Authority established under section 5 of the Act;

"board" means the board of directors of a commodity exchange or a commodity broker;

"bucketing" means directly or indirectly taking the opposite side of a client's order into a commodity broker's own account or into an account in which a commodity broker has an interest, without open and competitive execution of the order on the trading platform of a commodity exchange;

"clearing house" means an entity, approved by the Authority, recognized as a clearing institution on behalf of a commodity exchange, providing the services of clearing and settlement of transactions and guaranteeing settlement on behalf of the commodity exchange;

"client" means a person on whose account a commodity broker carries on trading in any spot commodity contract, but does not include directors, key personnel, representatives and related companies of the commodity broker;

"commodity" has the meaning assigned to it under section 2 of the Act;

"commodity broker" means a company cleared by the exchange and licenced by the Authority to carry on the business of purchase or sale of commodities contracts as an agent for investors or on its own account;

"commodity exchange" means an exchange licenced by the Authority to undertake spot commodity trading, and includes any clearing or settlement or transfer services connected with the transaction;

"commodity market" has the meaning assigned to it under section 2 of the Act;

"Fund" means the Investor Compensation Fund established under section 18 of the Act;

"key personnel" has the meaning assigned to it under section 2 of the Act;

"market participant" includes commodity brokers, clearing house of a commodity exchange or a client of a commodity broker;

"member" means any person, with the approval of the Authority, has been admitted to membership of a commodity exchange and includes a commodity broker and settlement bank of a commodity exchange;

"settlement bank" means a bank as defined under section 2 of the Banking Act (Cap. 488), approved by the Authority to facilitate the maintenance of a segregated account and settlement of transactions executed on a commodity exchange;

"settlement price" means the daily settlement price at the close of trading;

"spot commodity contract" means delivery verses payment contract traded on a commodity exchange for settlement within five working days from the date of the transaction at the exchange;

"trading system" includes any system or platform provided by a commodity exchange, which makes available to the members of the commodity exchange, and disseminates information regarding trades effected, volumes and such other notifications as may be placed thereon by a commodity exchange;

"warehouse receipt" has the meaning assigned to it under the Warehouse Receipt System Act, 2019 (No. 8 of 2019);

"warehouse receipt system" has the meaning assigned to it under the Warehouse Receipt System Act; and

"warehouse operator" has the meaning assigned to it under the Warehouse Receipt System Act.

PART II – LICENSING OF COMMODITY EXCHANGES

3. Licensing of commodity exchanges

(1) A person shall not carry on business as a commodity exchange or hold himself out as providing or maintaining a commodities exchange unless such a person has obtained a commodity exchange license from the Authority.

(2) A securities exchange or derivatives exchange intending to operate a commodities exchange shall set up a separate legal entity to conduct such business of a commodity exchange.

4. Application for licence

(1) A person who intends to establish a commodity exchange shall apply to the Authority for licensing in Form A set out in the First Schedule.

(2) An application for licensing under paragraph (1) shall be accompanied by —

(a) copies of memorandum and articles of association;

(b) rules governing the operations of the commodities exchange;

(c) details of trading, clearing and settlement systems proposed to be adopted by the applicant;

(d) the application fees set out in the Second Schedule;

(e) satisfactory bank references;

(f) a business feasibility plan evaluated by an entity with a proven track record and expertise in commodity markets or commodity market development, establishment or management; and

(g) any additional documents as the Authority may require.

5. Considerations in granting a licence

In considering an application for a licence to operate a commodity exchange an applicant shall be required to —

(a) be a company limited by shares;

(b) be demutualized;

(c) ensure that the clearing and other arrangements made, its clearing house and its members are such as to provide a reasonable assurance that all obligations arising out of contracts entered on the proposed commodity exchange will be met;

(d) have a minimum authorized, issued and paid up equity share capital to support initial infrastructural investments and three years' operating capital;

(e) satisfy all requirements relating to ownership and governance structure specified in these Regulations;

(f) have its directors and shareholders determined as fit and proper persons as provided under section 24A of the Act;

(g) satisfy the minimum liquid net-worth requirements specified in these Regulations;

(h) have a minimum amount of money, as may be determined by the Authority from time to time by notice, in the settlement guarantee fund before the commencement of trading;

(i) satisfy requirements relating to financial capacity, functional expertise and infrastructure to—

(i) establish and operate a fair and efficient commodity exchange;

(ii) meet contingencies or disasters including events such as technical complications occurring with automated systems, and

(iii) provide adequate security arrangements on risk identification and mitigation, data protection and fail-safes on critical infrastructure;

(j) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience;

(k) have measures in place to actively enforce compliance by its members with its rules and for the prevention of manipulation and excessive speculation;

(l) have adequate provision to record and publish details of trading, including volume and open interest; and

(m) comply with any other requirements as may be specified by the Authority.

6. Rules of the commodity exchange

(1) An applicant seeking to operate a commodity exchange shall develop rules to be approved by the board and the Authority prior to the application.

(2) The rules under paragraph (1) shall contain provisions on —

(a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the committees of the board;

(b) the code of conduct and ethics for directors and key personnel;

(c) the powers of the chief executive officer including in emergency situations;

(d) the granting of membership to the commodity exchange including the procedures for admission as a member of a commodity exchange and requirements for membership inclusive of fees;

(e) powers to levy fees and impose penalties for breach of its rules;

(f) the granting of trading rights and non-transferable memberships of the commodity exchange;

(g) requirements and management of margin deposit by commodity brokers so as to provide reasonable assurance that all obligations arising out of the commodity contracts trading will be met;

(h) general obligations of the trading participants who are members of the commodity exchange, including requirements on minimum net worth, maintenance of accounting records and compliance to the Laws of Kenya and the rules of the commodity exchange;

(i) the termination of membership to a commodity exchange;

(j) specifications on the minimum parameters to be disclosed in respect of spot commodity contracts to be listed, with prior approval from the Authority;

(k) procedures for fixing of position limits and trading limits;

(l) the clearing and settlement of all trades in spot commodity contracts by the appointed clearing house, whether the clearing house is a department of the commodities exchange or its subsidiary or is independent;

(m) the performance of novation, netting and guarantee settlement of trades;

.

(n) complete segregation of business accounts of trading participants from that of their clients and between different clients;

(o) trading including validation of order on the commodity exchange;

(p) the suspension of trading of any spot commodity contract for the protection of investors or for the conduct of orderly and fair trading;

(q) investigation into trading practices and financial transactions of commodity brokers and their clients;

(r) the clearing house and designated settlementbanks of the commodity exchange;

(s) commodity categories including provisions on commodity category due diligence and demand and supply assessments;

(t) the operation of warehousing facilities on commodities;

(u) The declaration, management and delivery of various commodities traded on a commodity exchange;

(v) detailed provisions on direct market access by clients of the commodity exchange;

(w) detailed provisions on give-up and take-up transactions, position transfers, assignments, transaction separations, open or close transaction designations and adjustments, and average pricing including transaction mergers and de-mergers;

(x) the methodology for determining the daily and final settlement prices with provisions for adjustments in contract prices to compensate for allowable adjustments in quality and quantity;

(y) the closing out of spot commodity contracts in case of noncompliance with the rules of the commodity exchange;

(z) the mandatory maintenance of a settlement guarantee fund including provisions for pay in, pay out and topping up;

(aa) The declaration of an event of default and disposal of a defaulter's assets under lien or pledge;

(bb) The exclusion from membership to a commodity market of persons who are not fit and proper as provided for under the Act;

(cc) The expulsion, suspension or disciplining of members of a commodity market for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the proposed commodity market;

(dd) The trading days and business hours of the commodity exchange;

(ee) The resolution of disputes and provision for appeal to the Authority by trading participants and investors;

(ff) generally, for the carrying on the business of the proposed commodity market with due regard to the interests and protection of the public; and

(gg) any other provisions specified by the Authority or the commodities exchange.

7. Grant of a licence

(1) The Authority shall, if satisfied that the applicant has met all the requirements for licensing as a commodities exchange and upon payment of the licensing fees set out in the Second Schedule, grant the applicant a licence to operate as a commodity exchange.

(2) A licence granted shall remain valid unless suspended or revoked by the Authority as specified in regulation 8.

(3) A commodity exchange shall pay an application fee and an annual regulatory fee as set out in the Second Schedule or as may be imposed by the Authority from time to time.

8. Suspension, restriction or revocation of a licence

The Authority may suspend, restrict or revoke a commodity exchange licence in accordance with section 26 and 26A of the Act.

9. Obligations of a commodity exchange

(1) A commodity exchange shall have a duty to ensure that—

(a) an orderly, fair and transparent market in spot commodity contracts traded at the exchange is maintained at all times;

(b) adequate market information is readily available to all participants, investors, media and other relevant stakeholders in a commodity market;

(c) risks associated with the operations of the market and the commodity exchange are managed prudently; and

(d) the exchange complies with these Regulations.

(2) A commodity exchange shall operate its facilities in accordance with its rules as approved by the Authority.

(3) A commodity exchange shall —

(a) regulate the operations, standards of practice and business conduct of its members, their employees, representatives and associates, in accordance with the exchange's rules;

(b) keep such records as are necessary for the proper recording of each transaction in the commodity exchange;

(c) preserve confidentiality of all information in its possession concerning its members and their clients, except such information as may be disclosed by the commodity exchange when required to do so, in writing, by its clearing house, the Authority, an order of a Court of law in Kenya and the provisions of any Law of Kenya;

(d) publish its rules, fees and charges;

(e) identify and manage conflicts of interest;

(f) ensure that only licenced warehouses and warehouse operators are used in connection with trading in a commodity market; and

(g) provide a robust mechanism for clearing and settlement.

(4) A commodity exchange shall immediately notify the Authority where it becomes aware that —

(a) a member is unable to comply with any rule of the exchange or any rules relating to financial resources; or

(b) a financial irregularity or other matter which, in the opinion of the exchange, may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet its legal obligations.

10. Board of the commodities exchange

(1) A commodity exchange shall have a board responsible for the overall leadership, governance and strategic direction of the commodities exchange.

(2) The board of a commodities exchange shall comprise of the —

(a) chairperson;

(b) chief executive of the commodity exchange; and

(c) executive and non-executive directors with at least one third of the members of the board being independent directors.

(3) The non-executive and independent directors shall be persons who have knowledge and experience in commodity exchanges, and corporate governance and shall represent the interests of investors and the public interest.

11. Conditions for appointment of directors and key personnel

(1) The Authority shall approve the names of the proposed directors and key personnel where such directors and key personnel have met the fit and proper requirements as prescribed under section 24A of the Act.

(2) An independent director shall serve for a fixed term of three years and shall be eligible for re-appointment, at the option of a commodity exchange, for one further term.

12. Appointment of a chief executive officer

(1) A commodity exchange shall determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the appointment of the chief executive officer.

(2) A person shall not be appointed as the chief executive officer of a commodity exchange where the person is —

(a) a significant shareholder or an associate of a shareholder of any commodity exchange; or

(b) a significant shareholder or an associate of a market participant.

(3) The tenure under any contract of appointment of the chief executive officer of a commodity exchange shall not be less than three years and not exceeding five years and may be renewable once.

(4) A commodity exchange may change its chief executive officer upon prior written notice to the Authority.

(5) The Authority may recommend to the board of the commodity exchange the termination of the appointment of a chief executive officer of a commodity exchange if the Authority considers the chief executive officer has not met the fit and proper requirements as set out in section 24A of the Act.

13. Committees of the board and audit committee

(1) The board of a commodity exchange shall establish relevant committees to deal with the following functions of the commodities exchange —

(a) audit;

(b) nomination;

(c) risk management;

(d) finance; and

(e) information technology.

(2) Notwithstanding paragraph (1), the Board may establish other committees to deal with any other relevant functions of the commodities exchange.

(3) The committees of the board shall have written terms of reference which set out their authority and duties.

14. Audit committee and internal audit function

(1) The audit committee established by the board shall consist of the following —

(a) at least one third of its members who shall be independent directors;

(b) the chairperson of the audit committee is an independent director;

(c) at least one of the members of the audit committee holds professional qualification in audit or accounting.

(2) The board shall establish an internal audit function which reports directly to the audit committee.

(3) The internal audit function shall be responsible for providing assurance to the board on the adequacy of the commodity exchange's internal controls and processes.

15. Advisory committee

(1) The board of a commodity exchange shall establish an advisory committee mandated to advise the board on non-regulatory and operational matters including product innovation and design, technology, charges and levies.

(2) The advisory committee shall comprise persons with technical expertise on commodity markets matters or capital markets.

(3) The chairperson of the board and the chief executive officer shall attend every meeting of the advisory committee.

(4) The advisory committee shall meet at least four times a year, but a period of three months shall not lapse between the date of one meeting and the next meeting.

(5) The recommendations of the advisory committee shall be tabled at the meeting of the board of the commodity exchange for consideration and by the board.

16. Risk management committee

(1) A commodity exchange shall establish a risk management committee comprising directors and independent external experts.

(2) The risk management committee shall —

(a) report to the board;

(b) formulate a detailed risk management policy which shall be approved by the board;

(c) monitor the implementation of the risk management policy;

(d) keep the Authority and the board informed on the implementation of policy and any deviation; and

(e) perform any other responsibilities as may be assigned by the board.

(3) The head of risk management function shall—

(a) be responsible for implementation of the risk management policy; and

(b) report to the risk management committee and to the chief executive officer of the commodity exchange.

17. Appointment of a compliance officer

The board of a commodity exchange shall appoint a compliance officer in accordance with regulation 30 of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011.

18. Disclosure and corporate governance norms

A commodity exchange shall comply with the disclosure requirements and corporate governance norms and conduct of business requirements applicable to market intermediaries, issued by the Authority and as amended from time to time.

19. Net worth requirements

(1) A commodity exchange shall maintain, at all times, liquid net worth amounts of a type acceptable to the Authority, which shall be adequate in relation to the nature, size and complexity of the business of that commodity exchange to ensure that there are no significant risks that liabilities may not be met as they fall due.

(2) The minimum liquid net worth capital requirement for a commodity exchange shall be —

(a) an amount equal to one half of the estimated gross operating costs of the commodity exchange for the next twelve-month period; or

(b) such other liquid net worth amount as may be prescribed by the Authority.

(3) A commodities exchange shall establish systems and controls to enable the commodity exchange to determine and monitor the sufficiency of its liquid net worth.

(4) A commodity exchange shall, on a quarterly basis within thirty days after the end of every quarter, submit to the Authority an audited liquid net worth certificate from an auditor.

20. Penalties levied by a commodity exchange.

Any fines imposed by the commodity exchange on its members shall be credited to the Fund.

21. Self-regulatory organization

(1) A Commodity exchange seeking to operate a Self-regulatory organization shall, for the purpose of section 18B of the Act, have—

(a) a procedure and appropriate system of exercising self-regulation over its commodity market members;

(b) a code of conduct for its commodity market members;

(c) adequate trading surveillance and compliance capacity; and

(d) a procedure for dispute resolution.

(2) A commodity exchange shall, as a condition for a licence, implement a system of self-regulation with respect to its members and shall ensure the day to day management of trading, clearing, settlement, delivery and all other activities of its members is in accordance with —

(a) the rules of the commodity exchange, and any amendments thereto, approved by the Authority; and

(b) laws, regulations and guidelines relating to spot commodity contracts issued by the Authority.

22. Categories of membership

A commodity exchange shall have members, comprising of —

(a) commodity brokers;

(b) warehouse operators;

(c) settlement banks; and

any other category of membership as may be approved by the Authority.

PART III — COMMODITY CLEARING HOUSE AND COMMODITY BROKERS

23. Establishment of a clearing house

(1) A person intending to establish and operate a clearing house for a commodities exchange shall —

(a) be a company or such other body corporate as approved by the Authority;

(b) satisfy the commodity exchange as to its technical, financial and human resources, including fit and proper requirements set out in the Act; and

(c) be approved by the Authority as a clearing house.

(2) The Authority shall, in writing, approve an application to act as a clearing house, if it is satisfied that —

(a) the applicant will ensure that there are orderly, fair and expeditious clearing arrangements for transactions in spot commodity contracts;

(b) the rules of the commodity exchange make satisfactory provision relating to guaranteeing to its members of the performance of spot commodity contracts made in a commodity market;

(c) the interests of the public will be served by granting the application; and

(d) all conditions imposed by the Authority on the applicant clearing house have been met.

(3) A clearing house shall be exclusively engaged in its clearing business except only in respect of such other matters as are ancillary or incidental thereto as may be expressly permitted by the Authority.

(4) Where the Authority proposes to impose a condition under this regulation, the Authority shall give reasons for its decision and shall give the applicant an opportunity to be heard before a final decision is made.

24. Duties of a clearing house

(1) A clearing house shall ensure that—

(a) there is orderly, fair and expeditious clearing and settlement arrangements for any transactions in spot commodity contracts through its facilities; and

(b) the risks associated with its business and operations are managed prudently.

(2) In discharging its duty, a clearing house shall —

(a) act in the interest of the public; and

(b) ensure that where the interest of the public conflicts with its interest, the interest of the public prevails.

(3) A clearing house shall —

(a) operate its facilities in accordance with the established commodity exchange rules relating to clearing and settlement;

(b) formulate and implement appropriate procedures to ensure that commodity brokers comply with commodity exchange rules;

(c) preserve confidentiality on all information in its possession concerning its commodity brokers and their clients, subject to disclosure of such information when required in writing to do so by the Authority, a commodity exchange or if it is ordered by court to do so; and

(d) have efficient procedures and arrangements to address investor complaints.

(4) A clearing house shall immediately notify the Authority if it becomes aware —

(a) that any of its agents are unable to comply with any rule of the clearing house or a commodity exchange; and

(b) of a financial irregularity or any other matter which in the opinion of the clearing house may indicate that —

(i) the financial standing or integrity of a commodity broker or warehouse operator is in question; or

(ii) a commodity broker or warehouse operator may not be able to meet its legal obligations.

(5) A clearing house shall provide and maintain at all times —

(a) adequate and properly equipped premises;

(b) competent personnel;

(c) automated systems with adequate capacity and facilities to meet contingencies or emergencies;

(d) security arrangements; and

(e) technical support for the conduct of its business.

25. Licensing of commodity brokers

A person shall not carry on or purport to carry on business as a commodity broker unless the person—

(a) is licenced as a commodity broker by the Authority; and

(b) conducts its business in accordance with the rules and practices of a commodity exchange on which the trading takes place.

26. Application for a licence

(1) A person who intends to carry on the business of a commodity broker shall apply to the Authority for a licence to operate as such in Form B as set out in the First Schedule.

(2) The application under paragraph (1) shall be accompanied by—

(a) the fees as set out in the Second Schedule;

(b) the relevant documents in support of the information and declarations; and

(c) a letter from a commodity exchange stating that the application meets all the relevant requirements of that commodity exchange and that the commodity exchange will admit the applicant if licensed by the Authority.

27. Consideration for grant of license

(1) An applicant seeking a licence to operate as a commodity broker shall be required to—

(a) be a company limited by shares;

(b) have a chief executive officer who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in commodities, spot commodity contracts, derivatives contracts or other securities;

(c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;

(d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and

(e) have a minimum net capital and minimum net worth as determined by a commodity exchange and approved by the Authority from time to time.

(2) Where an applicant is a market intermediary of another licensed exchange under the Act, the applicant shall provide an undertaking that it shall allocate a set percentage of the net capital balance to support its activities at the commodity exchange.

(3) The net capital required, shall—

(a) not be less than the minimum required net capital balance at a commodity exchange;

(b) be kept segregated; and

(c) be maintained at all times.

28. Furnishing of information and clarifications

(1) The Authority may, in considering an application made for a commodity broker licence, require an applicant to furnish such further information regarding any previous dealings in securities, derivatives, commodities and any other related matter as the Authority may consider necessary.

(2) An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

29. Grant of license

(1) The Authority, shall, within thirty days from the date of receipt of an application that meets all the requirements, grant a licence to the applicant.

(2) The Authority shall within seven days of its decision, inform a commodity exchange and the applicant of the grant of a licence.

(3) A licence granted shall remain valid unless it is suspended or revoked.

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

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a licence, the Authority shall, in writing, communicate the decision to the applicant and the commodity exchange within fourteen days of the hearing, stating the grounds for refusal.

(6) An applicant aggrieved by the decision of the Authority to refuse the grant of a licence may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

30. Annual regulatory fee

A commodity broker shall pay an annual regulatory fee as set out in the Second Schedule.

31. Suspension, restriction or revocation

The Authority may suspend, restrict or revoke a commodity exchange license in accordance with section 26 and 26A of the Act.

32. Commodity broker to clear its liabilities

In the event of a suspension or revocation of a commodity broker's licence, a commodity broker shall be responsible for clearing all of its outstanding obligations up to the date on which that commodity broker had been operating.

33. Continuing obligations

(1) A commodity broker shall, as a condition of continued admission to a commodity exchange, provide to the Authority, through a commodity exchange, a certified copy of —

(a) the net capital balance;

(b) net worth statements; and

(c) a report of the auditor.

(2) The certified copies of the documents provided in paragraph (1) above shall be submitted to the Authority quarterly within thirty days of the end of the quarter in a form the manner provided by the Authority.

PART IV – TRADING AND CONDUCT OF BUSINESS

34. Trading system and platform

(1) Every trade on a commodity exchange shall take place on—

(a) the trading system of the commodity exchange;

(b) an electronic platform provided by a commodity exchange; or

(c) such other facility a commodity exchange provides, subject to the approval of the Authority.

(2) The trading system deployed under paragraph (1) shall —

(a) be integrated with a clearing and settlement system;

(b) have an online screen-based trading system for providing direct market access up to the client level via the internet;

(c) be integrated with the electronic central registry of the warehouse operators prescribed under the Warehouse Receipt System Act, 2019; and

(d) have an effective risk management framework.

35. Transactions on a commodity exchange

Transactions to be conducted in a commodity exchange shall include dealings in spot commodity contracts.

36. Approval of spot commodity contract specifications

(1) The commodity exchange shall submit spot commodity contract specification to the Authority for approval prior to becoming eligible for listing on a commodity exchange.

(2) Where, after the approval of the spot commodity contract specification, the Authority finds the application or operationalization of the approved spot commodity contract deficient in any material respect or that the commodity exchange has failed to comply with any

conditions or requirements or that the continued listing of the spot commodity contract would not be in the public interest, the Authority may —

(a) direct the relevant commodity exchange to correct the deficiency;

(b) direct the relevant commodity exchange to comply with the condition or requirement given by the Authority within the specified time;

(c) amend the specification of any spot commodity contract; or

(d) revoke the spot commodity contract.

(3) The Authority may require an application for approval of a spot commodity contract to be accompanied by an expert opinion regarding any of the information contained in the contract.

(4) An application for approval of a spot commodity contract specification shall not be rejected and an approval of a spot commodity contract shall not be revoked unless the relevant commodity exchange has been given an opportunity to be heard by the Authority.

37. Fixing of position and trading limits in contracts

(1) In order to diminish, eliminate or prevent excessive speculation in any commodity under a spot commodity contract, a commodity exchange, with the approval of the Authority, may, by notice in writing, establish and fix such limits as it considers necessary on the amount of trading which may be done or positions which may be held by any person, generally or specifically, under a spot commodity contract on or subject to rules of a commodity exchange.

(2) A commodity exchange shall, in deciding on whether a person has exceeded the limits fixed under paragraph (1) consider the positions held and trading done by any persons, directly or indirectly, controlled by such a person shall be included with the positions held and trading done by that person.

(3) The limits on positions and trading, described under this regulation shall apply to positions held by, and trading done by, two or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.

38. Clearing and settlement through the clearing house

All approved contracts transacted on a commodity exchange shall be cleared and settled by the clearing house of a commodity exchange, and whenever required, closed out in accordance with the rules of a commodity exchange or as directed by the Authority.

39. Application of Warehouse Receipt System Act

(1) The Warehouse Receipt System Act shall apply to the warehouse receipt of a commodity that is the subject of a spot commodity contract.

(2) The Authority or the commodity exchange subject to the Approval of the Authority may impose additional requirements on warehouses or warehouse operators where necessary to maintain market integrity and efficiency or in the protection of investor interests.

40. Standards of conduct. L.N. No. 144 of 2011. L.N. No. 145 of 2011.

The Capital Markets (Conduct of Business) (Market Intermediaries) Regulations and the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations shall apply to commodity brokers with necessary modifications as may be set out by the Authority.

41. Commodity broker not to use funds

A commodity broker shall not knowingly use money, securities, property, proceeds or funds received from, advanced to or held for any customer to margin, guarantee or secure the trades or contracts or to secure or extend the credit of any client other than the client for whom such money, securities, property, proceeds or funds are held.

42. Statement of purchase and sale

Every commodity broker who has acted as an agent in connection with a liquidating trade in a spot commodity contract shall promptly send to their client a statement of purchase and sale setting forth the—

(a) dates of the initial transaction and liquidating trade;

(b) commodity and quantity bought and sold;

(c) commodity exchange upon which the contracts were traded;

(d) delivery period;

(e) prices on the initial transaction and on the liquidating trade;

(f) gross profit or loss on the transactions;

(g) commission; and

(h) net profit or loss on the transactions.

43. Statement, terms and conditions to be furnished to prospective client

(1) Every commodity broker shall furnish each prospective client prior to the opening of an account with a written statement in a form approved by the Authority which will—

(a) explain the nature of, and risks inherent in trading in contracts and obligations assumed by the client upon entering a contract;

(b) advise the client to request and study the terms and conditions of the contract;

(c) set out the terms and conditions of any relevant contracts;

(d) furnish details concerning commissions and other charges levied by the commodity broker and the commodity exchange.

(2) Every commodity broker shall upon request by a prospective client avail copies of all current terms and conditions of any spot commodities contract.

(3) Where there is any unexpired or unexercised open spot commodity contract outstanding in a client's account, the relevant commodity broker for that specific transaction shall promptly deliver to such a client, a written monthly statement, setting forth—

(a) the opening cash balance for the month in the client's account;

(b) all deposits, credits, withdrawals and debits to the client's account;

(c) the cash balance in the client's account;

(d) each unexpired and unexercised spot commodity contract;

(e) the agreed price of each unexpired or unexercised spot commodity contract;

(f) each open spot commodity contract; and

(g) the price at which each open spot commodity contract was entered into.

44. Risk disclosure statements

A commodity broker shall not open a spot commodity contract account for a client unless the commodity broker furnishes the client with a separate written risk disclosure document which shall be in the form provided by a commodity exchange and receives from the client an acknowledgement signed and dated by the client that the client has received and understood the nature and contents of the risk disclosure document

45. Segregation of clients' funds

(1) A commodity broker shall maintain strict segregation between its own funds and each individual client's funds without any commingling.

(2) A commodity broker shall establish a client group account with the designated settlement bank of the commodity exchange of which that commodity broker is a member.

(3) A commodity broker shall undertake and complete reconciliation on a daily basis between—

(a) the client group account maintained at the designated clearing house of a commodity exchange;

(b) the client group account at the clearing house of a commodity exchange; and

(c) individual clients' account maintained at the clearing house of a commodity exchange.

(4) A commodity broker shall not accept cash from or pay cash to a client for a transaction under these Regulations.

(5) A commodity broker shall maintain a record of transactions with the relevant banks including client's deposits and withdrawals from the client group account maintained with the commodity exchange designated clearing house.

PART V – COMMODITY SETTLEMENT GUARANTEE FUND

46. Establishment of the Fund

(1) For the purposes of section 12(1) (i) and (j) of the Act, the commodity exchange shall establish a Fund to be known as the Settlement Guarantee Fund for the purpose of providing guarantee to a member of a commodity exchange who fails to meet their clearing and settlement obligations to a commodity exchange arising out of transactions on a commodity exchange.

(2) The settlement guarantee fund shall be maintained by the commodities exchange.

(3) Subject to the approval of the Authority, a commodity exchange shall prepare rules, procedures, terms and conditions governing the settlement guarantee fund, which may specify the—

(a) amount of deposit or contribution to be made by each member of the commodity exchange to the settlement guarantee fund;

(b) terms, manner and mode of deposit or contribution;

(c) conditions of repayment of deposit or withdrawal of contributions from the settlement guarantee fund;

(d) charges for drawing from the settlement guarantee fund;

(e) penalties applicable; and

(f) disciplinary actions.

47. Composition of the Fund

(1) The Settlement Guarantee Fund shall consist of —

(a) contributions from a commodity exchange and its clearing house;

(b) contributions from settlementbanks of a commodity exchange as may be determined by the board of a commodity exchange, with the approval of the Authority, from time to time;

(c) such sums of money as accrued from interest and profits from investing the assets of the settlement guarantee fund;

(d) such money recovered by or on behalf of a commodity exchange from entities whose failure to meet their obligations to investors results in payments from the settlement guarantee fund; and

(e) such sums of money as are received for purposes of the settlement guarantee fund from any other source approved by the commodity exchange.

(2) Money accumulated in the settlement guarantee fund may be invested by the commodities exchange in such manner as set out in the rules of the Settlement Guarantee Fund.

(3) A commodity exchange shall recommend the amount of additional contributions or deposit to be made by each of its members.

(4) A clearing house shall, in respect of settlement of transactions, guarantee financial settlement of such transactions to the extent it has acted as a legal counter party.

48. Form of contribution or deposit to the Fund

The commodity exchange may, permit a member of a commodity exchange to contribute to or provide the deposit to be maintained with the Fund, in the form of cash or in such other form or method and subject to such terms and conditions, as may be specified by the commodity exchange.

49. Management of the Fund

The Settlement Guarantee Fund may be used for such purposes specified by the commodity exchange, which may include—

(a) defraying the expenses of creation and maintenance of the settlement guarantee fund;

(b) temporary application of the settlement guarantee fund to meet shortfalls and deficiencies arising out of the clearing and settlement obligations of members of a commodity exchange in respect of and connected to transactions related to spot commodity contracts;

(c) meeting any loss or liability of a clearing house arising out of clearing and settlement operations;

(d) repayment of the balance amount to a member pursuant to provisions in the commodity exchange rules regarding the repayment of deposits after meeting all obligations, when such a member ceases to be a member of a commodity exchange; and

(e) any other purpose as may be specified by the commodity exchange.

50. Scheme of arrangements on default

Where a member of a commodity exchange has failed to meet his clearing and settlement obligations or where a member of a commodity exchange has been declared a defaulter, a commodity exchange or a clearing house, may use the settlement guarantee fund and other monies of the concerned member to the extent necessary to fulfil his obligations in the following order—

(a) any amount that may have been paid by the defaulting member in the form of a pre-trade deposit, but does not include a client's pre-trade deposit, or any other money deposited with or retained by a clearing house for the purpose of meeting the clearing and settlement obligations;

(b) any amount that may have been deposited by the defaulting member towards additional deposit with the clearing house;

(c) the proceeds, if any, recovered from auctioning or disposing of the member's membership rights vested in a commodity exchange, subject to deduction of the expenses relating or incidental to the auction or disposal, as the case may be;

(d) the fines, penalties, interest or other income, if any, earned by investment or divestments of the settlement guarantee fund as may be decided by the Authority;

(e) the contribution made by all classes of members in proportion to their deposit to the settlement guarantee fund, or where the deposit is deficient, the deficit in the amount shall be deposited in the Settlement Guarantee Fund;

(f) the profits, if any, from returns on investments of the settlement guarantee fund; and

(g) any other funds set aside by the commodities exchange.

51. Additional contributions or deposits

(1) Where a pro-rata charge has been made against a member's actual contribution or deposit, and as a consequence, the member's remaining contribution or deposit towards the settlement guarantee fund falls below his required contribution or deposit, the member shall contribute or deposit towards the shortfall in the settlement guarantee fund within such time as the commodity exchange may specify.

(2) Where any member who is required to contribute or deposit to the Fund fails to do so, the commodities exchange may charge such rate of interest on the shortfall, as it may determine, in addition to any administrative action, including imposing fines and penalties against the member.

PART VI – RECORD KEEPING, ACCOUNTS, AUDITS AND INSPECTIONS

52. Production of records

(1) A commodity exchange, clearing house or commodity broker shall—

(a) produce any books, accounts and records kept by it in connection with, or for the purposes of, its business, or in respect of any trading in spot commodity contracts;

(b) collect and furnish any returns; and

(c) provide any information relating to its business, or any trading in spot commodity contracts, or any other specified information, as the Authority may require.

(2) The Authority, may, on production of any books, accounts or records under paragraph (1) take copies of or extracts from them.

53. Records of transactions on a commodity market or clearing house

(1) A commodity exchange, commodity broker and a clearing house shall keep such records as are necessary for the proper recording of each transaction on the exchange, commodity broker or clearing house.

(2) The records kept under paragraph (1) shall be availed to any client of any member of such an exchange, broker or clearing house, upon production of a written confirmation of any transaction with such member, particulars of the approximate time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation.

(3) The Authority may, at any time, require a commodity exchange, commodity broker or a clearing house of a commodity exchange to deliver to it reports of transactions on the commodity exchange, commodity broker or clearing house of a commodity exchange.

54. Information to be provided by market participants

(1) Upon a determination by the Authority that information concerning accounts may be relevant to determine whether manipulation, corner, squeeze or other market disorders exist in any commodity exchange, the Authority may, by notice in writing, require such information as it thinks necessary from any person, including a member of a clearing house or a commodity broker or any client in the commodity market, and the person concerned shall provide the required information within such time as may be specified by the Authority.

(2)) Where the Authority has reason to believe that any person has failed to give the information required in the notice under paragraph (1), it may without prejudice to any other penalty that may be imposed, inform a commodity exchange or a clearing house which shall, in the event, prohibit the execution of, or acceptance for orders of, trades on the exchange or a clearing house in the months or expiration dates specified in the notice unless such trades offset open contracts of that person.

55. Accounts and audit

(1) A commodity exchange, clearing house and commodity broker shall keep proper books of accounts and records of income and expenditure, assets and liabilities and all other transactions of the commodity exchange.

(2) A commodity exchange, clearing house and commodity brokers shall, within four months after the end of each financial year, prepare a statement of accounts of the commodity exchange, clearing house and commodity brokers for the financial year, including a statement of comprehensive income and a statement of financial position.

(3) A commodity exchange and commodity broker shall appoint a qualified auditor or auditors, to audit the books of accounts or to investigate any affairs of a commodity exchange or broker.

(4) A commodity exchange, clearing house and commodity brokers shall submit the statement of accounts prepared under paragraph (2) to their auditors for audit.

(5) The auditors shall prepare a report on the accounts and submit the report to the commodity exchange, clearing house and commodity brokers.

(6) A commodity exchange, clearing house and commodity brokers shall, within thirty days from the date of receipt of the auditor's report referred to under paragraph (5), send a copy of the report and a copy of the statement of accounts to the Authority.

(7) The auditors' report shall include —

(a) the opinion of the auditor, whether the statement of comprehensive income for the financial year to which the report relates gives a true and fair view of the surplus or deficit of a commodity exchange, clearing house or commodity broker;

(b) a statement whether, in the opinion of the auditor, the statement of financial position for the financial year gives a true and fair view of a commodity exchange, clearing house or commodity broker and their financial affairs at the end of that financial year; and

(c) any other information that the auditor may consider important.

(8) Every commodity exchange, clearing house, commodity broker and any of their employee or agent shall on demand by an audit firm—

(a) allow the auditor reasonable access to the premises occupied by a commodity broker or by any other person acting on behalf of a commodity broker;

(b) extend reasonable facilities to the auditor;

(c) provide any information required by an auditor; and

(d) produce for inspection any documents, books, vouchers and other records or copies of any documents, books, vouchers and other records, that the audit firm may consider necessary for the performance of its duties.

(9) An auditor shall, during an audit or investigation, be entitled to examine or record statements of any member, director, partner, proprietor, associate or employee of a commodity exchange, commodity broker or clearing house, under audit or investigation.

(10) A member, director, partner, proprietor, associate or employee of a commodity exchange, broker or clearing house under audit or investigation shall give the auditor all assistance in connection with the audit or investigation.

56. Authority may appoint an auditor

The Authority may, where satisfied that it is in the public interest to do so, appoint an auditor, in writing, at the expense of a commodity exchange, clearing house or commodity broker, to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a commodity exchange, clearing house or commodity broker.

57. Annual report

(1) A commodity exchange, clearing house or commodity broker shall, within four months after the end of their respective financial year, submit to the Authority an annual report.

(2) The annual report submitted under paragraph (1) shall include —

(a) a description of the activities undertaken in that financial year;

(b) the resources, including financial, technological and human resources, that were available and used, to ensure compliance with obligations and, in particular, for a commodity exchange, the obligation to ensure that the commodity market operates in a fair, efficient and transparent manner;

(c) an analysis of the extent to which activities undertaken, and resources used have resulted in full compliance with all obligations under these Regulations and the rules of the commodity exchange;

(d) the audit report as required under these Regulations; and

(e) any other information and statements as the Authority may specify, in writing.

58. The right of the Authority to inspect

The Authority may appoint one or more persons as inspecting officers to undertake inspection of the books of accounts and other records of a commodity exchange, commodity broker or clearing house where there is need to—

(a) establish that the books of accounts and other records are being maintained in the manner required;

(b) ensure the provisions of the Act are being complied with;

(c) investigate into the complaints received from investors, other commodity brokers or any other person on any matter having a bearing on the activities of the commodity exchange, commodity broker or clearing house; and

(d) investigate on its own motion, in the interest of the commodity market or the interest of investors, into the affairs of a commodity exchange, commodity broker or clearing house.

59. Procedure for inspection

(1) The Authority shall, before undertaking an inspection under regulation 58, give the relevant commodity exchange, commodity broker or clearing house a reasonable notice on the intention to undertake an inspection.

(2) The Authority may direct, in writing, that an inspection of a commodity exchange, commodity broker or clearing house be carried out without notice to the commodity exchange, commodity broker or clearing house, if the Authority is satisfied that it is in the interest of the commodity market or investors in the commodity market that no such notice should be given.

(3) The inspecting officers appointed for the purpose of an inspection, shall have the power to undertake the inspection as directed by the Authority and that commodity broker is bound to discharge its statutory obligation.

60. Obligations of a commodity broker in respect of inspections

(1) An inspecting officer may require a shareholder, director, officer or an employee of a commodity exchange, commodity broker or clearing house under inspection to produce such books, accounts and other documents in his custody or control and furnish the inspecting officer with the statements and information relating to the transactions in a commodity exchange within such time as the inspecting officer may require.

(2) A commodity exchange, commodity broker or clearing house shall—

(a) allow the inspecting officer reasonable access to its premises;

(b) extend reasonable facilities to the inspecting officer to examine any books, records, documents and computer data in its possession;

(c) provide copies of documents or other materials which, in the opinion of the inspecting officer, are relevant.

(3) An inspecting officer shall, during inspection, be entitled to examine or record statements of any shareholder, director, partner, proprietor or employee of a commodity exchange, commodity broker or clearing house under inspection.

(4) A director, an officer or an employee of the commodity exchange, Commodity broker or clearing house under investigation shall give to the inspecting officer all assistance in connection with the inspection as it may reasonably be expected to give.

61. Action on inspection report

The Authority may, after considering an inspection report, take such action as provided for under the Act.

PART VII — OFFENCES

62. Market offences

A person who—

(a) directly or indirectly purchases or sells spot commodity contracts to cause a false appearance of active trading or cause the creation of misleading information regarding the condition of the market or price of any spot commodity contract;

(b) issues an order for the purchase or sale of a spot commodity contract, whose execution would involve no change in ownership or without incurring a market risk or change in the commodity broker's position;

(c) circulates, disseminates, authorises the circulation or dissemination of any untruthful or misleading statements or information to the effect that the price of trading in any class of spot commodity contracts will, or is likely to, rise or fall because of the market operations of one or more persons, with the purpose of benefitting from the fluctuations so created on the commodity exchange or off the commodity exchange;

(d) knowingly executes, or hold himself out as having executed, an order for the purchase or sale of a spot commodity contract on a commodity exchange without having effected a bona fide purchase or sale of the spot commodity contract in accordance with the rules and practices of a commodity;

commits and offence.

63. Bucketing

A person who knowingly executes, or hold himself out as having executed, an order for the purchase or sale of a spot commodity contract on a commodity exchange without having effected a bona fide purchase or sale of the spot commodity contract in accordance with the rules and practices of a commodity exchange commits an offence.

64. Manipulation of price and cornering

A person who directly or indirectly —

(a) manipulates, or attempts to manipulate, the price, of a spot commodity contract that may be dealt in on a commodity exchange;

(b) misrepresents the quality or quantity of a commodity that is the subject of a spot commodity contract; or

(c) corners, or attempts to corner, any commodity which is the subject of any spot commodity contract,

commits an offence.

65. Employment of fraudulent or deceptive devices, etc

A person who directly or indirectly, in connection with any transaction with any other person involving trading in a spot commodity contract—

(a) employs any device, scheme or artifice to defraud that other person;

(b) engages in any act, practice or course of business which operates as a fraud or deception, of that other person; or

(c) makes any untrue statement of a material fact or omits to state a material fact necessary to make the statements made in light of the circumstances under which they were made not misleading,

commits an offence.

66. Fraudulently inducing trading

A person who directly or indirectly, for the purposes of inducing or attempting to induce another person to trade in a spot commodity contract or class of spot commodity contracts, makes or publishes —

(a) any statement which is, at the time and considering the circumstances in which it is made, false, misleading or deceptive with respect to any material fact and which he knows, or has reasonable grounds for believing, is false, misleading or deceptive; or

(b) any statement which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which he knows, or has reasonable grounds for believing is rendered false, misleading or deceptive by reason of the omission of that fact;

commits an offence.

67. Insider trading

(1) A board member, employee, member or agent of a commodity exchange who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any spot commodity contract for which such information has not been made public, and disseminates such information with intent to assist another person, directly or indirectly to participate in any transaction in a commodity exchange or any other exchange or off-exchange commits an offence.

(2) Any person who acquires information as described under paragraph (1) from a board member, employee, member or agent of a commodity exchange and uses such information to directly or indirectly participate in any transaction in a commodity exchange or any other exchange or off-exchange commits an offence.

68. Penalty

A person who commits an offence under these Regulations shall be liable, upon conviction to—

(a) the penalty specified under section 34A of the Act; and

(b) damages for any loss occasioned.

PART VIII — GENERAL PROVISIONS

69. Investor compensation Fund

(1) The Fund established under section 18 of the Act, shall apply to the commodities market with the necessary modifications.

(2) A commodity broker shall remit to the Fund fees payable to the Fund for every spot commodity contract within fifteen days following a transaction.

70. Transition

An entity carrying on the business of a commodity exchange prior the commencement of these Regulations shall comply with these Regulations within twelve months upon commencement of these Regulations.

FIRST SCHEDULE

FORM A

(r.4(1))

APPLICATION FORM FOR A LICENCE TO CONDUCT THE BUSINESS OF A COMMODITY EXCHANGE

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of application

22. Name of the Company ..... Limited
23. Registered office .....
24. Date of incorporation .....
25. Address .....
26. E-mail .....
27. Location, address and telephone number of principal office

.....

28. Location, address and telephone number of branch offices .

.....

29. Details of capital structure:

(d) Nominal/authorized capital (KSh.) .....
(e) Number of shares .....
(f) Paid-up capital (KSh.) .....

30. Shareholders (please attach list)

Name	Address and telephone number	Number of shares held
	.	

31. (a) Directors (please attach a list)

Name	Identity card/ Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company
.		.		.		.

(b) Secretary

Name .....

Address .....

Institute of Certified Secretaries of Kenya Registration No .....

(d) Chief Executive Officers and other key personnel

Name	Identity card/ Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company

32. Particulars of other directorship (s) of the directors and secretary .....

.....

33. Particulars of shares held by the directors and secretary in other companies .....

34. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If "Yes", give details .....

.....

.....

35. Has any director, secretary or key personnel of the applicant been a director of a company that has been:

(d) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No

If Yes, give details .....

.....

(e) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/ No. If Yes, give details.....

.....

(f) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. if Yes, give details

.....

36. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details .....

37. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a "yes" answer to question 15? Yes/No. If "yes" give details .....

.....

.....

38. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, derivatives exchange or commodity exchange? Yes/No. If "yes" give details…… .....

.....

..(2) have any of the above persons been —

(c) refused admission as a commodity member of any securities organization? Yes/No. if Yes, give details .....

.....

.....

(d) expelled from or suspended from trading on any securities organization? Yes/No if Yes, give details

.....

.....

(e) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No if Yes, give details .....

.....

.....

39. Business references:

Name	Address	Telephone number(s)	Occupation

40. Profile of the chief executive officer and key personnel in the applicant company

.....

.....

41. List of office facilities of the applicant .....

.....

.....

42. Any other additional information considered relevant to this applicant

.....

.....

We.....(Director).....

Director) and .....(Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this .....day of ..... 20.....

Signed: …….....

……) Director

……) Director

……) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).

FORM B

(r. 26(1))

APPLICATION FORM FOR LICENCE AS COMMODITY BROKER

1. Name of the Company ..... Limited

2. Registered office .....

3. Date of incorporation .....

4. Address .....

5. E-mail .....

6. Location, address and telephone number of principal office .....

7. Location, address and telephone number of branch offices .....

8. Details of capital structure:

(a) Nominal capital (KSh.) .....

(b) Number of shares .....

(c) Paid-up capital (KSh.).....

9. Shareholders (please attach list)

Name	Address and telephone number	Number of shares held
	.	

10. (a) Directors (please attach a list)

Name	Identity card/ Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company
.		.		.		.

(b) Secretary

Name .....

Address .....

Institute of Certified Public Secretaries of Kenya Registration No.....

(c) Chief Executive Officers and other key personnel

Name	Identity card/ Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company
.		.		.		.

11. Particulars of other directorship (s) of the directors and secretary .....

.....

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If “Yes”, give details

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) (a) denied any license or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No

If Yes, give details

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appropriate authority? Yes/ No. If Yes, give details.

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details.

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceedings that could result in a “yes” answer to question 15? Yes/No. If “yes” give details…...

.....

.....

17. (1) is the applicant, or any shareholder, director or secretary of the applicant a member or director of a member company of any securities, derivatives or commodities exchange? Yes/No. If “yes” give details.

.....

(2) have any of the above persons been—

(a) refused membership of any securities organization? Yes / No. If 'yes', give details

.....

.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details

.....

(c) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No if Yes, give details …….....

18. Business references:

Name	Address	Telephone number (s)	Occupation

.

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience

21. List the office facilities of the applicant

.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a license from the Capital Markets Authority

.....

23. Any other additional information considered relevant to this application:

We……. (Director)…….....…….. (Director)

and…….(Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this……..day of……..……..20….

Signed:

…….....) Director

…….....) Director

…….....) Secretary

Note:

1. Please attach the documents and details referred to in regulation 4(2).

2. If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

SECOND SCHEDULE

LICENSING AND ANNUAL FEES FOR COMMODITY EXCHANGE AND COMMODITY BROKERS (r. 4(1) (b);26(2)(a)

Licensee	Application fee (KSh.) Non-refundable	Annual Regulatory fee (KSh.)
Commodity exchange	10,000	2,500,000
Commodity broker	10,000	50,000
