

THE CENTRAL DEPOSITORIES ACT, 2000

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An Act of Parliament to facilitate the establishment, operation and regulation of central depositories, to provide for the immobilisation and eventual dematerialisation of, and dealings in, securities deposited therewith in Kenya, and for connected purposes

ENACTED by the Parliament of Kenya, as follows –

PART I - PRELIMINARY

Short title and commencement. **1.** This Act may be cited as the Central Depositories Act, 2000 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.

Interpretation. **2.(1)** In this Act, unless the context otherwise requires -

“access”, in relation to a computer system, means the placing of information on that system and the retrieval of information from that system;

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“Authority” means the Capital Markets Authority established under section 5 of the Capital Markets Authority Act;

in

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“bank” has the meaning assigned to it in section 2 of the Banking Act;

“bare trustee” means a trustee who has no beneficial interest in the subject matter of the trust;

“bearer security” means a security the title to which is transferable by delivery (with or without endorsement) of the certificate representing such security;

“book-entry security” means a security standing to the credit of a securities account which is transferable by way of book-entry in the record of depositors and includes a security in a securities account that is in suspense;

“buying in” means the buying effected by a securities exchange, according to the rules of the securities exchange, of securities which a seller has failed to deliver on a day fixed for settlement;

“CDS rules” means operational and procedural rules issued or to be issued by a central depository for the purpose of ensuring orderliness, efficiency and security in the operation of a central depository as approved by the Authority;

"central depository" means a company approved by the Authority under section 5 to establish and operate a system for the central handling of securities -

- (a) whereby all such securities are immobilised or dematerialised and dealings in respect of those securities are effected by means of entries in securities accounts without the physical necessity of certificates; or
- (b) which permits or facilitates the settlement or registration of securities transactions or dealings in securities without the physical necessity of certificates; and
- (c) to provide other facilities and services incidental thereto;

"central depository agent", in relation to any central depository, means a person appointed under section 9 to be an agent of that central depository;

"certificate" means any document that is, or is a document of title to, a security;

"charge" includes a pledge or a mortgage;

"CMA rules" means the rules prescribed by the Authority under this Act or under the Capital Markets Authority Act;

"computer system", in relation to a central depository, means a computer system established by a central depository which forms

part of the system for the central handling of securities and which consists of -

- (a) the central equipment comprising hardware and software associated with that hardware, located at the premises of the central depository; and
- (b) the terminals located at the premises of the users;

“dealer” means a person who carries on the business of buying, selling, dealing, trading, underwriting or retailing of securities as principal;

“dealing in securities” 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 -

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
- (b) any agreement the purpose or intended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;

“debt securities” means debentures, bonds, notes, or other similar instruments representing or evidencing indebtedness whether secured or otherwise;

“dematerialisation date”, in relation to a dematerialised security, means the date prescribed by a central depository under

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section 24 as being the last day on which a certificate representing such security shall be recognised as *prima facie* evidence of share ownership under the Companies Act;

“dematerialised security” means a book-entry security which has been prescribed by the central depository under section 24, whereby the underlying physical certificate is no longer recognised as *prima facie* evidence of ownership under the Companies Act, on or after the dematerialisation date;

“depositor” in relation to any book-entry, means a holder of a securities account;

“eligible security” means a security which has been prescribed by a securities exchange to be immobilised with a central depository under section 13;

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“financial institution” means a financial institution as defined under the Banking Act;

“immobilisation date”, in relation to any eligible security, means the date specified in the notice given by a securities exchange under section 13 as being the last day on which the eligible security may be traded on the securities exchange unless such security has been deposited with the central depository;

“immobilised security” means a security where the underlying physical certificates have been deposited with and are held by a central depository;

“information” includes data recorded in a form which can be processed by equipment

operating automatically in response to instructions given for a particular purpose;

“institutional investor” means a person whose ordinary course of business is to hold, manage or invest funds in connection with retirement benefits, insurance contracts, mortgage and saving schemes and any fund or scheme in the nature of a collective investment scheme or a unit trust;

“issuer”, in relation to any book-entry security, means the company, corporation, government, or body corporate or unincorporate, which issued the security, and includes any person performing the functions of a registrar for such issuer in respect of such security;

“listed” means admitted to the official list of a securities exchange in Kenya and listing shall be construed accordingly;

“listed book-entry security” means a book-entry security listed on a securities exchange in Kenya;

“market day” means any day during which a securities exchange is open for business;

“member” in relation to -

- (a) a securities exchange, means a person who is recognised as a member of a securities exchange; and
- (b) a company, means a person who is recognised as a member of a

company under the Companies Act;

“Minister” means the Minister for the time being responsible for finance;

“non-bearer security” means a security other than a bearer security;

“notification date” means the date on which the notice pursuant to subsection (2) of section 13 is given by a securities exchange;

“official list”, in relation to a securities exchange in Kenya, means a list specifying all securities which have been admitted for listing on that securities exchange;

“quoted”, in relation to a security other than a listed security, means a security issued outside of Kenya but traded on a securities exchange;

“record” includes, in addition to a record in writing -

- (a) any photograph;
- (b) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom; and
- (c) any film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom, and any

reference to a copy of a record includes -

- (i) in the case of a record falling within paragraph (b) but not paragraph (c) of this definition, a transcript of the sounds or other data embodied therein;
- (ii) in the case of a record falling within paragraph (c) but not paragraph (b) of this definition, a still reproduction of the images embodied therein, whether enlarged or not; and
- (iii) in the case of a record falling within both paragraph (b) and paragraph (c) of this definition, the transcript of the sounds or other data embodied therein together with the still reproduction of the images embodied therein.

“record of depositors” means a record provided by a central depository to an issuer under section 36 which contains the particulars specified in subsection (3) of the said section;

“Registrar” means the registrar of companies appointed under the Companies Act and includes any deputy or assistant registrar of companies;

“securities” means -

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

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

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“securities account” means an account established by a central depository for a depositor for the recording of book-entry securities and cash balances, in respect of dealings in such securities by the depositor;

“securities exchange” means a stock exchange or an approved securities organisation;

“selling out” means the selling effected by a securities exchange according to the rules of the securities exchange, of securities which a buyer has failed to accept and to pay for

when delivered on a day fixed for the settlement;

“stock market” means a market, or other place at which, or a facility by means of which -

- (a) offers to sell, purchase or exchange securities are regularly made or accepted;
- (b) offers or invitations are regularly made, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities; or
- (c) information is regularly provided concerning the prices at which, or the consideration for which, particular persons or particular classes of persons, propose, or may reasonably be expected to sell, purchase or exchange securities;

“user” means a central depository agent, an issuer, a securities exchange or such other person as may be prescribed by the Authority, who may be given access to a computer system of a central depository;

(2) A reference to writing shall be deemed to include any mode of representing or reproducing letters, figures or marks in a visible form.

(3) A reference to a security being deposited, or required to be deposited, with a central depository shall be construed as a reference to a deposit of or a requirement for the deposit of -

- (a) the certificate;
- (b) the instrument of transfer, if any; or
- (c) any other document representing the security,

with the central depository.

PART II - CENTRAL DEPOSITORY

Restriction on
hold establishment
except with
of central
in
depository.

3. (1) No person shall establish, maintain or himself out as maintaining a central depository the prior written approval of the Authority given in accordance with section 5.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding ten years, or to both.

Establishment of
a central Cap. 486
depository.

4. (1) Any company incorporated under the Companies Act which proposes to establish and maintain a central depository shall apply to the Authority in writing for approval.

(2) Every application under subsection (1) shall be accompanied by –

- (a) CDS rules made by the applicant in such manner and form as the Authority may prescribe; and
- (b) such other information as may be prescribed.

(3) At any time after receiving an application under this section, the Authority may, by written

notice, require the applicant to provide additional information or documents in support of the application.

Authority to
approve
establishment and
establishment
Authority is
of central
depository.

5.(1)The Authority may, in writing, approve an application made under section 4 for the establishment and maintenance of a central depository if the Authority is satisfied -

- (a) that a securities exchange is a shareholder of the applicant;
- (b) upon assessment of the proposed CDS rules of the applicant, that such rules comply with the CMA rules prescribed by the Authority; and
- (c) that the establishment and maintenance of the central depository would promote the positive development of capital markets in Kenya and that the interests of the public dealing with book-entry securities will be served by the granting of the Authority's approval.

(2) The Authority may, in approving any application under subsection (1), impose –

- (a) requirements with respect to the paid-up or authorised capital of the central depository;
- (b) conditions relating to the shareholdings of the members of the central depository;
- (c) requirements on the appointment of the board of directors and management of the central depository; and

(d) any other requirements or conditions as the Authority considers appropriate.

Amendment
depository,
of CDS
Authority,
rules.

6.(1) The rules of an approved central depository, in so far as they have been approved by the Authority, shall not be amended, varied or rescinded without prior approval of the Authority.

(2) Where the board of directors of an approved central depository intends to amend its rules, it shall forward the proposed amendments to the Authority for approval.

(3) The Authority shall, within thirty days of receipt of a notice under subsection (2), notify the central depository of its decision regarding the proposed amendments, and where it does not approve the same, shall specify the reason for such decision.

(4) A central depository which proposes to alter any particulars already furnished to the Authority, or to make any change in its state as specified in its application under section 4, shall seek the prior approval of the Authority.

Power of
Authority to
amend CDS
rules.

7. Notwithstanding the provisions of any other written law, the Authority may from time to time, after consultation with the central depository, amend the CDS rules by written notice, specifying the amendments and the dates on which such amendments shall come into force.

Duties of
to

8.(1) A central depository shall provide or cause

central
-
depository.

be provided all such facilities as may be necessary to

- (a) facilitate the immobilisation of securities;
- (b) facilitate the deposit and withdrawal of certificates in respect of immobilised securities;
- (c) facilitate the dematerialisation of securities;
- (d) open, maintain and close securities accounts;
- (e) facilitate the efficient transfer of book-entry securities;
- (f) facilitate the efficient process of cash payment in exchange for securities;
- (g) facilitate registration of dealings in book-entry securities;
- (h) operate securities accounts for the handling of book-entry securities and cash, if any;
- (i) facilitate the collection of fees and other charges as may be required;
- (j) ensure the safe custody of certificates and other documents representing immobilised securities;
- (k) guard against falsification of any records or accounts required to be kept or maintained under the Act; and
- (l) establish a proper and efficient system for the verification, inspection, identification and recording of all book-entry securities with the central depository.

(2) The Authority may, from time to time, prescribe such other duties to be performed by a central depository as it considers appropriate.

(3) A central depository shall be entitled to charge such fees for its services and facilities as may be approved by the Authority.

Central
as
depository
duly
agents.

9.(1) No person shall act or hold himself out as a central depository agent unless such person is appointed as such in accordance with this section.

(2) Subject to this Act, a central depository may, in writing, appoint –

(a) any member of a securities exchange; or

(b) a non-bank subsidiary of any bank or financial institution licensed under the Banking Act; or

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(c) any institutional investor; or

(d) any body corporate of a type prescribed by the Authority,

to be its central depository agent.

(3) A central depository agent appointed under this section shall perform all or any functions approved by the central depository under the CDS rules.

(4) In the performance of its functions under this Act, a central depository agent shall, when so required, produce or make available to the central

depository or to the Authority, any information or document relating to a securities account.

(5) Subject to this Act, the Authority may make such rules as may be necessary to regulate the appointment of a central depository agent and the imposition of duties, obligations and sanctions on such agent.

Regulation of
things
dealings in
in
securities.

10.(1) A central depository shall do all such as are necessary to ensure orderly dealings immobilised or dematerialised securities.

(2) A central depository may, in performing its function under subsection (1), give to an issuer of any security or a central depository agent directions to do a particular act or thing or to refrain from doing a particular act or thing and the issuer or central depository agent shall comply with such directions.

(3) An issuer or central depository agent who fails to comply with any direction given by a central depository under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years, or to both.

Central depository
depository
agents, issuer,
with,
etc, to comply
to
with CDS rules.

11.(1) Any person who is a central agent, an issuer, a depositor, or a user shall comply enforce or give effect to the CDS rules to the extent which those rules apply to such person.

(2) For the purposes of this section, "CDS rules" includes any direction given, from time to time, by a central depository to any person pursuant to any provision of this Act.

Central depository
such to provide
required for
assistance to
and
the Authority.

12.(1) A central depository shall provide assistance to the Authority as is reasonably required for the performance by the Authority of its functions and duties under this Act.

(2) The Authority shall be entitled at all reasonable times to full and free access to any part of the premises of a central depository for the purpose of ensuring compliance with this Act.

PART III - PROVISIONS RELATING TO IMMOBILISED SECURITIES

(A) - Immobilisation of Securities

Prescription of
Securities
with a
for
or
immobilisation.
securities
with

13.(1) Subject to subsection (2), a securities exchange may, from time to time, after consultation with a central depository, prescribe that any security listed or quoted or proposed to be listed or quoted on the exchange be immobilised by depositing such security with the central depository.

(2) A securities exchange shall, in respect of securities listed or quoted on the securities exchange, give notice to the public in the manner prescribed in the CDS rules of all eligible securities prescribed by it to be immobilised with a central depository.

(3) For the purposes of this Act, the deposit by a person of any eligible security with an agent of a central depository shall be deemed to be a deposit of such security with that central depository.

Verification of
certifi-

14.(1) After the deposit by any person of a

certificates and
instrument of
transfer to a
deposi-
central depository
or nominee
period
company.

cate representing an eligible security and the
transfer in respect of that security, if any, a central
tory or its agent, as the case may be, shall lodge the
certificate and instrument with the issuer within the
prescribed in the CDS rules.

(2) Subject to subsection (3), the issuer shall, on receipt of the certificate and instrument, forthwith do all such acts as are necessary to register the transfer of the security in respect of such certificate in the name of the central depository or its nominee company.

(3) Without prejudice to the right of an issuer to refuse to register a transfer under any written law, the issuer shall refuse registration of the transfer under subsection (2) if -

- (a) the certificate is not a genuine certificate or is a certificate that was reported lost or destroyed; or
- (b) in relation to any such security -
 - (i) there has been a duplication in the issuance of the certificate representing that security; or
 - (ii) such certificate is a certificate issued in excess of the issued share capital of the issuer; or
- (c) it has been served with an order of a court of competent jurisdiction prohibiting any dealing in respect of the security underlying such certificate; or

(d) any lawful order exists to the knowledge of the issuer preventing the person who deposited the certificate from dealing with any of his monies, properties or assets.

(4) Within two market days after a transfer is lodged with an issuer or within such period as may be allowed in writing by the central depository, the issuer shall, in any case other than a case referred to in subsection (3), notify the central depository agent, complete and deliver the appropriate certificate to the central depository.

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(5) Section 80 of the Companies Act shall not apply in relation to any transfer required to be registered by an issuer pursuant to this section and section 15(4), but where an issuer refuses registration of such a transfer, it shall serve on the transferor and the central depository (being the transferee) a written notice giving the reasons for such refusal.

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(6) Notwithstanding the provisions of section 81 of the Companies Act, an instrument of transfer lodged with an issuer pursuant to subsection (1) shall be capable of registration in the name of a central depository or its nominee company if such instrument has been certified by a central depository agent instead of being executed by the central depository or its nominee company.

(7) For the purposes of this section, an eligible security shall be immobilised if it is no longer in suspense.

(8) The provisions of this section shall not apply to bearer securities.

Transitional
in

15.(1) This section shall apply to all trading

provisions relating to trading of eligible securities. eligible securities during the period beginning on the day immediately following the notification date and ending on the immobilisation date (in this section and in section 16 referred to as "the transitional period").

(2) A central depository or a central depository agent, as the case may be, shall accept any certificate representing an eligible security to be immobilised for the purpose of settlement of any trade on the securities exchange during the transitional period in accordance with the CDS rules.

(3) No person shall trade in any eligible security on a securities exchange without having a securities account.

(4) The provisions of sections 14(2) to 14(8) shall apply to all central depository agents and the issuers with whom the documents referred to in subsection (2) of this section have been lodged.

Dealer in eligible securities to hold securities account. **16.** No person shall, after the transitional period, trade or transfer any eligible security on a securities exchange unless such person holds a securities account.

Restriction of trade in eligible securities. **17.(1)** No person shall, after the immobilisation date, trade any eligible security on a securities exchange unless such security has been deposited with a central depository.

(2) Notwithstanding subsection (1), an eligible security may, at any time after the immobilisation

date, be deposited by a depositor with the central depository subject to such additional fees, if any, as may be imposed under the CDS rules.

Receipt of
certificates of
securities
eligible
eligible
security for
safe custody.

18.(1) A central depository may, by notice, prescribe a date following which no member of a exchange may receive a certificate representing an security merely for safe custody.

(2) A central depository shall give notice to the public of the date prescribed in subsection (1).

Liability of
be
central depository
for loss, damage,
any
etc of
certificates.

19.(1) A central depository and its agent shall be liable to a depositor for any loss, damage or liability suffered or incurred by a depositor in respect of any disappearance, loss or destruction of any certificate deposited by the depositor with the central depository or such agent due to any wilful act, omission, neglect or default on the part of the central depository or its central depository agent.

(2) Notwithstanding subsection (1), a central depository agent shall not be liable for any loss, damage or liability suffered or incurred by any person in respect of any certificate the transfer of which is not capable of registration under section 14:

Provided that the provisions of this subsection shall not operate to relieve a central depository agent from any obligation imposed on it by the rules of a securities exchange in its capacity as a member of such securities exchange to effect any buying in, whether directly or otherwise, following a refusal to register a transfer under that section.

Deeming
company
provisions.

20. A central depository or its nominee

shall -

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- (a) for the purposes of section 4 of the Capital Markets Authority Act, not be deemed to have an interest in relation to the book-entry securities which are registered in its name; and
- (b) be deemed to be a bare trustee.

(B) – Withdrawal of Immobilised Securities

Withdrawal
provisions of
of immobilised
central
Security.

21.(1) Subject to section 22 and the

this section, a depositor may, on application to the central depository, withdraw an immobilised security standing to the credit of his securities account.

(2) Where an application is made under this section for the withdrawal of an immobilised security which is registered in the name of a central depository or its nominee company, the central depository shall forthwith place such security under suspense and lodge with the issuer –

- (a) the certificate representing the security; and
- (b) the instrument of transfer duly executed by the central depository or its nominee company, as the case may be

for the purpose of effecting the transfer in favour of the depositor.

(3) Notwithstanding the provisions of the

Cap. 486. Companies Act, an issuer shall, within two weeks after the certificate and the instrument of transfer in respect thereof are lodged with it –

(a) complete and have ready for delivery to the depositor, the appropriate certificate registered in the name of such depositor, and any other document in connection with the security, if any; and

(b) unless otherwise instructed by the depositor, send or deliver the completed certificate and such other documents, if any, to the depositor.

(4) Nothing in subsection (3) shall operate to relieve a central depository or its central depository agent from any obligation imposed under any written law or under the rules of a securities exchange to notify the securities exchange of such transfer.

Trading of securities

withdrawn

withdrawn from

central depository.

22.(1) No person shall trade any security

from a central depository on a securities exchange unless

such security is redeposited in a central depository.

(2) A security which is redeposited with a central depository shall not be capable of being utilised to settle a transaction which took place on a securities exchange prior to the redeposit of that security.

(3) The provisions of section 14 relating to eligible securities shall apply in respect of a redeposited security.

Withdrawal of

prescribed

23.(1) No person shall withdraw any security which is prescribed as a dematerialised security

under this Act from a central depository.

securities
prohibited.

(2) A securities exchange may, from time to time, after consultation with the Authority, restrict or prohibit the withdrawal of any immobilised security or class of immobilised securities which is listed or quoted for such period and in such manner as it considers appropriate.

(3) Where a securities exchange restricts or prohibits withdrawal of immobilised book-entry securities under subsection (2), the securities exchange shall -

(a) inform the central depository of such decision; and

(b) give notice to the public of -

(i) the book-entry securities the withdrawal of which is restricted or prohibited; and

(ii) the period of such restriction or prohibition.

(C) - Dematerialisation of Securities

Prescription of
to
dematerialised
securities.
selection

24.(1) A central depository may, from time to time, after consultation with an issuer, prescribe an immobilised security, or class of securities, as a dematerialised security in accordance with the process laid down under the CDS rules.

(2) Notwithstanding subsection (1), a central depository may, from time to time, after consultation with an issuer, prescribe any security proposed to be listed or quoted on a securities exchange, as a dematerialised security.

(3) Upon being notified by the central depository of the prescription under subsection (1), an issuer of a dematerialised security shall –

- (a) give notice to the public that such security shall, on the dematerialisation date, become a dematerialised security; and
- (b) do all such things as are necessary to amend its deed of establishment, trust deed, constitution or articles of association, as the case may be, to give effect and comply with this Act and CDS rules within one hundred and twenty days of the notice.

(4) A notice under subsection (3) shall identify the security to be dematerialised and shall specify a dematerialisation date, not being less than one month from the date of publication of the notice, on or before which that security shall become dematerialised.

Central depository
every
to maintain
security
official record
of depositors.

25.(1) On or after the dematerialisation date, issuer of a security prescribed as a dematerialised security shall –

- (a) surrender the physical register of members or debenture holders, as the case may be, to the central depository; and
- (b) provide information to the central depository of any member or debenture holder who appears in the appropriate register as a holder of a certificate not already immobilised by the central depository.

(2) A central depository shall maintain an official record which shall include the name and particulars of –

- (a) every depositor with an immobilised security credited to a securities account held by such depositor; and
- (b) where the prescribed security is issued by a listed company, every member or debenture holder whose name would, save for this section, appear in the appropriate register of members or debenture holders of such company, as the case may be.

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(3) Notwithstanding section 112 of the Companies Act, a record of depositors maintained pursuant to subsection (2) shall -

- (a) contain information in computerised record form;
- (b) not be distinguished by any share number; and
- (c) contain such other information as may be required under the CDS rules.

(4) The provisions of this section shall not apply to any bearer security.

(5) Nothing in this section shall be construed as making the central depository an agent of the issuer for the purposes of providing registration services.

Issuer not to
date
issue certificates
security.
in respect of
dematerialised
securities.

26. No issuer shall, after the dematerialisation issue any certificate in respect of a dematerialised

- References to **27.(1)** With effect from the dematerialisation date
- Cap.486. and notwithstanding the provisions of the Companies Act or anything in the articles of association of the issuer, a reference in respect of a dematerialised security, to –
- (a) a register of members or debenture holders including branch registers, as the case may be, maintained by a company under the Companies Act, shall be deemed to be a reference to the record of depositors maintained by the central depository;
 - (b) a transfer of shares or debentures from a transferee under the Companies Act shall be deemed to be a reference to a book-entry transfer performed by the central depository; and
 - (c) any certificate, instrument of transfer or any movable property representing any security which is used as *prima facie* evidence of ownership of the security shall be deemed to be a reference to a statement of account issued by the central depository.
- Cap.486. (2) The provisions of section 83 of the Companies Act shall not apply to a dematerialised security.
- Application to collective Investment schemes. **28.(1)** With effect from the dematerialisation date and notwithstanding the provisions of any other written law or any thing in a trust deed of any collective investment scheme, a reference in respect of
- interest a dematerialised security which represents an

in a collective investment scheme, to -

- (a) a register of any collective investment scheme, shall be deemed to be a reference to the record of depositors maintained by the central depository;
- (b) a transfer of interest in a collective investment scheme from one investor to another, shall be deemed to be a reference to a book-entry transfer by the central depository; and
- (c) a certificate issued as evidence of an interest in a collective investment scheme, shall be deemed to be a reference to a statement of account issued by the central depository.

CMA rules in
respect of
dematerialised
securities.

29. The Authority may, in respect of dematerialised securities, prescribe CMA rules -

- (a) to effect the replacement of physical registers with book-entry records where the dematerialised security to be prescribed is a security other than a share or debenture under the Companies Act, or an interest in a collective investment scheme; and
- (b) to prescribe forms for recording the interest in securities standing to the credit of any depositor before the dematerialisation date.

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PART IV - SECURITIES ACCOUNTS AND RECORDS

Dealer in book-

30.(1) No person shall deal in book-entry

entry securities to hold securities account. securities unless such person holds a securities account.

(2) A central depository may establish different types of securities accounts for different classes of persons or securities.

Issuance of statements of accounts.

31. (1) A central depository shall issue to all depositors statements of account in respect of all book-entry securities held in custody by, or registered in the name of, the central depository or its nominee company for the depositors at such time and in such manner as may be prescribed under this Act.

(2) Notwithstanding the provisions of subsection (1), a depositor may, at any time, by written notice, require the central depository to issue to him a statement of account in respect of all or any of the book-entry securities for the time being held in custody by, or registered in the name of, the central depository or its nominee company on behalf of the depositor.

(3) A central depository shall, on receipt of a written notice under subsection (2) and upon payment of any charges which may be imposed under the CDS rules, issue to the depositor the statement of account so required.

(4) A statement of account issued under this section shall be *prima facie* evidence of the truth of the matters specified in the statement of account.

Duty of central depository to be as

32. A central depository shall keep or cause to be kept such records and account, in sufficient detail, so as

keep records. to show particulars of -

- (a) all transfer of book-entry securities to and from a securities account;
- (b) all moneys received or paid by a central depository, including dividends received in respect of any book-entry securities and the disbursement of such dividends to depositors;
- (c) all income received from commissions, fees, charges and other sources, and all expenses, commissions, and other payments made or paid by the central depository; and
- (d) all assets and liabilities (including contingent liabilities) of the central depository.

Audit of
of
records and
conducted in
accounts.

33.(1) A central depository shall, at the end of every financial year cause an audit to be conducted in respect of every record or account kept pursuant to section 32, which shall include:-

- (a) a verification of the accuracy of the details shown in such records or accounts; and
- (b) a stock count of all certificates held by the central depository.

(2) The central depository shall, within ninety days of the end of the financial year, submit a copy of the report of the audit conducted pursuant to subsection (1) duly certified by the auditors, to the Authority .

(3) The Authority may by notice in writing, cause an audit to be conducted of any aspect of a central depository's operations at the expense of such central depository for purposes of giving effect to the provisions of this Act.

PART V - SECURITIES TRANSACTIONS, ENTRIES AND MISCELLANEOUS

Evidence of any book-entry security instrument or transactions. **34.(1)** Notwithstanding the provisions of other written law, a transaction of a book-entry security by a depositor, whether accompanied by an instrument or not shall be evidenced or effected by means of an entry in the securities account of the depositor.

(2) For the purposes of this section, a transaction of a book-entry security shall include a deposit of an eligible security under section 13 and a trade or transfer of a book-entry security from a securities account to another securities account maintained by the central depository.

Cap.485A (3) Notwithstanding anything in the Capital Markets Authority Act, or the Stamp Duty Act or any regulations made thereunder, a transaction of a book-entry security by a depositor pursuant to subsection (1) shall be deemed to be a transaction or trade within the securities exchange.

Entries in securities accounts. **35.(1)** An entry in a securities account in respect of a transaction shall –

(a) in the case of a securities account established and maintained directly by a central depository, be deemed to have been made by, or with the authority of, such central depository; and

(b) in the case of a securities account established through, and maintained by a central depository agent on behalf of a central depository, be deemed to have been made by, or with the authority of, the central depository agent.

(2) A record of an entry in a securities account in respect of a transaction in book-entry securities shall be *prima facie* evidence of the truth of the matters so recorded.

Provision of
record of
depositors
to issuer.

36.(1) An issuer of any book-entry security may, by written notice, require a central depository to furnish it with a record of the depositors in whose securities accounts such securities are credited as at the date of the notice or at such other date as may be specified in the notice.

(2) A record of depositors required by an issuer under subsection (1) shall be issued by the central depository within the period prescribed under the CDS rules.

(3) A record of depositors issued under this section shall contain the name, identity card, passport number or company number as the case may be, nationality and such other information and particulars of the depositors as may be requested by the issuer, and a statement as to the number of the book-entry securities acquired by each depositor.

(4) The record of depositors obtained by an issuer under this section shall be available for inspection by any member of the issuer (including a depositor) without charge and by any other person on payment of such sum as may be prescribed from time

to time by the central depository, in respect of each inspection.

(5) Any member of an issuer or any other person may require the issuer to furnish him with a copy of the record of depositors, or of any part thereof, but only so far as it relates to the names, addresses, and the number of securities held, on payment of such sum as may be prescribed from time to time by the central depository, in respect of every hundred words or fractional part thereof required to be copied.

(6) The copy of the record of depository, or any part thereof, required under subsection (5) shall be supplied to the person who required such copy within a period of twenty-one days or within such longer period as the Authority considers reasonable in the circumstances, commencing from the day after the date of receipt of the request by the issuer.

Depositor to
be treated as Cap.486
governing the
member or
name
debenture holder.

37.(1) Notwithstanding the provisions of the Companies Act or any other written law governing the issuer, a depositor of any book-entry security whose name appears in the record of depositors shall be entitled to all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from such security (whether conferred or imposed by the Companies Act, or such other written law or the deed of establishment or the memorandum or articles of association of the issuer, or otherwise) as if he were a member or debenture holder registered in the appropriate register, as the case may be, maintained by the issuer of such security, pursuant to the said Act or any other written law.

(2) For the purposes of this section, “book-entry security” does not include a security specified in

the securities account as being in suspense pursuant to section 43 or to any CMA rules made thereunder.

Prohibition of
dealings in
book-entry
securities.

38. No central depository shall purchase, acquire, or otherwise deal in, book-entry securities as principal other than for such purpose and in such manner as may be permitted by the Authority under CMA rules made under this Act.

Public offer
of securities.

39.(1) Where, pursuant to section 13 or section 24, a securities exchange or a central depository, as the case may be, prescribes any security proposed to be listed or quoted on a securities exchange to be immobilised or dematerialised with a central depository, the issuer of such security or the offeror, as the case may be, shall in the prospectus issued by such issuer or offeror in respect thereof, notify the public that the security is so prescribed.

(2) Upon completion of the allotment or allocation of such security, the issuer or offeror, as the case may be, shall forthwith confirm with the central depository the record of the successful applicants together with such particulars as may be required by the central depository for the purpose of making appropriate entries in the securities accounts of the respective applicants and shall deliver to the central depository the certificates, if any, (in such denominations as may be specified by the central depository) registered in the name of the central depository or its nominee company.

(3) For the purposes of this section, “offeror”, in relation to any security, means the person offering the security for sale.

(4) A reference to a security proposed to be listed on a securities exchange in this section shall

be construed as a reference to a security which has been approved by the Authority to be listed on the securities exchange.

(5) A central depository shall open a securities account in the name of every successful applicant who does not hold such account.

Capitalisation,

rights, issues, etc.

40.(1) Where an issuer, in relation to any book-

entry –

- (a) makes a bonus issue by way of an increase in the total issued capital, or issues securities pursuant to a rights issue or the conversion of any debt securities; or
- (b) issues securities pursuant to an exercise of any right or option to acquire securities in the share capital of the issuer,

the issuer shall notify the central depository accordingly, and deliver to the central depository-

- (a) a confirmed list of the names of the allottees for purposes of amendment of the securities accounts held by such allottees; and
- (b) the appropriate certificates, if any, in such denominations as may be specified by the central depository registered in the name of the central depository or its nominee company.

(2) A prospective allottee shall, before acquiring any of the securities referred to in subsection (1), open a securities account in his name.

Underwriters to

41. A person intending to underwrite any

open securities accounts. security proposed to be listed on a securities exchange, or any rights issue in respect of any book-entry security, shall open a securities account.

Charging or mortgaging of securities. **42.(1)** Where a book-entry security is charged by a depositor (in this section referred to as “the chargor”) in favour of any person (in this section referred to as “the chargee”) the chargee or his nominee shall create a security interest or cause to be created such security interest in the security which is the subject of the charge, as the case may be, in accordance with this section.

(2) Except as provided in this Act or the CMA rules, no security interest may be created in book-entry securities.

(3) A security interest in book-entry securities to secure the payment of a debt or liability may be created in favour of any chargee by an instrument of charge in the form prescribed under the CDS rules executed by the chargor:

Provided that any security interest in a book-entry security subsequent to any charge, created by the chargor in favour of any other person shall be void.

(4) Upon receipt of the instrument of charge, the central depository agent shall forthwith register the instrument in a register of charges maintained by the central depository.

(5) Where a charge over a deposited security has been discharged or released, the central depository or the central depository agent, as the case may be, shall, upon receipt of a notice in writing from the chargee confirming the same, transfer the

deposited security into the securities account of the chargor.

(6) This section shall not apply to floating charges:

Provided that nothing in this section shall affect the validity and operation of floating charges on book-entries created under common law.

(7) Nothing in this section shall be construed in law to require the central depository to monitor, protect, enforce or give effect to any agreement or memorandum made between the chargor and the chargee in respect of the charge, but the central depository or its central depository agent, as the case may be, may require the chargor or chargee to provide such supporting documents evidencing the charge upon creation of the security interest by way of the charge.

Securities in or
under suspense.

43.(1) A central depository may specify that any book-entry security in a securities account is in suspense-

- (a) where the transfer of such security in the name of the central depository or its nominee company is not registered, or is not registrable by the issuer under section 14;
- (b) where an application under section 21 for withdrawal of such security has been made by a depositor: or
- (c) in such other circumstances as may be prescribed by the central depository under the CDS rules.

(2) A central depository may specify that any book-entry security in a securities account is under suspense -

(a) where, pursuant to an objection or investigation made in accordance with the CDS rules, there is a need for the central depository to restrict the transfer, charge or mortgage of such security; and.

(b) where, the central depository has been instructed to restrict the movement of any book-entry transfers, whether partially or otherwise, under such circumstances in accordance with the CDS rules.

PART VI - SECRECY PROVISIONS

Security measures. **44.** Every central depository and central depository agent shall take all reasonable measures to protect information and documents relating to the affairs of the depositors, and in particular, relating to their securities accounts, against any unauthorised access thereto by unauthorised persons.

Duty to maintain
secrecy. **45.(1)** Except as provided in this Act, no director, officer, employee or agent of a central depository or a central depository agent, whether during his tenure of office or during his employment or thereafter, and no other person who has access by any means to any information or document whatsoever relating to the affairs of any of the depositors, and in particular, relating to their securities accounts, shall give, divulge, reveal or otherwise disclose such information or document to any person.

(2) No person who has any information or document which to his knowledge has been disclosed

in contravention of subsection (1) shall in any manner howsoever disclose the same to any other person.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years, or to both.

Restrictions on disclosure of information by central depository agents. Cap.488

46. Except as provided in subsection 9(4) of this Act, nothing shall authorise a central depository agent which is a bank or a financial institution within the meaning of the Banking Act to reveal, or disclose any information or document to any person in contravention of that Act.

Permitted disclosures.

47. Subject to the provisions of this Act, nothing in any other written law shall entitle any person to refuse to disclose any information or document –

(a) which the depositor, his authorised agent or his personal representative, has given permission in writing to disclose;

(b) in a case where the depositor is declared bankrupt, or, if the depositor is a corporation, the corporation is being or has been wound up, in Kenya or in any country, territory or place outside Kenya;

(c) for the purpose of instituting or, in the course of, any civil proceedings –

(i) between a central depository or a central depository agent and a

depositor relating to the securities account of the depositor; or

- (ii) between a central depository or a central depository agent and two or more parties making adverse claims to securities or monies in the securities account of the depositor, where the central depository or central depository agent seeks relief by way of interpleader;
- (d) to any person duly authorised to investigate into any offence under any law, such disclosure being, in any case, limited to the securities account and affairs of the depositor suspected of the offence;
- (e) to a central depository for purposes of the compilation of the record of depositors, or any part thereof, under section 36 of this Act;
- (f) to an issuer in respect of a record of depositors issued under section 36 of this Act.
- (g) to any member of an issuer or any person in respect of a record of depositors issued under sections 36.
- (h) for the purpose of enabling or assisting the Authority to exercise any power conferred on it by this Act or by any other written law.
- (i) for the purpose of enabling or assisting the Authority and the Registrar to discharge their functions under this Act;
- (j) for the purpose of enabling or assisting a securities exchange or clearing house of a

securities exchange to discharge their functions;

(k) for the purpose of enabling or assisting auditors of a central depository and central depository agents to discharge their functions;

(l) in a summary or collection of information or statistics, framed in such a way so as not to enable the identity of any depositor, to whom the information or statistics relates, to be ascertained.

Regulation of

access to the
computer system.

48.(1) A central depository may give access to its computer system to its central depository agents, a securities exchange (on which the book-entry securities are listed), a clearing house of such securities exchange, issuers and any other person as may be prescribed by the Authority in CMA rules.

(2) The Authority may, for the purpose of regulating access to the computer system, prescribe by CMA rules, the extent to which any user or class of users may have, or should be prohibited from having, access to such system.

(3) Any person who –

(a) being a user, unlawfully gains access, or attempts to gain access, to a computer system of a central depository, whether by means of any device or apparatus forming part of the computer system or by any other means, beyond the extent to which he is authorised to have access by the central depository under subsection (1); or

(b) unlawfully gains access, or attempts to gain access, to a computer system of a central depository, whether by means of any device or apparatus forming part of the computer system or by any other means; or

(c) unlawfully interferes with, or impedes, or attempts to interfere with or impede, the operation of a computer system of a central depository,

commits an offence.

(4) A person who is guilty of an offence under this section shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

PART VII - OFFENCES AND PENALTIES

Falsification
of records or
accounts.

49. Where a central depository or its central depository agent keeps or maintains a record or an account that is required to be kept or maintained under any of the provisions of this Act by means of a mechanical device, an electronic device, or any other device, any person who-

(a) records or stores, by means of that device, information that he knows or ought to know to be false or misleading in a material particular:

(b) falsifies; or

(c) with intent to falsify, destroys or removes
—

- (i) information which is recorded or stored by means of that device;
 - (ii) information which is prepared for the purpose of being recorded or stored by means of that device;
 - (iii) information which is prepared for use in compiling records;
 - (iv) information which is prepared for use in recovering other information which is recorded or stored by means of that device; or
- (d) having a duty to record or store information by means of that device, fails to record or store such information-
- (i) with intent to falsify, wholly or in part, any entry made, or record intended to be compiled, from the information that has been recorded or stored; or
 - (ii) knowing that the failure to so record or store the information will render false or misleading in a material particular other information so recorded or stored,

commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding ten years, or to both.

Destruction,
concealment,
mutilation and

50. A person who –
(a) destroys, conceals, mutilates or alters

alteration of records. be any record or account required to be kept or maintained under any of the provisions of this Act; or

(b) sends or attempts to send or conspires with any other person to send out of Kenya any such record or account,

with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under this Act, commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years, or to both.

Furnishing false or misleading information. **51.(1)** Any person who knowingly furnishes any information which is false or misleading in a material particular or recklessly furnishes any information which is false or misleading in any material particular-

(a) for the purpose of, or in connection with, any application under this Act; or

(b) in purported compliance with any requirement imposed on him by or under this Act,

commits an offence.

(2) Any person convicted of an offence under this section shall be liable to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years, or to both.

Offences by bodies
corporate.

52. Where an offence against this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, an executive officer or the secretary of the body corporate or was purporting to act in such capacity, shall be deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

General penalty.

53.(1) A person who contravenes or fails to comply with any of the provisions of this Act or of any rules made thereunder commits an offence under this Act and, where no penalty is expressly provided, shall, on conviction, be liable to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years, or to both.

(2) In addition to the penalties provided in this Act, any person found guilty of an offence under this Act, shall be liable to pay compensation to any person who suffers loss as a consequence of the offence committed by the first named person.

(3) The amount of compensation for which a person is liable under subsection (2), shall be -

- (a) the amount of the loss sustained by the person claiming the compensation; or
- (b) where the loss has been occasioned on the market as a whole, an amount equal to the profit made by such person, which shall be paid into the Compensation Fund established under the Capital Markets Authority Act.

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PART VIII - INVESTIGATION

Application of Part. **54.** Nothing, unless specifically provided for in this Part, shall authorise any investigation by the Authority into the business of a licensed person or its representatives under the Capital Markets Authority Act.
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Power of Authority to require production of records. **55.(1)** The Authority may, at any time, if it considers that there is sufficient reason to do so, in writing-

- (a) give a direction to –
 - (i) a central depository;
 - (ii) a nominee company of a central depository;
 - (iii) a central depository agent;
 - (iv) a user; or
 - (v) a person who is or has been an officer or employee of, or an agent, or advocate and solicitor, auditor, or other person acting in any capacity for or on behalf of, a central depository, or its nominee company, or a central depository agent, or a user,

requiring the production, to the Authority, of such records or accounts as are so specified, being records and accounts relating to the business or affairs of a central depository or its nominee company, or a central depository agent, or a user or any

record or account required to be kept pursuant to section 32; or

- (b) give a direction to any person requiring the production, to the Authority, of any record or account relating to the persons mentioned in subparagraph 1(a)(iv) or 1(a)(v) that are in the custody or under the control of such person:

Provided that the production of such record or account shall not be required at such times or at such places as shall interfere with the proper conduct of the normal daily business of that person.

(2) A reference in subsection (1) to a business carried on by a person shall be deemed to include a reference to a business carried on by a person as trustee.

(3) Where the Authority requires the production of any record or account under this section and a person has a lien on the record or account, the production of such record or account shall not prejudice the lien.

(4) Where the Authority exercises a power under this section to require another person to produce records or accounts and-

- (a) if the records or accounts are produced, the Authority-
 - (i) may take possession of the records or accounts and make copies of, or take extracts from, the records or accounts;

- (ii) may require the other person or any other person who was party to the compilation of the records or accounts to make a statement providing an explanation of any of the records or accounts.
 - (iii) may retain possession of the records or accounts for as long as the Authority may consider necessary; and
 - (iv) shall permit the other person, upon giving a reasonable notice and description of the records or accounts, to have access to the records or accounts which are in the possession of the Authority; or
- (b) if the records or accounts are not produced, the Authority may require the other person-
- (i) to state, to the best of his knowledge and belief, where the records or accounts may be found; and
 - (ii) to identify the person who, to the best of his knowledge and belief, last had custody of the records or accounts and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, to making the requirement of any

person who is or has been an officer of the body corporate.

(6) A person who, without lawful excuse, refuses or fails to comply with a requirement made under this section within the time stated by the Authority in writing shall be liable to a penalty of one million shillings in the first instance and in the case of a continuing offence, shall, in addition, be liable to be punished with a daily fine of one hundred thousand shillings for every day during which the offence continues after the fourteenth day from the date such person is required to comply with such requirement.

Power of Authority
grounds
to enter and search
been or is
premises, etc

56.(1) Where the Authority has reasonable grounds for suspecting that an offence under this Act has been committed or that there are on any particular premises any records or accounts the production of which has been required by virtue of section 55 and which have not been produced in compliance with such requirement, it may-

- (a) enter and search the premises and –
 - (i) in the case of premises occupied by a central depository or a user, inspect, examine and operate the whole or any part of the computer system; and
 - (ii) in the case of premises occupied by any other person, break open and search any cupboard, drawer, safe, box or other receptacle, and where a computer system (not being a computer system as defined in section 2 of this Act) is installed in such premises, inspect,

examine and operate the whole or any part of such system; and

- (b) inspect and take possession of, or secure against interference, any records, documents or other material found in such premises which may be evidence of such offence.

(2) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred under this Act or by any other written law.

Obstruction.

57. A person who –

- (a) intentionally obstructs or hinders the Authority in the exercise of its powers under section 55 or section 56; or
- (b) fails without reasonable excuse to give to the Authority such assistance as it may reasonably require,

commits an offence and shall, on conviction, be liable to a fine of five million shillings or to imprisonment for a term of five years or to both.

Disclosure to

58.(1) The Authority may require a central

Authority.

depository or its central depository agent to disclose to the Authority, in relation to any acquisition or disposal of book-entry securities, any information including the name of the person from or through whom or on whose behalf the securities were disposed of, their securities account numbers and the entries made in such securities accounts and the nature of the instructions given to the central depository or its central depository agent in respect of such acquisition or disposal.

(2) The Authority may require a depositor to disclose to it whether such depositor acquired or disposed of the book-entry securities, as the case may be, as trustee for, or on behalf of, another person and, if he acquired or disposed of those securities as trustee for, or on behalf of, another person, to disclose the name of that other person and the nature of any instructions given to the depositor in respect of the acquisition or disposal.

(3) A person who, without reasonable excuse, fails to comply with the requirement of the Authority under subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years or to both.

Investigation by
the Authority.

59. Where the Authority has reason to suspect that a person has committed an offence under a provision of this Act or is about to do an act that, if done, would be an offence under a provision of this Act, the Authority may make such investigation as it thinks expedient for the due administration of this Act.

Power of Court
to make certain
orders.

60.(1) Where on the application of an aggrieved party or a central depository it appears to the High Court that a person –

- (a) has committed an offence under this Act relating to any dealing in book-entry securities;
- (b) has contravened the CDS rules; or
- (c) is about to do an act with respect to any dealing in book-entry securities that, if done, would be an offence under this Act

or would be a contravention of the CDS rules,

the High Court may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders-

- (i) in the case of persistent or continuing breaches of this Act, or of the CDS rules, an order restraining a person from acting as a central depository agent or from holding himself out as so acting;
- (ii) an order restraining a person from withdrawing or otherwise dealing with any book-entry securities that are specified in the order;
- (iii) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act; and
- (iv) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) Any person who fails to comply with an order made under subsection (1) commits an offence and shall, on conviction, be liable to a fine of not

exceeding five million shillings, or to imprisonment for a term not exceeding five years or to both.

(4) Subsection (3) shall not affect the powers of the High Court in relation to the punishment for contempt of court.

(5) The High Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order, upon application made to that effect.

PART IX - GENERAL

Preservation
of records and
accounts.

61. A central depository and its central depository agents shall preserve all records and accounts for a period of seven years, whether or not they cease to carry on their business before the end of the seventh year.

Power of
Authority to
compound
offences.

62. The Authority may, where it is satisfied that a person has committed an offence under this Act other than offences under sections 3(1), 9(1), 45(1), 48 and 49, compound the offence and order that person to pay such sum of money, not exceeding fifty per centum of the amount of the minimum fine, including the daily fine, if any to which he would have been liable if he had been prosecuted and convicted of the offence, as the Authority may deem fit whereupon -

- (a) if such person pays such amount to the Authority within fourteen days after the order, proceedings shall not be taken against him in relation to the offence; or
- (b) if such person does not pay the amount so ordered within fourteen days, the

Authority may cause proceedings to be instituted in relation to the offence.

Prosecution. **63.** A prosecution for any offence against any provision of this Act may be conducted by the Authority or by any officer authorised in writing by the Authority.

Indemnity. **64.** No officer, employee or agent of the central depository shall be sued in any court for any act or matter done, or ordered to be done, or omitted to be done, by him in good faith and in the intended exercise of any power or performance of any duty, conferred or imposed on him by or under this Act.

CMA rules. **65.(1)** The Authority may, from time to time, make such CMA rules as may be necessary or expedient for carrying out or achieving the objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), CMA rules may be made for –

- (a) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act.
- (b) prescribing the circumstances when a book-entry security in a securities account may be specified by a central depository as being in suspense under section 43;
- (c) regulating the appointment of central depository agents and nominee companies and the imposition of duties, obligations and sanctions on such agents and companies.
- (d) regulating the setting-up and operation of the computer system including computer terminals which form part of such system;

- (e) regulating the manner in which immobilised book-entry securities shall be kept for safe custody by a central depository;
- (f) regulating the manner in which book-entry securities shall be immobilised or dematerialised by a central depository;
- (g) regulating the replacement of physical registers with book-entry records where the dematerialised security to be prescribed is a security other than a share or debenture under the
Cap.486. Companies Act or an interest in a collective investment scheme;
- (h) prescribing other purposes for which a central depository may appoint central depository agents under section 9(2);
- (i) prescribing the types of bodies corporate which may be appointed to act as central depository and its central depository agents;
- (j) regulating the activities of, and the standards to be maintained by, a central depository and its central depository agents;
- (k) prescribing the manner in which records shall be kept and maintained by a central depository, its central depository agents and its nominee companies under this Act;
- (l) prescribing all matters relating to the maintenance of insurance, and the establishment and maintenance of compensation funds, by a central depository, its nominee companies and central depository agents for the purpose of settling claims by depositors against them;

- (m) prescribing such other persons who may have access to the computer system of a central depository;
- (n) prescribing the extent to which any user or class of users may have access to the computer system of a central depository;
- (o) matters relating to linkages between a central depository and other securities depositories established outside Kenya; and
- (p) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to give effect to this Act.

(3) All rules, regulations and guidelines formulated by the Authority shall –

- (a) take into account and be consistent with the objective of promoting and maintaining an effective and efficient securities market;
- (b) be exposed to comment by stakeholders and the general public for a period of thirty days through notifications in at least two daily newspapers of national circulation and the electronic media; and
- (c) be signed by the chairman and chief executive and published in the Gazette.

(4) For the purposes of sub-paragraph (3)(b) stakeholders shall include listed companies, all persons licensed or approved by the Authority or financial or other institutions whose operations in the opinion of the Authority have a bearing on the development or regulation of capital markets in Kenya.

Reference to

66. For purposes of the application of the

allottee in
Cap 486.
Cap.486.
Publication of
notice.

Companies Act in relation to any book-entry security, a reference to an allottee in that Act shall be construed as a reference to a depositor who, by virtue of section 37 of this Act, is deemed to be a member or debenture holder of the company which makes the allotment.

67. Where notice is required under Part III of this Act, it shall be given in not less than three daily newspapers of national circulation, one of which shall be in Kiswahili and two in the English language, once a week for three consecutive weeks.