



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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KENYA

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Ref: TNT/ZZ/38/07/C TY (35)

THE NATIONAL ASSEMBLY	
DATE: 04 OCT 2022	
DAY: June 3, 2022	
TABLED BY:	Deputy Speaker
CLERK-AT-THE-TABLE:	DLS/D H. Sulema

Mr. Michael R. Sialai, EBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
NAIROBI

use deal. cut 10/6/22

Dear *Michael*

RE: LEGAL NOTICE NO.65 ON THE CAPITAL MARKETS
(WHISTLEBLOWER) REGULATIONS, 2022

The above Regulations have been issued under Legal Notice No. 65 and notification of the same made vide the Kenya Gazette Vol. CXXIV No. 96 of 27th May, 2022.

Attached herewith please find the above Regulations together with the cover page of the Kenya Gazette, for your necessary action, pursuant to Section 11 of the Statutory Instruments Act, 2013.

Yours *Sincerely*
[Signature]

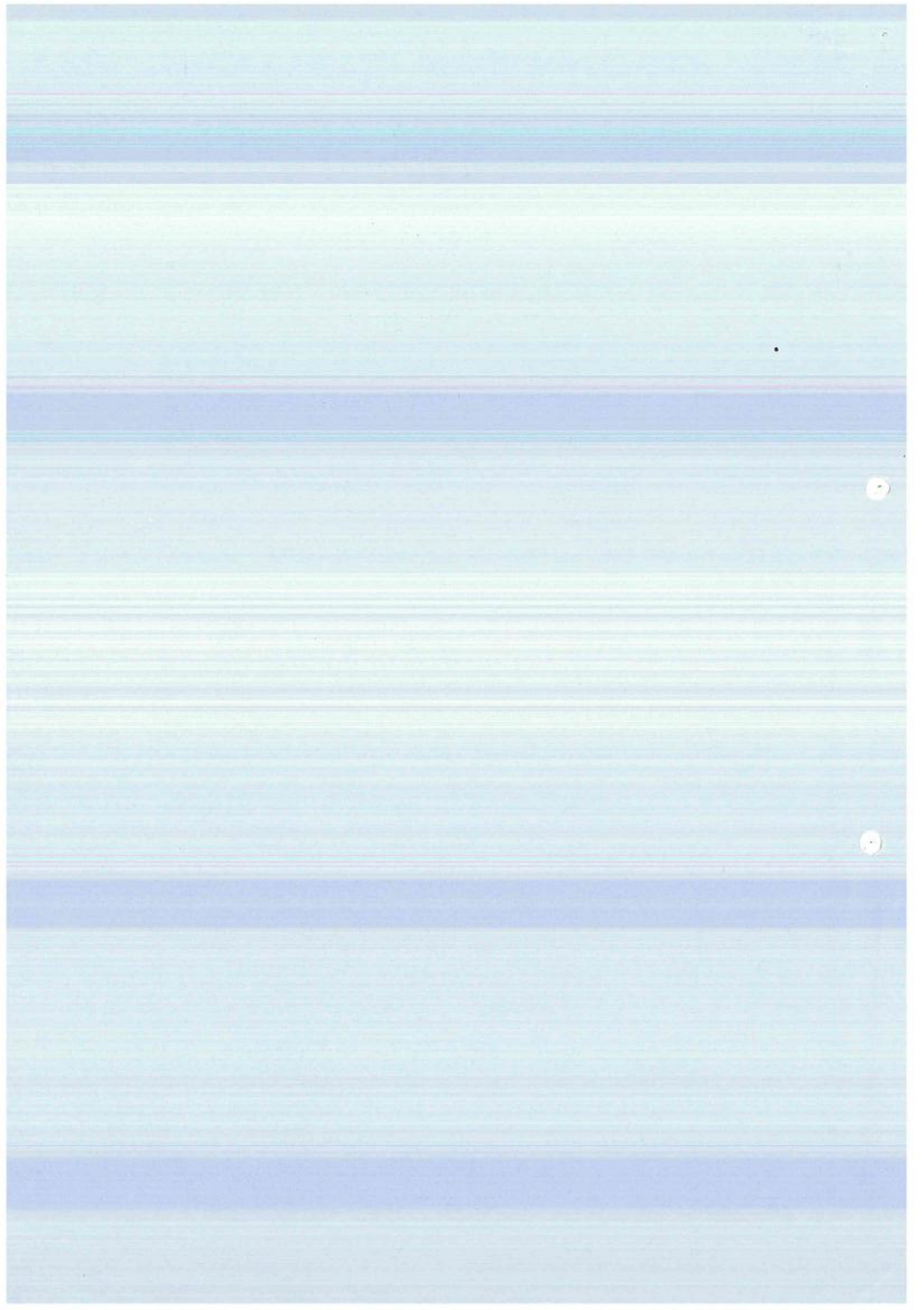
JULIUS MUIA, PhD, CBS
PRINCIPAL SECRETARY/NATIONAL TREASURY

Encl.

(2) How, take the receipts to register, acknowledge and inform them house is on recess; they will be tabled upon sitting if (any) or next Parliament. 10.6.22

*Sup #10
13/06/2022
Resubmitted
13/06/2022*

RECEIVED
10 JUN 2022
CLERK'S OFFICE
P. O. Box 41842, NAIROBI





THE NATIONAL ASSEMBLY
PARLIAMENTARY BUILDING

04 OCT 2022 DAY
Tuesday

BY: Deputy Speaker
H. Guleman

THE KENYA GAZETTE

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CORRIGENDA

IN Gazette Notice No. 7199 of 2022, Cause No. 6 of 2020, *amend* the expression printed as "IN THE CHIEF MAGISTRATE'S COURT AT NYERI" to read "IN THE HIGH COURT OF KENYA AT NYERI".

IN Gazette Notice No. 902 of 2021, Cause No. E173 of 2020, *amend* the deceased's name printed as "Ouko Achoth" to read "Ouko Achoth alias David Achuoth Alem alias Achuoth Alem".

GAZETTE NOTICE NO. 6018

THE IRRIGATION ACT

(No. 14 of 2019)

THE NATIONAL IRRIGATION AUTHORITY BOARD

RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 9 (1) (a) of the Irrigation Act, 1, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, reappoints—

JOSHUA TORO (ENG.)

to be the Chairperson of the National Irrigation Authority Board, for a period of three (3) years, with effect from the 27th May, 2022.

Dated the 26th May, 2022.

UHURU KENYATTA,
President.

GAZETTE NOTICE NO. 6019

THE STATE CORPORATIONS ACT

(Cap. 446)

THE KENYATTA NATIONAL HOSPITAL BOARD ORDER

(L.N. 109/1987)

RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 6(1)(a) of the State Corporations Act and section 2(2)(a) of the Kenyatta National Hospital Board Order, 1, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, re-appoint—

GEORGE OPONDO OOKO

to be the Chairperson of the Kenyatta National Hospital Board, for a period of three (3) years, with effect from the 27th May, 2022.

Dated the 27th May, 2022.

UHURU KENYATTA,
President.

GAZETTE NOTICE NO. 6020

THE STATE CORPORATIONS ACT

(Cap. 446)

LAPSSET CORRIDOR DEVELOPMENT AUTHORITY ORDER, 2013

(L.N. 58 of 2013)

APPOINTMENT

IN EXERCISE of the powers conferred by section 6(1)(a) of the State Corporations Act and section 5(1)(a) of the LAPSSET Corridor Development Authority Order, 2013, 1, Uhuru Kenyatta, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces, appoint—

TITUS IBUI

to be the Chairperson of the LAPSSET Corridor Development Authority Board, for a period of two (2) years, with effect from the 27th May, 2022.

Dated the 27th May, 2022.

UHURU KENYATTA,
President.

GAZETTE NOTICE NO. 6021

THE ARCHITECTS AND QUANTITY SURVEYORS ACT

(Cap. 525)

APPOINTMENTS

IN EXERCISE of the powers conferred by section 4 and 6 of the Architects and Quantity Surveyors Act, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works appoints—

Under section 4 (2)(a)—

Silverster Kiua Muli,
Samuel Kigundu,
Francis Kingori,
Adeline M. Dindi,

Under section 4 (2)(b) approves the nomination by Architectural Association of Kenya of—

Wilson Mugambi Macharia,
Marylyn Mumbua Musyimi,
Alfred Ingida Aluvaala,
Patience Rachel Mulondo,

as members of the Board; and

Under section 4 (3) appoints—

Silverster Kiua Muli.

as chairman of the Board of Registration of Architects and Quantity Surveyors, for a period of three (3) years, with effect from the 7th May, 2022.

Dated the 9th May, 2022.

JAMES MACHARIA,
*Cabinet Secretary for Transport, Infrastructure,
Housing, Urban Development and Public Works.*

GAZETTE NOTICE NO. 6022

THE BRIBERY ACT

(No. 47 of 2016)

IN EXERCISE of the powers conferred under section 12 (1) of the bribery Act, 2016, the Attorney-General, in consultation with the Ethics and Anti-Corruption Commission, issues the Guidelines set out in the Schedule. Gazette Notice No. 11125 of 2021 is revoked.

SCHEDULE

GUIDELINES TO ASSIST PUBLIC AND PRIVATE ENTITIES IN THE PREPARATION OF PROCEDURES FOR THE PREVENTION OF BRIBERY AND CORRUPTION

PART I—PRELIMINARY

Legal Framework

1. (1) The bribery Act, 2016, requires public and private entities to establish procedures for the prevention of bribery and corruption. An entity that fails to establish bribery and corruption prevention procedures commits an offence.

(2) The Commission is required under the Act to assist public and private entities to develop and implement the procedures for the prevention of bribery and corruption.

(3) The Cabinet Secretary, in consultation with the Commission, is required to publish guidelines to assist private and public entities in preparation of procedures required under the Act.

(4) Each State officer, public officer or person holding a position of authority in a private entity shall report knowledge or suspicion of an act of bribery or corruption within twenty-four hours thereof.

(5) A person who fails to report knowledge or suspicion acts of bribery or corruption within the specified period commits an offence.

(6) The Act provides for the protection of whistle-blowers, informants and witnesses from intimidation or harassment for providing information on bribery or corruption or giving evidence in court.

(7) Any person who demotes, admonishes, dismisses from employment, transfers to unfavourable working areas or otherwise harasses and intimidates a whistle-blower, informant or witness will commit an offence and is liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

SPECIAL ISSUE

Kenya Gazette Supplement No. 70

399

14th April, 2022

(Legislative Supplement No. 30)

LEGAL NOTICE NO. 65

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by Section 18(2B) of the Capital Markets Act, the Cabinet Secretary for the National Treasury and Planning, makes the following Regulations —

THE CAPITAL MARKETS (WHISTLEBLOWER) REGULATIONS, 2022

PART I—PRELIMINARY

1. These Regulations may be cited as the Capital Markets (Whistleblower) Regulations, 2022.

2. In these Regulations, unless the context otherwise requires—

“Act” means the Capital Markets Act;

“Authority” has the meaning assigned to it under the Act;

“Compensation Fund” has the meaning assigned to it under the Act;

“new and timely information” means information that is not already known to the Authority from any other source and which the whistle-blower obtained from their independent knowledge, experience, communication or observation during in employment, business or social interactions.

“securities” has the meaning assigned to it under the Act; and

“whistleblower” means any person who provides to the Authority, either by himself or acting jointly with another person, new and timely information relating to misconduct or contravention of laws relating to securities leading to the recovery of penalties or illicit gains referred to in section 18(2A) of the Act.

PART II—REWARD OF WHISTLEBLOWERS

3. A whistleblower shall be eligible for a reward under these Regulations where the whistleblower voluntarily provides information or evidence, to the Authority, that leads to the successful recovery of penalties or illicit gains within the capital markets.

4. (1) A whistleblower shall only be rewarded in accordance with these Regulations.

(2) A reward shall be payable to a whistleblower upon receipt, by the Authority, of the recovered sums of money.

(3) Any sums of money recovered under these Regulations shall

Citation.

Interpretation.

No. 17 of 1989.

Eligibility.

Conditions for reward of whistleblower.

be transferred into the Investor Compensation Fund net of the whistleblower reward.

PART III— REPORTABLE MISCONDUCT

5. (1) A whistleblower may confidentially report to the Authority any reportable misconduct, either anonymously or in person, through any of the Authority's communication channels.

Reportable
misconduct.

(2) For purposes of this regulation, "reportable misconduct" includes—

- (a) failure to comply with legal and regulatory obligations as required under the Act and Regulations;
- (b) offences under the Act and Regulations thereunder;
- (c) capital markets fraud.

(3) A whistleblower shall report a misconduct or offence in good faith and must have reasonable grounds for believing the alleged reported misconduct has occurred or will occur.

6. (1) A report made under regulation 5 shall provide substantial details of the alleged misconduct or offence and include any relevant evidence that may assist the Authority in investigating the misconduct or offence.

Information to be
included in
disclosure.

(2) The information reported under paragraph (1) shall be new and timely information, authentic, complete and relevant in that it makes a fact more probable than it would without it.

7. A whistleblower shall certify to the best of their knowledge that the information provided is true and acknowledge awareness that it is an offence to submit false information.

Affirmation by the
whistleblower.

PART IV— ACTION AFTER REPORTING

8. (1) The Authority may undertake an investigation or an inquiry into the alleged misconduct or offence in accordance with the Act.

Action after
reporting.

(2) Upon conclusion of the investigation or inquiry under paragraph (1), the Authority may impose any sanctions, penalties or other appropriate administrative measures in accordance with the Act.

9. (1) The Authority shall take reasonable steps to maintain the confidentiality of the whistleblower's identity.

Confidentiality

(2) Any information provided to the Authority under these Regulations may be made available to—

- (a) the Office of the Director of Public Prosecutions; or
- (b) an appropriate regulatory authority.

Provided that the Authority shall exercise its discretion when determining the information necessary to accomplish the purposes of these Regulations and to protect investors.

(3) The information provided to the entities specified under paragraph (2) shall be maintained as confidential information in accordance with the requirements set out under this regulation.

10. (1) A whistleblower's identity and such other confidential information of the whistleblower shall not be disclosed unless required by law or an order of the court and in accordance with the Witness Protection Act.

Protection of a whistleblower

Cap. 79

(2) A confidentiality agreement in the whistleblower's employment contract shall not prevent the employee from reporting to the Authority any sensitive information obtained in the course of their employment.

(3) The Witness Protection Act shall apply to the protection of a whistleblower who qualifies for such protection as provided under Witness Protection Act.

No. 16 of 2006.

PART IV— PAYMENT OF REWARDS

11. An application for a reward under these Regulations shall be made to the Authority—

Application for a reward.

- (a) in the form set out in the Schedule;
- (b) within ninety days of the date of conclusion of the enforcement action to which the claim relates; and
- (c) providing the justification for the reward sought.

12. (1) Pursuant to section 18(2A) of the Act, the reward payable to a whistleblower under these Regulations shall be three percent of the amount recovered subject to a maximum of five million shillings.

Amount of reward

(2) A reward payable under these Regulations shall be subject to tax deductions as may be applicable.

(3) A reward shall be payable to a whistleblower where the information provided is new and timely, and leads to the recovery of the sums lost.

13. A reward shall not be payable to a whistleblower who

Denial of reward.

- (a) at the time he acquired the original information submitted to the Authority, is or was a member, officer, or employee of any governmental or self-regulatory entity that is under an obligation to report any such misconduct or offence including—
 - (i) an appropriate regulatory agency;
 - (ii) judicial administration; or
 - (iii) a law enforcement organization;
- (b) is convicted of a criminal misconduct or offence related to the judicial or administrative action for which the whistleblower otherwise could receive a reward under this regulation; or

- (c) gains the information through the performance of an audit of financial statements required under the capital markets laws.

14. Prior to the payment of a reward, a whistleblower shall disclose his identity and provide such other information as the Authority may require:

Disclosure of
identity

Provided that despite this disclosure, the Authority shall maintain the confidentiality of the whistleblower and not release any information that may lead to the discovery of the whistleblower's identity.

PART V— GENERAL PROVISIONS

15. (1) Any determination made under these Regulations on the compensation of a whistleblower, shall be at the discretion of the Authority.

Appeals

(2) Any person aggrieved by the decision of the Authority relating to a reward may within thirty days from the date of such decision, appeal, to the Capital Markets Tribunal.

16. A person who submits false information to the Authority shall commit an offence and shall be liable upon conviction to the penalty provided under section 34A of the Act.

Submission of false
information

SCHEDULE
APPLICATION FOR A REWARD

(r. 11(a))

A. APPLICANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)		
Last Name:	Middle Name:	First Name:
P.O Box:	Postal Code:	Physical Address:
Primary Phone No:		Alternative Phone No:
Email Address:		
B. TIP/ COMPLAINT DETAILS		
1) Manner in which original information was submitted to the Authority. CMA Website <input type="checkbox"/> Email <input type="checkbox"/> Letter <input type="checkbox"/> Other <input type="checkbox"/>		
2) Tip/ Complaint reference number		<input style="width: 150px;" type="text"/>
3) Date Tip/Complaint referred to in (2) above was submitted to the Authority		<input style="width: 150px;" type="text"/>
4) Subject of the Tip/ complaint:		<input style="width: 150px;" type="text"/>
C. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION		
1) Are you or were you at the time you acquired the original information you submitted to us a member, officer or employee of the Capital Markets Authority (the Authority), any regulatory agency, department of Justice, a self-regulatory organization or any law enforcement organization? Yes <input type="checkbox"/> No <input type="checkbox"/>		
2) Did you obtain the information provided to us through the performance of an engagement required under the capital markets laws by an independent public accountant? Yes <input type="checkbox"/> No <input type="checkbox"/>		
3) Are you a spouse, parent, child or sibling of a member or employee of the Authority or do you reside in the same household as a member or employee of the Authority? Yes <input type="checkbox"/> No <input type="checkbox"/>		
4) Did you acquire the information you have provided to us from any person described in questions (1) through (3) above? Yes <input type="checkbox"/> No <input type="checkbox"/>		

5) Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information upon which your application for an award is based? Yes

6) If you answered "yes" in response to any of the above five questions, please provide a detailed response explaining your answer. Use additional sheets of paper if necessary.

D. ENTITLEMENT TO AWARD

Explain the basis for your belief that you are entitled to an award in connection with your submission of information to us. Include any supporting documents in your possession or control and attach additional sheets if necessary.

E. PAYMENT METHOD AND ACCOUNT DETAILS

Preferred mode of payment:

Bank Account details:

F. DECLARATION

I declare that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a Whistleblower reward if, in my submission of information, my other dealings with the Authority, or my dealings with another regulator in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Signature:

Date:

G. GENERAL	
1) If you are filing your claim in connection with information that you provided to the Authority, then your form and any attachments thereto must be received by the Authority within ninety (90) days of the date of the Enforcement Action to which the claim relates.	
2) You must submit your Form to us in one of the following two ways:	
a) By Email sent to: ceoffice@cma.or.ke	
b) By mailing or delivering the signed form to the Capital Markets Authority Office, Embankment Plaza, 3 rd Floor, Upper Hill -Nairobi, P.O. Box 74800-00200, Nairobi.	
FOR OFFICIAL USE	
Received by:.....Date:.....	Verified by :..... Date:
Signature:.....	Signature:

Made on the 21st March, 2022.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE NO. 66

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 of the Capital Markets Act, the Cabinet Secretary to the National Treasury and Planning makes the following Regulations—

THE CAPITAL MARKETS (CONDUCT OF BUSINESS) (MARKET INTERMEDIARIES) (AMENDMENT) REGULATIONS, 2022

1. These Regulations may be cited as the Capital Markets (Conduct of Business) (Market Intermediaries) (Amendment) Regulations, 2022.

Citation.

2. Regulation 42 of the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011, is amended in paragraph (4) by adding the following proviso—

L.N. 145/2011

Provided that a market intermediary which is a subsidiary, or an associated company of a listed company may be exempted from this requirement for purposes of aligning the term of an auditor in the entire group of companies.

Made on the 4th April, 2022.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE NO. 67

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 of the Capital Markets Act, the Cabinet Secretary to the National Treasury makes the following Regulations—

THE CAPITAL MARKETS (LICENSING REQUIREMENTS)
(GENERAL) (AMENDMENT) REGULATIONS, 2022

1. These Regulations may be cited as the Capital Markets (Licensing Requirements) (General)(Amendment) Regulations, 2022.

Citation.

2. The Capital Markets (Licensing Requirements) (General) Regulations, 2002, in these Regulations referred to as the "principal Regulations" are amended by deleting regulation 28 and substituting therefor the following new regulation —

L.N. 125/2002

Application for
license

28. (1) A sole proprietor, company, partnership or limited liability partnership may apply to the Authority for a licence to operate as an investment advisor.

(2) A company may apply to the Authority for a licence to operate as a fund manager.

(3) An application for a license in paragraphs (1) or (2) shall be submitted to the Authority, in duplicate, in Form 1 as set out in the First Schedule.

3. Regulation 29(1) of the principal Regulations is amended—

- (a) in subparagraph (a), by inserting the words "or registration" immediately after the word "incorporation";
- (b) in subparagraph (b), by inserting the words "in case of a company" immediately after the word "association";
- (c) in subparagraph (d)—
 - (i) by deleting the words "two million five hundred thousand shillings investment advisers and" appearing in item (iv);
 - (ii) by inserting the words "where applicable" immediately after the word "auditor" appearing in item (xiii).

4. Regulation 30 of the principal Regulations is amended—

- (a) by deleting paragraph (1);
- (b) in paragraph (3), by deleting the words "of the investment advisor or" wherever they occur;

- (c) by deleting paragraph (4) and substituting therefor the following new paragraph—

(4) A fund manager shall maintain a liquid capital of five million shillings or eight per cent of its total liabilities, whichever is higher.

- (d) by deleting paragraph (7).

5. Regulation 31 of the principal Regulations is amended in paragraph (1)—

- (a) by deleting sub paragraph (g); and
(b) by deleting sub paragraph (h).

6. Regulation 32 of the principal Regulations is amended in paragraph (1) by deleting the words “investment adviser or” wherever they occur.

7. Regulation 34 of the principal Regulations is amended—

- (a) by deleting paragraph (1) and substituting therefor the following new paragraph—

(1) A fund manager that manages discretionary funds shall appoint a custodian for the assets of the Fund.

- (b) in paragraph (2), by deleting the words “or investment adviser”.

8. Regulation 35 of the principal Regulations is amended—

- (a) in paragraph (1)(a),(f),(g) and (i), by deleting the words “investment adviser or” wherever they occur;
(b) in paragraph (3), by deleting the words “investment adviser or” wherever they occur; and
(c) in paragraph (4), by deleting the words “investment adviser or” wherever they occur.

9. Regulation 36 of the principal Regulations is amended—

- (a) in paragraph (1)(b), by deleting the words “investment adviser or”;
(b) in paragraph (2), by deleting the words “investment adviser or”; and
(c) in paragraph (3)—
(i) in the opening statement, by deleting the words “or investment adviser”;
(ii) in subparagraph (a), by deleting the words “investment adviser or”; and
(iii) in subparagraph (b), by deleting the words “investment adviser or”.

10. Regulation 51B of the principal Regulations is amended by inserting the following new paragraph—

(4) Investment advisers shall obtain professional indemnity insurance the value of which shall not be less than five hundred thousand shillings.

11. Regulation 55A of the principal Regulations is amended in paragraph (6) by adding the following proviso—

Provided that a licensed or approved person which is a subsidiary, or an associated company of a listed company may be exempted from this requirement for purposes of aligning the term of an auditor in the entire group of companies.

12. The Second Schedule of the principal Regulations is amended in Part II by deleting item (b) and substituting therefor the following new item—

“(b) Investment Adviser 50,000”.

Made on the 4th April, 2022.

UKUR YATANI,

Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE NO. 68

THE VALUE ADDED TAX, 2013

(No. 35 of 2013)

IN EXERCISE of the powers conferred by section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY)
(AMENDMENT) REGULATIONS, 2022

1. These Regulations may be cited as the Value Added Tax Citation. (Digital Marketplace Supply) (Amendment) Regulations, 2022.

2. Regulation 2 of the Value Added Tax (Digital Marketplace L.N. 190/2020. Supply) Regulations, 2020, hereinafter referred to as the “principal Regulations”, is amended—

- (a) by deleting the definition of “business-to-business transaction”; and
- (b) by deleting the definition of “business-to-consumer transaction”.

3. Regulation 4 of the principal Regulations is amended—

- (a) by deleting paragraph (2);
- (b) by deleting paragraph (3); and
- (c) by deleting paragraph (5).

**EXPLANATORY MEMORANDUM ON THE CAPITAL MARKETS
(WHISTLEBLOWER) REGULATIONS, 2021
LEGAL NOTICE NO.
PART I**

Statutory Instrument	: Capital Markets (Whistleblower) Regulations, 2021.
Parent Act	: Capital Markets Act, Cap 485A.
Enacted Pursuant to	: Sections 18(2B) of the Capital Markets Act.
Name of Ministry	: The National Treasury and Planning
Gazetted on	: 27th May, 2022

1. Purpose of Statutory Instrument

Section 18(2A) of the Capital Markets Act (the Act) provides that the Authority may reward any person who provides new and timely information leading to the recovery of sums of money that are paid into the Investor Compensation Fund. Section 18(2A)(b) of the Act stipulates that the reward payable under this subsection shall be three per cent of the amount recovered subject to a maximum of five million shillings. Consequently, a Whistleblower under the Act is eligible for payment of a reward of three percent subject to a maximum of Kenya Shillings five million of the amount recovered by the Authority following enforcement action before the funds are paid into the Investor Compensation Fund.

Section 18(2B) of the Act provides that the Cabinet Secretary to the National Treasury and Planning shall make regulations to give effect to the provisions of subsection (2A).

The Authority therefore makes these Regulations to give effect to Section 18(2B) of the Act. The Capital Markets (Whistleblower) Regulations provide details on the requirements that must be complied with in order for a person to be eligible for consideration as a Whistleblower under the Act. The Regulations provide that, the Witness Protection Act, Cap 79 shall be applicable in the protection of a Whistleblower who qualifies for such protection under the Act.

2. Legislative Context

The Capital Markets (Whistleblower) Regulations are made pursuant to Section 18(2A) and 18(2B) of the Capital Markets Act Cap 485A Laws of Kenya. This section empowers the Authority to reward Whistleblowers and requires the Cabinet Secretary to develop regulations on

implementation of the Whistleblower rewards. The Regulations are divided into the following parts:-

Part I –contains preliminary provisions which are the short title and the definition of various terms used in the Regulations.

Part II –provides for the reward of a Whistleblower and prescribes the maximum award payable.

Part III- provides for the submission of information on reportable misconduct, the nature of the information to be submitted, confidentiality and protection of Whistleblowers.

Part IV- provides for payment of rewards. This part prescribes disclosure of the Whistleblower's identity in order for the Authority to process the reward, determination of amount of reward and denial of reward by the Authority.

Part V- of the Regulations provides for general provisions on the procedure of appeal by any person aggrieved by the decision of the Authority and the offence of submission of false information.

The Regulations also provide a Schedule on the form for application for award by a Whistleblower.

3. Consultation

The Authority published a public notice in the daily newspapers requesting for comments from stakeholders and the general public between March 30, 2021 and April 30, 2021. The comments received were reviewed and considered in the refinement of the Regulations. The public notice and the stakeholder engagement matrix are attached hereto.

4. Impact

4.1 Impact on Fundamental Rights and Freedoms

The Regulations seek to enhance investor protection and market integrity in the conduct of business of companies and market intermediaries by promoting accountability and compliance with capital markets legal and regulatory framework.

4.2 Impact on the Private Sector

The Regulations seek to promote investor protection and legal compliance by companies and market intermediaries in order to enhance stability of the capital markets.

4.3 Impact on the Public Sector

The Regulations seek to promote investor protection and legal compliance in order to increase confidence in the capital markets in Kenya.

4.4 Impact Assessment

The regulations seek to promote market integrity and investor protection by balancing the rights of companies, market intermediaries and investors in the conduct of their business and compliance with capital markets legal and regulatory framework.

5. Monitoring and review

Implementation of the Capital Markets (Whistleblower) Regulations will be done through the investigation and enforcement process. This will be when new and timely information is received leading to investigation and subsequent enforcement proceedings conducted by the Authority.

6. Contact

The Cabinet Secretary
The National Treasury and Planning
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EXPLANATORY MEMORANDUM ON THE CAPITAL MARKETS (CONDUCT OF BUSINESS) (MARKET INTERMEDIARIES) (AMENDMENT) REGULATIONS, 2022
GAZETTE NO. Vol. CXXIV- No. 96

PART I

Statutory Instrument	: Capital Markets (Conduct of Business) (Market Intermediaries) (Amendment) Regulations, 2022.
Parent Act	: Capital Markets Act, Cap 485A.
Enacted Pursuant to	: Sections 12(1) of the Capital Markets Act.
Name of Ministry	: The National Treasury.
Gazetted on	: 27th May, 2022

1. Purpose of Statutory Instrument

Regulation 42 of the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations provides for a market intermediary to appoint an external auditor and issue the auditor with an engagement letter, that sets out their powers and duties. The same is expected to be signed by both the market intermediary and the external auditor. The market intermediary is not expected to appoint or remove an auditor without prior approval of the Authority at least one month prior to such appointment or removal. The auditor is required to serve for a maximum period of four consecutive years.

2. Legislative Context

Section 12(1) (c) of the Capital Markets Act provides that the Minister shall formulate such rules and regulations as may be required to regulate the keeping and proper maintenance of books, records, accounts and audits by all persons approved or licensed by the Authority and regular reporting by such persons to the Authority of their affairs. In addition, Section 12(1) (d) stipulates that the Minister shall formulate such rules and regulations as may be required to regulate the operations of any other bodies corporate or persons dealing with capital markets instruments. These are the enabling provisions on the Cabinet Secretary of the National Treasury and Planning's mandate on regulating on the appointment of auditors for market intermediaries and issuers of securities to the public.

The Amendment on appointment of auditors is aimed at bridging the gaps in the regulatory framework between the requirements for appointment of an auditor under the Capital Markets

(Conduct of Business) (Market Intermediaries) Regulations and the requirements on appointment of an auditor by listed entities under Code of Corporate Governance Practices for Issuers of Securities to the Public.

In addition, the amendment will create certainty in the tenure of external auditors of market intermediaries that are associated with listed entities as well as harmonization of provisions on external auditor rotation by amending Regulation 42 of the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations to align it with the Code of Corporate Governance Practices for Issuers of Securities to the Public.

The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015, Guideline 6.1.4 on the other hand guides the Boards of issuers of securities to rotate independent auditors every six to nine years.

With these two non-aligned provisions, listed entities with intermediaries find themselves hiring different auditors, which is more costly to them. To bridge the gaps in the regulatory framework and create certainty in the tenure of external auditors of market intermediaries that are associated with listed entities.

Amendment to Regulation 55A (6) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002 was proposed by inserting the following proviso at the end as follows.

“Provided that a licensed or approved person which is a subsidiary, or an associated company of a listed company may be exempted from this requirement for purposes of aligning the term of an auditor in the entire group of companies.”

3. Consultation

Stakeholders were also requested to share their policy proposals and an industry stakeholders' roundtable workshop was held on 17th August 2021. Following stakeholder feedback and an analysis of practices in other jurisdictions was conducted to inform the final policy proposals.

4. Impact

4.1 Impact on Fundamental Rights and Freedoms

The Regulations seek to enhance conduct of business and corporate governance of companies and market intermediaries by promoting accountability and compliance with capital markets legal and regulatory framework.

4.2 Impact on the Private Sector

The Regulations seek to bridge the gaps in the regulatory framework and create certainty in the tenure of external auditors of market intermediaries that are associated with listed entities.

4.3 Impact on the Public Sector

The Regulations seek to promote best practices in governance and legal compliance in order to increase confidence in the capital markets in Kenya and reduce the cost of doing business in the aspect of appointment and term of external auditors of market intermediaries that are associated with listed entities.

4.4 Impact Assessment

The regulations seek to promote clarity in legal requirements on appointment of auditors by market intermediaries and listed companies. As well as bridge the gaps in the regulatory framework and create certainty in the tenure of external auditors of market intermediaries that are associated with listed entities. This will enhance investor protection by balancing the rights of companies, market intermediaries and investors in the conduct of their business and compliance with capital markets legal and regulatory framework.

5. Monitoring and review

Implementation of the Capital Markets (Conduct of Business) (Market Intermediaries) (Amendment) Regulations, 2022 will be implemented through the licensing, issuer governance, market supervision and inspection processes of the Authority. This will be when market intermediaries are seeking the Authority's approval in the appointment or renewal of terms of the auditors and inspections conducted by the Authority.

6. Contact

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**EXPLANATORY MEMORANDUM ON THE CAPITAL MARKETS (LICENSING
REQUIREMENTS) (GENERAL) (AMENDMENT) REGULATIONS, 2022
GAZETTE NO. Vol. CXXIV- No. 96**

PART I

Statutory Instrument	: Capital Markets (Licensing Requirements) (General) (Amendment) Regulations, 2022.
Parent Act	: Capital Markets Act, Cap 485A.
Enacted Pursuant to	: Sections 12(1) of the Capital Markets Act.
Name of Ministry	: The National Treasury.
Gazetted on	: 27th May, 2022

1. Purpose of Statutory Instrument

To enhance protection of retail investors through increased access to professional investment advisory services countrywide. These amendments are expected to result in increasing access to financial advisory services by investors and deepening the capital markets through provision of investment advisory services nationwide. In addition, it will lead to an increase in the number of licensed investment advisers. The changes are proposed to be made by amending the Capital Markets (Licensing Requirements) (General) Regulations.

2. Legislative Context

Section 12(1) (d) of the Capital Markets Act stipulates that the Minister shall formulate such rules and regulations as may be required to regulate the operations of any other bodies corporate or persons dealing with capital markets instruments. This is the enabling provision on the Cabinet Secretary of the National Treasury and Planning's mandate on regulating the services of investment advisors.

The Capital Markets (Licensing Requirements) (General) Regulations, provides that an investment advisor is a CMA licensed person or firm that: carries on business of advising others concerning securities; issues reports concerning securities; manages a portfolio of securities not exceeding Kshs. 10 million; deals with long-term financing equity and debt; and acts as advisor or underwriter in relation to public issue of debt, for compensation.

Investment Advisors are key players in the capital markets space as they enhance financial literacy levels, particularly of retail investors. This is a crucial role as the investor is not only more protected through better knowledge but is more likely to take up investments in the capital markets.

The proliferation of unregulated products and services that has resulted in substantial investment losses to investors can be addressed by extensive availability of financial literacy by Investment Advisors.

Amendment of Part IV of the Capital Markets (Licensing Requirements) (General) Regulations was proposed so that it includes licensing of single director companies, partnerships and limited liability partnerships.

3. Consultation

Stakeholders were requested to share their policy proposals and an industry stakeholders' roundtable workshop was held on 17th August 2021. Following stakeholder feedback, an analysis of practices in other jurisdictions was conducted to inform the final policy proposals.

4. Impact

4.1 Impact on Fundamental Rights and Freedoms

The Regulations seek to enhance economic rights of individuals and companies by providing for the licensing and practice investment advisors. It promotes the rights of the citizens of Kenya through the access of investment advisory services countrywide in view of the reduction of the license fees from Kshs.100,000/= to Kshs. 50,000/=.

4.2 Impact on the Private Sector

The Amendments to the Regulations seek to provide for licensing of sole proprietor, company, partnership or limited liability partnership being able to apply to the Authority for a licence to operate as an investment advisor. These amendments increase the ease of doing business for the private sector by providing a requirement for investment advisors to obtain professional indemnity insurance thus reducing the element of personal liability in the conduct of business.

4.3 Impact on the Public Sector

The Regulations seek to promote access to information and financial literacy of the public in view of the projected increase in the number of licensed investment advisors in Kenya. Thus there will be increased investor protection and knowledge of financial services and products in Kenya.

4.4 Impact Assessment

The regulations seek to promote development of Kenya's capital markets and investor protection. This will enhance investor protection by balancing the rights of investment advisors and investors in the conduct of their business and enhance compliance with capital markets legal and regulatory framework.

5. Monitoring and review

Implementation of the Capital Markets (Licensing Requirements) (General) (Amendment) Regulations, 2022 will be implemented through the licensing, market supervision and inspection processes of the Authority. This will be when investment advisors are seeking the Authority's approval in licensing and through periodic inspections conducted by the Authority.

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