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THE CAPITAL MARKETS (AMENDMENT) BILL, 2018

A Bill for

AN ACT of Parliament to amend the Capital Markets Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Capital Markets (Amendment) Act, 2018. Short title.

2. The Capital Markets Act, (in this Act referred to as “the principal Act”,) is amended in section 2 amended in the definition of “key personnel” by inserting the words “of licensed persons and chief financial officers and Board of Directors of issuers of securities” immediately after the word “manager”. Amendment of section 2 of Cap. 485A.

3. Section 11 of the principal Act is amended in subsection (3)— Amendment of section 11 of Cap. 485A.
 - (a) by deleting the words “in securities” and substituting therefor the words “in an issuer and its securities” in paragraph (t); and
 - (b) by inserting the word “determination of any” in paragraph (u).

4. Section 13B of the Capital Markets Act is amended— Amendment of section 13B of Cap. 485A.
 - (a) in subsection (1), by deleting paragraph (b) and substituting therefor the following new paragraph—
 - “(b) a director, manager or employee of a licensee, approved person or an issuer or any other person, may have engaged in embezzlement, fraud, misfeasance or other misconduct in an issuer, licensee or approved person in connection with its regulated activity.”
 - (b) by adding the following new subsection immediately after subsection (3)—
 - “(4) The Authority may, where satisfied that the capital markets or an investor shall

suffer irreparable damage as a result of an activity under subsection (1), impose an interim measure for not more than three months to prevent further damage pending completion of an of inquiry.”

5. Section 18 of the Capital Markets Act is amended— Amendment of section 18 of Cap. 485A.

(a) by inserting the following new subsection immediately after subsection (2)—

“(2A) The Authority may reward any person who provides new and timely information leading to the recovery of sums of money referred to in subsection (2):

Provided that—

- (a) this provision shall not apply to any officer of the Authority;
- (b) the reward payable under this subsection shall be three per cent of the amount recovered subject to a maximum of five million shillings; and
- (c) the reward referred to in paragraph (a) shall be paid before the recovered sums of money are transferred to the Fund.”

(b) in subsection (3), by deleting the words “Investor Compensation Fund Board in such manner as may be determined by the Investor Compensation Fund Board” and substituting therefor the word “Authority”.

6. The Capital Markets Act is amended by repealing section 18A. Repeal of section 18A of Cap. 485A.

7. Section 25A of the Capital Markets Act is amended— Amendment of section 25A of Cap. 485A.

(a) in subsection (1)—

- (i) by deleting the words “listed company” wherever they appear and substituting therefor the word “issuer”;
 - (ii) by inserting the word “employee” immediately after the words “licensed or approved person or”;
 - (iii) by inserting the words “the benefit accrued from the breach and” immediately after the words “person of” in of paragraph (a) (v);
 - (iv) by inserting the word “issuer” immediately before the words “employee of a” in paragraph (b) (i);
 - (v) by inserting the words “the benefit accrued from the breach” immediately after the word “employee” in paragraph (b) (iii);
 - (vi) by inserting the words “the benefit accrued from the breach” immediately after the words “person of” in paragraph (c) (ii); and
 - (vii) by inserting the words “the benefit accrued from the breach and” immediately after the words “person of” appearing in item (v) of paragraph (a); and
- (b) in subsection (6) (b), by deleting the words “a listed company” and substituting therefor the words “an issuer”.

8. The Capital Markets Act is amended by inserting the following new section immediately after section 30G—

Insertion of new section in Cap. 485A.

Form of report books, records and internal accounting directives

30GA. (1) Every issuer of securities, licensed and approved persons shall devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in

conformity with the International Financial Reporting Standards.

(2) An issuer of securities, a licensed or an approved person shall not falsify its books or record of accounts or financial statements or report financial statements not in line with the International Financial Reporting Standards.

(3) An officer or director of an issuer, a licensed or an approved person or any other person acting under the direction thereof, shall not take any action to mislead an auditor engaged in the performance of an audit or review of the financial statements of that issuer, licensed or approved person that such action would render the issuer's financial statements materially misleading as to their completeness and correctness.

9. The Capital Markets Act is amended by inserting the following new section immediately after section 32J—

Insertion of new section in Cap. 485A.

Front-running

32JA. (1) Any person in a market intermediary who has insider information on client orders with a price differential or is aware of such orders and effects an own account transaction in the securities concerned or in any related investments directly or through any other person, to take advantage of the price differential before the client order is executed commits an offence.

(2) Any other person who facilitates the commission of the offence referred to in subsection (1) commits an offence.

10. The Capital Markets Act is amended by inserting the following new section immediately after section 32K—

Insertion of new section in Cap. 485A.

Obtaining gain by fraud.

32KA. Any person who on his own action or conspires with another by deceit, intentional concealment, omission or any fraudulent means to obtain financial or

personal gain from the public, an issuer or a regulated person commits an offence.

11. Section 35A of the Capital Markets Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

Amendment of section 35A of Cap. 485A.

“(4) The Tribunal shall, upon an appeal made to it in writing by an aggrieved party following a determination by the Authority on any matter relating to this Act, inquire into the matter and make an award thereon, and every award made shall be notified by the Tribunal to the parties concerned and the Authority as the case may be.”

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning in line with the proposals announced in the Budget from 2018/19. The principal object of the Bill is to amend the Capital Markets Act to facilitate the punishing of persons involved in embezzlement activities and further ensure that administrative enforcement action set out is sufficiently explicit in application to key employees of listed companies.

This Bill is not a Bill concerning county government.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 19th June, 2018.

JOSEPH LIMO,
*Chairperson, Departmental Committee
on Finance and National Planning.*