

REPUBLIC OF KENYA



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NATIONAL ASSEMBLY

EIGHTH PARLIAMENT - FOURTH SESSION

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DEPARTMENTAL COMMITTEE

PARLIAMENT  
OF KENYA  
LIBRARY

ON FINANCE, PLANNING AND TRADE

*REPORT*

ON

THE CAPITAL MARKETS AUTHORITY (AMENDMENT)  
BILL, 2000

PARLIAMENT BUILDINGS  
NAIROBI

MAY, 2000

## **PREFACE**

Mr. Speaker Sir, on behalf of Members of the Departmental Committee No. F on Finance, Planning and Trade and in pursuance of provisions of Standing Order 101(3), I wish to present to the House the Report and Recommendations of the Committee on the Capital Markets Authority (Amendment) Bill, 2000.

Some of the functions of the Departmental Committee pursuant to provisions of Standing Order 151 are:-

- (c) to study and review all legislation after First Reading, subject to the exemptions under Standing Order 101(4);
- (e) to investigate and inquire into all matters relating to the assigned Ministries and departments as they deem necessary, and as may be referred to them by the House or a Minister; and
- (f) to make reports and recommendations to the House as often as possible, including recommendations on proposed legislation.

Mr. Speaker Sir, the Committee is comprised of the following Members:-

The Hon. Simeon M. Mkalla, M.P. - Chairman  
The Hon. Jimmy N. Angwenyi, M.P.  
The Hon. Onesmus Mboko, M.P.  
The Hon. Wycliffe W. Osundwa, M.P.  
The Hon. John N. Michuki, M.P.  
The Hon. Peter O. Odoyo, M.P.  
The Hon. David Mwiraria, M.P.  
The Hon. Soita Shitanda, M.P.  
The Hon. Adan Keynan, M.P.  
The Hon. Mohamed A. Galgalo, M.P.  
The Hon. Adan M. Noor, M.P.

## **THE CAPITAL MARKETS AUTHORITY (AMENDMENT) BILL, 2000**

The Capital Markets Authority (Amendment) Bill, 2000 seeks to amend the Capital Markets Authority Act, Cap 485A, Laws of Kenya, in order to harmonise and refine the existing regulatory framework, to incorporate the changes in market development and meet the emerging regulatory challenges.

The Bill received the First Reading on April 13, 2000 and was referred to the Committee on the same day. It took the Committee three Sittings to deliberate on the Bill. During the second and third Sitting, the Committee had the

opportunity to discuss the bill with the Minister for Finance, the Capital Markets Authority, the Nairobi Stock Exchange and the Attorney-General Chambers.

### **RECOMMENDATIONS OF THE COMMITTEE AND THE PROPOSED AMENDMENTS AS AGREED UPON WITH THE MINISTER FOR FINANCE**

The following are the amendments proposed by the Committee and agreed upon with the Minister:-

Clause 4(a,b) (P94) - the definition of the word **'stock'** be deleted as it is equity and means the same as a **'share'**.

- add a new definition of the word **'Board'** as **"the membership of the Authority constituted under Section 5"**.

Clause 5 (b) - delete paragraph (4) and substitute in place thereof the following:-

- **"The Chairman and every Member appointed under paragraph (6) of Sub-section 3 shall be appointed from persons who have experience and expertise in legal, financial, banking, accounting, economics or insurance matters."**

Clause 8 - delete the present Section 8 of the principal Act and substitute in place thereof the following New Section:-

**8(1) The Chief Executive of the Authority shall be appointed from persons who have qualifications in legal, financial, accounting, economics, banking or insurance matters and not less than ten years experience at senior management level with expertise in money markets, capital markets or financial services.**

**(2) The Minister in consultation with the Board shall recommend to the President a qualified person to be appointed as Chief Executive as provided for under sub-clause(1) and shall determine the remuneration.**

- (3) The Chief Executive shall be appointed by the President and shall hold office for a period of four years and shall be eligible for re-appointment for a further term of four years.**

**Provided that no Chief Executive shall serve for more than two terms.**

Clause 9

- the Committee made the following proposals for amendments:
- **(i) - 11(1)(b) to facilitate the existence of a nationwide system of stock market and brokerage services so as to enable the wider participation of the general public in the stock market;**
- **(f) the development of a framework to facilitate the use of electronic commerce for the development of capital markets in Kenya.**
- **(ii) 11(2) a reference to electronic Commerce shall be construed as a reference to the use of information technology to effect linkages among functions provided by licensed persons or other market participants and describes technology platforms that allow:-**
  - (a) the transfer and dissemination of market information to a wider number of users within and between networks;**
  - (b) the offer, distribution or delivery in electronic form of securities or services ordinarily provided by licensed persons; and**
  - (c) the execution of securities transactions without the need for parties to the transaction to be**

**physically present at the same location.**

**(iii) 11(3)(d)(i)**

**insert the words "and issue guidelines" between the words "rules" and "on" appearing in the first line.**

**d(ii)**

**to prescribe financial penalties or sanctions for breach of the Authority's rules or non-compliance with the Authority's requirements,**

**(iv) 11(3) (f)(i)**

**to grant a licence to any person to operate a stockbroker, dealer or investment adviser, investment bank or authorised securities dealer and ensure the proper conduct of that business,**

**(ii)**

**to grant approval to any person to operate as a security's exchange, central depository, credit rating agency, registered venture, capital fund, collective investment scheme or to operate in any other capacity which directly contributes, to attainment of the objectives of this Act and to ensure the proper conduct of business,**

**(k)(i)**

**to prescribe the disclosure requirements and other terms and conditions on which securities may be listed or delisted from a securities exchange or offered for sale to the public or a section thereof;**

**(ii)**

**to suspend or cancel the listing of any securities or the trading of any securities for the protection of investors;**

**(iii)**

**to appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or public company the**

**securities of which are traded on an approved securities exchange if such action is deemed to be in the interest of investors, at the expense of such collective investment scheme or Company.**

- (o) to co-operate or enter into agreements for mutual co-operation with other regulatory authorities for the development and regulation of cross border activities in capital markets.**
- (q) to prescribe fees payable:-**
  - (i) annually by a securities exchange or a central depository; and**
  - (ii) for securities transactions, licences and approvals required by the Act to be issued or granted on application to the Authority**
- (r) to regulate the use of electronic commerce for dealing in securities or offer services ordinarily carried out by a licensed person.**
- (s)(i) to trace any assets including bank accounts of any person who on investigation by the Authority is found to have engaged in any fraudulent dealings on securities or insider tradings.**
- (ii) to order writing caveats to be placed against the title to such assets or prohibit any such person from operating any such bank account as may be directed by the authority, pending determination of any charges**

**instituted against that person.**

Clause 19(1)(b)

to delete the phrase "**as soon as reasonably practicable**" and substitute therefor the words

**"within 30 days of revocation of licence."**

Page 126

to delete in paragraph (i)(a) the words "**or to imprisonment not exceeding five years or both**".

Clause 29

to delete the word "**section**" in the second line and substitute therefor, the word "**sections**".

Clause 29

(i) In Sub-clause 6 delete the words "**every three months**" in the second line and substitute therefor words "**every month**".

(ii) to insert a New Sub-clause 33B to read:-

**33B**

**Any person who in the course of providing services to a licensed person or company whose securities are listed at a securities exchange comes into possession of information that such licensed person or company is engaged in any conduct- prohibited by this Act shall report to the Authority and failure to report shall commit an offence under this Act.**

Clause 32

(i)

to insert the words "**and the secretary**" after the word "**members**" in the penultimate line of the New Clause 35A.

(ii)

to insert a New Sub-clause (e) after (d) to read as follows:

(e) **the secretary shall be an advocate of not less than five years experience in commercial law;**

(iii) delete the words in Sub-clause (27) and substitute in place thereof the following words:

- **all expenses of the Capital Markets Tribunal will be charged to the general fund of the Authority;**

Clause 33

re-number Sub-clause(4) of Section 36 as (ii) and insert a New Sub-clause (i) to read as follows:-

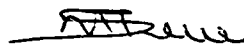
(i) **the provisions of the State Corporations Act shall not apply to the Authority;**

**CONCLUSION**

I wish to commend the report to the House and hope that Members will find it of use in their deliberation on the Capital Markets Authority (Amendment) Bill, 2000.

Last but not least Mr. Speaker Sir, I would like to sincerely thank the Members of the Committee and the staff of the National Assembly for their cooperation and dedication in pursuing the objectives for which the Committee was established. I feel indebted to their invaluable contribution and commitment which has ensured the timely production of this report.

**SIGNED:**



**The Hon. Simeon M. Mkalla, M.P.,  
Chairman,  
Departmental Committee No. F on Finance,  
Planning and Trade.**

**DATE:**

4<sup>TH</sup> MAY, 2000



**MINUTES OF THE SEVENTY-EIGHTH SITTING OF THE DEPARTMENTAL COMMITTEE NO. F ON FINANCE, PLANNING AND TRADE HELD IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS ON THURSDAY, APRIL 20, 2000 AT 10.0 A.M.**

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**PRESENT:** The following Members of the Committee were present:-

The Hon. Simeon M. Mkalla, M.P. - Chairman  
The Hon. Soita Shitanda, M.P.  
The Hon. Peter O. Odoyo, M.P.

**ABSENT:** The following Members of the Committee were absent:-

The Hon. Wycliffe W. Osundwa, M.P.  
The Hon. John N. Michuki, M.P.  
The Hon. Onesmus Mboko, M.P.

**ABSENT WITHOUT APOLOGY:**

The Hon. Adan. Noor, M.P.  
The Hon. David Mwiraria, M.P.  
The Hon. Mohamed A. Galgalo, M.P.  
The Hon. Jimmy N. Angwenyi, M.P.  
The Hon. Adan Keynan, M.P.

**IN ATTENDANCE:**     **NATIONAL ASSEMBLY**

Mr. David K. Ziah             -             Second Clerk Assistant

**MIN. NO.333/2000**     **CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The minutes of the Seventy-Fourth, Seventy-Fifth, Seventy-sixth and Seventy-Seventh were confirmed with some amendments.

**MIN. NO.334/2000**     **CONSIDERATIONS OF THE CENTRAL DEPOSITORIES BILL, 2000**

**PAPER LAID**

A paper on proposals of amendments to the Central Depository Bill, 2000 from Capital Markets Authority was laid before the Committee for its deliberation and comments.

The Committee discussed and adopted the following proposals:-

Page 34      **Definition of CDS rules**

CDS rules means operational and procedural rules issued by the Central depository for the purpose of ensuring orderliness, efficiency and security in the operation of the Central depository as approved by the Authority.

The Committee repeated its concern that the Minister for Finance ought to have a hand in the formulation of the CDS rules.

Page 44      **New Provision for Clause 6**

Changes in Central depository 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 the prior approval of the Authority.
- (2) Where the board of directors of an approved central depository wishes to amend its rules, it shall forward the amendments to the Authority for approval.
- (3) The Authority shall, after hearing from the Central depository, and within thirty days of receipt of a notice under subsection(2) give written notice to the central depository stating whether such amendments to the rules are allowed or disallowed and in the event of the rules being disallowed, the Authority shall give reasons for such disallowance.
- (5) Where an approved central depository proposes to alter any particulars already furnished or undergoes or intends to undergo a change from its state specified in the application for approval it shall inform the Authority and obtain its prior consent before such alteration or change is affected.

**The existing clause 53 will be itemized as 53(1) and new sub items(2),(3) and (4) included**

- 53(1) A person who contravenes or fails to comply with any of the provisions of this Act or of any rules made there under 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.
- (2) In addition to the penalties provided in this Act, any person guilty of an offence under this Act shall be liable to pay compensation to any person who suffers loss by the first named person.
- (3) The amount of compensation for which a person is liable under subsection (2), is-
- (a) The amount of the loss sustained by the person claiming the compensation;
  - or
  - (b) in the event the harm has been done on the market as a whole, the liability shall be the amount of illegal gains received or the loss averted as a result of the illegal action as determined by the court.
- (4) To the extent that a person found guilty of an offence under subsection(2) profited by that offence but those harmed cannot reasonable and practicably be determined, the payment under subsection(2) shall be made to the compensation Fund established under the Capital Markets Authority Act (485A).

The Committee went through the Bill Clause by Clause.

Title of the Bill	Adopted
Clause 1 to 3	Adopted
Page 94 Subsection ivc	The Committee wished to be informed how this subsection harmonises with the company's Act.
Page 94 part (d)	The Committee wanted to be clarified on the issue of collective investment scheme.
Page 95 to 98	Adopted
Page 99 paragraph 2	The Committee needs clarification on the term "investment company" appearing in the second paragraph.
Page 100 to 101	Adopted
Clause 8(a)	The Committee asked if there was any proposal to protect the tenure of office of the Chief Executive.
Clause 9 c, f(i)	The Committee wondered whether this subsection does not contradict the Banking Act.
f(ii)	The Committee asked what linkage there was between the Retirement Benefits Authority and the Capital Markets Authority regarding the licensing of investment companies.
Page 105 to 107	Adopted
Clause 12	(i) The Committee asked why e-commerce was not included in this list.  (ii) The Committee asked whether these amendments have been harmonized with the Banking Act.
Page 109 to 111	Adopted

Clause 19 1b	Delete the words "as reasonable practicable" appearing in the first line and insert there in the words "30 days".
Page 113 to 125	Adopted
Page 126(i) 9	The Committee required the following:- <ul style="list-style-type: none"> <li>(i) Explanation on how a body corporate can be jailed.</li> <li>(ii) Explanation on how the fine figures of 5 million and 2.5 million were reached in (a) and (b) respectively.</li> <li>(iii) What will happen if the fraud is over 5 million.</li> </ul>
Clause 29	<ul style="list-style-type: none"> <li>(i) The Committee wished to be informed how the Authority will vet licensing requirements.</li> <li>(ii) The Committee proposed that the statutory manager should give monthly reports.</li> </ul>
Page 128 to 130	Adopted
Page 132	Adopted
Clause 32 (d)	Delete the word "two" and insert there in the word "four".
Subclause (2)	<ul style="list-style-type: none"> <li>(i) The Committee asked the Minister to state the quorum of the Tribunal. It proposed that 9 constitute the Membership of the tribunal.</li> <li>(ii) The Committee felt that the Chairman of the tribunal be appointed by the Minister in Consultation with the Chief Justice.</li> </ul>
Page 135 to 137	Adopted
Subclause 27	Should appear in clause 32 as part (e).

Page 139

Adopted

Page 141 subsection 3

The Committee proposed that the statutory manager submits reports annually and not after six months.

Clause 34

The Committee asked for a clarification on why there should be a conflict between the Capital Market Authority Act and other existing Acts.

Clause 35

The Committee wished to be explained the procedure in repealing an Act of Parliament.

**MIN.NO.336/2000**

**DATE OF NEXT MEETING**

The Committee resolved to meet on April 25, 2000 at 10.00 a.m.

**MIN.NO.337/2000**

**ADJOURNMENT**

And the time being thirty minutes past two O'clock the Chairman adjourned the sitting.

**Confirmed** .....  
**(CHAIRMAN**

**DATE** .....

**MINUTES OF THE SEVENTY-NINTH SITTING OF THE DEPARTMENTAL COMMITTEE NO. F ON FINANCE, PLANNING AND TRADE HELD IN COMMITTEE ROOM, SECOND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS ON TUESDAY, APRIL 25, 2000 AT 10.0 A.M.**

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**PRESENT:** The following Members of the Committee were present:-

The Hon. Simeon M. Mkalla, M.P. - Chairman  
The Hon. Jimmy N. Angwenyi, M.P.  
The Hon. Peter O. Odoyo, M.P.  
The Hon. Mohamed A. Galgalo, M.P.

**ABSENT WITH APOLOGY:**

The following Member of the Committee was absent with apology:-

The Hon. John N. Michuki, M.P.

**ABSENT WITHOUT APOLOGY:**

The Hon. Adan Noor, M.P.  
The Hon. David Mwiraria, M.P.  
The Hon. Wycliffe W. Osundwa, M.P.  
The Hon. Onesmus Mboko, M.P.  
The Hon. Adan Keynan, M.P.  
The Hon. Soita Shitanda, M.P.

**IN ATTENDANCE:**            **NATIONAL ASSEMBLY**

Mr. David K. Ziah            -            Second Clerk Assistant

**CAPITAL MARKETS AUTHORITY**

Mr. Paul Melly            -            Chief Executive  
Mrs Catherine Kola   -            Head of Enforcement and  
Administration  
Mrs Shamira Hussein   -            Manager Enforcement and Legal  
Affairs

**NAIROBI STOCK EXCHANGE**

Mr. Kibuga Karithi   -            Chief Executive

**MINISTRY OF FINANCE**

Mr. Barrack O. Omollo   -            Under Secretary

## **ATTORNEY-GENERAL'S CHAMBER**

Mr. Jeremiah M. Nyengenyé - Parliamentary Counsel

**MIN.NO.338/2000**

### **DELIBERATIONS ON THE CAPITAL MARKETS AUTHORITY ACT (AMENDMENT) BILL, 2000**

The Committee together with the stakeholders went through the Bill Clause by Clause and the following amendments were proposed and agreed to by the stakeholders:-

Clause 1 and 2 - were adopted

Clause 3 - adopted

Clause 4 - adopted

- The Committee expressed concern why other institutions such as banks and insurance firms were left out. The Committee was informed that the reason was that such institutions do not deal with Capital Markets Business.

Page 94 ivc

The Committee was informed that this subsection does not conflict with the Company's Act.

Page 94 Part (a)

The Capital Market Authority agreed to furnish the Committee with the definition of the term stock.

Page 95

The term Unit trust was explained to the Committee.

Page 96

- CMA explained to the Committee the different types of Collective Schemes:-

(i) Open and closed ended Investment Schemes.



(ii) Unit Trust Investment Schemes.

(iii) Mutual Fund Investment Schemes.

The Committee was informed that the term Collective Investment had excluded Building Societies or Insurance Companies and Cooperative Societies because of the nature of business which have nothing to do with Capital Markets.

Page 97-98 - adopted

Page 99 - Members were happy that at last there will be an Investment bank which will be a non-deposit taking institution licensed by the Authority to advise on offers of Security to the Public or a Section of the Public. It was felt that this will help to attract domestic Saving.

Clause 5(b) - The Committee proposed that the Chairman, Chief executive and every Members appointed under paragraph 6 of Sub-section 3 should have financial expertise as one of the condition for appointment.

It was further proposed that those appointed should include people with knowledge in the areas of accounting, finance or economics.

Clause 5(c) The Committee proposed that those members holding office by virtue of paragraphs ("C" "d" and "e" will have no voting rights.

The Committee further proposed that the Chief executive should have a tenure of office together with a mechanism to remove him from office.

The chief executive should be of 10 years standing experience and an expert in money or capital markets.

- The chief executive be a graduate in the relevant field or have professional qualifications in that field.

- His term of service should be 4 years.

Clause 9 (i) Committee proposed that the rules by CMA be borrowed from the professional ethics.

- (ii) on relationship between Retirement Benefits Authority and the Capital Markets Authority, the Committee was informed that RBA registered companies which deal in pension funds while Capital markets Authority registered Investment Companies. The Committee proposed the need to move towards a Consolidated financial sector in Kenya.

Page 126 - adopted

- (a) The stakeholders concurred with the proposal by the Committee that a body corporate could not be jailed. the CMA promised to look into ways of coming up with a suitable amendment.

- The Committee expressed its concern whether CMA will have enough powers to enforce its regulations. It was feared that prosecutions using Courts, especially in Civil cases could take long. The Committee proposed the following measures.

- (i) That, the plaintiff must deposit with CMA the equivalent of the amount to be paid before the case is settled in Court.

- (ii) Freeze the account of such an investor.

- (iii) Seizing and forfeiture of assets.

- (iv) CMA promised to bring comprehensive measures on how the Authority will enforce its regulations.

Page 131 (b) The Committee proposed that the report by the statutory manager be submitted on a monthly basis.

Page 133 - Clause 31b - adopted?

Page 134 (d) The Committee had following recommendations.

- (i) That, the Chairman of the Tribunal be a magistrate seconded from the High Court.

- (ii) Decisions by the Tribunal to be appealed against in the High Court.

- (iii) The Secretary to the Tribunal must have 5 years relevant experience.

The Committee inquired whether it was not proper for one to appeal against decision of the High Court in the Court of Appeal. The office of the Attorney General informed the Committee that it was not a Constitutional right to appeal to the Court of Appeal.

Page 105

- The Committee wanted to know whether the CMA had enough Surveillance powers to oversee the operation of a Company. CMA responded by saying that it had such powers as follows:-

- (i) One was the comprehensive disclosure where the shareholder will be informed of the details of the running of a company to avoid a situation where the shareholders is ambushed with information especially when the company is running down.
- (ii) Another measure is the requirement chief investment advisers will be required to disclose any anomalies to CMA. Withholding of such information will be an offence.

The Committee was also informed that the amendments proposed in the Bill have been harmonized with other Acts such as the Banking Act and the Insurance Act.

Page 111

The Committee resolved as follows on the Tribunal:-

- (i) That, the Members of the Tribunal be 5 and the quorum of the Tribunal to be 3.
- (ii) Tribunal to determine the payment of salaries to the secretary to the Tribunal.
- (iii) Capital markets Authority will provide for the funding because funds from the Consolidated Fund may not be forthcoming.

Page 138

The issue of "status quo" will be suspension of the Company.

Page 140

The CMA was to see if there was a suitable way to appeal.

Page 141

Recommended that the report by CMA be submitted to Parliament.

- The Committee resolved that CMA be exempted from the State Co-rporations Act.

Page 142

Specific amendments were insisted by the Committee to amend the Retirement Benefit Act. The concern of Members arose from the fact that the RBA Act specifies that except for the Constitution all other acts cannot supersede it. The Committee resolved that CMA was to look at both the RBA and CMA Acts to harmonise them.

**MIN.NO.339/2000**

**ADJOURNMENT**

And the time being fifteen minutes past two O'clock, the Chairman adjourned the Sitting.

**Confirmed** .....  
**(CHAIRMAN)**

**Date** .....

**MINUTES OF THE EIGHTIETH SITTING OF THE DEPARTMENTAL COMMITTEE NO.F ON FINANCE, PLANNING AND TRADE HELD IN COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS ON THURSDAY, APRIL 27, 2000 AT 2.30 P.M.**

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**PRESENT:** The following Members of the Committee were present:-

The Hon. Simeon M. Mkalla, M.P. - Chairman  
The Hon. Jimmy N. Angwenyi, M.P.  
The Hon. Peter O. Odoyo, M.P.  
The Hon. Soita Shitanda, M.P.  
The Hon. David Mwiraria, M.P.

**ABSENT WITHOUT APOLOGY:**

The Hon. Adan Noor, M.P.  
The Hon. John N. Michuki, M.P.  
The Hon. Wycliffe W. Osundwa, M.P.  
The Hon. Onesmus Mboko, M.P.  
The Hon. Adan Keynan, M.P.  
The Hon. Mohamed A. Galgalo, M.P.

**IN ATTENDANCE:      NATIONAL ASSEMBLY**

Mr. David K. Ziah                      -              Second Clerk Assistant

**MINISTRY OF FINANCE**

The Hon. Chris Okemo, EGH              -              Minister for Finance  
Mr. Barrack O. Omollo                      -              Under Secretary

**CAPITAL MARKETS AUTHORITY**

Mr. Paul K. Melly                              -              Chief Executive  
Mrs. Catherine Kola                              -              Head of Enforcement and  
Administration  
Mrs. Shamira Hussein                              -              Manager Enforcement and Legal  
Affairs.

**MIN.NO.340/2000      DELIBERATIONS ON THE CAPITAL MARKETS AUTHORITY (AMENDMENT) BILL, 2000**

**PAPER LAID**

A paper responding to the Committee's proposed amendments was laid by the Capital Markets Authority. the

Committee resolved to go through the proposed amendments together with the Minister for Finance. the Committee adopted the amendments.

Pages 94 (a and b) (i) **"STOCK"** will be deleted in the definition section as it is equity and means the same as a "Share".

(ii) **Item to be added "Board" shall be defined to mean the membership of the Authority Constituted under sections 5.**

Clause 5(b) (i) to delete Paragraph (4) and replace it with the following:-

**4. "The Chairman and every Member appointed under paragraph (6) of subsection 3 shall be appointed from persons who have experience and expertise in legal, financial, banking accounting, economics or insurance matters."**

(ii) A new subsection 4(c) be inserted with the following provision.

**4(c) A Member of the Authority by virtue of subsections (c), (d) or (e) of section 5(3) shall not be entitled to vote on any decisions.**

The Minister objected to the decision of the Committee on the issue of no vote. He cited the fact that if the Minister and the Attorney General who will be Members of the Board will be denied voting rights, the Government will be placed in jeopardy.

The Committee concurred with the sentiments of the Minister and therefore reverted to the original Clause which provided for voting rights.

Clause 8 to be substituted with the following:-

8(1) The Chief executive of the Authority shall be appointed from persons who have qualifications and not less than ten years experience at Senior Management level in legal, financial, accounting, economics, banking or Insurance matters with expertise in money markets, capital markets or

financial services.

- (2) The Minister in Consultation with the board shall recommend to the President a qualified person to be appointed as Chief executive as provided for under(1) and shall determine the remuneration.
- (3) The Chief executive shall be appointed by the President and shall hold office for a period of four years and shall be eligible for re-appointment for a further term of four years.

Provided that no Chief executive shall serve for more than two terms.

Clause 9 Members expressed concern why e-commerce had been left out of the Principal objectives of the Authority, a new Clause and sub-clause were added to provide for e-commerce:-

11(1)(f) The development of a framework to facilitate the use of electronic Commerce for development of Capital Markets in Kenya.

(2) A reference to electronic Commerce shall be construed as a reference to the use of Information technology to effect linkages among functions provided by licensed persons or other market participants and describes technology platforms that allow:-

- (a) the transfer and dissemination of market information to a wider number of users within and between networks;
- (b) the offer, distribution or delivery in electronic form of securities or services ordinarily provided by licensed persons; and
- (c) the execution of securities transactions without the need for parties to the transaction to be physically present at the same location.
- (d)(i) Insert the words "and issue guidelines" between the words "rules" and "on" appearing in the first line.
- 3 d(ii) to prescribe financial penalties or sanctions for breach of the Authority's rules or non-compliance with the Authority's requirements,

- (f)(i) to grant a licence to any person to operate a stockbroker, dealer or investment adviser, investment bank or authorised securities dealer and ensure the proper conduct of that business.
- (ii) to grant approval to any person to operate as a security's exchange, Central depository, Credit rating agency, registered venture Capital fund, collective investment scheme or to operate in any other capacity which directly contributes, to attainment of the objectives of this Act and to ensure the proper conduct of business.
- (k)(i) to prescribe the disclosure requirements and other terms and conditions on which securities may be listed or delisted from a securities exchange or offered for sale to the public or a section thereof;
- (ii) to suspend or cancel the listing of any securities or the trading of any securities for the protection of investors;
- (iii) to appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or Public Company the securities of which are traded on an approved securities exchange if such action is deemed to be in the interest of investors, at the expense of such collective investment scheme or Company.
- (o) to co-operate or enter into agreements for mutual co-operation with other regulatory authorities for the development and regulation of Cross border activities in capital markets.
- (q) to prescribe fees payable:-
  - (i) annually by a securities exchange or a central depository; and
  - (ii) for securities transactions, licences and approvals required by the Act to be issued or granted on application to the Authority:-
- (r) to regulate the use of electronic Commerce for dealing in securities or offer services ordinarily carried out by a licensed person.
- (s) (i) to trace any assets including bank accounts of any person who on investigation by the Authority is found to have engaged in any fraudulent dealings on securities or insider



tradings.

- (ii) to order writing caveats to be placed against the title to such assets or prohibit any such person from operating any such bank account as may be directed by the authority, pending determination of any charged institute against that person.

Clause 19 to replace the phrase "as soon as" reasonable practicable and put in paragraph 1(b) with-

"within 30 days of revocation of license."

Page 126 to delete from paragraph (i)(a) the words "or to imprisonment not exceeding five years or both."

Clause 29 (i) to replace the word "section" on the second line with the word "sections".

(ii) In sub-clause 6 to replace "every three months" on the second line with "every month".

(iii) To insert a new section 33B to read:-

**33B** Any person who in the course of providing services to a licensed person or Company whose securities are listed at a securities exchange comes into possession of information that such licensed person or company is engaged in any conduct prohibited by this Act shall report to the Authority and fails to report shall commit an offence under this Act.

Clause 32 (i) to insert the words "and the secretary after Members in the penultimate line of the new section 35A.

(ii) To insert a new sub-clause (e) after (d) with the following provision.

(e) the secretary shall be an advocate of not less than five years experience in a Commercial bank.

(iii) To replace the provision in sub-clause (27) with the following new text.

(27) all expenses of the Capital Markets tribunal will be charged to the general fund of the

Authority.

(iv) To number sub-clause(4) of section 36 as (ii) and to insert a new sub-clause (i).

(i) the provisions of the State Corporations Act shall not apply to the Authority.

**MIN.NO.341/2000**

**ADJOURNMENT**

And the time being fifteen minutes to 4 O'clock the Chairman adjourned the Sitting.

**Confirmed** .....  
**(CHAIRMAN)**

**Date** .....