

THE CENTRAL DEPOSITORIES ACT, 2003

ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY PROVISIONS

1. Short title and Commencement.
2. Interpretation.

PART II

CENTRAL DEPOSITORY

3. Restriction on establishment of central depository.
4. Establishment of a central depository.
5. Authority to approve establishment of central depository.
6. Amendment of CDS rules.
7. Power of the Authority to amend CDS rules
8. Duties of a central depository.
9. Central depository agents.
10. Regulations of dealing in securities.
11. Central depository agents, issuers etc., to comply with CDS rules.
12. Central depository to provide assistance to the Authority.

PART III

PROVISION RELATING TO IMMOBILISED AND DEMATERIALISED SECURITIES

A: Immobilization of securities

13. Prescription of securities for immobilization.
14. Verification of certificates and transfer to a central depository or nominee company.
15. Transitional provision relating to trading of eligible securities.
16. Dealers in eligible securities to hold securities account.
17. Restriction on trade in eligible securities.
18. Receipt of certificates of eligible securities for safe custody.
19. Liability of central depository for loss, damage, etc of certificates.
20. Deeming provisions.

B: Withdrawal of immobilized securities

21. Withdrawal of immobilized securities.
22. Trading of securities withdrawn from a central depository.
23. Withdrawal of prescribed securities prohibited.

C: Dematerialization of securities

24. Prescription of dematerialized securities.
25. Central depository to maintain official record of depositors.
26. Issuer not to issue certificates in respect of dematerialized securities.
27. Reference to cap.212.
28. Application to collective investment schemes.
29. Rules in respect of dematerialized securities.
30. Prohibition on withdrawal of dematerialized .

PART IV

SECURITIES ACCOUNTS AND RECORDS

31. Dealers in book entry securities to hold securities account
32. Issuance of statements of accounts
33. Duty of central depository to keep records.
34. Audit of records and accounts.

PART V

**SECURITIES TRANSACTIONS, ENTRIES
AND MISCELLANEOUS**

35. Evidence of book-entry securities transactions.
36. Entries in securities accounts.
37. Provision of record of depositors to issuers.
38. Depositors to be treated as members or debenture holder.
39. Prohibition of dealings in book-entry securities.
40. Public offers of securities.
41. Capitalization, rights issue, etc.
42. Underwriters to open securities accounts.
43. Charging or mortgaging of securities.
44. Securities in or under suspension.

PART VI

SECURITY PROVISIONS

45. Security measures.
46. Duty to maintain secrecy.
47. Restrictions on disclosure of information by central depository agents.
48. Permitted disclosures.
49. Regulation of access to the computer system.

**PART VII
OFFENCES AND PENALTIES**

- 50. Falsification of records or accounts.
- 51. Destruction, concealment, mutilation and alteration of records.
- 52. Furnishing false or misleading information.
- 53. Offences by bodies corporate.
- 54. General penalty.

**PART VIII
INVESTIGATION**

- 55. Application of this Part.
- 56. Power of the authority to require production of records.
- 57. Power of the Authority to enter and search premise, etc.
- 58. Obstruction.
- 59. Disclosure to Authority.
- 60. Investigation by the Authority.
- 61. Power of Court to make certain orders.

**PART IX
GENERAL PROVISIONS**

- 62. Preservation of records and accounts.
- 63. Power of the Authority to compound offences.
- 64. Prosecution.
- 65. Immunity.
- 66. Rules.
- 67. Reference to allottee in the Companies Ordinance.
- 68. Notices.

A BILL

for

An act to facilitate the establishment, operation and regulation of central depositories, to provide for the immobilization and eventual dematerialization of, and dealings in, securities deposited in the United Republic, and for related matters.

ENACTED by the Parliament of the United Republic of Tanzania.

**PART I
PRELIMINARY PROVISIONS**

Short title and commencement

1. This Act may be cited as the Central Depositories Act, 2003 and shall come into operation on a date which the Minister may, by notice published in the Gazette, appoint.

Interpretation

2.-(1) In this Act, unless the context requires otherwise-
"access" in relation to a computer system, means the placing of information on that system and the retrieval of information from that system;

Act No:
5 of 1994

"Authority" means the Capital Markets and Securities Authority established by section 6 of the Capital Markets and Securities Authority Act, 1994;

Act No:
12 of 1991

"bank" has the meaning ascribed to it by the Banking and Financial Institutions Act, 1991;

"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 certificates representing such securities;

"book-entry security" means a security standing to the credit of a security 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 security 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 the rules of a central depository referred to in section 4;

“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 immobilized or dematerialized 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) which provides other facilities and services incidental with the preceding provisions;

“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 a document of title to a security;

“charge” includes a pledge or a mortgage;

“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 dealing in securities whether he carries on any other business or not, but does not include an exempt dealer;

“dealing in securities” means whether as a principal or agent, 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;

“dematerialization date” in relation to a dematerialized security, means the date prescribed by a central depository under section 24 as being the last day on which a certificate representing such security shall not be recognized as *prima facie* evidence of share ownership under the Companies Ordinance;

Cap 212.

“dematerialized 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 recognized as *prima facie* evidence of ownership under the Companies Ordinance;

“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 immobilized with a central depository under section 13;

Act No:

“financial institution” means a financial institution defined by

the Banking and Financial Institutions Act, 1991;

“immobilization 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 a stock market of the securities exchange unless such security has been deposited with the central depository;

“immobilized security” means a security in which the underlying certificate has 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 corporate body 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 funds or scheme in the nature of a collective investment;

“issuer” in relation to any book-entry security, means the company, corporation, government, or body corporate or unincorporated, 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 the United Republic of Tanzania and listing shall be construed accordingly;

“listed book-entry security” means a book-entry security listed on a securities exchange in the United Republic of Tanzania;

“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 recognized as a member of a securities exchange; and

(b) a company, means a person who is recognized as a member of a company under the Companies Ordinance;

“Minister” means the Minister 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 section 13(2) is given by a securities exchange;

“official list” in relation to a securities exchange in the United Republic, 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 the United Republic but traded on a securities exchange;

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

- (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 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 paragraphs (b) and (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 Ordinance and includes any deputy or assistant registrar of companies;

“securities” includes-

- (a) debenture, stocks, bonds or notes issued or proposed to be issued by a body corporate and any right, warrant or option in respect thereof;
- (b) bonds or other loan instrument of the Government of Tanzania or of any other country;
- (c) rights or interest, whether described as units or otherwise under any collective investment scheme;
- (d) such other rights, interests or instruments as the Minister may, by notice in the Gazette, prescribe.

“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 stock market;

“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;

Act No:
5 of 1994

“stock Exchange” has a meaning ascribed to it under the Capital Markets and Securities Act, 1994;

“stock market” means a market exchange or other place at which, or a facility by means of which securities are regularly offered for sale, purchased or exchanged;

“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 with the central depository of-

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

PART II CENTRAL DEPOSITORY

Restriction on establishment of central depository

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

(2) A person who contravenes the provisions of subsection (1), commits an offence and upon conviction is liable to a fine of not less than ten million shillings, or to imprisonment for a term of not less than ten years or to both that fine and imprisonment.

(3) Notwithstanding the provisions of subsection (1), on coming into operation of this Act, the central depository maintained by the Bank of Tanzania shall be deemed to have been approved by the Authority.

Establishment of a central depository

4.-(1) Any person who wishes to establish and maintain a central depository shall apply in writing to the Authority for its approval.

(2) Except for the CDS referred to in section 3(3), a person other than a company incorporated under the Companies Ordinance shall not be eligible for establishing and maintaining a central depository.

(3) Every application under subsection (1) shall be made in such manner and form as the Authority may prescribe and shall be accompanied by-

- (a) CDS rules; and
- (b) such other information as may be prescribed by the Authority.

(4) At any time after receiving an application under this section, the Authority may, by a notice in writing, require the applicant to provide additional information or documents in support of the application.

Authority
to approve
establishment
of central
depositories

5.-(1) The Authority may in writing, approve an application made pursuant to section 4 if it 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 any other regulations prescribed by the Authority in respect of the provisions in the CDS rules; and
- (c) that the establishment and maintenance of the central depository, would promote the positive development of capital markets in Tanzania and that the interest of the public dealing with book-entry securities, will be served by the granting of the approval.

(2) The Authority may, in approving any application impose-

- (a) requirements with respect to the paid-up or

- authorized capital of the central depository;
- (b) conditions relating to the shareholding 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 requirement or condition which the Authority considers appropriate.

Amendment to
CDS rules

6.-(1) Where an amendment to the rules of a central depository is proposed, the central depository shall forward a written notice of the proposed amendment to the Authority.

(2) The Authority may, within thirty days after the receipt of the notice under subsection (1), notify the central depository concerned whether the Authority approves or rejects the whole or any specified part of the proposed amendment.

Power of the
Authority
to amend
CDS rules

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

Duties of central
depository

8.-(1) A central depository shall provide or cause to be provided all such facilities as may be necessary to-

- (a) facilitate the immobilization of securities;
- (b) facilitate the deposit and withdrawal of certificates in respect of immobilized securities;
- (c) facilitate the dematerialisation of securities accounts;
- (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 the 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 immobilized 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 depository agents

9.-(1) No person shall act or hold himself out as an agent of a central depository unless such person is duly 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 and Financial Institutions Act, 1991: or
- (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 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 agents and the imposition of duties, obligations and sanctions on such agents.

Regulations in dealings in securities.

10.-(1) A central depository shall do all such things as are necessary to ensure orderly dealings in immobilized or dematerialized securities.

(2) A central depository may, in performing its functions under subsection (1), give to an issuer of any securities or a central depository agent directions to do a particular act or thing and the issuer or a 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 upon conviction shall be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both that fine and imprisonment.

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

11.-(1) A central depository agent, an issuer, a depositor or a user, shall comply with, enforce or give effect to the CDS rules to the extent to which those rules apply to them.

(2) For the purpose 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 to provide assistance to the Authority

12.-(1) A central depository shall provide such assistance to the Authority as is reasonably required for the performance of the Authority's 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 AND
DEMATERIALIZED SECURITIES**

A: Immobilisation of securities

Prescription of securities for immobilisation

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 securities exchange, be immobilized 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 immobilized with a central depository.

(3) For the purpose 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 certificates and transfer to a central depository or nominee company.

14.-(1) After the deposit by any person of a certificate representing an eligible security and the instrument of transfer in respect of that security, if any, a central depository or its agent, as the case may be, shall lodge the certificate and instrument with the issuer within the period 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 certificates 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;
- (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 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 to complete and deliver the appropriate certificate to the central depository.

(5) The provisions of the Companies Ordinance shall not apply in relation to any transfer required to be registered by an issuer pursuant to this section and section 15(3), 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.

(6) Notwithstanding the provision of the Companies Ordinance, 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 executed by the central depository or its nominee company.

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

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

Transitional provisions relating to trading of eligible securities

15.-(1) This section shall apply to all trading in eligible securities during the period beginning on the day immediately following the notification date and ending on the immobilization 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 immobilized 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 security exchange without having a securities account.

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

Dealers 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 on trade in eligible securities

17. -(1) No person shall, after the immobilization 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 eligible securities for safe custody

18.-(1) No member of a securities exchange may receive a certificate representing an eligible security merely for safe custody after the date prescribed by the central depository.

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

Liability of a central depository for loss damage etc of certificates

19.-(1) A central depository and its agents 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 a depositor with the central depository or such agent due to any willful act, omission, neglect or default on the part of the central depository or its central depository agent.

(2) Notwithstanding subsection (1), a central depository shall not be liable for 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(3).

(3) Subsection (2) 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 provisions.

- 20.** A central depository or its nominee company shall-
- (a) for the purposes of the provisions of Section 5 of the Capital Markets and Securities Authority Act, 1994, 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 of immobilized security

21.-(1) Subject to section 22 and the provisions of this section, a depositor may, on application to the central depository, withdraw an immobilized security standing to the credit of his securities account.

(2) Where an application is made under this section for withdrawal of an immobilized security which is registered in the name of a central depository, the central depository shall immediately 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 Companies Ordinance, an issuer shall, within two weeks after the certificate and the instrument of transfer 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 the rules of a securities exchange to notify the securities exchange of such transfer.

Trading of securities withdrawn from central depository.

22.-(1) No person shall trade any securities withdrawn from a central depository on a securities exchange unless such security is re-deposited in a central depository.

(2) A security, which is re-deposited with a central depository, shall not be capable of being utilized 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 re-deposited security.

Withdrawal of prescribed securities prohibited

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

(2) Where a securities exchange restricts or prohibits withdrawal of immobilised book-entry securities under subsection (1), 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: De-materialisation of securities

Prescription of dematerialized securities.

24.-(1) A central depository may, from time to time, after consultation with an issuer, prescribe an immobilized security or class of securities as a dematerialised security in accordance with the selection 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 dematerialized 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 dematerialized 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 ninety days of the notice.

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

Central depository
to maintain official
record of
depositors

25.-(1) On or after the dematerialisation date, every issuer of a security prescribed as a dematerialized 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 immobilized 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 immobilized 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 under the appropriate register of members or debenture holders of such company, as the case may be.

Cap.212

(3) Notwithstanding the provisions of Section 96 and 97 the Companies Ordinance relating to the record of depositors, a record of depositors maintained pursuant to this section

shall-

- (a) contain information in computerized 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 purpose of providing registration services.

Issuer not to issue certificates in respect of dematerialized securities.

26.- No issuer shall, after the dematerialisation date issue any certificate in respect of a dematerialized security.

Reference to cap. 212

27.-(1) With effect from the dematerialisation date and notwithstanding the provision of the Companies Ordinance or anything in the Articles of Association of the issuer, a reference in respect of a dematerialized 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 Ordinance, 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 Ordinance 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 a security shall be deemed to be a reference to a statement of account issued by the central depository.

Cap.212 (2) The provisions of section 96 and 97 of the Companies Ordinance shall not apply to a dematerialized security.

Application to collective investment schemes.

28.-(1) With effect from the dematerialisation date and notwithstanding the provisions of any other written law or anything in a trust deed of any collective investment scheme, a reference (in respect of a dematerialized security which represents an interest 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 or unit issued as evidence of an interest in a collective investment scheme, shall be deemed to be a statement of account issued by the central depository.

Rules in respect of dematerialized securities

29. The Authority may, in respect of dematerialized securities, prescribe regulations-

- (a) to effect the replacement of physical registers with book-entry records where the dematerialized security to be prescribed is security other than a share or debenture under the Companies Ordinance, 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.

Prohibition on withdrawal of dematerialized securities

30. No person shall withdraw from a central depository, any security that is prescribed as a dematerialized security pursuant to this Act.

**PART IV
SECURITIES ACCOUNTS AND RECORDS**

Dealers in book-entry securities to hold securities account

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

32.-(1) A central depository shall issue to all depositors statements of accounts 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 accounts 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 charges which may be imposed under the CDS rules, issue to the depositor the statement of account so required.

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

Duty of central depository to keep records.

33. A central depository shall keep or cause to be kept such records and accounts in sufficient detail, so as to show particulars of-

- (a) all transfers of book-entry securities to and from a securities account;
- (b) all moneys received or paid by the 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 liability (including contingent liabilities) of the central depository;
- (e) any other matter as may be prescribed by the authority from time to time.

Audit of records and accounts.

34.-(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 33, 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 book-entry securities transactions

35.-(1) Notwithstanding the provisions of any other written law, a transaction of a book-entry security by a depositor, whether accompanied by an instrument or not shall be evidenced 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 from a securities account to another securities account maintained by the central depository.

Act No:
5 of 1994
Act No:
20 of 1972

(3) Notwithstanding anything in the Capital Markets and Securities Authority Act, 1994, the Stamp Duty Act 1972 or any regulations made under both Acts, a transaction of a book-entry security by a depositor pursuant to subsection (1), shall be deemed to be a transaction or trade with the securities exchange.

Entries in
securities accounts.

36.-(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, the 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 matters recorded.

Provision of record
of depositors to
issuers.

37.-(1) An issuer of any book-entry security may, by written notice, require a central depository to furnish him with a record of the depositors in whose securities accounts such issuer of securities are credited as at the date of notice or at such other dates 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 requested by the issuer and issued under this section, shall contain the name, identity card, passport number or company number, as the case may be, and 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 an 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 any part of it, 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.

(6) The copy of the record of depository, or any part of it 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 member or debenture holder

38.-(1) Notwithstanding the provisions of the Companies Ordinance or any written law, 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 as if he were a member or debenture holder registered by the issuer of such security, pursuant to the said Ordinance or any other written law.

(2) For the purpose 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 any rules made by the Authority.

Prohibition in dealings in book-entry securities.

39. 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 regulations made under this Act by the Authority.

Public offer of securities

40.-(1) Where pursuant to section 13 or section 24, a securities exchange or a central depository, prescribes any

securities proposed to be listed or quoted to be immobilized or dematerialized with a central depository, the issuer of such security or the offeror shall, in the prospectus issued by such issuer or offeror in respect thereof, notify the public that the security is 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 entry 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 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.

41.-(1) Where an issuer, in relation to any book-entry securities-

- (a) makes a bonus issue by way of an increase in the total issued capital, or issue 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-

- (i) a confirmed list of the names of the

allottees for the purposes of amendment of the securities accounts held by such allottees; and

- (ii) the appropriate certificates, if any, registered in the name of the central depository or its nominee company.

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

Underwriters to open securities accounts.

42. A person intending to underwrite any securities 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.

43.-(1) Where a book-entry security is charged by a depositor (in this section referred to as “the charger”) 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 in the rules made by the Authority, no security interest may be created in book-entry securities.

(3) A security interest in book-entry securities to secure the payment of a debtor 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 charger.

(4) Any security interest in a book-entry security subsequent to any charge, created by the charger in favour of any other person shall be void.

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

(6) Where a charge over a deposited security has been

discharged or released, the central depository or the central depository agent shall, upon receipt of a notice in writing from the chargee, confirm the same and transfer the deposited security into the security account of the charger.

(7) This section shall not apply to floating charges and nothing in this section shall affect the validity and operation of floating charges on book-entries created under common law.

(8) Nothing in this section shall be construed in law to require the central depository to monitor, protect or give effect to any agreement or memorandum made between the charger 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 charger or chargee to provide such supporting document evidencing the charge upon creation of the security interest by way of the charge.

Securities in or under suspense.

44.-(1) A central depository may specify that any book-entry 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 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 other circumstances as may be prescribed by the central depository under the CDS rule.

PART VI SECURITY PROVISIONS

Security measures

45. 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 unauthorized access by unauthorized persons.

Duty to maintain secrecy.

46.-(1) Except as provided in this Act, any 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 any other person who has access by any means to any information or document relating to the affairs of any of the depositors, and in particular, relating to the securities accounts, shall not 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 disclose the same to any other person.

(3) A person who contravenes this section commits an offence and upon conviction is liable to a fine of one million shillings or imprisonment for a term of not less than a year, or to both that fine and imprisonment.

Restriction on disclosure of information by central depository agent.

47. Except as provided in section 9(3) of this Act, nothing shall authorize a central depository agent which is a bank or financial institution to reveal, or disclose any information or document to any person in contravention of this Act.

Permitted disclosures.

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

- (a) which the depositor, his authorized 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 the United Republic or in any country, territory or place outside the United Republic;
- (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 authorized 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 to the offence;
 - (e) to a central depository for the purposes of the compilation of the record of depositors, or any part of it, 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 record of depositors issued under section 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 the functions under this Act;
 - (j) for the purpose of enabling or assisting a securities exchange or clearing house of securities exchange to discharge their functions;
 - (k) for the purpose of enabling or assisting auditors of a central depository and a central depository agent to discharge their functions;
 - (l) in a summary of collection of information statistics, framed in such a way so as not enabling the identity of any depositor, to whom the information or statistics relates, to be ascertained.

Regulation of
access to computer
system

49.-(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 by regulations made under this Act.

(2) The Authority may, for the purpose of regulating access to the computer system, prescribe regulations, 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 authorized to have access by a 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 commits an offence under this section shall, upon conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both that fine and imprisonment.

PART VII OFFENCES AND PENALTIES

Falsification of
record or accounts.

50. 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; or
- (b) falsifies; or
- (c) with intent to falsify, destroys or removes any of the following-
 - (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 if prepares 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, upon conviction, be liable to a fine of not less than ten million shillings, or to imprisonment for a term of not less than five years, or both that fine and imprisonment.

Destruction, concealment, mutilation and alteration of records.

51. A person who-

- (a) destroys, conceals, mutilates or alters 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 the United Republic 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, upon conviction, be liable to a fine of not less than fifteen million shillings or to imprisonment for a term of not less than five years or to both that fine and imprisonment.

Furnishing false or misleading information

52.-(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, on conviction, be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years.

Offences by bodies corporate.

53. Where an offence against this Act has been committed by a body corporate, any person who at the time of the commission of an offence was a director, the 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

54. A person who contravenes or fails to comply with any of the provision of this Act or of any regulations made under this Act, commits an offence and where no penalty is expressly provided, shall, upon conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or to both that fine and imprisonment.

PART VIII INVESTIGATION

Application
of this
Part.

55. Nothing, unless specifically provided for in this Part, shall authorize any investigation by the Authority into business of a licensed central depository or its representative under the Capital Markets and Securities Authority Act 1994.

Power of the
Authority to
require production
of records

56.-(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 agent, or 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 person mentioned in paragraphs (a)(iv) or (a) (v) that are in the custody or under the control of such person except that the production of such record or account shall not be required at such times or at such place 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 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 records or accounts and-

(a) if the record 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 record 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 a daily penalty of one hundred thousand shillings for every day from the date such person is required to comply with such requirement.

Power of
Authority to enter
and search
premises etc

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

(a) enter and search the premises and -

(i) in the case of premises occupied by 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

58. 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 not less than five million shillings or to imprisonment for term of not less than two years or to both that fine and imprisonment.

Disclosure to
Authority

59.-(1) The Authority may require a central 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, of 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 of not less than five million shillings or to imprisonment for a term of not less than three years or to both that fine and imprisonment.

Investigation by
the Authority

60. Where the Authority has reasons 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 due administration of this Act.

Power of court to
make certain
orders.

61.-(1) Where on the application of an aggrieved party, it appears to the Court that a person-

- (a) has committed an offence under this Act relating to any dealing in book-entry securities;
- (b) has contravened the regulations under this Act; 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; or
- (d) on application of a central depository, it appears to the High Court that a person has contravened the regulations made under this Act,

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 the regulations made under this Act, an order restraining a person from acting as 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; or
- (iv) any ancillary order deemed to be desirable in consequence of the making of an order under any 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 upon conviction is liable to a fine of not less two million shillings or to imprisonment for a term of not less than one year or to both that fine and imprisonment.

(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 PROVISIONS**

Preservation of records and accounts

62. 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 the Authority to compound offences

63. 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) of 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 ordered within fourteen days, the Authority may cause proceedings to be instituted in relation to the offence.

Prosecution.

64. A prosecution for any offence against any provision of this Act may be conducted by the Authority or by any officer authorized in writing by the Authority.

Immunity

65. No officer, employee or agent of the central depository shall be sued in any court for any act of matter done, 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.

Rules

66.-(1) The Authority may, from time to time, make such regulations 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), the Authority may make rules -

- (a) prescribing fees to be paid in respect of any matter or thing required for the purpose 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 operations of the computer systems including computer terminals which form part of such system;
- (e) regulating the manner in which immobilized book-entry securities shall be kept for safe custody by a central depository;
- (f) regulating the manner in which book-entry securities shall be immobilized or dematerialized by a central depository;
- (g) regulating the replacement of physical registers with book-entry records where the dematerialized securities to be prescribed is a security other than a share or debenture under the Companies Ordinance or an interest in a collective investment scheme;
- (h) prescribing other purposes for which a central depository agent may appoint central depository agent under section 9(2);
- (i) prescribing the types of bodies corporate which may be appointed to act as central depository agent;
- (j) regulating the activities of, and standards to be maintained by, a central depository and 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 maintenance of insurance, and establishment and maintenance of compensation funds, by a central depository, its nominee companies and a 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 computer system of a central depository;
- (o) prescribing matters relating to linkages between a central depository and other securities depositories established outside the United Republic; and
- (p) all matters or things which by this Act are required 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 for 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 of the Authority and published in the Gazette.

(4) For the purposes of subsection (3) (b), stake holders 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 the United Republic.

Reference to
allottee in the
Companies
Ordinance

67. For the purposes of the application of the Companies Ordinance in relation to any book-entry security, a reference to an allottee in that Ordinance 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.

Notices

68. Where notice is required in 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 one in English language once a week for three consecutive weeks.