

SPECIAL ISSUE

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LEGAL NOTICE NO. 65

THE CAPITAL MARKETS ACT

(Cap. 485A)

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

THE CAPITAL MARKETS (WHISTLEBLOWER) REGULATIONS,
2022

PART I—PRELIMINARY

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

2. In these Regulations, unless the context otherwise requires— Interpretation.
“Act” means the Capital Markets Act; No. 17 of 1989.

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

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

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

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

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

PART II—REWARD OF WHISTLEBLOWERS

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

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

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

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

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

PART III—REPORTABLE MISCONDUCT

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

Reportable
misconduct.

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

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

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

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

Information to be
included in
disclosure

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

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

Affirmation by the
whistleblower.

PART IV—ACTION AFTER REPORTING

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

Action after
reporting.

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

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

Confidentiality

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

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

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

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

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

Protection of a whistleblower

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

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

No. 16 of 2006.

PART IV— PAYMENT OF REWARDS

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

Application for a reward.

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

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

Amount of reward

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

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

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

Denial of reward.

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