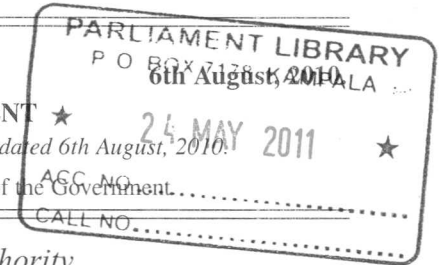


BILLS
SUPPLEMENT No. 12

BILLS SUPPLEMENT ★

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Capital Markets Authority
(Amendment) Bill

Bill No. 19

2010

THE CAPITAL MARKETS AUTHORITY (AMENDMENT)
BILL, 2010

MEMORANDUM

1. The object of this Bill is to amend the Capital Markets Authority Act, Cap.84 by converting all references to shillings into currency points and by inserting a new Part XA dealing with offering of securities to the public. The new Part comprising sections 90A to 90AF is intended to replace the provisions of the Companies Act, Cap.110 relating to the issue of prospectuses namely sections 37 to 53 and 382 to 385 and the Third Schedule of that Act.
2. The present state of the legislation is anomalous in that provisions which deal with prospectuses are contained in the Companies Act which governs only the offering of securities by companies to the public, i.e. an offer to the public of shares and debentures. Other types of securities offering, e.g. an offer of debt securities by a statutory corporation, or partnership, or a local authority are not covered by the Companies Act and therefore there is no legislation at present, which requires the issue of prospectuses in the case of those offerings.
3. To remove that anomaly and to introduce consistency in the law, the prospectus provisions governing all forms of offered securities are therefore by the Bill being moved into the Capital Markets Authority Act and the relevant Companies Act provisions will therefore need to be repealed. The consequence will be that there will be one Act, namely the Capital Markets Authority Act, to regulate all securities markets activities whether by way of an IPO (initial public offering) or by way of dealings in securities.

4. The new Part XA will not be limited in its application to companies although companies will be the most common issuers of securities affected by this Part. The offering of units or shares under a licensed scheme under the Collective Investment Schemes Act, Act No.4 of 2003 is excluded from the application of these provisions. Part XA also does not apply to any security issued by the Government of Uganda or the Bank of Uganda.

Interpretation - section 90A

5. Proposed section 90A sets out the definitions of a number of terms used in Part XA.

Territorial scope of the prospectus provisions has been widened - section 90B

Proposed section 90B broadens the territorial scope of the provisions of the Act covering the offering of securities in Uganda. Those provisions are to apply to a security offered to a person in Uganda regardless of where any resulting allotment occurs and regardless of where the issuer is resident, incorporated or carries on business.

This provision is designed to cover "cold calling" into Uganda from outside the jurisdiction and internet offerings made from outside the jurisdiction which are targeted at persons in Uganda.

Proposed section 90B (2) is designed to exclude those securities offerings where the issuer takes all reasonable steps to ensure that a person in Uganda may not accept the offer. For example, an internet offer or an offer made in an international magazine or newspaper may be received by persons in Uganda, but if the offer makes it clear that it is not open for acceptance by any persons in Uganda (or alternatively not open for acceptance by any person outside certain named jurisdictions), then that offer would be excluded from the application of the Act.

Exemptions from the IPO provisions -section 90C

This section makes it clear that the new Part XA of the Act dealing with prospectuses is not to apply to offers of securities made by the Government of Uganda or the Bank of Uganda. There are separate Regulations dealing with offers of Government securities. It is not appropriate to bring those securities under the general prospectus provisions. The financial disclosure which is required of other issuers is not appropriate, nor practicably possible on the part of Government. Persons who take up Government securities do so on the basis of the Government guarantee, i.e. the Government standing behind any offer of securities and behind the truth of any statements made in the offering document.

Offerings of units and shares under the Collective Investment Schemes Act, 2003 are also excluded from new Part XA. Such offers are governed by their own legislation.

Authority may grant exemption from Part XA of the Act - section 90D

Under this section, a broad power to exempt from Part XA of the Act is conferred on the Authority. The exemption-granting power is, however circumscribed by section 90D (2) in that the Authority must bring any exemption under one of the paragraphs in this subsection.

Under 90D (3), any exemption must be published in the next available issue of *the Gazette* and in a newspaper circulating in Uganda. The reason for this requirement is that there is need for transparency in relation to the grant of any exemption from the provisions of the Act. It would be undesirable for the Authority to be able to exercise its power to grant an exemption in a private manner for the benefit of some individual without disclosure.

The Authority may impose conditions on any exemption and it will be an offence for any person to contravene or fail to comply with the conditions imposed by the Authority.

Meaning of "offer to the public" - section 90E

It is only in the case of securities which are "offered to the public" that the prospectus provisions of the Act will apply. This is also the case with the prospectus provisions in the Companies Act. The present Companies Act contains a limited definition of "offer to the public" in s.57. There is a substantial body of case law, in England, dealing with the meaning of "offer to the public" but the case law is not clear or consistent. It is, therefore, desirable to set out a clear and comprehensive definition in the Act itself. Proposed section 90E endeavours to provide this.

In paragraphs (a) to (c) of section 90E (2) an inclusive definition of "offer to the public" is provided. However, exceptions from the broad scope of that definition are clearly necessary and these are set out in section 90E (2).

Paragraph (a) of section 90E (2) is designed to exclude the case of a person who subscribes for a substantial parcel of securities. The policy behind that provision is that a substantial investor is taken to have the financial means to obtain independent advice or have sufficient influence to bear on the issuer to secure the provision of the information which the investor needs to know before making the investment decision. The figure which is suggested in this case is five hundred currency points in the case of any one investor.

Paragraphs (b), (c) and (d) of section 90E (2) are designed to exclude offers which are made to directors, executive officers, close relatives (as defined) and close business associates (as defined) of a director or executive officer and related companies of those persons. The policy behind this decision is that such persons are sufficiently close to the issuer to be able to obtain the information needed to make an investment decision.

Paragraph (e) of section 90E (2) excludes offers where no consideration is payable, e.g. offers of "free shares".

Paragraph (f) of section 90E (2) provides that an offer to enter into an underwriting agreement does not require the issue of a prospectus as the underwriter is in a position to secure the necessary information.

Paragraph (g) of section 90E (2) excludes persons defined as "professional investors" or "experienced investors". Both those definitions, which are set out in subsection (2), will need to be studied. The provisions are designed to exclude financial institutions and habitual investors who have the necessary experience and do not require the protection of the Act. Private placements to institutions and experienced investors would be excluded under this paragraph.

Paragraph (h) of section 90E (2) is designed to exclude the case of a takeover of a business or acquisition of a business by five or fewer persons, e.g. the acquisition of a business by a syndicate or partnership. In that case, the persons acquiring the shares can be expected to be acting in concert and to be in a bargaining position to extract the necessary information needed or to be able to conduct due diligence before making their purchase decision.

Section 90E (3) makes it clear, in accordance with earlier case law, (e.g. *Nash v Lynde* [1929] AC 158) that an offer needs to be made to only one member of the public for it to be an offer to the public. The policy behind this provision is that even a single person, if a member of the public, requires the protection of the Act.

Prior placements to be notified - section 90F

"Prior placement" is defined in section 90A. This section covers the circumstance where a promoter or organiser of securities invites professional investors or close business associates to subscribe for those securities or, in the case of a professional

investor, place them with selected clients. Whether or not a prospectus should be issued may often not be clear. This section requires the promoter or organiser to notify the Authority and provide the Authority with certain basic information. The Authority is to determine promptly whether a prospectus is required and if the offering can proceed as a private placement, give directions on the matters that are to be disclosed.

Prohibition on offering securities without a prospectus and contents of prospectuses - sections 90G and 90M

These sections are an adapted and expanded form of section 42 of the Companies Act.

Pathfinder documents - section 90H

It is becoming a common practice in some markets for an issuer to first issue a "pathfinder prospectus" to a selected group of professional investors (financial institutions) in order to test the market and assist in identifying a price for the later general offer of securities. This section provides statutory recognition of a practice of this kind by permitting a draft disclosure document or unregistered prospectus to be sent to professional investors within a period not exceeding fourteen days prior to the registration of the prospectus.

Material change after the date of approval of the prospectus - section 90I

This is an important provision which plugs a gap in the present legislation. If there is a material change in circumstances after the Authority has given approval to a prospectus, but before registration by the Registrar and before closing of the offer or, in the case of listed securities, admission to listing on the approved stock exchange, the issuer is required to promptly inform the Authority of that change and the Authority may then make

appropriate directions, including the revocation of its approval. The Authority could, in terms of subsection 90 I (2), require the prospectus to be amended and a fresh document to be submitted in its place.

Special provisions dealing with an invitation to the public to deposit or lend money - section 90J

One of the difficulties with the present Companies Act provisions is that they date back to 1961 and are therefore based on the earlier UK Companies Act of 1948 deriving from the Cohen Report of 1945. Substantial changes have taken place in the intervening period. One of these is the practice of appointing a trustee for debenture holders or other debt security holders. This section now requires the appointment of a trustee and the entry into of a trust deed in a case where a company or a "declared person" issues any invitation to deposit or lend money. A "declared person" is defined in subsection (3) as being:

"... any person or class of persons including a body corporate who the Authority shall by notice in the Gazette state to be a declared person for the purposes of this section."

This section also, for the protection of depositors, requires that depositors must be issued with a document which acknowledges or evidences the indebtedness of the company in respect of the deposit or loan; and where deposits or loans are not secured on the undertaking of the company or a declared person then the document must refer to those deposits by a description that includes the word "unsecured" and shall not refer to them as being debentures or use any description that includes the word "registered".

Securities advertisements deemed to be prospectuses - section 90K

“Advertisement” is defined in section 90K (2) to mean any form of communication made to any person in Uganda which contains or refers to an invitation or inducement to subscribe for or purchase any form of investment. Section 90K deems such an advertisement to be a prospectus, and therefore requires compliance with the prospectus requirements of the Act, unless the advertisement contains no information other than the particular matters which are prescribed in this section.

The purpose of the provision is to avoid the use of advertisements that provide peripheral material about an issuer, and endeavour to ramp up the attractiveness of an offer. Any contextual or surrounding material about an offer can only be stated in the prospectus itself.

Offer for sale - section 90L

This provision generally corresponds to section 47 of the Companies Act.

Form and content of prospectus - section 90M

This provision is an updated version of sections 38 to 42 of the Companies Act. The provisions include section 90M (5). This provides that if, after delivery of the prospectus for registration as approved by the Authority, but prior to registration, the expert referred to in subsection (1)(h) has withdrawn his or her consent, the person who submitted the prospectus to the Authority for approval, shall immediately notify the Authority and the Registrar.

Empowering making of regulations providing for a short form prospectus - section 90N

Where an offer relates to shares or debt securities which are intended to be in all respects uniform with shares or debt securities already issued, regulations may provide for the prospectus, in this case to be a Short Form Prospectus, which sets out such abbreviated matters by way of disclosure as may be prescribed in the Regulations. The present Companies Act section 42(5) excludes such offers from the prospectus requirements. That is not desirable.

Over-subscription in issue of debt securities - section 90O

This section is concerned with a company or declared person that issues a debt prospectus and accepts subscriptions for an amount greater than the figure stated in the prospectus. The company may not accept over-subscriptions unless the prospectus states that the company or declared person reserves the right to accept or retain over-subscriptions and a limit expressed as a sum of money is placed on the amount of over-subscriptions that may be accepted or retained. That amount may not exceed twenty five percent above the amount of the issue.

Section 90O (2) requires a relevant financial disclosure to be made where a company reserves the right to receive over-subscriptions.

The purpose of this provision is to provide for the circumstance where an issuer, in the case of a debt prospectus, wishes to receive over-subscriptions. The requirements of this section must be observed if over-subscriptions are to be accepted or retained.

Amendment of registered prospectus - section 90P

This section provides for the registration of a Memorandum of Amendments if for any reason it is necessary for the prospectus to be amended.

Power to suspend or cancel a prospectus - section 90Q

This is an important provision. It empowers the Registrar to suspend and then following an inquiry, to cancel a prospectus. A two-stage process is envisaged. Once the Authority becomes aware of any circumstances which leave it to question whether a prospectus may not be misleading, it may immediately direct the suspension of the prospectus. This situation may arise from the Authority having become aware subsequent to its giving its approval of additional facts or that facts disclosed to it have changed. The relevant parties then have an opportunity of making representations to the Authority on whether the prospectus should not be cancelled. A period of fourteen days is allowed for that purpose. If any further period is required, then application must be made to the Court for an extension of time. In the meantime, strict confidentiality is required to be observed on the part of the Authority and Registrar so that if the suspension is lifted, the offer will not be irreparably damaged.

While a prospectus is suspended, no allotment of securities may be made but the issuer may continue to receive subscriptions. Those subscriptions must be held in trust. If a prospectus is later cancelled, the subscriptions must be returned with interest to investors. If not repaid, the directors may be held personally liable.

Allotment by reference to stock exchange - section 90R

Generally, this section follows section 53 of the Companies Act.

Interpretation of provisions relating to advertisements and prospectuses - section 90S

This section follows section 48 of the Companies Act.

Civil liability for misstatements in prospectus - section 90T

This section follows section 45 of the Companies Act. It is a complex provision but the wording has not been materially changed as the section has been interpreted by the Courts on various occasions and it may, therefore, be preferable to retain the existing wording which is used in a number of English-based jurisdictions.

Offences in respect of untrue statements - section 90U

This is an expanded version of section 46 of the Companies Act. It includes statutory defences along the lines of more recent Companies Acts.

No diminution of liability under any other law - section 90V

This provision makes it clear that any civil or criminal liability under this Act in relation to prospectuses is not to detract from any other statutory or common law liability on the part of directors and others involved. For example, liability for negligent misstatement under *Hedley v. Byrne* and any criminal liability for fraud would not be affected.

Time limit as to allotment or acceptance - section 90W

This provision makes it clear that there is a time limit of six months on any prospectus after which the prospectus will become stale. It is an offence to circulate a stale prospectus.

No allotment unless minimum subscription received - section 90X

This section generally follows section 49 of the Companies Act. It deals with a quite different matter to that in section 91N (over-subscriptions in issue of debt securities). This section deals with the circumstance where a prospectus states a minimum amount required to be raised in order to provide for matters specified in Regulations. If a minimum amount is not received under the prospectus, then no allotment of securities may be made and any allotment will be void under section 91W.

No allotment or acceptance if application form not attached to prospectus - section 90Y

This is an important provision. It is designed to ensure that no subscriptions are received or securities allotted under a prospectus unless the prospectus has actually been brought to the subscriber's attention. The application form attached to the prospectus must be used for the purpose of the subscription.

Voidable allotment if certain sections contravened - section 90Z

This section brings together the various circumstances in which an allotment will be voidable and provides for a period of thirty days within which the applicant may seek to have the allotment set aside. If the allotment is declared void, the directors and officers concerned in the issue are personally liable to compensate the allottees. That provision is designed to cover the circumstance where the issuer makes use of or dissipates funds received under an issue before there is an opportunity to have the allotment set aside.

Waiting period - section 90AA

This section applies only to equity and debt prospectuses. Generally, it follows the policy of section 52 of the Companies Act but is more simply expressed. The previous and somewhat obscure subsection (3) of the existing section 52 has not been included.

Restriction of alteration of terms used in prospectus - section 90AB

This section repeats section 44 of the Companies Act.

Prohibition of issue of prospectus in respect of private companies - section 90AC

This provision prohibits a person from issuing a prospectus in respect of a private company and provides a penalty of a fine not exceeding ten million shillings or imprisonment not exceeding five years or both for a person who contravenes the section.

Continuous disclosure - section 90AD

This provision deals with the requirement for giving the Authority information to enable the Authority and the public to appraise the financial position of the issuer.

Regulations - section 90AE

This section empowers the making of regulations covering the matters dealt with in the new Part XA.

The requirements for a statement in lieu of prospectus are not repeated

The provisions of section 50 of the Companies Act requiring a statement in lieu of prospectus have not been included in the Bill. It is considered that neither of these requirements serves a useful purpose in the modern context and in many recent Companies Acts, these provisions have been omitted.

If a public company does not issue a prospectus, it will have very limited opportunity to attract public interest in its shares. If it does so, the issue could well be called an "offer for sale". If it lists the securities on the stock exchange then it will have to comply with the listing requirements and publish an Information Memorandum. In those circumstances, there appears to be little purpose served in requiring the company to issue a statement in lieu of prospectus.

SYDA BBUMBA,
Minister of Finance, Planning and Economic Development.

*Capital Markets Authority
(Amendment) Bill*

2010

Bill No. 19

THE CAPITAL MARKETS AUTHORITY (AMENDMENT) BILL, 2010

ARRANGEMENT OF CLAUSES

Clause

1. Commencement.
2. Amendment of Capital Markets Authority Act, Cap. 84.
3. Insertion of new Part XA in principal Act.
4. Amendment of principal Act to convert shillings into currency points.
5. Modification of references to shillings in statutory instruments under principal Act.
6. Section 103 of principal Act replaced.
7. Insertion of new Schedule 1 in principal Act.
8. Renumbering of existing Schedule to principal Act as Schedule 2.

A Bill for an Act

ENTITLED

**THE CAPITAL MARKETS AUTHORITY (AMENDMENT)
ACT, 2010**

An Act to amend the Capital Markets Authority Act to provide for the conversion of amounts in shillings into currency points and to provide for the offering of securities to the public and for connected purposes.

BE IT ENACTED by Parliament as follows:

1. Commencement.

This Act shall come into force on such date as the Minister may, by statutory instrument, appoint; and the Minister may appoint different dates for the coming into force of different provisions of this Act.

2. Amendment of Capital Markets Authority Act, Cap. 84.

The Capital Markets Authority Act, in this Act referred to as the principal Act is amended in section 1—

- (a) by inserting immediately after paragraph (m) the following—

“(ma) “currency point” has the value assigned to it in Schedule 1 to this Act”; and

- (b) in paragraph (ee) by substituting for “Schedule” the word “Schedule 2”.

3. Insertion of new Part XA in Cap. 84

The Capital Markets Authority Act is amended by inserting immediately after Part X the following—

“PART XA—OFFERING OF SECURITIES TO THE PUBLIC

90A. Interpretation

In this Part, unless the context otherwise requires—

“advertisement” means a form of communication made to a person in Uganda which contains or refers to an invitation or inducement to subscribe for or purchase a form of investment whether that investment constitutes particular securities which are or are to be offered for subscription or purchase or relates generally to investment in some form of securities but does not include—

- (a) a registered prospectus;
- (b) a statement or report made for the purposes of any meeting of shareholders or members of the issuer or the report of the proceedings of the issuer; or
- (c) a notification statement or report made by or on behalf of an issuer relating to the affairs of the issuer made to the Authority or a stock exchange for the purposes of compliance with section 90K or the Listing Rules or with a report of the notification statement or report;

“close relative” means—

- (a) a parent, child, including an adopted child, brother or sister of that person;

- (b) a parent, child, including an adopted child, brother or sister of a spouse of that person; or
- (c) a nominee or trustee of a person referred to in paragraph (a) or (b);

“close business associate” in relation to a person means a person who has had a close working relationship in business with that person during the preceding five years whether as business partner, co-director or co-trustee on a board of directors or trustees, or employee or employer in an executive capacity;

“closely held” with reference to a public company means a company the securities of which are held by persons referred to in section 90E (2) (b), (c) or (g) and not more than ten persons who are employees of the company or nominees for such persons;

“debt security” means a security that involves the right to be paid money that is owed by any person whether or not secured by a charge over a property and includes debentures, loan stock, bonds or notes issued by a body corporate or by a government;

“director” means—

- (a) in relation to a company, a person occupying the position of a director of the company by whatever name called;
- (b) in relation to a partnership, other than a limited partnership, a partner;
- (c) in relation to a limited partnership, a general partner;

- (d) in relation to a body corporate, other than a company or a partnership or a limited partnership, a person occupying a position in the body that is comparable with that of a director of a company; or
- (e) in relation to a unit trust, the manager of the unit trust and where the manager is a company, every director of that company;

“equity securities” means shares, including preference shares, convertible equity shares and options, warrants and similar instruments having the right to subscribe for or purchase equity shares attached;

“information memorandum” means the memorandum required by this Act or by regulations to be furnished by or on behalf of an issuer, the securities of which are accepted for listing on or are the subject of an introduction to a stock exchange licensed by the Authority;

“introduction” means an offer of securities to the public in respect of a security that is listed on an approved stock exchange of a country specified by the Authority in regulations made under this Act and in respect of which an application for listing in an approved stock exchange in Uganda has been made;

“issuer”, refers to a company or other body corporate or a government that makes an offering of securities;

“listed company” or “listed issuer” means respectively a company or other issuer—

- (a) which has entered into and is party to a listing undertaking with a stock exchange approved by the Authority under this Act or a stock exchange outside Uganda recognised and approved by the Authority in a country specified by the Authority in regulations made under this Act in relation to cross-border listings any class of whose securities are listed on that stock exchange; or
- (b) which was previously a party to a listing undertaking with a stock exchange referred to in paragraph (a) and any class of whose securities were listed on the stock exchange, in respect of an action or event to which this Act applied while the person was a party to a listing agreement with that stock exchange;

“prior placement” means the organising by the issuer or a promoter of the offering of securities for subscription by either directly, or through a dealer or other licensed person, inviting persons who are professional investors or close business associates of the issuer to subscribe for the securities or, in the case of professional investors, place the securities with selected clients;

“professional investor” means a person whose ordinary business or regular activity involves the buying and selling of securities, as principal, and includes an underwriter, a bank, and an insurance company, a funds manager, a dealer, dealer's representative, investment adviser or investment adviser's representative acting as principal, subject to any exception that may be prescribed by the Authority;

“promoter” means—

- (a) a person who is instrumental in the formulation of a plan or programme under which securities are offered to the public for subscription or purchase;

- (b) where a body corporate is a promoter includes every person who is a director of that body corporate;

but does not include a director or officer of the issuer of the securities or a person acting solely in a professional capacity; and “promotion” shall have a corresponding meaning;

“prospectus” means a prospectus, notice, circular, advertisement, or other invitation, offering to the public securities for subscription or purchase and includes—

- (a) a prospectus relating to an offer of debt securities to the public; or
- (b) a prospectus in respect of any other offer of securities to the public;

“publicly held” with respect to the holding of securities means the holding of securities of a company that have been the subject of an offer to the public but does not include—

- (a) the holding of securities in a private company; or
- (b) the holding of securities in a public company all the securities of which, by reason of takeover or other acquisition or for some other reason, have become closely held;

“substantial shareholder” means a shareholder entitled to exercise or control the exercise of fifteen percent or more of the voting power at general meetings of the company or one who is in a position to control the composition of a majority of the board of directors of a company or such lesser percentage as may be prescribed.

90B. Territorial Scope

(1) This Part applies to a security offered to a person in Uganda regardless of—

- (a) where a resulting allotment occurs; or
- (b) where the issuer is resident, incorporated or carries on business.

(2) For the purposes of this Part a security is offered to a person in Uganda if an offer of that security for subscription is received by a person in Uganda, unless the issuer took all reasonable steps to ensure that a person in Uganda may not accept the offer.

90C. Exemptions from this Part

(1) Nothing in this Part shall apply in respect of any security the issuer of which is—

- (a) the Government of Uganda; or
- (b) the Bank of Uganda.

(2) This Part shall not apply to an offer of units or shares in a licensed scheme under the Collective Investment Schemes Act 2003.

90D. Authority may grant exemption from this Part

(1) The Authority may, in its discretion, and upon terms and conditions it may think fit, exempt a person or class of persons or a transaction or class of transactions from compliance with any provision of this Part including regulations made under this Act which relate to this Part of the Act.

(2) The Authority shall not grant an exemption under subsection (1) unless it is satisfied that compliance with the requirements of this Part—

- (a) would, in the case of a prospectus, render the prospectus misleading in some particular or would provide a misleading impression material to the prospectus as a whole; or

- (b) is inappropriate to the circumstances in which the securities are being offered and the granting of the exemption will not prejudice persons investing under the prospectus; or

- (c) compliance with the requirement from which exemption is sought would place an unreasonable and excessive burden on the issuer or any officer of the issuer and any benefit that compliance would provide to persons investing in the securities would be minimal.

(3) The Authority shall ensure that an exemption granted by the Authority under this section is immediately published in the Gazette and a daily English newspaper of nationwide circulation.

(4) A person who is exempted by the Authority, subject to a condition, from compliance with a requirement of this Part or of regulations made under this Act which relate to this Part shall not contravene or fail to comply with the condition.

(5) Where a person has contravened or fails to comply with a condition to which an exemption under subsection (1) is subject, the Authority may cancel the exemption.

90E Meaning of “offer to the public”

(1) A reference in this Part to offering securities to the public shall be construed as including—

- (a) offering securities to a section of the public, however selected, whether selected as clients, employees, or a purchaser of goods from the offeror or a promoter of the securities, or being the holder of securities previously issued by the issuer or promoter of the securities;
- (b) offering the securities to individual members of the public selected at random; or

- (c) offering the securities to a person if the person became known to the offeror as a result of an advertisement made by or on behalf of the offeror or that was intended or likely to result in the public seeking further information or advice about an investment opportunity or services.

(2) None of the following offers shall constitute an offer to the public—

- (a) an offer of securities where the amount subscribed for the securities by each person to whom the securities are offered is not more than five hundred currency points or a prescribed amount;
- (b) an offer of securities which is restricted to persons who are directors or executive officers of the corporation making the offer or are close relatives or business partners or close business associates of such director or executive officer;
- (c) an offer of securities which is restricted to persons who are close business associates of persons who are directors or executive officers of the corporation making the offer;
- (d) an offer of securities which is restricted to persons referred to in paragraph (b) and to a body corporate in which an executive officer or a close relative or business partner or associate of the kind referred to in paragraph (c) have a controlling interest;
- (e) an offer of securities where no consideration is paid or provided in respect of the issue or allotment of the securities;
- (f) an offer to enter into an underwriting agreement;

- (g) an issue or allotment of securities to not more than one hundred persons who are professional investors or experienced investors where the securities are allotted as a result of an invitation or offer made personally to that person or those persons; or
- (h) an offer made to acquire all of the shares in a company which provides ownership of the whole of the assets and undertaking of a business enterprise or to acquire the whole of the undertaking and assets of a partnership or trust and which offer is capable of acceptance by and restricted to not more than ten persons and each person has reasonably available to him or her the financial and other information needed by that person to make a reasonably informed investment decision.

(3) Proof of an offer of securities to one person selected as a member of the public shall be *prima facie* evidence of an offer of securities to the public.

90F. Prior placements to be notified

(1) An issuer which intends to make a placement to subscribe for securities to persons referred to in subsection (2)(c) directly or through a dealer inviting persons to subscribe for securities or, in the case of professional investors, place the securities with selected clients, shall, before receiving any subscription under that invitation, or any commitment on the part of any person to subscribe for or take the securities, give notice in writing to the Authority of its intention to receive those subscriptions.

(2) The notice required to be given under subsection (1) shall provide the following information to the Authority—

- (a) a description of the securities to be offered;
- (b) particulars of the terms of sale;

- (c) particulars of all persons to be approached to subscribe for securities under the invitation; and
- (d) a description of the capital structure and a copy of the financial statements of the issuer covering the last financial year of the issuer.

(3) The Authority may, within three working days after receiving the notification, require the issuer to provide the Authority with further information material to the Authority's determination.

(4) The Authority shall promptly determine whether the invitation as notified to it constitutes an offer to the public and requires a prospectus to be issued and if it is determined that the proposed offer may proceed as a private placement that does not require the issue of a prospectus, the Authority may give directions to the issuer on the matters that are to be disclosed to the proposed investors under the placement.

90G. Prohibition on offering securities without a prospectus

(1) A person shall not offer securities to the public for subscription and shall not issue or circulate a form of application for securities unless—

- (a) the form of application is accompanied by a prospectus whose date of publication is a date within six months immediately preceding the date on which the form was issued, circulated or distributed;
- (b) the prospectus complies with the requirements of this section; and
- (c) a copy of the prospectus and particulars of the issue, circulation or distribution have been registered with the Registrar of Companies.

(2) The Registrar of Companies shall not register a prospectus unless—

- (a) the prospectus has been approved by the Authority and the Authority has stated in writing that it has approved the prospectus;
- (b) the prospectus complies with the requirements of this Act and regulations made under this Act;
- (c) the prospectus states at its head the following—

“A copy of this prospectus has been delivered to the Registrar of Companies for registration. Neither the Registrar nor the Authority has checked or will check the accuracy of any statements made in the prospectus and accept no responsibility for it or for the financial soundness of the company or the value of the securities concerned”;

- (d) there is also filed with the Registrar of Companies a copy of—
 - (i) every consent required by section 90M (1) (h) to the issue of the prospectus;
 - (ii) every material contract referred to in the prospectus or, in the case of a contract not reduced into writing, a declaration giving full particulars of the contract; and
- (e) where a prospectus relates to securities dealt in on an approved stock exchange or states that the application has been or will be made to an approved stock exchange for permission to deal in the securities to which it relates, the prospectus shall be accompanied by a certificate from the approved stock exchange that the prospectus has been scrutinised by the stock exchange, and that the exchange's requirements relating to its contents have been satisfied.

(3) Every issuer of securities shall—

(a) cause a copy of every document referred to in subsection (2)(c) to be deposited, not later than three days after the prospectus is registered, at its registered office where it is required to have one or at its principal place of business; and

(b) keep every copy, for at least six months after the registration of the prospectus, for the inspection by investors, members and creditors.

(4) The Registrar of Companies shall keep and maintain a register of prospectuses on which all prospectuses registered under this section shall be entered.

(5) The Registrar of Companies shall upon registering a prospectus of a company send a copy of the prospectus to the Authority.

(6) This section applies so far as companies are concerned in addition and supplementary to the provisions relating to registration of a prospectus under the Companies Act.

90H. Actions to which section 90G does not apply

A person does not contravene section 90G by sending a draft disclosure document or unregistered prospectus for securities to a person who is a professional investor within a period not exceeding fourteen days prior to the registration of a prospectus offering the securities for subscription.

90I. Material change

(1) Where after the Authority has given approval to the prospectus, but before registration by the Registrar of Companies, or after the registration but before in the case of listed securities, the admission to listing on an approved stock exchange, or in any other case before the closure of the offering

period, a material change occurs in the business of the issuer, or in any other matter which would have the effect of rendering the prospectus or a statement required to be contained in the prospectus or any other matter concerning the issue to the public generally, untrue, incomplete, misleading or non-compliant with any law applicable or any listing rules to the issuer, the issuer shall promptly inform the Authority of the occurrence of the change and the Authority shall give directions as it considers appropriate in the circumstances including the revocation of the approval granted.

(2) Where in the circumstances set out in subsection (1) or in any other circumstances where the Authority considers that the prospectus, before or after registration and before the closing of the offer period or in the case of listed securities before admission of the securities to listing, contains any untrue, incomplete or misleading statement or does not comply with the law or any listing rules applicable to the issuer, the Authority may require the prospectus to be amended or completed or may require that a fresh document be submitted.

90J. Invitations to deposit or lend money

(1) Subject to subsection (3), a company or declared person shall not issue, circulate or distribute an invitation to deposit money with or lend money to a person unless—

(a) a copy of the prospectus relating to the invitation has been registered under section 90G;

(b) the prospectus contains an undertaking by the company or declared person or proposed company that it will, within two months after the acceptance of any money as a deposit or loan from any person in response to the invitation, issue to that person a document which acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the company or declared person in respect of that deposit or loan; and

(c) where the deposits or loans are not to be secured by a charge or charges on the undertaking of the company or declared person or on any of the company or declared person's assets, any statement in the invitation or advertisement relating to documents to be issued evidencing the deposits or loans shall refer to those documents as unsecured deposit notes or unsecured notes, or by some other description that includes the word "unsecured", and shall not—

- (i) refer to the documents as debentures; or
- (ii) refer to them by any description that includes the word "registered";

(d) in the case of a company a trust deed is entered into with a trustee for debenture holders with such person as trustee and on such terms as shall be approved by the Authority or is provided for by Regulations under this Act; and

(e) in the case of a declared person a trust deed is entered into providing for the appointment of a trustee for security holders with such person as trustee and on such terms as shall be approved by the Authority or is provided for by Regulations under this Act.

(2) Where a company or declared person has accepted any money as a deposit or loan under subsection (1), it shall, within seven days after the acceptance of the money, issue to that person a document which—

- (a) acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the company in respect of that deposit or loan; and
- (b) complies with the other requirements of this section.

(3) In this section, and in section 90O, a "declared person" is a person or class of persons including a body corporate whom the Authority shall by notice in the *Gazette* state to be a declared person for the purposes of this section.

90K. Securities advertisements taken to be prospectus

(1) Where a prospectus is required for an offer of securities, a person shall not—

- (a) advertise the offer to intended offerees; or
- (b) publish a statement that directly or indirectly refers to the offer or intended offer or calls attention to the offer or intended offer or is reasonably likely to induce persons to subscribe for or to purchase securities,

unless the advertisement or statement is authorised by this section.

(2) An advertisement or statement is authorised by this section if it contains no information other than the following—

- (a) the number and description of the securities concerned;
- (b) the name and date of registration of the issuer and in the case of a company the amount of its issued capital;
- (c) a concise statement of the general nature of the main business or proposed main business of the issuer;
- (d) the names, addresses and description of—
 - (i) the directors or proposed directors or members or proposed members of the board of management of the issuer;
 - (ii) the dealers or underwriters to the issue if any; and
 - (iii) in the case of debentures, the trustee for debenture holders;

- (e) the name of the stock exchange if any of which the brokers or underwriters to the issue are members;
- (f) particulars of the opening and closing dates of the offer and the time and place at which copies of the prospectus and forms of application for the securities may be obtained;
- (g) statements with respect to the sale price of securities, or their yield or other benefits received or likely to be received by holders of securities, in relation to an approved investment institution;
- (h) a statement that a prospectus is available or will be made available when the offer is made and the time and place where a prospectus is or will be available;
- (i) a statement of how to arrange to receive a copy of the prospectus; and
- (j) a statement that persons interested in subscribing may consult with a licensed investment adviser or licensed dealer.

(3) The advertisement or statement shall contain a statement that applications for securities will proceed only on one of the forms of application referred to in and attached to a printed copy of the prospectus.

(4) A security advertisement in accordance with this section shall be taken to be prospectus.

(5) A person who contravenes this section and in the case of a corporation every officer who knowingly permits the issue of the advertisement or statement commits an offence, and is liable on conviction, to a fine not exceeding two hundred currency points or imprisonment not exceeding two years or both.

(6) The Authority may exempt a person from this section, subject to conditions and restrictions determined by the Authority.

90L. Document offering for sale deemed to be prospectus

(1) Where a company allots or agrees to allot securities to any person with a view to their being offered for sale to the public, a document by which the offer for sale is made shall be taken to be a prospectus.

(2) For the purposes of this section, an allotment of, or an agreement to allot, a share or debenture shall, unless the contrary is proved, be taken to have been made with a view to the securities being offered for sale to the public if it is shown that—

- (a) an offer of the securities for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) at the date when the offer was made the whole consideration to be received by the company in respect of the securities had not been received.

90M. Form and content of prospectus

(1) Every prospectus shall—

- (a) be printed in a font type of a size approved by the Authority;
- (b) be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;
- (c) subject to subsection (4), be signed by every director or person named in the prospectus as a proposed director of the issuer, or by his agent authorised in writing;

- (d) state, the matters specified in section 90G and in Regulations under this Act which provide for the content of prospectuses and set out the reports specified in the Regulations and under rules issued by the Authority relating to prospectuses;
- (e) in the case of an offer of a prescribed interest other than an offer coming under paragraph (d) state the matters specified in regulations made under this Act and under rules issued by the Authority relating to prospectuses issued by an issuer of a prescribed interest;
- (f) where the person making a report required to be included in the prospectus has made in the report, or has without giving any reason indicated in it, an adjustment to the report, has endorsed on it or attached to it a statement by that person setting out the adjustment and giving the reason for the stated adjustment;
- (g) contain a statement that no securities shall be allotted on the basis of the prospectus later than six months after its date of issue;
- (h) where it contains a statement made or purporting to have been made by an expert or contains what purports to be a copy of or extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus and contains a copy of that person's consent which shall have previously been lodged with the Authority and contains—

- (i) a statement that the expert has given and has not, before delivery of the prospectus for registration, withdrawn his or her written consent to the issue of the prospectus with the statement included in the form and context in which it is included; and
 - (ii) a statement that he or she has given and not withdrawn his or her consent as appears in the prospectus;
- (i) not contain the name of a person as a debenture holder's representative or trustee or as an auditor or a banker or a lawyer or share broker of the company or proposed company or for or in relation to the issue or proposed issue of securities, unless that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus and a copy of the consent has been lodged with the Registrar of Companies; and
 - (j) subject to subsection (2) where the prospectus offers shares in or debentures or other securities of a foreign corporation incorporated or to be incorporated, contains particulars with respect to—
 - (i) the instrument constituting the corporation;
 - (ii) the enactment or provisions having the force of an enactment by or under which the incorporation of the corporation was effected or is to be effected;
 - (iii) an address in Uganda where the instrument, enactments or provisions or certified copies may be inspected;
 - (iv) the date on which and the place where the company was or is to be incorporated; and

(v) whether the corporation has established a place of business in Uganda and, if so the address of its principal office in Uganda.

(2) Subsection (1)(j)(i), (ii) and (iii) shall not apply in the case of a prospectus issued more than two years after the day on which the corporation was entitled to commence business.

(3) A document referred to in section 90L shall, in addition state—

(a) the net amount of the consideration received or to be received by the company in respect of shares or debentures to which the offer relates; and

(b) the place and time at which a copy of the contract under which the shares or debentures have been or are to be allotted may be inspected.

(4) Where an offer to which section 90L relates is made, it shall be sufficient if the document referred to in that section is signed on behalf of the issuer by two directors or their authorised agent in writing.

(5) Where after delivery of the prospectus approved by the Authority to the Registrar of Companies for registration but prior to registration the expert referred to in subsection 90M(1)(h) has withdrawn his or her consent, the person who has submitted the prospectus to the Authority for approval shall immediately notify the Authority and the Registrar of Companies.

(6) A condition requiring or binding an applicant for securities to waive compliance with a requirement of this section, or purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

(7) Where a prospectus does not comply with the requirements of this Act or regulations made under this Act, a director or other person shall not incur any liability in respect of the failure to comply if he or she proves that he or she had no knowledge of the matter and that he or she exercised due diligence to ensure that the failure to comply did not occur.

90N. Offer of shares uniform with existing shares

Where the intended offer relates to shares or debt securities of a company which are or are intended to be in all respects uniform with shares or debt securities as the case may be previously issued and the offer is made only to existing shareholders or holders of debt securities of a company with or without the right to renounce in favour of other persons, and a copy of the most recent financial statements of the company have been sent to those shareholders or debt security holders, regulations made under this Act may provide for the prospectus to be a Short Form Prospectus which sets out abbreviated matters by way of disclosure as may be prescribed in the regulations.

90O. Over-subscription in issue of debt securities

(1) A company or declared person shall not accept or retain subscriptions to an issue of debt securities issued in excess of the amount of the issue disclosed in the prospectus unless the prospectus specifies—

(a) that the company or declared person as the case may be expressly reserves the right to accept or retain over subscriptions; and

(b) a limit expressed as a specific sum of money on the amount of over subscriptions that may be accepted or retained, being an amount not exceeding twenty five percent above the amount of the issue as disclosed in the prospectus.

(2) Where a company or declared person specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions—

- (a) the company or declared person shall not make, authorise or permit any statement of, or reference to, the asset backing for the issue to be made or contained in a prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the company or declared person and of its guarantor companies; and
- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the company or declared person would be if over-subscriptions to the limit specified in the prospectus were accepted or retained^d

90P. Amendment of registered prospectus

(1) A registered prospectus may be amended by a memorandum setting out the amendments which is delivered to the Registrar of Companies for registration together with a copy of the prospectus as amended.

(2) The memorandum shall not be registered by the Registrar of Companies until it has been approved by the Authority.

(3) The memorandum shall be signed by the issuer and by every person who is a director of the issuer at the time the memorandum is delivered to the Registrar of Companies or by his or her agent authorised in writing.

(4) Where the issuer is unable to obtain the signatures of all directors the matter shall be referred by the issuer to the Authority for it to determine whether the memorandum can be registered.

(5) The amended prospectus shall bear the same date as the prospectus originally registered.

90Q. Power to suspend or cancel a prospectus

(1) Where at any time subsequent to the registration of a prospectus, the Authority from information available to it is satisfied that a registered prospectus is false or misleading in a material particular or omits any material particular whether or not it was false or misleading, or the omission was material, at the time the prospectus was registered, or does not comply with this Act or regulations made under this Act or in the case of a listed issuer with the listing rules, the Authority may, in consultation with any relevant stock exchange, notwithstanding its earlier approval of the prospectus, exercise either or both of the following powers in respect of the registered prospectus—

- (a) where it considers that suspension of the approval of the registered prospectus is necessary, the Authority may suspend the approval of the registered prospectus for a period not exceeding fourteen days; or
- (b) after giving the issuer named in the registered prospectus not less than seven days' written notice, and after considering any written submissions made by the issuer, the Authority may cancel the approval of the registered prospectus.

(2) Where the Authority suspends the approval of a registered prospectus under this section—

- (a) it shall immediately notify the issuer named in it, the relevant stock exchange and, in the case of a company, the Registrar of Companies of the suspension and the reasons for the suspension; and

- (b) the Authority, the relevant stock exchange and the Registrar of Companies shall not, nor any of its or his or her officers or employees, except following cancellation of the registered prospectus under this section or in the course of criminal proceedings, divulge or communicate to any other person the fact of the suspension or any matter relating to the suspension.
- (3) Subject to subsection (4), where the approval of a registered prospectus is suspended—
- (a) an allotment shall not be made of any securities subscribed for whether before or after the suspension of the approval of the registered prospectus; and
- (b) all subscriptions received for securities, not being subscriptions for securities which have been allotted before the approval of the registered prospectus is suspended, shall be frozen and shall not be dealt with.
- (4) Where the period of suspension of approval of a registered prospectus has not been cancelled under this section, subsection (3) shall cease to apply.
- (5) Where the Authority cancels the approval of a registered prospectus under this section—
- (a) it shall immediately notify the issuer named in it, the relevant stock exchange and the Registrar of Companies of the cancellation and the reasons for the cancellation; and
- (b) it may notify any other person of the cancellation and reasons for the cancellation.
- (6) Where the approval of a registered prospectus is cancelled—

- (a) allotment shall not be made of any securities subscribed for whether before or after the cancellation of the approval of the registered prospectus; and
- (b) all subscriptions received for the securities including subscriptions held under subsection (3)(b) shall immediately be repaid to the subscribers entitled to them.
- (7) Subject to subsection (8), where any subscriptions which are required to be repaid to the subscribers entitled to them are not repaid within one month after the date of the cancellation of the approval of the registered prospectus, the issuer named in it and all the directors shall be jointly and severally liable to repay the subscriptions with simple interest at a sum that is prescribed by regulations made under this Act, from the date the subscriptions were received by or on behalf of the issuer.
- (8) A director of an issuer shall not be liable to repay any subscriptions and interest under subsection (7) where that director proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his or her part.

90R. Allotment by reference to stock exchange

- (1) Where a prospectus states or implies that an application has been or will be made for permission for the securities offered in the prospectus to be listed for quotation on the official list or any other list of an approved stock exchange or of a stock exchange outside Uganda, an allotment on an application made in response to the prospectus is, subject to subsection (3), whenever made, void if the permission is not—
- (a) applied for in the form required by the stock exchange before the third day on which the stock exchange is open after the date of issue of the prospectus; or

(b) granted before the expiry of forty two days from the date of issue of the prospectus or such longer period not exceeding three months from the date of issue as is, within that period of forty two days, notified to the applicant by or on behalf of the stock exchange.

(2) Where the permission has not been applied for, or has not been granted, the issuer shall, subject to subsection (4), immediately repay without interest any money received from any applicant in response to the prospectus, and if the money is not repaid within fourteen days after the issuer becomes liable to repay it, the directors are, in addition to the liability of the issuer, but subject to subsection (3) jointly and severally liable to repay the money with interest at the ruling bank rate from the expiration of that period of fourteen days.

(3) A director shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(4) Where, in relation to any securities, the permission is not applied for or granted, the Authority may, on application made by the issuer before any security is purported to be allotted, by public notice, provide that subsections (1) and (2) shall not apply to the allotment of the securities.

(5) Where a stock exchange has, within the time specified in subsection (1) (b), granted permission subject to any condition, permission will be deemed to have been granted by the stock exchange if the directors have given to the stock exchange an undertaking in writing to comply with the condition.

(6) Where a prospectus contains a statement to the effect that the articles of association or constitution or trust deed of an issuer complied or has been drawn up so as to comply with a condition imposed by a stock exchange, the prospectus shall,

unless the contrary intention appears, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the securities offered by the prospectus to be listed for quotation on the official list of a stock exchange.

(7) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or purporting to do so shall be void.

(8) The issuer shall, for so long as it may become liable to repay money under subsection (2), keep in a separate bank account all money received in relation to a prospectus.

(9) A person shall not issue a prospectus which includes—

(a) an untrue statement that permission has been granted for securities to be dealt in or quoted on a stock exchange; or

(b) a statement in any way referring to—

(i) any such permission;

(ii) any application or intended application for any such permission;

(iii) dealing in or quoting the securities on a stock exchange; or

(iv) a condition imposed by a stock exchange, unless that statement is or is to the effect that permission has been granted or that an application has been or will be made to the stock exchange within three days after the issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

(10) This section shall have effect—

(a) in relation to shares or debt securities agreed to be taken by a person underwriting an offer contained in a prospectus, as if he or she had applied for them in response to the prospectus; and

(b) in relation to a prospectus offering shares for sale as if—

(i) a reference to sale were substituted for a reference to allotment; and

(ii) the persons by whom the offer is made, and not the company, were liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection were construed accordingly.

(11) The reference to any “stock exchange outside Uganda” in this section refers to a stock exchange outside Uganda which has been approved by the Authority for the purpose of offering securities in Uganda.

90S. Interpretation of provisions relating to advertisements and prospectuses

(1) A statement included in an advertisement or prospectus is taken to be untrue if—

(a) it is misleading in the form and context in which it is included; or

(b) it is misleading by reason of the omission of a particular which is material to the statement in the form and context in which it is included.

(2) A statement about a future matter, including the doing of, or refusing to do an act, is misleading if the person making the statement does not have reasonable grounds for making the statement.

90T. Civil liability for misstatement in prospectus

(1) Subject to this section, every person who—

(a) is a director at the time of the issue of a prospectus;

(b) authorises or causes himself or herself to be named and is named in a prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) is a promoter; or

(d) authorises or causes the issue of a prospectus;

is liable to pay compensation to a person who subscribes for or purchases securities on the faith of a prospectus for any loss or damage sustained by reason of—

(i) an untrue statement in the prospectus; or

(ii) the willful non-disclosure in the prospectus of a matter of which he or she had knowledge and which he or she knew to be material.

(2) A person shall not be liable under subsection (1) (d) as a person authorising or causing the issue of a prospectus by reason only that—

(a) in a case where the consent of an expert is required to the issue of a prospectus, he or she has given that consent, except in respect of an untrue statement in the prospectus purporting to be made by him as an expert; or

- (b) his or her name is included in a prospectus as a trustee for debenture holders, trustee, auditor, banker, barrister, attorney at law or share broker, or as a person performing some other professional or advisory function only.
- (3) Subject to subsection (4) a person shall not be liable under subsection (1) if he or she proves that—
- (a) having consented to become a director, he or she withdrew his or her consent before the issue of the prospectus, and it was issued without his or her authority or consent;
- (b) the prospectus was issued without his or her knowledge or consent and he or she gave reasonable notice to the public of the fact as soon as possible after he or she became aware of its issue;
- (c) after the issue of the prospectus and before any allotment or sale under it he or she withdrew his or her consent and gave reasonable notice to the public of the withdrawal as soon as possible after he or she became aware of any untrue statement in the prospectus;
- (d) in relation to an untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he or she had reasonable ground to believe, and did up to the time of the allotment or sale of the securities believe, that the statement was true;
- (e) in relation to an untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert contained in what purports to be a copy of or extract from a report, memorandum or valuation of an expert, it fairly represented the statement,

or was a correct and fair copy of or extract from the report, memorandum or valuation, and he or she had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that that person had given the consent required by section 90M(1)(h) to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for lodging, or, to that person's knowledge, before any allotment or sale under the prospectus; and

- (f) in relation to a statement purporting to be a statement made by a public officer contained in what purports to be a copy of or extract from a public document, it was a correct and fair representation of the statement or copy of or extract from the document.

(4) Subsection (3) shall not apply in the case of a person who is liable under subsection (i)(d), by reason of his or her having given a consent required of him or her by section 90M(1)(h), in respect of an untrue statement purporting to have been made by him or her as an expert.

(5) A person who apart from this subsection would be liable under subsection (i)(d) by reason of his or her having given a consent required of him or her by section 90M(1)(h), in respect of an untrue statement purporting to be made by him or her as an expert shall not be liable if he or she proves that—

- (a) having given his or her consent under section 90M (1) (h), to the issue of the prospectus, he or she withdrew it in writing before a copy of the prospectus was registered by the Authority;

- (b) after a copy of the prospectus was registered by the Registrar of Companies and before allotment or sale of securities, he or she withdrew his or her consent and gave reasonable notice to the public of the withdrawal as soon as possible after he or she became aware of the untrue statement; or
- (c) he or she was competent to make the statement and had reasonable ground to believe and did up to the time of the allotment or sale of shares or debentures believe that the statement was true.
- (6) Where—
- (a) a prospectus contains the name of a person as a director, or as having agreed to become a director, and he or she has not consented to become a director, or has withdrawn his or her consent before the issue of the prospectus, and has not authorised or consented to its issue; or
- (b) the consent of a person is required under section 90M(1)(h) to the issue of the prospectus and he or she either has not given that consent or has withdrawn it before the issue of the prospectus,

every director of the company other than a director without whose knowledge or consent the prospectus was issued, and every other person who authorised or caused its issue shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him or her as an expert, or in defending himself or herself against any action or legal proceeding brought against him or her in respect of it.

90U. Offences in respect of untrue statements in prospectus

- (1) Where a prospectus contains a statement which is untrue, every person referred to in section 90U(1), subject to subsections (3) and (4), commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.
- (2) Where there is published with or as part of a prospectus a report of an expert or an extract from that report and the report or extract contains a statement which is untrue, the expert if, he or she has given his or her consent to the inclusion of that statement in the prospectus in the form and context in which it appears, and subject to subsections (3) and (4), commits an offence, and is liable on conviction to a fine not exceeding three hundred currency points or imprisonment not exceeding three years or both.
- (3) In a prosecution under this section it shall be a defence if it is proved that the untrue statement was immaterial or—
- (a) with respect to every such untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that the person charged had, after reasonable investigation, reasonable ground to believe and did up to the time of the allotment of the securities or acceptance of the offer as the case may be believe that the statement was true, and that there was no omission to state any material fact necessary to make the statement as set out not misleading; and
- (b) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that the person charged had reasonable ground to believe and did believe that the person making the report or valuation was competent to make it; and

(c) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document.

(4) In a prosecution under this section, it is a defence if a person proves that—

- (a) having consented to become a director of the issuer he or she withdrew his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent; or
- (b) the prospectus was issued without his or her knowledge or consent, and that on becoming aware of its issue he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or
- (c) after the issue of the prospectus and before allotment or acceptance of any securities under it, he or she, on becoming aware of the untrue statement in the prospectus, withdrew his or her consent to the prospectus and gave reasonable public notice of the withdrawal, and of his or her reason for withdrawing his or her consent.

90V. No diminution of liability under any other law

Nothing in this Part shall limit or diminish liability which a person may incur under this Act apart from this Part, or under any other law.

90W. Time limit as to allotment or acceptance

(1) An issuer shall not allot securities offered to the public for subscription and an offeror shall not accept an offer to purchase shares or debentures offered for sale to the public under section 90L unless the application in question is received by the company or the offeror, as the case may be, before the expiration of six months after the date of registration of the prospectus.

(2) A director or officer of a company or offeror of, if the offeror is a company, a director or officer of that company who knowingly contravenes or permits the contravention of subsection (1) with respect to allotment or acceptance of an offer, commits an offence, and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

90X. No allotment unless minimum subscription received

(1) Securities shall not be allotted on an application made in response to a prospectus for subscription unless the amount stated in that prospectus as the minimum amount which in the opinion of the directors of the issuer concerned must be raised by the issue in order to provide for the matters specified in that respect in regulations under this Act providing for the content of prospectuses has been subscribed and the amount stated has been paid to and received by the issuer.

(2) For the purposes of subsection (1)—

- (a) an amount stated in a cheque received by the issuer shall not be taken to have been paid to and received by it until the amount of the cheque has been unconditionally credited to its account with its banker; and
- (b) an amount paid to and received by the issuer shall be reduced by the amount of the money, bill, promissory note or cheque which it has at any time delivered to the payer otherwise than in discharge of a debt bona fide due to him by the issuer.

(3) The amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as “the minimum subscription”.

(4) The amount paid on application shall be set apart by the directors as a separate fund in a separate account with a banking institution registered under the Financial Institutions Act 2004, and shall not be available for the purposes of the issuer or for the satisfaction of its debts until the minimum subscription has been made up.

(5) If the requirements prescribed in subsection (1) have not been complied with on the expiration of sixty days after the issue of the prospectus, moneys received from applicants for securities shall immediately be repaid to them without interest, and, if the money is not repaid within eighty days after the issue of the prospectus, the directors and officers of the issuer shall be jointly and severally liable to repay that money with interest at the ruling bank rate reckoned from the expiration of the period of eighty days.

(6) Any director or officer of the issuer who knowingly contravenes or permits the contravention of any provision of this section, in addition to other liability incurred under subsection (5), commits an offence, and is liable on conviction to a fine not exceeding three hundred currency points or imprisonment not exceeding three years or both.

(7) It is a defence to any claim under subsection (5), or any charge under subsection (6), to prove that the default which is the subject of the claim or charge, was not due to any misconduct or negligence on the part of the defendant or the accused.

90Y. No allotment or acceptance if application form not attached to prospectus

(1) An issuer shall not allot any securities if the securities have been offered for subscription, or an invitation to subscribe for the securities has been issued and an offeror shall accept an offer to purchase shares offered for sale to the public under section 90L unless the subscription or offer has been made on an

application form which has been attached to or accompanied by a prospectus as required by section 90F or unless it is shown that the applicant, at the time of his or her application, was in possession of a copy of the prospectus or was aware of its contents.

(2) A director or officer of an offeror who knowingly contravenes or permits the contravention of subsection (1), commits an offence and is liable on conviction to a fine not exceeding three hundred currency points or imprisonment for a term not exceeding three years or both.

90Z. Voidable allotment where section 90W, 90X or 90Y contravened

(1) An allotment made by an issuer to an applicant, or the acceptance of an offer made by an applicant, in contravention of section 90W, 90X or 90Y shall be voidable at the instance of the applicant concerned within thirty days after the date of allotment or acceptance, and not later.

(2) Subsection (1) applies notwithstanding that the issuer concerned may be in the course of being wound up.

(3) Where an allotment or an acceptance is declared void under subsection (1), every director and every officer of the issuer concerned or the offeror, is liable to compensate the issuer concerned and the applicant for any loss, damages or costs which the issuer or the applicant may have sustained or incurred owing to the allotment or acceptance.

(4) Proceedings to recover a loss, damages or costs under this section shall not be commenced after the expiration of two years from the date of the relevant allotment or acceptance.

90AA. Waiting period

(1) This section applies to equity and debt prospectuses.

(2) In this section, “waiting period” means, subject to subsection (2), seven days after the first publication of a prospectus which has been lodged or a longer period stated in the prospectus as the period before the expiration of which applications, offers or acceptances in response to the prospectus will not be accepted or treated as binding.

(3) Where the securities to which the invitation relates are dealt in on a stock exchange or where the prospectus states that application has been or will be made for permission to deal in the securities on a stock exchange, and it is necessary to advertise the prospectus in one or more newspapers to comply with the requirements of that stock exchange, the publication of the prospectus shall not be taken to have occurred until the prospectus is advertised.

(4) A binding contract or legally enforceable obligation, other than a bona fide underwriting agreement in respect of any shares or debentures to which this section applies, shall not be entered into in response to an invitation to the public in respect of shares or debentures of a public company until after the expiration of the waiting period, and an application, offer or acceptance by a person in response to the invitation shall be recoverable by that person at any time before the expiration of the waiting period.

90AB. Restriction or alteration of terms mentioned in the prospectus

(1) A company limited by shares or a company limited by guarantee and having a share capital shall not prior to the statutory meeting vary the terms of a contract referred to in the prospectus, except on the condition that it is subject to the approval of the statutory meeting.

(2) This section does not apply to a private company but applies to a company that was a private company before becoming a public company.

90AC. Prohibition of issue of prospectus in respect of private companies

(1) A person shall not issue a prospectus relating to a private company.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.

90AD. Continuous disclosure

(1) Subject in the case of a listed issuer to subsection (10), every issuer of securities that are the subject of a public offer or which are publicly held, in the case of a non listed issuer, shall keep the Authority and in the case of a listed issuer, the stock exchange, informed promptly of any information relating to the issuer and its subsidiaries if any, that—

- (a) is necessary to enable them and the public to appraise the financial position of the issuer and of its subsidiaries;
- (b) might reasonably be expected materially to affect market activity in securities of or otherwise affect its subsidiaries; or
- (c) might reasonably be expected materially to affect market activity in the price of its securities.

(2) An issuer of securities that are not listed on a stock exchange, shall issue promptly press releases informing the public of the matters referred to in subsection (1)(a), (b) and (c).

(3) Notification of the information is not required, where—

- (a) it would be a breach of the law to disclose the information;
- (b) the information concerns an incomplete proposal or

negotiations;

- (c) the information comprises matters of supposition or is insufficiently definite such that it would be misleading to the market for it to be disclosed;
- (d) the information is generated solely for the purposes of the internal management of the issuer and its advisers; or
- (e) the information is a trade secret.

(4) The Authority may, in the case of a listed issuer, require the issuer by notice to provide the Authority immediately with a copy of the information notified to the stock exchange.

(5) In addition to the requirements of subsection (1), every issuer shall—

- (a) keep records which shall not be available for inspection by the public or disclosure to any person other than the Authority, of all persons who hold securities of the issuer as nominees or in trust on behalf of other persons;
- (b) comply with further obligations and requirements as may be prescribed by regulations made under this Act.

(6) The Authority may require the issuer to furnish to it the information referred to in subsection (5)(a) and for that purpose the issuer may by notice to the holder of the securities require the holder within seven days to state whether the securities are held as nominee or on trust and if so provide the issuer with the name and address of the beneficial owner of the securities.

(7) For the avoidance of doubt, this section applies to the issuer of securities publicly held prior to the coming into

operation of this Act.

(8) An issuer of securities that fails or neglects to comply with this section commits an offence and is liable on conviction to a fine not exceeding four million shillings or imprisonment not exceeding two years or both.

(9) Where a holder of securities fails to provide the issuer with the information required to be provided in response to a notice given under subsection (6) the issuer may seek the assistance of the Authority in obtaining that information.

(10) The requirement to disclose under subsection (1) shall not derogate from any continuous disclosure requirements in the case of listed issuers which are prescribed in listing or other rules of the relevant stock exchange.

(11) It shall be sufficient compliance with the requirements of subsection (1) in the case of a listed issuer, if disclosure in relation to the matters referred to in subsection (1) is made to the stock exchange on which the securities are listed in accordance with the listing rules of the exchange.

90AE. Regulations in relation to Part XA

Without prejudice to the general effect of section 102, the Authority may make regulations for the purposes of this Part that provide for—

- (a) matters that are to be stated in a prospectus;
- (b) matters that are to be stated in a short-form prospectus;
- (c) requirements or obligations placed on issuers with respect to providing continuous disclosure under section 90AA;
- (d) requirements or obligations in relation to the approval and making of an introduction of securities for offer

in Uganda;

- (e) requirements and obligations relating to the listing of securities including the form and contents of any information memorandum to be furnished by or on behalf of an issuer whose securities are accepted for listing;
- (f) requirements or obligations placed on substantial shareholders in relation to disclosure of the acquisition or disposal of a substantial shareholding in an issuer; and
- (g) other matters relevant to the offering, issue and listing of securities that are offered to the public and the restraining or prohibition of misleading or non-complying offers.”

4. Amendment of principal Act to convert shillings into currency points

The principal Act is amended as follows—

- (a) in section 13 by substituting for “four million shillings” the words “two hundred currency points”;
- (b) in section 16(2) by substituting for “four million shillings” the words “two hundred currency points”;
- (c) in section 18(6) by substituting for “four million shillings” the words “two hundred currency points”;
- (d) in section 18(7) by substituting for “six million shillings” the words “three hundred currency points”;
- (e) in section 20(5) by substituting for “four million shillings” the words “two hundred currency points”;
- (f) in section 28(2) by substituting for “one million shillings” the words “fifty currency points” and substituting for “fifty thousand shillings” the words “two and half currency

- points”;
- (g) in section 29(6) by substituting for “one million shillings” the words “fifty currency points” and substituting for “one hundred thousand shillings” the words “five currency points”;
- (h) in section 37 by substituting for “four million shillings” the words “two hundred currency points”;
- (i) in section 50(5) by substituting for “two hundred thousand shillings” the words “ten currency points” and substituting for “twenty thousand shillings” the words “one currency point”;
- (j) in section 57(11) by substituting for “four million shillings” the words “two hundred currency points”;
- (k) in section 59(7) by substituting for “two million shillings” the words “one hundred currency points”;
- (l) in section 60(2) by substituting for two million shillings” the words “one hundred currency points”;
- (m) in section 61(2) by substituting for “two million shillings” the words “one hundred currency points”;
- (n) in section 62(2) by substituting for “four million shillings” the words “two hundred currency points”;
- (o) in section 63(2) by substituting for “two million shillings” the words “one hundred currency points”;
- (p) in section 65(2) by substituting for “four million shillings” the words “two hundred currency points”;
- (q) in section 66(5) by substituting for “two million shillings” the words “one hundred currency points”;
- (r) in section 67(7) by substituting for “four million shillings” the words “two hundred currency points”;
- (s) in section 67(8) by substituting for “six million shillings”

- the words “three hundred currency points”;
- (t) in section 68(1) by substituting for “four million shillings” the words “two hundred currency points”;
- (u) in section 68(2) by substituting for “six million shillings” the words “three hundred currency points”;
- (v) in section 68(8) by substituting for “six million shillings” the words “three hundred currency points”;
- (w) in section 89(1)(a) by substituting for “ten million shillings” the words “five hundred currency points”;
- (x) in section 89(1)(b) by substituting for “twelve million shillings” the words “six hundred currency points”;
- (y) in section 92(1) by substituting for “two million shillings” the words “one hundred currency points”;
- (z) in section 93 by substituting for “four million shillings” the words “two hundred currency points”;
- (aa) in section 94 by substituting for “four million shillings” the words “two hundred currency points”;
- (bb) in section 97(7) by substituting for “four million shillings” the words “two hundred currency points”;
- (cc) in section 99(2) by substituting for “four million shillings” the words “two hundred currency points”; and
- (dd) in section 101(4) by substituting for “four million shillings” the words “two hundred currency points” and substituting for “one hundred thousand shillings” the words “five

currency points”.

5. Modification of references to shillings in statutory instruments under principal Act

Any statutory instrument made under the principal Act and in existence at the commencement of this Act is amended by substituting for all references to shillings in it, references to currency points converted at the rate of 20,000 shillings to a currency point.

6. Section 103 of principal Act replaced

For section 103 of the principal Act there is substituted the following—

“103. Power of Minister to amend Schedules

(1) The Minister may with the consent of the Cabinet by statutory instrument, amend Schedule 1.

(2) The Minister may with the approval of Parliament by statutory instrument, amend Schedule 2.”

7. Insertion of new Schedule 1 in principal Act

The principal Act is amended by inserting immediately before the existing Schedule the following new Schedule—

“SCHEDULE 1

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings”.

8. Renumbering of existing Schedule to principal Act as ‘Schedule 2’

The Schedule to the principal Act existing immediately before the commencement of this Act is renumbered as “Schedule 2”.

Cross references

1. The Collective Investment Schemes Act, 2003 Act, No. 4 of 2003
2. The Companies Act, Cap.110
3. The Financial Institutions Act, 2004, Act No. 2 of 2004