

LEGAL NOTICE NO.....

THE CAPITAL MARKETS ACT
(Cap. 485A)

IN EXERCISE of the powers conferred by section 18(2) (B) of the Capital Markets Act, the Cabinet Secretary to the National Treasury, makes the following Regulations-

THE CAPITAL MARKETS (WHISTLEBLOWER) REGULATIONS, 2020

PART I- PRELIMINARY

Citation **1.** These Regulations may be cited as the Capital Markets (Whistleblower) Regulations, 2021.

Interpretation. **2.** In these Regulations, unless the context otherwise requires-

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“Act” means the Capital Markets Act;

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

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

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

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

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

PART II - REWARD OF WHISTLEBLOWERS

Eligible
whistleblower

3. A Whistleblower who voluntarily provides information or evidence to the Authority leading to a successful recovery of penalties or illicit gains within the capital markets shall be eligible for an award in accordance with these Regulations.

Reward of
Whistleblowers

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

(2) The reward payable shall be three per cent of the amount recovered subject to a maximum of five million shillings.

(3) The reward shall be payable to the whistleblower upon receipt by the Authority of the amount recovered and shall be subject to tax deductions as may be applicable.

(4) The recovered sums shall be transferred into the Investor Compensation Fund net of the Whistleblower reward.

PART III - SUBMISSION OF REPORTABLE MISCONDUCT

Submission of
information

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

- 6.** (1) For purposes of these Regulations, reportable misconduct includes:-
- (a) Failure to comply with legal and regulatory obligations as required under the Act and Regulations;
 - (b) offences under the Act and Regulations thereunder;
 - (c) Capital markets fraud.

(2) The report shall provide substantial details of the alleged misconduct or offence and include any relevant evidence that may assist the Authority in investigating the misconduct or offence.

(3) The information contained in the report shall be new and timely, authentic, complete and relevant in that it makes a fact more probable than it would without it.

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

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

Confidentiality of
whistleblower

7. The Authority shall take reasonable steps to maintain the confidentiality of the Whistleblower's identity.

Protection of
whistleblower

8. (1) A Whistleblower's identity and such other confidential information of the Whistleblower shall not be disclosed unless required by law or an order of the court.

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(2) The Witness Protection Act shall be applicable to the protection of a whistleblower who qualifies for such protection as is prescribed under that Act.

PART IV - PAYMENT OF REWARDS

Disclosure of
Identity

9. Prior to the payment of a reward, a whistleblower shall disclose his identity and provide such other information as the Authority may require.

Determination of
amount of reward

10. (1) A person seeking reward under paragraph (2) shall apply to the Authority in the form set out in the Schedule and provide the justification for the reward sought.

(2) The amount of reward payable shall be in accordance with regulation 4.

(3) A reward is payable, where the information provided is new and timely, and leads to the recovery of the lost sums in accordance with Regulation 4(3).

Denial of Reward

11. A reward shall not be made under Regulation 8 to any whistleblower:

(1) who is, or who was at the time he acquired the original information submitted to the Authority, a member, officer, or employee of any entity that is under an obligation to report any such misconduct or offence including-

- (a) an appropriate regulatory agency;
- (b) judicial Administration;
- (c) a self-regulatory organization;
- (d) a law enforcement organization; or

(2) who is convicted of a criminal misconduct or offence related to the judicial or administrative action for which the whistleblower otherwise could receive a reward under this regulation; or

(3) Who gains the information through the performance of an audit of financial statements required under the capital markets laws.

PART V – GENERAL PROVISIONS

Appeals

12. (1) Any determination made under these regulations on compensation of a whistleblower, shall be at the discretion of the Authority.

(2) Any person aggrieved by the decision of the Authority in sub regulation (1) may appeal to the Capital Markets Tribunal within fifteen days

from the date of such decision.

Submission of
false information

13. A person who submits false information to the Authority shall commit an offence and shall be liable upon conviction to the penalty provided under section 34A of the Act.

SCHEDULE

APPLICATION FOR AWARD FOR NEW AND TIMELY INFORMATION SUBMITTED PURSUANT TO SECTION 18(2A) OF THE CAPITAL MARKETS ACT AND REGULATION 10 OF THE CAPITAL MARKETS (WHISTLEBLOWER) REGULATIONS

A. APPLICANT'S INFORMATION(REQUIRED FOR ALL SUBMISSIONS)		
Last Name:	Middle Name:	First Name:
P.O Box:	Postal Code:	Physical Address:
Primary Phone No:		Alternative Phone No:
Email Address:		
B. TIP/ COMPLAINT DETAILS		
1) Manner in which original information was submitted to the Authority. CMA Website <input type="checkbox"/> Email <input type="checkbox"/> Letter <input type="checkbox"/> Other <input type="checkbox"/>		
2) Tip/ Complaint reference number <input type="text"/>		
3) Date Tip/Complaint referred to in (2) above was submitted to the Authority <input type="text"/>		
4) Subject of the Tip/ complaint: <input type="text"/>		
C. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION		
1) Are you or were you at the time you acquired the original information you submitted to us a member, officer or employee of the Capital Markets Authority (the Authority), any regulatory agency, department of Justice, a self-regulatory organization or any law enforcement organization? Yes <input type="checkbox"/> No <input type="checkbox"/>		
2) Did you obtain the information provided to us through the performance of an engagement required under the capital markets laws by an independent public accountant? Yes <input type="checkbox"/> No <input type="checkbox"/>		
3) Are you a spouse, parent, child or sibling of a member or employee of the Authority or do you reside in the same household as a member or employee of the Authority? Yes <input type="checkbox"/> No <input type="checkbox"/>		

4) Did you acquire the information you are provided to us from any person described in questions (1) through (3) above? Yes <input type="checkbox"/> No <input type="checkbox"/>
5) Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information upon which your application for an award is based? Yes <input type="checkbox"/> No <input type="checkbox"/>
6) If you answered “yes” in response to any of the above five questions, please provide a detailed response explaining your answer. Use additional sheets of paper if necessary. <div style="border: 1px solid black; height: 60px; margin-top: 10px;"></div>
D. ENTITLEMENT TO AWARD
Explain the basis for your belief that you are entitled to an award in connection with your submission of information to us. Include any supporting documents in your possession or control and attach additional sheets if necessary. <div style="border: 1px solid black; height: 120px; margin-top: 10px;"></div>
E. PAYMENT METHOD AND ACCOUNT DETAILS
Preferred mode of payment: <div style="border: 1px solid black; width: 530px; height: 20px; display: inline-block; margin-left: 10px;"></div>
Bank Account details: <div style="border: 1px solid black; width: 530px; height: 40px; display: inline-block; margin-left: 10px;"></div>
F. DECLARATION
<p>I declare that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower reward if, in my submission of information, my other dealings with the Authority, or my dealings with another regulator in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.</p> <p>Signature: <div style="border: 1px solid black; width: 370px; height: 25px; display: inline-block; margin-left: 10px;"></div></p> <p>Date: <div style="border: 1px solid black; width: 370px; height: 25px; display: inline-block; margin-left: 10px;"></div></p>

G. GENERAL	
<p>1) If you are filing your claim in connection with information that you provided to the Authority, then your form and any attachments thereto must be received by the Authority within ninety (90) days of the date of the Enforcement Action to which the claim relates.</p> <p>2) You must submit your Form to us in one of the following two ways:</p> <p>a) By Email sent to:</p> <p>b) By mailing or delivering the signed form to the Capital Markets Authority Office, Embankment Plaza, 3rd Floor, Upper Hill -Nairobi, P.O. Box 74800-00200, Nairobi.</p>	
FOR OFFICIAL USE	
Received by:.....Date:.....	Verified by:..... Date:
Signature:.....	Signature:

Dated, 2021

UKUR YATANI,
Cabinet Secretary for the National Treasury.