

CAPITAL MARKETS TRIBUNAL RULES

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CAPITAL MARKETS TRIBUNAL RULES

[Legal Notice 179 of 2002]

1. Citation

These Rules may be cited as the Capital Markets Tribunal Rules.

2. Interpretation

In these Rules —

"Chairperson" means the Chairperson of the Tribunal;

"Secretary" means the secretary to the Tribunal;

"Tribunal" means the Capital Markets Tribunal established under section 35A of the Act.

3. Publication of address of Tribunal

The Secretary shall publish a notice in the *Gazette* of the address at which documents may be presented to, filed with or served on the Tribunal or the Secretary.

4. Form of appeal

(1) An appeal to the Tribunal shall be entered by presentation of a memorandum of appeal, with six copies thereof, together with the prescribed fee to the Secretary.

(2) The memorandum shall set out concisely, under distinct heads and numbered consecutively, the grounds of appeal without argument or narrative.

(3) The memorandum shall be signed by the appellant, if the appellant is an individual, or by a director and the chief executive, if the appellant is a corporation.

(4) The memorandum shall be presented within fifteen days after the date on which the decision appealed from was communicated to the appellant.

5. Statement of facts of appellant

Each copy of the memorandum of appeal shall be accompanied by a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to the documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed the original copy of the decision of the Authority on which the appeal is based, and each document or extract from a document referred to upon which the appellant proposes to rely as evidence at the hearing of the appeal.

6. Service of memorandum

Within seven days after the presentation of the memorandum of appeal to the Secretary, a copy thereof and the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Authority.

7. Statement of defence

(1) The Authority shall, within twenty-one days after service of the memorandum of appeal upon it, file with the Secretary a statement of defence signed by the chief executive of the Authority or a person authorized by him in writing and a statement of facts together with six copies thereof and the provisions of rule 5 shall apply *mutatis mutandis* to the statement of facts.

(2) At the time of filing the statement of defence and the statement of facts under paragraph (1), the Authority shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) Where the Authority does not desire to file a statement of facts under this rule, the Authority shall forthwith give written notice to that effect to the Secretary and to the appellant.

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and in that case the Authority shall be deemed at the hearing of the appeal to have admitted the facts set out in the statement of facts of the appellant.

8. Service

(1) The provisions of the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21) dealing with the service of a summons shall apply with respect to the serving of documents under these Rules as though those provisions formed part of these Rules.

(2) The Tribunal may, on the application of a party, direct that documents be served in a different manner than that provided for under paragraph (1).

9. Withdrawal of appeal

(1) The appellant may, at any time before the appeal is heard, withdraw the appeal by notice in writing to the Secretary.

(2) If an appeal is withdrawn the Tribunal shall make an order under section 35A(18) of the Act as to costs.

10. No communications outside hearing

No party to the appeal shall communicate, outside the hearing of the appeal, with the Chairperson or any other member of the Tribunal other than the Secretary.

11. Time and place of hearing

(1) The Secretary shall within three days after receiving the memorandum of appeal under rule 4 notify the Chairperson of the receipt thereof.

(2) The Chairperson shall, after the documents of the parties are received, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal and the Secretary shall cause notice thereof to be served on the appellant and the Authority.

(3) The Secretary shall supply each member of the Tribunal with a copy of the notice of hearing and all documents received by the Secretary from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days notice of the time, date and place fixed for the hearing of the appeal.

12. Summoning and attendance of witnesses

The provisions of the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21) dealing with the summoning and attendance of witnesses shall apply with respect to the hearing of an appeal as though those provisions formed part of these Rules.

13. Assessors

(1) If in the opinion of the Chairperson a matter arises in a hearing which calls for specialized knowledge, he may call upon any person who he considers to be possessed of such knowledge to sit with the Tribunal as an assessor to assist the Tribunal.

(2) A person called upon to sit with the Tribunal under paragraph (1) shall be paid his reasonable expenses and a daily remuneration, the amount of which shall be decided by the Chairperson.

14. Representative to file a notice

A person representing a party before the Tribunal shall file a notice of his appointment as the representative of the party and any subsequent change shall be notified by the filing of a notice of change of representative or a notice of intention to act in person as the case may be.

15. Hearing procedure

The following shall apply with respect to the hearing of an appeal-

- (a) the Authority shall be entitled to be represented;

- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence, but save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum of appeal and may not adduce evidence of facts or documents unless those facts have been referred to in, or copies of those documents have been annexed to, the statement of facts of the appellant;
- (c) at the conclusion of the statement and evidence on behalf of the appellant, the Authority may make submissions supported by relevant evidence, and the conditions of sub-paragraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Authority;
- (d) the appellant shall be entitled to reply but may not raise a new issue or argument;
- (e) the Chairperson or a member of the Tribunal may at any stage of the hearing ask any questions to the parties or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party to the appeal may be cross-examined by the other party to the appeal and if so cross-examined may be re-examined;
- (g) the Tribunal may call and examine witnesses and a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary or desirable, on such terms as it may determine;
- (i) the Tribunal shall consider and reach its decision according to law;
- (j) the decision of the Tribunal shall be on the basis of a majority vote and shall be in writing, dated and signed by the Chairperson and the members of the Tribunal who participated in the decision;
- (k) the Secretary shall record the proceedings of the Tribunal and include that record, together with a copy of the decision, in a document to be certified and signed by the Chairperson as a true and correct record of the proceedings and decision;
- (l) the Secretary shall forward a certified copy of the document described in subparagraph (k) to each party;
- (m) a copy certified under subparagraph (k) shall be conclusive evidence of the decision and proceedings of the Tribunal.

16. Copies of documents admissible

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

17. Tribunal may adopt Civil Procedure Rules

In matters of procedure not governed by these Rules or the Act, the Tribunal may adopt the Civil Procedure Rules (sub. leg) made under the Civil Procedure Act (Cap. 21).

18. Extension of time limits

The Chairperson may, on application, extend the time appointed by these Rules for doing any act or taking any proceedings upon such terms and conditions, if any, as appear to the Chairperson to be just and expedient.

[Subsidiary]

19. Orders for costs

The Tribunal shall make an order under section 35A(18) of the Act as to costs on an appeal.

20. Fees

The fees set out in the Schedule are prescribed in respect of the matters described in the Schedule.

21. Transition

The following shall apply with respect to an appeal made before these Rules come into operation—

- (a) these Rules shall apply with necessary modifications and such modifications as the Chairperson may direct;
- (b) nothing done before these Rules come into operation shall be ineffective only because it was not done in accordance with these Rules;
- (c) any applicable time limit under these Rules that would otherwise have commenced or expired shall be deemed not to have commenced or expired but shall be deemed to have commenced running upon the publication of these Rules; and
- (d) if anything was done before these Rules come into operation for which a fee would have been payable under these Rules if they had been in operation, that fee shall be payable within ten days after the publication of these Rules.

SCHEDULE

[r. 20]

FEES

	Description	Fee (Shs.)
1.	Presentation of a memorandum of appeal	10,000
2.	Filing of statement of defence by the Authority	2,500
3.	Filing of any other document	1,500

**THE CAPITAL MARKETS (ASSET-
BACKED SECURITIES) REGULATIONS**

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**THE CAPITAL MARKETS (ASSET-
BACKED SECURITIES) REGULATIONS**

[Legal Notice 184 of 2007]

PART I – PRELIMINARY**1. Citation**

These Regulations may be cited as the Capital Markets (Asset-Backed Securities) Regulations.

2. Application

(1) These Regulations shall apply to all offers of asset-backed Application securities to the public or a section thereof in Kenya including issues by state corporations and other public bodies.

(2) The Rules and Regulations governing the issue, offer and listing of fixed income securities shall apply to asset-backed securities to the extent that the same do not conflict with the provisions of these Regulations.

3. Interpretation

In these Regulations, unless the context otherwise requires—

"advisor" means a person appointed to arrange, package, place or market the application for issue, offer and listing of the asset-backed securities;

"allowable expenses" includes trust fees, ongoing fees paid to rating agencies, servicing fees, origination fees; acquisition expenses, liquidation expenses, bank service charges, legal fees, audit fees and other direct charges incurred in the ordinary course of business, exclusive of organizational and offering expenses, conversion expenses and extraordinary expenses, all being deemed incidental expenses relating to the authorization and issue of asset-backed securities offered for purchase by the general public for the purposes of the Income Tax Act (Cap. 470);

"asset-backed securities" means securities—

- (a) that are issued as part of a securitization transaction in which assets are transferred to a third party that issues the securities; and
- (b) that are primarily serviced, with respect to both return of investment and return on investment, by cash flow from assets described in paragraph (a) above;

"asset-backed securities holder" means the person whose name appears in the register of asset-backed securities holders;

"Authority" means the Capital Markets Authority established under section 5 of the Capital Markets Act (Cap. 485A);

"day" means any calendar day excluding Saturdays, Sundays and public holidays;

"Cabinet Secretary" Act means the Cabinet Secretary for the time being responsible for matters relating to finance;

"Central Bank" means the Central Bank of Kenya established by section 3 of the Central Bank of Kenya Act (Cap. 491);

"close relation" means a relationship supported by documentary evidence of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, son-in-law, grand child or spouse of a grandchild;

"credit enhancement" means any arrangement including but not limited to insurance, letters of credit, lines of credit, collateralization, guarantees and other arrangements intended to decrease the credit risk on the asset-backed securities;

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"credit enhancer" means a person or entity that provides credit enhancement;

"credit rating" means an objective and independent opinion on the creditworthiness of the debt instrument to be issued based on relevant risk factors;

"Commissioner" means the Commissioner of Insurance appointed under the Insurance Act;

"eligible assets" means assets which are the subject matter of the securitization transaction;

"independent director" means a director who—

- (i) is not and has not been employed by the originator in an executive capacity within the five year period preceding the date of application;
- (ii) is not a member of the issuer or originator's senior management or a significant customer or supplier to the issuer or originator or is an entity that receives significant contributions from the issuer or originator; or within a period of five years immediately preceding the date of application has not had any business relationship with the issuer or originator (other than service as a director) for which the issuer has been required to make disclosure;
- (iii) has no personal service contract with any of the shareholders, directors or members of the senior management of the issuer or originator;
- (iv) is not employed by a company at which a director of the issuer or originator serves as a director;
- (v) is not a close relation of any person described above; or
- (vi) has not had any of the relationships described above with any affiliate of the issuer or originator;

"information memorandum" means any prospectus, document, notice, circular, advertisement, or other invitation in print or electronic form containing information in relation to an issue of asset-backed securities and inviting offers from the public or a section of the public to subscribe for the purchase of asset-backed securities;

"issuer" means an entity that seeks to offer or offers asset-backed securities to the public or a section thereof;

"liquidation expenses" means the expenditures necessary to convert residual or non-performing eligible assets or any underlying collateral, into cash, including expenditures necessary to collect on credit enhancement;

"liquidity provider" means a person who provides funds to a servicing agent for the settlement of payments due to asset-backed securities holders in accordance with the schedule of payments stipulated for the terms and conditions of asset-backed securities to cover any short-term cashflow shortfalls;

"originator" means the entity that seeks to transfer its assets in a securitization transaction;

"origination fees" means all fees, commissions or other consideration, paid by any party to any party in connection with the origination and sale of eligible assets to the Issuer, but not including the purchase price of the eligible assets, initial fees paid to rating agencies and professional fees paid to advocates, valuers and similar professionals for providing routine professional services;

"securitization transaction" means an arrangement which involves the transfer of assets or risk to a special purpose vehicle where such transfer is funded by the issuance of securities to investors and payments to investors in respect of such debt securities are principally derived, directly or indirectly, from the cash flows of the transferred assets;

"selling agent" means the entity appointed to distribute or offer the asset-backed securities to the public or a section thereof;

"servicing agent" means an entity appointed to manage collections on the assets underlying the asset-backed securities and administering the cash flows of the asset pool;

"transfer," means the transfer of legal and beneficial title to the assets that are the subject matter of a securitization transaction;

"trustee" means the person or institution appointed to enforce the rights of the Asset-Backed Securities holders pursuant to the securitization;

"working hours," means between 8.00 a.m. and 5.00 p.m. on any working day.

PART II – PARTIES TO SECURITIZATION

4. Eligibility to be originator

The originator shall be—

- (a) a public company incorporated or registered under the Companies Act;
- (b) a statutory corporation, local authority or Government Ministry; or
- (c) an entity established in Kenya under the provision of any written law;
- (d) such other entity as may be approved by the Authority.

5. Purchase of asset-backed securities by originator

(1) An originator may, subject to regulation 37, purchase no more than the cumulative sum of ten percent at any time of the total value of any asset-backed securities issued pursuant to a transfer of its own assets to the Issuer unless otherwise permitted by the Authority.

(2) The restriction in paragraph (1) shall not apply to the holding of subordinated securities by the originator.

6. The Issuer

(1) An Issuer shall be a company incorporated under the Companies Act (Cap. 486) or be of such other form as may be approved by the Authority.

(2) An issuer shall unless otherwise approved by the Authority be a newly created entity with no pre-existing creditors or other claims against it other than formation expenses.

(3) At least one third of the members of the board of directors of the issuer shall be independent directors.

7. Functions of the issuer

The objects of an issuer shall be to—

- (a) offer, issue and list of asset-backed securities;
- (b) purchase of eligible assets, enter into principle agreements required in connection to a securitization transaction; and
- (c) the undertake of any other matters incidental thereto.

8. No relation of issuer to originator

An issuer shall neither be marketed as a subsidiary or a company within the group of the originator nor shall the name of the issuer or the asset-backed securities product imply any relation to the originator.

9. Dissolution of issuer

An issuer shall not be voluntarily wound up until the asset-backed securities issued by the issuer are fully redeemed in accordance with the terms and conditions of the asset-backed securities.

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10. Voluntary winding up of issuer

The written consent of the board of directors or governing body of the issuer and the Authority shall be sought before the commencement of any voluntary winding up proceedings of the issuer.

11. Auditor of the Issuer

An auditor appointed by an issuer shall be a member of the Institute of Certified Public Accountants of Kenya and shall comply with the international standards on auditing in conducting the audit.

12. Record keeper of the Issuer

Where an issuer delegates the record keeping functions to another entity, the officer in-charge of the other entity shall be a member of the Institute of Certified Public Secretaries of Kenya.

13. Appointment of servicing agent

An issuer shall appoint a servicing agent in accordance with these Regulations.

14. Eligibility for appointment

A servicing agent shall be independent of the issuer, but may be the originator in so far as the originator provides these services on an arms-length basis and subject to market terms and conditions.

15. Records to be maintained by servicing agent

(1) A servicing agent shall keep such books of account, records and statements in the name of the issuer as may be necessary to give a complete record of—

- (a) all receipts and payments in respect to the eligible assets and asset-backed securities;
- (b) the portfolio of eligible assets; and
- (c) every transaction carried out by the issuer.

(2) A servicing agent shall permit authorized agents of the Authority to inspect such books of account, records and statements at any time during working hours.

16. Remittance of funds

A servicing agent shall, unless operating as the credit enhancer, be under no obligation to release any funds for the benefit of the asset-backed securities holders unless or until it has received the same from the issuer.

17. Provision of liquidity by servicing agent

A servicing agent may operate as a liquidity provider to ensure that timely payments are made to the asset-backed securities holders where there is a cashflow shortfall on a payment or repayment date in respect to the relevant asset-backed securities.

18. Resignation of servicing agent

(1) A servicing agent who intends to resign shall give three months notice in writing to the issuer and copy the notice to the Authority, stating such intention and the reasons for resignation.

(2) Notwithstanding the notice period stipulated in subparagraph (1), the resignation shall not come into effect until a replacement has been duly appointed by the issuer.

19. Removal of servicing agent

An issuer who intends to terminate the appointment of a servicing agent shall inform the Authority of such intention at least three months prior to the termination and shall provide the Authority with the copy of the relevant notice and the reasons for termination.

20. Appointment of new servicing agent

An issuer shall appoint a new servicing agent at least thirty days before the expiry of the term of the outgoing servicing agent and ensure that there is adequate time for the hand-over and transfer of all information within itself in relation to its contractual duties to enable the incoming servicing agent to properly execute their duties.

21. Handover to new servicing agent

An outgoing servicing agent shall hand over to the incoming servicing agent all the books of account, documents and records that are required to be kept under these Regulations.

22. Liquidity provider

(1) A liquidity provider may decline to advance sums to an issuer unless it is certain that such amounts are recoverable and payable in full from the issuer *pari passu* or in priority to credit enhancers and asset-backed securities holders.

(2) A liquidity provider shall not underwrite the credit risk of an issuer or otherwise operate as a credit enhancer unless appointed to act as a credit enhancer.

23. Appointment and role of trustee

An issuer shall appoint a trustee who shall—

- (a) be the trustee for the asset-backed securities holders;
- (b) enforce the rights of the asset-backed securities holders as against the issuer, credit enhancer or any other such person against whom the trustee and the asset-backed securities holders have recourse; and
- (c) have such other duties and obligations as indicated by the terms and condition of its trust deed.

24. Rights of trustee

A trustee shall have all such rights as may accrue to the asset-backed securities holders including but not limited to access to information on the performance, operation of the securitization transaction and the asset-backed securities issued thereunder.

PART III – ISSUE OF ASSET-BACKED SECURITIES**25. Advisors**

(1) An originator shall appoint an advisor from among duly licensed investment banks, stock brokers and investment advisors which advisor shall be responsible for liaising with the Authority on the offer, issue or listing of the asset-backed securities.

(2) An originator may also appoint such other advisors as it deems necessary.

26. Form of application

(1) An application for approval for the offer, issue or listing of asset-backed securities shall be submitted to the Authority in the prescribed form.

(2) Compliance with the requirements set out in these Regulations does not guarantee an applicant's suitability which shall be determined by the Authority in consultation with the Mi

(3) The application to be submitted shall be accompanied by—

- (a) a term sheet setting out the salient terms and conditions of the proposed structure of the proposed securitization transaction including
 - (i) name, date and place of incorporation, names and professions of directors, names and interests of shareholders and proposed structure of the Issuer
 - (ii) name, date and place of incorporation, names and professions of directors, names and interests of shareholders the of originator;
 - (iii) names and addresses of the transaction advisors;

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- (iv) securitization transaction overview;
- (v) proposed arrangements for the transfer of eligible assets and nature of the eligible assets;
- (vi) currency and principal amount of proposed issue;
- (vii) tenor of proposed issue
- (viii) details of proposed credit enhancement and provision of liquidity by the liquidity provider (where applicable);
- (ix) details of utilization of proceeds;
- (x) indicative credit rating;
- (xi) confirmation on whether the offer is to be listed and structure of issue; and
- (xii) conditions precedent;
- (b) The following documents relating to the originator—
 - (i) resolution of the board of directors approving the transfer of eligible assets to the issuer; and
 - (ii) written consent from any existing secured creditor enjoying any security interest of any nature over the proposed eligible assets agreeing to wholly discharge their security in respect of the eligible assets to be transferred;
- (c) Where the originator is a company incorporated under the Companies Act it shall submit a certified copy of its certificate of incorporation including any certificate of change of name and the memorandum and articles of association;
- (d) The constitution documents relating to the issuer together with a written undertaking to comply with the requirements of these Regulations.
- (e) declarations from the originator, issuer and advisor confirming that they have taken all reasonable care in structuring the issue, preparing the information memorandum and developing all projections on performance;
- (f) a legal opinion confirming that the transferred eligible assets would not be available to the creditors, liquidators or receiver managers of the originator in the event of the bankruptcy, winding up, insolvency or receivership of the originator;
- (g) all reports by any expert included or referred to in the information memorandum;
- (h) draft copies of material contracts (where applicable) including the credit-enhancement agreement, proposed servicing agreement between the issuer and servicing agent and guarantee agreement where applicable;
- (i) duly executed declarations by the directors of the issuer in the form prescribed in the First Schedule;
- (j) where applicable, a letter of no objection from the relevant primary regulator of the originator;
- (k) a credit rating report of the proposed issue from an independent credit rating agency ; and
- (l) the prescribed application fee.

27. Consultation with Cabinet Secretary

The Authority shall upon receipt of an application to issue or list asset-backed securities inform the Cabinet Secretary of its decision to approve or reject the application at least fourteen days prior to communicating that decision to the Applicant.

28. Documents to be lodged and available for inspection

(1) The information memorandum and all required information relating to the proposed securitization and asset-backed securities shall be submitted to the Authority in a period of not less than twenty eight days before the opening of the offer period and the Authority may require additional disclosures as it deems fit.

(2) All documents which are required to accompany the application and the documents referred to in the information memorandum shall be made available for inspection at the registered office of the issuer for the period which the asset-backed securities are in issue, unless otherwise advised by the Authority.

29. Offer Period

The offer period shall not exceed thirty days from the date of the opening of the offer unless the Authority approves otherwise.

30. Manner of subscription

Subscription for the issue of asset-backed securities shall be made through one or more of the selling agents.

31. Subscription proceeds

(1) The subscription amount shall be deposited with the selling agent and all the proceeds shall be held in a separate trust account in the name and for the benefit of the issuer and shall be applied by the issuer for the purposes specified in the information memorandum immediately after the offer period is closed.

(2) Notwithstanding paragraph (1) where the minimum subscription is not raised, the issuer shall refund the subscribers their subscription amount.

32. Investor Compensation Fund

The interest deemed to accrue on the subscription proceeds shall be paid into the Investor Compensation Fund in accordance with section 18 of the Act.

33. Allotment of securities

(1) The allotment of securities offered to the public shall be made in strict accordance with the allotment policy disclosed in the information memorandum.

(2) Notwithstanding paragraph (1) where the results of the subscription make such policy impractical, the allotment policy may be amended with the prior written approval of the Authority.

(3) Where the Authority approves amendment under paragraph (2), the issuer shall announce the fact of approval within twenty four hours of the grant of the approval.

34. Publication of results of offer

The results of the allotment of a public offer shall be published after the Authority has been received prior notification of not less than twenty four hours.

PART IV – ASSETS TO BE SECURITIZED**35. Eligible assets**

The assets to be securitized for purposes of issuing asset-backed securities shall be—

- (a) capable of generating a true and identifiable revenue stream that is projected to be sufficient to service the return of and return on investment as well as allowable expenses for the life of the asset-backed securities;
- (b) free from any encumbrances or impediments to their free transfer and their transfer shall not constitute an event of default or acceleration trigger under any security agreement relating to the assets of the originator; and
- (c) transferred at fair value.

[Subsidiary]**36. Rights to transfer of assets**

An originator shall have and demonstrate an unencumbered right to transfer all legal and beneficial interests in the eligible assets and the rights to the eligible asset.

37. Transfer of assets

(1) An originator shall transfer all its rights, title, interests and obligation in the assets to the Issuer and shall not retain any beneficial interest or liability.

(2) Where the eligible assets have declined to a level that renders the asset securitization transaction uneconomical to carry on, the originator may retain a first right of refusal to repurchase assets from an Issuer at a fair value; or

(3) The originator may repurchase assets from the issuer where the originator is under an obligation to do so under a securitization transaction when it has breached any conditions, representation or warranty in respect of the securitization transaction.

PART V – CREDIT RATING AND CREDIT ENHANCEMENT**38. Credit rating**

All securitization transactions shall be rated by an independent credit rating agency approved and registered by the Authority.

39. Credit enhancement

(1) An issuer may seek credit enhancement of the issue, which enhancement may be in the form of—

- (a) over-collateralization;
- (b) a standby letter of credit or line of credit issued by a bank or financial institution that is licensed by the Central Bank;
- (c) a guarantee by a bank or financial institution that is licensed by the Central Bank;
- (d) surety bond issued by an insurance company licensed by the Commissioner of Insurance other than the originator or its subsidiary, its parent company or the parent company;
- (e) an instrument issued by a bilateral or multilateral institution of which Kenya is a member;
- (f) issue of subordinated tranches;
- (g) an instrument issued by the Government of Kenya; or
- (h) such other instrument or mechanism from such other entity as may be approved by the Authority.

(2) Where the credit enhancement is to be provided by a bank, financial institution or insurance company licensed in Kenya, the credit enhancement shall only be provided with the prior written consent of the Central Bank in the case of a bank or financial institution or the Commissioner of Insurance in the case of an insurance company

PART VI – LISTING, SUSPENSION OF DEALING AND DE-LISTING**40. Listing**

Upon the approval and issue, the asset-backed securities may be listed on the fixed income securities market segment at an approved securities exchange in Kenya.

41. Suspension or de-listing to be approved by the Authority

No asset-backed securities shall be suspended or delisted by a securities exchange without the prior written approval of the Authority.

42. Publication of suspension or de-listing

Where an asset-backed security has been suspended or delisted, the securities exchange shall within forty eight hours publish such information in at least two local dailies of national circulation.

PART VII – FEES AND CHARGES**43. Fees**

An issuer of asset-backed securities approved to offer, issue or list shall pay the prescribed fees.

FIRST SCHEDULE

[r. 26(3)(i)]

INFORMATION MEMORANDUM**DISCLOSURE REQUIREMENTS FOR PUBLIC
ISSUE OF ASSET-BACKED SECURITIES**

Cover Page Disclosure and Declarations:

1.1 Disclaimer Statement

The information memorandum shall contain on its front page the following prominent and legible disclaimer statements:

"As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus or information memorandums. Approval of the issue or listing by the Authority is not to be taken as an indication of the merits of the issuer, the originator or the asset-backed securities"

"The originator does not underwrite the issue of asset-backed securities by the issuer and shall not make good any losses or otherwise guarantee the credit risk of the issuer".

1.2 Declaration by directors

Declarations by directors of issuer:

1. Webeing the directors of the issuer namely: accept responsibility for the information contained in this prospectus/information memorandum. To the best of our knowledge and belief we have taken all reasonable care to ensure that such is the case, the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information.

2. That in their opinion the issuer does not have any debts, liabilities or other such claims as may increase the likelihood of the issuer being subjected to voluntary or involuntary winding-up or liquidation proceedings

3. That they have taken all reasonable care as would be expected of competent professionals in structuring the transaction, preparing the information memorandum and developing all projections

Declaration by directors of originator:

1. That in their opinion the originator is a going concern.

1.3 Resolutions statement

A statement of the originator's board resolutions, shareholders approval where required and approval by existing debt holders where required.

[Subsidiary]

A statement of the issuer's board resolutions and shareholder approval of the issuer acknowledging and accepting the liabilities arising in accordance with the securitization transaction.

2.0. Offering and Listing Summary

A statement that the originator is incorporated or established in Kenya under the laws of Kenya together with the particulars of incorporation or establishment as the case may be.

The name, registered or principal office of the issuer and a statement that it is set up for the sole purpose to issuing asset-backed securities.

A statement that the issuer is incorporated or otherwise established in Kenya and is subject to Kenyan laws.

A summary description of the public offering or listing and of particulars dealt with in the document.

A statement that the Authority has approved the public offering and listing of the securities at the fixed income securities market segment of a securities exchange.

A statement that a copy of the prospectus or information memorandum has been delivered to the Registrar of Companies.

3.0 Identity of directors, advisors and auditors of the Issuer

3.1 Directors and shareholders of the issuer

- (a) The full name, age, home or business address, nationality, professional, experience and academic qualifications of the directors and other directorships;
- (b) The names of the shareholders and the number of shares owned by each of them as of the most recent practicable date;
- (c) In cases where the issuer is constituted other than as a limited liability company
- (d) The full name, age, home or business address, nationality, professional experience and academic qualifications of the members of the governing body;

3.2 Advisors

- (a) The names and addresses of the issuer's bankers, legal and financial advisors, auditors, reporting accountants and any other expert to whom a statement or report included in the information memorandum has been attributed.
- (b) The names and addresses of all the parties involved in the issue.
- (c) Where a statement or report attributed to a person as an expert is included in the information memorandum, a statement that it is included, in the form and context in which it is included, with the written consent of that person, who has authorised the contents of that part of the information memorandum, and has not withdrawn his consent.

4.0 Financial information and procedure for subscription and allotment

- (a) The amount to be raised through the issue and the tenure of the security.
- (b) A statement that the application forms shall be submitted to the selling agent together with the subscription amount.
- (c) A statement that the receipt signed and issued by the selling agent shall contain the name of the subscriber, the address, nationality, date of subscription, the number of securities subscribed and amount paid by the subscriber.
- (d) The nominal amount of the securities together with the issue and redemption prices and nominal interest rate.

- (e) The historic cash flows (for the preceding five years, where applicable) and projected cash flows in respect of the eligible assets.
- (e) An indication as to, where potential material liquidity shortfalls may occur, the availability and details of any liquidity support and plans to cover potential shortfalls.
- (e) Information regarding the accumulation of surpluses in the Issuer and an indication of the investment criteria for the investment of any liquidity surpluses.
- (f) The order of priority of payments made by the issuer.
- (g) Details of any other arrangements upon which payments of interest and principal to asset-backed securities holders are dependent.
- (g) The nature, number and numbering of the debt securities and the denominations.
- (h) The procedures for the allocation and the procedure to be applied in case of over subscription.
- (i) Arrangements for the amortisation of any substantial loan that may impact repayment, including detailed repayment schedule of both the principal and interest.
- (j) The date from which interest becomes payable and the due dates for interest as well as the final repayment date and any earlier repayment dates.
- (k) The allotment policy.
- (l) The subscription procedure and process of facilitating subscription and payment.
- (m) The time limit on the validity of claims to interest and repayment of principal.
- (n) The period during which the offer will remain open.
- (o) State the method and time limits for delivery of securities (including provisional certificates, if applicable) to subscribers or purchases.
- (p) Where applicable, a statement that the debt securities are dematerialised.
- (q) State the manner in which results of the distribution of securities will be made public and when appropriate, the manner for refunding excess amounts paid by applicants.
- (r) A statement that the securities will be freely transferable.
- (s) A summary of the rights conferred upon the asset-backed securities holders and particulars of the security (if any) thereof.

5.0. Details of the eligible assets

The originator shall disclose the following information regarding eligible assets and explanatory notes where applicable.

- (a) the legal jurisdiction where the eligible assets are located;
- (b) the nature of and title of the eligible assets;
- (c) the criteria for the selection of the eligible assets;
- (d) the number and value of the eligible assets in the pool;
- (e) rights of recourse against the originator to the extent allowed in law, including a list of material representations and warranties given to the Issuer relating to the eligible assets;
- (f) rights to substitute the eligible assets and the qualifying criteria;
- (g) the treatment of early amortization of the eligible assets;
- (h) level of concentration of the obligors in the asset pool, identifying obligors that account for twenty five percent or more of the eligible asset value;

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- (i) where there is no concentration of obligors above twenty five percent, the general characteristics and descriptions of the obligors;
- (j) the payment methods and cash flows in respect of the eligible assets;
- (k) the outstanding principal balance or anticipated collections over a definite period from the eligible assets;
- (l) the outstanding principal balance or anticipated collections over a definite period from the eligible assets as a percentage of the total amount of asset-backed securities being offered;
- (m) the amount of eligible assets in default;
- (n) the amount of eligible assets in default as a percentage of the total amount of asset-backed securities being offered and the amount of eligible assets in default as a percentage of the credit enhancement;
- (o) explanatory notes where there is expected material difference between historic and projected cash flows and any actions being taken to correct the situation; and
- (p) a description of what constitutes a default.

6.0. Credit enhancement

- (a) statement that the issue is credit enhanced.
- (b) A description of the nature and scope of the guarantees, sureties and commitments intended to ensure that the asset-backed securities will be duly serviced as regards both the repayment of the debt securities and the payment of interest.
- (c) An explicit statement on and procedure for recourse by the asset-backed securities holders or their duly appointed trustee to the credit enhancer.

7.0 Expenses of the issue

- (a) An itemized statement of the major categories of allowable expenses incurred in connection with the issue and to whom expenses are payable. If the amounts of any items are not known, estimates shall be given.
- (b) Where estimates are used in (i) above the rationale for the estimates should be disclosed and the final schedule provided to the Authority once available.

8.0 Details of servicing agent

The name, address, description and significant business activities of the servicing agent or equivalent, (if any), together with a summary of the servicing agent's responsibilities and a summary of the provisions relating to the appointment or removal of the servicing agent and alternative servicing agent and their details.

9.0 Legal opinion

A legal opinion confirming that the transferred eligible assets will not be available to the liquidator or receiver and manager of the originator in the event of liquidation or winding up of the originator.

10.0 Reasons for the securitization transactions and use of proceeds

- (a) The directors of the originator shall state the purpose for which the securitization transaction is intended.
- (b) The minimum amount which, in the opinion of the directors of the originator, must be raised by securitizing the eligible assets in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters:
 - (i) the purchase price for the eligible assets, purchased or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue;

- (ii) any preliminary expenses payable by the Issuer, and any commission payable to any person in consideration for his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for or of his underwriting or guaranteeing any asset-backed securities of the issuer;
- (iii) the repayment of any moneys borrowed in respect of any of the forgoing matters;
- (iv) any other material expenditure, stating the nature and purposes thereof and the estimated amount in each case; and
- (v) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

11.0 Risk factors

Provide information on the risk factors headed "Risk factors" including financial, economic and sectoral risk factors as well as risks associated with or affecting the underlying eligible assets, the securitization transaction, the issuer, the asset-backed securities to be issued and the credit enhancer.

12.0 Information available for inspection

A statement that for a period of not less than five working days before the date of the information memorandum until the final repayment date of the asset-backed securities, the following documents shall be available for inspection at the registered office of the issuer or at the trustee's office.

- (a) the memorandum and articles of association of the originator and of the issuer or relevant documents of establishment where issuer is not a company limited by shares;
- (b) copies of the agreement between the issuer and the servicing agent and liquidity provider where relevant;
- (c) copies of the agreement the with credit enhancer
- (d) the trust deed which is referred to in the information memorandum;
- (e) documents of conveyance of the eligible assets under the securitisation transaction;
- (f) a statement of the originator's and issuer's board resolutions, shareholders approval and approval by existing debt holders where applicable;
- (g) all reports, letters, and other documents, valuations and statements by any expert any part of which is included or referred to in the information memorandum;
- (h) each material contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group within the two years immediately preceding the publication of the prospectus, including particulars of dates, parties, terms and conditions, that may or may be deemed to have an impact on the eligible assets;
- (i) any contractual arrangement with a controlling shareholder required to ensure that the issuer is capable at all times of carrying on its business independently of any controlling shareholder, including particulars of dates, terms and conditions and any consideration passing to or from the originator or any other member of the group; and
- (j) a copy of any contractual arrangement with a controlling shareholder.

Where any of the documents listed above are not in the English language, translations into English must also be available for inspection.

13.0 Interest of experts

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If any of the named experts owns an amount of shares in the originator or its subsidiaries which is, material to that person, or has a material, direct or indirect economic interest in the originator or that depends on the success of the offering, provide a brief description of the nature and terms of such contingency or interest.

Shareholding of one percent or more in the originator shall be considered material.

14.0 Trustee

Details of trustees or of any other representation for the asset-backed securities holders.

- (a) The name, function, description and head office of the trustee or other representative of the asset-backed securities holders; and
- (b) The main terms of the document governing such trust arrangement and in particular the conditions under which a trustee or may be replaced.

15.0 Credit enhancer

The names, addresses and descriptions of the persons underwriting the issue and where the credit enhancer is a company, the description must include—

- (a) the place and date of incorporation and registration number of the credit enhancer;
- (b) the names of the directors of the credit enhancer;
- (c) the name of the secretary of the credit enhancer;
- (d) the bankers to the credit enhancer where applicable;
- (e) the authorised and issued share capital of the credit enhancer; and
- (f) the credit rating of the credit enhancer.

Where not all of the issue is underwritten or guaranteed, a statement of the portion not covered shall be made.

SECOND SCHEDULE

ASSET-BACKED SECURITIES CONTINUOUS REPORTING OBLIGATIONS

Issuer:

A 01 An issuer must publish, by way of cautionary announcement information, which could lead to material movements in the ruling price of its securities if at any time the necessary degree of confidentiality cannot be maintained, or that confidentiality has or may have been breached.

A 02 An issuer whose securities are listed on more than one securities exchange must ensure that equivalent information is made available within twenty four hours to the market at all such securities exchange.

Annual financial statements

BA I (1) Every issuer of asset-backed securities to the public or section of the public shall prepare an annual report containing audited annual financial statements within four months of the close of its financial year.

- (2) A complete set of financial statements includes the following components:
 - (a) balance sheet;
 - (b) income statement;
 - (c) a statement showing either—
 - (i) all changes in equity; or
 - (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
 - (d) cash flow statement; and

- (e) accounting policies and explanatory notes.

CO. Reporting Requirements:

C.00 Quarterly, interim and annual reports and accounts

C.01 An issuer should include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report:

- (a) a statement that the same accounting policies and methods of computation are followed in the interim financial statements as compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change;
- (b) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence; and
- (c) the nature and amount of changes in estimates of amounts reported;
- (d) a brief report on any material developments including a quarterly report from the credit rating agency where applicable or where the Asset-Backed Securities is not rated, the trustee's assessment of the performance of the pool of assets securitized which report should also be made available for inspection by the public.
- (e) an overview of events that are not necessarily material.

C.02 An issuer should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements.

C.03 The minimum disclosures in the quarterly, interim and annual financial statements of the Issuer includes:

Income and Expenditure Account

Income:

1. Cash collected
2. Interest received
3. Other incomes received
4. Surplus or deficit

Expenses

1. Allowable expenses

In cases where there is a deficit, a disclosure on how the shortfall was met is required.

Balance Sheet

Assets:

1. Eligible Assets (portion yet to mature)
2. Investments (Government securities)
3. Bank balance

Capital and Liabilities:

1. Share capital
2. Surplus or Deficit
3. Borrowings (asset-backed securities outstanding)
4. Accrued interest

C.04 An issuer of asset-backed securities should disclose the following if not disclosed elsewhere in information published with the financial statements:

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(a) the domicile and legal form of the issuer, its country of incorporation and the address of the registered office (or principal place of business, if different from the registered office);

(b) a description of the nature of the issuer's operations and its principal activities;

C.05 An issuer of asset-backed securities shall notify the Authority and the securities exchange of its annual results within twenty-four hours following approval by the Issuer's directors.

C.06 An issuer of asset-backed securities shall at the end of each calendar quarter, submit to the Authority and securities exchange the following information:

(a) A register of asset-backed security holders in the format prescribed below—

Investor's Name

Date of purchase

Maturity date

Face value (KSh.)

Yield (%age)

Redeemed value (KSh.)

Outstanding balance (KSh.)

Banks

Insurance Companies

Fund Managers

Investment advisors

Individuals

Others

Total

(b) A schedule of the obligations maturing in the next quarter against amounts already collected to date and amounts expected to be collected by the end of the next quarter and where there is material difference between the preceding quarter's collections and the anticipated collections in the next quarter, an explanation should be given.

(c) The following information regarding eligible assets:

i. The outstanding principal balance or anticipated collections over a definite period from the eligible assets;

ii. The outstanding principal balance or anticipated collections over a definite period from the eligible assets as a percentage of the total amount of Asset-Backed Securities being offered;

iii. An aging schedule of the receivables or assets being securitized for the last three years or less where they have been in existence for a shorter period;

iv. A description of what constitutes a default;

v. The amount of eligible assets in default;

vi. The amount of eligible assets in default as a percentage of the total amount of asset-backed securities being offered and the amount of eligible assets in default as a percentage of the credit enhancement.

vii. The rate of interest of the asset-backed securities, the interval of payment of interest and the entitlement period; and

viii. Explanatory notes where there is expected material difference between actual and projected cash flows and any actions being taken to correct the situation.

(d) Name, address telephone number, registered office at which the register of the security holders is kept.

C.07 An issuer of asset-backed securities shall provide the Authority and the securities exchange details of its asset-backed security holders, which may be required by the Authority or the securities exchange.

An issuer shall submit interim reports to the Authority and publish extracts of the annual report in at least two daily newspapers of national circulation in Kenya.

D.00 Communication with asset-backed security holders

D.01 An issuer shall ensure that at least in each securities exchange in which its securities are listed all the necessary facilities and information are available to enable holders of such securities exercise their rights. In particular it shall:

- (a)** inform holders of securities of the holding of meetings which they are entitled to attend;
- (b)** publish notices or distribute circulars giving information on—
 - (i) the allocation and payment of interest;
 - (ii) redemption or repayment of the securities.

D.02 An issuer must forward to the Authority and securities exchange at which the asset-backed securities are listed copies of:

- (a)** all circulars, notices, reports, announcements or other documents at the same time as they are issued; and
- (b)** all resolutions passed by the issuer, where applicable, at any meeting of holders of listed securities within ten days after the relevant general meeting.

EO. Credit rating renewals

E.00

E.01 An issuer of asset-backed securities shall ensure that the credit rating of the issue is reviewed and updated every year from the date of the last credit rating report.

E.02 A trustee shall ensure that each credit rating report is delivered to the Authority within seventy two hours of the date of the report and the results of the same are published in two newspapers of national circulation within seven days of the date of the report.

F0 Corporate governance

FO1 There shall be public disclosure in respect of any management or business agreements entered into between the issuer and its related parties, which may result in a conflict of interest situation.

G.00 Miscellaneous obligations

G.01 1. An issuer shall disclose and make a public announcement of all material information including but not limited to:

- (a)** any change of address of the registered office of the issuer or of any office at which the register of the holders of listed securities is kept;
- (b)** any change in the directors, registrar, servicing agent or auditors of the issuer;
- (c)** any proposed significant alteration of the memorandum and articles of association of the issuer or the trust documents;
- (d)** any application filed in a court of competent jurisdiction to wind up the originator or issuer. Details of the suit and the probable outcome of the suit must be confidentially submitted to the Authority and the securities exchange where the asset-backed securities are listed; and

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the appointment or imminent appointment of receiver or receiver and manager or liquidator of the originator or issuer; and

(e) any "cash inflow" warning, where there is a material discrepancy between the projected cash inflows for the current financial year and the level of cash inflows in the previous financial year.

2. For the purposes of subparagraph (1)(e), the expression "material discrepancy" in relation to projected cash flows for a financial year means that such cash inflows are at least five percent lower than the level of cash inflows in the previous financial year.
