

THE CAPITAL MARKETS (INVESTMENT-BASED CROWDFUNDING) REGULATIONS

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THE CAPITAL MARKETS (INVESTMENT-BASED CROWDFUNDING) REGULATIONS

[Legal Notice 175 of 2022]

PART I – PRELIMINARY**1. Citation**

These Regulations may be cited as the Capital Markets (Investment Based Crowding) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Capital Markets Act;

"Authority" means the Capital Markets Authority established under section 5 of the Act;

"cooling off period" means a contractual period within which an investor can withdraw from a crowdfunding transaction without any restrictions;

"crowdfunding" means the act of raising money from many individuals or entities to either finance a project or business through a crowdfunding platform;

"crowdfunding platform" means a website, internet based portal or such other technological application, which facilitates interactions between investors and issuers and other related interactions;

"crowdfunding platform operator" means an entity licensed by the Authority to facilitate transactions involving the offer or sale of investment instruments through a crowdfunding platform;

"custodian" means a bank licensed under the Banking Act (Cap. 488) and appointed by the Crowding Platform Operator to receive and hold funds raised through the crowding platform;

"investment-based crowdfunding" means crowdfunding in exchange for shares, debt securities or any other investment instruments approved by the Authority;

"investor" means any person or entity that seeks to make, or has made an investment through a crowdfunding platform;

"investment instruments" means securities as defined under the Act;

"issuer" means a company which issues the security or investment instrument, which is hosted on the crowdfunding platform for purposes of crowdfunding;

"key personnel" has the meaning assigned to it under the Act;

"liquid capital" means part of an entity's assets that it holds as cash or assets that can easily be converted into cash;

"medium enterprise" means a company whose annual turnover ranges between five million and fifty million Kenya shillings and employs between fifty to three hundred employees;

"micro enterprise" means a company registered as such under the Micro and Small Enterprises Act (Cap. 499C);

"retail investor" means an investor who is not a sophisticated investor;

"small enterprise" means a company registered as such under the Micro and Small Enterprises Act (Cap. 499C);

"sophisticated investor" has the meaning assigned to it under the Act;

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"start-up" means a company incorporated in Kenya that is newly established or has not been in existence for more than ten years, which is established for the sole purpose of developing an innovative and scalable product or service;

"trading facility" means system that facilitates the exchange of crowdfunded investment instruments between parties; and

"trust account" means a bank account opened in trust by the Crowdfunding Platform Operator for the benefit of the issuers and investors and managed and monitored by the Custodian.

3. Application

(1) These Regulations shall apply to an investment-based crowdfunding platform established, maintained or operated in Kenya.

(2) A person shall be considered to be operating, providing or maintaining an investment-based crowdfunding platform in Kenya where—

- (a) the platform is established in Kenya;
- (b) the platform is located outside Kenya but actively targets Kenyan investors as provided for under sub-regulation (3); or
- (c) the key components of the platform when taken together are physically located in Kenya even if any of its component parts, in isolation, is located outside Kenya.

(3) For purposes of these Regulations, a crowdfunding platform operator located outside Kenya shall be considered as actively targeting investors in Kenya if the operator, or the operator's representative, promotes crowdfunding activities either directly or indirectly in Kenya.

(4) A crowdfunding platform operator deemed to be actively targeting investors in Kenya for purposes of these Regulations shall be required to obtain a license from the Authority.

(5) In deciding whether there is direct or indirect promotion of the crowdfunding activity, the Authority may take into consideration the following activities—

- (a) advertising the crowdfunding platform, investment instruments that are subject to the crowdfunding or the issuer hosted on the platform in any publication or electronic media in Kenya;
- (b) sending direct mail to a Kenyan address or electronic message to a person domiciled in Kenya marketing or promoting the crowdfunding platform or activity; or
- (c) direct or indirect solicitation through agents.

(6) Notwithstanding subregulations (1), (2), (3), (4) or (5), in determining whether a crowdfunding platform is targeting investors in Kenya, the Authority shall assess all relevant facts and circumstances while taking into account the protection of investors and the integrity of Kenya's capital markets.

PART II – THE CROWDFUNDING PLATFORM OPERATOR

4. Licensing requirement

(1) A person shall not establish, maintain or operate an investment based crowdfunding platform unless that person is duly licenced as a crowdfunding platform operator by the Authority.

(2) A person who contravenes sub regulation (1) commits an offence and is liable to the penalty prescribed in section 34A of the Act.

5. Application for licence and accompanying documents

A person who intends to be a crowdfunding platform operator shall apply to the Authority for licensing in the form set out in the First Schedule accompanied by the following documents—

- (a) a certified copy of certificate of incorporation;
- (b) evidence of its financial soundness and capital adequacy confirming the financial position of the company including audited financial statements, management accounts and certified bank statements, where applicable;
- (c) rules for the operation of its business setting out the planned activities and conduct of its platform users;
- (d) details of the organization structure and profiles of the directors, management and other key personnel including duly completed fit and proper forms as provided in the Second Schedule;
- (e) evidence of adequate human resources with adequate knowledge and competence on crowdfunding business;
- (f) a business plan that includes financial projections;
- (g) detailed information of the crowdfunding website or application to be used including system capacity and security measures and evidence of its functionality;
- (h) details of platform outsourcing arrangements, if any;
- (i) proposed procedures to verify the completeness, correctness and clarity of the information of the issuer and investment hosted on the platform;
- (j) business continuity and disaster recovery plan;
- (k) record keeping procedures including audit trail for daily operations to meet emergencies;
- (l) adequate risk management framework that includes details of its fraud detection and prevention measures;
- (m) the proposed standard offer document to be used;
- (n) data protection policy in compliance with the relevant laws;
- (o) policy on prevention of anti-money laundering and terrorism financing;
- (p) the application fees set out in the Third Schedule; and
- (q) any other additional documents or information as the Authority may require.

6. Eligibility for licensing

An applicant shall be eligible for licensing as a crowdfunding platform operator, if that applicant—

- (a) is a company limited by shares;
- (b) has a minimum paid up share capital of Kenya shillings five million; and
- (c) has a minimum liquid capital of Kenya shillings ten million or eight percent of its liabilities, whichever is higher.

7. Criteria for licensing

The Authority shall license an applicant as a crowdfunding platform operator if it is satisfied that the applicant—

- (a) has complied with the licensing requirements set out in regulation 5;
- (b) has the capacity to operate an orderly, fair and transparent market in relation to the securities or investment instruments issued through its platform;
- (c) has as its directors and key personnel determined as fit and proper persons as prescribed under section 24A of the Act;
- (d) has demonstrated that the platform to be used has the adequate functionality, capacity and security measures necessary for the conduct of its business;
- (e) has demonstrated ability to manage any risks associated with its business and operations;

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- (f) has demonstrated ability to take appropriate action against any person in breach including directing such persons to take any necessary remedial measures;
- (g) has robust rules to guide operations of the crowdfunding activities; and
- (h) has sufficient financial, human and other resources for the operation of its crowdfunding platform.

8. Rules for the operation of business

The Rules of the crowdfunding platform operator shall provide for—

- (a) criteria for on boarding its users including issuers and investors;
- (b) procedure for transfer of proceeds for each funding round and monitoring of the proceeds;
- (c) code of conduct and ethics for its users including misconduct and proposed penalties;
- (d) general obligations and liability of its platform users;
- (e) rules and procedure for their trading facility (if any);
- (f) proposed communication policy;
- (g) cyber security, backup systems and disaster recovery mechanisms for the platform;
- (h) protection of investors and public interest;
- (i) promotion of fairness and transparency in the market;
- (j) management of conflicts of interest that may arise including disclosures to be made where the crowdfunding platform operator or its employees participate in a crowdfunding transaction;
- (k) promotion of fair treatment of its platform users;
- (l) resolution of disputes and provision for appeal to the Authority;
- (m) fees and associated costs to be charged to the crowdfunding platform users; and
- (n) any other matter as may be required by the Authority.

9. Grant of a license

(1) The Authority shall, if satisfied that the applicant has met all the requirements for licensing and upon payment of the fees set out in the Third Schedule, grant a licence to operate as a crowdfunding platform operator.

(2) The crowdfunding platform operator shall be required to pay an annual regulatory fee as set out in the Third Schedule.

(3) A licence granted shall remain valid unless suspended or revoked by the Authority as specified under regulation 11.

10. Denial of grant of license

(1) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity to be heard.

(2) If the Authority, after hearing the applicant, refuses to grant a licence, it shall communicate the decision to the applicant within fourteen days of the decision, stating the grounds for refusal.

(3) An applicant aggrieved by the decision of the Authority may appeal against such refusal to the Capital Markets Tribunal within fifteen days of communication of the decision.

11. Suspension, restriction or revocation of a licence

The Authority may suspend, restrict or revoke a crowdfunding platform operator's licence in accordance with sections 26 of the Act.

12. Cessation of business

A crowdfunding platform operator shall not cease to operate as such without prior thirty days' notice in writing to the Authority who may impose any terms and conditions to ensure orderly cessation of business of the crowdfunding platform operator.

PART III – CROWDFUNDING PARTICIPANTS**(A) Issuers****13. Eligible issuers**

(1) A micro, small or medium enterprise incorporated in Kenya with a minimum of two years' operating track record and a good corporate governance record shall be eligible to raise funds through a crowdfunding platform in exchange for the issuance of an investment instrument.

(2) Despite sub-regulation (1), start-ups with a good operating track record and a good corporate governance record shall be eligible to raise funds through a crowdfunding platform.

14. Fundraising limits

(1) The aggregate amount that may be raised by an eligible micro, small and medium enterprises or startup within a twelve months period shall be a maximum amount of Kenya shillings one hundred million.

(2) A crowdfunding platform operator may apply to the Authority for a no-objection where an issuer seeks to raise more than the set maximum amount within the given duration.

(3) The Authority may issue a no-objection to raise additional funds subject to such conditions as may be imposed from time to time.

15. Prohibited issuers

The entities listed below are prohibited from raising funds through a crowdfunding platform—

- (a) public listed companies and their subsidiaries;
- (b) entities with a poor governance record;
- (c) entities that intend to use the funds raised to provide loans or invest in other entities; and
- (d) any other entity as may be specified by the Authority.

(B) Investors**16. Eligible investors**

The following persons are eligible to invest in crowdfunding investments—

- (a) sophisticated investors; and
- (b) retail investors subject to investment limits prescribed by the crowdfunding platform operator but up to a maximum of Kenya shillings one hundred thousand.

PART IV – THE CROWDFUNDING TRANSACTION**17. Permitted investment instruments**

Investment instruments allowed for purposes of crowdfunding under these Regulations include shares, debt securities including bonds or debentures or any other instruments as shall be approved by the Authority from time to time.

18. Offering document

(1) A crowdfunding platform operator shall develop a standardized offering document for entities offering securities, which shall have the disclosures set out in the Fourth Schedule and shall be submitted to the Authority not later than forty-eight hours prior to publication.

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(2) The crowdfunding platform operator shall make available the offering document through the crowdfunding platform to the investors at least fourteen days before the commencement of the offer period.

(3) The issuer and the crowdfunding platform operator shall not avail the offering document on any other communication medium other than the crowdfunding platform on which the issuer intends to offer its securities.

(4) A person who makes a false or misleading statement in form or context in an offering document knowing the statement to be false or misleading shall commit an offence and is liable to the penalties under the Act.

19. Requirements for issuers

An eligible issuer shall, in addition to any other obligations that may be imposed by a crowdfunding platform operator—

- (a) clearly outline, in the offering document, investors' rights and ownership of the investment instruments to be issued;
- (b) file a duly completed standardised offering document with the crowdfunding platform operator for approval to crowdfund on their platform; and
- (c) provide the disclosures set out in the Fourth Schedule.

20. Crowdfunding transaction

(1) The issuer shall determine and disclose in the offering document—

- (a) the period in which the offer shall remain open; and
- (b) the threshold amount for the offer to be deemed a successful offer.

(2) Where an issuer is unable to meet the prescribed minimum threshold for the targeted amount, the offer shall be withdrawn and the crowdfunding platform operator shall effect a refund of the monies to the investors within forty-eight hours and the costs for such refunds shall be fully borne by the issuer.

(3) Where an offer is withdrawn under sub regulation (2), the issuer may only commence a fresh crowdfunding offering not earlier than ninety days after the said withdrawal.

(4) Where the crowdfunding transaction is successful, the crowdfunding platform operator shall make the funds available to the issuer within five business days after the close of the offer.

(5) The crowdfunding offer by the issuer shall include a contractual right of a cooling off period allowing the investor to withdraw an offer or agreement to purchase the investment instrument by delivering a notice in the manner prescribed by the crowdfunding platform operator within forty-eight hours from the date of investments subscription, but no withdrawal shall be made after the close of the offer period.

(6) The crowdfunding platform operator shall ensure that any changes made to the offering documents prior to the close of the offer, must be communicated to the investors and the investors shall be given an opportunity to withdraw the investments within forty-eight hours of such communication.

(7) Where an investor cancels the offer or agreement to purchase investment instruments, all funds of the investor shall be refunded or released within forty-eight hours of the request to cancel.

(8) A crowdfunding platform operator who does not comply with the timelines provided in sub-regulations (5) will be liable to the penalties specified under section 25A of the Act.

21. Use of funds

(1) The crowdfunding platform operator shall take reasonable steps to ensure that the funds raised through its platform are used for the stated purpose.

(2) An issuer who uses the proceeds for any other purpose other than that stated or a purpose related thereto commits an offence and shall be liable to the penalties prescribed under the Act.

22. Transaction fees

A crowdfunding platform operator shall, in addition to any other fees that they may charge for use of their platform, levy a transaction fee as specified in the Third Schedule for each successful crowdfunding transaction facilitated through its platform which amount shall be payable and remitted to the Authority directly within thirty days of such transaction.

23. Restrictions on crowdfunding platform operator

- (1) A crowdfunding platform operator is prohibited from—
 - (a) raising own funds through its own platform;
 - (b) offering investment advice;
 - (c) handling investor funds;
 - (d) promising a guaranteed return to investors; and
 - (e) promising a guaranteed outcome of the offer to the issuer.
- (2) An issuer shall not host an offer concurrently on multiple crowdfunding platforms.

PART V – TRADING FACILITY

24. Requirements of the trading facility

(1) A crowdfunding platform operator may operate a trading facility for the transfer of the crowdfunded investment instruments originally offered on the crowdfunding platform.

(2) A crowdfunding platform operator providing such an additional facility shall comply with the following requirements—

- (a) have in place transparent rules and procedures for fair and orderly trading on the crowdfunded investment instruments;
- (b) inform its platform users on the nature of the facility, including applicable fees;
- (c) provide prospective investor(s) intending to buy the investment instruments availed on the facility with information that was availed to the earlier investors and information on the performance of the investment availed on the facility; and
- (d) ensure that the prospective investor(s) affirms to the risk acknowledgment form under regulation 29.

(3) The Cabinet Secretary shall formulate such rules as may be required to regulate such trading activities.

PART VI – DUTIES OF A CROWDFUNDING PLATFORM OPERATOR

25. Requirements for the crowdfunding platform operator

A crowdfunding platform operator shall—

- (a) discharge its duties as required by these Regulations in relation to a crowdfunding transaction;
- (b) communicate to investors any material changes to an issuer's proposal.

26. General obligations

(1) Every crowdfunding platform operator shall disclose and display on its platform relevant information relating to the platform and its use, including—

- (a) how the platform operates;
- (b) users rights and responsibilities;
- (c) eligibility criteria for prospective issuers and investors;
- (d) investor education materials;
- (e) complaint handling and dispute resolution procedures;
- (f) disclaimers and limitation of liability, highlighting the platforms legal liability for damages incurred by its users; and

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- (g) related fees and charges for using the platform.

(2) In addition to the requirements set out in sub-regulation (1), a crowdfunding platform operator shall undertake—

- (a) to establish custodial arrangements as required by these Regulations;
- (b) to monitor and ensure compliance of its rules;
- (c) to take reasonable steps to prevent fraud and ensure compliance with these Regulations and relevant laws;
- (d) to maintain a register and records of all investors and issuers including details of the management of all issuers and details of investor holdings;
- (e) to avail any relevant document or information to the investor upon request;
- (f) to notify the Authority immediately of any material changes that may occur during operations which would affect its authorization and licensing;
- (g) to comply with continuous reporting obligations as specified by these Regulations; and
- (h) to perform any other obligation as may be required by these Regulations or the Authority.

27. Obligations on risk disclosures

A crowdfunding platform operator shall disclose all risks associated with the crowdfunding investment which includes information on—

- (a) risk warning on investing through the platform;
- (b) restrictions on the ability to cancel the investment; and
- (c) any other appropriate risk disclosures.

28. Cautionary statement

(1) A crowdfunding platform operator shall prominently display a cautionary statement—

- (a) to all visitors to the site of the home page of the platform;
- (b) to every investor, on the subscription landing page of the issuer; and
- (c) on all application forms for investing through the platform.

(2) The cautionary statement should caution and advise investors that—

- (a) investing in the issuers hosted on the platform may be high risk investment;
- (b) investors must be in a position to bear the risk associated with the loss of investment without undue hardship; and
- (c) investors must read the information carefully and may seek independent financial advice.

29. Risk acknowledgement form

(1) A crowdfunding platform operator shall require each investor to affirm to a risk acknowledgement form, prior to acceptance of the offer, in which the investor affirms that the investor—

- (a) understands that the proposed investment is a risky investment;
- (b) has ability to absorb the complete loss of the amount invested;
- (c) understands that they may not be able to sell the securities, or investment instruments;
- (d) has been provided with the required disclosures for the offer; and
- (e) understands that crowdfunding investments are not covered by the Investor Compensation Scheme under the Act.

(2) The information in the risk acknowledgment form shall be provided in a manner that is clear and easily understood by all investors.

(3) The information in the risk acknowledgment form shall be written in such a manner as to be capable of being read with reasonable ease by the investor.

(4) The crowdfunding platform operator shall obtain and retain the self-declared risk acknowledgement forms from the investors prior to them investing on a crowdfunding platform.

30. Due diligence

(1) A crowdfunding platform operator shall carry out due diligence on prospective issuers and investors intending to use its platform.

(2) The scope of the due diligence exercised by the operator shall include taking reasonable steps to—

- (a) conduct background checks on the issuer and investor;
- (b) determine the level of sophistication of the investor;
- (c) conduct fitness and probity checks on the directors and management;
- (d) interrogate the information in the issuer's disclosure documents lodged before they are made accessible to investors through the platform;
- (e) ensure their compliance with anti-money laundering rules in place; and
- (f) ensure compliance with the disclosure requirements.

31. Operation of trust account

(1) A crowdfunding platform operator shall appoint a custodian to hold in trust any funds raised through the platform.

(2) The custodian shall establish and maintain a separate trust account for each funding round on its platform with a financial institution duly licensed and approved by the Authority as a custodian.

32. Duties of a custodian

The duties of a custodian shall include—

- (a) opening and maintaining a segregated account in the name of each issuer for the exclusive benefit of each issue; and
- (b) conducting any other duty as shall be guided by the crowdfunding platform operator or the Authority.

33. Data protection and privacy

A crowdfunding platform operator—

- (a) shall establish appropriate safeguards for ensuring the integrity of the information received and published;
- (b) shall ensure security and confidentiality of information collected from both the issuers and investor to facilitate a crowdfunding transaction;
- (c) shall maintain reliable and secure operating systems;
- (d) shall install and ensure the operation of suitable backup facilities;
- (e) shall develop and implement a written identity theft prevention program;
- (f) shall provide detailed information on the data privacy rights of users and a description of the technical and organizational security measure taken to ensure integrity and confidentiality of the data; and
- (g) shall comply with the Data Protection Act (Cap. 411C), to the extent applicable.

34. Record keeping

(1) A crowdfunding platform operator shall keep a copy of all relevant documents, including—

- (a) a detailed list of all the issuers and investors;

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- (b) evidence of individual holdings of each investor;
- (c) a record of past and present holders of the crowdfunded investments and their holdings; and
- (d) a transfer journal or log recording the transfer of the crowdfunded investments.

(2) All records shall be kept for a period of at least seven years from the date which the information was lodged in the portal.

35. Continuous reporting

(1) A crowdfunding platform operator shall on a monthly basis report and provide information to the Authority on—

- (a) details of the issuers and amounts raised through its platform;
- (b) statistics on investor profiles and investment trends;
- (c) a quarterly monitoring report on the use of proceeds; and
- (d) any other information as the Authority may require from time to time.

(2) A crowdfunding platform operator shall submit to the Authority—

- (a) on a quarterly basis management accounts for each quarter; and
- (b) audited annual accounts within four months following the end of its financial year.

PART VII – GENERAL PROVISIONS

36. Inspections

The Authority may carry out inspections on a crowdfunding platform operator or on any of its facilities satisfy itself as to the integrity of the platform, financial soundness and stability, risk management and its control systems.

37. Offence

Any person who contravenes the provisions of these Regulations for which no penalty is provided, that person shall be liable, upon conviction, to the penalty specified under section 34A of the Act and general damages where applicable, for any loss occasioned to the other party.

38. Applicability of capital markets laws

A crowdfunding platform operator shall comply with—

- (a) the Capital Markets (Conduct of Business)(Market Intermediaries) Regulations (LN. No. 145/2011);
- (b) the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations (LN. No. 144/2011);
- (c) the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets; and
- (d) any other existing capital market laws and Regulations to the extent applicable except where expressly exempted by the Authority.

39. Transition provision

Any person operating an investment-based crowdfunding platform or holding itself out as a crowdfunding platform operator prior to the commencement of these Regulations shall obtain a license within twelve months after the commencement of these Regulations.

FIRST SCHEDULE

[r. 5]

APPLICATION FORM FOR A LICENCE TO OPERATE
AS A CROWDFUNDING PLATFORM OPERATOR

Application is made for a Crowdfunding Platform Operator license under the Capital Markets (Investment Based Crowdfunding) Regulations, 2022 and the following statements are made in respect thereof:

Note:

(a) If space is insufficient to provide details, please attach annexure(s).

(b) Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

INFORMATION ON THE APPLICANT

1. Name of company
2. Registered Office
3. Date of Incorporation
4. Address
5. E-mail
6. Location of Principal Office
- Telephone number of principal office
- Branch offices (if any)
- Details of Branch Offices

INFORMATION ON THE APPLICANT'S BUSINESS

7. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority
 8. Information on the business model (please attach a business plan if necessary)
 9. Description of the internal controls to secure the integrity of the business (e.g. risk management, Data Protection, IT security, control mechanisms for compliance with investor protection requirements)
 10. Evidence and details of the platform (e.g. ownership, readiness for use)
- OWNERSHIP STRUCTURE, DIRECTORS AND OTHER KEY PERSONEL**
- Fit and proper: Your directors and senior managers must be fit and proper persons to hold their respective positions.
- Capability: Your organisation must have the right mix of people with the right skills and experience, in the right roles, to monitor your licensed business properly and effectively.
- Financial resources: Your organisation must have adequate financial resources to effectively and efficiently run the business.

11. Details of capital structure:

- (a) Nominal capital (KSh.)
- (b) Number of shares
- (c) Paid up capital (KSh.)
- (d) Liquid capital (KSh)

12. Shareholders (please attach a list showing the following details)

Name	Address and telephone number	Number of shares held
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13. Directors (please attach a list with the following details)

Name	Identity Card/	Date of Appointment	Date of birth	Permanent address	Academic or	Number of shares
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Passport
numberand Professional held in the
telephone qualification company
number

14. Company Secretary (details)

i. Name

ii. Address

iii. Institute of Certified Secretaries of Kenya Registration No.

15. Details of the Chief Executive Officer and other Key personnel (please attach a list with the following details)

Name	Identity Card/ Passport number	Date of Appointment	Date of Birth	Permanent address and telephone number	Academic or Professional qualification held in the company	Number of shares held in the company

16. Profile of the persons listed in note 12

Name	Post	Qualification	Experience

OTHER PARTICULARS ON THE KEY PERSONEL OF THE APPLICANT

17. Particulars of other directorship(s) of the directors and secretary.

.....

18. Particulars of shares held by directors or secretary in other companies

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19. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details

.....

20. Has any director, secretary or senior management of the applicant been a director of a company that has been:

a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give

details

b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the relevant authority? Yes/No.

If Yes, give

details

c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No.

If yes, give

details

21. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No.

If 'yes', give details.

.....

22. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (21)? Yes/No.

If 'yes,' give

details

23. (1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities or derivatives exchange or any over the counter platform? Yes/ No.

If 'yes', give details

.....

(2) Have any of the above persons been—

a) refused membership of any securities or derivatives organization? Yes / No.

If 'yes', give details

b) expelled from or suspended from trading on or membership of any securities or derivatives organization or any over the counter platform? Yes/No.

If 'yes' give details

.....

c) subjected to any other form of disciplinary action by any stock/securities or derivatives exchange? Yes/No.

If 'yes', give details

.....

REFERENCE

24. Business references:

25. One bank reference, (where the applicant is a bank the reference shall be given by another bank independent of the applicant

ADDITIONAL INFORMATION

26. Any other additional information considered relevant to this application:

.....

.....

We (Director)

..... (Director) and

..... (Secretary)

declare that all the information given in this application and in the attached documents is true and correct

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Secretary Note:

1. The following shall be submitted with the application for a licence:

a) articles of association

b) certificate of incorporation

c) Business plan complying with the relevant capital markets laws

d) Detailed rules of operation of the business

e) Risk management plan

f) A copy of the platform's terms and conditions

g) a declaration by persons authorized as prescribed to accompany the application form

h) any other document(s) referred to under these Regulations

[Subsidiary]

i) an application fee of Ksh. 10,000.

SECOND SCHEDULE

[r. 5(d)]

FIT AND PROPER FORMS

FIT AND PROPER FORM FOR INDIVIDUALS WHO ARE OR ARE PROPOSING TO BECOME DIRECTORS OR KEY PERSONNEL OF THE CROWDFUNDING PLATFORM OPERATOR.	
COMPANY	
Name of Applicant Company:	
<input type="text"/>	
PERSONAL INFORMATION OF THE KEY PERSONNEL	
Full names (Including former surname(s) and /or forenames by which you may have been known):	
<input type="text"/>	
ID/Passport number:	<input type="text"/>
Please state the capacity in which you are completing this form (i.e. as a director or key personnel)	
<input type="text"/>	
Please state your full title and describe the particular duties and responsibilities attaching to the position(s), which you hold or will hold.	
If you are completing this form in the capacity of director, indicate whether, in your position as director, you have or will have executive responsibility for the management of the applicant's business.	
In addition, please provide a copy of your curriculum vitae.	

<div></div>	
Place and date of birth:	<div></div>
Citizen of:	<div></div>
Residence of:	<div></div>
Present business address:	<div></div>
Present Residential address:	<div></div>

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[Subsidiary]

ACADEMIC AND PROFESSIONAL RECORD
Professional & academic qualifications (starting with highest qualification) <div></div>
Special awards or honors (if any) <div></div>
Membership in professional organizations

Occupation or employment (Present or most recent and for the past ten years) Note to include the dates, Name & business of employer and positions held.

Capital Markets

[Subsidiary]

Bodies corporate (other than the applicant) where you are now an, officer, shareholder, or manager? Give relevant dates.

--

Bodies corporate other than the applicant and those listed above where you have been a director, shareholder, controller or manager at any time during the last 10 years. Give relevant dates:

--

Capital Markets

[Subsidiary]

Past and present business affiliations (direct and indirect): Nature of affiliation (That is, director, officer, share Inclusive date holder with 10% and above (month and year):

Nature of business:

From:

To:

Do any of the above business affiliations maintain a business relationship with the institution? If so, give particulars:

Family group: Business affiliation (State name of business and nature of affiliation i.e. director, officer, significant shareholder. Also indicate the nature of the family group member's relation to the Applicant. A family group member can be a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, son-in-law, grandchild or spouse of a grandchild).

[Subsidiary]

PROBITY, COMPETENCE AND SOUNDNESS OF JUDGMENT

Have you, in Kenya or elsewhere, been dismissed from any office or employment, or been subjected to disciplinary proceedings by your employer or barred from entry to any profession or occupation? If so give particulars:

Has an adverse finding been made against you at any time preceding the date of this questionnaire in any civil or criminal proceedings by a court of law (whether in the Republic of Kenya or elsewhere) in which you were found to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty. If so give particulars:

--

Have you at any time preceding the date of this questionnaire been found guilty by any professional or financial services industry body (whether in the Republic of Kenya or elsewhere) of an act of dishonesty, negligence, incompetence or management. If so give particulars:

--

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[Subsidiary]

Have you at any time preceding the date of this questionnaire been denied membership of any body on account of an act of dishonesty, negligence, incompetence or mismanagement? If so give particulars:

Have you at any time preceding the date of this questionnaire been found guilty by any regulatory or supervisory body (whether in the Republic of Kenya or elsewhere), or has an authorization to carry on business been refused, suspended or withdrawn by any such body on account of an act of dishonesty, negligence, incompetence or mismanagement by yourself? If so give particulars:

Have you at any time prior to the date of this questionnaire been disqualified or prohibited by any court of law (whether in the Republic of Kenya or elsewhere) from taking part in the management of any company or other statutorily created, recognized or regulated body, irrespective of whether such disqualification has since been lifted or not? If so give particulars:

--

DILIGENCE WITH RESPECT TO THE PROPOSED ROLE

Would you confirm that if appointed as a director of the Company that you will undertake your role diligently, in accordance with the duties of a director under the law and that you will do so without reservation? If so give particulars:

--

Are there any reasons, which might impair your ability to undertake your role diligently?

--

[Subsidiary]

WHETHER INTERESTS OF CUSTOMERS MAY BE THREATENED BY VIRTUE OF PAST CONVICTIONS OR OFFENCES

Have you at any time preceding the date of this questionnaire had any judgment (including a finding of fraud, misrepresentation or dishonesty) given against you in any civil or criminal proceedings, in the Republic of Kenya or elsewhere or are there any proceedings now pending which may lead to such judgment? If so give particulars:

Have you at any time preceding the date of this questionnaire had any judgment (including a finding of fraud, misrepresentation, misappropriation of funds, manipulation or securities/market transactions, dishonesty) given against you in any civil or criminal proceedings, in the government of Kenya, Africa or elsewhere or are any proceeding now pending which may lead to such judgment? If so give particulars:

Have you at any time preceding the date of this questionnaire knowingly or negligently aided or abetted other persons in the breaching of any laws, regulations, exchange rules and/or codes of conduct? If so give particulars:

Have you at any time preceding the date of this questionnaire been the subject of any investigation or disciplinary proceedings by any regulatory authority (whether in the Republic of Kenya or elsewhere) or exchange, professional body or government body or agency. If so give particulars:

CONTRAVENTION OF LAWS DESIGNED TO PROTECT MEMBERS OF THE PUBLIC

Have you at any time preceding the date of this questionnaire ever been found to have contravened the provision of any law designed for the protection of members of the public against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in transactions with marketable securities? If so give particulars:

Have you at any time preceding the date of this questionnaire ever been a controlling shareholder, director of a company or member of a corporation or been involved in any business which has been found to have contravened the provision of any law designed for the protection of members of the public against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in transaction with marketable securities? If so give particulars:

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[Subsidiary]

--

CONTRAVENTION OF LAWS DESIGNED TO PROTECT MEMBERS OF THE PUBLIC

Have you ever been a director of a brokerage firm that has been liquidated or has been under liquidation or statutory management?

--

Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it?

--

IMPROPER BUSINESS PRACTICES

Have you ever taken part in or been associated with any business practice that is fraudulent, prejudicial or which otherwise could be viewed to have discredited your methods of doing business?
If so give particulars:

Capital Markets

[Subsidiary]

Have you ever taken part or been associated with any other business practice as would, or have you otherwise conducted yourself in such a manner as to cast doubt on your competence and soundness of judgment? If so give particulars:

--

ADDITIONAL INFORMATION

Do you have any additional information, which should be brought to the attention of the Capital Markets Authority which may have an impact on the evaluation by the Authority of your good character, integrity, suitability or otherwise for the position(s) held/to be held? If so give particulars (The omission of material facts may represent the provision of misleading information).

--

Indicate the names, addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a reference on your personal and professional integrity. (The referees must not be related to you, and should have known you for at least three years).

--

Capital Markets

[Subsidiary]

CONFIDENTIALITY	
<i>The information given in response to this questionnaire shall be kept confidential by the Authority except in cases provided for by law.</i>	
DECLARATION	
<p>I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading. I am also aware that omitting material information intentionally shall be construed to be an offence and may lead to rejection of my application.</p> <p>I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the supervisory authority should be aware.</p> <p>I undertake to inform the Authority of any changes material to the applications, which arise while the application is under consideration and after taking up of the relevant post.</p>	
Name:	<input type="text"/>
Signature:	<input type="text"/>
Dated:	<input type="text"/>
Witnessed before me:	<input type="text"/>
Signed:	<input type="text"/>
<p>Sworn at <input type="text"/> this <input type="text"/> day of <input type="text"/> 20</p> <p>Before me: <input type="text"/></p> <p style="text-align: center;">Commissioner for Oaths</p>	

THIRD SCHEDULE

[rr. 5(p), 9(1), (2), 22]

APPLICABLE FEES**(a) Application, Licensing and Annual Regulatory fee**

Application fee Ksh. 10,000/-

Licensing fee Ksh. 100,000/-

Annual regulatory fee Ksh. 100,000/-

(b) Other fees

A transaction fee of 0.15% of the value of the amount raised in each crowdfunding round facilitated through the platform.

FOURTH SCHEDULE

[rr. 18(1) & 19(c)]

MINIMUM DISCLOSURE REQUIREMENTS TO
BE CONTAINED IN THE OFFERING DOCUMENT

1. The investor:

- (a) Warning to investors.
- (b) Key information of the investors including contact details and details of key personnel (if a body corporate).

2. The Issuer

- (a) Key information on the issuer.
- (b) Ownership and capital structure.
- (c) The nature of its existing or proposed business and business plan.
- (d) Issuer's source of revenue (if applicable).

3. Information on the crowdfunding

- (a) Amount to be raised.
- (b) Minimum amount that must be raised to consider the funding round successful.
- (c) Maximum amount to be raised in a funding round subject to the prescribed limits.
- (d) Price of the investment.
- (e) Nature of the investment.
- (f) Term of the investment
- (g) Description of activity to be financed.
- (h) The offer period.
- (i) Offer timetable.
- (j) Transfer method of the amounts raised.
- (k) Associated costs of the fund raising.
- (l) Any guarantees.
- (m) Detailed schedule on the use of proceeds.

4. Financials

- (a) Two years audited financial statements (where applicable).
- (b) Corporate governance structures.
- (c) Financial ratios such as, solvency, profitability, efficiency and liquidity ratios.
- (d) Schedule of outstanding debts including bank loans or any other off balance sheet liabilities.
- (e) Financial projections for 3 years including any assumptions.
- (f) Any other relevant financial information.

5. Other information

- (a) Rights and obligations of the issuer, investor and crowdfunding platform operator.
- (b) The custodian to provide the safekeeping services, the nature and terms and conditions of those services.
- (c) Conditions and warranties.
- (d) Risks and risk mitigation measures.
- (e) Material contracts, trademarks, licenses.
- (f) Litigation history including ongoing court cases.

[Subsidiary]

- (g) Description of fees applicable to the crowdfunding platform operator.
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