



**ACTS SUPPLEMENT**

*to The Uganda Gazette No. 45 Volume CIV dated 8th July, 2011.*

Printed by UPPC, Entebbe, by Order of the Government.

*Capital Markets Authority*  
**Act 12** *(Amendment) Act* **2011**

**THE CAPITAL MARKETS AUTHORITY (AMENDMENT) ACT, 2011**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Amendment of Capital Markets Authority Act, Cap. 84.
2. Amendment of section 6 of principal Act.
3. Insertion of new Part XA in principal Act.
4. Insertion of new section 99A in principal Act.
5. Amendment of principal Act to convert shillings into currency points.
6. Modification of references to shillings in statutory instruments under principal Act.
7. Section 103 of principal Act replaced.
8. Consequential amendment of Cap. 110.
9. Insertion of new Schedule 1 in principal Act.
10. Renumbering of existing Schedule to principal Act as Schedule 2.

**THE CAPITAL MARKETS AUTHORITY (AMENDMENT)  
ACT, 2011**

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

DATE OF ASSENT: 24th June, 2011.

*Date of Commencement:* 8th July, 2011.

BE IT ENACTED by Parliament as follows:

**1. Amendment of Capital Markets Authority Act, Cap. 84.**

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

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

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

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

**2. Amendment to section 6 of the principal Act**

The principal Act is amended in section 6(1) by substituting for “each month”, the words “every three months”.

**3. Insertion of new Part XA in Cap. 84**

The principal Act is amended by inserting immediately after Part X the following—

“PART XA—OFFERING OF SECURITIES TO THE PUBLIC

**90A. Interpretation**

In this Part, unless the context otherwise requires—

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

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

“close relative” means—

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

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

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

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

“director” means—

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

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

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

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

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

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

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

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

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

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

“promoter” means—

- (a) a person who is instrumental in the formulation of a plan or programme under which securities are offered to the public for subscription or purchase;
- (b) where a body corporate is a promoter includes every person who is a director of that body corporate;

but does not include a director or officer of the issuer of the securities or a person acting solely in a professional capacity;

and “promotion” shall have a corresponding meaning;

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

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

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

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

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

**90B. Territorial Scope**

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

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

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

**90C. Exemptions from this Part**

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

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

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

**90D. Authority may grant exemption from this Part**

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

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

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



*Capital Markets Authority*  
*(Amendment) Act*

Act 12

2011

- (b) is inappropriate to the circumstances in which the securities are being offered and the granting of the exemption will not prejudice persons investing under the prospectus; or
- (c) compliance with the requirement from which exemption is sought would place an unreasonable and excessive burden on the issuer or any officer of the issuer and any benefit that compliance would provide to persons investing in the securities would be minimal.

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

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

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

**90E Meaning of “offer to the public”**

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

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

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

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

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

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

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

#### **90F. Prior placements to be notified**

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

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

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

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

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

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

**90G. Prohibition on offering securities without a prospectus**

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

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

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

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

“A copy of this prospectus has been delivered to the Registrar of companies for registration. However, the securities that are the subject of the prospectus have neither been approved nor disapproved by the Capital Market Authority;

Prospective investors should pay due attention to the risk factors outlined in the prospectus.”

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

(3) Every issuer of securities shall—

- (a) cause a copy of every document referred to in subsection (2)(c) to be deposited, not later than three days after the prospectus is registered, at its registered office where it is required to have one or at its principal place of business; and
- (b) keep every copy, for at least six months after the registration of the prospectus, for the inspection by investors, members and creditors.

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

(5) The Registrar of Companies shall within three days after registering a prospectus of a company send a copy of the prospectus to the Authority.

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

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

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

#### **90I. Material change**

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