

LEGAL NOTICE NO.....

THE NAIROBI INTERNATIONAL FINANCIAL CENTRE ACT
(No. 25 of 2017)

**THE NAIROBI INTERNATIONAL FINANCIAL CENTRE (GENERAL)
REGULATIONS, 2021**

Regulation

PART I- PRELIMINARY

- 1— Citation.
- 2— Interpretation.
- 3—Conflicts of interest.

PART II- RULES

- 4—Rules.
- 5—Waiver and modification of Rules.
- 6—Application for a waiver or modification of the rules.
- 7—Consideration of an application for a waiver or modification of a rule.
- 8—Publication.
- 9—Withdrawal or variation.
- 10—Guidance.
- 11—Public records.

PART III- QUALIFIED ACTIVITIES

- 12—Qualified activities.

PART IV- CERTIFICATION

- 13—Application for certification.
- 14—Form and content of an application.
- 15—Conditions for certification.
- 16—Fit and proper.
- 17—Adequate resources.
- 18—Compliance arrangements.
- 19—Business plan and strategy.
- 20— Application requirements.
- 21—Variation of certification.
- 22—Exemption from certain provisions.
- 23—Grant or rejection of an application.
- 24—Powers and discretion of the Authority.
- 25—Reliance during assessment.
- 26—Status of certification.
- 27—Action by the Authority.

PART V- REPORTING, SUPERVISION AND INVESTIGATIONS

- 28—Reporting.
- 29— Powers to obtain documents and information.
- 30— Appointment of investigators.

31—Obstruction of the Authority.

PART VI- DISCIPLINARY POWERS

32—Sanctions for contravention.

33—General contravention.

34—Prohibitions and restrictions.

35— Injunctions.

36— Restitution orders.

37— Appeals.

38— Power to intervene in any proceedings.

39— Procedural irregularities.

PART VII- ENFORCEMENT PROCEDURE

40— Decision notices.

41— Form and content of decision notices.

42— Implementation of a decision notice.

43— Discontinuation of proceedings.

44— Publication of a decision notice.

45— Third party rights.

46— Access to the Authority's materials.

47— Procedure in relation to decision notices.

SCHEDULE- QUALIFIED ACTIVITIES

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REGULATIONS, 2021**

IN EXERCISE of the powers conferred by section 40 of the Nairobi International Financial Centre Act, the Cabinet Secretary, for the National Treasury and Planning, on the recommendation of the Authority, makes the following Regulations —

**THE NAIROBI INTERNATIONAL FINANCIAL CENTRE (GENERAL)
REGULATIONS, 2021**

PART I- PRELIMINARY

- Citation. **1.** These Regulations may be cited as the Nairobi International Financial Centre (General) Regulations, 2021.
- Interpretation. **2.** In these Regulations, unless the context otherwise requires—
- No. 25 of 2017.* “Authority” means the Nairobi International Financial Centre Authority established under section 5 of the Act;
- No. 25 of 2017.* “Act” means the Nairobi International Financial Centre Act;
- “applicant” means a person making an application to the Authority;
- “application” means an application for—
- (a) certification to carry out a qualified activity;
 - (b) variation of a certification;
 - (c) withdrawal of a certification;
 - (d) guidance;
 - (e) a waiver; or
 - (f) revocation or modification of a waiver;
- “benefit” means a benefit, exemption, allowance or any other incentive available to a certified firm as may be prescribed under any law;
- No. 25 of 2017.* “Board” means the Board of the Authority constituted under section 8 of the Act;
- “Cabinet Secretary” refers to the Cabinet Secretary as defined in the Act;
- “certification” means an approval granted by the Authority to an applicant to carry out a qualified activity;

“certified firm” means an entity that has been granted, and continues to hold a certification from the Authority;

“confidential information” refers to information of a confidential nature received by the Authority in the exercise of its functions other than information—

- (a) which was, prior to such receipt, was in the public domain or which has come into the public domain other than as a result of a contravention of these Regulations or any other law; or
- (b) is a summary, collation, redaction or statistical representation of analysis of information from which it is not possible to ascertain that it relates to a certain person;

“controller” means a person who, either alone or with an associate,—

- (a) holds more than ten percent or more of the shares in either a certified firm or a holding company of a certified firm;
- (b) is entitled to exercise or exercises ten percent or more of the voting rights in a certified firm or a holding company of a certified firm; or
- (c) is able to exercise significant influence over the management of a certified firm as a result of holding shares or being able to exercise the voting rights in a certified firm or a holding company of a certified firm or having a current exercisable right to acquire such shares or voting rights;

“decision notice” means a notice issued by the Authority under these Regulations;

“governing body” means the board of directors, partners, committee of management or other governing body or any other person or body of persons exercising equivalent powers and functions in relation to directing the operations of a business;

“group” means a group of entities which includes an entity (the first entity) and—

- (a) any parent of the first entity; and
- (b) any subsidiary of the first entity or of any parent of the first entity;

“guidance” means guidance issued by the Authority;

No. 25 of 2017

“Tribunal” refers to the Financial Centre Tribunal established under section 35 of the Act;

“interested parties” means persons who may be affected by a relevant scheme under these Regulations as may be determined from time to time by the Authority;

“investigator” means a person appointed under Regulation 29 to conduct an investigation under these Regulations;

“NIFC” refers to the Nairobi International Financial Centre;

“person” includes a natural or legal person, body corporate, including a branch, company, partnership or any undertaking;

“regulator” means a regulatory authority as defined in the Act or any other authority or body in Kenya that is officially recognized;

“related regulations” means any regulations conferring powers, duties or functions on the Authority or a person specified in these Regulations or with respect to which the Authority or such person have powers, duties or functions, whether by virtue of delegation, assignment or otherwise;

“Rules” means rules made by the Authority; and

“third party” has the meaning assigned to it under Regulation 45.

Conflicts of interest.

3. (1) The Authority shall put in place procedures to identify and manage conflicts of interest to which its directors, officers, employees and agents may be subject in the performance of their duties.

(2) The procedures put in place under paragraph (1) shall ensure, amongst other things that such persons shall not make decisions on matters in respect of which they are subject to a material conflict of interest.

PART II - RULES

Rules.

4. (1) The Authority shall publish the Rules it proposes to make.

(2) A publication under paragraph (1) shall contain—

(a) the draft text of the proposed rules;

(b) the date on which the rules will come into force; and

- (c) an invitation to make comments to the Authority and the date by which such comments shall be received.

(3) Notwithstanding paragraph (1), the procedures for publication shall not apply if the Authority determines that—

- (a) the delay in bringing such rules into force that would arise as a consequence of compliance with the procedures would impede the Authority from achieving its objectives; or
- (b) such amendments are inconsequential.

(4) Where the Authority is not required to publish the rules under paragraph (3), the Authority shall publish the information on its website as soon as practicable.

(5) The Authority may from time to time, as appropriate, issue—

- (a) policy papers;
- (b) information notices; and
- (c) discussion documents.

(6) The Authority may undertake such other forms of consultations and discussions as the Authority may consider appropriate.

(7) The Authority shall state in the Rules, which Rules may be waived or modified.

Waiver and
modification of
the Rules.

5. (1) The Authority may, on the application of a person, with or without conditions, direct that a provision in the Rules—

- (a) applies to that person with modifications as mentioned in the notice; or
- (b) does not apply in relation to that person.

(2) The Authority shall not issue a notice under paragraph (1) unless the Authority is satisfied that—

- (a) compliance by the person with the rules, or with the rules unmodified, would be unduly burdensome or would not achieve the purposes for which the Rules were made; or
- (b) the waiver or modification would not adversely affect the advancement of any of the objectives of the Authority.

(3) The Authority may—

- (a) revoke a notice; or

Application for a waiver or modification of a rule.

(b) vary it on the application or with the consent of the person to whom it relates.

6. (1) If a certified firm wishes to have a Rule waived or modified, the certified firm shall apply, in writing, to the Authority, using the prescribed form or process.

(2) An application under paragraph (1) shall contain—

- (a) the name of the applicant;
- (b) certification number;
- (c) the rule to which the application relates;
- (d) an explanation of the waiver or modification that is being applied for;
- (e) reasons for the waiver or modification;
- (f) details of any other requirements including a specific period for which the waiver or modification is required;
- (g) the reasons, if any, why details of the waiver or modification should not be published or why it should be published without disclosing the identity of the certified firm; and
- (h) all the relevant facts to support the application.

(3) A certified firm shall as soon as practicable, notify the Authority if it becomes aware of any material change in circumstances which may affect the application or the continuing relevance of a waiver or modification.

Consideration of an application for a waiver or modification.

7. (1) The Authority-

- (a) shall acknowledge, in writing, receipt of an application for a waiver or modification; and
- (b) may request for any further information from the applicant.

(2) The Authority may, if it is satisfied after reviewing the application,—

- (a) grant a waiver or modification with or without conditions and communicate its decision to the certified firm; and
- (b) specify the time which the waiver or modification shall apply, if any.

(3) Where the Authority declines to grant an approval for a waiver or modification, the Authority shall give the applicant the reasons for that decision.

(4) An applicant may withdraw its application at any time before the Authority makes its decision.

(5) Where an applicant withdraws an application under paragraph (4), the applicant shall give reasons for the withdrawal.

Publication.

8. (1) The Authority shall, where appropriate, make public, through its website, details of all the waivers and modifications granted.

(2) The details under paragraph (1) shall be in such a way as the Authority considers appropriate to bring it to the attention of—

(a) those likely to be affected by the notice; and

(b) any other person who may be likely to become subject to a similar notice.

Withdrawal or variation.

9. (1) The Authority may—

(a) on its own initiative, or on the application of the person to whom it applies, withdraw a waiver or a modification; or

(b) on the application of, or with the consent of the person to whom it applies, vary a waiver or a modification.

(2) Where a notice directs that a provision shall apply to the applicant with modifications, the applicant shall comply with the provision as modified.

(3) The Authority may take enforcement action against a person who fails to comply with a notice issued by the Authority under paragraph (2).

(4) Where a waiver or modification has been granted for a limited period of time, the person to whom the notice applies shall comply with the expiry date.

(5) The Authority shall not automatically renew any waiver or modification granted by the Authority.

(6) Notwithstanding paragraph (5), a person to whom the notice applies, shall, within the time prescribed in the notice, notify the Authority before the expiry of the notice —

(a) of its intention to apply for an extension; or

(b) how that person intends to comply with the original provision.

(7) Where an applicant applies for an extension, the Authority shall consider the application and may or may not grant an extension.

Guidance.

10. (1) The Authority may, from time to time, give guidance consisting of any information or advice as the Authority may consider appropriate.

(2) Guidance under paragraph (1) may be given—

- (a) with respect to the operation of the Act, these Regulations, any rules or any related regulations;
- (b) with respect to any matters relating to the functions of the Authority;
- (c) for the purpose of meeting the statutory objectives of the Authority; or
- (d) with respect to any other matters which the Authority considers desirable to give information or advice.

(3) Guidance under paragraph (1) —

- (a) may be given generally to a class of certified firms, or to any certified firm or other person individually;
- (b) may be issued either—
 - i. at the request of the person seeking such guidance; or
 - ii. by the Authority on its own initiative;
- (c) shall be —
 - i. an indicative view of the Authority at the time and in the circumstances in which the guidance was given; and
 - ii. is non-binding.

(4) The Authority may make rules prescribing the procedures on how a person may apply to the Authority for guidance.

(5) The Authority shall, unless the Authority is satisfied that it is inappropriate or unnecessary to do so, publish any guidance it has given.

(6) A publication under paragraph (5), shall be made in such a way as the Authority may consider appropriate in order to bring it to the attention of—

- (a) those likely to be affected by it; and
- (b) others who may be likely to become subject to similar guidance.

Public records.

11. (1) The Authority shall make the following information available on its website —

- (a) Regulations;
- (b) Rules and any proposed rules to the extent required;
- (c) discussion documents, information notices, and policy statements issued by the Authority;
- (d) relevant information relating to certified firms and the qualified activities that such firms are certified to carry on as the Authority considers appropriate;
- (e) details of decisions by the Tribunal;
- (f) the annual report of the Authority; and
- (g) such other information consistent with the objectives of the Authority as it may consider relevant.

(2) The Authority may exercise its functions to cooperate with and provide assistance to domestic and international regulators and state agencies in the exercise of their functions or in connection with the detection or prevention of money laundering, terrorist financing or any other financial crimes.

PART III – QUALIFIED ACTIVITIES

Qualified activities.

12. (1) An activity shall be a qualified activity if it —

- (a) falls within one or more of the activities as set out in the Schedule, or it is prescribed by the Cabinet Secretary in the Gazette from time to time; and
- (b) is carried out by way of business.

(2) A qualified activity may be conducted to the extent, and subject to any limitations or conditions as may be designated by the Authority by notice published from time to time.

PART IV- CERTIFICATION

Application for certification.

13. A body corporate or a registered partnership may apply to the Authority for a certification to carry on one or more qualified activities.

Form and content of an application.

14. A person making an application for a certification, variation or withdrawal shall—

- (a) complete the forms prescribed by the Authority;

- (b) submit the completed form accompanied by such documents specified in the form or accompanying instructions;
- (c) provide such further information as the Authority may require; and
- (d) pay the prescribed fees.

Conditions for certification.

15. (1) A person shall, if that person wants to be or remain certified, demonstrate to the satisfaction of the Authority at all times that,

—

- (a) it is fit and proper;
- (b) it has adequate resources, including financial resources;
- (c) it has adequate compliance arrangements, including policies and procedures in order to comply with the applicable requirements; and
- (d) its proposed business activities are in line with—
 - i. NIFC legislation; and
 - ii. the strategic priorities of the NIFC.

(2) The Authority may cancel or withdraw a certification if a certified firm ceases to meet the conditions under paragraph (1).

Fit and proper.

16. The Authority shall, in assessing whether a person is fit and proper for the purposes of regulation 15(1)(a), consider—

- (a) the fitness and propriety of the members of its governing body;
- (b) the suitability of the controllers of that person;
- (c) the impact a controller might have on the person's ability to comply with the applicable requirements;
- (d) the applicant's connection with any person or membership of any group;
- (e) the qualified activities concerned;
- (f) the overall activities of the person and any associated risks that those activities pose to the objectives of the NIFC and the Authority;
- (g) any matter which may harm or may have harmed the integrity or the reputation of the NIFC or the Authority;
- (h) that person's standing with any relevant regulatory body, its disciplinary record, and risk

posed to the NIFC by the applicant's activities;
and

(i) any other relevant matters.

Adequate
resources.

17. The Authority shall, in assessing whether a person has adequate resources for the purposes of Regulation 15(1)(b), consider—

- (a) the skills and experience of those who will manage its affairs ;
- (b) its capacity to identify, monitor, measure and act to remove or reduce risks to its safety and soundness;
- (c) the effectiveness of the management of its business; and
- (d) whether its financial and non-financial resources are sufficient to enable the applicant to comply with the relevant legislation.

Compliance
arrangements.

18. The Authority shall, in assessing whether a person has adequate compliance arrangements for the purposes of Regulation 15(1)(c), consider whether it has—

- (a) clear and comprehensive policies and procedures relating to compliance with all the applicable requirements; and
- (b) adequate means to implement those policies and procedures, and audit and monitor that they are operating effectively as intended.

Business plan
and strategy.

19. (1) The Authority shall, in assessing a person's business plan and whether the plan is in line with the strategic priorities of the NIFC, consider—

- (a) the performance and track record of that person;
- (b) the strengths of the proposed business, including its alignment with the strategic priorities of the NIFC;
- (c) the contribution of the business to the economy, including but not limited to skills transfer;
- (d) the overall plan for the business in Kenya or regionally;
- (e) the level of innovation, specialisms or expertise of the business;
- (f) the environmental impact of the business; and
- (g) any other relevant matters.

(2) The Authority may, in assessing a business plan under paragraph (1), consult any person or organization with expert knowledge in the area of interest.

Application requirements.

20. (1) The Authority may make an order providing that certain applicants or types of applicants or category of applicants may not be granted a certification or carry on particular qualified activities, together with the reasons for the order.

(2) The Authority may waive all or any part of its generally adopted requirements on form and content of an application either in an individual case or generally, provided that the Authority is satisfied in either case that—

- (a) materially similar, up-to-date information is provided in other documentation already issued or completed by the applicant;
- (b) such information is not necessary taking into account any license the applicant may have in a jurisdiction outside Kenya; or
- (c) such information is not considered by the Authority to be relevant in the context of any particular application.

(3) The Authority may require the applicant to provide further information which the Authority may reasonably require in considering an application.

(4) If at any time between the filing of an application and the grant of the certification, variation or withdrawal, the applicant becomes aware of any material change which is likely to be relevant to the application under consideration, the applicant shall inform the Authority of such a change without delay.

Variation of certification.

21. (1) A certified firm may apply to the Authority for a withdrawal or variation of the scope, conditions, restrictions or otherwise of the certification.

(2) A variation under paragraph (1) may include—

- (a) expanding its certification to include an additional qualified activity;
- (b) varying any conditions, restrictions or requirements imposed on its certification; or
- (c) withdrawing its certification in respect of one or more qualified activities.

(3) An applicant under this Regulation shall—

- (a) complete the appropriate form as may be prescribed by the Authority;
- (b) submit the completed form with such documents as may be specified; and

(c) pay the prescribed fees.

(4) An applicant may withdraw its application by giving notice to the Authority at any time before the Authority determines the application.

Exemptions
from certain
provisions.

22. The Authority may issue an order—

- (a) exempting certain applicants or a category of applicants from certain provisions of these Regulations; and
- (b) providing for any such exemptions to be—
 - i. limited to certain qualified activities or specified circumstances; or
 - ii. subject to certain conditions and restrictions.

Grant or
rejection of an
application.

23. (1) The Authority may—

- (a) grant an application for certification either—
 - i. without any conditions, restrictions or requirements; or
 - ii. with such conditions, restrictions or requirements as it considers appropriate;or
- (b) reject the application.

(2) Where the Authority grants an application for certification under paragraph (1) (a), the Authority shall notify the applicant of—

- (a) the decision;
- (b) the date on which the certification will be deemed to take effect;
- (c) the qualified activities that the applicant is certified to carry on; and
- (d) any conditions and restrictions applicable to the certification.

(3) Where the Authority rejects an application for certification under paragraph (1) (b), the Authority shall inform the applicant in writing of the—

- (a) rejection and the reasons thereof; and
- (b) right of the applicant to appeal the decision to the Tribunal.

Powers and
discretion of the
Authority

24. The Authority may exercise its powers and discretion under this Part having regard to such matters as it may consider appropriate, including, but not limited to the—

- (a) priorities, strategic goals and circumstances of the NIFC;
- (b) objectives, strategies and priorities of the Authority; and
- (c) proposed business and circumstances of the applicant and any implications or potential implications in respect of the objectives of the NIFC.

Reliance during assessment.

25. (1) The Authority may, in assessing and in making a decision whether or not to grant a certification, rely in part or in whole on the assessment—

- (a) of a regulatory authority that is in receipt of, or has approved an application for a license from the applicant; or
- (b) by any person that has been appointed to review the suitability of the applicant by the Authority.

(2) In assessing an application for certification, the Authority may—

- (a) make any enquiries which the Authority considers appropriate;
- (b) require the applicant to provide additional information; and
- (c) take into account any information which the Authority may consider relevant.

Status of certification.

26. (1) A certification granted under these Regulations is not transferrable other than by the Authority.

(2) Any benefits which a certified firm is entitled to shall cease when a firm ceases to be certified.

Action by the Authority.

27. (1) The Authority may exercise any of the powers or take any of the steps set out in this Part at any time where the Authority considers it appropriate to do so in accordance with its objectives, including where it is satisfied that—

- (a) a certified firm is failing, or is likely to fail to satisfy the applicable criteria;
- (b) a certified firm has failed, during a period of at least twelve months after certification, to carry on a qualified activity for which it has been certified;
- (c) it is desirable to take such steps to exercise such power in order to protect the interests of clients or customers of a certified firm or the financial system;
- (d) a certified firm is in breach of, or has been in breach of one or more conditions, restrictions or requirements applicable to it;

- (e) a certified firm is, or has been, otherwise in breach of the Act, these regulations, any other relevant regulations or any rules; or
- (f) a certified firm has, during the course of making an application for certification or at any other time, provided information to the Authority, which is false, misleading, deceptive or failed to provide timely information.

(2) The powers and steps under paragraph (1) shall be by a written notice to the certified firm—

- (a) imposing or varying such conditions, restrictions and requirements on a certification as the Authority may consider appropriate;
- (b) requiring a person specified in the condition, restriction or requirement to take or refrain from taking such action as the Authority may consider appropriate; or
- (c) withdrawing or varying the certification to remove one or more qualified activities.

(3) The Authority may only exercise these actions —

- (a) after giving the certified firm an appropriate opportunity to make representations to the Authority in relation to the proposed steps; and
- (b) after giving due consideration to the representations in determining the steps to be taken.

(4) The requirements of paragraph (3) may not apply—

- (a) where the Authority concludes that any delay likely to arise as a result of the requirement to allow representations is prejudicial to the interests of the clients or customers of the certified firm, or the financial system:

PROVIDED that in such cases, the Authority shall provide the certified firm with an opportunity to make representations promptly after such powers have been exercised or steps taken and shall give due consideration to such representations; or

- (b) where the powers to be exercised or steps to be taken follow a determination by the Authority pursuant to procedures as set forth in its rules or a decision by the Tribunal relating to or affecting the certified firm in question.

(5) The Authority shall not approve an application for cancellation of certification unless the certified firm has stopped carrying out certified activities, paid any outstanding fees, provided any outstanding reports and has discharged its outstanding liabilities.

PART V- REPORTING, SUPERVISION AND INVESTIGATIONS

Reporting.

28. (1) The Authority shall prescribe the information and reports required to be provided to the Authority by certified firms.

(2) The Authority may make rules on the reporting obligations of certified firms.

(3) A certified firm shall submit the required reports containing the prescribed information to the Authority within the prescribed period.

(4) Without prejudice to the requirements under paragraph (3), a certified firm shall, within the prescribed period, submit to the Authority, an annual report containing details of the persons having control over the firm including the name and the level and type of control.

Powers to obtain documents and information.

29. (1) The Authority may require a certified firm to produce —

- (a) specified information; or
- (b) specified documents,

within such prescribed time and in such form and manner as the Authority may reasonably require in order to fulfil its functions under the Act.

(2) The Authority may request an appropriate overseas regulatory authority, body or agency to assist in exercising the powers in respect of any such person.

(3) The Authority may, in collaboration with any regulatory authority where applicable, enter the premises of a certified firm at any time, for the purposes of inspection and making of copies of information or documents stored in any form on such premises.

(4) A person who is a subject of an inspection shall give the Authority all such assistance as the Authority may reasonably require.

Appointment of investigators.

30. (1) If it appears to the Authority that there may have been, may be or about to be a contravention of any law, regulation or rule administered by the Authority, the Authority may appoint an employee of the Authority, a regulator or a competent person to conduct an investigation and report to the Authority.

(2) The Authority shall give a written notice of the appointment of an investigator under paragraph (1) to the person subject to the investigation, unless the Authority believes that giving such notice is likely to impede the investigation.

(3) A notice under paragraph (2) shall specify the purpose of the investigation.

(4) A person under investigation shall be entitled to legal representation during the course of an investigation.

(5) The Authority or an investigator may require, by a written notice, any person to —

- (a) appear before the investigator at a specified time and place and to respond to questions;
- (b) produce at a specified time and place any specified document; or
- (c) provide such information or assistance as the investigator may require.

Obstruction of the Authority.

31. (1) A person shall not engage in any conduct that is intended to obstruct the Authority in the exercise of any of its powers under these Regulations.

(2) Without prejudice to the generality of paragraph (1), an obstruction may include, but is not limited to—

- (a) destruction of documents;
- (b) failure to give or produce information or documents specified by the Authority;
- (c) failure to appear before the Authority at a specified time and place to respond to questions;
- (d) giving information that is false or misleading; or
- (e) failure to cooperate in relation to an investigation.

PART VI- DISCIPLINARY POWERS

Sanctions for contravention.

32. (1) If the Authority considers that a certified firm or person has contravened any law, regulation or rule administered by the Authority, the Authority may —

- (a) fine the certified firm such amount as the Authority may consider appropriate in respect of the contravention;
- (b) censure the certified firm in respect of the contravention;
- (c) direct the certified firm to effect restitution or compensate any other person in respect of the

contravention within such period and on such terms as the Authority may direct;

- (d) direct the certified firm to account for, in such form and on such terms as the Authority may direct, such amounts as the Authority determines to be profits or unjust enrichment arising from the contravention;
- (e) direct the certified firm to cease and desist from such activity constituting or connected to the contravention as the Authority may stipulate; or
- (f) direct the certified firm to do an act or thing to remedy the contravention or matters arising from the contravention.

(2) Nothing in this Part prevents the Authority from exercising any other power that the Authority may exercise under any other legislation.

General
contravention.

33. A certified firm commits a contravention if the firm—

- (a) fails to comply with any —
 - i. prohibition or requirement imposed on the firm by the Authority;
 - ii. undertaking given by the firm to the Authority; or
 - iii. agreement made by the firm with the Authority;
- (b) engages in an activity that is prohibited under, or that contravenes any legislation administered by the Authority;
- (c) fails to comply with any requirement under any legislation administered by the Authority;
- (d) commits an act of fraud or abuses any fiduciary duty which the firm owes to its clients or other persons;
- (e) acts in a deceptive, misleading or dishonest manner; or
- (f) otherwise commits any contravention described as such in regulations or rules made by the Authority.

Prohibitions and
restrictions.

34. The Authority may, by a written notice, prohibit a certified firm from—

- (a) entering into certain specified transactions or types of transactions;
- (b) soliciting business from certain specified persons or types of persons;
- (c) carrying on business in a specified manner or other than in a specified manner;

- (d) using a particular name or description in respect of the certified firm;
- (e) dealing with any relevant property in a specified manner or other than in a specified manner; or
- (f) assisting, advising or procuring another person to deal with any relevant property in a specified manner or other than in a specified manner.

Injunctions.

35. Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention, a Court may, on the application of the Authority or any aggrieved person, make one or more of the following—

- (a) an order restraining the person from engaging in the conduct including but not limited to, engaging in conduct that may constitute a contravention;
- (b) an order requiring that person to do any act or thing including, but not limited to, acts or things to remedy the contravention or to minimize loss or damage; or
- (c) any other order as the court may consider fit to make.

Restitution orders.

36 (1) Where—

- (a) the Authority is conducting or has conducted an investigation into the acts or omissions of a person which may constitute a contravention within the meaning of these Regulations; or
- (b) proceedings have been instituted by the Authority or otherwise, against a relevant person in relation to an alleged contravention,

a Court may, on the application of the Authority or any aggrieved person, make a restitution order.

(2) For the purposes of these Regulations, a restitution order is one or more of the following—

- (a) an order restraining the relevant person from paying, transferring, disposing of or otherwise dealing with any assets of which they are reasonably likely to dispose of or otherwise deal with;
- (b) an order restraining any person holding assets on behalf of the relevant person from paying, transferring, disposing of, or otherwise dealing with, any assets of the relevant person which are reasonably likely to be disposed of or otherwise dealt with;

- (c) an order prohibiting the relevant person or any other person from taking or sending out of the Republic of Kenya any assets of the relevant person or held on their behalf; or
- (d) an order appointing a receiver or a receiver manager, having such powers as the court may see fit, of the property or any of the property of the relevant person.

Appeals.

37. If the Authority exercises any of its disciplinary powers under this Part, the person concerned may, within twenty eight days of receipt of a decision notice, refer the matter to the Tribunal.

Power to intervene in any proceedings.

38. The Authority may intervene as a party in any proceedings before a Court where the Authority considers such intervention appropriate to meet its objectives.

Procedural irregularities.

39. (1) A procedure under these Regulations shall not be invalidated because of any procedural irregularity unless the Tribunal declares the procedure to be invalid.

(2) For the purposes of this Regulation—

- (a) procedure includes the making of a decision, conduct of a hearing, giving of a notice and any proceedings, legal or otherwise; and
- (b) procedural irregularity includes a reference to a defect, irregularity or deficiency of notice or time.

PART VII- ENFORCEMENT PROCEDURE

Decision Notices.

40. (1) If the Authority proposes to exercise its disciplinary powers in relation to a person, the Authority shall issue a decision notice —

- (a) specifying the action which the Authority proposes to take; and
- (b) giving that person an opportunity to make written representations to the Authority in relation to the action to be taken.

(2) The Authority may specify in any such notice the manner and time within which any such written representations shall be made.

(3) The requirement under paragraph (1) shall not apply where the Authority concludes that any delay likely to arise as a result of the requirement might be prejudicial to the interests of the clients or customers of the relevant person, the NIFC or the financial system.

(4) The action proposed under paragraph (1)(a) may include one or more of the following:

- (a) cease and desist

- (b) restitution
- (c) penalty; or
- (d) withdrawal of certification.

Form and content of a decision notices.

41. (1) A decision notice given under regulation 40 shall—

(a) be in writing; and

(b) contain the Authority’s reasons for the decision to take the action to which the notice relates.

(2) Where a decision notice relates to a financial penalty, the decision notice shall state the amount of the financial penalty and the period within which the amount shall be paid.

Implementation of a decision notice.

42. If a person who has received a decision notice does not refer the matter to the Tribunal within the time period specified in the notice, the Authority may take the action specified in the decision notice.

Discontinuation of proceedings.

43. (1) Where the Authority, due to any circumstance warranting discontinuation of the decision, the Authority shall give a notice of discontinuance identifying the proceedings which are being discontinued to the person to whom the decision notice was given.

(2) If a person to whom a decision notice is given appeals the matter to the Tribunal, that person may apply to the Tribunal to stay the action specified in the decision notice pending the outcome of the appeal.

Publication of a decision notice.

44. (1) Subject to any other rights and obligations contained in the Act and these Regulations on the part of the Authority relating to the publication of information, any person to whom a decision notice is given or copied may not publish the decision notice.

(2) Notwithstanding paragraph (1), the Authority may publish details of a decision notice in order to meet its objectives under the Act.

Third party rights.

45. (1) If any of the reasons contained in a decision notice relate to a matter which—

(a) identifies a person (hereinafter referred to as the “third party”) other than the person to whom the notice is given; and

(b) in the opinion of the Authority, is prejudicial to the third party,

a copy of the notice shall be given to the third party.

(2) A notice under paragraph (1) shall specify a reasonable period within which the third party may make representations to the Authority.

(3) Notwithstanding paragraph (1), the Authority may not give a notice to a third party if the Authority considers it impractical to do so,

provided that the Authority shall demonstrate that it has made all reasonable efforts to give notice to the third party.

(4) A third party may refer to the Tribunal—

- (a) the decision in question or any aspect of the decision, so far as it relates to that person; or
- (b) any opinion expressed by the Authority in relation to that person.

(5) A copy of the decision notice shall be accompanied by an indication of the third party's right to make a reference to the Tribunal.

(6) If a third party refers the matter to the Tribunal, the third party may apply to the Tribunal to stay the action specified in the decision notice.

(7) Where the Authority discontinues an action which relates to a decision notice issued to a third party, the Authority shall give the third party a copy of any notice of discontinuance.

Access to
Authority
material.

46. (1) If the Authority gives a person a decision notice, the Authority shall allow that person access to the material on which the Authority relied on in taking the decision which gave rise to the issuance of the notice.

(2) Notwithstanding paragraph (1), the Authority may deny a person access to particular material if, in the opinion of the Authority, allowing access to the material would not be in the public interest or would not be fair to other parties to whom the material relates or prohibited by any other legislation.

(3) Where the Authority denies a person access to any material under paragraph (2), the Authority shall give that person a written notice of the refusal and the reasons thereof.

Procedure in
relation to
decision notices.

47. The Authority may issue rules relating to the procedure in relation to the issuance of decision notices.

SCHEDULE-QUALIFIED ACTIVITIES*(reg. 12)***Part 1 – Financial Service Activities**

<i>Activity</i>	<i>Description</i>
Finance and banking business	Includes accepting deposits, banking business, financial business, Islamic banking, electronic and mobile banking
Investment banking business	Includes investment finance, project finance, corporate finance and wholesale finance, market making
Insurance business	Includes insurance and reinsurance business of any kind, as principal or as agent
Asset management and administration	Includes collective investment schemes, fund management, as principal, agent or advisory
Investment business	Includes advising, arranging, managing, dealing in investments as principal or agent or related activities
Pension business	Includes activities of retirement benefits schemes, administrations
Financial broking and agency business	Includes insurance broking, stock broking, credit broking, distribution of financial products, either as principal or agent or administration, classification services, investment grading and other grading
Consumer credit business	Includes credit finance, unsecured lending, consumer credit activities, credit information, credit references, debt counselling
Custody business	Includes acting as trustee, financial custodian, fiduciary business
Trading, money market and exchange business	Includes trading in precious metals, stocks, bonds, and other related or derived financial activities, setting up and operating an exchange

Part 2 – Ancillary Activities

<i>Activity</i>	<i>Description</i>
International legal services	Legal services on matters governed by laws other than Kenyan law
Accounting and actuarial services	Includes forensic and investigative services

Financial technology business	Includes mobile and technology business, blockchain, digital assets, cryptocurrency
Factoring and invoicing business	Includes invoice discounting
Climate business	Includes climate finance, carbon trading, green instruments
Company administration	Includes formation, operation and administration of companies and related entities, nominee services, directorship services, secretarial services, registered office, treasury management
Company headquarter activities	Includes establishing or operating company headquarters, management offices, treasury operations and other functions
Operating a designated area	Operating a business and commercial area designated as such by the Authority
Corporate finance activities	Includes advisory business, management business
Crowdfunding activities	Includes digital fundraising
Incubation activities	Includes operating an incubation hub, sandbox environment
Investor company	Includes special purpose vehicles and special purpose acquisition companies
Joint venture company	Includes all forms of collaborative investment entities
Consulting company	Includes management consulting, research and advisory consulting activities

Made this..... 2021,

HON. AMB. UKUR YATANI KANACHO,
Cabinet Secretary for the National Treasury and Planning.