

**ACTS SUPPLEMENT**

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**Act 1**

*Securities Central Depositories Act*

**2009**

THE SECURITIES CENTRAL DEPOSITORIES ACT, 2009.

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**THE SECURITIES CENTRAL DEPOSITORIES ACT, 2009.**

**An Act to facilitate the establishment, operation and regulation of securities central depositories; to provide for the immobilisation and eventual dematerialisation of, and dealings in, securities deposited with securities central depositories in Uganda, and for related matters.**

DATE OF ASSENT: 28th January, 2009.

*Date of Commencement:* 20th February, 2009.

BE IT ENACTED by Parliament as follows—

**PART I—PRELIMINARY****1. Application.**

This Act applies to a securities central depository and clearing system established under sections 4 and 5 but does not apply to a central depository and clearing system operated by the Bank of Uganda.

**2. Interpretation.**

In this Act, unless the context otherwise requires—

“access” in relation to a computer system, means the placing of information on that system and the retrieval of information from that system;

- “Authority” means the Capital Markets Authority established by section 4 of the Capital Markets Authority Act;
- “bank” has the meaning assigned to it in the Financial Institutions Act, 2004;
- “bare trustee” means a trustee who has no beneficial interest in the subject matter of the trust;
- “bearer security” means a security, the title to which is transferable by delivery, with or without endorsement of the certificate representing the security;
- “book-entry security” means a security standing to the credit of a securities account which is transferable by way of book-entry in the record of depositors and includes a security in a securities account that is in suspense;
- “buying in” means the buying effected by a securities exchange, according to the rules of the securities exchange, of securities which a seller has failed to deliver on a day fixed for settlement;
- “certificate” means any document that is a security, or is a document of title to a security;
- “charge” includes a pledge or a mortgage;
- “computer system”, in relation to a central depository, means a computer system established by a securities central depository which forms part of the system for the central handling of securities and which consists of—
- (a) the central equipment comprising hardware and software associated with that hardware, located at the premises of the securities central depository; and
  - (b) the terminals located at the premises of the users;
- “court” means a chief magistrate’s court and a High Court;
- “currency point” has the value assigned to it in the Schedule;

“dealer” means a person who carries on the business of dealing in securities on his or her own account, whether he or she carries on any other business or not;

“dealing in securities” means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into—

(a) an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(b) an agreement, the purpose or intended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;

“debt securities” means debentures, bonds, notes, or other similar instruments representing or evidencing indebtedness, whether secured or unsecured;

“dematerialisation” means the process of eliminating physical certificates as *prima facie* evidence of ownership of securities or where ownership of securities as an accounting record;

“dematerialisation date”, in relation to a dematerialised security, means the date prescribed by a securities central depository under section 26 as being the last day on which a certificate representing the security shall be recognised as *prima facie* evidence of share ownership under the Companies Act;

“dematerialised security” means a book-entry security prescribed by the securities central depository under section 26, by which the underlying physical certificate is no longer recognised as *prima facie* evidence of ownership under the Companies Act, on or after the dematerialisation date;

“depositor” in relation to any book-entry, means a holder of a securities account;

“eligible security” means a security which has been prescribed by a securities exchange to be immobilised with a central depository under section 15;

“financial institution” means a financial institution as defined by the Financial Institutions Act, 2004;

“immobilisation”, means any circumstance where underlying physical certificates relating to securities have been deposited with and are held by the securities central depository and an investor does not receive a physical certificate upon purchase of shares;

“immobilisation date”, in relation to any eligible security, means the date specified in the notice given by a securities exchange under section 15 as being the last day on which the eligible security may be traded on the securities exchange, unless that security has been deposited with the securities central depository;

“immobilised security” means a security in respect of which the underlying physical certificates have been deposited with and are held by a securities central depository;

“information” includes data recorded in a form which can be processed by equipment operating automatically in response to instructions given for a particular purpose;

“institutional investor” means a person whose ordinary course of business is to hold, manage or invest funds in connection with retirement benefits, insurance contracts, mortgage and saving schemes and any fund or scheme in the nature of a collective investment scheme;

“issuer”, in relation to any book-entry security, means the company, corporation, government, or body corporate or any person that issued the security, and includes any person performing the functions of a registrar for the issuer in respect of that security;

“listed” means securities admitted to the official list of a securities exchange in Uganda and listing shall be construed accordingly;

“listed book-entry security” means a book-entry security listed on a securities exchange in Uganda;

“market day” means any day during which a securities exchange is open for business;

“member”, in relation to—

(a) a securities exchange, means a person who is recognised as a member of a securities exchange; and

(b) a company, means a person who is recognised as a member of a company under the Companies Act;

“Minister” means the Minister responsible for finance;

“mortgage” means an interest in property created as a form of security for a loan or payment of a debt from the borrower (mortgagor) in favour of the lender (mortgagee) and which is terminated on payment of a loan or debt;

“non-bearer security” means a security other than a bearer security;

“notification date” means the date on which notice under section 15(2) is given by a securities exchange;

“official list”, in relation to a securities exchange in Uganda, means a list specifying all securities which have been admitted for listing on that securities exchange;

“pledge” means the transfer of an interest in property by the owner (pledgor) to another (pledgee) as security for a debt;

“record” includes, in addition to a record in writing—

(a) a photograph;

- (b) a disc, tape, sound-track or other device in which sounds or other data, not being visual images, are embodied so as to be capable with or without the aid of some other instrument, of being reproduced from it; and
- (c) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other instrument, of being reproduced from it;

and a reference to a copy of a record includes—

- (i) in the case of a record falling within paragraph (b) but not this paragraph, a transcript of the sounds or other data embodied in it;
- (ii) in the case of a record falling within paragraph (c) but not paragraph (b), a still reproduction of the images embodied in it, whether enlarged or not; and
- (iii) in the case of a record falling within both paragraph (b) and this paragraph, the transcript of the sounds or other data embodied in it together with the still reproduction of the images embodied in it;

“record of depositors” means a record provided by a securities central depository to an issuer under section 40;

“Registrar” means a company registrar engaged in the keeping of the register of members and shareholders and performing other auxiliary functions of his or her company or other companies or institutions;

“regulations” means the regulations made by the Authority under section 68;

“SCDS” means Securities Central Depository System;

“SCDS rules” means the operational and procedural rules issued by a securities central depository for the purpose of ensuring orderliness, efficiency and security in the operation of a securities central depository as approved by the Authority;

“securities central depository” means a securities central depository licenced by the Authority under sections 4 and 5—

- (a) to establish and operate a system for the central handling of securities—
  - (i) by which the securities are immobilised or dematerialised and dealings in respect of those securities are effected by means of entries in securities accounts without the physical necessity of certificates; or
  - (ii) which permits or facilitates the settlement or registration of securities transactions or dealings in securities without the physical necessity of certificates; and
- (b) to provide other incidental facilities and services;

“securities central depository agent”, in relation to any securities central depository, means a person appointed under section 11 to be an agent of that securities central depository;

“securities” means—

- (a) debentures, stocks or bonds issued or proposed to be issued by a government;
- (b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate;
- (c) a right, warrant, option or futures in respect of a debenture, stocks, shares, bonds, notes or in respect of commodities; or
- (d) any instruments commonly known as securities; except—
  - (i) bills of exchange;
  - (ii) promissory notes; or

(iii) certificates of deposits issued by a bank or a financial institution;

(e) any unit, interest or share offered under a collective investment scheme;

“securities account” means an account established by a securities central depository for deposit or for the recording of book-entry securities and cash balances, in respect of dealings in securities by the depositor;

“securities exchange” means a stock exchange or an approved securities organisation by which—

(a) offers to sell, purchase or exchange securities are regularly made or accepted;

(b) offers or invitations are regularly made, being offers or invitations that are intended or that may reasonably be expected to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities; or

(c) information is regularly provided concerning the prices at which, or the consideration for which, particular persons or particular classes of persons, propose, or may reasonably be expected to sell, purchase or exchange securities;

“selling out” means the selling effected by a securities exchange according to the rules of the securities exchange, of securities which a buyer has failed to accept and to pay for when delivered on a day fixed for the settlement;

“transaction” means a transaction in eligible securities on the securities exchange or otherwise permitted by the SCDS rules involving eligible securities and which effects a deposit, sale, purchase, charge, gift, transfer, delivery or withdrawal of eligible securities, their registration, a change in the information pertaining to a securities account and any other operation provided for in the SCDS rules;

“uncertificated securities” means a transaction in eligible securities not evidenced by a certificate, the issue or transfer of which is registered or recorded in registers maintained for that purpose by or on behalf of that issuer;

“user” means a central depository agent, an issuer, a securities exchange or such other person as may be prescribed by the Authority, who may be given access to a computer system of a central depository.

## PART II—SECURITIES CENTRAL DEPOSITORY

### **3. Restriction on establishment of securities central depository.**

(1) A person shall not establish, maintain or hold himself or herself out as maintaining a securities central depository unless that person has obtained a licence issued by the Authority in accordance with section 5 of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and forty currency points or imprisonment not exceeding ten years or both.

### **4. Establishment of securities central depository.**

(1) A company incorporated or registered under the Companies Act or a securities exchange which proposes to establish and maintain a securities central depository shall apply to the Authority in writing for a licence.

(2) An application under subsection (1) shall be accompanied by—

- (a) SCDS rules made by the applicant in such manner and form as the Authority may by regulations prescribe; and
- (b) any other information prescribed by the Authority by regulations.

(3) At any time after receiving an application under this section, the Authority may, by written notice, require the applicant to provide additional information or documents in support of the application.

**5. Licence to establish a securities central depository.**

(1) The Authority may, approve an application made under section 4 and issue a licence for the establishment and maintenance of a securities central depository if the Authority is satisfied—

- (a) where the applicant is a company, that the securities exchange is a shareholder of the applicant;
- (b) upon assessment of the proposed SCDS rules of the applicant, that those rules comply with the regulations prescribed by the Authority; and
- (c) that the establishment and maintenance of the securities central depository would promote the positive development of capital markets in Uganda and that the interests of the public dealing with book-entry securities will be served by the granting of the licence.

(2) The Authority may, in issuing a licence under subsection (1), impose—

- (a) in the case of a company—
  - (i) requirements with respect to the paid-up or authorised capital of the securities central depository;
  - (ii) conditions relating to the shareholding of the members of the securities central depository;
  - (iii) requirements on the appointment of the board of directors and management of the securities central depository;
  - (iv) requirements as to notice on the appointment and change of the board of directors and management of the securities central depository; and
  - (v) any other requirements or conditions as the Authority considers appropriate;
- (b) in the case of a securities exchange, requirements with respect to internal controls.

**6. Duration of licence.**

(1) Subject to subsection (2), a licence issued under section 5 shall expire at the end of one year from the date of its issue.

(2) For avoidance of doubt, a licence renewed in accordance with Part II of this Act shall continue in force for one year from the date of its renewal.

**7. Renewal of licence.**

(1) A licence issued under section 5 shall be renewed in accordance with this section.

(2) An application for renewal of a licence under this section shall be made to the Authority in the prescribed form not later than thirty days before the expiry of the licence.

(3) An application for renewal of a licence shall be accompanied by the prescribed fees.

(4) The Authority may require an applicant to provide any information as it considers necessary in relation to an application for renewal of a licence under this Act.

(5) The Authority shall renew the licence if satisfied that the applicant continues to meet the requirements for the issuance of a licence.

(6) The Authority shall not refuse to renew a licence unless it has given the applicant opportunity to be heard.

(7) Where a person holds a licence issued under this Act and has applied for renewal of the licence before its expiry but the renewal has not been granted, the licence shall continue in force until renewed or when the application is rejected or withdrawn.

**8. Amendment of SCDS rules.**

(1) SCDS rules approved by the Authority, shall not be amended, varied or rescinded without the prior approval of the Authority.

(2) Where a securities central depository intends to amend its SCDS rules, it shall submit the proposed amendments to the Authority for approval.

(3) The Authority shall, within forty five days after receipt of a notice under subsection (2), notify the securities central depository of its decision regarding the proposed amendments, and where it does not approve the amendments, specify the reason for the decision.

(4) A securities central depository which proposes to alter any particulars already submitted to the Authority, or to make any change in its state as specified in its application under section 5, shall seek the prior approval of the Authority.

#### **9. Power of Authority to amend SCDS rules.**

Notwithstanding the provisions of any other written law, the Authority may, after consultation with the securities central depository, amend the SCDS rules by written notice, specifying the amendments and the dates on which the amendments shall come into force.

#### **10. Duties of securities central depository.**

(1) A securities central depository shall provide or cause to be provided, all facilities necessary to—

- (a) facilitate the immobilisation of securities;
- (b) facilitate the deposit and withdrawal of certificates in respect of immobilised securities;
- (c) facilitate the dematerialisation of securities;
- (d) open, maintain and close securities accounts;
- (e) facilitate the efficient transfer of book-entry securities;
- (f) facilitate the efficient transfer of monetary value and securities between transacting parties;
- (g) facilitate registration of dealings in book-entry securities;

- (h) operate securities accounts for the handling of book-entry securities and funds, if any;
- (i) facilitate the collection of fees and other charges as may be required;
- (j) ensure the safe custody of certificates and other documents representing immobilised securities;
- (k) guard against falsification of any records or accounts required to be kept or maintained under this Act;
- (l) establish a proper and efficient system for the verification, inspection, identification and recording of all book-entry securities with the securities central depository;
- (m) control access to computer systems and the extent to which any user or class of users may have or should be prohibited from having access to those systems;
- (n) subject to Part VI of this Act, take all reasonable measures to protect the confidentiality of information in documents relating to the affairs of depositors and their securities accounts; and
- (o) carry out any other duties imposed by law.

(2) The Authority may prescribe other duties to be performed by a securities central depository as it considers appropriate.

(3) A securities central depository is entitled to charge fees for its services and facilities as may be approved by the Authority.

#### **11. Securities central depository agents.**

(1) A person shall not act or hold himself or herself out as a securities central depository agent unless that person is duly appointed as such in accordance with this section and subject to the approval of the Authority.

(2) Subject to this Act, a securities central depository may, in writing, appoint as its securities central depository agent—

- (a) any member of a securities exchange;
- (b) a non-bank subsidiary of any bank or financial institution approved under the Financial Institutions Act, 2004;
- (c) any institutional investor; or
- (d) any body corporate of a type prescribed by the Authority.

(3) A securities central depository agent appointed under this section shall perform the functions approved by the securities central depository under the SCDS rules.

(4) In the performance of its functions under this Act, a securities central depository agent shall, when required, produce or make available to the securities central depository or to the Authority, any information or document relating to a securities account.

(5) Subject to this Act, the Authority may suspend, revoke or impose any other sanctions on a securities central depository agent.

## **12. Regulation of dealings in securities.**

(1) Subject to this Act, a securities central depository shall do all things as are necessary to ensure orderly dealings in immobilised or dematerialised securities.

(2) A securities central depository may, in performing its functions under subsection (1), give to an issuer of any security or to a securities central depository agent, directions to do a particular act or thing or to refrain from doing a particular act or thing and the issuer or securities central depository agent shall comply with those directions.

(3) Where an issuer or securities central depository agent fails to comply with any direction given by a securities central depository under subsection (2), the securities central depository shall apply to the Authority for a direction to be issued to that issuer or agent.

(4) An issuer or securities central depository agent who fails to comply with the direction of the Authority commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points, or imprisonment not exceeding five years, or both.

**13. Securities central depository agents, issuer, etc, to comply with SCDS rules.**

A securities central depository agent, an issuer, a depositor, and a user shall comply with, enforce and give effect to the SCDS rules to the extent to which those rules apply to that person.

**14. Securities central depository to provide assistance to the Authority.**

(1) A securities central depository shall provide such assistance to the Authority as the Authority may reasonably require for the performance by the Authority of its functions under this Act.

(2) The Authority is entitled, at all reasonable times, to full and free access to any part of the premises of a securities central depository for the purpose of ensuring compliance with this Act.

**PART III—IMMOBILISED AND DEMATERIALISED SECURITIES***Immobilisation of Securities***15. Prescription of securities for immobilisation.**

(1) Subject to subsection (2), a securities exchange may, after consultation with a securities central depository, prescribe that any security listed or quoted or proposed to be listed on the securities exchange be immobilised by depositing the security with the securities central depository.

(2) A securities exchange shall, in respect of securities listed on the securities exchange, give notice to the public in the manner prescribed in the SCDS rules, of all eligible securities prescribed by it to be immobilised with a securities central depository and the notice shall specify the immobilisation date.

(3) For the purposes of this Act, the deposit by a person of any eligible security with a securities central depository agent shall be taken to be a deposit of the security with that securities central depository.

**16. Verification of certificates and transfer to securities central depository or nominee company.**

(1) After the deposit by a person of a certificate representing an eligible security and the instrument of transfer in respect of that security if any, a securities central depository or a securities central depository agent, shall lodge the certificate and instrument with the issuer within the period prescribed in the SCDS rules.

(2) Subject to subsection (3), the issuer shall, on receipt of the certificate and instrument, do all acts necessary to register the transfer of the security in respect of that certificate in the name of the securities central depository or its nominee company.

(3) Without prejudice to the right of an issuer to refuse to register a transfer under any written law, the issuer shall refuse registration of the transfer under subsection (2) if—

- (a) the certificate is not a genuine certificate or is a certificate that was reported lost or destroyed;
- (b) in relation to the security—
  - (i) there has been a duplication in the issuance of the certificate representing that security;
  - (ii) the certificate is a certificate issued in excess of the issued share capital of the issuer;
- (c) the issuer has been served with an order of a court of competent jurisdiction prohibiting any dealing in respect of the security underlying the certificate;
- (d) any lawful order exists, to the knowledge of the issuer, preventing the person who deposited the certificate from dealing with any of his or her monies, properties or assets.

(4) Within two market days after a transfer is lodged with an issuer or within such period as may be allowed in writing by the securities central depository, the issuer shall, in any case other than a case referred to in subsection (3), notify the securities central depository agent and complete and deliver the appropriate certificate to the securities central depository.

(5) Section 77 of the Companies Act shall not apply in relation to a transfer required to be registered by an issuer under this section and section 17(4), but where an issuer refuses registration of such a transfer, it shall serve on the transferor and the securities central depository, being the transferee, a written notice giving the reasons for the refusal.

(6) Notwithstanding section 81 of the Companies Act, an instrument of transfer lodged with an issuer under subsection (1) shall be capable of registration in the name of a securities central depository or its nominee company if the instrument is certified by a securities central depository agent instead of being executed by the securities central depository or its nominee company.

(7) For the purposes of this section, an eligible security shall be immobilised if it is no longer in suspense.

(8) The provisions of this section shall not apply to bearer securities.

### **17. Transitional provisions relating to trading in eligible securities.**

(1) This section applies to trading in eligible securities during the period beginning on the day immediately following the notification date and ending on the immobilisation date, in this section and in section 17 referred to as “the transitional period”.

(2) A securities central depository or a securities central depository agent, shall accept any certificate representing an eligible security to be immobilised for the purpose of settlement of any trade on the securities exchange during the transitional period in accordance with the SCDS rules.

(3) A person shall not during transitional period trade in eligible security on a securities exchange without having a securities account.

(4) Sections 16(2) to 16(8) apply to all securities central depository agents and the issuers with whom the documents referred to in subsection (2) are lodged.

**18. Dealer in eligible securities to hold securities account.**

A person shall not, after the transitional period, trade or transfer any eligible security on a securities exchange unless that person holds a securities account.

**19. Restriction of trade in eligible securities.**

(1) A person shall not, after the immobilisation date, trade any eligible security on a securities exchange unless that security has been deposited with a securities central depository.

(2) Notwithstanding subsection (1), an eligible security may, at any time after the immobilisation date, be deposited by a depositor with the securities central depository subject to additional fees, if any, as may be imposed under the SCDS rules.

**20. Receipt of certificates of eligible securities for safe custody.**

(1) A securities central depository may, by notice, prescribe a date after which no member of a securities exchange may receive a certificate representing an eligible security merely for safe custody.

(2) A securities central depository shall give notice to the public of the date prescribed in subsection (1).

**21. Liability of securities central depository for loss, damage, etc of certificates.**

(1) A securities central depository and its agent shall be liable to a depositor for any wilful act, omission, neglect, default, loss, damage or liability suffered or incurred by a depositor in respect of the disappearance, loss or destruction of any certificate deposited by the depositor with the securities central depository or its agent.

(2) Notwithstanding subsection (1), a securities central depository agent shall not be liable for any loss, damage or liability suffered or incurred by any person in respect of any certificate the transfer of which is not capable of registration under section 16.

(3) Subsection (2) shall not operate to relieve a securities central depository agent from any obligation imposed on it by the rules of a securities exchange in its capacity as a member of that securities exchange to effect any buying in, whether directly or indirectly, following a refusal to register a transfer under section 16.

**22. Interest in relation to book-entry securities.**

A securities central depository or its nominee company shall—

- (a) not be taken to have an interest in relation to the book-entry securities which are registered in its name; and
- (b) be taken to be a bare trustee.

*Withdrawal of Immobilised Securities***23. Withdrawal of immobilised security.**

(1) Subject to this section and section 24, a depositor may, on application to the securities central depository, withdraw an immobilised security standing to the credit of his or her securities account.

(2) Where an application is made under this section for the withdrawal of an immobilised security which is registered in the name of a securities central depository or its nominee company, the securities central depository shall immediately place that security under suspense and lodge with the issuer—

- (a) the certificate representing the security; and
- (b) the instrument of transfer duly executed by the securities central depository or its nominee company,

for the purpose of effecting the transfer in favour of the depositor.

(3) Notwithstanding the Companies Act, an issuer shall, within two weeks after the certificate and the instrument of transfer in respect the certificate are lodged with it—

- (a) complete and have ready for delivery to the depositor, the appropriate certificate registered in the name of that depositor, and any other document in connection with the security, if any; and
- (b) unless otherwise instructed by the depositor, send or deliver the completed certificate and other documents, if any, to the depositor.

(4) Notwithstanding subsection (1), a securities central depository agent shall not be liable for any loss, damage or liability suffered or incurred by any person in respect of any certificate, the transfer of which is not capable of registration under section 16.

#### **24. Trading of securities withdrawn from securities central depository.**

(1) A person shall not trade any security withdrawn from a securities central depository on a securities exchange unless that security is redeposited in a securities central depository.

(2) A security which is redeposited with a securities central depository shall not be capable of being utilised to settle a transaction which took place on a securities exchange prior to the redeposit of that security.

(3) The provisions of section 15 relating to eligible securities shall apply in respect of a redeposited security.

#### **25. Prohibition of withdrawal of prescribed securities.**

(1) Subject to section 23, a person shall not withdraw any security which is prescribed as a dematerialised security under this Act from a securities central depository.

(2) A securities exchange may, after consultation with the Authority, restrict or prohibit the withdrawal of any immobilised security or class of immobilised securities from a securities central depository which is listed for a period and in a manner it considers appropriate.

(3) Where a securities exchange restricts or prohibits the withdrawal of immobilised book-entry securities under subsection (2), the securities exchange shall, where it is not itself operating the securities central depository, inform the securities central depository of the decision, specifying—

(a) the book-entry securities, the withdrawal of which is restricted or prohibited; and

(b) the period of the restriction or prohibition.

*Dematerialisation of Securities***26. Prescription of dematerialised securities.**

(1) A securities central depository may, after consultation with an issuer, prescribe an immobilised security, or class of securities, as a dematerialised security in accordance with the selection process laid down under the SCDS rules.

(2) Notwithstanding subsection (1), a securities central depository may, after consultation with an issuer, prescribe any security proposed to be listed on a securities exchange, as a dematerialised security.

(3) Upon being notified by the securities central depository of the prescription under subsection (1), an issuer of a dematerialised security shall—

- (a) give notice to the public that the security shall, on the dematerialisation date, become a dematerialised security; and
- (b) do all things necessary to amend its deed of establishment, trust deed, constitution or articles of association, as the case may be, to give effect and comply with this Act and SCDS rules within one hundred and twenty days after the notice.

(4) A notice under subsection (3) shall identify the security to be dematerialised and shall specify a dematerialisation date, not being less than one month after the date of publication of the notice, on or before which that security shall become dematerialised.

**27. Securities central depository to maintain official record of depositors.**

(1) On or after the dematerialisation date, every issuer of a security prescribed as a dematerialised security shall—

- (a) surrender the physical register of members or debenture holders, as the case may be, to the securities central depository; and

- (b) provide information to the securities central depository of any member or debenture holder who appears in the appropriate register as a holder of a certificate not already immobilised by the securities central depository.

(2) A securities central depository shall maintain an official record which shall include the name and particulars of—

- (a) every depositor with an immobilised security credited to a securities account held by that depositor; and
- (b) where the prescribed security is issued by a listed company, every member or debenture holder whose name would, but for this section, appear in the appropriate register of members or debenture holders of that company.

(3) Notwithstanding section 82 of the Companies Act, a record of depositors maintained under subsection (2) shall—

- (a) contain information in computerised record form;
- (b) not be distinguished by any share number; and
- (c) contain any other information required under the SCDS rules.

(4) The provisions of this section shall not apply to any bearer security.

(5) Nothing in this section shall be construed as making the securities central depository an agent of the issuer for the purposes of providing registration services.

## **28. Issuer not to issue certificates in respect of dematerialised securities.**

An issuer shall not, after the dematerialisation date issue a certificate in respect of a dematerialised security.

## **29. Issue of uncertificated securities.**

Notwithstanding the Companies Act, a listed issuer may—

- (a) issue a security in uncertificated form where it is authorised by resolution of its board of directors;

- (b) convert a certificated security into an uncertificated security where it is authorised in its memorandum or articles of association and by resolution of its board of directors.

### 30. Registration and transfer of dematerialised securities.

(1) With effect from the dematerialisation date and notwithstanding the Companies Act or anything in the articles of association of the issuer, a reference in respect of a dematerialised security, to—

- (a) register of members or debenture holders including branch registers, as the case may be, maintained by a company under the Companies Act, shall be taken to be a reference to the record of depositors maintained by the securities central depository;
- (b) a transfer of shares or debentures from a transferee under the Companies Act shall be taken to be a reference to a book entry transfer performed by the securities central depository; and
- (c) a certificate, instrument of transfer or any movable property representing a security which is used as *prima facie* evidence of ownership of the security shall be taken to be a reference to a statement of account issued by the securities central depository.

(2) Section 83 of the Companies Act shall not apply to a dematerialised security.

### 31. Application to collective investment schemes.

(1) With effect from the dematerialisation date and notwithstanding the provisions of any other written law or anything in a trust deed of any collective investment scheme, a reference in respect of a dematerialised security which represents an interest in a collective investment scheme, to—

- (a) a register of any collective investment scheme, shall be taken to be a reference to the record of depositors maintained by the securities central depository;

- (b) a transfer of interest in a collective investment scheme from one investor to another, shall be taken to be a reference to a book-entry transfer by the securities central depository; and
- (c) a certificate issued as evidence of an interest in a collective investment scheme, shall be taken to be a reference to a statement of account issued by the securities central depository.

### **32. SCDS regulations in respect of dematerialised securities.**

The Authority may, in respect of dematerialised securities, prescribe regulations—

- (a) to effect the replacement of physical certificate of title with book-entry records where the dematerialised security to be prescribed is a security other than a share or debenture under the Companies Act, or an interest in a collective investment scheme; and
- (b) to prescribe forms for recording the interest in securities standing to the credit of any depositor before the dematerialisation date.

#### PART IV—SECURITIES ACCOUNTS AND RECORDS

### **33. Dealer in book-entry securities to hold securities account.**

(1) A person shall not deal in book-entry securities unless that person holds a securities account.

(2) A securities central depository may establish different types of securities accounts for different classes of persons or securities.

### **34. Issue of statements of accounts.**

(1) A securities central depository shall issue to all depositors, at least twice a year, statements of account in respect of all book-entry securities held in custody by, or registered in the name of, the securities central depository or its nominee company for the depositors, and in a manner prescribed under this Act.

(2) Notwithstanding subsection (1), a depositor may, at any time, by written notice, require the securities central depository to issue to him or her a statement of account in respect of all or any of the book-entry securities for the time being held in custody by, or registered in the name of, the securities central depository or its nominee company on behalf of the depositor.

(3) A securities central depository shall, on receipt of a written notice under subsection (2) and upon payment of any charges which may be imposed under the SCDS rules, issue to the depositor the statement of account required under subsection (2).

(4) A statement of account issued under this section shall be *prima facie* evidence of the truth of the matters specified in the statement of account.

### **35. Duty of securities central depository to keep records.**

A securities central depository shall keep or cause to be kept records of accounts referred to in section 33 in sufficient detail, so as to show particulars of—

- (a) all transfers of book-entry securities to and from a securities account;
- (b) all moneys received or paid by a securities central depository, including dividends received in respect of any book-entry securities and the disbursement of the dividends to depositors;
- (c) all income received from commissions, fees, charges and other sources, and all expenses, commissions, and other payments made or paid by the central depository; and
- (d) all assets and liabilities, including contingent liabilities, of the securities central depository.

### **36. Maintenance of proper books of accounts.**

(1) A securities central depository shall—

- (a) keep such accounting records as correctly recorded and explain the transactions and financial position of the business of dealing in securities carried out by the securities central depository;

- (b) keep the accounting records of the securities central depository in such a manner as enables preparation of statements that reflect a true and fair view of the operations of the securities central depository;
- (c) keep the accounting records of the securities central depository in such a manner as enables financial statements of the business of dealing in securities carried out by the securities central depository to be conveniently and properly audited.

(2) An operator or agent of a securities central depository who contravenes subsection (1) of this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred forty currency points or imprisonment not exceeding ten years.

### **37. Audit of records and accounts of securities central depositories.**

(1) The accounts and records of a securities central depository shall, in each financial year, be audited and reported upon by an auditor appointed by the securities central depository with the approval of the Authority.

(2) The auditor appointed under subsection (1) shall have access to all books of accounts, vouchers and other records of the office of the securities central depository and is entitled to any information and explanation required in relation to those records.

(3) The audited financial statements shall be submitted to the Authority not later than three months after the end of the financial year to which they relate and should comply with the regulations made under this Act.

## PART V—SECURITIES TRANSACTIONS AND ENTRIES.

### **38. Evidence of book-entry security transactions.**

(1) Notwithstanding any other written law, a transaction of a book-entry security by a depositor, whether accompanied by an instrument or not, shall be evidenced or effected by means of an entry in the securities account of the depositor.

(2) For the purposes of this section, a transaction of a book-entry security shall include a deposit of an eligible security under section 15 and a trade or transfer of a book-entry security from a securities account to another securities account maintained by the securities central depository.

(3) Notwithstanding anything in the Capital Markets Authority Act or the Stamps Act or any regulations made under those Acts, a transaction of a book-entry security by a depositor under subsection (1) shall be taken to be a transaction or trade within the securities exchange.

### **39. Entries in securities accounts.**

(1) An entry in a securities account in respect of a transaction shall—

- (a) in the case of a securities account established and maintained directly by a securities central depository, be taken to have been made by, or with the authority of, that securities central depository; and
- (b) in the case of a securities account established through, and maintained by a securities central depository agent on behalf of a securities central depository, be taken to have been made by, or with the authority of, the securities central depository agent.

(2) A record of an entry in a securities account in respect of a transaction in book-entry securities shall be *prima facie* evidence of the truth of the matters recorded.

### **40. Provision of record of depositors**

(1) An issuer of a book-entry security may, by written notice, require a securities central depository to furnish it with a record of the depositors in whose securities accounts those securities are credited as at the date of the notice or at another date specified in the notice.

(2) A record of depositors required by an issuer under subsection (1) shall be issued by the securities central depository within the period prescribed under the SCDS rules.

(3) A record of depositors issued under this section shall contain the name, identity card number, passport number or company number as the case may be, nationality and any other information and particulars of the depositors requested by the issuer, and a statement as to the number of the book-entry securities acquired by each depositor.

(4) The record of depositors obtained by an issuer under this section shall be available for inspection by any member of the issuer, including a depositor, without charge and by any other person on payment of a sum prescribed by the securities central depository, in respect of each inspection.

(5) A member of an issuer or any other person may require the issuer to furnish him or her with a copy of the record of depositors, or of any part of the record, but only so far as it relates to the names, addresses, and the number of securities held, on payment of a sum prescribed by the securities central depository, in respect of every hundred words or part of the record required to be copied.

(6) The copy of the record of depository, or any part of the record, required under subsection (5) shall be supplied to the person who required the copy within a period of twenty one days or within a longer period as the Authority considers reasonable in the circumstances, commencing from the day after the date of receipt of the request by the issuer.

#### **41. Depositor to be treated as member or debenture holder.**

(1) Notwithstanding the Companies Act or any other law governing the issuer, a depositor of a book entry security whose name appears in the record of deposits is—

- (a) entitled to all the rights, benefits, powers and privileges; and
- (b) subject to all the liabilities, duties and obligations, arising from the security.

(2) Subsection (1) applies whether the rights, benefits, powers, privileges and liabilities, duties and obligations are conferred or imposed by—

- (a) the Companies Act;
- (b) any other written law;
- (c) the deed of establishment or the memorandum or articles of association of the issuer;
- (d) or otherwise,

as if the issuer were a member or debenture holder registered in the appropriate register maintained by the issuer of the security under the Companies Act or any other written law.

(3) For the purposes of this section, “book -entry” does not include a security specified in the securities account as being in suspense under section 47 or any other regulations made under section 68.

#### **42. Prohibition of dealings in book-entry securities.**

A securities central depository shall not purchase, acquire, or otherwise deal in book-entry securities as principal, other than for the purpose and in a manner permitted by the Authority by regulations.

#### **43. Public offer of securities.**

(1) Where, under section 15 or section 26, a securities exchange or a securities central depository, prescribes any security proposed to be listed on a securities exchange to be immobilised or dematerialised with a securities central depository, the issuer of the security or the offeror shall, in the prospectus issued by the issuer or offeror in respect the security, notify the public that the security is prescribed.

(2) Upon completion of the allotment or allocation of securities referred to in subsection (1), the issuer or offeror shall immediately confirm with the securities central depository, the record of the successful applicants together with any particulars required by the securities central depository for the purpose of making appropriate entries in the securities accounts of the respective applicants and shall deliver to the securities central depository the certificates, if any, in such denominations as may be specified by the securities central depository, registered in the name of the securities central depository or its nominee company.

(3) For the purposes of this section, “offeror”, in relation to any security, means the person offering the security for sale.

(4) A reference to a security proposed to be listed on a securities exchange in this section shall be construed as a reference to a security, whose prospectus has been approved by the Authority to be listed on the securities exchange.

(5) A securities central depository shall open a securities account in the name of every successful applicant who does not hold that account.

#### **44. Capitalisation, rights, issues, etc.**

(1) Where an issuer, in relation to any book- entry—

(a) makes a bonus issue by way of an increase in the total issued capital, or issues securities following a rights issue or the conversion of any debt securities; or

(b) issues securities in exercise of any right or option to acquire securities in the share capital of the issuer,

the issuer shall notify the securities central depository accordingly, and deliver to the securities central depository—

(i) a confirmed list of the names of the allottees for the purposes of amendment of the securities accounts held by those allottees; and

(ii) the appropriate certificates, if any, in such denominations specified by the securities central depository registered in the name of the securities central depository or its nominee company.

(2) A prospective allottee shall, before acquiring any of the securities referred to in subsection (1), open a securities account in his or her name.

#### **45. Underwriters to open securities accounts.**

A person intending to underwrite any security proposed to be listed on a securities exchange or any rights issue in respect of any book-entry security, shall open a securities account.

**46. Charging or mortgaging of securities.**

(1) Where a book-entry security is charged by a depositor, in this section referred to as “the chargor”, in favour of any person, in this section referred to as “the chargee”, the chargee or his or her nominee shall create a security interest or cause to be created a security interest in the security which is the subject of the charge, in accordance with this section.

(2) Except as provided in this Act or in regulations made under this Act, a security interest may not be created in book-entry securities.

(3) A security interest in book-entry securities to secure the payment of a debt or liability may be created in favour of any chargee by an instrument of charge in the form prescribed under the SCDS rules executed by the chargor.

(4) Upon receipt of the instrument of charge, the central depository agent shall register the instrument in a register of charges maintained by the securities central depository.

(5) Where a charge over a deposited security has been discharged or released, the securities central depository or the securities central depository agent, shall, upon receipt of a notice in writing from the chargee confirming the receipt of the notice, transfer the deposited security into the securities account of the chargor.

(6) This section does not apply to floating charges, except that nothing in this section shall affect the validity and operation of floating charges on book-entries created under common law.

(7) Nothing in this section shall be construed in law to require the securities central depository to monitor, protect, enforce or give effect to any agreement or memorandum made between the chargor and the chargee in respect of the charge, but the securities central depository or its securities central depository agent, may require the chargor or chargee to provide supporting documents evidencing the charge upon creation of the security interest by way of the charge.

**47. Securities in or under suspense.**

(1) A securities central depository may specify that any book-entry security in a securities account is in suspense—

- (a) where the transfer of the security in the name of the securities central depository or its nominee company is not registered, or is not registrable by the issuer under section 16;
- (b) where an application under section 23 for withdrawal of the security has been made by a depositor; or
- (c) in any other circumstances prescribed by the securities central depository under the SCDS rules.

(2) A securities central depository may specify that any book-entry security in a securities account is under suspense—

- (a) where, following an objection or investigation made in accordance with the SCDS rules, there is a need for the securities central depository to restrict the transfer, charge or mortgage of the security; and
- (b) where, the securities central depository has been instructed to restrict the movement of any book-entry transfers, whether partially or otherwise, under those circumstances in accordance with the SCDS rules.

## PART VI—SECRECY

**48. Security measures.**

A securities central depository and a securities central depository agent shall take all reasonable measures to protect information and documents relating to the affairs of the depositors, and in particular, relating to their securities accounts, against any unauthorised access by unauthorised persons.

**49. Duty to maintain secrecy.**

(1) Except as provided in this Act, no director, officer, employee or agent of a securities central depository or a securities central depository agent, whether during his or her tenure of office or during his or her employment or afterwards, and any other person who has access by any means to any information or document relating to the affairs of any of the depositors, and in particular, relating to their securities accounts, shall not give, divulge, reveal or otherwise disclose that information or document to any person.

(2) A person who has any information or document which to his or her knowledge has been disclosed in contravention of subsection (1) shall not disclose the information or document to any other person.

(3) A person who contravenes this section commits an offence and is liable on conviction, to a fine not exceeding two hundred and forty currency points, or imprisonment not exceeding ten years, or both.

#### **50. Restriction on disclosure of information by securities central depository agents.**

Except as provided in section 11(4), nothing shall authorise a securities central depository agent which is a bank or a financial institution within the meaning of the Financial Institutions Act, 2004 to reveal or disclose any information or document to any person in contravention of that Act.

#### **51. Permitted disclosures.**

Subject to this Act, nothing in any other written law shall entitle a person to refuse to disclose any information or document—

- (a) which the depositor, his or her authorised agent or his or her personal representative, has given permission in writing to disclose;
- (b) where the depositor is declared bankrupt, or, if the depositor is a corporation, the corporation is being or has been wound up in Uganda or in any country, territory or place outside Uganda;
- (c) for the purpose of instituting or, in the course of, any civil proceedings—
  - (i) between a securities central depository or a securities central depository agent and a depositor relating to the securities account of the depositor; or
  - (ii) between a securities central depository or a securities central depository agent and two or more parties making adverse claims to securities or monies in the securities account of the depositor, where the securities central depository or securities central depository agent seeks relief by way of interpleader;

- (d) to any person duly authorised to investigate into any offence under any law, that disclosure being, in any case, limited to the securities account and affairs of the depositor suspected of the offence;
- (e) to a securities central depository for the purposes of the compilation of the record of depositors, or any part of the record, under section 40;
- (f) to an issuer in respect of a record of depositors issued under section 40;
- (g) to a member of an issuer or a person in respect of a record of depositors issued under section 40;
- (h) for the purpose of enabling or assisting the Authority to exercise any power conferred on it by this Act or by any other written law;
- (i) for the purpose of enabling or assisting the Authority and the Registrar to discharge their functions under this Act;
- (j) for the purpose of enabling or assisting a securities exchange or clearing house of a securities exchange to discharge their functions;
- (k) for the purpose of enabling or assisting auditors of a securities central depository and securities central depository agents to discharge their functions; or
- (l) in a summary or collection of information or statistics, framed in a way so as not to enable the identity of any depositor, to whom the information or statistics relates, to be ascertained.

## **52. Regulation of access to the computer system.**

(1) A securities central depository may give access to its computer system to its securities central depository agents, a securities exchange on which the book- entry securities are listed, a clearing house of the securities exchange, issuers and any other person as may be prescribed by the Authority by regulations.

(2) The Authority may, for the purpose of regulating access to the computer system, prescribe by regulations, the extent to which any user or class of users may have, or should be prohibited from having, access to that system.

(3) A person commits an offence who—

- (a) being a user, unlawfully gains access, or attempts to gain access, to a computer system of a securities central depository, whether by means of any device or apparatus forming part of the computer system or by any other means, beyond the extent to which he or her is authorised to have access by the securities central depository under subsection (1);
- (b) unlawfully gains access, or attempts to gain access, to a computer system of a securities central depository, whether by means of any device or apparatus forming part of the computer system or by any other means; or
- (c) unlawfully interferes with, or impedes, or attempts to interfere with or impede, the operation of a computer system of a securities central depository.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding two hundred and forty currency points or imprisonment not exceeding ten years, or both.

#### PART VII—OFFENCES

### **53. Falsification of records or accounts.**

Where a securities central depository or securities central depository agent keeps or maintains a record or an account that is required to be kept or maintained under this Act by means of a mechanical device, an electronic device, or any other device, a person who—

- (a) records or stores, by means of that device, information that he or she knows or ought to know to be false or misleading in a material particular;
- (b) falsifies;

- (c) with intent to falsify, destroys or removes—
- (i) information which is recorded or stored by means of that device;
  - (ii) information which is prepared for the purpose of being recorded or stored by means of that device;
  - (iii) information which is prepared for use in compiling records; or
  - (iv) information which is prepared for use in recovering other information which is recorded or stored by means of that device; or
- (d) having a duty to record or store information by means of that device, fails to record or store that information—
- (i) with intent to falsify, wholly or in part, any entry made, or record intended to be compiled, from the information that has been recorded or stored; or
  - (ii) knowing that the failure to record or store the information will render false or misleading in a material particular other information recorded or stored,

commits an offence and is liable on conviction to a fine not less than one hundred currency points and not exceeding two hundred and forty currency points, or imprisonment for a term not exceeding ten years, or both.

**54. Destruction, concealment, mutilation and alteration of records.**

A person who—

- (a) destroys, conceals, mutilates or alters any record or account required to be kept or maintained under this Act; or
- (b) sends or attempts to send or conspires with any other person to send in any part of or out of Uganda, any such record or account,

with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under this Act, commits an offence and is liable on conviction to a fine not exceeding two hundred and forty currency points, or imprisonment not exceeding ten years, or both.

### **55. Furnishing false or misleading information.**

(1) A person commits an offence who knowingly furnishes false information or information which is misleading in a material particular—

- (a) for the purpose of, or in connection with, any application under this Act; or
- (b) in purported compliance with any requirement imposed on him or her under this Act.

(2) A person convicted of an offence under this section is liable on conviction to a fine not exceeding one hundred and twenty currency points, or imprisonment not exceeding five years, or both.

(3) A person who recklessly or negligently makes a misrepresentation shall be liable to make good any loss occasioned by reliance on that misrepresentation.

### **56. Offences by bodies corporate.**

Where an offence under this Act is committed by a body corporate, any person who at the time of the commission of the offence is a director, an executive officer or the secretary of the body corporate or was purporting to act in that capacity, shall be taken to have committed that offence unless he or she proves that the offence was committed without his or her consent or connivance and that he or she exercised all due diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.

**57. Compensation.**

(1) In addition to any penalty prescribed for an offence under this Act or regulations made under this Act, any person convicted of an offence under this Act, shall be liable to pay compensation to a person who suffers loss as a consequence of the offence.

(2) The amount of compensation for which a person is liable under subsection (1), is—

- (a) the amount of the loss sustained by the person claiming the compensation; or
- (b) where the loss has been occasioned on the market as a whole, an amount equal to the profit made by that person, which shall be paid into the guarantee fund established under section 65.

## PART VIII—INVESTIGATION

**58. Investigation of records, etc.**

The Authority may conduct investigations into the records, accounts or business affairs relating to a securities central depository or its nominee company, or a securities central depository agent or a user.

**59. Power of Authority to require production of records.**

(1) The Authority may, if it considers that there is sufficient reason to do so, in writing—

- (a) give a direction to—
  - (i) a securities central depository;
  - (ii) a nominee company of a securities central depository;
  - (iii) a securities central depository agent;
  - (iv) a user; or
  - (v) a person who is or has been an officer or employee of, or an agent, or advocate and solicitor, auditor, or other person acting in any capacity for or on behalf of, a securities central depository or its nominee company or a securities central depository agent or a user,

requiring the production, to the Authority, of records or accounts specified in the request, being records and accounts relating to the business or affairs of a securities central depository or its nominee company, or a securities central depository agent, or a user or any record or account required to be kept under section 35; or

- (b) give a direction to any person requiring the production, to the Authority, of any record or account relating to the persons mentioned in paragraph (a)(iv) or (v) that are in the custody or under the control of that person.

(2) A reference in subsection (1) to a business carried on by a person shall be taken to include a reference to a business carried on by a person as trustee.

(3) Where the Authority requires the production of any record or account under this section and a person has a lien on the record or account, the production of that record or account shall not prejudice the lien.

(4) Where the Authority exercises a power under this section to require another person to produce records or accounts—

- (a) where the records or accounts are produced, the Authority—

- (i) may take possession of the records or accounts and make copies of, or take extracts from, the records or accounts;

- (ii) may require the other person or any other person who was party to the compilation of the records or accounts to make a statement providing an explanation of any of the records or accounts;

- (iii) may retain possession of the records or accounts for as long as the Authority may consider necessary; and

- (iv) shall permit the other person, upon giving a reasonable notice and description of the records or accounts, to have access to the records or accounts which are in the possession of the Authority; or

- (b) where the records or accounts are not produced, the Authority may require the other person—
- (i) to state, to the best of his or her knowledge and belief, where the records or accounts may be found; and
  - (ii) to identify the person who, to the best of his or her knowledge and belief, last had custody of the records or accounts and to state, to the best of his or her knowledge and belief, where that last-mentioned person may be found.

(5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, to making the requirement of any person who is or has been an officer of the body corporate.

(6) A person who, without lawful excuse, refuses or fails to comply with a requirement made under this section within the time stated by the Authority in writing, is liable to a penalty of fifty currency points in the first instance and in the case of a continuing offence, is, in addition, liable to a daily fine of five currency points for every day during which the offence continues.

#### **60. Power of Authority to enter and search premises.**

(1) Where the Authority has reasonable grounds for suspecting that an offence under this Act has been or is being committed or is about to be committed that there are on any particular premises any records or accounts the production of which has been required by virtue of section 59 and which have not been produced in compliance with that requirement, it may—

- (a) enter and search the premises and—
  - (i) in the case of premises occupied by a securities central depository or a user, inspect, examine and operate the whole or any part of the computer system; and

(ii) in the case of premises occupied by any other person, break open and search any cupboard, drawer, safe, box or other receptacle, and where a computer system, not being a computer system defined in section 2, is installed in the premises, inspect, examine and operate the whole or any part of that system; and

(b) inspect and take possession of, or secure against interference, any records, documents or other material found in the premises which may be evidence of the offence.

(2) The powers conferred under subsection (1) are in addition to, and not in derogation of, any other powers conferred by this Act or by any other written law.

### **61. Obstruction.**

A person who—

(a) intentionally obstructs or hinders the Authority in the exercise of its powers under section 58 or section 59; or

(b) fails without reasonable excuse to give to the Authority such assistance as it may reasonably require,

commits an offence and is liable on conviction to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both.

### **62. Disclosure to Authority.**

(1) The Authority may require a securities central depository or its securities central depository agent to disclose to the Authority, in relation to any acquisition or disposal of book-entry securities, any information including the name of the person from or through whom or on whose behalf the securities were disposed of, his or her securities account numbers and the entries made in those securities accounts and the nature of the instructions given to the securities central depository or its securities central depository agent in respect of the acquisition or disposal.

(2) The Authority may require a depositor to disclose to it whether the depositor acquired or disposed of the book-entry securities, as trustee for, or on behalf of, another person and, if he or she acquired or disposed of those securities as trustee for, or on behalf of, another person, to disclose the name of that other person and the nature of any instructions given to the depositor in respect of the acquisition or disposal.

(3) A person who, without reasonable excuse, fails to comply with the requirement of the Authority under this section commits an offence and is liable on conviction, to a fine not exceeding two hundred and forty currency points or imprisonment not exceeding ten years or both.

### **63. Investigation of offences by Authority.**

Where the Authority has reason to suspect that a person has committed an offence under this Act or is about to do an act that, if done, would be an offence under this Act, the Authority may make such investigation as it thinks expedient for the due administration of this Act.

### **64. Power of court to make certain orders.**

(1) Where, on the application of an aggrieved party or a securities central depository it appears to the court that a person—

- (a) has committed an offence under this Act relating to any dealing in book-entry securities;
- (b) has contravened the SCDS rules; or
- (c) is about to do an act with respect to any dealing in book-entry securities that, if done, would be an offence under this Act or would be a contravention of the SCDS rules,

the court may, without prejudice to any orders it would be entitled to make otherwise than under this section, make one or more of the following orders—

- (i) in the case of persistent or continuing breaches of this Act, or of the SCDS rules, an order restraining a person from acting as a securities central depository agent or from holding himself or herself out a securities central depository agent;

- (ii) an order restraining a person from withdrawing or otherwise dealing with any book-entry securities that are specified in the order;
- (iii) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act; and
- (iv) any ancillary order taken to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) A person who fails to comply with an order made under subsection (1) commits an offence is liable on conviction, to a fine of not exceeding one hundred and twenty currency points, or imprisonment not exceeding five years or both.

(4) Subsection (3) shall not affect the powers of the court in relation to punishment for contempt of court.

(5) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order, upon application made to that effect.

#### PART IX—GENERAL

### **65. Guarantee fund.**

(1) A securities central depository shall establish and maintain a guarantee fund for the purpose of providing an indemnity against any default in respect of payments for or delivery of securities by any participant and of obligations of participants towards the securities central depository.

(2) The assets of the guarantee fund shall consist of all the money accruing lawfully to that fund and contributions specified in the SCDS rules.

**66. Preservation of records and accounts.**

(1) A securities central depository and its securities central depository agents shall preserve all records and accounts for seven years, whether or not they cease to carry on their business before the end of the seventh year.

(2) A securities central depository and its securities central depository agents shall maintain proper back up of all its records and accounts for the period prescribed in subsection (1).

**67. Liability of officers employees and agents of SCDS.**

(1) An officer, employee or agent of a securities central depository or a person acting on the directions of such a person shall be personally liable for any acts or omissions done or omitted to be done in the exercise of powers conferred or performance of duties imposed on him or her by or under this Act.

(2) Subsection(1) shall not apply where such acts or omissions are done in good faith and not contrary to the provisions of this Act.

**68. Regulations.**

(1) The Authority may make regulations as may be necessary or expedient for carrying out or achieving the objects and purposes of this Act.

(2) Without prejudice to the general effect of sub-section (1), regulations may be made for all or any of the following purposes—

- (a) prescribing the circumstances when a book-entry security in a securities account may be specified by a securities central depository as being in suspense under section 47;
- (b) regulating the appointment of securities central depository agents and nominee companies and the imposition of duties, obligations and sanctions on such agents and companies;
- (c) regulating the manner in which immobilised book-entry securities shall be kept for safe custody by a securities central depository;

- (d) regulating the manner in which book-entry securities shall be immobilised or dematerialised by a securities central depository;
- (e) regulating the replacement of physical registers with book-entry records where the dematerialised security to be prescribed is a security other than a share or debenture under the Companies Act or an interest in a collective investment scheme;
- (f) prescribing other purposes for which a securities central depository may appoint securities central depository agents under section 11(2);
- (g) prescribing the types of bodies corporate which may be appointed to act as securities central depository and securities central depository agents;
- (h) regulating the activities of, and the standards to be maintained by, a securities central depository and its securities central depository agents;
- (i) prescribing the manner in which records shall be kept and maintained by a securities central depository, its securities central depository agents and its nominee companies under this Act;
- (j) prescribing all matters relating to the maintenance of insurance, and the establishment and maintenance of compensation funds, by a securities central depository, its nominee companies and securities central depository agents for the purpose of settling claims by depositors against them;
- (k) prescribing the manner in which statements are to be issued by the securities central depository;
- (l) prescribing the obligations of a securities central depository to make available to the public information on its activities under this Act;

- (m) prescribing the terms and conditions of a licence granted under this Act or regulations made under this Act;
- (n) prescribing the procedure for preparation and audit of financial statements of a securities central depository;
- (o) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to give effect to this Act.

**69. Reference to allottee in the Companies Act.**

For the purposes of the application of the Companies Act in relation to any book-entry security, a reference to an allottee in that Act shall be construed as a reference to a depositor who, by virtue of section 41, is considered to be a member or debenture holder of the company which makes the allotment.

**70. Publication of notice.**

Where notice is required under Part III of this Act, it shall be given, in English in at least two daily newspapers of national circulation.

**71. Supremacy of the Securities Central Depositories Act.**

Subject to the Constitution and the Capital Markets Authority Act, where a provision of any law relating to securities central depositories is inconsistent with this Act, the provisions of that law shall be invalid to the extent of the inconsistencies.

**72. Amendment of Schedule.**

The Minister may, with the approval of Cabinet, by statutory instrument, amend the Schedule to this Act.

SCHEDULE

*Section 2, 72*

CURRENCY POINT

One currency point is equivalent to twenty thousand Shillings.

**Cross References**

1. Capital Markets Authority Act, Cap. 84.
2. Companies Act, Cap. 110.
3. Financial Institutions Act, 2004, Act No. 2 of 2004.
4. Stamps Act, Cap. 342.