

**DIRECTIVE 2013/11/EAC
OF THE COUNCIL OF MINISTERS**

Of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON SELF-
REGULATORY ORGANISATIONS**

PREAMBLE:

The Council of Ministers of the East African Community

Having regard to the Treaty for the establishment of the East African Community and in particular **Articles 85 (d), 14 and 16;**

WHEREAS Article 31 of the Common Market Protocol provides that for proper functioning of the Common Market, the Partner States undertake to co-ordinate and harmonise their financial sector policies and Competent Authority frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system;

WHEREAS Article 47 of the Common Market Protocol provides that the Partner States shall undertake to approximate their national laws and to harmonise their policies and systems for purposes of implementing this Protocol and that the Council shall issue directives for the purposes of implementing this Article.

HAS ISSUED THIS DIRECTIVE

ARTICLE 1 INTERPRETATION

In this Directive unless the context otherwise requires:

“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State.

“Community” means the East African Community established by Article 2 of the Treaty.

“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“key personnel” means persons who manage or control the activities of the Self-Regulatory Organization and include:

- a) the Chief Executive Officer, Chief Financial Officer, Chief Compliance Officer, Secretary to the Board and Chief Internal Auditor or a manager; and
- b) any person who holds a position or discharges responsibilities of any person referred to in Paragraph (a).

“Partner States” means the Republic of Uganda, the Republic of Kenya, the United Republic of Tanzania, the Republic of Rwanda and the Republic of Burundi and any other country granted membership to the Community under Article 3 of the Treaty.

“self-regulatory organization” means an organization whose object is to regulate the operations of its members or of the users of its services and includes the organizations that may be recognized as such, by a Competent Authority;

ARTICLE 2 OBJECTIVES

The objective of this Directive is to promote self-regulation in the securities market in the Community. The self-regulatory organisations will:

- a) support Competent Authorities to deal with compliance and operational issues with the licensed entities; and

- b) inform policy decisions by obtaining industry input in the development of regulatory initiatives.

ARTICLE 3 PRINCIPLES

In implementing this Directive, Partner States shall:

- (a) make appropriate use of self-regulatory organizations that exercise direct oversight responsibility for their areas of competence, to the extent appropriate to the size and complexity of the markets; and
- (b) be subject to the oversight of the Competent Authority and shall observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.

ARTICLE 4 SCOPE

This Directive shall apply to all self-regulatory organizations operating within the Community.

ARTICLE 5 RECOGNITION OF A SELF REGULATORY ORGANIZATION

1. An organization which intends to operate as a self-regulatory organization shall apply to a Competent Authority for recognition as such.
2. The application shall specify the functions and powers that the entity is seeking to exercise after it has been recognised.
3. A Competent Authority may, in respect of an application made for recognition, subject to such terms and conditions as it may impose , by notice declare an organization to be a recognized self-regulatory organization where it is satisfied that the organization :
 - (a) has a constitution and internal rules and policies which are consistent with securities-related legislation within the Community;

- (b) has the capacity, financial and administrative resources necessary to carry out its functions as a self-regulatory organization, including dealing with a breach of a provision of the law or of any other applicable standards or guidelines; and
 - (c) has competent personnel for the carrying out of its functions.
4. A Competent Authority may, by notice delegate any of its powers or functions to a self-regulatory organization.
5. Where a Competent Authority has delegated a power or a function it shall specify:–
- (a) the function or power delegated to the self-regulatory organization;
 - (b) the extent of disciplinary powers delegated and the scope of sanctions that may be imposed by the self-regulatory organisation;
 - (c) the terms and conditions upon which the power or function has been delegated and how it may be exercised ;
 - (d) the persons authorized to exercise the delegated power or function in the self-regulatory organization;
 - (e) the framework for submitting periodical reports to the Competent Authority in respect of the exercise of the delegated power or function; and
 - (f) any other matter as the Competent Authority may prescribe.

ARTICLE 6

RULES OF A SELF REGULATORY ORGANIZATION

1. A self-regulatory organization shall make rules relating to the matters over which it has regulatory or supervisory functions, including any sanction and disciplinary powers to be exercised in connection with the functions or power delegated to it.
2. The rules shall provide for the;
- (a) management structures and shareholding rights of the self-regulatory organization taking into consideration the interests, rights and liabilities of its members, consumers, investors and users of the members' services;
 - (b) rules of membership and conditions for approval and admission of members;

- (c) the procedure for dispute resolution between members, users, investors and their clients and the procedure of appeal to the Competent Authority or other relevant primary regulators; and
 - (d) the rules and procedures of self-regulatory organizations with respect to reporting and accountability to any primary regulator other than the Competent Authority.
3. The rules shall not be implemented by the self-regulatory organisation unless they have been approved by the Competent Authority.
 4. A self-regulatory organization shall submit any amendments to its constitution to the Competent Authority for approval before the amendments are registered or implemented.

ARTICLE 7

DECISIONS BY SELF REGULATORY ORGANIZATIONS

1. A self-regulatory organization shall not make a decision which adversely affects the rights of a person unless the self-regulatory organization has given that person an opportunity to make representations.
2. A self-regulatory organisation may make a decision against a person without giving that person an opportunity to make a representation if the self-regulatory organisation has reasonable grounds to consider that a delay will prejudice other persons.

ARTICLE 8

DISCIPLINARY ACTION BY SELF REGULATORY ORGANIZATIONS

1. A self-regulatory organization may take disciplinary action against any of its members in accordance with its rules.
2. A self-regulatory organization shall, where it has taken disciplinary action, immediately inform the Competent Authority in writing of the name of the member, the reason and the action taken, the amount of any fine that may have been imposed or the duration of suspension.

3. The Competent Authority may, on its own motion or on the application of an aggrieved person, review any disciplinary action taken and may affirm, modify or set aside the decision after giving the aggrieved person and the Self-regulatory organization an opportunity to make representations.
4. This Directive shall not preclude the Competent Authority, in any case where a self-regulatory organization fails to act against its member, from suspending, expelling or otherwise disciplining a member of the self-regulatory organization.
5. The Competent Authority shall, before taking any disciplinary action, give the licensed person and the self-regulatory organization an opportunity to be heard.
6. Any action taken by a self-regulatory organization shall not prejudice the power of the Competent Authority to take any further action as it considers necessary with regard to the licensed person.

ARTICLE 9

PROTECTION FROM PERSONAL LIABILITY

No civil liability, whether arising in contract, tort, defamation, equity or otherwise shall be incurred by –

- (a) a self-regulatory organization; or
- (b) any person acting on behalf of a self-regulatory organization including –
 - (i) any member of the Board of directors, employee or agent of the self-regulatory organization; or
 - (ii) any member of any committee established by the self-regulatory organization;

in respect of anything done or omitted to be done in good faith in the discharge of the duties delegated to the self-regulatory organization under this Directive or in the performance of its functions under its rules.

ARTICLE 10

CHANGE OF KEY PERSONNEL BY SELF REGULATORY ORGANIZATIONS

A self-regulatory organization shall inform the Competent Authority of changes in its key personnel within seven (7) calendar days of such changes.

ARTICLE 11

DIRECTIONS TO A SELF REGULATORY ORGANIZATION

1. A Competent Authority may, after giving a self-regulatory organization reasonable opportunity to be heard in respect of any matter, give direction in writing to the self-regulatory organization in accordance with this Directive.
2. A direction under sub-article 1 may:
 - (a) suspend a provision of the constitution or rules of a self-regulatory organization for a period specified in the direction;
 - (b) require a self-regulatory organization, subject to any other law, to amend its constitution as specified in the direction so as to bring it in conformity with this Directive, or that other law;
 - (c) require a self-regulatory organization to amend its rules; or
 - (d) require a self-regulatory organization to implement or enforce its constitution or its rules.

ARTICLE 12

REPORTING OBLIGATIONS

1. A self-regulatory organization shall, within four (4) months after the end of every financial year, submit to the Competent Authority its financial statement and an annual report which shall include:
 - (a) a report on the corporate governance policy of the self-regulatory organization;
 - (b) financial statements prepared and audited in accordance with International Financial Reporting Standards ; and
 - (c) such other requirements as may be specified by the Competent Authority.

2. A Competent Authority may require a self-regulatory organization to submit the independent Auditor's report to management.
3. A Competent Authority may appoint in writing an auditor at the expense of the self-regulatory organization to examine, audit and report either generally or in relation to any matter on the books, accounts, records and systems, where it has reason to believe that:
 - (a) there is or has been an adverse change in the risks inherent in the business of the self-regulatory organization with the potential to jeopardize its ability to continue as a going concern;
 - (b) the self-regulatory organization may be in contravention of any provisions of this Directive, or directions issued by a Competent Authority;
 - (c) a financial crime has been or is likely to be committed by the self-regulatory authority;
 - (d) serious irregularities have occurred; or
 - (e) any other related matter.

ARTICLE 13
WITHDRAWAL AND SUSPENSION OF RECOGNITION OF SELF- REGULATORY ORGANIZATIONS

1. A Competent Authority may at any time withdraw or suspend a recognition granted to a self-regulatory organisation if the organisation:
 - (a) is not a fit and proper person to carry on the self-regulatory responsibilities; or
 - (b) has contravened any provision of this Directive or any relevant law in any jurisdiction within the Community or, in purported compliance with any such provision, has furnished the Competent Authority with false, inaccurate or misleading information, or has contravened any prohibition or requirement imposed by the Competent Authority under this Directive or any relevant law.
2. The suspension or withdrawal of recognition shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with, and during the suspension the holder shall not carry out any self-regulatory organization responsibilities.

3. Any period, event or conditions specified under sub-article (2) above in the case of recognition may be varied by the Competent Authority on the application of the holder.

ARTICLE 14 COOPERATION

1. Competent Authorities shall cooperate with each other for the purpose of carrying out their duties under this Directive, in the exercise of their powers under this Directive or national law.
2. Competent Authorities shall exchange information and cooperate with self-regulatory organizations in any licensing and supervisory activities.

ARTICLE 15 APPEAL OF DECISIONS MADE BY A COMPETENT AUTHORITY

A person who feels aggrieved by a decision made in accordance with laws, regulations or administrative provisions adopted in accordance with this Directive may appeal to the courts.

ARTICLE 16 AMENDMENTS

1. Any proposals for amendment may be submitted in writing by the Partner States to the Secretary General of the East African Community.
2. This Directive shall be amended by the Council of Ministers.

ARTICLE 17 IMPLEMENTATION

1. Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of the issue by the Council of Ministers. They shall forthwith inform the Council of Ministers thereof.

2. When Partner States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods for making such reference shall be laid down by Partner States.

ARTICLE 18
ENTRY INTO FORCE

This Directive shall enter into force upon issuance by the Council.

ARTICLE 19
ADDRESSEES

*This Directive is addressed to the Partner States.
Done in Arusha, Tanzania*