



GAZETTE NOTICE NO. 12325

THE CAPITAL MARKETS ACT

(Cap. 485A)

GUIDELINES ON SHARE BUYBACKS FOR LISTED COMPANIES

IN EXERCISE of the powers conferred by section 11 (3) (d) of the Capital Markets Act, the Capital Markets Authority issues the Guidelines on Buybacks for Listed Companies as set out in the Schedule.

SCHEDULE

GUIDELINES ON SHARE BUYBACKS FOR LISTED COMPANIES

Introduction and application.

1. (1) These Guidelines have been issued for guiding listed companies that intend to undertake share buybacks.

(2) A listed company that intends to buy back its shares shall comply in full with the provisions of the Companies Act, 2015, Capital Markets Act, and these Guidelines.

Definitions.

2. In these Guidelines, unless the context otherwise requires—

“distributable profits” has the meaning assigned to it under section 423 (1) of the Companies Act, 2015;

“listed company” means a company which has any of its securities listed on a securities exchange;

“off-market purchase” means the purchase of the securities of a listed company made—

- (a) outside an approved securities exchange; or
- (b) on an approved securities exchange but is not subject to a marketing arrangement on the exchange;

“on-market (exchange) purchase” means the purchase of the securities of a listed company that is made on a securities exchange; and

“treasury shares” means the shares of a listed company that have been bought back by the listed company from the company’s shareholders and have not been cancelled.

Power to undertake share buyback.

3. (1) A listed company may only buy back its shares if the Articles of Association of the listed company provide for share buybacks.

(2) A proposal to buy back the shares of a listed company shall be approved by the shareholders of the company at a general meeting of shareholders before the share buyback is undertaken.

(3) Where a listed company intends to submit a share buyback proposal to the company’s shareholders for approval at a general meeting, the company shall provide the shareholders with a circular setting out the terms and conditions of the share buyback proposal:

Provided that the circular shall first have been —

- (a) approved by the Authority pursuant to regulation 63 of the Capital Markets (Licensing Requirements) (General) Regulations, 2002; and
- (b) shall have been submitted to the securities exchange on which the share buyback transactions shall be undertaken by the listed company.

Shareholder circular.

4. (1) The circular contemplated in paragraph 3 (3) shall disclose all material information that the shareholders of the listed company and the shareholders’ professional advisors would reasonably require or expect to be informed about in order to make an informed decision on the proposed share buyback transaction.

(2) Despite the generality of subparagraph (1), the circular shall contain the following information—

- (a) the reasons for the share buyback;
- (b) the number of shares of the listed company that are intended to be bought back;
- (c) the method of undertaking the share buyback including whether or not the buyback shall be undertaken—

- (i) through open market repurchase programmes executed through tender offers or over a period of time; or
 - (ii) through on -market (exchange) or off-market purchases;
- (d) the treatment by the listed company of the shares to be bought back including—
 - (i) whether or not the shares bought back shall be held in treasury or cancelled; and
 - (ii) where the shares that have been bought back are intended to be held in treasury, the listed company shall disclose the current and future treatment of those treasury shares;
- (e) the price-per-share intended to be paid by the listed company specifying the maximum and minimum prices of the shares and a detailed explanation supporting the prescribed price including valuation reports;
- (f) the mode of financing the share buyback either being the proceeds from a fresh issue of shares or out of distributable profits of the listed company;
- (g) whether or not consent for the share buyback has been obtained from other relevant parties including bondholders, regulators and creditors;
- (h) a declaration by the directors of the listed company of the company's solvency or liquidity based on the company's last audited financial statements that is sufficient to undertake the share buyback including a statement that on the date of the shareholder circular—
 - (i) the assets of the listed company are fairly valued;
 - (ii) the assets of the listed company are equal to or exceed the liabilities of the listed company; and
 - (iii) the listed company shall be able to pay its debts as they come due in the ordinary course of business for a period of twelve months;

- (i) the potential impact of the proposed share buyback on the shareholding structure of the listed company;
- (j) the risk factors and assumptions of the share buyback transaction;
- (k) any related party transaction or director's interest in the share buyback transaction;
- (l) the impact of the share buyback on the listed company's financial position;
- (m) the period during which the shareholders' approval for the share buyback shall be valid; and
- (n) any other relevant information regarding the proposed share buyback transaction.

Off-market purchase transactions.

5. If a listed company intends to buy back its shares through off-market purchases, that company shall submit the draft share buyback contract to the Authority for approval in line with the requirements for private transactions in addition to the shareholders' circular contemplated under paragraph 3 (3).

Publication of notice.

6. (1) A listed company that intends to buy back its shares shall publish, within twenty-four hours of the board's resolution approving the share buyback, and with the approval of the Authority, a public announcement of the intended share buyback in at least one newspaper of nationwide circulation and on the company's website.

(2) The listed company shall submit the published public announcement to the securities exchange and the exchange shall publish the announcement on its website.

(3) The announcement shall contain material information on the share buyback including the following—

- (a) the method of effecting the share buyback (on-market (exchange) purchase or off-market purchase);
- (b) the minimum and maximum prices of the shares to be bought back;
- (c) the treatment of shares by the listed company after they are bought back;

- (d) the percentage of the shares to be bought as a proportion of the issued share capital of the listed company; and
- (e) the transaction advisors advising the listed company in the share buyback transaction.

(4) The announcement shall contain a statement that the listed company shall provide the shareholders with a circular on the proposed share buyback seeking the shareholders' approval after the circular on the share buyback has been approved by the Authority.

On-market
(exchange)
purchases.

7. If a listed company intends to buy back its shares through on-market (exchange) purchases—

- (a) the maximum share buyback price of the shares to be purchased shall be ten per cent above the weighted price average of the shares during the period of thirty days before the day of the board resolution approving the share buyback; and
- (b) the minimum share buyback price of the shares to be purchased shall be the nominal price of the shares or the prevailing market price, whichever is lower, on the date of the board resolution approving the share buyback.

Minimum
capital and free
float
requirements.

8. A proposal by a listed company to buy back its shares shall not reduce or contravene the minimum capital and free float requirement for continued listing of the company in the respective market segment under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, and any other additional free float requirements that may be introduced by the Authority.

Share buyback
relating to a
class of shares
and treatment of
treasury shares.

9. (1) If a proposal to buy back shares relates to a class of shares of the listed company, the shares to be bought back by the company shall not exceed ten per cent of the total issued shares of that class in a given financial year:

Provided that the Authority may consider waiving this limit on the written application of the listed company.

(2) If a listed company opts to keep the shares bought back in treasury, the treasury shares shall not exceed ten per cent of the total issued shares of that class.

(3) Where a listed company proposes to reissue treasury shares, including any reissue to employee share ownership schemes of the company, the company shall seek the approval of the company's shareholders and Authority pursuant to the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, before reissuing the treasury shares.

Volume of shares to be purchased.

10. (1) The volume of the shares purchased by a listed company on any single day may not exceed twenty-five per cent or the limit prescribed by the Authority.

(2) The limit under subparagraph (1)—

(a) shall be based on the liquidity of the shares in the market of the average daily trading volume for the four calendar weeks preceding the week of the purchase; and

(b) shall not be executed as to significantly adversely affect the liquidity of the shares in question.

(3) The share buyback shall not be effected during pre-open session of trading of the shares of the listed company.

Listed company must make disclosure on share buybacks to the security exchange.

11. (1) A listed company that undertakes a share buyback shall disclose to the securities exchange the details of the buyback transaction immediately after the buying back of the shares and the disclosure shall be published on the security exchange's website.

(2) The disclosure under subparagraph (1) shall include information on the listed company, the number of shares that have been bought back, the price per share of the shares that have been bought back, and the percentage of the free float after the shares have been bought back.

Duration of a buyback programme.

12. A listed company shall—

(a) complete the share buyback within a period not exceeding eighteen months from the date of the shareholder resolution approving the share buyback proposal; and

(b) separate the share buyback programmes by a period of three hundred and sixty-five days.

Prohibition,
cancellation or
suspension of
share buybacks.

13. (1) A listed company shall not undertake a share buyback transaction—

- (a) during the period of fourteen days before the publication of the company's half-yearly or annual financial statements; or
- (b) after it has become aware of any material information which has not been made public which, if disclosed, could affect the price of the company's shares.

(2) A share buyback may be cancelled or suspended if—

- (a) material information is announced within fourteen days before the buyback being conducted; or
- (b) if the listed company deems it fit in the circumstances:

Provided that the cancellation or suspension is done within a reasonable time before the effective date of the buyback transaction.

Reporting and
disclosures.

14. (1) A listed company that undertakes a share buyback transaction shall submit to the Authority daily reports on the share buyback transaction undertaken and the treatment of the shares acquired by the listed company including reports on the price and volume of shares bought back and any treasury shares sold by the company.

(2) A listed company that undertakes share buyback transactions shall disclose in its annual report any share buyback transactions undertaken in the year to which the report relates and the treatment by the company of the shares bought back.

De-listings and
privatisations to
be approved by
independent
shareholders.

15. If, after a share buyback, the listed company that buys back its shares proposes to de-list its shares from the securities exchange or the company is privatised—

- (a) the directors of the listed company and any person acting in concert with the directors shall not be considered to be independent and shall not be entitled to vote at the meeting of shareholders convened to approve the share buyback proposal; and

- (b) the share buyback proposal shall be require to be approved by—
- (i) at least seventy-five per cent of the votes attached to the shares owned by independent shareholders that are cast either in person or by proxy at a duly convened general meeting; and
 - (ii) the number of votes cast against the resolution shall not be more than ten per cent of the votes attached to the shares owned by independent shareholders.

Capital Markets
(Takeovers and
Mergers)
Regulations,
2002 to apply.

16. If a share buyback transaction triggers the percentage shareholding limits that may lead to a takeover of the listed company, the Capital Markets (Takeovers and Mergers) Regulations, 2002, shall apply.

Listed company
to comply with
applicable laws
and regulations.

17. (1) A listed company shall comply with the corporate governance requirements, listing obligations and all relevant written laws and Regulations of Kenya as may be applicable during the share buyback process.

(2) A listed company undertaking share buyback shall ensure that it, its directors, shareholders, connected persons, and persons acting in concert with the company or its directors, do not commit any offences relating to market abuse or insider dealing during the share buyback.

Dated the 7th October, 2021.

THOMAS KIBUA,
Acting Chairperson,
Capital markets Authority.

WYCKLIFFE SHAMIAH,
Chief Executive Officer,
Capital Markets Authority.