

LEGAL NOTICE NO.

**THE CAPITAL MARKETS ACT
(Cap.485A)**

IN EXERCISE of the powers conferred by section 12 (1) (d) of the Capital Markets Act, the Cabinet Secretary to the National Treasury and Economic Planning makes the following Regulations-

**THE CAPITAL MARKETS (CORPORATE GOVERNANCE)
(MARKET INTERMEDIARIES) REGULATIONS, 2025**

Citation. **1.** These regulations may be cited as the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations 2025.

Interpretation. **2.** In these Regulations, unless the context otherwise requires-

“board” means the board of directors of the market intermediary;

“ chief executive officer” means the person who is responsible for the day to day administration of a market intermediary and any title or designation that has similar responsibilities shall be interpreted as such.

“close relation” means a relationship of a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grand child or spouse of a grandchild;

“Executive director” means a member of the board who serves as a manager of the market intermediary or a related entity;

“fit and proper” means a person who has met the criteria as set out in section 24A of the Act;

“management of a market intermediary” means the persons who the Authority has been informed, in writing, are responsible for the day to day administration of a market intermediary;

“market intermediary” means a company licensed, approved or recognized under Part IV of the Act and includes market intermediaries in the commodities market;

“independent director” means a member of a board of directors who –

- (a) is not an executive director or employee of the company or related entity;
- (b) is compensated through sitting fees or allowances;
- (c) does not own shares in the company;
- (d) has not been employed by the company in an executive capacity within the last three years;
- (e) is not associated to –
 - (i) an adviser or consultant to the market intermediary;
 - (ii) a member of the market intermediary’s senior management;
 - (iii) a person employed by the market intermediary in an executive capacity within the last five years;
 - (iv) a significant client or supplier of the market intermediary; or
 - (v) a not-for-profit entity that receives significant contributions from the market intermediary.
- (f) within the last five years, has not had any business relationship with the market intermediary, other than service as a director, for which the market intermediary has been required to make disclosure;
- (g) does not have contract of service with the market intermediary, or a member of the market intermediary’s senior management;
- (h) is not employed by any entity at which an executive officer of that entity serves as a director of the market intermediary;
- (i) is not a representative of a shareholder who has the ability to control or significantly influence management;
- (j) is free from any business or other relationship which could be seen to interfere materially with the individual’s capacity to act in an independent manner;
- (k) does not have a direct or indirect interest in the

company (including any parent or subsidiary in a consolidated group with the company) which is either material to the director or to the company. A holding of five percent or more is considered substantial;

(l) is not a director in a related entity ; and

(m) has not served for more than six years since they were first elected.

“Non-Executive Director “means a director of a company who is not an employee of the company or related entity;

‘Related entity’ means in relation to a natural person, any person who is related to that person by marriage, affinity or consanguinity or who is a partner or employee of that person; and in relation to a company any entity which is its holding company, subsidiary, subsidiary of its holding company, or any person who controls that company whether alone or with such person’s related parties.

Application

3. These Regulations shall apply to all market intermediaries in the capital and commodities market.

Objectives of the Regulations

4. The Objective of these Regulations shall be to-

- (a) promote good governance within the Capital Markets;
- (b) safeguard investor interests and enhance market confidence; and
- (c) promote transparency, accountability, integrity and responsible decision making.

Board of Directors.

5. (1) The Board of a market intermediary shall be composed of –

- (a) a minimum of three directors of whom at least two shall be natural persons;
- (b) at least one third independent director;
- (c) not more than one third of the directors who are close relations of any director
- (d) At least one of the directors should have three years’ experience in capital markets or finance

(2) A person shall not be a director in more than three market intermediaries unless the market intermediaries are subsidiaries or holding companies.

(3) A market intermediary shall not change the composition of its board without the prior written approval of the Authority

Fit and proper requirements for appointment as Director

6. (1) A market intermediary shall not appoint a person to be a director unless that person is fit and proper to hold such position.

(2) A market intermediary shall ensure that any person appointed as a director undergoes corporate governance training within six months of appointment.

Register of directors.

7. A market intermediary shall keep a register of its directors and avail the register to the public, without any charge, at its registered office.

The Board.

8. (1) A market intermediary shall have a board that shall lead, control and be collectively responsible and accountable for the conduct and governance of its business.

(2) The Board shall-

- (a) give strategic direction to the market intermediary;
- (b) provide leadership within a framework of prudent and effective control that facilitates risk assessment and management.
- (c) ensure that the necessary financial and human resources are available to meet its objectives and review management performance.
- (d) ensure the integrity of a market intermediary's accounting and financial reporting systems, including provision for independent audit, and that the appropriate systems for risk management and financial and operational control are in place;
- (e) maintain control and monitor the management of a market intermediary in implementing its plans and strategies; and
- (f) ensure that the market intermediary complies with the Act and other relevant legislation.

Chairman of the Board

9. (1) The chairman of the board shall not be appointed as the chief executive officer of the market intermediary, and the board shall specify the roles and responsibilities of the chairman in writing.

(2) The chairman of the board shall be a non-executive director or an independent director.

Chief Executive Officer

10. (1) The board shall appoint a Chief Executive Officer, in writing, who will be responsible for the day-to-day affairs of the company and answerable to the Board.

(2) The board shall specify the roles and responsibilities of the chairman and chief executive, in writing

(3) Despite the generality of sub regulation (2) the chief executive officer shall-

- (a) observe high standards of integrity and act with due skill, care and diligence;
- (b) implement the policies, decisions and the corporate strategy developed by the board;
- (c) identify and recommend to the board employment of officers who are competent to manage the operations of the market intermediary;
- (d) co-ordinate the operations of the departments within the market intermediary;
- (e) establish and maintain efficient and adequate internal control systems for the management of the market intermediary;
- (f) design and implement management information systems necessary to facilitate efficient and effective communication within the market intermediary;
- (g) Be accountable to the board for monitoring the system of internal controls and reporting on such monitoring activities; and
- (h) regularly apprise the board adequately on the operations of the market intermediary.

Committees.

11. (1) The board shall establish an audit committee and such other committees of the board, as it considers necessary, and specify their terms of reference, in writing, including the reporting procedures and a written scope of

authority.

(2) The chairperson of the Board shall not serve in any committee of the Board.

(3) The board may, refer to a relevant committee established under paragraph (1), any matter for consideration and determination.

(4) A decision of a committee shall not bind a market intermediary unless the decision has been approved by the board.

Audit committee

12. (1) The Chairperson of the audit committee shall be an independent director.

(2) At least one member of the audit committee shall be a certified auditor in accounting, risk or systems and a member of a relevant professional body

(3) The audit committee shall, among others-

- (a) review regular internal audit reports prepared by the market intermediary's internal auditor for management and management's response to such reports;
- (b) review the market intermediary's periodic financial statements and any other financial reports or financial information, when necessary;
- (c) review with management and external auditors,-
 - (i) the audited and unaudited financial statements of a market intermediary before they are released to the public;
 - (ii) the effectiveness of the documented risk management policy report for the assessment, monitoring and managing the possible risk exposure;
- (d) review the effectiveness of the internal controls of the market intermediary and other matters affecting the financial performance and financial reporting of a market intermediary, including information technology security and control;
- (e) review the external auditors' proposed audit scope and approach;

- (f) Assess the independence and objectivity of the external auditors on an annual basis;
- (g) monitor compliance of a market intermediary with its code of conduct and ethics;
- (h) consider the work plan of the market intermediary compliance activities;
- (i) regularly report to the board on the activities of the market intermediary, issues and related recommendations; and
- (j) institute and oversee special investigations, when necessary.

Board charter.

13.(1) The board shall develop a charter that-

- (a) confirms its responsibility for the adoption of strategic plans, monitoring the operational performance, the determination of policy and processes that ensure that the integrity of the market intermediary's risk management and internal controls;
- (b) reserves specific powers to itself and delegates other matters to the management of a market intermediary;
- (c) addresses conflict of interest, relating to directors and management, and
- (d) identifies key risk areas, that require regular monitoring

(2) The Board shall review its charter, and update where necessary, at least once every two years

Code of conduct

14. The Board shall develop a code of conduct for directors, management and staff which shall be regularly reviewed and updated as necessary.

Accountability and responsibility.

15. (1) The board shall be responsible and accountable for the performance and conduct of the business of the market intermediary.

(2) The board shall keep and maintain a schedule of the matters reserved for its decision and ensure that it directs and controls.

(3) The board shall not be discharged from its duties and responsibilities for matters or authority delegated to committees of the board or to the management of a market

intermediary.

Board meetings

16. (1) The board, where applicable, shall meet at least once in every three calendar months to review the market intermediary's processes and procedures to ensure the effectiveness of its internal systems of control.

(2) The board or partners shall, at the beginning of each financial year, prepare an annual schedule of meetings of the market intermediary.

Remuneration of directors.

17. The remuneration of directors, the chief executive and top management of a market intermediary shall be commensurate with the nature, size of operations and performance of the market intermediary and available for inspection by the Authority.

Corporate governance framework.

20. (1) A market intermediary shall establish a corporate governance framework that provides-

(a) strategic guidance of the market intermediary that promotes the effective monitoring of the management and accountability of the board;

(b) Continuous improvements that aligns with the local and international governance and sector specific best practices; and

(c) for availability and documentation of timely and accurate information relating to the market intermediary, including its financial structure, performance, ownership and governance.

(2) The board shall review the management of the market intermediary, operations, financial status and corporate performance at least once in every three months.

(3) The board shall review its corporate governance structure annually.

(4) The board shall document the results of the reviews conducted under paragraphs (2) and (3).

Responsibilities of shareholders

21. (1) The shareholders of a market intermediary shall, jointly and severally, protect, preserve and actively exercise authority over the institution in general meetings.

- (2) The shareholders shall-
 - (a) elect or appoint persons who are fit and proper, have the relevant experience and qualifications, and can provide effective leadership and guidance in the business of the market intermediary to the board of directors;
 - (b) ensure that the board is, through general meetings and related forums, constantly held accountable and responsible for the efficient and effective governance of the market intermediary;
 - (c) utilise powers vested in general meetings to change the composition of a board of directors that does not perform to expectation or in accordance with the mandate of the market intermediary.;
- (3) The shareholders of a market intermediary shall ensure that the market intermediary applies to the Authority for approval of any acquisition or transfer if the acquisition or transfer results to a person being entitled to exercise control of five per cent or more of the share capital of that intermediary.
- (4) A market intermediary shall obtain the approvals required under paragraph (3), before the allotment of shares.

Appointment of employees

22. (1) The board shall formulate a policy for the appointment of employees.

(2) The board shall ensure that all employees are fit and proper for their roles.

(3) The board shall review the policy formulated under paragraph (1) at least once in every three years.

(4) The management of a market intermediary shall determine and document the experience and qualifications for each post that shall meet any relevant requirements prescribed by the Authority.

(5) The management shall ensure and document that all employees have an appropriate training programme based on the needs of the market intermediary and the requirements of the Authority.

(6) A market intermediary shall document for every employee-

- (a) any securities transaction undertaken with details of permission received;
- (b) any declaration of an existing or potential conflicts of interest made; and
- (c) details of all listed or publicly traded securities owned.

Ownership and management changes

23. A market intermediary shall not change its shareholders, directors, chief executives or key personnel except with the prior confirmation, in writing, by the Authority that it has no objection to the proposed change and subject to compliance with any conditions imposed by the Authority.

Separation of employees' duties.

24. (1) The management of a market intermediary shall maintain adequate separation of employee duties with appropriate maker-checker controls.

(2) A market intermediary shall maintain such internal controls, functional lines and systems to restrict the flow of information between key departments or other demarcations as may be considered necessary.

Finance officers and internal auditors.

25. The chief finance officer or any other person who is responsible for finance department of a market intermediary and the person responsible for the internal audit function, shall be members of the Institute of Certified Public Accountants of Kenya (ICPAK) in good standing.

Internal audit.

26. (1) A market intermediary shall establish an effective and functionally independent internal audit function

(2) The board shall formulate and implement an internal audit charter that will provide -

- (a) the purpose, authority and responsibility of the internal audit function;
- (b) assurance that the management processes are adequate to identify and monitor significant risks;
- (c) confirmation of the effective operation of the established internal control system;
- (d) credible processes for feedback on

risk management and assurance; and

- (e) objective confirmation that the board receives the right quality of assurance and information from management and that this information is reliable.

Internal auditor.

27. The board shall appoint an internal auditor who shall-

- (a) not be the compliance officer and shall not be involved in any function that is being audited
- (b) have sufficient authority to carry out his function as an internal auditor;
- (c) have direct access to the board;
- (d) subject to the oversight of the audit committee, develop an internal audit programme; and
- (e) submit quarterly reports to the audit committee.

Responsibility
for risk
management

28. (1) The board shall be responsible for the development and implementation of the process of risk assessment and management and shall regularly review the effectiveness of the process.

(2) The management of a market intermediary shall be accountable to the Board for designing, implementing, monitoring and integration of the risk management process into the day-to-day business of the market intermediary.

(3) The risk assessment process developed under paragraph (2) shall, having regard to the size and nature of operations of a market intermediary, and the extent to which the risks may impact on the business of the market intermediary, address-

- (a) compliance risks;
- (b) trading, payment and settlement systems risks;
- (c) operational risks;
- (d) human resource risks;
- (e) technology risks including cyber security and data integrity
- (f) business continuity and disaster recovery;
- (g) credit risks
- (h) market risks;
- (i) Liquidity risks;

- (j) Money laundering, terrorism financing and proliferation financing risks;
- (k) Sustainability risks;
- (l) reputational risks; and
- (m) any other risks that the board considers may be relevant to its business.

(4) The board shall, in consultation with the management of a market intermediary-

- (a) develop and document the risk management policies and processes designed to mitigate the risks to its business.
- (b) annually, review its risk management procedures and contingency plans, and document the results and conclusions of such reviews.

(5) The management of a market intermediary shall-

- (a) communicate the risk management policies to all employees;
- (b) maintain back up and contingency plans for dealing with eventualities relating to risks, including catastrophic information technology failure, the loss of records and the loss of access to their business premises;
- (c) make arrangements for business continuity in the event of the loss of key personnel through illness, resignation or otherwise; and
- (d) evaluate the contingencies plans on a regular basis.

Risk
management
officer

29. A market intermediary shall appoint a risk management officer to-

- (a) discharge duties relating to corporate accountability and risk management, assurance and reporting;
- (b) review and assess the integrity of the risk control systems and ensure that the risk policies and strategies are effectively managed;

- (c) define the nature, role, responsibility and authority of the risk management function of the market intermediary;
- (d) monitor external developments relating to the practice of corporate accountability and the reporting of associated risk, including emerging and prospective impact;
- (e) provide independent and objective oversight and review of the information presented by management on corporate accountability and specifically associated risk, taking account of risk concerns raised by management at the audit committee meetings on financial, business and strategic risk;
- (f) obtain such external or other independent professional advice as he considers necessary to carry out his duties; and
- (g) provide quarterly reports to the audit committee of the Board.

Information management system.

30. The board shall develop and implement an information management system that ensures compliance with the relevant laws.

Responsibility for internal controls.

31. (1) The board shall be responsible for the market intermediary's system of internal controls.

(2) The board shall establish and monitor implementation of appropriate policies on internal controls.

(3) The board shall periodically review and enquire, based on the information and assurances provided to it by management of a market intermediary, to determine the effectiveness of internal controls established by the management of the market intermediary.

(4) The board shall document the results and conclusions of its periodic reviews and actions taken thereon.

Compliance officer.

32. The board shall appoint a compliance officer who shall-

- (a) monitor compliance with the regulatory requirements prescribed by the Authority, and shall not be involved with any function that is the subject of compliance;
- (b) have sufficient authority to carry out such function;
- (c) have unfettered access to information;
- (d) have direct access to the board;
- (e) take necessary action to rectify any non-compliance;
- (f) report to the board any non-compliance issues;
- (g) report to the board any material breaches upon occurrence;
- (h) submit an annual corporate governance report to the board; and
- (i) Provide quarterly compliance reports to the audit committee of the Board.

(2) The compliance officer may be held personally liable for the failure to identify and report to the board any non-compliance by the market intermediary with the regulatory requirements of the Authority.

Regulatory requirements.

33. A market intermediary shall maintain all the records that are required to be kept under these Regulations for a minimum period of seven years from the date on which they are made

Board records.

34. The board shall maintain a record of all the decisions of the board and all actions taken to comply with the regulatory requirements of the Authority.

Sanctions and penalties

35. A market intermediary, a director, partner or an employee of a market intermediary that contravenes these regulations shall be liable to sanctions or penalties as provided under the Act.

Made on..... 2025

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