

POLICY GUIDANCE NOTE ON GREEN BONDS



This Policy Guidance Note (PGN) is a guide on the operational regulatory environment on Green Bonds in Kenya.

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1 Definitions

In this Policy Guidance Note, unless the context otherwise requires –

“**Act**” means the Capital Markets Act, Cap 485A, Laws of Kenya;

“**aggregated portfolio basis**” means the percentage of proceeds allocated to certain project categories due to a large number of underlying projects;

“**Authority**” means the Capital Markets Authority;

“**eligible projects**” means project categories that contribute to environmental objectives including but not limited to climate change mitigation, climate change adaptation, natural resource conservation, biodiversity conservation, and pollution prevention and control;

“**Green Bond**” means a fixed income instrument, either unlisted or listed on a securities exchange, approved by the Authority, whose proceeds are used to finance or refinance new or existing projects that generate climate or other environmental benefits that conform to green guidelines and standards;

“**green guidelines and standards**” means guidelines and standards including –

- (a) Green Bond Principles, as may be amended, issued and governed by the International Capital Markets Association;
- (b) Green Bond Standards such as the Climate Bonds Standard, as may be amended, issued and governed by the Climate Bonds Initiative;
- (c) Government policies and guidelines such as the Kenya National Policy on Climate Change and Green Economy Strategy, among other Government policies; or
- (d) any other standard acceptable to the Authority;

“**greenwashing**” means the superficial or insincere display of concern for the environment including –

- (a) mislabelling of a bond as green; or
- (b) the overstatement of the environmental benefits of a project that the proceeds of the Green Bond will fund;

“**Independent Verifier**” means an entity, independent of an issuer, its directors, senior management and advisers, compliant with the International Capital Markets Association’s

Guidelines for External Reviewers or accredited under the Climate Bonds Standards and Certification Scheme, or any other professional body acceptable to the Authority, and a securities exchange, in the case of a listed Green Bond, appointed by the issuer to confirm the green status of the Green Bond;

“**Information Memorandum**” shall have the same meaning assigned to it under the Act;

“**Performance indicators and metrics**” means qualitative performance measures which may be based on parameters such as electricity generation, electricity connections made, greenhouse gas emissions reduced or avoided, increases in forest cover, number of people provided with access to clean power, decreased water use, reduction in the number of cars among other indicators; and

“**Transaction Advisor**” means a person described under Regulation 5A (3) of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations.

2 Application of this Policy Guidance Note

- 2.1 This Policy Guidance Note provides for the guiding principles for the issuance of Green Bonds.
- 2.2 In case of any doubt, it is advised that direction or clarification be sought from the Authority.

3 Procedure for Issuance of a Green Bond

- 3.1 An issuer of a Green Bond shall comply with the requirements in this Policy Guidance Note in addition to the relevant provisions of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations as amended from time to time.
- 3.2 An issuer shall appoint an Independent Verifier to carry out a pre-issuance review and confirm to investors and the Authority, and a Securities Exchange where the issuance is intended to be listed, that the issuance is eligible to be classified as green pursuant to green guidelines and standards applicable.
- 3.3 An issuer shall prepare an Information Memorandum which shall comply with the provisions of Regulation 7 (1) (c) as read together with the Second Schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations.
- 3.4 The Information Memorandum described under paragraph 3.3 shall contain a statement from the Independent Verifier, in the form of a report, confirming whether the proposed issuance can be classified as green pursuant to Green Bond guidelines and standards.
- 3.5 The report in paragraph 3.4 shall contain the following particulars –
 - (a) a statement on the environmental or other green objectives of the proposed Green Bond and the process to determine project eligibility and related eligibility criteria;
 - (b) a statement of the systems, policies and processes to be used for the management, allocation and reporting of the Green Bond funds and investments; and
 - (c) a statement to confirm that the proposed Green Bond issuance can be classified as green.

4 Procedure for Listing a Green Bond

- 4.1 The procedure for listing of Green Bonds shall be in accordance with the provisions of the Nairobi Securities Exchange Listing Rules or the rules of any other securities exchange, approved by the Authority and as amended from time to time.

5 Eligibility as an Independent Verifier

- 5.1 An Independent Verifier appointed under paragraph 3.2 shall be an entity –
- (a) specialising in assessing the framework of the Green Bond’s environmental objectives, with sufficient environmental, financial and market-specific expertise to perform a comprehensive assessment of the use of proceeds;
 - (b) independent of the issuer, its directors, senior management and advisors;
 - (c) compliant with the International Capital Markets Association’s Guidelines for External Reviewers, or accredited under the Climate Standards and Certification Scheme, or any industry body acceptable to the Authority, and to a Securities Exchange, in the case of a listed Green Bond; and
 - (d) with significant and appropriate expertise needed for providing independent reviews on green bonds.

6 Submission of the Information Memorandum

- 6.1 A proposed issuer shall submit the Information Memorandum and all supporting documents to the Authority through its Transaction Advisor.
- 6.2 The Authority, after receipt of full and final documents from the proposed issuer, shall undertake a review of the Information Memorandum and supporting documents with a view of satisfying itself that the proposed issuer has complied with all laws and requirements relating to the issuance of a Green Bond.
- 6.3 The Authority shall give feedback, in writing, to the proposed issuer on the Information Memorandum by either approving or rejecting the application for approval of the proposed Green Bond issuance.
- 6.4 The approval shall be subject to the payment of the relevant fees as prescribed under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations.

7 Disclosure and Continuous Reporting Obligations

- 7.1 The issuer of a Green Bond shall provide to investors and the Authority a Green Bond report, annually, for the duration of the Green Bond in line with reporting requirements in the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations.
- 7.2 An issuer of a Green Bond shall be required to provide in its annual report, in addition to the requirements in paragraph 7.1, the following –
 - (a) a brief description of the projects and the amounts disbursed, including the percentage of proceeds that have been allocated to different project types and to financing and refinancing of such projects,
 - (b) where confidentiality agreements or competition considerations, or a large number of underlying projects limit the amount of detail that can be disclosed, the information shall be presented to the investors, in generic terms or on an aggregated portfolio basis, with the Authority reserving the right to request detailed information for regulatory purposes;
 - (c) the expected impact of the projects and assets;
 - (d) the qualitative performance indicators, and, where feasible, quantitative performance measures of the impact of the projects;
 - (e) the methodology and underlying assumptions used to prepare performance indicators and metrics; and

7.3 The annual report shall be reviewed and confirmed by the Independent Verifier.

8 Project Selection Process

8.1 An issuer shall, in the information memorandum, provide criteria on how the issuer will select eligible projects.

9 Use and Management of Proceeds

9.1 The proceeds of Green Bonds may only be used in the funding of eligible green projects.

9.2 Prior to the issuance of a Green Bond, the issuer must disclose to investors, in the documentation for issuance, the process for managing the net proceeds from the Green Bond.

9.3 Certain eligible projects may also have social co-benefits, in such circumstances, the use of proceeds should be determined by the issuer based on its primary objectives for the underlying projects prior to the issuance.

9.4 The net proceeds of the Green Bond must be tracked by the issuer in an appropriate manner quarterly or within any other period as the issuer may provide and attested to by a formal internal process linked to the issuer's lending and investment operations for eligible green projects.

9.5 At all times prior to a Green Bond maturing, the balance of the tracked proceeds shall be periodically adjusted to match allocations to eligible green projects made during that period.

9.6 An issuer shall disclose to investors in the prospectus, the intended types of temporary placement for the balance of the unallocated net proceeds of the Green Bond.

9.7 The issuer's management of proceeds shall be confirmed by an auditor, or other third party, to verify the issuer's internal tracking method and the allocation of funds from the proceeds of the Green Bond.

9.8 Where an issuer appoints an auditor under 9.7 above, such an issuer must make the report produced by the auditor or other third party publicly available on a website designated by the issuer at the time of the issuance of the Green Bond.

10 Consequences for Breach of Green Requirements by an Issuer of Unlisted Green Bonds

- 10.1 In the event of breach of the requirements under this Policy Guidance Note or any other relevant laws by an issuer of unlisted Green Bond, the Authority shall communicate to the issuer concerning the breach and shall authorize the issuer to take remedial steps to rectify the breach, subject to an agreed timeframe between it and the Authority, in addition to any other action that the Authority may take.
- 10.2 Where the issuer fails to take any remedial steps to rectify the breach, the Authority shall direct issuer to remove the green label on the Green Bond.
- 10.3 The Authority shall have power to take any other enforcement action on the issuer for the breach or any other act of non-compliance with laws and regulations as it may deem fit and in the interest of the investors.
- 10.4 Where the breach on the Green requirement is by an issuer whose securities are listed on a Securities Exchange, the Listing Rules of such a Securities Exchange shall apply.

11 Consequences for Breach of Green Requirements by an Issuer of a Listed Green Bond

- 11.1 The consequences for breach of green requirements by an issuer of a listed Green Bond shall be in accordance with the provisions of the Nairobi Securities Exchange Listing Rules or the rules of any other securities exchange approved by the Authority and as amended from time to time.

12 Suspension of a Green Bond

- 12.1 Any action to suspend the trading of a Green Bond shall be undertaken subject to the provisions of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations.
- 12.2 The Authority may require the removal of the green label from an approved Green Bond where it is noted by the Authority or through the Independent Verifier's report that there has been greenwashing or the Green Bond has ceased to meet the prescribed eligibility requirements.
- 12.3 In instances where greenwashing has occurred, the action may constitute a fraud on, or misrepresentation to investors and therefore may be punishable under the Laws of Kenya.

13 Review and updating of this Policy Guidance Note

13.1 The Authority shall from time to time issue updates to this Policy Guidance Note.