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Legal Notice No. EAC/142/2017.

**DIRECTIVE OF THE COUNCIL OF MINISTERS
ON
THE EAST AFRICAN COMMUNITY SECURITIES MARKET**

**(EAC/CM/35/Directive 15)
April, 2017**

INVESTOR EDUCATION AND PROTECTION

PREAMBLE

This Directive is issued by the Council in exercise of the powers conferred upon the Council by Article 14(3)(d) of the Treaty for the Establishment of the East African Community and Article 47(2) of the Protocol on the Establishment of the East African Common Market.

WHEREAS under Article 85 of the Treaty, the Partner States undertook to harmonise their capital markets policies and their regulatory and legislative frameworks and regulatory structures in order to create a conducive environment for the movement of capital within the Community;

WHEREAS the Partner States undertook to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system under Article 31 of the Protocol on the Establishment of the East African Common Market;

AND WHEREAS under Article 47 of the Protocol on the Establishment of the East African Common Market the Partner States undertook to approximate their national laws and to harmonize their policies and systems for purposes of implementing the Protocol;

IN ACCORDANCE with Article 14(3)(d) of the Treaty and Article 47 (2) of the Protocol on the Establishment of the East African Common Market, the Council directs the Partner States to enact, amend and harmonise their national laws on licensing in the securities markets in accordance with the principles set out in this Directive.

1. Scope of Directive

This Directive shall apply to all investor education activities by the Competent Authorities and licensed market intermediaries and their agents in respect of the securities markets within the Community.

2. Objective

The objective of this Directive is to—

- (a) promote fair and equitable securities markets services practices by setting minimum standards for market intermediaries in the Partner States;
- (b) increase transparency in order to inform and empower investors in the securities market;
- (c) provide efficient and effective mechanisms for handling investor complaints relating to the provision of securities markets products;
- (d) establish a regulatory framework for the achievement and maintenance of investor education and protection that is fair, accessible, efficient, sustainable and responsible for the benefit of investors generally;
- (e) improve investor education and awareness and encourage responsible and informed investor choice and behaviour;
- (f) promote investor confidence, empowerment and the development of a culture of investor responsibility through individual and group education, vigilance, advocacy and activism.

3. Principles for implementing this Directive

In implementing this Directive, Partner States shall abide by the following principles—

- (a) the relationship between the market intermediaries and the investors shall be guided by the following key principles –
- (i) fairness;
 - (ii) reliability;
 - (iii) transparency;
 - (iv) accountability; and
 - (v) objectivity;
- (b) a market intermediary shall act fairly and professionally in all its dealings with an investor;
- (c) a market Intermediary shall not engage in unfair, deceptive or aggressive practices such as intimidating an investor, offering or soliciting for bribes or gifts or other unfair inducements.

4. Principles for enacting, amending and harmonizing national laws

<i>No</i>	<i>Principle</i>	<i>Directive</i>
1	Interpretation	<p>“advertisement” means any form of public notice which is an attempt to invite or induce, directly or indirectly, any person to purchase or acquire an interest in a product or service;</p> <p>“agreement” means an arrangement or understanding between or among two or more parties that purports to establish a relationship in law between or among them;</p> <p>“Board” means the Board of the Competent Authority;</p> <p>“Community” means the East African Community established by Article 2 of the Treaty;</p> <p>“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;</p> <p>“complaint” means any oral or written expression of dissatisfaction about the provision or failure to provide a securities product:</p> <ol style="list-style-type: none"> (a) which is made by a licensed market intermediary in the securities market by or on behalf of an investor; and (b) which alleges that as a result of an act or omission by or on behalf of the licensed market intermediary, the investor has suffered or may suffer financial loss, material inconvenience or material distress; <p>“direct marketing” means to approach a person either in person or by mail or electronic communication for the direct or indirect purpose of:</p> <ol style="list-style-type: none"> (a) promoting or offering to supply in the ordinary course of business the services to a person; or (b) requesting the person to make a donation of any kind for any reason; <p>“Fund” means a Fund established for the purposes of Investor education;</p> <p>“investor” means a person who has invested in securities in the EAC securities market through any of the market intermediaries in the EAC Partner States;</p> <p>“market intermediary” means a broker, dealer, fund manager, investment bank or any other entity licensed by the competent authorities in the EAC to provide services in the securities market;</p> <p>“market player” means a market intermediary, issuer of securities and any other person involved in the securities markets in the Community;</p> <p>“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania and the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;</p> <p>“Treaty” means the Treaty for the Establishment of the East African Community and any annexes and protocols thereto; and</p> <p>“Competent court” means any court that has jurisdiction to determine cases in the Partner States</p>

2	Role of Competent Authorities	<ol style="list-style-type: none"> 1. A Competent Authority shall— <ol style="list-style-type: none"> (a) take such steps as are necessary to ensure that the investor education function and protection is performed; and (b) adopt an annual budget and plan for the investor education activities 2. A Competent Authority shall publish an Annual report including a list of activities undertaken during a financial year for investor education.
3	Protection against discriminatory practices	<ol style="list-style-type: none"> 1. A market intermediary shall not discriminate against any investor on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, social standing, political affiliation or disability. 2. If an investor has exercised, asserted or sought to uphold any rights set out in this directive or in any agreement or transaction with a market intermediary, the market intermediary shall not, in response: <ol style="list-style-type: none"> (a) treat the investor unfairly or with prejudice as a result of having made a complaint; (b) fail to act on a complaint for reasons that other investors have not exercised, asserted or sought to uphold such a right on a similar matter; (c) penalize the investor; (d) alter the terms or conditions of a transaction or agreement with the investor to the detriment of the investor; or (e) take any action to accelerate, enforce, suspend or terminate an agreement with the investor.
4	Prohibition of monopolistic tendencies by market intermediaries	<p>A market intermediary shall not require as a condition of offering financial services to an investor or entering into an agreement or transactions that the investor shall:</p> <ol style="list-style-type: none"> (a) use the services of that particular market intermediary; (b) enter into an additional agreement or transaction with the same licensed market intermediary or a designated third party; and (c) agree to purchase any particular securities services or products from a designated third party, <p>Unless the market intermediary:</p> <ol style="list-style-type: none"> (a) can show that the convenience to the investor in having these services bundled overweighs the limitation of the investor's right to choose; (b) can show that the bundling of those services may result into economic benefit for the investors; or (c) offers bundled services separately and at individual prices.
5	Disclosure and display of information	<ol style="list-style-type: none"> 1. The market intermediary or issuer of any securities product shall publicly display a notice, document or visual representation in plain language which can easily be understood by investors. 2. A notice, document or visual representation shall be in plain language. 3. A notice, document or visual representation shall be considered to be in plain language if it is reasonable to conclude that an ordinary investor of the class of persons for whom the notice, document or visual representation is intended with average literacy skills and minimal experience as an investor of the relevant securities services could be expected to understand the content, significance and importance of the notice, document or visual representation without undue effort having regard to: <ol style="list-style-type: none"> (a) the context, comprehensiveness and consistency of the notice, document or visual representation; (b) the organization, form and style of the notice, document, or visual representation; and

		<p>(c) the use of any illustrations, examples, headings or other aids to reading and understanding.</p> <p>4. A market intermediary shall:</p> <p>(a) disclose prescribed information to:</p> <p>(i) any person who the intermediary solicits or agrees to represent with respect to the sale of any product or services or from whom the intermediary accepts any product for the purpose of offering it for sale; and</p> <p>(ii) any person from whom the market intermediary solicits an offer or to whom the intermediary offers services to be performed by a third party;</p> <p>(b) keep safe the prescribed records of all relationships and transactions contemplated in this law.</p>
6	False, misleading or deceptive representations	<p>1. A market intermediary shall not market any services in a manner that is misleading, fraudulent or deceptive including in respect of:</p> <p>(a) the nature, properties, advantages, disadvantages or use of products and services;</p> <p>(b) the manner or conditions in which those services maybe provided;</p> <p>(c) the price at which the services may be provided or the existence of a relationship of the price to any previous price or competitor's price for comparable or similar services;</p> <p>(d) the sponsoring of any event; or</p> <p>(e) any other material respect of the services.</p> <p>2. A market intermediary or his representative who is directly marketing any securities products or services and who concludes a transaction or agreement with an investor must inform the investor in the prescribed manner and form of the right to rescind that agreement.</p> <p>3. In relation to the marketing of products and services, the market intermediary or his representative shall not by words or conduct:</p> <p>(a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to an investor;</p> <p>(b) use exaggeration, innuendo or ambiguity as to a material fact or fail to disclose a material fact if that failure amounts to a deception; or</p> <p>(c) fail to correct an apparent misapprehension on the part of an investor, amounting to a false, misleading or deceptive representation or permit or require any other person to do so on behalf of the market intermediary.</p>
7	Provision of information and advice to an investor	<p>Prior to an investor choosing a product or service provided by the licensed market intermediary, the market intermediary shall:</p> <p>(a) explain clearly in plain language the key features of the range of products and services that the investor is interested in so as to enable the investor to arrive at an informed decision about these products and services including any charges and fees that would be incurred; and</p> <p>(b) request the investor to provide all the information needed to verify whether or not the product or service meets the investors' investment objectives.</p>
8	Notice of change in terms and conditions	<p>A market intermediary shall ensure that an investor is notified:</p> <p>(a) at least thirty (30) calendar days in advance before implementing any changes to the terms and conditions, fees or charges, discontinuation of services or relocation of premises of the Market Intermediary; and</p> <p>(b) immediately upon receipt of any information that may have a material impact on the investment.</p>

9	Transparency	<p>A market intermediary shall ensure that:</p> <ol style="list-style-type: none"> (a) any information given to an investor in writing, electronically or orally is fair, clear and transparent; (b) the information is easily comprehensible so that investors can make an informed choice about a product or service; (c) the information is written in plain language and in a font size of not less than 10 points so that it is clear and legible; (d) the information on its products and services is updated, current and easily available; and (e) contracts and other documentation relating to the securities products and services are summarized in a key facts document written in plain language setting out clearly all the key information relating to the product or service of interest to the investor.
10	Remedial measures and administrative sanctions	<p>A market intermediary that contravenes any provision of the law implementing this Directive commits an offence that may lead to sanctions or penalties prescribed by national laws.</p>
11	Dispute resolution	<ol style="list-style-type: none"> 1. An investor dissatisfied with a decision of a market intermediary may request, in writing, that such decision be reviewed by the Competent Authority or such other body in the Partner State mandated to deal with investor complaints in accordance with the applicable Law. 2. An investor aggrieved by the decision of the Competent Authority or such other body in the Partner State mandated to deal with investor complaints, may seek resolution of that complaint from alternative dispute resolution mechanisms prior to lodging an appeal to a court of competent jurisdiction.

5. **Cooperation by Competent Authorities**

The Competent Authorities responsible for capital markets in the Partner States shall cooperate with each other for the purpose of carrying out their duties and in the exercise of their powers under this Directive or national laws.

6. **Implementation of Directive**

1. Partner States shall enact laws, regulations and administrative provisions to comply with this Directive not later than one year from the date of publication this Directive.
2. The Partner States shall at least once every year report to the Council stating the laws, regulations and administrative provisions each Partner State has taken to comply with this Directive.
3. A Partner State shall not implement measures likely to jeopardise the achievement of the objectives or the implementation of this Directive.

RT HON. DR. AL HAJI ALI KIRUNDA KIVEJINJA,
Chairperson Council of Ministers

Legal Notice No. EAC/143/2017.

**DIRECTIVE OF THE COUNCIL OF MINISTERS
ON
THE EAST AFRICAN COMMUNITY SECURITIES MARKET**

(EAC/CM/35/Directive 15)

April, 2017

SELF-REGULATORY ORGANISATIONS

PREAMBLE

This Directive is issued by the Council in exercise of the powers conferred upon the Council by Article 14(3)(d) of the Treaty for the Establishment of the East African Community and Article 47(2) of the Protocol on the Establishment of the East African Common Market.

WHEREAS under Article 85 of the Treaty, the Partner States undertook to harmonise their capital markets policies and their regulatory and legislative frameworks and regulatory structures in order to create a conducive environment for the movement of capital within the Community;

WHEREAS the Partner States undertook to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system under Article 31 of the Protocol on the Establishment of the East African Common Market;

AND WHEREAS under Article 47 of the Protocol on the Establishment of the East African Common Market the Partner States undertook to approximate their national laws and to harmonize their policies and systems for purposes of implementing the Protocol;

IN ACCORDANCE with Article 14(3)(d) of the Treaty and Article 47 (2) of the Protocol on the Establishment of the East African Common Market, the Council directs the Partner States to enact, amend and harmonise their national laws on licensing in the securities markets in accordance with the principles set out in this Directive.

1. Scope of Directive

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

2. Objective

1. The objective of this Directive is to promote self-regulation in the securities market in the Community.
2. For the purposes of this Directive, a self-regulatory organisation shall –
 - (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.

3. Principles for implementing this Directive

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.

4. Principles for enacting, amending and harmonising national laws

<i>No</i>	<i>Principle</i>	<i>Directive</i>
1	Interpretation	<p>“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State.</p> <p>“Community” means the East African Community established by Article 2 of the Treaty.</p> <p>“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;</p> <p>“key personnel” means persons who manage or control the activities of the Self- Regulatory Organization and include:</p> <ol style="list-style-type: none"> 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). <p>“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.</p> <p>“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;</p>
2	Recognition of a self-regulatory organization	<ol style="list-style-type: none"> 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 has— <ol style="list-style-type: none"> (a) a constitution and internal rules and policies which are consistent with securities- related legislation within the Community; (b) 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) 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 – <ol style="list-style-type: none"> (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.

3	Rules of a self-regulatory organization	<ol style="list-style-type: none"> 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; <ol style="list-style-type: none"> (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.
4	Decisions by self-regulatory organizations	<ol style="list-style-type: none"> 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.
5	Disciplinary action by self-regulatory organizations	<ol style="list-style-type: none"> 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 provision 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.

6	Directions to a self-regulatory organization	<ol style="list-style-type: none"> 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 paragraph 1 may — <ol style="list-style-type: none"> (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 law, 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.
7	Withdrawal and suspension of recognition of self-regulatory organizations	<ol style="list-style-type: none"> 1. A Competent Authority may at any time withdraw or suspend a recognition granted to a self-regulatory organisation if the organisation: <ol style="list-style-type: none"> (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.
8	Protection from personal liability	<p>No civil liability, whether arising in contract, tort, defamation, equity or otherwise shall be incurred by—</p> <ol style="list-style-type: none"> (a) a self-regulatory organization; or (b) any person acting on behalf of a self-regulatory organization including — <ol style="list-style-type: none"> (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 law or in the performance of its functions under its rules.
9	Change of key personnel by self-regulatory organizations	<p>A self-regulatory organization shall inform the Competent Authority of changes in its key personnel within seven (7) calendar days of such changes.</p>
10	Reporting obligations	<ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> (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

		<p>(c) such other requirements as may be specified by the Competent Authority.</p> <p>2. A Competent Authority may require a self-regulatory organization to submit the independent Auditor's report to management.</p> <p>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:</p> <p>(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;</p> <p>(b) the self-regulatory organization may be in contravention of any provisions of this Directive, or directions issued by a Competent Authority;</p> <p>(c) a financial crime has been or is likely to be committed by the self-regulatory authority;</p> <p>(d) serious irregularities have occurred; or</p> <p>(e) any other related matter.</p>
11	Appeals	A person aggrieved by a decision made in accordance with laws, regulations or administrative provisions providing for self-regulatory organisations may appeal to the courts.

5. Cooperation by Competent Authorities

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

6. Implementation of Directive

1. Partner States shall enact laws, regulations and administrative provisions to comply with this Directive not later than one year from the date of publication this Directive.
2. The Partner States shall at least once every year report to the Council stating the laws, regulations and administrative provisions each Partner State has taken to comply with this Directive.
3. A Partner State shall not implement measures likely to jeopardise the achievement of the objectives or the implementation of this Directive.

RT HON. DR. AL HAJI ALI KIRUNDA KIVEJINJA,
Chairperson Council of Ministers.

Legal Notice No. EAC/144/2017.

**DIRECTIVE OF THE COUNCIL OF MINISTERS
ON
THE EAST AFRICAN COMMUNITY SECURITIES MARKET**

**(EAC/CM/35/Directive 15)
April, 2017**

TAKEOVERS AND MERGERS

PREAMBLE

This Directive is issued by the Council in exercise of the powers conferred upon the Council by Article 14(3)(d) of the Treaty for the Establishment of the East African Community and Article 47(2) of the Protocol on the Establishment of the East African Common Market.

WHEREAS under Article 85 of the Treaty, the Partner States undertook to harmonise their capital markets policies and their regulatory and legislative frameworks and regulatory structures in order to create a conducive environment for the movement of capital within the Community;

WHEREAS the Partner States undertook to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system under Article 31 of the Protocol on the Establishment of the East African Common Market;

AND WHEREAS under Article 47 of the Protocol on the Establishment of the East African Common Market the Partner States undertook to approximate their national laws and to harmonize their policies and systems for purposes of implementing the Protocol;

IN ACCORDANCE with Article 14(3)(d) of the Treaty and Article 47 (2) of the Protocol on the Establishment of the East African Common Market, the Council directs the Partner States to enact, amend and harmonise their national laws on licensing in the securities markets in accordance with the principles set out in this Directive.

1. Scope of Directive

This Directive applies to takeover bids and mergers relating to the securities of companies admitted to trading on a regulated market in more than one Partner State.

2. Objective

The objective of this Directive is to:

- (a) establish minimum guidelines for the conduct of takeover bids and mergers; and
- (b) ensure an adequate level of protection for holders of securities throughout the Community.

3. Principles

1. For the purposes of implementing this Directive, Partner States shall comply with the following principles—
 - (a) all holders of the securities of an offeree company of the same class shall be afforded equal treatment;
 - (b) if a person acquires control of a company, the other holders of securities shall be protected;
 - (c) interests of minority shareholders shall be protected;
 - (d) the holders of the securities of an offeree company shall have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company shall give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;
 - (e) the board of an offeree company shall act in the interests of the company as a whole and shall not deny the holders of securities the opportunity to decide on the merits of the bid;

- (f) false markets shall not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
 - (g) an offeror shall announce a bid only after ensuring that he can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and
 - (h) an offeree company shall not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.
2. With a view to ensuring compliance with the principles laid down in paragraph 1, Partner States:
- (a) shall ensure that the minimum requirements set out in this Directive are observed; and
 - (b) may lay down additional conditions and provisions more stringent than those of this Directive for the regulation of bids.

4. Principles for enacting, amending and harmonising national laws

No.	Principle	Directive
1	Interpretation	<p>“acting in concert” means persons who pursuant to a formal or informal agreement or understanding actively co-operate through the acquisition by any of them of shares having voting rights in a public listed company to obtain or consolidate control of that company;</p> <p>“Community” means East African Community established by Article 2 of the Treaty;</p> <p>“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;</p> <p>“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;</p> <p>“merger” means an arrangement whereby the assets of two or more companies become vested in or under the control of one company;</p> <p>“minority shareholder” means a shareholder who owns less than 50% of the total shares of a company’s and does not have the voting control of the company;</p> <p>“offeree company” means a company in respect of whose shares the takeover offer relates;</p> <p>“offeror” means a person by or on whose behalf the takeover offer is made or is to be made;</p> <p>“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;</p> <p>“takeover bid” or “bid” means a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law;</p> <p>“Treaty” means the Treaty for the Establishment of the East African Community and any Annexes and Protocols thereto.</p>

2	Rules applicable to the conduct of bids	<p>The rules that govern the conduct of bids shall include:</p> <ul style="list-style-type: none"> (a) the lapsing of bids; (b) the revision of bids; (c) competing bids; (d) the disclosure of the results of bids; and (e) the irrevocability of bids and the conditions permitted.
3	Acquiring effective control	<ul style="list-style-type: none"> 1. A person shall not make an offer to acquire voting rights of a listed company which together with voting rights already held by that person or persons acting in concert or by associated person or persons or related company entitle that person to exercise effective control in the listed company without complying with the takeover procedure provided for under this law. 2. Where a person— <ul style="list-style-type: none"> (a) holds more than 25% but less than 50% of the voting rights of a listed company, and who acquires in any one year more than 5% of the voting rights of such company; (b) holds 50% or more of the voting rights of a listed company and acquires additional voting rights in the listed company; (c) acquires a company that holds effective control in the listed company or together with the voting rights already held by an associated person or related company, resulting in acquiring effective control; or (d) acquires any shareholding of 25% or more in a subsidiary of a listed company that has contributed 50% or more to the average annual turnover in the latest three financial years of the listed company preceding the acquisition, <p>that person shall be presumed to have a firm intention to make a takeover of that listed company and required to comply with the takeover procedures.</p> 3. A company that is already in control of 25% but less than 50% of the voting rights of a listed company may without the need to comply with the takeover procedures, acquire up to an additional 5% in any one year in that listed company up to a maximum of 50%.
4	Supervision of the bid	<ul style="list-style-type: none"> 1. Competent Authorities shall exercise their functions impartially and independently of all parties to a bid. 2. <ul style="list-style-type: none"> (a) The Competent Authority responsible for supervision of a bid shall be that of the Partner State in which the offeree company has its registered office and its securities are admitted to trading on a regulated market in that Partner State; (b) If the offeree company's securities are not admitted to trading on a regulated market in the Partner State in which the company has its registered office, the Competent Authority to supervise the bid shall be that of the Partner State on the regulated market of which the company's securities are admitted to trading; (c) If the offeree company's securities are admitted to trading on regulated markets in more than one Partner State, the Competent Authority to supervise the bid shall be that of the Partner State on the regulated market of which the securities were first admitted to trading;

		<p>(d) If the offeree company's securities were first admitted to trading on regulated markets in more than one Partner State simultaneously, the offeree company shall determine which of the Competent Authorities of those Partner States shall be the authority competent to supervise the bid by notifying those regulated markets and their Competent Authorities on the first day of trading;</p> <p>(e) A Competent Authority shall ensure that the decisions referred to in paragraphs (c) and (d) are made public;</p> <p>(f) In the cases referred to in paragraphs (b), (c) and (d), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Competent Authority;</p> <p>(g) In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the Competent Authority shall be those of the Partner State in which the offeree company has its registered office.</p>
5	Information concerning bids	<ol style="list-style-type: none"> 1. An offeror shall inform the securities exchange and Competent Authority of its decision to make a bid and that decision shall be made public immediately. 2. An offeror shall draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid. 3. Where an offer document has been approved, it shall be recognised in any other Partner State on the market of which the offeree company's securities are admitted to trading. 4. The Competent Authority may require the inclusion of additional information in the offer document only if such information is specific to the market of a Partner State or Partner States on which the offeree company's securities are admitted to trading. 5. The additional information that may be included under sub-article 4 may only relate to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid as well as to the tax arrangements to which the consideration offered to the holders of the securities will be subject. <ol style="list-style-type: none"> 1. The offer document shall include: <ol style="list-style-type: none"> (a) the terms of the bid; (b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company; (c) the securities or, where appropriate, the class or classes of securities for which the bid is made; (d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;

		<ul style="list-style-type: none"> (e) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire; (f) details of any existing holdings of the offeror, and of persons acting in concert with him, in the offeree company; (g) all the conditions to which the bid is subject; (h) the offeror's intentions with regard to the future business of the offeree company including safeguarding of the jobs, material change in the conditions of employment, offeror's strategic plan, and the place of business; (i) the time allowed for acceptance of the bid; (j) where the consideration offered by the offeror includes securities of any kind, information concerning those securities; (k) information concerning the financing for the bid; (l) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company; (m) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts; and (n) the offeror shall state whether the offeree's securities will continue to be listed at the securities exchange after the takeover offer has been successfully complete <p>5. The parties to a bid shall provide the Competent Authority upon request with all the information in their possession concerning the bid.</p>
6	Time allowed for acceptance	<ol style="list-style-type: none"> 1. The time allowed for the acceptance of a bid may not be less than thirty (30) calendar days nor more than sixty (60) calendar days from the date of publication of the offer document. 2. The period of sixty (60) calendar days may be extended on condition that the offeror gives at least two (2) weeks' notice of his intention to close the bid. 3. The period referred to in paragraphs 1 and 2 may change in specific cases to allow the offeree company to call a general meeting of shareholders to consider the bid.
7	Disclosure	<ol style="list-style-type: none"> 1. A bid shall be made public in order to prevent the publication or dissemination of false or misleading information. 2. The information and documents shall be readily and promptly available to the holders of securities on the regulated markets of which the offeree company's securities are admitted to trading.

8	Equitable price	<ol style="list-style-type: none"> 1. Equitable price shall be the highest price paid for the same securities by the offeror or by persons acting in concert with him, over a period to be determined by a Competent Authority, of not less than six (6) months and not more than twelve (12) months. 2. Where the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him, purchases securities at a price higher than the offer price, the offeror shall increase his offer so that it is not less than the highest price paid for the securities so acquired. 3. The Competent Authority may require the offeror to adjust the price referred to in paragraphs 1 and 2 in the following circumstances: <ol style="list-style-type: none"> (a) where the highest price was set by agreement between the purchaser and a seller; (b) where the market prices of the securities in question have been manipulated; and (c) where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. 4. Any decision by a Competent Authority to require adjustment of the equitable price shall be substantiated and made public. 5. The offeror shall offer cash or a combination of cash and securities by way of consideration. 6. In addition to the protection provided for in paragraphs 1 and 2, a Competent Authority may provide for further instruments intended to protect the interests of the holders of securities in so far as those instruments do not hinder the normal course of a bid.
9	Obligations of the board of the offeree company	<ol style="list-style-type: none"> 1. The board of the offeree company shall issue a circular to the holders of voting shares in the offeree to which the take-over offer relates, indicating whether or not the board of directors of the offeree recommend to holders of the voting shares the acceptance of the take-over offer made by the offeror under the take-over scheme within fourteen (14) calendar days from the date of receipt of the takeover document from the offeror. 2. The board of directors of the offeree shall disclose in the circular referred to in paragraph 1 to every holder of the voting rights to which the take-over offer relates all such information as the holders of such voting shares and their professional advisers would reasonably require or expect to find in such a circular or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in such action. 3. The board of directors of the offeree shall appoint an independent adviser, on receipt of the offeror's notice of intention to takeover. 4. The independent adviser's advice shall be made known to the holders of the class of the voting shares to which the take-over offer relates, in a circular by the offeree to its shareholders.

10	Protection of minority shareholders	<ol style="list-style-type: none"> 1. A Competent Authority shall ensure that a person who has acquired effective control makes a bid as a means of protecting the minority shareholders of that company, and that bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price. 2. The obligation to launch a bid shall not apply where effective control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings.
11	Confidentiality	<ol style="list-style-type: none"> 1. Persons employed or formerly employed by a Competent Authority shall be bound by professional secrecy. 2. Information covered by professional secrecy may not be divulged to any person or authority except under provisions laid down by law.
12	Sanctions	A person who contravenes any provision of the law implementing this Directive commits an offence that may lead to sanctions or penalties prescribed by national laws.
13	Appeals	Decisions made pursuant to laws, regulations and administrative provisions implementing this Directive are subject to the right of appeal to a competent court.

5. Cooperation

1. The Competent Authorities and other authorities supervising capital markets shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive.
2. Information exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the Competent Authorities receiving the information are subject.
3. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the Competent Authorities in connection with bids, as well as such other assistance as may reasonably be requested by the Competent Authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.

6. Dispute resolution

This Directive shall not affect the power of Partner States to designate judicial or other authorities responsible for dealing with disputes in respect to the application of this Directive.

7. Implementation of Directive

1. Partner States shall enact laws, regulations and administrative provisions to comply with this Directive not later than one year from the date of publication this Directive.
2. The Partner States shall at least once every year report to the Council stating the laws, regulations and administrative provisions each Partner State has taken to comply with this Directive.
3. A Partner State shall not implement measures likely to jeopardise the achievement of the objectives or the implementation of this Directive.

Legal Notice No. EAC/145/2017.

**DIRECTIVE OF THE COUNCIL OF MINISTERS
ON
THE EAST AFRICAN COMMUNITY SECURITIES MARKET**

(EAC/CM/35/Directive 15)

April, 2017

LICENSING IN THE SECURITIES MARKET

PREAMBLE

This Directive is issued by the Council in exercise of the powers conferred upon the Council by Article 14(3)(d) of the Treaty for the Establishment of the East African Community and Article 47(2) of the Protocol on the Establishment of the East African Common Market.

WHEREAS under Article 85 of the Treaty, the Partner States undertook to harmonise their capital markets policies and their regulatory and legislative frameworks and regulatory structures in order to create a conducive environment for the movement of capital within the Community;

WHEREAS the Partner States undertook to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system under Article 31 of the Protocol on the Establishment of the East African Common Market;

AND WHEREAS under Article 47 of the Protocol on the Establishment of the East African Common Market the Partner States undertook to approximate their national laws and to harmonize their policies and systems for purposes of implementing the Protocol;

IN ACCORDANCE with Article 14(3)(d) of the Treaty and Article 47 (2) of the Protocol on the Establishment of the East African Common Market, the Council directs the Partner States to enact, amend and harmonise their national laws on licensing in the securities markets in accordance with the principles set out in this Directive.

1. Scope of Directive

- (1) This directive shall apply to licensing of securities market intermediaries operating in more than one Partner State.
- (2) A Partner State shall not introduce additional requirements for market intermediaries operating in more than one Partner State beyond the requirements specified in this Directive.

2. Principles for implementing this Directive

In implementing this Directive, a Partner State shall –

- (a) provide the licensing requirements in this Directive for market intermediaries operating in more than one Partner State;
- (b) adopt the financial requirements in this Directive for market intermediaries operating in more than one Partner State;
- (c) ensure that the key personnel of the market intermediaries meet the minimum prescribed qualifications in the home Partner State;
- (d) ensure that market intermediaries have adequate infrastructural resources including back office, Central Securities Depository Systems, automated trading platform systems, and other resources;
- (e) ensure that the market intermediaries are fit and proper persons.

3. Objective of this Directive

The objective of this Directive is:

- (a) to provide conditions for provision of securities services in other partner states on the basis of home country authorization and supervision;

- (b) to provide licensing requirements for markets intermediaries operating in more than one Partner State;
- (c) to provide for protection of investors;
- (d) to grant single authorization to operate throughout the East African Community;
- (e) to provide for fair, efficient and transparent securities markets within the Community.

4. Principles for amending and harmonizing national laws

1	Interpretation	<p>“Broker dealer” means a person who by way of business, as a principal or an agent–</p> <ul style="list-style-type: none"> (a) makes or offers to make with any person, or induces or attempts to induce any person to enter into or offer to enter into, any agreement for, with a view to buy, sell, exchange or subscribe for securities; or (b) solicits or accepts any order for, or otherwise trading in securities; <p>“Central Securities Depository” means an electronic system which permits or facilitates immobilized or dematerialized capital markets transactions or dealings;</p> <p>“clearing house” means an agency or separate corporation responsible for settling accounts, clearing trades, regulating delivery and reporting trade data;</p> <p>“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;</p> <p>“credit rating agency” means where by way of business that person provides the service of evaluating the relative credit-worthiness of issuers of securities or securities themselves and assigns ratings to such issuers of securities.</p> <p>“custodian” means a person by way of business that holds in custody funds, securities, financial instruments or documents of title of assets;</p> <p>“dealer” means a person who carries on the business of dealing in securities on his own account;</p> <p>“derivatives dealer” means by way of business, that person who carries on the business of–</p> <ul style="list-style-type: none"> (a) buying; (b) selling; (c) dealing; (d) Trading; (e) Underwriting; or (f) retailing derivatives as an agent for investors or for his own account with the intention of selling them to the public; <p>“Fund Manager” means by way of business, that person –</p> <ul style="list-style-type: none"> (a) who manages, offers or agrees to manage a portfolio of securities belonging to another person, whether on a discretionary authority granted by that other person or otherwise; (b) in relation to – <ul style="list-style-type: none"> (i) a collective investment scheme which is a unit trust, or an investment company which is not self-managed, who acts as the management company appointed by the management contract; (ii) an investment company which is self- managed, who acts as that company; (iii) who acts as a manager of a venture capital company <p>“home Partner State” means the primary Partner State where the market intermediary was first licensed within the East African Community;</p> <p>“Investment advisor” means by way of business, a person that -</p>
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		<p>(a) advises on the terms and conditions on which securities may be bought, sold, exchanged or subscribed for;</p> <p>(b) issues analysis or reports on specific securities that may be bought, sold, exchanged or subscribed for;</p> <p>“investment bank” means a non-deposit taking institution licensed by the Authority to advise on offers of securities to the public or a section of the public, take-overs, mergers, acquisitions, corporate restructuring involving companies listed or quoted on a securities exchange, privatization of companies listed or to be listed on a securities exchange or underwriting of securities issued or to be issued to the public, and to engage in the business of a stockbroker or dealer;</p> <p>“market intermediary” means an entity licensed or authorized by a competent authority in a Partner State;</p> <p>“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;</p> <p>“stock broker” means a body corporate that is licensed to carry on the business of buying or selling securities as an agent;</p> <p>“transaction advisor” means by way of business, that person advises on-</p> <ul style="list-style-type: none"> public offer of securities; listing of securities; mergers and acquisitions; corporate restructuring; securitization arrangements; <p>“trustee license” means where that person by way of business is –</p> <ul style="list-style-type: none"> entrusted with the property of the Collective Investment scheme for safekeeping; or an authorized trustee in respect of asset backed securities; <p>“share and note registrar” means where that person, in relation to a public offering of securities, by way of business carries primary responsibility for amongst other activities, receiving and recording all applications in respect of subscriptions for the offer, assisting in determining and implementing the allotments for the offer;</p> <p>“Securities Exchange” means an exchange, a securities organization or any other place where securities are offered for sale, purchase or exchange.</p>
2	Requirements for a licence	<p>No person shall act in any of the following capacities, activities or hold himself out as acting in that capacity in more than one Partner State unless that person is authorized by law to carry out that activity:</p> <ul style="list-style-type: none"> (a) Securities Exchange; (b) Central Securities Depositories (CSD) (c) Broker Dealer (d) Investment Advisor (e) Transaction Advisor (f) Investment Bank (g) Derivatives Dealer (h) Fund Manager (i) Trustee (j) Custodian of Securities (k) Share and Note Registrar (l) Credit Rating Agency (m) Central Counter Parties (n) Clearing House

3	Application for a licence	An application for a licence to operate in more than one Partner State shall be made to the competent Authority in the form specified in the First Schedule.
4	Legal status of the applicant	The applicant shall be a company incorporated or registered in any of the Partner States
5	Fees	<ol style="list-style-type: none"> 1. The applicant shall pay an application fee and an annual license fee in accordance with the Third Schedule. 2. The Competent Authority receiving the application and annual fees shall share equally the fees received with the other Regulatory Authorities in the jurisdictions in which the market intermediary is operating.
6	Capital adequacy requirements	An applicant for a licence shall meet the capital adequacy requirements specified in the Second Schedule.
7	Conduct of business	A person granted a licence shall be required to comply with the provisions of the law implementing the EAC Directive on Conduct of Business for Market Intermediaries.
8	Rights and obligations of a license holder	<p>A license holder:</p> <ol style="list-style-type: none"> (a) shall establish a branch or office in every jurisdiction in which it operates. (b) shall comply with the national law implementing the EAC Conduct of Business Directives. (c) may access trading facilities, central depository systems and clearing houses subject to conditions for admission.
9	Corporate governance	The applicant shall comply with the national law implementing the EAC Corporate Governance Directive for Market Intermediaries.
10	Provision of services	<p>A license holder wishing to provide services in another Partner State for the first time or which wishes to change the range of services shall communicate the following information to the Competent Authority:</p> <ol style="list-style-type: none"> (a) the Partner State in which it intends to operate; (b) the services which it intends to provide. <p>The Competent Authority shall within ten days (10) of receiving the information review and forward it to the Competent Authority of the Partner State in which the licence holder intends to provide services.</p>
11	Withdrawal and suspension of a license or approval	<ol style="list-style-type: none"> 1. A Competent Authority may at any time withdraw or suspend a license granted by it if it appears to it: <ol style="list-style-type: none"> (a) that the holder of the license is not a fit and proper person to carry on the securities business; or (b) that the holder of the license has contravened any provision of this Directive or any relevant law in the jurisdiction in which the market intermediary operates 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 a license shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and while a license is suspended the holder shall not carry out the business to which the licence relates to. 3. Any period, event or conditions specified under paragraph (1) above in the case of a license may be varied by the Competent Authority on the application of the holder.

12	Remedial measures and administrative sanctions	Any Market Intermediary that contravenes any provision of the law implementing this Directive commits an offence that may lead to sanctions or penalties prescribed by national laws.
13	Appeal against decisions made by a competent authority	Decisions made pursuant to laws, regulations and administrative provisions implementing this Directive are subject to the right of appeal to a competent court.

5. Cooperation by Competent Authorities

The Competent Authorities responsible for capital markets in the Partner States shall cooperate with each other for the purpose of carrying out their duties and in the exercise of their powers under this Directive or national laws.

6. Implementation of Directive

1. Partner States shall enact laws, regulations and administrative provisions to comply with this Directive not later than one year from the date of publication this Directive.
2. The Partner States shall at least once every year report to the Council stating the laws, regulations and administrative provisions each Partner State has taken to comply with this Directive.
3. A Partner State shall not implement measures likely to jeopardise the achievement of the objectives or the implementation of this Directive.

FIRST SCHEDULE

APPLICATION FOR A LICENCE TO CONDUCT BUSINESS IN MORE THAN ONE PARTNER STATE¹

PART 1

1. This application must be accompanied by -
 - (a) a detailed statement of the applicant's assets and liabilities signed by the applicant as required by
 - (b) in the case of an applicant which is a company, copies certified by the Director of the Company to be true copies of the balance sheet and of the profit and loss accounts for the last two years, incorporating the results of the last financial year and which have been audited by the Company's Auditors
 - (c) a copy of the report of the Auditors on them;
 - (d) the fees prescribed in Article .. of this Directive

TYPE OF LICENCE REQUIRED (*Tick whichever is applicable*)

1. Broker Dealer
2. Investment Advisor
3. Transaction Advisor
4. Investment Bank
5. Derivatives Dealer
6. Fund Manager
7. Trustee
8. Custodian of Securities
9. A Share and Note Registrar
10. Credit Rating Agency
11. Securities Exchange
12. Central Securities Depository
13. Clearing House

¹ Notes:
If space is insufficient to provide details, please attach annexure(s).
Any annexure should be identified as such and signed by the signatory to this application.

2. Is the business identified above the principal business carried on by the Applicant?

.....

COMPANIES

3. (a) Name of the Company:

.....

(b) Registered Office:

.....

(c) Date and place of incorporation:

.....

(d) Address, telephone and fax numbers of principal place at which the business of the Applicant is to be carried on:

.....

.....

(e) Details of capital structure -

(i) Authorised Capital, USD.

(ii) Paid up capital, USD.....

(iii) Types of shares issued:

(f) Details of shareholders:

Name	Address	Amount of shares held	Date of acquisition

(g) Particulars of Directors and Secretary

Name & residential address	Date of birth	Educational qualifications	Office held	Date of appointment

4. Set out the name and address of each person who, directly or indirectly, exercises or has power to exercise a controlling influence over the management and policies of the applicant other than those shown as Directors:

.....
.....
.....
.....

5. Does the Applicant have an interest in one or more shares in any company the shares of which are quoted on a securities exchange, the aggregate of the nominal amount of which constitutes not less than 5% of all issued shares of the Company?

.....

6. Has the Applicant within the past 10 years—

(i) been a member or partner in a member firm of a securities exchange?

.....

(ii) carried on business under any name other than the name shown in this application?

.....

(iii) Has a director of the applicant been censured or disciplined by any professional body, society or association of which he was or is a member?

(If "Yes" attach annexure giving details including name of the professional body, society or association)

.....

(iv) Has the director of the applicant been convicted of any offence other than a traffic offence within the EAC or elsewhere or are there any proceedings now pending which may lead to such a conviction? *(If "Yes" attach annexure giving full details of the convictions or proceedings)*

.....

PART II

a) State the type of clients with whom the Applicant proposes to do business:

.....

b) Describe in detail the experience of the Applicant and his management staff in the proposed business:

.....

c) State in detail the activity and the manner in which the Applicant proposes to conduct the business for which the Applicant requires a broker or dealer's license.

.....

d) State in detail the sources of capital that the Applicant will use to finance the business

.....

7. Is the Applicant or any Director or Secretary of the Applicant company a Director of any Company in Uganda or elsewhere?

Answer "Yes" or "No".

If "Yes" give details of:

a) names of the Companies:

b) places of incorporation and;

c) dates of appointment:

*For question 11 answer "Yes" or "No" in the space provided.
If "Yes" attach annexure giving relevant particulars.*

8. Has the Applicant or any Director or Secretary of the Applicant Company within the past 10 years:
- a) been licensed or registered in any place under any law which requires licensing or registration in relation to dealing in securities?
.....
 - b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place?
.....
 - c) been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific licence, registration or other authority is required by law in any place?
.....
 - d) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?
.....
 - e) been refused membership of any securities exchange?
.....
 - f) been known by any name other than the name or names shown in this application?
.....
 - g) had judgement including findings in relation to fraud , misrepresentation or dishonesty been given against him in any civil proceedings , in the EAc or else where? *(If "Yes" using an annexure, give full details, including whether judgement was unsatisfied)*
.....
 - h) been declared bankrupt or compounded with or made an arrangement for the benefit of his creditor, in Uganda or elsewhere?
.....
 - i) been engaged in the management of any Company other then those referred to in answer to question 11?
.....
 - j) been refused a fidelity or surety bond in any EAC Partner State or elsewhere?
.....
9. Set out below, details of the Applicant's or of each Director and Secretary of the Applicant Company's employment and business activities, during the previous 10 years.

Name of individual Applicant or Director or Secretary of Applicant Company	Name and Address of Employer (if self employed, so state)	Nature of business or activity	Description of duties in relation to the employment	Period of employment or activity (give exact dates)

10. Set out additional; information (including any formal qualifications or training and the name of the institution that conducted the course) considered relevant to this application.

.....

11. Set out below details of two persons (who are not related to the Applicant, and neither of whom shall have any interest in the success or otherwise of this application) with whom the Applicant or each Director or Secretary of the Applicant company has had regular contact over the past five years and of whom the Authority may require regarding the Applicant’s character and reputation.

Name	Address	Occupation

12. I declare that all information given in this application and in the attached annextures (if any) is true and correct.

Date:

(Signature:
(Name of Applicant/ Director/ Secretary)

SECOND SCHEDULE

CAPITAL ADEQUACY REQUIREMENTS

All figures are in US Dollars

License category	Paid-up Share Capital	Liquid Capital
Broker Dealer	A minimum of USD 240,000 to be increased to USD 500,000 within the next 5 years.	8% of liabilities or the paid-up share capital whichever is higher.
Stock Broker		
Dealer	No Minimum capital required but person licensed as a stock broker or an investment bank.	8% of liabilities.
Investment Advisor	USD 33,000.	Adequate professional indemnity cover for the services offered.
Transaction Advisor	No Minimum capital required but person licensed to do investment advisory work.	
Investment Bank	USD 3 million.	8% of the liabilities or USD 3 million whichever is higher.
Derivatives Dealer	Determined by the Derivatives Exchanged and approved by the Regulator.	Determined by the Derivatives Exchanged and approved by the Regulator.
Fund Manager	USD 120,000.	Adequate professional indemnity cover.
Trustee	Licensed Banks or any other financial institution that is duly approved or regulated.	Adequate professional indemnity cover.
Custodian of Securities	Licensed banks	Adequate professional indemnity cover.
A Share and Note Registrar	No Minimum capital required.	Adequate professional indemnity cover.
Credit Rating Agency	USD 144,000.	Adequate professional indemnity cover.

THIRD SCHEDULE

FEES

All figures are in US Dollars

License category	Application Fee	Annual License Fee
Broker Dealer	USD 5,000	USD 2,000
Broker		
Dealer		
Investment Advisor	USD 3,000	USD 2,000
Transaction Advisor	USD 3,000	USD 2,000
Investment Bank	USD 6,000	USD 4,000
Derivatives Dealer	USD 5,000	USD 2,000
Fund Manager	USD 5,000	USD 2,000
Trustee	USD 3,000	USD 2,000
Custodian of Securities	USD 5,000	USD 2,000
A Share and Note Registrar	USD 2,000	USD 1,000
Credit Rating Agency	USD 3,000	USD 2,000

RT HON. DR. AL HAJI ALI KIRUNDA KIVEJINJA,
Chairperson Council of Ministers.

Legal Notice No. EAC/146/2017

**DIRECTIVE OF THE COUNCIL OF MINISTERS
ON
THE EAST AFRICAN COMMUNITY SECURITIES MARKET**

**(EAC/CM/35/Directive 15)
April, 2017**

ANTI-MONEY LAUNDERING IN THE SECURITIES MARKET

PREAMBLE

This Directive is issued by the Council in exercise of the powers conferred upon the Council by Article 14(3)(d) of the Treaty for the Establishment of the East African Community and Article 47(2) of the Protocol on the Establishment of the East African Common Market.

WHEREAS under Article 85 of the Treaty, the Partner States undertook to harmonise their capital markets policies and their regulatory and legislative frameworks and regulatory structures in order to create a conducive environment for the movement of capital within the Community;

WHEREAS the Partner States undertook to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system under Article 31 of the Protocol on the Establishment of the East African Common Market;

AND WHEREAS under Article 47 of the Protocol on the Establishment of the East African Common Market the Partner States undertook to approximate their national laws and to harmonize their policies and systems for purposes of implementing the Protocol;

IN ACCORDANCE with Article 14(3)(d) of the Treaty and Article 47 (2) of the Protocol on the Establishment of the East African Common Market, the Council directs the Partner States to enact, amend and harmonise their national laws on licensing in the securities markets in accordance with the principles set out in this Directive.

1. Scope

This Directive shall apply to all market intermediaries licensed or approved by a Competent Authority in the Partner States.

2. Objective

The objective of this Directive is to harmonize the standards and measures on anti-money laundering for market intermediaries in the securities markets of Partner States with a view to—

- (a) detecting, preventing and controlling money laundering activities in the securities market;
- (b) protecting the integrity of the securities market against all forms of abuse, fraudulent and unfair practices;
- (c) ensuring fair, efficient and transparent securities markets, and
- (d) reducing systemic risks.

3. Principles for implementing this Directive

In implementing this Directive, Partner States shall ensure that market intermediaries—

- (a) establish documented internal systems and procedures to prevent money laundering, to report suspicious transactions and to appoint a money laundering reporting officer;
- (b) when establishing a business relationship with an applicant for business, apply appropriate customer due diligence measures including identifying and verifying the identity of the applicant for business;
- (c) maintain effective record keeping systems and implement effective on-going customer due diligence measures and risk-profiling procedures; and
- (d) provide members of their staff with on-going anti-money laundering and countering of the financing of terrorism training.

4. Principles for enacting, amending and harmonizing national laws

1	Interpretation	<p>“beneficial owner” in relation to a customer of a market intermediary, means the natural person who makes final decisions, ultimately controls a customer or the person on whose behalf a transaction is being conducted. This includes the person who exercises ultimate effective control over a body corporate.</p> <p>“Community” means East African Community established by Article 2 of the Treaty;</p> <p>“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;</p> <p>“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;</p> <p>“Financial Intelligence Unit” is a central, national agency responsible for receiving, analysing and disseminating to the competent authorities, disclosures of financial information:</p> <ul style="list-style-type: none"> (a) concerning suspected proceeds of crime and potential financing of terrorism; or (b) required by national legislation or regulation, in order to combat money laundering and terrorism financing; <p>“market intermediary” means an entity licensed or approved by a Competent Authority in the Partner State;</p> <p>“money laundering” means—</p> <ul style="list-style-type: none"> (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action; (a) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity; (b) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; (c) the transportation, transmission, transfer or receipt of a monetary instrument or anything of value to another person, with intent to commit an offence; and (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b), (c) and (d); <p>“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;</p> <p>“politically exposed person” is a person who is or has been entrusted with a prominent function and includes:</p> <ul style="list-style-type: none"> (a) persons who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or government, senior politicians, senior judicial, military or government officials, senior executives of state owned corporations, important political party officials;
		<ul style="list-style-type: none"> (b) persons who are or have been entrusted domestically with prominent public functions, for example Heads of State or government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials; (c) persons who are or have been entrusted with a prominent function by an international organisation, refers to members of senior management or individuals who have been entrusted with equivalent functions, i.e. directors, deputy directors and members of the board or equivalent functions;

		<p>(d) persons who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership; and</p> <p>(e) close associates of a Politically Exposed Person, either socially or professionally;</p> <p>“property” means assets of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in the Community or elsewhere, and includes a legal or equitable interest, whether full or partial, in any such property;</p> <p>“shell bank” means a bank that has no physical presence in the country in which it is incorporated and licensed and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision;</p> <p>“terrorism” means the unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments, often for ideological or political reasons;</p> <p>“financing of terrorism” means:</p> <p>(a) the provision of, or making available such financial or other related services to a terrorist group or entity which is concerned with terrorist act; or</p> <p>(b) entering into or facilitating, directly or indirectly, any financial transaction related to a dealing in property owned or controlled by or on behalf of any terrorist or any entity owned or controlled by a terrorist;</p> <p>“suspicious transaction” means a transaction in which there are reasonable grounds to suspect that the transaction is related to any criminal offence or criminal activity and includes—</p> <p>(a) transactions having unclear economical and business target;</p> <p>(b) transactions conducted in relatively large amount cash or conducted repeatedly and unnaturally; and</p> <p>(c) transactions conducted differently from the usual and normal transactions conducted by the relevant customer; and</p>
<p>2</p>	<p>Anonymous accounts and fictitious persons</p>	<p>A market intermediary shall not deal with any person on an anonymous basis or any person using a fictitious name.</p>
<p>3</p>	<p>Customer due diligence</p>	<p>A market intermediary shall undertake customer due diligence measures when—</p> <p>(a) establishing a business relationship;</p> <p>(b) a transaction is carried out in a single operation or several operations that appear to be linked;</p> <p>(c) carrying out occasional transactions that are electronic transfers, including those applicable to cross-border and domestic transfers between market intermediaries and when credit or debit cards are used as a payment system to effect money transfer;</p> <p>(d) there is a suspicion of money laundering or financing of terrorism, notwithstanding that the Market Intermediary would otherwise not be required under this Directive to perform customer due diligence measures;</p> <p>(e) there are doubts about the veracity or adequacy of previously obtained customers identification data;</p> <p>(f) a substantial or significant sum of money relative to the usual activities of the customer is used in the transaction; or</p> <p>(g) the source of money is a jurisdiction that has not enacted any anti-money laundering laws.</p>

4	Identification of customers and beneficial owners	<ol style="list-style-type: none"> 1. A market intermediary shall— <ol style="list-style-type: none"> (a) carry out the full range of the customer due diligence measures in this Directive; and (b) identify all his or her customers and verify their identities using reliable and independently sourced documents, data or information. 2. The type of customer information to be obtained and identification data to be used to verify the information shall include the following - <ol style="list-style-type: none"> (a) for a customer who is a legal person, a Market Intermediary shall verify: <ol style="list-style-type: none"> (i) the identity of any person purporting to have been authorized to act on behalf of such a customer by obtaining evidence of his identity and verifying the identity of such a person; and (ii) the status of the legal person by obtaining proof of incorporation or similar evidence of establishment or existence and any other relevant information. (b) for other customers, a market intermediary shall identify a beneficial-owner and take reasonable measures to verify his identity using relevant information or data obtained from a reliable source to satisfy itself that it knows who the beneficial-owner is. 3. A market intermediary shall in respect of all customers, determine whether a customer is acting on behalf or for the benefit of another person; and where the customer is acting on behalf or for the benefit of another person, a market intermediary shall take reasonable steps to obtain sufficient identification data to verify the identity of that other person. 4. A market intermediary shall take reasonable measures in respect of customers that are legal persons to: <ol style="list-style-type: none"> (a) understand the ownership and control structure of such a customer; and (b) determine the natural persons that ultimately own or control the customer. 5. Where the customer or owner of the controlling interest is a pension fund, a government institution or a public company listed on a recognized securities exchange, it is not necessary to identify and verify the identity of the shareholders of such a public company. 6. A market intermediary shall obtain information on the purpose and intended nature of the business relationship of its potential customer.
5	Records and information needed from customers	<ol style="list-style-type: none"> 1. In order to identify customers and beneficial owners, a market intermediary shall obtain and record the information of the customer including— <ol style="list-style-type: none"> (a) full name and any aliases; (b) unique authorised identification number including identity card number, birth certificate number, voter registration card number or passport number, or where the customer is not a natural person, the incorporation number or business registration number; (c) current residential address, registered or business address, as may be appropriate, and contact telephone number(s); (d) date of birth, incorporation or registration (as may be appropriate); (e) nationality or place of incorporation or registration (as appropriate); or (f) occupation/business. 2. Where the customer is a company, the market intermediary shall also identify the directors of the company. 3. Where the customer is a partnership or a limited liability partnership, the market intermediary shall also identify the partners.

<p>6</p>	<p>Risk based approach</p>	<ol style="list-style-type: none"> 1. A market intermediary shall subject all customers to a full range of customer due diligence measures: Provided that a market intermediary may, determine the risk attached to a particular type of a customer, business relationship, transaction or products, depending on the type of customer product, transaction or location of the customer and may apply reduced or simplified customer due diligence measures. 2. A market intermediary shall adopt: <ol style="list-style-type: none"> (a) an enhanced customer due diligence process for higher risk categories of customers, business relations or transactions; and (b) a simplified customer due diligence process for lower risk categories of customers, business relation or transactions. 3. An enhanced customer due diligence process shall include enquiries on the following: <ol style="list-style-type: none"> (a) the purpose for opening an account; (b) the level and nature of trading activities intended ; (c) the ultimate beneficial owners; (d) the source of funds; and (e) senior management’s approval for opening the account. 4. For the purpose of this Article: <ol style="list-style-type: none"> (a) high risk customers shall include non-resident customers from locations known for high crime rate, customers from jurisdictions designated by financial action task force as high-risk jurisdiction or jurisdictions which do not or insufficiently apply the Financial Action Task Force recommendations, Politically Exposed Persons as well as person or company clearly related to them, companies which have nominee shareholders; (b) high risk transaction shall include complex legal arrangements such as unregulated investment vehicles or special purpose vehicles, electronic transfers or non-face-to-face transactions; and (c) “Financial Action Task Force” means an intergovernmental policy making body established to set standards and promote effective implementation of statutory, regulatory and operational measures for combating money-laundering, terrorist financing and other related threats to the integrity of the international financial system.
<p>7</p>	<p>Application of customer due diligence measures to existing customers</p>	<ol style="list-style-type: none"> 1. A market intermediary shall apply customer due diligence measures to existing customers on the basis of materiality and risk, and shall continue to conduct due diligence on such existing relationships at appropriate times. 2. The appropriate time to conduct customer due diligence by a market intermediary includes where: <ol style="list-style-type: none"> (a) a transaction of significant value takes place; (b) a client’s documentation standards change substantially; (c) there is a material change in the way that an account is operated; and (d) the market intermediary becomes aware that it lacks sufficient information about an existing client. 3. A market intermediary shall keep clients’ identification records available for inspection by a Competent Authority.

8	Reliance on identification and verification already performed	<p>When a market intermediary acquires, either in whole or in part, the business of another financial institution, the acquiring market intermediary shall perform customer due diligence measures on customers acquired with the business at the time of the acquisition except where the acquiring market intermediary has:</p> <ul style="list-style-type: none"> (a) also acquired all corresponding customer records, including customer identification information and has no reason to doubt the veracity or adequacy of the information so acquired; and (b) conducted due diligence enquiries that have not raised any doubt on the part of the acquiring market intermediary as to the adequacy of anti-money laundering and combating the financing of terrorism measures previously adopted in relation to the business or part thereof now acquired by the acquiring market intermediary.
9	Timing of verification identity	<ol style="list-style-type: none"> 1. A market intermediary shall verify the identity of the client, beneficial owner and occasional clients before or during the course of establishing a business relationship or conducting transactions for them. 2. A market intermediary shall complete the verification of the identity of the client, beneficial owner and occasional client following the establishment of the business relationship where: <ul style="list-style-type: none"> (a) it shall take place as soon as reasonably practicable; (b) it is essential not to interrupt the normal business conduct of the client; and (c) the money laundering and financing of terrorism risks can be effectively managed. 3. Where a client is permitted to utilize the business relationship before verification, a Market Intermediary shall adopt risk management procedures concerning the conditions under which this utilisation may occur and these procedures shall include: <ul style="list-style-type: none"> (a) a limit on the number of transactions; (b) a limitation of the types and amounts of transactions that can be performed; and (c) the monitoring of large or complex transactions being carried out outside the expected norms for that type of relationship.
10	Enhanced due diligence to politically exposed persons	<p>A Market Intermediary shall, in relation to politically exposed persons perform enhanced Customer Due Diligence measures in addition to normal customer due diligence measures, including but not limited to:</p> <ul style="list-style-type: none"> (a) implementing appropriate internal policies, procedures and risk management systems; (b) making a determination to establish or continue business relations where the customer or beneficial owner is a politically exposed person or subsequently found to be or subsequently becomes a politically exposed person; (c) taking reasonable measures to establish the source of wealth and source of funds of the customer or beneficial owner, and (d) conducting enhanced monitoring of business relations with the customer during the course of business relations.
11	Keeping customer information up-to-date	<p>A market intermediary shall periodically review the adequacy of customer identification information obtained in respect of customers and beneficial owners and ensure that the information is kept up to date, particularly for higher risk categories of customers.</p>

12	Non-compliance of customer with due diligence measures	<ol style="list-style-type: none"> 1. Where the market intermediary is unable to complete customer due diligence measures, the market intermediary shall terminate the business relationship. 2. Where the market intermediary has terminated a business relationship and it considers the circumstances as suspicious, it shall file a suspicious transaction report.
13	Relationship with a shell bank	<ol style="list-style-type: none"> 1. A market intermediary shall not establish a correspondent relationship with a shell bank. 2. A market intermediary shall take all necessary measures to satisfy itself that a correspondent market intermediary in a foreign country does not permit its accounts to be used by shell banks.
14	Measures to prevent the misuse of new technologies and non-face-to-face transactions	<ol style="list-style-type: none"> 1. A market intermediary shall put in place: <ol style="list-style-type: none"> (a) policies or take such measures necessary to prevent the misuse of technological developments such as credit or debit cards, to facilitate money laundering or financing of terrorism schemes; and (b) policies and procedures to address any specific risks associated with non-face to face business relationships or transactions. 2. The market intermediary shall implement policies and procedures referred to in this Article when establishing customer relationships and when conducting due diligence.
15	Complex and unusual large transactions	<ol style="list-style-type: none"> 1. A Market Intermediary shall pay special attention to complex, unusually large transactions or unusual patterns of transactions that do not have apparent or visible economic or lawful purpose. 2. Transactions or patterns of transactions under paragraph 1 shall include: <ol style="list-style-type: none"> (a) significant transactions relative to the relationship; (b) transactions that exceed certain limits; (c) very high account turnovers that are inconsistent with the size of the account balance; or (d) transactions which fall out of the regular pattern of the account's activities. 3. A market intermediary shall examine as far as possible the background and purpose for such transactions and set forth their findings in writing which findings shall be made available to the Competent Authority or any financial intelligence unit within the Community, and kept for at least ten (10) years from the end of the business relationship.
16	Reporting suspicious transaction	<ol style="list-style-type: none"> 1. A market intermediary shall: <ol style="list-style-type: none"> (a) be alert to the various patterns of conduct set out in the Schedule that have been known to be suggestive of money laundering and maintain a checklist of such transactions which shall be disseminated to the relevant staff; (b) immediately file a suspicious transaction report with the financial intelligence unit in the primary jurisdiction; and (c) maintain confidentiality in respect of any investigation and suspicious transaction report that may be filed with the relevant authority. 2. A market intermediary, its directors, officers and employees whether permanent or temporary shall not disclose that a report shall be filed or has been filed with the Financial Intelligence Unit. 3. A market intermediary shall put in place a structure that ensures the operational independence of the anti-money laundering and combating of financing of terrorism officer. 4. A market intermediary who suspects or has reason to suspect that funds are the proceeds of a criminal activity or are related to financing of terrorism shall promptly report its suspicions to the Financial Intelligence Unit, provided that all suspicious transactions, including attempted transactions are reported regardless of the amount involved and whether the transactions involve tax matters or other things.

17	Internal procedures, policies and controls	<ol style="list-style-type: none"> 1. A market intermediary shall establish and maintain internal procedures, policies and controls to prevent money laundering and financing of terrorism and to communicate these procedures, policies and controls to their employees and agents. 2. The procedures, policies and controls instituted under sub-article 1 shall cover Customer Due Diligence, record retention, detection of unusual and suspicious transactions, staff screening and training, and reporting obligations. 3. In formulating its policies, procedures and controls, a market intermediary shall take into consideration money laundering and financing of terrorism threats that may arise from the use of new technologies, especially those that promote anonymity. 4. A market intermediary shall develop appropriate compliance management arrangements, including at least, the appointment of a management -level officer as the anti-money laundering and combating the financing of terrorism officer to oversee its anti-money laundering and control of terrorist financing programme. 5. The market intermediary shall ensure that the anti-money laundering and combating of financing of terrorism officer, as well as any other persons appointed to assist him, have timely access to all customer records and other relevant information required to discharge their functions. 6. A market intermediary shall maintain an audit function that is adequately resourced and independent, and which shall be able to regularly assess the effectiveness of the market intermediary's internal policies, procedures and controls, and its compliance with statutory and regulatory requirements. 7. A market intermediary shall have in place screening procedures to ensure high standards when hiring employees and agents. 8. A market intermediary shall take all appropriate steps to ensure that its staff and agents are regularly trained on anti-money laundering and combating the financing of terrorism laws and methods and identification of suspicious transactions.
18	Prohibition of disclosure	<ol style="list-style-type: none"> 1. A market intermediary shall not disclose to the customer concerned or to any other third persons the fact that information has been transmitted in accordance with the provision relating to reporting suspicious transactions or that a money laundering or financing of terrorism investigation is being or may be carried out. 2. The prohibition laid down in sub-article 1 shall not include disclosure: <ol style="list-style-type: none"> (a) to the Competent Authorities; (b) to the Financial Intelligence Units; (c) by leave of court; or (d) between organisations in which Partner States are members and impose requirements equivalent to those laid down in this Directive.

19	Record keeping	<ol style="list-style-type: none"> 1. A market intermediary shall: <ol style="list-style-type: none"> (a) maintain all necessary records of transactions, for at least ten (10) years following completion of the transaction if requested by the Competent Authority or any financial intelligence unit within the Community in specific cases; (b) maintain records of the identification data, account files and business correspondence for at least ten (10) years following the termination of an account or business relationship or longer if requested by the Competent Authority or any financial intelligence unit within the Community in specific cases; (c) ensure that all clients transaction records and information are available on a timely basis to the Competent Authority or any financial intelligence unit within the Community; and (d) keep the necessary components of transaction records which shall include customers' and beneficiaries' names, addresses or other identifying information recorded by the Market Intermediary, the nature and date of the transaction, the type and amount of currency involved, and the type and identifying number of any account involved in the transaction.
20	Enforcement and sanctions	<ol style="list-style-type: none"> 1. The Competent Authority shall report any non-compliance by a market intermediary to the Financial Intelligence Unit. 2. The Competent Authority may, upon being satisfied that a market intermediary has failed to comply with the provisions of this Directive, impose the following administrative sanctions: <ol style="list-style-type: none"> (a) a requirement that the market intermediary shall comply with this Directive within a specified period; (b) a reprimand; (c) a restriction or suspension of certain business activities; (d) a revocation or suspension of a business licence; or (e) issue an order to the market intermediary to suspend or remove from office any member of the staff who fails to comply. 3. Before imposing an administrative sanction, the Competent Authority shall give the market intermediary a notice in writing indicating: <ol style="list-style-type: none"> (a) nature of non-compliance; (b) intention to impose administrative sanction; and (c) amount or particulars of the intended administrative sanction. 4. The market intermediary may, in writing, within a period specified in the notice, make representations as to why the administrative sanctions should not be imposed. 5. The Competent Authority shall ensure that when determining the type and amount of administrative sanctions, it shall take into account all relevant circumstances, including: <ol style="list-style-type: none"> (a) the gravity and the duration of the non-compliance; (b) the degree of responsibility; (c) profits gained or losses avoided; (d) losses for third parties caused by the non-compliance; (e) the level of cooperation by the responsible natural or legal person with the Competent Authority; and (f) previous non-compliance by the responsible natural or legal person.

5. Cooperation by Competent Authorities

The Competent Authorities responsible for capital market in the Partner States shall cooperate with each other for the purpose of carrying out their duties and in the exercise of their powers under this directive or national laws.

6. Implementation of Directive

1. Partner States shall enact laws, regulations and administrative provisions to comply with this Directive not later than one year from the date of publication this Directive.
2. The Partner States shall at least once every year report to the Council stating the laws, regulations and administrative provisions each Partner State has taken to comply with this Directive.
3. A Partner State shall not implement measures likely to jeopardise the achievement of the objectives or the implementation of this Directive.

SCHEDULE*Art. 21***SUSPICIOUS INDICATORS FOR MONEY LAUNDERING OR FINANCING OF TERRORISM****1. Customer Due Diligence**

- (a) The customer provides the market intermediary with unusual or suspicious identification documents that cannot be readily verified or are inconsistent with other statements or documents that the customer has provided. This indicator may apply to account openings and to interaction subsequent to account opening, such as electronic transfers.
- (b) During the account opening process, the customer refuses to provide information to complete customer due diligence, such as occupation or prior financial relationships.
- (c) The customer, is reluctant to provide the market intermediary with complete information about the nature and purpose of the customer's business, prior financial relationships, anticipated account activity, the entity's officers and directors or business location.
- (d) The customer, is located in a jurisdiction that is known as a bank secrecy haven, a tax shelter, or high-risk geographic locations such as narcotics producing jurisdiction.
- (e) The customer is reluctant to meet personnel from the market intermediary in person, is very secretive or evasive or becomes defensive when asked to provide more information.
- (f) The customer refuses to identify a legitimate source for funds or provides the Market Intermediary with information that is false, misleading, or substantially inaccurate
- (g) The customer engages in frequent transactions through money services businesses.
- (h) The customer's background, is questionable or does not meet expectations based on the customer's business activities.
- (i) The customer has no discernible reason for using the market intermediary's service or the market intermediary's disadvantageous location does not discourage the customer for instance a customer lacks roots to the local community or has come out of his or her way to use the market intermediary.
- (j) The customer refuses to provide information regarding the beneficial owners of an account opened for an entity, or provides information that is false, misleading or substantially inaccurate.
- (k) The customer's address is associated with multiple other accounts that do not appear to be related.

- (l) The customer has a history of changing financial advisors or using multiple firms or banks. This indicator is heightened when the customer uses firms located in numerous jurisdictions.
- (m) The customer is known to be experiencing extreme financial difficulties.
- (n) The customer is, or is associated with, a Politically Exposed Person or senior political figure.
- (o) The customer refuses to invest in more appropriate securities when those securities would require a more enhanced customer due diligence procedure.
- (p) The customer with a significant history with the market intermediary abruptly liquidates all of his or her assets in order to remove wealth from the jurisdiction.
- (q) The customer appears to be acting as a fiduciary for someone else but is reluctant to provide more information regarding whom he or she may be acting for.
- (r) The customer is publicly known to have criminal, civil or regulatory proceedings against him or her for crime, corruption or misuse of public funds or is known to associate with such criminal activities. Sources for this information include news items or Internet searches.
- (s) The customer inquires as to how quickly he or she can liquidate his or her accounts or earnings without explaining why or provides suspicious reasons for doing so.
- (t) The customer opens an account or purchases a product without any regard to loss, commissions or other costs associated with that account or product.
- (u) The customer has commercial or other types of relationships with risky persons or institutions.
- (v) The customer acts through intermediaries, such as money managers or advisers, in order not to have his or her identity registered.
- (w) The customer exhibits unusual concern with the market intermediary's compliance with the reporting requirements or the market intermediary's anti-money laundering and combating of financing of terrorism policies.
- (x) The customer is reluctant to provide the market intermediary with information required to file reports or fails to proceed with a transaction once asked for documentation or learns of any recordkeeping requirements.
- (y) The customer is interested in paying higher charges to the market intermediary in order to keep some of his or her information secret.
- (z) The customer tries to persuade an employee of the market intermediary not to file a required report or not to maintain required records.
- (aa) The customer funds, deposits, withdraws or purchases financial or monetary instruments below a threshold amount in order to avoid any reporting or recordkeeping requirements imposed by the jurisdiction.
- (ab) The customer requests that account openings and closings in his or her name or in the name of family members be done without producing a paper trail.
- (ac) A law enforcement organisation or agency has issued subpoenas or summonses regarding a customer or account at the market intermediary.

2. Fund Transfers or Deposits

- (a) Electronic transfers are sent to, or originate from, financial secrecy havens, tax shelters or high-risk geographic locations, such as jurisdictions known to produce narcotics, psychotropic drugs or to be related to terrorism, without an apparent business reason or connection to a securities transaction.

- (b) Electronic transfers or payments to or from unrelated third parties or where the name or account number of the beneficiary or remitter has not been supplied.
- (c) Many small incoming electronic transfers or deposits are made, either by the customer or third parties, using cheques, money orders or cash that are almost immediately withdrawn or electronically transferred in a manner inconsistent with the customer's business or history.
- (d) Incoming payments made by third-party cheques or cheques with multiple endorsements.
- (e) Deposits of large amounts in small-denomination currencies to a fund account or exchanges of small denomination currency for larger denomination currency
- (f) An electronic transfer activity that is unexplained, repetitive, unusually large or shows an unusual pattern or which has no apparent business purpose.
- (g) The securities account is used for payments or outgoing electronic transfers with little or no securities activities such as where the account appears to be used as a depository account or a conduit for transfers.
- (h) The controlling owner or officer of a public company transfers funds into his personal account or into the account of a private company that he or she owns or that is listed as an authorised signatory.
- (i) The quick withdrawal of funds after a very short period in the account.
- (j) The transfer of funds to financial or banking institutions other than those from where the funds were initially directed, specifically when different countries are involved.
- (k) Transfers or journals between different accounts owned by the customer with no apparent business purpose.
- (l) Customer requests that certain payments be routed through nostro² or correspondent accounts held by the financial intermediary or sundry accounts instead of its own account.

3. Bearer Securities

- (a) The customer requests cashing bearer securities without first depositing them into an account or frequently deposits bearer securities into an account.
- (b) The customer's explanation regarding the method of acquiring the bearer securities is suspicious. The customer deposits bearer securities together with a request to journal the shares into multiple accounts that do not appear to be related, or to sell or otherwise transfer ownership of the shares.

4. Unusual Securities Transactions and Account Activity

- (a) Transaction where one party purchases securities at a high price and then sells them at a considerable loss to another party. This is indicative of transferring value from one party to another.
- (b) A customer's transactions include a pattern of sustained losses. This is indicative of transferring value from one party to another.
- (c) The purchase and sale of non-listed securities with a large price differential within a short period of time. This is indicative of transferring value from one party to another.
- (d) Payments effected by administrators and asset managers in cash, bearer cheques or other transferable instruments without identifying who they are for or providing very little information regarding the underlying account holder or beneficiary.

² Nostro and vostro are accounting terms used to distinguish an account held for another entity from an account another entity holds. The entities in question are almost always, but need not be, banks.

- (e) A company uses cash to pay dividends to investors.
- (f) The use of shell companies to purchase public company shares, in particular if the public company is involved in a cash intensive business.
- (g) The transfer of assets without a corresponding movement of funds, such as through journaling or effecting a change in beneficial ownership.
- (h) A dormant account that becomes active without a plausible explanation (e.g. large cash deposits that are electronically transferred from a dormant account)
- (i) A customer's transactions that have no apparent economic purpose.
- (j) A customer who is unfamiliar with a financial product's performance and specifications but wants to invest in it nonetheless.
- (k) Transactions that indicate the customer is acting on behalf of third parties.
- (l) The purchase of long term investments followed by a liquidation of the accounts shortly thereafter, regardless of fees or penalties.
- (m) Transactions involving an unknown counterparty.
- (n) Large sum cash purchases of financial instruments and mutual funds holdings followed by instant redemption.

5. Activity that is Inconsistent with the Customer's Business Objective or Profile

- (a) The customer's transaction patterns suddenly change in a manner that is inconsistent with the customer's normal activities or inconsistent with the customer's profile.
- (b) There are unusual transfers of funds among accounts without any related business purpose or among apparently unrelated accounts.
- (c) The customer maintains multiple accounts or maintains accounts in the names of family members or corporate entities with no apparent business or other purpose.
- (d) The customer enters into a financial commitment that appears beyond his or her means.
- (e) The customer begins to use cash extensively.
- (f) The customer engages in extremely complex transactions where his or her profile would indicate otherwise.
- (g) A customer's credit usage is in extreme amounts that do not correspond to his or her financial status or collateral where the collateral is provided by an unrelated third-party.
- (h) The time zone in the customer's location is inconsistent with the time periods that the trades were executed, with no apparent business or other purpose, or there is a sudden change that is inconsistent with the customer's typical business activity.
- (i) A foreign based customer that uses domestic accounts to trade on foreign exchanges.
- (j) The customer exhibits a lack of concern about higher than normal transaction costs.

6. Rogue Employees

- (a) The employee appears to be enjoying a lavish lifestyle that is inconsistent with his or her salary or position.

- (b) The employee is reluctant to take annual leave.
- (c) The employee inputs a high level of activity into one customer account where the customer's account is relatively unimportant to the organisation.
- (d) The employee has no authority to arrange and process customer affairs without supervision or involvement of colleagues but does so.
- (e) The management or reporting structure of the financial institution does not allow an employee to have a large amount of autonomy without direct control over his activities.
- (f) The employee is located in a different country to his direct line of management, and supervision is only carried out remotely. What is meant by these?
- (g) A management culture within the financial institution that focuses on financial reward over compliance with regulatory requirements.
- (h) The employee's supporting documentation for customers' accounts or orders is incomplete or missing.
- (i) Business is experiencing a period of high staff turnover or is going through significant structural changes.

RT HON. DR. AL HAJI ALI KIRUNDA KIVEJINJA,
Chairperson Council of Ministers.

Legal Notice No. EAC/147/2017

**DIRECTIVE OF THE COUNCIL OF MINISTERS
ON
THE EAST AFRICAN COMMUNITY SECURITIES MARKET**

**(EAC/CM/35/Directive 15)
April, 2017**

INVESTOR COMPENSATION FUNDS

PREAMBLE

This Directive is issued by the Council in exercise of the powers conferred upon the Council by Article 14(3)(d) of the Treaty for the Establishment of the East African Community and Article 47(2) of the Protocol on the Establishment of the East African Common Market.

WHEREAS under Article 85 of the Treaty, the Partner States undertook to harmonise their capital markets policies and their regulatory and legislative frameworks and regulatory structures in order to create a conducive environment for the movement of capital within the Community;

WHEREAS the Partner States undertook to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system under Article 31 of the Protocol on the Establishment of the East African Common Market;

AND WHEREAS under Article 47 of the Protocol on the Establishment of the East African Common Market the Partner States undertook to approximate their national laws and to harmonize their policies and systems for purposes of implementing the Protocol;

IN ACCORDANCE with Article 14(3)(d) of the Treaty and Article 47 (2) of the Protocol on the Establishment of the East African Common Market, the Council directs the Partner States to enact, amend and harmonise their national laws on licensing in the securities markets in accordance with the principles set out in this Directive.

1. Scope of Directive

This Directive shall apply to all investor compensation funds established in respect of the securities markets within the Community.

2. Objective

The objective of this Directive is to harmonize the standards pertaining to Investor Compensation Funds in the securities markets of Partner States with a view:

- (a) to protect investors by setting the level of compensation payable to investors;
- (b) to reduce systemic risks by setting out in more detail how investor compensation funds should be administered and funded to ensure their sound operations;
- (c) to provide cooperation between investor compensation funds;
- (d) to reduce delays in the pay out of claims to investors;
- (e) to provide for criteria for compensation for investors;
- (f) to provide for investors to receive more detailed information from market intermediaries about what is covered and not covered under compensation fund.

3. Principles

In implementing this Directive, Partner States shall abide by the following principles:

- (a) ensure confidence in capital markets by promoting high standards of transparency and prompt payment of compensation to investors ;
- (b) provide investors with a reasonable level of disclosure and protection tailored to their circumstances;
- (c) ensure that Competent Authorities enforce the rules consistently, in relation to the establishment of mandatory compensation funds; and
- (d) ensure coherence across Partner States' legislation on investor compensation funds.

4. Principles for enacting, amending and harmonising national laws

No.	Principle	Directive
1	Interpretation	<p>“Collective Investment Schemes” (in this Directive shall be referred to as “CIS”) means schemes as defined in Article 2 of the EAC Directive on Collective Investment Schemes;</p> <p>“Community” means the East African Community established by Article 2 of the Treaty;</p> <p>” Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;</p> <p>“investor” means a person who has invested in securities in the EAC securities market through any of the market intermediaries in the EAC Community;</p> <p>“investor compensation fund” means a Fund established for the purposes of granting compensation to investors who suffer pecuniary losses resulting from the failure, of a Market Intermediary to meet their contractual obligations;</p> <p>“market intermediary” means a broker, dealer, fund manager, investment bank or any other licensed entity by any competent authority in the EAC Community to provide services in the securities market;</p> <p>“Partner State” 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; and</p> <p>“Treaty” means the Treaty establishing the East African Community and any annexes and protocols thereto.</p>
2	Establishment of investor compensation funds	<ol style="list-style-type: none"> 1. Each Competent Authority shall ensure that within its territory one or more investor-compensation funds are introduced and officially recognised. 2. A fund shall provide coverage for investors in relation to securities business in accordance with principle 6 where any of the following conditions apply: <ul style="list-style-type: none"> (a) the Competent Authorities have determined that a market intermediary appears, for the time being, for reasons directly related to the financial circumstances of the market intermediary or the financial circumstances of any third party with whom financial instruments have been deposited by the market intermediary, to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so; (b) a court of competent authority has made a ruling, for reasons directly related to the financial circumstances of the market intermediary or the financial circumstances of any third party with whom financial instruments have been deposited by the market intermediary, which has the effect of suspending investors' ability to make claims against the firm or the firm's ability to make claims against the third party. (c) Competent Authorities shall determine whether a market intermediary is able to meet its financial obligation as soon as possible and in any event within three (3) months, after first becoming aware that a market intermediary has failed to meet its obligations arising out of investors' claims.

		<ol style="list-style-type: none"> 3. The coverage referred to in paragraph 2 shall be provided in accordance with the legal and contractual conditions applicable for claims arising out of a Market Intermediary's inability to perform either of the following: <ol style="list-style-type: none"> (a) repay money owed to or belonging to investors and held on their behalf in connection with investment business; or (b) return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business. 4. A Competent Authority shall ensure that the funds provide coverage where financial instruments or monies are held, administered or managed for or on behalf of an investor, irrespective of the type of investment business being carried on by the firm and whether or not the firm is acting in accordance with any restriction set out in its authorisation. 5. A scheme shall also provide coverage for CIS unit holders where any of the following conditions is met: <ol style="list-style-type: none"> (a) the Competent Authority has determined that a depositary or a third party to whom the assets of the CIS are entrusted is unable to meet its obligations to a CIS, for the time being, for reasons directly related to the financial circumstances of the depositary or the third party and has no early prospect of being able to do so; or (b) a Court of Competent jurisdiction has made a ruling, for reasons directly related to the financial circumstances of the depositary or any third party to whom assets of the CIS are entrusted, which has the effect of suspending the CIS ability to make claims against the depositary or the third party. 6. A Competent Authority shall determine within 3 months, after first becoming aware that a depositary or a third party to whom the assets of the CIS are entrusted has failed to meet its obligations arising out of the CIS claims. 7. The coverage for investors in relation to securities business shall be provided in accordance with the legal and contractual conditions applicable for a claim by a CIS unit holder for the loss of value of the CIS unit due to the inability of a market intermediary. 8. A claim shall not be eligible for compensation more than once. 9. The amount of an investor's claim shall be calculated in accordance with the legal and contractual conditions, in particular those concerning set off and counterclaims, that are applicable to the assessment, on the date of the determination or ruling.
3	Administration of the fund	<ol style="list-style-type: none"> 1. The Fund shall be administered by an independent body which shall also be responsible for overseeing compensation. 2. The following may be paid out of the fund: <ol style="list-style-type: none"> (a) money required to be paid as compensation to investors; and (b) any expenses relating to management and investment of the monies constituting the fund. 3. The independent body shall cause proper records in respect of the funds to be kept and shall ensure that: <ol style="list-style-type: none"> (a) the records disclose with reasonable accuracy, the financial position of the fund; (b) the Fund is subjected to an Independent Audit on an annual basis; (c) the records explain in detail all the transactions relating to the fund; and (d) the records shall be kept for a period of seven years. 4. The independent body shall maintain a separate account for the investor compensation fund.

4	Funding	<ol style="list-style-type: none"> 1. Competent Authorities shall ensure that the funds have in place adequate measures to compensate investors where need arises. 2. Sources of funds for Investor Compensation Fund shall include; <ol style="list-style-type: none"> (a) such monies that are required to be paid into the compensation fund by market intermediaries; (b) sums which accrue from interest and returns from investing monies from the investor compensation fund; (c) such monies recovered by the Competent Authorities from entities which have failed to meet their obligations from investors resulting into payments to the investor compensation fund; (d) such sums of monies as are paid as fines or penalties under any legislation administered by a Competent Authority; (e) Such other monies paid as ill-gotten gains where those harmed are not specifically identifiable; and (f) f) Such other monies as received for purposes of the Investor Compensation Fund from any other source as determined or approved by the Competent Authorities. 3. The monies shall only be invested in low-risk liquid financial instruments.
5	Contribution by market intermediary	<p>Where a market intermediary is required to contribute to a fund, the Competent Authority shall take all measures appropriate, including the imposition of penalties, to ensure that the Market Intermediary meets its obligations.</p>
6	Coverage for investor compensation funds	<ol style="list-style-type: none"> 1. Eligible investors shall be compensated up to a maximum of US\$1,000 in respect of aggregate claim. 2. The independent body responsible for administering the fund may adjust the amount taking into account the size of the investor compensation fund. 3. The investors listed in Annex 1 shall be excluded from compensation. 4. The compensation limit shall apply to the investor's aggregate claim on the same market intermediary irrespective of the number of accounts, the currency and location within the Community.
7	Compensation pay-outs	<ol style="list-style-type: none"> 1. The independent body shall take appropriate measures to inform investors of a determination or ruling and, if they are to be compensated, to compensate them as soon as possible. 2. Every investor who has suffered a pecuniary loss resulting from the failure of a market intermediary to meet his contractual obligations shall apply for compensation to the independent body within three (3) months. 3. In exceptional circumstances, the independent body in consultation with the Competent Authority may extend the time limit. 4. The independent body shall pay compensation within three (3) months of the establishment of the eligibility and amount of the claim

8	Procedures for lodging a claim	<ol style="list-style-type: none"> 1. Where the Competent Authority has appointed a statutory manager it shall inform the independent body accordingly to oversee the process. 2. The Competent Authority shall immediately upon appointing a statutory manager make an announcement informing the investing public of that appointment and provide contact details of the appointed statutory manager. 3. Where a statutory manager has been appointed, every investor who has suffered a pecuniary loss shall within three (3) months of the announcement notify the statutory manager of such a loss. 4. The statutory manager shall submit to the independent body a list of investors to be compensated as well as the supporting documents. 5. The independent body shall verify and approve the claims for compensation payments 6. The statutory manager shall pay all valid claims within six (6) months of its appointment. 7. Where payment has been made out of the compensation fund on behalf of a market intermediary, such a market intermediary shall be liable to the compensation fund for an amount equal to the payment made out of the fund. 8. In the event of liquidation of a market intermediary, the liquidator shall pay the compensation fund any money paid by the fund to investors.
9	Subrogation of rights	Without prejudice to any other rights which they may have under national law, funds which make payments in order to compensate investors shall have the right of subrogation to the rights of those investors in liquidation proceedings for amounts equal to their payments.
10	Claims arising from criminal activity	Claims arising out of transactions connected to a criminal offence or obtained from money laundering or arising out of any other conduct which is prohibited, shall be excluded from compensation.
	Investor compensation information	<ol style="list-style-type: none"> 1. The Competent Authority shall ensure that market intermediaries take appropriate measures to make available to existing and potential investors the information necessary for the identification of the Investor Compensation Fund of which the market intermediary contributes or is a member. 2. The independent body shall inform the public of the rules governing compensation.

6. Cooperation by Competent Authorities

The Competent Authorities responsible for capital market in the Partner States shall cooperate with each other for the purpose of carrying out their duties and in the exercise of their powers under this directive or national laws.

7. Implementation of Directive

1. Partner States shall enact laws, regulations and administrative provisions to comply with this Directive not later than one year from the date of publication this Directive.
2. The Partner States shall at least once every year report to the Council stating the laws, regulations and administrative provisions each Partner State has taken to comply with this Directive.
3. A Partner State shall not implement measures likely to jeopardise the achievement of the objectives or the implementation of this Directive.

ANNEX I**LIST OF EXCLUSIONS**

The following investors shall be excluded from compensation:

1. Professional, institutional or qualified investors, including:
 - (a) financial institutions such as banks, insurance companies, savings and credit co-operative societies, micro-finance institutions, credit institutions, forex bureaux;
 - (b) collective investment schemes;
 - (c) pension and retirement funds; and
 - (d) other professional, institutional or qualified investors.
2. Supranational institutions, government and central administrative authorities.
3. Provincial, regional, local and municipal authorities.
4. Directors, managers and personally liable members of a market intermediary, persons holding 5% or more of the capital of such market intermediary, persons responsible for carrying out the statutory audits of market intermediary' accounting documents and investors with similar status in other firms within the same group as such a firm.
5. Close relatives and third parties acting on behalf of the investors referred to in sub paragraph 4.
6. Other firms in the same group as the investors specified in paragraphs (1) to (3).
7. Investors who have any responsibility for or have taken advantage of certain facts relating to a market intermediary which gave rise to the firm's financial difficulties or contributed to the deterioration of its financial situation.

RT HON. DR. AL HAJI ALI KIRUNDA KIVEJINJA
Chairperson Council of Ministers.

Legal Notice No. EAC/148/2017

**DIRECTIVE OF THE COUNCIL OF MINISTERS
ON
THE EAST AFRICAN COMMUNITY SECURITIES MARKET**

**(EAC/CM/35/Directive 15)
April, 2017**

CONDUCT OF BUSINESS IN THE SECURITIES MARKET

PREAMBLE

This Directive is issued by the Council in exercise of the powers conferred upon the Council by Article 14(3)(d) of the Treaty for the Establishment of the East African Community and Article 47(2) of the Protocol on the Establishment of the East African Common Market.

WHEREAS under Article 85 of the Treaty, the Partner States undertook to harmonise their capital markets policies and their regulatory and legislative frameworks and regulatory structures in order to create a conducive environment for the movement of capital within the Community;

WHEREAS the Partner States undertook to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system under Article 31 of the Protocol on the Establishment of the East African Common Market;

AND WHEREAS under Article 47 of the Protocol on the Establishment of the East African Common Market the Partner States undertook to approximate their national laws and to harmonize their policies and systems for purposes of implementing the Protocol;

IN ACCORDANCE with Article 14(3)(d) of the Treaty and Article 47 (2) of the Protocol on the Establishment of the East African Common Market, the Council directs the Partner States to enact, amend and harmonise their national laws on licensing in the securities markets in accordance with the principles set out in this Directive.

1. Scope of Directive

This Directive shall apply to market intermediaries licensed by Competent Authorities.

2. Objective of this Directive

The objective of this Directive is—

- (a) to harmonise the standards on conduct of business of market intermediaries in the securities markets of the Partner States;
- (b) to protect investors;
- (c) ensure fair, efficient and transparent markets; and
- (d) reduce systemic risks.

3. Principles for implementing this Directive

In implementing this Directive Partner states shall ensure that market intermediaries -

- (a) conduct their business fairly with skill, care and diligence in the best interest of their clients and integrity of the market;
- (b) adopt and observe appropriate internal codes of conduct and high standards of market conduct;
- (c) know their clients by obtaining and maintaining information about their clients' financial status investment experience and investment objectives that are relevant to the services provided and where there are suspicious transactions to report immediately to the Competent Authority;
- (d) treat clients' information confidentially, unless required to disclose by law;
- (e) take reasonable steps to provide to their clients, in a comprehensible way, any information needed to enable their clients to make balanced and informed investment decisions;

- (f) avoid conflicts of interests between them and their clients;
- (g) put in place mechanisms for the detection and deterring of manipulation and other unfair trading practices;
- (h) have in place mechanisms for adequate protection of clients' funds; and
- (i) employ suitable staff who are adequately trained and properly supervised.

4. Principles for enacting, amending and harmonizing national laws

No.	Principle	Directive
1	Interpretation	<p>“Community” means the East African Community established by Article 2 of the Treaty.</p> <p>“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;</p> <p>“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;</p> <p>“market intermediary” means an entity licensed or approved by a Competent Authority in the Partner State;</p> <p>“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania and the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;</p> <p>“Regulated activity” means any activity of which a Market intermediary is licensed or authorized to do by any Competent Authority;</p> <p>“Suspicious transaction” means transaction in which there are reasonable grounds to suspect that the transaction is related to any criminal offence. The transaction includes:</p> <ul style="list-style-type: none"> (a) transactions having unclear economical and business target; (b) transactions conducted in relatively large amount cash or conducted repeatedly; and (c) transactions conducted differently from the usual and normal transactions conducted by the relevant client;
2	Standards of conduct	<p>A market intermediary shall, when conducting a regulated activity, apply the principles of best practice and, in particular, act with skill, care and diligence, and observe a high standard of market conduct, integrity and fair dealing.</p>
3	Training, competence and supervision	<ol style="list-style-type: none"> 1. A market intermediary shall: <ul style="list-style-type: none"> (a) regularly assess the training needs of its staff ensure that its staff are trained (b) satisfy itself that its staff are competent to carry out their roles; (c) comply with the certification requirements as required by the Competent Authorities; (d) review at appropriate intervals the competence of its staff and take steps to ensure that they remain competent for their role; and (e) ensure appropriate supervisory structures for its staff. 2. A market intermediary shall consider the level of relevant experience of a member of staff when determining the level of supervision required.

4	Know your client requirements	<ol style="list-style-type: none"> 1. A market intermediary shall comply with the Know Your Client requirements set out in the Schedule. 2. A market intermediary shall keep updated records of client information including postal physical and email addresses, and telephone numbers. 3. A market intermediary shall comply with any trading restrictions applicable to the client.
5	Client agreement	<ol style="list-style-type: none"> 1. A market intermediary shall not provide any service in respect to a regulated activity unless it has entered into a written agreement with the client and has been signed by both the client and the market intermediary. 2. The agreement shall set out the basis on which the market intermediary's services are provided, including: <ol style="list-style-type: none"> (a) essential information about the parties, including names, addresses and contact information; (b) services to be provided; (c) fees to be charged or the way the fees will be calculated; (d) nature or basis of commissions to be received by the market intermediary from third parties in relation to the services provided to the client; (e) rights and obligations of the client, including— <ol style="list-style-type: none"> (i) the right to the title for any securities purchased; (ii) the right to a statement of all fees and charges; (iii) the right to information on the remuneration received by the market intermediary from third parties for the services provided, in relation to the client; (iv) the right to ask for information on the experience, qualifications and statutory and regulatory compliance history of the market intermediary; (v) the right to interest earned on the funds held by the market intermediary on the client's behalf; (vi) the right to receive payment for securities sold within a specified period; (vii) the right to see the market intermediary's conflict of interest policy; (viii) the right to complain and to have that complaint dealt with fairly and promptly; and (ix) the obligation to pay fees and other charges; (f) rights and obligations of the market intermediary; (g) arrangements made for securing titles to and for custody of securities bought, including where nominee or custodian accounts are to be used; (h) any conflicts of interest relating to the market intermediary; (i) any connections the market intermediary has with third parties that could affect the services being provided, including a requirement that the market intermediary deals through certain third parties or recommend certain investment products; (j) the fact that the market intermediary is regulated by the Authority; and (k) any other terms and conditions of the agreement, including the notice to be given in respect of any changes to it or its termination. 3. Each party shall retain a copy of the agreement.

6	Suitability of services for clients	<ol style="list-style-type: none"> 1. A market intermediary shall take all reasonable steps to ensure that it does not give advice or effect a transaction on behalf of a client unless the advice or transaction is suitable for the client. 2. Where a market intermediary gives advice to a client, the market intermediary shall ensure that: <ol style="list-style-type: none"> (a) the advice is consistent with the client's investment objectives; (b) any product or service which the market intermediary recommends to a client is suitable for the client; (c) the choice of product or service is the most appropriate for the client based on the market intermediary's professional judgment; (d) the market intermediary keeps sufficient records of each piece of advice it has given to a client; and (e) the market intermediary clearly informs the client of any actual or potential conflict of interest.
7	Fair and clear communications	A market intermediary shall ensure that any agreement, communication, notification or information that it gives or sends to clients to whom it provides the service of a regulated activity is presented fairly, clearly and does not contain any misleading information.
8	Issue of advertisements	<p>Where a market intermediary issues an advertisement concerning its securities business, it shall take all reasonable steps to ensure that:</p> <ol style="list-style-type: none"> (a) the contents and presentation of the advertisement are demonstrably fair and not misleading; and (b) the advertisement discloses fairly the risks concerned.
9	Independence	Where a market intermediary is advising or acting on behalf of a client, the market intermediary shall ensure that any claim it makes relating to its independence or impartiality includes any limitation that there may be on its capacity to advise or act as instructed.
10	Clients' understanding of risk	<ol style="list-style-type: none"> 1. A market intermediary shall not: <ol style="list-style-type: none"> (a) recommend a transaction to a client, or effect a transaction with or for him, unless it has taken all reasonable steps to enable the client to understand all the risks involved; (b) knowingly mislead a client on any advantages or disadvantages of a contemplated transaction; or (c) promise a return unless the return is contractually guaranteed. 2. A market intermediary shall give sufficient information to the client to ensure that the client's decisions are informed. 3. A market intermediary shall, when making recommendations to a client, take all reasonable steps to satisfy itself that the client has a full understanding of the: <ol style="list-style-type: none"> (a) nature of the investment; (b) fees and charges associated with the investment; (c) risks of the investment; (d) factors that are likely to affect the performance of the investment; (e) terms and conditions of the investment; and (f) consequences of departing from the terms and conditions of the investment.

		<p>4. A market intermediary:</p> <ul style="list-style-type: none"> (a) shall retain a copy of any explanation given to a client under sub- article 3 in its records; (b) who gives a client an oral explanation shall thereafter send a written note of the explanation to the client and retain a copy of such explanation in its record; (c) may not give an explanation to a client if it believes that it is not necessary to do so because of the clients knowledge but the market intermediary shall document that explanation in its records.
<p>11</p>	<p>Fees</p>	<p>1. A market intermediary shall charge its fees according to the rate prescribed by the Competent Authority: Provided that where a competent authority has not prescribed any rates, a market intermediary shall charge fees in accordance with its agreement with the client.</p> <p>2. A market intermediary shall, before providing the service of a regulated activity to a client, disclose to the client the basis for all its fees and charges.</p> <p>3. A market intermediary shall provide a statement of fees or charges to a client for each transaction or a monthly statement to a client on whose behalf many transactions are undertaken.</p> <p>4. A market intermediary shall not take any fees or charges from any client’s funds or liquidate client’s securities for the purpose of recovering its fees or charges unless it is in accordance with the client agreement or in the manner prescribed by the Competent Authority.</p> <p>5. A market intermediary shall prominently display all its charges and fees in its promotional materials and any other communication channels it uses.</p>
<p>12</p>	<p>Contract notes</p>	<p>1. A market intermediary shall, in respect of every contract for the purchase or sale of securities it has entered into, not later than the end of the next trading day after the contract was entered into, prepare a contract note which complies with sub-article 2 and where the market intermediary entered into a contract:</p> <ul style="list-style-type: none"> (a) as agent, deliver the original contract note to the person on whose behalf it entered into the contract; or (b) as principal, retain the contract note for itself. <p>2. The contract note shall specify:</p> <ul style="list-style-type: none"> (a) whether it is in respect of a purchase or a sale of securities; (b) whether a specific or limit price has been specified or whether the market rate should be applied in addition to the ultimate price, per unit of the securities; (c) the name, postal and principal physical addresses or principal place of business, email address and telephone number of the market intermediary whether the market intermediary is acting as a principal or an agent; (d) the name, postal and principal physical addresses or principal place of business, email address and telephone number of the person to whom the contract note is to be delivered or the person for whom the transaction is to be undertaken; (e) the date of the contract, and the date on which the contract note is made; (f) the quantity and description of the securities that are the subject of the contract; (g) the rate or amount of commission payable in respect of the contract; (h) the amount of stamp duty, if any, payable in connection with the contract and, where applicable, in respect of the transfer; (i) the date of settlement of the transaction; and (j) any other information as may be prescribed by the Competent Authority. A market intermediary shall promptly deliver the contract note to a client.

13	Clients' rights	<p>1. A market intermediary shall not, in any written communication or agreement, exclude or restrict:</p> <ul style="list-style-type: none"> (a) any duty or liability to a client which it has under any law; (b) any other duty to act with due skill, care and diligence that is owed to a client; or (c) any liability owed to a client for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of the service of a regulated activity. <p>2. Any purported exclusion or restriction prohibited by this Directive shall be void and of no effect.</p> <p>3. Where a client has exercised, asserted or sought to uphold a right set out in this Directive in an agreement or during a transaction with a market intermediary, the market intermediary shall not:</p> <ul style="list-style-type: none"> (a) treat the client unfairly or with prejudice as a result of having exercised, asserted or sought to uphold the right; (b) fail to act on the demand for reasons that other clients have not exercised, asserted or sought to uphold such a right; (c) penalize the client by taking any action so as to accelerate, enforce, suspend or terminate an agreement with the client; or (d) alter the terms or conditions of a transaction or agreement with the client to the detriment of the client.
14	Cold calling	<p>A market intermediary shall not, for the purposes of soliciting business, make unsolicited telephone calls or attend at any property, unless it maintains a Do-Not-Call list of prospects that is updated whenever any contacted person requests not to be called again;</p> <ul style="list-style-type: none"> (a) has trained staff on the use of the Do-Not-Call list; (b) has limited the making of telephone calls to official working hours; (c) has obliged its staff to state their first and last names at the commencement of the call; (d) has obliged its staff to state the firm's name and address and the fact that it is licensed by the Competent Authority at the commencement of the call; and (e) has obliged its staff to provide a detailed overview of any product being marketed by the market intermediary before soliciting any offers.
15	Execution of client orders	<p>1. A market intermediary shall execute a client's order:</p> <ul style="list-style-type: none"> (a) if the client has made final and irrevocable arrangements for the necessary funds or securities; and (b) in the chronological sequence in which the orders were received and shall give priority to outstanding orders. <p>2. A market intermediary shall execute a client's order on the best terms available in the market.</p>
16	Allocation of trades	<p>1. A market intermediary shall ensure that trades it executes are allocated to the clients who gave the orders in a timely and equitable manner.</p> <p>2. Where a market intermediary has aggregated a client's order with an order for its own account or with other clients orders, the market intermediary shall in the subsequent allocation:</p> <ul style="list-style-type: none"> (a) not give unfair preference to itself or to any of the clients; and (b) give priority to satisfying client orders, if all orders cannot be satisfied.

17	Front running	Where a market intermediary has a client order to execute, or where it intends to publish to clients a price-sensitive recommendation, research or analysis, it shall not knowingly effect an own account transaction in the securities concerned or in any related investment until the order has been executed or until the clients for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.
18	Churning	<p>A market intermediary shall not:</p> <ul style="list-style-type: none"> (a) deal or arrange deals for any client; or (b) advise a client to deal, <p>if the dealing could be considered as too frequent or too large having regard to the trading activities, investment objectives, size and operations of such client.</p>
19	Insider dealing	A market intermediary shall not profit or seek to profit, either for its own account, the account of a client or any third party, from inside information in the possession of any of its officers, employees, agents, or any insider or assist anyone with such information to make a profit for himself or for another person.
20	Clients' funds	<ol style="list-style-type: none"> 1. A market intermediary shall hold its clients' funds in trust for and on behalf of the clients. 2. Clients' funds shall not form part of the assets of the market intermediary for any purpose and shall not be available in any circumstances for payment of any debt owed by the market intermediary.
21	Segregation of clients' funds	<ol style="list-style-type: none"> 1. A market intermediary that receives or holds clients' funds shall open a trust account for each client 2. A market intermediary shall segregate its client trust accounts from any account holding funds belonging to the market intermediary. 3. A market intermediary shall deposit into a client trust account all funds received on behalf of or from a client upon receipt. 4. A market intermediary shall keep records of: <ul style="list-style-type: none"> (a) the amounts it has deposited into a client trust account held by the market intermediary, specifying the person on whose behalf the amounts are held and the dates on which they were deposited into the account; (b) withdrawals from a client trust account, the dates of the withdrawals, and the names of the persons on whose behalf the withdrawals were made; and (c) any other particulars as may be prescribed by the Competent Authority. 5. A market intermediary shall on a daily basis reconcile its records showing the amounts held on behalf of each client in the client trust account and the aggregate of clients' money held in the client account or being held by third parties on behalf of clients. 6. Where there is more than one client trust account, the market intermediary shall reconcile each client trust account separately as well as the aggregate position on all clients' trust accounts. 7. The person who is responsible for authorizing payments into and out of the client's trust accounts shall not carry out the reconciliation. 8. A market intermediary shall obtain and maintain, in its records, written acknowledgement from the bank confirming that the clients' funds deposited with the bank are held in trust for the clients and are not available to offset any obligation of the market intermediary.

22	Accounting and use of clients' funds	<ol style="list-style-type: none"> 1. A market intermediary shall promptly and accurately account for clients' funds and ensure that: <ol style="list-style-type: none"> (a) clients' funds and other funds are segregated; (b) the amount of clients' funds standing to the credit of each client can be ascertained at all times; and (c) funds held on behalf of a client are not used for the benefit of another client. 2. A market intermediary shall not withdraw money deposited in a clients' bank account unless the money is required for the purposes of: <ol style="list-style-type: none"> (a) making a payment in accordance with the written instructions of a client ; (b) purchasing, margining, guaranteeing, securing, transferring, adjusting or settling dealings in securities effected by the market intermediary on the written instructions of a client; (c) defraying brokerage and other charges incurred in respect of dealings in securities effected by the market intermediary on the written instructions of a client; or (d) making a payment that is otherwise authorized by law.
23	Compliance with financial requirements	<p>A market intermediary shall establish procedures that facilitate its compliance with financial resources requirements, client asset management requirements and working capital requirements which shall include;</p> <ol style="list-style-type: none"> (a) daily reconciliations of funds held in the client accounts; (b) daily calculations of the working capital and financial resource; and (c) the maintenance of a record of daily calculations and reconciliations.
24	Financial statements	<ol style="list-style-type: none"> 1. A market intermediary shall, at the end of its financial year, prepare in accordance with International Financial Reporting Standards annual financial statements that consist of: <ol style="list-style-type: none"> (a) a statement of financial position, that gives a true and fair view of the state of affairs of the market intermediary, as at the last day of the financial year; and (b) a statement of comprehensive income and expenditure, that gives an accurate position of the market intermediary's profit or loss, for the financial year. 2. A market intermediary shall submit to the Competent Authority, within three (3) months after the end of each financial year, its audited accounts together with— <ol style="list-style-type: none"> (a) its annual financial statements; and (b) a written confirmation that it has complied with this Directive and any other additional requirements of the Competent Authority. 3. Where audited accounts of the market intermediary are qualified on grounds of the auditor's uncertainty on the completeness or accuracy of the accounting records, when they are being submitted by the market intermediary to the Competent Authority, they shall be accompanied by a written statement signed by two directors stating whether— <ol style="list-style-type: none"> (a) all the accounting records of the market intermediary were made available to the auditor for the purposes of its audit; (b) all transactions undertaken by the market intermediary were properly reflected and recorded in its accounting records; and (c) all the other records of the market intermediary and related information were made available to the auditor.

25	Appointment of auditors	<ol style="list-style-type: none"> 1. A market intermediary shall appoint an external auditor in writing and the market intermediary and the auditor shall enter into an agreement regarding the auditor's powers. 2. An auditor appointed under this article shall be an accountant duly registered in the Partner State with the accountants' regulatory body. 3. The market intermediary shall keep n a copy of the agreement between the market intermediary and the auditor. 4. A market intermediary shall, within seven (7) calendar days of appointing an auditor notify the Competent Authority of the appointment, in writing. 5. A market intermediary shall appoint a new auditor at least once in every four (4) years.
26	Resignation or removal of auditors	<ol style="list-style-type: none"> 1. Where an auditor resigns, the market intermediary shall notify the Competent Authority of the resignation within seven (7) calendar days and submit a copy of the auditor's resignation letter. 2. Where the market intermediary intends to remove an auditor, the market intermediary shall notify the Competent Authority of its intention and provide reasons thereof.
27	Conflict of interest	<ol style="list-style-type: none"> 1. A market intermediary shall: <ol style="list-style-type: none"> (a) identify and document the conflicts of interest that are likely to occur in the course of its regulated activity; (b) adopt and document appropriate policies and procedures to minimize conflicts of interest by identifying the instances where it would refuse to act for a client and where this is not necessary, making arrangements to minimize the risk of any loss to the client; (c) where a conflict of interest arises, shall ensure the fair treatment of the client by disclosing the conflict to the client, or by declining to act for the client and by ensuring that the interests of the market intermediary are not unfairly placed ahead of those of the client. 2. A market intermediary shall not take advantage of information obtained from a client for its own benefit or the benefit of its employees or the benefit of another client. 3. Where it is likely that information obtained by a market intermediary is likely to be abused by the market intermediary, its employees or another client, the market intermediary shall: <ol style="list-style-type: none"> (a) adopt and document procedures, including the creation of information barriers such as information technology systems barriers and physical barriers to minimize the possibility of information from one client being used for the benefit of another client, its employees or the market intermediary; (b) sensitize employees in matters relating to the conflict of interest and the procedures developed to avoid them; and (c) obtain undertakings from employees that they will not use information gained from the clients for their personal benefit. <p>A market intermediary shall take reasonable steps to ensure that neither it nor any of its employees or agents offers, gives, solicits or accepts any inducement that is likely to cause a conflict of interest between the market intermediary and its clients.</p>

		<p>4. Where a market intermediary has a material interest in a transaction with a client, or a relationship which gives rise to a conflict of interest, the market intermediary shall not, advise, or exercise discretion, in relation to that transaction unless it has –</p> <p>(a) disclosed the material interest or relationship that may give rise to a conflict, as the case may be, to the client; or</p> <p>(b) taken reasonable steps to ensure that neither the material interest nor relationship would adversely affect the interests of the client.</p>
28	Client confidentiality	<p>1. A market intermediary shall adopt and document policies and procedures designed to keep client information and information obtained from third parties is confidential and secure.</p> <p>2. The policies and procedures adopted shall include:</p> <p>(a) a requirement that employees undertake to maintain confidentiality in their contract of employment;</p> <p>(b) how to determine the employees who may have access to confidential information;</p> <p>(c) procedures that restrict access to confidential information by employees through the use of secure document management systems; and</p> <p>(d) systems designed to safeguard the integrity of any electronic records or transaction recording systems.</p> <p>3. A market intermediary shall maintain the confidentiality of all information in its possession relating to a client</p> <p>4. Notwithstanding paragraph 3, a market intermediary may disclose information relating to a client to the Competent Authority or an authorised securities exchange:</p> <p>(a) on written request of the Authority or the exchange;</p> <p>(b) if the information amounts to a suspicious transaction; or</p> <p>(c) if it is ordered to do so by a court of competent jurisdiction in any of the Partner States.</p>
29	Off-market transactions	A market intermediary shall report to the Competent Authority all transactions in securities conducted outside of the licensed Securities Exchange.

30	Complaints procedure	<ol style="list-style-type: none"> 1. A market intermediary shall have in place and operate appropriate and effective procedures which it has documented for receiving, considering and responding to client's complaints. 2. A market intermediary shall ensure that information about its procedures for handling complaints is easily available at its branches, websites and any other communication channels which it uses. 3. A market intermediary shall ensure that in handling complaints it identifies and remedies any recurring or systemic problems by: <ol style="list-style-type: none"> (a) analysing the causes of individual complaints in order to identify any failings in processes, products or services; and (b) correcting any such failings. 4. A market intermediary shall, on receiving a complaint: <ol style="list-style-type: none"> (a) promptly provide the complainant with a written acknowledgement of the complaint and action it has taken; (b) investigate the complaint impartially; (c) assess the complaint and whether it should be upheld, and what remedial action is required (d) explain fairly and clearly to the complainant without misleading the complainant, its assessment of the complaint, its decision and its offer of remedial action or redress; and (e) comply with any offer or remedial action or redress which the complainant accepts. 5. The market intermediary shall maintain a complaints register and report to the Competent Authority every three (3) months, on any outstanding complaints.
31	Notification to clients	<ol style="list-style-type: none"> 1. Where a market intermediary intends to implement any changes to fees or charges or relocate their premises, it shall: <ol style="list-style-type: none"> (a) seek approval from the Competent Authority at least thirty (30) calendar days before implementing any changes; and (b) notify the clients immediately upon receiving the approval in paragraph (a) 2. Where a market intermediary intends to withdraw from a regulated activity, it shall: <ol style="list-style-type: none"> (a) notify the Competent Authority immediately of its decision to withdraw; (b) ensure to the satisfaction of the Authority that any business that is outstanding is properly concluded or transferred to another market intermediary; and (c) notify the clients immediately upon compliance with paragraphs (a) and (b).
32	Returns	<ol style="list-style-type: none"> 1. The Competent Authority may, by notice in writing, require a market intermediary to submit to it such periodic returns as it may specify. 2. The Competent Authority may, in addition to any periodic returns required under sub-article 1, by notice in writing, require a market intermediary to submit to the Competent Authority such exceptional returns as it may specify.

33	Requirements for records	<ol style="list-style-type: none"> 1. A market intermediary shall update its records on a daily basis. 2. A market intermediary shall prepare and maintain proper records that show the transactions effected on its behalf or on behalf of others. 3. A market intermediary shall preserve the records under sub-article 1 for ten (10) years from the date on which they are made. 4. The Competent Authority or any person authorized by the Competent Authority may, at reasonable times and during the period in which records kept under paragraph 2, require a market intermediary to produce the records for purposes of inspection.
34	Remedial measures and administrative sanctions	Any market intermediary that contravenes any provision of the law implementing this Directive commits an offence and is liable to sanctions or penalties prescribed by national laws.

5. Implementation of Directive

1. Partner States shall enact laws, regulations and administrative provisions to comply with this Directive not later than one year from the date of publication this Directive.
2. The Partner States shall at least once every year report to the Council stating the laws, regulations and administrative provisions each Partner State has taken to comply with this Directive.
3. A Partner State shall not implement measures likely to jeopardise the achievement of the objectives or the implementation of this Directive.

SCHEDULE

KNOW YOUR CLIENT (KYC) REQUIREMENTS

1. A market intermediary shall have a client identification program that specifies the procedures for identifying clients and documentation to be obtained from the client.
2. Clients due diligence measures shall be applied before opening of a Central Securities Depository (CSD) account for a client and the relevant documentation used to establish the client's identity. The accuracy of such documentation shall be verified by the market intermediary.
3. A market intermediary shall be required to complete and sign a KYC checklist form for all its clients.
4. The following information shall be the minimum acceptable for determining the true identity of clients wishing to make transactions:
 - (a) Where the client is an individual;
 - (i) a birth certificate;
 - (ii) a national identity card;
 - (iii) a driver's license;
 - (iv) a passport; or
 - (v) any other official means of identification as may be prescribed.
 - (c) where the client is a body corporate, documents of registration or incorporation (such as a certified copy of Certificate of Registration or Certificate of Incorporation, Partnership Deed or Memorandum and Articles of Association);

- (i) a statute under which the body corporate is established (where the client is a state corporation)
 - (ii) a resolution authorizing a person to act for the body corporate and a copy of the latest annual returns;
 - (iii) In the case of a government department, a letter from the accounting officer; and
 - (iv) any other item as may be prescribed.
5. where it appears that a client is acting on behalf of another person, the market intermediary shall take reasonable measures to establish the true identity of the person on whose behalf or for whose ultimate benefit the client may be acting in the proposed transaction, whether as a trustee, nominee, agent or otherwise.
6. A market intermediary shall ensure that their clients do not use fictitious names when opening securities accounts.

Know Your Client (KYC) - Checklist for Individual/Joint Account Holders

All the data required in Sections 1 and 2 must be supplied and maintained for all new and existing clients and any other signatory so authorized

Section A – Basic Information Required on Applicant

Full Name				
Name & Code of Agent				
Type of Account	Individual	Nominee	Joint	Others, specify:
Account Number				
Complete a separate KYC form for each account holder with the following:				
Name of Account Holder				
Identity Document Number				
Nationality				
Date of Birth (DD/MM/YY)				
Marital Status				
Occupation		Position held		
Name of Employer				
Residential Address				
Email Address				
Telephone Number				
Postal Address				
Section B –Supplementary information required from all authorized signatories for verification				
		Please check as appropriate		
1.	Identification	Name and identity verified using prescribed listing provided by the Financial Action Task Force (FATF)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2.	Name, Date of Birth and Nationality of Applicant	Applicant's Name, Date of birth and Nationality confirmed by one of the following <input type="checkbox"/> Birth Certificate <input type="checkbox"/> Passport <input type="checkbox"/> Driver's Licence <input type="checkbox"/> Social Security Number <input type="checkbox"/> National I.D. Card		

3.	Address and Telephone Contact	Applicant's Residential Address confirmed through one of the following <input type="checkbox"/> Tenancy Agreement <input type="checkbox"/> Utility Bill <input type="checkbox"/> Income Tax Certificate <input type="checkbox"/> Bank Statements <input type="checkbox"/> Reference Letter <input type="checkbox"/> Employer's reference letter																		
4.	Purpose of Account Operation	Confirm purpose for opening the account: <input type="checkbox"/> Custodial <input type="checkbox"/> Transactional <input type="checkbox"/> Pledging <input type="checkbox"/> Investment <input type="checkbox"/> Other, please specify _____																		
5.	Source of Funds for the Account	As appropriate, kindly indicate the source of funds: <table border="1" data-bbox="421 577 1477 792"> <tr> <td data-bbox="421 577 874 629"><input type="checkbox"/> Personal Savings</td> <td data-bbox="879 577 1189 629"><input type="checkbox"/> Commission</td> <td colspan="2" data-bbox="1193 577 1477 629"></td> </tr> <tr> <td data-bbox="421 636 874 687"><input type="checkbox"/> Inheritance/Gift</td> <td data-bbox="879 636 1189 687"><input type="checkbox"/> Capital Gains/Dividends</td> <td colspan="2" data-bbox="1193 636 1477 687"></td> </tr> <tr> <td data-bbox="421 694 874 745"><input type="checkbox"/> Profits</td> <td data-bbox="879 694 1189 745"><input type="checkbox"/> Borrowings</td> <td colspan="2" data-bbox="1193 694 1477 745"></td> </tr> <tr> <td data-bbox="421 752 874 792"><input type="checkbox"/> Salaries, Emoluments and Bonuses</td> <td data-bbox="879 752 1189 792"><input type="checkbox"/> Other income, please specify _____</td> <td colspan="2" data-bbox="1193 752 1477 792"></td> </tr> </table>			<input type="checkbox"/> Personal Savings	<input type="checkbox"/> Commission			<input type="checkbox"/> Inheritance/Gift	<input type="checkbox"/> Capital Gains/Dividends			<input type="checkbox"/> Profits	<input type="checkbox"/> Borrowings			<input type="checkbox"/> Salaries, Emoluments and Bonuses	<input type="checkbox"/> Other income, please specify _____		
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<input type="checkbox"/> Salaries, Emoluments and Bonuses	<input type="checkbox"/> Other income, please specify _____																			
6.	Expected Volume and Type of Activity	Require information on the applicant's expected volume and type of activity to be conducted across the account <table border="1" data-bbox="421 871 1477 1037"> <tr> <td data-bbox="421 871 874 936">Transaction Types</td> <td data-bbox="879 871 1189 936">Expected No. of Transaction per year</td> <td colspan="2" data-bbox="1193 871 1477 936">Expected Amount per year</td> </tr> <tr> <td data-bbox="421 943 874 994">Additional Investments</td> <td data-bbox="879 943 1189 994"></td> <td colspan="2" data-bbox="1193 943 1477 994"></td> </tr> <tr> <td data-bbox="421 1001 874 1037">Divestments</td> <td data-bbox="879 1001 1189 1037"></td> <td colspan="2" data-bbox="1193 1001 1477 1037"></td> </tr> </table>			Transaction Types	Expected No. of Transaction per year	Expected Amount per year		Additional Investments				Divestments							
Transaction Types	Expected No. of Transaction per year	Expected Amount per year																		
Additional Investments																				
Divestments																				
7.	Investment Objective	<input type="checkbox"/> Speculative	<input type="checkbox"/> Long term	<input type="checkbox"/> Both																
8.	Origin of Funds	Country: Do the funds come from a country with AML laws? <input type="checkbox"/> Yes <input type="checkbox"/> No																		

SECTION C**Section 1 – Indicate if the Applicant belongs to any of the following:****Level 1 - Low Risk Clients**

If the applicant(s) fall into any of the following categories, check the appropriate box.

- The applicant is an ordinary individual resident in East Africa but not associated with Politically Exposed Person (PEP)
- The applicant does not reside or operate in a high risk country.
- The applicant whose funding is sourced from normal activities,

Section 2 – Indicate if the Applicant belongs to any of the following:**Level 2 – Medium Risk Clients**

If the applicant(s) fall into any type of account that is not listed as either Level 1 and 3.

Section 3 – Indicate if the client(s) belong to any of the following categories

**Level 3
Special
Clients**

If the account holder(s) fall into any of the following categories, tick the appropriate box(es) and specify the required details. *(If not applicable, skip Sections C & D in respect of this individual)*

The client is a Politically Exposed Person (PEP) or closely associated with a PEP
Please specify details of PEP position and/or relationship_____

An overseas client residing or operating in high-risk jurisdictions (e.g. FATF-Non Cooperative Countries & Territories (NCCTs)).
Please specify the NCCT or high risk country_____

The client whose source of funds is from high-risk jurisdictions. Please specify country_____

The client(s) business involves gambling, defense or money services. Refer to the list or mandatory special risk occupation/industries that the business may designate for additional KYC information.
Please specify the client's nature of business_____

Complete Section D if any of the above-mentioned boxes has been completed

Section D – Complete additional KYC information for clients who fulfilled one or more criteria in Section C

1 Source of Wealth Obtain details of client's source of wealth and estimated net worth:
(Tick or specify more than one category as appropriate, e.g. a business owner who inherited his/her wealth)

Client's wealth generated from:

- Business Ownership Income from employment
- Investments Inheritance

Others, please specify_____

Estimated Net Worth : _____ (specify currency)

Obtain the estimated annual remuneration/income or annual sales turnover:
(Details as appropriate)

_____ Comments, if any:

Upon completion of Section D, obtain the joint approval from the Chief Executive Officer/Managing Director and Head of Legal & Compliance or jointly by their approved delegates (senior managers).

Note: Any mandatory checks not completed or ticked 'No' must be supported by suitable comments by the staff responsible. Branch manager or designated officer must review the checklist for completeness and decide on whether to allow the account opening while documenting reasons for the decision on the checklist.

To be completed By Account Opening Officer

Reviewed by Branch Manager or designated officer

Name:

Designation:

Name:

Designation:

Comments:

Comments:

Does potential client fall within Section 3 above category?

Yes No

(Tick as appropriate)

Signature _____ Date: _____

Signature _____ Date: _____

Account Opening for Special Client (as identified in Section C) must be approved jointly by the Chief Executive Officer/Managing Director and Head of Legal & Compliance or jointly by their approved delegates (senior managers).

Name:**Name:****Designation:****Designation:****Date:****Date:****Signature:****Signature:**

NB: Retain evidence of the approval together with the completed checklists.

Note: Only one approval sheet needs to be completed for all checklists written under the account opened. State the number of checklists covered under this approval: ____

KNOW YOUR CLIENT (KYC) CHECKLIST – INSTITUTIONS & NON-INDIVIDUALS

(The information on Section (A) and (B) must be obtained and retained for Institution & Non-Individuals notably limited liability company, partnership, sole-proprietorships, clubs & societies, non-governmental organisations (NGO), ministries, departments & agencies (MDAs), trusts and others (specify) including their authorized signatories*, principal beneficial owners, directors and persons* with control over the company’s assets.

(Note: *Control is determined as owners entitled to exercise or control more than 30% of voting rights*)

Section A – Basic Information Requirements Applicable to the Account

Full Legal Name of Client	:			
Name & Code of Agent	:			
Type of Institution (Tick appropriate box)	Limited Company <input type="checkbox"/>	Partnership <input type="checkbox"/>	Sole-proprietorship <input type="checkbox"/>	Others, specify: _____
Account Type	Corporate <input type="checkbox"/>	Nominee <input type="checkbox"/>	Holding <input type="checkbox"/>	Dealing <input type="checkbox"/>
Operation of the Account	Agent <input type="checkbox"/>	Proprietary <input type="checkbox"/>		
Account Number	:			
Nature of Business	:			
Company registered address	:			
Company trading address	:			

Section B – Mandatory Checks Applicable to the Account (Complete this section only once for the account)

		Tick the appropriate box		
1.	Status Verification	Name and or <u>identity</u> search conducted using prescribed “Special Reference Listing” e.g. sanction lists, PEP list, blacklist etc?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2.	Name and Address Verification for corporate body	Name and <u>registered address</u> verified and supported by one of the following accepted documents <input type="checkbox"/> Certificate of Incorporation <input type="checkbox"/> Partnership deed <input type="checkbox"/> Trust deed <input type="checkbox"/> Certificate from the registrar of societies / business <input type="checkbox"/> Tax Registration Certificate		
		<u>Trading address</u> , if not the same as above official documents, is verified separately and evidence of verification documented on file?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.	Purpose of Account	Specify purpose for opening the account: <input type="checkbox"/> Transactional <input type="checkbox"/> Investment <input type="checkbox"/> Others, please specify _____		
4.	All Directors Names and Contact Addresses	Name	Address	
5.	Source of Funds	Source of funds passing through the account: <input type="checkbox"/> Sales proceeds <input type="checkbox"/> Trust funds per Trust Deed <input type="checkbox"/> Services rendered <input type="checkbox"/> Others, please specify _____ (Tick as many boxes where Appropriate)		
6.	Origin of Funds	Country: Do the funds come from a country with AML laws? <input type="checkbox"/> Yes <input type="checkbox"/> No		
7.	Anticipated Volume and Type of Activity	Obtain information on the customer’s anticipated Volume and Type of Activity to be conducted across the account:		
		Transaction Types	Anticipated No. of Transaction per year	Anticipated Amount per year
		Additional Investments		
	Divestments			

8.	Unincorporated Business/ Partnerships	Have you established that the business has been set up for the legitimate purpose stated? (E.g. A visit to the trading address or sighting annual accounts/tax returns to confirm true nature of the business activities)	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Section 1 – Indicate if the Applicant belongs to any of the following:

Level 1 - Low Risk Clients If the applicant(s) or authorized signatories fall into any of the following categories, check the appropriate box.

- The applicant is a limited liability company, partnership, sole-proprietorships, clubs & societies, non-governmental organisations (NGO), ministries, departments & agencies (MDAs), trusts but not associated with Politically Exposed Person (PEP).
- The applicant does not reside or operate in a high risk country.
- The applicant whose funding is sourced from normal business activities.

Section 2 – Indicate if the Applicant belongs to any of the following:

Level 2 – Medium Risk Clients If the applicant(s) or authorized signatories fall into any type of account that is not listed as either Level 1 and 3.

Section 3 – Indicate if the Applicant belongs to any of the following:

Special or High Risk Clients If the applicant(s) or authorized signatories fall into any of the following categories, check the appropriate box. If not applicable, kindly ignore Sections 3 & 4.

- The applicant is a Politically Exposed Person (PEP) or closely associated with a PEP whose position / relationship is.....

Section 4 – Complete this section if applicant satisfied one or more categories in Section 3

Applicant Source of Wealth Require details of applicant’s source of wealth and estimated net worth:
Kindly, indicate source of applicant’s net-worth:

- Business Salary
- Investments Inheritance/Gift
- Other income source _____

Estimated Net Worth : _____

Estimate annual income or turnover of application:

NOTE: For applicants completing Section 4, the joint approval of Managing Director and the Chief compliance officer of the market intermediary or their appointees is mandatory.

CAUTION: Any ‘No’ answer above must be backed by appropriate comments by the responsible staff. A superior officer must review this form for completeness and accuracy and approve the account opening. Information on this form must be updated as and when necessary. All evidence supporting approval for this form must be retained for examination by the competent authority.

Section 5 – This section must be completed for all applicants categorizing them into one of three (3) risk levels

To be completed By Account Opening Officer		To be reviewed by Branch Manager or other superior officer	
Name:	Designation:	Name:	Designation:
Comments:		Comments:	

Does potential client fall within Section 3 above category?

Yes No
(Tick as appropriate)

Signature _____ Date _____ Signature _____ Date: _____

CAUTION: Account Opening for Risk Applicant as identified in Section 3 must be approved jointly by the Managing Director / Chief Executive Officer and Chief Compliance Officer or by their designated officials as follows:

Name: _____ Name: _____

Designation: _____ Designation: _____

Date: _____ Date: _____

Signature: _____ Signature: _____

RT HON. DR. AL HAJI ALI KIRUNDA KIVEJINJA,
Chairperson Council of Ministers.