

GAZETTE NOTICE NO.

THE CAPITAL MARKETS ACT
(Cap. 485A)

GUIDELINES ON SHARE BUYBACKS FOR LISTED COMPANIES

IN EXERCISE of the powers under **Section 11(3) (d) of the Capital Markets Act, Cap 485A** Laws of Kenya, the Capital Markets Authority issues the Guidelines on Share Buybacks for Listed Companies as set out in the Schedule hereto.

SCHEDULE

1. Introduction and Application.

The **Companies Act, 2015** which introduced the concept of share buybacks provides for the procedure and rules on share buybacks. Therefore, companies intending to undertake share buybacks are obligated to fully comply with the provisions of the Companies Act.

Further to the provisions under the Companies Act and the Capital Markets Act, the Capital Markets Authority has developed these guidelines to provide guidance to listed companies intending to undertake share buybacks.

2. Power to undertake share buyback.

- 2.1 A listed company shall ensure its Articles of association (the company) have a provision empowering the company to undertake share buybacks.
- 2.2 The proposed share buyback must be authorised by shareholders in a general meeting.
- 2.3 Prior to a General Meeting that proposes to discuss a share buyback resolution, within reasonable time, the company shall provide shareholders with an approved circular detailing all terms and conditions of the proposed share buyback.
- 2.4 The proposed shareholder circular shall be submitted to the Authority for review and approval prior to its circulation pursuant to Regulation 63 of the Capital Markets (Licensing Requirements) (General Regulations), 2002.

3. Shareholder circular.

- 3.1 A listed company shall, in the shareholder circular, disclose all material information that the shareholders of the company and their professional advisers would

reasonably require or expect to be informed about in order to make an informed decision on the merits of accepting or rejecting the proposed share buyback transaction.

3.2 In addition, the shareholder circular shall contain the following information:

- a) Reasons for the buyback
- b) The number of shares to be bought back.
- c) The method of effecting the share buybacks. This could either be through open market repurchase programs executed through tender offers or over a period of time on or off-market repurchases that would inform the approval required from the shareholders as prescribed in the **Companies Act, 2015**.
- d) The treatment of the shares proposed to be bought back. The shares could either be held in treasury or cancelled. Where the company opts to hold the shares in treasury, appropriate disclosure should be made on the current and future treatment implication of the said treasury shares.
- e) The price per share of effecting the share buyback prescribing the maximum and the minimum price. In disclosing the price, detailed explanation should be provided including valuation reports supporting the prescribed price.
- f) The mode of financing the share buyback being either the proceeds from a fresh issue of shares or out of distributable profits of the company.
- g) Disclosure of whether consents from other relevant parties such as bondholders, regulators and creditors, among others, have been obtained.
- h) Declaration of solvency and liquidity by the directors of the company to undertake the share buyback. Such declaration should include a statement by the directors confirming that as at the date of the shareholder circular, the assets of the company are fairly valued and are equal or exceed the liabilities of the company and that the company will be able to pay its debts as they become due in ordinary course of business for a period of 12 months.
- i) Potential impact of effecting the proposed share buyback transaction on the shareholding structure of the company.
- j) Risk factors and assumptions of effecting the share buyback transaction.
- k) Any related party transaction or director's interest in the share buyback transaction.
- l) Impact of the share buyback on the company's financial position.
- m) Validity period for the buyback once approval is given.
- n) Any other relevant information regarding the proposed share buyback transaction.

4. Off-market purchase transactions.

In the event of an intended off-market purchase, the draft share buyback contract shall be submitted to the Authority accompanying the shareholders' circular for the Authority's approval, in line with the requirements of private transactions.

5. Publication of notice.

- 5.1 The company intending to undertake share buyback shall issue relevant public announcements subject to the Authority's approval to be published in at least one (1) newspaper of national circulation and made available on the company's website within one (1) day of the board's' resolution to undertake the share buyback.
- 5.2 The announcement shall contain material information on the share buyback including the following:
- a) The method of effecting the share buyback (on or off-market),
 - b) The minimum and maximum prices,
 - c) The treatment of shares after buyback and
 - d) The percentage of the share buyback relative to the issued share capital of the company and the transaction advisors.
- 5.3 The announcement shall further disclose that the company shall avail a circular to the shareholders seeking approval of the proposed share buyback transaction following its approval by the Authority.

6. On-market (Exchange) transactions.

- 6.1 For on-market (Exchange) transactions, the maximum share buyback price shall be 10% above the weighted price average of the share 10 days prior to the day of the Board resolution of share buyback.
- 6.2 The minimum price shall be the nominal price of the shares or the prevailing market price of the shares at the time the resolution was approved by the shareholders.

7. Minimum capital and free float requirement.

The share buyback shall not reduce or breach the minimum capital and free float requirement for continued listing of the company on the respective market segment under the Capital Markets(Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

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

- 8.1 If the share buyback relates to a class of shares, the share buyback shall not exceed 10% of the total issued shares of that class in a given financial year, provided that the

Authority may consider waiving this limit upon submission of an application by a company.

8.2 In the event a company opts to keep the shares bought back in treasury, the treasury shares shall not exceed 10% of the total issued shares of that class.

8.3 Where the company has treasury shares and proposes to re-issue them, the company shall seek an approval from the shareholders and the Authority pursuant to the **Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002** prior to re-issuing the said treasury shares including a re-issue to Employee Share Ownership Schemes.

9. Volume of shares to be purchased.

The volume of the shares purchased on any single day must not exceed 25% of the average daily trading volume for the four calendar weeks preceding the week of the purchase and must not be executed as to significantly adversely affect the liquidity of the shares in question. The buyback should not be effected during pre-open session of trading.

10. The Securities Exchange to make disclosure on share buybacks.

The Securities Exchange shall disclose on its website, the share buybacks undertaken by any listed company. The disclosure shall include information on the company, the number of shares that have been bought back, the price per share of the shares bought back and the percentage of the free float in the post-buyback era.

11. Conditions for undertaking, cancelling or suspending share buybacks

A company shall not effect share buyback transactions during the period of two (2) weeks prior to the publication of its half-yearly or annual financial statements; or after it has become aware of any material information which has not been made public, which if disclosed, could affect the price of the shares.

A buyback may be cancelled or otherwise suspended if material information is announced within 14 days prior to the buyback being conducted or if the company deems it fit, subject to that company doing so within reasonable time.

12. Reporting and disclosures

12.1 A company that undertakes a share buyback transaction shall avail to the Authority a report on the transaction undertaken and the treatment of the shares

acquired by the company. The reports shall include the price and volume of the shares bought back as well as any treasury shares sold.

12.2 A company that undertakes share buyback transactions shall disclose in its annual report any share buyback transactions undertaken in a given year and the treatment of the shares bought back.

13. Applicability of the Capital Markets (Take-overs and Mergers) Regulations, 2002

In the event a proposed share buyback breaches the limits that may trigger a takeover, the **Capital Markets (Take-overs and Mergers) Regulations, 2002**, shall apply.

14. Compliance with applicable laws and regulations

A company shall observe the Corporate Governance Requirements, listing obligations and be in compliance with all laws and regulations of Kenya during the share buyback process. In any case, companies undertaking share buyback shall ensure that no offence such as market abuse or insider dealing is propagated even as the company undertakes a share buyback.

DATED THE JUNE 2020

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