

**DIRECTIVE 2014/21/EAC
OF THE COUNCIL OF MINISTERS**

Of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON
EVALUATIVE AND ANALYTICAL
SERVICES**

PREAMBLE

The Council of Ministers of the East African Community

Having regard to the Treaty for the establishment of the East African Community and in particular **Articles 85 (d), 14 and 16;**

WHEREAS Article 31 of the Protocol on the Establishment of the East African Community Common Market provides that for proper functioning of the Common Market, the Partner States undertake 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;

WHEREAS Article 47 of the Protocol on the Establishment of the East African Community Common Market provides that the Partner States shall undertake to approximate their national laws and to harmonise their policies and systems for purposes of implementing this Protocol and that the Council shall issue directives for the purposes of implementing this Article.

HAS ISSUED THIS DIRECTIVE

ARTICLE 1 PRELIMINARY

Interpretation:

In this Directive, unless the context otherwise requires –

“Community” means East African Community established by Article 2 of the Treaty;

“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;

“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“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;

“Public Appearance” means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning a security.

“Public Media” means any media source available to the general public and includes a radio, television or print media.

“Regulated Person” means a person licensed, approved, or registered by the Competent Authority to carry on a regulated activity as defined in this Directive;

“Research Analyst” means a person or his associate who prepares and/or publishes research report or the substance of research report or who makes a recommendation or offers an opinion concerning public offer or provides research report or opinion or recommendation concerning securities that are listed or to be listed and are traded or to be traded in a stock exchange and includes:

- (i) an independent research analyst;
- (ii) a regulated person that employs any research analyst and issues research reports;
and
- (iii) research analysts giving recommendations in the public media such as television channels, newspapers, etc.

“Research Report” means any written (including electronic) communication that includes result of investment analysis of securities or research or opinion concerning participation in a public offer and provides information having reasonably sufficient base for investment decision and does not include the following communications:

- (i) general trends in the securities market;
- (ii) discussions on the broad-based indices;
- (iii) commentaries on economic, political or market conditions;
- (iv) periodic reports or other communications prepared for unit holders of Collective

Investment Schemes or Alternative Investment Funds or clients of Portfolio Managers and Investment Advisers.

- (v) internal communications that are not given to current or prospective clients; and
- (vi) communications that constitute offer documents or prospectus that are circulated under a specific regulation.

“Treaty” means the Treaty for the Establishment of the East African Community and any Annexes and Protocols thereto.

ARTICLE 2 OBJECTIVE

The main objective of this Directive is to:

1. Promote investor protection;
2. Minimize risks to users of analytical or evaluative services or to the integrity of the market;
3. Promote objectivity of research analysts views;
4. Enhance disclosure requirements of the various conflicts of interest by research analysts that may affect the objectivity of their report; and
5. Substantially reduce the opportunities for conflicts of interest through prescriptive measures by:
 - (i) strengthening the existing *Chinese walls* between research and business units in integrated financial services firms;
 - (ii) regulating analysts ability to own and trade securities of the firms that they cover;
 - (iii) modifying the incentive structure in integrated financial services firms that may encourage the issuance of bias research.

ARTICLE 3 PRINCIPLES

1. Evaluative or analytical services with respect to regulated activities shall be subject to oversight and regulation appropriate to the impact the activities have on the market or the degree to which the regulatory system relies on them.
2. Provide for mechanisms to ensure that analysts’ trading activities or financial interests do not prejudice their research findings and recommendations.
3. Provide for mechanisms to ensure that analysts’ research and recommendations are not prejudiced by the trading activities or financial interests or business relationships of the firms that employ them.
4. Ensure reporting lines for analysts and their compensation arrangements are structured to eliminate or severely limit actual and potential conflicts of interest.

5. Ensure that firms that employ analysts should establish written internal procedures or controls to identify and eliminate, manage or disclose actual and potential conflicts of interest on the part of analysts.
6. There should be mechanisms to manage or eliminate undue influence by issuers, institutional investors and other outside parties upon analysts.
7. There should be complete, timely, clear, concise, specific and prominent disclosures of actual and potential conflicts of interest.
8. Analysts should be held to high integrity standards.
9. Investor education should play an important role in managing analyst conflicts of interest.

ARTICLE 4 SCOPE

This Directive shall apply to all persons that provide evaluative and analytical services in the EAC securities markets.

ARTICLE 5 CONFLICT OF INTEREST AND DISCLOSURES

1. A person undertaking evaluative and analytic services shall establish, maintain written policies and control procedures governing the dealing and trading by any research analyst with a view of eliminating, avoiding, managing or disclosing actual or potential conflicts of interest arising from such dealings or trading.
2. The policies and procedures referred to under sub-Article 1 shall be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the Research Analyst or regulated persons or certain current or prospective clients.
3. The policies and procedures referred to in Sub-Article 1 shall prohibit pre- publication of research reports by other than the persons engaged in preparation of research report.

ARTICLE 6 LIMITATIONS ON DEALINGS BY RESEARCH ANALYSTS

1. Research Analyst or regulated persons shall not deal in or trade any securities that the research analyst recommends or follows within 30 days before and 5 days after the publication of a research report on the subject company or in a manner contrary to the recommendation.
2. Research Analyst or regulated persons shall not publish or recommend security of a subject company wherein the Research Analyst or regulated persons had dealt in or traded the concerned securities within previous 30 days.

3. Research Analyst or regulated persons shall not purchase or receive any securities before the issuer's initial public offering or further offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows. Provided that Research Analyst or regulated persons shall deal in or trade in such securities only in exceptional circumstances as specified in its policies and procedures.

ARTICLE 7 RESTRICTIONS ON RESEARCH ANALYST COMPENSATION

1. Research Analyst or regulated persons shall ensure that the compensation of the research analysts is neither determined nor based on any specific investment banking or broker or dealer transactions;
2. The compensation of a research analyst or regulated persons shall be reviewed, documented and approved annually by the board of directors, or if no board of directors, by a chief executive officer.
3. Research Analyst or regulated persons shall not be subject to the supervision or control of any employee of the investment banking department or broker or dealer, and no personnel engaged in investment banking or brokerage activities may have any influence or control over the compensatory evaluation of a research analyst.
4. Research Analyst or regulated persons shall not receive pay bonus, salary or other form of compensation that is linked to any specific investment banking transaction.
5. Research Analyst or regulated persons shall not directly or indirectly offer favorable research to a company or in respect of a security or public offer as consideration or inducement for the receipt of business or compensation.

ARTICLE 8 LIMITATIONS ON PUBLICATION OF RESEARCH REPORTS AND RESTRICTIONS ON PUBLIC APPEARANCES BY RESEARCH ANALYSTS

1. Research Analyst or regulated persons shall not submit a research report to the subject company before its publication, provided that some sections of such a research report may be submitted to the subject company before its publication for review as necessary only to verify the factual accuracy of information in those sections.
2. Research Analyst or regulated persons shall not issue research reports and shall not make public appearance regarding a subject company for which he acted as a investment banker, underwriter, lead manager, dealer in a initial public offering for a period of 50 days from the date of completion of such offering or for 10 days for a secondary offering.
3. Research Analyst or regulated persons shall not directly or indirectly solicit investment-banking business with prospective clients, or share any research reports they have prepared with the companies subject of the research report.

ARTICLE 9 CONTENT IN RESEARCH REPORTS

1. Research Analyst or regulated persons shall ensure facts in its research reports are based on accurate and reliable information and shall define the terms used in making recommendations, and these terms should be consistently used.
2. Research Analyst or regulated persons that employ a rating system must clearly define in each research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based.

ARTICLE 10 DISCLOSURE IN RESEARCH REPORTS

1. Research Analyst or regulated persons shall disclose in research report:
 - (i) the valuation methods used to determine the price target, if any, that has a reasonable basis and shall be accompanied by a disclosure concerning the risk that may impede achievement of the price target.
 - (ii) whether the research analysts or regulated persons are market makers in securities in respect of a subject company.
 - (iii) whether the research analyst's or regulated persons close relative has a financial interest in the debt or equity securities of the subject company, and the nature of such interest;
 - (iv) whether the research analyst or regulated persons or its employees serves as an officer of the subject company
 - (v) whether the research analyst or regulated person or any affiliate received compensation based upon the intermediary's other activities revenues in the previous 12 months;
 - (vi) whether the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the research report, was, a client of the regulated persons;
 - (vii) whether the research analyst or regulated person has managed or co-managed a public offering or any takeover, buyback or delisting offer of securities for the subject company in the past 12 months and/or received compensation for investment banking or broker or dealer services from the subject company in the past 12 months;
 - (viii) whether the research analyst or regulated person expects to receive or intends to seek compensation for investment banking or brokerage services from the subject company in the next three months;
 - (ix) whether the research analyst or regulated person has any financial interest in the debt or equity securities of the subject Company and such interests aggregate to an amount equal to or more than 1% of the equity securities of the

subject Company;

- (x) whether any other material conflict of interest of the research analyst or regulated person that the research analyst or an associated person of the regulated person with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of a research report.
2. All the disclosures under this Directive shall be made by a research analyst or regulated person in public appearance.
 3. Research Analyst or regulated person shall not be required to make a disclosure to the extent such disclosure would reveal material non-public information regarding specific potential investment banking or brokerage transactions of the subject company.
 4. Research Analyst or regulated person shall not be held responsible, if relevant disclosures have been made and their report is published or reproduced in whole or in part in the public media without the relevant disclosures.

ARTICLE 11 RECOMMENDATIONS ON PUBLIC MEDIA

1. All the provisions of Article 6-10 shall apply *mutatis mutandis* to Research Analyst, regulated person or their employees or directors who makes commentaries or recommendations concerning securities or public offers through public media:
 - (i) When they provide analyses or comments in public media in their personal capacity, they shall disclose their name, their registration status if any, and the details of financial interest if any, at the time of provision of analyses or comments.
 - (ii) When they respond in personal capacity to queries from audiences and journalists;
 - (iii) When they communicate the research report or substance of the research report through the public media.

ARTICLE 12 DISTRIBUTION OF RESEARCH REPORTS

1. A Research Analyst or regulated person shall not selectively distributed a research report to internal trading personnel or a particular client or class of clients in advance of other clients that are entitled to receive the research report.
2. A Research Analyst or regulated person distributing any third-party research report shall establish written policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.
3. Research Analyst's or regulated person's obligation to review a third-party research report shall extend to any untrue statement of material fact or any false or

misleading information that:

- (i) should be known from reading the report; or
 - (ii) is known based on information otherwise possessed by the research analyst.
4. A Research Analyst or regulated person which distributes any third party research report, shall accompany the third-party research report it distributes, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third party research provider or the subject company of a third-party research report.
 5. A regulated person shall not be required to follow provisions of sub-article (1) to (3) and not required to review a third-party research report if such research report is an independent third-party research report.

ARTICLE 13 TERMINATION OF COVERAGE

1. Research Analyst or a regulated person shall promptly notify its clients if it intends to terminate coverage of a subject company.
2. The notice under shall be accompanied by a final research report, comparable in scope and details to prior research reports, and include a final recommendation or rating.
3. If impracticable to provide a final research report, recommendation or rating, Research Analyst or regulated person shall disclose to its clients, its reason for terminating coverage.

ARTICLE 14 GENERAL OBLIGATIONS

1. Research Analyst or regulated persons shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise on and suitably address the same.
2. Research Analyst or regulated persons shall maintain an arms-length relationship between its research activity and other activities that may impair its neutrality in respect of activity as Research Analyst or regulated person.
3. Research Analyst or regulated person shall abide by Code of Conduct as specified in First Schedule.
4. Research Analyst or regulated person shall furnish to the Competent Authority information and reports as may be specified by the Competent Authority from time to time.
5. It shall be the responsibility of the Research Analyst or regulated person to ensure that its employees preparing research reports are qualified.

ARTICLE 15 MAINTAINANCE OF RECORDS

1. Research Analyst or regulated persons shall maintain the following records -
 - (i) Research Report prepared;
 - (ii) Research recommendation provided, whether written or oral;
 - (iii) Rationale for arriving at research recommendation;
 - (iv) Record of Public appearances.

2. All records shall be maintained either in physical or electronic form and preserved for a minimum period of ten years, provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

ARTICLE 16 INSPECTION

1. A Competent Authority may *on* its own volition or upon receipt of information or complaint undertake inspection of the books of accounts, records and documents relating to Research Analyst or regulated person for any of the following reasons -
 - (i) to inspect into complaints received from clients or any other person, on any matter having a bearing on the activities of the Research Analyst or regulated person;
 - (ii) to ascertain whether the provisions of this Directive are being complied with by the Research Analyst or regulated person;
 - (iii) to inspect into the affairs of Research Analyst or regulated person, in the interest of the securities market or in the interest of investors.

ARTICLE 17 SANCTIONS

1. Research Analyst or regulated person shall be considered to have contravened the provisions of this Directive if he/she -
 - (i) fails to furnish any information relating to its activity as a research analyst as required by the Competent Authority;
 - (ii) furnishes to the Competent Authority information which is false or misleading in any material particular;
 - (iii) does not submit periodic returns or reports as required by the Competent Authority;
 - (iv) does not co-operate in any enquiry, inspection or investigation conducted by the Competent Authority;
 - (v) fails to resolve the complaints of clients or fails to give a satisfactory reply to the Competent Authority in this behalf, shall be dealt with in the manner provided under this Directive.

2. The Competent Authority may after consideration of the inspection report and after giving reasonable opportunity of hearing to the Research Analyst or regulated person or its authorized representatives, without prejudice to any other action under the Directive, issue such directions as it deems fit in the interest of securities market or the investors including –
 - (i) requiring Research Analyst or regulated person not to provide research recommendation for a particular period;
 - (ii) requiring the Research Analyst or regulated person to refund any money collected as fees, charges or commissions or otherwise to the concerned clients along with the requisite interest.
 - (iii) prohibiting the Research Analyst or regulated person from operating in the capital market or accessing the capital market for a specified period.

ARTICLE 18 MISCELLANEOUS

In order to remove any difficulties in the application or interpretation of this Directive, the Competent Authority may issue clarifications and guidelines.

ARTICLE 19 COOPERATION

Competent Authorities 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.

ARTICLE 20 AMENDMENTS

This Directive may be amended by the Council of Ministers.

Any proposals for amendment may be submitted in writing by the Partner States to the Secretary General of the East African Community.

ARTICLE 21 IMPLEMENTATION

Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of the Council of Ministers' approval. They shall forthwith inform the Council of Ministers thereof.

When Partner States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods for making such reference shall be laid down by Partner States.

**ARTICLE 22
ENTRY INTO FORCE**

This Directive shall enter into force upon approval by the Council.

**ARTICLE 23
ADDRESSEES**

*This Directive is addressed to the Partner States.
Done in Arusha, Tanzania*

FIRST SCHEDULE CODE OF CONDUCT FOR RESEARCH ANALYST

1. Honesty and fairness

Research Analyst shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.

2. Diligence

Research Analyst shall act with due skill, care and diligence in the best interests of its clients and shall ensure that the research report is prepared after thorough analysis.

3. Conflicts of Interest

Research Analyst or regulated person shall avoid, manage conflict and make disclosure of conflicts or suitably address the same.

4. Insider trading or Front running

The Research Analyst or regulated person or employees of regulated person shall not engage in insider trading or front running or front running of its own research report.

5. Confidentiality

Research Analyst or regulated person or its employees shall maintain confidentiality of report till the report is made public.

6. Professional Standard

The Research Analyst or the staff of the regulated person engaged in research analysis shall observe high professional standard while preparing research report.

7. Compliance

Research Analyst and regulated person's employees shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

8. Responsibility of senior management

The senior management of a research analyst regulated person shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the research analyst or regulated person.