

**DIRECTIVE 2014/22/EAC
OF THE COUNCIL OF MINISTERS**

Of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON REGULATED
ACTIVITIES**

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 –

“Associate” in relation to –

(a) an individual, means –

that individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

(i) any company of which that individual is a director;

any company in which that individual, or any of the persons mentioned in subparagraph (i), has control of 20% or more of the voting power in the company, whether such control is exercised individually or jointly;

(ii) any employee of that individual; or

a company, means another company in which the first-mentioned company has control of not less than 20% of the voting power in that company, and a reference in this Directive to an associated person or associated company shall be construed accordingly;

“Client” means a person on whose behalf a regulated activity is carried on;

“Client assets” means money received or retained by, or any other property (including securities) deposited with, a person undertaking a regulated activity in the course of its business for which it is liable to account to its client, and any money or other property accruing therefrom;

“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;

“Fund Manager” means by way of business, that person –

(i) 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;

(ii) in relation to –

(a) a Collective Investment Scheme which is a unit trust, or an investment company which is not self-managed, acts as the management company

- appointed by the management contract;
- (b) an investment company which is self-managed, acts as that company; and
- (c) acts as a manager of a venture capital company.

“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;

“Regulated Activity” means a securities activity specified in Article 5 of this Directive;

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

“Representative” means a person, in the direct employment of, or acting for, or by arrangement with, a regulated person, who performs for that regulated person any regulated activity for which the regulated person is licensed, approved or registered;

“Securities” means:–

- (i) Shares in the share capital of a company (“shares”);
- (ii) Any instrument creating or acknowledging indebtedness which is issued or proposed to be issued (“debt securities”);
- (iii) Loan stock, bonds and other instruments creating or acknowledging indebtedness by or on behalf of Government, Central Bank, local authority or public authority (“Government and public entities”);
- (iv) Rights, options, or interests, whether described as units or otherwise, in, or in respect of such shares, debt securities and Government and public securities;
- (v) Any right, whether conferred by warrant or otherwise, to subscribe for shares or debt securities (“warrants”);
- (vi) Any option to acquire or dispose of any other security;
- (vii) Futures in respect of securities or other assets or property;
- (viii) Securities and collective investment scheme products structured in conformity with Islamic principles for investments;
- (ix) Units in a collective investment scheme, including shares in an investment company, or other similar entities whether established in an EAC Partner State or not;
- (x) Interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (xi) The rights under any depositary receipt in respect of shares, debt securities and warrants (“depositary receipts”);
- (xii) Asset backed securities; and
- (xiii) Any other instrument prescribed by a competent authority to be securities for the purposes of this Directive;

but does not include –

- (i) Securities of a private company (other than asset backed securities);
- (ii) Bills of exchange;
- (iii) Promissory notes (other than asset backed securities);
- (iv) Certificates of deposit issued by a bank; and
- (v) Any other instrument prescribed by a competent authority not to be securities for the purposes of this Directive.

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

ARTICLE 2 OBJECTIVE

The main objectives of this Directive are to:

1. Provide Competent Authorities with the framework for reviewing the regulatory perimeter;
2. Provide regulatory activities to be undertaken by regulated persons in the EAC securities markets;
3. Assess and address regulatory arbitrage between unregulated and regulated activities in the EAC securities markets;
4. Identify and address gaps and duplication between jurisdictions of different regulatory authorities;
5. Protect the integrity of the securities market against all forms of abuse, fraudulent and unfair practices;
6. Ensure fair, efficient and transparent securities markets and reduce systemic risks;
7. Ensure provision of licensing requirements for markets intermediaries operating in more than one Partner States; and
8. Ensure protection of investors.

ARTICLE 3 PRINCIPLES

In exercising its implementing powers in accordance with this Directive Partner States shall abide by the following principles:

- (i) Implement the licensing requirements in the Council Directive on Licensing of Market Intermediaries.
- (ii) Ensure that the key personnel of the regulated persons meet the minimum prescribed qualifications in the home Partner State.

ARTICLE 4 SCOPE

This directive shall apply to all regulated activities or any other transactions incidental to regulated activities in the EAC Securities markets.

ARTICLE 5 REGULATED ACTIVITIES

1. For the purposes of this Directive, a regulated activity shall include –
 - (a) Dealing in securities;
 - (b) Dealing in Derivative Contracts;
 - (c) Investment Advisory in securities;
 - (d) Investment/Fund management;
 - (e) Advising on corporate finance;
 - (f) Share registrar services;
 - (g) Trustee services;
 - (h) Custodial services;
 - (i) Underwriting services;
 - (j) Credit rating services; or
 - (k) Any other activity prescribed by a Competent Authority to constitute a regulated activity for the purposes of this Directive.

ARTICLE 6 ENGAGING IN REGULATED ACTIVITIES

1. A person undertaking a regulated activity shall be fit and proper as prescribed in Article 7 of this Directive.
2. A person shall not carry on a regulated activity, or purport to do so, unless that person is a company licensed, approved or registered by a Competent Authority;
3. A person shall not perform any regulated function in relation to a regulated activity, or purport to do so, unless he is authorized as a representative of a regulated person;
4. A person licensed to undertake a regulated activity shall be exclusively engaged in that regulated activity except only in respect of such other matters as are ancillary or incidental to the regulated activity or as otherwise may be expressly permitted by the Competent Authority;
5. A person licensed in respect of regulated activity in any Partner State may engage in that regulated activity in any other Partner State, subject to such terms and conditions where no licensing framework for that activity exists in that Partner State.

ARTICLE 7

FIT AND PROPER TEST FOR REGULATED PERSONS

- (1) For the purposes of this Directive in considering whether a person is a fit and proper person the Competent Authority shall, in addition to any other matter that it may consider relevant, have regard to –
 - (a) the financial status or solvency;
 - (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is granted, the person will perform;
 - (c) the status of any other license, approval or registration granted to the person by any financial sector regulator;
 - (d) the ability to carry on the regulated activity competently, honestly and fairly; and the reputation, character, financial integrity and reliability, of –
 - (i) where the person is an individual, the individual himself; or
 - (ii) where the person is a company, the company, its directors, chief executive, management and all other key personnel, and any substantial shareholder of the company.

- (2) Without limiting the generality of sub-article (1), the Competent Authority may, in considering whether a person is a fit and proper person –
 - (a) have regard to whether the person –
 - (i) has contravened the provision of any law designed for the protection of members of the public against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in transacting with marketable securities;
 - (ii) was a director of a regulated person that has been liquidated or in under liquidation or statutory management;
 - (iii) has taken part in any business practice that, in the opinion of the Authority, was fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business; and
 - (iv) has taken part or been associated with any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment.

 - (b) take into account any information in the possession of the Competent Authority whether provided by the applicant or not, relating to –
 - (i) any person who is to be employed by, associated with, or who will be acting for or on behalf of, the applicant for the purposes of a regulated activity;
 - (ii) where the applicant is a company in a group of companies –
 - (A) any other company in the same group of companies; or
 - (B) any substantial shareholder or officer of the company or

- any company referred to in sub-subparagraph (A);
- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

For the purposes of sub-article (2)(b)(ii)(A), “group of companies” means any two or more companies one of which is the holding company of the other or others (as the case may be).

ARTICLE 8 DEALING IN SECURITIES

“Dealing in securities” means, whether as principal or agent–

- (a) Acquiring, disposing of, subscribing for or underwriting securities; or
- (b) Making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into–
 - (i) Any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
 - (ii) Any agreement, other than a derivative contract, the purpose or intended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities.

ARTICLE 9 DEALING IN DERIVATIVES CONTRACTS

“Dealing in derivatives” means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person, or soliciting or accepting any order for, or otherwise–

- a) Entering into, or taking an assignment of the derivative, whether or not on another person’s behalf;
- b) Taking or causing to be taken, action that closes out the derivative, whether or not on another person’s behalf;
- c) In relation to an option–
 - (i) exercising any right under the option; or
 - (ii) allowing any right under the option to lapse, whether or not on another person’s behalf; or
- d) Initiating, originating, or issuing over-the-counter derivatives.

ARTICLE 10 INVESTMENT ADVISORY IN SECURITIES

Means carrying on the business of:

- (i) advising others on the terms and conditions on which securities may be bought, sold, exchanged or subscribed for;
- (ii) Issuing analysis or reports on specific securities that may be bought, sold, exchanged or subscribed for.

ARTICLE 11 INVESTMENT/FUND MANAGEMENT

“Investment/Fund Management” means by way of business a contractual undertaking with a client whether on a discretionary authority granted by the client or otherwise to –

- i) Manage a portfolio of securities for the purpose of investment;
- ii) A collective investment scheme which is a unit trust, or an investment company which is not self-managed, acts as the management company appointed by the management contract;
- iii) An investment company which is self-managed, acts as that company; and/or
- iv) Acts as a manager of a venture capital company

ARTICLE 12 CORPORATE FINANCE ADVISORY SERVICES/INVESTMENT BANKING

Corporate Finance advisory services/investment banking means by way of business, a contractual undertaking with a client 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.

ARTICLE 13 SHARE REGISTRAR SERVICES

In relation to publicly offered or listed securities, offering by way of business of services including:

- (a) Receiving and recording all applications in respect of subscriptions for an offer of securities;
- (b) Implementing the allotments of an offer of securities;
- (c) Maintenance of securities holders’ register;
- (d) Deposit and transfer of securities;
- (e) Split and/or consolidation securities;
- (f) Dividend entitlements and payments to security holders;
- (g) Bonus shares issuance to security holders; and
- (h) Custody of undelivered certificates and dividend warrants, etc.

ARTICLE 14 TRUSTEE SERVICES

“Trustee services” means by way of business a legal arrangement through which the legal title to securities is held or securities are administered for the benefit of third parties in financial transactions including Collective Investment Schemes, securitisation or any other fiduciary relationship in securities markets.

ARTICLE 15 CUSTODIAL SERVICES

“Custodial services” means by way of business –

- (a) The safekeeping of assets (portfolio securities, cash and other properties);
- (b) Transfer, exchange, or delivery of securities on instructions from fund manager or client;
- (c) Exercise of subscription, purchase or other similar rights represented by securities;
- (d) Delivery of information on securities from issuers for purposes of corporate monitoring;
- (e) Securities lending; and
- (f) Maintenance of segregated accounts of client assets, etc.

ARTICLE 16 UNDERWRITING SERVICES

“Underwriting services” means an agreement with or without conditions to subscribe to the securities of a body corporate where the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them.

ARTICLE 17 CREDIT RATING SERVICES

“Credit Rating services” means the business of offering an objective and independent assessment of the general creditworthiness of issuers or potential issuers of debt instruments or with respect to particular debt or financial obligation and their ability to meet obligations in a timely manner over the life of the financial instrument based on relevant risk factors.

ARTICLE 18 AUTHORITY MAY ISSUE DIRECTIONS TO REGULATED PERSONS

1. The Competent Authority may by notice in writing give a person undertaking a regulated activity direction under this Directive where it appears to the Competent Authority that –
 - (a) it is desirable for the protection of investors;
 - (b) the person is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under this Directive or,
 - (c) the person has engaged in any activity contrary to the interests of investors.
2. A direction under this Directive may contain all or any of the following –
 - (a) require a person to cease and desist from the contravention or activity;

- (b) prohibit a person from entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
 - (c) prohibit a person from soliciting business from any specified person or a person of a class or description so specified or from persons other than persons of such a class or description;
 - (d) prohibit a person from carrying on business in a specified manner or otherwise than in a specified manner; and
 - (e) require a person to comply with such other matter as the Competent Authority considers necessary for the protection of investors, and the person shall comply with such direction.
3. A direction under this section shall be for such specified period as the Competent Authority may consider necessary (and which period may be extended as considered necessary by the Competent Authority).
 4. The Competent Authority may, by written notice either of its own motion or on the application of the person on whom a prohibition or requirement has been imposed under this Article, rescind or vary the prohibition or requirement if it appears to the Competent Authority that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.
 5. Where the Competent Authority proposes to give a direction under subsection (1), or refuses to vary or rescind the direction under sub-article (4), the Competent Authority shall give reasons for its decision and shall give the person concerned a right to be heard before a final decision is made.
 6. Sub-article (5) shall not apply where the Competent Authority determines that it is necessary or expedient to meet its objectives that the direction should take effect without delay, in which case, the reasons for the direction shall be supplied and the opportunity to be heard shall be provided as soon as is reasonably practical after the direction has taken effect.

ARTICLE 19

REQUEST FOR INFORMATION BY THE COMPETENT AUTHORITY

The Competent Authority may, by notice in writing, require a person to furnish it with such information, either specifically or periodically from time to specified time, as it may require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.

ARTICLE 20 SUPERVISION OF REGULATED ACTIVITIES

1. The Competent Authority shall supervise all persons providing regulated activities.
2. In the exercise of its powers the Competent Authority may –
 - (a) access the premises and records of the regulated person;
 - (b) require the regulated person, or any other person under the control of the regulated person to produce any record or document;
 - (c) make inquiries on information relating to any record or document, referred to in sub-article (2); and
 - (d) inspect and make copies, or take extracts from, and where necessary take possession of, such documents.

ARTICLE 21 INVESTIGATION

Where the Competent Authority has reasonable cause to believe, either on its own motion or as a result of a complaint received, that –

- (a) an offence has been committed under this Directive;
- (b) a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with a regulated activity; or
- (c) the manner in which a person has engaged or is engaging in a regulated activity is not in the interest of the client or of investors more generally, the Competent Authority may commence an investigation on any of the matters referred to in paragraphs (a), (b) or (c).

ARTICLE 22 RESTRICTION OF BUSINESS

The Competent Authority may by notice in writing prohibit a person from doing any one or more of the following –

- (a) entering into transactions considered to be regulated activities under this Directive; or
- (b) soliciting business in relation to regulated activities.

ARTICLE 23 VARIATION OF REQUIREMENT

1. The Competent Authority may, its own motion or on the application of a person on whom a prohibition or requirement has been imposed under this Directive, rescind or vary the prohibition or requirement if it appears to the Competent Authority that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

2. The power to impose, rescind or vary a prohibition or requirement under this Part shall be exercisable by written notice served by the Competent Authority on a person undertaking a regulated activity and any such notice shall take effect on such date as is specified in it.

ARTICLE 24 REMEDIAL MEASURES AND SANCTIONS

A person undertaking a regulated activity that contravenes any provision of this Directive commits an offence that may lead to sanctions or penalties prescribed by national laws of the Partner State.

ARTICLE 25 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 26 AMENDMENTS

1. This Directive may be amended by the Council of Ministers.
2. Any proposals for amendment may be submitted in writing by the Partner States to the Secretary General of the East African Community.

ARTICLE 27 IMPLEMENTATION

1. 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.
2. 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 28 ENTRY INTO FORCE

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

ARTICLE 29 ADDRESSEES

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