

**DIRECTIVE 2014/19/EAC
OF THE COUNCIL OF MINISTERS**

Of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON THE
COMPETENT AUTHORITIES**

PREAMBLE

The Council of Ministers of the East African Community

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

Having regard to the recommendations of the Sectoral Council on Finance and Economic Affairs;

WHEREAS Article 31 of the Common Market Protocol provides that for proper functioning of the Common Market the Partner States undertake to co-ordinate and harmonize their financial sector policies and regulatory framework 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 Common Market Protocol provides that the Partner States shall undertake to approximate their national laws and to harmonize 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 ADOPTED THIS DIRECTIVE

ARTICLE 1 INTERPRETATION

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

“Independent director” has the meaning assigned to it under EAC Council Directive on Corporate governance code for listed companies;

“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;

“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.

ARTICLE 2 PRINCIPLES

In implementing this Directive Partner States shall ensure that Competent Authorities:

1. Are operationally independent and accountable in the exercise of its functions and powers.
2. Have clear and objectively stated responsibilities
3. Have adequate powers, proper resources and the capacity to perform their functions and exercise their powers.
4. Adopt clear and consistent regulatory processes.
5. Observe the highest professional standards, including appropriate standards of confidentiality.
6. Contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate.
7. Contribute to a process to review the perimeter of regulation regularly.
8. Ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.
9. Have comprehensive inspection, investigation and surveillance powers
10. Comprehensive enforcement powers
11. Ensure an effective and credible use of information, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
12. Authority to share both public and non-public information with domestic and foreign counterparts.

ARTICLE 3 SCOPE

This Directive shall apply to all Competent Authorities mandated to regulate the securities markets in the EAC.

ARTICLE 4 OBJECTIVES

The objectives of the directive include;

- a) To promote convergence and mutual recognition among securities regulators in the EAC region;
- b) To ensure that the legal and regulatory frameworks established and implemented by the EAC Securities Regulators provide for the following;
 - i. Market Confidence
 - ii. Public awareness
 - iii. Protection of investors
 - iv. Reduction of financial crime
- c) To ensure that Competent Authorities in the EAC facilitate innovation in the EAC Securities Market
- d) To ensure that the Competent Authorities in the EAC facilitate the deepening of the securities market.

ARTICLE 5 REGULATORY OBJECTIVES AND FUNCTIONS

- (1) The responsibilities of the Competent Authorities shall be clearly and objectively set out in the laws establishing the Competent Authorities and other laws regulating the Securities Markets in the Partner state.
- (2) The securities Legislation shall be designed to ensure that any division of responsibility among Competent Authorities addresses gaps or inequities. Where there is a division of regulatory responsibilities, substantially the same type of conduct generally should not be subjected to inconsistent regulatory requirements.
- (3) Where there is shared responsibility on securities markets regulation between various authorities, there should be effective cooperation among responsible authorities, through appropriate channels.

ARTICLE 6 INDEPENDENCE

- (1) The Competent Authority shall be operationally independent from interference in the exercise of its functions and powers.
- (2) Consultation with or approval by government or other authority shall not include decision making on day-to-day technical matters of the Competent Authorities.
- (3) Where particular matters of regulatory policy require consultation with, or even approval by, government or other authority, the circumstances in which such consultation or approval is required or permitted should be clear and the process of consultation and criteria for action sufficiently transparent or subject to review to safeguard its integrity.
- (4) The Competent Authority shall have a stable source of funding sufficient to exercise its powers and responsibilities.
- (5) There shall be adequate legal protection for Competent Authorities and their staff acting in the bona fide discharge of their functions and powers.

ARTICLE 7 ACCOUNTABILITY

- (1) The Competent Authority shall be publicly accountable in the use of its powers and resources to ensure that it maintains its integrity and credibility.
- (2) There shall be a dispute settlement mechanism to review the final decisions of the Competent Authorities.
- (3) Where accountability is through the government or some other external agency, the confidential and commercially sensitive nature of information in the possession of the Competent Authority must be respected. Safeguards shall be put in place to protect such information from inappropriate use or disclosure.

ARTICLE 8 POWERS OF COMPETENT AUTHORITIES

The Competent Authority shall have powers of licensing, supervision, inspection, investigation and enforcement.

ARTICLE 9
CAPACITY OF A COMPETENT AUTHORITY TO EXERCISE ITS FUNCTIONS

- (1) The Competent Authority shall have adequate funding to exercise its powers and responsibilities.
- (2) The level of resources shall recognize the difficulty of attracting and retaining experienced staff.
- (3) The Competent Authority shall ensure that its staff receives adequate and ongoing training.

ARTICLE 10
CLEAR AND CONSISTENT REGULATORY PROCESSES

- (1) Competent Authorities shall have clear, consistent, transparent procedures and processes as part of fundamental fairness and of a framework for developing regulatory decisions and for undertaking regulatory actions that assures accountability.
- (2) The Transparency policies shall balance the rights of individuals to confidentiality, and Competent Authorities ' enforcement and surveillance needs, with the objective of fair, equitable and open regulatory processes.
- (3) In the formulation of policy and legal framework, subject to enforcement and surveillance concerns, the Competent Authority shall:
 - a) Have a process for consultation with the public, including those who may be affected by the policy or legal framework.
 - b) Publicly disclose its policies and legal framework in important operational areas.
 - c) Have regard to the cost of compliance with regulation and policies.

ARTICLE 11
TRANSPARENCY AND CONFIDENTIALITY

Competent Authorities shall ensure that the transparency practices, such as publication of reports on the outcome of investigations or inquiries, where permitted, shall be consistent with the rights of an individual to a fair hearing and the protection of personal data, factors that will often preclude publicity when a matter is still the subject of investigation.

ARTICLE 12 INVESTOR EDUCATION

Competent Authorities shall play an active role in the education of investors and other market participants as per the EAC Council Directive on Investor Education

ARTICLE 13 INTEGRITY AND CONFIDENTIALITY BY THE STAFF OF THE COMPETENT AUTHORITIES

- (1) The staff of the Competent Authority shall observe the highest professional and ethical standards and be given clear guidance on matters of conduct including:
 - a) The avoidance of conflicts of interest (including the conditions under which staff may trade in securities).
 - b) The appropriate use of information obtained in the course of the exercise of powers and the discharge of duties.
 - c) The proper observance of confidentiality and secrecy provisions and the protection of personal data.
 - d) The observance of procedural fairness.
- (2) If the staff of the Competent Authority fails to meet the standards of professional and ethical integrity and confidentiality, they shall be subject to sanctions.

ARTICLE 14 EFFECTIVE COMPLIANCE PROGRAM

- (1) The Competent Authority shall have the power to require the provision of information in the ordinary course of business, in response to an inquiry or as part of a reporting cycle, or to carry out inspections of licensed market intermediaries' business operations whenever it believes it is necessary to ensure compliance with relevant standards.
- (2) The Competent Authority shall be able to require the provision of all information from all regulated entities reasonably required to ensure compliance with relevant standards, including books, documents, communications, and statements.
- (3) Where the Competent Authorities' enforcement responsibilities are delegated to a Self-Regulatory Organization (SRO) or a third party, these parties shall be subject to disclosure

and confidentiality requirements that are as stringent as those applicable to the Competent Authorities.

ARTICLE 15 INVESTIGATIVE AND SURVEILLANCE POWERS

- (1) The Investigative and Surveillance powers of the Competent Authorities shall ensure an effective and credible enforcement system. The Competent Authority shall ensure that it has sufficient powers and mechanisms to;
 - (a) Detect suspected breaches of the law in an effective and timely manner.
 - (b) Gather the relevant information necessary for investigating such potential breaches.
 - (c) Be able to use such information to take action where a breach of the law is identified.
- (2) Competent Authorities shall have a compliance system in place for the licensed market intermediaries and this will be aimed at detecting and deterring securities law violations.

ARTICLE 16 ENFORCEMENT POWERS

- (1) The Competent Authorities shall have comprehensive investigative and enforcement powers including the power:
 - a) to seek orders or to take action to enforce regulatory, administrative or investigative powers;
 - b) to impose or seek appropriate sanctions; and
 - c) to initiate or refer matters to the criminal authorities.
- (2) The Competent Authority shall have powers to obtain data, information, documents, books and records and statements or testimony from any person involved in relevant conduct or who may have information relevant to a regulatory or enforcement inquiry/investigation.
- (3) The enforcement powers of the Competent Authorities shall not compromise private person's right to seek their own remedies including compensation, damages or specific performance of an obligation.

- (4) Where enforcement or other corrective action requires the action of more than one Competent Authority, prompt cooperation, including information sharing between them, shall be possible for investigative and enforcement purposes.

ARTICLE 17

SHARING PUBLIC AND NON PUBLIC INFORMATION

- (1) The Competent Authority shall have power to share public and non-public information within its files, or available to it through inspection, without other external process.
- (2) When sharing non-public information, the Competent Authority shall take care to ensure that uses of such information are consistent with the purpose for which it is shared and to preserve its confidentiality subject to such uses.
- (3) A Competent Authority shall be able to share both public and non-public information with other domestic authorities.
- (4) A regulator shall be able to share public and non-public information with its foreign counterparts.
- (5) The domestic securities laws of the Partner State shall not impede international cooperation through sharing of information for regulatory, surveillance, technical assistance, or enforcement purposes.
- (6) The Competent Authorities shall have Information sharing mechanisms, whether formal or informal, and shall have several characteristics:
 - a) Identification of the circumstances under which assistance may be sought.
 - b) Identification of the types of information and assistance that can be provided.
 - c) Safeguards of the confidentiality of information transmitted.
 - d) A description of the permitted uses of the information.
- (7) The design of information-sharing mechanisms shall take into account the following factors:
 - a) The market authority or regulatory Authority which has access to and is able to provide the information or assistance.
 - b) How such access can be obtained under applicable law.
 - c) Confidentiality and use restrictions under applicable law.
 - d) The form and timing of the assistance or information sharing.
 - e) The applicability of other arrangements, including MOUs, between such authorities for sharing investigative and financial information.

- (8) Where assistance to another Competent Authority is provided through the provision of confidential information gathered by the regulator in the exercise of its functions or powers, particular care shall be taken to ensure that the information is provided subject to conditions which, to the extent consistent with the purpose of its release, preserve the confidentiality of that information.

ARTICLE 18 ASSISTANCE TO FOREIGN REGULATORS

- (1) Competent Authority shall provide information or other assistance to a foreign securities regulator, with whom the competent authority has entered into an information sharing arrangement.
- (2) A domestic Competent Authority shall provide assistance to foreign securities regulators who need to make inquiries under their competence, with respect to securities and derivatives matters, including brokerage records and client identification information, regardless of whether the domestic Competent Authority has an independent interest in the matter.
- (3) Assistance, including compulsory assistance, in obtaining records shall be provided to foreign securities regulators in securing compliance with securities and derivatives laws.
- (4) Competent Authorities shall provide assistance, including obtaining court orders, to the full extent of their powers.
- (5) Competent Authorities shall provide information on financial conglomerates subject to their supervision.
- (6) Competent Authorities shall provide assistance not only for use in investigations and enforcement matters, but also for other types of inquiries, such as part of a compliance program for the purposes of preventing illicit activities.

ARTICLE 19 CORPORATE GOVERNANCE

The EAC Competent Authorities shall adopt generally accepted principles of Corporate Governance.

ARTICLE 20 REGIONAL COOPERATION

- (1) The Competent Authorities shall make arrangements to consult with the different Partner States' Competent Authorities on matters affecting the Securities market in the region.
- (2) Competent Authorities in all Partner States shall cooperate with each other at all times for the purpose of establishing and sustaining an efficient regulatory system.

ARTICLE 21 SYSTEMIC RISK

The Competent Authorities shall ensure that they have systems in place to monitor, mitigate and manage systemic risk in the securities market and the financial sector.

ARTICLE 22 REGULATORY FRAMEWORK

- (1) The Competent Authorities shall make appropriate policies and laws for their respective securities markets and review them regularly.
- (2) The Competent Authorities shall ensure that their respective national policies and laws relating to securities comply with the EAC Council Directives on Securities Market.

ARTICLE 23 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 24 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 25 ENTRY INTO FORCE

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

ARTICLE 26 ADDRESSEES

This Directive is addressed to the Partner States.

Done in Arusha, Tanzania