
**DIRECTIVE 2014/10/EAC
OF THE COUNCIL OF MINISTERS**

of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON SECURITIES
EXCHANGES**

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 Common Market Protocol provides that for proper functioning of the Common Market, the Partner States undertake to co-ordinate and harmonise their financial sector policies and Competent Authority 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 Common Market Protocol 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 INTERPRETATION

“Capital Markets Infrastructure” means an infrastructure that links all the Partner States trading platforms within the Community.

“Capital Markets Infrastructure Rulebook” means a set of rules that govern the operationalization of the capital markets infrastructure.

“Chief Executive” means the Chief Executive Officer of an approved exchange;

“Central Securities Depository” means a company within any Partner State approved by a Competent Authority to establish and operate a system for the central handling of securities –

- (a) whereby all such securities are immobilized or dematerialized and dealings in respect of those securities are effected by means of entries in securities accounts without the physical necessity of certificates; or
- (b) which permits or facilitates the settlement or registration of securities transactions or dealings in securities without the physical necessity of certificates; and
- (c) to provide other facilities and services incidental thereto;

“Community” means the 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;

“Exchange” means an approved or licensed securities exchange in any of the Partner States;

“Linkage” means a set of contractual and operational arrangements between two or more Exchanges that connect the securities exchanges directly or through an intermediary;

“Listed” means admitted to the Official List of an exchange, and listing shall be construed accordingly;

“Notifiable interest” means three percent or more of the relevant share capital of a listed company;

“Partner States” means the Republic of Uganda, the Republic of Kenya, the United Republic of Tanzania, the Republic of Rwanda, 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 the Competent Authority; and

“Trading participant” means a licensee of a Competent Authority with rights to trade at an approved or licensed exchange.

ARTICLE 2 OBJECTIVES

1. To set standards of operations of exchanges in the Community securities markets with a view to establishing and sustaining an efficient cross border trading.
2. To facilitate seamless movement of securities and payments within the Community securities market.

ARTICLE 3 PRINCIPLES

In implementing this Directive, exchanges in each Partner State shall respect the following principles:

- (a) to have objective, risk-based and publicly disclosed rules which permit efficient and transparent trading of securities listed on the exchanges' in the Partner States;
- (b) to have a fair, transparent and publicly disclosed criteria for admission, registration, and provision for different categories of trading participants, where appropriate, and the rights and obligations attaching to each category;
- (c) to have a transparent and efficient trading and surveillance systems in the integrated securities market;
- (d) to have in place independent management of and budgetary structures for the administrative, commercial and regulatory functions of the exchange;

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- (e) to have a procedure and appropriate system of exercising self-regulation over its trading participants; and
 - (f) to facilitate the development of an integrated securities market in the Community.

ARTICLE 4

SCOPE

This Directive shall apply to all exchanges licensed or approved to operate within the Community.

ARTICLE 5

LEGAL STATUS

1. An exchange shall be a company incorporated or registered in any Partner State and licensed or approved to operate as an exchange.
2. All exchanges within the Community shall have their ownership separated from the right to trade on such exchange within twenty four (24) months of entry into force of this Directive.

ARTICLE 6

THE ROLE AND RESPONSIBILITY OF A COMPETENT AUTHORITY

The mandate of a Competent Authority with regard to an exchange shall include:

- (a) taking such necessary measures to ensure that the provisions of this Directive are complied with;
- (b) taking necessary measures to ensure fairness, efficiency, competitiveness, transparency and orderliness in the exchanges;
- (c) licensing, approving, supervising, monitoring and regulating activities of exchanges;
- (d) approving standards of competence for trading participants;
- (e) approving rules of exchanges;
- (f) countering and suppressing illegal, improper or unfair practices; and
- (g) making regulations for the better carrying out of the purposes and provisions of this Directive

ARTICLE 7

RULES OF AN EXCHANGE

An exchange shall make rules to govern all aspects of its operations including -

- (a) listing and de-listing of securities by the exchange;
- (b) the conditions governing dealing in securities by its trading participants so as to ensure protection of the rights of investors;
- (c) prompt disclosure of material information in a manner that is fair to all investors;
- (d) protection of investors against abuse of confidential information, misleading information, fraud, deceit, and other adverse practices in the issuing and trading of securities;
- (e) prohibition of market manipulation in any form;
- (f) investigation into trading in securities and financial transactions of trading participants and for conducting spot checks on such trading participants;
- (g) suspension of trading of any security for the protection of investors or for the conduct of orderly and fair trading;
- (h) the conduct of securities trading by trading participants and the manner in which information relating to transactions is to be maintained and reported to the exchange;
- (i) segregation of clients' funds and securities from other business accounts of trading participants;
- (j) arbitration of disputes and provision for appeal to a Competent Authority by trading participants, investors and listed companies;
- (k) carrying out of the business of the exchange with due regard to interest of the investing public;
- (l) trading rights on the exchange including the right to access the CMI;

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- (m) admission of trading participants to the Exchange, registration of representatives of trading participants with the Exchange and to provide for different categories of trading participants, where appropriate, and the rights and obligations attaching to each category;
 - (n) conduct of business by trading participants; and
 - (o) the capital markets infrastructure rulebook.

ARTICLE 8

ADMISSION OF TRADING PARTICIPANTS TO AN EXCHANGE

An Exchange may, in accordance with the procedures prescribed in its rules, admit as a trading participant, any person who has been licensed by a Competent Authority to exercise rights to trade:

- (a) if that person satisfies any admission requirements of the Exchange; and
- (b) on payment of any admission fee set by the Exchange where applicable,

and accord that person the applicable rights to the relevant category of admission.

ARTICLE 9

CORPORATE GOVERNANCE

1. An Exchange shall comply with the Directive on Corporate Governance for Market Intermediaries.
2. An Exchange shall also provide in its rules or articles of association –
 - (a) terms of service for its chairman and chief executive;
 - (b) a board of directors comprising of the chief executive of the exchange and at least one third independent and non-executive directors; and

the independent and non-executive directors appointed under subparagraph (b) shall be persons who have knowledge and experience in investments, public service and corporate governance and shall represent the interests of investors and the public interest.

ARTICLE 10

EFFICIENT TRADING SYSTEM

An exchange shall have a transparent and efficient trading system that shall provide for –

- (a) a trading facility at which all bids to purchase and offers to sell are exposed to each other and at which members of the public are granted an opportunity to witness trading;
- (b) a transparent and efficient pricing mechanism which:-
 - (i) displays the best offer and bid prices;
 - (ii) provides for automatic matching;
 - (iii) allows for efficient distribution of liquidity within the Community;
 - (iv) displays the highest and lowest prices, the latest transactions as well as the volume of securities traded;
 - (v) has an audit trail and trace back mechanism for all transactions;
 - (vi) has sufficient internal controls and security measures to ensure that only authorized persons have access; and
 - (vii) maintains records of all transactions and retrieves such records as may be necessary.
- (c) connectivity to a central securities depository.

ARTICLE 11

RISK MANAGEMENT

1. An exchange shall have a sound risk-management framework for comprehensively managing risks.
2. For the purposes of this Directive, risks include but are not limited to:
 - (a) **“Business Risk”** means the possibility that a company will have lower than anticipated profits, or that it will experience a loss rather than a profit;
 - (b) **“Operational Risk”** mean the risk that deficiencies in information systems or internal processes, human errors, management failures or disruption from external events will result in the reduction, deterioration or breakdown of services provided by a CSD.

(c) **“Legal Risk”** means a risk of the unexpected application of a law or regulation usually resulting in a loss. Legal risk can also arise if the application of relevant laws is uncertain.

3. An exchange shall comply with the EAC Council Directive on Business Continuity

ARTICLE 12 ANNUAL BUDGET

1. An exchange shall put in place independent management of and budgetary structures for the administrative, commercial and regulatory functions of the exchange.
2. An exchange shall make provision in its annual budget to support market development.

ARTICLE 13 SELF REGULATION

1. An Exchange shall have:-
 - (a) a procedure and appropriate system of exercising self-regulation over its trading participants;
 - (b) a code of conduct for its trading participants;
 - (c) adequate trading surveillance and compliance capacity; and
 - (d) a procedure for dispute resolution.
2. An exchange shall implement a system of self- regulation with respect to its trading participants and shall ensure the day to day management of trading, settlement, delivery and all other activities of its trading participants are in accordance with—
 - (a) the rules of the exchange; and
 - (b) laws, regulations and guidelines relating to securities issued by a Competent Authority.
3. The rules of an exchange shall, where applicable, support the self-regulatory functions of the exchange and in particular shall be designed to—
 - (a) promote investor protection;
 - (b) promote fair treatment of its trading participants and any person who applies for admission as a trading participant;

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- (c) exclude a person who is not fit and proper from being its trading participant or being appointed as its chief executive, director or officer;
 - (d) promote proper regulation and supervision of its trading participants;
 - (e) promote appropriate standards of conduct of its trading participants;
 - (f) manage any conflict of interest which may arise between its interest and the interest of investors and the general public;
 - (g) ensure that its trading participants and their officers duly comply with the relevant securities laws, regulations guidelines and rules of the exchange;
 - (h) require trading participants to report in a timely manner any breaches of applicable rules;
 - (i) prevent the use of any information by its trading participants or their officers which may result in such trading participants or their officer making an unfair gain;
 - (j) expel, suspend, discipline or sanction a trading participant if such trading participant contravenes securities laws, regulations and guidelines issued by a Competent Authority or where relevant, the rules of the securities exchange, or an approved central depository;
 - (k) require a trading participant to report any action, restriction or limitation imposed on its operations by another securities exchange, central depository or a Competent Authority; and
 - (l) allow an aggrieved trading participant to appeal against any decision of the securities exchange acting in its capacity as a recognized self-regulatory organization.
4. An exchange shall comply with the EAC Council Directive on Self Regulatory Organisations.

ARTICLE 14

MAINTENANCE OF RECORDS

An exchange shall maintain and preserve the following records and documents, for a period of ten (10) years;

- (a) minutes of the meetings of-
 - (i) its shareholders;
 - (ii) its board of directors; and
 - (iii) any standing committee or committees of its board of directors;
- (b) register of trading participants including the full names and physical addresses of all directors and shareholders of such trading participants;

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- (c) register of authorized persons to access the trading system or floor;
 - (d) record of securities transactions by sectors for each market segment;
 - (e) statistical information on market turnover and capitalization on a monthly basis for each market segment;
 - (f) register of –
 - (i) all listed securities including the names of issuers and number of securities listed by each issuer;
 - (ii) holders of notifiable interest
 - (g) records of receipts and disbursement of the investors compensation fund where applicable;
 - (h) copies of annual audited accounts of its trading participants;
 - (i) copies of annual reports of all listed companies;
 - (j) records containing any trading limits, margin requirements or related financial and operational limits it imposes on its trading participants on a monthly basis; and
 - (k) financial records of all financial transactions which shall also be maintained in an electronic form including:
 - (i) ledgers;
 - (ii) journals; and
 - (iii) bank statements and reconciliation accounts.

ARTICLE 15

REPORTING OBLIGATIONS

1. An exchange shall within four (4) months after the end of each financial year make available to the relevant Competent Authority, and to the investors an annual report and audited financial statements prepared in accordance with the International Financial Reporting Standards;
2. An exchange shall, by the last day of the first quarter after the end of its financial year, furnish the relevant Competent Authority with a report of its activities during the preceding calendar year and such report shall contain information on –

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- (a) changes in its rules and by-laws, if any;
 - (b) changes in the membership of its board of directors;
 - (c) composition and mandates of all the committees set up and changes (if any) in the membership of its existing ones;
 - (d) admission, suspension or expulsion of trading participants;
 - (e) disciplinary action against trading participants including appointment of statutory manager;
 - (f) arbitration of disputes;
 - (g) securities listed, suspended or de-listed; and
 - (h) market turnover and capitalization per sector.
3. An exchange shall submit to the relevant Competent Authority, through electronic means, and make public a daily report on the securities transacted, the price movements on each security including low, high and average prices, and the volume of transactions in each security.
 4. An exchange shall furnish the relevant Competent Authority within thirty (30) calendar days after the end of each quarter, a report of all securities transactions for each day, including private transactions, the value of each transaction, names of the parties for each private transaction and the holders of notifiable interest disclosed to the Exchange.
 5. The annual accounts of an exchange shall be audited by an independent auditor appointed by its board of directors and approved by its shareholders.
 6. Communication to investors shall be by way of publication in at least two (2) daily newspapers of national circulation and on the exchanges' websites.
 7. An exchange shall immediately report to the relevant Competent Authority by telephone and in writing whenever-
 - (a) there is a delay in the opening or closing of the exchange;
 - (b) trading suspended in any security; and
 - (c) there are incidences of material violation of the relevant rules and regulations.

ARTICLE 16
LINKAGE OF EXCHANGE TRADING SYSTEMS

1. An exchange shall have objective and publicly disclosed criteria, which permits fair and open access by trading participants from other Partner State exchanges.
2. A linkage shall conform to the CMI rulebook.
3. The CMI shall provide linkage of exchanges within the Community.
4. An exchange may establish a linkage with another exchange within the Community for the primary purpose of expanding its services to additional financial instruments, markets, or institutions.

ARTICLE 17
EFFICIENCY AND EFFECTIVENESS

1. An exchange shall be designed to meet the needs of its participants and the markets it serves.
2. An exchange shall have established mechanisms for the annual review of its efficiency and effectiveness.

ARTICLE 18
COMMUNICATION PROCEDURES AND STANDARDS

An exchange shall use or accommodate internationally accepted communication procedures and standards in order to facilitate a secure and efficient trading, payment, clearing, settlement, and recording of securities.

ARTICLE 19
DISCLOSURE OF RULES, KEY PROCEDURES, AND MARKET DATA

1. All exchange rules, key procedures and market data shall be publicly disclosed, clear and comprehensive to enable investors and issuers to have accurate information.
2. For purposes of this directive, market data shall mean primary information regarding daily securities transactions such as share prices and volumes traded. It shall exclude information arising from further analysis of such primary data.

ARTICLE 20 COOPERATION

1. Exchanges of all Partner States shall cooperate with each other at all times for the purpose of establishing and sustaining a secure and efficient securities market.
2. All exchanges in the Community shall cooperate for the purpose of implementing the capital markets infrastructure.

ARTICLE 21 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 22 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 23 ENTRY INTO FORCE

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

ARTICLE 24 ADDRESSEES

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