

**DIRECTIVE 2014/15/EAC
OF THE COUNCIL OF MINISTERS**

Of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON INVESTOR
EDUCATION AND PROTECTION**

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 EAC 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 EAC Common Market 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 ISSUED THIS DIRECTIVE

ARTICLE 1 INTERPRETATION

In this Directive unless the context otherwise requires:

“advertisement” means any form of public notice which is an attempt to invite or induce, directly or indirectly, any person to purchase or acquire an interest in a product or service;

“agreement” means an arrangement or understanding between or among two or more parties that purports to establish a relationship in law between or among them;

“Board” means the Board of the Competent Authority;

“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;

“complaint” means any oral or written expression of dissatisfaction about the provision or failure to provide a securities product:

- (a) which is made by a licensed market intermediary in the securities market by or on behalf of an investor; and
- (b) which alleges that as a result of an act or omission by or on behalf of the licensed market intermediary, the investor has suffered or may suffer financial loss, material inconvenience or material distress;

“direct marketing” means to approach a person either in person or by mail or electronic communication for the direct or indirect purpose of:

- (a) promoting or offering to supply in the ordinary course of business the services to a person; or
- (b) requesting the person to make a donation of any kind for any reason;

“Fund” means a Fund established for the purposes of Investor education;

“investor” means a person who has invested in securities in the EAC securities market through any of the market intermediaries in the EAC Partner States;

“market intermediary” means a broker, dealer, fund manager, investment bank or any other entity licensed by the competent authorities in the EAC to provide services in the securities market;

“market player” means a market intermediary, issuer of securities and any other person involved in the securities markets in the Community;

“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania and the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;

“Treaty” means the Treaty for the Establishment of the East African Community and any annexes and protocols thereto; and

“Competent court” means any court that has jurisdiction to determine cases in the Partner States.

ARTICLE 2 PRINCIPLES

In implementing this Directive, Partner States shall abide by the following principles:

- a) The relationship between the market intermediaries and the Investors shall be guided by the following key principles;
 - (i) fairness
 - (ii) reliability;
 - (iii) transparency;
 - (iv) accountability; and
 - (v) objectivity;

- b) A Market Intermediary shall act fairly and professionally in all its dealings with an investor.

- c) A Market Intermediary shall not engage in unfair, deceptive or aggressive practices such as intimidating an investor; offer or solicit for bribes or gifts or other unfair inducements.

ARTICLE 3 OBJECTIVES

1. To promote fair and equitable securities markets services practices by setting minimum standards for market intermediaries in EAC Partner States
2. Increase transparency in order to inform and empower investors in the securities market.
3. Provide efficient and effective mechanisms for handling investor complaints relating to the provision of securities markets products.
4. To establish a regulatory framework for the achievement and maintenance of investor education and protection that is fair, accessible, efficient, sustainable and responsible for the benefit of investors generally.
5. Improve investor education and awareness and encourage responsible and informed investor choice and behaviour.
6. Promote investor confidence, empowerment and the development of a culture of investor responsibility through individual and group education, vigilance, advocacy and activism.

ARTICLE 4 SCOPE

This Directive shall apply to all Investor education activities by the Competent Authorities and licensed market intermediaries and their agents in respect of the securities markets within the Community.

ARTICLE 5 ROLE OF COMPETENT AUTHORITIES

1. A Competent Authority shall
 - (a) take such steps as are necessary to ensure that the investor education function and protection is performed and shall
 - (b) adopt an annual budget and plan for the investor education activities
2. The Competent Authorities shall publish an Annual report including a list of activities undertaken during a financial year for investor education.

ARTICLE 6
PROTECTION AGAINST DISCRIMINATORY PRACTICES

1. A market intermediary shall not discriminate against any investor on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, social standing, political affiliation or disability.
2. If an investor has exercised, asserted or sought to uphold any rights set out in this directive or in any agreement or transaction with a market intermediary, the market intermediary shall not, in response:
 - (a) treat the investor unfairly or with prejudice as a result of having made a complaint;
 - (b) fail to act on a complaint for reasons that other investors have not exercised, asserted or sought to uphold such a right on a similar matter;
 - (c) penalize the investor;
 - (d) alter the terms or conditions of a transaction or agreement with the investor to the detriment of the investor; or
 - (e) take any action to accelerate, enforce, suspend or terminate an agreement with the investor.

ARTICLE 7
PROHIBITION OF MONOPOLISTIC TENDENCIES BY MARKET INTERMEDIARIES

A market intermediary shall not require as a condition of offering financial services to an investor or as a condition of entering into an agreement or transactions that the investor shall:

- (a) use the services of that particular market intermediary;
- (b) enter into an additional agreement or transaction with the same licensed market intermediary or a designated third party; and
- (c) agree to purchase any particular securities services or products from a designated third party;

Unless the market intermediary:

- (a) can show that the convenience to the investor in having these services bundled outweighs the limitation of the investor's right to choice;
- (b) can show that the bundling of those services may result into economic benefit for the investors; or

(c) offers bundled services separately and at individual prices.

ARTICLE 8 DISCLOSURE AND DISPLAY OF INFORMATION

1. The market intermediary or issuer of any securities product shall publicly display a notice, document or visual representation in plain language which can easily be understood by investors.
2. For the purposes of this Directive, a notice, document or visual representation shall be in plain language.
3. A notice, document or visual representation shall be considered to be in plain language if it is reasonable to conclude that an ordinary investor of the class of persons for whom the notice, document or visual representation is intended with average literacy skills and minimal experience as an investor of the relevant securities services could be expected to understand the content, significance and importance of the notice, document or visual representation without undue effort having regard to:
 - (a) the context, comprehensiveness and consistency of the notice, document or visual representation;
 - (b) the organization, form and style of the notice, document, or visual representation; and
 - (c) the use of any illustrations, examples, headings or other aids to reading and understanding;
4. A market intermediary shall:
 - (a) disclose prescribed information to:
 - (i) any person who the intermediary solicits or agrees to represent with respect to the sale of any product or services or from whom the intermediary accepts any product for the purpose of offering it for sale; and
 - (ii) any person from whom the market intermediary solicits an offer or to whom the intermediary offers services to be performed by a third party;
 - (b) keep safe the prescribed records of all relationships and transactions contemplated in this Directive.

ARTICLE 9 FALSE, MISLEADING OR DECEPTIVE REPRESENTATIONS

1. A market intermediary shall not market any services in a manner that is misleading, fraudulent or deceptive including in respect of:
 - (a) the nature, properties, advantages, disadvantages or use of products and services;
 - (b) the manner or conditions in which those services maybe provided;
 - (c) the price at which the services may be provided or the existence of a relationship of the price to any previous price or competitor's price for comparable or similar services;
 - (d) the sponsoring of any event; or
 - (e) any other material respect of the services.
2. A market intermediary or his representative who is directly marketing any securities products or services and who concludes a transaction or agreement with an investor must inform the investor in the prescribed manner and form of the right to rescind that agreement.
3. In relation to the marketing of products and services, the market intermediary or his representative shall not by words or conduct:
 - (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to an investor;
 - (b) use exaggeration, innuendo or ambiguity as to a material fact or fail to disclose a material fact if that failure amounts to a deception; or
 - (c) fail to correct an apparent misapprehension on the part of an investor, amounting to a false, misleading or deceptive representation or permit or require any other person to do so on behalf of the market intermediary.

ARTICLE 10

PROVISION OF INFORMATION AND ADVICE TO AN INVESTOR

1. Prior to an investor choosing a product or service provided by the licensed market intermediary, the market intermediary shall:
 - (a) explain clearly in plain language the key features of the range of products and services that the investor is interested in so as to enable the investor to arrive at an informed decision about these products and services including any charges and fees that would be incurred; and
 - (b) request the investor to provide all the information needed to verify whether or not the product or service meets the investors' investment objectives.

ARTICLE 11
NOTICE OF CHANGE TO TERMS AND CONDITIONS

1. A market intermediary shall ensure that an investor is notified:
 - (a) at least thirty (30) calendar days in advance before implementing any changes to the terms and conditions, fees or charges, discontinuation of services or relocation of premises of the Market Intermediary; and
 - (b) immediately upon receipt of any information that may have a material impact on the investment.

ARTICLE 12
TRANSPARENCY

A Market Intermediary shall:

- (a) ensure that any information given to an investor in writing, electronically or orally is fair, clear and transparent;
- (b) ensure that the information is easily comprehensible so that investors can make an informed choice about a product or service;
- (c) ensure that the information is written in plain language and in a font size of not less than 10 points so that it is clear and legible ;
- (d) ensure that the information on its products and services is updated, current and easily available; and
- (e) ensure that contracts and other documentation relating to the securities products and services are summarized in a key facts document written in plain language setting out clearly all the key information relating to the product or service of interest to the investor.

ARTICLE 13
REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

Any Market Intermediary that contravenes any provision of this Directive commits an offence that may lead to sanctions or penalties prescribed by national laws.

ARTICLE 14 CO-OPERATION

Competent Authorities shall cooperate with each other for the purpose of carrying out their duties under this Directive or national laws.

ARTICLE 15 DISPUTE RESOLUTION

1. An investor dissatisfied with a decision of a market intermediary may request, in writing, that such decision be reviewed by the Competent Authority or such other body in the Partner State mandated to deal with investor complaints in accordance with the applicable Law.
2. An investor aggrieved by the decision of the Competent Authority or such other body in the Partner State mandated to deal with investor complaints, shall first seek resolution of that complaint from alternative dispute resolution mechanisms prior to lodging an appeal to a court of competent jurisdiction as provided under the National law of his jurisdiction.

ARTICLE 16 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 17 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' issuance of the directive.
2. The Partner States shall inform the Council of Ministers of the implementation of sub article (1).

3. 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 18 ENTRY INTO FORCE

This Directive shall enter into force upon issuance by the Council of Ministers.

ARTICLE 19 ADDRESSEES

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