

**DIRECTIVE 2014/9/EAC
OF THE COUNCIL OF MINISTERS**

of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAST AFRICAN
COMMUNITY ON CENTRAL SECURITIES
DEPOSITORIES**

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 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 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 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:

“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;

“Central Bank Money” means a liability of a Central Bank, in this case in the form of deposits held at the Central Bank, which can be used for settlement;

“Central Depository Agent or participant” (in this Directive referred to as **“agent”**) means a person authorized to open and hold securities account with the central securities depository.

“Central Securities Depository” (in this Directive referred to as **“CSD”**) means a company within any Partner State established by law or 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 necessity of physical certificates;
- (b) which permits or facilitates the settlement or registration of securities transactions or dealings in securities without the necessity of physical 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 Competent Authority that is the primary supervising entity of securities depository in the Partner State;

“CPSS-IOSCO” means the Committee on Payment and Settlement Systems-International Organization of Securities Commission;

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

“Dematerialization” means the process whereby the underlying physical certificate is no longer recognized as *prima facie* evidence of ownership of securities and securities are issued only in the form of book entry.

“Immobilization” means any circumstance where the underlying physical certificate relating to securities have been deposited with and are held by the central securities depository and an investor does not receive a physical certificate upon purchase of shares.;

“Linkage” refers to a set of infrastructural and operational arrangements between two or more central securities depositories that connect the central securities depositories directly or through an intermediary;

“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.

“Value Date” means the day on which the payment, transfer instruction or other obligation is due and the associated funds and securities are typically available to the receiving participant.

ARTICLE 2 PRINCIPLES

In implementing this Directive, central securities depositories in each Partner State shall:

- (a) adhere to the CPSS-IOSCO Principles for Financial Markets Infrastructures as issued from time to time; and
- (b) facilitate the development of an integrated securities market in the Community.

ARTICLE 3 OBJECTIVES

1. To set standards of operations of central securities depositories within the Community securities markets with a view to establishing and sustaining an efficient national and cross border post trade infrastructure.
2. To facilitate seamless movement of securities and payments within the Community securities market.

ARTICLE 4 SCOPE

This Directive shall apply to all central securities depositories operating in the Community.

ARTICLE 5 LEGAL STATUS

The central securities depository operator shall be an entity incorporated, registered or established by law in the applicable Partner State and licensed or recognised to operate as a central securities depository.

ARTICLE 6

THE ROLES AND RESPONSIBILITIES OF A COMPETENT AUTHORITY

The mandate of a Competent Authority with regard to central securities depositories shall include:

- (a) taking such necessary measures to ensure that the provisions of this Directive are complied with;
- (b) taking necessary measures to maintain and promote fairness, efficiency, competitiveness, transparency and orderliness in the deposit of securities, and the clearance and settlement of transactions in securities, by a central securities depository;
- (c) licensing, approving, supervising, monitoring and regulating activities of central securities depositories;
- (d) approving standards of competence for central securities depository agents;
- (e) approving rules of central securities depositories;
- (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

SELF REGULATION

1. A central securities depository recognised as a self regulatory organisation shall have:
 - (a) a procedure and appropriate system of exercising self-regulation over its agents;
 - (b) a code of conduct for its agents; and
 - (c) a procedure for dispute resolution.
2. A central securities depository shall implement a system of self-regulation with respect to its agents and shall ensure the day to day management of clearing and settlement and all other activities of its agents are in accordance with:
 - (a) the rules of the central securities depository; and
 - (b) laws, regulations and guidelines relating to securities issued by a Competent Authority.
3. A central securities depository recognised as a self-regulatory organisation shall comply with the EAC Council Directive on Self Regulatory Organisations.

ARTICLE 8

RULES OF A CENTRAL SECURITIES DEPOSITORY

A central securities depository shall make rules to govern all aspects of its operations including:

- (a) self-regulatory functions of the recognised central securities depository as a self regulatory organisation;
- (b) appointment, functions, suspension and revocation of appointment of central depository agents;
- (c) appointment of a manager for a suspended central depository agent;
- (d) notification to the issuers and the public of all securities eligible for immobilisation or dematerialisation in the central depository;
- (e) deposit of certificates where applicable;
- (f) safekeeping and transfer of securities;
- (g) settlement finality;
- (h) information to be contained in the record of depositors;
- (i) frequency of issue of the statement of account by the central depository to the depositors;
- (j) charging of securities;
- (k) circumstances when a book entry security in a securities account is in suspense;
- (l) circumstances for investigation or restriction of dealings in any book entry transfers partially or otherwise;
- (m) appropriate policies and procedures to handle participant default;
- (n) the capital markets infrastructure rulebook.

ARTICLE 9

ACCOUNT OPENING PROCEDURES

A central securities depository shall ensure all its agents comply with the minimum set securities accounts opening and maintenance procedures as set out in the Schedule to this

Directive, as well as the Know Your Client (KYC) requirements provided under the EAC Council Directive on Conduct of Business in the Securities Market.

ARTICLE 10 CORPORATE GOVERNANCE

A central securities depository within the Community shall comply with the EAC Directive on Corporate Governance for Market Intermediaries.

ARTICLE 11 RISK MANAGEMENT

1. A central securities depository within the Community 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) **“credit risk”** means the risk that a counter party whether a participant or other entity will be unable to meet fully its financial obligations when due or any time in the future;
 - (c) **“custody risk”** means the risk of loss of securities held in custody occasioned by the insolvency, negligence or fraudulent action of the central securities depository or its agents;
 - (d) **“liquidity risk”** means the risk that a counter party whether a participant or other entity will have insufficient funds to meet its financial obligations as and when expected, although it may be able to do in future;
 - (e) **“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 central securities depository; and
 - (f) **“legal risk”** means a risk of the unexpected application of a law or regulation usually resulting in a loss and 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 SETTLEMENT FINALITY

1. A central securities depository shall provide clear and certain final settlement, by the end of the value date and where necessary or preferable, a central securities depository shall provide final settlement intraday or in real time.
2. A central securities depository shall conduct its money settlements in central bank money.

ARTICLE 13

DEMATERIALIZATION OF SECURITIES

A central securities depository shall maintain securities in an immobilised or dematerialised form for their transfer by book entry and where appropriate, a central securities depository shall provide incentives to immobilise or dematerialise securities.

ARTICLE 14

RIGHTS OF SECURITIES ISSUERS AND HOLDERS

A central securities depository shall have appropriate rules, procedures, and controls, including robust accounting practices, to safeguard the rights of securities issuers and holders, prevent the unauthorised creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities it maintains.

ARTICLE 15

SEGREGATION OF ASSETS AND SECURITIES

A central securities depository shall employ a robust system that ensures segregation between the central securities depository's own assets and the securities of investors.

ARTICLE 16

LINKAGES OF CENTRAL SECURITIES DEPOSITORY SYSTEM

1. A central securities depository shall have objective and publicly disclosed criteria, which permits fair and open access by other Partner States' central securities depositories.
2. A linkage shall conform to the CMI rulebook.
3. The CMI shall provide linkage of central securities depositories within the Community.

ARTICLE 17

EFFICIENCY AND EFFECTIVENESS

1. A central securities depository shall be designed to meet the needs of its participants and the markets it serves including but not limited to, choice of a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures.

2. A central securities depository shall have established mechanisms for the annual review of its efficiency and effectiveness.
3. A central securities depository shall carry out a systems audit at least once every three (3) years.
4. Notwithstanding sub-article 3, a central securities depository may carry out an ad-hoc review in the event of circumstances such as suspected fraud.

ARTICLE 18 COMMUNICATION PROCEDURES AND STANDARDS

A central securities depository shall use or accommodate internationally accepted communication procedures and standards in order to facilitate secure efficient payment, clearing, settlement, and recording of securities.

ARTICLE 19 DISCLOSURE OF RULES AND KEY PROCEDURES

1. All central securities depository rules and key procedures shall be publicly disclosed, clear and comprehensive to enable investors and issuers to have an accurate understanding of the risks, fees, and other material costs.
2. A central securities depository shall complete and disclose publicly responses to the CPSS-IOSCO disclosure framework for financial market infrastructures and also at a minimum, disclose basic data on transaction volumes and values.

ARTICLE 20 COOPERATION

1. Central securities depositories within the Community shall cooperate with each other at all times for the purpose of establishing and sustaining a secure and efficient cross border post trade infrastructure.
2. All central securities depository 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 shall 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' 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 and shall be laid down by Partner States.

ARTICLE 23
ENTRY INTO FORCE

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

ARTICLE 24
ADDRESSEES

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

SCHEDULE PART 1

MINIMUM CSD/CDS ACCOUNT OPENING REQUIREMENTS

1. The client will submit to the central depository agent a duly completed and signed Securities Account Opening Form prescribed by the CSD together with supporting documentation as indicated on the Form.
2. The agent shall ensure full disclosure of client's relevant information, verify the accuracy thereof and witness client's signature on the Form.
3. The agent or CSD operator shall enter the data obtained from the Securities Account Opening or Maintenance Form submitted by client into the CSD system.
4. CSD system will generate a CSD Identification Number.
5. The agent or CSD operator will enter the CSD Identification Number in the Form and will return to the client a copy of Securities Account Opening or Maintenance Form, duly signed.
6. The agent or CSD operator shall ensure that it retains and keeps safe and easily accessible copies of identification documents and supporting documentation to assist it identify its clients.
7. The agent shall transmit the Account Opening Form and all supporting information to the CSD, within one day (1) of the opening of the account.

PART 2

SECURITIES ACCOUNT MAINTENANCE

1. Where the client wishes to change any particulars submitted when opening an account, the client will submit duly signed Securities Account Opening or Maintenance Form prescribed by the CSD, indicating the desired changes together with any supporting documents to his agent.
2. The agent shall verify the accuracy of information provided by the client and authenticate the signature before submitting the documents to the CSD.
3. The agent shall confirm the changes to the client by returning a copy of the Securities Account Opening or Maintenance Form, duly signed, stamped and dated.
4. The agent shall forward a copy of the Form to the CSD within one (1) day of receipt and CSD will effect the change.
5. The agent will keep its copy of the Securities Account Opening or Maintenance Form.
6. The CSD will suspend or close a Securities Account upon receipt and verification of written instructions together with supporting documents from a client through an Agent or by a Competent Authority.
7. The Securities in the suspended CSD Account will no longer be available for settlement of other transactions until the suspension is released.