

**DIRECTIVE 2013/6/EAC
OF THE COUNCIL OF MINISTERS**

Of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON LICENSING IN
THE SECURITIES MARKET**

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 INTERPRETATIONS

“Broker dealer” means a person who by way of business, as a principal or an agent–

- (i) makes or offers to make with any person, or induces or attempts to induce any person to enter into or offer to enter into, any agreement for, with a view to buy, sell, exchange or subscribe for securities; or
- (ii) solicits or accepts any order for, or otherwise trading in securities;

“Central Securities Depository” means an electronic system which permits or facilitates immobilized or dematerialized capital markets transactions or dealings.

“Clearing House” means an agency or separate corporation responsible for settling accounts, clearing trades, regulating delivery and reporting trade data.

“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State.

“Credit rating agency” means where by way of business that person provides the service of evaluating the relative credit-worthiness of issuers of securities or securities themselves and assigns ratings to such issuers of securities.

“Custodian” means a person by way of business that holds in custody funds, securities, financial instruments or documents of title of assets.

“Dealer” means a person who carries on the business of dealing in securities on his own account.

“Derivatives dealer” means by way of business, that person who carries on the business of:

- i) buying,
- ii) selling,
- iii) dealing,
- iv) trading,
- v) underwriting, or
- vi) retailing derivatives as an agent for investors or for his own account with the intention of selling them to the public.

“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;
 - c) acts as a manager of a venture capital company

“Home Partner State” means the Primary Partner State where the market intermediary was first licensed within the EAC.

“Investment Advisor” means by way of business, a person that -

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

“investment bank” means a non-deposit taking institution licensed by the Authority 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, and to engage in the business of a stockbroker or dealer;

“Market intermediary” means an entity licensed or authorized by a competent authority in an EAC Partner State.

“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.

“Stock Broker” means a body corporate that is licensed to carry on the business of buying or selling securities as an agent.

“Transaction advisor” means by way of business, that person advises on-

- i) public offer of securities;
- ii) listing of securities;
- iii) mergers and acquisitions;
- iv) corporate restructuring;
- v) Securitization arrangements

“Trustee license” means where that person by way of business is

- i) entrusted with the property of the Collective Investment scheme for safekeeping; or
- ii) An authorized trustee in respect of asset backed securities.

“A share and note registrar” means where that person, in relation to a public offering of securities, by way of business carries primary responsibility for amongst other activities, receiving and recording all applications in respect of subscriptions for the offer, assisting in determining and implementing the allotments for the offer.

“Securities Exchange” means an exchange, a securities organization or any other place where securities are offered for sale, purchase or exchange.

ARTICLE 2 PRINCIPLES

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

- (i) Implement the licensing requirements in this Directive for market intermediaries operating in more than one EAC Partner State.
- (ii) Adopt the financial requirements in this Directive for market intermediaries operating in more than one EAC Partner State.
- (iii) Ensure that the key personnel of the market intermediaries meet the minimum prescribed qualifications in the home Partner State.
- (iv) Ensure that market intermediaries have adequate infrastructural resources e.g. back office, CSD, automated trading platform, etc.
- (v) Ensure that the market intermediaries are fit and proper persons.

ARTICLE 3 OBJECTIVES

- (i) To provide conditions for provision of securities services in other partner states on the basis of home country authorization and supervision.
- (ii) Provision of licensing requirements for markets intermediaries operating in more than one EAC Partner States.
- (iii) Protection of investors
- (iv) Grant of single authorization to operate throughout the EAC
- (v) Ensure fair efficient and transparent markets in the EAC securities market.

ARTICLE 4 SCOPE

This directive shall apply to licensing of securities market intermediaries operating in more than one EAC Partner State. Partner States should not introduce additional requirements for market intermediaries operating in more than one EAC Partner State.

ARTICLE 5 REQUIREMENTS FOR LICENCE

No person shall act in any of the following capacities or hold himself as doing so in more than one EAC Partner State unless such person is authorized to carry out that activity under this Directive:

- i. Securities Exchanges
- ii. Central Securities Depositories (CSDs)
- iii. Broker Dealers
- iv. Investment Advisors
- v. Transaction Advisors
- vi. Investment Banks
- vii. Derivatives Dealers
- viii. Fund Managers
- ix. Trustee
- x. Custodian of Securities
- xi. Share and Note Registrar
- xii. Credit Rating Agency
- xiii. Central Counter Parties
- xiv. Clearing House

ARTICLE 6 APPLICATION FOR A LICENSE

An application for a license to operate in more than one EAC Partner State shall be made to the competent Authority in the form specified in the First Schedule.

ARTICLE 7

LEGAL STATUS OF THE APPLICANT

The applicant shall be a company incorporated or registered in any of the EAC Partner State.

ARTICLE 8 FINANCIAL RESOURCES

The applicant shall meet the capital adequacy requirements in the Second Schedule.

ARTICLE 9 CORPORATE GOVERNANCE

The applicant shall comply with EAC Corporate Governance Directive for Market Intermediaries.

ARTICLE 10 CONDUCT OF BUSINESS

The applicant shall comply with EAC Conduct of Business Directive for Market Intermediaries.

ARTICLE 11 RIGHTS AND OBLIGATIONS OF A LICENSE HOLDER

A license holder:

- i. shall establish a branch or office in the jurisdiction in which it operates.
- ii. shall comply with the EAC Conduct of Business Directives.
- iii. may access trading facilities, central depository systems and clearing houses subject to conditions for admission.

ARTICLE 12 FEES

1. The applicant shall pay an application fee and an annual license fee in accordance with the Third Schedule.
2. The Competent Authority shall share equally the fees received in (i) above with the other Regulatory Authorities in the jurisdictions in which the market intermediary is operating.

ARTICLE 13

WITHDRAWAL AND SUSPENSION OF A LICENSE OR APPROVAL

A Competent Authority may at any time withdraw or suspend a license granted by it if it appears to it:

- a. that the holder of the license is not a fit and proper person to carry on the securities business; or
- b. without prejudice to paragraph (a) above, that the holder of the license has contravened any provision of this Directive or any relevant law in the jurisdiction in which the market intermediary operate or, in purported compliance with any such provision, has furnished the Competent Authority with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed by the Competent Authority under this Directive or any relevant law.

The suspension or withdrawal of a license shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and while a license is suspended the holder shall not carry out the business for which the licence relates to.

Any period, event or conditions specified under paragraph (1) above in the case of a license may be varied by the Competent Authority on the application of the holder.

ARTICLE 14

PROVISION OF SERVICES

A license holder wishing to provide services within the jurisdiction of another Partner State for the first time or which wishes to change the range of services shall communicate the following information to the Competent Authority:

- i. the Partner State in which it intends to operate in;
- ii. the services which it intends to provide.

The Competent Authority shall within ten days (10) of receiving the information review and forward it to the Competent Authority of the host Partner State.

In the event of change in any of the particulars in 1 above, the license holder shall give written notice of that change to the Competent Authority of the home Partner State.

The Competent Authority of the home Partner State shall inform the Competent Authority of the host Partner State of those changes.

ARTICLE 15

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 16

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 17

APPEAL AGAINST DECISIONS MADE BY A COMPETENT AUTHORITY

Decisions made pursuant to laws, regulations and administrative provisions in accordance with this Directive are subject to the right of appeal to a competent court.

ARTICLE 18

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 19

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 20 ENTRY INTO FORCE

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

ARTICLE 21 ADDRESSEES

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

FIRST SCHEDULE

APPLICATION FOR A LICENCE TO CONDUCT BUSINESS IN MORE THAN ONE PARTNER STATE¹

PART 1

1. This application must be accompanied by -
 - (a) a detailed statement of the applicant's assets and liabilities signed by the applicant as required by
 - (b) in the case of an applicant which is a company, copies certified by the Director of the Company to be true copies of the balance sheet and of the profit and loss accounts for the last two years, incorporating the results of the last financial year and which have been audited by the Company's Auditors
 - (c) a copy of the report of the Auditors on them;
 - (d) the fees prescribed in Article .. of this Directive

TYPE OF LICENCE REQUIRED (*Tick whichever is applicable*)

1. Broker Dealer
2. Investment Advisor
3. Transaction Advisor
4. Investment Bank
5. Derivatives Dealer
6. Fund Manager
7. Trustee
8. Custodian of Securities
9. A Share and Note Registrar
10. Credit Rating Agency
11. Securities Exchange
12. Central Securities Depository
13. Clearing House

2. Is the business identified above the principal business carried on by the Applicant?

.....

COMPANIES

¹ Notes:

If space is insufficient to provide details, please attach annexure(s).

Any annexure should be identified as such and signed by the signatory to this application.

3. (a) Name of the Company:

.....

(b) Registered Office:

.....

(c) Date and place of incorporation:

.....

(d) Address, telephone and fax numbers of principal place at which the business of the Applicant is to be carried on:

.....

.....

(e) Details of capital structure -

(i) Authorised Capital, USD.

(ii) Paid up capital, USD.....

(iii) Types of shares issued:

(f) Details of shareholders:

Name	Address	Amount of shares held	Date of acquisition

(g) Particulars of Directors and Secretary

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Name & residential address	Date of birth	Educational qualifications	Office held	Date of appointment

4. Set out the name and address of each person who, directly or indirectly, exercises or has power to exercise a controlling influence over the management and policies of the applicant other than those shown as Directors:

.....
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.....
.....
.....

5. Does the Applicant have an interest in one or more shares in any company the shares of which are quoted on a securities exchange, the aggregate of the nominal amount of which constitutes not less than 5% of all issued shares of the Company?

.....

6. Has the Applicant within the past 10 years -

(i) been a member or partner in a member firm of a securities exchange?

.....

(ii) carried on business under any name other than the name shown in this application?

.....

(iii) Has a director of the applicant been censured or disciplined by any professional body, society or association of which he was or is a member?

(If "Yes" attach annexure giving details including name of the professional body, society or association)

.....

- (iv) Has the director of the applicant been convicted of any offence other than a traffic offence within the EAC or elsewhere or are there any proceedings now pending which may lead to such a conviction? *(If "Yes" attach annexure giving full details of the convictions or proceedings)*

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PART II

- a) State the type of clients with whom the Applicant proposes to do business:

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- b) Describe in detail the experience of the Applicant and his management staff in the proposed business:

.....

- c) State in detail the activity and the manner in which the Applicant proposes to conduct the business for which the Applicant requires a broker or dealer's license.

.....

- d) State in detail the sources of capital that the Applicant will use to finance the business

.....

7. Is the Applicant or any Director or Secretary of the Applicant company a Director of any Company in Uganda or elsewhere?

Answer "Yes" or "No".

If "Yes" give details of:

- a) names of the Companies:

- b) places of incorporation and;

- c) dates of appointment:

For question 11 answer "Yes" or "No" in the space provided. If "Yes" attach annexure giving relevant particulars.

8. Has the Applicant or any Director or Secretary of the Applicant Company within the past 10 years:

a) been licensed or registered in any place under any law which requires licensing or registration in relation to dealing in securities?

.....

b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place?

.....

c) been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific licence, registration or other authority is required by law in any place?

.....

d) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange?

.....

e) been refused membership of any securities exchange?

.....

f) been known by any name other than the name or names shown in this application?

.....

g) had judgement including findings in relation to fraud , misrepresentation or dishonesty been given against him in any civil proceedings , in the EAc or else where? (If "Yes" using an annexure, give full details, including whether judgement was unsatisfied)

.....

h) been declared bankrupt or compounded with or made an arrangement for the benefit of his creditor, in Uganda or elsewhere?

.....

i) been engaged in the management of any Company other than those referred to in answer to question 11?

j) been refused a fidelity or surety bond in any EAC Partner State or elsewhere?

9. Set out below, details of the Applicant's or of each Director and Secretary of the Applicant Company's employment and business activities, during the previous 10 years.

Name of individual Applicant or Director or Secretary of Applicant Company	Name and Address of Employer (if self employed, so state)	Nature of business or activity	Description of duties in relation to the employment	Period of employment or activity (give exact dates)

10. Set out additional; information (including any formal qualifications or training and the name of the institution that conducted the course) considered relevant to this application.

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11. Set out below details of two persons (who are not related to the Applicant, and neither of whom shall have any interest in the success or otherwise of this application) with whom the Applicant or each Director or Secretary of the Applicant company has had regular

contact over the past five years and of whom the Authority may require regarding the Applicant's character and reputation.

Name	Address	Occupation
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12. I declare that all information given in this application and in the attached annexures (if any) is true and correct.

Date:

(Signature:
(Name of Applicant/ Director/ Secretary)

SECOND SCHEDULE

All figures are in US Dollars

License category	Paid-up Share Capital	Liquid Capital
Broker Dealer	A minimum of USD 240,000 to be increased to USD 500,000 within the next 5 years.	8% of liabilities or the paid-up share capital whichever is higher.
Stock Broker		
Dealer	No Minimum capital required but person licensed as a stock broker or an investment bank.	8% of liabilities.
Investment Advisor	USD 33,000.	Adequate professional indemnity cover for the services offered.
Transaction Advisor	No Minimum capital required but person licensed to do investment advisory work.	
Investment Bank	USD 3 million.	8% of the liabilities or USD 3 million whichever is higher.
Derivatives Dealer	Determined by the Derivatives Exchanged and approved by the Regulator.	Determined by the Derivatives Exchanged and approved by the Regulator.
Fund Manager	USD 120,000.	Adequate professional indemnity cover.
Trustee	Licensed Banks or any other financial institution that is duly approved or regulated.	Adequate professional indemnity cover.
Custodian of Securities	Licensed banks	Adequate professional indemnity cover.

A Share and Note Registrar	No Minimum capital required.	Adequate professional indemnity cover.
Credit Rating Agency	USD 144,000.	Adequate professional indemnity cover.

THIRD SCHEDULE

All figures are in US Dollars

License category	Application Fee	Annual License Fee
Broker Dealer	USD 5,000	USD 2,000
Broker		
Dealer		
Investment Advisor	USD 3,000	USD 2,000
Transaction Advisor	USD 3,000	USD 2,000
Investment Bank	USD 6,000	USD 4,000
Derivatives Dealer	USD 5,000	USD 2,000
Fund Manager	USD 5,000	USD 2,000
Trustee	USD 3,000	USD 2,000
Custodian of Securities	USD 5,000	USD 2,000
A Share and Note Registrar	USD 2,000	USD 1,000
Credit Rating Agency	USD 3,000	USD 2,000