

**DIRECTIVE 2013/11/EAC  
OF THE COUNCIL OF MINISTERS**

**Of**

*(Date of Approval by Council of Ministers)*

**DIRECTIVE OF THE EAC ON SELF-  
REGULATORY ORGANISATIONS**

## Annexure XIV

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### **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 harmonies their financial sector policies and Competent Authority 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**

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### ARTICLE 1 INTERPRETATION

In this Directive unless the context otherwise requires:

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

**“Community”** means the East African Community established by Article 2 of the Treaty.

**“Key Personnel”** means a person who manages or controls the activities of the Self Regulatory Organization and includes:

- a) The Chief Executive Officer, Chief Financial Officer, Chief Compliance Officer, Secretary to the Board and Chief Internal Auditor or manager; and
- b) Any person who holds a position or discharges responsibilities of any person referred to in Paragraph (a).

**“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 OBJECTIVE

1. To add capacity and resources to deal with detailed and technical rules governing securities markets and members.
2. To set higher standards for Self Regulatory Organization (SROs) members based on identification of specific issues or concerns.
3. To be a front-line regulator of its own markets, have more immediate access to information on trading, market activity and members’ issues.

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4. To assist and support Competent Authorities to deal with compliance and operational issues with the licensed entities.
5. To inform policy decisions by obtaining industry input in discussion of regulatory initiatives.-

### **ARTICLE 3 PRINCIPLES**

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

- (a) The regulatory regime shall make appropriate use of Self Regulatory Organizations that exercise direct oversight responsibility for their respective areas of competence, to the extent appropriate to the size and complexity of the markets.
- (b) Self Regulatory Organization shall be subject to the oversight of the Competent Authority and shall observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.

### **ARTICLE 4 SCOPE**

This Directive shall apply to all Self Regulatory Organizations operating within the Community.

### **ARTICLE 5 RECOGNITION OF A SELF REGULATORY ORGANIZATION**

1. An organization which intends to operate as a Self Regulatory Organization shall apply to a Competent Authority, for recognition as such.
2. The application shall specify the functions and powers that the entity is seeking to exercise upon recognition.
3. A Competent Authority may, in respect of an application made, subject to such terms and conditions as it considers necessary, by notice, declare an organization to be a recognized Self Regulatory Organization where it is satisfied that the organization –

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- (a) has a constitution and internal rules and policies which are consistent with securities related legislation within the Community;
  - (b) has the capacity and financial and administrative resources necessary or desirable to carry out its functions as a Self Regulatory Organization, including dealing with a breach of the law or of any other applicable standards or guidelines; and
  - (c) has competent personnel for the carrying out of its functions.
4. A Competent Authority may, in writing, delegate any of its powers or functions to a Self Regulatory Organization.
5. A delegation made under Paragraph (4) above, shall specify –
- (a) the function or power delegated to the Self Regulatory Organization;
  - (b) the extent of disciplinary powers delegated and the scope of sanctions that may be imposed;
  - (c) the terms and conditions upon which the power or function has been delegated and may be exercised ;
  - (d) the persons authorized to exercise the delegation on behalf of the Self Regulatory Organization;
  - (e) the manner in which a Self Regulatory Organization shall submit periodical reports to the Competent Authority in respect of the exercise of a delegated power or function; and
  - (f) any other matter as the Competent Authority may prescribe.
6. Partner States shall not introduce additional requirements for Self Regulatory Organizations operating in more than one Partner State.

### **ARTICLE 6**

#### **RULES OF A SELF REGULATORY ORGANIZATION**

1. A Self Regulatory Organization shall make rules relating to the matters for which it has regulatory or supervisory functions, including any sanction and disciplinary powers to be exercised in connection with the functions delegated to it.

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2. The rules made shall make provisions relating to –
  - (a) management structures and shareholding rights of the Self Regulatory Organization taking into consideration the interests, rights and liabilities of its members, consumers, investors and users of their services;
  - (b) rules of membership and conditions for approval and admission of members;
  - (c) the procedure for dispute resolution between members, users, investors and their clients and the right of appeal to the Competent Authority or other relevant primary regulators; and
  - (d) the rules and procedures of Self Regulatory Organization with respect to reporting and accountability to any primary regulator other than the Competent Authority.
3. The rules made shall not be implemented unless approved by the Competent Authority.
4. A Self Regulatory Organization shall submit any amendments to its constitution to the Competent Authority for approval before the amendments are registered or implemented.

### **ARTICLE 7**

#### **RESTRICTION ON DECISION BY A SELF REGULATORY ORGANIZATION**

A Self Regulatory Organization shall not make a decision, under its rules, which adversely affect the rights of a person unless the Self Regulatory Organization –

- (a) has given that person an opportunity to make representations about the matter; or
- (b) considers on a reasonable ground, that a delay in making the decision will prejudice a class of consumers.

### **ARTICLE 8**

#### **DISCIPLINARY ACTION BY A SELF REGULATORY ORGANIZATION**

1. A Self Regulatory Organization may take a disciplinary action against any of its members in accordance with its rules.

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2. A Self Regulatory Organization shall, where it has taken a disciplinary action, immediately inform the Competent Authority, in writing, of the name of the member, the reason and the action taken, the amount of any fine and the period of suspension if any.
3. The Competent Authority may, on its own motion or on application by an aggrieved person, review any disciplinary action taken and may affirm, modify or set aside the decision after giving the aggrieved person and the Self Regulatory Organization an opportunity to be heard.
4. Nothing in this Directive shall preclude the Competent Authority, in any case where a Self Regulatory Organization fails to act against its member, from suspending, expelling or otherwise disciplining a member of the Self Regulatory Organization.
5. The Competent Authority shall, before taking any disciplinary action, give the licensed person and the Self Regulatory Organization an opportunity to be heard.
6. Any action taken by a Self Regulatory Organization shall not prejudice the power of the Competent Authority to take any further action as it considers necessary with regard to the licensed person.

### ARTICLE 9

#### PROTECTION FROM PERSONAL LIABILITY

No civil liability, whether arising in contract, tort, defamation, equity or otherwise shall be incurred by –

- (a) a Self Regulatory Organization; or
- (b) any person acting on behalf of a Self Regulatory Organization including –
  - (i) any member of the Board of directors, employee or agent of the Self Regulatory Organization; or
  - (ii) any member of any committee established by the Self Regulatory Organization;

in respect of anything done or omitted to be done in good faith in the discharge of the duties delegated to the Self Regulatory Organization under this Directive or in the performance of its functions under its rules.

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### **ARTICLE 10 CHANGE OF KEY PERSONNEL BY A SELF REGULATORY ORGANIZATION**

A Self Regulatory Organization shall inform the Competent Authority of changes in its key personnel within seven days of such changes.

### **ARTICLE 11 DIRECTIONS TO A SELF REGULATORY ORGANIZATION**

1. A Competent Authority may, after giving a Self Regulatory Organization reasonable opportunity to be heard in respect of any matter, give direction, in writing, to the Self Regulatory Organization in terms of this Directive.
2. A direction given may-
  - (a) suspend a provision of the constitution or rules of a Self Regulatory Organization for a period specified in the direction;
  - (b) require a Self Regulatory Organization, subject to any other law, to amend its constitution as specified in the direction so as to bring it in conformity with this Directive, or any other law;
  - (c) require a Self Regulatory Organization to amend its rules; or
  - (d) require a Self Regulatory Organization to implement or enforce its constitution or its rules.

### **ARTICLE 12 REPORTING OBLIGATIONS**

1. A Self Regulatory Organization shall, within ninety days after the end of every financial year, submit to the Competent Authority, its Financial Statement and an Annual Report which shall include –
  - (a) a report on the corporate governance policy of the Self Regulatory Organization;
  - (b) financial statements prepared and audited in accordance International Accounting and Auditing standards ; and
  - (c) such other requirements as may be specified by the Competent Authority.



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2. A Competent Authority may require a Self Regulatory Organization to submit the Auditor's management letter.
3. A Competent Authority may appoint in writing an auditor at the expense of the Self Regulatory Organization to examine, audit and report either generally or in relation to any matter on the books, accounts, records and systems, where it has reason to believe that:—
  - (a) there is or has been an adverse change in the risks inherent in the business of a Self Regulatory Organization with the potential to jeopardize its ability to continue as a going concern;
  - (b) the Self Regulatory Organization may be in contravention of any provisions of this Directive, or directions issued by a Competent Authority;
  - (c) a financial crime has been or is likely to be committed;
  - (d) serious irregularities have occurred; or
  - (e) any other related matter.

### **ARTICLE 13**

#### **WITHDRAWAL AND SUSPENSION OF RECOGNITION TO A SELF REGULATORY ORGANIZATION**

1. A Competent Authority may at any time withdraw or suspend a recognition granted by it if it appears to it:
  - (a) that the holder of the recognition is not a fit and proper person to carry on the self-regulatory responsibilities; or
  - (b) that the holder of the recognition has contravened any provision of this Directive or any relevant law in any jurisdiction within the Community 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.
2. The suspension or withdrawal of recognition shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and while

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recognition is suspended the holder shall not carry out any Self Regulatory Organization responsibilities.

3. Any period, event or conditions specified under paragraph (2) above in the case of recognition may be varied by the Competent Authority on the application of the holder.

### **ARTICLE 14 COOPERATION**

1. Competent Authorities shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive, in the exercise of their powers under this Directive or national law.
2. Competent Authorities shall exchange information and cooperate with Self Regulatory Organizations in any licensing and supervisory activities.

### **ARTICLE 15 APPEAL OF DECISIONS MADE BY A COMPETENT AUTHORITY**

Partner States shall ensure that decisions taken pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right of appeal to the courts.

### **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 TRANSPOSITION**

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.

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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 18 ENTRY INTO FORCE**

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

### **ARTICLE 19 ADDRESSEES**

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