

**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 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 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 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 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 ADOPTED THIS DIRECTIVE**

## **ARTICLE 1 INTERPRETATION**

In this Directive unless the context otherwise requires:

**“Business Risk”** means possibility that a company will have lower than anticipated profits, or that it will experience a loss rather than a profit;

**“Central Bank Money”** means deposits held at the Central Bank (plus bank notes);

**“Competent Authority”** means the national Competent Authority 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;

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

**“Credit Risk”** means the risk of loss arising from a debtor being unlikely to pay its loan obligations in full or the debtor is more than ninety days past due on any material credit obligation;

**“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 necessity of physical certificates; or
- (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;

**“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;

**“Dematerialization”** refers to the substitution or conversion of paper-form securities by book-entry securities where paper certificates are no longer recognized as *prima facie* evidence of ownership. Evidence of ownership of dematerialized securities is replaced with the electronic record at the central securities depository;

**“Immobilization”** refers to the process by which paper-form securities of an investor are converted to an equivalent number of securities in electronic form and credited into the investor’s account in a central securities depository;

**“Link”** 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;

**“Liquidity Risk”** refers to the risk that an agent of a Central Securities Depository or a settlement bank may be unable to meet short term financial demands. This usually occurs due to the inability to convert a security or hard asset to cash without a loss of capital and/or income in the process;

**“Operational Risk”** refers to the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events;

**“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 PRINCIPLES**

In implementing this Directive, Central Securities Depositories in each Partner State shall adhere to the CPSS IOSCO Principles for Financial Markets Infrastructures published in April 2012 annexed hereto and any amendments thereto.

## **ARTICLE 3 OBJECTIVE**

To establish the minimum standards of operations of Central Securities Depositories within the Community with a view to establishing and sustaining an efficient national and cross border post trade infrastructure.

## **ARTICLE 4 SCOPE**

This Directive shall apply to all Central Securities Depositories operating in the Community<sup>1</sup>.

## **ARTICLE 5 LEGAL STATUS**

The Central Securities Depository operator shall be a company incorporated or registered in the applicable Partner State and licensed to operate as a Central Securities Depository by a Competent Authority.

## **ARTICLE 6 THE FUNCTIONS OF A COMPETENT AUTHORITY**

The mandate of a competent Authority with regard to Central Securities Depositories shall include:

- (a) take such necessary measures to ensure that the provisions of this Directive are complied with;
- (b) take 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) license, approve, supervise, monitor and regulate activities of Central Securities Depositories;
- (d) approve standards of competence for Central Securities Depository agents;
- (e) approve rules of Central Securities Depositories;
- (f) counter and suppress illegal, improper or unfair practices; and
- (g) make regulations for the better carrying out of the purposes and provisions of this Directive

## **ARTICLE 7 SELF REGULATION**

1. A Central Securities Depository shall have:

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<sup>1</sup> CSD in Central Banks?

- (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.

## **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 Central Securities Depository;
- (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 eligible securities prescribed to be immobilized or dematerialized in the central depository;
- (e) deposit of certificates;
- (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; and
- (m) appropriate policies and procedures to handle participant default.

## **ARTICLE 9**

## **ACCOUNT OPENING PROCEDURES**

A Central Securities Depository shall ensure all its Agents comply with the minimum set Securities Accounts Opening Procedures attached as schedule 1, as well as the Know Your Customer (KYC) requirements provided under article 6 of the 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 Directive on Corporate Governance for Market Intermediaries.

### **ARTICLE 11 RISK MANAGEMENT**

A Central Securities Depository within the Community shall have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

### **ARTICLE 12 SETTLEMENT FINALITY**

1. A Central Securities Depository shall provide clear and certain final settlement, latest by the end of the value date. 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. Where appropriate, a Central Securities Depository shall provide incentives to immobilise or dematerialise securities.

**ARTICLE 14**  
**SAFEGUARDING THE 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 unauthorized creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues 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**  
**CENTRAL SECURITIES DEPOSITORY SYSTEM LINKAGES**

1. A Central Securities Depository shall have objective, risk-based, and publicly disclosed criteria which permits fair and open access by other Partner States' Central Securities Depositories
2. A link shall have a well-founded legal basis that supports its design and provides adequate protection to the Central Securities Depositories involved in the link.

**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 atleast once every three (3) years.
4. Notwithstanding (3) above, 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 at a minimum use or accommodate internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.

## **ARTICLE 19 DISCLOSURE OF RULES AND KEY PROCEDURES**

1. All Central Securities Depository rules and key procedures shall be publicly disclosed and shall be clear and comprehensive enough to enable investors 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**

Central Securities Depositories within the Community shall cooperate with each other at all times for the purpose of establishing and sustaining an efficient cross border post trade 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 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.
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 of Ministers.

## **ARTICLE 24 ADDRESSEES**

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

## **MINIMUM CSD/CDS ACCOUNT OPENING REQUIREMENTS**

1. The client will submit 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 shall enter the data obtained from the Securities Account Opening/Maintenance Form submitted by client into the CSD system.
4. CSD system will generate a CSD Identification Number.
5. The Agent will enter the CSD Identification Number in the form and will return to the client a copy of Securities Account Opening/Maintenance Form, duly signed.
6. An Agent must ensure 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 of the opening of the account.

## **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/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/Maintenance Form, duly signed, stamped and dated.
4. The Agent shall forward a copy of the form to the CSD within one day of receipt and CSD will effect the change.
5. The Agent will keep its copy of the Securities Account Opening/Maintenance Form.
6. The CSD will suspend or close a Securities Account upon receipt of written instructions to do so 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.