



**THE CENTRAL DEPOSITORY  
(SECURITIES LENDING AND BORROWING)  
RULES, 2019**



# CENTRAL DEPOSITORY (SECURITIES LENDING AND BORROWING) RULES, 2017

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## **THE CENTRAL DEPOSITORIES ACT, 2000**

**IN EXERCISE** of the powers conferred by Section 4 of the Central Depositories Act 2000, the Central Depositories and Settlement Corporation Ltd makes the following rules –

### **CENTRAL DEPOSITORY (SECURITIES LENDING AND BORROWING) RULES, 2017**

#### **PART I – PRELIMINARY**

Citation   **1.**       These rules may be cited as the Central Depository (Securities Lending and Borrowing) Rules 2019.

Interpretation   **2.**       In these rules, unless the context otherwise requires -

**"Act"** means the Central Depositories Act, 2000 and any rules made there under;

**"Account"** means a securities account;

**"Approved functions"** in relation to any CDA, means those functions, which have been authorized or approved, from time to time, by the Central Depository under these Rules to be performed by that agent;

**"Authority"** means the Capital Markets Authority established under section 5 of the Capital Markets Act (Cap. 485A);

**"Borrower"** means any investor or entity that is allowed to borrow securities from a lender;

**"Borrowing Agent"** means an SLB agent authorized to conduct securities borrowing transactions on behalf of others;

**"CDA"** means Central Depository Agent and **"CDAs"** means Central Depository Agents;

**"Central Depository"** means the Central Depository and Settlement Corporation Limited a limited liability company, incorporated in Kenya and approved under Section 5 of the Act;

**"Lender"** means an investor or entity that is allowed to lend securities to a borrower;

**"Lending Agent"** means an SLB agent authorized to conduct securities lending transactions on behalf of others;

**"Lending fee"** means a percentage of the value of the securities that are loaned payable by the borrower to the lender of securities;

**"Loaned securities"** means the specified securities lent or borrowed;

“**Margin**” means the amount of collateral required above the value of the loaned securities to cover potential adverse movements in the value of the securities and the word margining shall be construed accordingly;

"**Procedures Manual**" includes any manual containing guidelines and operating procedures for Central Depository agents, issuers and depositors, from time to time, issued by the Central Depository;

“**Rebate rate**” means part of the interest earned by the collateral held by the lender returned to the borrower where collateral is in form of cash;

“**Regulated person**” has the meaning assigned to it under the Act;

“**Securities lending**” means the temporary transfer of securities from one party, the lender, to another, the borrower, with a simultaneous formal agreement to return the securities either on demand or at a future date;

“**Securities lending and borrowing agreement**” means a contract executed by both the SLB agent and the borrower or lender of securities before engaging in a securities lending and borrowing transaction;

“**Settlement bank**” means the bank(s) appointed by the Central Depository to provide clearing and settlement services;

“**SLB**” means Securities Lending and Borrowing;

“**SLB AGENT**” An agent appointed by CDSC to carry out securities Lending & borrowing transactions;

“**SLB Agency agreement**” is a contract between CDSC and an SLB agent for SLB transactions;

“**SLB Regulations**” means Capital Markets (Securities Lending and Borrowing and Short Selling) Regulations, 2016.

In these rules, unless expressed to the contrary:

- a) Words in the singular include the plural, and words in the plural include the singular.
- b) Words importing the masculine gender include feminine and neuter gender.
- c) References to the Act or any statute shall be deemed to include the Act or that statute as amended or re-enacted from time to time.
- d) A reference to writing shall be deemed to include any mode of representing or reproducing letters, figures or marks in a visible form.
- e) Terms used in these Rules and in the Act not specifically defined here shall unless a contrary intention appears; have the meaning respectively assigned to them under the Act.

## **PART II - GENERAL**

### **(A) RULES RELATING TO APPOINTMENT OF SLB AGENTS**

Eligibility	<p><b>3</b> (1) Only persons prescribed under section 5 of the Capital Markets (Securities Lending and Borrowing and Short Selling) Regulations, 2016 shall be eligible for appointment as SLB Agents. (2) Without prejudice to section (1) a CDA will be eligible for appointment as an SLB agent subject to meeting the application conditions set in rule 4(2).</p>
procedure	<p>(3) All appointments of SLB Agents shall be made by the Central Depository in writing under the hand of the Chief Executive for the time being of the Central Depository.</p>
Application	<p><b>4</b> (1) A written application for appointment to operate as a Securities Lending and Borrowing agent shall be submitted to the Chief Executive of the Central Depository.</p> <p>(2) The application for appointment as SLB agent shall be submitted to the Chief Executive of the Central Depository in Form 1 set out in the First Schedule under the Procedures Manual and shall be accompanied by -</p> <ol style="list-style-type: none"><li>i. Memorandum and Articles of Association or any other document that defines the constitution of the applicant;</li><li>ii. A firm profile including experience and expertise;</li><li>iii. A current license of operation (where applicable);</li><li>iv. Statement by directors of the applicant's ability to provide the required services including risk management framework, financial and human resources to meet its obligations pursuant to the Act, the SLB Regulations, the CMA rules, these rules and the Agency (SLB Agency) Agreement;</li><li>v. Details of key personnel, their training experience and skill;</li><li>vi. The approved appointment fee.</li><li>vii. Financial statements for the last 3 years. The Agent shall be required to meet minimum risk based capital (liquid capital) requirements imposed by the Central Depository and the agent's regulator.</li></ol>
Conditions	<p>(3) The Central Depository may, in appointing any SLB agent to perform any of the approved functions, impose such requirements or conditions, as it considers necessary to ensure orderly conduct of the SLB transactions.</p>
Appointment	<p><b>5</b> Upon finding an applicant fit for appointment as an SLB agent and, upon the applicant satisfying the requirements under rule 4, the Central Depository shall issue the applicant with a letter of appointment as a SLB agent.</p>

**6** The SLB agent shall execute the SLB Agency Agreement and thereafter be duly appointed and entitled to commence operations as such agent on the terms set out in the Agency Agreement.

Fees

**7.** Every SLB agent shall pay an annual subscription fee prescribed by the Central Depository which shall be payable at the commencement of every calendar year from the year of appointment.

Continuing  
appointment: -  
Obligations

**8. (1)** Every CDA shall, throughout the term of its

(a) Comply with all the terms of their appointment as set out in the Letter of Appointment

(b) Comply with the provisions of the Act;

(c) Comply with the settlement obligations as provided in these rules and the SLB Procedures;

(d) Comply with the CMA regulations and these rules;

(e) Comply with technical and information security standards as may be prescribed by the Central Depository from time to time;

(f) Remain in good standing with their regulator;

(g) Provide such documents and information as may reasonably be required by the Central Depository from time to time and

(h) Meet all other conditions that may reasonably be imposed by the Central Depository

(2) The Central Depository may take disciplinary action against an SLB Agent for failure to meet any or all of its obligations, and such action may include levying of pecuniary penalties against such SLB Agent or suspension or revocation of the Agent's appointment. The decision on the disciplinary action shall rest with the Business Conduct Committee.

Approved  
functions

**9.** An SLB agent shall be authorized by the Central Depository to perform any or all of the following functions:-

a) Submission of borrowing and lending requests for their own books or on behalf of their clients;

b) Collection of collateral to support borrowing requests

c) The collection of such fees and charges imposed by the Central Depository; and

d) Such other incidental and ancillary functions as the Central Depository may determine at its sole discretion.

Indemnity

**10(1)** Every SLB agent shall be responsible for its own operations and functions pursuant to its appointment and shall indemnify and hold indemnified the Central Depository for any loss, legal costs (including third party legal costs), damage or liability suffered or incurred by the Central Depository, whether directly or otherwise, as a result of any negligence, omission, mistake, misrepresentation, fraud or error on the part of the SLB agent, its servants or agents.

(2) The Central Depository shall be responsible for its own operations and functions and shall indemnify and hold indemnified the SLB agents for any loss, legal costs (including third party legal costs), damage or liability suffered or incurred by the SLB agents directly as a result of any negligence, omission, mistake, misrepresentation, fraud or error on the part of the Central Depository, its servants or agents.

Suspension or revocation

**11. (1)** An SLB agent may be suspended by the Central Depository or be prohibited from maintaining or performing any or all of the approved functions of a SLB Agent in any of the following circumstances:-

- (a) violation, whether directly or indirectly, of any provisions of the Act, the CMA regulations or these rules notwithstanding the payment of any penalties or fines imposed thereon;
- (b) failure to pay any money due and owing to the Central Depository on any account;
- (c) Dealing in a client's securities accounts without the client's approval or instructions;
- (d) Failure to return securities due and owing to other investors.
- (d) failure to make good any indemnity for the benefit of the Central Depository pursuant to rule 10 hereof;
- (e) becoming insolvent under the Companies Act or any rules or regulations made thereunder;
- (f) where it has been suspended from operating as a Central Depository Agent; or
- (g) Suspension of its operating license by its regulator; or
- (h) otherwise acts in a manner prejudicial to the interests of the depositors, the Central Depository or the capital markets generally.

(2) A suspended SLB agent may have its appointment revoked if within the time allowed by the Central Depository it does not remedy the default for which it was suspended.

(3) An SLB agent may voluntarily terminate its agency appointment according to the process specified in



the Securities Lending and Borrowing Operational Procedures.

**(B) CENTRAL DEPOSITORY ACCOUNTS TO BE USED FOR SLB**

Securities accounts           **12** Central Depository accounts shall be used for SLB transactions. These accounts shall comprise the agent's securities account and client securities account.

Operations                   **13** The depository service and its facilities shall be extended by the Central Depository and made available to SLB agents in accordance with the Agency Agreement. Borrowers and lenders shall submit their transactions only through the SLB agents.

Restrictions                 **14** Where SLB agents are permitted to perform their own SLB transactions they shall be required to segregate their client's transactions from their own transactions. Agents' own transactions shall only be performed in the accounts in which the agent holds beneficial ownership of securities.

**(C) SECURITIES ACCOUNTS**

Responsibility for entries in security accounts           **15** Every SLB agent shall be responsible for all entries made by such SLB agent, its employees or servants in relation to SLB transactions in the securities accounts of its clients and shall, in respect of any such entries, fully indemnify such clients for any loss, damage or liability suffered by any depositor arising from any willful act, omission, neglect, fraud or error on the part of such agent, its employees or servants in respect thereof and shall indemnify and hold indemnified the Central Depository against any claim, action or proceeding instituted against the Central Depository by the depositors or any other third party towards any cost, expense, loss, damage or liability suffered or incurred by the Central Depository as a result of such claim, action or proceeding.

**(D) PROHIBITION AGAINST VARIATION OF CONTRACT**

Standardization of contracts           **16** All contracts, agreements or memorandum governing the contractual relationship between the Central Depository, the SLB agent and the lenders and borrowers, shall be made on forms prescribed by the Central Depository. No agent shall vary, delete, amend or include any term or condition in the aforesaid forms without the prior written approval of the Central Depository.

Prohibition

**17** No SLB agent shall enter into any additional agreement, whether supplemental or principal, with their depositors, which may exclude, exempt, disclaim, reduce, limit or waive any liability for loss damage or liability on the part of the SLB agent for any willful act, omission, neglect fraud or error on the part of such SLB agent.

**(E) BORROWING OF SECURITIES**

General

**18** (1) Borrowers of securities may borrow securities that are eligible for SLB transactions.

(2) A request to borrow securities shall be made through an SLB agent.

**(F) LENDING OF SECURITIES**

General

**19** (1) Lenders of securities may lend securities that are eligible for SLB transactions.

(2) A request to lend securities shall be made through a SLB agent.

(3) Once a request to lend securities has been made, no dealings in those securities may take place unless and until the lending request is first withdrawn through the SLB agent.

Exceptions

**20** No book-entry securities may be lent out in any of the following circumstances:

- a) Where the securities are the subject of a transaction which has not been settled;
- b) where a security has not been prescribed for securities lending and borrowing.
- c) where such securities are for the time being designated as securities in or under suspense;
- d) where the security has been pledged as collateral;
- e) any other circumstances as may be prescribed by the Central Depository from time to time.

**(G) SECURITIES LENDING & BORROWING TRANSACTIONS**

General

**21** (1) Lending and borrowing transactions shall be matched automatically according to criteria specified in the Securities Lending & Borrowing operational procedures.

(2) The matched transactions shall form an SLB agreement.

(3) Once an SLB transaction has matched it shall be irrevocable.

**(H) SECURITIES LENDING & BORROWING COLLATERAL**

General **22** (1) All borrowing transactions shall be supported by collateral of at least one hundred per centum of the value of the loaned securities.

(2) CDSC shall require an additional margin on the collateral provided under paragraph (1) which shall be defined in the SLB operational procedures.

(3) Collateral shall be of the form prescribed by CDSC.

(4) The securities and collateral shall be revalued on a daily basis and the collateral adjusted correspondingly.

(5) CDSC shall collect mark-to-market (variation) SLB margins.

**(I) RIGHTS AND OBLIGATIONS**

General **23** (1) Legal title of loaned securities shall move from the lender to the borrower once the SLB transaction has matched.

(2) The lender shall be entitled to receive all economic benefits associated with the securities loaned during the period of the loan.

(3) The lender shall be entitled to a lending fee income from the loan.

(4) The borrower shall be obligated to provide collateral and pay such other amounts as may be requested to ensure that the collateral provided is sufficient at all times.

**(J) SETTLEMENT OF SLB TRANSACTIONS**

Settlement **24** (1) All SLB agents shall settle their funds obligations for SLB transactions through a settlement bank appointed by the Central Depository

Of transactions

(2) Every SLB agent that participates in securities lending and borrowing, shall enter into an agreement with the settlement bank for the purpose of settling funds for SLB transactions.

Transaction Report **25** On every market day in which one or more SLB transactions are recorded in a SLB agent's Account, the Central

Depository shall provide such agent with reports at such time as are set forth in the operational procedures..

Settlement  
Date

**26** Settlement shall be effected on the next business day following the return date as indicated at the time of capturing the lending transaction. The Central Depository shall be informed of any change in the return date at least seven days prior to the new intended return date.

Settlement  
mode

**27** At end of day on return date the borrower's securities account is debited with the eligible securities being the object of the transaction and the lender's securities account is credited with the securities. The corresponding collateral is released simultaneously. On settlements date, the borrower's settlement account is debited with the settlement amount being the object of the transactions and the lender's settlement account is credited with the corresponding payment therefor.

Net  
Settlement

**28** All net funds payment obligations arising on settlement date shall be effected and settled through the settlement bank at the time prescribed in the SLB operational procedures on settlement date through the crediting and debiting by the settlement bank of the respective settlement account of the agents based on the net position of each as a result of settlement.

Failed delivery

**29** (1) In the instances where a delivery failure occurs, the collateral provided shall be used to buy the securities that have not been delivered  
(2) Delivery and settlement failure shall be subject to such fines and penalties as may be prescribed from time to time.

Failed  
settlement

**30** In the instances where funds settlement failure occurs, the outstanding amount shall be deducted from the collateral provided.

**(K)**

### **DE-LISTING OR TRADE SUSPENSION OF SECURITIES**

De-listing

**31** If securities which are eligible for securities lending and borrowing are suspended from trading at the relevant securities exchange, the Central Depository shall ensure that all outstanding SLB transactions (agreements) are wound up in accordance to the procedures outlined in the SLB operational procedures.

**(L)**

### **CORPORATE ACTIONS**

**32** The Lender is entitled to receive all corporate actions related to the lent securities. Corporate actions will be handled in accordance to procedure 13 of the SLB Operational procedures

**(M) MISCELLANEOUS**

Exclusion of liability

**33(1)** The Central Depository shall at all times act in good faith and shall exercise due care and diligence.

(2) The Central Depository shall not be liable to any Agent or holders of securities accounts under its management for:

- a) any loss of opportunity, profit, market, goodwill, interest or use of money or securities;
- b) any other special, indirect or consequential loss, damage, expense, liability or claim; which is suffered or incurred by any Agent or holders of securities accounts under its management arising from or related to the SLB services.

Force Majeure

**34** The Central Depository and any person including a SLB agent acting on its behalf shall not be held liable to indemnify any aggrieved party for any delay, loss, damage or failure of performance in the event of any act of God, act of public enemy, war, insurgency, riot, labor disputes or any other reason or cause whatsoever beyond its control.

Reprimand

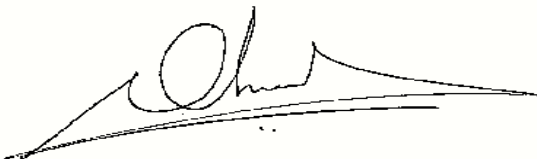
**35** Notwithstanding any other powers conferred on the Central Depository in the Act, SLB Regulations, these rules or the CMA rules the Central Depository may reprimand or caution any SLB agent or other Users for any breach of any of the provisions of these rules.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signed

Chairman  
Central Depository & Settlement Corporation Limited

Signed



Nkoregamba Mwebesa  
Chief Executive  
Central Depository & Settlement Corporation Limited