

ONLINE FOREX BROKERS



Compliance with License Requirements

Section 29 of the *Capital Markets Act, Part IV of the Capital Markets (Licensing Requirements) (General) Regulations, 2002 and the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011*

	Requirement	Met Y/N	Comment
1.	Duly completed and executed application form (Form 1) in duplicate		
2.	Certified copy of the Certificate of Incorporation		
3.	Certified copy of the Memorandum and Articles of Association (<i>with objects that allow the company to carry out the business for which the license is sought</i>).		
4.	Accounts (6 months unaudited +2 years where relevant or an auditor's certificate in case of a newly established entity)		
	<ul style="list-style-type: none"> ▪ Paid up share capital (\geq Kshs. 50 million for a dealing license and \geq Kshs. 30 million for non-dealing license) 		
	<ul style="list-style-type: none"> ▪ Liquid capital ▪ ($x \geq$ The higher of Kes. 30,000,000 or 8% of total liabilities) 		
	<ul style="list-style-type: none"> ▪ An undertaking to maintain at all times, liquid capital of- Thirty million shillings or eighty per cent of total liabilities whichever is higher in the case of a dealing or anon-dealing foreign exchange broker. 		
5.	Where an applicant provides online forex brokerage services in another jurisdiction, they shall provide an undertaking that they will allocate the prescribed percentage of		



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	<p>the capital to support its activities in Kenya, which shall:</p> <ul style="list-style-type: none"> ▪ not be less than the required minimum capital; ▪ be kept segregated; ▪ be maintained in Kenya at all times 		
7.	<p>Business plan with details of the following:</p> <ul style="list-style-type: none"> ▪ Management structure 		
	<ul style="list-style-type: none"> ▪ Board of Directors which should comprise of: <ul style="list-style-type: none"> ○ A minimum of 3 directors a third of whom must be natural persons; ○ At least one third should be independent and non-executive director; ○ Not more than one third of the directors who are close relations of any director; ▪ A director should not hold more than 2 directorships in market intermediaries unless they are subsidiaries or holding companies; ▪ The Chairman of the Board shall be independent and non-executive 		



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	director.		
	<ul style="list-style-type: none"> Company Secretary (<i>Disclose the name of an individual and ICPSK Number</i>) 		
	<ul style="list-style-type: none"> Shareholding Structure, detailing the number of shares and the percentage holding (<i>Please note the shareholding structure requirements as stipulated under section 29(5) of the Capital Markets Act</i>) 		
	<ul style="list-style-type: none"> The beneficial owners of the legal person or arrangement including beneficial owners of corporate shareholders 		
	<ul style="list-style-type: none"> Name and competencies of Chief Executive (<i>A fit and proper person within the description of under section 24A of the Capital Markets Act and who has experience of not less than five years in the business of buying, selling, managing, or dealing in forex, forex futures, or futures contracts and is a member of a professional body.</i>) 		
	<ul style="list-style-type: none"> Financial projections for 3 years 		
	<ul style="list-style-type: none"> Operating and IT system (<i>describe the system in place or the system to be put in place once licensed</i>) 		
	<ul style="list-style-type: none"> External Auditor 		
	<ul style="list-style-type: none"> Details of premises 		

	<ul style="list-style-type: none"> ▪ Details of staff (<i>please note the requirement for the chief financial officer, risk management officer,</i> 		
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	<p><i>compliance officer and internal audit functions as per the Corporate Governance Regulations)</i></p> <ul style="list-style-type: none"> ▪ The internal auditor and chief financial officer must be members of ICPAK and the internal auditor must not be the compliance officer. ▪ The appointed compliance officer should be a Chartered Institute of Securities and Investments (CISI) accredited officer who can be also the anti-money laundering officer.) 		
	<ul style="list-style-type: none"> ▪ Directors' declaration as required under paragraph 1(e) of the Application Form 		

8.	<p>Submission of a board charter that:</p> <ul style="list-style-type: none"> ▪ confirms the Board’s responsibility for adoption of strategic plans, monitoring operational performance, the determination of policies and processes that ensure the intermediary’s risk management and internal controls; ▪ establishes an audit committee of at least three independent and non-executive directors who shall report to the board; ▪ reserves specific powers to itself and delegates other matters to the 		
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	<p>management of a market intermediary;</p> <ul style="list-style-type: none"> ▪ provides a code of conduct that addresses conflict of interest relating to directors and management which shall be regularly reviewed and updated as necessary; ▪ Identifies the key risk areas that require regular monitoring. 		
9.	Clear separation of roles and responsibilities of the Chairman and Chief Executive.		
10.	Have a policy for appointment of employees and provide indemnity insurance for key personnel policy.		

11.	Have policies regarding: <ul style="list-style-type: none"> ▪ Client on-boarding; ▪ Individual risk assessment; ▪ Anti-money Laundering and Know Your Client checks; ▪ Product Sensitization Framework; ▪ Internal Client Dispute Resolution Framework. 		
12.	Have a Risk Management framework in place		
13.	Applicant from other jurisdictions: <ul style="list-style-type: none"> ▪ Subsidiary, branch or money manager regulated in another jurisdiction shall provide a letter from that other foreign online forex broker or money manager and legal documents evidencing such 		



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	relationship including copies of any agreements; <ul style="list-style-type: none"> ▪ A letter from the regulator confirming that the online forex broker or money manager is in good standing and the regulator has no objection for the broker or manager to operate in Kenya; ▪ A letter from an online trading platform stating that the online forex broker meets all the relevant requirements of the platform and the platform will admit the applicant if licensed by the Authority. 		
14.	Two (2) letters of business reference		
15.	One (1) letter of bank reference		

16.	Comprehensive Curriculum Vitae for directors and key personnel*		
17.	Declaration of compliance and clearance certificate from a licensed credit reference bureau		
18.	Duly filled and executed Fit & Proper Forms for directors and key personnel		
19.	The Applicant shall ensure that all its personnel responsible for roles involving direct client facing have undertaken Module one and two of the Securities Industry Certification Program (SICP) offered by the Chartered Institute of Securities and Investments (CISI).		
20.	A shareholder, director and all key personnel of the applicant shall be persons who have not		



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	defaulted in payment of dues at any securities exchange, clearing house or a central bank or any bank and this will be evidenced by a declaration of compliance and a clearance certificate from a licensed credit reference bureaus.		
21.	Valid certified copies of Police Clearance Certificate for directors and key personnel*		
22.	Application Fees (Kshs. 10,000)		

*Key personnel is defined in the Capital Markets Act "a person who manages or controls the activities of a licensed or a regulated person and includes-

- (a) the chief executive officer, chief financial officer, chief compliance officer, secretary to the Board, chief internal auditor or any manager; and
- (b) any person who holds a position or discharges responsibilities of any

person referred to in paragraph (a);