

THE CAPITAL MARKETS ACT (CAP 485A)

IN EXERCISE of the powers conferred by section 36 of the Capital Markets Act, the Minister for Finance makes the following Regulations:-

THE CAPITAL MARKETS (FOREIGN INVESTORS) REGULATIONS, 2002

Citation. 1. These Regulations may be cited as the Capital Markets (Foreign Investors) Regulations, 2002 and shall come into force on July 15, 2002.

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

Cap. 488 "Authorized Depository" means a bank licensed under the Banking Act or a financial institution approved by the Authority to hold in custody funds, securities, financial instruments or documents of title to assets registered in the name of local investors, foreign investors or of an investment portfolio;

"days" means calendar days excluding Saturdays, Sundays and public holidays;

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"East African Community Partner State" means States that are members of the East African Community;"

"free float" means any shares in excess of the minimum reserved under the regulation 3 (1) and (2) of these Regulations;

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investor

14th March 2008

"foreign investor" means any person who is not a local Commenced

"issuer" means a company or other legal entity incorporated or established under the laws of East African Community Partner States that offers securities to the public or a section thereof, whether or not such securities are the subject of an application for admission or have been admitted to listing;

"institutional investor" means a body corporate including a financial institution, collective investment scheme, fund manager, dealer or other body corporate whose ordinary business includes the management or investment of funds whether as principal or on behalf of clients;

"listed company" means an issuer any part of whose shares have been listed at a securities exchange;

“local investor” in relation to –

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(a) an individual, means a natural person who is a citizen of an East African Community Partner State;

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(b) a body corporate means a company incorporated under the Companies Act of Kenya or such other similar statute of an East African Community Partner State in which the citizen or the Government of an East African Community Partner State have beneficial interest in one hundred per centum of its ordinary shares for the time being or any other body corporate established or incorporated in an East African Community Partner State under the provisions of any written law.”

“official list” means a list specifying all securities which have been admitted to listing on any of the market segments of a securities exchange;

“public offer” has the meaning assigned to it in Regulation 5 of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002

“ reserve” means any shares of an issuer or a listed set aside for investment by local investors which are not available for investment by foreign investors except as provided under regulation 3 (4) of these Regulations.

Shares reserved for local investors and participation by foreign investors.

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3. (1) Every issuer or listed company shall reserve at least twenty five per centum of its ordinary shares for investment by local investors in the issuer or listed company.

(2) In the case of –

(a) ordinary shares of a listed company which have been listed, the shares to be reserved shall be the per centum of the ordinary shares already listed on the securities exchange;

(b) ordinary shares of the issuer in respect of which the issuer is making a public offering and which is a subject of an application for listing, the shares to be reserved shall be the per centum of the ordinary shares being offered to the public.

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(3) Any proportion of the voting shares of an issuer or listed

company in excess of twenty five per centum reserved for local investors, shall be available for investment by the foreign investors without any restrictions in the level of holdings except as provided under the Capital Markets (Take over and Mergers) Regulations, 2002.

(4) Notwithstanding the provisions of paragraphs (1) and (2) where, in the case of public offering, the per centum reserved for local investors is not subscribed for in full by local investors, the issuer may with the prior written approval of the Authority, allot the shares so remaining to foreign investors.

**Register of
shareholders.**
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4. (1) A company shall maintain a register of shareholders of ordinary shares showing at all times the holding thereof by-

- (a) foreign investors;
- (b) individual local investors; and
- (c) institutional local investors.

(2) Every listed company shall, within thirty days from the day these Regulations come into force provide the Authority with a status report with respect to the category of shareholders specified in paragraph (1) and subsequently, within ten days following the end of each month, furnish to the Authority and to the securities exchange on which its shares are listed, a report showing details of the holding of its ordinary shares according to the categories specified in paragraph (1).

**Declaration of
investor status.**

5. (1) A stockbroker shall-

- (a) on every application for the shares of an issuer; or
- (b) on the transfer of the shares of a listed company to an investor;

declare whether the applicant or the transferee, as the case may be, is a foreign investor, East African Community Partner States individual investor or East African Community Partner States institutional investors with supporting documentation evidencing such status.

|(2) No company registrar shall effect any transfer of the ordinary shares of an issuer or of a listed company if such transfer would result in investment in the ordinary shares of such issuer or listed company by local investors to fall below the per centum specified in paragraphs (1) and (2) of regulation 3 other than under the circumstances specified in paragraph (4) of regulation 3.

**Report by
listed Companies.**
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6. (1) In relation to paragraphs (1) and (2) of regulation 3, a listed company shall immediately report to the securities exchange at which it is listed, all transactions that result in the percentum of ordinary shares held by foreign investors to reach seventy per cent or more specifying the percentum attained by each such transaction.

(2) A securities exchange shall publish a weekly report showing-

(a) the number of shares of each listed company traded on that day; and

(b) listed companies in which foreign investors and East African investors hold seventy per centum or more indicating the percentage so held.

(3) A securities exchange shall submit to the Authority Weekly and make available to the public at its Principle place of business every report Prepared under this regulation

**Deposit of share
certificates
with an authorized
depository.**

7. (1) A stockbroker shall deposit every share certificate registered in the name of a foreign investor African with an authorized depository designated by the foreign investor,

(2) An authorized depository shall hold in its custody every share certificate for foreign investors under this regulation, which certificate shall remain so held unless shares are transferred to a local investor.

PROVIDED that if the issuer's shares are immobilized or dematerialized the shares shall be held by an authorized depository or a central depository agent.

Report by

8. An authorized depository shall, in respect of each

**authorized
depository.**

month, prepare a report showing the share certificates or statement of account of the shares in its custody pursuant to the provisions of regulation 7 and shall furnish such report to the Authority within ten days after the end of every month.

**Restrictions of
shares issued
outside Kenya.**

9. No person shall, in Kenya, offer or cause to be offered to the public any shares or other capital market instrument as the Authority may specify which are listed or to be listed outside Kenya except with the prior written approval and registration of such security with the Authority.

**Transitional and
Saving
provisions**

10. (1) Nothing in these Regulations shall require a foreign investor who, at the commencement of these Regulations, holds shares of an issuer in excess of the limits prescribed in these Regulations, to dispose of the excess shares

(2) In the event that a foreign investor who holds shares in excess of the limits prescribed by these Regulations by virtue of the provisions of paragraph (1) above, determines to dispose of any shares, no foreign investor shall be eligible to purchase the same save to the extent that the aggregate of the shares of that issuer held by foreign investors shall not exceed the limits prescribed in Regulation 3.

(3) Nothing in these Regulations shall restrict the right of a foreign investor to acquire additional shares by way of a bonus or right or scrip dividend issue pursuant to the memorandum or articles or association or other regulations of a listed company or under the provisions of any other written law: PROVIDED that in the event of a rights or scrip dividend issue no foreign investor shall be eligible to acquire directly or indirectly additional shares as would result in the percentage reserved for local investors to fall below twenty five per centum.

L.N. 291/1995.

11. The Capital Markets Authority (Foreign Investors) (No. 2) Regulations 1995, are revoked.

L.N. 109/2002.

12. The Capital Markets (Foreign Investors) (Amendment) Regulations 2002, are revoked.

Made on 26th July 2002.

C. M. OBURE,
Minister for Finance.