

## **THE CAPITAL MARKETS (FOREIGN INVESTORS) REGULATIONS**

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**THE CAPITAL MARKETS (FOREIGN INVESTORS) REGULATIONS**

[Legal Notice 134 of 2002, Legal Notice 98 of 2007,  
Legal Notice 28 of 2008, Legal Notice 113 of 2015]

**1. Citation**

These Regulations may be cited as the Capital Markets (Foreign Investors) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires —

"authorized depository" means a bank licensed under the Banking Act (Cap. 488) or a financial institution licensed 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;

"Cabinet Secretary" means the Cabinet Secretary responsible for the National Treasury;

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

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

"East African investor" *deleted by LN 78/2007, r. 2(b);*

"free float" *deleted by LN 113/2015, r. 2(a);*

"foreign investor" means any person who is not a East African Community Partner States;

"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 —

- (a) an individual, means a natural person who is a citizen of an East African Community Partner State;
- (b) a body corporate means a company or any other body corporate established or incorporated under the Companies Act or under the provisions of any written law of an East African Community Partner State in which the citizens or the government of an East African Community Partner State have beneficial interests in one hundred per centum (100%) of its ordinary shares;

"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 (L.N. 60/2002);

"reserve" *deleted by LN 113/2015, r. 2(c);*

[L.N. 78/2007, r. 2, L.N. 28/2008, r. 2, L.N. 113/2015, r. 2.]

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[Subsidiary]**3. Participation by foreign investors**

(1) Any proportion of the voting shares of an issuer after an initial public offering shall be available for investment by foreign investors without any restrictions in the level of holdings except as provided under the Capital Markets (Take over and Mergers) Regulations, 2002.

(2) Notwithstanding Regulation 3(1), the Cabinet Secretary may by notice in the gazette, prescribe a maximum foreign shareholding in an issuer or listed company.

(3) The Cabinet Secretary may only exercise the powers under paragraph 3(2) where —

- (a) in a privatization transaction, the government or its agency is divesting its shares to the public; or
- (b) some level of local ownership in a strategic industry or sector in the country is to be maintained; or
- (c) it is in national interest.

[L.N. 78/2007, r. 3, L.N. 28/2008, r. 3, L.N. 113/2015, r. 3.]

**4. Register of shareholders**

(1) A company shall maintain a register of shareholders of ordinary shares showing at all times the holdings 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).

[L.N. 78/2007, r. 4, L.N. 28/2008, r. 4.]

**5. Declaration of investor status**

(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, individual local investor or institutional local 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 regulation 3(2).

[L.N. 78/2007, r. 5, L.N. 113/2015, r. 4.]

**6. Report by listed companies**

(1) A listed company shall immediately report to the securities exchange at which it is listed, once the per centum of ordinary shares held by foreign investors reach the prescribed foreign shareholding under regulation 3(2).

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

- (a) the number of shares of each listed company traded on during the week; and
- (b) the percentage shareholding by foreign investors in listed companies prescribed by the Cabinet Secretary under regulation 3(2).

(3) A securities exchange shall submit to the Authority weekly and make available to the public at its principal place of business every report prepared under this regulation.

[L.N. 78/2007, r. 6, L.N. 28/2008, r. 5, L.N. 113/2015, r. 5.]

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

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

(2) An authorized depository shall hold in its custody every share certificate deposited under paragraph (1) and the certificate shall remain so held unless shares are transferred to a local investor.

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

[L.N. 78/2007, r. 7(a).]

## **8. Report by authorized depository**

An authorized depository shall, in respect of each 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.

## **9. Restrictions of shares issued outside Kenya**

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 by the Authority.

## **10. Transitional and saving provisions**

(1) Nothing in these Regulations shall require a foreign investor who, at the commencement of these Regulations, hold 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 or an East African investor who holds shares in excess of the limits prescribed by these Regulations by virtue of the provisions of paragraph (1), resolves to dispose of any shares, no foreign investor shall be eligible to purchase such shares 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 or an East African investor to acquire additional shares by way of a bonus or right or scrip dividend issue pursuant to the memorandum or articles of 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 exceeding the percentage shareholding by foreign investors in listed companies prescribed by the Cabinet Secretary under regulation 3(2).

[L.N. 78/2007, r. 8, L.N. 113/2015, r. 6.]

## **11. L.N. 291/1995**

The Capital Markets Authority (Foreign Investors) (No. 2) Regulations 1995, (L.N. 291/1995) are revoked.

## **12. L.N. 109/2002**

The Capital Markets (Foreign Investors) (Amendment) Regulations 2002 (L.N. 109/2002), are revoked.

