



THE REPUBLIC OF KENYA

LAWS OF KENYA

**THE CENTRAL DEPOSITORIES (REGULATION
OF CENTRAL DEPOSITORIES) RULES, 2004**

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Central Depositories Act

The Central Depositories (Regulation of Central Depositories) Rules, 2004

Legal Notice 118 of 2004

Legislation as at 5 November 2004

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CENTRAL DEPOSITORIES ACT
THE CENTRAL DEPOSITORIES (REGULATION
OF CENTRAL DEPOSITORIES) RULES, 2004
LEGAL NOTICE 118 OF 2004

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Part I – Preliminary

1. Citation

These Rules may be cited as the Central Depositories (Regulation of Central Depositories) Rules, 2004.

2. Interpretation

In these Rules, unless the context otherwise requires—

"**Act**" includes reference to the Central Depositories Act;

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

"**nominee company**" in relation to the central depository is a company incorporated and wholly owned by the central depository whose only purpose is to hold the securities in the central depository as a bare trustee on behalf of the depositors.

Part II – The Central Depository A nd Nominee Companies

3. Application to operate a central depository

- (1) An application for approval to operate a central depository shall be submitted to the Authority in Form 1 set out in the First Schedule.
- (2) The application under paragraph (1) shall be submitted together with—
 - (a) memorandum and articles of association of the applicant whose main objective shall be to operate a central depository, the certificate of incorporation and applicant's proposed rules;
 - (b) the name(s), certificate(s) of incorporation, memorandum and articles of association for all its nominee companies;
 - (c) a business model including the details of the depository and settlement system proposed to be adopted by the applicant;
 - (d) a certified copy of the agreement between the systems provider and the applicant (where applicable);
 - (e) rules made pursuant to rule 4;
 - (f) the prescribed fees set out in the Capital Markets Act (Cap. 485A);
 - (g) a schedule of proposed fees and penalties; and
 - (h) such additional documents as may be required by the Authority.

4. CDS rules

An applicant who proposes to operate as a central depository shall make rules which shall be included in the application to govern all aspects of its operations including—

- (a) appointment, functions, suspension and revocation of appointment of central depository agents;
- (b) appointment of a manager for a suspended central depository agent;
- (c) notification to the issuers and the public of all eligible securities prescribed to be immobilized or dematerialised in the central depository;
- (d) deposit of certificates;
- (e) information to be contained in the record of depositors;
- (f) frequency of issue of the statement of account by the central depository to the depositors;
- (g) charging of securities;
- (h) circumstances when a book entry security in a securities account is in suspense in circumstances other than provided under the Act; and
- (i) circumstances for investigation or restriction of dealings in any book entry transfers partially or otherwise;

5. Chief executive officer of a central depository

- (1) There shall be a chief executive officer of a central depository, who shall be in charge of the day to day affairs of the central depository.
- (2) A person shall not be qualified for appointment as a chief executive of a central depository, unless such a person has -
 - (a) qualifications in law, finance, accounting, economics, banking or insurance; and
 - (b) at least seven years experience at management level in matters relating to financial markets.
- (3) The chief executive of a central depository shall not at the same time be a stockbroker, dealer or an investment bank licensed by the Authority or a key personnel, director or shareholder thereof.

6. Chairman of a central depository

There shall be a chairman of the board of a central depository who shall be non-executive and elected by the Board in compliance with internationally accepted corporate governance practices and principles.

7. Appointment of committees

The central depository Board shall appoint—

- (a) an audit committee which shall comprise of at least two non executive directors qualified in law, finance, accounting or economics;
- (b) a business conduct committee whose membership and mandate shall be provided in the central depositories rules; and
- (c) any other committee as it may deem necessary.

8. Fees, levies and penalties

- (1) The central depository shall charge such fees and levy such transaction and depository levies and penalties as approved by the Authority.

- (2) The fees and penalties levied by a central depository will be reviewed every two years provided that the same may be reviewed earlier at the instance of either the Authority or the central depository if the central depository is dissatisfied with the outcome of the review exercise it may apply for a review to the Capital Markets Tribunal established under the Capital Markets Act.
- (3) In carrying out such review the Authority will take into account the following—
 - (a) the rate of inflation;
 - (b) market turnover;
 - (c) overall transaction fees in the market;
 - (d) viability and sustainability of the central depository;
 - (e) overall interest of the investors; and
 - (f) views of other market participants.
- (4) To facilitate continuous monitoring and assessment of adequacy or otherwise of the fees charged, the central depository shall furnish the Authority with updated information every six months on the following—
 - (a) actual and projected volumes of trade;
 - (b) actual and projected revenue;
 - (c) achieved and projected efficiency measures;
 - (d) proposed major capital expenditures.
- (5) The central depository may initiate a review, in exceptional circumstances, which shall be deemed to be in any or a combination of the following reasons for any period of twelve months and compared to that of the preceding twelve months—
 - (a) a doubling of the Kenyan rate of inflation as published by the Central Bureau of Statistics;
 - (b) a doubling of reported income of the central depository;
 - (c) a reduction of the reported gross revenue of the central depository by more than fifty per cent.
- (6) Where a central depository, in the case of exceptional circumstances, wishes to initiate a review as envisaged in subrule (4) the central depository shall notify the Authority of the proposal to review the fees in writing justifying the proposed changes provided that no such review will be considered less than six months before the next scheduled review.
- (7) Where the Authority initiates a review by reason of exceptional circumstances it shall notify the central depository of the review justifications for the proposed review and the central depository will be accorded an opportunity to make representations on the proposed changes before the final decision is made.
- (8) Where the Authority or the central depository initiates a review by reason of exceptional circumstances the review will be completed within 90 days of the notice issued by the initiating party.
- (9) The Authority will ensure that a scheduled review process is completed not later than the second anniversary of the approval of the existing fees.
- (10) If the central depository is dissatisfied with the outcome of the review exercise it may apply for a review to the Capital Markets Tribunal established under the Capital Markets Act (Cap. 485A).
- (11) The fees prevailing before the appeal shall remain until the decision of the Tribunal is made.

- (12) The central depository and all central depository agents shall prominently display all approved fees, charges, levies and other imposts at their business premises.

9. Central depository to maintain records

Every central depository shall, for a period of seven years, maintain and preserve all records and documents relating to depositors, central depository agents and meetings of its Board and the standing committees of its Board.

10. Reporting obligations

A central depository shall—

- (a) (i) within four months from the commencement of its operations provide a list of its central depository agents approved by the central depository to the Authority and shall thereafter notify the Authority each time it approves a central depository agent within forty eight hours after each approval; and
- (ii) notify the Authority at least seven days prior to prescription for immobilization or dematerialization.
- (b) furnish the Authority, by the last day of March in each year with a report of its activities during the preceding calendar year and such report shall contain information on—
- (i) financial statements duly audited by an independent auditor;
- (ii) changes in the membership of its board of directors;
- (iii) composition of the committees required to be set up under these rules;
- (iv) approvals, suspensions or revocation of approvals of central depository agents;
- (v) securities immobilized or dematerialised;
- (vi) arbitration of disputes; and
- (vii) any other information that the Authority may request.
- (c) immediately inform the Authority whenever there—
- (i) is a default on settlement and delivery;
- (ii) are, to its knowledge, incidences of violation of the Act or the rules issued thereunder.

Part III – CENTRAL DEPOSITORY AGENTS

11. Application for appointment as an agent

- (1) An application for an appointment to operate as a central appointment as an agent, depository agent shall be submitted to the central depository.
- (2) The following persons may be appointed in addition to the persons referred to in Section 9 (2) of the Act:
- (i) custodians or authorized depositories approved under the Capital Markets Act or the Retirement Benefits Act:
- (ii) Central Bank of Kenya.
- (3) The applicant shall meet any technical requirements as may be stipulated by the central depository.

12. Operation of accounts

Every central depository agent who is a member of a securities exchange and a stockbroker as defined under the Capital Markets Act shall disclose under rule 23 of the Central Depository (Operational) Rules the holders of beneficial interest to the accounts opened in the name of such stockbroker or its nominees.

13. Agents to maintain records and accounts

Every central depository agent shall maintain and preserve records and accounts relating to transactions in securities for a period of seven years including information on—

- (i) collection and submission to the central depository of certificates for purposes of immobilisation of securities;
- (ii) withdrawal of certificates in respect of immobilized securities;
- (iii) opening, maintenance and closing of securities accounts;
- (iv) the collection of fees and charges imposed by the central depository as may be provided under the Act.

14. Right of access

The central depository shall from time to time and at any time with or without notice, require its agents to produce to it or a duly authorized person such documents or records in respect of any securities transactions or accounts and to provide access to its terminals and other computer peripherals situated at the agent's premises and any data record or information in respect thereof as may, in the opinion of the central depository, be necessary for the purposes of enabling it to perform its audit investigation or review.

Part IV – CENTRAL DEPOSITORY GUARANTEE FUND

15. Establishment of the Central Depositories Guarantee Fund

- (1) There is established a fund to be known as the Central Depository Guarantee Fund (hereinafter referred to as Fund) for the purposes of ensuring settlement of trades through the central depository.
- (2) The Fund shall consist of—
 - (a) a contribution of Kenya Shillings one million five hundred thousand (or such higher amount as the central depository may from time to time, in consultation with the Authority and the Nairobi Stock Exchange, determine) by such central depository agents as will be involved in settlement.
 - (b) all penalties and fines imposed by the central depository;
 - (c) such sums of money as accrued from interest and profits from investing the Fund's moneys;
 - (d) a levy for every transaction through the securities exchange as approved by the Authority;
 - (e) such contribution from the revenue of the central depository as its Board may from time to time determine;
 - (f) funds hitherto constituting the Nairobi Stock Exchange Investor Compensation Fund; and
 - (g) such other funds as the Board of the central depository, with the approval of the Authority may determine.

16. Management of the Fund

- (1) The Fund shall be managed by the central depository as a separate fund and disclosed as such in the central depository's annual balance sheet.
- (2) The central depository shall keep proper accounts and records of the Fund and in every financial year, prepare a statement of accounts showing the movement and financial position of the Fund in its annual report.
- (3) The accounts referred to in paragraph (2) shall include all sources of income and contributions to and expenses or disbursements of the Fund and any investments of the Fund.
- (4) The accounts and records of the Fund shall be audited by an auditor appointed by the central depository for its annual accounts.
- (5) The central depository shall make rules on the operation and maintenance of the Fund.

Part V – INSURANCE

17. Insurance

- (1) A central depository shall at all times maintain an insurance policy to cover loss or damage arising from, *inter alia*—
 - (a) computer crime, involving theft or criminal damage to the computer system;
 - (b) theft, damage, falsification or alteration of any record or data kept within the computer system;
 - (c) stolen, missing certificates which are under the physical control of the central depository, whether such certificates are kept on its premises or are in transit;
 - (d) fire or theft of any records in any vault, premise or warehouse of the central depository where such records are kept pursuant to the Act;
 - (e) professional negligence of its employees, agents or servants;
 - (f) public liability; and
 - (g) fraudulent or dishonest acts of its employees or agents with intent to cause or sustain loss.
- (2) The central depository shall obtain and maintain at a reasonable and competitive cost, one or more insurance policies for such amounts and coverage as may be reasonably determined in the best interests of the central depository and its depositors.
- (3) The insurance policies maintained by the central depository shall be available for inspection by central depository agents and the Authority during business hours, upon request.
- (4) The central depository shall notify the Authority and the Central Depository agents of any material reduction in the coverage or amount of any policy of insurance it maintains.

Part VI – Miscellaneous Provisions

18. Access only to authorized personnel

Every central depository agent shall ensure that only persons authorized to transact business with the central depository have access (as defined in the Act) to the system linked to the central depository.

19. Safe custody of immobilised securities

A central depository shall ensure safe custody of its jumbo certificates and shall be liable in the event of any loss or destruction thereof.

20. Central Bank to be a central depository agent

The Central Bank of Kenya may be a central depository agent of the central depository on such terms as may be agreed with the central depository and through which government securities may be held.

21. Access to computer system

- (1) The following persons may have access to the computer system and terminals of the central depository in addition to those provided for under section 48 of the Act -
 - (a) the Authority;
 - (b) systems provider; and
 - (c) a vendor of the computer system pursuant to contract.
- (2) A central depository agent will have access to the system and be able to open, maintain and close depositor's accounts upon their instructions.
- (3) Central depository agents who are members of the securities exchange shall also be able to allocate trades in accordance with the Central Depositories (Operational) Rules.

22. Linkages to other securities depositories outside Kenya

The Authority may on request of the central depository approve computer system linkages to other securities depositories, securities exchanges and the appointment of central depository agents outside Kenya if it is satisfied that such linkages would promote development in the capital markets and that the interests of the public dealing with book-entry securities will be served by the granting of the Authority's approval.

23. Off-site disaster recovery plan

A central depository shall, prior to commencement of its operations, make arrangements for an off -site business continuity and disaster recovery plan and notify the Authority of the same.

FIRST SCHEDULE**[Regulation 3]**

FORM 1

APPLICATION FOR APPROVAL TO OPERATE A CENTRAL DEPOSITORY

Application is hereby made for renewal of/approval to operate a central depository as provided under the Act and the following statements are made in respect thereof

Note:

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of company Limited
2. Registered office
3. Date of incorporation
4. Address
5. E-mail
6. Location, address and telephone number of principal office
7. Location, address and telephone number of branch offices and nominee companies
8. Details of capital structure
 - (a) Nominal capital (KSh.)
 - (b) Number of shares
 - (c) Paid-up capital (KSh.)
9. Shareholders
(please attach a list where necessary)

<i>Name</i>	<i>Address and telephone number</i>	<i>Number of shares held</i>
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-

10. (a) Directors

<i>Name</i>	<i>Identity card/ Passport number</i>	<i>Date of appointment</i>	<i>Date of birth</i>	<i>Permanent address and telephone number</i>	<i>Academic or professional qualification</i>	<i>Number of shares held in the company</i>
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-

(b) Secretary

Name

Address

Institute of Certified Secretaries of Kenya Registration No.

(c) Chief Executive and other key personnel

<i>Name</i>	<i>Identity card/ Passport number</i>	<i>Date of appointment</i>	<i>Date of birth</i>	<i>Permanent address and telephone number</i>	<i>Academic or professional qualification</i>	<i>Number of shares held in the company</i>
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-

11. Particulars of other directorship(s) of the directors

12. Particulars of shares held by directors in other companies

13. Has the applicant or any of its directors or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/No. If 'Yes', give details.

14. Has any director or senior management of the applicant been a director of a company that has been—
- (a) denied any licence or approval by any Regulator? Yes/No. If 'Yes', give details
.....
- (b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No. If 'Yes', give details
.....
- (c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its directors was a member? Yes/No. If Yes, give details.
.....
15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of any law? Yes/No. If 'Yes', give details.
.....
16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'Yes' answer to the above question? Yes/No. If 'Yes,' give details.
17. (1) Is the applicant, or any shareholder or director of the applicant, a member or director of a member company of any securities exchange? Yes/No. If 'Yes', give details
-

(2) Have any of the above persons been—

(a) refused membership of any securities organization? Yes/No. If 'Yes', give details.

.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'Yes', give details.

.....

(c) subjected to any other form of disciplinary action by any securities exchange? Yes/No. If 'Yes', give details.

.....

18. Particulars of two business referees of the applicant:

<i>Name</i>	<i>Address</i>	<i>Telephone number(s)</i>	<i>Occupation</i>
.			
.			
.			
.			
.			

19. Attach a profile of the chief executive and key employees in the applicant company setting out the educational and professional qualifications and work experience.

<i>Name</i>	<i>Post</i>	<i>Qualifications</i>	<i>Experience</i>
.			
.			
.			
.			
.			

20. List the office facilities of the applicant.

21. Any other additional information considered relevant to this application:

We (Director), (Director)
and (Secretary) declare that all the information
given in this application and in the attached documents is true and correct.

Made on this day of, 20

Signed

(.....) Director

(.....) Director

(.....) Secretary

SECOND SCHEDULE

[Rules 3(2) & 6.]

DEPOSITORY FEES FOR THE CENTRAL DEPOSITORY AND SETTLEMENT CORPORATION LIMITED

Depository levy for issuers	KSh. 90.00 per transaction on counter subject to a minimum of KSh. 50,000 and a maximum of Kshs. 1,000,000 per annum payable quarterly in arrears with effect from April 1, 2005
Appointment Fee for Central Depository Agents who are members of a Securities Exchange	KSh. 20,000
Appointment fee for Central Depository Agents who are not members of a Securities Exchange	KSh. 75,000
Annual Subscription Fee of Central Depository Agents	KShs. 2,500
Change of Central Depository Agents, transfer of securities between different accounts of the same Depositor	KSh. 200 per change
In respect of statements issued upon request from the account holder	KSh. 50 per statement
In respect of withdrawal of securities	KSh. 500 per certificate
Fee for recording, releasing or for foreclosing of pledges	KSh. 1,000 per pledge