

Rwanda

Capital Markets Guidelines on Issuance of Commercial Papers Guidelines 11 of 2012

Legislation as at 2 July 2012

FRBR URI: /akn/rw/act/guidelines/2012/11/eng@2012-07-02

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PDF created on 21 February 2024 at 12:59.

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Capital Markets Guidelines on Issuance of Commercial Papers

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Guidelines 11 of 2012

Published in Official Gazette 27 on 2 July 2012

Assented to on 6 June 2012

Commenced on 2 July 2012

[This is the version of this document from 2 July 2012.]

Pursuant to the Law N° 11/2011 of 18/05/2011 establishing the Capital Markets Authority especially in its articles 3 & 4;

Pursuant to the Law N° 01/2011 of 10/02/2011 regulating the Capital market, especially in its article 74;

Pursuant to the Law N° 40/2011 of 20/09/2011 regulating the Collective Investment Schemes especially in its article 64;

The Capital Market Authority hereinafter referred to as the “AUTHORITY”, decrees:

Article 1 – Purpose

In order to develop and broaden the money market and also provide an additional financial instrument to investors, it is considered desirable to allow highly rated companies to diversify their sources of short-term financing by issue of commercial paper CP as an instrument of redeemable capital.

Article 2 – Definitions

In these Guidelines unless there is anything repugnant in the subject or context,-

“**Advisor**” means an entity that has been granted a license by the Authority to provide advice on the structuring, placement and issue of the commercial paper;

“**Bank**” means a Financial Institution as defined by the Banking law in Rwanda;

“**Commercial paper**” means an unsecured promissory note with a maturity of not less than 30 days and not more than one year;

“**Authority**” means the Government Institution that is charged with the Regulations of Capital Market Business;

“**Company**” means a company as defined in the Companies law of 2008 as amended to date;

“**Financial institution**” means a financial institution as defined in the Banking law;

“**Investors**” means the initial investors or subsequent buyers of commercial paper in the secondary market;

“**Issuer**” means a company that intends to raise short-term finance by issuing commercial paper;

“**Rating agency**” means a Credit Rating Agency (CRA) as defined in the capital Market Law and registered with the Authority;

“**Issuing and Paying Agent (IPA)**” means a Bank, a licensee of Capital Market or any other financial Institution as defined under the Banking law.

All other words and expressions used but not defined in these Guidelines shall have the same meanings as are assigned to them in the Capital Markets law, Banking Law and Companies law.

Article 3 – Eligibility for issue of commercial paper

A company, which satisfies the following requirements, shall be eligible to issue commercial paper subject to the terms and conditions contained in these Guidelines:

- (a) The equity of the company is not less than Rwf 500 million as per the latest audited balance sheet
- (b) The company should have no overdue loan or defaults in the report obtained from the Credit Reference Bureau (CRB) of Rwanda, and the said report should not be more than two months old.

Article 4 – Minimum and maximum period of commercial paper

- (a) The commercial paper shall be issued for maturities between 30 days and one year from the date of subscription;
- (b) If the maturity date happens to be a holiday, the company shall be liable to make payment on the immediate following working day;
- (c) Commercial paper may be rolled over at maturity subject to the written consent of the investor(s) provided a clause to this effect is mentioned on the commercial paper and in the terms and conditions of the agreement under which the commercial paper has been issued and the issuer fulfils the requirement of clause of the Guidelines at the time of roll over. Further, the issuer may redeem the commercial paper before maturity under the call option, if any, and the investor may ask the issuer for early redemption under the put option, if any.

Article 5 – Minimum size and denomination of commercial paper

- (a) The minimum size of the issue of commercial paper shall not be less than 200 million;
- (b) The commercial paper, in case of private placement, may be denominated in Rwf100, 000 (face value) or in multiples thereof and in case of offer to general public, may be denominated in Rwf1000, 000 or in multiples thereof.

Article 6 – Ceiling on amount of issue of commercial paper

The aggregate amount of commercial paper raised by an issuer shall be within the limit as provided by its Board of Directors in accordance with the prudential regulations or the quantum indicated by the rating agency for the specified rating, whichever is lower.

Article 7 – Mode of issue and discount rate

The commercial paper shall be in the form of a promissory note and be issued at such discount to face value as may be determined by the issuer keeping in view the prevailing T-Bill rates, and its Credit Rating.

Article 8 – Issuer expenses

A company issuing commercial paper shall bear the expenses of issue including the fees payable to the advisor, the issuing and paying agent, the dealers, the rating agency, and any other relevant charges connected with such issue.

Article 9 – Investors in commercial paper

Commercial paper may be issued to and held a by individuals, banking, other corporate bodies, registered or incorporated in Rwanda and a unincorporated bodies, Non-Resident Rwandans and Foreign & Domestic Institutional Investors.

Article 10 – Procedure for issue of commercial paper

- a) Commercial paper can be issued either in the form of a promissory note or in a dematerialized form through the Central Securities depositories of Rwanda. As regards the existing stock of Commercial paper, the same can continue to be held either in physical form or can be dematerialized, if both the issuer and the investor agree for the same;
- b) CP will be issued at a discount to face a value as may be determined by the issuer;
- c) No issuer shall have the issue of Commercial Paper underwritten or accepted;
- d) The issuer may appoint an adviser for assistance on the structure and placement of the commercial paper issue;
- e) The issuer shall thereafter appoint a transaction advisor and, dealers if so desired, for private placement/sale of the issue;
- f) The commercial paper issue in case of private placement must be completed within a period of two weeks from the date on which the issuer opens the issue for subscription. Any unsold portion of the issue after two weeks of its opening for subscription shall not be issued. In case of public offer it should be completed within the period as specified in offer document;
- g) The initial investors in commercial paper shall pay through the issuing and paying agent, the discounted value of the commercial paper by means of crossed account payee cheque to the account of the issuing company;
- h) The issuer shall intimate in writing to all initial investors and all financial institutions, who have provided working capital limits to the company, about the amount and tenure of the commercial paper issue, and copies of such intimation should be provided to the issuing and paying agent;
- i) The issuer shall intimate to the Authority the amount of commercial paper actually issued, within three days of the closing of subscription list.

Article 11 – Preference for dematerialized form

While option is available to both issuers and subscribers, to issue/hold CP in dematerialized or physical form, issuers and subscribers are encouraged to prefer exclusive reliance on dematerialized form of issue/holding.

Article 12 – Role and responsibilities of credit rating agencies and Issuing and Paying Agents

- (a) **Issuer**

The issuer shall ensure that the Guidelines and procedures laid down for commercial paper issuance are strictly adhered to.
- b) **Issuing and Paying Agent (IPA)**
 - (i) IPA shall ensure that issuer has the minimum credit rating as stipulated by the Authority and the quantum of amount raised through issuance of commercial paper is within the limit as disclosed in these guidelines;

- (ii) IPA shall ensure that the issuer has met all the regulatory requirements as prescribed by the Authority before the issue of commercial paper and shall communicate the same to the Authority;
 - (iii) IPA has to verify all the documents submitted by the issuer viz., copy of Board's resolution, signatures of authorized executants (if commercial paper is in physical form) and issue a certificate that documents are in order. It should also certify that it has a valid agreement with the issuer;
 - (iv) Certified copies of original documents verified by the IPA should be held in the custody of IPA;
 - (v) On the issue date, the issuing and paying agent would deliver the commercial paper to investors against proof of payment and, at maturity, having received funds from the issuer, it will effect repayment on receipt of the commercial paper back from the investors;
 - (vi) IPA shall make it clear to the investors in the offering document that investors' investment is subject to credit and other risks inherent in such instruments and payment will be made to them only if the issuer has made the funds available to IPA;
 - (vii) IPA shall inform the prospective investors that in case of any default by the issuer IPA will not be in a position to seek recovery from the issuer or initiate any action against the issuer either on its own or on behalf of the investors;
 - (viii) In case of any default by the issuer, it will be the responsibility of the IPA to promptly notify such default to the investors and the Authority within five (5) working days of occurrence of such default. For the purpose of these Guidelines, payment of only partial amount shall also be considered default;
 - (ix) In case of partial payment by the issuer, IPA shall distribute the received funds, among all the investors, on *pro-rata* basis. However, while doing so, they shall take all necessary measures to safeguard their position against any adverse consequences including incorporation of this provision in the agreement executed between the issuer and the IPA.
- (c) **Credit Rating Agency (CRA)**
- (i) All eligible issuers shall obtain credit rating for issuance of commercial paper from the credit rating agencies duly registered with the Authority;
 - (ii) The CRA would ensure that the impact of the additional amount of funding raised through commercial paper has been taken into consideration while assigning the rating. Accordingly, CRA shall at the time of rating, clearly indicate the circumstances in which the rating shall be due for review. Such circumstances may include amongst others rollover of commercial paper at maturity, fresh issue of securities by the issuer, any other activity undertaken by the issuer which would further reduce the minimum current ratio, debt-equity ratio required to be maintained by the issuer under these Guidelines.

Article 13 – Payment of commercial paper

On maturity of commercial paper, the holder of the commercial paper shall present the instrument for payment to the issuing and paying agent who, having received funds from the issuer, shall effect payment through crossed cheques. However, when the Commercial Paper is held in demit form, the holder of the Commercial Paper will have to get it redeemed through the depository and receive payment from the IPA.

Article 14 – Stand-by facility

In view of Commercial Paper being a 'stand alone' product, it would not be obligatory in any manner on the part of banks and Financial Institutions to provide stand-by facility to the issuers of Commercial Paper. Banks and Financial Institutions would, however, have the flexibility to provide for a Commercial Paper issue, credit enhancement by way of stand-by assistance/credit backstop facility, etc., based on their commercial judgment and as per terms prescribed by them. However, these should be within the prudential norms as applicable and subject to specific approval of the Board.

Article 15 – Miscellaneous

- a) Commercial paper shall be transferable by endorsement and delivery. However, the issuer at its absolute discretion may decline to accept any purchaser or transferee of the commercial paper, unless a transfer memo which records such transfer is submitted to the issuer. Upon receipt of the duly completed transfer memo, the issuer shall record such transfer in its books;
- b) The issuer will regard the last named endorsee(s) of the commercial paper as the absolute owner(s) thereof and the issuer shall not be bound to take notice of any trust whether, expressed, implied or constructive to which the commercial paper may be subject, save by an order of a court of competent jurisdiction to recognize any trust or equity affecting the title of the commercial paper or the monies secured thereby;
- c) If any commercial paper issued pursuant to these Guidelines be worn out or defaced, then upon production to the issuer, it may issue a fresh commercial paper in lieu thereof, and if any commercial paper is lost or destroyed then upon proof to the satisfaction of the issuer and on such indemnity and/or such other requirements as the issuer may deem adequate being given, a new commercial paper in lieu thereof may be given to the person entitled to such lost or destroyed instrument. The cost involved in issue of fresh Instrument will be payable by the person entitled thereto.

Article 16 – Relaxation of the Guidelines

Where the Authority is satisfied that it is not practicable to comply with any requirement of these Guidelines in a particular case or class of cases, the Authority may, for reason to be recorded, relax such requirement subject to such conditions as it may deem fit.

Article 17 – Repealing of inconsistent provisions

All prior regulatory provisions contrary to these guidelines are hereby repealed.

Article 18 – Commencement

These guidelines shall come into force on the date of their publication in the Official *Gazette* of the Republic of Rwanda.