

Rwanda

# Capital Market Regulation for Issuance of Regional Fixed Income Securities

## Regulation 13 of 2012

Legislation as at 31 December 2012

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## Rwanda

# Capital Market Regulation for Issuance of Regional Fixed Income Securities

## Regulation 13 of 2012

Published in Official Gazette 53bis on 31 December 2012

**Assented to on 5 December 2012**

**Commenced on 31 December 2012**

*[This is the version of this document from 31 December 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:

### **Part I – General provisions**

#### **Article 1 – Purpose**

The purpose of these regulations is to facilitate the investors to access long term funds through the issuance of regional bonds.

#### **Article 2 – Scope of the Regulations**

These Regulations applies to all corporate bodies incorporated in East Africa or other Corporate & International Bodies Incorporated outside East Africa which meets eligibility criteria's provided in these regulations.

### **Part I – The requirements for issuance of regional fixed income securities**

#### **Article 3 – Approval entity**

The issuer shall elect a primary jurisdiction in which it will lodge the prospectus. It shall simultaneously submit the prospectus to the regulators of the other jurisdictions in which it proposes to raise capital for approval. The procedure for approval is detailed in Appendix I.

#### **Article 4 – Fees**

Each regulator approving the issue shall get an equal share of the evaluation fees fee of 0.1%. At all times, the evaluation fees shall be a maximum of USD 200,000 and a minimum of USD 20,000.

Evaluation fees shall be paid at the time of application to the Primary Regulator. It shall be the duty of the Primary Regulator to transfer to the other regulators their share of the evaluation fees paid. In the event of a rejection, the issuer shall forfeit 25% of the evaluation fee paid.

## **Article 5 – The issuer and incorporation status**

The issuer shall be an entity incorporated or registered as a foreign entity in all jurisdictions where the offer is to be made.

Where the issuer is not a company, then it shall be duly established under a written law or recognized under an international treaty.

## **Article 6 – Share capital and net assets**

The minimum paid-up share capital shall be the local currency equivalent of USD 850,000 and the net assets shall be the local currency equivalent of USD 1,700,000.

All sovereign borrowers, quasi-sovereign borrowers and treaty organizations are exempted from this requirement.

## **Article 7 – Financial statement disclosure**

Issuers without a track record may raise capital through special purpose vehicles.

Issuers without a track record shall be subjected to disclosure requirements on performance projections, risk factors and mitigations and on the availability of financial information to assess any projections made.

Where an issuer has a track record, the following financial statements complying with IFRS for the three years preceding the offer shall be required—

- Audited accounts not more than 6 months old at the time of the offer;
- Where the audited accounts are more than 6 months old they shall be supported by management accounts.
- Management accounts shall be prepared to a date within 1 month of the date of the offer

An issuer who is not eligible for listing may be approved to issue its securities to sophisticated or institutional investors and the securities may be approved for trade on regulated Over the Counter (OTC) markets.

## **Article 8 – Cash flow projections**

An issuer shall provide proforma financial statements that shall cover a period of not less than three (3) years from the date of issue or where the bond has a shorter maturity period, the life of that bond.

## **Article 9 – Profitability**

An issuer shall be required to have reported profits in at least two of the previous three years preceding the offer.

Provided that the regulatory authorities shall retain the discretion to grant a waiver in circumstances where decline in profitability is not deemed to be a consequence of the fundamentals of the company.

Provided further that an issuer without a track record will be eligible for approval to make offers to institutional or sophisticated investors but not unrestricted offers to the public.

## **Article 10 – Ratio analysis**

The financial ratios applicable to national offers shall not be applicable to regional offers.

## **Article 11 – Guarantee and credit enhancement**

An issuer may seek a guarantee or credit enhancement.

Provided that where credit enhancement is to be provided the following requirements shall apply:

- The guarantor shall be a bank, duly licensed non-bank financial institution, or recognized international financial institution;
- A letter of no objection shall be provided by the guarantor's primary regulator (other than in the case of an international financial institution)
- The guarantor shall be required to have a valid credit rating

### **Article 12 – Issue size**

The minimum size of a regional fixed income security issue shall be USD \$850,000.

### **Article 13 – Credit ratings**

An issuer of regional fixed income securities shall maintain a valid credit rating for so long as the issue remains outstanding.

Provided that where an issuer has no track record or where the debt is to be funded from a specific project's revenues then, the credit rating shall be in respect of the project or performance projections.

Only a credit rating agency with a publicly available Code of Conduct guiding its ratings practices and which is in compliance with International Organization for Securities Commissions (IOSCO) Code of Conduct Fundamentals for Credit Rating Agencies shall be eligible to provide credit rating reports.

Provided further that a credit rating agency which complies with the IOSCO CRA code shall not be required to be registered in any EAC jurisdiction.

All Information Memoranda for regional offers of fixed income securities shall include a cautionary statement with words to the effect that—

“A credit rating is not a recommendation to apply for the securities on offer or an assurance of performance of the offeror and investors should exercise due diligence and use the rating as only one of the considerations in making their investment decision.”

### **Article 14 – Listing**

Listing shall be mandatory for all regional offers of securities that are to be offered to the public or a section of the public.

Provided that this requirement shall not apply to offers targeted at institutional or sophisticated or professional investors.

However, offers targeted at institutional or sophisticated investors may trade on a regulated OTC platform.

An institutional or sophisticated or professional investor means:

- (a) any person licensed under any securities legislation applicable in the EAC region;
- (b) any authorized or a recognized scheme by any securities legislation applicable in the EAC region;
- (c) an individual, either alone or with any of his associates on a joint account, having proven liquid assets as may be prescribed from time to time, or its equivalent in any foreign currency;
- (d) any company or partnership having proven liquid assets of an equivalent as may be prescribed from time to time, or its equivalent in any foreign currency;

## **Article 15 – Trading, clearing and settlement**

An issuer of regional fixed income securities shall comply with the regional requirements relating to trading, clearing and settlement.

## **Article 16 – Professional parties**

An issuer of regional fixed income securities shall comply with the following requirements relating to professional parties.

### ***Transaction arranger/ Sponsoring stockbroker/ Placing agent:***

Appoint a transaction arranger/placing agent/ sponsoring stockbroker who shall be a corporate body licensed by at least one EAC Partner State regulator and has affiliates in all regional jurisdictions where the security will be issued.

### ***Accountant's report***

Appoint an accountant who shall be subject to the requirements of their professional bodies. The reporting accountant shall be a firm registered in any EAC country.

### ***Legal opinion***

Appoint a legal adviser who shall be subject to the requirements of their professional bodies. The legal advisers shall be a firm registered in any EAC country with affiliates in all EAC countries.

### ***Paying and receiving bank***

Appoint paying and receiving banks which shall be banks licensed in the EAC countries where funds are being raised. The issuer shall determine the number of receiving banks.

## **Article 17 – Denomination of offer and application of funds outside jurisdiction where funds raised**

An issuer may raise funds in any jurisdiction in the region without restriction on the jurisdiction where proceeds are to be used subject to disclosure of that fact in the information memorandum and subject to obtaining the necessary exemptions on exchange controls, if required.

An issuer shall determine the currency or currencies for the issue.

## **Article 18 – Eligibility to issue**

An offer of fixed income securities approved for issue in more than one jurisdiction in EAC, shall be considered a regional offer of fixed income securities and shall comply with the relevant regulations, rules or guidelines attaching to issuers of securities to the public in any jurisdiction in which the issue has been made

## **Article 19 – Continuous disclosure obligations**

An issuer of a regional fixed income security shall be required to comply with the continuous disclosure obligations applicable to offers of fixed income securities in all jurisdictions in which it has raised capital from the public.

Where the regional fixed income security is listed on one or more securities exchanges or is traded on any regulated market within the EAC region it shall comply with any and all continuous obligations imposed by that securities exchange or market.

The issuer shall be obliged to avail to investors in all jurisdictions in which the issuer has raised capital all relevant information for proper appraisal of the financial position of the issuer in an effective and timely manner.

The matters subject to continuous reporting shall include:

1. Updates on rating reports;
2. Interim financial reporting;
3. Audited financial reports.

Proposals on continuous disclosure obligations for issuers of regional fixed income securities to be enforced by regulators shall be those applicable in each of the jurisdiction where the offer is made.

### **Article 20 – Penalties**

An issuer who fails to comply with the continuous disclosure obligations including failure to provide any required information to all investors simultaneously shall stand liable for breach of the continuous reporting obligations in any jurisdiction in which such omission occurs and the applicable sanctions shall apply.

### **Article 21 – Additional offers**

Notwithstanding that an issuer has made a regional fixed income security offer, the issuer may at any juncture raise an additional amount in any one jurisdiction pursuant to a further pricing supplement updating the disclosures in the regional information memorandum.

In all events, where a green shoe option is available it shall be made to all countries where the offer has been made available.

### **Article 22 – Dispute resolution**

The law in force in the jurisdiction where a cause of action arises shall apply in case of a dispute between an investor and an intermediary or between an issuer and an intermediary. The information memorandum shall specify the applicable law and mode of dispute resolution where a dispute involves the issuer and an investor.

### **Article 23 – All prospectuses for regional offers of fixed income securities shall contain the following statement on its front page—**

"As a matter of policy, the approving regulator assumes no responsibility for the correctness of any statements or opinions made or reports contained in this prospectus.

Approval of the issue and/or listing is not to be taken as an indication of the merits of the issuer or of the security.

### **Article 24 – Repealing of inconsistent provisions**

All prior regulatory provisions contrary to this regulation are hereby repealed.

### **Article 25 – Commencement**

This code shall come into force on the date of its publication in the Official *Gazette* of the Republic of Rwanda.

## Annex I

### Proposed prospectus approval procedure for issuance of regional fixed income securities

1. The issuer shall submit for approval a draft information memorandum accompanied by an evaluation fee to all East African securities industry regulators indicating the jurisdiction that it desires to be the primary approving jurisdiction (Primary Regulator).
2. Where an application has been lodged that is incomplete and unmeritorious *ab initio* as a regional fixed income security, the primary regulator shall have the discretion to reject the application in whole and inform the other Regulators of such rejection and the reasons therefor. In the event of a rejection in such circumstances, where the issuer wishes to proceed with the issuance, the issuer shall be required to lodge the application afresh in all jurisdictions and be liable to pay any application costs attaching thereto.
3. Each regulator shall apply the eligibility and disclosure requirements for issuance of regional fixed income securities for purposes of assessing the application.
4. In the event that any regulator seeks to interpret the applicability of any provision of the eligibility and disclosure requirements, they shall officially communicate with all other regulators to determine the manner in which that matter is to be addressed and the majority opinion shall prevail.
5. Where a regulator has communicated with the other EASRA regulators pursuant to clause 4, the regulators consulted shall revert within 5 working days of the receipt of communication and in all events the final position shall be communicated to the issuer within 10 days and copied to all regulators.
6. The other regulators shall submit any and all comments on the information memorandum to the primary regulator for consolidation for communication to the issuer. Where the primary regulator proposes to exclude certain matters from communication to the issuer, it shall communicate its intention to the other regulators, which action shall be subject to the timelines for communication under clause 5.
7. Upon the completion of its review, the primary regulator shall submit the same for consideration and approval by its relevant authority in accordance with its applicable procedures for approval of offers to the public provided that submission shall not be made later than 5 working days following the receipt of the complying document from the issuer. In the event of an approval the primary regulator shall issue a letter to all other regulators communicating its approval and confirming that the issue complies with the regional criteria.
8. In the event of the grant of an approval of the issue, the primary regulator shall provide a copy of the letter of approval and details of any conditions imposed on that approval to all the other regulators. This approval will not be communicated to the issuer pending circulation and determination by the other regulators.
9. Upon receipt of a copy of the approval letter from the primary regulator, every other regulator in receipt of the information memorandum shall submit the final Information Memorandum together with the primary regulator's approval to their respective authorities for consideration and determination provided that such submission will not be made later than 5 working days following the receipt of the primary regulators decision. Refer to Annex 1.
10. In the event that approval for the offer is not secured, the primary regulator shall provide a copy of the reasons for such decision to all other regulators for their consideration. The primary regulator shall specify where the approval has been withheld for reasons other than those in the criteria set down for regional issues.

Where a rejection occurs for reasons other than failure to comply with the regional guidelines, the other regulators shall retain full statutory discretion to approve or reject the application placed before it notwithstanding any approval or rejection by the primary regulator.



11. For purposes of coordination, the approving regulators shall engage with any listing exchange in their jurisdiction to ensure compliance by the issuer with any reporting and disclosure obligations issued by the regulator and the securities exchange.
12. In so far the issuer has raised capital in a particular jurisdiction the relevant regulator shall be responsible for the supervision of that issuer in respect of that issue.
13. Where an imbalance in information disclosure occurs, the regulators shall coordinate any and all action with any relevant securities exchanges or trading platforms on which the securities in question are traded to mitigate the negative impacts of such information asymmetry on investors.
14. Any changes or interpretations made to these Guidelines, or the Approval Procedure shall be published by all the jurisdictions.

## **Annex II**

### **Approval timetable**

T: Complying application lodged with all Regulators

T+ 10: All comments from regulators lodged with primary Regulator

T + 15: All areas for consultation for interpretation resolved

T+ 20: All issues communicated to issuer

Y (date issuer reverts with complying documents) + 10: Primary Regulator board determination (primary board may approve with conditions) and issues letter of comfort

Y+ 15: All other regulator's board determination (Decisions may be conditional indicating matters to be addressed)

Y+ 17: Communication of Regulators decision to issuer

"day" means a business day.