

Rwanda

Regulation on Capital Markets Complaints Regulation 4 of 2012

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Regulation on Capital Markets Complaints

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Rwanda

Regulation on Capital Markets Complaints

Regulation 4 of 2012

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Commenced on 2 July 2012

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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:

Chapter One Preliminary

Article 1 – Purpose of the regulations

These Regulations are hereby established to guide the market practitioners and their clients on how to lodge their complaints.

Article 2 – Definitions

In these regulations, unless the context otherwise requires:

“**Act**” means the law N° 01/2011 of 10/02/2011 regulating the Capital market in Rwanda;

“**Authority**” means the Capital Markets Authority;

“**Award**” means a finding in the form of direction, or an order of the complaints committee given in accordance with these regulations;

“**Authorized representative**” means a person duly appointed and authorized by a complainant or any other party to the complaint to act on his behalf and represent him in the proceedings before the complaints committee;

“**Committee**” means the Complaints Committee established under article 3 of these Regulations;

“**Complaint**” means a representation in writing containing a grievance as specified in regulations 10 and 11 of these regulations;

“**Complainant**” means any person who lodges complaint with the complaints committee;

Words and expressions used and not defined in these regulations but defined in the Act or in the rules or regulations made under the Act shall have the meanings respectively assigned to them in the Act or in the rules or regulations made under the Act.

Chapter Two

The complaints committee

Article 3 – Establishment and appointment

The Authority shall establish a complaints committee to handle complaints of capital markets investors and persons licensed or approved to perform a regulated activity under the Act and in the first instance complaints regarding the CMA.

The members of the complaints committee shall be selected from the members of the Authority's Board of Directors.

The Authority may if it deems it necessary appoint external members of requisite skills and experience to the complaints committee.

The tenure of the complaints committee shall be three years renewed only once.

Article 4 – Secretariat of the Complaints Committee

The head office of the Authority shall serve as secretariat of the Complaints Committee.

The Authority shall designate members of staff to deal with the administrative functions of the secretariat including receiving complaints, processing them, communicating with complainants and scheduling meetings of the committee.

Article 5 – Meetings of the committee

The committee shall determine its own procedures for meetings and hearing of complaints, provided rules of natural justice are adhered to.

The meetings of the committee shall be scheduled in such a manner as to ensure that complaints are resolved in a speedy and expeditious manner.

Article 6 – Disqualification from committee

A member of the committee shall disclose to the committee and disqualify himself or herself from any proceedings of the committee in which he or she is likely to have a conflict of interest.

Article 7 – Expenses of the committee

The expenses of the committee shall be funded out of the general fund of the Authority.

Chapter Three

Powers and functions of the committee

Article 8 – General functions

The complaints committee shall have the following powers and functions:

- (i) To receive complaints against any entity or persons licensed or approved to perform a regulated activity under the Act;
- (ii) To consider such complaints and facilitate resolution thereof by amicable settlement;

- (iii) To approve a friendly or amicable settlement of the dispute between the parties;
- (iv) To adjudicate such complaints in the event of failure of settlement thereof by friendly or amicable settlement.

Article 9 – Other powers and functions

The complaints committee shall:

- (i) In consultation with the Authority, draw up an annual budget to enable it perform its functions and shall incur expenditure within and in accordance with the provisions of the approved budget;
- (ii) Furnish from time to time such information to the Board as may be required by it.

The committee shall submit an annual report of complaints handled to the Authority for publication in the annual report of the Authority.

Chapter Four Procedures for handling complaints

Article 10 – Complaints against the Capital Markets Authority (CMA)

Anyone directly affected by the way in which the CMA has carried out its functions, or

Anyone acting directly on such a person's behalf may refer the matter to the Complaints Committee in the first instance.

The complaints against the CMA shall be in respect of allegations of misconduct by the CMA arising from the way in which it has carried out or failed to carry out its functions and shall include allegations of:

- (i) Mistakes and lack of care;
- (ii) Unreasonable delay;
- (iii) Unprofessional behavior;
- (iv) Bias; and
- (v) Lack of integrity.

Article 11 – Complaints against licensed or approved persons

A person may lodge a complaint on any one or more of the following grounds to the complaints committee:

- (i) Improper conduct of a member of staff of any licensed or approved person;
- (ii) Any grievance in respect of an act or omission of a licensed or approved person whether or not the act is performed by the authorized entity or outsourced to a third party;

Article 12 – Procedure of filing a complaint

Any person who has a complaint relating to any of the matters specified in article 11 may himself or herself or through his or her authorized representative or any investors association recognized by the Authority, lodge a complaint to the complaints committee.

The complaint shall be in writing duly signed by the complainant or his or her authorized representative in the form specified in the Schedule to these regulations and supported by documents, if any.

No complaint to the committee shall lie:

- (i) Unless the complainant had, before making a complaint, made a written representation to the party named in the complaint and the party had rejected the complaint or the complainant had not received any reply within a period of 15 days after the party received his representation or the complainant is not satisfied with the reply given to him by the party;
- (ii) Unless the complaint is made within (30) days from the date of the receipt of communication of rejection of his complaint by the complainant;
- (iii) If the complaint is in respect of the same subject matter which was settled by the committee in any previous proceedings, whether or not received from the same complainant or along with any one or more or other complainants or any one or more of the parties concerned with the subject matter;
- (iv) If the complaint pertains to the same subject matter for which any proceedings before the complaints committee, any court, tribunal or arbitrator or any other forum is pending or a decree or award or a final order has already been passed by any such competent Authority, court, tribunal, arbitrator or forum;
- (v) The complaints committee may dismiss a complaint on any of the grounds specified under paragraph (iii) or when such complaint is frivolous in its opinion.

Article 13 – Power to call for information

For the purpose of carrying out its functions under these regulations, the complaints committee may require the party named in the complaint or any other person, institution or Authority to provide any information or furnish certified copy of any document relating to the subject matter of the complaint which is or is alleged to be in its or his possession.

Provided that in the event of the failure of the party from whom information has been requested, to comply with the requisition made under this section without any sufficient cause, the complaints committee may, if it deems fit, draw the inference that the information, if provided or copies if furnished, would be unfavorable to the party against whom a complaint was made.

Article 14 – Confidentiality

The complaints committee shall maintain confidentiality of any information or document coming to its knowledge or possession in the course of discharging its duties and shall not disclose such information or document to any person except and as otherwise required by law or with the consent of the person furnishing such information or document:

Nothing in paragraph (i) above shall prevent the complaints Authority from disclosing information or document furnished by a party in a complaint to the other party or parties, to the extent considered by it to be reasonably required to comply with the principles of natural justice and fair play in the proceedings.

Article 14 shall not apply in relation to the disclosures made or information furnished by the complaints Authority to the Board or to the publication of the complaints committee award in any journal or newspaper or filing thereof before any Court, forum or Authority.

Article 15 – Evidence Law of Rwanda not to apply in the proceedings before the complaints committee

In proceedings before the complaints committee, strict rules of evidence under the Evidence Law of Rwanda shall not apply and the committee may determine its own procedure consistent with the principles of natural justice.

The committee shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceeding shall be conducted on the basis of documents and other materials.

Provided that it shall not be necessary for a complainant to be present at the oral hearing of proceedings under these regulations and the committee may proceed on the basis of the documentary evidence submitted before him.

Article 16 – Settlement by mutual agreement

As soon as it may be practicable to do, the committee shall cause a notice of the receipt of any complaint along with a copy of the complaint sent to the party named in the complaint and endeavor to promote a settlement of the complaint by agreement or mediation between the complainant and the party named in the complaint.

If any amicable settlement or friendly agreement is arrived at between the parties, the committee shall pass an award in terms of such settlement or agreement within 15 days from the date thereof and direct the parties to perform their obligations in accordance with the terms recorded in the award.

For the purpose of promoting a settlement of the complaint, the committee may follow such procedure and take such actions as it may consider appropriate.

Article 17 – Award on adjudication

In the event the matter is not resolved by mutually acceptable agreement within a period of one month of the receipt of the complaint or such extended period as may be permitted by the committee, it shall, based upon the material placed before it and after giving opportunity of being heard to the parties, give its award in writing or pass any other directions or orders as it may consider appropriate.

The award on adjudication shall be made by the committee within a period of one month from the date of the filing of the complaint, Provided that no award shall be invalidated by reason alone of the fact that the award was made beyond the said period of one month.

The committee shall send his or her award to the parties to the adjudication to perform their obligations under the award.

Article 18 – Correction of award

Within 15 days from the receipt of the award a party, with notice to the other party, may request the committee to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award.

If the committee considers the request made under paragraph (i) above to be justified, it shall make the correction within 7 days from the receipt of the request which shall form part of the award.

The committee may also rectify any error of the type referred to in paragraph (i), on its own initiative, within 7 days from the date of the award.

Article 19 – Finality of award and circumstances of review

Subject to the provisions of this regulation, an award shall be binding on the parties and persons claiming under them respectively.

Any party aggrieved by the award on adjudication may within one month from the receipt of the award under article 17 or corrected award under article 18 refer the matter to Capital Market Independent Review Panel.

An award may be referred to Capital Market Independent Review Panel only if:

- (i) there is substantial mis-carriage of justice, or
- (ii) there is an error apparent on the face of the award.

Where a matter is referred to Capital Market Independent Review Panel by a party from whom the amount mentioned in the award is to be paid to the other party in terms of the award, such matter shall not be heard

unless the party presenting the matter has deposited with the Panel seventy-five percent of the amount mentioned in the award.

Provided that the Panel may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this paragraph.

The Panel may review the award and pass such order as it may deem appropriate.

The Panel shall endeavor to dispose of the matter within a reasonable time after the filing of the petition for review.

The award passed by the complaints committee shall remain suspended till the expiry of period of one month for submitting the matter to Panel arbitration under paragraph (ii) or till the Panel has disposed off the matter.

Article 20 – Costs and interest

The complaints committee or the Panel, as the case may be, shall be entitled to award reasonable compensation along with interest including future interest till date of satisfaction of the award.

Where a matter is referred to Panel, the person against whom a complaint is made shall pay 90% of the costs of Panel.

The complaints committee or the Panel may impose cost on the complainant for filing complaint or any petition for review, which is frivolous.

Article 21 – Consequences of non-implementation of the award

The award shall be implemented by the party so directed within one month of receipt of the award from the committee or a decision of the Panel or within such period as specified in the award or order of the Panel.

If any person fails to implement the award or order of the Panel without reasonable cause, he shall be deemed to have failed to redress investors' grievances and shall be liable to administrative or regulatory action as the Authority may deem fit.

Chapter Five

Obligation to inform clients about complaints procedure

Article 22 – Obligation to inform clients about complaints procedure

Every licensed and approved person shall inform its clients about the right to lodge a complaint with the complaints committee of the Authority.

Article 23 – Removal of difficulties

If any difficulty arises in giving effect to the provisions of these regulations, the Authority may issue such directions or clarifications as it may think necessary or expedient for removing the difficulty.

Article 24 – Repealing inconsistent provisions

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

Article 25 – Commencement

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

Annex 1

Forms

[Editorial note: The forms have not been reproduced.]

Annex 2

Forms

[Editorial note: The forms have not been reproduced.]