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The Guidelines on Share Buybacks for Listed Companies, 2021

1. Introduction

The Guidelines on Share Buybacks for Listed Companies published in the Kenya Gazette on November 12, 2021 provide the framework for implementation of Part XVI of the Companies Act 2015 by listed companies. Section 447 of the Companies Act allows limited companies to acquire their own shares, provided certain conditions are met. The shares must be fully paid and the purchase should not result in the company no longer having any issued shares, other than redeemable or treasury shares. Purchases may be financed in two ways: either by the distributable profits of the company or the proceeds of a fresh issue of shares made for the purpose of financing the purchase.

2. Additional conditions for listed companies

The Guidelines require listed companies to satisfy the following additional conditions before undertaking a share buyback transaction:

- i. The Articles of Association of the company must allow it.
- ii. The company must submit for approval by the Capital Markets Authority (CMA) a circular setting out the terms and conditions of the share buyback proposal.
- iii. The share buyback must be approved by the shareholders of the company.

2.1. Contents of the Circular

The Circular should contain information on:

- i. the reasons for the share buyback;
- ii. the number of shares intended to be bought back;
- iii. the method of undertaking the share buyback;
- iv. the treatment of the shares to be bought back;
- v. the price per share intended to be paid by the company and a detailed explanation

- supporting the prescribed price including valuation reports;
- vi. the mode of financing the share buyback;
- vii. whether consent for the share buyback has been obtained from other relevant parties including bondholders, regulators and creditors;
- viii. solvency statement issued by the company's directors;
- ix. the potential impact of the proposed share buyback on the shareholding structure of the company;
- x. the risk factors and assumptions of the share buyback transaction;
- xi. any related party transaction or director's interest in the share buyback transaction;
- xii. the impact of the share buyback on the company's financial position;
- xiii. the period during which the shareholders' approval for the share buyback will be valid; and
- xiv. any other relevant information regarding the proposed share buyback transaction.

3. Methods of effecting a share buyback

3.1. Off market purchases

Off market purchases refer to purchases conducted outside the securities exchange and those conducted on the securities exchange but not subject to a marketing arrangement on the exchange. In this case the company concludes a share buyback agreement between itself and the shareholders whose shares are being bought. The Guidelines require companies to submit draft share buyback agreements to CMA for approval before conclusion. The terms of the agreement must also be approved by a special resolution of the members before the contract is entered into.

3.2. On market purchases

This is where the shares are purchased through stock brokers on the securities exchange trading platform.



The Guidelines provide for how the maximum and the minimum prices paid for the shares are determined:

1. the maximum share buyback price will be 10% above the weighted price average of the shares during the period of 30 days before the date of the board resolution approving the share buyback; and
2. the minimum share buyback price will be the nominal price of the shares or the prevailing market price, whichever is lower, on the date of the board resolution approving the share buyback.

The shares bought back may be held in treasury or cancelled. Companies hold shares in treasury for various reasons including; future sale when the share price has increased and to set up employee share option schemes without having to create new shares.

Where a company holds treasury shares in excess of the limits prescribed by CMA, the company will be required to dispose or cancel the excess shares within 12 months. If the company reissues the shares, the issue must comply with the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

4. Restrictions

- i. The share buyback should not result in the company contravening any minimum shareholding requirements set out in law.
- ii. The share buybacks must be completed within 18 months from the date of the shareholders resolution approving the share buyback proposal.
- iii. No share buyback will be undertaken until the lapse of 365 days from the date of the previous share buyback.
- iv. Where a proposal to buy back shares relates to a class of shares, the shares to be bought back by the company back will not exceed 10% of the total issued shares of that class in a given financial year. However, the company may apply to CMA to waive the limit.
- v. The volume of the shares repurchased on any single day may not exceed 25% or the limit prescribed by CMA.

- vi. A share buyback transaction should not be undertaken during the period of 14 days before the publication of the company's half-yearly or annual financial statements.
- vii. A share buyback transaction should not be undertaken where the company becomes aware of any material information which if made public could affect the price of the company's shares.

A share buyback transaction may be cancelled or suspended if material information is announced less than 14 days before the share buyback is conducted or if the listed company deems it fit in the circumstances.

5. Disclosure and reporting requirements

The Guidelines impose disclosure requirements on the listed companies both before the share buyback and after the share buyback transaction has been concluded.

5.1. Disclosures before the share buyback

The company is required to publish a public announcement of the intended share buyback in at least one newspaper of nationwide circulation and on the company's website within 24 hours of the board resolution approving the share buyback, and upon the approval of CMA.

The public announcement should provide information on:

- i. the method of effecting the share buyback;
- ii. the minimum and maximum prices of the shares to be bought back;
- iii. the treatment of shares after they are bought back;
- iv. the percentage of the shares to be bought as a proportion of the issued share capital of the company;
- v. the transaction advisors advising the company in the share buyback transaction.
- vi. a statement that the company will provide the shareholders with the circular setting out the terms of the share buyback after the circular has been approved by CMA.

5.2. Disclosures after the share buyback



- i. The company should immediately after conclusion of the transaction disclose on its website and to the securities exchange, details of the buyback.
- ii. Daily reports are submitted to CMA on the share buyback transaction undertaken detailing the treatment of the shares acquired by the company, the price and volume of shares bought back and any treasury shares sold by the company.
- iii. The company should within 14 days of completion of the share buyback transaction file the returns with the Registrar of Companies.

6. Conclusion

The Guidelines will provide clarity on how listed companies may undertake share buyback transactions. Since the enactment of the Companies Act, 2015, only Nation Media Group has undertaken a share buyback. We expect to see more share buy backs in the coming days, especially by listed companies whose directors believe that their shares are trading at significantly lower than their true value.

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