

S T A T U T O R Y I N S T R U M E N T S

2009 No. 38.

THE SECURITIES CENTRAL DEPOSITORIES REGULATIONS, 2009.

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1. Title
2. Interpretation

**PART II—THE SECURITIES CENTRAL DEPOSITORY
AND NOMINEE COMPANIES**

3. Application to operate a securities central depository
4. Securities central depositories system rules
5. Board of Directors of a securities central depository
6. Chief executive officer and other employees of a securities central depository
7. Committees of the board
8. Review of fees, levies and penalties
9. Securities central depository to maintain records
10. Reporting obligations

PART III—THE SECURITIES CENTRAL DEPOSITORY AGENTS

11. Application for appointment as an agent
12. Operation of accounts
13. Agents to maintain records and accounts
14. Right of access.

Regulation

PART IV—SECURITIES CENTRAL DEPOSITORY GUARANTEE FUND

15. Securities Central Depositories Guarantee Fund.
16. Management of the Fund

PART V—INSURANCE

17. Insurance

PART VI—MISCELLANEOUS

18. Access only to authorised personnel
19. Safe custody of immobilised securities
20. Access to computer system
21. Linkages to other securities depositories outside Uganda

22. Off-site disaster recovery plan

SCHEDULES

- | | |
|------------|--|
| Schedule 1 | Application for a licence to operate a securities central depository |
| Schedule 2 | Fees |
| Schedule 3 | Criteria for determining a fit and proper person for purposes of appointment to the SCDS Board |

STATUTORY INSTRUMENTS

2009 No. 38.

The Securities Central Depositories Regulations, 2009.

*(Under section 68 of the Securities Central Depositories Act, 2009,
Act No. 1 of 2009)*

IN EXERCISE of the powers conferred on the Capital Markets Authority by section 68 of the Securities Central Depositories Act, 2009, these Regulations are made this 10th day of August, 2009.

PART I—PRELIMINARY

1. Title

These Regulations may be cited as the Securities Central Depositories Regulations, 2009.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Securities Central Depositories Act, 2009;

“Authority” means the Capital Markets Authority established by section 5 of the Capital Markets Authority Act;

“custodian” means a company whose business includes taking responsibility for the safe custody of the funds, securities, financial instruments and documents of title;

“Guarantee Fund” means the Securities Central Depository Guarantee Fund established under regulation 15;

“jumbo certificate” means the manner in which deposited certificates are stored by the depository during the process of immobilization and dematerialization;

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

“SCDS Rules” means rules referred to in regulation 4;

“SCDS” means Securities Central Depositories System.

PART II—SECURITIES CENTRAL DEPOSITORY AND NOMINEE COMPANIES

3. Application to operate a securities central depository

(1) An application for a licence to operate a securities central depository shall be submitted to the Authority in the Form set out in Schedule 1.

(2) The application under subregulation (1) shall be submitted together with—

- (a) the certificate of incorporation and certified copies of the memorandum and articles of association of the applicant whose objectives shall include the operation of a securities central depository;
- (b) certified copies of the name(s), certificate(s) of incorporation and memorandum and articles of association of all its nominee companies;
- (c) a business plan including—
 - (i) the depository and settlement system proposed to be adopted by the applicant;
 - (ii) business prospects;
 - (iii) risks and uncertainties facing the company;
 - (iv) staff and directors;
 - (v) key performance indicators;

- (vi) Business Continuity Plan;
- (vii) financial projections (balance sheets, income statements, cash flow statements);
- (d) a certified copy of the agreement between the systems provider and the applicant, (where applicable);
- (e) rules made under regulation 4;
- (f) fees prescribed in Schedule 2; and
- (g) any additional documents as may be required by the Authority.

4. Securities central depositories system rules

(1) An applicant who intends to operate as a securities central depository shall make securities central depositories rules to govern all aspects of its operations.

(2) The securities central depositories rules referred to in subregulation (1) shall be submitted together with the application to operate a securities central depository and shall include provisions relating to—

- (a) the appointment, functions, suspension and revocation of appointment of securities central depository agents;
- (b) the appointment of a manager for a suspended securities central depository agent;
- (c) notification to the issuers and the public of all eligible securities prescribed to be immobilized or dematerialised in the securities central depository;
- (d) deposit of certificates;
- (e) information to be contained in the record of depositors;
- (f) charging of securities;
- (g) timely notification by electronic or other means to depositors that dealings have occurred on their accounts;

- (h) circumstances when a book entry security in a securities account is in suspense other than those circumstances provided under the Act; and
- (i) circumstances for investigation or restriction of dealings in any book entry transfers;
- (j) complaint handling mechanism;
- (k) operation and maintenance of the Guarantee Fund; and
- (l) fees and penalties.

5. Board of Directors of a securities central depository

(1) The Board of Directors of a securities central depository shall consist of not less than five directors and shall have a Chairperson who shall be a non executive director.

(2) A person shall not become a director in a securities central depository unless—

- (a) he or she is above twenty one years of age;
- (b) he or she is of sound mind and has not been declared to be of unsound mind by any court of law in Uganda or elsewhere;
- (c) he or she is not an undischarged bankrupt;
- (d) he or she is a natural person;
- (e) the SCDS has served a written notice to the Authority of its nomination of that person to become a director; and
- (f) the Authority has given written approval that he or she meets the fit and proper criteria prescribed in Schedule 3.

(3) The Authority may, on receipt of the notice referred to in subsection (2) (e), seek further information and documents from that person or from any other person.

(4) A Director appointed under regulation 5(1) shall cease to hold office if—

- (a) he or she ceases to be a fit and proper person as required by the Authority; or
- (b) on the advice of the Authority, the securities central depository removes him or her from office on the grounds that he or she is unable or unfit to discharge his or her functions as a director.

6. Chief executive officer and other employees of a securities central depository

(1) The Board of Directors of securities central depository shall appoint a chief executive officer on such terms and conditions as may be specified in the instrument of appointment.

(2) The chief executive officer shall be in charge of the day to day affairs of the securities central depository.

(3) A person is not qualified for appointment as a chief executive officer of a securities central depository, unless he or she—

- (a) has qualifications in law, finance, accounting, economics, banking or insurance with experience and competence in management; and
- (b) has seven years experience at management level in matters relating to financial markets.

(4) The chief executive officer of a securities central depository shall not at the same time be an officer of an entity licensed by the Authority (other than the Stock Exchange) or a key personnel, director or shareholder of an entity licensed by the Authority.

(5) The securities central depository may appoint such other officers and employees as it considers necessary for the efficient discharge of its responsibilities and functions.

(6) A securities central depository shall not employ or maintain in its employment a person who has—

- (a) been convicted of an offence (other than a traffic offence) in Uganda or elsewhere;
- (b) been censured, disciplined, warned as to future conduct by a regulatory body, government agency or barred from entry to any profession or occupation;
- (c) failed to pay a debt adjudged due and payable by an order of a court in any country or has been adjudged bankrupt;
- (d) taken part in any business practice that, in the opinion of the Authority, was deceitful, oppressive fraudulent, prejudicial or improper whether unlawful or not or reflects on or discredits his or her manner of conducting business; or
- (e) been dismissed from membership of a Board of Directors of a public company or has been removed from public office.

7. Committees of the board

(1) The securities central depository Board shall appoint—

- (a) an audit committee which shall comprise of at least three non executive directors;
- (b) a business conduct committee whose membership and mandate shall be provided in the SCDS rules; and
- (c) any other committee as it may deem necessary.

(2) The Board shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

(3) The main role and responsibility of the audit committee shall include—

- (a) to review the internal audit report and programs of the depository;

- (b) to review the internal controls, operating procedures and systems and management information systems of the depository;
- (c) to ensure that the audit function of the depository is adequately staffed with competency and integrity;
- (d) to ascertain the nature of the external audit, co-ordinate the internal and external audits;
- (e) to consider rectification and implementation of issues raised by the external auditor;
- (f) to review the financial statements of the securities central depository and making recommendations on them; and
- (g) to review the practices of the securities central depository to ensure that any insider transactions of the securities central depository that have a material effect on its stability or solvency are identified and dealt with.

8. Review of fees, levies and penalties

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

(2) The Authority shall, once in every two years, review the fees, levies and penalties levied by a securities central depository.

(3) The fees, levies and penalties referred to in subregulation (1) may be reviewed earlier at the instance of either the Authority or the securities central depository in the event of exceptional circumstances as defined in subregulation (5).

(4) In carrying out the review under subregulation (1), the Authority shall take into account the following—

- (a) the rate of inflation;
- (b) the market turnover;
- (c) the overall transaction fees in the market;

- (d) the viability and sustainability of the securities central depository;
- (e) the overall interest of the investors; and
- (f) the views of other market participants.

(5) The securities central depository shall, in order to facilitate continuous monitoring and assessment of adequacy of the fees, furnish the Authority with updated information every six months on the following—

- (a) the actual and projected volume of trade;
- (b) the actual and projected revenue;
- (c) the achieved and projected efficiency measures; and
- (d) the proposed major capital expenditures.

(6) The securities central depository may initiate a review of its fees in any of the following exceptional circumstances—

- (a) a material change of the Uganda rate of inflation as published by the National Bureau of Statistics;
- (b) a material change of reported income of the securities central depository; and
- (c) a material reduction of the reported gross revenue of the securities central depository by more than fifty percent.

(7) Where a securities central depository, in the case of exceptional circumstances, wishes to initiate a review as envisaged in subregulation (5), the securities central depository shall notify the Authority of the proposal to review the fees in writing, justifying the proposed changes except that no review will be considered less than six months before the next scheduled review.

(8) Where the Authority initiates a review by reason of exceptional circumstances, it shall notify the securities central depository of the justifications for the proposed review and the securities central depository will be accorded an opportunity to make representations on the proposed changes before the final decision is made.

(9) Where the Authority or the securities central depository initiates a review by reason of exceptional circumstances, the review shall be completed within 90 days after the notice issued by the initiating party.

(10) The Authority shall ensure that a scheduled review process is completed not later than the second anniversary of the approval of the existing fees.

(11) If the securities central depository is dissatisfied with the outcome of the review exercise, it may apply to court for a review.

(12) The fees prevailing before the appeal shall remain effective until the decision of the court.

(13) The securities central depository and every securities central depository agent shall prominently display all approved fees, charges and levies at their business premises.

9. Securities central depository to maintain records

A security central depository shall maintain and preserve for a period of seven years, all records and documents relating to depositors, securities central depository agents and meetings of its board of directors.

10. Reporting obligations

A securities central depository shall—

- (a) within four months after the commencement of its operations—
 - (i) provide a list of its securities central depository agents;
 - (ii) notify the Authority at least seven days prior to prescription for immobilization or dematerialization.

- (b) submit to the Authority, in accordance with section 37 of the Act, audit records and accounts of the depository of its activities during the preceding calendar year and the report shall contain—
 - (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 by these Regulations;
 - (iv) approvals, suspensions or revocation of approvals of securities central depository agents;
 - (v) securities immobilised or dematerialised;
 - (vi) arbitration of disputes; and
 - (vii) any other information that the Authority may request.
- (c) as soon as practicable, inform the Authority whenever—
 - (i) there is a default on settlement and delivery;
 - (ii) there are, to its knowledge, incidences of violation of the Act or these Regulations and rules issued under the Act.

PART III—SECURITIES CENTRAL DEPOSITORY AGENTS

11. Application for appointment as an agent

(1) An application for an appointment to operate as a securities central depository agent shall be submitted to the securities central depository.

(2) An applicant under subregulation (1) shall obtain prior approval of the Authority before submitting the application to the securities central depository.

(3) The following persons may be appointed as agents of the securities central depository in addition to the persons referred to in section 11 of the Act—

- (a) custodians; and
- (b) authorized depository.

(4) The applicant shall meet any technical requirements as may be stipulated by the SCDS rules.

(5) Where a securities central depository reprimands, fines, suspends, expels or otherwise takes disciplinary action against an agent of a securities central depository, it shall, within two days, give to the authority in writing, particulars of the name of the agent, the reason for and nature of the action taken, the amount of the fine, if any, and the period of the suspension, if any.

(6) An agent aggrieved by the decision of the securities central depository may appeal to the Authority within seven days after he or she is notified of the decision.

(7) The authority may review any disciplinary action taken by a securities central depository under subregulation (5) and may affirm or set aside a decision of a securities central depository after giving the agent and the securities central depository an opportunity to be heard.

(8) Nothing in this regulation precludes the Authority in a case where a securities central depository fails to act against an agent of the securities central depository, from suspending, expelling or otherwise disciplining a member of the depository; but before doing so, the authority shall give the agent and the securities central depository an opportunity to be heard.

(9) Any person aggrieved by the decision of a securities central depository or the authority under subregulation (6) may, seven days after he or she is notified of the decision, appeal to the High court.

12. Operation of accounts

A securities central depository agent shall disclose to the Authority, the holders of beneficial interests to the accounts opened in the name of the Broker or Dealer or its nominee.

13. Agents to maintain records and accounts

(1) A securities central depository agent shall maintain and preserve records and accounts relating to transactions in securities for a period of seven years.

(2) Information referred to in subregulation (1) shall include—

- (a) collection and submission to the securities central depository of certificates for purposes of immobilisation of securities;
- (b) withdrawal of certificates in respect of immobilised securities;
- (c) opening, maintenance and closing of securities accounts;
- (d) the collection of fees and charges imposed by the securities central depository as may be provided under the Act.

14. Right of access

The Authority and a securities central depository may, from time to time, require an agent or a duly authorised person—

- (a) to produce to it documents or records in respect of any securities transactions or accounts;
- (b) to provide access to its terminals and other computer peripherals situated at the agent's premises; and
- (c) to provide any data record or information in respect of its terminals and other computer peripherals,

as may, in the opinion of the Authority and the securities central depository, be necessary for the purposes of enabling it to perform its audit investigation or review.

15. Securities Central Depository Guarantee Fund

(1) Every SCDS shall in accordance with section 65 of the Act establish a Guarantee Fund for the purposes of providing indemnity against any default in respect of payment for, or delivery of securities by, any participant and of obligations of participants towards the securities central depository.

(2) The Fund shall consist of—

- (a) a contribution of such amounts as the SCDS may from time to time determine in consultation with the Authority and the Stock Exchange and such securities central depository agents as will be involved in settlement;
- (b) penalties and fines imposed by the securities central depository;
- (c) money accrued from interest and profits from investing moneys of the Fund;
- (d) a levy for every transaction through the securities exchange or depository as approved by the Authority;
- (e) contribution from the revenue of the securities central depository as its Board may from time to time determine;
- (f) any other funds as the Board of Directors of the securities central depository, with the approval of the Authority may determine.

16. Management of the Guarantee Fund

(1) The Guarantee Fund shall be managed by the securities central depository as a separate fund from the operational funds of the SCDS and disclosed as such in the securities central depository's annual balance sheet.

(2) The securities 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 Guarantee Fund in its annual report.

(3) The accounts referred to in subregulation (2) shall include all sources of income and contributions to and expenses or disbursements of the Fund and any investments of the Guarantee Fund.

(4) The accounts and records of the Guarantee Fund shall be audited by an auditor appointed by the securities central depository and approved by the Authority.

(5) The securities central depository shall make guidelines for the operation and maintenance of the Guarantee Fund.

PART V—INSURANCE

17. Insurance

(1) A securities 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 or missing certificates which are under the physical control of the securities central depository, whether the certificates are kept on its premises or are in transit;
- (d) fire or theft of any records in any vault, premises or warehouse of the securities central depository where the records are kept in accordance with the Act;
- (e) professional negligence of its employees, agents or servants;
- (f) public liability in respect of the operations of the depository;
and

(g) fraudulent or dishonest acts of its employees or agents with intent to cause or sustain loss.

(2) The securities 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 securities central depository and its depositors.

(3) The insurance policies maintained by the securities central depository shall be available for inspection by securities central depository agents and the Authority during business hours, upon request.

(4) The securities central depository shall notify the Authority and the securities central depository agents of any material reduction in the coverage or amount of any policy of insurance it maintains.

PART V—MISCELLANEOUS

18. Access only to authorised personnel

A securities central depository agent shall ensure that only persons authorised to transact business with the securities central depository have access to the system linked to the securities central depository in accordance with the Act.

19. Safe custody of immobilized securities

A securities central depository shall ensure safe custody of its jumbo certificates or other form in which certificates shall be kept and shall be liable, in the event of any loss or destruction of the certificates.

20. Access to computer system

(1) The following persons may have access to the computer system and terminals of the securities central depository in addition to those specified under section 51 of the Act—

- (a) the Authority;
- (b) a systems provider; and
- (c) a vendor of the computer system under a contract.

(2) A securities central depository agent shall have access to the system and be able to open, maintain and close depositor's accounts upon their instructions.

(3) A securities central depository agent who is a member of the securities exchange may allocate trades upon prior authorisation by the account beneficiaries.

21. Linkages to securities depositories outside Uganda

The Authority may, on request of the securities central depository, approve computer system linkages to other securities depositories, securities exchanges and the appointment of securities central depository agents outside Uganda if it is satisfied that the 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.

22. Off-site disaster recovery plan

A securities central depository and its agents shall, before the commencement of its operations, make arrangements for an off-site business continuity and disaster recovery plan which shall be approved by the Authority.

SCHEDULE 1

THE SECURITIES CENTRAL DEPOSITORY ACT, 2009

THE SECURITIES CENTRAL DEPOSITORIES REGULATIONS, 2009

Regulation 3(1)

APPLICATION FOR A LICENCE TO OPERATE A SECURITIES
CENTRAL DEPOSITORY

*Application is made for a licence to operate a securities central depository
under the Act.*

The following statements are made in relation to the application—

Note: If space is insufficient to provide details, please attach annexes. Any annexes (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.

1. Name of company.....
2. Registered office
3. Date of incorporation
4. Postal address.....
5. E-mail address.....
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 (Ug.Sh.).....
 - (b) Number of shares
 - (c) Paid-up capital (Ug.Sh.)

9. Shareholders
(please attach a list)

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

10. Directors

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

11. Secretary

Name.....

Address

12. 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 & telephone number</i>	<i>Academic or professional qualification</i>	<i>Number of shares held in the company</i>

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

14. Particulars of shares held by directors in other companies.....

15. 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 its creditors, in Uganda or elsewhere - Yes/No. If 'yes', give details.....

16. Has any director or member of 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 director was a member - Yes/ No. If yes, give details.....
17. 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.....
18. 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 question (15) - Yes/ No. If `yes,' give details.....
- 19 (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 to any securities organisation - Yes / No. If “yes”, give details.....

20. Particulars of two business referees of the applicant:

Name	Address	Telephone number(s)	Occupation

21. 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>

22. List the office facilities of the applicant

23. 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 2009

Signed:

.....Director

.....Director

.....Secretary

SCHEDULE 2

Regulation 3(f)

THE SECURITIES CENTRAL DEPOSITORIES ACT, 2009

THE SECURITIES CENTRAL DEPOSITORIES REGULATIONS, 2009

FEES

Application fee for a licence to operate a depository	UGX 3,000,000
Application fee to renew a licence	UGX 3,000,000

SCHEDULE 3

Regulation 5 (2) (f)

THE SECURITIES CENTRAL DEPOSITORIES ACT, 2009

THE SECURITIES CENTRAL DEPOSITORIES REGULATIONS, 2009

CRITERIA FOR DETERMINING A FIT AND PROPER PERSON FOR PURPOSES OF APPOINTMENT TO THE SCDS BOARD

1. Qualities for professional suitability

In order to determine for the purposes of these regulations, the professional and moral suitability of persons to be appointed as a member of the Board, the Capital Markets Authority shall have regard to the following qualities, in so far as they reasonably determine, in respect of the person concerned—

- (a) his or her general probity;
- (b) his or her competence and soundness of judgment for the fulfillment of the responsibilities of the office in question;
- (c) the diligence with which the person concerned is fulfilling or likely to fulfill those responsibilities; and
- (d) whether the functions of the board are likely to be in any way threatened by his or her holding that position.

2. Previous conduct activities

For the purposes of and without prejudice to the general effect of paragraph 1, the Capital Markets Authority may have regard to the previous conduct and activities of the person concerned in business, financial matters and in particular, any evidence that the person—

- (a) has been convicted of the offence of fraud or any other offence of which dishonesty or violence is an element;
- (b) was the director of an institution that has been liquidated or is under liquidation;
- (c) has taken part in any business practice that in the opinion of Capital Markets Authority was deceitful and oppressive, fraudulent, prejudicial, or otherwise improper whether unlawful or not or which otherwise reflect discredit on his method of conducting business;

(d) has engaged or taken part in or been associated with any other business practices or otherwise conducted himself in such a manner as to cause doubt on his competence and soundness of judgment.

3. Additional information

The Capital Markets Authority may request any person to furnish additional information as may be necessary in determining the professional suitability of a person.

TWAHA KAAWAASE KIGONGO,
Chairperson, Capital Markets Authority

Cross References

The Capital Markets Authority Act, Cap. 84