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A COMPARATIVE OVERVIEW OF THE CAPITAL MARKETS (LICENSING REQUIREMENTS) (GENERAL) REGULATIONS, 2025

Introduction

For over two decades, licensing in Kenya's capital markets sector was primarily governed by the 2002 *Capital Markets (Licensing Requirements) (General) Regulations*. These regulations were designed for a traditional, floor-based financial market. Over time, as the capital markets were digitalized and new market needs arose, the Capital Markets Authority ("CMA") was forced to issue multiple, fragmented, standalone rules, circulars and guidance notes.

This necessitated the enactment of a consolidated, modernised regulatory regime that caters for the modern, highly digitalized market. The *Capital Markets (Licensing Requirements) (General) Regulations, 2025* (the "new Regulations") do just that. Gazetted on the 11th of December, 2025, the new Regulations overhaul the 2002 regulations while, consolidating and modernizing the regulatory standards for licensing of various market participants.

We analyse below the cardinal provisions of the new Regulations and the key changes introduced.

Inclusion of digital market intermediaries

The new Regulations incorporate within the regulatory regime digital platforms that provide automated, algorithm-driven intermediary services with little to no human supervision. Hitherto, these novel platforms operated in a grey area in which it was unclear whether or not they needed to be licensed. This exposed consumers of these services to the risk of unregulated and, at times, sub-standard services.

Regulation 34(1) of the new Regulations introduces a new category of market intermediaries known as **intermediary service platform providers**. The Regulation requires any person who intends to carry on such business to apply for a licence, which will only be granted upon fulfilment of the specified criteria.

An intermediary service platform provider is a person who operates an intermediary service platform, which the new Regulations (Regulation 2) defines as a digital application which facilitates aggregation, marketing and distribution of capital markets products and services.

Notably, however, an existing licensed institution that utilizes a digital platform to improve its internal efficiency or in the normal course of its licensed business does not need to obtain a separate license for the platform.

The licensing criteria and compliance requirements for intermediary service platform providers are similar to those of traditional market intermediaries. *Please look out for our next publication on licensing and compliance requirements for intermediary service platform providers.*

Standards for securities exchanges and over-the-counter platforms

Part II of the new Regulations revamps the regulatory requirements for securities exchanges and codifies the law on regulation of over-the-counter (OTC) platforms. It is noteworthy that the 2002 regulations treated securities exchanges as self-regulating mutual organisations, with the regulatory regime applicable to them being significantly less strict than that of other market participants. The new Regulations modernises the regulatory framework to accommodate a digital, demutualized ecosystem with new financial instruments and a push for greater liquidity.

Importantly, Regulation 4 specifically requires securities exchanges to be demutualised prior to licensing, thus permanently embedding demutualisation as a blanket statutory prerequisite for any newly established securities exchange. The 2002 regulations did not mandate the demutualisation of securities exchanges. Thus, when the Nairobi Securities Exchange needed to demutualise (separate its ownership from trading rights), subsidiary legislation had to be enacted specific to that singular event.

To ensure robust capitalization and corporate governance and safeguard public interest, the new Regulations make the following rules:

- a) A proposed licensee must have a paid-up capital of at least Kenya Shillings one billion (Kshs. 1,000,000,000);
- b) The CMA has the power to prescribe limits on the ownership of a securities exchange by its trading participants;

- c) A director or a shareholder of a trading participant cannot be a director or hold beneficial interest either directly or indirectly in more than one trading participant of a securities exchange unless the CMA grants an exemption;

- d) The chief executive officer must meet the specified criteria and possess the specified qualifications; and

- e) A set of clear guidelines on board composition and tenure.

Regarding OTCs, Regulation 11 establishes OTC platforms as a licensable entity by making an application to the CMA. Once licensed, the platform will be subject to oversight by the CMA, and thus formalising the trading of unlisted securities in Kenya. While OTC trading historically occurred in Kenya, it was generally restricted to private, off-market transfers. There was no distinct license to legally operate a standalone, digital OTC platform under the former regime.

Investment advisors

The current regime on licensing and regulation of investment banks has largely been retained, save for the following notable enhancements:

- a) The 2002 regulations envisioned that an applicant for an investment advisory license must be a limited liability company. Regulation 12 (a) of the new regulations allows an applicant to be either a company or limited liability partnership incorporated or registered in Kenya;

- b) Where an investment advisor offers all or some of its services through an intermediary service platform, it must fulfil the following additional criteria:

- It must have its principal bank account in Kenya;
- It must have documented and robust processes, methodologies, and procedures in respect of the platform; and
- It must have a robust data protection policy and keep copies of all documents for at least 7 years.

Investment banks and other market intermediaries

The new Regulations have largely adopted the requirements contained in the 2002 regulations as amended from time to time. However, the new Regulations revamp the capital adequacy requirements as follows:

a) Investment banks are required to have:

- a paid-up share capital of Kshs. 150,000,000 and a liquid capital of 50,000,000 or 8% of its total liabilities, whichever is higher. *The new regulations define “liquid capital” as the amount by which the liquid assets of an entity exceed its liabilities;* and
- shareholder’s funds (paid up share capital and reserves) of Kshs. 150,000,000.

It should also be noted that the above requirement is a significant reduction of the minimum paid-up share capital from the previous Kshs. 250,000,000.

b) Broker-dealers

The 2002 regulations maintained a rigid dichotomy where entities were licensed either purely as 'stockbrokers' (acting only as agents of investors) or 'dealers' (trading on their own accounts). The new regime aligns with global best practices by introducing a new category of intermediaries, the **hybrid 'broker-dealer', allowing a single entity to execute both agency and principal trades cohesively.**

The previous regulations required brokers to have minimum shareholders’ funds (paid up share capital and reserves) of Kshs. 50,000,000 for brokers and Kshs. 20,000,000 for dealers.

Under the new Regulations, broker-dealers require a minimum paid-up share capital of Kshs. 70,000,000 and a liquid capital of 50,000,000 or 8% of its total liabilities, whichever is higher.

c) Fund managers

The minimum paid-up share capital has been increased from Kshs. 10,000,000 to shareholders’ funds (paid up share capital and reserves) of Kshs. 20,000,000.

It should also be noted that, to enhance risk management, Regulation 39(3) of the new Regulations requires that where a fund manager invests in a related company, that investment shall be limited **10%** of the fund manager’s AUM.

d) Trustees

The 2002 regulations did not provide for licensing of trustees and CMA has historically mainly only licensed banking institutions to act as trustees. However, the new Regulations allow any company or other body corporate established in Kenya to apply for licensing as a trustee.

The licensing criteria for trustees is similar to those applicable to other intermediaries. The required minimum paid-up share capital is Kshs. 20,000,000 and a liquid capital of Kshs. 5,000,000 or 8% of its liabilities, whichever is higher.

Digitalisation of compliance

Acknowledging the fast pace of digitalised capital markets, the new Regulations impose a proactive, risk-based reporting regime. For instance, Regulation 15(1)(a) compels investment advisors to submit “a monthly risk-based capital adequacy report and management accounts within fifteen days of the end of each month.”

In contrast the former regime's reporting obligations were relatively static, relying heavily on quarterly or annual reports that were sufficient for slower, manual trading environments but inadequate for a high-frequency digitalized market.

Thus, the new regime ensures the regulator has near real-time visibility into the financial health of all intermediaries.



Conclusion

The new Regulations constitute a progressive and necessary legislative leap in modernizing Kenya's capital markets regulation. By replacing the fragmented 2002 framework with a cohesive text that harmonises traditional markets with emerging algorithmic players, the new Regulations ensure that Kenya's capital markets remain secure, agile, and internationally competitive.

How we can partner with you

At **CM Advocates LLP**, our **Capital Markets, Private Equity & Investment Funds (CPEIF) Practice Group** stands ready to partner with sponsors, issuers, fund managers, DFIs, family offices, and institutional investors to structure, raise, deploy, and exit capital with confidence. Whether you are launching a fund, executing a cross-border transaction, undertaking an IPO or bond issuance, structuring a private placement, or navigating complex regulatory approvals, we provide commercially grounded, technically rigorous, and regionally coordinated advice tailored to Africa's dynamic investment landscape. Engage our **CPEIF** team today to unlock strategic capital solutions, mitigate regulatory risk, and drive sustainable value across your investment lifecycle.

Our services include, but are not limited to:

1. Partnering with you to offer transaction advisory services.
2. Advising you on licensing requirements and guiding you through the licensing process within the capital markets, from inception to licensing.
3. Advising you comprehensively on the immediate and continuous compliance requirements introduced by the new Regulations.
4. Creating compliance matrices or checklists for your existing business to ensure a seamless compliance environment.
5. Conducting a compliance audit or health-check on your existing business.
6. Giving you continuous and periodic advice, as we expect these regulations to be updated from time to time.

If you would like to consult on this article or any other related matter, you may contact the team via cpeif@cmadvocates.com or the Corporate and Commercial team via corporate.commercial@cmadvocates.com

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CONTRIBUTOR



George Kinyua
Principal Associate,
Corporate Commercial Business Unit
Email: gkinyua@cmadvocates.com
CM Advocates LLP

Head Office - Nairobi, Kenya

I&M Bank House, 7th Floor, 2nd Ngong Avenue
T: +254 20 2210978 / +254 716 209673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office - Kenya

Links Plaza, 3rd Floor, Links Road, Nyali
T: +254 041 447 0758 / +254 41 447 0548
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

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