

DRAFT DIRECTIVE FOR DEMATERIALIZATION OF SECURITIES

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DRAFT

PREAMBLE

WHEREAS, it is necessary to transition from physical paper-based securities to an efficient, secure, and transparent electronic system that enhances market operations, promotes investor confidence, and improves the capital markets' overall functioning.

WHEREAS, it is necessary to provide for a dematerialization regulatory framework to efficiently transition from a physical paper certificate system of holding securities to an electronic system of holding securities to facilitate electronic issuance and transfer of securities; and

NOW THEREFORE, the Authority hereby issues the following Directive on the Dematerialization of Private Securities in accordance with Articles 43(3), 6(3) and 108 (2) of the Capital Market Proclamation No.1248/2021.

PART I: PRELIMINARY PROVISIONS

(1). Short Title

This Directive may be cited as the “Directive for the Dematerialization of Securities No. XX/2024.”

(2). Definitions

Unless the context otherwise requires:

1. “**Authority**” means the Ethiopian Capital Market Authority established under the Capital Market Proclamation No. 1248/2021.
2. “**Account Holder**” means a person in whose name a Central Securities Depository and Clearing Services Provider Member maintains a securities account, whether that person is acting for its own account or for others.
3. “**Beneficial Owner**” means the ultimate owner of a security, entitled to all the rights, benefits, powers and privileges and all liabilities, duties and obligations in respect of, or arising from the security, but does not include a Nominee.
4. “**Book-entry**” means an electronic record system for dematerialized securities where records and ownership changes are kept electronically using a computerized entry system.
5. “**Central Securities Depository and Clearing Services Provider**” or “**CSDCSP**” means a legal entity licensed by the Authority as a Securities Depository and Clearing Company or an entity authorized by the Authority to provide securities depository and clearing services according to Article 54 of the Proclamation.
6. “**Dematerialization Date**” means a specific date on which physical securities are converted into electronic form and no longer exist as physical documents. After this date, prima facie evidence of ownership and transactions of the securities are recorded electronically in a centralized securities depository, and the paper certificates cease to be valid for trading or settlement purposes.

7. **“False Information”** or **“Misleading Information”** means at the time and in light of the circumstances in which the information was shared, the information was false or misleading concerning any material fact and which the person who shared it knew or reasonably ought to have known to be false or misleading; or because of the omission of a material fact, the information is rendered false or misleading and which the person who shared it knew or ought to have known to be rendered false or misleading because of the omission of that fact.

8. **“Know Your Customer/Client (KYC)”** is a mandatory and recurring process of identifying and verifying a client's identity, to understand a client's activities, provide better service, and prevent financial crime and money laundering.

9. **“Member of Central Security Depository & Clearing Services Provider”** or **“CSDCSP Member”** means an institution appointed by the CSDCSP, according to its internal rules, to perform the functions of a Securities Depository and Clearing Company member as prescribed under Article 2(66) of the Proclamation.

10. **“Nominee Account”** means an account where securities are held in the name of a third-party Nominee other than the Beneficial Owner for convenience and administrative purposes.

11. **“Omnibus Account”** means an account where Securities of several Beneficial Owners are consolidated in one account opened in the name of a CSDCSP Member or a Nominee.

12. **“Pledged Security”** means a security used as collateral by a Beneficial Owner in securing a debt or a loan.

13. **“Pledgee”** means a person to whom a pledge is given.

14. **“Pledgor”** means a Beneficial Owner who pledges his security to guarantee payment on a loan contract or the payment of a debt.

15. **“Proclamation”** means the Capital Market Proclamation No. 1248/2021.

16. **“Securities Account”** means an account on which securities are credited or debited.

17. **“Securities Holder”** means an individual or entity that has legal ownership or beneficial interest in Securities, with associated rights and responsibilities including a nominee as defined by applicable laws, regulations, and contractual arrangements.

18. **“Segregated Client Accounts”** means accounts where securities are held separately by the CSD for each client, providing the client’s direct ownership and control over their securities.

19. **“Shadow Register”** means a separate register of holders of securities maintained by public companies to reflect the record of the Central Securities Depository (CSD).

20. **“Unclaimed Securities”** means securities whose physical certificates have not been collected by Securities Holders from the issuers.

21. **“Un-reclaimed Securities”** means those securities whose physical certificates are yet to be returned to public companies for dematerialization.

22. In this Directive, any expression in the masculine shall include the feminine.

23. Any terms and phrases defined in the proclamation shall apply to this directive.

(3). Scope of Application

This Directive shall apply to all publicly offered securities, including securities issued by public enterprises that the Federal Government of Ethiopia fully or partially owns, whether these securities are traded on a licensed securities exchange or an over-the-counter (OTC) market.

PART II: DEMATERIALIZATION AND REGISTRATION OF SECURITIES

(4) Registration with a CSDCSP

1. Pursuant to Article 42 of the Proclamation, Issuers of publicly offered securities shall register their securities on a CSD.
2. Publicly offered securities shall not be traded until registered with a CSD and the Authority.
3. The CSD’s electronic record shall include identification details of shareholders, securities, quantity issued and other information as required in the rules of the CSDCSP.

(5) Legal Nature of Dematerialized Securities

1. Dematerialized securities are legally recognized, valid, and enforceable financial instruments subject to identical legal rights and obligations as physical certificates.
2. Ownership of dematerialized securities is evidenced by a CSD electronic records.
3. Transfer of ownership of dematerialized securities is done through electronic book entries in the CSD system.
4. The electronic register maintained by the CSD shall serve as the authoritative source of ownership information, documenting the identities and quantities of securities held by Security Holders.
5. Dematerialized Securities of the same issue are fungible whereby the securities of the same class, type, and right issued by the same issuer are interchangeable in the market without affecting their value.

PART THREE: MIGRATION OF SHAREHOLDERS' DATA AND CSD SECURITIES ACCOUNT

(6) Migration of Shareholders Data to CSD Issuers Account and Reconciliation

1. Issuers of publicly offered securities shall submit a register of all Securities Holders to the CSD in the form prescribed by the CSDCSP.
2. Before an Issuer submits its register to the CSDCSP for dematerialization, it shall reconcile its register to capture details of all its Securities Holders and their ownership interests.
3. Before the reconciliation, every issuer shall notify all its Security Holders to update their contact information.
4. The reconciliation must at a minimum address the following:
 - a. Total number of securities issued and the amount of capital they represent;
 - b. Details of Securities Holders including their names, contact details, percentage and number of holdings; and

- c. For pledged securities, the names of the Pledgee and the Pledgor and all pledge details that are specified on the pledge contract.
5. The CSD will credit the Securities under Sub-Article 1 of this Article in securities accounts opened in the CSD in the name of the Securities Holders and managed by the issuer.
6. The record of the securities in accounts managed by the issuer under Sub-Article (2) of this Article does not make the issuer the holder of rights on these securities.
7. The issuer records of securities ownership shall be replaced with electronic records of securities ownership in the book-entry register maintained on the CSD.

(7) Requirement to open Securities Holder Accounts

1. No person shall deal in deposited or dematerialized securities without first having a securities account.
2. A CSDCSP Member shall open and maintain a securities account with the CSDCSP for itself and its clients.
3. A CSDCSP Member shall segregate its assets from the assets of its clients.
4. A CSDCSP may establish different types of securities accounts. The types of accounts may include the following:
 - a. Segregated client accounts opened in the name of a Beneficial Owner;
 - b. Nominee accounts opened in the name of an authorized nominee; or
 - c. Omnibus accounts opened in the name of a CSDCSP Member or a Nominee.
5. Every securities account opened with a CSDCSP shall be in the name of the Beneficial Owner of the deposited securities, a CSDCSP Member or a Nominee.

PART FOUR: DEMATERIALIZATION PROCESS

(8) Process for Deposit of Physical Certificates

1. Securities Holders shall open a securities account with the CSD through a CSDCSP member after completing an account opening form and attaching identification details in the format prescribed in the CSDCSP's rules.

2. 2. After opening a CSD account, every Securities Holder shall submit his physical certificate or evidence of ownership of securities to his nominated CSDCSP Member accompanied by a deposit form and a valid means of identification as prescribed in the CSDCSP rules.
3. Upon receiving physical certificates and completed forms from their clients, CSDCSP Members shall submit them to the issuer for verification and confirmation.
4. Upon receiving the physical certificates, an issuer shall verify the authenticity of a physical certificate submitted by a Securities Holder to a CSDCSP member and confirm to the CSD that the details of the Securities Holder provided are identical to the details in its register of shareholders.
5. Upon verifying the documents submitted as per the CSDCSP's procedures, the issuer shall approve or disapprove the credit of the securities into the client's CSD security account.
6. Upon confirmation by the CSDCSP Member that the Security Holder's account has been credited with the securities, the issuer shall mark the physical certificates as dematerialized and store them for a minimum ten (10) year period.

(9) Pledged Securities

1. All pledged securities are eligible for dematerialization provided that the issuer of the security submits details of the pledge with the registration request.
2. Before a Security Holder deposits the physical certificates of a Pledged security, he must consult with the Pledgee.
3. A Pledgee shall cooperate with the Pledgor to surrender the physical securities.
4. The Pledged securities shall be recorded in the securities account of the Securities Holder on the CSD and shall be marked as Pledged to the Pledgee as per the rules of the CSD.

(10) Communication During Dematerialization

1. Issuers shall notify all their Security Holders:
 - a. of the requirements under this Directive;
 - b. of the dematerialization process; and

- c. to start the process for dematerialization of their securities.
2. The notifications required under Sub-Articles (1) above shall be published in a newspaper of wide circulation in Ethiopia both in Amharic and English languages. In addition to the newspaper publication, an issuer may also send the notice via SMS, electronic mail, its website, or other additional medium of communication of its choice.
3. The CSDCSP shall submit monthly reports to the Authority on the status of dematerialization not later than seven (7) days after the end of every month. The report shall be in a form specified by the Authority.

(11) Fully Paid-up and Partly Paid Shares

1. All fully paid-up shares shall be dematerialized and credited into the CSD account of Securities Holders in accordance with the provision of this Directive.
2. There shall be no restriction on the transaction of the dematerialized securities that are fully paid and recorded in the name of the Securities Holder or under their authorized nominee except where the securities have been pledged or used as collateral.
3. Unpaid or partly paid shares shall be dematerialized and credited into the CSD account of the issuer.

(12) Errors and Complaints

1. A complainant shall first report all errors, complaints and disputes arising from the dematerialization of securities to the issuer for resolution.
2. The issuer shall resolve or rectify the error as appropriate within ten (10) working days from the day it receives the complaint.
3. The issuer shall use the information provided by the complainant, its internal records, and Federal Document Authentication and Registration Service records to resolve the complaint.
4. Where the resolution reached will affect records or information on the CSD, the issuer must notify the CSD to correct the information within five (5) working days.

5. The Issuer shall report all complaints and their final resolution to the Authority within two (2) working days after the compliant resolution.
6. Where the complaint is not resolved within ten (10) working days, or where the complainant is not satisfied with the decision of the issuer, the Securities Holder or the issuer may refer the complaint to the Authority. The referral shall include a summary of the process leading to the referral and copies of all relevant supporting documents.
7. The Authority shall review the referral under Sub-Article 6 of this Article and make a decision within five (5) working days.

PART FIVE: OFFICIAL RECORD, SHADOW REGISTER AND STATEMENT OF ACCOUNT

(13) Official Record of Depositors

1. The CSDCSP shall maintain the official ownership record on all dematerialized securities which shall include details as specified in Article 7(1) of this directive and the name of:
 - a. every Securities Holder who has surrendered their certificates for crediting into a securities account held by such depositor; and
 - b. every Securities Holder who has not surrendered their certificates for crediting into their securities account.
2. A record of Securities Holders maintained by the CSDCSP to Sub-Article (1) of this Article shall:
 - a. contain information in electronic form;
 - b. not be distinguished by any share number or serial number; and
 - c. contain such other information as may be required under the CSDCSP rules.
 - d. comply with all applicable data protection and privacy regulations
3. Nothing in this section shall be construed as making the CSDCSP an agent of the issuer to provide registration services.

(14) Shadow Register to be Maintained by Issuers

1. Without prejudice to the provisions of this Directive, an issuer may maintain an electronic shadow register of its shareholders.
2. The Issuer shall continuously update the shadow register to reflect transactions and transfers in the electronic record of the CSD.
3. The CSDCSP shall furnish the issuer with a periodic report on the transactions on its securities.
4. An issuer that chooses to maintain a shadow register shall have a system that facilitates continuous reconciliation and update of its electronic shadow register with the CSD's record or otherwise have access to view and print shareholders' records from the CSD in accordance with the rules and regulation of the CSDCSP.

(15) Statement of Accounts

1. The CSDCSP shall issue account statements to all account holders periodically as per its rules, detailing securities held in their name.
2. Notwithstanding the provisions of Sub-Article (1) of this Article, an account holder may request a CSD account statement from a CSDCSP Member.
3. Notwithstanding the provisions of Sub Articles (1) and (2) of this Article, an account holder may at any time make a written request to the CSDCSP for an official statement of account for all or any of the deposited securities currently held in custody on his behalf.
4. Upon receiving a written request under Sub-Article (3) of this Article and the payment of any applicable fees as per its rules, the CSDCSP shall issue an official signed and stamped statement of account to the account holder.

PART SIX: DECLARATION OF DEMATERIALIZATION OF SECURITIES AND SPECIAL ACCOUNT

(16) Declaration of Dematerialization of Securities

1. The Authority shall declare all publicly offered securities as dematerialized securities and provide a dematerialization date.

2. The Authority may also declare non-publicly offered securities, as dematerialized securities upon a request by an issuer of such securities.
3. An issuer of a security that is dematerialized shall:
 - a. Within a month of the dematerialization date, give notice to the public that its securities have been dematerialized; and
 - b. amend its document of incorporation, or memorandum of association, as the case may be, to give effect and comply with the provisions of the commercial code and this Directive.

(17) Special Account

1. Ten years after the declaration of dematerialization by the Authority, securities represented by physical certificates that are not tendered for verification shall be transferred to a Special Account under the compensation fund managed by the Authority.
2. The distributions or benefits accruing to the securities specified under Sub-Article 1 of this Article shall be transferred to the Special Fund and shall not give rise to a refund of dividend and payment of any interest.
3. The voting rights attached to the Securities specified under Sub-Article 1 of this Article shall be suspended until the securities have been reclaimed and recorded in the Security Holder s' account in the CSD.
4. A Securities Holder 's voting rights to the securities specified under Sub-Article 1 of this Article shall not count toward the calculation of the quorum and during general shareholder meetings and holders of these securities shall not be admitted to the general shareholder meetings.
5. Securities Holder s seeking to claim the securities specified under Sub-Article 1 of this Article from the Special Fund shall comply with the requirements of the Special Fund as prescribed by the Authority.
6. The securities specified under Sub-Article 1 of this Article and their related benefits shall not be transferred out of the Special Fund without the approval of the Authority.

PART SEVEN: INSPECTION AND DIRECTIONS

(18) Power of Authority to Conduct Inspections

1. The Authority may conduct onsite and off-site supervision and inspections, with or without prior notice on any issuer, the CSDCSP, or CSDCSP Member with access to all necessary books, information, and records.
2. The Authority may use external, auditors, law enforcement personnel, and other authorities as appropriate during its inspections.
3. During the Authority's inspection, every director, manager, partner, secretary, officer or employee of a CSDCSP, issuer or CSDCSP Member shall produce all relevant information, records, or documents in his custody.

(19) Power of the Authority to Give Directions in Certain Cases

Following an inquiry or inspection and to protect the market and investors, the Authority may issue an instruction to stop any activity that could harm the securities market or investor interest to an issuer, CSDCSP or CSDCSP members.

PART EIGHT: ENFORCEMENT, ADMINISTRATIVE SANCTIONS AND PENALTIES

(20) Enforcement

1. The Authority shall monitor the compliance of issuers, the CSDCSP, investors, and CSDCSP Members, within the provisions of this Directive and any person or entity who conducts himself within the scope of this Directive.
2. The Authority may take administrative actions against the persons and entities identified under Sub-Article (1) of this Article, whenever they contravene the provisions of this Directive.

(21) Administrative Measures

1. The Authority may impose any or a combination of the following administrative measures for non-compliance with or violation of any provisions of this Directive:
 - i. issue a public or private warning;
 - ii. impose a fine;

- iii. direct person(s) or entity(ies) to buy back securities;
- iv. suspension or prohibition of trading of securities;
- v. order a stop actions;
- vi. order a corrective measure;
- vii. blacklist a CSDCSP Member, capital market service provider, issuer, director(s), company secretary, senior management, representative, promoter, or anyone responsible for violation of this Directive, or
- viii. any other measure the Authority prescribes from time to time.

2. Failure to Reconcile the Register of Shareholders

The Authority may impose administrative measures for the violations identified below.

- i. which shall include but is not limited to the following:
 - i. Not notifying Securities Holders of planned reconciliation of the register of shareholders before the commencement of the dematerialization of securities and before submission of the register to the CSDCSP.
 - ii. Not reconciling the register of Securities Holders before submission to the CSDCSP for conversion to electronic dematerialized form.
 - iii. Not reconciling records in the CSD with that of the issuer at intervals; or
 - iv. Not providing issuers with access to CSD or with an updated register to enable issuer carry out reconciliation by the CSDCSP.
- ii. Depending on the circumstances of the case, and by whom the violation is committed, the Authority may, in combination or separately, impose the following administrative measures as it deems appropriate:
 - i. A fine of Birr 500,000 – 1,000,000 for each violation if it is an issuer or CSDCSP
 - ii. Other sanctions may include but are not limited to:
 - a. Suspension of the dematerialization of physical certificates of the holders of the issuer's securities.
 - b. require the issuer to make a publication and send a notification to its shareholders to inform them of the reconciliation; or

- c. require the issuer to reconcile its register.
- 3. Failure to Communicate and Report
 - a. Lack of or inadequate communication and reporting during dematerialization including:
 - i. Not notifying Securities Holders and the market of the commencement of dematerialization.
 - ii. Failure to provide sufficient information about the dematerialization process as per Article 13(3) of this directive.
 - iii. Failure to submit a status report to the Authority on the dematerialization.
 - iv. Failure to submit a status report to the Authority within the prescribed time.
 - v. Failure to provide every issuer with a daily report on changes of its register or failure to grant issuers access to its system to view changes to its register.
 - b. The Authority may impose the following administrative measures as appropriate for lack of or inadequate communication and reporting during dematerialization:
 - i. A fine of:
 - a. Birr 50,000 – 100,000 and an additional Birr 5,000 for every day of default, for an issuer violation
 - b. Birr 10,000 – 20,000 and an additional Birr 1,000 for every day of default, for a CSDCSP Member violation; or
 - c. Birr 30,000 – 40,000 and an additional Birr 2,000 for every day of default, for a CSDCSP violation.
 - ii. Other sanctions may include public or private warnings.
- 4. Violations of not Addressing Errors and Complaints
 - a. Not addressing errors and complaints include but are not limited to the following:
 - i. Not addressing complaints from CSDCSP Members; or
 - ii. Not notifying the Authority of complaints.
 - b. The Authority may impose the following administrative measures as appropriate for violations related to addressing errors and complaints:

- i. A fine of Birr 100,000 – 500,000 and an additional Birr 10,000 for every day of default;
or
- ii. Other sanctions may public or private warnings.

(22) Prohibited Practices

1. The following are prohibited during the dematerialization of securities:
 - a. Refusal to tender physical certificates of securities for dematerialization;
 - b. Submission of false or misleading information or documents;
 - c. Dematerialization of physical certificates or crediting the CSD account of Securities Holders where the submissions made by such Securities Holders have known errors and inconsistencies;
 - d. Transfer of securities from the Special Fund without the approval of the Authority.
 - e. Issuance of physical certificates for issuing and offering securities after the effective date of the Directive, and
 - f. Failure to update a memorandum of association when required by the Directive.
2. The Authority may impose the following administrative measures for violations of the prohibited activities listed under Sub-Article 1 of this Article.
 - a. A fine of:
 - i. Birr 50,000 for every day of default for issuers; and
 - ii. Birr 100,000 – 400,000 for the CSDCSP.
 - b. Other sanctions may include but are not limited to:
 - i. An order for the refund of the securities dematerialized.
 - ii. Temporary suspension of rights to Securities Holders; and
 - iii. Public or private sanction.

PART NINE: MISCELLANEOUS PROVISIONS

(23) Transitional Arrangement

1. Notwithstanding the provisions of this Directive, the Authority may, through a circular or notice, provide for transitional arrangements that vary from the provisions of this Directive.

2. Notwithstanding sub-article (1) of this article, the Authority may not provide for transitional arrangements that impose more stringent obligations than those prescribed by this Directive.
3. The Authority may revise the dematerialization processes and procedures stated in this directive through notices and circulars considering the special circumstances of issuers during the dematerialization process.
4. Such circulars or notices issued by the Authority as part of the transitional arrangements shall be deemed legally binding and integral to this Directive.

(24) Amendments

No directive or customary practice, inconsistent with this Directive, shall have effect concerning matters governed by this Directive.

(25) Inapplicable laws

No law or customary practice, inconsistent with this Directive, shall have effect concerning matters governed by this Directive.

(26) Effective Date

This Directive shall come into force on the date of its registration with the Ministry of Justice and its uploading on the official website of the Authority.

DONE IN ADDIS ABABA ON xxxxx 2024

HANA TEHELKU

DIRECTOR GENERAL

ETHIOPIAN CAPITAL MARKET AUTHORITY