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S/No	Designation	Violation	Value/Principle violated	Action taken
24.	Senior Superintending Engineer	Insubordination	Integrity	First warning
25.	Mechanical Engineer	Insubordination	Integrity	First warning
26.	ECDE Teacher	Insubordination and Unaccountability	Integrity, transparency and accountability	Dismissed

5.0 Impediments in the promotion of National Values and Principles of Governance

Promotion of National Values and Principles of Governance were impeded by the following—

(a) Inadequate budgetary allocation for implementation of the proposed programmes;

(b) Intense lobbying by the public in relation to recruitments.

(c) Claims of extortion by the public

(d) Lack of cooperation from complainants (the public) in providing conclusive evidence for prosecution of cases relating to extortion/ bribery;

(e) Delay by investigating /enforcing agencies to investigate and prosecute reported cases.

(f) Litigations by aggrieved staff before conclusion of internal administrative processes and the long time taken by the courts to conclude on the same.

6.0 Specific recommendations and programs planned or undertaken by the Board towards promotion of National Values and Principles of Governance

The Board planned and undertook the following specific recommendations and programs aimed at promoting National Values and Principles of Governance

(a) Induction of state and public officers joining the County Public Service on Values and Principles of Governance;

(b) Enhanced collaboration with the County Anti-Corruption Committee in promotion of National Values and Principles of Governance;

(c) Provided regular advisories to the County Executive Committee on dynamic aspects of Human Resource Management and development that enhance the practice of good Governance;

(d) Provided an alternative communication channels for purposes of receiving feedback from staff and public on Values and Principles of Governance in the County public service.

Dated the 4th January, 2021.

WILLIAM KOECH,
Secretary, Uasin Gishu County Public Service Board.

MR/2356919

GAZETTE NOTICE NO. 12325

THE CAPITAL MARKETS ACT

(Cap. 485A)

GUIDELINES ON SHARE BUYBACKS FOR LISTED COMPANIES

IN EXERCISE of the powers conferred by section 11 (3) *(d)* of the Capital Markets Act, the Capital Markets Authority issues the Guidelines on Buybacks for Listed Companies as set out in the Schedule.

SCHEDULE

Introduction and application.

1. (1) These Guidelines have been issued for guiding listed companies that intend to undertake share buybacks.

(2) A listed company that intends to buy back its shares shall comply in full with the provisions of the Companies Act, 2015, Capital Markets Act, and these Guidelines.

Definitions.

2. In these Guidelines, unless the context otherwise requires—

"distributable profits" has the meaning assigned to it under section 423 (1) of the Companies Act, 2015;

"listed company" means a company which has any of its securities listed on a securities exchange;

"off-market purchase" means the purchase of the securities of a listed company made—

(a) outside an approved securities exchange; or

(b) on an approved securities exchange but is not subject to a marketing arrangement on the exchange;

"on-market (exchange) purchase" means the purchase of the securities of a listed company that is made on a securities exchange; and

"treasury shares" means the shares of a listed company that have been bought back by the listed company from the company's shareholders and have not been cancelled.

Power to undertake share buyback.

3. (1) A listed company may only buy back its shares if the Articles of Association of the listed company provide for share buybacks.

(2) A proposal to buy back the shares of a listed company shall be approved by the shareholders of the company at a general meeting of shareholders before the share buyback is undertaken.

(3) Where a listed company intends to submit a share buyback proposal to the company's shareholders for approval at a general meeting, the company shall provide the shareholders with a circular setting out the terms and conditions of the share buyback proposal:

Provided that the circular shall first have been —

(a) approved by the Authority pursuant to regulation 63 of the Capital Markets (Licensing Requirements) (General) Regulations, 2002; and

(b) shall have been submitted to the securities exchange on which the share buyback transactions shall be undertaken by the listed company.

Shareholder circular.

4. (1) The circular contemplated in paragraph 3 (3) shall disclose all material information that the shareholders of the listed company and the shareholders' professional advisors would reasonably require or expect to be informed about in order to make an informed decision on the proposed share buyback transaction.

(2) Despite the generality of subparagraph (1), the circular shall contain the following information—

(a) the reasons for the share buyback;

(b) the number of shares of the listed company that are intended to be bought back;

(c) the method of undertaking the share buyback including whether or not the buyback shall be undertaken—

(i) through open market repurchase programmes executed through tender offers or over a period of time; or

(ii) through on -market (exchange) or off-market purchases;

(d) the treatment by the listed company of the shares to be bought back including—

(i) whether or not the shares bought back shall be held in treasury or cancelled; and

(ii) where the shares that have been bought back are intended to be

held in treasury, the listed company shall disclose the current and future treatment of those treasury shares;

(e) the price-per-share intended to be paid by the listed company specifying the maximum and minimum prices of the shares and a detailed explanation supporting the prescribed price including valuation reports;

(f) the mode of financing the share buyback either being the proceeds from a fresh issue of shares or out of distributable profits of the listed company;

(g) whether or not consent for the share buyback has been obtained from other relevant parties including bondholders, regulators and creditors;

(h) a declaration by the directors of the listed company of the company's solvency or liquidity based on the company's last audited financial statements that is sufficient to undertake the share buyback including a statement that on the date of the shareholder circular—

(i) the assets of the listed company are fairly valued;

(ii) the assets of the listed company are equal to or exceed the liabilities of the listed company; and

(iii) the listed company shall be able to pay its debts as they come due in the ordinary course of business for a period of twelve months;

(i) the potential impact of the proposed share buyback on the shareholding structure of the listed company;

(j) the risk factors and assumptions of the share buyback transaction;

(k) any related party transaction or director's interest in the share buyback transaction;

(l) the impact of the share buyback on the listed company's financial position;

(m) the period during which the shareholders' approval for the share buyback shall be valid; and

(n) any other relevant information regarding the proposed share buyback transaction.

Off-market purchase transactions.

5. If a listed company intends to buy back its shares through off-market purchases, that company shall submit the draft share buyback contract to the Authority for approval in line with the requirements for private transactions in addition to the shareholders' circular contemplated under paragraph 3 (3).

Publication of notice.

6. (1) A listed company that intends to buy back its shares shall publish, within twenty-four hours of the board's resolution approving the share buyback, and with the approval of the Authority, a public announcement of the intended share buyback in at least one newspaper of nationwide circulation and on the company's website.

(2) The listed company shall submit the published public announcement to the securities exchange and the exchange shall publish the announcement on its website.

(3) The announcement shall contain material information on the share buyback including the following—

(a) the method of effecting the share buyback (on-market (exchange) purchase or off-market purchase);

(b) the minimum and maximum prices of the shares to be bought back;

(c) the treatment of shares by the listed company after they are bought back;

(d) the percentage of the shares to be bought as a proportion of the issued share capital of the listed company; and

(e) the transaction advisors advising the listed company in the share buyback transaction.

(4) The announcement shall contain a statement that the listed company shall provide the shareholders with a circular on the proposed share buyback seeking the shareholders' approval after the circular on the share buyback has been approved by the Authority.

On-market (exchange) purchases.

7. If a listed company intends to buy back its shares through on-market (exchange) purchases—

(a) the maximum share buyback price of the shares to be purchased shall be ten per cent above the weighted price average of the shares during the period of thirty days before the day of the board resolution approving the share buyback; and

(b) the minimum share buyback price of the shares to be purchased shall 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.

Minimum capital and free float requirements.

8. A proposal by a listed company to buy back its shares shall not reduce or contravene the minimum capital and free float requirement for continued listing of the company in the respective market segment under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, and any other additional free float requirements that may be introduced by the Authority.

Share buyback relating to a class of shares and treatment of treasury shares.

9. (1) If a proposal to buy back shares relates to a class of shares of the listed company, the shares to be bought back by the company back shall not exceed ten per cent of the total issued shares of that class in a given financial year:

Provided that the Authority may consider waiving this limit on the written application of the listed company.

(2) If a listed company opts to keep the shares bought back in treasury, the treasury shares shall not exceed ten per cent of the total issued shares of that class.

(3) Where a listed company proposes to reissue treasury shares, including any reissue to employee share ownership schemes of the company, the company shall seek the approval of the company's shareholders and Authority pursuant to the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, before reissuing the treasury shares.

Volume of shares to be purchased.

10. (1) The volume of the shares purchased by a listed company on any single day may not exceed twenty-five per cent or the limit prescribed by the Authority.

(2) The limit under subparagraph (1)—

(a) shall be based on the liquidity of the shares in the market of the average daily trading volume for the four calendar weeks preceding the week of the purchase; and

(b) shall not be executed as to significantly adversely affect the liquidity of the shares in question.

(3) The share buyback shall not be effected during pre-open session of trading of the shares of the listed company.

Listed company must make disclosure on share buybacks to the

11. (1) A listed company that undertakes a share buyback shall disclose to the securities exchange the details of the buyback transaction

immediately after the buying back of the shares and the disclosure shall be published on the security exchange's website. *security exchange.*

(2) The disclosure under subparagraph (1) shall include information on the listed company, the number of shares that have been bought back, the price per share of the shares that have been bought back, and the percentage of the free float after the shares have been bought back.

Duration of a buyback programme.

12. A listed company shall—

(a) complete the share buyback within period not exceeding eighteen months from the date of the shareholder resolution approving the share buyback proposal; and

(b) separate the share buyback programmes by a period of three hundred and sixty-five days.

Prohibition, cancellation or suspension of share buybacks.

13. (1) A listed company shall not undertake a share buyback transaction—

(a) during the period of fourteen days before the publication of the company's half-yearly or annual financial statements; or

(b) after it has become aware of any material information which has not been made public which, if disclosed, could affect the price of the company's shares.

(2) A share buyback may be cancelled or suspended if—

(a) material information is announced within fourteen days before the buyback being conducted; or

(b) if the listed company deems it fit in the circumstances:

Provided that the cancellation or suspension is done within a reasonable time before the effective date of the buyback transaction.

Reporting and disclosures.

14. (1) A listed company that undertakes a share buyback transaction shall submit to the Authority daily reports on the share buyback transaction undertaken and the treatment of the shares acquired by the listed company including reports on the price and volume of shares bought back and any treasury shares sold by the company.

(2) A listed company that undertakes share buyback transactions shall disclose in its annual report any share buyback transactions undertaken in the year to which the report relates and the treatment by the company of the shares bought back.

De-listings and privatisations to be approved by independent shareholders.

15. If, after a share buyback, the listed company that buys back its shares proposes to de-list its shares from the securities exchange or the company is privatised—

(a) the directors of the listed company and any person acting in concert with the directors shall not be considered to be independent and shall not be entitled to vote at the meeting of shareholders convened to approve the share buyback proposal; and

(b) the share buyback proposal shall be require to be approved by—

(i) at least seventy-five per cent of the votes attached to the shares owned by independent shareholders that are cast either in person or by proxy at a duly convened general meeting; and

(ii) the number of votes cast against the resolution shall not be more than ten per cent of the votes attached to the shares owned by independent shareholders.

Capital Markets (Takeovers and Mergers) Regulations, 2002 to apply.

16. If a share buyback transaction triggers the percentage shareholding limits that may lead to a takeover of the listed company, the Capital Markets (Takeovers and Mergers) Regulations, 2002, shall apply.

Listed company to comply with applicable laws and regulations.

17. (1) A listed company shall comply with the corporate governance requirements, listing obligations and all relevant written laws and Regulations of Kenya as may be applicable during the share buyback process.

(2) A listed company undertaking share buyback shall ensure that it, its directors, shareholders, connected persons, and persons acting in concert with the company or its directors, do not commit any offences relating to market abuse or insider dealing during the share buyback.

Dated the 7th October, 2021.

THOMAS KIBUA,
Acting Chairperson,
Capital Markets Authority

WYCKLIFFE SHAMIAH,
Chief Executive Officer,
Capital Markets Authority.

GAZETTE NOTICE NO. 12326

THE STANDARDS ACT

(*Cap.* 496)

DECLARATION OF KENYA STANDARDS

PURSUANT to section 9 (1) of the Standards Act, the National Standards Council declares the specifications or codes of practice appearing in the schedule hereto to be Kenya Standards with effect from the date of publication of this notice.

Number	*Title of Specification or Code of Practice*
Chemical	
KS EAS 985-1:2020	Kenya Standard — Hermetic storage bags — Specification — Part 1: Woven polypropylene outer bag, First Edition
KS EAS 987-1:2020	Kenya Standard — Glass containers — Specification — Part 1: Bottles for carbonated and non-carbonated drinks, First Edition
KS EAS 984-1:2020	Kenya Standard — Packaging ancillary materials — Specification — Part 1: Single-sided pressure sensitive adhesive tapes, First Edition
KS EAS 986:2020	Kenya Standard — Portable rigid plastic hermetic grain silo — Specification, First Edition
KS EAS 849:2021	Kenya Standard — Silk (sheen) emulsion paint for interior use — Specification, First Edition
KS EAS 936:2021	Kenya Standard — Gloss solvent borne paint for interior and exterior use — Specification, First Edition
KS EAS 937:2021	Kenya Standard — Semi-gloss (egg-shell) solvent borne paint for interior and exterior use — Specification, First Edition
KS EAS 998:2021	Kenya Standard — Textured paint — Specification, First Edition
KS EAS 999:2021	Kenya Standard — Drop on materials for road marking paint — Specification, First Edition
Food	
KS EAS 4-1:2021	Kenya Standard — Infant formula — Specification — Part 1: Formula for normal nutritional use, Third Edition

EXPLANATORY MEMORANDUM ON THE GUIDELINES ON SHARE BUYBACKS FOR LISTED COMPANIES

GAZETTE NO. 12325

PART I

Statutory Instrument	: Guidelines on Share Buybacks for Listed Companies.
Parent Act	: Capital Markets Act, Cap 485A.
Enacted Pursuant to	: Sections 11(3) (d) of the Capital Markets Act.
Name of the Ministry	: The National Treasury.
***Gazetted* on**	: 12th November, 2021

PART II

1. **Purpose of Statutory Instrument**

Share buybacks refers to the acquisition by limited companies of its own shares. The concept was introduced in Kenya pursuant to **Part XVI** of the **Companies Act, 2015** (the Companies Act) to provide limited companies with a unique opportunity to consider this option as an additional strategy for limited companies wishing to re-invest in themselves.

In a typical share buyback transaction, a company buys back its shares and then cancels them and the amount of the company's issued share capital is diminished by the nominal value of the cancelled shares. This effectively leaves the remaining shareholders with larger stakes in the company.

Part XVI of the **Companies Act** contains general procedures to be applied by any limited company intending to acquire its own shares either through a market purchase or an off-market purchase. Specifically, Division 3 gives limited companies that have a share capital powers to purchase its own shares including redeemable shares subject the requirements thereunder,[1] and any restriction or prohibition in the company's articles.

In addition to the prescriptive requirements under the Companies Act, the Capital Markets Authority (the Authority) has developed additional Guidelines that will further apply to Companies listed at the Securities Exchange. The Guidelines provide additional disclosure requirements that must be complied with to fully operationalize the share buyback regime for companies listed on

[1] Companies Act, 2015. See sections 447 to 451.

the bourse coupled by the need to protect investors while at the same time ensuring liquidity in the market.

2. Legislative Context

The Guidelines on Share Buybacks for Listed Companies are made pursuant to **section 11(3) (d)** of the **Capital Markets Act, Cap 485A** Laws of Kenya (the Act), which empowers the Authority to issue Guidelines on matters within its jurisdiction for purposes of carrying out its objectives under the Act. The Guideline is divided into the following parts:

Part I: Provides for the introduction and application of the Guidelines. It explains the nexus between the Guidelines and the Companies Act, 2015 and requires that companies undertaking a share buyback comply with both pieces of legislation.

Part II: Provides for the powers to undertake share buybacks by companies. It requires listed companies to ensure that their Articles of Association have a provision empowering them to undertake share buybacks. With regards to the shareholders, the Guidelines requires listed companies to seek for authorization to undertake a buyback from its shareholders in a general meeting and the submission of the shareholder circular to the shareholders, the Authority and the Securities Exchange.

Part III: Gives detailed requirements of what must be disclosed in the shareholder circular.

Part IV: Provides for off-market purchase transactions. Requires the submission of the draft share buyback contract together with the shareholder circular to the Authority for approval in line with the requirements of private transactions.

Part V: Requires the timely publication of notice by a company intending to undertake a share buyback. It also provides for the disclosures to be made in the public notice.

Part VI: Provides for on-market (Exchange) transactions. Specifically, it provides for the maximum and minimum buyback price.

Part VII: Provides for the minimum capital and free float requirement. The part specifically highlights that share buyback transactions ought not to reduce or breach the minimum capital and free float requirement for continued listing of the company on the respective market segment under the Capital Markets(Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

Part VIII: Addresses share buybacks relating to a class of shares and the treatment of treasury shares. It requires for the general rule that, where share buyback relates to a class of shares, the buyback ought not to exceed 10% of the total issued shares of that class in a given financial year. On treasury shares, it gives companies the option to keep the shares bought back in treasury provided they do not exceed 10% of the total issued shares of that class and allows companies re-issue the treasury share pursuant to seeking approval from the Authority.

Part IX: Provides for the volume of the shares purchased. It limits the volume of shares that can be repurchased on any single day to a certain percentage.

Part X: Requires listed companies that undertakes a share buyback to make certain disclosures of the details of the buyback transaction to the Securities Exchange and publication of the same on the on the website of the Exchange.

Part XI: Provides for the maximum period for undertaking a share buybacks. The part also requires companies to separate its buyback programs by a period of 365 days.

Part XII: Provides for Conditions for undertaking, cancelling or suspending share buybacks. Prohibits companies from undertaking a share buyback during the period of two (2) weeks prior to the publication of its half-yearly or annual financial statements; or after it has become aware of any material information which has not been made public, which if disclosed, could affect the price of the shares. Also provides that a repurchase cancelled or suspended if material information is announced within 14 days prior to the buyback.

Part XIII: Provides for reporting and disclosures obligations. It requires companies that undertake a repurchase to avail reports to the Authority on a periodic basis and provides for what should be contained in the reports.

Part XIV: Provides the procedure for approval of delisting's and privatizations by independent shareholder in the event a share buyback triggers such.

Part XVI: Provides for the applicability of the Capital Markets (Take-overs and Mergers) Regulations, 2002 In the event a proposed share buyback breach the limits that may trigger a takeover.

Part XVII: Requires compliance with laws and regulations that may be applicable to share repurchase transactions.

3. Consultation

The Authority published a public notice in the daily newspapers requesting for comments from stakeholders and the general public between 30^{th} June, 2020 and 31st July, 2020. The Comments received were reviewed and considered in the refinement of the Guidelines. The public notice and stakeholder engagement matrix are attached hereto.

4. Impact

4.1 The Impact on Fundamental Rights and Freedoms

The Share Buyback Guidelines seek to enhance fair treatment of shareholders and market integrity in share buyback transactions by promoting transparency and accountability.

4.2 The impact on the Private Sector

The Guidelines seek to provide additional guidance to listed companies to ensure that their right to share buybacks is not abused. It also seeks to achieve market stability.

3.3 The impact on the Public Sector

The Guidelines seek to promote investor protection and fair treatment of shareholders in a bid to bolster market confidence.

3.4 Impact Assessment

The Guidelines seek to promote market integrity by balancing the rights of companies to undertake share repurchases and the rights that accrue to shareholders.

5. Monitoring and review

The implementation of the Share Buyback Guidelines will be done through the approval and supervision processes whenever listed companies seeks approval from the Authority to undertake a share repurchase.

6. Contact

The Chief Executive
Capital Markets Authority
Embankment Plaza, 3rd Floor, Longonot Road, Upper Hill
P.O. Box 74800-00200,
NAIROBI

Tel: +254-20-2264900, 2221910, 2226225
Website: www.cma.or.ke

CAPITAL
MARKETS AUTHORITY
Promoting the Integrity and Growth of the Capital Markets

PUBLIC NOTICE

THE CAPITAL MARKETS ACT (CAP 485A)

DRAFT GUIDELINES ON SHARE BUYBACKS FOR LISTED COMPANIES

The acquisition by limited companies of their own shares was introduced in Kenya pursuant to the **Companies Act, 2015** (the Companies Act) to provide limited companies with a unique opportunity to consider this option as an additional strategy for them to re-invest in their operations.

Part XVI of the **Companies Act** contains general procedures to be applied by any limited company intending to acquire its own shares either through a market purchase or an off-market purchase.

In addition to the requirements under the Companies Act, the Capital Markets Authority pursuant to **Section 11(3) (d)** of the **Capital Markets Act, Cap 485A** has developed draft Guidelines on Share Buybacks by Listed Companies, 2020 that will apply to companies listed at the Nairobi Securities Exchange. The draft Guidelines provide additional requirements for share buyback transactions by listed companies, including disclosures, approval requirements and timelines.
The Guidelines seek to enhance investor protection, promote liquidity and ensure transparency in share buyback transactions.

In accordance with **Section 12A(3)** of the **Capital Markets Act,** the Authority now invites stakeholders and the general public to submit comments on the proposed Guidelines on Share Buybacks for Listed Companies, available on **www.cma.or.ke.**

Kindly submit your comments by **July 31, 2020** to:

The Ag. Chief Executive
Capital Markets Authority
P.O. Box 74800-00200 Nairobi
3rd Floor, Embankment Plaza
Longonot Road, Upperhill
Email: comments@cma.or.ke ,
Website www.cma.or.ke

SHARE BUYBACK GUIDELINES – COMMENTS FROM STAKEHOLDERS

PROVISON	COMMENT	PROPOSAL	CMA's RESPONSE
Power to undertake share buyback. 2.2 The proposed share buyback must be authorised by shareholders in a general meeting. 2.3 Prior to a General Meeting that proposes to discuss a share buyback resolution, within reasonable time, the company shall provide shareholders with an approved circular detailing all terms and conditions of the proposed share buyback. 2.4 The proposed shareholder circular shall be submitted to the Authority for review and approval prior to its circulation pursuant to Regulation 63 of the Capital Markets (Licensing Requirements) (General Regulations), 2002.	This should be the responsibility of the Board of Directors as part of their role in representing shareholders' best interests. It will also avoid missed opportunities due to timing of AGM versus stock price dislocations that shareholders could benefit from.	We propose the share buyback be authorized by the Board of Directors in their discretion at any time without a shareholder general meeting. Share buyback program details shall be disclosed publicly immediately following the decision to implement one. Consequently, proposal 2.3 should be eliminated. We propose 2.4 be amended such that the circular is not a proposal, but rather a disclosure of the intended buyback program to the Authority for review and approval.	The decision by the Board to undertake share buybacks is a critical and material one that requires shareholder consideration and approval. Without such approval, the shareholders may be disenfranchised.[1] This position is supported under the Companies Act which provides that company may make a market purchase of its own shares only if the purchase has been approved by a resolution of the company
	Shareholders to have the opportunity to participate in equal terms in approving the share buyback and method adopted.	The share buyback and the method to be adopted to effect the buyback must be authorized by shareholders in a general meeting.	Proposal emanates from the Directors and shareholders have an option to either agree or disagree with the proposed method. The Shareholder circular indicates the details of how the share buyback will be conducted

[1] Other jurisdictions: Australia and Brazil- Board of directors and the shareholders meeting. In France, Italy, Malaysia, Hong Kong and United Kingdom it is the shareholders meeting.

	Adequate prior notice ensures fair treatment of shareholders.		and other key details as highlighted under the guideline. This then means that the shareholders will be equipped enough to approve the buyback in totality including the method that will be used to effect it.
		To be deemed passed, the special resolution should be passed by 75% of shareholders present at general meeting	Sec 256 (5) of the Companies Act provides that anything done by ordinary resolution may also be done by a special resolution if the company so provides. To this extent then, we may opt to either make a special resolution a requirement or leave it at the discretion of the company. (Most regulations/rules require a special resolution at a general meeting).
		Ample notice to shareholders to be given. At least 21 days as is with other notices to general meetings	The Companies Act already gives the general rule on matters notice to be given for general meetings. Section 281 provides for at least 21 days' notice for private companies and at least 21 days' notice for an AGM and 14 days' notice for other general meetings for a public company. Companies will thus be required to comply with the standards set under the Act.

		Include submission of the shareholder circular to the Exchange.	Provision included under the new subsection 2.5.
Shareholder circular Clause 3.2 In addition, the shareholder circular shall contain the following information…	To provide appropriate disclosure on buyback activity including actions of company insiders and directors.	We propose the inclusion of an additional disclosure item aimed at providing more transparency including details of any share buyback made within the last 12 months, including the total number of shares purchased, purchase price paid, total consideration paid for the purchases and number of shares held by current and former corporate insiders and Directors	This disclosure will be addressed under guideline 12 on reporting and disclosure particularly 12.1 which provides that a company that undertakes share buyback transactions shall disclose in its annual report any share buyback transactions undertaken in a given year and the treatment of the shares bought back.
Clause 3.2(b) The number of shares to be bought back.	The value of shares to be purchased is more informative to shareholders so they can understand cash to be allocated to purchases and the effect on leverage. Share prices can vary considerably so the number of shares to be purchased under the current language is variable.	We propose the "number" of shares be replaced with "value" of buyback authorization.	No of share is a requirement under sec 458 (3) (a) of the Companies Act. Value of shares can be deduced through the minimum and maximum prices which has been addressed under guideline 3.2 (e).
	This protects market liquidity.	Number of shares to be bought -This should not be more than the required float.	Guideline no 7 addresses this. Addition included.

Clause 3.2 (c) The method of effecting the share buybacks. This could either be through open market repurchase programs executed through tender offers or over a period of time on or off-market repurchases that would inform the approval required from the shareholders as prescribed in the Companies Act, 2015.	Off-market share buy backs violate shareholders rights to be treated equally. The repurchase transaction should be done at the Exchange to maintain transparency. OTC buy backs run the risk of possible misuse of material information by the companies' managers or other insiders.	Off market repurchases should be prohibited. All buybacks should be undertaken on the Exchange in the interest of maintaining a fair market and avoid price distortions.	The Companies Act already gives Companies a right to either purchase its own shares through an off-market purchase under a contract or by a marker purchase (see section 450 (1) And (2) of the Act.)
Clause 3.2 (d) The treatment of the shares proposed to be bought back. The shares could either be held in treasury or cancelled.	Holding shares in treasury or cancellation results to sucking liquidity from the market. Cancellation of repurchased shares is an easier route to delisting.	Repurchased shares should not be cancelled. If held in treasury, the repurchased shares should be reissued within a given time period (12 months) at the then prevailing market price.	This provision has been borrowed from the Companies Act which allows a Company that has bought back its shares to either hold shares in treasury or cancel them subject to the conditions under sec 463.
Clause 3.2(e) The price per share of effecting the share buyback prescribing the maximum and the minimum price. In disclosing the price, detailed explanation should be provided	Disclosing minimum and maximum prices is overly transparent and potentially detrimental to existing shareholders. Additionally, we do not believe it is the responsibility of the company to disclose	We propose eliminating the provision.	The requirement to disclose both the minimum and maximum price that **may be** paid for the shares is a statutory requirement under sec 458(3) (b) as read with subsection 7 of the same section and thus cannot be entirely eliminated.[2]

[2] **In South Africa** where the repurchase of the shares in a listed company is made by way of a general repurchase, the repurchase price cannot be greater than 10% above the weighted average of the market value of the shares for the five business days immediately preceding the date on which the transaction is affected.)

In Singapore, the acquisition price is the average of the closing market prices of the shares over the last 5 market days, on which transactions in the share were recorded, before the day on which the purchases are made and deemed to be adjusted for any corporate action that occurs after the relevant 5-day period. **In the UK**, the maximum

including valuation reports supporting the prescribed price.	valuation reports supporting the prescribed price.		
		This should be harmonized with guideline 6. This avoids two price variables.	There will be no 2 price variables. For on market purchases, the minimum and maximum prices shall have to comply with the requirement of guideline 6.
Clause 3.2(f) The mode of financing the share buyback being either the <u>proceeds from a fresh issue of shares</u> or out of distributable profits of the company.	One of the rationale of share buybacks is to reduce the company's shares in circulation. The underlined statements may be imply the exercise in futility if a listed company issues new shares and then from proceeds buys back existing shares.	Consider reviewing the line. Also, is debt financing is allowed to execute share buy backs? It's not stated neither is it prohibited.	This can actually be used as financing model for the share buyback whereby a fresh issue could perhaps be that that few shares are issues at a high price to back to buyback more shares at a lower price. (Buying the undervalued stock and re-issuing at the 'corrected' market price). Section 448 of the Companies Act provides that a limited company may not purchase its own shares unless they are fully paid. Further, 449 highlights that, '*...a private ltd company may purchase its own shares* ***only*** *out of (a) Distributable profits or (b) The proceeds of a fresh issue of shares made for the purpose of financing the purchase*

purchase price for buybacks of less than 15% of ordinary shares, should not be more than 5% above the average market value of the company's equity shares for the 5 business days prior to the day the purchase is made

			This provision therefore limits the mode of financing thus implying that companies may not purchase its own shares on credit terms.[3] And the same is in line with international standards.
		Should be restricted to distributable profits only. This ensures the company is not compromising its solvency.	Refer to explanation above.
Clause 3.2(h) Declaration of solvency and liquidity by the directors of the company to undertake the share buyback. Such declaration should include a statement by the directors confirming that as at the date of the shareholder circular, the assets of the company are fairly valued and are equal or exceed the liabilities of	From an accounting standpoint, it is possible for a company to have a negative equity value while remaining well capitalized. This scenario can occur if treasury stock is greater than the rest of the equity value. It is noted the existence of provision 8.2 is likely to make this scenario unlikely.	For the avoidance of confusion, we recommend removing "the assets of the company are fairly valued and are equal or exceed the liabilities of the company and that" from the proposal.	The Capital Markets Securities Public Offers Listing and Disclosures Regulations already requires that for all listed companies the total assets must exceed the total liabilities at all times. The Regulatory requirement supersedes the accounting interpretation for the assessments of compliance with continuous reporting obligations

[3] This position is **similar to UK and South Africa.** Companies share buyback in Nigeria are only repurchased out of share premium account not older than nine months and or accumulated profit of the company which would otherwise be available for dividends. The mode of financing in India is also by use of the share premium account. Payment for the acquisition or purchase by a company of its own shares in Singapore must be made out of its distributable profits. 'Distributable profits' means profits that are available for payments as dividends but excludes any amount in the company's share premium accounts and the company's capital redemption reserves. In India, repurchase may be done using free reserves, securities premium account or proceeds of any shares or other specified securities however a company cannot buy back its own shares or other specified securities out of the proceeds of an earlier issue of the same kind of shares or specified securities.

the company and that the company will be able to pay its debts as they become due in ordinary course of business for a period of 12 months.			and protection of investor interests as well.
	The buyback should not leave the company with insufficient capital or impact on the company's solvency.	The declaration of solvency and liquidity by the directors of the company should be auditable and based on a recognized professional opinion.	Agreed and amendment included. The declaration of solvency and liquidity by the directors will be based on the last audited financial statements of the company, which includes the audit opinion.
Clause 3.2 (k) Any related party transaction or director's interest in the share buyback transaction.	Directors and managers of a company have greater access to information relevant to judging a company's prospects and valuation. This holds true regardless of obligations to disclose material information in a timely manner.	A company, its directors and subsidiaries should not deal with own shares during closed periods as defined in the CMA regulations and company's internal policies.	CMA has not defined any closed periods in its regulations .This can be hard to achieve
Clause 3.2 (m) Validity period for the buyback once approval is given.	Leaving the validity period open ended is open to abuse as the company can seek shareholder approval once for undefined length of time.	The validity period of the buyback approval should be limited to 12 months.	Provision included under the new guideline 11.[4] *A company shall have a maximum period of eighteen months from the date of approval of the shareholder resolution for the completion of the*

[4] In Nigeria, an issuer company has a maximum period of 12 months for the completion of the buyback programme and a separation of the buyback programme by a period of 365 days. In the case of a Public Company, a resolution conferring, varying or renewing approval shall specify a date on which the approval is to expire which may not be later than 18 months after which the resolution is passed.

			buyback program and it shall separate its buyback programs by a period of 365 days.
Off-market purchase transactions. **Off-market purchase transactions** In the event of an intended off-market purchase, the draft share buyback contract shall be submitted to the Authority accompanying the shareholders' circular for the Authority's approval, in line with the requirements of private transactions.	To ensure fair dealing	We recommend that the framework allow for off-market acquisitions to only be undertaken on an equal access scheme. To qualify as an equal access scheme, the offers under the scheme are to be made to every non inside and non-related party shareholder to purchase the same percentage of their shares and the terms of all the offers are the same.	Basically what this means is that you are pro rating what a company can purchase per shareholder. It is a good idea but it assumes all shareholders want to sell which may not be the case and restricts shareholders who want to sell their entire holding. I think this needs further and extensive discussion. Companies Act provides A company is allowed to vary the terms of an off market purchase contract through a special resolution[5]. Any variation is subject the same procedures of baring the member whose shares are being bought from participating and members have a right to be availed with the resolution and the varied contract for inspection[6]. Any release of a company of its rights

[5] Section 454
[6] Section 455, 456

			in an off market purchase is subject to the same process[7].
		Management and the Board of Directors and insiders, as well as related parties, shall not be allowed to transact in off-market purchase transactions except for transactions related to compensation schemes.	The disclosures in the guideline suffice.
		This whole section should be expunged from the guidelines. OTC buy backs for listed securities should be prohibited. Refer to comment to guideline 3.2 above.	See comment on 3.2
	Off market purchase transactions—Guidelines require draft share buyback contract to be submitted to the Authority. However, the terms of the contract must be authorised by a resolution of the company before the contract is entered into.		What is to be submitted to the Authority is a draft contract and the accompanying shareholder circular which must have the details as provided for under guideline 3. Once the contract is approved by the Authority the same shall be tabled at the shareholders meeting.

[7] Section 457

			In the event there are material changes before shareholders' approval, the new draft should be resubmitted to the Authority.
Publication of notice. **Clause 5.1** The company intending to undertake share buyback shall issue relevant public announcements subject to the Authority's approval to be published in at least one (1) newspaper of national circulation and made available on the company's website within one (1) day of the board's' resolution to undertake the share buyback.	To seek clarification regarding the proposal.	We find the language of this proposal unclear. If the proposal is aimed at announcing to the market immediately prior to the company commencing a buyback then market participants would be able to front-run the company's repurchases. We also encourage buyback information to be disclosed publicly on the CMA and NSE website.	Is the stakeholder calling for a short publication period, say 12 hours? We need to include publication on NSE website, not sure of CMA website as it does not have much info on issuers. I think clarity is needed on this. The announcement to undertake a buy back is very different from the actual buy back as the buying back of shares will be done only after shareholder approval. The announcement on the other hand is after the board resolves to undertake a buy back. In my opinion there will be no announcement prior to actual purchase of shares as it will have already been publicly disclosed the validity period of the buy back. I agree the announcement just like any other material announcement should be disclosed on NSE website within 24 hours. I agree 24 hours is

			consistent with the rest of the regulations. This has been captured under 5.1(amended).
		Publication on the NSE and CMA websites within 24 hours of the board resolution to undertake a share buyback. 24 hours is consistent with release of other material information in the capital markets.	See above.
Clause 5.2 (a) The announcement shall contain material information on the share buyback including the following: a) The method of effecting the share buyback (on or off-market)…		Delete the words "on or off-market".	See 3.2 above
Clause 5.2(b) The announcement shall contain material information on the share buyback including the following: … (b) The minimum and maximum prices	Overly transparent and potentially detrimental to existing shareholders	We propose eliminating the provision.	The Companies Act requires for this disclosure under sec 458. This is to thus align it to the provisions under the Act.
	Based on paragraph 6, there will only be a single price for the share buyback.		Clause 6.2 amended by adding 'whichever is lower.'

On-market (Exchange) transactions. Clause 6.1 For on-market (Exchange) transactions, the price bands shall be reasonable and fair, reflecting the share's price fluctuation during the previous 12 months prior to the day of the Board resolution of share buyback.	The proposal could potentially hinder the ability to execute a pre-established buyback program.	We recommend removing or adjusting the proposal.	See comment on this above on pricing
	What happens if the price moves up more than 10% above the weighted price average of the share 10 days prior to the day of the Board resolution of share buyback? Would this mean the share buy-back be abandoned or seeking of a fresh approval from the Board?		The Authority will give permission to allow companies proceed with buyback.
		Reword 6.1 to substitute "Board resolution" with "shareholders' approval". This will protect the sanctity of pricing and avoid manipulation of price.	There is a significant time difference between board resolution and shareholders' approval. By time of shareholder's approval the market has already inculcated the pricing of the information.
	On market (Exchange) transactions—Under Section458, a company may make market purchase of its own shares if the purchase has been approved by a resolution of the company. It is for the members to decide what		This criteria has been set to ensure there is no market abuse propagated through the share buyback.

	should be the maximum and minimum prices. Will it be right for the Authority to stipulate the price?		
Clause 6.2 The minimum price shall be the nominal price of the shares or the average price at which most of the shareholders bought the share at.	This runs counter to the benefit of shareholders. Purchasing at a lower price is beneficial to shareholders.	We recommend removing the proposal.	The clause provides a basis for determining the minimum price, so this is not the price that the shares will ultimately be sold at. This is to protect shareholders against any buyback transactions that go below the set threshold.
	What happens if there is a further price drop below nominal price of the shares or the prevailing market price of the shares at the time the resolution was approved by the shareholders? Would this mean the share buy-back be abandoned or seeking of a fresh approval from the shareholders?	Authority to offer guidance on this	Provision amended by adding '…whichever is lower.' See guideline 6.2
Volume of shares to be purchased. **Clause 9** The volume of the shares purchased on any single day must not exceed 25% of the average daily trading volume for the four calendar weeks preceding the week of the purchase and must not be executed as to significantly adversely affect the liquidity of the shares in question. The buyback should not be	Placing a limit on volume of single day purchases may render a buyback difficult, if not impossible to implement for companies whose stock trades infrequently.	Companies shall be able to trade in one block trade per week without regard to the volume limit, provided it does not make any other repurchases on the same day.	The threshold is to ensure that the market is not distorted as a result of the share buyback, further, the buyback should only be executed on normal trading hours to ensure transparency. However, provision has been amended to allow the Authority to review the cap based on liquidity of the shares in the market.

effected during pre-open session of trading.			
	Though some counters have a large number of shares issued, the volume traded is quite small and they would not be able to achieve share buy backs efficiently. The clause would only work for the very liquid counters.	We request for a review of the 25% capping on the average daily trading volume.	See above.
Share buyback relating to a class of shares and treatment of treasury shares. **Clause 8.3** Where the company has treasury shares and proposes to re-issue them, the company shall seek an approval from the shareholders and the Authority pursuant to the **Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002** prior to re-issuing the said treasury shares including a re-issue to Employee Share Ownership Schemes.	There's need for enhanced clarity regarding to time to elapse before buy back shares held as treasury are re-issued. In addition, does the guideline makes it open for listed companies to re-issue the shares in any allowable form (SEO, bonus or rights issuances) subject to approvals?	Consider to give some clarity.	This provisions is in line with section 529 the Companies Act on disposal of shares which provides, '*...A company that holds shares as treasury shares may at any time (a) Sell the shares or any of them for a cash consideration or (b) Transfer the shares, or any of them for the purpose of or in accordance with Employee Share Scheme.* However, the provision requires for approval to be sought before dealing in the shares which will take care of question of 'adequate' time in light of circumstances.
The Securities Exchange to make disclosure on share buybacks.	The guideline has not mentioned any additional charges for this. It is	Authority to confirm if this is covered under the annual listing	There will be no additional cost on this.

Clause 10 The Securities Exchange shall disclose on its website, the share buybacks undertaken by any listed company. The disclosure shall include information on the company, the number of shares that have been bought back, the price per share of the shares bought back and the percentage of the free float in the post-buyback era.	not mentioned how the exchange will get this information, any company involvement and the timelines for reporting and also how the exchange will determine the free float in the post buyback era?	fees. Authority to clarify these issues as they are critical to both the company and investors.	
	The onus of disclosure should be on the company and not on the Exchange. The Exchange can only make this information available on its website and to the public after the disclosure.	This guideline should be reworded to put the onus of disclosure on the company that carries out a share buy back as follows: *Continuous disclosure –A company that undertakes share buyback shall disclose details of the buyback transaction immediately to the Securities Exchange and not later than the opening of the following trading day. The disclosure shall indicate the company's free float after the share buyback.*	Provision amended. See new guideline 10.
Conditions for undertaking, cancelling or suspending share buybacks		Consider adding 'quarterly' for listed companies with quarterly reporting requirements.	Quarterly may be too stringent
Clause 11 A company shall not effect share buyback transactions during the period of two (2) weeks prior to the publication of its half-yearly or annual financial statements; or after it has become aware of any material information which has not been made public, which	To avoid tipping off market participants that the company is in possession of material information.	We propose language should be added that allows for companies to enter in pre-established, binding contracts that provide instructions to a broker to effect repurchases at a future time period. The company shall continue to purchase shares under this scheme even if it has obtained material inside information	Not addressed. Perhaps the question needed to be paraphrased.

if disclosed, could affect the price of the shares. A buyback may be cancelled or otherwise suspended if material information is announced within 14 days prior to the buyback being conducted or if the company deems it fit, subject to that company doing so within reasonable time.		and regardless of possession of information the company shall not be able to exercise any subsequent discretion to dates of trades, price or number of shares to be repurchased.	
Reporting and disclosures **Clause 12.1** A company that undertakes a share buyback transaction shall avail to the Authority a report on the transaction undertaken and the treatment of the shares acquired by the company. The reports shall include the price and volume of the shares bought back as well as any treasury shares sold.	The clause does not provide the frequency of reporting to the exchange. The reality is this can be daily, weekly, monthly, quarterly, or annual. The information is already with the exchange. Can the authority consider receiving the information from the exchange instead of the issuer?	Authority to consider indicating the frequency of reporting. Authority can consider a common database for the issuer, the exchange and the Authority. This will minimize reconciliation issues.	Agreed Amendment included in now clause 13.1
	There is need for clarity on timelines for disclosures.	We propose the following levels of disclosures: 1. Pre-implementation disclosures – Announcement to the NSE and CMA immediately a board resolution to undertake a buy back is passed. 2. Continuous disclosure –To the NSE and the CMA. The issuer to file within 10 days of the end of each month a report on the daily number of securities purchased (or sold), the average price, the name of the broker-dealer, the number of shares	Pre-implementation disclosure. Proposal included in the new subsection 2.5 This has sufficiently been included under guideline 10.

		held in treasury or cancelled and the issuers free float.	
Additional Comments			
-	For clarity and avoidance of possible conflicts, there's need to state that listed companies shall also require no objection approval from their other regulators such as for banks and insurance companies.	Consider adding a clause providing for the same.	Guideline 15 requires companies to comply with applicable law and regulations during the share buyback process. This means that companies will be needed to procure approves form their other regulators in the event a proposed buyback will affect their compliance requirements under other applicable laws.
Treasury shares:		Guidelines on how the Company that holds the Treasury Shares may use the same shares to, among other things, support the liquidity and price of its own shares in the market.	Sec 526 of the Companies Act provides that the treasury shares can either be held by the company or disposed. If the shares are held, the company shall enter itself in the register of members. The held shares can be sold for cash consideration or transferred for the purpose of an ESOP. We have included a statement in the disclosures to be made in the shareholder circular that where a company has treasury shares it shall disclosure its intention for the same as guided under the Act.

FEEDBACK ON COMMENTS AND ISSUES RAISED ON THE DRAFT GUIDELINES DURING A MEETING WITH THE NATIONAL TREASURY HELD ON 16TH AUGUST 2021

Provision under the Guideline	Comment/Question	Response
General Guideline	Will the guidelines only be applicable to listed company or all companies? If it's the former, kindly amend from 'company' to 'listed company'	The Guidelines applies to listed companies. We have amended to specifically refer to 'listed company' rather than 'company'. Guidelines amended
	Will the Guidelines fall under legal notice or gazette notice?	The AG will advise.
	What public participation conducted? Any evidence?	The Guideline was exposed to stakeholders through a 30 days stakeholder participation and an additional 2 weeks to allow for more input. Evidence of the public participation is as attached.
	What is the legal lifespan of a Guideline?	The Guideline is a statutory instrument, and therefore construed as such with a lifespan of 10 years.
	Consider adding a clause stating that words used should be construed within the meaning of the Act.	Amended accordingly.
	Provide definitions for new terms if any.	The Guideline has not included any new terms.
	Consider using 'Nairobi Securities Exchange' as opposed to 'Securities Exchange' to be more specific.	Use of the latter term is more inclusive because the term can be applied to other Securities Exchanges that may be licensed in the near future.
Clause 2: Powers to undertake a buyback	Kindly clarify on 2.4 and 2.5 on submission of the circular to both the Authority and the Securities Exchange. Will both be required to approve? If so, why? And, which approval will come first?	2.4 means that the Authority will be approving is the content of the circular in accordance with the requirements of Regulations 63 of the Licensing General Regulations. 2.5 on submission of the circular to the Exchange is an additional disclosure given the role that the Exchange places with regards to listed companies. However, the Exchange will not be approving the circular.

Clause 6: On market (exchange) transactions	Kindly justify the 10% threshold.	UK has adopted a 5% maximum whereas South Africa has adopted a 10% maximum. 10% presents a fair consideration for effecting a buyback. In our view, because it is above the '30-day weighted average' this threshold allows enough room as an attractive offer to existing shareholders. Further, 10% is in line with the prescribed price limits in the NSE trading rules which is as follows; The daily price movement for an equity security in a single trading session shall not be more than 10% of the equity average price as determined during the previous session
Clause 8: Share buyback relating to a class of shares and treatment of treasury shares.	Kindly justify the 10% threshold. What consideration will the Authority use to for giving a waiver under 8.1?	8.1: worldwide, having a threshold limit is a policy decision aimed at ensuring that the buyback does not extinguish a certain class of shares, thus substantially affecting the free float and ultimately, liquidity. The limit in UK and Nigeria is 15%, India 25% and Singapore 10%. The Authority settled on the lower limit of 10%, as the most plausible, given the levels of liquidity of the Kenyan market. 8.2: The limit of 10% on the Treasury Shares has been prescribed under section 527 of the Companies act, 2015.
Clause 9: Volume of shares to be purchased	Kindly justify the 25% threshold.	The threshold is to ensure that the stock is not significantly denied its market liquidity after the share buyback. The 25% limit in terms of volume in a given day was benchmarked with both UK and US. To make it inclusive, the provision further allows the Authority to review the cap based on liquidity of the shares in the market to

		address challenges that may be creates for low liquidity counters.
	What does 'significantly affect' in this context mean?	This has been drafted in broad terms to give room for any other consideration required to ensure that the buyback does not adversely affect the liquidity of the stock in question, thus triggering a steep rise in its price.
Clause 10: Listed company to make disclosure on share buybacks to the Securities Exchange	How does disclosure under this provision differ from the disclosure through the circular under 2.5?	Disclosures through the circular under section 2 are intended to provide shareholders with the necessary information to determine whether to approve or not a share buyback transaction while those under this section are to be done after the share buyback exercise to provide details on the performance of the transaction. Amended to provide better clarity.
Clause 12: Conditions for undertaking, cancelling or suspending share buybacks	'Reasonable time' is subjective. Consider providing an actual period for what will suffice as reasonable time.	This has been amended to state that 'reasonable time' must be before the effective date of the buyback transaction. We may not be able to provide an actual period because various events may necessitate the cancellation of a transaction. This should be left open and the reasonableness left to the regulator to determine as no loss would be occasioned by any party other than the company that cancels the transaction.
Clause 14: Approval of delisting and privatization	Kindly justify the percentages	The percentages are to ensure that the decision to delist/turn the listed company into a private entity receives an unequivocal majority support, with the Directors of the company (who are now technically insiders) being precluded from voting.
	Please explain the correlation between 14(b) (i) and (ii). How are the percentages complementary?	There is a relationship in that; 75% being the ideal 'majority vote' threshold means that a clear majority needs to support this decision.

		The 10% minority vote threshold ensures that empowers the minority to have their say, with a 10% plus 1 vote implying that the SBB should not sail through. Given the implications of a delisting, the proposal is to ensure that the decision to delist has overwhelming support and has not been instigated by some insiders who are trying to secure/protect their interest.
Clause 15: Applicability of the Mergers and Takeover Regulations.	Kindly clarify on the applicability of the referred regulation	The Capital Markets (Take-overs and Mergers) Regulations, 2002 would be applicable if the buy-back coincidentally/because of breaking certain clauses of the SBB guideline leads to a takeover/merger since the shareholding after the buy back may be affected.
	Consider paraphrasing the provisions to make it clear.	Legal team to give feedback Provisions amended.