

CAPITAL MARKET INTEGRATION IN EAST AFRICA: INADEQUACY OF EAST  
AFRICAN COUNCIL OF MINISTERS DIRECTIVES ON CAPITAL MARKET  
INTEGRATION

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**DECLARATION**

I, RONO BRIAN KIPKORIR, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....

Date: .....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: .....

Mrs. Eunice Kiumi.

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I also wish to thank my roommates; Wayne, Kevin and Eugene. Your input was invaluable.

Thank you all.

## **ABSTRACT**

The East African Community (EAC), formed through an agreement between Uganda, Tanzania, Kenya, Rwanda and Burundi has provided the impetus for the integration of affairs in the region. The integration especially of capital markets in the region is expected to bring the following benefits to the people of the region; risk sharing and diversification, better allocation of capital among investment opportunities and financial development. This form of integration anticipated by the treaty establishing the East African Community is to be realized through the formation of a Custom Union, a Common Market, a Monetary Union and ultimately a Political Federation. This academic work shall explore regional integration in the region from the context of capital markets. The body with the responsibility of setting up the legal framework for the integration of capital markets through the enactment of directives is the East African Council of Ministers. The paper shall argue that in as much as the council has enacted a number of directives there are some key areas that have not been legislated on which is hindering the process of integration. It shall conclude by providing recommendations on the directives that should be enacted to smoothen the integration process

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## CHAPTER ONE: INTRODUCTION

### 1.1 Background

The East African Community is the regional intergovernmental organization of the Republics of Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania with its Headquarters in Arusha, Tanzania. The Treaty for Establishment of the East African Community was signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the Original 3 Partner States – Kenya, Uganda and Tanzania. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18th June 2007 and became full Members of the Community with effect from 1st July 2007.<sup>1</sup>

The treaty establishing the East African Community provides that the East Africa Community members shall engage measures aimed at creating an environment for the movement of Capital in the East African region and ultimately fully integrate the Capital Markets of the East African region.<sup>2</sup> These measures shall include; the harmonization of capital market policies, the harmonization of regulatory and legislative frameworks governing capital markets, the promotion of cooperation among the three exchanges and the regulators, the promotion of cross-border listing and trading of securities and the development of a regional rating system for securities.

The most significant step in achieving this treaty objective was the passing of The Protocol on the Establishment of the EAC Common Market. The protocol provides that for proper functioning of the Common Market, the Partner States undertake to co-ordinate and harmonize their financial sector policies and Regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system.<sup>3</sup> It further provides that the Partner States shall undertake to approximate their national laws and to harmonize their policies and systems for purposes of implementing this Protocol and that the Council shall issue directives for the purposes of implementing this Article.<sup>4</sup>

To ensure that measures to achieve capital markets integration are put in place, the treaty establishes the EAC Council with the function of *inter alia* making financial rules and regulations

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<sup>1</sup> EAC Secretariat, 'Protocol on the Establishment of the EAC Custom Union', Arusha, EAC secretariat, 2007.

<sup>2</sup> Article 85, Treaty establishing the East African Community.

<sup>3</sup> Article 31, Protocol on the Establishment of the EAC Common Market.

<sup>4</sup> Article 47, Protocol on the Establishment of the EAC Common Market.

of the Community.<sup>5</sup>The regulations and recommendations of the council shall be binding on all the partner states and on all organs and institutions of the community.<sup>6</sup>

However, in spite of the power that the EAC Council wields most national exchanges in the EAC are constrained by a lack of appropriate institutional capacity for enforcing stock market regulations, rudimentary stock market infrastructure, unreliable access to information and communications technology, and stock market regulations modelled on those of more developed financial markets that were hastily adopted without adequate regard for local market conditions.<sup>7</sup>

The council has furthermore failed to sufficiently promote the cross-border listing of firms. Out of the thousands of firms across the East African region, there are currently seven (7) Kenyan companies listed on the Uganda Securities Exchange (USE) and five (5) listed on the Dar-es-Salaam Stock Exchange (DS) –East African breweries limited, Kenya Airways, Jubilee Holdings Limited, Kenya Commercial Bank, and Nation Media Group which are cross-listed on the USE and the DSE; Equity Bank and Centum are also cross-listed on the USE. Two Kenyan cross-listing on the Rwandan Stock Exchange include Centum, and KCB. Only Nation Media Group is cross listed in all the three exchanges.<sup>8</sup>

## **1.2 Statement of Problem.**

The problem that arises is whether the EAC council directives that are in place to date are adequate to address the following challenges facing East African capital markets; insufficient institutional capacity for enforcing stock market regulations, rudimentary stock market infrastructure, unreliable access to information and communications technology, stock market regulations modelled on those of more developed financial markets that were hastily adopted without adequate regard for local market conditions and the limited number of cross border listing firms.

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<sup>5</sup> Article 14, Treaty establishing the East African Community.

<sup>6</sup> Article 16, Treaty establishing the East African Community.

<sup>7</sup> Jacqueline Irving, 'Regional Integration of Stock Exchanges in Eastern and Southern Africa: Progress and Prospects', *IMF Working Paper* (WP/05/122).

<sup>8</sup> Samuel O. Onyuma, Robert K. Mugo, John K. Karuiya, 'Does Cross-border listing (still) improve firm financial performance in Eastern Africa?' *Journal of Business Economics & Finance* 1(2012).

### **1.3 Justification of the Study**

The East African Treaty espouses a very beautiful dream, that of consolidating the various countries of the East African region to form a formidable economic block and political federation for the fast, balanced and sustainable development in all fields of human endeavour that will ultimately raise the standard of living and enhance economic development.<sup>9</sup> The achievement of this dream shall ultimately involve the states taking positive legislative and policy actions in order for the benefits of the integration to trickle down to the citizens of the community. This however is not the situation on the ground, there sadly exists an insufficient framework to realize these goals.

This research aims to bring to light the legal barriers that hinder capital market integration in East Africa. Over and above that, the research shall also highlight the possible solutions that can be put in place to overcome these barriers. This shall enable the achievement of the objectives envisioned in the treaty.

### **1.4 Statement of Objectives.**

1. The general objective of this proposal is to examine the legal barriers hindering the integration of capital markets in the East African Region.
2. The specific objective of this paper is to discuss the inadequacy of the EAC Council directives on capital market integration in East Africa.

### **1.5 Research Questions**

This research shall seek to answer;

1. What legislative and policy framework has been laid down in to realize capital Market integration in the East African Region by the EAC Council?
2. What are the legal loopholes that exist in the capital market integration regulatory framework?
3. How should the loopholes be addressed?

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<sup>9</sup> Preamble of the Treaty Establishing the East African Community which provides, “*DETERMINED to strengthen their economic, social, cultural, political, technological and other ties for their fast balanced and sustainable development by the establishment of an East African Community, with an East African Customs Union and a Common Market as transitional stages to and integral parts thereof, subsequently a Monetary Union and ultimately a Political Federation;*”

## 1.6 Literature Review.

There exists a sea of literature discoursing on the subject of financial integration covering almost all aspects of the topic including its advantages, history, challenges, opportunities of growth and the role of macro-economic policies in financial integration. However, the scholarly works especially by writers in the East African region on the East African capital integration and its challenges are scarce. This dissertation is heavily informed by the prior works on the subject.

Jacqueline Irving argues that regional integration if rightly implemented by the bodies tasked with this function, could improve liquidity and competitiveness of capital markets. However, she warns that the development of capital markets must begin at individual member state exchanges prior to working on integrating them with those of their partner states. The integration opens up the exchanges to increased cross-border listing and information technology sharing.<sup>10</sup>

The International Financial Corporation under the Efficient Securities Markets Institutional Development (ESMID) program argue that the Capital Markets in Africa have the potential to bridge a 31 billion dollars gap annually to financial development. Their study focus on the role that integrated markets have in development considering that governments can now access a larger pool of funds.<sup>11</sup>

Maurice Obstfeld however, warns on the risks that financial integration poses to a country's economy. He explores the position that experiences from the recent financial crises have shown that financial integration has the ability to submerge the economy of a country that is integrated to a country facing a crises. He further points out that in financial integration the benefits to countries are distributed unevenly since some countries derive more from the integrated markets than other partner states. He also highlights the political risks that face integrated markets.<sup>12</sup>

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<sup>10</sup> Irving, Jacqueline, 'Regional Integration of Stock Exchanges in Eastern and Southern Africa: Progress and Prospects'. *IMF Working Paper*, Vol., (2005), 1-42, Available at SSRN: <http://ssrn.com/abstract=887991> accessed 18<sup>th</sup> February 2016.

<sup>11</sup> Briceno-Garmendia, Cecilia M.; Foster, Vivien. (2009). 'Africa's infrastructure: a time for transformation'. Africa development forum. Washington, DC: World Bank. Available at <<http://documents.worldbank.org/curated/en/2009/01/11487313/africas-infrastructure-time-transformation>>accessed 18th February 2016.

<sup>12</sup> Maurice Obstfeld, *Global Capital Markets: Integration, Crises and Growth*, Cambridge University Press, New York, 2014.

Richard A. Posner, on the hand focuses on creating a legal framework for economic development. He takes the position that for a country to achieve economic prosperity it must lay down at least a modest legal infrastructure. The infrastructure must consist of precise legal rules as opposed to open ended standards.<sup>13</sup>

The World Bank in publications commenting on capital market integration East Africa argue that the legal framework that should govern the integration should adopt principles of mutual integration rather full harmonization as it is costly and the East African markets are at different stages of development. It also points out the necessity of having national regulators that issue licenses that enable financial institutions to provide services across the border. It also urges regulators to minimize the need to file multiple prospectus and modernize their commercial laws.<sup>14</sup>

Victor Murinde, points out the importance of macro-economic policies which influence the performance of capital markets and their ability to play their role. The author also highlights a criteria to determine the performance of capital markets that is the stock market capitalization, number of companies listed, liquidity, returns and volatility of the 20 capital markets in Africa.<sup>15</sup>

Samuel Onyuma and Robert Mugo ventured into analyzing the impact of cross-border listing on Firm's financial performance. Their work discovered that cross-border listing improved a firm's liquidity and market confidence.<sup>16</sup>

Joseph Sanjula work features the East Africa Community capital market integration strategies. He discusses integration from two perspectives; the legal and operational level. The integration strategies at the legal level are having a single legal and regulatory framework with a supranational regulator, or maintaining the national legal frameworks and national regulators but with harmonized laws and regulations to facilitate cross border transactions. At the operational level, a

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<sup>13</sup> Richard Posner, 'Creating a Legal Framework for Economic Development', *World Bank Research Observer*, 13, 1, (1998), 1 – 11.

<sup>14</sup> World Bank. *Capital Market Integration in the East African Community*. Washington, DC: World Bank. Available at <http://documents.worldbank.org/curated/en/2002/12/7248202/capital-market-integration-east-african-community> accessed 18 February 2016.

<sup>15</sup> Victor Murinde, Financial Sector Policies for Enterprise Development in Africa, *Review of Development Finance*, 2, 4, (2014) 66-72.

<sup>16</sup> Samuel Onyuma, Robert Mugo, 'Does Cross-border Listing still Affect Financial Performance in East Africa', available at < [https://www.researchgate.net/publication/258358936\\_DOES\\_CROSS-BORDER\\_LISTING\\_STILL\\_IMPROVE\\_FIRM\\_FINANCIAL\\_PERFORMANCE\\_IN\\_EASTERN\\_AFRICA](https://www.researchgate.net/publication/258358936_DOES_CROSS-BORDER_LISTING_STILL_IMPROVE_FIRM_FINANCIAL_PERFORMANCE_IN_EASTERN_AFRICA)> accessed 4 February 2016

single market could be created, markets could merge, enter into a joint venture or have co-operation agreements allowing for cross-listing.<sup>17</sup>

In a summary, the works above have highlighted the advantages of financial integration, the need for having a legal framework for the integration and the strategist for integration. In light of that, this dissertation shall proceed to analyse the East African case to examine whether the regulatory framework is adequate to achieve effective integration.

### **1.7 Theoretical Framework.**

This study is influenced by the following theories regarding integration.

Regionalism theory “focuses on the role of shared domestic attributes or characteristics by having the responsibilities of regional cooperation and integration that is likely to depend heavily on the coherence and viability of the states and state structure in a given region. The absence of viable states makes difficult the process of region building, such a problem is part of the major obstacles towards effective regionalism in parts of Africa including EAC”.<sup>18</sup>

Neo-Functionalist theory is a “theory of regional integration that places major emphasis on the role of non-state actors – especially, the “secretariat” of the regional organization involved and those interest associations and social movements that form at the level of the region. Member states remain important actors in the process. They set the terms of the initial agreement, but they do not exclusively determine the direction and extent of subsequent change. Rather, regional bureaucrats in league with a shifting set of self-organized interests and passions seek to exploit the inevitable “spill-overs” and “unintended consequences” that occur when states agree to assign some degree of supra-national responsibility for accomplishing a limited task and then discover that satisfying that function has external effects upon other of their interdependent activities”.<sup>19</sup>

The customs union theory “advanced by Jacob Viner, the theory postulates that a customs union can result in either trade creation or trade diversion. Viner defines a custom union as the process of “elimination of intra-trade barriers and the equalization of tariffs on imports from non-member

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<sup>17</sup> Lutwama, Joseph, 'Capital Markets Integration: Strategies for the East African Community' (April 30, 2010). Available at <SSRN: <http://ssrn.com/abstract=1863762>> accessed 4 February 2016

<sup>18</sup> Bagwatti J, 'Regionalism and Multilateralism: an Overview', In J. de Melo and A. Pangariya(1993)(eds),*New Dimensions in Regional Integration*, Cambridge University Press for CEPR

<sup>19</sup> Arthur L. Stinchcombe, 'Constructing Social Theory', *New York: Harcourt, Brace and World*,1968, 32

countries.<sup>20</sup>A custom union aims at the formation of a single customs territory. With regard to the economic activity of integration partners, trade becomes a fundamental focus with the main aim being the realization of economies of scale in a bid to realize economic development’.

Institutionalism as a “theoretical framework for explaining regional integration stems from the contributions of March and Olsen who argued that institutions are important because of the impact they yield on political outcomes. Institutions intervene between the preferences of actors and the policy outcomes that are desired. Institutions do not therefore carry political actors along a defined path nor do they follow their preferences, they are able to channel the access of the actors to attain the resultant changes which are the intents that the institution seeks to follow’.<sup>21</sup>

Inter-governmentalism “conceptualizes integration as a series of bargains between the heads of government of the leading states in a region. Its basic assumption is that integration takes place within domestic politics. Converging interests that form the basis for deliberations are based on the interests of large states where harmony is attained by big states buying off the smaller ones. The theory contends that despite this, the smaller states would still need an international organization to help them deal with complex issues that they are not equipped to handle on their own. Inter-governmentalism however places a lot of focus on heads of government as the vital forces behind integration schemes’.<sup>22</sup>

### **1.8 Hypothesis.**

This dissertation shall attempt to prove the following presumptions;

- i) The Legal Framework on capital market integration is integral to the integration of capital markets in East Africa.
- ii) The Legal Framework on Capital Market Integration in East Africa is not adequate.
- iii) The EAC Council directives on Capital Market Integration have failed to adequately fill the void in the legal framework.

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<sup>20</sup> Viner J., ‘the Customs Union Issue’, New York: Carnegie Endowment for International Peace, 1950.

<sup>21</sup> Iona A. ‘Historical Institutionalism as a Regional Integration Theory: An outline of Theory and Methodology’, Paper Prepared for the Fifth Pan-European Conference on EU Politics, Porto, Portugal, 23<sup>rd</sup> -26<sup>th</sup> June, 2010.

<sup>22</sup> Keohane R.O, ‘After Hegemony: Co-operation and Discord in the World Political Economy’, Princeton University Press.

iv) Integration would be more effective and fast should the East Africa Council issue directives on Issues raised by this dissertation.

### **1.9 Research Design/Methodology.**

This research shall heavily rely on qualitative research methods that is secondary data. The secondary data will include East African Council directives on capital Market integration, Treaty establishing the East African Community and other scholarly works on capital market integration in East Africa.

There will be little or no reliance on primary data due to time constrains and lack of financial resources to undertake such research.

This research will also involve case study as well as comparative methods of inquiry on legal frameworks of other integrated capital markets especially in the European Union where absolute free movement of capital has been achieved through proper market oriented regulatory framework.

This research shall be conducted in an ethical manner. Secondary data shall be cited whenever they shall be used in the research.

### **1.10 Limitation.**

This research shall be based on the following East African Council directives that are in place;

- i) EAC Council of Ministers Directives on Collective Investment Schemes.
- ii) EAC Council of Ministers Directives on Admission to Trading on a Secondary Exchange.
- iii) EAC Council of Ministers Directives on Public Offers (Equity) in the Securities Market.
- iv) EAC Council of Ministers Directives on Public Offers (Debt) in the Securities Market.
- v) EAC Council of Ministers Directives on Regional Listings in the Securities Market.
- vi) EAC Council of Ministers Directives on Asset-Backed Securities.
- vii) EAC Council of Ministers Directives on Corporate Governance for Securities Market intermediaries.

### **1.11 Chapter Breakdown.**

Chapter one of this dissertation shall provide a brief overview of EAC Capital Markets. This enables one to appreciate the level of development in each of the capital market in relation to those of its counterparts.

Chapter two shall be a discourse on the theoretical framework that underpin capital market integration.

Chapter Three shall delve into the treaty establishing the East African Community, the EAC Common Market Protocol and the EAC Council directives in order to understand the legal and regulatory framework behind capital market integration in the East African Community.

Chapter four shall highlight the legal and regulatory barriers to EAC Capital Markets integration. It shall also contain a comparative study of capital market integration in the European Union

Chapter five shall contain the recommendations and Conclusion.

## **CHAPTER TWO: THEORETICAL FRAMEWORK**

### **2.1 Financial Integration**

Brouwer defines financial integration as the process by which the capital markets of a country becomes more connected to the capital markets of other countries. This is characterized by the increased by the increased inter-markets capital movement and the price sensitivity of securities to events in other markets.<sup>23</sup> The Economic Commission for Africa argues that to achieve this trade barriers between countries should be eliminated to facilitate the cross border movement of financial services and products. It also takes cognize of financial integration which is bred without the involvement of agreements between states which arise as a result of foreign participation in the financial sector of a country for example the entry of foreign investors, offshore security trading and the extension of foreign loans to local institutions.<sup>24</sup> Ho points out that financial market integration can be achieved through an international agreement between states which provide for co-operation in financial crises and the elimination of barriers to cross-border movement of capital through harmonization of financial rules.<sup>25</sup>

Some literature point out that the process of integration could take various stages and forms including; “Monetary integration, either through currency unions (Europe, Western and Central Africa) or through dollarization, such as in Latin America and the Caribbean; Liberalization of the capital account; Subcontracting abroad of financial services or infrastructure, such as in the case of listing of securities on foreign stock exchanges; Foreign entry; Regulatory convergence and harmonization.”<sup>26</sup>

### **2.2 Benefits of Financial Integration.**

Baele et al, highlights that financial integration brings about the following benefits; risk sharing and diversification, better allocation of capital among investment opportunities and financial development.<sup>27</sup>

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<sup>23</sup> Brouwer, ‘Monetary and Financial Integration in Asia: Empirical Evidence and Issues’, *Asian Economic Co-operation and Integration: Progress, Prospects, Challenges*, Asian Development Bank, 2005, 269-293.

<sup>24</sup> Economic Commission for Africa, ‘Assessing Regional Integration in Africa’, *Towards Monetary and Monetary and Financial Integration in Africa*, United Nations Economic Commissions for Africa, 2008.

<sup>25</sup> Ho, ‘Financial Integration: Concepts and Impacts’, *Macao Monetary Research Bulletin*, 10, 2009, 69-84.

<sup>26</sup> Liebscher k, ‘Financial Development, Integration and Stability: Evidence from Central, Eastern and South-Eastern Europe’, Edward Elgar Publishing, 2006.

<sup>27</sup> Baele L, ‘ Measuring Financial Integration in the Euro Area’, *European Central Bank Occasional Papers Series No.14*, 2004

i) Risk Sharing.

Financial Integration brings together a large number of participants hence facilitating the sharing of risk as suggested by Jappelli and Pagano.<sup>28</sup> The spreading of risk enables the funding of high risk and return projects as the integrated markets enables low risk investors to hedge their risks with more low risk projects. This opens up a pool of funds to investors. The large market also enables the creation of a wide investment portfolio.<sup>29</sup>

ii) Increased Capital Allocation.

An integrated financial market brings forth many opportunities for investors to exchange financial security allowing the investors the opportunity to invest in opportunities they believe will bring better returns. A bigger market enables information to be collected and analyzed more efficiently.<sup>30</sup>

iii) Economic Growth.

Financial integration “facilitates access to investment opportunities and an increase in competition between domestic and foreign financial institutions. This in turn leads to improved efficiency of financial institutions as financial resources are released for productive activities. In addition, financial integration leads to increased availability of intermediated investment opportunities, and consequently higher economic growth. Authors also argue that the integration process will increase competition within less developed regions and thereby improve the efficiency of their financial systems by, for instance, reducing intermediation costs”.<sup>31</sup>

iv) Financial Development.

Hartmann characterized financial development by the new way of doing things in the financial sector and improvement in the institutions that are in the financial sector in terms of governance and competitiveness.<sup>32</sup>Jappelli and Pagano point it out that competition created by the removal of

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<sup>28</sup> Jappelli T, ‘Financial Market Integration under EMU’, *CEPR Discussion Paper No 7091*, 2008.

<sup>29</sup> Levine R, ‘Financial Development and Economic Growth: Views and Agenda’, *Journal of Economic Literature*, 35,688-726.

<sup>30</sup> Levine R, ‘Financial Development and Economic Growth: Views and Agenda’

<sup>31</sup> Edison H, ‘International Financial Integration and Economic Growth’, *Journal of International Money and Finance*, 21, 749-776.

<sup>32</sup> Hartmann, P, ‘The microstructure of the euro money Market’, *Journal of International Money and Finance*, 20,2001,895-948

barriers in an integrated market lower the cost of financial services leading to a growth in the financial market.<sup>33</sup>

### **2.3 Financial Theories.**

Several theories underline capital markets integration. The Regionalism theory “focuses on the role of shared domestic attributes or characteristics by having the responsibilities of regional cooperation and integration that is likely to depend heavily on the coherence and viability of the states and state structure in a given region. The absence of viable states makes difficult the process of region building, such a problem is part of the major obstacles towards effective regionalism in parts of Africa including EAC”<sup>34</sup>

Neo-Functionalist theory based on the work of Ernst Haas is a “theory of regional integration that places major emphasis on the role of non-state actors – especially, the “secretariat” of the regional organization involved and those interest associations and social movements that form at the level of the region. Member states remain important actors in the process. They set the terms of the initial agreement, but they do not exclusively determine the direction and extent of subsequent change. Rather, regional bureaucrats in league with a shifting set of self-organized interests and passions seek to exploit the inevitable “spill-overs” and “unintended consequences” that occur when states agree to assign some degree of supra-national responsibility for accomplishing a limited task and then discover that satisfying that function has external effects upon other of their interdependent activities”<sup>35</sup>

The customs union theory “advanced by Jacob Viner, the theory postulates that a customs union can result in either trade creation or trade diversion. Viner defines a custom union as the process of “elimination of intra-trade barriers and the equalization of tariffs on imports from non-member countries. A custom union aims at the formation of a single customs territory. With regard to the economic activity of integration partners, trade becomes a fundamental focus with the main aim being the realization of economies of scale in a bid to realize economic development”<sup>36</sup>

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<sup>33</sup> Jappelli T, ‘Financial Market Integration under EMU’.

<sup>34</sup> Bagwatti J, ‘Regionalism and Multilateralism: an Overview’, In J. de Melo and A. Pangariya (1993) (Eds), *New Dimensions in Regional Integration*, Cambridge University Press for CEPR.

<sup>35</sup> Arthur L. Stinchcombe, ‘Constructing Social Theory’, *New York: Harcourt, Brace and World*, 1968, 32

<sup>36</sup> Viner J., ‘the Customs Union Issue’, New York: Carnegie Endowment for International Peace, 1950.

Institutionalism as a “theoretical framework for explaining regional integration stems from the contributions of March and Olsen who argued that institutions are important because of the impact they yield on political outcomes. Institutions intervene between the preferences of actors and the policy outcomes that are desired. Institutions do not therefore carry political actors along a defined path nor do they follow their preferences, they are able to channel the access of the actors to attain the resultant changes which are the intents that the institution seeks to follow”.<sup>37</sup>

Inter-governmentalism “conceptualizes integration as a series of bargains between the heads of government of the leading states in a region. Its basic assumption is that integration takes place within domestic politics. Converging interests that form the basis for deliberations are based on the interests of large states where harmony is attained by big states buying off the smaller ones. The theory contends that despite this, the smaller states would still need an international organization to help them deal with complex issues that they are not equipped to handle on their own. Inter-governmentalism however places a lot of focus on heads of government as the vital forces behind integration schemes”.<sup>38</sup>

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<sup>37</sup> Iona A. ‘Historical Institutionalism as a Regional Integration Theory: An outline of Theory and Methodology’, Paper Prepared for the Fifth Pan-European Conference on EU Politics, Porto, Portugal, 23<sup>rd</sup> -26<sup>th</sup> June, 2010.

<sup>38</sup> Keohane R.O, ‘*After Hegemony: Co-operation and Discord in the World Political Economy*’, Princeton University Press, 2005.

## **CHAPTER THREE: THE LEGAL AND REGULATORY FRAMEWORK FOR CAPITAL MARKET INTEGRATION IN EAST AFRICA.**

### **3.1 .The History of Capital Markets Integration in East Africa.**

The legal traditions of the three founding states of the East African Community are influenced by their common British colonial heritage. As a result their legal systems are shaped along the doctrines of common law and equity. Hence it is not surprising that even in the securities market the capital markets in the region are regulated by almost similar rules mirroring those of the United Kingdom.

The regulation of Capital Markets in East Africa begun with the establishment of the Nairobi Stock Exchange (as it was then known) in 1954. The Nairobi Stock Exchange during its establishment served as the bourse for all East African Community states. It was set up after it was recognized by the London Stock Exchange as a colonial stock exchange.<sup>39</sup> The exchange was legalized by dint of its registration under the Societies Act as an association of willing stockbrokers purposed to establish a vibrant stock market and self-regulate. The Self-regulatory framework, *Rules and Regulations of NSE 1954*, similar to those of the London Stock Exchange regulated primary and secondary issues and provided a code of operation for stock brokers.<sup>40</sup> After independence the exchange continued with operations as a regional exchange where the governments of Tanzania and Uganda had issued their public sector securities. This was enabled by the continued existence of a common market which allowed the free movement of capital and common exchange regulations even after attainment of independence.<sup>41</sup>

Leading to 1977, there were changes in the political climate of the region. Each of the East African countries persuaded by their political regimes pursued different economic objectives. For example, Tanzania adopted a socialist leaning with their Ujamaa policy leading to nationalization of industries. Uganda on the other hand, withdrew from Scheduled Territories for Exchange Control – this was an arrangement that currencies of the three countries would be exchanged freely and at

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<sup>39</sup> Nairobi Securities Exchange, 'History of NSE', available at <https://www.nse.co.ke/nse/history-of-nse.html> accessed 30 November 2016.

<sup>40</sup> Rose Ngugi, 'Development of the Nairobi Stock Exchange: A Historical Perspective', *KIPPRA Discussion Paper* No.27 March 2013, 10.

<sup>41</sup> Aworolo, 'The development of capital markets in Africa with particular reference to Kenya and Nigeria', *IMF Staff Papers*, 1971, 420-469.

par within these countries.<sup>42</sup>This ultimately led to the collapse of the East African Community, its Common Market and without doubt its first regional Capital market.<sup>43</sup> With the collapse came the delisting of non-Kenyan companies from the Nairobi Stock Exchange.

After the exit of the partner states from the Nairobi Stock Exchange, the government of Kenya made its first attempt to regulate the market by establishing the capital Issue Committee under the Ministry of Finance. The committee consisted of officials from the National Treasury, Ministry of Commerce, Central Bank of Kenya and Industry Stakeholders. The committee was set up to primarily advise the national treasury on terms, priority and timing of all new public issues of equity, rights issues to existing shareholders in listed companies, debentures and loan issues. It also approved the price of issues, timing of sales and allotment of the issues between institutions and individuals, and also between residents and non-residents.

As a result of changes spearheaded by the International Finance Corporation and other policy documents in the 1990's, a statutory legislative framework was enacted which established the Kenya Capital Markets Authority CMA (K) as the overall regulatory and supervisory agency for the capital market.<sup>44</sup> Prior to the establishment of the authority key oversight over the capital market was carried out through Self-Regulation. Hence at the establishment of the Authority the enabling legislation ensured that while it promoted oversight over the market, it supplemented rather than supplanted self-regulation.<sup>45</sup>

To buttress its regulatory role the CMA(K) is emboldened by the Capital Markets Act and the Central Depositories Act of 2000. In the performance of its obligations the CMA(K) has issued several pieces of regulations key among them; the Collective Investment Schemes Regulations; Public Offer of Securities, Listing and Disclosure Regulations; and the Licensing and General Regulations. Regulations are in turn supplemented with guidelines including: Code on Corporate Governance Practices for Public Listed Companies; and Guidelines on the Approval and

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<sup>42</sup> Rose Ngugi, 'Development of the Nairobi Stock Exchange: A Historical Perspective', 18.

<sup>43</sup> Preamble of the Treaty Establishing the East African Community, 'other causes of the collapse were seen as; lack of political will, lack of participation by the private sector and civil society, disproportionate sharing of benefits from the community'.

<sup>44</sup> Sessional Paper No.1 of 1986

<sup>45</sup> Akamiokhor, 'The role of regulatory bodies in capital market development: The Nigerian experience', *Bullion Publication of the Central Bank of Nigeria*, 16 (4), 26- 31

Registration of Credit Rating Agencies. The Kenyan Companies Act plays a critical role in capital markets Regulation especially with regard to rules on company prospectus.

In Tanzania, the Capital Market and Securities Authority (CMSA) was set up under the Capital Markets and Securities Act of 1994 as the overall regulator and supervisor for the Tanzanian capital market prior to the establishment of the Dar-es-Salaam Securities Exchange unlike the Kenyan case. There also existed regulations under the Act on licensing, prospectus requirements, codes of conduct, financial and accounting provisions to enable the CMSA carry out its oversight functions.

In Uganda, the capital market is regulated by the Capital Markets Authority of Uganda CMA (U), established by a 1996 statute. This statute provides for CMA (U) powers regarding the approval of stock exchanges and stock exchange rules, powers to license market intermediaries and punish infringements of securities regulations.

In 1997, the re-integration fire was ignited once again when the three capital markets of Kenya, Uganda and Tanzania entered into a Memorandum of Understanding to establish the East African Member States Capital Markets Regulatory Authorities (EASRA) in order to promote capital market co-operation and ultimate integration.<sup>46</sup>

### **3.2. The Harmonization of Capital Market Regulations in East Africa.**

The concept of harmonization refers to the application of a uniform law across the different markets telling market actors how to behave, structure transactions, inform the public and so on. The securities regulators' power in the different markets will be pre-empted or limited to a varying degree, depending on whether the harmonization measures are minimum or maximum, mandatory or optional, partial or comprehensive.<sup>47</sup>

The harmonization policy is the doctrine that is to inform capital markets integration in East Africa as provided by article 85 of the EAC Treaty. To achieve this the Capital Markets Development Committee (CMDC) was set up in 2001. The committee consist of members' Central Banks,

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<sup>46</sup> African Development Bank Group, 'Financial Sector Integration in Three Regions of Africa: How Financial Sector Integration can Support Growth, Development and Poverty Reduction', 2010, 52

<sup>47</sup> Enriques et al, 'Is There a Uniform EU Securities Law after the Financial Services Action Plan', 2007, available at <SSRN: <http://ssrn.com/abstract=982282>> accessed 02 December 2016.

ministry of Finance, stock exchanges, securities exchange regulators and pension sector representatives. The committee most pursued course of action has been the consolidation of market policies on cross-border listing, foreign portfolio investors, taxation of capital market proceeds and financial reporting standards.<sup>48</sup>To this extent the following pieces of legislation have been crafted in order to facilitate this objective;

a). Treaty establishing the East African Community

The Treaty establishing the East African Community is the pinnacle of the East African Community. The treaty first conceptualized as the Treaty for East African Co-operation in 1967, was resuscitated after its 1977 collapse on November 30 1999. The treaty was signed by the East African Countries of Kenya, Burundi, Rwanda, Tanzania and Uganda in cognizance of the fact that regional integration of the state parties was the key to raising the standards of living of East Africans, promoting their peaceful co-existence and unlocking the region's economic potential.

The Article 5 of the Treaty provides that the objective of the community *inter alia* is to promote regional partnership in the Economic field by laying grounds for the establishment of the Customs Union, Common Market and Ultimately a Monetary Union.

The treaty further establishes 'The council' which consists of the ministers of East African Community Affairs, the Attorney General; from each partner state and other minister that each state shall determine. The council shall among other functions make regulations, issue directives, take decisions, make recommendations and give opinions in accordance with the provisions of this Treaty.<sup>49</sup>The directives issued by 'The Council' shall be binding on the all the partner states.<sup>50</sup>

The treaty furthermore envisions the establishment of a common market which shall facilitate the fluid movement of factors of production in the East African region.<sup>51</sup>The common market should create an environment where the movement of capital within the partner states shall not be obstructed, nationals of partner states can be able to own securities in any state in the community

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<sup>48</sup> United Nations Economic Commission for Africa, 'Assessing Regional Integration', 2008,276, available at <http://www.uneca.org/aria3/> accessed 20 March 2013.

<sup>49</sup> Article 14(d), Treaty Establishing the East African Community (As amended on 14<sup>th</sup> December, 2006 and 20<sup>th</sup> August, 2007).

<sup>50</sup> Article 16, Treaty Establishing the East African Community.

<sup>51</sup> Article 76, Treaty Establishing the East African Community.

and the encouragement of cross-border trade in financial instruments.<sup>52</sup> This article, in addition also grants East Africans the right to set up business in any of the part of the region as if they were nationals of that individual member state. Various institutions in the Community can be granted power and authority by ‘The Council’ to administer the common market.

Chapter 14 of the Treaty specifically provides for the Financial and Monetary Co-operation in the Community. It provides that the partner states shall consolidate their macro-economic policies specifically those dealing with exchange rates and interest rates. Partner States shall also remove obstacles to the mobile movement of goods, services and capital across the states. To realize capital Market Integration, the treaty outlines that the following measures shall be undertaken;

- i) Harmonise capital market policies on cross-border listing, foreign portfolio investors, taxation of capital market transactions, accounting, auditing and financial reporting standards, procedures for setting commissions and other charges
  - ii) Harmonise and implement common standards for market conduct
  - iii) Harmonise policies impacting on capital markets, particularly the granting of incentives for the development of capital markets within the region
  - iv) Promote co-operation among the stock-exchanges and capital markets and securities regulators within the region through mutual assistance and the exchange of information and training
  - v) Promote the establishment of a regional stock exchange within the Community with trading floors in each of the Partner State
  - vi) Ensure adherence by their appropriate national authorities to harmonised stock trading systems, the promotion of monetary instrument s and to permitting residents of the Partner States to acquire and negotiate monetary instrument s freely within the Community.
  - vii) establish within the Community a cross listing of stocks, a rating system of listed companies and an index of trading performance to facilitate the negotiation and sale of shares within and external to the Community;
  - viii) Institute measures to prevent money laundering activities.
- b). Protocol on the establishment of the East African Community Common Market.

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<sup>52</sup> Article 80, Treaty Establishing the East African Community.

This protocol came into force on 1 July 2010 after its ratification by: Burundi, Kenya, Rwanda, Tanzania and Uganda. The purpose of the Act is to facilitate the growth of trade and boost investments in the East African region by facilitating the free movement of: goods, labour, services and capital.

The protocol provides that the partner states shall remove restrictions on the movement of capital belonging to citizens of partner states.<sup>53</sup>The capital that can freely flow within the community includes but is not limited to: direct investment; equity and portfolio investments; bank and credit transactions; payment of interest on loans and amortisation; dividends and other income on investments; repatriation of proceeds from the sale of assets; and other transfers and payments relating to investment flows.<sup>54</sup>

The Protocol further outlines a schedule according to which this objective shall be progressively realized, in order to give adequate time for states to repeal their national legislation to conform to the provisions of the treaty. The schedule outlines the different types of capital, its restrictions that exist in the partner states that and the deadline by which that restriction ought to have been removed.

The Protocol permits some forms of restrictions on capital movement in the community provided that they relate to prudential supervision; public policy considerations; money laundering; and financial sanctions agreed to by the Partner States<sup>55</sup> Where such restrictions are applied, the state must inform the secretariat and the other partner states whilst providing proof that it was a reasonable and justified restriction.

A state, where they are of the opinion that the free movement of capital is likely to cause harm to their financial sector, can institute safeguard measures.<sup>56</sup>These measures shall be implemented according to the following principles;<sup>57</sup>

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<sup>53</sup> Article 25(1) Protocol on the establishment of the East African Community Common Market (hereinafter referred to as the Common Market Protocol).

<sup>54</sup> Article 28, Common Market Protocol

<sup>55</sup> Article 25(1), Common Market Protocol

<sup>56</sup> Article 26, Common Market Protocol

<sup>57</sup> Article 27(1), Common Market Protocol

- i) The measures shall not discriminate Partner States in favour of third parties, in accordance to this Protocol;
- ii) They shall at all times seek to minimize damage to the commercial, economic or financial interests of other Partner States;
- iii) They shall not exceed the safeguard measures necessary to deal with the circumstances
- (iv) They shall be temporary and be phased out progressively as the situation improves.

The secretariat and other state partners shall be notified of the adoption and the maintenance of the aforementioned measures. The councils shall develop guidelines to facilitate consultation between the partner states to facilitate the removal of the safeguard measures.<sup>58</sup>

The Council of Ministers in the exercise of power conferred to them by the treaty has gazetted several directives that regulate capital market operations in the region. These directives include;

- i) Directive on Collective Investment Schemes (CIS).

This directive applies to Collective Investments Schemes operated, promoted or marketed in more than one state in the community.<sup>59</sup> The directive was necessitated by the need to harmonize the regulations pertaining to the operation, governance and setting up of Collective Investment Schemes in the community in order to; facilitate seamless cross listing and operation; reduce systemic risk posed to the schemes in the region.<sup>60</sup>

The directive enables collective investment schemes registered and operated in any of the community states to apply for registration in any other sister state in the community.<sup>61</sup> The applicant is required to provide the schemes' incorporation documents, the updated audited reports for; the fund managers, trustees and custodians. The application is also to be accompanied by the prescribed application fee.<sup>62</sup> The host Competent Authority may after satisfaction that the

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<sup>58</sup> Article 27(4), Common Market Protocol

<sup>59</sup> Article 4, Directive EAC/EX/CN29/Directive 17 of the Council of Ministers on Collective Investment Schemes(hereinafter called the Directive on Collective Investment Schemes)

<sup>60</sup> Article 3, Directive on Collective Investment Schemes

<sup>61</sup> Article 5(1), Directive on Collective Investment Schemes

<sup>62</sup> Article 5(3), Directive on Collective Investment Schemes

requirements of this directive have been met allow the Collective Investment Scheme to operate as a recognized Collective Investment Scheme in the state.<sup>63</sup>

The directive also requires that partner states undertake to modify their domestic legislation in order to enact laws and come up with policies in order to comply with the provisions of this directive.<sup>64</sup>

ii) Directive on Admission to Trading on a Secondary Exchange.

This directive, was enacted in order to provide for mechanisms which enable stock brokers and dealers to operate in secondary jurisdictions within the East African Region.<sup>65</sup> The directive only applies to stock brokers and dealers who have operations in more than one partner state in the community.<sup>66</sup> These brokers and dealers shall be known as Regional Stock Brokers and shall have access to the trading platform in the secondary market.<sup>67</sup>

For one to be recognized as a regional stock broker, they must comply with the following requirements; one must be a trader in another primary exchange in the region; they must comply with the requirements of the Council Directives on minimum paid up share capital; one must have presence in the secondary exchange through a branch or office; for applicants who have been operational in the primary market, they must provide a compliance history in the primary market by providing information on compliance with the laws and regulations of the primary exchange, any disciplinary action taken and related sanctions, any investigations whether concluded or on-going, any market complaints levied against the applicant whether or not the said complaints were a subject of further investigations or not, adequate staffing especially of key staff.<sup>68</sup>

The secondary exchange can where need be request information on regional stock brokers from other exchanges where the brokers are admitted for the purpose on monitoring their compliance with secondary exchange regulations.<sup>69</sup> Also, such flow of information between the exchanges is required where disciplinary actions are taken against the regional stock brokers. Where a stock

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<sup>63</sup> Article 6(1), Directive on Collective Investment Schemes

<sup>64</sup> Article 8(1), Directive on Collective Investment Schemes

<sup>65</sup> Article 2, Directive EAC/EX/CN29/Directive 17 of the Council of Ministers on Admission to Trading on a Secondary Exchange (hereinafter called the Directive on Admission to Trading on a Secondary Exchange)

<sup>66</sup> Article 4, Directive on Admission to Trading on a Secondary Exchange

<sup>67</sup> Article 7(1)(2), Directive on Admission to Trading on a Secondary Exchange

<sup>68</sup> Article 5, Directive on Admission to Trading on a Secondary Exchange

<sup>69</sup> Article 8, Directive on Admission to Trading on a Secondary Exchange

broker is suspended or expelled from a primary market, they by implication are suspended or expelled from all secondary exchanges. This shall however, shall not be case when they are reinstated. Where the disciplinary action originates from a secondary market, the primary market is obligated to carry out investigations into the stock broker and may suspend or expel them.<sup>70</sup> The stock broker can however, appeal the decision of the exchange to the Consultative Committee of East African Securities Association (EASEA) or take any other legal action it deems fit.<sup>71</sup>

### iii) Directive on Corporate Governance for Securities Market Intermediaries.

The main objective of the directive was to provide uniform corporate governance rules for all the market intermediaries in the Regions' market.<sup>72</sup>It mandates the regulatory authorities in the East African region to ensure that market intermediaries in the Region: have in place corporate boards that are in charge of the operation of the entity, the board consists of members who possess diverse skills and competencies and that there exists clear cut differences in the powers and functions of the Chief Executive Officers and those of the Chairman of the Board.<sup>73</sup>

The directive provides that “a market intermediary shall have a board that shall lead, control and shall be collectively responsible for the conduct and governance of its securities business. It shall also shall provide leadership within a framework of prudent and effective control that facilitates risk assessment and management”

The directive goes on further to make specific provisions on the duties of the Chief Executive Officers<sup>74</sup>, the competence of Financial Officers<sup>75</sup> and Internal and External Auditors<sup>76</sup>, the qualification and experience of employees and the remedial measures and administrative sanctions against directors.<sup>77</sup>

### iv) Directive on Asset Backed Securities (Abs)

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<sup>70</sup> Article 9, Directive on Admission to Trading on a Secondary Exchange

<sup>71</sup> Article 9(6), Directive on Admission to Trading on a Secondary Exchange

<sup>72</sup> Article 3, Directive EAC/EX/CN29/Directive 17 of the Council of Ministers on Corporate Governance for Securities Market Intermediaries (hereinafter called the Directive on Corporate Governance for Securities Market Intermediaries).

<sup>73</sup> Article 2, Corporate Governance for Securities Market Intermediaries

<sup>74</sup> Article 20, Corporate Governance for Securities Market Intermediaries

<sup>75</sup> Article 23, Corporate Governance for Securities Market Intermediaries

<sup>76</sup> Article 24,26, Corporate Governance for Securities Market Intermediaries

<sup>77</sup> Article 35, Corporate Governance for Securities Market Intermediaries

Asset-Backed Securities (ABS) are “securities that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite period of time, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders.”<sup>78</sup>

A person shall not issue an ABS to the public in the region without the approval of a competent Authority in the region.<sup>79</sup> The directive provides for the requirements of: Issuers<sup>80</sup>, Originators<sup>81</sup>, Sponsors<sup>82</sup>, Auditors<sup>83</sup>, Depositor<sup>84</sup> and Trustees<sup>85</sup>

The first schedule to the directives provide that the following principles of continuous disclosures shall apply;

- i) Information regarding ABS should be provided on a periodic basis
- ii) Material events should be disclosed in event based reports
- iii) Periodic and event-based disclosure should contain sufficient information to increase the transparency and to enable investors to perform due diligence in their investment decisions independently
- v) Other directive that have been gazetted include; Directive on Regional Listings in the Securities Market- this Directive standardizes the listing requirements in the regional exchanges in order to enable multiple listing by entities<sup>86</sup> and Directive on Public Offers (Equity & Debt) in the Securities Market.

There is also a plan to gazette the following directives after stakeholder consultation;

- EAC Council Directives on Corporate Governance for Issuers
- EAC Council Directive on Licensing of Market Intermediaries

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<sup>78</sup> Article 1, Directive EAC/EX/CN29/Directive 17 of the Council of Ministers on Asset Backed Securities (hereinafter called the Directive on Asset Backed Securities).

<sup>79</sup> Article 6, Directive on Asset Backed Securities

<sup>80</sup> Article 5, Directive on Asset Backed Securities

<sup>81</sup> Article 7, Directive on Asset Backed Securities

<sup>82</sup> Article 8, Directive on Asset Backed Securities

<sup>83</sup> Article 9, Directive on Asset Backed Securities

<sup>84</sup> Article 11, Directive on Asset Backed Securities

<sup>85</sup> Article 12, Directive on Asset Backed Securities

<sup>86</sup> Article 3

- EAC Council Directive on Conduct of Business of Market Intermediaries
- EAC Council Directive on Mergers and Takeovers
- EAC Council Directive on Investor Education and Protection
- EAC Council Directive on AML
- EAC Council Directive on Investor Compensation Funds
- EAC Council Directive on Self-Regulatory Organizations
- EAC Council Directive on Central Securities Depository
- EAC Council Directives on Securities Exchanges
- EAC Council Directive on Credit Rating Agencies
- EAC Council Directive on Regulated Activities
- EAC Council Directive on REITS

## CHAPTER FOUR: INADEQUACIES OF THE EAC COUNCIL DIRECTIVES ON CAPITAL MARKET INTEGRATION.

### 4.1 Introduction

The EAC Capital Markets integration strategy was steered through harmonization of the partner states legal framework. This involves the adoption of minimum standard regulation which apply to all the partner states. The council of Ministers promulgate these harmonized laws by issuing directives. The council of ministers of the East African community has enacted various legislation to facilitate the smooth and seamless integration of the capital markets in the East African Community. As a result of this seven council directives have been given due regard by the Council's finance and economic affairs committee and thereafter enacted into community law by the Council of ministers inn April 2014. Another set of legislation covering; securities Exchanges; Central Securities Depositories; Self-Regulatory Organizations; Conduct of Business for Market Intermediaries; Corporate Governance for Listed Companies; Anti-Money Laundering; Investor Compensation Funds; Investor Protection; and Regulation of Takeovers and Mergers are under stakeholder consideration.<sup>87</sup>

In spite of the several pieces of legislation that have been enacted, there still exists loopholes in the legal and regulatory framework governing capital markets integration. These loopholes have hindered the realization of the full gains anticipated the EAC Common Market Protocol. The current legal framework has not lived up to the expectation of ensuring free “movement, sale, investment and payments of capital and the elimination discrimination based on the nationality or on the place of residence of the persons or on the place where capital is invested”.<sup>88</sup> Some of the challenges that the directives have inadvertently failed to address range from legal issues, operational issues and policy issues.<sup>89</sup> These challenges include;

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<sup>87</sup> Public Exposure Notice, 'Country Consultation on the proposed Harmonized east African Community Capital Markets Legal and Regulatory Framework' available on [https://www.cdsckeny.com/media-center/press-release/item/download/15\\_8240bdf0aeb060d0e0679c99007b5cce+&cd=3&hl=en&ct=clnk](https://www.cdsckeny.com/media-center/press-release/item/download/15_8240bdf0aeb060d0e0679c99007b5cce+&cd=3&hl=en&ct=clnk) accessed 5 January 5, 2017.

<sup>88</sup> H Kyambalesa. Hougnikpo, 'Economic Integration and Development in Africa', 2001, 23.

<sup>89</sup> Kamene Sylvia, 'Capital Markets Integration in the East Africa Community: Progress Ahead of the Monetary Union Formation', 2014, 27, available at < <https://su-plus.strathmore.edu/bitstream/handle/11071/4476/Capital%20market%20integration%20in%20EAC%20progress>

#### 4.1.1 Existence of Different Licensing Categories among the East African Partner States.

The EAC partner states issue different categories of licenses to market intermediaries in each of the states. One case in point, Kenya and Rwanda issue separate licenses for brokers and dealers while Uganda and Tanzania issue a dual license<sup>90</sup>In Kenya, the Capital Markets Authority handles applications for licenses and applications for approval.<sup>91</sup>Kenyan Law requires persons with the intention of carrying on the business of a stockbroker, dealer, investment bank, fund manager, investment adviser, and authorized depository to hold a valid license issued by the Authority<sup>92</sup> while those intending to carry on the business of a securities exchange, registered venture capital company, collective investment scheme, central depository or credit rating agency to be approved by the Authority.<sup>93</sup>Regulations made under the Act provide for specific requirements for each of the licenses; stockbrokers are required to have paid up share capital of a minimum of fifty million shillings while dealers are to have twenty million shillings.<sup>94</sup> In Uganda the Capital Markets Authority Act, provides that stock brokers; dealers; authorized depositories; commodities exchanges; commodities brokers; stock exchange; transaction advisers; investment advisers; fund managers; representatives; authorized registrars; custodians; credit rating agencies; underwriters; investment houses; venture capital funds; or market advisors shall not undertake any activity under the Act unless approved by the Capital Markets Authority.<sup>95</sup> The interpretation clause of the Act provides that a license is to be taken to be in three forms; a broker or dealer's license; an investment adviser's license; or a representative's license, issued under section 36.<sup>96</sup>

Another case in point is with regard to market intermediaries. In Uganda and Tanzania licenses are issued to market intermediary's representatives. A representative is a "person, in the direct employment of, or acting for, or by arrangement with, a dealer/broker, who performs for that

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[%20ahead%20of%20the%20monetary%20union%20formation.pdf?sequence=1&isAllowed=y](#)> accessed January 7, 2017.

<sup>90</sup> Lutwama Joseph, 'Capital Markets Integration: Strategies for the East African Community', 2010, available at < SSRN: <https://ssrn.com/abstract=1863762> or <http://dx.doi.org/10.2139/ssrn.1863762>>

<sup>91</sup> Capital markets Authority (KE), 'Licensing and Approval Overview', 2016, available at < [http://cma.or.ke/index.php?option=com\\_content&view=article&id=139&Itemid=553](http://cma.or.ke/index.php?option=com_content&view=article&id=139&Itemid=553)> accessed 7th December 2017.

<sup>92</sup> Capital Markets Act, section 23(1)

<sup>93</sup> Capital Markets Act, section 23(2)

<sup>94</sup> The capital Markets (Licensing Requirements) (General) Regulations 2002.

<sup>95</sup> Capital Markets Authority Act, section 30(1)

<sup>96</sup> Capital Markets Authority Act, section 1.

dealer/broker any of the functions of a dealer/broker, other than work ordinarily performed by accountants, clerks or cashiers, whether his remuneration is by way of salary, wages, commission or otherwise; and where the dealer/broker is a body corporate, includes any director or officer of the body corporate who performs for the body corporate any of the said functions”<sup>97</sup>. In Tanzania, the Capital Markets and Securities Act mandates the Capital and Securities Authority to license securities dealers / brokers and *their representatives*, Nominated Advisers and their *representatives*, investment advisers, fund managers, custodians of securities, Central Depositories (CSD), stock exchanges and commodity exchanges. In Uganda, the Capital Markets Authority Act provides in section 36 for the grant and renewal of representatives’ licenses.<sup>98</sup>

#### 4.1.2 Differences in Accounting and Auditing Practices

In the East African region the accounting profession is regulated by; the Institute of Certified Public Accountants Kenya; Institute of Certified Public Accountants Uganda; National Board of Accountants and Auditors Tanzania. All these bodies apply International Financial Reporting Standards (IFRSs), issued by the International Accounting Standards Board (IASB), and International Accounting Standards (IASs) and International Standards of Auditing (ISAs), issued by the International Federation of Accountants (IFAC).<sup>99</sup>In spite of this Tanzania which adopted IFRS in 2004, has clung on to its original accounting standards that is the Tanzania Financial Accounting Standards (TFASs) and Tanzania Statements of Recommended Practice (TSRPs) for standards that do not have counterpart International standards.<sup>100</sup> These standards include; TFAS No.12 Director’s Report, TFAS No.16 accounting for Extractive Industries , TFAS No.23 Accounting for Value Added Tax and TFAS No.24. Public Sector Accounting.<sup>101</sup> This departure from commonly adopted standards has created an incoherence in financial reporting which has hampered cross listing or cross border offering.

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<sup>97</sup> Capital Markets and Securities Act, section 1.

<sup>98</sup> Section 36 provides that “the authority shall grant or renew a broker or dealer's representative's license or investment representatives license if after consideration of the application it considers that the applicant will perform the duties of the holder of a broker or dealer's representative or an investment representative's license, efficiently, honestly and fairly”

<sup>99</sup> Lutwama Joseph, ‘Capital Markets Integration: Strategies for the East African Community’, 2010, 14.

<sup>100</sup> Muroki F Mwaura, ‘International Financial Accounting Standards and the Continent of Africa’, *International Business & Economic Research Journal*, 2009, 38.

<sup>101</sup> National Board of Accountants and Auditors, ‘Accounting and Auditing Standards’, available at <<http://www.nbaa.go.tz/members/Standards.htm>> accessed January 7, 2017.

The East African countries also require that companies be audited by auditors registered in their jurisdictions.<sup>102</sup> This means that for companies that have cross-listed, auditors/accountants from the secondary bourse will have a very difficult time accessing financial information from the company to assess its true and fair value except rely on the information provided on the prospectus filed with the secondary bourse. These differences in accounting and auditing practices is also facilitated to the tough restrictions that are exist preventing the cross-border practice of accounting. Kenya Uganda and Rwanda prohibits branches of foreign firms setting up in the countries. Kenya and Uganda further disallow the control of foreign accounting and auditing firms by professionals not licensed in the countries.<sup>103</sup>

#### 4.1.3 Restrictions on Cross-border Investments.

Countries like Uganda and Tanzania do not allow some sectors in their financial industry to invest outside their border, this is especially the case for pensions and insurance.<sup>104</sup> This is in contrast to the trend that is being adopted by countries in other trading blocks.<sup>105</sup> On the other hand a country like Kenya have undertaken legislatives measures to exhibit East African integration goodwill allowing pension funds to invest about 70% other their total market value or pooled resources in stocks offered by exchanges in Kenya, Uganda and Tanzania. The funds can invest abroad subject to a 15% limit of its market value.<sup>106</sup> While Uganda and Rwanda do not limit foreigner's participation in their capital markets, Kenya provides for similar treatment between its nationals and EAC citizens and allows them up to 100% ownership of securities in the Kenyan bourse, on the hand, Tanzania limits foreign participation at 60% in primary and issues and forbids absolute participation of foreigners in Initial Public Offers<sup>107</sup>. In Rwanda and Uganda the Central Banks

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<sup>102</sup> Lutwama Joseph, 'Capital Markets Integration: Strategies for the East African Community', 2010, 14.

<sup>103</sup> Dihel Nora, Fernandes, 'Reform and Regional Integration of Professional Services in East Africa, *Economic Premise*, World Bank, available at < <http://documents.worldbank.org/curated/en/942751468235734264/Reform-and-regional-integration-of-professional-services-in-East-Africa>> accessed January 7, 2017.

<sup>104</sup> Andrew Slater, 'Why Pension Funds should Diversify including cross-border', article on Financial Nigeria, available at <http://www.financialnigeria.com/why-african-pension-funds-should-diversify-including-cross-borders-news-356.html#sthash.0eTtBIYS.hTVjUsR6.dpuf>> accessed January 7, 2017.

<sup>105</sup> Namibia allows up to 35% of assets outside the Common Monetary Area (Lesotho, South Africa, Namibia and Swaziland), with a limit of 30% outside Africa, while Botswana allows up to 70% investment abroad. In South Africa, pension funds may invest as much as 30% of their assets outside the country's borders

<sup>106</sup> World Bank, 'Scaling-up Regional Financial Integration in the East African Community', 2012, available at < <https://openknowledge.worldbank.org/handle/10986/13031>> accessed January 7, 2017.

<sup>107</sup> Foreign investors, including Kenyans, will be locked out of the upcoming initial public offerings (IPOs) of Tanzania's privately-held Telco's, including Vodacom, Tigo and Airtel, which must list on the Dar-es-Salaam bourse

approve the acquisition of foreign shares by citizens. The trade in securities by foreigners is unrestricted in Kenya, Uganda and Tanzania but in Rwanda the Central Banks' approval is required. Foreigners can freely buy any debt securities in Kenya, Rwanda, Burundi and Uganda. Tanzania limits foreigners' participation in acquisition of government bonds while their purchase of private debt securities is unrestricted.<sup>108</sup> Kenya's East African spirit was exemplified when during the initial public offering East African community citizens were allowed to participate in the percentage allotted to nationals and levied a lower withholding tax.<sup>109</sup>

#### 4.1.4 Lack of double taxation agreement between EAC states.

The ratification of the East African Community Common Market Protocol, was intended that to unlock the economic potential of the East African region through the eradication of barriers to the movement of people, goods, services and capital. However, this has greatly been hindered by the non-existence of a double taxation agreement between the partner states hence increasing the cost of integration especially with regard to the movement of capital in the region.<sup>110</sup>

Double Taxation is a taxation concept where two or more countries charge the same tax on an income or transaction. For example the employment income of a Kenyan working in Tanzania could be taxed income tax in Tanzania and because Kenya charges worldwide employment tax the same individual is also charge income Tax in Kenya. This contrary to the intention of the Common markets Protocol hinders the movement of capital and services across the East African borders.<sup>111</sup>

This problem can be mitigated through the adoption of Double taxation Agreements between the East African states. Double Taxation Agreements are treaties between states that determines the amount of tax to be charged on income that is liable for tax in more than one jurisdiction. The rules under the treaty could provide that; income that has already been levied tax in another jurisdiction

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under a new law. See <<http://www.businessdailyafrica.com/Kenyan-investors-locked-out-of-Tanzania-telcos--share-sale/539552-3505650-d863u2/index.html>> accessed January 7, 2017.

<sup>108</sup>World Bank, 'Scaling-up Regional Financial Integration in the East African Community', 2012

<sup>109</sup> Paul Brenton, Gozde Isik, 'De-Fragmenting Africa: Deeping Regional Trade Integration in Goods and Services', World Bank Publications, 2012,148.

<sup>110</sup> United Nations Economic commission for Africa, 'Investment Policies and Bilateral Investment Treaties in Africa', available at [http://www.uneca.org/sites/default/files/PublicationFiles/eng\\_investment\\_landscaping\\_study.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/eng_investment_landscaping_study.pdf) accessed January 9, 2017.

<sup>111</sup> Lisa Kayaga, 'Tax policy Challenges facing developing countries: A Case Study of Uganda', 2007,115, available at <<http://www.collectionscanada.gc.ca/obj/s4/f2/dsk3/OKQ/TC-OKQ-850.pdf>> accessed January 9, 2017.

shall not be levied any further similar tax in another party state; a lower tax rate shall be charged to certain incomes derived from particular sources.<sup>112</sup> In spite of the fact that EAC partner states do not have tax treaties among themselves, they have entered into agreements with other countries outside the community. Kenya has double taxation agreements with India<sup>113</sup>, Zambia<sup>114</sup>, France, the UK<sup>115</sup>, Germany<sup>116</sup>, Canada<sup>117</sup>, Denmark<sup>118</sup>, Norway<sup>119</sup>, Sweden<sup>120</sup>, South Africa and Mauritius. Uganda has tax treaties with 10 countries, Tanzania with 9 countries, Kenya with 8 countries and Burundi does not have any tax treaty. Rwanda has Double Taxation treaties with South Africa and Mauritius.

Cognizant of the challenges posed by; the existence of multiple and overlapping tax regimes existing in the EAC, the need for fiscal certainty for EAC investors and the catastrophic effect double taxation has on business interests in the community, the partner states signed an agreement on double taxation avoidance.<sup>121</sup> The agreement provides that companies operating in the community are to be taxed in the country of incorporation not the country of operation. However, though the agreement was signed on November 30, 2010 it is yet to come into force. Only Kenya and Rwanda have ratified the treaty while Uganda, Tanzania and Burundi are yet to ratify.<sup>122</sup> The ratification of this treaty will provide a great boost to regional trade. The low tax burden would incentivize companies to expand their operation to cover the whole region creating a large number of employment opportunities.

#### 4.1.5 Overlapping Regional Blocks Membership.

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<sup>112</sup> Richard Bulenzi, 'Why the East African Community need to Enact a Double taxation Agreement', The New Times, 2001, available at < <http://www.newtimes.co.rw/section/article/2010-10-22/25226/>> accessed January 9, 2017.

<sup>113</sup> Legal Notice No.61/1989.

<sup>114</sup> Legal Notice No.10/1970.

<sup>115</sup> Legal Notice No. 253/1977.

<sup>116</sup> Legal Notice No.20/1980.

<sup>117</sup> Legal Notice No. 111/1987

<sup>118</sup> Legal Notice No. 5/1973

<sup>119</sup> Legal Notice No. 6/1973

<sup>120</sup> Legal Notice No.14/1973

<sup>121</sup> Agreement between the Governments of the Republic of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

<sup>122</sup> James Anyanzwa, 'Approvals Delay for EAC Double Taxation Law', the East African, 2015, available at < <http://www.theeastafrican.co.ke/business/Approvals-delay-EAC-double-taxation-law-/2560-2608588-tc9ryu/index.html>> accessed January 9, 2017.

The EAC Council Directive have not addressed the challenges posed by the numerous block subscription of EAC partner states. While Kenya, Uganda, Tanzania, Rwanda and Burundi are members to the EAC, Uganda, Kenya, Rwanda and Burundi are members of the Common Market for Eastern and Central Africa (COMESA)<sup>123</sup> while Tanzania is a member of the Southern Africa Development Community. Tanzania withdrew from the COMESA in 1999 because of a proposal by COMESA to reduce custom duties by 90%. Other reasons cited included; the need to focus on its membership to the EAC and the SADC; it also highlighted that the COMESA Free Trade Area posed a danger to its industries.<sup>124</sup> This multiple membership poses a risk in that it reduces the commitment of states to the bodies as they subscribe with an aim to spread the economic gains from these bodies. It also burdening financially to some states as they are unable to fulfill all their obligations in the several bodies that they subscribe to. In terms of trade it also brings confusion; for example in the COMESA region, Tanzania's goods are to be treated as external goods and taxed at a higher level since it is not a member but this would fly in the face of the rules applying to members of the East African community of which it is a member. The challenge then becomes how to "harmonize the two tariff systems: which goods will be considered to be COMESA when Tanzania trades with either Kenya or Uganda and which goods will be EAC goods when this exchange occurs".<sup>125</sup>

In Rwanda, the investment and export promotions law<sup>126</sup> lists Tanzanians as foreign investors by virtue of not being members of the COMESA as a result they are subject to more stringent rules

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<sup>123</sup> Common Market for Eastern and Central Africa, 'COMESA Members States', available at < <http://www.comesa.int/comesa-members-states/>> accessed January 9, 2017.

<sup>124</sup> Stahl M, 'overlapping membership in COMESA, EAC, SACU and SADC: Trade Policy Options to Overcome the Problem of Multiple Memberships', Arusha: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), 2005.

<sup>125</sup> Mutea Iringo, 'Regional Economic Integration: The Challenge of Dual Membership to Kenya-With Special Reference to EAC and COMESA', 2005, available at < [http://erepository.uonbi.ac.ke/bitstream/handle/11295/19878/Iringo\\_Regional%20economic%20integration%3A%20the%20challenge%20of%20dual%20membership%20to%20Kenya-%20with%20special%20reference%20to%20eac%20and%20comesa.pdf?sequence=3&isAllowed=y](http://erepository.uonbi.ac.ke/bitstream/handle/11295/19878/Iringo_Regional%20economic%20integration%3A%20the%20challenge%20of%20dual%20membership%20to%20Kenya-%20with%20special%20reference%20to%20eac%20and%20comesa.pdf?sequence=3&isAllowed=y) > accessed January 9, 2017.

<sup>126</sup> Article 1(f) of the Law no 14/98 of 18<sup>th</sup>/12/2008 establishing Rwanda Promotion Agency.

than other EAC members' citizens, for example the minimum investment that a Tanzanian can make in Rwanda is 250,000 US Dollars while other EAC citizens is 150,000 US Dollars.<sup>127</sup>

#### 4.1.6 EAC Dispute Resolution

It is approximated that trade between East African Community (EAC) states grew from 2 billion US dollars in 2005 to 6 billion US dollars in 2014, representing a 300% increase in the value of trade. This growth in the level of trade inevitably triggers the exponential growth of commercial disputes between nationals of the EAC states.<sup>128</sup>

In spite of the regional aspect of the cross border trade, there does not exist a regional dispute settlement mechanism. The Protocol establishing the Common Market provides that “disputes regarding to the infringement of rights and liberalities of any person as recognized by the Protocol are resolved in accordance with the constitutions, national laws and administrative procedures of Partner States by the competent judicial, administrative or legislative authorities or any other competent authority and an individual shall have a right of redress even the infringement has been committed by persons acting in their official capacities”.<sup>129</sup> This provision clearly vests the power to handle disputes regarding the movement of capital to national institutions bringing forth issues of conflict of laws.

## **4.2 COMPARATIVE ANALYSIS OF THE FREE MOVEMENT OF CAPITAL IN EAST AFRICAN COMMUNITY AND THE EUROPEAN UNION**

The borders between the European Union states with regard to the movement of capital are very porous as restrictions on the movement of capital among member states and third countries are prohibited.<sup>130</sup> The grounds that can justify departure from this rule include; different tax treatment of non-residents and foreign investment, but with the reservation that this must not represent a means of arbitrary discrimination; the prudential supervision of financial institutions; the right of Member States to take measures which are justified on grounds of public policy or public

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<sup>127</sup> Article 45 of the law no 26/2005 of 17/12/2005 on the investment and export promotion and facilitation in Rwanda.

<sup>128</sup> William Mwanza, 'The EAC Court's Jurisdiction Over Investment Matters and What it means for the Community's Legal Instruments', 2015, available at < <https://www.tralac.org/discussions/article/7126-the-eac-court-s-jurisdiction-over-investment-matters-and-what-it-means-for-the-community-s-legal-instruments.html>> accessed January 9, 2017.

<sup>129</sup> Common Market Protocol, article 54(a)(b)

<sup>130</sup> Treaty on the Functioning of the European Union, article 63

security;<sup>131</sup> restrictions regarding third countries to safeguard against serious difficulties for the operation of economic and monetary union;<sup>132</sup> taking of protective balance of payments measures, where difficulties jeopardize the functioning of the Internal Market or where a sudden crisis occurs.<sup>133</sup> The European Court of Justice has expanded this scope to include; Services of general interest - the Court acknowledged with regard to safeguarding the solvency and continuity of the provider of the universal postal service, "that the guarantee of a service of general interest, such as universal postal service, may constitute an overriding reason in the general interest capable of justifying an obstacle to the free movement of capital;<sup>134</sup> regarding the petroleum, telecommunications and electricity sectors, the court has ruled, that "...it is undeniable that the objective of safeguarding supplies of such products or the provision of such services within the Member State concerned in the event of a crisis may constitute a public-security reason...and therefore may justify an obstacle to the free movement of capital."<sup>135</sup>

Compared to the EAC, the EU is much more open as the movement of capital applies even to third states.<sup>136</sup> Restrictions on free movement of capital differ between the EU and EAC with regard to public security which exist only in the EU while anti- money laundering and financial sanctions restrictions apply in EAC.<sup>137</sup> The treaty establishing the EAC does not mandate a specific institution with overseeing the free movement of capital however, generally the EAC Council can allow a country to institute measures to prevent negative effects of the free movement of capital upon showing that it has taken all steps to overcome the difficulty.

The harmonization and integration of capital markets was intended by the European Union.<sup>138</sup> As a result on September 2000, the bourses of Amsterdam, Brussels and Paris merged to form the Euronext N.V. For regulatory reasons the individual bourses still exist. The Euronext provides a single trading platform, and single clearing and settlement system. Dealers on the exchanges are

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<sup>131</sup> Treaty on the Functioning of the European Union, article 65(1b)

<sup>132</sup> Treaty on the Functioning of the European Union, article 66

<sup>133</sup> Treaty on the Functioning of the European Union, article 143

<sup>134</sup> Commission v Netherlands C-542/09

<sup>135</sup> Commission v Spain C-157/03

<sup>136</sup> Alfred Mwendata, 'Legal Challenges to the Implementation of East African Community Common Market Protocol: Case of Free Movement of capital in Rwanda', *IOSR Journal of Humanities and Social Science*, 21, 41.

<sup>137</sup> Free movement of capital in European Union and in East African Community, available at: <[www media, leidenuniv.nl/legacy/eac-final-summary.pdf](http://www.media.leidenuniv.nl/legacy/eac-final-summary.pdf)> Accessed on 12th May 2015

<sup>138</sup> Heiko Schmiedel, 'Integration of Securities Market in the Euro Area', *European Central Bank: Occasional paper Series*, 2005

licensed in Netherlands, France, Belgium, and Portugal depending on the location of the dealer.<sup>139</sup>The Euronext operates with the authorization of the national regulator in the relevant countries. Each Euronext Market Undertaking is subject, as a European market operator, to the national laws and regulations in force in its jurisdiction, in addition to the requirements imposed by the regulators and, in some cases, by the central bank and/or the Ministry of Finance. The market participants are over and above these rules bound by Euronext harmonized and non-harmonized rules implemented through notices.<sup>140</sup>

The European Parliament has enacted the Markets in Financial Instruments Directive which harmonizes the regulation of investment services across the European Union in order to promote competition and consumer protection. Unlike the earlier Investment Services Directive, this directive adopted maximum harmonization which requires that markets be supervised by the home state rather the mutual recognition concept.

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<sup>139</sup> Mattias Levin, ' Competition Fragmentation and Transparency: Providing the Regulatory Framework for fair Efficient and Dynamic European Securities Markets Assessing the ISD Review',2003

<sup>140</sup> See: <https://www.euronext.com/en/regulation>

## **CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATION**

### **5.1 Conclusion.**

This academic paper set out to outline the shortcomings of the EAC Council directives on capital Market Integration. It outlined several issues that are yet to be addressed by the council directives. These legal shortcomings have hindered the achievement of free movement of capital within the East African Community. These challenges can only be addressed by the council of Ministers as provided by the Treaty establishing then East African Community through the issuance of directives that provide model regulation for the East African partner states.

The integration strategy adopted by the East African states is harmonization rather than the establishment of supra national legal framework. This is in cognizance of the fact that the capital markets in the region are at different level of development and the development of minimum standards that apply across the region; where each state recognizes the regulations of the other state is a better fit.

This is a similar approach to that taken by countries in the European Union especially those in the Euronext. The pan-European capital market is regulated by a mixture of harmonized rules on minimum standards, national legislation of member countries and regulations from the European parliament. This has created a cogent legal framework where lacunas do not exist to hamper the free flow of capital.

Despite the fact that the EAC Council of ministers has enacted regulations promoting the East African Capital Markets integration; there still exists a lot of loopholes that need to be plugged in order to achieve a fully integrated capital market system. The established capital markets in the region should be ready to provide capacity development to capital markets that are still in the development or setting up stage for example in the case of Burundi.

## 5.2 Recommendations.

- a) The EAC Council of ministers should put in place regulations to consolidate the licenses that are issued in the region to prevent the licensing mismatch which causes uncertainty among investors. A draft EAC Council Directive on Licensing should outline the type of licenses that the Authorities in the region should issue, the particular requirements to acquire the license, the issuing authority to prevent seeking multiple license to perform the same function for example in Kenya where a fund manager managing a retirement scheme need a license form the Capital markets authority and the retirement benefits authority.
- b) A Council directive requiring that cross listed firms and market intermediaries licensed in more than one exchange should record and state their financial information using internationally accepted accounting standards should be enacted. Principles advocated for in the Common Markets should be adhered to allow the movement of accountants across the region.
- c) Political will should not come in the way of community laws. This political influence causes countries to deviate from the principles enshrined in the community laws for example the Protocol on a Common Market which provides for free movement of capital in the region. Also the EAC Council of minister should be pro-active either by legislation or political goodwill exempt East African states from the harsh rules that prevent the investment in the insurance and pension sectors.
- d) The Agreement between the Governments of the Republic of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income should be ratified with haste by Uganda, Tanzania and Burundi to facilitate the abolition of double taxation in the region which hinders capital market integration.
- e) The EAC Council of ministers should adopt regulations which deter or discourage members of the community from subscribing to various regional trade blocks which results in them missing out on the benefits of the community. This especially applies to Tanzania.

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