

Meaning of private offers.

21.(1)For purposes of these Regulations, an offer of securities shall be regarded as private offer and accordingly shall be deemed not to be an offer to the public in Kenya if, to the extent that the offer is made to persons in Kenya under the following conditions -

(a) the securities are offered to not more than one hundred persons;

(b) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;

(c) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;

(d) the securities are offered in connection with a *bona fide* invitation to enter into an underwriting agreement with respect to them;

(e) the securities are of a private company and are offered by that company to-

i (i) members or employees of the company;

i (ii) members of the families of any such members or employees; or

i (iii)the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;

(f) the minimum subscription for securities per applicant is not less than Kenya Shillings one hundred thousand (Kshs. 100,000);

(g) the securities result from the conversion of convertible securities and a prospectus relating to the convertible securities was approved by the Authority and published in accordance with these Regulations;

(h) the securities of a listed company are offered in connection with a take-over scheme approved by the Authority; or

(i) the securities are not freely transferable.

(2) For the purposes of paragraph (e)(ii) the members of a person's family are the person's husband or wife, widow or widower and children (including stepchildren) and their descendants, and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself or herself, or any of those relatives.