The International Capital Markets Review

Third Edition

Editor
Jeffrey Golden

Law Business Research

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This article was first published in
The International Capital Markets Review, 3rd edition
(published in November 2013 – editor Jeffrey Golden).

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-907606-88-5

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AFRIDI & ANGELL LEGAL CONSULTANTS

ALLEN & OVERY

ATTORNEYS AT LAW BORENIUS LTD

BBH, ADVOKÁTNÍ KANCELÁŘ, V.O.S.

DAVIS POLK & WARDWELL LONDON LLP

DE PARDIEU BROCAS MAFFEI

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ULHÔA CANTO, REZENDE E GUERRA ADVOGADOS

URÍA MENÉNDEZ ABOGADOS, SLP

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EDITOR'S PREFACE TO THE THIRD EDITION

As I write the preface to this third edition of *The International Capital Markets Review*, my morning newspaper reports that one of the major global banks, having shrunk its workforce by more than 40,000 employees over the past two years, will now embark on a hiring spree to add at least 3,000 additional compliance officers.

It would be nice if the creation of these new jobs evidenced new confidence that capital markets activity is on the rise in a way that will justify more hands on deck. In other words, capital markets lawyers will have something to celebrate if this bolstering of the ranks was thought necessary to ensure that requisite regulatory approvals and transactional paperwork would be in place for a projected expansion in deal flow.

And, indeed, my morning newspaper also reports a new transaction of some significance, namely, Twitter's filing for a multi-billion dollar international public offering, accompanied by a tweet, of course – but with a true sign-of-the-times disclosure: 'This Tweet does not constitute an offer of any securities for sale'!

Yes, confirmation of an uptick in deal flow – especially 'big deals' flow – would be nice. In the preface to the last edition of this work, I speculated that there were 'signs that any 'big freeze' on post-crisis capital markets transactional work may be thawing'. All the better if the current newspaper reports provide continued and further support for that inference. After all, when our first edition appeared a little over two years ago, the newspapers were saying terrible things about the capital markets.

What is more likely, however, is that this increased staffing aims to cope with regulatory complexity that will now impact the financial markets regardless of any growth and perhaps may even have been designed to slow down the business being done there. That complexity, but also just the scale of recently promulgated new regulation and the practitioner's resulting challenge in 'keeping up' have all encouraged this new third edition. The 8,843 pages of Dodd-Frank rule-making that I reported in my preface to the last edition have now grown to more than 14,000 pages at this time of writing – and approximately 60 per cent of the job remains unfinished. Other key jurisdictions have been catching up. Plus the rules are purposive and aim to change the way things have been done. If compliance and even ethics in the capital markets were ever instinctual, rather than matters to be taught and studied, that is probably a thing of the past.

The thickness of this volume has grown as well because of the increased number of pages and coverage in it. Nine new contributors (Finland, Indonesia, Italy, the Netherlands, the Philippines, Spain, Switzerland, Tanzania and the UAE) and an overview of EU Directives have been added. Banks are lending less to corporates, which in turn are having to issue more to meet liquidity needs. Moreover, with the low interest rate environment of quantitative easing, central banks are encouraging risk-taking rather than hoarding. For investors, risk-free assets have become very expensive. So we see a growing willingness to get off the traditional highway in search of yield. Investment banks are, as a result, often taking their clients (and their clients' regular outside counsel) to difficult, or at least less well-known, geographies.

Having a pool of country experts and jurisdictional surveys that facilitate comparative law analysis can be very helpful in this instance. That is exactly what this volume aims to provide: a 'virtual' legal network and global road map to help the reader navigate varying, and increasingly difficult, terrain to arrive at right places.

There has been much relevant change in the legal landscape surveyed in the pages that follow. However, what has not changed is our criteria for authors. The invitation to contribute continues to go to 'first in class' capital market specialists from leading law firms. I shall be glad if, as a result, the biographical notes and contact details of the contributing firms prove a useful resource as well.

The International Capital Markets Review is not a novel. Impressed I might be, but I would certainly also be surprised by anyone picking up and reading this volume from cover to cover. What I expect instead, and what is certainly the publisher's intention, is that this work will prove a valuable resource on your shelf. And I hope that you will have plenty of opportunities to take it off the shelf and lots of excuses to draw on the comparative jurisdictional wisdom it offers.

Let me again express my sincere gratitude to our authors for their commitment to the task and their contributions. It remains a privilege to serve as their editor and a source of great pride to keep their company in the pages of this book.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
October 2013

EDITOR'S PREFACE TO THE SECOND EDITION

It was my thought that we should also include in this second edition of *The International Capital Markets Review* my preface to the first edition. Written less than a year ago, it captures relevant background and sets out the rationale for this volume in the series. The contemporary importance of the global capital marketplace (and indeed you must again admire its resilience), the staggering volume of trading and the complexity of the products offered in it, and the increased scrutiny being given to such activity by the courts all continue. And, of course, so does the role of the individual – the difference that an informed practitioner can make in the mix, and the risk that follows from not staying up to date.

However, I was delighted, following the interest generated by our first edition, by the publisher's decision to bring out a second edition so quickly and to expand it. There were several reasons for this. The picture on the regulatory front is much clearer for practitioners than it was a year ago – but no less daunting. According to one recent commentary, in the United States alone, rule-making under the Dodd-Frank report has seen 848 pages of statutory text (which we had before us when the first edition appeared) expand to 8,843 pages of regulation, with only 30 per cent of the required regulation thus far achieved. Incomplete though the picture may look, the timing seems right to take a gulp of what we have got rather than wait for what may be a very long time and perhaps then only to choke on what may be more than any one person can swallow in one go! Regulatory debate and reform in Europe and affecting other key financial centres has been similarly dramatic. Moreover, these are no longer matters of interest to local law practitioners only. Indeed, the extraterritorial reach of the new financial rules in the United States has risen to a global level of attention and has been the stuff of newspaper headlines at the time of writing.

There are also signs that any 'big freeze' on post-crisis capital markets transactional work may be thawing. In the debt markets, the search for yield continues. Equities are seen as a potential form of protection in the face of growing concerns about inflation. Participants are coming off the sidelines. Parties can be found to be taking risks. They are not oblivious to risk. They are taking risks grudgingly. But they are taking them. And derivatives (also covered in this volume) are seen as a relevant tool for managing that risk.

Most importantly, it is a big world, and international capital markets work hugs a bigger chunk of it than do most practice areas. By expanding our coverage in this second edition to include six new jurisdictions, we also, by virtue of three of them, complete our coverage of the important BRIC countries with the addition of reporting from Brazil, Russia and China. Three other important pieces to the international capital markets puzzle – Belgium, the Czech Republic and New Zealand – also fall into place.

The picture now on offer in these pages is therefore more complete. None of the 24 jurisdictions now surveyed has a monopoly on market innovation, the risks associated with it or the attempts to regulate it. In light of this, international practitioners benefit from this access to a comparative view of relevant law and practice. Providing that benefit – offering sophisticated business-focused analysis of key legal issues in the most significant jurisdictions – remains the inspiration for this volume.

As part of the wider regulatory debate, there have been calls to curtail risk-taking and even innovation itself. This wishful thinking seems to miss the point that, if they are not human rights, risk-taking and innovation are hardwired into human nature. More logical would be to keep up, think laterally from the collective experience of others, learn from the attention given to key issues by the courts (and from our mistakes) and 'cherry-pick' best practices wherever these can be identified and demonstrated to be effective.

Once again, I want to thank sincerely and congratulate our authors. They have been selected to contribute to this work based on their professional standing and peer approvals. Their willingness to share with us the benefits of their knowledge and experience is a true professional courtesy. Of course, it is an honour and a privilege to continue to serve as their editor in compiling this edition.

Jeffrey Golden
London School of Economics and Political Science
London
November 2012

EDITOR'S PREFACE TO THE FIRST EDITION

Since the recent financial markets crisis (or crises, depending on your point of view), international capital markets (ICM) law and practice are no longer the esoteric topics that arguably they once were.

It used to be that there was no greater 'show-stopper' to a cocktail party or dinner conversation than to announce oneself to be an ICM lawyer. Nowadays, however, it is not unusual for such conversations to focus – at the initiation of others and in an animated way – on matters such as derivatives or sovereign debt. Indeed, even taxi drivers seem to have a strong view on the way the global capital markets function (or at least on the compensation of investment bankers). ICM lawyers, as a result, can stand tall in more social settings. Their views are thought to be particularly relevant, and so we should not be surprised if they are suddenly seen as the centre of attention – 'holding court', so to speak. This edition is designed to help ICM lawyers speak authoritatively on such occasions.

In part, the interest in what ICM lawyers have to say stems from the fact that the amounts represented by current ICM activities are staggering. The volume of outstanding over-the-counter derivatives contracts alone was last reported by the Bank for International Settlements (BIS) as exceeding $700 trillion. Add to this the fact that the BIS reported combined notional outstandings of more than $180 trillion for derivative financial instruments (futures and options) traded on organised exchanges. Crisis or crises notwithstanding, ICM transactions continue apace: one has to admire the resilience. At the time of writing, it is reported that the 'IPO machine is set to roar back into life', with 11 flotations due in the United States in the space of a single week. As Gandhi said: 'Capital in some form or another will always be needed.'

The current interest in the subject also stems from the fact that our newspapers are full of the stuff too. No longer confined to the back pages of pink-sheet issues, stories from the ICM vie for our attention on the front pages of our most widely read editions. Much attention of late has been given to regulation, and much of the coverage in the pages of this book will also report on relevant regulation and regulatory developments; but regulation is merely 'preventive medicine'. To continue the analogy, the courts are our 'hospitals'. Accordingly, we have also asked our contributors to comment on any lessons to be learned from the courts in their home jurisdictions. Have the judges got it right? Judges who understand finance can, by fleshing out laws and regulations and applying them to

facts perhaps unforeseen, help in the battle to mitigate systemic risk. Judges who do not understand finance – given the increase in financial regulation, the amounts involved, and the considerable reliance on standard contracts and terms (and the need therefore for a uniform reading of these) – may themselves be a source of systemic risk.

ICM lawyers are receiving greater attention because there is no denying that many capital market products that are being offered are complex, and some would argue that the trend is towards increasing complexity. These changing financing practices, combined with technological, regulatory and political changes, account for the considerable challenge that the ICM lawyer faces.

ICM activity by definition shows little respect for national or jurisdictional boundaries. The complete ICM lawyer needs familiarity with comparative law and practice. It would not be surprising if many ICM practitioners felt a measure of insecurity given the pace of change; things are complex and the rules of the game are changing fast – and the transactions can be highly technical. This volume aims to assuage that concern by gathering in one place the insights of leading practitioners on relevant capital market developments in the jurisdictions in which they practise.

The book's scope on capital markets takes in debt and equity, derivatives, high-yield products, structured finance, repackaging and securitisation. There is a particular focus on international capital markets, with coverage of topics of particular relevance to those carrying out cross-border transactions and practising in global financial markets.

Of course, ICM transactions, technical though they may be, do not take place in a purely mechanical fashion – a human element is involved: someone makes the decision to structure and market the product and someone makes the decision to invest. The thought leadership and experience of individuals makes a difference; this is why we selected the leading practitioners from the jurisdictions surveyed in this volume and gave them this platform to share their insights. The collective experience and reputation of our authors is the hallmark of this work.

The International Capital Markets Review is a guide to current practice in the international capital markets in the most significant jurisdictions worldwide, and it attempts to put relevant law and practice into context. It is designed to help practitioners navigate the complexities of foreign or transnational capital markets matters. With all the pressure – both professional and social – to be up to date and knowledgeable about context and to get things right, we think that there is a space to be filled for an analytical review of the key issues faced by ICM lawyers in each of the important capital market jurisdictions, capturing recent developments but putting them in the context of the jurisdiction's legal and regulatory structure and selecting the most important matters for comment. This volume, to which leading capital markets practitioners around the world have made valuable contributions, seeks to fill that space.

We hope that lawyers in private practice, in-house counsel and academics will all find it helpful, and I would be remiss if I did not sincerely thank our talented group of authors for their dedicated efforts and excellent work in compiling this edition.

Jeffrey Golden
London School of Economics and Political Science
London
November 2011

Chapter 27

TANZANIA

Kamanga W Kapinga and Anayaty Tahir[1]

I INTRODUCTION

Capital markets as a primary market of security in Tanzania was established in the early 1990s as a result of the government policy to liberalise Tanzania's financial institutions. Accordingly the Capital Markets and Securities Authority (CMSA) was established under the Capital Markets and Securities Act of 1994[2] for the purpose of 'promoting and facilitating the development of an orderly, fair and efficient capital market and securities industry in Tanzania'.

Alongside the Capital Markets and Securities Act of 1994 (which applies to both Tanzania Mainland and Zanzibar) the Banking and Financial Institution Act of 2006[3] (BFIA) has also been enacted with aim of maintaining the stability, safety and soundness of the financial system.

The provisions of the BFIA apply to all banks and financial institutions, and where there is a conflict between the BFIA and any provision of any law establishing a bank or financial institution, the provisions of the BFIA prevail.

The BFIA also provides that any income earned from investment in two-year treasury bonds is subjected to withholding tax. Yet income on investments in five-year, seven-year and ten-year vehicles are exempted from withholding tax. All applicants exempted from paying withholding tax must provide to the Bank of Tanzania (BOT) tax exemption certificates from the Tanzania Revenue Authority (TRA), which is responsible for the administering of the central government taxes as well as several non-tax revenues and was established by the Act of Parliament No. 11 of 1995.

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1 Kamanga W Kapinga and Anayaty Tahir are associates at Mkono & Co Advocates.

2 The Capital Markets and Securities Act, 1994 (Act No. 5 of 1994 as amended by Act No. 4 of 1997).

3 The Banking and Financial Institution Act of 2006 (Cap. 342).

The Dar es Salaam Stock Exchange (DSE), which is responsible for the trading of shares and bonds, is regulated by the Dar es Salaam Stock Exchange (Foreign Investors) Regulations[4] and the Capital Markets and Securities Act.[5] It was established in 1996 as a secondary market for both equity and debt securities, and its primary aim is to provide a responsive security that will advance and liberalise Tanzania's economic and financial sectors.

As of 12 June 2013, the DSE had 11 listed companies and six cross-listed companies worth approximately US$5 billion. Acquisitions and mergers involving public listed companies are governed by the Capital Markets and Securities (Substantial Acquisitions, Takeovers and Mergers) Regulations 2006 (the Regulations), which came into force in December 2006. The Regulations mainly apply to acquisitions of an interest of between 20 and 75 per cent in public or listed companies and to mergers meeting such thresholds. A specialised committee, the Prospectus Evaluation Committee, is responsible for reviewing applications, pending the creation of a specialised Mergers and Acquisitions Committee. The Regulations contain:

a lengthy and detailed provisions that ensure a transparent and efficient offering system;
b restrictions on dealings before, during and after the offering; and
c shareholder disclosure requirements.

The acquisition of an interest of more than 90 per cent triggers the mandatory takeover and delisting sections of the Regulations. This means that the acquirer must either make a mandatory public takeover offer to all shareholders of the target or disinvest through an offer for sale or by a fresh issue of capital to the public to fall below the threshold.

At the DSE stock listing is open to foreign investors subject to some limitations set out in the Regulations. Within the Regulations foreign investors are defined as a person who or a body corporate that intends to acquire or has acquired securities in a listed company, but are not in the case of an individual, a citizen of Tanzania, and in the case of a body corporate, a body corporate in which more than 50 per cent of its shareholding is held by persons who are not citizens of Tanzania, or a body corporate not incorporated in Tanzania. Foreign investors are subjected to the limits prescribed in the Capital Markets and Securities (Foreign Investors) Regulations[6] in the acquiring of securities of an issuer in respect of which the issuer is making an application for listing or which are already listed at the DSE; provided that prior the acquisitions of such securities at the DSE the foreign investor has appointed a custodian who is an 'authorised central depository system operator'. The custodian is responsible for maintaining the records of all securities of foreign investments as well as implementing duly received instructions of the investor.

The following incentives have been put in force in Tanzania with aim of promoting participation of foreign investors in the capital markets sector:

4 Regulated by the Dar es Salaam Stock Exchange (Foreign Investors) Regulations, 2003.

5 The Capital Markets and Securities Act, 1994 (Act No. 5 of 1994 as amended by Act No. 4 of 1997).

6 Capital Markets and Securities (Foreign Investors) Regulations 2002.

a zero capital gain tax as opposed to 10 per cent for unlisted companies;
b zero stamp duty on transactions executed at the DSE compared to 6 per cent for unlisted companies;
c withholding tax of 5 per cent on dividend income as opposed to 10 per cent for unlisted companies;
d zero withholding tax on interest income from listed bonds whose maturities are three years and above;
e exemption of withholding tax on income accruing to fidelity funds maintained by the DSE for investor protection; and
f income received by Collective Investment Scheme (CIS) investors is tax-exempt.

Foreign investors, however, also face a range of different constraints in the capital market sector, some of which are detailed below:

a foreign investors are excluded from the purchasing of government securities;
b preference to purchase the shares is given to Tanzanian investors in initial public offering listings unless the Tanzanian investors are unable to purchase all the shares offered;
c as provided by the Foreign Exchange (Listed Securities) Regulations[7] payment of shares or corporate bonds acquired by a foreign investor shall be made either in foreign currency transfer received through normal banking channels or by withdrawals from local currency accounts opened by a foreign investor at a licensed bank operating in Tanzania or by debiting the securities investment account maintained by the investor with a licensed bank operating in Tanzania; and
d furthermore, upon acquisition of shares or corporate bonds listed at an approved stock exchange, foreign investors shall not dispose of such shares or corporate bonds for a period of three months following acquisition.

i Local agencies' and the central bank's respective roles

The BOT acts as a banker and as a fiscal agent to the United Republic of Tanzania and the Revolutionary Government of Zanzibar. The BOT issues treasury bonds on behalf of the two governments. The treasury bonds offered have maturities of two years, five years, seven years or ten years; they are issued at a fixed interest rate and quoted at premium or par value.[8]

The CMSA is the industry regulatory and supervisory body on the capital markets, which licenses and regulates investment intermediaries and deals with exchanges with the issuance of and trade in securities. The CMSA has since promulgated a number of rules and regulations including those covering guidelines for the issue of corporate bonds and commercial paper, cross-listing disclosure guidelines, etc.

7 The Foreign Exchange (Listed Securities) Regulations, 2003.

8 African Bond Markets: www.africanbondmarkets.org/countries/east-africa/tanzania/overview/69/.

ii Structure of the courts, including any relevant specialist tribunals; trends reflected in decisions from the courts or other authorities

The High Court of Tanzania, Commercial Division is responsible for cases dealing with capital markets. Section 5(2) of the High Court (Commercial Division) Procedure Rules[9] stipulates that to bring a commercial case in the commercial division the value of the claim shall be at least 1 million shillings in case of proceedings for recovery of possessions of immoveable property and at least 70 million shillings in proceedings where the subject matter is capable of being estimated at a monetary value.

The Court, as provided by Section 23 of the Capital Markets and Securities Act,[10] has the authority, if it appears to the Court that a person has committed an offence or contravened the conditions or restrictions or rules of the stock exchange, or is about to do an act with respect to dealing in securities that, if done, would be such an offence or contravention, the court may within its powers make one of the following orders, but is not limited to these orders:

a an order restricting a person acquiring, disposing of or otherwise dealing with any securities that are specified in the order;

b an order declaring a contract relating to securities to be void or voidable;

c an order directing a person to do or refrain from doing a specified act; and

d in the case of persistent breaches of the Act or conditions or restrictions of a licence, or of the rules or listing rules of stock exchange, an order restraining a person from carrying in securities, acting as an investment adviser or as a dealer's representative or investment representative, or from holding him or herself out as carrying on such business or so acting.

II THE YEAR IN REVIEW

i Cross-border listing

Cross-border listing, where a firm lists its equity shares for trading in a stock exchange located in different country, has gained significance in East Africa over the past few years since the signing of the Treaty for the Establishment of the East African Community (the Treaty). This is because Article 85 (Banking and Capital Market Development) of the Treaty states that the Partner States undertake to implement within the Community a capital market development programme to be determined by the Council and shall create a conducive environment for the movement of capital within the Community.

Furthermore, the Partner States (which as of July 2009 consisted of Tanzania, Kenya, Uganda and Rwanda) were specifically tasked with promoting cooperation among the stock exchanges and capital markets and securities regulators in the EAC and establishing 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. Tanzania has passed the Capital Markets and

9 The High Court (Commercial Division) Procedure Rules, 2012.

10 The Capital Markets and Securities Act, 1994 (Act No. 5 of 1994 as amended by Act No. 4 of 1997).

Securities (Foreign Companies Public Offers Eligibility and Cross Listing Requirements) Regulations 2003 and the Capital Markets and Securities (Foreign Companies Public Offers and Cross Listing Requirements) Amendment Regulations, 2005 (which are read together as one) to govern the cross-listing process in its jurisdiction. At present Tanzania has four cross-listed companies, whose market capitalisation is around US$2.5 billion or more than double the market capitalisation of domestic listed companies.

ii Developments affecting debt and equity offerings

There have been no recent developments affecting debt and equity offerings.

iii Developments affecting derivatives, securitisations and other structured products

There have been no recent developments affecting derivates, securitisations and other structured products. The capital account is not fully liberalised in Tanzania, hence the lack of specific regulations of over-the-counter (OTC) transactions. Such transactions are still regulated by the Law of Contract Act (LOCA), the Foreign Exchange Circular No. 6000/DEM/EX.REG/58 of 1998, the Bankruptcy Act, the Companies Act, the Income Tax Act 2004 (ITA), and the BFIA.

Agreements concerning trading of financial derivates fall within the ambit of and must conform to Tanzanian contract law. According to Section 10 of the LOCA, all agreements are valid contracts if made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object. Contracting parties are said to consent when they agree upon the same thing in the same sense. Consent is deemed to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

Under the LOCA, the consideration or object of an agreement is lawful, unless:

a it is forbidden by law;
b it is of such a nature that if permitted, it would defeat the provisions of any law;
c it is fraudulent;
d it involves or implies injury to the person or property of another; or
e the court regards it as immoral or opposed to public policy.

Tanzanian law generally respects the sanctity of contract and the courts have no general jurisdiction to reform the terms and conditions of a contract merely because they consider them unduly onerous to one party. Parties are generally bound to their agreement, whose terms and conditions are usually upheld, unless they are for an illegal purpose or contrary to public policy.

Banks and financial institutions, as well as other bodies corporate and individuals, may enter into agreements that are governed by English law and give non-exclusive jurisdiction to the courts of England. The High Court in Tanzania will enforce any judgment of the High Court of England or of the Court of Appeal given on appeal from the High Court of England without further examination, if the judgment is final and conclusive as between the parties thereto and if there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges or of a like nature or in respect of a fine or other penalty.

If the Tanzanian counterparty is a banking or financial institution regulated under the BFIA, under Section 24(1) of the BFIA, a licensed bank or financial institution may engage in, directly or through a separately incorporated subsidiary as determined by the bank, subject to any limitation in the licence issued to such bank or financial institution, trading for its own account or for account of customers in (1) money market instruments such as cheques, bills and certificates of deposit; (2) foreign exchange; (3) financial futures and options; (4) exchange and interest-rate instruments; and (5) transferable securities. Under the BFIA, banks and financial institutions are prohibited from acting in an unsound or imprudent manner or in a manner detrimental to the interests of its depositors or contrary to public interest.

iv Cases and dispute settlement

There have been no recent developments in case law involving disputes relating to cross-border financial market activity or trading pursuant to market standard contracts.

v Relevant tax and insolvency law

There have been no recent developments with regard to tax on cross-border transactions. The position remains that, pursuant to Section 82 of the ITA, a Tanzanian resident must withhold income tax if he or she pays to a non-resident a dividend, interest, natural resource payment, rent or royalty, and the payment has a source in Tanzania.

Section 3 of the ITA defines 'interest' to mean a payment for the use of money and includes a payment made or accrued under a debt obligation that is not a repayment of capital and any gain realised by way of a discount, premium, swap payment or similar payment, payments made under a financial lease, transfers between a permanent establishment and its owner and on-compliance interests. In practice payments to be made under a transaction would fall within the meaning of 'interest' and as such will be subject to a 10 per cent withholding tax.

Based on a plain reading of the Companies Act, the BFIA and the Bankruptcy Act, our analysis is that close-out netting – and contractual clauses that provide for it – are enforceable in Tanzania; also in the event of insolvency or bankruptcy such net claim would rank equally with other unsecured unsubordinated claims of the insolvent party. No law in Tanzania contains an express prohibition against close-out netting clauses. Furthermore, Section 36 of the Bankruptcy Act allows for the sum due from one party to another in respect of mutual dealings to be set-off against the sum due from the other party and for no more than the balance to be claimed or paid. That said, set-off (including close-out netting) is applicable for multiple transactions between the parties and an insolvency practitioner does not have the power to 'cherry pick' which trades under any OTC agreement it would enforce and which it would reject.

A claim in an insolvency procedure can be filed in a foreign currency.

vi Role of exchanges

There have been no recent developments with regard to the role of exchanges on cross-border transactions, the position remains that the BOT issues foreign exchange circulars that are intended to guide banks and financial institutions involved in the administration and management of foreign exchange transactions. Although the government of

Tanzania liberalised the exchange control regime in Tanzania, the Foreign Exchange Circular No. 6000/DEM/EX.REG/58 renders certain foreign exchange transactions subject to exchange control restrictions, which restrictions vary depending on the type of transaction in question.

The range of foreign exchange transactions still subject to regulatory restrictions includes outward portfolio investments, foreign lending operations in favour of non-residents, acquisition of real estate, outward direct investment, operation of offshore foreign currency accounts by residents and participation of non-residents in domestic money and capital markets. In such circumstances, an application has to be made to the BOT for approval.

III OUTLOOK AND CONCLUSIONS

Overall, the outlook for the capital markets industry in Tanzania is very positive and there are appealing opportunities for future investors and traders in the sector. In the past six months there have been preparations for a five-year strategic plan for the CMSA 2013–2018 with four key aims, which are as follows:

a to achieve financial self-sustainability and independence;

b to allow the delivery of the CMSA's obligations as defined by law;

c to foster growth of the Tanzanian marketplace, creating employment and wealth through economic multipliers; and

d to provide an implementation roadmap for key regulatory and market developments bringing beneficial and lasting changes to the Tanzanian financial markets.

It is assumed that by achieving the above-mentioned aims, the capital and commodity markets will become more significant engines of economic development in Tanzania. For instance, when one looks at the commodity markets, the government of Tanzania has prioritised the establishment of an agricultural commodity exchange in the country.

The CMSA has been tasked to spearhead the process of establishing the proposed exchange and is doing so in collaboration with the Bank of Tanzania, the Tanzania Warehouse Licensing Board and the Ministry of Agriculture, Food Security and Cooperatives. To date, three studies have been commissioned to contribute to the development of a roadmap for establishing the proposed exchange. Through the accomplishment of the above-mentioned, the markets will remove their dependency on subventions. This will be a critical milestone in the history of the United Republic of Tanzania, meaning development in Tanzania will be further supported by the public and the private sectors.

Appendix 1

ABOUT THE AUTHORS

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Kamanga specialises in telecommunications and information communication technology law. He also regularly advises clients on banking and finance transactions, labour law, mergers and acquisitions. He has wide expertise in advising international and national clients on setting up businesses in Tanzania, legal advisory services to international clients on regulatory compliance specifically in the banking industry, the telecoms industry, the oil and gas industry, and the mining industry.

Kamanga is also licensed to advise small and medium-sized enterprises to list on the Enterprise Growth Market Segment at the Dar Es Salaam Stock Exchange as an authorised dealer representative or a licensed dealing members and as a nominated adviser representative.

His qualifications include: the Securities Industry Certification Course, Capital Markets and Securities Authority of Tanzania (CMSA) 2013; Law School of Tanzania Legal Practical Course 2010–2011; King's College London LLM with specialisation in Regulation and Technology 2008–2009; the University of Warwick LLB Bachelor of Laws (Honours) 2005–2008; and United World College of Southern Africa, Waterford Kamhlaba Mbabane, Swaziland, International Baccalaureate 2003–2004.

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Anayaty is currently pursuing an LLM in the legal practice course at Oxford Brookes University. She is a graduate member of the Chartered Institute of Legal Executives. She obtained a postgraduate diploma in the legal practice course from

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