Construction and development have really taken off in East Africa

Accessing East African Capital

Accessing capital markets in Tanzania and East Africa through cross-listing may not be as difficult as at first thought, assert Nimrod Mkono, Clark Arrington, and Bijal Mehta, Mkono & Co Advocates

Tanzania embarked on a programme of privatisation in the early 1990s as it shifted away from being a quasi-socialist to a more market driven economy. As part of this initiative, efforts were made to develop, broaden and deepen the financial sector. This included providing opportunities for broader local ownership and expanding long term financing alternatives and opportunities through the development of capital markets.

The first step in furthering the development and expansion of capital markets in Tanzania was the creation of an overall regulatory agency, the Capital Markets and Securities Authority (The Securities Authority). The agency was established under the Capital Markets and Securities Act, 1994 (The Securities Act) as an autonomous body "for the purpose of promoting and facilitating the development of an orderly, fair and efficient capital market and security authority in Tanzania". The Securities Authority is the regulatory and supervisory body for the capital markets. It licenses and regulates investment intermediaries and investment professionals, monitors and regulates exchanges and supervises the issuance of and trade in securities. The Securities Authority has since promulgated a number of rules and regulations including those covering guidelines for the issuance of corporate bonds and commercial paper and disclosure guidelines for cross-listing.

A necessary adjunct to the creation of the Securities Authority was the establishment of the Dar es Salaam Stock Exchange (DSE). The DSE was incorporated in September 1996 as a private company limited by guarantee with the purpose of facilitating the implementation of financial sector reforms, encouraging wider local share ownership in all companies and facilitating the raising of medium and long-term capital.

Trading activities at the DSE commenced on April 15, 1998. Currently the DSE has only the Main Investment Market segment which is an amalgam of main investments and fixed income securities. An Entrepreneurship Growth Market and an Alternative Investment Market are in the process of being created.

More than 10 years later, the DSE has 11 domestic companies listed and four foreign cross-listed companies whose total market capitalisation is valued at approximately $3.7bn. In terms of the number of companies listed, the DSE is behind the Nairobi Stock Exchange (NSE) but ahead of the Uganda Securities Exchange (USE) and the Rwandan Capital Markets Advisory Council (CMAC).

The NSE was formed in 1954 and is one of the most active capital markets in Africa with more than 50 listed companies. The USE, which was launched in June 1997 and started trading in January 1998, is operated under the jurisdiction of the Capital Markets Authority, which reports to the Central Bank of Uganda and has 12 listed companies of which five are foreign cross-listed companies. The CMAC was established by a prime-ministerial decree in March 2007 and is comprised of a Board of Directors and a Secretariat. The latter oversees the day to day operation of the Rwanda Over-the-Counter Exchange which at present has seven listed companies.

Cross border listings in East Africa

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

Furthermore the Partner States (which as of July 2009 consisted of Tanzania, Kenya, Uganda and Rwanda) were specifically tasked with promoting co-operation among the stock-exchanges and the capital markets and securities regulators in the EAC. This included establishing within the EAC a mechanism for cross-listing 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 EAC.

The development of cross listing across national stock markets in Tanzania, Kenya, Uganda and Rwanda is a milestone in the EAC's drive for regional integration

Further, the Securities Authority issued the Capital Markets and 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 ("The Regulations") which are read together and govern the cross listing process.

At present, Tanzania has four cross-listed companies (Kenya Airways, East African Breweries, Jubilee Holdings and Kenya Commercial Bank). Their market capitalisation is approximately $2.5bn or more than double the market capitalisation of the domestic listed companies.

The process

The regulations apply to all offers of securities to the Tanzanian public by foreign companies which, subsequent to a public offer, intend to list on the DSE as well as to other foreign companies that intend to apply for cross-listing on the DSE.

Each foreign company applying for cross-listing must establish a place of business in Tanzania and register as a foreign company under the Companies Act, 2002.

A foreign company is then eligible to issue securities to the public in Tanzania subject to the following:

i) Compliance with the provisions of Part XII of The Securities Act, which deals with prospectus requirements, advertisements and compensation;

ii) Listing such securities at a stock exchange in Tanzania subsequent to such public offer; and

iii) Compliance with the First Schedule of The Regulations which requires verification that the laws under which the foreign company is incorporated impose similar requirements as the Companies Act, 2002.

The execution of a Memorandum of Understanding (MOU) between the securities regulator in the jurisdiction where the applicant is listed and the foreign company and the execution of a MOU between the exchange where the applicant's securities are listed or where listing is being sought and the DSE will satisfy the requirements of the First Schedule of the Regulations. However, the First Schedule can also be satisfied if the securities regulator of the country where the company is listed is a signatory to a relevant multilateral MOU of which Tanzania is also a signatory.

An applicant seeking to cross-list in the first tier market of the DSE must be listed in a similar market in other countries where it is listed or cross-listed. Also the company must have minimum issued and fully paid up capital of not less than $700,000 and have net assets of not less than $1.4m.

Other requirements include:

- securing at least 1,000 shareholders of which at least 25 percent must be held by the public; and
- publication of audited financial statements complying with International Accounting Standards for at least five years and which show the company was profitable for at least three of the past five years; and
- approval of an Information Memorandum by the Securities Authority.

Part Two of the Second Schedule of the Regulations prescribes the form and content requirements of the Information Memorandum. The regulations reflect international norms regarding disclosure requirements.

Lastly the securities regulator and the stock exchange of primary listing must each upon notification transmit to the Securities Authority a confidential report on the foreign company regarding the compliance history of the company with the regulations of the stock exchange of primary listing.

Tanzania's commitment

In 2002 the Securities Authority enacted the Guidelines on Corporate Governance Practices by Public Listed Companies in Tanzania (the Governance Guidelines) "with the ultimate objective of realising shareholders long-term value while taking into account the interest of other stakeholders". At the core of the Governance Guidelines is an effort to promote a high standard of self-regulation within public listed companies in Tanzania and achieving an international standard of governance. The provisions highlight practices relating to the board of directors, audit committees, supply and disclosure of information, shareholder participation, etc. Emphasis extends beyond descriptions of accountability within respective roles to principles of operation aimed at fostering efficient communication both within the company and between the company and the Securities Authority. Good corporate governance has become increasingly significant given the multifaceted nature of cross-border listings. Thus, the Partner States are continuing to develop strategies in this area as they work towards attaining a smoother flow of capital in the East African region.

Ongoing requirements

In addition to the annual listing fee of 0.05 percent of the market capitalisation of the listed securities and the holding of annual shareholder meetings, listed companies are required to submit semi-annual financial reports to the DES and also to notify the DSE and the public of any previously undisclosed price sensitive information. There are also on-going corporate governance reports regarding the progress attained in complying with the Governance Guidelines.

Incentives

Tanzania provides numerous incentives for issuers and investors participating in the DSE. They include a reduced corporate income tax rate of 25 percent for three years where 35 percent of the issuer's shares are held by the public as opposed to a 30 percent rate for unlisted companies. Investors of publicly traded companies realise a zero capital gains tax as opposed to a 10 percent tax on shares of unlisted companies. They also receive a five percent withholding tax on dividend income as opposed to 10 percent on dividends from unlisted companies.

The way forward

The development of cross listing across national stock markets in Tanzania, Kenya, Uganda and Rwanda is a milestone in the EAC's drive for regional integration. Despite barriers such as wavering political will, differences in settlement procedures and still relative illiquidity, the EAC's stock markets are braced for continued growth, access and harmonisation. With the emergence of electronic gateways, perhaps a regional stock market is not lingering too far in the future?

To properly navigate and take advantage of the dynamic opportunities offered by the East African capital markets it is advisable to hire a reputable and experienced law firm such as Mkono & Co Advocates with regional offices and formal international affiliations. ■

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