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Going public: changes in capital markets regulations

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Kenya has witnessed significant capital market development and activity over recent years. Recognising the need to encourage a culture of thrift and improve access to finance, particularly as the commercial banks could not offer the long-term credit necessary to support and sustain desirable economic development, both the Capital Markets Authority (CMA) and the Nairobi Stock Exchange (NSE) have moved on to create a robust regulatory environment and a key market for trade in securities.

The resulting vibrant capital markets sector and well-run regulator have seen a number of Kenyan companies turn to capital markets as an alternative, flexible source of capital, raising short-term finance through commercial paper and bonds or long-term capital by selling shares. IPOs, rights issues and bonds have become investment buzzwords and the CMA has progressively rolled out an investor education programme to boost investor confidence.

The NSE has, in conjunction with neighbouring securities exchanges, pursued an agenda for the development of cross-listing to promote simultaneous public issues of securities in the region with a view to attracting regional flows of capital and allowing issuers to tap into a wider capital base.

Listings regulations

The listing of securities on the NSE is regulated by the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations 2002 (the Principal Regulations) which were recently amended by the Capital Markets (Securities) (Public Offers, Listing and Disclosures) (Amendment) Regulations 2008 (the Amendment Regulations).

Information memorandum

A company must obtain the approval of the CMA for any public offer or listing of securities. When securities are offered to the public in Kenya, the Amendment Regulations now require the company to publish an information memorandum (previously a prospectus, although the terms appear to be used interchangeably) by making it available to the public free of charge during the offer period or for such period before listing as prescribed by the CMA. Before publication, the company must obtain the approval of the CMA that the information memorandum complies with the regulations. It must also deliver a copy to the Registrar of Companies for registration.

With respect to IPOs, the information memorandum must include an accountant's report confirming compliance with the prescribed financial disclosures and a legal opinion with respect to: (i) trade licences and consents required to perform the business; (ii) evidence of ownership of land and relevant assets; (iii) agreements pertaining to the proposed issue of securities; (iv) material litigation; (v) conformity with legal requirements of existing capital and any proposed changes thereto; and (vi) other material items with regard to the legal status of the issuer and the proposed issue.

Allotment policy

The Principal Regulations required the allotment of securities to be made on the basis of the allotment policy disclosed in the information memorandum, unless the results of the subscription render such policy impractical, in which case the policy may be amended with CMA approval. The Amendment Regulations have introduced new provisions requiring an issuer, when developing an allocation policy, to ensure that the policy reserves at least 40% of the ordinary shares that are subject to an IPO and subsequent listing for investment by local investors. However, where the portion reserved for local investors is not fully subscribed by local investors, the issuer may, with CMA approval, allocate the remaining shares to foreign investors.

Eligibility, disclosures and introduction

In order to issue securities to the public or list at a securities exchange, a prospective issuer must comply with the detailed eligibility requirements prescribed with respect to the various market segments, namely the Main Investment Market Segment (MIMS), the Alternative Investment Market Segment (AIMS), or the Fixed Income Securities Market Segment (FISMS).

An issuer not intending to list on any market segment must still comply with the eligibility and disclosure requirements prescribed for the AIMS in the case of a share offer, or the FISMS in the case of an offer of debt or other fixed income securities. However, under the Amendment Regulations, one year after the securities cease to be the subject of a public offer, such an issuer may now list those securities by introduction, in which case the form and content of the information memorandum must comply with the newly introduced disclosure requirements for listing by introduction.

Entering capital markets, traditionally a daunting step, affords a viable alternative to raising capital. With the depth of expertise available in all facets of advisory work in Kenya and also considering the CMA's expressed intention to revise its fee structure with a view to encouraging corporate finance, capital markets in Kenya are certainly worthy of consideration.

Financial and corporate

Recommended firms
Tier 1
Kaplan & Stratton
Tier 2
Anjarwalla & Khanna
Daly & Figgis
Hamilton Harrison & Mathews
Walker Kontos
Tier 3
Iseme Kamau & Maema
Tier 4
Muriu Mungai & Company
Oraro & Company

Kenya's capital markets emerged from a state of sluggish decline in June 2008 when Safaricom broke records by launching east Africa's largest stock market flotation. The $800 million deal provided mandates for a consortium of four local firms acting as legal counsel to the issuer.

Law firms have also been mandated by an onslaught of international and domestic companies in a heated struggle to acquire shares. The high-profile listing, in addition to other smaller transactions in the capital markets, are a sign that political turbulence after Kenya's national elections in December 2007 and the global credit crunch have had a limited impact on the market.

In the banking and finance market, EcoBank's plan to buy a 75% stake in East African Building Society is making headlines. "EcoBank's entry into Kenya will spur on competition in the banking sector, which could increase the workload for banking practices," says one market commentator. "We are already seeing a number of Nigerian banks coming to the market."

Emerging markets are also keen to have a stake in Kenya's energy sector. The past year saw a spate of western petroleum companies exiting the country due to increased competition. BP's project was taken over by Shell, Gulf Africa Petroleum Corporation was acquired by Reliance Industries of India, and OiLibya bought out ExxonMobil. At the time of publication, Essar Oil had agreed to buy a 50% stake in Kenya Petroleum Refineries from Chevron Corp, signalling more opportunities for legal practitioners in Kenya's volatile energy market.

Kaplan & Stratton

"We use Kaplan & Stratton because of their range of competencies and their strength in commercial law," says a client of the firm, adding: "I like that fact that they are responsive and have a fast turnaround time." Although the firm - which is a founding member of Lex Africa - is consistently recognised as a market leader, it constantly fights to retain its position at the top of the tree as new players shift the legal market dynamics.

In one standout deal, Richard Harney advised France Télécom on its acquisition of a 51% stake in the incumbent operator Telkom Kenya for $390 million. Harney receives accolades from peers and clients alike. One lawyer says: "Richard Harney is the best financial lawyer; he is in a class of his own." Harney also advised Equity Bank on its sale of 25% ownership at $178 million to American investment group Helios SEB.

Oliver Fowler is another lawyer from Kaplan & Stratton receiving praise from peers and clients. "He was recommended by one of our banking clients. We were pleased and hope to use him in future transactions," says a client of Fowler.

In October 2007, Fowler advised Barclays Bank of Kenya on a $77 million Tier II MTN programme listed on the Nairobi Stock Exchange.

The firm is also active advising Kenya Petroleum Refineries on a joint venture with Kenya Pipeline Company to establish an autogas storage facility.

Other highlighted work includes advising African pay-TV operator Multichoice on its cross-border acquisition of satellite network company Afsat Communications, and acting for French finance development agency AFD on a loan agreement with Kenya Electricity Generating Company for a combined-cycle power plant.

Leading lawyers

Philip Coulson
Oliver Fowler
Richard Harney

Anjarwalla & Khanna

Anjarwalla & Khanna solidified its high standing in the Kenyan legal market by winning a number of high-status M&A deals in the past year. The firm advised Essar Oil in its attempted acquisition of a 50% stake in the Kenya Petroleum Refineries, a mandate which is seen by many as a key transaction.

In other M&A work, Karim Anjarwalla, who is described by one client as an asset to the profession, represented Helios Investment Partners in its acquisition of a 25% stake in Equity Bank. The $175 million deal, in which Kaplan & Stratton acted for the seller, is the biggest private-equity investment in Kenya to date. "Karim is very innovative and has a brilliant mind," says one client. "I am yet to come across a situation where it is not possible for him to find a solution. He is bold and fearless."

A steady inflow of work is also coming into Kenya from India. In addition to to the Essar Oil acquisition, Atiq Anjarwalla acted for Reliance Industries in its takeover of Gapco in September 2007.

In June 2008, the firm advised Kuwaiti company Agility Logistic on its $4.1 million acquisition of Kenyan firm Starfreight Logistics. In the same month, the firm also acted in Shelys Africa's sale of 60% of shares to Aspen Pharmacare Holding.

The firm also has the capacity to deal in international energy projects. In one, Anjarwalla & Khanna acted on behalf of Lundin Petroleum, a Swedish oil company, on its production sharing contract on the exploration and production of oil and gas in northwest Kenya.

On the project finance side, the firm is acting as local counsel on the financing for the construction of an independent power project for Rabai Kenya, and advising on the $600 million Turkana wind power project. "We are satisfied with their work - they give value for money and are able to handle complex international transactions," says a client of the firm.

Leading lawyers

Atiq Anjarwalla
Karim Anjarwalla
Sonal Sejpal

Daly & Figgis

Daly & Figgis, established in 1899, is the oldest legal practice in Kenya. Despite increased competition from new players, the firm has managed to secure a string of notable transactions in the past year.

In October 2007, Hamish Keith and Ashwini Bhandari advised Karuturi Networks on its €50 million takeover of the Sher Agencies. "Hamish Keith is excellent; he knows his subject matter and is always proactive," says a client. "I can always rely on him."

The firm also boasts a reputation in cross-border M&A deals. A team of seven lawyers acted on behalf of Telkom South Africa on its attempted $230 million acquisition of Telkom Kenya in October 2007. In other M&A work, the firm is advising East African Building Society on its sale of a 75% stake to EcoBank.

Says a client of Daly & Figgis: "They are an excellent firm - they made all of their resources available to provide the end product. They have become our firm of preference."

Leading lawyers
Ashwini Bhandari
Hamish Keith

Hamilton Harrison & Mathews

"We were using various firms in Kenya and we have now cut down to using a select few. Hamilton Harrison & Mathews is one of them. They are one of the best firms in Kenya," says a client.

Hamilton Harrison & Mathews, established in 1902, is one of the oldest and largest law firms in Kenya. In the past year the firm has won mandates from multinationals including Google, Intel, Renaissance Capital, Unilever and General Electric.

Paras Shah has hit the ground running since he joined Hamilton Harrison & Mathews as a partner in 2002. "I do not think that Paras Shah is a rising star, I see him to be a fully-fledged leading lawyer," says a client of Shah. Another adds: "Paras Shah is a very practical and understanding young lawyer; he knows how to handle clients well."

In December 2007, Standard Bank hired Shah to act as legal advisor in the $110 million financing of the Eastern Africa Submarine Cable System – a system which links to the rest of the world via a high- cable system. Market commentators consider the cable system as a milestone in the development of in the region.

On the capital markets side, Richard Omwela, who heads the firm's commercial and conveyancing group, advised Renaissance Capital on its $4.5 million purchase of a coveted seat on the Nairobi Stock Exchange.

In one standout M&A transaction, Shah is advising Uganda Microfinance on its $27.5 million sale to Equity Bank. Another notable transaction saw the firm advise Google on the establishment of a new east African sister company.

Clients consistently praise the work of the firm. "I love working with the firm - we use them for all our financial and corporate transactions," says one client.

Leading lawyers
Andrew Mugambi
Richard Omvela
Paras Shah

Walker Kontos

Walker Kontos, founded in 1988, has had a steady year participating in M&A and capital markets transactions. The firm is also active in banking, securitisation, project finance and corporate finance. "Walker Kontos Advocates is highly rated in commercial operations," says one client of the firm.

In one highlight deal, Michael Kontos advised on Kenya Commercial Bank's $80 million rights issue. In another deal, Alexandra Kontos, qualified as a lawyer in three jurisdictions, is advising Stanbic Bank Kenya, owned by South Africa's Standard Bank, on its 60% acquisition of Kenya's CFC Bank. The deal is thought to be the largest bank-related merger to date in Kenya.

Deepen Shah became a partner in 2005 and has quickly come under the spotlight for his work in banking and financial transactions. In one highlighted deal, he advised Business Partners International on a $15 million fund for assisting local small to medium-sized enterprises.

The firm also advised Citibank and Standard Bank on a $41 million debenture, and acted for Alliance for a Green Revolution in Africa on the financing of a joint venture between the Kenyan and Tanzanian governments, the International Fund for Agricultural Development, Equity Bank and the Bank of Tanzania to fund a $51 million agricultural PPP project.

Leading lawyers
Alexandra Kontos
Michael Kontos
Peter Mwangi

Iseme Kamau & Maema

Iseme Kamau & Maema Advocates may be one of the youngest firms in the market but it has secured some significant financial deals. The firm hired three financial and corporate lawyers in 2007, and consistently impresses clients with its work. "They are an extraordinary firm, I am very satisfied by the quality of service they provide," says one.

In one highlighted deal, the firm advised Barclays Bank of Kenya on the financing of a $4 million debenture, which incorporated the use of Islamic banking practices.

Another standout deal saw managing partner James Kamau advise South African law firm Hofmeyr Herbstein & Gihwala (now merged with Cliffe Dekker) on a $640 million private placement for the Pan African Infrastructure Development Fund. The initiative will fund developments in the energy, technology, transport and water sectors in Africa.

In the past year the firm has also represented Coca-Cola (East & Central Africa), the National Oil Corporation of Kenya and Vestergaard Frandsen.

Leading lawyers
James Kamau
William Maema

Muriu Mungai & Company

Muriu Mungai & Company enters the rankings for the first time after receiving a raft of commendations from peers and clients. The firm, established in 1995, is relatively new in the market, but it has managed to build a loyal following from a list of reputable clients.

"They are competing with firms that have been the market for a lot longer," says one client. "I am impressed by the competency of the lawyers and their ability to negotiate."

Njoroge Nani Mungai, a highly praised lawyer, represented the government in the high-profile Safaricom public offering on the Nairobi Stock Exchange. Mungai also advised on the restructuring of holding company Iberafrica Power, and on its share transfer to parent company Unión Fenosa Desarrollo y Acción in Spain for $14 million.

One client was extremely please by Mungai's capabilities: "He is a distinguished lawyer who works hard to meet deadlines, even if it means working throughout the night." In another notable transaction, John Syekei Nyandieka advised Digital Network Consulting on a $200,000 private placement.

Leading lawyers
Njoroge Nani Mungai

Oraro & Company

Oraro & Company is a reputable firm for banking transactions and is recognised by peers as having a significant presence in the market. George Oraro is particularly highly regarded by peers. "George is a knowledgeable senior partner in the firm," says one competitor.

In one standout deal, the firm advised Diamond Trust Bank Kenya on a rights issue. In another, the firm acted on behalf of Cooperative Insurance Company of Kenya on a private placement of shares.

Leading lawyers
George Oraro