

Tanzania

Chamber of commerce:

Tanzania Chamber of Commerce, Industry
& Agriculture
Second Floor, Twiga House
Samora Avenue
PO Box 9713
Dar es Salaam
Tanzania
Tel: +255 22 211 9436
Fax: +255 22 211 9437
Email: info@tccia.com
Web: www.tccia.com

The Capital Markets and Securities (Substantial Acquisitions, Takeovers and Mergers) Regulations 2006

Krista Bates-van Winkelhof and Adam Lovett
FK Law Chambers
Dar es Salaam

The recently published Capital Markets and Securities (Substantial Acquisitions, Takeovers and Mergers) Regulations 2006 grant important new powers to the Capital Markets and Securities Authority (CMSA) to regulate the disposal and acquisition of shares in public and listed companies and to impose additional continuous reporting obligations.

The broad objective of the regulations is to ensure that adequate information relating to certain proposed transactions in public and listed company shares is made available in a timely manner to the market, thereby ensuring a transparent and efficient framework for the regulation of substantial share transactions and the fair treatment of shareholders.

Reporting obligations

With this aim, the regulations introduce an obligation to report certain shareholdings to the market once thresholds are met for the acquisition of shares or voting rights in a public or listed company, coupled with a continuous disclosure of substantial shareholdings on an annual basis.

Of perhaps greater interest to market participants is the introduction of a regime regulating the making of offers for public or listed companies.

Making an offer

Any person wishing to make an offer for a public or listed company (target) must comply with the regulations. Furthermore, a person will be required to make a mandatory bid for a target in the event that such person: (a)

acquires shares resulting in a holding of 20% or more of the shares in the target company; (b) (together with persons acting in concert with him) increases an existing shareholding of between 20% and 25% by more than 5% in any 12-month period; or (c) (together with persons acting in concert with him) seeks to effect a takeover or acquisition of control of a target.

Interestingly, the definition of takeover includes an offer to acquire shares of a subsidiary of a target where that subsidiary contributes more than 50% of the consolidated earnings of the target.

Approach and announcement

The party wishing to acquire the shares (offeror) must notify the board of the target before the offer is put to the public. Having received the offer, the board of the target is required to retain a financial adviser to advise the board on the merits of the offer.

Once an offer has been received by the board of the target (or if the board of the target has reason to believe that an offer is imminent), the board is prohibited from taking any action that could frustrate the offer or deny the shareholders the opportunity to decide on its merits.

An announcement of an offer will be required in certain circumstances including, among others: (a) where a firm intention to make an offer is notified to the board of the target; (b) on the trigger of a mandatory bid; (c) where following an approach to the target there is rumour and speculation or undue movement in the price or volume of trading in the target's shares; or (d) when negotiations or discussions are to be extended to include more than a very restricted number of people.

Documentation

The offeror is required to prepare a formal offer document containing basic summary details as set out in the regulations and submit

it to the CMSA for their approval before sending it to the target's shareholders. Within 14 days of receipt of the offer document, the board of the target must send to its shareholders a circular setting out, among other things, the views of both the target's board and the board's financial adviser on the terms of the offer.

Regulation of offer and share dealings

The regulations contain detailed provisions for calculating the minimum offer price, how competing bids must be dealt with, and the circumstances in which an offeror may revise its bid. The regulations also place restrictions on dealing in the target's shares, both before a bid and following a lapsed or withdrawn bid.

Enforcement

The CMSA has extensive powers under the regulations to ensure that the objectives of the regulations are met. It may impose fines for a failure to provide information required to be furnished under the regulations or a failure to comply with any order given by the CMSA. In addition, where a person willfully contravenes the disclosure requirements of the regulations, the CMSA has the power to disqualify the individual from managing the company or operating in the securities market, order that the individual make good any damage caused by the failure to disclose, suspend the voting rights of the undeclared securities or cancel the transaction and prevent registration of the securities.

In the event that the CMSA considers that there is a risk that an uninformed market for shares in either the offeror or the target could develop before the public announcement, the CMSA has the discretion to suspend trading in the affected shares pending publication of the announcement.

The regulations represent an important development in the regulation of listed securities in Tanzania and demonstrate a growing

awareness on the part of the regulatory authorities of the increasing sophistication of the market and the need to control market manipulation.

Financial and corporate

Recommended firms	
Tier 1	Mkono & Co
Tier 2	FK Law Chambers Ishengoma Karume Masha & Magai Rex Attorneys Ringo & Associates
Tier 3	Abenry & Company

Tanzania's politics and economy experienced a succession of mishaps last year. In February 2008, the country's prime minister resigned after being implicated in an energy deal scandal. Resignations were also seen from the Minister for Energy and Minerals, the Minister for East African Cooperation and the Director-General of the Prevention of Corruption Bureau. and appointed a new prime minister, Mizengo Pinda.

Market commentators noted a significant slowdown in capitals markets activity during this period. But despite the downturn, Tanzania boasts a vibrant microfinance sector. Law firms are particularly keen to advise on National Microfinance Bank's \$54 million IPO, with shares in the bank expected to list in late 2008.

In the telecoms market, Tanzania is seeing significant investment from the Gulf region. Etisalat, the third-largest Gulf telecoms firm, bought an additional 17% of the smallest mobile phone operator in Tanzania Zantel. In another highlight, Celtel Tanzania secured a \$270 million syndicated loan to finance an expansion in network coverage.

Firms are also preparing to take on mandates as mobile phone money transfer services are launched by Zantel and Vodacom. In addition, foreign investors are keen to tap into the country's vast energy resources.

Mkono & Co

Mkono & Co came under the spotlight this year following a report by Tanzania's Controller and Auditor General that the firm had been overpaid by the Bank of Tanzania, which has since launched an investigation into the fees paid to the firm. But clients are

undeterred. Says one: "We certainly monitored the event but we continue to instruct them because of the quality of their work."

Market commentators note that a number of junior lawyers left the firm between January and March 2008. But despite a turbulent year, clients remain convinced that Mkono & Co is still the most successful firm operating in the Tanzanian legal market. "A big firm suffers these kind of losses - there are also new lawyers who have joined the firm," says one client.

The firm has also won some of the most desirable deals in the Tanzanian legal market over the last 12 months. In one standout deal, Wilbert Kapinga and Steven De Backer advised the China Development Bank on a \$148 million term loan to finance the purchase of telecoms equipment. Kapinga and De Backer are also advising Istithmar Real Estate, part of the Dubai World Group, on a hotel development project on Zanzibar. "Wilbert Kapinga is a very good lawyer," says a client. "He is calm, clever and good with clients; they like his manner. He manages his staff well."

De Backer is also highly respected by clients. Says one: "Steven De Backer has benefited from his time at Freshfields - he is a commercially-minded young lawyer. He has internationalised the firm by opening an office in Burundi."

Mkono & Co is well recognised in the international market due to its exposure on cross-border deals. In one highlight deal, Mkono represented Swedish investment firm Swedfund International in its acquisition of shares in Mauritian holding company Raffia Holdings and its subsidiaries in Tanzania, Kenya, Mozambique, South Africa and Swaziland.

The firm is also capitalising on Tanzania's flourishing energy sector. In February 2008, De Backer advised Ophir Energy on an oil exploration project in Tanzania and on raising international capital through a private placement.

The firm may have faced a difficult year but it retains a dominant market position. Clients continue to applaud its work: "There are lots of things that are said in the newspaper. But the first thing to bear in mind is the firm's expertise," says one. "They have a competitive edge and a close association with international law firms."

Leading lawyers

Steven De Backer
Wilbert Kapinga
Nimrod Mkono

FK Law Chambers

"Through its association with Shadbolt & Co, FK Law is able to offer legal work of London quality, with staff trained at major London firms, in a Tanzanian east African environment," says one client of FK Law Chambers, which has had an excellent year and receives positive reviews from both peers and clients. The firm is fiercely battling to enter the top tier of the rankings, although market commentators note that despite acting on a number of deals, the practice would benefit from an increased capacity to execute deals.

Former Linklaters lawyer Krista Bates-van Winkelhof has played a pivotal role in the success of the firm. In one high-profile transaction, Bates-van Winkelhof advised Standard Bank on its intended merger with CFC Bank.

Another notable deal saw the team advise electricity generating company Songas on a \$100 million loan note agreement. "I have been working with Krista. She is good at taking the initiative and driving things forward," says a client of Bates-van Winkelhof. "She has the ability to see the big picture and advises on strategic issues, not just law."

In January 2008, Gateway Communications also sought Bates-van Winkelhof's expertise in its establishment of GTV Tanzania - part of Gateway's new pan-African service. On the project finance side, the firm acted for PME Infrastructure on its investment in telecoms company Dovetel.

The firm's success shows no sign of slowing down. "We engaged Krista for a complex restructuring transaction, particularly for Tanzania, and she managed and coordinated the project extremely well on our behalf. Peter Gray was engaged to turn around some project finance drafting that was needed urgently," says a client of the firm.

Leading lawyers

Krista Bates-van Winkelhof
Florens Luoga
Kibuta Ongwamuhana

Ishengoma Karume Masha & Magai Advocates

Ishengoma Karume Masha & Magai Advocates (IMMA) consolidates its position in the rankings, after acting on some notable transactions over the last 12 months. Sadock Magai is particularly singled out for praise by clients: "Magai is a bright, well-trained, sophisticated lawyer," says one.

Sadock Magai led a team which advised a \$300 million syndicate of banks on a loan agreement to with a Tanzanian power company. IMMA is also receiving a healthy flow of mandates from the government. In one stand-out deal, the firm advised the government on

the 25% privatisation of National Microfinance Bank.

On the banking side, Protase Ishengoma advised a UAE company on the preparation of securities for a \$20 million credit facility issued by Standard Bank to an agricultural commodities company based in Dubai. In another banking deal, the firm advised a syndicate of banks on recovery measures against a guarantee issued by the Bank of Tanzania in a deal worth \$100 million.

“Seventy percent of our work is given to IMMMA,” says a client. “We are particularly happy with Protase [Ishengoma]’s ability to negotiate - he was one of the first lawyers in Tanzania to establish a law firm.”

Leading lawyers

Protase Ishengoma
Sadock Magai

Rex Attorneys

“Rex Attorneys is one of the best premier law firms in the market,” says a client of the firm, which has a particularly strong reputation for representing small to medium-sized enterprises.

The practice underwent a restructuring over the past year, seeing George Mpeli Kilindu and Christopher Giattas promoted to the firm’s partnership. In one notable transaction Hawa Sinare and Christopher Giattas advised the Financial Sector Deepening Trust on trusteeship services and also advised in various areas of the microfinance sector in Tanzania.

The Millennium Challenge Corporation sought the firm’s advice on a \$700 million grant issued to the Tanzanian government. In the telecoms field, the firm acted for a syndication of lenders on a \$270 million facility to mobile phone operator Celtel Tanzania.

Charles Rwechungura received extensive praise this year from peers and clients. “He is the heartbeat of Rex Attorneys,” says a client of Rwechungura. “He stays calm and keeps his cool. I worked on one high-profile deal with him that went well. There was a lot of understanding on his side.”

Leading lawyers

Charles Rwechungura
Hawa Sinare

Ringo & Associates

Ringo & Associates had a promising year, receiving mandates on a number of high-profile corporate transactions. As a member of the Africa Legal Network, the firm has formed associations with other prominent law firms

in east Africa and is often mandated on cross-border deals.

Mustafa Tharoo is an esteemed lawyer who is highly regarded for his services in the Tanzanian legal market. “If you take Mustafa away from Ringo & Associates the firm will collapse,” says a client. Even competitors are keen to work with Tharoo. “Mustafa is an excellent lawyer - I have been trying to pinch him for years,” says one rival lawyer. “He is a pragmatic lawyer who is well-recognised in the market.”

In August 2007, Mustafa Tharoo advised Indian oil company Reliance Industries on its acquisition of Gapco Group, a regional oil marketing company. Tharoo is also advising Rift Valley Holdings in acquisition of the entire issued share capital of Kibena Tea, in a deal worth more than \$5 million.

In another highlight, the firm advised Celtel Tanzania on a \$270 million syndicated loan facility, which involved the review and negotiation of the syndicated loan agreement and related security documentation.

Leading lawyers

Mustafa Tharoo

Other notable firms

Abenry & Company had a steady year acting on a string of notable transactions. In one highlight deal, the firm advised on the privatisation of 25% of National Microfinance Bank. “They are very good lawyers,” says a client. “Lucy [Sondo, one of the firm’s most prominent lawyers] is a wonderful person; she has her feet on the ground. She knows how to advise clients on what is possible.”