

# Tanzania

## Chamber of commerce:

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## Nimrod Mkono, Wilbert Kapinga and Aisha Naiga Mkono & Co Dar es Salaam

The law governing securities in Tanzania is the Capital Markets and Securities Act 1994 (Act 5 of 1994) (the CMS Act).

Section 6 of the CMS Act establishes the Capital Markets and Securities Authority. The Authority is a body corporate with perpetual succession. It has a common seal and is capable of suing and being sued, taking, purchasing or acquiring, holding, charging and disposing of both moveable and immovable property, borrowing and lending money, and entering into contracts.

Section 10 of the CMS Act enables the Authority to advise the minister on all matters relating to the securities industry, to maintain surveillance over securities to ensure orderly and equitable dealings in securities; to register, licence, authorize or regulate stock exchanges, investment advisers, securities dealers, and their agents; and to control and supervise the activities of these persons to maintain proper standards of conduct and professionalism in the securities business.

The Authority is also empowered to monitor the solvency of licence holders and to take measures to protect the interests of customers where the solvency of any the licence holder is in doubt. It is also responsible for protecting the integrity of the securities market against any abuse arising from the practice of insider trading and for reviewing, approving and regulating takeovers, mergers, acquisitions and all forms of business combinations in accordance with existing rules of practice.

Section 31 of the CMS Act gives the Authority the power to prohibit trading in particular securities. Section 32 further provides that no person can deal in securities or hold themselves out as carrying on such business unless they hold a dealer's licence issued by the Authority.

Trading in securities is regulated by Part IX of the CMS Act. The CMS Act provides that any person who carries out false trading commits an offence. False trading offences are where a person creates, or causes to be created, a false or misleading appearance of active trading in any securities on the Tanzania stock exchange, or a false or misleading representation with respect to the market for, or the price of, any such securities.

The CMS Act also prohibits making false or misleading

statements that are likely to induce the sale or purchase of securities by other persons or that are likely to raise, lower, maintain, or stabilize the market price of securities. Fraudulent inducement of a person into dealing in securities, dissemination of information about illegal transactions and the use of manipulative and deceptive devices are prohibited offences in Tanzania.

The CMS Act also prohibits dealings by insiders. It provides that a person who is, or has at any time in the six months before a specific deal, been connected with a body corporate must not deal in any securities of that body corporate if by reason of their association they are in possession of information that is not generally available but, if it were, might materially affect the price of those securities.

## Mergers and acquisitions

The Fair Competition Act 2003 (Act 8 of 2003) (the M&A Act) governs mergers and acquisitions in Tanzania. The M&A Act, which came into force on May 12 2004, promotes and protects effective competition in trade and commerce, and protects consumers from unfair and misleading market conduct. The ultimate goal of the M&A Act is to increase efficiency in the production, distribution and supply of goods and services.

Under Section 11 of the M&A Act, mergers and acquisitions are prohibited if they create or strengthen a position of dominance in a market. A person intending to effect a merger must notify the Fair Competition Commission (the FCC). The FCC then determines, within 14 days of the notification, whether the proposed merger should be examined. If the FCC chooses to examine the proposed merger, the merger will be prohibited for 90 days, or for such further time as the FCC determines, unless the FCC determines that the merger should not be prohibited.

Any person who contravenes the provisions of Section 11 of the M&A Act commits an offence and, if convicted, is liable to pay a fine of at least 5% of its annual turnover and no more than 10% of its annual turnover.

A party to a proposed merger may apply to the FCC for an exemption for a merger. The FCC can grant the exemption either unconditionally or subject to conditions. The exemption is granted where the FCC is satisfied that:

- the merger is likely to create, or strengthen, a position of

dominance in a market and it is likely to result in benefits to the public, for example by contributing efficiency in production and allocation of resources, promoting technical and economic progress, protecting the environment, and those benefits to the public outweigh any detriments caused by the merger; and

- the merger is likely to create, or strengthen, a position of dominance in a market and, in the case of a merger resulting in the change of control of a business, the business faces actual or imminent financial failure, and the merger offers the least anti-competitive alternative use of the assets of the business.

Any person who disagrees with the decision of the FCC may appeal to the Fair Competition Tribunal. The decisions of the Fair Competition Tribunal on appeals from the FCC are final.

## Corporate and commercial

### Recommended firms

Tier 1

**Maajar Rwechungura Kameja & Nguluma**

**Mkono & Co**

Tier 2

**Epitome Advocates**

**FK Law Chambers**

**Ishengoma Masha Mujulizi & Magai Advocates**

**Kalunga & Company**

### Maajar Rwechungura Kameja & Nguluma

Some market observers regard Maajar Rwechungura Kameja & Nguluma as the leader of the Tanzanian corporate finance law market. The firm advises on a broad range of corporate and commercial services, including capital markets, privatizations, banking and corporate law. As well as this, the firm offers guidance on tax, employment advice and intellectual property.

Maajar's expertise in capital markets work is formidable – the firm has worked on the initial public offerings of two-thirds of firms listed on the Dar es Salaam stock exchange. From among the team, name partner Charles Rwechungura is an excellent practitioner, and is cited by commentators as a leading authority on work connected with mines. Fellow name partner Mwanaidi Maajar is also respected as a leading lawyer.

#### Leading lawyers

Mwanaidi Maajar  
Charles Rwechungura

#### Key contact partners

Mwanaidi Maajar  
Charles Rwechungura

### Mkono & Co

Nimrod Mkono is the head of the corporate and commercial department at this highly regarded practice. Clients value the

firm's "excellent network of correspondents" in cities around Tanzania, and draw benefit from a host of lawyers who have a reputation for being "multi-specialists." From this strong network of respected individuals, Wilbert Kapinga is considered a leading practitioner, and is especially admired for his litigation work. The firm without doubt also reaps the benefits of its association with UK firm Denton Wilde Sapte.

The firm has recently acquired new personnel – three associates have joined the firm since February 2004, Abdallah Mwinyi (formerly in-house counsel at BP Tanzania), Bart Wilms (who joined the firm from Freshfields Bruckhaus Deringer's Brussels office) and Tara Blackham. These new arrivals have brought the count of lawyers to eight partners and 14 associates; one associate is UK-qualified.

Recent deals have included advising Tanzania's Presidential Parastatal Reform Commission on the privatization of the National Microfinance Bank, and acting for a consortium on the \$10 million sale of shares in International House Property. The firm has also advised banks, including the Bank of Tanzania, which came to Mkono & Co for advice in relation to the privatization of the People's Bank of Zanzibar. The team advising on the deal included Nimrod Mkono, Wilbert Kapinga, Steven De Backer and Lucy Sondo.

Another client was Loita Capital Partners International, which Mkono advised on its \$15 million fixed-rate bond issue and listing on the Dar es Salaam Stock Exchange, arranged by the East African Development Bank. Mkono & Co also advised Stanbic Bank Tanzania when it sought advice in relation to a syndicated facility for the Kagera sugar project. Mkono & Co's advice on this \$60 million refinancing project involved reviewing the term sheet, drafting and registering the finance and security documents, and advising on syndications.

#### Leading lawyers

Wilbert Kapinga  
Nimrod Mkono

#### Key contact partners

Steven De Backer  
Wilbert Kapinga  
Nimrod Mkono

### Epitome Advocates

Epitome Advocates, formerly known as Sinare Shiyo & Mwandambo Advocates, is a well-regarded firm with a number of talented practitioners, not least Hawa Sinare, a lawyer with a solid reputation among Tanzania's corporate law community.

Epitome has recently advised the Tanzanian government on a number of deals, including the sale of the Tanzania Harbours Authority and the Dar es Salaam Water Supply and Sewerage Authority. As well as this, Epitome has advised on various initial public offerings on the Tanzanian stock exchange, and provided advice to the government on labour legislation and domestic financing joint venture projects.

**Leading lawyer**

Hawa Sinare

**Key contact partner**

Hawa Sinare

**FK Law Chambers**

FK Law Chambers is a strong player in the tax and corporate finance market. Kibuta Ongwamuhana is the firm's recommended managing partner, who heads the firm's tax drive. Florens Luoga is another recommended individual at the firm, and is a corporate and tax partner with experience of litigation both in the High Court and Court of Appeal.

**Leading lawyers**

Florens Luoga

Kibuta Ongwamuhana

**Key contact partners**

Florens Luoga

Kibuta Ongwamuhana

**Ishengoma Masha Mujulizi & Magai Advocates**

Lau Masha is the head of the corporate and commercial department at Ishengoma Masha Mujulizi & Magai Advocates (IMMA). Masha is considered a leading lawyer in Tanzania, as is senior partner Protase Ishengoma. The firm has recently seen the arrival of Joyce Masalle, who joined IMMA as an associate, and her arrival brings the count of lawyers to three partners and four associates.

Recent clients have included Citibank, which the firm advised throughout the liquidation of Tri-Telecommunications, a deal valued at \$18.7 million. The IMMA lawyers involved in the deal included Aloysius Mujulizi, Sadock Magai, Zephrine Galeba and Joseph Nuwamanya.

Vodacom Tanzania turned to the firm for advice in relation to the determination of inter-connection, and Barclays Bank came to IMMA for advice on the Gapco refinancing project. Lastly, at the time of writing, the firm was advising CRDB Bank in connection with the recovery and refinancing of the Agoa projects in Tanzania.

**Key contact partners**

Protase Ishengoma

Sadock Magai

Lau Masha

**Leading lawyers**

Protase Ishengoma

Lau Masha