

Tanzania

Chamber of commerce:

Tanzania Chamber of Commerce, Industry and Agriculture

2199/6 Samora Avenue

PO Box 9713

Dar Es Salaam

Tanzania

Tel: +255 022 211 9436

Fax: +255 022 211 9437

Email: tccia.hq@cats-net.com

Website: www.tccia.co.tz



Corporate finance legislation in Tanzania

Wilbert Kapinga
Mkono & Co
Dar es Salaam

Securities market

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

Section 6 of the Act establishes the Capital Markets and Securities Authority (the 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 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 the aforementioned persons with a view to maintaining 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 such 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 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 Act. The 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 Tanzanian stock exchange, or a false or misleading representation with respect to the market for, or the price of, any such securities.

The Act also prohibits the making of 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 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 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 his association he is 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 Trade Practices Act (the M&A Act) governs mergers and acquisitions in Tanzania. The M&A Act was enacted to encourage competition by prohibiting restrictive trade practices and regulating monopolies.

Under Section 35 of the M&A Act, mergers and acquisitions require the approval of the minister for commerce (the minister). Under the M&A Act, any person who participates in a merger between two or more independent enterprises without ministerial consent commits an offence and, if convicted, is liable to pay a fine not exceeding Tsh2 million (\$1,900) or be imprisoned for a term not exceeding 12 months, or both.

Any merger carried out without the Minister's authorization is of no effect and the obligations imposed on the participating parties by any agreement in respect of such a merger are not legally enforceable.

Any person intending to effect a merger must apply to the commissioner for trade practices (the commissioner) for an authorization order. The commissioner will then investigate such application and will formulate a recommendation to the minister. In evaluating the application, the commissioner will have due regard as to whether the merger is advantageous or disadvantageous to the country, to the extent that the parties produce goods and services that will be traded internationally, or to the extent that it reduces competition in the domestic market.

The minister may then make an order concerning the authorization application, taking into consideration the commissioner's recommendation. Any person who disagrees with the ministerial order may appeal to the Trade Practices Tribunal.

Changes to corporate finance legislation

Certain aspects of corporate finance law were recently amended.

Among other things, the amendments established a Fair Competition Commission (the FCC). The FCC may, upon application of a party to a merger, grant an exemption for that merger, either unconditionally, or subject to such conditions as the FCC sees fit.

The FCC also has the power to revoke or vary an exemption at any time during the period of the exemption, if it is satisfied that circumstances have materially changed since the exemption was granted, or if the exemption was granted wholly or partly on the basis of false, misleading or incomplete information.

Corporate and commercial

Recommended firms

Maajar Rwechungura Kameja & Nguluma

Mkono & Co

Epitome Advocates

FK Law Chambers

Ishengoma Masha Mujulizi & Magai Advocates

Kalunga & Company

Maajar Rwechungura Kameja & Nguluma

Maajar Rwechungura Kameja & Nguluma is considered by some in the legal market to be “the number one firm in Tanzania”. Within corporate finance it specializes in capital markets, privatization, banking, and corporate law, though it is also highly recommended for its tax, intellectual property and employment advice.

Charles Rwechungura is an “undoubted leader” among the country's lawyers and is particularly highlighted for his “excellent mining knowledge”. Mwanaidi Maajar is also a leading lawyer at the firm, credited with strong mining law advice, but also considered one of the best for corporate and banking law.

The firm's capital markets expertise is illustrated by its involvement with two-thirds of the initial public offerings by companies listed on the Dar es Salaam stock exchange. Among its clients are development banks such as the International Finance Corporation and East African Development Bank, and private banks such as The Bank of New York and Citibank Tanzania.

Key contact partners

Mwanaidi Maajar
Charles Rwechungura

Leading lawyers

Mwanaidi Maajar
Charles Rwechungura

Mkono & Co

Associated with UK firm Denton Wilde Sapte, Mkono & Co is the traditional market leader for corporate legal advice in Tanzania. Competitors allege that the firm has suffered in recent years with Nimrod Mkono's move towards politics – he was elected as a member of parliament last year. Also, some of its senior counsel have unfortunately passed away in recent years. But the firm has been boosted by the hire of Steven de Backer from the Brussels office of UK firm Freshfields Bruckhaus Deringer. De Backer specializes in corporate law and capital markets transactions as well as

telecommunications and IT law. Mkono & Co is also fortunate to have leading lawyer Wilbert Kapinga waiting in the wings, who is perceived by many in the market to now be the chief partner at the firm.

The firm counts Barclays Bank, Eurafrikan Bank, Stanbic Bank and Standard Chartered Bank among its clients, and has been involved with several privatizations in Tanzania including the National Bank of Commerce, the Tanzania Telecommunications Company, the Tanzania Portland Cement Company and the Southern Paper Mill.

Key contact partners

Wilbert Kapinga
Nimrod Mkono

Leading lawyers

Wilbert Kapinga
Nimrod Mkono

Epitome Advocates

The law firm Sinare Shiyu & Mwandambo Advocates changed its name to Epitome Advocates last year after the departure of partner Cecilia Shiyu. Luckily for the firm, it has another leading lawyer in managing partner Hawa Sinare, who is “one of the few really talented corporate lawyers in Tanzania”. In total there are four partners – two junior and two senior – four associates and one counsel at the firm.

Last year the firm worked on the government’s divestiture of Tanzania Harbours Authority and the Dar es Salaam Water Supply and Sewerage Authority, was involved in the review of the Loan Advances Realization Trust and acted on the privatizations of the Mbeya Cement Company, Tanzania Hotels Investment and Tembo Chipboard. It also worked on two of the three initial public offerings to date on the Tanzanian stock exchange, and advised the government on labour legislation and financing joint-venture projects in Tanzania.

More recently, Epitome has worked on a divestiture leading to a reorganized port authority in Tanzania for the Rotterdam Maritime Group, advised Proparco on a project finance deal for Tanzania Tea Packers and is, at the time of writing, working on a project in the floriculture sector for Stanbic Bank Tanzania.

Key contact partners

Lugano Mwandambo
Hawa Sinare

Leading lawyer

Hawa Sinare

FK Law Chambers

FK Law Chambers receives its place as a debutante in the 2005 edition of the *IFLR1000* rankings on the back of its

strong performance in tax and corporate finance work over the last couple of years. Kibuta Ongwamuhana heads the tax side of the firm, which is “very strong”. The highly recommended Ongwamuhana is also the firm’s managing partner.

The corporate finance practice is “a strong partnership with well-qualified people,” according to its competitors, and is also described as a “well-run establishment”. Florens Luoga, who is considered to be the other leading lawyer at the firm, is a corporate and tax partner with much experience of litigation work in the High Court and the Court of Appeal.

The firm has a productive alliance with UK firm Shadbolt & Co, a young firm – founded in 1991 – that has one of the largest dedicated construction and engineering practices in the UK.

Key contact partners

Florens Luoga
Dan Mapigano
Kibuta Ongwamuhana

Leading lawyers

Florens Luoga
Kibuta Ongwamuhana

Ishengoma Masha Mujulizi & Magai Advocates

Ishengoma Masha Mujulizi & Magai Advocates is highly rated by its competitors. The firm is variously described as “coming up very strongly,” “on its way up” and, shifting tenses, “has come up well”. Name partner Lao Masha is similarly praised as coming, or having come, up well. She is seen as a leading lawyer alongside senior partner Protase Ishengoma. They are supported by four other partners and 10 associates in the firm’s Dar es Salaam office.

The firm was only established in 1997 but has grown aggressively since and is now one of the country’s big players in corporate and financial law. It also has smaller practices focusing on mining and natural resources law.

Ishengoma advises the government’s Parastatal Sector Reform Commission on privatization issues in Tanzania, and banking and finance clients include Citibank Tanzania, the National Bank of Commerce, Kenya Commercial Bank Tanzania, Kahama Mining and African Gem Resources.

Key contact partners

Protase Ishengoma
Aloysius Mujulizi

Leading lawyers

Protase Ishengoma
Lao Masha