

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

No. 11

28th May, 2010

to the Gazette of the United Republic of Tanzania No. 22 Vol. 91 dated 28th May, 2010

Printed by the Government Printer, Dar es Salaam by Order of Government

THE CAPITAL MARKETS AND SECURITIES (AMENDMENTS)
ACT, 2010

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THE UNITED REPUBLIC OF TANZANIA



No. 10 of 2010

I ASSENT,

JAKAYA MRISHO KIKWETE,
*President*20th May, 2010

An Act to amend the Capital Markets and Securities Act with a view to making better provision for regulating, supervising and coordinating the capital markets activities and to provide for other related matters.

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Capital Markets and Securities (Amendments) Act, 2010 and shall be read as one with the Capital Markets and Securities Act, hereinafter referred to as the "principal Act".

PART II
GENERAL AMENDMENTSAmendment of
section 2

2. The principal Act is amended in section 2, by-

- (a) inserting in their appropriate alphabetical order the following new definitions:
- “enterprise growth market” means a stock market segment that facilitates trading of securities of start up, small and medium size companies;
- “market intermediary” means an individual or corporate body whose activities are provided for under this Act including but not limited to dealers, dealers’ representatives, investment advisors, investment advisors’ representatives, nominated advisors, nominated advisors’ representatives, stock exchanges, collective investment schemes, securities depositories and custodian of securities;
- “nominated advisor’s” means a company licensed by the authority to undertake the responsibility of nurturing and assisting an issuer for a public office of securities, listing of those securities on the enterprise growth market of the stock exchange and advising the issuer listed on the enterprise growth market.
- “nominated advisors representative” means a person in full time employment of a nominated advisor, who performs for such nominated advisor any of the functions of the nominated advisor;
- “Tribunal” means the Capital Markets Tribunal established under this Act.
- (b) deleting the definition of the word “securities” and substituting for it the following new definition:
- ““securities” includes-
- (a) debentures, stock, shares, bonds or notes issued or proposed to be issued by a body corporate and any right, warrant or option in respect thereof;

- (b) bonds or other loan instrument of the Government of Tanzania or of any other country or corporation;
- (c) rights or interests, whether described as units or otherwise under any collective investment scheme;
- (d) any right, warrant, option or futures in respect of any debenture, stocks, shares, bonds, notes or in respect of commodities;
- (e) options and warrants on shares, depository receipts, derivatives and options on derivatives;
- (f) such other rights, interests or instruments as the Authority may, by notice published in the *Gazette* prescribe."

Amendment
of section 10

3. The principal Act is amended in section 10 by repealing it and substituting for it the following:

"Functions and powers of the Authority 10.-(1) Subject to the provisions of this Act, the Authority shall have the duty to-

- (a) regulate the securities market;
- (b) protect the interests of investors in securities;
- (c) promote and facilitate the development of securities market; and
- (d) conduct public education programmes.

(2) Without prejudice to the provisions of subsection (1), the Authority shall have powers to-

- (a) advise the Minister on all matters relating to the securities industry;

- (b) maintain surveillance over securities business;
- (c) ensure orderly, fair and equitable dealings in securities;
- (d) register, authorise, approve and regulate in accordance with this Act, stock exchanges, dealers, dealers' representatives, investment advisors, investment advisors' representatives, collective investment schemes and other market intermediaries;
- (e) regulate and supervise the activities of dealers, dealers' representatives, investments advisors, investment advisors' representatives and other market intermediaries with a view to maintaining proper standards of conduct and professionalism in the securities business;
- (f) formulate principles for the guidance of the industry;
- (g) determine licensing criteria, conditions and the minimum capital requirements for a licensed, approved, registered, authorized or regulated persons

- depending on the size of operations and risk;
- (h) monitor the solvency of licence holders and take measures to protect the interest of customers where the solvency of any such licence holder is in doubt;
 - (i) inquire into the affairs of, or conduct routine or *ad hoc* inspections of the books and records of any licensed, authorized, registered, approved or regulated person and any public company or issuer of the securities;
 - (j) adopt measures to minimize and supervise any conflict of interest that may arise;
 - (k) review, approve and regulate takeovers, mergers, acquisitions and all forms of business combination in accordance with any existing rules of practice authorizing or requiring the Authority to do so;
 - (l) create the necessary environment for the orderly growth and development of the capital market;
 - (m) perform the functions required to be performed by the

- Authority under the Companies Act;
- (n) conduct investigations where the Authority has reasons to believe that:
 - (i) transaction in securities is dealt with in a market in a manner which is detrimental to the investors or securities markets; or
 - (ii) a market intermediary which violated this Act or the directions issued by the Authority;
 - (o) call for information from any person and undertake, inspect, conduct inquiries and audits of any market intermediaries including a stock exchange, collective investment scheme or a public company;
 - (p) call for or furnish any agency such information as may be considered necessary by it for the efficient discharge of its functions;
 - (q) levy fees or other charges on any person for carrying out

- securities business in Tanzania;
- (r) conduct research into all aspects of securities industry;
 - (s) disqualify unfit individuals from being employed anywhere in the securities industry;
 - (t) liaise effectively with the regulators and supervisors of other financial institutions locally and overseas;
 - (u) do anything which is calculated to facilitate the discharge of its functions, or is incidental or conducive to its discharge, under this Act;
 - (v) issue notices, circulars, conditions and guidelines as the Authority considers necessary for effective administration of the provisions of this Act; and
 - (w) undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act."

Amendment of
section 15

4. The principal Act is amended in section 15 by -
- (a) deleting the phrase "is guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for

a term of not less than five years or to both such fine and imprisonment" appearing in paragraph (c) after figure "13";

- (b) inserting below paragraph (c) the following phrase -

"is guilty of an offence and shall be liable on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both."

Amendment of
section 18

5. The principal Act is amended in section 18 by -

- (a) adding new paragraph (c) in subsection (1) as follows:

"(c) for the purpose of exchange of information required under section 147A."

- (b) deleting the word "one" and substituting for it the word "five" appearing in subsection (2).

Amendment of
section 20

6. The principal Act is amended in section 20 by deleting-

- (a) in subsection (6)-

(i) the phrase "of section 18 or subsection (1) or (2)" appearing immediately after figure "(3)"; and

(ii) the words "one hundred thousand" and substituting for them the words "ten million" appearing immediately after the words "five not exceeding";

- (b) in subsection (7)-

(i) the words "subsection (1), (2) or (3) of section 18 or"; and

(ii) the word "one" and substituting for it the word "five" appearing after the word "than".

Amendment of
section 21

7. The principal Act is amended by repealing section 21 and replacing it with the following:

“Investiga-
tion of certain
matters

21.-(1) Where the Authority has reason to suspect that any person is involved in any fraudulent or unfair practice on a securities market it may conduct an investigation as it think proper.

(2) For the purposes of investigation under this section, the Authority may inspect the book, accounts, document and transactions of any person.

(3) The powers of investigation under subsection (2), may be exercised by the Authority itself or by any person appointed in writing by the Authority to exercise those powers.

(4) For the purpose of an investigation under this section, a person shall afford the Authority or any person appointed by the Authority under subsection (3) access to, and shall produce, its or his books, accounts and documents and shall give such documents, information and facilities as may be required to conduct the inspection.

(5) The Authority and any person appointed by the Authority shall for the purposes of investigations have the power to copy or take possession of the books, accounts and other documents of any person.

(6) Any person who, without reasonable excuse, fails to produce any book, account or document or furnish any information or facilities in accordance with subsection (3), is guilty of an offence and shall be liable on conviction to a fine of not less than five million shillings or to

imprisonment for a term of not less than five years or to both.”

Amendment of
section 22

8. The principal Act is amended by repealing section 22 and replacing it with the following provisions:

“Measures to be
taken pending
investigations

22.-(1) The Authority may, for reasons to be recorded in writing, in the interests of investors or the securities market, take any of the following measures, either pending investigations or on completion of investigations-

- (a) suspend the trading of any security on a stock exchange;
- (b) restrain any person from accessing the securities market and prohibit any person associated with a securities market to buy, sell or deal in securities;
- (c) suspend any office-bearer of any stock exchange or self-regulatory organization, market intermediary or any issuer of securities from holding such position;
- (d) impound and retain proceeds of securities with respect to any transaction which is under investigation;
- (e) attach one or more bank accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the

provisions of this Act, or the rules or the regulations made thereunder; and

- (f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigations.

(2) Subject to subsection (1), the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act shall be allowed to be attached.

(3) The Authority may take any of the measures under this section against any person where the Authority has reasonable grounds to believe that such person has been involved in insider trading, market manipulation, fraudulent or unfair practices relating to securities market.

(4) For the purpose of subsection (3), the Authority may either before or after taking any measures referred to in this section afford a person concerned an opportunity to be heard."

Amendment of
section 23

9. The principal Act is amended in section 23 by deleting the word "one" appearing in subsection (7) and substituting for it the word "five".

Amendment of
section 25

10. The principal Act is amended in section 25 by deleting in subsection (2) -

- (i) the phrase "exceeding five hundred thousand shillings appearing after the words "fine not" and

- substituting for it the phrase "less than fifty million and not more than five hundred million shillings;"
- (ii) the word "two" and substituting for it the phrase "ten and not more than fifteen years";

Amendment of
section 28

11. The principal Act is amended in section 28 by deleting in subsection (5)-

- (a) the phrase "or of the Authority" which appears after the word "exchange";
- (b) the phrase "Minister whose decision shall be final" which appears at the end and substituting for it the phrase "Authority and where the decision was made by the Authority the appeal shall lie to the Tribunal".

Amendment of
section 30

12. The principal Act is amended in section 30 by deleting the word "Minister" and substituting for it the word "Tribunal".

Amendment of
section 31

13. The principal Act is amended in section 31 by -

- (a) deleting the word "Minister" appearing in subsection (4) and (5) and substituting for it the word "Tribunal" and
- (b) deleting the word "one" appearing in subsection (6) and substituting for it the word "fifty".

Amendment of
section 32

14. The principal Act is amended by repealing section 32 and replacing it with the following provisions:

"Requirement
for licences

32. A person shall not act in the capacity of-

- (a) a dealer;
- (b) a dealers' representatives;
- (c) an investment advisor;
- (d) an investment advisor's representative; or
- (e) any other market intermediary,

unless he is the holder of a licence or certificate for that purpose granted under this Part of the Act."

- Repealing of sections 33, 34 and 35 **15.** The principal Act is amended by repealing sections 33, 34, and 35.
- Amendment of section 39 **16.** The principal Act is amended in section 39 by deleting -
 (a) the phrase "two hundred thousand" and substituting for it the words "ten million" ;
 (b) the word "two" and substituting for it the word "five" which appears after the words "term of not less than";
- Amendment of section 48 **17.** The principal Act is amended by repealing section 48 and replacing it with the following:
 "Appeal against the decision of the Authority **48.-(1)** Any person who is aggrieved by the decision of the Authority refusing to grant, renew, suspend or revoke a licence may appeal to the Tribunal, within thirty days from the date of receiving such decision."
- Repealing of section 49 **18.** The principal Act is amended by repealing section 49.
- Amendment of section 50 **19.** The principal Act is amended in section 50 by adding immediately after paragraph (d) the following paragraph:
 "(e) any other market intermediary as the Minister may prescribe in the Regulations."
- Amendment of section 52 **20.** The principal Act is amended in section 52(5) by deleting -
 (a) the phrase "one hundred thousand" and substituting for it the words "one million";
 (b) the word "fifty" and substituting for it the words "one hundred" appears in third line.
- Amendment of section 59 **21.** The principal Act is amended in section 59(10) by deleting -
 (a) the words "one hundred thousand" and substituting for it the words "five million".

- (b) the words “fifty thousand” and substituting for it the words “one hundred thousand”.

Amendment
of section 60

22. The principal Act is amended in section 60(3) by deleting the words “five hundred thousand” and substituting for it the words “five million”.

Amendment
of section 61

23. The principal Act is amended in section 61(7) by deleting the words “one hundred thousand” and substituting for it the words “ten million”.

Amendment
of section 63

24. The principal Act is amended in section 63(2), by deleting the words “five hundred thousand” and substituting for it the words “ten million”.

Amendment
of section 64

25. The principal Act is amended in section 64(2) by deleting the words “two million” and substituting for it the words “twenty million”.

Amendment
of section 65

26. The principal Act is amended in section 65(2) by deleting the words “five hundred thousand” and substituting for it the words “two million”.

Amendment
of section 67

27. The principal Act is amended in section 67(2) by deleting the words “two hundred thousand” and substituting for it the words “five million”.

Amendment
of section 69

28. The principal Act is amended in section 69 by -

- (a) deleting the word “one” which appears in subsection (6) and substituting for it the word “five”;
- (b) deleting the word “five” which appears in subsection (7) and substituting for it the word “fifty”.

Amendment
of section 70

29. The principal Act is amended in section 70 by deleting -
(a) the word “two” which appears in the penultimate

paragraph and substituting for it the word "twenty"

(b) the word "five" which appears in subsection (2) and substituting for it the word "fifty"; and

(c) the word "two" which appears in subsection (8) and substituting for it the word "twenty".

Amendment
of section 72

30. The principal Act is amended in section 72(2) by deleting the word "Court" and substituting for it the word "Tribunal".

Amendment
of section 95

31. The principal Act is amended in section 95, by deleting the word "Court" and substituting for it the word "Tribunal".

Amendment
of section 97

32. The principal Act is amended in section 97 by deleting -

(a) the phrase "to a judge of the high Court who" which appears in subsection (3) and substituting for it the phrase "to the Authority which";

(b) the word "Court" which appears in subsection (7) and substituting for it the word "Tribunal".

Amendment
of sections
98, 101 and
102

33. The principal Act is amended in sections 98, 101 and 102, by deleting the word "Court" and substituting for it the word "Tribunal".

Amendment
of section 106

34. The principal Act is amended in section 106 by inserting after the words "in Tanzania" appearing in subsection (1) the words "or outside Tanzania".

Amendment
of section 107

35. The principal Act is amended in section 107 by inserting after the word "in Tanzania" appearing in subsection (1) the words "or outside Tanzania".

Amendment
of section 113

36. The principal Act is amended in section 113 by deleting the words "five" and substituting for it the word "fifty".

Amendment
of section 115

37. The principal Act is amended in section 115 by deleting the word "not exceeding one" and substituting for it the words "not less than fifty million".

Amendment
of section 116

38. The principal Act is amended in section 116, by deleting the words "not exceeding one" which appear in paragraph (b) and substituting for them the words "not less than twenty million".

Amendment
of sections
122, 125, 126
and 127

39. The principal Act is amended in sections 122, 125, 126 and 127, by deleting the words "High Court" or "Court" and substituting for them the word "Tribunal".

Amendment
of section 129

40. The principal Act is amended in section 129 by deleting the words "not exceeding five hundred thousand" and substituting for them the words "not less than fifty million".

Amendment
of section 131

41. The principal Act is amended by repealing section 131 and replacing for it the following-

"Approval
of
prospectus

131.-(1) No person shall issue or cause to be issued an advertisement offering securities unless the issuer has-

- (a) submitted for approval by the Authority and the Authority has approved a prospectus which complies with the requirements of this Part;
- (b) appointed advisors who shall include but not limited to the Lead Advisor, Sponsoring Broker, Independent Reporting Accountant and a Legal Advisor;

(2) In the case of an application for issue of securities in the Enterprise Growth Market, the issuer shall, in addition to advisors referred to in subsection (1)(b), appoint a Nominated Advisor."

Amendment
of section 134

42. The principal Act is amended in section 134 by deleting the words “not exceeding five hundred thousand” which appear in subsection (5) and substituting for them the words “not less than fifty million”.

Amendment
of section 135

43. The principal Act is amended in section 135 by deleting the words “not exceeding three hundred thousand” which appear in subsection (5) and substituting for them the words “five million”.

Amendment
of section
136

44. The principal Act is amended in section 136 by deleting the phrase “not exceeding five hundred thousand” which appear in subsection (6) and substituting for it the words “five million”.

Addition of
new Parts

45. The principal Act is amended by adding a new Part XIII A immediately after Part XIII as follows:

“PART XIII A

ESTABLISHMENT, JURISDICTION AND PROCEDURE FOR APPELLATE TRIBUNAL

“Establish-
ment of the
Tribunal

136A.-(1) There shall be established an independent Tribunal to be known as the Capital Markets Tribunal which shall, subject to this Act, have jurisdiction in respect of matters specified in subsection (2).

(2) The Tribunal shall, in the performance of its functions and the exercise of its powers, have all the powers of the High Court including, but not limited to-

- (a) enforcing the attendance of witness and examining them on oath, affirmation or otherwise;
- (b) compelling the discovery and production of documents; and

- (c) issuing of a commission or requesting for examination of witnesses abroad.

Composition
of the Tribunal

136B. The Tribunal shall consist of-

- (a) a Chairman who shall be a person holding or qualified to hold the office of a Judge of the High Court, appointed by the President after consultation with the Chief Justice; and
- (b) four members who have knowledge and experience on the capital markets one of whom shall be a lawyer, appointed by the Minister.

Eligibility of
members

136C. No person shall be appointed as a member of the Tribunal unless he qualifies for appointment by virtue of his knowledge of, or experience in law, norms, practices and operations of the capital markets.

Tenure of
office of
members

136D. A member of the Tribunal shall hold office for a period not exceeding three years and shall be eligible for re- appointment unless, prior to the expiration of that period-

- (a) resigns his office by written notification under his hand addressed to the Minister;

- (b) the Minister, being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that the member has failed without leave or good cause to attend at least three consecutive meetings of the Tribunal, revokes his appointment.

Quorum of
meetings

136E.-(1) The quorum for meetings of the Tribunal shall be the Chairman and two other members.

(2) The Tribunal shall sit at the time and place as it may appoint.

Remuneration of
members

136F. The terms and conditions of service of the members and their remuneration shall be such as may be prescribed in their letters of appointment.

Jurisdiction of
the Tribunal

136G.-(1) The Tribunal shall have powers to adjudicate on disputes and controversies arising under this Act.

(2) Without prejudice to the generality of subsection (1), the Tribunal shall adjudicate on matters relating to-

- (a) the interpretation of any enactment or regulations to which this Act applies;

- (b) dispute between the Authority and the stock exchanges;
- (c) dispute between the Authority and any market intermediaries;
- (d) dispute between market intermediaries and their clients;
- (e) dispute between listed companies and the regulators or the securities exchange;
- (f) refusal by the Authority to grant a licence;
- (g) imposition by the Authority of limitations or restrictions on a licence;
- (h) suspension or revocation of a licence by the Authority;
- (i) refusal to admit securities on a stock exchange;
- (j) suspension of trading of a security on a stock exchange;
- (k) removal of a security from the official list of a stock exchange; and
- (l) any other dispute arising in the course of discharge of the

functions of the Authority under this Act.

(3) The Tribunal shall have no criminal jurisdiction.

(4) Where in the course of investigation, the Authority discovers that there is evidence of possible commission of a criminal offence, it shall inform an appropriate criminal prosecuting authority.

Appeals from
the decisions
of the
Authority

136H.-(1) A person aggrieved by an action or decision of the Authority under this Act may lodge an appeal to the Tribunal against such decision within thirty days from the date of the action or decision of the Authority was communicated to the aggrieved party.

(2) No appeal shall lie to the Tribunal from an order made by the Authority with the consent of the parties.

(3) In the determination of the appeal, the Tribunal may confirm or rescind the decision of the Authority or give such direction as it may deem appropriate for the determination of the appeal.

(4) Where an appeal has been lodged to the Tribunal against any decision of the Authority, the decision of the Authority shall

remain in force until a final decision of the Tribunal is delivered.

(5) A decision of the Tribunal reversing or rescinding the decision of the Authority shall not be enforced until the time for lodging an appeal has expired or where the appeal has been lodged, until the appeal has been determined.

(6) Until the establishment of the Tribunal, appeals and powers of determination of the appeals shall be exercised by the Minister and the provisions of this section shall apply *mutatis mutandis* in respect with the exercise of powers of the Tribunal by the Minister.

Appeals to the
court of
Appeal

136 I. Any person dissatisfied with a decision of the Tribunal may appeal against that decision on points of law to the Court of Appeal of Tanzania upon giving notice in writing to the Tribunal within thirty days from the date on which the decision was made.

Powers and
procedures of
the Tribunal

136J. The Tribunal may make Rules for regulating its proceedings.”

Amendment
of section 140

46. The principal Act is amended in section 140, by deleting the word “one” which appears in the penultimate paragraph and substituting for it the word “five”.

Amendment
of section 143

47. The principal Act is amended in section 143 by deleting the words "Court" or "High Court" and "Court" and substituting for them the word "Tribunal".

Amendment
of section 144

48. The principal Act is amended in section 144 by deleting -

- (a) the word "Court" or "High Court" and substituting for them the word "Tribunal"; and
- (b) subsection (3).

Addition of
section
147A

49. The principal Act is amended by adding immediately after section 147 the following new provisions.

"Assistance to
foreign
authorities

147A-(1) The Authority may, upon receiving a written request from a foreign supervisory authority for assistance to investigate into an alleged breach of a legal or regulatory requirement which the foreign supervisory authority enforces or administers, and if it considers it necessary in the interest of the public -

- (a) provide assistance by carrying out investigations of all the alleged breach of the legal or regulatory requirement; or
- (b) provide other assistance,

to the foreign supervisory authority as the Authority thinks fit.

(2) For the purpose of subsection (1), the provisions of Part IX shall, apply and have effect accordingly as if the breach of the legal or regulatory requirement were an offence under this Act.

(3) In determining whether it is in the interest of the public to render assistance under subsection (1), the Authority shall have regard to whether the –

- (a) foreign supervisory authority shall pay to the Authority any costs and expenses incurred for providing the foreign supervisory authority with the assistance;
- (b) foreign supervisory authority shall be able and willing to provide reciprocal assistance within its jurisdiction in response to a request for assistance from the Authority; and
- (c) requesting foreign supervisory authority is a signatory to the Multilateral Memorandum of understanding of the International

Organization of
Securities
Commissions.”

Addition of
Section 151

50. The principal Act is amended by adding immediately after section 150 a new Section 151 which reads:

“Powers
over other
legislation

151. Where the provisions of this Acts is in conflict or is otherwise inconsistent with a provision of any other written law relating to listing of shares to the stock exchange, the provision of this Act shall prevail to the extent of such inconsistency.”

Passed in the National Assembly on the 16th April, 2010.

DR. THOMAS D. KASHILILAH,
Clerk of the National Assembly