

The Capital Markets Authority (Amendment) Act, 2016

The Capital Markets Authority (Amendment) Act 2016 (the “Amendment”) was assented to by the President on 3rd May 2016 and came into force on 20th May 2016.

The key provisions in the Amendment are as follows;

Broader powers given to the Capital Markets Authority (“CMA”)

The Amendment has enhanced the powers of CMA to include implementing East African Community Council directives relating to the securities market in the East African region; acting as the supervisory authority for anti-money laundering in the capital markets; tracing and freezing any assets of any person engaged in fraudulent dealings in securities or insider trading. These powers are consistent with the changes occurring internationally in the capital markets space. We would expect to see an increase of the work force at the CMA to allow it perform these extra functions.

CMA is further empowered to approve venture capital funds. The Amendment defines a venture capital fund as a company approved by the Authority and incorporated for purposes of providing risk capital to businesses in Uganda with high growth potential, whereby not less than eighty per cent of the funds so invested consist of equity or quasi-equity investment in eligible enterprises. It is not clear what the approval of venture capital funds will entail and it is anticipated that regulations will be made to amplify this. Caution would be advised on setting up administrative requirements to inward investment by such funds.

Introduction of new licences

New licences for fund managers, investment houses, collective investment schemes, market advisers, representatives, trustees, custodians or depositories have been introduced. Previously CMA granted licences only to brokers, dealers and investment advisers. Again, additional licensing requirements could have a deterrent effect on the market, depending on the nature of requirements for licencing.

Licensing of persons for one off transactions

CMA can now issue approval for transaction advisors and underwriters for one off transactions. This was previously not permitted. This is a welcome development and is likely to quicken the more complex capital markets transactions.

Capital Markets Tribunal (the “Tribunal”)

This Amendment creates the Tribunal that will hear and determine, among others, disciplinary actions referred to it by CMA, complaints made by CMA, inquiries in the conduct of licensed persons and appeals from CMA. This introduces a new appeal hierarchy with appeals from decisions of CMA going to the Tribunal as instead of the Minister of Finance or the High Court.

The Tribunal is composed of a chairperson, an advocate with 7 (seven) years’ experience in the commercial sector and 2 persons with demonstrated competence in the fields of securities. The existence of a full time tribunal increases the cost of public administration and it is unlikely that our relatively small sized capital market requires a full time tribunal. Similar specialized tribunals in other sectors are underutilized.

Conclusion

The Amendment is yet another step taken by the CMA in bolstering the legal framework for capital markets. Looking at the raft of amendments and regulations done in the capital markets area over the last 5 years, certainly the CMA deserves a prize. However with the last listing on the Uganda Securities Exchange coming in 2012, the real test of these reforms is the market response. Already there are promising signs that the great reform effort has stirred some positive response. As the mantra goes, ‘build it and they will come’.