

GOVERNMENT NOTICE NO:..... published on

THE CAPITAL MARKETS AND SECURITIES ACT, 1994

(NO: 5 OF 1994)

REGULATIONS

Made under section 148(1)

THE CAPITAL MARKETS AND SECURITIES (FOREIGN COMPANIES PUBLIC OFFERS ELIGIBILITY AND CROSS LISTING REQUIREMENTS) AMENDMENT REGULATIONS, 2005

Citation 1. These Regulations may be cited as the Capital Markets and Securities (Foreign Companies Public Offers and Cross Listing Requirements) Amendment Regulations, 2005 and shall be read as one with the Capital Markets and Securities (Foreign Companies Public Offers Eligibility and Cross Listing Requirements) Regulations, 2003 (in these Regulations referred to as the “principal regulations”).

G.N. No: 164 of 2003

Amendment of regulation 2 2. Regulation 2 of the principal regulations is amended –

(a) by adding before the definition of the word “cross listing” the following new definition:

Act No: 5 of 1994 “Authority” means the Capital Markets and Securities Authority established by the Capital Markets and Securities Act, 1994;”

(b) by deleting the definition of the word “prescribed territory”.

Amendment of regulation 3 3. Regulation 3 of the principal regulation is deleted and replaced by the following provision:

“Application 3.-These regulations shall apply to-

- (a) all offers of securities to the Tanzanian public by foreign companies which subsequent to the public offer, intend to list at a stock exchange in Tanzania;
- (b) applications by foreign companies for cross listing at a stock exchange in Tanzania;

Amendment of Regulation 4 and 5

4. Regulations 4 and 5(1) of the principal regulations are amended by deleting them and substituting for them the following provisions:

“Issuance of securities by foreign companies

4.-(1) A foreign company shall be eligible to issue securities to the public in Tanzania subject to-

- (a) compliance with the provisions of PART XII of the Capital Markets and Securities Act,1994;
- (b) listing such securities at a stock exchange in Tanzania subsequent to such public offer, and
- (c) compliance with the eligibility criteria set out in the First Schedule to these regulations.

(2) A foreign company shall, prior to cross listing at a stock exchange in Tanzania, meet the conditions set out in Part One of the Second Schedule to these regulations and issue an Information Memorandum to be approved by the Authority.

Contents of Information Memorandum

G.N no: 769 of 1997

5.-(1) The form and content of an Information Memorandum issued under regulation 4(2) shall comply with the requirements of the Capital Markets and Securities (Prospectus Requirements) Regulations, 1997 and the contents set out in Part Two of the Second Schedule to these regulations.”.

Addition of regulation 8

5. The principal regulations are amended-

(a) by adding immediately after regulation 7, the following new provision:

“Cross listing out in Tanzania may cross list at a stock side exchange outside Tanzania subject to Tanzania compliance with the criteria set out in paragraphs 2 and 3 of the First Schedule to these regulations.”;

(b) by renumbering regulation 8 as 9;

(c) by deleting regulation 9 as renumbered and substituting for it the following provision:

“fees 9.- Every issuer of securities who has applied for approval of the same or for approval of cross listing to the Authority, shall pay such fees as may be prescribed by the Authority from time to time.”.

Addition of the First and second Schedules

6. The principal regulations are amended by adding the First and Second Schedules immediately after regulation 9 as follows:

“FIRST SCHEDULE

ELIGIBILITY CRITERIA FOR FOREIGN COMPANIES PUBLIC OFFERS AND SUBSEQUENT CROSSLISTING IN TANZANIA

The following requirements shall be met in order for a foreign company to be eligible to offer securities to the Tanzanian public and subsequently list at a stock exchange in Tanzania:

- 1) The relevant law pursuant to which the company has been incorporated must impose similar requirements or requirements with similar import, as those imposed by the Companies Ordinance (Cap 212). These requirements shall include but are not limited to:
 - a) The incorporation requirements;
 - b) The requirement for submission of periodic financial and business information to the Registrar of Companies;

- c) Rights of shareholders with regards to dividends, capital, pre-emptive rights to subscribe to new issues of shares, redemption of shares, voting and rights issues;
 - d) Protection of minority shareholders in instances where their rights have been infringed by the company and in cases of impending takeovers, mergers or acquisitions;
 - e) Appointment of directors/managers and auditors;
 - f) Convening of the meetings of the shareholders and shareholders rights of voting at meetings;
 - g) Legal consequences in events of violations of that law;
 - h) Adherence to corporate governance principles.
- 2) Existence of a Memorandum of Understanding between the securities regulator in the jurisdiction where the applicant is listed or is seeking cross listing and the Authority.
 - 3) Existence of a Memorandum of Understanding between the Exchange where the applicants securities are listed or where listing is being sought and a stock exchange in Tanzania.

Where the requirements under paragraphs 2 and 3 above are not met, the applicant may be deemed to be eligible if-

- (a) the securities regulator of the country where the company is listed, is a signatory to a relevant multilateral MOU; and
- (b) processes to sign Memoranda of Understanding as required under paragraphs 2 and 3 above, are undertaken.

For avoidance of doubt, the relevant MOUs are those signed under the auspices of the following fora:

- (a) International Organization of Securities Commissions (IOSCO);
- (b) and the Committee for Insurance, Securities and Non Financial Authorities (CISNA) of the Southern Africa Development Committee (SADC);
- (c) East Africa Securities Regulatory Authorities (EASRA);
- (d) African Stock Exchanges Association (ASEA);
- (e) Committee of SADC Stock Exchanges (COSSE)

SECOND SCHEDULE

[Under Regulation 4(2) and 5(1)]

PART ONE

CONDITIONS FOR APPLICANTS

All applicants for the approval of a Cross Border Listing or Introductions shall in addition to the requirements contained in the Foreign Companies (Public Offers Eligibility and Cross Listing Requirements) Regulations 2003 meet the following conditions:

Incorporation

1. The Applicant must be a company limited by shares, registered as a public company under the relevant law of its primary jurisdiction, establish a place of business and comply with the provision of Part XII of the Companies Ordinance (Cap 212).
2. The Applicant must obtain all the requisite licenses and approvals.
3. An applicant seeking to cross list in the first tier market (or main market) of a stock exchange in Tanzania shall be listed in a similar market in other countries where it is listed or cross-listed.
4. The constitutive documents of the applicant shall have provisions for the protection of minority shareholders.

Size

5. The Applicant shall have a minimum issued and fully paid up capital of not less than Tanzania Shillings one billion upon conversion at the prevailing exchange rate.
6. The Applicant shall have net assets of not less than Tanzania Shillings two billion upon currency conversion at the prevailing exchange rate.

7. The Applicant shall have at least 1000 shareholders and the public shall hold at least 25% of the total shareholding.

Professional Advisers

8. The Applicant shall use the services of licenced Tanzanian professional advisors.

Transferability of shares

9. The Applicant's shares shall be freely transferable and not subject to any restrictions on marketability or pre-emption rights.

Financial records

10. The Applicant shall have published audited financial statements complying with International Accounting Standards for an accounting period of at least five years ending on a date not longer than three months prior to the proposed introduction.
11. If more than three months have elapsed since the end of the company's last accounting period for which financial statements have been prepared, then the Applicant shall prepare unaudited interim financial statements from the end of the last accounting period.
12. The period covered by the unaudited interim financial statements shall not exceed six months.
13. The Applicant shall have prepared audited financial statements for the latest accounting period on a going concern basis and the accompanying audit report shall not contain any emphasis of matter or qualifications.
14. At the date of the application, the Applicant shall not be in breach of any of its loan covenants (if any).

Suitability of Directors and senior Managers

15. As at the date of the application and for a period of at least two years prior to the date of the application, none

of the Directors and senior managers of the Applicant shall have-

- 1) any petition under bankruptcy laws filed against him/her (for individual directors) or any winding up petition pending (for corporate directors);
- 2) any criminal proceedings in which he/she has been convicted of fraud or any felony.
- 3) been a subject of any ruling of a court of competent jurisdiction or any governmental body, the effect of which is to permanently or temporarily prohibit him/her from acting as an investment advisor, director, broker, dealer or employee of any financial institution or engaging in any business practice or activity.

Profitability records and future prospects

16. The Applicant shall have declared profits after tax attributable to shareholders in at least three of the last five completed accounting periods prior to the proposed date of the introduction or cross listing.

Solvency and adequacy of working Capital

17. The Applicant shall not have winding up proceeding instituted anywhere against its related parties.
18. The Applicant shall make an undertaking that it is not insolvent and that it has adequate working capital in place to meet present and foreseeable future.

Corporate Governance

19. The Applicant shall undertake to comply with the Corporate Governance Guidelines issued by the Authority.

PART TWO

CONTENTS OF AN INFORMATION MEMORANDUM

The contents of
the caution
statement

1. A caution statement

An Information Memorandum shall contain in its first page a Caution Statement in clearly legible and more prominent letters stating that-

- (a) A copy of the Information Memorandum has been delivered to the Capital Markets and Securities Authority for approval, and to the Registrar of Companies for registration;
- (b) the securities that are the subject of the Information Memorandum have not been approved nor disapproved by the Authority;
- (c) approval of the Information Memorandum by the Authority is not an indication of the merits of the Company nor its shares;
- (d) the Information Memorandum does not constitute an offer or invitation to any person to subscribe for or purchase any new shares in the applicant;
- (e) prospective investors should carefully consider the matters set forth under the caption "Risk Factors" in the Information Memorandum.

In the case of an Introduction, an Information Memorandum shall contain the following paragraph in the Caution Statement:

"the Information Memorandum is not for marketing any new shares of the applicant".

Directors
statement

2. Directors statement

An Information Memorandum shall contain a statement indicating that:

"the Directors of the applicant have taken reasonable care to ensure that the information contained in the Information Memorandum is in accordance with the Regulations issued by

the Authority and that there are no other facts bearing on the application, which, in the Directors' knowledge and belief, should be included in the Information Memorandum; and that the Directors take responsibility for the information in the Information Memorandum".

Requirement for
an executive
summary

3. An executive summary

An Information Memorandum shall contain an accurate executive summary of all its key contents and information.

information on
capital structure

4. Information on Capital Structure

In addition to the requirements of the International Accounting Standards (IAS), an Information Memorandum shall contain key information pertaining to the applicant's capital including:

A: Equity capital

1. A summary of the provisions of the issuer's memorandum and articles of association regarding changes in the capital and in the respective rights of the various classes of securities.
2. Details of any controlling shareholder of the issuer including-
 - (a) The names of the persons, so far as they are known to the issuer, who directly or indirectly, jointly or severally, exercise or could exercise control over the issuer. For these purposes, joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer;
 - (b) Particulars of the proportion of the voting capital held by such persons.
 - (c) the amount of its or their interest in the share capital of the issuer and;
 - (d) a statement explaining how the issuer is satisfied that:
 - i. it is capable of carrying on its business independently of the controlling shareholder (including any associate thereof); and

- ii. all transactions and relationships between the issuer and the controlling shareholder (or associate) are, and will be, at arm's length and on a normal commercial basis.
3. Details of any change in controlling shareholder(s) as a result of the issue.
4. The history of any change in the controlling shareholder(s) and operation objectives of the issuer and its subsidiaries during the previous two financial years. A statement of the new business objectives and the manner in which the new objects will be implemented.
5. If the issuer has subsidiary undertakings or parent undertakings, a brief description of the group of undertakings and of the issuer's position within it stating, where the issuer is a subsidiary undertaking, the name of and number of shares in the issuer held (directly or indirectly) by each parent undertaking of the issuer.
6. The persons to whom any capital of any member of the group or of any of its subsidiary undertakings is under option, or agreed conditionally or unconditionally to be put under option, with particulars of the capital including the price and duration of the option and consideration for which the option was or will be granted, or an appropriate negative statement. Where options have been granted or agreed to be granted to all the holders of shares or debt securities, or of any class thereof, or to employees under an employees' share scheme, it will be sufficient, so far as the names are concerned, to record that fact without giving names

B: Debt capital

1. The nature, types, characteristics and sources of debt capital employed by the applicant
2. Aggregate nominal value of debt capital outstanding in all members of the group, and debt capital created but unissued if any.
3. If the issuer has shares not representing equity capital, he shall disclose:

- (a) the number and main characteristics of such shares;
- (b) the amount of any outstanding convertible debt securities, exchangeable debt securities or debt securities with warrants; and
- (c) a summary of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

Capital of the applicant

5. Capital of the applicant

An information Memorandum shall include a statement of opinion by its Directors on whether the capital is adequate for the purpose of the business of the applicant and its subsidiaries, any extent of inadequacy and the proposed manner in which those inadequacies are to be financed.

Description of the business of the applicant

6. The business of the applicant

An information Memorandum shall contain a clear summary of the applicant's business, its corporate structure, details of its key products and services and those of any of its subsidiaries, as well as alliances and joint ventures.

Risks

7. Risk Factors

In relation to the business of the applicant (and to any of its subsidiaries), an Information Memorandum shall contain information on any new ventures risks, construction risks, licensing risks, potential increased competition, regulation, dependence on key personality, taxation, level of indebtedness, dilution, unexpectedness of dividend or any other risks.

Shareholder's rights

8. Rights and Obligations of Shareholders

1. An information Memorandum shall contain a summary of the rights attaching to the shares of the applicant, and in particular the extent of voting rights, entitlement to share in the profits of the applicant, and in the event of liquidation, rights to surpluses and other special rights as well as any shareholder obligations.
2. Any material limitation or qualification on the rights of the applicant's shares and details of such limitation or qualification.

3. In event of more than one class of shares, the above information shall be given for each class.

Details on merger and acquisitions

9. Mergers and Acquisitions

1. An information Memorandum shall include details of any mergers and acquisitions agreed upon but not concluded or not reflected in the accounts of the issuer.
2. In the case of (1) above, the applicant shall include the following details:
 - (a) the date of such acquisition or agreement;
 - (b) the consideration and payment terms;
 - (c) any outstanding payments;
 - (d) details of the value of the property and valuation methods employed;
 - (e) any goodwill to be paid and how the good will shall be accounted for;
 - (f) the nature of and type of interest acquired or to be acquired
 - (g) details of the vendors.

Information on bankers and advisors

10. Information on bankers and other advisors

An Information Memorandum should include names and details of the bankers of the applicant and their advisors therein.

Information on service providers

11. Information on service providers

An Information Memorandum shall include details of custodians, registrars and receiving agents in the jurisdiction the applicant is listed, in Tanzania and in any other jurisdiction where the applicant is seeking admission or listing on a stock exchange.

Legal opinion

12. Statement on Legal Status and Affairs of the Applicant

An Information Memorandum shall include:

- (a) a brief of the initial organization of the business, including the form and name under which the initial organization took place;
- (b) the nature and results of any bankruptcy, receivership or similar proceedings with respect to the issuer;
- (c) the nature and results of any other material reclassification, merger, or consolidation of the issuer or any of its significant subsidiaries;
- (d) the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business and any material changes in the mode of conducting the business;
- (e) a summary of the material provisions of the articles of association with respect to annual general meetings of shareholders, voting rights of shareholders, the election and removal of directors and the rights of directors to vote on proposals in which they have a personal interest; and
- (f) a legal opinion including but not limited to the following:
 - i. whether all licences and consents required to perform the business or proposed business of the issuer have been duly obtained;
 - ii. the validity of evidence of ownership of land, plant and equipment and other important and relevant assets of the issuer;
 - iii. any agreements or contracts with respect to the proposed issue of securities including where applicable but not limited to underwriting contracts, agreements or contracts with any securities exchange, registrar and trustees of bonds, debentures or other credit securities;
 - iv. any material litigation, prosecution or other civil or criminal legal action in which the issuer or any of its directors is involved;
 - v. whether the existing capital of the issuer and any proposed changes thereto is in

conformity with applicable laws and has received all necessary authorizations; and

- vi. any other material items with regards to the legal status of the issuer and the proposed issue.

Trading and settlement modalities

13. Trading and settlement procedures

An Information Memorandum shall include details of the modalities and procedures of trading and settlement of the applicant's shares in the Tanzanian market.

Details of directors and senior management

14. Information Relating to Directors and Senior Management

An Information Memorandum shall include details of all the Applicant's directors and members of senior management, including their qualifications, business experience during the preceding five years, principal occupation in any company in which he/she was employed, expertise and number of shares held in the applicant.

Borrowings

15. Borrowing powers of the applicant

An Information Memorandum should include details of the applicant's borrowing powers including:

- (a) the borrowing powers of its parent and that of its subsidiaries exercisable by its Directors;
- (b) the manner in which such borrowing powers may be varied;
- (c) the circumstances under which the borrowing powers have been exceeded in the preceding three years (if applicable);
- (d) any exchange controls or other restrictions on the borrowing powers of the applicant or any of its subsidiaries.

Real property

16. Land and fixed assets

1. An Information Memorandum shall include details of any land, estates, plants, machinery and fixed assets owned

by the applicant. In addition, the applicant must give details of any land, estates, plant, machinery and fixed assets disposed of by it or any of its subsidiaries during the last 5 years.

2. In the case of disposals, the applicant shall state:

- (a) the consideration paid;
- (b) any outstanding consideration payable;
- (c) any goodwill paid and how it was accounted for;
- (d) the valuation of the property and the valuation methods employed.

Material contracts **17. Material contracts**

An Information Memorandum should include the dates of and parties to all material contracts (not being contracts entered into in the ordinary course of business) entered into within two years immediately preceding the publication of the Information Memorandum together with a summary of the principal contents of each contract including particulars of any consideration passing to or from the issue or any subsidiary.

Financial statements

18. Financial statements for the Preceding Five Accounting Periods

An Information Memorandum shall include the audited financial statements for five accounting periods preceding the proposed date of the Introduction or public offer prepared in accordance with IAS.

Share performance

19. Share performance

An Information Memorandum shall indicate details of the market price history of the applicants shares in the last five preceding years in all the exchanges in which it is listed at the time of the application, including:

- (a) the annual high and low prices for each of the five years;
- (b) the high and low market prices for each financial quarter of the most recent two years;

- (c) the high and low market prices for each of the most recent six months.

Confirmation of financial information

20. Confirmation of Financial Information

An Information Memorandum shall contain a report from an Auditor in Tanzania confirming the financial information provided in the Information Memorandum.

Dividend policy

21. Dividend Policy and Modalities of Payment

An Information Memorandum shall include details of the applicants, dividend policy, the modalities of payment, the time limit after which entitlement to dividends lapses and any arrangements under which future dividends may not be declared.

Listing details

22. Listing

An Information Memorandum shall include details of other stock exchanges where the applicant's shares are already listed, information on whether admission to list will or is being sought; including (if known) the date on which the shares will be admitted to the stock exchange and on which dealings will commence.

Prospects of the company

23. Prospects of the Company

An Information Memorandum should contain a statement from the directors of the applicant on their opinion regarding the future prospects of the company/applicant.

Applicable Law

24. Governing Law

An Information Memorandum shall state that the Laws of Tanzania shall be applicable to the application for cross listing.

Tax advice

25. Tax policy

An Information Memorandum shall include a statement of the tax payable on income from the transfer of shares, both in the primary jurisdiction and in Tanzania, including whether the applicant assumes the responsibility for withholding of tax at

source.

Accompanying
documents

26. Accompanying Documents

An Information Memorandum shall be accompanied by the following documents:

- (a) Certified copies of the applicants certificate of incorporation;
- (b) Certified copies of the Memorandum and Articles of Association;
- (c) Copies of material contracts (if any);
- (d) Copies of all required authorizations or approvals;
- (e) Valuation report in the case of a public offers of securities.

Additional
information

28. Any additional information as may be required by the Authority

An Information Memorandum shall contain any other additional information as may be required or directed to be included by the Authority, including any proposed amendments or clarifications.”

Dar es Salaam
..... May 2004

BASIL P. MRAMBA
Minister for Finance