

CAPITAL MARKETS AND SECURITIES LAW

The securities market in Tanzania emerged in the 1990s as a result of the government policy to liberalize the Tanzania financial sector, which included a 1990 study on monetary issues

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ORDINARY MARKET CONCEPT

What is a Market?

-Products sold

-Sellers

-Buyers

-Brokers

-Management

- lenders /Financiers

-Financial advisers

-Tax collectors

Problems:

-substandard goods

-Price problems like monopoly, overpricing, underpricing,

-dishonesty traders ◀◀fake goods

Management is necessary hence some authority to regulate the market.

- Refresh on company laws

Definitions

Stated formally, **financial markets** provide channels for allocation of savings to investment. These provide a variety of assets to savers as well as various forms in which the investors can raise funds and thereby decouple the acts of saving and investment. **The financial markets have two major components; the money market and the capital market.**

A **capital market** is a financial **market** in which long-term debt (over a year) or equity-backed securities are bought and sold. **Capital markets** channel the wealth of savers to those who can put it to long-term productive use, such as companies or governments making long-term investments.

The Capital Market is a **market for financial investments** that are **direct or indirect claims to capital**. It **embraces all forms of lending and borrowing, whether or not evidenced by the creation of a negotiable financial instrument.**

The Capital Market comprises the complex of institutions and mechanisms through which intermediate term funds and long term funds are pooled and made available to business, government and individuals. The Capital Market also encompasses **the process by which securities already outstanding are transferred.**

The financial markets have two major components; the money market and the capital market.

Financial Markets

(a) Money Market

The money market refers to the market where borrowers and lenders exchange **short-term funds** to solve their liquidity needs. Money market instruments are generally financial claims that have **low default risk, maturities under one year and high marketability.**

MONEY MARKET Vs. CAPITAL MARKET

The money market possesses different operational features as compared to capital market. Money market is distinguished from capital market on the basis of the **maturity period, credit instruments and the institutions:**

- Maturity Period:

The money market deals in the lending and borrowing of **short-term finance varying for one year or less**, while the capital market deals in the lending and borrowing of long-term finance for **more than one year.**

- Credit Instruments:

The main credit instruments of the money market are **call money, treasury bills, commercial bills, commercial papers, and bills of exchange.** On the other hand, **the main instruments used in the capital market are stocks, shares, debentures, bonds, corporate deposits etc.**

- **Institutions:**

Important institutions operating in the **money market** are **central banks, commercial banks, acceptance houses, non banking financial institutions, bill brokers, etc.** Important institutions of the **capital market** are **stock exchanges, commercial banks and non banking institutions, such as insurance companies, mortgage banks, etc.**

- **Purpose of Loan:**

The **money market** meets the **short-term credit needs** of business; it **provides working capital** to the industrialists. The **capital market**, on the other hand, caters the **long-term credit needs** of the industrialists and **provides fixed capital to buy land, machinery, etc.**

-**Risk and Liquidity:**

The **degree of risk is small and that of liquidity is higher in the money market** as compared to the **higher risk and lower liquidity in the capital market.**

-**Role of Central Bank:**

The central bank closely and directly has impact on the money market and its participants by **framing its regulations and deciding various rates of interests** that has impact on the parameters of an economy, while in case of capital market central bank has an indirect link through other regulators like DSE.

Market Regulation: In the money market, commercial banks are closely regulated. In the capital market, the institutions are not much regulated.

(b) Capital Market

The Capital Market is a market for financial investments that are direct or indirect claims to capital. **It is wider than the Securities Market and embraces all forms of lending and borrowing, whether or not evidenced by the creation of a negotiable financial instrument.** The Capital Market comprises the complex of institutions and mechanisms through which intermediate term funds and long term funds are pooled and made available to business, government and individuals. The Capital Market also encompasses the process by which securities already outstanding are transferred.

The Securities Market

The Securities Market, refers to the markets for those financial instruments/claims/obligations that are commonly and readily transferable by sale.

The Securities Market has two inter-dependent and inseparable segments, the **new issues (primary) market** and the **stock (secondary) market**.

Importance of having Capital Markets

Capital market plays an extremely important role in promoting and sustaining the growth of an economy.

- ➔ It is an important and efficient conduit to channel and mobilize funds to enterprises, both private and government.
- ➔ It provides an effective source of investment in the economy.
- ➔ It plays a critical role in mobilizing savings for investment in productive assets, with a view to enhancing a country's long-term growth prospects, and thus acts as a major catalyst in transforming the economy into a more efficient, innovative and competitive marketplace within the global arena.
- ➔ In addition to resource allocation, capital markets also provide a medium for risk management by allowing the diversification of risk in the economy.
- ➔ A well-functioning capital market tends to improve information quality as it plays a major role in encouraging the adoption of stronger corporate governance principles, thus supporting a trading environment, which is founded on integrity.
- ➔ Capital market has played a crucial role in supporting periods of technological progress and economic development throughout history.
- ➔ Among other things, liquid markets make it possible to obtain financing for capital-intensive projects with long gestation periods. This certainly held true

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during the industrial revolution in the 18th century and continues to apply even as we move towards the so-called ↑New Economy↓.

- ➔Capital markets make it possible for companies to give shares to their employees via ESOPs.
- ➔Capital markets provide a currency for acquisitions via share swaps.
 - Capital markets provide an excellent route for disinvestments to take place.
- ➔Venture Capital and Private Equity funds investing in unlisted companies get an exit option when the company gets listed on the capital markets
- ➔The existence of deep and broad capital market is absolutely crucial in spurring the growth our country.

The functions of Capital Markets

Major objectives of capital market are:

- ➔To mobilize resources for investments.
- ➔To facilitate buying and selling of securities.
- ➔To facilitate the process of efficient price discovery
 - raising capital,
 - trading,
 - and investment,

Financial products (Capital markets products)

Savings are linked to investments by a variety of intermediaries through a range of complex financial products called **↑securities↓** which include **shares, scrips, stocks, bonds, debentures, debenture stock, or other marketable securities of like nature** in or of any incorporate company or body corporate, **government securities, derivatives of securities, units of collective investment scheme, security receipts, interest and rights in securities, or any other instruments** so declared by the central government.

Types of Capital Markets

The main markets

- Financial assets
- Money market
- Bond market
- Equity market
- Foreign exchange market
- Options markets
- Alternative investments
- Financial information

Functions of the CMSA

Functions, duties and powers of the CMSA are subject to the provisions of the Section 10 (1) of the CMS Act; the CMSA has the duty to:-

- Promote and develop efficient and sustainable capital markets and securities business in Tanzania while ensuring fair and equitable dealings;
- Formulate principles for the guidance of the industry, protection of investors' interests and integrity of the securities market against any abuses;
- Licensing and regulating stock exchanges, dealers, brokers and their representatives and investment advisors;
- Advising the Government on policies and all matters relating to the securities industry.
- Create the necessary environment for the orderly growth and development of the capital market;

Relevant Laws/ Regulatory Framework

A) -STATUTES

The legal framework governing the entry into the business, conduct and operations of capital markets in Tanzania is built on a three-tier structure.

(i) The Capital Markets and Securities Act, 2023, 1. Capital Markets And Securities Act [PRINCIPAL LEGISLATION] Acts Nos.5 of 1994

2. Capital Markets and Securities (Amendments) Act, 2010.

3. Commodity Exchanges Act, 2023 (Cap.79) (as amended) This is the basic law which regulates the conduct of business in capital markets. The enforcement organ is the Capital Markets and Securities Authority (CMSA).

(ii) The Companies Act, 2023 (Cap.212).

This law regulates a wide range of corporate issues including; the formation of private as well as public companies and all matters relating to issuance of securities, rights of shareholders, prospectuses → contents, obligations of directors and governance issues. The enforcement agency is the Registrar of companies.

B) CAPITAL MARKETS' REGULATIONS

Regulations and Rules made by CMSA and DSE. The understanding that the Capital Markets are sufficiently complex and the speed of changes within the industry is so fast that the ability of the Parliament to cope with it through statutory enactments is limited; made the Parliament find it prudent to delegate Regulations and Rules making powers on specific issues to CMSA and DSE respectively.

1. [The Capital Markets and Securities \(Licencing\) Regulations 1996](#)

2. [The Capital Markets and Securities \(Registers of Interests in Securities\) Regulations 1996](#)

3. [Capital Markets and Securities \(Establishment of Stock Exchange\) Regulations 1996](#)

- 4.[The Capital Markets and Securities \(Financial and Accounting Requirements\) Regulations 1997](#)
- 5.[The Capital Markets and Securities \(Advertisements\) Regulations 1997](#)
- 6.[The Capital Markets and Securities \(Collective Investment Schemes\) Regulations 1997](#)
- 7.[Capital Markets and Securities \(Prospectus Requirements\) Regulations 1997](#)
- 8.[The Capital Market and Securities \(Conduct of Business\) Regulations 1997](#)
- 9.[The Capital Markets and Securities \(Capitalization and Rights Issue\) Regulations 2000](#)
- 10.[The Capital Markets and Securities \(Foreign Investors Amendments\) Regulations 2014](#)
- 11.[Capital Markets and Securities \(Foreign Companies Public Offers Eligibility and Cross Listing Requirements\) Regulations 2003](#)
- 12.[Capital Markets and Securities \(Custodian of Securities\) Regulations 2006](#)
- 13.[Capital Markets and Securities \(Substantial Acquisitions, Takeovers and Mergers\) Regulations 2006](#)
- 14.[Capital Markets and Securities Authority \(Nominated Advisors\) Regulations, 2008](#)

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15. Capital Markets and Securities Authority (Collective Investment Schemes) (Real Estate Investment Trusts) Rules, 2011

16. Capital Markets and Securities Authority (Foreign Companies Public Offers Eligibility and Cross Listing Requirements) Amendment, 2005

17. **DSE Rules (as approved by CMSA), 2014.**

C) GUIDELINES

1. Guidelines for the Issuance of Corporate Bonds and Commercial Paper, 1999

2. Capital Markets and Securities (Corporate Governance) Guidelines, 2002

FINANCIAL PRODUCTS/INSTRUMENTS

Section 2 of the THE CAPITAL MARKETS AND SECURITIES ACT defines:

"securities" include→

(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; (c) rights or interests, whether described as units or otherwise under any collective investment scheme; (d) such other rights, interests or instruments as the Minister may, by notice in the Gazette prescribe.

Capital Market Instruments:

Equity, Debentures, Preference Shares, Sweat Equity, Non-Voting Shares, Share Warrants Pure, Hybrid and Derivatives

Money Market Instruments:

Treasury Bills, Commercial Bills, Commercial Paper, Factoring Agreements & Discounting of Bill

- CORPORATE BOND

A Corporate Bond is a bond issued by company/ an enterprise ↑A borrower↓ to investors ↑Lenders↓ from the general public. When a company issues a bond it divides it into small proportions that are sold at a price called the **face value**. The Company will promise investors payment of some **interests** on the borrowed amount; **interests will be paid annually or semiannually**. Investors are also promised **repayment** of the borrowed amount after the bond matures.

- GOVERNMENT BOND

A Government Bond is a bond issued by the Government ↑The Borrower↓ to the investors ↑The Lenders↓ who are from the general public. When the Government issues a bond it divides that bond into smaller proportions that are sold at a price called the **face value**. The Government promises investors payment of some **interests** on the borrowed amount; interests are paid annually or semiannually. Investors are also promised repayment of the borrowed amount after the **bond matures**. Currently the Government issues bonds that mature after a period of 2, 5, 7, 10 and 15 years, these bonds yield interest rates of 7.82%, 9.18%, 10.08%, 11.44% and 13.5% respectfully.

- DERIVATIVE

A derivative is a financial instrument whose value depends on an underlying asset. Derivatives help to **alleviate risk exposures of the underlying assets** by structuring contractual **agreements to buy or sell underlying assets in a future date at a pre-determined price**. The main types of derivative are **Futures** and **Options**. **Futures are contracts (agreements) to buy or sell another asset at a future date for the price agreed upon today.** Options are contracts that give the

holder the **right to buy or sell another asset at or before a future date for the price agreed upon today.**

- FUTURES

Futures is a contract between two parties to buy or sell a underlying asset of standardized quantity and quality for a price agreed upon today with delivery and payment occurring at a specified future date. **Underlying assets for the purpose include equities, foreign exchange, interest bearing securities and commodities.** The **idea behind financial futures contract is to transfer future changes in security prices from one party in the contract to the other. It offers a means to manage risk in participating financial market.** Futures basically **transfer value rather than create it.** It is a means for reducing risk or assuming risk in the hope of profit. Every futures contract entered into has two side willing buyer and a willing seller. **If one side of contract makes a profit, the other side must make a loss. All futures market participants taken together can neither lose nor gain the futures market is a zero sum game.**

-OPTIONS

An option contract **conveys the right, but not the obligation, to buy or sell a specific security or commodity at specified price within a specified period of time.** The right to buy is referred to as a call option whereas the right to sell is known as a put option. An option contract comprises of its type a put or call, underlying security or commodity expiry date, strike price at which it may be exercised.

- CORPORATE BONDS AND COMMERCIAL PAPER

Corporate bonds and commercial paper are instruments issued for the purpose of **raising funds directly from investors without intermediation by banks or other financial institutions.**

This is for **working capital** requirements in the case of **commercial paper** and for **long term financing requirements** in the case of **corporate bonds**. The **time horizon** of the financial instruments determines whether it is a corporate bond or commercial paper.

(A) BOND

A bond is a debt instrument with a maturity of one year or more, and evidence of a loan extended by a creditor to a corporation or other borrower such as a government or local authority. The borrower is obligated to pay the bondholder a specific interest at specific intervals, and to repay the principal amount of the loan at maturity. Bonds signify indebtedness of the issuer to the bondholder but do not have corporate ownership privileges as shareholders.

- GUARANTEED BOND

Means a bond which is guaranteed as to payment of interest and repayment of **principal by a third party** who may or may not be related to the issuer but is usually larger, better known or more credit worthy than the issuer, or guaranteed by means of a contract of insurance.

(B) COMMERCIAL PAPER

Commercial paper is a debt instrument with a maturity of less than one year and is evidence of loan extended by a creditor to a corporation.

- GUARANTEED PAPER

Means a commercial paper which is guaranteed as to payment of interest and repayment of principal by a third party who may or may not be related to the issuer but is usually larger, better known or more credit worthy than the issuer or guaranteed by means of a contract of insurance.

- SHARE

"Share" means the interest of members of a body corporate who are entitled to share in the capital or income of such body corporate. (S 2 CMA 1994)

Paid-up Share Capital

This represents ordinary shares (equity shares), which have been issued and fully paid for, but excludes all non-equity shares except for non-redeemable preference shares.

Equity capital and further issues of equity capital by a company are generally based on the condition that they will rank pari pass along with the earlier issued share capital in all respects. However, as regards dividend declared by the company such additional capital shall be entitled to dividend ratably for the period commencing from the date of issue to the last day of the accounting year, unless otherwise specified in the articles or in the terms of the issue.

Important characteristics of equity shares are given below:

- (i) Equity shares, **have voting rights** at all general meetings of the company. These votes have the affect of the controlling the management of the company.
- (ii) **Equity shares have the right to share the profits of the company in the form of dividend (cash) and bonus shares.** However even equity shareholders cannot demand declaration of dividend by the company which is left to the discretion of the Board of Directors.
- (iii) When the **company is wound up**, payment towards the equity share capital will be made to the respective shareholders only after **payment of the claims of all the creditors and the preference share capital.**

Preference share capital

That part of the issued share capital of the company which carries or would carry a preferential right with respect to ➔ **(a) payment of dividend**, either as a fixed amount or an amount calculated at a fixed rate, which may either **be free of or subject to income-tax**; and **(b) repayment, in the case of a winding up or repayment of capital**, of the amount of the share capital paid up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

The following kinds of preference shares are issued by the companies:

◀Cumulative preference shares

The dividend payable every year becomes a first claim while declaring dividend by the company. In case the company does not have adequate profit or for some reason the company does not want to pay preference dividend, it gets accumulated for being paid subsequently. Such arrears of preference dividend will be carried forward and paid out of the profits of the subsequent years, before payment of equity dividend. However, **if a company goes into the liquidation no arrears of preference dividend will be payable** unless the Articles of Association of the issuing company contains a specific provision to make such payment even in winding up.

◀Non-cumulative preference shares

Dividend does not accumulate. If there are no profits or the profits are inadequate in any year, the shares are not entitled to any dividend for that year. They are entitled to payment of the declared preference dividend in any particular year and to the **repayment of their preference capital in the event of winding up before payment to the equity shareholders.**

◀Convertible preference shares

The terms of issue of preference shares includes **a right for converting them into equity shares at the end of a specified period** they are called convertible preference share

◀ **Redeemable preference shares**

Are redeemed after specific period and money is returned to shareholders.

◀ **Participating preference shares**

Generally, all preference shareholders are not entitled to dividend more than what has been indicated as part of the terms of issue, even in a year in which the company has made huge profits. Subject to provision in the terms of issue

Participating preference shares can be entitled to participate in the surplus profits left, after payment of dividend to the preference and the equity shareholders to the extent provided therein

◀ **Non participating preference shares.**

Unless the terms of issue indicate specifically otherwise, all preference shares are to be regarded as **nonparticipating preference shares.**

- DEBENTURE

Debenture is a document evidencing a debt or acknowledging it and any document which fulfills either of these conditions is a debenture.

The important features of a debenture are:

1. It is issued by a company as a **certificate of indebtedness**.
2. It usually **indicates the date of redemption** and also provides for the **repayment of principal and payment of interest at specified date** or dates.
3. **It usually creates a charge on the undertaking or the assets of the company.** In such a case the lenders of money to the company enjoy better protection as **secured creditors**, i.e. if the company does not pay interest or repay principal amount, the lenders may either directly or through the debenture trustees bring action against the company to realise their dues by sale of the assets/undertaking earmarked as security for the debt.
4. Debentures holders **do not have any voting rights**.
5. **Compulsory payment of interest.** The interest on debenture is payable irrespective of whether there are profits made or not.

Types:

(a) Naked or unsecured debentures

Debentures of this kind do not carry any charge on the assets of the company. The holders of such debentures do not therefore have the right to attach particular property by way of security as to repayment of principal or interest.

(b) Secured debentures

Debentures that are **secured by a mortgage of the whole or part of the assets of the company** are called Secured debentures. . In case of default debenture trustee has the rights to sell the securities and pay the amount to holders.

(c) Redeemable debentures

Debentures that are **redeemable on expiry of certain period** are called **redeemable debentures**

(d) Perpetual debentures.

If the debentures are **issued subject to redemption on the happening of specified events which may not happen for an indefinite period**, e.g. winding up, they are called perpetual debentures.

(e) Bearer debentures

Such debentures are **payable to bearer and are transferable by mere delivery**. The **name of the debenture holder is not registered in the books of the company, but the holder is entitled to claim interest and principal as and**

when due. A bonafide transferee for value is not affected by the defect in the title of the transferor.

(f) Registered debentures

Such debentures **are payable to the registered holders whose name appears on the debenture certificate/letter of allotment and is registered on the companies register of debenture holders** maintained.

CONVERTIBILITY OF DEBENTURES

Based on **convertibility**, debentures can be classified under three **categories**:

1. Fully Convertible Debentures (FCDs)

These **are converted into equity shares of the company with or without premium** as per the terms of the issue, **on the expiry of specified period or periods.**

2. Non Convertible Debentures (NCDs)

These debentures do not carry the option of conversion into equity shares and are therefore redeemed on the expiry of the specified period or periods.

3. Partly Convertible Debentures (PCDs)

These may consist of two kinds namely -convertible and non-convertible. **The convertible portion is to be converted into equity shares at the expiry of specified period.** However, **the non convertible portion is redeemed at the expiry of the stipulated period.**

- UNIT

"Unit" in relation to a unit trust, means a right or interest, whether described as a unit, sub-unit or otherwise which may be acquired under the trust; (s.2 CMSA)

and "unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property.

-CALL MONEY CALL/NOTICE MONEY is an amount borrowed or lent on demand for a very short period. If the period is more than one day and up to 14 days it is called ~~←~~Notice money~~→~~ otherwise the amount is known as Call money. No collateral security is required to cover these transactions. The call market enables the banks and institutions to even out their day to day deficits and surpluses of money. Commercial banks, Co-operative Banks and primary dealers are allowed to borrow and lend in this market for adjusting their cash reserve requirements.

- TREASURY BILLS

Treasury Bills In the **short term, the lowest risk category instruments are the treasury bills.** Reserve Bank of India issues these at a prefixed dbt and a fixed amount. These include 91-day T-bills, 182-Day T-bills, and 364-day T-bills. The usual investors in these instruments are banks who invest not only to part their short-term surpluses. **These T-bills, which are issued at a discount, can be traded in the market.** The transaction cost on T-bills is nonexistent and trading is

considerably high in each bill, immediately after its issue and immediately before its redemption.

- **CERTIFICATES OF DEPOSITS (CDS)** After treasury bills, the next lowest risk category investment option is the certificate of deposit (CD) issued by banks and Financial Institutions. **CDs are issued by banks and FIs mainly to augment funds by attracting deposits from corporates, high net worth individuals, trusts, etc.** The foreign and private banks, especially, which do not have large branch networks and hence lower deposit base use this instrument to raise funds.

- **COMMERCIAL PAPERS (CP)**

CPs are negotiable short-term unsecured promissory notes with fixed maturities, issued by well rated companies generally sold on discount basis. Companies can issue CPs either directly to the investors or through banks / merchant banks (called dealers). **These are basically instruments evidencing the liability of the issuer to pay the holder in due course a fixed amount i.e. face value of the instrument, on the specified due date.** These are issued for a fixed period of time at a discount to the face value and mature at par.

-**INTER-CORPORATE DEPOSITS**

Apart from CPs, corporates have access to another market called the inter corporate deposits (ICD) market. **An ICD is an unsecured loan extended by one corporate to another. This market allows funds surplus corporates to lend to other corporates.** As the cost of funds for a corporate is much higher than a bank, the rates in this market remain higher than those in the other markets.

-COMMERCIAL BILLS

Bills of exchange are negotiable instruments drawn by the seller of the goods on the buyer of the goods for the value of the goods delivered. These bills are called trade bills. These trade bills are called commercial bills when they are accepted by commercial banks.

THE SECURITIES MARKET INTERMEDIARIES / KEY PLAYERS

The securities market has essentially **three categories of participants**, namely **(i) the issuers of securities, (ii) investors in securities** and **(iii) the intermediaries**.

The issuers and investors are the consumers of services rendered by the intermediaries while the investors are consumers of securities issued by issuers. Those who receive funds in exchange for securities and those who receive securities in exchange for funds often need the reassurance that it is safe to do so. This reassurance is provided by the law and custom, often enforced by the regulator. The regulator develops fair market practices and regulates the conduct of issuers of securities and the intermediaries so as to protect the interests of investors in securities. The regulator ensures a high standard of service from intermediaries and supply of quality securities and non-manipulated demand for them in the market.

The role of intermediaries makes the market vibrant, and to function smoothly and continuously. Intermediaries possess professional expertise and play a promotional role in organising a perfect match between the supply and demand for capital in the market. **All those, institutions or individuals, who help to bring the savers and seekers of capital and enable a regular flow of funds from supply to demand**

points are intermediaries. All intermediaries are service providers and are an integral part of the Securities Market. These market intermediaries provide different types of financial services to the investors. They are constantly operating in the financial market. It is in their (market intermediaries) own interest to behave rationally, maintain integrity and to protect and maintain reputation, otherwise the investors would not be trusting them next time. In principle, these intermediaries bring efficiency to corporate fund raising by developing expertise in pricing new issues and marketing them to the investors.

The following market intermediaries are involved in the Securities Market:

Merchant Bankers

‘Merchant Banker’ means any person engaged in the business of issue management by making arrangements regarding selling buying or subscribing to securities or acting as **manager/consultant/advisor or rendering corporate advisory services in relation to such issue management.** Merchant Bankers are rendering diverse services and functions. These include organising and **extending finance for investment in projects,** assistance in financial management, raising **loans and issue of foreign currency bonds.**

Registrars and Share Transfer Agents

‘Registrar to an Issue’ means the person appointed by a body corporate or any person or group of persons to carry on the following activities on its or his or their behalf i.e.: (i) collecting application for investor in respect of an issue; (ii) keeping a proper record of applications and monies received from investors or paid to the seller of the securities; (iii) (a) assisting body corporate or person or group of

persons in determining the basis of allotment of the securities in consultation with the stock exchange; (b) finalising the list of person entitled to allotment of securities; (c) processing and despatchment of allotment letters, refund orders or certificates and other related documents in respect of the issue;

Underwriters

Underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate. Underwriting is an arrangement whereby certain parties assure the issuing company to take up shares, debentures or other securities to a specified extent in case the public subscription does not amount to the expected levels. For this purpose, an arrangement (agreement) will be entered into between the issuing company and the assuring party such as a financial institution, banks, merchant banker, broker or other person. Underwriting is compulsory for a public issue. It is necessary for a public company which invites public subscription for its securities to ensure that its issue is fully subscribed. The company cannot depend on its advertisements to bring in the full subscription. In case of any short-fall, it has to be made good by underwriting arrangements made in advance of the opening of the public issue. It is the underwriter who agrees to take up securities which are not fully subscribed in a public issue. The underwriter makes a commitment to get the issue subscribing either by others or by themselves.

Bankers to issue

Bankers to the issue, as the name suggests, carries out all the activities of ensuring that the funds are collected and transferred to the Escrow accounts. The Banks render crucial service in mobilisation of capital for companies. While one or more banks may function as Bankers to the Issue as well as collection banks, others may

do the limited work of collecting the applications for securities along with the remittance in their numerous branches in different centres. The banks are expected to furnish prompt information and records to the company and to the lead manager for monitoring and progressing the issue work.

Debenture Trustees

‘Debenture Trustee’ means a trustee of a trust deed for securing any issue of debentures of a body corporate. Intermediaries such as Trustees who are generally Banks and Financial Institutions render this service to the investors for a fee payable by the company. Role and Functions include: ➔Call for periodical reports from the body corporate, i.e., issuer of debentures. ➔Take possession of trust property in accordance with the provisions of the trust deed. ➔Enforce security in the interest of the debenture holders. ➔**Ensure on a continuous basis that the property charged to the debenture is available and adequate at all times to discharge the interest and principal amount payable**

Portfolio managers

Portfolio manager means any person who pursuant to contract or arrangement with the client, advises or directs or undertakes on behalf of the client the management or administration of a portfolio of securities or the funds of the clients as the case may be. **A portfolio manager plays a pivotal role in deciding the best investment plan for an individual as per his income, age as well as ability to undertake risks.** A portfolio manager is responsible for **making an individual aware of the various investment tools available in the market and benefits associated with each plan. Make an individual realize why he actually needs to invest and which plan would be the best for him.** A portfolio manager is

responsible for designing customized investment solutions for the clients according to their financial needs.

Stock-brokers and sub-brokers

Stock-broker means a member of stock exchange and they are the intermediaries who are allowed to trade in securities on the exchange of which they are members.

They buy and sell on their own behalf as well as on behalf of their clients. A sub-broker is one who works along with the main broker and is not directly registered with the stock exchange as a member. **Sub-broker means any person not being a member of stock exchange who acts on behalf of a stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers.** A stock broker plays a very important role in the secondary market helping both the seller and the buyer of the securities to enter into a transaction. The buyer and seller may be either a broker or a client.

Custodians

A custodian is a person who carries on the business of providing custodial services to the client. **The custodian keeps the custody of the securities of the client. The custodian also provides incidental services such as maintaining the accounts of securities of the client, collecting the benefits or rights accruing to the client in respect of securities.** Every custodian should have adequate facilities, sufficient capital and financial strength to manage the custodial services.

Investment Advisers

“Investment Adviser” means any person, who **for consideration**, is engaged in the business of **providing investment advice to clients** or other persons or group of

persons and includes any person who holds out himself as an investment adviser, by whatever name called. Investment advisers are those, who **guide one about his or her financial dealings and investments**. The role of investment adviser has got a lot of significance in the present time. Investment adviser serve as **facilitators, making sure that all clients have many opportunities to express their financial concerns and issues**. Basically Investment adviser **give advice and provide services related to the investment management process**. The rapid change of market conditions as well as the availability of numerous options for financial investments necessitates the existence of knowledgeable investment adviser. In order to add value, the investment adviser is called upon to **apply specialized knowledge, experience and analytical resources to create and deliver focused advice to client and works to increase the investment knowledge of clients** and thereby support the fiduciary obligations clients face in the management of their plan.

Credit Rating Agencies

Credit ratings establish a link between risk and return. **They thus provide a yardstick against which to measure the risk inherent in any instrument**. An investor uses the ratings to assess the risk level and compares the offered rate of return with his expected rate of return (for the particular level of risk) to optimise his risk-return trade-off. **Credit ratings provide individual and institutional investors with information that assists them in determining whether issuers of debt obligations and fixed-income securities will be able to meet their obligations with respect to those securities**. Credit rating agencies provide investors with objective analyses and independent assessments of companies that issue such securities.

THE DAR ES SALAAM STOCK EXCHANGE (DSE)

Originally the DSE was a body corporate incorporated in 1996 under the Companies Act, 2023 as company limited by guarantee without share capital, but as of 29th June, 2015 it became a public company limited by shares. The organogram of the DSE is spelt out under the Articles of Association of the DSE. The DSE governance structure is built on three pillars. **The apex pillar is the General Meeting of the shareholders of the company.** This forum is the final organ in the governance ladder within the DSE.

The second pillar (below the General Meeting) is the Board of Directors which is duly appointed in accordance with the Articles of Association of the DSE. All the governing functions of the DSE are vested into the Board. The Board is accountable to the General Meeting.

The third pillar is Management of the DSE under the leadership of the Chief Executive Officer. Management, which is composed of the CEO and Managers, is vested with powers to run the day to day activities of the DSE. Management is answerable to the Board of Directors.

DSE MEMBERSHIP

The DSE membership consists of **Licensed Dealing Members (LDMs)** and **Associate Members.**

LDMs are classified according to the activities or transactions they are licensed to perform.

1.-**The LDMs** that are allowed to transact at the DSE as agents **or on behalf of the investors are known as brokers.**

2.- **LDMs** who are allowed to transact **as Principals or on their own behalf** are known as **Dealers.**

3.- **Associate members** are all non-LDM members (natural and legal) who have interest in the development of capital markets in Tanzania including the following categories; Listed companies, Custodian Banks, Institutional investors, professional associations, as well as individuals.

DSE FUNCTIONS

(i) Provides a market for listed securities DSE provides a platform that enables those wishing to join listed companies to do so and those wishing to leave to do so as well. The DSE therefore provides platform and liquidity by way of providing a continuous market for securities whereby securities are exchanged for cash.

(ii) Facilitates transparency Disclosure requirements put in place by the DSE require listed companies to promptly disclose all price sensitive information so that investors may make informed decisions. This is achieved at two levels; first, at the initial offering period when companies have to meet listing requirements relating to offering documents and second through continuous listing obligations. In this context, the DSE becomes information clearing point between listed companies and investors (information hub).

(iii) Facilitates privatization and wider ownership of resources The DSE facilitates the privatizations of the some parastatal organizations which were

hitherto under the control of the Government whose shares have been sold by the Government to the public through the DSE.

(iv) Facilitates raising of capital for enterprises The DSE facilitates companies to sell new shares/bonds at better prices which lower the cost of capital to such companies and improves their chances of increasing operating profits. Experience has shown that investors accept higher prices for shares and lower interest rates for bonds, when companies selling these securities are well known and have met listing conditions and reporting requirements as opposed to lesser known enterprises where the investors are faced with a greater amount of uncertainty and as a result they demand lower prices for shares or higher yields as a compensation for this increased risk.

(v) Creation of wealth through investing in listed securities Listed companies provide an opportunity for many people in the society to participate through ownership in key sectors of the economy. This opportunity enhances a broad-based wealth creation and economic empowerment to many citizens.

(vi) Contributes to the cultural transformation of Tanzanians At the time the DSE was established, only a handful Tanzanians could claim to be knowledgeable with stock market operations. Operationalization of the DSE has contributed substantially towards public enlightenment which has caused more Tanzanians to invest in listed companies as a result of this transformation. The public enlightenment exercise is ongoing and will keep on while taking into account past experiences. It is the DSE's goal that Tanzanians appreciate and

eventually adopts a thrift culture that thrives on equity ownership in successful business concerns.

INVESTING AT THE DAR ES SALAAM STOCK EXCHANGE PLC

Both foreigners and Tanzanians are allowed to invest on the listed securities at the DSE. Anyone interested in investing on either equity or bonds must contact DSE Licensed Dealing Members. Also investors can buy and sell shares through their mobile phones simply by dialing *150*36# (Vodacom, Tigo & Airtel) for quotation, later will receive a message prompt to pay either by Mpesa, Tigo Pesa, Airtel Money or Maxmalipo. Within 3 days the respective broker that you have chosen will contact you.

MARKET MALPRACTICES (PART IX OF THE ACT-TRADING IN SECURITIES)

106. False trading and market rigging transactions.

106. False trading and market rigging transactions

(1) Any person who creates or causes to be created, or does anything that is calculated to create, **a false or misleading appearance of active trading in any securities on a stock exchange in Tanzania or a false or misleading appearance with respect to the market for, or the price of, any such securities commits an offence.** (2) Any person who by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or **by any fictitious transactions or devices, maintains, inflates, depresses, or causes fluctuations in the market price of any securities commits an offence.** (3) Without prejudice to the general effect of subsection (1), any

person who → (a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities; (b) makes or causes to be made an offer to sell or purchase any securities at a specified price where he has made or caused to be made or proposes to make, or knows that person associated with him has made or caused to be made or proposes to make, an offer to sell or purchase the same number, or substantially the same number of securities at a price that is substantially the same as the specified price, **shall be deemed to have created a false or misleading appearance of active trading in securities on a stock exchange.**

(4) In the prosecution of a person for an act referred to in subsection (3), **it is a defence if the defendant establishes that the purpose for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on the stock exchange.** (5) **A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with such person, acquires an interest in the securities after the purchase or sale.**

(6) In a prosecution for an offence under subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, **it is a defence if the defendant establishes that the purpose for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.** (7) The reference in subsection (3) to a transaction of sale or purchase of securities includes → (a) a reference to the making of an offer to sell or purchase

securities; and (b) a reference to the making of an invitation, however expressed that expressly or impliedly invites a person to offer to sell or purchase securities.

107. Stock market manipulation.

107. Stock market manipulation (1) Any person who effects, takes part in, is concerned in or carries out, either directly or indirectly **two or more transactions in securities of a body corporate which transactions have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the body corporate on a stock exchange in Tanzania with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate shall be guilty of an offence.** (2) A reference in this section to a transaction, in relation to securities of a body corporate, includes → (a) a reference to the making of an offer to sell or purchase such securities of the body corporate; and (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities of the body corporate

108. False or misleading statements.

108. False or misleading statements.

Any person who makes a statement, or disseminates information, that is false or misleading in a material particular that is **likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities** if, when he makes or disseminates the information →

(a) does not care whether the statement or information is true or false; or (b) he does or ought reasonably to have known that the statement or information is false or misleading in a material particular, commits an offence.

109. Fraudulently inducing persons to deal in securities.

109. Fraudulently inducing persons to deal in securities (1) Any person who → (a) by making or publishing any statement, promise or forecast which **he knows to be misleading, false or deceptive;** (b) **by any dishonest concealment of material facts;** (c) **by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive;** or (d) **by recording or storing in, or by means of, any mechanical, electronic or other device, which information he knows to be false or misleading in a material particular,** induces or attempts to induce another person to deal in securities is guilty of an offence. (2) It is a defence to a prosecution for an offence under subsection (1) (d) to establish that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person

110. Dissemination of information about illegal transactions.

110. Dissemination of information about illegal transactions Any person who circulates, disseminates or is concerned in the circulation or dissemination of, **any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate that is related to that body corporate,** in contravention of any of the provisions in this Part is guilty of an offence where → (a)

the person, or a person associated with the person, has entered into any such transaction or done any such act or thing; or (b) the person has received, or expects to receive directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of the statement or information,

111. Employment of manipulative and deceptive devices.

111. Employment of manipulative and deceptive devices

It is unlawful for any person directly or indirectly in connection with the purchase or sale of any securities► (a) to employ any device, scheme or artifice to defraud; (b) to engage in any act, **practice or course of business which operates or would operate as fraud or deceit upon any person**; or (c) to make any untrue statement of a material fact or to omit to state a material fact necessary, with the result that the statements made in the light of the circumstances under which they were made, appear truthful.

112. Prohibition of dealings in securities by insiders.

112. Prohibition of dealings in securities by insiders

(1) A person who is, or has at any time in the preceding six months prior to a specific **deal been connected with a body corporate shall 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.** (2) A person who is, or has at any time in the preceding six months prior to a specified deal been connected with a body corporate shall not deal in any securities of another body corporate if by

reason of his being; or having been connected with the firstmentioned body corporate he is in possession of information that➔

(a) is not generally available but, if it were, would be likely to affect materially the price of those securities; and (b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and the securities of the other. (3) Where a person is in possession of any information as provided in subsection (1) or (2), but he is not precluded by either of those subsections from dealing in those securities, he shall not deal in those securities if➔ (a) he has obtained the information, directly, from another person and is aware, or ought reasonably to be aware, of the facts or circumstances by virtue of which that other person is himself precluded by subsection (1) or (2) from dealing in those securities; or (b) when the information was so obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by himself or with that other person. (4) No person shall at any time when he is precluded by subsection (1), (2) or (3) of this section from dealing in any securities➔ (a) cause or procure any other person to deal in those securities; or (b) communicate that information to any other person if➔ (i) trading in those securities is permitted on a stock exchange whether within or outside Tanzania; and (ii) he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities. (5) Without prejudice to subsection (3) but subject to subsection (7) and (8), no body corporate shall deal in any securities at a time when any officer of the body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities. (6) A body corporate is not precluded by subsection (6) from entering into a transaction at any time by reason only of

information in the possession of an officer of that body corporate if► (a) the decision to enter into the transaction was taken on its behalf by a person other than that officer; (b) it had in operation at that time arrangements to ensure that the information was not communicated to any person and that no advice with respect to the transaction was given to him by a person in possession of the information; or (c) the information was not so communicated and such advice was not so given. (7)

A body corporate is not precluded by subsection (6) from dealing in securities of another body corporate by reason only of information in possession of its officer which was obtained by the officer in the course of his duties as its officer but relates to proposed dealings by the first- mentioned body corporate in securities of the other body corporate. (8) For the purposes of this section, a person is connected with a body corporate if, being a natural person► (a) he is an officer of that body corporate or of a related body corporate; (b) he is a substantial shareholder in that body corporate or in a related body corporate; or (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsection (1) and (2) apply by virtue of► (i) any professional or business relationship existing between himself (or his employer or body corporate of which he is an officer) and that body

corporate or a related body corporate; or (ii) his being an officer or a substantial shareholder in that body corporate or in related body corporate. (9) This section does not preclude the holder of a dealer's licence from dealing in securities, or rights or interests in securities, of a body corporate, where the securities, rights or interests are permitted by a stock exchange to be traded on the stock market of that stock exchange, if► (a) the holder of the licence enters into the transaction concerned as agent for another person in accordance with a specific instruction to effect that transaction; (b) the holder if the licence has not given any advice to the

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other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and (c) the other person is not associated with the holder of the licence.

(10) Where a prosecution is instituted against a person for entering into a transaction whilst in possession of certain information contrary to this section, it is a defence if the person satisfies the court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction. (11) For the purposes of subsection (8), "officer", in relation to a body corporate, includes→ (a) a director, secretary, executive officer or employee of the body corporate; (b) a receiver, or receiver and manager, of property of the body corporate; (c) an official manager or a deputy official manager of the body corporate; (d) a liquidator of the body corporate; and (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person

NB

Public Issue of shares means the selling or marketing of shares for subscription by the public by issue of prospectus. For raising capital from the public by the issue of shares, a public company has to comply with the provisions of the Companies Act etc. A company can raise funds from the primary market through different method.

(a) Public issue: When an issue/offer of securities is made to new investors for becoming part of shareholders→family of the issuer it is called a public issue. Public issue can be further classified into **Initial public offer (IPO)** and **Further public offer (FPO)**. The significant features of each type of public issue are illustrated below:

(i) Initial public offer (IPO):

When an unlisted company makes either a fresh issue of securities or offers its existing securities for sale or both for the first time to the public, it is called an IPO. This paves way for listing and trading of the issuer's securities in the Stock Exchanges.

(ii) Further public offer (FPO) or Follow on offer: When an already listed company makes either a fresh issue of securities to the public or an offer for sale to the public, it is called a FPO.

(b) Right issue (RI): When an issue of securities is made by an issuer to its shareholders existing as on a particular date fixed by the issuer (i.e. record date), it is called a rights issue. The rights are offered in a particular ratio to the number of securities held as on the record date.

(c) Bonus issue: When an issuer makes an issue of securities to its existing shareholders as on a record date, without any consideration from them, it is called a bonus issue. The shares are issued out of the Company's free reserve or share premium account in a particular ratio to the number of securities held on a record date.

Conclusion

A high premium placed on people having a qualification to work in the securities industry; first because securities regulators insist that only those people who have a license can offer investment advice. A market that requires the people working in it to be qualified is much more highly regarded than a market that operates with minimal qualification requirements. In most securities markets it is the securities regulator that sets the examination although many now leave it to training institutes

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to carry out the training. Some jurisdictions have formed Securities Institutes. Thus as to ensure market free business the agency are also given the power to advise the investors rather than concentrating in the same dealings.

Tanzania capital market regime is no an old concept, It growth associate with changes in legal environment in period between 1985 to mid-1990s. The legal framework of capital market in Tanzania covers laws, regulations and institutions which establish from the said laws. It cover all aspect relating to capital market from entering of business, conduct and operation of business, It also designed to cover current issues relating to company such as cross listing and cooperate good governance. The institutions under the regime also work together with other international institutions who involve in securities industries in order to regulate the capital market regime in well and sound manner.