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Briefing

Impact of foreign exchange regulation amendments on Tanzanian investments

The latest amendments to the foreign exchange regulations have relaxed and in some cases removed restrictions on inward foreign investment in the Dar es Salam Stock Exchange (**DSE**) and Government (**GOT**) securities as well as restrictions on outward investment by Tanzanian residents. This month's breifing looks at the historic restrictions and considers the changes brought by the recent amendments.

The new regulations

Recent liberalisations were enacted through Government Notice No. 13 of 2014, of two key regulations on 2 May 2014:

– The Foreign Exchange (Listed Securities) (Amendment) Regulations 2014 (**FELSAR**); and
– The Foreign Exchange (Amendment) Regulations 2014 (**FEAR**).

Below we consider their impact on investments in the DSE, investments in GOT securities and outward investments by Tanzanian residents.

Trading on the DSE

The DSE was established and incorporated in September 1996 as a company limited by guarantee responsible for the acquiring, selling and transferring of shares and corporate bonds, with its principal aim being the advancement of the economic and financial sectors of Tanzania.

Historically, the DSE's regulations were very much geared to protect the position of Tanzanian investors, to the exclusion of foreign direct investment (**FDI**). It wasn't until 2003 that regulations were brought in allowing foreign investors to participate in the acquisition of shares of publicly listed companies on the DSE. The legal and regulatory frameworks that governed this participation were:

– the Capital Markets and Securities (Foreign Companies Public Offers Eligibility and Cross Listing Requirements) Regulations 2003;
– the Capital Markets and Securities (Foreign Investors) Regulations 2003 (both issued under the Capital Markets and Securities Act of 1994) (**CMSFIR**); and

– the Bank of Tanzania Foreign Exchange (Listed Securities) Regulations 2003, issued under the Foreign Exchange Act of 1992.

The regulations provided for a 60% ceiling on investment by foreigners in DSE listed companies. On floatation, foreign investors were allowed to purchase up to 60% of shares floated, with at least 40% of shares set aside for Tanzanian investors.

The CMSFIR defines a "foreign investor", in the case of a natural person, to mean a person who is not a citizen of Tanzania, and in the case of a company, to mean a company incorporated under the laws of any country other than Tanzania in which more than 50% of the shares are held by a person who is not a citizen of Tanzania, and in the case of partnerships, to mean a partnership in which the partnership controlling interest is owned by a person who is not a citizen of Tanzania.

Companies with more than 60% foreign ownership which were already listed on the DSE at the time these regulations were enacted were exempt to the extent that they were not obliged to sell their shares so as to meet the 40% Tanzanian ownership threshold. However, were these companies to sell their shares, then they were to be sold to Tanzanian investors as required so as to achieve the minimum 40% local investment threshold.

An additional regulation was that for all Initial Public Offers (**IPO**), preference had to be given to Tanzanian investors. Foreign investors were allowed to purchase the shares from Tanzanian investors through secondary trading at the DSE. However, foreign investors would be allowed to participate in an IPO in cases where Tanzanian investors were unable to take all shares on offer.

Under the new regulations however, a non-resident may now acquire, sell or transfer any securities other than GOT securities issued in Tanzania, thereby lifting the existing 60% ceiling on foreign investment (regulation 3(1) of FELSAR).

GOT securities

Participation in GOT securities was previously prohibited for all foreigners. Unlike the limited participation of foreign investors enjoyed in relation to the acquiring, selling, and transferring of listed shares and corporate bonds, GOT securities were excluded from purchase by foreign investors.

However, under the new regulations, this restriction has now been partially lifted, in relation to investments by East African Community (**EAC**) residents. Regulation 3(2) of FELSAR now provides that an EAC resident can acquire, sell or transfer GOT securities of up to 40% of the amounts issued, but EAC resident investors from the same country cannot exceed two-thirds of that 40%. For example, an investor or investors from Kenya will not be allowed to participate in GOT securities transactions exceeding two-thirds of the 40% as a threshold granted to that country.

It should also be noted that regulation 3(2)(c) of FELSAR provides that the GOT securities acquired by EAC residents under these provisions shall not be transferred to a Tanzanian resident within twelve months of the date of acquisition.

As a result of the amended regulation, GOT securities are now open for EAC residents (up to the 40% ceiling), but still blocked for non-East African investors.

Outward investments

Prior to the current amendments, outward investments were generally restricted for Tanzanian residents, including participation in foreign capital markets and purchase of foreign securities (which required externally generated funds and approval of Capital Markets and Securities Authority (**CMSA**)).

Under the new regulations, a resident (defined as a person who resides consecutively, or whose centre of predominant economic interest is in Tanzania for twelve months or more), may now acquire from, sell, or transfer to, a non resident, any security or coupon if the issuer or buyer of the security or coupon is an EAC resident and the security or coupon to be acquired, sold or transferred is funded exclusively by externally acquired funds (regulation 9(1) of FEAR). This in effect allows Tanzanian residents to deal in any securities freely within the East African region.

In addition, regulation 9(A) of FEAR now allows residents to engage in FDI and acquisition of real estate and other real assets beyond the EAC region (provided that the relevant bank notifies the Bank of Tanzania of the intended remittance in advance).

Conclusion

Foreign investment restrictions have not been entirely lifted. There are still restrictions on inward and outward investments which remain in place, including restrictions on the acquisition of GOT securities by non-EAC residents (and ceilings applicable to EAC residents), restrictions on outward investments beyond the EAC region, and restrictions on investments in Collective Investment Schemes (which require CMSA authorisation).

Procedural requirements also remain; for example, for outward investment within the EAC, payment must be made through a bank and accompanied by supporting documents and the BOT must be notified of the intended remittance.

Nevertheless, as the EAC moves towards free movement of capital, these new regulations are a step in achieving the Common Market goals of the EAC in relation to both outward and inward investments.

Further information

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Further advice should be taken before relying on the contents of this summary.