

**ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING THE
PROTECTION OF INVESTORS AGAINST INSIDER TRADING IN
CAPITAL MARKET BUSINESS IN TANZANIA**

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PROTECTION OF INVESTORS AGAINST INSIDER TRADING IN
CAPITAL MARKET BUSINESS IN TANZANIA**

By

SOPHIA KIHILILE

**A Compulsory Dissertation Submitted to the Faculty of Law in Partial Fulfillment
of the Requirements for the Award of Master's Degree in Commercial Laws
(LL.M. - CL) of Mzumbe University**

2018

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by Mzumbe University, a dissertation entitled: **Analysis of the Legal framework governing the protection of investors against insider trading in capital market business in Tanzania**. In partial fulfillment of the requirements for award of Master’s degree in Commercial Law of Mzumbe University.

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DEAN-FACULTY OF LAW

DECLARATION

I, Sophia Kihelile, declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other University for a similar or any other degree award.

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My sincere gratitude and thankfulness go to my supervisor, Prof. Cyriacus Binamungu, for his guidance and constructive criticism that helped me stay focused from the beginning of this work up to the end may the Almighty God protect and bless him abundantly.

I would like also to thank the CMSA, DSE and their staffs, stock brokers, Licensed Dealing Members for their help and contributions towards the success of this work.

However, I remain personally responsible for the errors and omissions which might be appearing in this report.

DEDICATION

This work is dedicated to my parents; my late Father Eng. Kareem Lotary Kihelile and lovely mother Jesca John.

The work is deeply dedicated to my lovely niece Sherrice Edmund, she is, a real blessing to our family.

LIST OF ABBREVIATIONS ACRONYMS

ASEA	–	African Stock Exchanges Associations
BoT	–	Bank of Tanzania
BRELA	–	Business Registration Licensing Agency
CIS	-	Collective Investment Schemes
CMSA	–	Capital Market and Securities Authority
DSE	–	Dar es Salaam Stock of Exchange
ERP	–	Economic Recovery Programme
IOSCO	-	International Organization of Securities Commissions
IPO	–	Initial Public Offer
LDM	-	Licensed Dealers
NBAA	–	National Board of Accounting and Auditing
SAP	–	Structural Adjustment Programme
TBL	–	Tanzania Breweries Limited
TOL	–	Tanzania Oxygen Limited
TRA	–	Tanzania Revenue Authority

LIST OF STATUTES

Principle Legislations

Business Licensing Act, Act No. 25 of 1972

Capital Markets and Securities Act No 5 of 1994 as amended by Act No. 4 of 1997

Companies Act, No 212 of 2002

Customs Tariff (Amendment) Act, Act No. 1 of 1976

Financial Laws (Miscellaneous Amendments) Act No 27 of 1997

Subsidiary Legislation

Capital Market and Securities (Collective Investment Scheme) Regulations, G.N. No. 770 of 1997. And its Amendments G.N. No 213 of 2011

Capital Markets and Securities (Accounting and Financial Requirements Amendment), Regulations, 2003 G.N. No. 14 of 1997

Capital Markets and Securities (Advertisements) Regulations, G.N. No. 15 of 1997

Capital Markets and Securities (Establishment of Stock Exchanges) Regulations, G.N. No. 416 of 1996

Capital Markets and Securities (Licensing) Regulations, G.N. No. 417 1996

Capital Markets and Securities (Prospectus Requirements) Regulations, G.N. No. 769 of 1997

Capital Markets and Securities (Collective Investment Scheme) Amendments Regulations, G.N No. 21 of 2011

Capital Markets and Securities (Registers of Interests in Securities) Regulations, G.N. No. 415 of 1996

Capital Markets and Securities (the Capitalization and Rights Issue) Regulations, G.N. No. 288 of 2000

High Court (Commercial Division) Procedure Rules, G.N No. 250 of 2012

Capital Markets and Securities (Conflict of Interest) Guidelines, 2002

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

Capital Markets and Securities (Guidelines on Corporate Governance) Guidelines, 2002

Guidelines of the Issuance of Corporate Bonds and Commercial Paper, 1999

ABSTRACT

This work is about the protection, protection of investors against insider trading in capital market business in Tanzania. The research focused on Insider Trading as the illegal practice of trading on the stock exchange to one's own advantage through having access to confidential information. The study was aimed at examining the laws and institutions governing the protection of investors against insider trading in capital market business in Tanzania. The research was conducted in the Dar Es Salaam city where the DSE and CMSA offices, the Securities brokerage firms and most of the individual investors are located.

The data were collected from DSE and CMSA legal departments through interviews of the officials. At the Securities Brokerage offices structured interviews were conducted to obtain primary data. Questionnaires were used to forty (40) individual investors from different professions and specializations, investors listed companies at DSE.

The researcher found that the laws on a securities exchange ensure speculator assurance, however the major frustrating variable is the utilization of the said laws on speculators who don't have satisfactory consciousness of their rights, on the restricted practices, and notwithstanding perusing the budget summaries of the organizations put resources into. Further, the DSE and CMSA do not have the satisfactory innovation to distinguish the denied offenses, for example, the insider managing which restrains the security of the premiums of speculators.

The suggestions are to expand the consciousness of the individual speculator through the LDMs and agents who manage the financial specialists on an everyday premise. There is likewise a requirement for the development of innovation to recognize precluded offenses and encourage in accumulation of proof to indict wrongdoers.

TABLE OF CONTENTS

CERTIFICATION	Error! Bookmark not defined.
DECLARATION	i
COPY RIGHT	iii
ACKNOWLEDGEMENT	iv
DEDICATION	Error! Bookmark not defined.
LIST OF ABBREVIATIONS ACRONYMS	Error! Bookmark not defined.
LIST OF STATUTES	Error! Bookmark not defined.
ABSTRACT	ix
CHAPTER ONE	1
INTRODUCTION AND BACKGROUND INFORMATION	1
1.1 Introduction.....	1
1.2 Background Information	4
1.3 Statement of the problem	10
1.4 Objectives of the Study	11
1.4.1 General Objectives	12
1.4.2 Specific Objectives.....	12
1.4 Research Questions	12
1.5 Significance of the Study	12
1.6 Literature Review.....	13
1.7 Research Design and Methodology	22
1.7.1 Data Collection Method	22
1.7.1.1 Interview	22
1.7.1.2 Questionnaires.....	23
1.7.1.3 Library Research	23
1.7.2. Research Design and Methodology	23
1.7.3. Area of Study	24
1.7.4. Sampling and Sampling Technique	24

1.7.5 Sample Size.....	24
1.7.5.1 Sample Selection.....	24
1.7.6 Data Processing and Analysis	25
1.8 Limitations of the Study.....	25
1.9 Delimitation of the Study	25
CHAPTER TWO	26
THE CONCEPTUAL FRAMEWORK ON PROTECTION OF INVESTORS AGAINST INSIDER TRADING IN CAPITAL MARKERT BUSINESS IN TANZANIA	26
2.1 Introduction.....	26
2.2 Insider Trading.....	26
2.3 Capital Market.....	26
2.4 Primary Market	27
2.5 Secondary Market	28
2.6 Stock Exchange.....	29
2.7 The Initial Public Offer (IPO).....	30
2.8 Shareholders Protection	31
CHAPTER THREE	32
THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING CAPITAL MARKETS BUSINESS IN TANZANIA	32
3.0 Introduction.....	32
3.1 Regulatory Bodies of the Securities Market Business in Tanzania	32
3.1.1 Business Licensing Agency	32
3.1.2 Dar es Salaam Stock of Exchange DSE.....	33
3.1.3 Capital Market Securities Authorities	33
3.2 The Capital Markets and Securities Act, 1994.....	33
3.3 The Companies Act, 2002.....	36
3.4 The Dar es Salaam Stock Exchange (Foreign Investors) Regulations, 2003.....	36

3.5 The High Court (Commercial Division) Procedure Rules, 2012	37
3.6 The Regulation of Insider Trading in Tanzania	38
3.7 Weaknesses of the Capital Markets and the Securities Act and the Companies Act in Combating Insider Trading in Tanzania	40
3.8 Conclusion	41
CHAPTER FOUR	42
DISCUSSION OF RESEARCH FINDINGS	42
4.0 Introduction	42
4.1 The legal framework governing the protection of investor against insider trading in capital market business	42
4.2 The Institutions governing the protection of Investor against Insider Trading in Capital Market Business	47
4.2.1 Control of market intermediaries	48
4.2.2 Investor Education on their rights and duties in the market.....	49
CHAPTER FIVE	50
SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS	50
5.0 Introduction	50
5.1 Summary of findings.....	50
5.2 Conclusion and Recommendation.....	51
5.2.1 Conclusion	51
5.2.2 Recommendations	51
5.3 Improved technology to detect insider trading.....	52
5.3.1 The Law should include interpretation of key legal concepts.....	52
5.3.2 Need for clear civil remedies and criminal penalties.....	52
5.3.3 Need for legal restriction on takeovers or mergers	53
5.3.4 Permanent exclusion from the market.....	53
5.3.5 Regular trainings and education against insider trading	53

REFERENCES.....54
APPENDICES.....60

CHAPTER ONE

INTRODUCTION AND BACKGROUND INFORMATION

1.1 Introduction

Globally, capital markets and securities segment assume a significant job on monetary improvement since capital is basic a component for enhancing financial generation.¹ Mainly, the functions of the capital market include enabling individuals to undertake more with their savings than what they would.² These business sectors can end up significant motors for financial extension in Sub-Saharan African nations.³ The nearness of energetic and dynamic securities markets positively affects society.⁴ Studies have indicated that there is a cherished relationship between deep securities markets and economic growth.⁵ These markets regulate the raising of capital which is professionally allocated to creative sectors of the economy, thus, promoting growth.

In addition, securities markets create a link between the reserve funds and the venture over the substances, existence. It gives a commercial center to buy and closeout of securities so as to guarantee transferability of securities which is for the reason for the joint stock endeavor framework.⁶

¹Read more at Capital Markets Definition | Investopedia <http://www.investopedia.com/terms/c/capitalmarkets.asp> accessed on 12nd April, 2017.

²Collin Kirkpatrick, Does Financial Development Contribute to Poverty Reduction? 42 J. DEV. ST. 631 (2005); Strahan Spencer & Adnan Wood, Making the Financial Sector Work for the Poor, 42 J. DEV. ST. 657 (2005)., Wagacha M. Mobilizing Domestic Resources in Kenya: A Survey of Shareholder Strategies in the Capital Markets, INSTITUTE OF POLICY ANALYSIS AND RESEARCH, Discussion Paper No. 022/2000 (2000), Cross, Law and Economic Growth, 80 TEX. L. REV. 1737, 1769-70 (2002), Rafael La Porta (*et al*), Investor Protection and Corporate Governance, 58 J. FIN. ECON.3, 16-17 (2000).

³ John Fagan, the Role of Securities Regulation in the Development of the Thai Stock Market, 16 COLUM. J. ASIAN L. 303, 305 (2003).

⁴ See Collin Kirkpatrick & Christopher Green, Finance and Development: An Overview of the Issues, 14 J. INT. DEV. 207 (2002).

⁵ See Michael S. Bennett, Securities Regulation in Singapore: The City-State as an International Financial Center, 12 UCLA PA. BASIN L. J. 1; Yohane Khamfula, African Capital Market and Real Sector Investment, 17 J. INT. DEV. 512 (2005). Bashar H. Malkawi & Haitham A. Haloush, Reflections on the Securities Law of Jordan, 23 AM. U. Intel L. Rev. 763, 764 (2008).

⁶See, "Capital Market in Tanzania", available at http://www.academia.edu/9630069/Capital_Market_In_Tanzania, accessed on 1st Dec, 2016.

In addition, securities showcase accommodates a linkage between the funds and the speculation over the substances, reality. It gives a commercial center to buy and clearance of securities so as to guarantee transferability of securities which is for the reason for the joint stock undertaking framework.⁷ Generally,⁸ the laws on security guarantees that the financial exchange exercises are keeping up with the goal that speculator interests are ensured. Speculators' interests are ensured by explicit laws and guidelines against misappropriation, carelessness, extortion, and terrible practices so as to dodge poor bookkeeping and budgetary exposure necessities in the market which will bring down the self-assurance of the financial specialists in the market. This is fundamental considering the way that capital market is a genuinely new region, which occurs because of the reception of the market arranged economy.⁹ It is one of the changes in the budgetary part that goes for reforming the money related area, which involved the order as well as correction of different laws to shield financial specialists from insider exchanging. These laws including the Tanzania Investment Act, 1997,¹⁰ The Financial Laws (Miscellaneous Amendments) Act, 1997,¹¹ the Capital Markets Securities Act, 1994,¹² and it's regulations for example; **Capital Markets and Securities (Register of Interests in securities) Regulations 1996, Capital Markets and Securities (Conflict of Interest) Guidelines, 2002** whereby these guidelines express that a register must be kept up tracking the securities in which individuals from staff of CMSA and other related have enthusiasm, nearby this gives straightforwardness which will check the issue of insider exchanging, workers from irreconcilable situation,

⁷ Act No.5 1994.

⁸ Act No.5 1994

⁹ Chong A & Lopez-de-Silanes F, *Investors Protection and Corporate Governance: Firm-level Evidence Across Latin America* (2007), Washington DC: Stanford University Press.

¹⁰ Act No. 26 of 1997, "This is an act to guide investment activities in Tanzania, to provide for more favorable conditions for investors. It provides definitions for inter alia local investor, foreign investor and local capital".

¹¹ Act No. 27 of 1997, "The Act aimed at amending certain financial laws, in order to address areas in affected legislations that had potential conflict with some provisions in the Tanzania *Investment Act* of 1997, The legislations which were affected by this Act are some sections of the *Income Tax Act*, 1973, the *Customs Tariff Act*, 1976, the *Sales Tax Act*, 1976 (since repealed) and the *Immigration Act*, 1995".

¹² Act No. 12 of 1991, "The Legislation intended to harmonize the operations of all financial institutions in Tanzania, to foster sound banking activities, to regulate credit operations, and to provide for other matters related to these purposes".

in matters relating to the market. Furthermore, the guidelines aim at preventing the likelihood that CMSA regulatory decisions are influenced by personal interests. Or the presumption that CMSA member and employees' investment decisions are subject to insider trading. .¹³

Individuals from the Authority and staff of the CMSA must not adventure or seem to endeavor to further their own potential benefit any data to which they may wind up privy as a result of their business. This is guideline involves that insider exchanging is unlawful since it would give the individuals and representatives more bit of leeway than different financial specialists with regards to choosing where to contribute and when give that, if any insider is to utilize such advantaged data will have submitted an offense.

Also, the other laws like **the Banking and Financial Institutions Act, 1991** and **the Bank of Tanzania Act, 2006.**¹⁴ Both laws treats the practice of insider trading as both a criminal offence as well as a cause for civil action. Thus, active enforcement of insider trading legislation helps investment companies to have a broader market base and aids countries to maintain viable economies. The researcher agrees on the view that insider trading must be treated as an offence against the company or the issuer of affected securities and the prejudiced investors.

¹³ Cap 79 R.E 2002] Section 112

¹⁴ The Act expressly specifies that, “ functions and objectives of the regulation and supervision of banks and financial institutions in Tanzania, Other laws include the *Land Act*, 1999, Act No. 4 of 1999, the *Village Land Act*, 1999, Act No. 5 of 1999) which provides for the management and administration of land in villages, and for related matters, the *Value Added Tax Act*, 1997, Act No. 24 of 1997) which provides for the imposition of tax to be known as Value Added Tax on supplies of goods and services and for related matters, the *Immigration Act*, 1995, Act No. 7 of 1995) which aimed to provide for the enactment of one law for control of immigration in the United Republic of Tanzania and for matters incidental to or connected with immigration, the *Foreign Exchange Act*, 1992, Act No. 1 of 1992) which provides for the administration and management of dealings and other acts in relation to gold, foreign currency, securities, payments, debts, imports, exports, transfer or settlement of property, the *Customs Tariff (Amendment) Act*, Act No. 1 of 1976) which provides for the imposition of duties on goods imported into Tanzania as well as the *Business Licensing Act*, Act No. 25 of 1972) which provides for licensing of business operations”. No firm or business entity can enter into business activities before getting a business license.

1.2 Background Information

Globally, capital market in the world has the originated when trade and factor mobility was opened to the economy of the world.¹⁵ During this period, capital and people moved all the way through the world, in search of extra profits, better wages and better jobs. As a consequence, trade and capital enlarged rapidly, and was accompanied by movement of labor across borders. Globalization first surfaced from 1870 to 1973 where capital and labor moved freely across borders, and together with capital markets they all became more integrated. The wars brought economic and political crisis, and as a result gave rise to nationalism which intensified people's movement and flow of capital.¹⁶

In Africa, capital markets existence can be traced back in 1989 where only eight stock markets existed, which developed and increased overtime, and by 2018 there were nineteen stock markets. The changes in the African economy were as a result of financial liberalization programs which paved way for the establishments of stock markets.¹⁷

In East Africa adopted the capital market system in 1990's,¹⁸ Individuals from the Authority and staff of the CMSA must not endeavor or seem to adventure to further their own potential benefit any data to which they may wind up privy as a result of their work. This is rule involves that insider exchanging is unlawful since it would give the individuals and workers more favorable position than different financial specialists with regards to choosing where to contribute and when give that, if any insider is to utilize such advantaged data will have submitted an offense.¹⁹

¹⁵ Chong A & Lopez-de-Silanes F, *Op Cit*.

¹⁶Chong A & Lopez –de - Silans F, *Investors Protection and Corporate Governance: Firm – level Evidence Across Latin America* (2007), Washington DC: Stanford University Press.

¹⁷ *Ibid*.

¹⁸ Rajab M. Factors affecting the development of Stock exchange in Tanzania; “a Dissertation Submitted for the Partial Fulfillment of the Requirement for the Degree of Masters in Business Administration (Finance) at the University of Dar es Salaam”, October 1996, p. 1.

¹⁹ <http://www.tanzaniainvest.com/finance/capitalmarkets/> accessed on 14th July 2018

From the 14 adjacent recorded associations in DSE, are outcome of the privatization methodology endeavored by the Tanzanian Government. Tanzania Oxygen Limited (DSE:TOL) was the chief state-had association decided for privatization through the DSE. After TOL's first clearance of stock (IPO) at DSE on April fifteenth, 1998 Tanzania Breweries Limited (DSE:TBL) sought after on September 28th of that year. Tanzania Cigarette Company (DSE:TCC), Swissport (DSE:SWIS), Tanzania Portland Cement Company (DSE:TPCC), Tanga Cement Company Limited (DSE:TCCL) and National Microfinance Bank (NMB) completed the once-over of 7 associations out of 330 shortlisted to be privatized.²⁰

Following these first state-driven postings, other exclusive organizations recorded in DSE as a bit of their corporate advancement procedure to raise capital. TATEPA, CRDB Bank, Precision Air, Maendeleo Bank, Swala Gas and Oil, MKOMBOZI Commercial Bank, and DCB Commercial Bank recorded independently on December seventeenth, 1999 June seventeenth, 2009 December 21st, 2011 November fourth, 2013 August eleventh, 2014 December 29th, 2014 and September sixteenth, 2008 separately.²¹ DSE in like manner counts with seven cross recorded associations with Kenya Airways (DSE:KA), East African Breweries (DSE:EAB), Jubilee Holdings (JHL), Kenya Commercial Bank (DSE:KCB), National media gathering (DSE:NMG), and Uchumi Supermarket (DSE:USL) from Kenya; and Acacia Mining Group (DSE:ACA) from UK. These associations crossed once-over basically due to procure a higher detectable quality and name affirmation in the Sub Saharan zone and for getting to potential examiners in different markets for possible game plans to raise capital, as it was articulated by the associations' CEOs at the posting minute.²²

The DSE has additionally figured out how to differentiate money related instruments available with values, subordinates, government and corporate securities and Real Estate

²⁰<https://www.tanzaniainvest.com/finance/capitalmarkets/> accessed on 14th July 2018

²¹ <https://www.tanzaniainvest.com/finance/capitalmarkets/> accessed on 14th July 2018

²² <https://www.tanzaniainvest.com/finance/capitalmarkets/> accessed on 14th July 2018

Investment Trusts (REITs) with the Watumishi Housing Company (WHC-REIT) which was the main REIT in East Africa.²³

The most recent organization to list at DSE is Mucoba Bank (DSE:MUCOBA), in the wake of raising a capital of more than TZS two billion amid its first sale of stock²⁴

The current arrangements conveyed a positive effect to the capital market improvement. through the foundation of the Capital Market and Securities Act,²⁵ its regulations²⁶ and runs consistently. The Dar es Salaam Stock Exchange (DSE) was set up under the Capital Markets and Securities Authority (CMSA) as an organization which managed the optional exchanging of securities. The DSE records offers and securities, which give organizations, the Government and the Municipal Authority with a wellspring of assets from both the general population and institutional financial specialists. By and by, the Act was corrected in the year 1997 to consolidate changes which primarily were identified with market players and administrators for the motivations behind giving more assurance and security to the securities speculators.²⁷

So as to ensure smooth undertaking of tasks, the Capital Markets and Securities Act builds up the Capital Markets and Securities Authority (CMSA) as a Government Agency built up to advance and manage securities business in the nation.²⁸

²³ ibid

²⁴ ibid

²⁵ [Cap. 79 R: E 2002].

²⁶“The Act is supplemented by various regulations that are promulgated by the Minister for Trade and Industries, These include the *Capital Markets and Securities (Establishment of Stock Exchanges) Regulations*”.

²⁷ In addition to these main laws, “there are other laws which have a direct impact on the operation of capital markets such as the *Companies Act* [Cap. 212 R: E2002].and the *Fair Competition Act* [Cap. 285 R: E2002]. This Act provides for the establishment of a Capital Markets and Securities Authority (CMSA) for the purpose of promoting and facilitating the development of capital markets and securities in Tanzania”. SEE more at <http://etd.uwc.ac.za/xmlui/handle/11394/5173?show=full> accessed on 1st Dec, 2016.

²⁸ <http://fortuneofafrica.com/tanzania/capital-market-and-securities-authority/>, accessed on 1st Dec, 2016.

Essentially, the Authority (CMSA) started working in 1994, under the Bank of Tanzania (BOT), however later turned into a self-ruling body with the vision of creating and managing a reasonable capital market, which is proficient, straightforward, organized, reasonable and impartial to all as given by the Capital Markets and Securities Act. The arrangement of the Capital Markets and Securities Authority has additionally been a change with a constructive effect to the capital market framework, as the expert has been managing encouraging and advancing advancement of an efficient, reasonable and equipped capital market and securities industry in Tanzania, to make arrangements as for stock trades, stockbrokers and different people managing in securities and for associated purposes.

The rise of capital market in Tanzania can likewise be connected with the monetary recuperation program that has been executed since mid-eighties going for facilitating of exchange limitations, trade controls, end of value control and privatization of open divisions.²⁹

As a component of accomplishing that, in 2002 the CMSA created and suggested its very own arrangement of rules on corporate administration to be received by open recorded organizations in Tanzania. For instance, the Capital Markets and Securities (Corporate Governance) Guidelines, 2002.

The rule mirrors the proposals that were once made by the Kings II Report and Kaduma Reports on corporate administration³⁰ with the point of improving and reinforcing great corporate administration rehearses by backers of securities through the capital markets and advance principles of self-guideline and raise the dimension of administration in accordance with universal patterns.³¹

²⁹ http://www.academia.edu/35833023/The_legal_framework_of_capital_markets_in_TANZANIA, accessed from 20th December 2018

³⁰ "Corporations governance is important because corporations are required to be accountable to their stakeholders with whom they interact, they expected to be sustainable institution, viable and competitive and be able to survive the demise of their founders; they are expected to be well managed to be able to attract finance form different investors".

³¹ Supra note 29

The activity by CMSA mirrors the present worldwide pattern regarding corporate administration since this includes the advancement of rules (standards) for successful corporate administration. The CMSA recognizes the impact of the standards for powerful corporate administration created by the OECD.³² The CMSA prescribed rules to take an investor instrumental perspective on associations. It states in its presentation that:-

*The selection of global principles on corporate administration best practices for open organizations in Tanzania is fundamental so as to boost investor esteem through viable and productive administration of corporate assets.*³³

The rules have exhaustively tended to different parts of investor rights and control, board control exercises, and determinants of board viability regarding the control work.³⁴ The rules prescribed by CMSA perceive that executives have a guardian duty to investors. Executives are relied upon to play out various exercises to secure and encourage the interests of investors. Similarly, it prescribes that the interests of the organization's partners ought to likewise be considered, particularly in basic leadership. The CMSA rules prescribed that, arrangement of the Board of Directors of recorded organizations ought to have in any event 33% of the board individuals as non official Directors.³⁵

Notwithstanding that, the CMSA has set out the guidelines identifying with struggle and mystery where the equivalent is appeared in the Capital Market and Securities Act, where it involves, among different elements of the expert, that it will be embrace measures to decrease and control and strife of the premium that may happen for vendors. These standards are known as the CMSA Guidelines to Conflict and Confidentiality

³² See the introductory part of the CMSA Para 1.2.

³³ Paragraph 1.1

³⁴ See Para 3.1, 3.2 and 3.3.

³⁵ *Ibid.*

whereby so as to advance great business structure the workers if the Authority are not required

In addition, Tanzania is likewise an individual from the International Organization of Securities Commissions (IOSCO), the worldwide body that sets principles and best practices in securities guideline. This was required because of the way that cross outskirt postings³⁶ has lower cost of capital, broadened worldwide investor base, more prominent liquidity in the exchanging of offers, esteem and attention are among other the drivers behind company's choice to list their offers abroad. Furthermore, it outperforms potential costs that the firm may encounter like posting costs, introduction to legitimate liabilities, charges and different exchanging erosions and compromise of fiscal reports with home and outside measures.³⁷ In principle, companies with cross-listed shares will have to follow and abide by the corporate governance rules adopted by the well-developed stock market.³⁸

As a component of remote postings and participation, the capital markets in Tanzania is presently accessible to outside financial specialists as the Dar es Salaam Stock Exchange was opened to remote capital in May, 2003, with the Bank of Tanzania guideline enabling outside speculators to hold up to 60% of the responsibility for organizations.³⁹ However, the challenge remains on the fear by the companies that if they come to the market, they will have to comply with full disclosure as this has tax implications.

³⁶ “Cross-listing is defined as a process by which a firm incorporated in one country elects to list its equity on the public stock exchange of another country” - See more at <http://www.tamimi.com/en/magazine/law-update/section-5/september-3/the-rationale-behind-cross-listing-its-implications-on-corporate-governance.html>, accessed on 12nd April, 2017. “In order to be approved for cross-listing, the company in question must meet the same requirements as any other listed member of the exchange, such as basic requirements for the share count, accounting policies, filing requirements for the company financial reports”. See Cross-Listing Definition, Investopedia <http://www.investopedia.com/terms/c/cross-listing.asp> accessed on 12nd April, 2017.

³⁷ See Karolyi (2006). "The world of cross-listing and cross-listing of the world: Challenging conventional wisdom". Review of Finance 10: 99–152; Khurana I., Martin X. and Periera R., 2007, “Cross-listing and Firm Growth”, Working Paper, University Of Missouri- Columbia.

³⁸ See more at <http://www.tamimi.com/en/magazine/law-update/section=5/september-3/the-rationale-behind-cross-listing-its-implications-on-corporate-governance.html>, accessed on 12nd April, 2017.

³⁹ See <http://www.tanzaniainvest.com>, accessed on 12nd April, 2017.

Investor protection is also guaranteed through corporate governance, where the activities of the companies existing in the capital market have to observe standards, which will safeguard the interests of the minority as well of those of majority shareholders in their day to day management. Through proper management of the companies, the shareholders will obtain the required benefits from their investments. It is against this backdrop that this research work is undertaken in order to critically analyse the effectiveness of investor's protection under the regulations and rules of the DSE so as to ensure that these investors effectively take part in a market.

1.3 Statement of the problem

A flourishing securities business relies upon the current legitimate system set up on the grounds that it decides the dimension of guideline of the market, the proficiency of exchanging and raising capital as needs be. In spite of the sanctioning of the Tanzania Investment Act, 1997,⁴⁰ the *Financial Laws (Miscellaneous Amendments) Act, 1997*,⁴¹ the *Capital Markets and Securities Act, 1994*⁴² together with the establishment of the Dar es Salaam Stock Exchange (DSE) whose main role is to ensure that a viable capital market succeeds in the country, reality on the ground indicates that capital market has not excelled to attain its prospects in protection of investors are concerned in relation to insider trading.⁴³ The analysis of the *Capital Market and Securities Act* indicates that it neither provides the interpretation to legal concepts such as insider, insider information

⁴⁰Act No. 26 of 1997, "This is an act to guide investment activities in Tanzania, to provide for more favorable conditions for investors, it provides definitions for inter alia local investor, foreign investor and local capital".

⁴¹ Act No. 27 of 1997, "The Act aimed at amending certain financial laws, in order to address areas in affected legislations that had potential conflict with some provisions in the Tanzania *Investment Act* of 1997, The legislations which were affected by this Act are some sections of the *Income Tax Act, 1973*, the *Customs Tariff Act, 1976*, the *Sales Tax Act, 1976* (since repealed) and the *Immigration Act, 1995*".

⁴² Act No. 12 of 1991, "An Act intended to harmonize the operations of all financial institutions in Tanzania, to foster sound banking activities, to regulate credit operations, and to provide for other matters related to these purposes".

⁴³ "This is made worse by the desirable characteristics of stock exchange market such as liquidity, availability of information which lead to market efficiency, high price sensitivity to new information, small price fluctuation and narrow price spread, " This coupled by lack of competent experts in financial markets low level of income of the local population, the negative perception of risks involved in the market as well as lack of confidence in the financial sector because the indigenous investors were not able to buy shares in the privatized companies".

and publication. Besides, civil remedies and criminal penalties provided under the Act are inadequate for deterrent purposes to combat insider trading practices.

Also, the legal framework regulating the practices of insider trading does not address how established offenses can be enforced. Hence, this study was guided by the following objectives:

1.4 Objectives of the Study

This study was guided by both the general and specific objectives.

1.4.1 General Objectives

To examine the laws and institutions governing the protection of investors against insider trading in capital market business in Tanzania.

1.4.2 Specific Objectives

- i. To examine the extent to which the *Capital Markets and Securities Act, 1994*⁴⁴ protect investors against insider trading in the capital market business in Tanzania.
- ii. To critically examine how the Dar es Salaam Stock Exchange (DSE) and the Capital Market handle issues of insider trading.

1.4 Research Questions

- i. Is the legal framework governing the capital markets and securities in Tanzania effective enough to protect investors against insider trading?
- ii. Are the Institutions framework such as the Dar es Salaam Stock Exchange (DSE) and the Capital Market and Securities Authority (CMSA) equipped in handling issues of insider trading in the country?

1.5 Significance of the Study

The findings of this research are important in various ways as follows:

This study was designed for accomplishing examination purposes at Mzumbe University as well as adding critical worth to the current stock of knowledge sources. It will also be of value to the business community especially on aspects related to capital market and securities issues.

⁴⁴ Act No. 12 of 1991, “An Act intended to harmonize the operations of all financial institutions in Tanzania, to foster sound banking activities, to regulate credit operations, and to provide for other matters related to these purposes”.

It is additionally envisioned that the work will permeate to a more extensive domain of stakeholders like the Dar es Salaam Stock Exchange, the Capital Market and Securities Authority (CMSA) legitimate office, BRELA and lawful officers of CMSA, licenses intermediaries, venture consultants, providers of capital, for example, retail speculators and institutional speculators for the most part from neighboring nations including for the most part banks associations, multilateral offices, insurance agencies, money related/business organizations, corporate bodies just as the clients of capital like businesspeople, people inspired by venture and capital markets just as the legislature.

In similar way, it is expected that the findings of this work serve as a catalyst to policy makers, the government and other stakeholders who play a crucial role in the policy-legal formulation as well as well as institutions dealing capital markets in Tanzania in order to ensure suitable measures are taken to address the challenges faced by investors at the DSE. All in all, the research serve as a challenge to stimulate further critique and scrutiny on the subject matter in order to ensure capital market and securities business/market competes at a global level.

1.6 Literature Review

Capital markets and securities is not a new topic in Tanzania. Diverse authors have written on the same. Therefore, the following are some of the literatures that the researcher has reviewed in the process of widening the understanding of the topic as well as substantiating the problem to be undertaken in the purported research. The focus of the work is on the protection of investors against insider trading as it is a crime that results when, under certain circumstances, a person uses non-public information in an attempt to generate a profit or avoid a loss. The rules governing insider trading are complex.

One of the academic works that has positively impacted this work is the work titled INSIDER TRADING AND OTHER MARKET ABUSES (INCLUDING THE EFFECTIVE MANAGEMENT OF PRICE SENSITIVE INFORMATION)⁴⁵ which indicate that insider trading has always been the stuff of controversy and scandal, making headlines and destroying reputations. According to the author, it is at the very root of discrimination, as it gives a small, usually already relatively privileged minority, an unfair advantage over the broad majority who do not enjoy the same equality of information or opportunity. It is on this basis that in many trading houses the compliance officers are responsible for ensuring that employees are not trading for their own account and benefiting from using inside information. This work has focused on insider trading, but the author does not state to what extent on which investors are at risk neither protected when it comes to the insider trading, therefore this work will cover the gap(s) left by this author.

Further, from the article **Hanifa Masawe and Mwajuma Kadilu** titled *Combating Insider Trading in Tanzania: The Adequacy of the Capital Markets and Securities Act of 1994 and the Companies Act of 2002*.⁴⁶ Basically, the article analyses the adequacy of the *Capital Markets and Securities Act* of 1994 and its regulations in combating insider trading practices for companies listed at DSE. They had this to say;

Although Tanzania has had enough to learn from the United States' misappropriation theory and classical theory, it is still observed that the provisions on insider trading as presented in the Act have not been put to test through case laws. Due to this fact that the authors have not come across any reported or unreported insider trading case laws in Tanzania to date. However, that does not mean that there are no insider trading practices taking place in the country but seems rather to be a result of non-awareness issues on the

⁴⁵ As available at <http://www.jse.co.za/content/JSERulesPoliciesandRegulationItems/Insider%20Trading20Booklet.pdf/>, accessed on 17th Feb, 2018.

⁴⁶ As available at https://www.researchgate.net/publication/276252873_Combatting_Insider_Trading_in_Tanzania_The_Adequacy_of_the_Capital_Markets_and_Securities_Act_of_1994_and_the_Companies_Act_of_2002/accessed on 17th Feb, 2018.

offence or the way the wording of the statute has been improperly couched to clearly present the offence. Apart from the Capital Markets and Securities Act, the Companies Act, being the regulator of companies in Tanzania does not expressly establish the offence of insider trading.

These author stated their findings that they have never come across with any reported nor unreported case relating to insider trading, that means they acknowledge that is an offense but they did not state from which law that offense has been established. While at the same time they stated Apart from the Capital Markets and Securities Act, the Companies Act, being the regulator of companies in Tanzania does not expressly establish the offence of insider trading. Therefore this study on findings revile how the companies as investors are protected from insider trading ang show from which law insider trading is an offense.

Moreover, **Liliana Rojas-Suarez** in her work titled '*Towards Strong and Stable Capital Markets in Emerging Market Economies*'⁴⁷ essentially centers around the fundamental conditions for the advancement of solid and stable capital markets in developing business sector economies. In particular, the paper contends that such conditions can be gathered into four columns: macroeconomic steadiness, sound financial frameworks, high institutional quality and a sufficient administrative and supervisory structure. The four columns are interrelated and reciprocal: the emission of fragilities in any of them debilitates the viability of the others. This suggests every one of the four columns are similarly significant. Fundamentally, the paper's accentuation is on issues identified with guideline exclusively mirrors the convenience of this column to represent its interrelationships with the other three.

⁴⁷ Lillian R. S., "*Towards strong and stable capital markets in emerging market economies*", BIS Papers No 75, as available at <http://www.bis.org/publ/bppdf/bispap75c.pdf>, accessed on 12th April, 2017.

Most importantly, the researcher basically examined the advantages of profound capital markets in developing business sector economies. As indicated by her, profound capital markets encourage firms' budgetary uprightness through market discipline and the need to follow universally acknowledged benchmarks on bookkeeping practices, straightforwardness and administration, among others. She goes on that regardless of these advantages; still, capital markets in most rising economies stay slim and immature.

This has been the situation since building up these business sectors isn't a simple errand, as it includes countless and foundations, just as perplexing structure hinders, to guarantee the proficiency and security of their activities. The creator completes her work with a reflection about a long haul requirement to the flexibility of developing economies' neighborhood capital markets to outside stuns: these nations' restrictions concerning issuing safe resources. Despite the fact that the work yet this work will give

on the Tanzania point of view and further creator's work is excessively broad however this work explicitly will cover assurance of financial specialists against insider exchanging available business Tanzania.

In the same way, **Malima B.**, (2006) in his work titled *The Liability of Professionals in the Capital Market and Securities Act*⁴⁸ states that professionals in the stock exchange are under a duty to full disclosure to the investors since they are the ones who have full background knowledge of the companies listed at the DSE or else face consequences. He goes on by criticizing that as much as strict application of the law is good for investor's protection but it may also cause rigidity of the market which is not good for business. He states that investors are protected through the Fidelity Fund, when compensation is needed for negligent acts of the experts and proper accounting is also another way. His work, though narrow in analysis on the issue of investor's protection, still, it serves as part of literature review of this study as it gives the foundation upon which this study expands further in as far as the topic is concerned.

⁴⁸ Malima B. (2006); "The liability of professionals in the Capital Market and Securities" Act [Cap 79 R.E 2002] : Theory and Practice; thesis, UDSM, p 45.

Drake (2006) in his work titled *The Factors Affecting Demand and Supply of Securities in Sub-Saharan Africa; The Case Study of Securities Listed at the DSE*⁴⁹ argues that regulation of the stock markets helps to control illegal acts such as fraud, manipulation and other dishonesties in the market. As much as such practices are difficult to police, he views it as a way to control malpractice and hence encourage confidence among the investors in the market since their interests are secured. But did not state how malpractice need to be controlled out of investors to ensure they are enjoying freedom of investment. This study covered the gaps which have been left by this author.

Another work is the paper by **William C. Dudley and R. Glenn Hubbard** titled *How Capital Markets Enhance Economic Performance and Facilitate Job Creation*⁵⁰ where the writers contend that a well-created capital markets create numerous monetary advantages, including higher profitability development, more prominent work openings, and improved macroeconomic soundness. Be that as it may, they caution that viable capital markets require a firm establishment. This incorporates the authorization of laws and property rights, straightforwardness and exactness in bookkeeping and monetary revealing, and laws and guidelines that give the best possible motivating forces to great corporate administration.

⁴⁹ Kyaruzi D.(2006); “the Factors affecting demand and supply of securities in Sub-Saharan Africa”; the case study of securities listed at the DSE; thesis, UDSM.

⁵⁰Global Market Institute as available at <http://www.gsb.columbia.edu/facultu/ghubbard/Article%20for%20Web%20Site/How%20Capital%Markets%20Enhance%Economic%20Perfomance%20and%Facilit.pdf>, accessed on 12th April, 2017.

As indicated by them, a very much created money related framework is a drive for development, macroeconomic execution, and progressively fast development in expectations for everyday comforts. That as well as it assumes a significant job in improving financial approach making. This improvement has happened in light of the fact that the capital markets go about as long haul limiting systems that give almost immediate criticism to policymakers. The work is essential to this examination as it contacts the availability between capital markets and approach producers on one hand and the significance of capital markets to the monetary development. All things considered, it doesn't completely manage the insurance of financial specialists against insider exchanging capital markets business in Tanzania, a hole which is filled by this investigation.

Similarly, a paper by **Luc Laeven** titled '*the Development of Local Capital Markets: Rationale and Challenges*'⁵¹ features that the improvement of nearby capital markets has been a long-standing strategy question. Over the previous decades, numerous nations have executed huge changes to cultivate residential capital market advancement. Such changes were frequently gone before by or part of more extensive change motivation to create monetary frameworks and make them increasingly coordinated with the worldwide market, including the evacuation of confinements and controls on banking

⁵¹ IMF Working Paper Research Department, 2014.

and the capital record. As indicated by the creator, this advancement of capital market improvement was effectively supported by universal associations and standard setters, for example, the IMF, the World Bank, and the OECD. The view was that the improvement of nearby capital markets, by cultivating money related advancement and budgetary reconciliation, would advance financial development through improving the productivity of capital assignment and taking into account better hazard sharing. In addition, the advancement of nearby security markets was viewed as basic for governments to fund enormous monetary deficiencies without falling back on money related constraint or outside acquiring with conversion scale chance and to encourage the sanitization of huge capital inflows. Nonetheless, notwithstanding these potential advantages and well meaning plans, the exhibition of capital markets in these nations has been blended. While a few nations have had the option to create sizeable and fluid nearby capital markets, others have seen their business sectors stagnate or even breakdown, notwithstanding great proposed and repeating government mediations.

More terrible still, a significant number of these business sectors, particularly in developing business sector economies, have been liable to unstable worldwide capital streams, driving some to scrutinize the advantages of monetary extending and budgetary globalization all the more for the most part. The best possible working of nearby capital markets necessitates that few conditions are met. These preconditions can comprehensively be characterized into three gatherings: sound macroeconomic approach, solid institutional and legitimate setting, and a well-working money related foundation. Without these preconditions, government endeavors to create neighborhood capital markets will undoubtedly fizzle, bringing about shallow markets and tricked speculators, and it is, thusly, by and large fitting to succession money related changes to such an extent that these conditions are adequately set up before nearby capital markets are set up. Essentially, the creator's work is principal to this examination as, in addition to other things, it addresses the difficulties looked by numerous administration in to the extent capital markets is concerned, which is likewise a focal piece of this investigation,

in any case, the work has left the vital part, which is speculators assurance, a point which is the focal point of this investigation.

Equally, **Zacharias Sautner and Belén Villalonga** in their working paper titled *Corporate Governance and Internal Capital Markets*⁵² argue that corporate governance has an important impact on internal capital markets. In particular, ownership concentration reduces the extent of corporate diversification, but increases the probability that internal capital markets are efficient. The authors conclude by warning that the broader policy implication is that lawmakers and regulators should be cautious when trying to harmonize corporate governance systems across countries with different institutional contexts and different governance mechanisms in play. Although their work focuses much on the institutional base related to capital markets, still it is relevant to this study in as far as policy implication is concerned. However, the work does not address much on how investors are protected in the capital markets business, a gap which will be filled by this study.

Also, the work by **Jochen R. Andritzky** titled *Capital Market Development in a Small Country: the Case of Slovenia*⁵³ while concentrating on the Slovenia's experience examines that capital market joining is never again an issue of decision since it can likewise add to money related solidness. Progressively expanded and fluid markets could pull in speculations from Slovene institutional speculators that right now like to contribute abroad. More profound neighborhood advertises that are very much incorporated with the worldwide money related markets empower a wide range of speculators to keep up a broadened worldwide portfolio and better deal with their dangers, while getting to be equipped for retaining the enormous annuity reserve funds Slovenia's maturing populace is relied upon to gather.

⁵² Working paper, January 01, 2010 as available at <http://www.hbs.edu/faculty/Publication%20files/10-100.pdf>, accessed on 12nd April, 2017.

⁵³IFM working paper, WP/07/229 as available at <https://www.imf.org/external/pubs/ft/wp/2007/wp07229.pdf>, accessed on 12th April, 2017

The writer continues positing that the more extensive financial specialist base likewise empowers organizations to raise capital at lower costs, while banks can create elective wellsprings of income from venture administrations. With more organizations dynamic on capital markets, showcase oversight would expand straightforwardness and responsibility in the corporate division. Thus, markets fill in as the well known "save tire" for money related frameworks and bolster the general solidness. Essentially the creator has broad managed the pretended by foundations like banks and other corporate divisions in to the extent upgrading capital market is worried in Slovenia. In spite of the fact that the creators' work does not manage the Tanzanian experience, still it significance lies on the job by these monetary organizations in creating capital markets, a viewpoint which is additionally critical to this exploration. Regardless of its pertinence as a component of writing survey of this examination, the work has neglected to catch the significance of financial specialist's insurance, a component which is managed broadly in this investigation.

Lastly, but not least, **Shahira Abdel Shahid** in her work titled '*The impact of globalization on capital markets: the Egyptian case*'⁵⁴ features that major developments are going on in the realm of contributing because of globalization. Accordingly, the economy presently is worldwide and interconnected and the business sectors are advancing to meet capital development needs around the world. Notwithstanding this interconnectedness, the creator cautions that financial exchanges need to change to address these issues. The up and coming age of securities exchanges must give worldwide and momentary value revelation, take into account exchange executions a reasonable, methodical and ease condition without time zone impediments. Guidelines, which permit this marvel, must adjust in like manner. The creator closed by portraying that stock trades must be globally aggressive and to live with falling expenses for their administrations. So as to keep up their income, trades must almost certainly upgrade the administrations they give, to convey extra esteem included, connecting into installment

and stock exchange offices and give a extensive scope of online data and correspondence administrations. The work is essential to this examination as it has broadly prescribed on the procedures should be taken so as to guarantee that capital market flourish appropriately and sufficiently, a point which should be considered in this investigation. Be that as it may, the work has missed the mark regarding not covering the part of financial specialist's insurance, a point which is the base of this examination.

1.7 Research Design and Methodology

This involves plan, procedures, strategies and dynamics for addressing the research problems in a systematic way. In other words, it refers to a collection of research methods as well as associated techniques and tools employed in gathering, managing and processing of data. Essentially, the described methods obtaining in the methodology are means or ways of data solicitation as well as respective data analysis.⁵⁴ Therefore, in this study, the researcher employed an integration of primary and secondary methods of data collection, whereby primary data was collected from the field study through interview and secondary data was through documentary review from Mzumbe University Library and other sources as expounded hereunder.

1.7.1 Data Collection Method

As part of primary data collection method, the researcher was making use field research to collect primary raw data through the use of research tools like interview, observation and questionnaires. The interviews were included both structured and unstructured so as to get first-hand/definite information from the interviewee. Basically, this helps the researcher to obtain clear-cut data from respondents.

⁵⁴ Howell, K. E. (2013), Introduction to the Philosophy of Methodology. London: Sage Publications. More details on research methodology, also available at <http://www.newagepublishers.com/samplechapter/000896.pdf>, accessed on 12nd April, 2017.

1.7.1.1 Interview

This includes an immediate discussion between the questioner (scientist) and the respondent so as to acquire data from him/her. Under this, information was gathered through talking every single important partner associated with capital and security markets. The scientist utilized a meeting strategy as a fundamental instrument for information gathering so as to get wide-extending data since the technique is stretchy and enables the specialist to continue adjusting questions relying upon the conditions. In such manner, both organized and unstructured meetings were utilized throughout gathering information.

1.7.1.2 Questionnaires

Number/set of printed questionnaires were prepared and distributed by the researcher to key respondents including the employees of the DSE, Capital Market and Securities Authority, BRELA, legal officers of CMSA, licenses brokers, investment advisors, institutional investors mostly from banks and multilateral agencies, insurance companies, financial/commercial institutions and other corporate bodies as well as the government employees responsible in capital and securities matters to ensure easy collection and administering of data. The purpose of questionnaires is to collect data from the respondents who are scattered to a vast area, and use it for compiling data collected.

1.7.1.3 Library Research

This method was applied by the researcher as the second source of data collection. It helps the researcher to conquer the problem of integrating with respondents, saving time as well as in verifying data genuineness. Fundamentally, it involves perusing of previous works written by diverse scholars on the topic.

1.7.2. Area of the study

The area of the study was Dar es Salaam region. Choice of the area is influenced by the fact that it is the areas where DSE and other related institutions are situated hence make it easy for data collection.

1.7.3. Sampling and Sampling Technique

Since the researcher cannot measure the entire population, the researcher made use of a random sampling technique in this study. Under this, the researcher was consider a total sample size of forty (40) respondents. This total number of respondents and informants will further divided into small groups depending on the purpose of the researcher. This allows the researcher to have a sizeable sample for obtaining accurate data relatable to the study. Definitely, sampling is an essential tool for research in the field of law as it helps in exploring some new dimensions in legal research.

1.7.4 Sample Size

The sample size of the research was included a total of forty (40) respondents ranging from the employees of the DSE, Capital Market and Securities Authority, BRELA, legal officers of CMSA, licenses brokers, investment advisors, institutional investors mostly multilateral agencies, insurance companies, financial/commercial institutions and other corporate bodies as well as the government employees responsible in capital and securities matters.

1.7.4.1 Sample Selection

Sample selection will base on group of individuals with different disciplines of study and experience. This picky sample selection will boost the researcher to acquire pertinent data pertaining to the research. In particular, the sample will cover academicians and legal practitioners acquainted with the legal knowledge on Capital Market and securities. What is more, CMSA and DSE officers, common people, NGO's officials forms part and parcel of the sample selection since they will provide knowledge

on the practical aspect in so far as protection of investors in the DSE since they are direct actors and interested persons in the entire process of protection of individual investors.

1.7.5 Data Processing and Analysis

Information examination is a procedure of assessing, cleaning, changing, and demonstrating information with the objective of giving helpful data, proposing end and supporting basic leadership. Amid this stage, every important material, including enactments was basically examined so as to guarantee that they count with the exploration criteria. Collected information was broken down subjectively as well as an auxiliary investigative technique was utilized for optional information. The discoveries of the examination were exhibited and broke down utilizing the type of subjective information investigation techniques while breaking down information which is as words (non-exact information). In information examination, the specialist completed three things which are data reduction, data display and drawing of inferences or conclusions.

1.6 Limitations of the study

1.7 Delimitation of the study

In order to delimit the problem of time limit, the researcher employed the case study method where targeted respondents are fixed and the research was conducted every day within the given time so as to meet the deadline set. In dealing with the financial constraints, the researcher was efficiently and economically uses the available funds so as to achieve the objective of the study. For successful cooperation, the researcher made use of interview skills to realise the objective of the study.

CHAPTER TWO

THE CONCEPTUAL FRAMEWORK ON PROTECTION OF INVESTORS AGAINST INSIDER TRADING IN CAPITAL MARKET BUSINESS IN TANZANIA

2.1 Introduction

Capital Markets give opportunities to investors to access funds for investment. In order to enjoy such opportunities the law and the institutions designed to protect customers have to function properly, otherwise, risks will frustrate the good intention of the govern capital markets. In Tanzania are regulated by DSE and supervised by CMSA. Hence, this chapter presents how the Law and Supervisory organs will be designed to operate I order to protect investor in Capital Market Business against Insider Trading.

2.2 Insider Trading

Insider trading alludes to the act of "insiders" exchanging on offers of an organization for which they have favored material data not accessible to "the general population", and for which they look to increase monetary or different advantages.⁵⁵ The term is also frequently used to refer to a practice in which an insider or a related party trades basing on material non-public information obtained during the performance of his duties at the company, or in breach of a fiduciary duty.⁵⁶

2.3 Capital Market

A capital market is a market which is made up of markets and institutions, which facilitate the issuance and secondary trading of long term financial instrument.⁵⁷ They are means through which funds move from inoperative holders to productive users. In

⁵⁵ O'Hara, A. (2001), Insider Trading in Financial Markets: Legality, Ethics, Efficiency, in: International Journal of Social Economics, vol. 28, pp 1046 – 1063

⁵⁶ Harris, L. 92003), trading and Exchanges, Oxford Press, Oxford, o.586

⁵⁷ Katuma Biyan , the role of Stock Exchange Market to the Economic Growth in Tanzania: A case of DSE Market, A Dissertation Submitted in partial fulfilment of requirements for the award of the Degree of Master Of Business Administration of the Open Univeristy of Tanzania, 2012.

that way, it unites the monetary sector with the real sector and consequently facilitates growth in the real sector and economic development.

Most importantly, the being of the capital market in an economy energizes more all-embracing responsibility for resources by little savers. It enables them to profit from monetary development and riches dispersion, and gives chances to speculation by expanding household reserve funds and venture proportions that are fundamental for quick industrialisation. Furthermore, it permits not just an ingenious allotment of the money related assets accessible at a positive minute in an economy from the market's perspective yet additionally allows to distribute assets agreeing the arrival and the hazard from the speculator's perspective offering a wide front of monetary instruments with assorted productivity chance attributes, fitting for sparing or hazard covering.⁵⁸

History of the capital markets in Tanzania point toward that the Tanzanian Stock Exchange was incorporated as private company limited by guarantee in 1996 and became operation in 1998.⁵⁹ In real meaning, capital markets make possible which channel funds at market price to productive activities. Capital markets have two inter-dependent segment primary and secondary market.⁶⁰

2.4 Primary Market

The primary market also involve in the capital market business. In which may be referred as *the marketplace where new shares, either from unissued or issued shares, are offered to public investors, either at the initial public offering (IPO) or seasoned*

⁵⁸ Tanzania: "The Role of Capital Markets in Financing Development", *The Citizen*, 8th November, 2016.

⁵⁹ History of Capital Markets in Tanzania, as available at <http://www.tanzaniainvest.com/finance/capitalmarkets/tanzania-capital-markets-report>, accessed on 21st April, 2017.

⁶⁰ Onyiuke, N, (2010), "Overview of the Nigerian Capital Market" (Seminar paper presented in UNEC. June, 2010).

*equity offering (SEO) market.*⁶¹ Put it differently, it is one which new issue of securities are sold to initial buyers for the first time commonly referred to as initial Public offers (IPOs).⁶² For example is when a company floats its shares or sells its corporate bonds to the investing public for the first time. The securities issued in primary market are later sold in secondary market.

2.5 Secondary Market

Most importantly, the existence of the capital market in an economy energizes more extensive responsibility for resources by little savers. It enables them to benefit from financial development and riches dispersion, and gives chances to venture by expanding household funds and speculation proportions that are fundamental for quick industrialisation. Additionally, it permits not just a creative designation of the money related assets accessible at an unmistakable minute in an economy from the market's perspective yet in addition licenses to distribute assets agreeing the arrival and the hazard from the speculator's perspective offering a wide front of monetary instruments with different gainfulness chance qualities, fitting for sparing or hazard covering.

In most cases, the secondary market price is determined endogenously by the net worth of financiers and bankers. When financiers have small net worth, the secondary market price is low and bankers sell assets only to boost their borrowing capacity. When instead financiers have huge net worth, the secondary market price is suitably high that some bankers begin originating low-quality assets, even as financiers produce affirmative returns on average. Investment effectiveness falls and financial frailty grows cumulatively. The root cause of this ineptitude is a pecuniary externality.

⁶¹ "Equity markets and economic development: Does the primary market matter"? As available at https://www.murdoch.edu.au/School-of-Business-and-Governance/_document/Australian-Conference-of-Economists/Equity-markets-and-economic-development.pdf, accessed on 21st April, 2017.

⁶² "*The Benefits for listing Securities with the DSE in Tanzania*", (PDF Download Available). Available from: http://www.researchgate.net/publication/227439507_The_Benefits_for_Listing_Securities_with_the_Dar_Es_Salaam_Stock_Exchange_in_Tanzania [accessed on Apr 19, 2017].

This is so because individual financiers do not realise that they worsen the collection of all assets by buying more assets on secondary markets, the consequences may be severe.⁶³

2.6 Stock Exchange

According to DSE, (2007), a stock exchange is a secondary capital market where large and small investors buy and sell securities (share, bond). It is an planned market where buyers and sellers of securities meet as they are represented by dealers/brokers and get hold of or dispose securities.

In Tanzania this market is facilitated by company limited by guarantee without share capital. It has a council composed of experts. It is there to monitor the operation of the market. It developed rule of trade which are followed by all the key players.

The DSE was fused in September, 1996 as an organization constrained by certification without an offer capital under the Companies Ordinance (Cap. 212). The foundation of the DSE came as a result of government's arrangement of changing its economy from open government ruled economy to private part determined economy. The DSE was set up by the Capital Markets and Security Authority under the Capital Markets and Securities (CMS) Act of 1994. As of walk, 2009 fourteen organizations recorded their offers with the DSE. Out of fourteen organizations, three are from Kenya and their offers cross recorded at the DSE as well as at the Uganda Stock Exchange and Nairobi Stock Exchange.

The primary firm to list imparts to the DSE was the Tanzania Oxygen Limited (TOL) in 1998 and was trailed by Tanzania Breweries Limited (TBL) around the same time. The DSE has been offered command to make a lawful system overseeing the section into business, lead and activities of capital markets in Tanzania.

⁶³ Daniel Neuhann, "Macroeconomic Effects of Secondary Market Trading", January 17, 2016, as available at http://economics.yale.edu/sites/default/files/neuhann_updated_jmp_1_17_16.pdf, accessed on 21st April, 2017.

The rules and laws are harnessed together by the Capital Markets and Security Authority (CMSA), which is a supreme government body created with a prime role of ensuring palatable environment to establish the DSE, and overseeing the interplay of the entire business as a referee does in any game. Now new companies continue to list including Vodacom Tanzania and TiGo Tanzania.

2.7 The Initial Public Offer (IPO)

This is the place the supply of a privately owned business is offered to general society out of the blue. In Tanzania, the Electronic Postal and Communications Act, 2016 commit every one of the broadcast communications licensees to offload 25 percent of their offers to general society through the securities exchange.⁶⁴ Initial public offerings are normally issued by littler, more youthful organizations looking for cash-flow to grow, however they should likewise be possible by enormous exclusive organizations hoping to turn out to be traded on an open market. Aside from acting like a noteworthy achievement for a firm, IPOs are the most supported gadget embraced by corporate to expand cash from the overall population⁶⁵ possibly allowing public firms to allocate ever-greater resources to pursuing innovation.⁶⁶ Also, IPO can supply as a first step toward having a company taken over at an attractive price.⁶⁷ Some of the big Industry players like Vodacom Tanzania use the IPO to attract strong interest from local investors. Although, foreign investors cannot take part in the IPO still they are allowed to invest after the listing.⁶⁸

⁶⁴Tanzania: Tigo Embarks On DSE Listing Procedures, as available at <http://www.africa-markets.com/en/stock-markets/dse/tanzania-tigo-embarks-on-dar-es-salaam-stock-exchange-lising-procedures>, accessed on 21st April, 2017.

⁶⁵Initial Public Offerings (IPOs): A Boon or a Bane? As available at <http://www.indianjournaloffinance.co.in/index.php/IJF/article/view/72362>, accessed on 21st April, 2017.

⁶⁶ Matthew Crail Johnson, The Effect of Initial Public Offerings on Firm Innovation, CIMR Research Working Paper Series Working Paper No. 22.

⁶⁷JAMES C. BRAU and STANLEY E. FAWCETT, "Initial Public Offerings: An Analysis of Theory and Practice", *THE JOURNAL OF FINANCE*, VOL. LXI, NO. 1, FEBRUARY, 2006.

⁶⁸ Vodacom Tanzania says IPO to start on March 9th, 2017, as available at <http://reuters.com/article/tanzania-telecoms>, accessed on 21st April, 2017.

Trends indicates that the IPO at the DSE is normally done in line with the global trend and practice for Exchanges which aims attaining good corporate governance practices, efficiency and effectiveness of the DSE so as to strengthen its strategic and operational practices.⁶⁹ Among the advantages of listing include access to capital which allows the company or firm to grow, creates more base for financial growth, it helps and guarantees the distribution of shares to a wider and more diverse investor base hence create public awareness about the company, increase employees morale and motivation as it gives them an opportunity to share the financial gain of the company as well as ensure accountability and good governance of the company⁷⁰

2.8 Shareholders Protection

Another key element of stock market development is the level of shareholders protection in overtly traded companies, as stipulated in securities or company laws.⁷¹ Stock market development is more likely to flourish in countries with strong shareholders protection because investors do not fear expropriation as much. What is more, ownership in such markets can be moderately dispersed, which provides liquidity to the market. La Porta *et al.* (1999) provide evidence for the importance of minority rights protection by using indicators of the quality of shareholder protection as written in laws.⁷² They make obvious that the quality of shareholder protection is interrelated with the capitalization and liquidity of stock markets in many countries around the world.

⁶⁹ PRESS RELEASE: INITIAL PUBLIC OFFERING (IPO) OF 15,000,000 SHARES BELONGING TO DSE PLC, as available at <http://www.dse.co.tz/content/press-releasw-dse-initial-public-offering-ipo>, accessed on 21st April, 2017.

⁷⁰ THINKING OF GOING PUBLIC? As available at <http://www.tanzaniasecurities.co.tz/pdf/GoingPublic.pdf>, accessed on 21st April, 2017.

⁷¹ Shleifer, A, and Robert, W, (1986), "Large Shareholders and Corporate Control" Journal of Political Economy, Vol PP 94461 – 88.

⁷² La Porta, R, – Lopez – de, S and Andrei, S (2003), "What Works in Securities Laws" NBER Working Paper No. 9882 Boston, National Bureau of Economic Research.

CHAPTER THREE

THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING CAPITAL MARKETS BUSINESS IN TANZANIA

3.0 Introduction

Capital markets as a significant piece of the budgetary market assumes a critical job, basic for government and different organizations needing long haul reserves. Government utilizes the capital market for framework advancement and private endeavors utilize the market for business development and improvement.⁷³ Taking into account its role in the market economy and the contemporary importance of the global capital marketplace, the government has enacted a diverse legal framework to regulate the same as well as to protect the investors in the business.

Giving protection to investors is one of the prime and focal objectives of the securities markets in the world. In order for the market to function efficiently the investors' must be shielded against fraud and other practices which will interfere with their investments hence causing them to suffer loss. Protection of investors will implant confidence in the stock industry; hence more investors will be willing to invest their funds in stocks. Further investor protection will ensure the integrity of the market. However, this can only be possible if there is adequate legal protection. This chapter, therefore, makes a critical analysis of the legal framework governing capital markets in the country.

3.1 Regulatory Bodies of the Securities Market Business in Tanzania

3.1.1 Business Licensing Agency

The protection of investors in the capital market business involves the presence of companies. In order for the companies to be involve and participated in the market, they must be registered by the Registrar of Business Licensing Agency.

⁷³ Tanzania: The Role of Capital Markets in Financing Development, The *Citizen*, 8th November, 2016.

The requirements of the company to be registered are provided under the Companies Act,⁷⁴ Parties involved in process of registering the company are potential shareholders, members, potential directors or prospective secretary of the company and last testing witness and commissioner for Oath.

3.1.2 Dar es Salaam Stock of Exchange DSE

The DSE was joined in September, 1996 as an organization restricted by assurance without an offer capital under the Companies Ordinance (Cap. 212). The foundation of the DSE came because of government's strategy of changing its economy from open government ruled economy to private area driven economy. The DSE was built up by the Capital Markets and Security Authority under the Capital Markets and Securities Act⁷⁵. As of March, 2009 fourteen companies listed their shares with the DSE. Out of the fourteen companies, three were from Kenya and their shares not only were cross listed at the DSE but also at the Uganda Stock Exchange and Nairobi Stock Exchange.

3.1.3 Capital Market Securities Authorities

The Capital Market Securities Authority was established under the Act No 5 of 1994 in order to facilitate Securities Market Business in Tanzania. This gave license to all participants of the Capital Market Business. This organ also acted as the Supervisory Organ in the Capital Market Business in Tanzania.

3.2 The Capital Markets and Securities Act, 1994⁷⁶

This Act built up a Capital Markets and Securities Authority (CMSA) for the motivations behind advancing and encouraging the advancement of a precise, reasonable and productive capital market and securities industry in Tanzania, to make arrangements as for stock trades, stockbrokers and different people managing in securities. The Act⁷⁷

⁷⁴ Cap 212 R.E 2002

⁷⁵ Act No. 5 of 1994

⁷⁶ Act No. 5 of 1994.

⁷⁷ Act No 5 of 1994

under section 2 defines the term "securities business as," *the business of dealing in or advising on securities and includes such other activity as may be prescribed.*

The Act was amended by the *Capital Markets and Securities (Amendments) Act*⁷⁸ to provide food for, in addition to other things, aggregate venture plans. Up until now, it sets up the CMSA to advance 'and encouraging the improvement of a systematic, reasonable and productive capital market and securities industry in Tanzania.'⁷⁹ This implies the CMSA is the business administrative and supervisory body on the capital markets, which licenses and directs venture middle people and manages trades with the affirmation of exchange securities. Essentially, it is worried about guaranteeing a proper administrative condition to ensure financial specialists, authorize securities enactment, advance revelation of significant data, and support reasonable and productive markets.

This implies the CMSA is the business administrative and supervisory body on the capital markets, which licenses and manages speculation middle people and manages trades with the confirmation of exchange securities. Essentially, it is worried about guaranteeing a proper administrative condition to ensure financial specialists, authorize securities enactment, advance exposure of significant data, and support reasonable and effective markets. '*Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.*'

This implies the CMSA is the business administrative and supervisory body on the capital markets, which licenses and manages speculation middle people and manages trades with the confirmation of exchange securities. Essentially, it is worried about guaranteeing a proper administrative condition to ensure financial specialists, authorize securities enactment, advance exposure of significant data, and support reasonable and effective markets.

⁷⁸ Act No. 4 of 1997.

⁷⁹ See section 6 of the Act.

Therefore, as part of protecting investors in the market, the Act provides for Fidelity Fund and dealers' deposit. The Fidelity Fund is maintained by a stock exchange and administered by its council. The Fund is made from moneys from member companies, interests and profits from investment of funds and any other moneys paid into it. The aim of establishing the Fund is to settle claims against DSE, to also settle legal and other expenses incurred in investigating or defending a claim. The major use of the Fund is to compensate persons who suffer pecuniary loss from fraudulent or dishonest securities dealing by licensed dealing member of DSE.

In dealer's deposit, normally a deposit of Tshs. 100,000/= (one hundred thousand shillings) or more is made by the dealer upon gaining acceptance for a license. These compensation schemes were set up for the right purpose but they deem useless since for example, since the establishment of the Fidelity Fund to date it has never been used to compensate a single investor who is aggrieved from loss due to negligence of the LDM; this is due to the conditions that an investor must comply to in order for the DSE Council to accept an application for Compensation. It is provided for under the DSE Blueprint⁸⁰ that an investor with a claim that is subject to be compensated by insurance or any other compensation claim, then the Council shall reschedule its decision in relative to a claim until the amount payable is resolute by the other scheme. The Council further may reject a compensation claim if the investor did in as indicated under section 83 of the *Act*⁸¹ anyway contribute to the loss incurred. Moreover, any irregularities in the application for compensation done by the aggrieved investor may lead to rejection of his claim.

Also, there is a dealer's guarantee in which LDM before admission to the stock exchange as an applicant is required to provide a bank guarantee as a security for the possibility of default on his part. This provides an avenue to control default on the part of LDMs.

⁸⁰ DSE Handbook, 2010 p 15.

⁸¹ [Cap 79 R.E 2002].

It is obvious from these provisions that priority is not given to the aggrieved investor but to the DSE so as to be able to retain the funds set up in the Fidelity fund even though the investor is truly aggrieved.

3.3 The Companies Act, 2002⁸²

The Act, “regulates a wide range of corporate issues including; the formation of the 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’”.⁸³ Under the Act, the enforcement agency is the Registrar of companies.

3.4 The Dar es Salaam Stock Exchange (Foreign Investors) Regulations, 2003

This implies the CMSA is the business administrative and supervisory body on the capital markets, which licenses and manages speculation middle people and manages trades with the confirmation of exchange securities. Essentially, it is worried about guaranteeing a proper administrative condition to ensure financial specialists, authorize securities enactment, advance exposure of significant data, and support reasonable and effective markets.

Foreign investors are subjected to the limits prescribed in the *Capital Markets and Securities (Foreign Investors) Regulations*⁸⁴ in the getting of securities of a guarantor in regard of which the backer is making an application for posting or which are as of now regard of which the backer is making an application for posting or which are as of now recorded at the DSE; gave that earlier the acquisitions of such securities at the DSE the outside financial specialist has designated a caretaker who is an 'approved focal storehouse framework administrator'. The overseer is in charge of keeping up the records of all securities of outside speculations just as executing properly gotten directions of the contribute the accompanying motivating forces have been placed in power in Tanzania

⁸² [Cap. 212 R.E 2002].

⁸³ DSE Handbook,(2010),“Regulatory framework of the DSE”, June, p.6.

⁸⁴ The *Capital Markets and Securities (Foreign Investors) Regulations*, 2002.

with point of advancing cooperation of remote financial specialists in the capital markets division.

These incorporate zero capital addition charge instead of 10 percent for unlisted organizations; zero stamp obligation on exchanges executed at the DSE contrasted with 6 percent for unlisted organizations; retaining assessment of 5 percent on profit pay rather than 10 percent for unlisted organizations; zero retention charge on premium salary from recorded securities whose developments are three years or more; exception of retention charge on pay accumulating to loyalty supports kept up by the DSE for financial specialist insurance; and if pay gotten by Collective Investment Scheme (CIS) speculators is charge excluded.

Outside financial specialists, be that as it may, likewise face a scope of various imperatives in the capital market division. For instance, outside financial specialists are barred from the buying of government securities; inclination to buy the offers is given to Tanzanian speculators in first sale of stock postings except if the Tanzanian speculators are unfit to buy every one of the offers offered; as given by the Foreign Exchange (Listed Securities) Regulations, 2003 installment of offers or corporate securities obtained by a remote speculator will be made either in outside cash exchange got through ordinary financial channels or by withdrawals from neighborhood money accounts opened by an outside financial specialist at an authorized bank working in Tanzania or by charging the securities venture account kept up by the speculator with an authorized bank working in Tanzania; and, endless supply of offers or corporate securities recorded at an affirmed stock trade, remote financial specialists will not discard such offers or corporate securities for a time of a quarter of a year following procurement.

3.5 The High Court (Commercial Division) Procedure Rules, 2012

Under the Rules, the High Court of Tanzania, Commercial Division is in charge of cases managing capital markets. Standard 5(2) of the High Court (Commercial Division) Procedure Rules stipulates that:-

To acquire a business case the business division the estimation of the case will be at any rate 1 million shillings if there should be an occurrence of procedures for recuperation of assets of immoveable property and in any event 70 million shillings in procedures where the topic is equipped for being assessed at a money related esteem.

Also, the Court, as provided by Section 23 of the *Capital Markets and Securities Act*,⁸⁵ has the expert, on the off chance that it appears to the Court that an individual has submitted an offense or contradicted the conditions or limitations or principles of the stock trade, or is going to complete a demonstration as for managing in securities that, whenever done, would be such an offense or repudiation, the court may inside its forces make one of the accompanying requests, however isn't constrained to these requests including: a request confining an individual gaining, discarding or generally managing any securities that are determined in the request; a request proclaiming an agreement identifying with securities to be void or voidable; a request guiding an individual to do or shun completing a predefined demonstration; and d on account of steady ruptures of the Act or conditions or confinements of a permit, or of the standards or posting guidelines of stock trade, a request controlling an individual from conveying in securities, going about as a venture consultant or as a seller's agent or speculation delegate, or from holding oneself out as continuing such business.

⁸⁵ Act No 5 of 1994

3.6 The Regulation of Insider Trading in Tanzania

Trade in securities is something which is somewhat new in Tanzania that comes about as a result of the implementation of the market oriented economy.⁸⁶ The rate of growth of the securities business in the country is still very low because of the existence of only one capital market since 1994, namely, the Dar es Salaam Stock Exchange as compare to countries such as United States where the securities business is vastly developed due to a large number of stock markets.

The DSE was established in 1996 and became operational in 1998. Currently, the DSE has 17 listed companies.⁸⁷ To ensure proper regulation of the listed companies' activities in as far as dealing in securities is concerned the Capital Markets and Securities Act⁸⁸ hereafter referred to as the Act and its respective Regulations⁸⁹ were enacted establishing the Capital Markets Authority as a body responsible for the enforcement of the same.⁹⁰ The Act was amended in the year 1997 to slot in changes which were associated to market players and operators for the purpose of giving more protection and security to the securities investors. On top of these main laws, there are other laws which have a direct impact on the operation of capital markets such as the Companies Act⁹¹ and the Fair Competition Act.⁹² The Act establishes the Capital Markets and Securities

⁸⁶ "Economic reforms which were implemented in Tanzania from the mid – 1980s entailed the shift from an administratively managed and public sector led economy to a market oriented and private sector led economy to a market oriented and private sector led economy".

⁸⁷ At 2012, "the market has 11 listed domestic companies and six cross listed firm".

⁸⁸ Act No 5 of 1994

⁸⁹ "The Capital Markets and Securities (Foreign Companies Public Offers Eligibility and Cross Listing Requirements), 2003, Capital a markets and Securities (Foreign Companies Public Offers Eligibility and Cross Listing Requirements) Regulations, 2003 [amended in 2005], Capital Markets and Securities (Foreign Investors) Regulations, 2003 Capital Markets and Securities (Foreign Investors) Regulations, 2003 Capital Markets and Securities (The Capitalization and Rights Issue) Regulations, 2000, Capital Market and Securities (Advertisements) Regulations, 1997, Capital Market and Securities (Accounting and Financial Requirements) Regulations, 1997, Capital Markets and Securities (Prospectus Requirements) Regulations, 1997, Capital Markets and Securities (Licensing) Regulations, 1996, Capital Market and Securities (Establishing of Stock Exchange) Regulations, 1996 Capital Market and Securities Authority Enforcement Guidelines, 2004, Capital Markets and Securities (Corporate Governance) Guidelines, 2002, and the Capital Market and Securities (Custodian Securities) Regulations, 2006".

⁹⁰ *ibid*

⁹¹ Cap 12 R.E.2002

⁹² Act No 8 of 2003

Authority, “hereafter referred to as the Authority, which is a body corporate with interminable progression and having a common seal”.⁹³ It is the principal governmental body in the institutional communications of Tanzania’s securities markets which provides a regulatory structure aimed at promoting innovation, flexibility and self regulation so as to uphold investor self-assurance and to protect the market against insider trading practices⁹⁴

The CMSA exclusively deals with issues related to securities business under Part IX of the Act.⁹⁵ Insider trading as crime in Tanzania was established under section 112 of the same Act⁹⁶ imported by the words “prohibition of dealings in securities by insiders”. The section requires that, “a person who is, or has at any time in the preceding six months, prior to a specific deal been affiliated with a body of corporate shall not deal in any securities of that body of corporate if by reason of his association”.

3.7 Weaknesses of the Capital Markets and the Securities Act and the Companies Act in Combating Insider Trading in Tanzania

The Tanzanian CMSA has not been able to make an understandable meaning of the term “insider”, instead section 5 of the same Act defines it as, “person deemed to have interest in securities”. Such definition is vague and fails to provide a clear meaning of who an insider is, making it difficult to categorise who is and who is not legally responsible as an insider in order to establish an effective and measured legislative ban on insider trading. Again insider trading being an offence has not been given a proper definition in the Penal Code⁹⁷ and the same goes for the Companies Act.⁹⁸

⁹³ Under section 6(2) CMSA

⁹⁴ Under section 10(c) of CMSA

⁹⁵ Under Section 106 – 118 of the CMSA

⁹⁶ Act No 5 of 1994

⁹⁷ Cap 16 R.E. 2002

⁹⁸ Cap 12 R.E 2002

Consequently, if the same law is prohibiting dealings in securities by insiders⁹⁹ and there is no clear definition of the wrongful act, then such is considered as an anomaly. Such clarity is vital since a clear differentiation has to be made between information with direct effect on the market value of securities and information just arrived at as a consequence of perceptive analysis of generally known facts by the prospective investors. A clear meaning on the quality information likely to amount to insider trading is necessary from the point of view of prospective traders, and thus the law should be properly understood to inform on when the information gathered amounts to ‘inside information,’ or from a regulatory point of view what type of information should be viewed as inside information.

3.8 Conclusion

It is evident that investor protection is fundamental in capital markets business as it has been obvious on the matter of compensation from Fidelity Fund and absence of it is unsafe for business. It can be demonstrated that the legal and institutional framework on securities markets in Tanzania is for the most part statutory, as discussed in the relevant legislations. However, the framework is characterized by gaps and duplications when it comes to fighting insider trading practices, which can be remedied by amendments. It was also seen that, since the Tanzanian companies’ law hasn’t done enough fighting insider trading, thus an argument can be made that it should be replaced with a more vibrant framework. It is particularly insufficient in relation to investor protection from insider trading point of view thus there seems an urgent need to align it with the securities markets legislation.

⁹⁹ Section 112 of CMSA

CHAPTER FOUR

DISCUSSION OF RESEARCH FINDINGS

4.0 Introduction

The data analysed in this chapter was collected from the offices of the DSE's and CMSA's the legal departments, the stock brokers and the licensed dealing members (LDMs). The aim was to determine whether there is protection of investors at the market, with emphasis on the law relating to the stock market in the country.

4.1 The legal framework governing the protection of investor against insider trading in capital market business

Findings reveal that, investors are to be informed of their rights and duties as investors of the said listed companies at the DSE. The said rights are listed under Section 133(1)¹⁰⁰ which states that:-

“Every company shall in each year hold a general meeting as its Annual General meeting, and shall specify the meeting as such in the notices calling it. At the Annual General Meeting... transact the following businesses”

- To have laid before the individuals the yearly records;
- To have laid before the individuals the chiefs' report;
- To have laid before the individuals the inspectors' report;
- The arrangement of inspectors for the time of the following general gathering at which accounts are laid;
- The re-appointment of executives resigning and looking for re-appointment.

The interview with one of the legal officer¹⁰¹ on the issue of protection of investors against insider trading in the capital market business specifically if they inform their client of their rights such as attendance of Annual General Meetings (AGM) where they

¹⁰⁰ Companies Act, Cap 212 R.E 2002

¹⁰¹Miss Anitha Kajole from DSE, the date of interview 21st May 2018.

can take part in decision making of the companies through voting; obtaining periodic dividends from profits of the company, inform the clients on how to obtain financial information of the company either through the AGM, the media, the brokers or at DSE or CMSA.

When the researcher interviewed LDM and brokers about informing the client of their rights as investors depending on the knowledge the investor has about the securities market on their rights. This is assumption does not give each investor the opportunity to learn in detail what is expected of him/her as an investor. Therefore, the said investor will not make a proper follow up on the progress of the company he/she has invested in and in case of any problems such non payment of dividends or poor performance of the company the investor's confidence in the market is lowered.

The Law¹⁰² impose duty to LDM and securities brokers duty to make sure that every investor is made fully aware of the role in the market in order to be competent to make conversant decisions in relation to the investment, for example when to decide to sell the stock depending on the performance of the company so as to make profit from the sold stock and when to buy more stock from a said company due to its good performance in the market.

Further, from the field it was observed that each client who deposits money with broker is kept in a Trust Account¹⁰³ made for such client and immediately upon obtaining the funds so as to avoid misuse of the same. The law provides for limitation of staying money of client who wishes to buy stock depends with the agreement between the broker and the client since stocks at times are not readily available, if no transaction is done the money should be returned to the client at the agreed time or else he may file a complaint.¹⁰⁴ It has been observed that:-¹⁰⁵

¹⁰² DSE Blueprint

¹⁰³ Rule 3.54(c) of DSE Blueprint

¹⁰⁴ section 69(1) of Cap 79 of 2002

- A dealer shall maintain and open an account designated as trust account with a bank in Tanzania.¹⁰⁶
- A dealer shall pay all money held by him or a client into such account not later than the next day on which the bank is in business following the day in which the moneys are received by the dealer.¹⁰⁷

Therefore, upon reception of a client's money, the dealer has up until the next working day to have opened a Trust Account for the client with the Bank of Tanzania (BOT) any other bank in Tanzania¹⁰⁸; Each LDM shall institute and keep in a bank or banks in Tanzania one or more Trust Account, evidenced as such, into which it shall pay all amounts less any commission and other proper charges that are received from or on account of any person (other than an LDM) for the purchase of securities:-¹⁰⁹

The law¹¹⁰ requires Trust Account to be designated client's account and shall solely accept moneys deposited by clients for the acquire of securities and effect payments for securities; The Trust Account shall not under any situation be co-mingled with any other bank accounts operated by the LDM; and The Exchange shall have power to inspect the operations and activities of all Trust Accounts maintained by the LDM at such intervals as may be determined by the Council.¹¹¹

One of the respondent¹¹² he stated that "The legal framework must protected against fraud, misappropriation, negligence and bad practices as well as ensuring against poor accounting and financial disclosure requirements in the market which will lowers the confidence of the investor in the market. Essentially" but the law does not protect the investor from loss but rather from infringed rights. He further stated that the law

¹⁰⁵ *ibid*

¹⁰⁶ section 69(1) of Cap 79 of 2002

¹⁰⁷ Cap 79 R.E 2002

¹⁰⁸ as provided for under Rule 3.54 (a) of DSE Blueprint

¹⁰⁹ DSE Blueprint

¹¹⁰ The Law provides that, Rule 3.54(c) *ibid*

¹¹¹ *ibid*

¹¹² J.R. KYENCHE, legal officer at DSE, interviewed on 5th May 2018

establish an offence for a broker to misuse a client's money¹¹³ may be fined an amount of two million shillings or imprisoned. For example in Exim Securities¹¹⁴ was banned for the misuse of clients' money in the year 2000, while Core Securities was suspended for a year in 2009 for price manipulation of the TBL shares.¹¹⁵ The essence here is to ensure that the markets provide a level playing field, to assure that market prices are not manipulated.

The government has enacted the Tanzania Investment Act, 1997,¹¹⁶ the Financial Laws (Miscellaneous Amendments) Act, 1997,¹¹⁷ the Capital Markets and Securities Act, 1994¹¹⁸ and its regulations, the Banking and Financial Institutions Act, 1991 and the Bank of Tanzania Act, 2006.¹¹⁹

¹¹³ Section 70 of Cap 79 R.E 2002

¹¹⁴ Section 70 of Cap 79 R.E 2002

¹¹⁵ Interview conducted with Mrs. Andrew Nichodemus a Licensed Dealing Member from Orbit Securities in Dar es Salaam

¹¹⁶ Act No. 26 of 1997. "This is an Act to guide investment activities in Tanzania, to provide for more favorable conditions for investors. It provides definitions for inter alia local investor, foreign investor and local capital".

¹¹⁷ Act No. 27 of 1997. "The Act aimed at amending certain financial laws, in order to address areas in affected legislations that had potential conflict with some provisions in the Tanzania Investment Act of 1997, The legislations which were affected by this Act are some sections of the Income Tax Act, 1973, the Customs Tariff Act, 1976, the Sales Tax Act, 1976 (since repealed) and the Immigration Act, 1995".

¹¹⁸ Act No. 12 of 1991. "An Act intended to harmonize the operations of all financial institutions in Tanzania, to foster sound banking activities, to regulate credit operations, and to provide for other matters related to these purposes".

¹¹⁹ "The Act expressly specifies functions and objectives of the regulation and supervision of banks and financial institutions in Tanzania. Other laws include the Land Act, 1999, Act No. 4 of 1999, the Village Land Act, 1999, Act No. 5 of 1999) which provides for the management and administration of land in villages, and for related matters, the Value Added Tax Act, 1997, Act No. 24 of 1997) which provides for the imposition of tax to be known as Value Added Tax on supplies of goods and services and for related matters, the Immigration Act, 1995, Act No. 7 of 1995) which aimed to provide for the enactment of one law for control of immigration in the United Republic of Tanzania and for matters incidental to or connected with immigration, the Foreign Exchange Act, 1992, Act No. 1 of 1992) which provides for the administration and management of dealings and other acts in relation to gold, foreign currency, securities, payments, debts, imports, exports, transfer or settlement of property, the Customs Tariff (Amendment) Act, Act No. 1 of 1976) which provides for the imposition of duties on goods imported into Tanzania as well as the Business Licensing Act, Act No. 25 of 1972) which provides for licensing of business operations. No firm or business entity can enter into business activities before getting a business license".

Unfortunately, practice indicates that capital market has not excelled to attain its prospects in protection of investors are concerned in relation to insider trading.¹²⁰ The analysis of the Capital Market and Securities Act¹²¹ indicates that it neither provides the interpretation to legal concepts such as insider, insider information and publication. Besides, civil remedies and criminal penalties provided under the Act are inadequate for deterrent purposes to combat insider trading practices.

The practice indicates further that unlike companies which have experts to assist them in deciding which companies to invest in and for what gain, individual investors in most cases, enter into the stock market world with or without adequate knowledge of the functioning of the market other than obtaining dividends or the buying and selling of shares. Worse still, there are no legal restrictions that prevent takeovers or mergers, something which is against strong securities laws which presupposes substantive law on disclosure, transparency, prohibition of all forms of market abuse and minority protection who most of them are individual local investors, against coercive takeover bids and expropriation.¹²² Similarly, the law does not protect the local investor from loss but rather from infringed rights.

Therefore, the legal framework on insider trading in Tanzania is characterized by gaps, duplications, and ambiguities. At the end of the article it is concluded that, such legal regime is not adequate in combating insider trading practices in the stock market in Tanzania, thus amendment of the law is considered necessary.

Commenting on, one lawyer from CMSA opined that:-

If the Capital Market and Securities Act as the mother law on security market does not provides for the interpretation to legal concepts such as

¹²⁰ “this made worse by the desirable characteristics of stock exchange market such as liquidity, availability of information which lead to market efficiency, high price sensitivity to new information, small price fluctuation and narrow price spread. This coupled by lack of competent experts in financial markets low level of income of the local population, the negative perception of risks involved in the market as well as lack of confidence in the financial sector because the indigenous investors were not able to buy shares in the privatized companies.”

¹²¹ Act No 4 of 1997

¹²²See Ali Adnan Ibrahim, Developing Governance and Regulation for Emerging Capital and Securities Markets, 39 RUTGERS L. J. 111, 119 (2007).

*insider, insider information and publication, it means that investors are not safe with their investment, I think the relevant authorities should look deep on this, especially now we are aspiring for the government of industries*¹²³

4.2 The Institutions governing the protection of Investor against Insider Trading in Capital Market Business

The institution governing the protection of investor against insider trading in capital market business in Tanzania are DSE¹²⁴ and his supervisory body CMSA¹²⁵. Data from both DSE and CMSA are presented as follows:-

DSE is dependable for trading of stocks and bonds; it is the only stock market in Tanzania. Through the brokers and the licensed dealing members, shares and bonds of the investors change hands through buying and selling at the market. With the establishment of the DSE whose main role is to ensure that a viable capital market succeeds in the country, practice indicates that capital market has not excelled to attain its prospects in protection of investors are concerned in relation to insider trading.¹²⁶

¹²³ Mr. Mathias Urrio, legal officer at CMSA, interviewed on 25th May 2018

¹²⁴ established by the Capital Markets and Security Authority under the Capital Markets and Securities (CMS) Act¹²⁴. As of March, 2009

¹²⁵ established under the Act No 5 of 1994, “ in order to facilitate Securities Market Business in Tanzania, This gave license to all participants of the Capital Market Business, This organ also acted as the Supervisory Organ in the Capital Market Business in Tanzania”.

¹²⁶ “This is made worse by the desirable characteristics of stock exchange market such as liquidity, availability of information which lead to market efficiency, high price sensitivity to new information, small price fluctuation and narrow price spread. This coupled by lack of competent experts in financial markets low level of income of the local population, the negative perception of risks involved in the market as well as lack of confidence in the financial sector because the indigenous investors were not able to buy shares in the privatized companies”.

The DSE regulations and Blueprint provide the guidelines under which the said trading should take place so as to ensure the interests of the investors are safe guarded and that the activities of the stock market run smoothly. DSE is supervised by CMSA which is responsible to overseas the activities done by the stock market and ensure the rules are adhered by stakeholders such as the licensed dealing members, the brokers, the investors and the said companies listed at the DSE.

The authorities¹²⁷ make sure that investor's protection is guaranteed by ensuring that listed companies provide interim and annual financial report on the process of their companies hence making investors aware of their investments' position; default of which will lead to warnings and finally delisting of the said company. Again, the DSE and CMSA oversee the conduct of the brokers and licensed dealing members, to ensure objectivity in the securities business. That the individual investor is informed of his rights and responsibility to his investing company. And that the brokers observe the law in their day to day activities in the market. However, the Capital Market and Securities Act¹²⁸ "clearly stipulation of the prohibited practices in the market such as insider dealing with all essentials to make it an offences but there is lack of adequate technology which limits the detection and collection of proof on offenders".

4.2.1 Control of market intermediaries

The main focus of the market intermediaries were the brokers and the licensed dealing members (LDM). Regulation of their activities begins from the moment one obtains the license; this is through deliberation of the Council of DSE to admit an application of an LDM, who must also pass through an exam se by the CMSA with a pass mark of 75% in order to obtain a practicing certificate. A broker and LDM must a have a running capital of 10 million and 20 million respectively.

¹²⁷ DSE and CMSA

¹²⁸ Cap 79 R.E 2002

The transaction carried out by the brokers and LDM are monitored through the CDS accounts of the clients or through on-site inspection at the brokerage firms. The accounting records are checked for order, the staffs at the brokerage firms are observed for competence, if there was a request from the CMSA for any competence report on any trading transaction, the firm must provide. Further that the trading rules are fully complied with when trading for a client.

Prohibited practices will be traced through monitoring of the clients account and through on-site inspection conducted by the officials from CMSA. A good example is in the year 2000 the brokerage firm that was banned from operating for misuse of clients funds¹²⁹. Another securities brokerage firm was suspended for the prohibited practice of price manipulation of TBL shares in the year 2009.¹³⁰

4.2.2 Investor Education on their rights and duties in the market

This education usually aims at giving the general public awareness on investment in stocks. The awareness creation is provided through news media such as television, radio, news papers, brochures and pamphlets, crowd pulling event.¹³¹

It is centered on informing investors of their rights as investors such as obtaining dividends, attendance of AGM, and their rights as shareholders such as voting rights so as to take part in the making of decisions in the companies he has invested in. The Authorities are also centered on making people aware of the disadvantages of being involved in pyramid schemes scams which will cause them to lose their money. They also educate on who are genuine brokers so as to avoid fraud of investors' money from people who are not qualified to trade in the market.

¹²⁹ Exim Advisory Securities was one of the earliest brokerage firms in the country.

¹³⁰ Core Securities which is still operation to date.

¹³¹ such a "Saba Saba" and "Nane Nane" Shows; seminars conducted all over the country at district level

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS.

5.0 Introduction

Investors are vital players in securities market; it is from their funds that companies obtain capital through shares in the said companies to carry out further investments of the said companies listed at the Dar es Salaam Stock Exchange. It is on this basis that their protection is paramount. Their protection mainly based on the protection from deceit, manipulation and fraudulent practices which may cause them unnecessary deprivation of their rights as investors. Above all, protection of investors instill confidence in the stock industry; hence more investors will be willing to invest their funds in stocks. Further, investor protection will ensure the integrity of the market.

5.1 Summary of findings

It is evident from the analysis of the findings that the legal framework and legal institutions established in Tanzania to protect investors against insider trading in Tanzania do not protect investors as it is not effectively tailored to resolve the challenges of faced by them against insider trading in the capital market and securities in the capital market business in the country.

5.2 Conclusion and Recommendations

5.2.1 Conclusion

The work has made an analysis on the existing legal framework in the country on how the same is adequate in protecting investors against insider trading in the capital market business in Tanzania. Usually, an insider trading involves the buying and selling of securities by taking advantage of the information that has not been made public but are crucial in making investment decisions. This means that the investor involved in insider trading gains an advantage over others, hence it is regarded as an illegal act punishable by law. It regarded as illegal because it involved the breach of the fiduciary duty and additional connection of trust and confidence. Unfortunately, as revealed in this work, there are no adequate legal and institutional frameworks in curbing this kind of malpractices. Nevertheless, the work has given out some suggestions which can be used in one way or the other to deal with the problem.

5.2.2 Recommendations

Therefore, the recommendations hereunder provide guidance to the government, local authorities, law enforcement officials especially the judiciary regarding intervention and investigation in insider trading practices. In other words, these recommendations are designed not only to remedy whatever harm may have occurred due to insider trading malpractices, but also to prevent future occurrences of these practices and to minimize its consequences thereto.

5.3 Improved technology to detect insider trading

There is a need for improvement of technology so as to increase the chances of detecting the prohibited practices such as insider trading. This is because currently it has been difficult to prove any allegations relating to insider trading due to lack of means to trace the flow of the confidential information from the insiders to outsiders hence difficulty in apprehending offenders due to lack of tangible proof. An improved technology will enable the law on insider dealing to be effectively applied hence protecting the investor in the process and the listed company concerned.

5.3.1 The Law should include interpretation of key legal concepts

The analysis of the *Capital Market and Securities Act*¹³² indicates that it neither provides the interpretation to legal concepts such as insider, insider information and publication. Therefore, the inclusion of these concepts will help to cover the existing gaps, duplications, and ambiguities featuring the existing laws.

5.3.2 Need for criminal penalties and civil remedies.

The criminal penalties and civil penalties provided under the Act are inadequate for deterrent purposes to combat insider trading practices. Therefore, there is a need for the establishment of clear civil remedies and criminal penalties as well as adequate enforcement mechanisms in order to ensure orderly, equitable and fair dealings in the market.

¹³² Cap 79 R.E 2002

5.3.3 Need for legal restriction on takeovers or mergers

There are no legal restrictions that prevent takeovers or mergers, something which is against strong securities laws which presupposes substantive law on disclosure, transparency, prohibition of all forms of market abuse and minority protection who most of them are individual local investors, against coercive takeover bids and expropriation. This calls for the need to have a legal restriction in place on takeovers or mergers.

5.3.4 Permanent exclusion from the market

There should be some legal restriction against insider trading which should serve as a deterrent factor to other traders who tend to deal or engage in these kinds of investments in order to protect investors in the capital market business. This includes permanent exclusion from the market. This, however, should go hand in hand with the establishment insider trading compliance and scrutiny policies.

5.3.5 Regular trainings and education against insider trading

Apart from the need to have a strong IT infrastructure in place, there is a need for the establishment of regular and continuous trainings and education to emphasize on the prevention of all criminal activities linked to insider trading in order to avoid their recurrence in the market.

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APPENDICES

Appendix 1

A Questionnaire

I am **Sophia Kihelile** from Mzumbe University undertaking a field research titled **ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING THE PROTECTION OF INVESTORS AGAINST INSIDER TRADING IN CAPITAL MARKET BUSINESS IN TANZANIA** as partial fulfillment of the requirements for the Award of the Masters Degree Commercial Laws (LL.M - CL) of the Mzumbe University.

I humbly request once you get this copy of questionnaires, kindly fill it accordingly and return them to the student in question on time. Your cooperation is highly appreciated. All the answers you provide in this survey will be kept confidential. The data will be reported in a summary fashion only and will not identify any individual person. Please tick the appropriate box and fill in the gaps where necessary. The study will take about 20 minutes to complete.

1. Particulars of the respondent:-

- Age years.....
- Gender Male/Female
- Occupation
- Mobile/Telephone no.

2. What company have you invested in?

3. How many shares do you own?

4. How did you come to know of the shares at the Dar es Salaam stock exchange?

- News media
- Licensed Dealing Member (LDM) / Securities broker
- Family members/ friends
- Other, please explain

4. Are you aware of your rights as a shareholder of a company?

Yes/No If the answer is yes, what are those right that u are aware of

.....

.....

6. Have you ever made any complaints due to unsatisfactory services given by a broker?

Yes/No

If the answer is yes, please explain the cause

.....

7. if the answer is yes from above question, what measures were taken

.....

8. Are you aware of the laws that deal with the stock market in the country?

Yes/No

If the answer is yes, mention them

9. Is the law governing insider trading in Tanzania adequate enough to protect individual local investor in the country?

10. are the civil remedies and criminal penalties provided under the law ae adequate in deterring insider trading practices in the country?

11. Do you follow up on the progress of the company you have invested in?

Yes

No

If

yes,

how?

.....

10. How do you rate the disclosure of financial statements of the listed companies at the DSE?

Bad

Good

Very Good E

xcellent

I don't know

11. Have you ever made any complaints due to unsatisfactory services given by DSE?

Yes/No

Appendix 2

A Questionnaire

I am **SOPHIA KIHILILE** from Mzumbe University undertaking a field research titled **ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING THE PROTECTION OF INVESTORS AGAINST INSIDER TRADING IN CAPITAL MARKET BUSINESS IN TANZANIA** as partial fulfillment of the requirements for the Award of the Masters Degree Commercial Laws (LL.M - CL) of the Mzumbe University.

I humbly request once you get this copy of questionnaires, kindly fill it accordingly and return them to the student in question on time. Your cooperation is highly appreciated. All the answers you provide in this survey will be kept confidential. The data will be reported in a summary fashion only and will not identify any individual person. Please tick the appropriate box and fill in the gaps where necessary. The study will take about 20 minutes to complete.

1. Particulars of the respondent:-

- Age years.....
- Gender Male/Female
- Occupation
- Mobile/Telephone no.

2. What company have you invested in?.....

3. How many shares do you own?

4. How did you come to know of the shares at the Dar es Salaam stock exchange?

- News media
- Licensed Dealing Member (LDM) / Securities broker
- Family members/ friends
- Other, please explain

4. Are you aware of your rights as a shareholder of a company?

Yes/No If the answer is yes, what are those right that u are aware of

.....
.....

6. Have you ever made any complaints due to unsatisfactory services given by a broker?

Yes/No

If the answer is yes, please explain the cause

.....

7. if the answer is yes from above question, what measures were taken

.....

8. Are you aware of the laws that deal with the stock market in the country?

Yes/No

If the answer is yes, mention them

.....

9. Is the law governing insider trading in Tanzania adequate enough to protect investor in the country?

10. are the civil remedies and criminal penalties provided under the law ae adequate in deterring insider trading practices in the country?

11. Do you follow up on the progress of the company you have invested in?

Yes

No

If

yes,

how?

.....

10. How do you rate the disclosure of financial statements of the listed companies at the DSE?

Bad

Good

Very Good E

xcellent

I don't know

11. Have you ever made any complaints due to unsatisfactory services given by a DSE?

Yes/No