Capital Markets Authority
Protecting Your Investments

CMA Amendment Act 2016

Implications for Market Participants

Background

Capital Markets Authority
Protecting Your Investments

- The Capital Markets Authority Act (Cap 84)
- Capital Markets Authority Amendment Act 2011
- Capital Markets Authority Amendment Act 2016
- Objective – Alignment with international standards and best practices in capital markets

Key Provisions

Capital Markets Authority
Protecting Your Investments

Section 1

- Approved & Regulated persons introduced
- Approved persons – regulated and authorized persons
- Regulated persons – licensed persons & Securities Exchanges
- Authorized persons – authorized to carry on any activity under the Act

Key provisions – Section 1

Capital Markets Authority
Protecting Your Investments

Securities – definition expanded to cover

- units, interests or shares offered under a collective investment scheme
- Rights, warrants, options or futures in respect of depository receipts, commodities or derivatives
- Investment contracts
- Any instrument prescribed by the Authority as a security

Key provisions – Section 4

New licenses introduced

- Fund manager
- Investment house
- collective investment scheme
- Market advisers
- Representatives
- Trustees
- Custodians or depositories.

Key Provisions – Section 4

Capital Markets Authority
Protecting Your Investments

Approvals for the following persons

- Commodities exchange
- Securities exchange
- securities central depository
- credit rating agency

Key Provisions – Section 4

Capital Markets Authority
Protecting Your Investments

- **Approvals for the following persons**
  - Registrar
  - underwriter
  - clearing house
  - clearance and settlement facility
  - venture capital funds.
  - or to operate in any other capacity which directly contributes to the attainment of the objectives of the Act; and to ensure the proper conduct of that business.

Key Provisions – Section 4

Widened the powers of the Authority

- The Authority may inquire into the affairs of any approved person
- Determination of complaints relating to breaches of the Act.
- CMA may refer matters to the Capital Markets tribunal
- To freeze the assets of persons engaged in fraudulent dealings under the Act.

Section 4

AML

- The Authority is required to carry out all the functions of an accountable person under the Anti-Money Laundering Act.
- This will require the Authority to report to the Financial Intelligence Authority on AML compliance within the Authority
- CMA will conduct AML focused inspections this year using a risk based approach.

Section 9

Capital Markets Authority
Protecting Your Investments

- The Authority may, at any time, without notice, enter any premises owned, controlled or occupied by an approved person and examine any books that may be found on those premises or that may be in the possession of the approved person .
- The Authority may require any key person to provide an explanation to the business, integrity, financial standing and compliance of the approved person.
- A key person is defined as any current or former controller, beneficial owner, director, manager, employee or associate of an approved person and includes an agent.

Section 11

Capital Markets Authority
Protecting Your Investments

- The Authority may at any time and without any prior written notice authorize any persons to use reasonable and necessary force to enter any premises where it has reason to believe that there any books the production of which have been directed by the Authority and which have not been provided .
- The Authority may require an approved person to disclose to it, in relation to any acquisition of securities the name of the person from or through whom or on whose behalf the securities were acquired or disposed of and the nature of instructions given to the stockbroker, dealer or fund manager in respect of an acquisition or disposal. (disclosure mandate widened)

Section 18

Capital Markets Authority
Protecting Your Investments

- Powers of investigations extended to cover all breaches under the Act .
- Procedure includes appointment of a committee to investigate
- Powers of the Authority in cases of non compliance
  - Warn or censure that person including a stock exchange and director of a corporate person;
  - Publish a statement;

Section 18

- Powers of the Authority in cases of non compliance
  - Give directions to the person concerned requiring certain actions to be taken by that person;
  - Impose a civil penalty including a penalty on an approved stock exchange and the director of a body corporate who had knowledge of the noncompliance ;
  - Suspend or cancel that person’s license

Section 18

Widened scope of investigations to cover the following ;

- Where the Authority has reasonable grounds to believe that an approved person or key person may not be a fit and proper person to continue to be an approved person or key person
- In the interests of persons who have transacted or may transact business with a licensed person;
- In order to maintain or enhance the integrity of the Ugandan Capital Markets Authority
- In order to perform its functions under the Act.

Section 18 , 19 & 20 ,21

- Appointment of private investigators
- Assistance to foreign regulators – IOSCO MMoU
- Whistleblowing by service providers of approved persons or listed companies in instances of fraud – non- compliance is an offence
- False statements in financial statements of listed companies – responsible persons commit an offence (i.e. persons that have misled, influenced, coerced)

Section 34 & 35

Capital Markets Authority
Protecting Your Investments

One off approvals for specific transactions

- Underwriters
- Transaction Advisers

❑ Competence of approved persons

- minimum financial requirements
- Educational qualifications
- and other requirements as may be determined by the Authority

Section 35

Refusal of license – grounds expanded

- If the Authority has reason to believe that the applicant is not of good reputation or character or is not a fit and proper person.

Section 41

Grounds for grant of license

- minimum share capital as the Authority may prescribe or is a duly licensed collective investment scheme;
- That none of the directors has been declared bankrupt, denied a license under the Act or has been a director of a company providing financial services whose license has been revoked by the appropriate authority;

Section 41

Capital Markets Authority
Protecting Your Investments

- **Grounds for grant of license**
  - That the management and Board of the applicant have satisfied such minimum requirements as prescribed by the Authority.
  - In the case of a stockbroker, dealer - security deposit or bank guarantee
  - Administrative capacity to carry on the business for which the approval is required;

Section 43

Capital Markets Authority
Protecting Your Investments

Statutory Management

- Approved person is given the opportunity to be heard
- A statutory manager may be appointed for an approved person upon application by the Authority to court.
- The appointment is for a maximum period of 6 months but may be extended by the court upon application of the Authority.
- Roles of the statutory manager have been outlined

Section 45

Appeals to the Tribunal

Any person aggrieved by the refusal of the Authority to;

grant or renew a license

revoke or impose conditions on or suspend a license

may within thirty days after the decision appeal to the Tribunal.

Section 47

SROS

- The Authority may delegate any of its powers or functions to an SRO.
- SRO can make rules for which it has regulatory or supervisory functions.
- The SRO is required to submit an annual report to the Authority

Section 51

Records are to be kept in Uganda. Records to be kept include:

- records of business affairs,
- financial position,
- internal organization,
- compliance with statutory and regulatory requirements and
- risk management systems.

Section 64

Appeals to the Tribunal

Capital Markets Authority
Protecting Your Investments

- The tribunal is to hear and determine disciplinary actions referred to it by the Authority,
- complaints made to the Authority and referred to the Tribunal by the Authority,
- inquiries in the conduct of licensed persons,
- appeals from the Authority, matters referred by the Authority,
- claims to compensation from the Investor compensation fund and
- any other matters concerning the Act requiring inquiry and adjudication which the Authority may refer to the Tribunal.