## Tolea Securities v. Capital Markets Authority (M.C No. 55 of 2019)

In December 2017, Tolea Securities submitted an application to the Capital Markets Authority (CMA) seeking approval of a prospectus for Exchange Traded Fund (ETF) securities. The application was later amended. Notably, Tolea did not engage a transaction advisor or any other licensed person to assist with the application process.

Subsequent to the submission, there were several engagements and correspondences between Tolea and the CMA. These consisted largely of CMA's requests for Tolea to comply with certain regulatory positions, and Tolea's explanations—primarily asserting that the positions were inapplicable to its circumstances.

On 30th November 2018, the CMA rejected Tolea's application. The rejection was based on the ground that the application had not been submitted in the prescribed form under the Capital Markets (Asset Backed Securities) Regulations, 2012 ("ABS Regulations"), despite Tolea's proposal to structure the ETF as an asset-backed security.

Tolea subsequently filed a judicial review application in court seeking the following reliefs:

- An order quashing the CMA's decision;
- A directive compelling the CMA to evaluate the application under the ALTX Securities Rulebook v2.0 ("ALTX Rules");
- General and exemplary damages; and
- Costs of the suit.

Tolea's primary contentions were:

1. That the CMA applied the wrong legal framework—the ABS Regulations—rather than the ALTX Rules which were applicable to its case;
2. That it was denied a fair hearing and thus condemned unheard.

In response, CMA argued that:

- The ABS Regulations were rightly applied, as Tolea's ETF was structured as an asset-backed security and described as such in the prospectus;
- Tolea had been given an opportunity to be heard prior to the decision;
- The matter was not suitable for judicial review since it challenged the merits of CMA's decision rather than the process;
- Tolea had alternative remedies available under the law.

**Court's Decision:**

The court ruled in favour of Tolea. It held that:

- The CMA applied the wrong legal framework in evaluating the application, which amounted to an illegality;
- The CMA acted procedurally improperly and irrationally by relying on reasons such as the application's incompleteness and Tolea's alleged lack of human capital and expertise without giving Tolea a fair opportunity to respond;
- The decision to reject the application was thus tainted by procedural unfairness and irrationality.

As a result, the CMA's decision was quashed.