



LEGAL UPDATE

A PUBLICATION OF THE CAPITAL MARKETS AUTHORITY,
UGANDA.



Miriam Musaali, CMA
Director Legal and
Board Affairs.

WHATS NEW?

- COMMENCEMENT OF REVIEW OF THE CMA ACT.
- 2 CIS REGULATIONS APPROVED BY THE CMA BOARD FOR STAKEHOLDER CONSULTATIONS.
- 3 CIS REGULATIONS APPROVED BY THE CMA BOARD AND FORWARDED TO FPC, MOJCA FOR REVIEW AND DRAFTING

Welcome!

A lot happens in a day, and much more has happened since the previous legal update from the Capital Markets Authority. Since then, Collective Investment Scheme Managers now hold more than UGX 1.15 Trillion in Assets under management. The Capital Markets Authority (CMA) congratulates the five licensed CIS (Collective Investment Scheme) Fund Managers that have mobilized domestic savings and opened over 32,998 investor accounts. The future looks promising.

REVIEW OF THE COLLECTIVE INVESTMENT SCHEMES LEGAL FRAMEWORK & COMMENCEMENT OF REVIEW OF THE CMA ACT

The Capital Markets Authority extends sincere appreciation to the following CIS market intermediaries who accepted our invitation to join the CIS Technical Working Group (TWG) and worked tirelessly to review the legal framework for CIS in Uganda.

- Mr. Mubbale Mugalya -Country Representative and Investment Manager, Sanlam Investments East Africa Ltd.
- Mr. Brian Ongodia - Investment Associate, Xeno Investment Management Uganda Ltd.
- Mr. Patrick Ssewanyana - Corporate Banker, Trustee Services Operations KCB Bank.
- Ms. Racheal Nambooze - UAP Old Mutual Financial Services Ltd.
- Ms. Grace Akumu - Standard Chartered Bank Uganda Ltd.

We thank all the stakeholders who attended the virtual stakeholder workshop on 8th June 2022. The level of attendance, debate and passion for the capital markets was very encouraging. We thank you!

The Authority has commenced review of the Capital Markets Authority Act Cap 84. Stakeholders are requested to note the proposed areas of change and submit any other areas for consideration by the Authority.

This legal bulletin is an update on the review on the 2 CIS regulations approved by the Board for circulation to stakeholders for comments and a notification on the commencement of review of the Capital Markets Authority Act.

An invitation to the virtual stakeholder workshop to be held on 27th September 2022 on the 2 approved CIS regulations and proposed areas for amendment of the CMA Act will be sent in due course. Written comments can be sent to: legaldepartment@cmauganda.co.ug.

Sincerely,
Miriam Musaali.

THE AMENDMENT OF THE CAPITAL MARKETS AUTHORITY ACT CAP 84

Capital markets play a critical role in economic development. A key building block for efficient capital markets is the presence of a facilitative regulatory framework that allows for innovation, increases access and ensures that the market is fair for the protection of investors. Where investors are better protected, confidence is high, leading to a deployment of capital.

To boost investor protection and increase access to capital markets, CMA is seeking an amendment to the CMA Act. Gaps have been identified that impede access to capital as well as supervision of the market to better protect investors.

Several definitions within the CMA Act are ambiguous, creating uncertainty and room for different interpretations. Definitions which require a review include: derivative; dealing; investment advisor; broker; registered venture capital and investment house, among others.

Some areas of the Act require deletion to ensure clarity of the regulatory framework. These include definitions such as exempt dealer, underwriting as a license category and requirements for a fidelity fund to be maintained by an exchange.

Investor protection is paramount in an industry based on trust such as the capital markets industry. The current Act goes a long way in protecting investors. However, CMA has identified gaps such as the extension of provisions allowing for monitoring of solvency of licensed persons to approved persons, which may have a direct bearing on investor protection. The financial health of approved or authorized persons is key in ensuring that they meet obligations to investors and other stakeholders. Additionally, the current Act allows CMA to issue directions to a Stock Exchange or Commodities Exchange where it appears to be in public interest.

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This ties the ability of the Authority to protect investors as public interest is an ambiguous concept. Ideally, the Authority should be able to issue directives for all breaches to protect investors without necessarily citing public interest.

Increased access to capital markets for both issuers and investors in securities ensures the vibrancy of a market. Introductory offers can provide an alternative pathway for accessing capital markets other than the traditional Initial Public Offering (IPO) route. Amending the definition of an “introduction” in the CMA Act to allow for introductory offerings by public companies that are not listed on any other exchange and whose shares are widely held will allow for increased access to capital markets by issuers who might not prefer the IPO route. Inclusion of High Net worth Individuals in the definition of “Professional Investors” will also allow sophisticated individuals of means to tap into riskier investments that may not be suitable for retail investors.

To facilitate the ability of market players to tap into business opportunities, CMA has identified the annual license renewal process as a hurdle that could impede certain categories of market players such as fund managers and brokers. To increase the ability of these market players to seek business opportunities, CMA is seeking to introduce a perpetual license with checks being maintained through inspections and other surveillance tools. CMA is also seeking to introduce levies in the Act

Stakeholders are requested to review the Capital Markets Authority Act and submit any other areas that may require amendment to legaldepartment@cmauganda.co.ug. An online Consultative workshop will be held in due course.

THE COLLECTIVE INVESTMENT SCHEMES (INVESTMENT COMPANIES WITH VARIABLE CAPITAL) REGULATIONS 2022

The Collective Investment Schemes (Open-ended Investment Companies) Regulations have been in place since 2003. However, the regulations are being renamed in tandem with the Collective Investment Schemes Act and the provisions have been made consistent with the existing framework for CIS. CMA has so far not licensed any companies to carry out CIS business under the OEIC regulations.

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It is anticipated that the market may gain interest in these kinds of CIS with clarity in the regulations and the creation of awareness of the merits among operators and investors as far as Investment Companies with Variable Capital (ICVCs) are concerned.

ICVCs' have shares representing ownership, rather than units in a trust making them eligible for listing on an exchange. The CIS Act requires all ICVCs' to be listed on an exchange.

This provides several benefits to the operators and investors such as liquidity provided on an exchange, eliminating the need for disposal of the underlying when investors wish to exit. This lowers costs for operators, which translates into increased returns to investors. Exchange liquidity has been known to be a magnet for investors who prioritize the liquidity of their investments. Furthermore, being exchange-listed provides visibility to a CIS from a marketing perspective while investors gain from price transparency.

ICVCs exist to make investments, instead of creating goods or providing services and they operate under company law. The ICVC structure also allows management companies to offer umbrella funds. These give the investor a choice of funds covering a range of investment objectives, each sub-fund offering or issuing a different class of shares within the company. Switches between funds, therefore, become a simple matter of share exchange.

The umbrella structure also makes it easier to create new funds, the interest in which is represented by another class of share. Additionally, unlike the unit trust managers who must worry about constant inflows and outflows of cash, CIS ICVC managers are responsible for a stable pool of capital. Where fund shares trade actively, that doesn't affect the fund manager because no assets are flowing into or out of the portfolio.

Therefore, CIS ICVC managers can put capital to work in a long-term strategy, without worrying whether their fund will have enough liquidity to pay back investors who suddenly sell (redeem) shares. **(Continues on page 5)**

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It also makes the CIS ICVC structure advantageous for investing in specialized areas such as less liquid and unlisted securities, private equity, venture capital opportunities, private placements, real estate and infrastructure projects.

Furthermore, in illiquid markets such as Uganda where the range of equities or bonds available is limited and these instruments are infrequently traded, the setting up of ICVCs should be encouraged. It is also worth noting that the development of ICVCs will help counter the problem of liquidity management that the current CIS managers in Uganda are facing. To this end, in absence of closed-ended fund-specific regulations in Uganda, enhancing provisions in the regulations for ICVCs coupled with increased awareness is expected to see the market intermediaries and investors embrace these types of CIS.

THE COLLECTIVE INVESTMENT SCHEMES (FEES INSTRUMENT) 2022

The Collective Investment Schemes (Fees) Instrument 2022 will replace the Collective Investment Schemes (Fees) Instrument 2016. The proposed changes include raising of the fees for recognition of a foreign scheme from UGX 750,000 to UGX 2,000,000, The non renewable application fee for a unit trust and ICVC to be raised from UGX 750,000 to UGX 10,000,000 and for replacement of a license to be raised from UGX 50,000 to UGX 100,000.

We would like to hear from you. For feedback please write to:

legaldepartment@cmauganda.co.ug