CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS ON IMPROVING THE TANZANIAN INSIDER TRADING REGULATORY FRAMEWORK

5.1 General Observation

This chapter provides concluding remarks with recommendations emanating from the study. Detailed discussions advanced in the first four chapters involved an attempt to answer the question as to whether or not the current Tanzania insider trading regulatory framework has successfully fulfilled its objectives viz to protect the integrity of the securities market against any abuses arising from the practice of insider trading, as well as to maintain surveillance over securities, and to ensure orderly, fair and equitable dealings in securities. Detailed analysis of foreign legislation (rnational standard and therefore comparable in the protection of s nducted of the English and South African insider trading legislation. apters two, three and four that the legal and institutional frameworks Tanzania is characterised by flaws and duplications when it comes rading practices.[165] The Capital Markets and Securities Act of 1994 is inadequate and ineffective especially in relation to prohibition of insider trading, defences and enforcement mechanisms. It is also inadequate in relation to investor protection from insider trading. Flaws discussed in this study particularly in chapters two and three have great impact in the regulation of insider trading on the securities market and are such as lack of strong, adequate and effective provisions on prohibition and enforcement mechanisms, including criminal and civil penalties and absence of administrative sanctions to be employed to offenders of insider dealing. The absence of definitions of some important terms such as insider, and inside information, and publication in relation to inside information, absence of circumstances in which information is to be regarded as having been made public and absence of clear provision on defences are problematic. Furthermore, and as it has also been presented under chapter three of this study, the CMSA in the discharge of its roles and functions has not been able to contribute to the

[165] See also Massawe H T & Kadilu M on 'Combating insider trading in Tanzania: the adequacy of the Capital Markets and Securities Act of 1994 and the Companies Act of 2002' 'CAPITAL MARKETS IN THANZANIA-Academia.edu' available at www.academia.edu/9630069/CAPITAL_MARKET_INTANZANIA (accessed 18/ 3/2015).

protection of the integrity of the securities market in terms of its supervisory powers of compliance in eradicating the problem of insider trading. Thus, it is concluded that the existing insider trading regulatory framework is too weak to curb the problem of insider trading practices in the Tanzanian securities market.

Important developments however have been noted in the Tanzanian insider trading legal framework. Chapter three of this study has clearly shown that the financial sector reform policy has had positive impact on securities, intending to create an enabling environment for investment. This is demonstrated by the legislative body enacting the Capital Markets and Securities Act of 1994.The step which the Capital Markets and Securities Act of 1994 has taken, of opening the door for private sectors to participate in financial management, including capital markets and securities, has enabled the establishment of the Capital Markets and Securities Authority (CMSA) with supervisory powers of compliance with the Act and the establishment of the Dar es Salaam Stock Exchange (DSE) of 1998 though with few listed companies. The Capital Markets and Securities Act of 1994 has also been amended twice; the 1997 amendment, and the 2002 amendment. The aim of the amendments among others was to match with the economic changes in the global market.[166]

The researcher submits that even though the CMSA was established among other goals, to protect the integrity of the securities market against any abuses arising from the practice of insider trading, the CMSA has never achieved this goal to attract investor confidence.

5.2 Recommendations

Herein below the researcher suggests a solution to combat the problem of insider trading practices. Arguments are based on the lessons developed in chapter four of this study to making the Tanzanian insider trading regulatory framework the most strong, fair, adequate, effective and competitive and comparable to international standards.

1. The researcher recommends that the legislature should consider the enactment of strong and effective insider trading enforcement mechanisms, including criminal and civil penalties.

One of the major purposes of having a regulated securities market in the country is to protect investors from insider trading practices. This goal is achieved where there are established strong, adequate, and effective enforcement mechanisms, including criminal and civil penalties to protect the integrity of the securities market. Severe penal sanctions should be

[166] See paragraph 2.2 of chapter two of this study.

employed to perpetrators of insider trading acts. As earlier stated in paragraph 3.6 of chapter three of this study, in Tanzania it is only the court and its instituted organs such as the office of the DPP that is mandated to enforce measures against any claim on securities abuse. However, the actual profit made or loss avoided in illegal securities dealings is determined by the court. The established single regulatory body- the CMSA does not prosecute criminal cases relating to insider trading. The office of Director of Public Prosecutions (DPP) is responsible for prosecuting criminal matters and this has affected the due process of law which required timely dispensation of justice due to the backlog of cases in Tanzanian courts. The researcher recommends the adoption of strong enforcement measures including criminal and civil penalties from the compared jurisdictions, especially from the South African insider trading regulatory framework as discussed in paragraph 4.3.3 of chapter four above. A fine of not less than five million shillings or imprisonment for a term of not less than five years or both such fine and imprisonment as discussed in paragraph 2.3 of chapter two above cannot deter insider trading practices on the securities market.

2. The researcher recommends that the legislature should enact adequate provisions on administrative sanctions.

Unlike in the compared jurisdictions, the Tanzanian insider trading regulatory framework does not provide for administrative sanctions. The researcher recommends the adoption of administrative sanctions to combat the problem of insider trading as usefully applied in compared jurisdiction of South Africa as discussed in paragraph 4.4 of chapter four of this study.

3. The legislature should enact adequate provisions on defences and should provide clear clauses on exceptions.

The Capital Markets and Securities Act, of 1994, (with its amendments) does provide only one defence relating to insider trading practices. This is found under subsection 10 of section 112 of the Capital Markets and Securities Act, of 1994. That it is a defence if the person satisfies the court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction. This is also discussed in paragraph 2.3 of chapter two. Other defences as found in compared jurisdictions, as explained in paragraph 4.3.3 of chapter four are not found in the Capital Markets and Securities Act, of 1994. The researcher is of the view that the Tanzanian insider trading legislation should adopt such defences to strengthen its regulatory framework to ensure fair and equitable dealings in securities.

4. The legislature should consider putting strict boundaries to technical terms which are very fundamental to the protection of the integrity of the securities market.

Earlier discussions in paragraph 2.3 of chapter two and paragraph 4.4 of chapter four of this study have shown that basic concepts such as an insider, inside information and publication are not defined by the Capital Markets and Securities Act, of 1994. The absence of strict boundaries to technical terms creates a loophole for many interpretations. The researchers' view is that the Act should be amended to provide limits to basic concepts to avoid inconsistencies in the law.

5. A complete repeal of the Capital Markets and Securities Act, Chapter 79 of 1994.

The discussions developed in this study have portrayed that the Tanzania insider trading regulatory framework is flawed and inadequate. Despite the two amendments to the Capital Markets and Securities Act, of 1994, both, the content and application of the Act, including its established regulatory bodies such as the CMSA and the DSE, have remained a concern in regulated and unregulated markets. Basing on this study, the researcher therefore concludes by recommending the enactment of a new piece of legislation which has features of a strong, fair, equitable, adequate and effective provisions to ensure the protection of the integrity of the securities market against any abuses arising from the practice of insider trading and to promote investment in the securities industry of Tanzania.

It is believed that when these recommendations are implemented, Tanzania will have strong and robust insider trading system.

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