VEMMA ARTICLE

VEMMA | CONSULT ATTORNEYS

22nd FEB 2025

THE DRAFT CAPITAL MARKETS AND SECURITIES (PRIVATE EQUITY AND VENTURE CAPITAL) REGULATIONS, 2024, REGULATING PRIVATE EQUITY AND VENTURE CAPITAL FUNDS IN TANZANIA, A NEW ERA FOR STARTUPS, SMALL, MEDIUM SIZE ENTERPRISES AND INVESTOR PROTECTION

INTRODUCTION TO THE REGULATIONS

The Capital Markets and Securities Authority (CMSA) of Tanzania, in collaboration with various stakeholders has developed the Draft Capital Markets and Securities (Private Equity and Venture Capital) Regulations, 2024. These regulations aim to provide a structured framework for the establishment and operation of private equity and venture capital businesses in Tanzania, the regulations will oversee Private Equity Funds ("PEFs") and Venture Capital Funds ("VCFs") within the financial sector in Tanzania.

OBJECTIVES

Subject to Regulation 3 of the Draft Capital Markets and Securities (Private Equity and Venture Capital) Regulations, 2024 (the "Draft Regulations"), the primary objectives of these regulations include the guidance for Establishment and Operation, providing clear guidelines for the establishment and operation of private equity and venture capital businesses. The Regulations aim to Regulate Venture Capital Business, regulating venture capital businesses including equity and debt securities.

Further the draft Regulations aims to protect the Investors by ensuring public awareness about venture capital businesses.

Also the draft Regulations aims at promoting financial inclusion by diversifying financial products and enhancing market liquidity, further the draft Regulations foster to promote and encourage innovations in capital markets through innovative business models, the same will strengthen the ecosystem for startups and small to medium-sized enterprises to drive economic growth.

KEY PROVISIONS

According to Regulation 6 of the Draft Regulations, any person who wishes to operate as PEF or VCF must obtain a Fund Management Licence (the "Licence") from the CMSA. The Licence shall be provided to the applicant with eligibility of the required minimum paid-up capital, one-third of independent directors, and focus on small and medium-sized businesses.

The application for a licence certificate to the CMSA should be made in a prescribed form provided in the First Schedule to the Draft Regulations.

LICENCE REVOCATION AND SUSPENSION

The Licence can be canceled or suspended under regulation13 of the Draft Regulations by the CMSA if, among others, the directors, or employees have not performed their duties honestly and fairly in the opinion of the CMSA and contravene or fail to comply with any condition of the Licence.

REQUIREMENT FOR APPROVAL

Regulations 14, 15, 16, 17, 23, 24, and 27 of the Draft Regulations, require PEFs and VCFs, through their fund managers, to apply for an approval from the CMSA prior to the raising or collection of funds from investors. The application must be submitted using the form indicated in the Second Schedule to the Draft Regulations. Before issuing the approval letter, the CMSA will assess the fund pools' eligibility, to ensure that they protect investor interests, in accordance with the applicable regulations.

AN OVERVIEW OF PEF AND VCF

The Draft Regulations provide a clear description of PEFs, defining them as investment vehicles that pool capital from sophisticated investors to invest in private companies, to generate returns from their growth. Their primary purpose is to collect capital from investors, such as, banks, insurance companies, or corporate bodies, and invest it in private companies, either by acquiring shares or providing debt financing.

On the other hand, VCFs are defined under the Draft Regulations as investment funds that manage the money of investors who seek equity stakes in startup and small to medium-sized enterprises with strong growth potential and characterized with high risk or high-return opportunities.

The difference between PEF and VCFs is that the former pools capital from sophisticated investors to invest in private companies, while the latter focus specifically on start-up companies, primarily by investing in or acquiring stakes in these businesses, often becoming shareholders by purchasing equity.

PROTECTION OF INVESTORS' (INVESTMENTS ALLOCATION IN PEFS AND VCFS)

Subject to Regulations 20 and 26 of the Draft Regulations, the regulations limit the usage of pooled funds for PEFs and VCFs. One significant limitation is that PEFs can only engage in large, emerging unlisted enterprises, with interests in a single unlisted company capped at 75% of the fund. Meanwhile, VCFs can only invest up to 25% in a single unlisted firm, with investments limited to small and medium-sized businesses.

PENALTIES FOR NON-COMPLIANCE

Subject to Regulation 41 (1) (a) (b) (c) (d) and (e), the CMSE, as the regulating authority may reprimand, suspend or de-register venture capital company or private equity company where; the registered venture capital company or registered private equity company ceases to meet the requirements for registration or fails to comply with the Act, any reports or other information filed by the registered venture capital or registered private equity company or fund manager are found to contain false or misleading information, or the registered venture capital or registered private equity company fails to take such corrective action in respect of a breach as indicated by Authority within the time prescribed, or the Authority becomes aware of any facts or circumstances, which in the opinion of the Authority, warrant deregistration of the registered venture capital or private equity company in the public interest; and if the board of directors of the registered venture capital company or registered private equity company requests in writing that the venture capital company or private equity company be deregistered.

CONCLUSION

The Draft Capital Markets and Securities (Private Equity and Venture Capital) Regulations, 2024, represent a significant step towards fostering innovation, attracting capital, and promoting financial inclusion in Tanzania. By providing a clear regulatory framework, these regulations are poised to enhance the country's economic growth and development. This will be done through clear guidelines for the establishment, operation, management of funds, and fostering of conducive environment for investment in both established businesses and emerging startups.

FURTHER INFORMATION:

This editorial is intended to give you a general overview of the Law. If you would like further information and clarification on any issue raised in this editorial, please contact.

Patrick Sanga
Partner
E: p.sanga@vemmaattorneys.co.tz

Bernard Nkwabi
Senior Associate
E: b.nkwabi@vemmaattorneys.co.tz