

**Association of Global Custodians
Middle East and Africa Focus Committee (“AGC ME&A”);
Subject to Supplemental Comments**

The CEO
Capital Markets and Securities Authority
P.O. Box 75713
Dar es Salaam
Tanzania

Email: nicodemus.mkama@cmsa.go.tz

Attention: Mr Nicodemus D. Mkama

Dear Mr MKama

The Association of Global Custodians Middle East & Africa (“AGC ME&A”) represents the international banking community¹. Within the AGC ME&A we have established an Insolvency Working Group to consider and assess the applicable insolvency regimes of certain jurisdictions in the region. The objective of the working group is to ascertain possible deficiencies concerning asset recourse and safety for the investor community

With respect to Tanzania, we have reviewed the following legislation:

1. Bankruptcy Act 1930
2. Companies Act Cap. 212 as supplemented by the Insolvency Regulations, 2005
3. Capital Markets and Securities Act 1994
4. Capital Markets and Securities (Foreign Investors) Regulations 2014
5. Rules of the Dar es Salaam Stock Exchange 2016
6. Draft Capital Markets Act, 2016 (Draft)

Our findings have been that while the laws listed above exclude client assets from the insolvency estate of a financial institution acting as custodian, the process for recovery and the other areas listed below are not addressed at a level that compares favourably with standards established globally or regionally in other markets. We believe it would be beneficial for such laws and regulations to provide more specifically for:

- priority for securities transactions in insolvency proceedings;
- a distinct approach to the treatment of intermediated custody assets in the event of the insolvency of an intermediary;
- specific processes to address transactions and holdings in the settlement system; and
- principles of settlement finality.

Capital markets are becoming increasingly cross-border in nature while the underpinnings of insolvency law remain significantly sovereign. As such the AGC ME&A seeks to understand the local market development plan towards an insolvency regime that combines improved risk management with sound legal principles and efficient insolvency processes. In our high-level assessment, we are encouraged by the progress already made in the East African Community (EAC) where the following long and short-term priorities have been identified:

- completion of the drafting and implementation of the necessary legal and regulatory frameworks that are necessary for a solid, stable and healthy financial sector integration in the EAC;
- Implementation of the agreed reforms and harmonisation of the supervision of the financial sector in the EAC;
- filling the regulatory and market development gaps;
- promotion of transparency, stability and accountability, as regards derivatives and market infrastructure;

¹ The Association of Global Custodians is an informal group of 12 financial institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations around the globe. The members of the Association of Global Custodians are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.

- continued strengthening of the region's prudential, accounting and consumer protection, covering all financial actors and markets in an appropriate way; and
- strengthening the governance of financial institutions, in order to address the weaknesses identified during the financial crisis in the area of risk identification and management.²

This positive strategic direction forms a good basis for future development in the insolvency frameworks of EAC countries. In the event that Tanzania embarks on further development of the body of insolvency law and practice, we respectfully propose that, in addition to being guided by the above stated regional policy objectives, Tanzania should consider work already done by the UNIDROIT Convention on Substantive Rules for Intermediated Securities for guidance on the scope and nature of an appropriate insolvency framework for the securities industry and the IOSCO Principles concerning the methodology for assessing implementation of the IOSCO objectives and Principles of Securities Legislation.

The AGC ME&A would appreciate an opportunity to meet with yourselves to discuss this matter further and, in particular, the extent to which the current draft of the Companies Act may be enhanced to capture these requirements and objectives. In addition, this matter will be addressed to local custodians for further consultation at a local market level. We will be in contact to make the arrangements for an initial meeting on this matter. During the meeting we would also like to consider other jurisdictions with you to assess leveraging their developments.

The AGC ME&A Committee communication details are as follows:

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Yours sincerely,



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² East African community Legislative Assembly (EALA) Strategic Plan 2013 - 2018